



LISA C. GOODHEART
lcg@fitchlp.com

FITCH LAW PARTNERS LLP
84 STATE STREET
BOSTON, MA 02109

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By E-mail

ehorowitz@njc-ma.org

Ethan R. Horowitz, Esq.
Managing Director
Northeast Justice Center
50 Island Street, Suite 203B
Lawrence, MA 01840

Re: *Barbara Craw, et al., v. Hometown America, LLC, et al.*, Case 18-cv-12149-LTS
(D. Mass.)

**Oak Point Surface Water Inspection Program Annual Report No. 1,
for Year 1 of the Judicially Enforceable Period – covering the period from
February 26, 2023 through February 25, 2024**

Dear Ethan:

I write on behalf of Hometown Oak Point I, L.L.C. and Hometown Oak Point II, L.L.C. (jointly, “Hometown Oak Point”), with respect to the Oak Point Surface Water Inspection Program (“SWIP”). As you know, the SWIP is described and incorporated into the parties’ Stipulation of Settlement (“the Oak Point Settlement Agreement”) (ECF Doc. 228-1). The Oak Point Settlement Agreement was approved by Judge Sorokin and is incorporated by reference into the Court’s January 26, 2023 Final Order and Judgment in the *Craw* case (the “Oak Point Final Judgment”) (ECF Doc. 248).

This correspondence constitutes the first annual SWIP report required by the Oak Point Settlement Agreement and the Oak Point Final Judgment. Based on the information reported herein, Hometown Oak Point is pleased to confirm its compliance with the requirements of the SWIP for the first year of the Judicially Enforceable Period of the Oak Point Final Judgment.¹

¹ The “Judicially Enforceable Period” is the “period of ten (10) years from the Final Settlement Date, plus such additional time, if any, that may be granted by the Court for good cause upon the petition of a Complaining Injunctive Relief Class Member filed at any time at least six months prior to the expiration of such ten-year period.” (ECF Doc. 228-1, p. 20 of 244). In this case, because no appeal was taken from the Oak Point Final Judgment, the “Final

The SWIP is continuing to provide an effective and efficient system for addressing site-specific stormwater management issues that affect certain home sites at the Oak Point community, if and when they arise and are reported to Hometown Oak Point.

1. The SWIP Annual Reporting Requirements.

Section III.C.4.(a) of the Oak Point Settlement Agreement incorporates by reference Exhibit G, entitled “The Oak Point Surface Water Inspection Program (‘SWIP’): A Reference Handbook (current as of July 2022)” (the “SWIP Reference Handbook”). (ECF Doc. 228-1, *see* p. 27 and pp. 126-36 of 244). Section IV.B of the SWIP Reference Handbook establishes the following requirements for annual SWIP reports:

Following the effective date of any judicially-approved agreement that so requires, and during the effective period of any such agreement, **Hometown will prepare an annual report to summarize the status and results of its implementation of the SWIP. The first annual SWIP report will specify the number of resident requests for participation in the SWIP from the inception of the program to date, the number of home sites addressed through SWIP and closed out of the program to date, and the number of home sites for which the SWIP protocol is then in process and not yet completed.** Subsequent annual reports will provide the same information for the applicable reporting period. Hometown will make its annual SWIP reports publicly available in the manner specified by any applicable judicially-approved agreement. (Bold typeface added for emphasis).

(*Id.*, at p. 136 of 144.)

Section III.C.4.(a) of the Oak Point Settlement Agreement further provides, in relevant part, as follows:

During the Judicially Enforceable Period, Hometown Oak Point shall share the annual SWIP reports with the Town of Middleborough’s Health Officer and the President of the Oak Point Homeowners Association, with copies filed with the Court and provided to Class Counsel, and copies provided upon request to any Oak Point resident at the Oak Point Clubhouse Office.

Settlement Date” is the “date on which the time to appeal or permission to appeal therefrom has expired.” (*Id.*, pp. 18-19 of 244.) By email correspondence dated February 27, 2023, you confirmed the parties’ understanding that the Final Settlement Date, following the expiration of the 30-day period to appeal the Oak Point Final Judgment, was February 25, 2023. Accordingly, the first year of the Judicially Enforceable Period covered by this SWIP Annual Report No. 1 (“Year 1”) is the period from February 26, 2023 through February 25, 2024.

Consistent with these requirements, this SWIP Annual Report No.1 is being contemporaneously delivered to you, the Town of Middleborough's Health Officer, and the President of the Oak Point Homeowners Association, and filed with the Court as an attachment to Hometown Oak Point's Notice of Compliance with its Year 1 Annual Reporting Obligations. In addition, copies of this SWIP Annual Report No. 1 will be provided upon request to any Oak Point resident at the Oak Point Clubhouse Office.

2. Hometown Oak Point's Year 1 Summary of the Status and Results of Its Implementation of the SWIP.

A. Implementation of the SWIP From the Inception of the Program To Date.

Prior to 2018, Hometown Oak Point had received only ten or so stormwater management complaints that required engineering assistance. Starting in 2018, Hometown Oak Point received an increasing number of resident complaints about the impacts of episodic flooding and standing water problems at certain Oak Point home sites.² In response, Hometown Oak Point announced a voluntary standing offer to provide any interested Oak Point residents with a free stormwater engineering assessment of their home sites. This offer launched the first iteration of the SWIP.

In the first two years after announcing its new inspection program on August 1, 2018, Hometown Oak Point received more than 350 requests for stormwater engineering assessments of Oak Point home sites. Over time, and with the benefit of experience, Hometown Oak Point refined, expanded, and brought increasing systematization to the SWIP. By the time of the parties' execution of the Oak Point Settlement Agreement and the Court's entry of the Oak Point Final Judgment, the SWIP had evolved into a well-documented, well-resourced, multi-step program, as detailed in the SWIP Reference Guide. (ECF 228-1, pp. 126-36 of 244.) To date, and since the inception of the program in 2018:

- Oak Point residents have made 508 SWIP inspection requests.³
- 502 SWIP inspections have been completed by the engineering consultants engaged by the Oak Point Defendants. This figure reflects that almost 98.8% of the requested SWIP inspections have been completed to date, and the remaining 1.2% of the requested inspections are currently listed for upcoming inspections.
- 502 SWIP inspection reports have been completed by the engineering consultants engaged by the Oak Point Defendants. This figure reflects that SWIP reports have been completed for 100% of the SWIP inspections that have been done to date.

² The Oak Point community is constructed in a low-lying area with abundant wetlands. Like other communities in the region, it must contend with the growing frequency and increasing severity of regional storm events associated with climate change, and the associated stormwater management problems.

³ For reference, there are 979 home sites in the Oak Point community.

- 462 of the 508 inspection requests to date have been addressed through SWIP and closed out of the program. This figure reflects that 90.9% of SWIP inspection requests have been addressed and closed out. The remaining requests are anticipated to be addressed and closed out in the spring and early summer of 2024.

B. Implementation of the SWIP During Year 1 of the Judicially Enforceable Period.

During the Year 1 reporting period (*i.e.*, in the period from February 26, 2023 through February 25, 2024):

- Oak Point residents made 46 SWIP inspection requests.
- In response to the above-referenced requests, 40 SWIP inspections were completed by the engineering consultants engaged by the Oak Point Defendants.
- Following the above-referenced inspections, 40 SWIP inspection reports were completed by the engineering consultants engaged by the Oak Point Defendants.
- Based on the recommendations in the above-referenced SWIP inspection reports, 7 inspection requests have been addressed through SWIP and closed out of the program to date, and the remaining requests are expected to be addressed in the spring or early summer of 2024.

3. Conclusion

This correspondence satisfies Hometown Oak Point's Year 1 reporting obligations under the Oak Point Settlement Agreement and the Oak Point Final Judgment. As shown by the above-reported figures, Hometown Oak Point had already closed out the vast majority of reported stormwater management issues on a voluntary basis before the start of the Judicially Enforceable Period. Still, the ongoing availability of the SWIP, which is now judicially enforceable, continues to provide substantial benefits to the residents of Oak Point. Hometown Oak Point is pleased to confirm its compliance with the requirements of the SWIP for Year 1 of the Judicially Enforceable Period, and looks forward to the program's continued success.

Sincerely,



Lisa C. Goodheart