

**RE: SP 2019-2/SPA  
41 Church Street & 14 West Street  
Brigati Village LLC  
Proposed 57-Unit Multi-Family Residential Development  
Grafton, MA  
DEP#164-970 / WP#792 / SWP#-18-7**

**RECEIVED**

**JUN 24 2019**

**PLANNING BOARD  
GRAFTON, MA**

Good afternoon Natalia,

In reviewing the Planning Board's website for this evening's Agenda with regard to Request for Special Permit (SP 2019-2/SPA) for the above referenced site, it is my understanding that Exhibit 40 - Geotechnical Engineering Report, May 15, 2019 prepared by Northeast Geotechnical, Inc. was posted earlier today.

Upon cursory review, it appears that this submittal does not comply with the requirements of 250 CMR 5.03 (Copy Attached) because it does not bear the professional seal of the registrant(s) as required, since this document has been filed with the Town Planning Board as a public authority. As a result of Exhibit 40 having been posted to the Town's website only a few hours prior to the meeting, I wish to reserve the opportunity to provide subsequent public comment on Exhibit 40 after I have the opportunity to give it further consideration.

Upon review of Exhibit 39 - Peer Review Report, Graves Engineering, Inc., June 18, 2019 it appears that the report identified as Exhibit 40 was received on May 23, 2019. However, Exhibit 39 does not appear to provide for any discussion or peer-review consideration of the geotechnical report. There appear to be several elements of the report that require further clarity: the origin of the minimum factor of safety applied in the slope stability analysis, the lack of pseudo-static stability analysis to analyze the proposed embankment under seismic loading conditions, inclusion of model parameters, slope geometry, analysis conditions and computational output files assessing the slope stability considerations.

It is respectfully requested that the Planning Board defer consideration of this project until a copy of Exhibit 40 may be submitted that is in conformance with 250 CMR, and that the report receives appropriate peer-review to protect the health, property, and welfare of the public. Further, these Exhibits should be made available on the Town's website for public inspection with adequate notice in advance of the Board Meeting.

COPY

EXHIBIT

Respectfully,

Daniel A. Vellone, M.S., PG, CPG

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 250cmr5.pdf  
65K

EXHIBIT

EXHIBIT

EXHIBIT

250 CMR: BOARD OF REGISTRATION OF PROFESSIONAL  
ENGINEERS AND LAND SURVEYORS

250 CMR 5.00: PROFESSIONAL PRACTICE

Section

- 5.01: Scope of Practice
- 5.02: Professional Conduct
- 5.03: Professional Seal
- 5.04: Direct Charge and Supervision
- 5.05: Business Entities
- 5.06: License Renewal
- 5.07: Reinstatement of Lapsed License
- 5.08: Use of Title Engineer or Land Surveyor
- 5.09: Professional and Moral Character

5.01: Scope of Practice

All engineering work and all land surveying work is considered work of a professional nature and shall be performed in conformance with 250 CMR unless such work falls within an exemption set forth in M.G.L. c. 112, § 81R. Consistent with M.G.L. c. 112, § 81D, 250 CMR 5.00 does not apply to work performed by persons who operate, maintain or install machinery or equipment, or to persons licensed as engineers under M.G.L. c. 146.

- (1) Engineering work may be performed only by a Professional Engineer or under the Direct Charge and Supervision of a Professional Engineer as described in 250 CMR 5.04.
- (2) Land surveying work may be performed only by Professional Land Surveyor or under the Direct Charge and Supervision of a Professional Land Surveyor as described in 250 CMR 5.04.
  - (a) A Professional Engineer qualified in the Branch of civil engineering may also perform land surveying incidental to his or her engineering work relative to locating or relocating any of the Fixed-works embraced within the practice of civil engineering, but excluding the determination of property lines.
  - (b) The delineation of existing or proposed structures, features or Boundaries relative to property lines requires the determination of property lines and therefore must be performed by a Professional Land Surveyor.
- (3) Engineering Registrants must restrict engineering practice to areas of competence based upon their education and experience qualifications.
- (4) Land Surveying Registrants must restrict land surveying practice to areas of competence based upon their education and experience qualifications.

5.02: Professional Conduct

Each Professional Engineer and Professional Land Surveyor has an ethical duty to the public, the profession, and his or her clients.

In order to protect the health, property, and welfare of the public and to establish and maintain a high standard of integrity and practice in the professions of engineering and land surveying, the following Rules of Professional Conduct and all other applicable provisions of 250 CMR shall be binding on every Professional Engineer and Professional Land Surveyor. Failure to comply with 250 CMR, including the rules of professional responsibility in 250 CMR 5.02(1) through (5), or M.G.L. c. 112, §§ 61 to 65E and §§ 81D to 81T may constitute grounds for disciplinary action against the Registrant.

- (1) Responsibility. A Registrant shall hold paramount the health, property and welfare of the public in the performance of the Registrant's professional duties.
  - (a) If the professional judgment of any Registrant is overruled under circumstances where the health, property or welfare of the public may be endangered, that Registrant shall notify the Registrant's employer, client or such other authority as may be appropriate.

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5.02: continued

- (b) A Registrant shall provide professional services that are truthful, based upon independent professional judgment, founded upon adequate knowledge of the issues, and based upon competence in the subject matter.
- (c) A Registrant shall approve, sign or seal only those Instruments of Service that conform to 250 CMR and generally accepted engineering and land surveying standards.
- (d) A Registrant shall not reveal facts, data or information obtained in a professional capacity, without the prior consent of the Registrant's employer except as authorized or required by law or regulation.
- (e) A Registrant shall not permit the use of the Registrant's name or firm name nor associate in business ventures with any person or firm which the Registrant may have reason to believe is engaging in fraudulent or dishonest business or professional practices.
- (f) A Registrant shall provide the Board with any information and assistance the Board may deem necessary for the investigation/prosecution of complaints filed with the Board.
- (g) A Registrant shall provide the Board with honest and objective responses on Reference Questionnaires regarding an applicant's qualifications for registration.
- (h) A Registrant shall provide written notification to other Registrants in the event of substantial disagreement with the work of the other. When appropriate, both Registrants shall investigate and attempt to resolve the disagreement collaboratively. The notified Registrant is required to respond in a timely manner to the Registrant giving notice.
- (i) A Registrant shall not act in a manner or engage in a practice that brings discredit on the honor or dignity of the profession of engineering or land surveying.

(2) Competency.

- (a) A Registrant shall practice only in areas of competence for which the Registrant is qualified by education and experience.
- (b) A Registrant may accept work outside of his or her Licensed Branch of practice only to the extent that such services are restricted to areas of expertise for which the Registrant is qualified by education and experience to perform.
- (c) A Registrant shall not take responsibility for work the Registrant is not competent by education or experience to perform, even if such work generally falls within a Branch in which said Registrant is registered.
- (d) In the event that a Registrant practices outside his or her Licensed Branch of practice, the Registrant must be prepared to demonstrate to the Board's satisfaction his or her competence in that additional Branch of practice. Demonstration of competence to the Board shall include at a minimum records of specific education and experience obtained by the Registrant in that additional Branch of practice.
- (e) A Registrant may affix the Registrant's Signature or seal only on Instruments of Service prepared by the Registrant or prepared under the Registrant's Direct Charge and Supervision.
- (f) A Registrant shall stay current with theoretical, technological and practical developments within the Registrant's profession and maintain personal competency for acceptable practice throughout the Registrant's career.

(3) Public Statements. A Registrant shall issue public statements only in an objective and truthful manner.

- (a) A Registrant shall issue no professional testimony that is inspired or paid for by interested parties unless the Registrant explicitly identifies the interested parties on whose behalf the Registrant is speaking and reveals any interest such parties have in the matters.
- (b) A Registrant shall not attempt to injure, maliciously or falsely, the professional reputation, prospects, practice, or employment of other Registrants.

(4) Conflicts of Interest. A Registrant shall act professionally for each employer or client as a faithful agent and shall avoid conflicts of interest, or the appearance of conflicts of interests.

- (a) A Registrant shall make full prior disclosures to the Registrant's employers or clients of potential conflicts of interest or other circumstances which could influence or appear to influence the Registrant's judgment or the quality of their services. The Registrant bears responsibility for maintaining documentation of compliance with this requirement.

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5.02: continued

(b) A Registrant shall not accept compensation, financial or otherwise, from more than one party for concurrent services on the same project unless the circumstances are fully disclosed in writing to all interested parties.

(c) A Registrant shall not solicit or accept compensation, financial or otherwise, directly or indirectly, from contractors, vendors or other parties in connection with work for employers or clients for which the Registrant is responsible.

(5) Solicitation and Compensation. A Registrant shall avoid improper solicitation of professional employment.

(a) A Registrant shall not falsify or permit misrepresentation of the Registrant's own academic or professional qualifications, or those of the Registrant's associates.

(b) A Registrant may be disciplined for being found in violation of the state ethics law by the State Ethics Commission.

(c) A Registrant may request, propose or accept contracts for professional services on a contingent basis only under circumstances in which the Registrant's professional judgment would not be compromised and the contingency agreement is in writing and complies with 250 CMR 5.02(5)(e).

(d) Regardless of the negotiated compensation, the Registrant must provide services that comply with accepted professional standards.

(e) A Registrant shall establish clear and unambiguous contractual arrangements with clients. At a minimum, contractual arrangements must state a description of the proposed work, fees and expenses to be paid, and schedule for completion.

5.03: Professional Seal

(1) Format.

(a) Each person registered as a Professional Engineer in the Commonwealth shall use a professional seal that conforms to the designs approved and made available by the Board. The seal shall contain the following words: "Commonwealth of Massachusetts", the Registrant's name, the Registrant's registration number, and the words "Professional Engineer" and may include one's Licensed Branch.

(b) Each person registered as a Professional Land Surveyor in the Commonwealth shall use a professional seal that conforms to the designs approved and made available by the Board. The seal shall contain the following words: "Commonwealth of Massachusetts", the Registrant's name, the Registrant's registration number, and the words "Professional Land Surveyor".

(2) The seal must be a symbol or image in the form of a rubber stamp, embossed seal or digitized seal (computer generated image), or other form approved by the Board. The outside diameter of the depicted image must be approximately one and one half inches.

(3) A Registrant shall affix his or her seal only to Instruments of Service produced by the Registrant personally or under the Registrant's Direct Charge and Supervision, except as provided in 250 CMR 5.03(4).

(4) A Registrant may review and adopt work started by or under another Registrant's Direct Charge and Supervision provided the adopting Registrant has performed a detailed and thoroughly documented review and will assume complete responsibility for the work of that previous Registrant.

(5) Under no circumstances shall a Registrant adopt the Work Products developed by unregistered persons who themselves were not working under the Direct Charge and Supervision of a Registrant.

(6) Any document bearing the Registrant's seal must also be appropriately dated and signed with either a legible hand written Signature adjacent to (not obscuring) the seal or a properly encrypted digital Signature, in compliance with 250 CMR .

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5.03: continued

- (7) The Registrant shall not affix his or her seal to stickers, decals, cards, stationery, advertising, or any other such material.
- (8) The Registrant must take reasonable steps to prevent the Registrant's seal or digital Signature encryption key from being lost, stolen or out of the Registrant's personal possession or control.
- (9) The Registrant shall not allow another person to use the Registrant's seal or digital Signature encryption key.
- (10) A Registrant whose License has lapsed shall not use his or her professional seal.
- (11) When a digital Signature is applied to an Instrument of Service, it must have an electronic authentication process attached to it that is uniquely associated with the Registrant, can be authenticated by the recipient, and is uniquely linked to the underlying documents in a manner that will invalidate the digital Signature if any part of the document is changed.
- (12) A Registrant is responsible for all work on any plan that bears the Registrant's professional seal unless the Registrant expressly and properly limits the Registrant's responsibility as set forth in 250 CMR 5.03(13).
- (13) If a Registrant does not take responsibility for all of the work on an Instrument of Service, the Registrant shall add any suitable comments near, but not through the seal to limit their responsibility. Such comments might limit responsibility to such things as electrical design, structural design, property boundaries, a specified portion of the document, or a specified change.
- (14) A Registrant may assume responsibility for coordination of an entire project and sign and seal the Instruments of Service for the entire project, provided that the Instruments of Service for each technical segment are signed and sealed by the qualified Registrant who either prepared or directly supervised the preparation of said technical segment.
- (15) A Registrant shall sign, date and seal instruments of service prepared by the Registrant, when those documents are filed with public authorities. If the Instrument of Service is a set of printed plans, each sheet must be individually signed and sealed and appropriately dated, unless otherwise authorized by statute.

5.04: Direct Charge and Supervision

A Registrant must exercise Direct Charge and Supervision over those persons assisting in the preparation of Instruments of Service. Direct Charge and Supervision requires at a minimum that:

- (1) the Registrant exercised unambiguous decision-making authority with respect to the preparation of the Instruments of Service he or she sealed and signed, without interference or undue influence from any other individual or entity;
- (2) the persons assisting in the preparation of the Instruments of Service were subordinates reporting directly to the Registrant rather than through some other person or entity capable of subverting the Registrant's direction;
- (3) the Registrant had the freedom and authority to assign personnel, and to employ appropriate technologies and equipment for the preparation of Instruments of Service;
- (4) the Registrant exercised due care in assigning tasks to persons assisting in the preparation of Instruments of Service based upon the Registrant's knowledge of each person's expertise, knowledge and skill levels;

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- (5) the Registrant has a verifiable written record establishing that contributing work provided by unlicensed individuals was subject to regular and continuing Direct Charge and Supervision throughout the development process;
- (6) the work performed by unlicensed individuals does not include approval of final designs or decisions; and
- (7) the persons assisting the Registrant preparing the Instruments of Service had continuous access to and guidance from the Registrant throughout the development process.

5.05: Business Entities

A Business Entity may provide or offer to provide engineering or surveying services only if a registered engineer or land surveyor has management responsibility for that part of the business. In this context, such Registrant is referred to as the Registrant-in-charge.

The relationship between the Business Entity and the Registrant-in-charge must be characterized by the following:

- (1) the Registrant-in-charge or a Registrant in his or her charge exercises Direct Charge and Supervision as set forth in 250 CMR 5.04; and
- (2) the Registrant-in-charge is an active participant in the contracting, reporting, publishing, scheduling, *etc.* of professional services being offered by the Business Entity.

5.06: License Renewal

A Registrant is responsible for maintaining his or her License to practice in good standing by renewing the License as required by M.G.L. c. 112, § 81N and 250 CMR 5.06, by providing all information required by the Board, and by maintaining generally acceptable ethical, professional and business practices. This responsibility cannot be delegated to others. Practice under a License that has not been properly renewed is considered the unlicensed Practice of Engineering or Practice of Land surveying and may result in disciplinary action.

- (1) A License is valid for a period ending June 30<sup>th</sup> of the next even-numbered year and requires renewal at that time. A License that is not renewed on or before the June 30<sup>th</sup> expiration date shall lapse.
- (2) A Registrant shall apply for renewal of his or her License on or before the date the License will lapse. To apply for renewal of a License, a Registrant shall submit to the Board a completed License renewal application on a form prescribed by the Board and shall pay such fees for renewal of that License as may be established by the Executive Office of Administration and Finance pursuant to M.G.L. c. 7, § 3B.
- (3) As a condition for renewal of his or her License, a Registrant must submit to the Board satisfactory proof that the Registrant is in compliance with statutory and regulatory requirements specified by the Board, including but not limited to, M.G.L. c. 62C, § 47A and § 49A, and 250 CMR 5.09.
- (4) It is the responsibility of each Registrant to notify the Board of any changes in his or her address of record as well as to know the status of his or her License.
- (5) Failure to receive renewal notification from the Board does not excuse the Registrant from responsibility for timely renewal.
- (6) A Registrant with a lapsed License is no longer permitted to practice engineering or land surveying in the Commonwealth and the use of the Registrant's seal is prohibited.

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5.06: continued

(7) A License may be renewed within two years of lapsing provided a renewal form is submitted along with the required fees, including the late fee.

(8) A License cannot be renewed if it has lapsed for more than two years. After the first two years, the former Registrant must file for reinstatement pursuant to 250 CMR 5.07.

5.07: Reinstatement of Lapsed License

An individual whose License has lapsed for more than two years may apply for reinstatement of his or her License by:

(1) Submitting a properly completed Reinstatement Application Form with the applicable filing fee;

(2) Demonstrating to the Board's satisfaction that nothing has occurred during the lapsed period which would justify the revocation of the Registrant's License under the provisions of M.G.L. c. 112, § 81P or any other applicable law;

(3) Demonstrating to the Board's satisfaction that the Registrant meets the current requirements for registration, which may include an oral interview/exam, submission of documentation, and the required written examinations; and

(4) Paying applicable late fees and renewal fees for missed licensing cycles as required by the Director of the Division of Professional Licensure.

5.08: Use of Title Engineer or Land Surveyor

No person, other than a Registrant holding a current License to practice in the applicable profession, shall advertise or hold themselves out as either a Professional Engineer or a Professional Land Surveyor, or use any other title to imply that they are qualified to practice engineering or land surveying in the Commonwealth, or in any other way hold themselves out as able to perform any of the Licensed Branches of engineering or land surveying.

250 CMR 5.08 shall not prohibit a person who is not registered/Licensed in Massachusetts but who holds a current License to practice in another state or Jurisdiction and who declares or otherwise qualifies his or her title in a manner that does not imply that the person is qualified to practice in Massachusetts (*e.g.*, "Professional Engineer, Kansas" would be acceptable).

5.09: Professional and Moral Character

(1) A Registrant shall provide the Board with written notification of any disciplinary action or restriction on practice imposed against any professional License, registration, certificate, or permit held by the Registrant by the applicable governmental authority of any state, territory or political subdivision of the United States or any foreign jurisdiction. Such notice must be received by the Board within 30 days of the effective date of said discipline or restriction.

(2) A Registrant shall provide the Board with written notification of the Registrant's conviction of any crime, including any misdemeanor or felony, other than a routine traffic violation, made by a court or any other adverse action by any state or federal agency. Such notice must be received by the Board within 30 days of said conviction or adverse action. Records of compliance with 250 CMR 5.09(2) shall be exhibited to the Board upon demand.

(3) For the purposes of 250 CMR 5.09(2), the term "conviction" means any of the following:

- (a) a final judgment entered after a jury verdict of guilty or a judicial finding of guilty;
- (b) a plea of guilty;
- (c) a plea of *nolo contendere* (no contest); or
- (d) any other plea or finding which is treated by the court as a plea or finding of guilty.



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5.09: continued

The standards in 250 CMR 5.09(3)(a) through (d) shall apply regardless of the law of the jurisdiction in which the disposition occurred.

REGULATORY AUTHORITY

250 CMR 5.00: M.G.L. c. 112, §§84D through 81T.