



PO Box 2487; 10 State Road Unit B-3; Vineyard Haven, MA 02568  
[eh@hammarlundlaw.com](mailto:eh@hammarlundlaw.com) § 508.696.7700 phone  
[www.hammarlundlaw.com](http://www.hammarlundlaw.com) § 508.696.7705 fax

6/16/2022

To the Martha's Vineyard Commission:

My name is Erik Hammarlund; I represent the 10 State Road Condo Trust. I am writing in my legal capacity to correct various misstatements regarding the scope and extent of the easement between 4 State Road and 10 State Road.

As the Commission is aware, there is a recorded easement that contains two exhibits: Exhibit A and Exhibit B. The parties dispute how the easement should be interpreted. However, the applicant's representations to the MVC have inaccurately and selectively represented the easement and its effect. And because the applicant has selectively presented only the parts of the easement which benefit him—even when those parts are conflicting—the applicant's presentations have been factually misleading.

This letter does not make any legal arguments; nor does it propose that the Commission adopt our preferred legal interpretation of the easement. The Commission need not get into the legal issues.

However, the access and parking are fully intertwined with the regional impact of the project as a whole. And without involving itself in the *legal* issues, the Commission should ensure it is fully apprised of the *practical* effects of the easement, prior to granting any approval.

In reality:

- There is a recorded easement to which both parties are bound, containing two somewhat-conflicting plans: Exhibits A and B.
- The parties disagree regarding the interpretation of the easement. Specifically, the applicant believes Exhibit A should control; my clients believe Exhibit B controls.
- Exhibits A and B have materially different effects on the applicant's project.
- **There is no realistic situation in which the applicant will be able to *simultaneously* obtain the benefits of both Exhibit A and Exhibit B, especially without "paying the costs" by allowing full access under Exhibit A and B.**
- The applicant has made numerous claims and presentations in which he relies on Exhibit A—and, simultaneously, has also made numerous claims and submissions that rely on Exhibit B.

This letter will state *all* facts of the easement without interpretation. Looking at the important differences between the two Exhibits, and evaluating the outcomes, may be helpful to the Commission in making its decision. It may also help when evaluating the veracity of the applicant's other claims and statements.

There are two competing exhibits to the easement: Exhibit A and Exhibit B. They are similar, but have crucial differences with respect to the project.

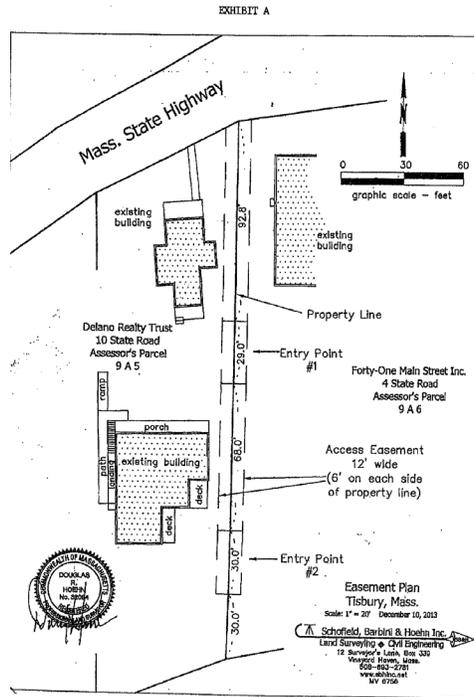


Exhibit A

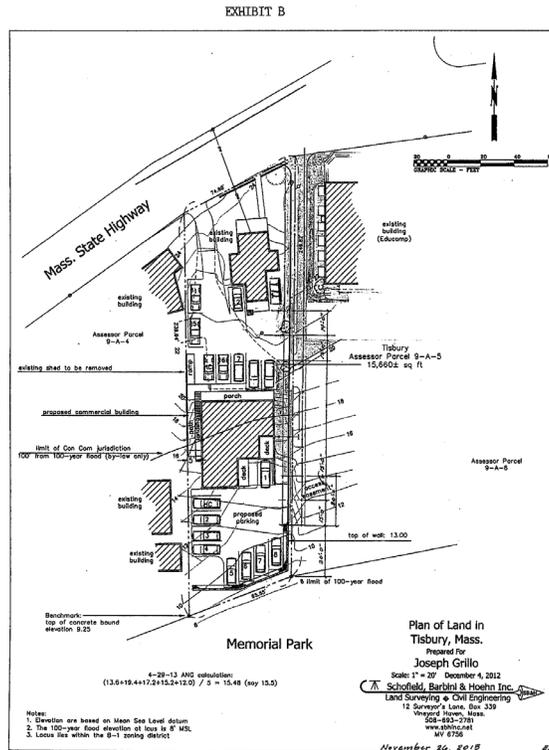


Exhibit B

**Exhibit A is a straight line, 6' on each side of the property boundary;  
installing it would require removal of all existing trees.**

The applicant has claimed he has the right to an easement over Exhibit A. An easement over Exhibit A would require removal of 100% of the vegetation that currently separates the two properties, including numerous mature trees: Those trees are within 6' of the property boundary. The applicant's answer #4 regarding tree removal is to be incorrect as these trees would also be set for removal under Exhibit A. Photo:



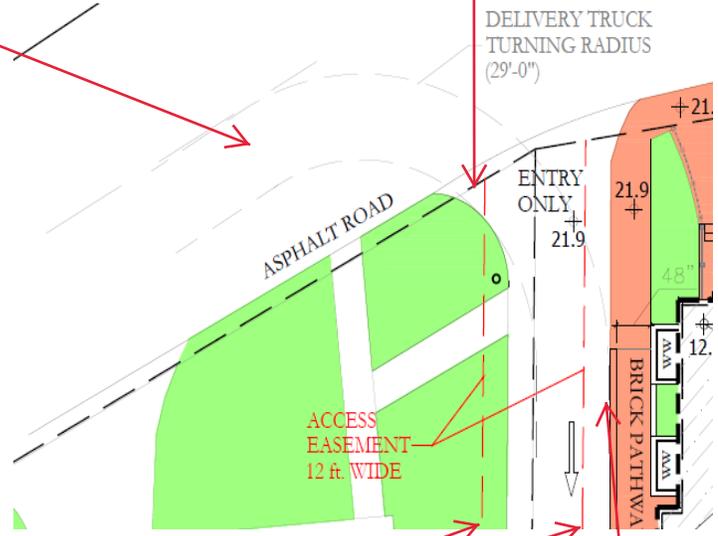
**TO BE REMOVED UNDER  
EXHIBIT A**

**Exhibit A DOES NOT have additional turning radius to the west (uphill.) This means that delivery trucks cannot properly turn in when coming downhill (towards 5 Corners) from State Road.**

As can be seen on the applicant's submissions, his plan relies on considerable extra turning radius. Below is a portion of "Lot Coverage Plan", dated 5/09/2022, by Delano & Co.; this plan shows the turning radius for the delivery truck extending quite a bit *past* the Exhibit A boundaries. Moreover, even this plan shows that **trucks must occupy both lanes of downhill traffic in order to make the right hand turn**: As can be seen from the referenced plan, the turning radius begins approximately 8' from the edge of the road—which is to say, it is making a RIGHT turn, while using the LEFT LANE.

As shown, the turn requires trucks to begin turning at the LEFT LANE (this is a two-lane area with multiple cars waiting.)

As shown, turn-in extends past Exhibit A.



Red dotted lines are boundaries of Exhibit A.

Existing plan shows no additional room and cannot work with this placement, unless there is a turn-in.

Even now, the turn-in from State Road is tight: The degradation of the curbing over time has resulted from trucks running over, past the edge of the sidewalk (photo follows.) Xerxes "Exhibit A" plan would make this even worse:



Even with the existing (large) turn-in, and without any extension of Educomp towards the west, trucks are already running over this area and causing degradation.

**Exhibit A has a thirty-foot-wide access point at its southern boundary. Xerxes "Loading Zone" (numbered spot #1) is within that access point and cannot be installed under either Exhibit A or Exhibit B, without our agreement.**

This appears to be the only loading zone on the property, as currently designated. Here is a side-by-side comparison of Exhibit A and Xerxes' parking plan:

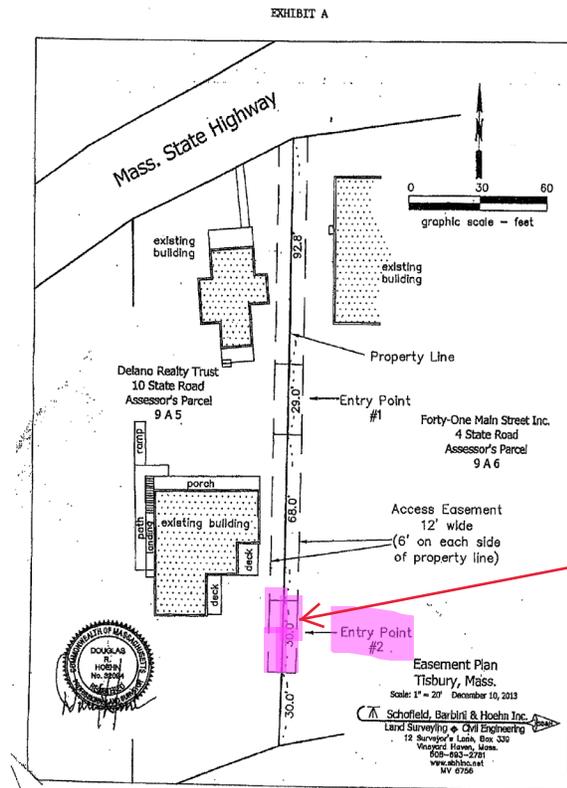
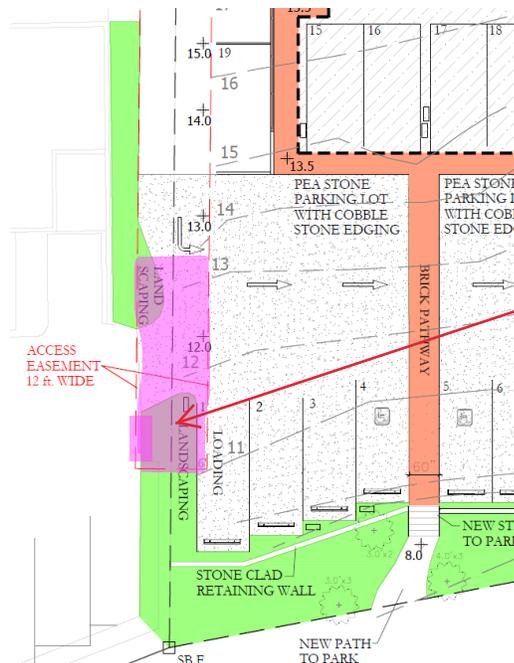


Exhibit A shows a thirty-foot-wide "Entry Point #2."

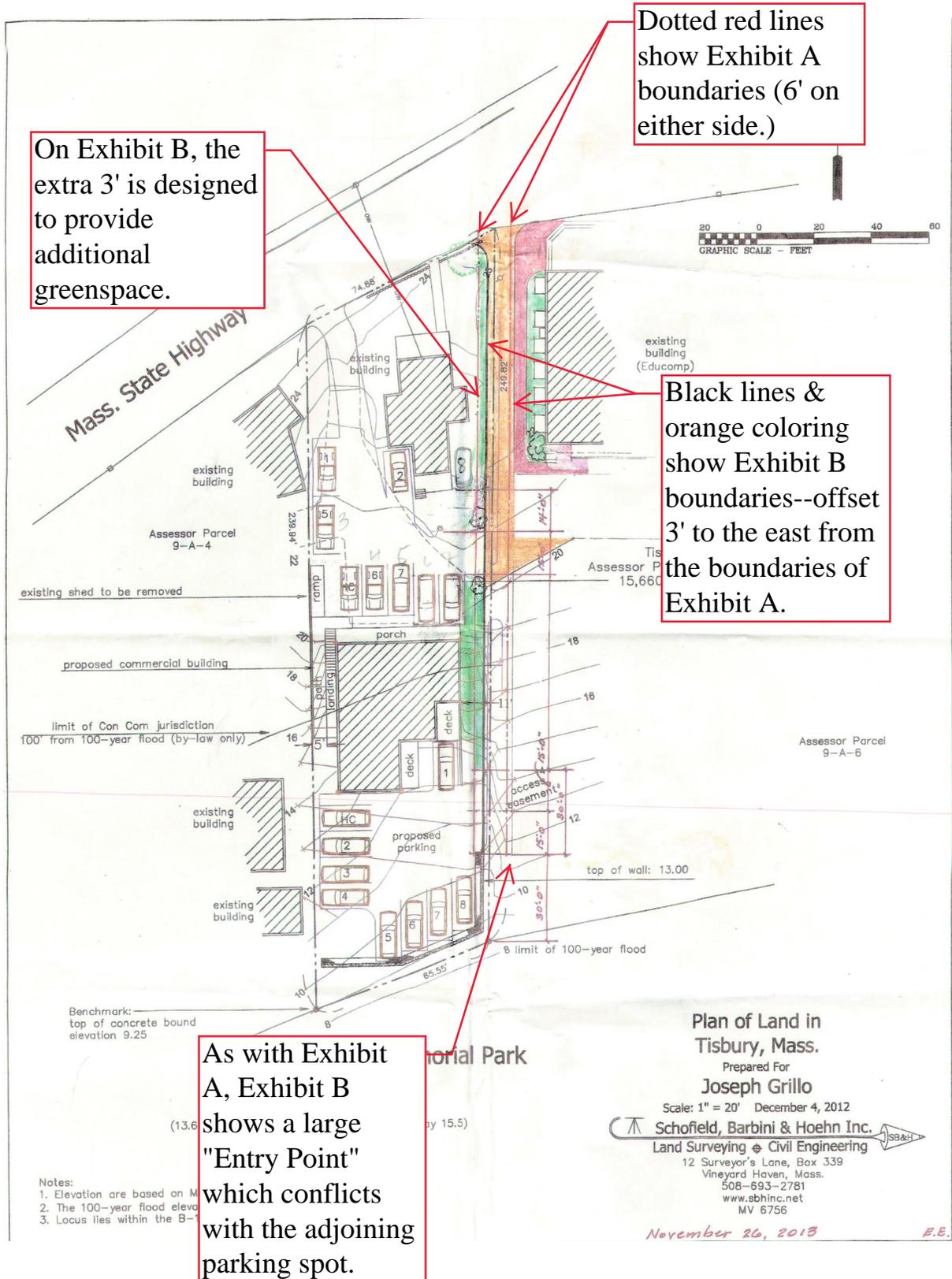
The Entry Point is 30' long north-to-south, and 12' wide.



The boundaries of Spot # 1, "Loading," fall within the traveled area.

**Exhibit B is of similar width, but the boundaries are offset three feet to the east to try to protect the greenspace and trees.**

Exhibit B (the proper easement in our view) was designed in an attempt to protect the greenspace between the properties, and was located for that purpose. Exhibit B shows that greenspace—colored green on this plan:

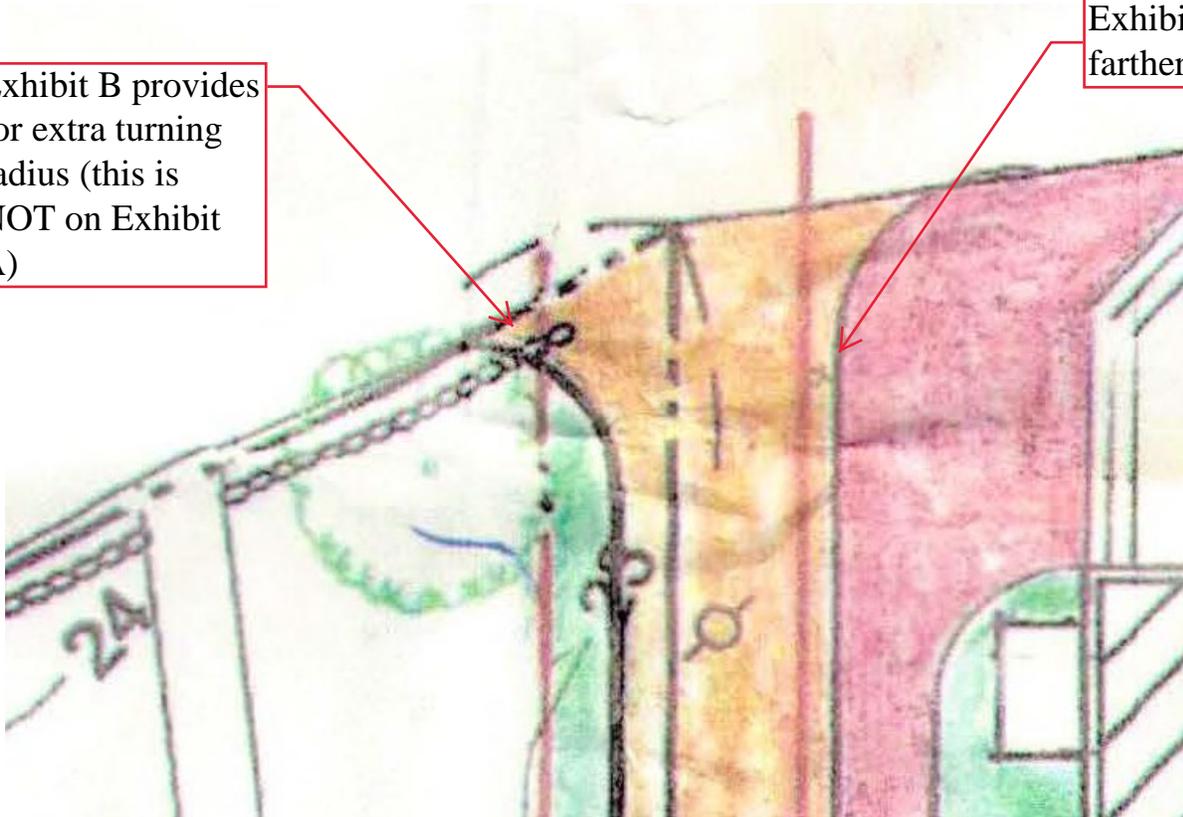


**Exhibit B DOES have an additional turning radius to the west, to allow trucks enough room to turn in.**

Not only does Exhibit B place the driveway closer to the Educomp building (allowing for easier turn-in) but it also has a large westward extension for turning in. The combination of moving the driveway to the east, and the large additional turn-in area (which extends more than six feet to the west of the property line, i.e. *past* even the Exhibit A boundary) allows for proper turn-in, as designed. Blowup of Exhibit B:

Exhibit B provides for extra turning radius (this is NOT on Exhibit A)

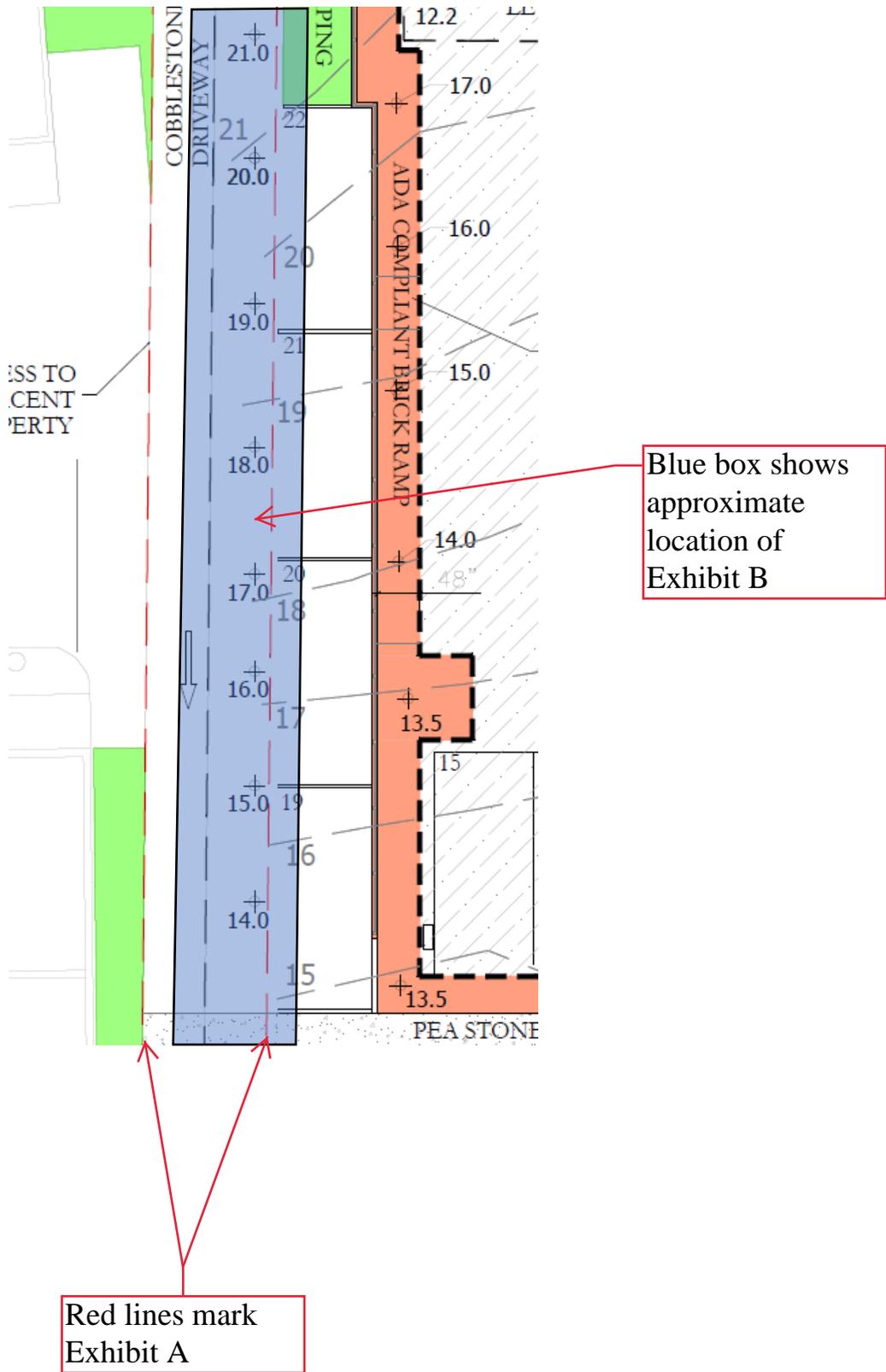
Exhibit B is also farther to the east



Red lines are Exhibit A boundaries (6' on each side)

**Because Exhibit B is offset three feet to the east, it conflicts with another four of the applicant's listed parking spots (plus spot #1).**

The four parking spots shown to the west of the building (numbered #19,20,21, & 22 on the plan) are within the area of travel shown on Exhibit B. (Similarly, as with Exhibit A, spot #1, "Loading," is also within the area of travel, but is not shown on this plan)



**Only a narrow “UNDISPUTED AREA” represents the overlapping areas between Exhibit A and Exhibit B.**

The Undisputed Area is a *nine-foot-wide strip* which runs north-south, made by the overlap of Exhibits A and B. The Undisputed Area is 3' to the west of the property line, and is 6' to the east of the property line. The “Undisputed Area” **does not** contain any room for turn-in from State Road and it **does not** interfere with parking spots # 19-22 inclusive. However, the Undisputed Area still overlaps the “Loading” spot, #1.

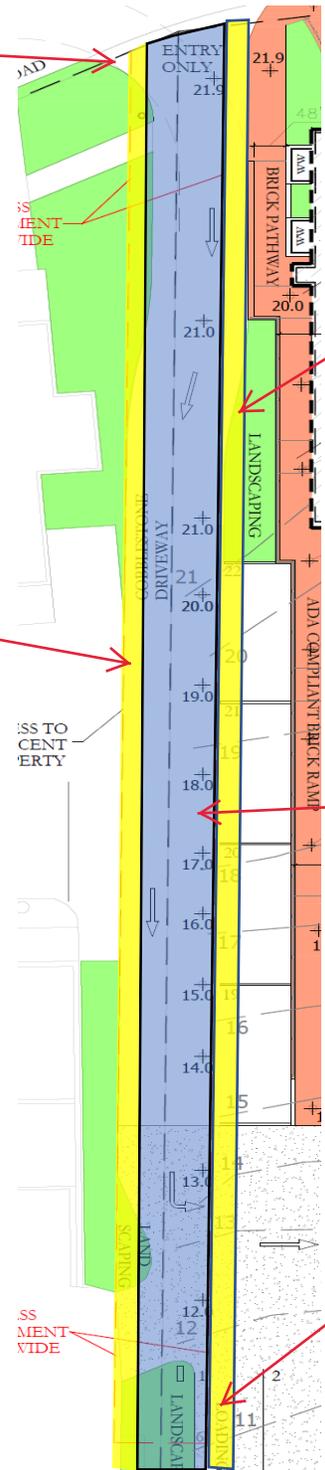
Disputed turn-in area not colored (exists on Exhibit B, but not Exhibit A)

Disputed area shown in yellow (Exhibit B travelled area, but not on Exhibit A.)

Disputed area shown in yellow (Exhibit A travelled area, but not Exhibit B.)

**UNDISPUTED AREA** representing overlap between exhibits A and B (colored blue)

Even the Undisputed Area conflicts with the parking spot. Exhibit B conflicts even more.



## Summary and Recommendations

Even as recently as the “Follow Up Questions Memo” dated 4/20/2022, the applicant continues to take internally conflicting positions. For example, the applicant’s answer to Question #2 *relies on* Exhibit B to create a turn-in over my client’s property. However, the very same memo then *ignores* Exhibit B when answering other questions—for example, by showing a parking plan that does not account for Exhibit B; or by incorrectly claiming 22 parking spots (rather than the 17 which are available under Exhibit B, or even the 21 which are available under Exhibit A.)

The parties are still in dispute regarding the correct interpretation of the easement, and the outcome is likely to be litigated. Should the Commission wish to consider the application during the pending dispute, it should take the various worst-case scenarios for the applicant on both sides. Specifically, the Commission should not grant an application that *relies on a claim of entitlement to any area under dispute*; nor should it grant one that *relies on the denial of other parties’ claim of entitlement to any area under dispute*.

As applied, this would mean:

- The Commission should consider the application as if the easement terminated only *three feet to the west of the property line*, as shown in the blue area immediately above, *without any additional space for a State Road turn-in* (doing otherwise would rely on the applicant winning the right to use those areas against my client’s wishes.)
- The commission should consider the application as if it did not have parking spot #1 (because the problem with spot #1 is common to *both* competing interpretations of the easement.)
- The commission should consider the application as if it did not have parking spots # 19, 20, 21, and 22 (doing otherwise would rely on the applicant successfully denying my clients their claim to place an easement through and over that area pursuant to Exhibit B.)
- The Commission should consider the application as if the easement terminated *nine feet to the east of the property line, including the disputed area* (doing otherwise would rely on the applicant successfully denying my clients their claim to place an easement in that area pursuant to Exhibit B.)

This is the only solution which would avoid embroiling the Commission in a dispute to which it is not appropriately a party. And it is the most sensible resolution—especially since the applicant has not otherwise opted to make the conflict clear, nor to explain the results of the competing scenarios.

I hope this letter has been helpful. Please do not hesitate to contact me for any additional clarification.

Sincerely yours,

Erik Hammarlund, Esq.