

## MEMORANDUM

TO: Cranston City Plan Commission

FROM: Moses Ryan Ltd., Attorney for 777 Main Street LLC

DATE: July 1, 2025

RE: Vaughn Lane RPD Master Plan Application

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This memorandum is submitted on behalf of our client 777 Main Street LLC, the Applicant, in response to the memorandum from Stephen J. Sypole, Esq., representing certain Fiskeville residents concerning the Vaughn Lane Residential Planned District (RPD) Master Plan Application (the “Project”). The Applicant appreciates the opportunity to clarify a number of points, including the Project’s adherence to all regulatory requirements.

The Applicant is committed to following the designated City Planning process and the creation of a well-designed and compliant development for the City of Cranston. This response will address the points raised by counsel for the abutters, demonstrating that the Project meets the required findings of fact for this stage of review and merits the Commission’s ongoing favorable consideration.

As an initial clarifying point, the Applicant must dispute counsel for the abutter’s mischaracterization of the “developer’s failure and/or refusal to provide meaningful responses to the numerous questions and concerns that have been raised.” At the June 3 Plan Commission meeting, the public offered comments on the Project. At the conclusion of the public comment period, before the Applicant had the opportunity to respond to said comments, the Honorable Commissioners determined that it would be in the best interest of all parties to continue the Project review to a later date. This determination was made partly in consideration of the fact that the Commission was approaching that evening’s curfew to conclude the meeting. As such and out of respect for the meeting curfew and the Commission’s stated intentions, the Applicant agreed to the continuance and simply noted for the record that responses and clarifications to public comment would be provided at the continued hearing. To call this a refusal or inability on the part of the Applicant to provide meaningful responses is a mischaracterization given the circumstances of the June 3 meeting.

Additionally, the contention put forth by counsel for the abutters that further continuance of this Project should not be granted is unreasonable. The City Plan Commission regularly grants continuances of applications, particularly when the Applicant is working collaboratively with the City and the public to address questions and provide additional information. Here, the parties are scheduling a site visit, as well as compiling additional information, which is good cause for further continuance and the Applicant formally requests continuance to the Commission’s August meeting.

## **I. Rebuttal of “Land Unsuitable for Development” Argument Regarding Wini Street Access**

Counsel for the abutters asserts that Wini Street is “Land Unsuitable for Development” due to the presence of a Providence Water Authority aqueduct, citing the City’s Subdivision & Land Development Regulations (the “Subdivision Regulations”) Section II. This interpretation misapplies the pertinent definitions and the scope of the Applicant’s proposed improvements. Separately, it is noted that Vaughn Lane does not contain a similar easement, and access to the project site is available through that route.

### **A. Distinction Between Development and Utility Easement Management**

The definition of “Land Unsuitable for Development” in Subdivision Regulations Section II, specifically subsection (6), refers to land *within* an easement on which utilities *are located*, implying a prohibition against typical construction that would impede or endanger the utility. However, this does not categorically prevent all forms of improvement or maintenance within a utility easement, particularly when such improvements are designed to *accommodate* the utility while ensuring its continued integrity and public safety.

Additionally, the definition of “Land Unsuitable for Development” in the Subdivision Regulations is specifically utilized to determine the maximum number of dwelling units permitted at a property.

### **B. Scope of “Development” in Context of Roadway Improvements**

The definitions of “development” found in RIGL § 45-24-31(21) and Cranston Zoning Ordinance § 17.04.030 are broad, encompassing various man-made changes to real estate. However, the Applicant’s proposal for Wini Street involves the extension and widening of an *existing* right of way. The design will incorporate best engineering practices to ensure the long-term safety and functionality of the aqueduct, including appropriate setbacks, structural enhancements, or alternative engineering solutions that do not involve “building *on*” the aqueduct in a manner that constitutes a prohibited impediment. Coordination with the Providence Water Authority is ongoing, and the Applicant is committed to obtaining all necessary approvals and implementing the Water Authority’s requirements.

At the Master Plan stage, the Commission reviews the conceptual viability of access. Detailed engineering plans, including specific accommodations for the aqueduct, will be provided during the Preliminary and Final Plan review stages, fully demonstrating compliance with all relevant regulations and utility requirements. To suggest that no modification or improvement can ever occur within the vicinity of an easement, even with proper engineering and utility company approval, is an overly restrictive interpretation unsupported by sound planning principles.

## **II. Clarification of Property Rights and Public Right of Way/Road Widening**

Counsel for the abutters contends that the Applicant lacks the right to widen Wini Street and Vaughn Lane and to disturb “non-conforming” structures. This argument mischaracterizes the Applicant’s approach and the legal mechanisms available for establishing adequate access.

### **A. Affirmation of Legal Access Acquisition**

Site access for this Project will be established through legal means. This includes, but is not limited to, the utilization of existing public rights-of-way along with the necessary roadway design improvements which consider the existing drives and structures. The assertion that the Applicant proposes to “seize and destroy” property without right is a misrepresentation. Additionally, it is inaccurate to state that Wini Street only provides access to Ms. Pimentel’s house and the aqueduct when there are three other lots that are located off the right of way (Plat 30, Lots 17, 28 and 35) in addition to Plat 30, Lot 258 which is one of the subject lots of the development.

### **B. Status of Existing Roadway**

The historical context of Fiskeville and the evolution of its roadways are acknowledged. However, the absence of modern plats does not automatically negate the existence of broader public rights-of-way established through historical dedication and acceptance by public use, as recognized in counsel’s own cited cases such as *Gammons v. Caswell* (Exhibit G) and *Ucci v. Town of Coventry* (Exhibit H). While the precise historical extent of these public rights of way may require further detailed legal and survey analysis, the Applicant has a good faith belief, supported by preliminary research, that these roads were intended to accommodate broader public access. The Applicant has already engaged a surveyor to survey the subject rights-of-way, and it is anticipated that said survey will be ready prior to the August Planning meeting to establish the legal status and dimensions of all required access points.

Furthermore, the Commission’s role in approving a major land development necessitates ensuring *adequate* and *permanent* physical access to a public street, as per Subdivision Regulations § III(L). If the existing paved width is insufficient to meet modern public safety and emergency access standards for a proposed development, the Applicant is obligated to propose solutions to achieve compliance. The method of securing the necessary additional width, including through confirmation of existing, wider rights-of-way, is part of the ongoing development process. As mentioned, a survey of the subject rights-of-way is being prepared. The Applicant will also provide comprehensive survey data and analysis at the Preliminary Plan stage.

### **C. Addressing Non-Conforming Uses within Rights-of-Way**

The Applicant recognizes the legal principle regarding the continuation of lawful non-conforming uses in Cranston Zoning Ordinance Chapter 17.88 and RIGL § 45-24-39(b).

However, this principle generally protects established structures from new zoning regulations; it does not grant immunity from necessary public infrastructure improvements, particularly when structures or improvements encroach upon established public rights-of-way.

The determination of whether an improvement constitutes a protected non-conforming structure or an encroachment into a public right-of-way requires precise survey and legal analysis. The *Gammons* case itself specifically states that “no right or title can be acquired in a public highway by adverse possession.” *Gammons v. Caswell*, 447 A.2d 361, 366 (R.I. 1982) (quoting *Knowles v. Knowles*, 25 R.I. 325, 55 A. 755). The Applicant is undertaking the necessary due diligence to confirm these boundaries. Should any existing structures be identified as being within a confirmed public right-of-way or an area necessary for code-compliant access, the Applicant will work cooperatively with the City and affected property owners to thoughtfully design the proposed improvements, consistent with all applicable laws and regulations. The Applicant’s approach is to find solutions, not to arbitrarily demolish.

### **III. Consistency with the City’s Comprehensive Plan: Historic and Cultural Preservation**

Counsel for the abutters argues that the project is contrary to the City’s Comprehensive Plan regarding historic and cultural preservation. This selectively interprets the Comprehensive Plan and fails to recognize the balance that modern planning documents seek to achieve.

#### **A. Balancing Preservation with Community Growth**

The Comprehensive Plan’s “Historic and Cultural Preservation” section (Exhibit I) highlights the importance of preserving Cranston’s heritage. However, the Comprehensive Plan also contains objectives related to housing diversity, economic development, infrastructure improvement, and smart growth. A well-designed RPD, such as the one proposed, thoughtfully integrates new development within existing contexts, providing much-needed housing, enhancing public infrastructure, while respecting historical elements and preserving open space.

The Comprehensive Plan’s Future Land Use Map (FLUM) designates the property for single family residential units and the proposed density of 0.57 unit per acre is in compliance with the density requirements. As confirmed in the Project’s staff report, the Project is in compliance with the Comprehensive Plan and meets many of the Plan’s goals, policies, and action including: Goal NR-1: Protect and enhance Cranston’s natural environment and resources; Goal NR-2: Establish a balance between natural resource protection and growth-related needs; Policy NR-4: Preserve and protect critical fish and wildlife habitat areas and areas containing rare and endangered species; Goal H-1: Ensure that future residential development in western Cranston is consistent with the capacity of the area’s natural resources and infrastructure, and preserves community character; Goal H-4: Promote housing opportunity for a wide range of household types and income levels; Goal H-5: Conserve resources in new subdivisions; Policy H-1: Maintain zoning densities that reflect planned municipal service levels and natural resource constraints; Policy H-6: Maintain a varied housing stock, with units of different age, size and type that are affordable

to a wide range of incomes; Goal SF-2: Expand municipal sewerage to areas where service is essential for existing and planned development, while at the same time protecting the system from excessive demands; Policy SF-19: Use sewer and water line connections in western Cranston to promote open space and agricultural preservation; Policy LU-1: Promote residential land use patterns that concentrate and compact development and maintain significant percentage of open space; Policy LU-2: Preserve, in significant tracts, 20 per cent of the remaining open space in western Cranston, or 500 acres (exclusive of wetlands), through restrictions associated with clustering of future development or through purchase; Policy LU-4: Preserve and enhance the quality of existing valuable resources including wetlands, surface water, ground water, wildlife habitats and migration corridors, historic sites, scenic views and unique cultural resources; Policy LU-12: Protect and stabilize existing residential neighborhoods by increasing open space, improving roadway conditions, and making the zoning conform to existing uses; Policy LU-18: Preserve the existing density of established neighborhoods.

### **B. Project's Commitment to Sensitive Design**

The Applicant acknowledges the historic fabric of Fiskeville. Any necessary modifications to the roadway infrastructure will be undertaken with a sensitive approach, aiming to minimize disruption and, where possible, enhance the overall community environment. Specific mitigation strategies for historic resources, if identified as impacted, will be developed in collaboration with relevant preservation bodies and presented at later stages of the review. The project is designed to be a thoughtful addition to Cranston and is consistent with the holistic goals of the Comprehensive Plan.

## **IV. Adequacy of Information and Distinguishing Precedent**

Counsel for the abutters cites *Green Development LLC v. Town of Exeter Zoning Board of Review* (Exhibit J), *Asa S. Davis III v. Town of Exeter Zoning Board of Review* (Exhibit K), and *Sakonnet Partners LLC v. Gescheidt (Tiverton)* (Exhibit L) to argue for denial based on insufficient information. These cases are distinguishable and do not support a denial of the current Master Plan Application.

### **A. Master Plan Stage vs. Denials Based on Fundamental Gaps**

The cited cases generally involve situations where fundamental, non-negotiable aspects of an application, such as clear access rights, or basic environmental impact data, were entirely lacking or actively disputed with no viable path to resolution, *after repeated requests for information*.

The Vaughn Lane RPD Master Plan Application is at a conceptual stage. The purpose of a Master Plan review is to determine the general feasibility and consistency with the Comprehensive Plan and the Zoning Ordinance, including the conceptual layout of streets, lots, and major infrastructure. Detailed engineering, environmental studies, and precise property line surveys are typically developed and submitted during the subsequent Preliminary Plan and Final Plan stages.

The Applicant has provided all information required for the Master Plan review and the application was certified complete by staff on May 14, 2025.

Nonetheless, the Applicant intends to and has been working with the Commission and Planning staff to provide additional requested materials. As mentioned above, although not a specific requirement, the Applicant will be completing boundary surveys of the two existing rights of way at this conceptual stage to allow a better understanding of any potential encroachments or considerations for the future improvement design. Additionally, the Applicant will be providing supplemental details about items requested by the Commissioners such as snow storage and drainage basin design.

### **B. Addressing Public Concerns within the Master Plan Framework**

As mentioned above, it has always been the Applicant's intention to acknowledge and respond to the public and Commissioners' concerns at the appropriate stage of the application process – as many of the items are not required by the Subdivision Regulations until the later review stages. The Applicant plans to fully address these items at a future Commission meeting or through supplemental submissions, but some of the items specifically brought up by counsel for the abutters are briefly addressed below.

- **Ledge/Vibrations:** Exploratory soil evaluations are part of the detailed design process that occurs during later stages of developments, and this information will be detailed at the Preliminary Plan stage and utilized for the civil site and stormwater design.
- **Stormwater/Drainage:** A comprehensive stormwater management plan, designed by the Project's engineers to meet all local and state (including RIDEM requirements), will be submitted at Preliminary Plan stage. This plan will ensure proper drainage and address existing conditions, such as those noted on Wini Street.
- **Mail Delivery/Public Safety Access:** The Applicant has stated willingness to assist in attempting to resolve existing postal issues in Fiskeville. While cognizant of failure of previous attempts to resolve this issue, a new development may assist in facilitating discussions with the U.S. Postal Service and emergency services to ensure all residents, both new and existing, receive adequate service.
- **Landlocked Parcels:** Access is currently proposed for "landlocked" parcels within the proposed development, including a stub to allow the existing access drive for these lots to tie into the proposed roadway extension. The proposed access for these lots may be modified/enhanced in later planning stages based on feedback and further engineering. The Applicant is willing to coordinate with the owners of said parcels and receive their feedback.
- **Traffic Impacts:** The Applicant will engage a traffic engineer, and a traffic impact study will be conducted by said traffic engineer at the Preliminary Plan stage.

- **Public Water and Sewer Availability:** The Applicant has already received availability letters for both water and sewer connection for the Project. The Applicant will coordinate with the relevant municipal and utility authorities to confirm the available capacity of public water and sewer services and to engineer and design required infrastructure.
- **Providence Water Authority Approval:** The Applicant is engaged in ongoing discussions with the Providence Water Authority to ensure that all aspects of the plan are acceptable and that the aqueduct's integrity is maintained. Formal approvals will be secured prior to final design.
- **School and Public Safety Capacity:** While this is not a specific required finding required for the City Plan Commissions' approval of Master Plan, the Applicant will contact the City of Cranston's school department to discuss the proposed project.
- **GIS Map Data and Survey:** A comprehensive survey of the entire property and surrounding access points will be submitted to the Commission at the Preliminary Plan stage to provide definitive and accurate boundary and topographic information. At this conceptual stage of the project submission, the Applicant has utilized a previously prepared Class I Boundary/ ALTA survey for the parcels to prepare a Class IV compiled boundary survey of the subject parcel for utilization in the submission. This approach was discussed with and approved by the City Planning staff prior to submission of the Master Plan.
- **Wildlife Habitat:** The Applicant has already provided a Natural Heritage Report for the project showing that the only observations at the site were two species of plants, one of which was last observed in 2010 and the other of which was last observed in 1987.

Additionally, the Applicant has been working to schedule a site visit to the property in July, inclusive of a neighborhood meeting with the Project's abutters.

While not all detailed solutions are required or finalized at the Master Plan stage, the Applicant has demonstrated a clear understanding of concerns and plans to comprehensively address applicable items, with some being addressed now and other being addressed as they are required in subsequent application phases.

## **V. Conclusion**

The Applicant has submitted a Master Plan Application that is consistent with the City's Comprehensive Plan, Zoning Ordinance, and the Cranston Subdivision & Land Development Regulations. The arguments raised by counsel for the abutters, while highlighting some legitimate community concerns, misinterpret the requirements for Master Plan approval and the iterative nature of the land development review process.

The Applicant is committed to a development that will contribute positively to the City of Cranston.

We respectfully request that the Commission allow additional continuance of this Application and that review of the Master Plan Application is based on the criteria appropriate for this stage, recognizing the Applicant's plans to address certain issues and provide comprehensive solutions in the subsequent Preliminary and Final Plan submissions.