



TABITHA HARKIN  
DIRECTOR

# City of New Bedford

## Department of City Planning

133 William Street, New Bedford, Massachusetts 02740  
Telephone: (508) 979.1488 www.newbedford-ma.gov/planning

# STAFF REPORT

REPORT DATE

August 2, 2019

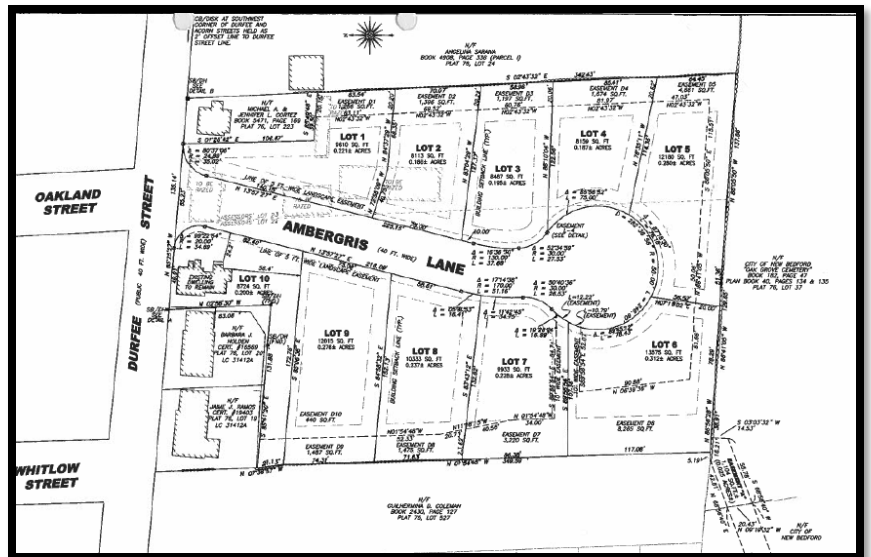
PLANNING BOARD MEETING

August 7, 2019

**Case #19-24:** Request for Final Release of Surety Whaler's Place Subdivision  
Map: 76  
Lots: 269-277 & 22

**Applicant:** Madeira Ventures, Inc  
12 Anne & Hope Way  
Cumberland, RI 02864

**Agent:** Atty. Michael A. Kelly,  
KSR&P Attorneys at Law  
98 Front Street  
New Bedford, MA 02740



### Overview

Request by applicant for **Final Release of Cash Surety** held by the city to ensure the completion of the Whalers Place subdivision, as shown on the plan of land entitled "Whaler's Place Definitive Subdivision Plan of Land in The City of New Bedford Bristol County, Massachusetts", prepared by Prime Engineering, PO Box 1088 350 Bedford Street Lakeville, MA 02347, dated March 8, 2004, revised through May 11, 2004, and recorded with the Bristol County (S.D.) Registry of Deeds in Plan Book 154 Page 84.

Total of Cash Surety currently held by City of New Bedford: **\$42,246.72** (includes interest)

### Brief History

Whaler's Place subdivision is a ten (10) lot subdivision located in the west end of the City on Ambergris Lane. The subdivision began construction in 2004. The subdivision was conveyed to four different developers since its inception, each developing only a portion of the house lots during their ownership. The most recent developer, Palmer River Development Co., LLC, in order to release the final lots for development, substituted a cash surety (in the amount of \$41,100) in place of the former covenant agreement. Palmer River Development Co., LLC developed the final lots and sold them to individual home owners. In 2017 Matthew Antonio, Manager of Palmer River

Development Co., LLC assigned the remaining cash surety to Madeira Ventures, Inc., the applicant before the board at this time.

### **Status**

All house lots in the residential subdivision have been developed and conveyed to individual home owners. The developer no longer owns any of the land. Madeira Ventures, Inc. is the assigned party for the surety agreement made between the previous developer and the Planning Board. All obligations of the surety agreement were to be completed by November 1, 2016.

July, 1, 2019 - The Department of City Planning received the request for final release of cash surety and reviewed the request and case history.

July 26, 2019 - The Department of City Planning sent a letter to Madeira Ventures, Inc. noting outstanding items and alerting the applicant that the surety agreement had expired. Primarily noted was that As-Built plans were still required to be submitted to the Department of Public Infrastructure to enable DPI to review and sign-off that all outstanding items have been completed as approved. Further, that the street acceptance process has not begun for the city to adopt Ambergris Lane as a city street. The street acceptance process may not begin until all obligations of the developer have been confirmed by DPI.

August 2, 2019 - KSR&P Law responded indicating revised As-Built plans were submitted to DPI for review the week of July 22-26.

August 6, 2019 – The DPI has confirmed they received the As-Built plans last week. Due to the short time frame they will be unable to complete the full review and site visit prior to the Planning Board meeting.

**DPI must confirm that the applicant has completed all outstanding items prior to the City street acceptance process. It is standard practice for the Planning Board to hold off on any final performance guarantees until the street has been accepted by the City, therefore releasing the developer of maintenance thereof.**

### **Attachments:**

- 1. Letter from Department of City Planning to Madeira Ventures, Inc.**
- 2. DPI Estimate revised through 7/26/16**
- 3. Form G: Performance Bond Secured by Cash Surety 8/10/16**

### **Staff Recommendations**

- Staff recommends that the Planning Board wait to take any action on this request until the Department of Public Infrastructure has reviewed the recently submitted As-Built plans. Planning staff has requested that a memorandum be provided to the board regarding the status of completion of all obligations.

**The board may wish to continue the case to the next meeting date, scheduled for: September 4, 2019.**

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**Materials Provided by the Applicant** are available at: <https://www.newbedford-ma.gov/planning/planning-board-agenda-info-2019/>.



**MAYOR**  
JON MITCHELL  
**PLANNING DIRECTOR**  
TABITHA HARKIN

## City of New Bedford Planning Department

133 William Street · Room 303 · New Bedford, Massachusetts 02740  
Telephone: (508) 979.1488 · Facsimile: (508) 979.1576

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### PLANNING BOARD

July 26, 2019

Maderia Ventures, Inc.  
12 Ann & Hope Way  
Cumberland, RI 02864

**Re: Whaler's Place – Final Release of Surety**

Dear Maderia Ventures, Inc.,

We have received and reviewed your request for final release of cash surety for Whaler's Place Subdivision held by the City of New Bedford. Our most recent records indicated the total cash surety held, including interest, is in the amount of \$42,246.72 (forty-two thousand two hundred and forty-six dollars and seventy-two cents).

Please note that several items are still required prior to close-out of this subdivision and final release of cash surety. First, the City requires a final set of engineered as-built plans to be submitted for review, in order to assess if all conditions of approval have been satisfied. The most recent list of outstanding items required for completion of the Whaler's Place subdivision are listed in the Department of Public Infrastructure Estimate revised through 7/26/16. The estimate is provided here for your review. Further, the City requires an engineered street acceptance plan so the street may be formally adopted by the City Council prior to the final release of the developer's obligations. You may contact us with any questions as to the format of these plans.

Additionally, it has come to our attention that the performance guarantee obligations have not been met within the time frame specified in the agreement. The "Form G: Performance Bond Secured by Cash Surety", recorded at the Bristol County Registry of Deeds (S.D.) Book 11799 Page 175; stipulated that all obligations of the agreement would be completed by November 1, 2016 or such later date as may be specified by vote of the Planning Board with written concurrence of the applicant. We have not found an agreement or vote record to indicate this deadline had been extended by mutual agreement.

Therefore, at this time we request that you contact us regarding your intended next steps. The options are to:

1. Request an extension of the time frame specified in the agreement from the board, and to complete all outstanding obligations; or
2. Surrender the remaining surety amount to City for the City to complete the outstanding obligations.

Please respond to state your intentions prior to the August 7, 2019 meeting so the board may hold a vote on this matter.

Sincerely,



Tabitha Harkin, LEED AP ND

Director of City Planning  
City of New Bedford  
133 William Street, Room 303  
New Bedford, MA 02740  
Phone: 508-979-1488  
Email: [Tabitha.Harkin@newbedford-ma.gov](mailto:Tabitha.Harkin@newbedford-ma.gov)

Enclosed:

1. Form G: Performance Bond Secured by Cash Surety - Bristol County Registry of Deeds (S.D.) Book 11799 Page 175
2. Department of Public Infrastructure (DPI) Estimate Revised through 7/26/16

CC:

Manny Silva – Department of Public Infrastructure  
Danny Romanowicz – Department of Inspectional Services  
Elizabeth Lydon – City Solicitors Office



**CITY OF NEW BEDFORD**  
Jonathan F. Mitchell, Mayor

**Department of Public Infrastructure**

**Eusebio Arruda**  
Commissioner

Water  
Wastewater  
Highways  
Engineering  
Cemeteries  
Park Maintenance  
Forestry  
Energy

**Whalers Place Subdivision Estimate**

<u>Items</u>	<u>Quantity x Unit Price</u>	<u>Total</u>
1.) 4" Cement Concrete Sidewalk	5 SY x \$40. =	\$200.00
2.) 6" Cement Concrete WCRs & Drives	40 SY x \$42. =	\$1,680.00
3.) Loam & Seed	60 SY x \$6. =	\$360.00
4.) Granite Curb	20 LF x \$30. =	\$600.00
5.) Street Lights	1 EA x \$3,000. =	\$3,000.00
6.) Bounds	10 EA x \$1,000. =	\$10,000.00
7.) Clean Structures	10 EA x \$300. =	\$3,000.00
8.) As-Built Plans	Water, S&D, Street Acceptance & Electric	\$6,000.00
9.) Take Over Detention Basin	(120 FT x 70 FT) x \$1. =	\$8,400.00
10.) Detention Basin	Clean Bottom, Cut Grass, etc.	\$2,000.00
11.) Miscellaneous		\$2,120.00
	<b>Sum:</b>	\$37,360.00
	<b>10% Contingency:</b>	\$3,736.00
	<b>Total Estimate:</b>	\$41,096.00
	<b>SAY</b>	<b>\$41,100.00</b>

PLANNING  
JUL 28 2016  
DEPARTMENT

Revised: 7/28/2016

1105 Shawmut Avenue, New Bedford, MA 02746 Telephone 508-979-1550 Fax 1-508-961-3054  
ZEB.ARRUDA@NEWBEDFORD-MA.GOV



*City of New Bedford*

**PLANNING BOARD**

133 William Street  
New Bedford, Massachusetts 02740  
Telephone: (508) 979.1488 Facsimile: (508) 979.1576

Registry of Deeds Use Only:



2016 00020419

Bk: 11799 Pg: 175 Pg: 1 of 3 BS  
Doc: BOND 08/28/2016 10:29 AM

**JONATHAN F. MITCHELL**  
**MAYOR**

**FORM G**

**PERFORMANCE BOND SECURED BY CASH DEPOSIT**

**Subdivision Name – WHALER'S PLACE DEFINITIVE SUBDIVISION**

Agreement made this date between the City of New Bedford and Matthew B. Antonio, Sole Member & Manager, Palmer River Development Co., LLC, hereinafter referred to as the "Applicant" whose address is P.O. Box 41, Swansea, MA 02777 to secure constructions of ways and installation of municipal services in the subdivision of land shown on a plan entitled Whaler's Place Definitive Subdivision Plan of Land in the City of New Bedford, Bristol County, Massachusetts, dated March 8, 2004, revised thru May 11, 2004, recorded in Bristol County (S.D.) Registry of Deeds, Plan Book 154, Page 84, prepared for Howland Place Realty Trust, by Prime Engineering, P.O. Box 1088, 350 Bedford Street, Lakeville, MA 02347, for land located at Durfee Street and Ambergris Lane (Map 76, Lots 22 & 23) and showing ten (10) lots.

The Applicant hereby binds and obligates himself, his or its executors, administrators, devisees, successors and assigns to the City of New Bedford, Bristol County, acting through its Planning Board, for the sum of forty-one thousand, one hundred dollars (\$41,100.00), and has secured this obligation by depositing with the Treasurer of the City of New Bedford the above amount sum, to be deposited in a subdivision escrow account in the name of the City of New Bedford. The cash deposit will be placed in an interest bearing account compounded monthly at a rate which is based on current market conditions.

Said sum of money is to be used to insure the performance by the Applicant of all covenants, conditions, agreements, terms and provisions contained in the following:

Page 1 of 3

*Return to: Mr. Matthew Antonio, P.O. Box 41, Swansea, MA 02777*



1. The Subdivision Control Law, the City of New Bedford Code of Ordinances, and City of New Bedford Subdivision Rules and Regulations.
2. The Definitive Plan known as Whaler's Place Definitive Subdivision Plan of Land in New Bedford, MA prepared for Howland Place Realty Trust by Prime Engineering as approved by the Planning Board on May 19, 2004 and endorsed June 17, 2004.
3. All conditions and agreements included in a Form D Covenant between the Planning Board and Applicant, approved on August 18, 2004 and duly recorded by the Applicant in the Bristol County (S.D.) Registry of Deeds as amended at Book 9746/ Page 180, Book 10119/ Page 225 and Book 10185/ Page 103.
4. Other Documents, specifying construction or installation to be completed, as stipulated by the Whaler's Place Subdivision Estimate prepared by the City of New Bedford Department of Public Infrastructure revised thru 07/26/2016.

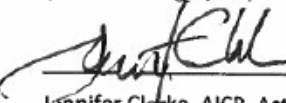
This agreement shall remain in full force and effect until the Applicant has fully and satisfactorily performed all obligations or provides another method of securing performance as provided in Massachusetts General Law, Chapter 41, Section 81-U.

Upon completion by the Applicant of all obligations as specified herein, on or before November 1, 2016 or such later date as may be specified by vote of the Planning Board with written concurrence of the Applicant, the deposit of money, including all interest accrued thereon, shall be returned to the Applicant by the City of New Bedford and this agreement shall become void.

In the event the Applicant should fail to complete the construction of ways and installation of municipal services as specified within the time stipulated, the cash deposit may be applied in whole or in part by the Planning Board for the benefit of the City of New Bedford, to the extent of the reasonable cost to the City of New Bedford for completing such construction and installation. Any unused money and interest accrued on the deposit, which shall bear a direct and reasonable relationship to the expected cost including the effects of inflation, shall be returned to the applicant upon completion of the work by the City of New Bedford.

The City of New Bedford, acting by and through its Planning Board, with City Planner as Agent, hereby agrees to accept the deposit of money in the amount specified in this agreement as security for the performance of the project. Any amendment to this agreement and/or to the aforesaid deposit of money shall be agreed upon in writing by all parties to this agreement.

8-10-16  
Date

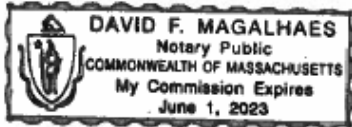
  
Jennifer Clarke, AICP, Acting City Planner  
Agent for the Planning Board

COMMONWEALTH OF MASSACHUSETTS

Bristol County, SS

8/10, 2016

Then personally appeared before me the above named Jennifer Clarke, stated as agent for the Planning Board, she is authorized to sign this document for said Planning Board and acknowledged the foregoing instrument to the Planning Board's free act and deed.



[Signature]

Signature of Notary Public

My commission expires:

JUNE 1, 2023

CITY TREASURER

The applicant has deposited cash in the amount of \$ 41,100.00 with the City of New Bedford.

[Signature]

Signature of City Treasurer

APPLICANT

In witness whereof I/we hereunto set my/our hands and seal this on the 26<sup>th</sup> day of August 2016.

[Signature]  
Signature of Owner

\_\_\_\_\_  
Signature of Owner

*8/26/16 State of MA  
Notary Public - Deborah L. Gonzaga*





# Whaler's Place Subdivision Map: 76 Lots: 269-277 & 22

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.

