

Agenda Item # : 5A-1

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 27, 2007

[] Consent [] Regular
[] Workshop [] Public Hearing

Department:

Submitted By: Engineering and Public Works

Submitted For: Right-of-Way Acquisition Section

I. EXECUTIVE BRIEF

Motion and Title: Staff requests Board direction on the matter of the transfer of Gardiner Lane.

Summary: This action will direct staff on how to proceed in the matter of Gardiner Lane, and the requested transfer of Gardiner Lane to the Gardiner Lane Association, Inc.

District: 1 (PK)

Background and Justification: The property in question is a strip of land 16 feet wide and 783 feet long. The property is known as Gardiner Lane. It appears to have been created as an access for parcels north of Center Street along the Loxahatchee River Waterway. This parcel does not supply direct access to the Waterway.

Beginning in 1953, the taxes were not paid on the property. Tax certificates were issued, and in 1971, the property was transferred to Palm Beach County as part of a Chancery case. The parcel has never been accepted for road maintenance by the County.

In 2006, the property owners who live north of Gardiner Lane and have only Gardiner Lane for access, formed the Gardiner Lane Association, Inc. (Association), and approached the County about transferring the property to them.

Two groups of owners, who are not a part of the Association, abut Gardiner Lane. The owners who live on Perigon Way are separated from Gardiner Lane by a Limited Access Easement, recorded in the plat of their neighborhood. Gardiner Lane is at the rear of their parcels.

The other owners, who live on April Lane, abut Gardiner Lane with no restrictions. Gardiner Lane is at the rear of their properties, too, except for one owner. This one owner has his only access on Gardiner Lane.

The Association approached the County about the transfer because there were two issues they wanted to address. First, there was an on-going problem with trash dumping on the property. Because it is only 16 feet wide, the trash created difficulties for people using the parcel to get to their homes. Second, since the property is not maintained by the County, repairs are sporadic and not well coordinated, being done by Association members and abutting owners.

Background and Jutification continued on page 3

Attachments:

1. Location Map
2. Detail Map
3. Sample Letters

Recommended by: *Michael A. Fernandez* 1/26/07 *[Signature]*
Division Director Date

Approved by: *S. T. Wehr* 2/1/07
County Engineer Date

KAT
[Signature]

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no additional fiscal impact.

C. Departmental Fiscal Review: R.D. Ward 1/26/07

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 John D. ... 2-5-07
 OFMB
 2-5-07
 John J. ... 2/7/07
 Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

 Paul F. ... 2/8/07
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

The first problem was turned over to the Solid Waste Authority (SWA). SWA has authority in this situation. They have begun to notify offenders to correct this problem.

One solution, though not the only solution, to the second problem would be to transfer the parcel to the Association.

The Engineering Department sent letters to the abutting owners who are on Perigon Way and April Lane asking for their comments and opinions on the proposed transfer. All but two owners responded. Most initial comments were not favorable to the transfer of Gardiner Lane to the Association. One property on April Lane has recently been sold, and we have no input from the new owner. Samples of the Engineering letters and owners responses are attached.

The owners on Perigon Way have been accessing Gardiner Lane for mainly pedestrian activities through back gates in their fences. Most of the responding owners would like to be able to continue to enjoy those activities. They expressed concern that they would no longer be able to walk on Gardiner Lane, or use it as an occasional access for vehicles, as they do now, if it were to become private. The owners on Perigon Way can never have full access rights to Gardiner Lane because of the Limited Access Easement recorded in the plat of their subdivision.

Some owners on April Lane have used Gardiner Lane as a second access, primarily for recreational vehicle purposes, in addition to pedestrian uses. These owners are more concerned with the possible loss of their access to Gardiner Lane. Some have made use of Gardiner Lane for more than ten years.

In discussions between the Engineering Department and Association, the Association has said they do not intend to block pedestrian pursuits by adjacent owners. The Association also said they would grant occasional vehicle access, if asked. However, if the property is transferred to the Association, without any provisions for additional access rights, there is no way to ensure that access by owners who are not in the Association would remain or be granted.

Additionally, there is the April Lane owner who has his only access on Gardiner Lane. This owner has declined to be included in the Association. If a transfer is approved, certain rights to this owner must accompany the transfer.

The absence of any real assurance about their future access rights seems to be the main issue for the abutting owners regarding the transfer of Gardiner Lane to the Association.

Staff has three possible actions for the Board to consider.

The first is that the County retain title to the parcel known as Gardiner Lane. The County, possibly through Commissioners discretionary funding, would do an overlay of the road on the property, doing repairs where needed, and then place this road on our Courtesy Maintenance Program. The parcel lacks sufficient width to be considered for regular maintenance. It would remain accessible to all, as it is now. This would address basic maintenance issues, though perhaps not to the level desired by all who use the road. The County would continue to work with SWA to address the trash dumping, as necessary.

The second is to transfer the property known as Gardiner Lane to the Association in fee without restrictions, except for the one April Lane owner. The Association could improve the road and would be responsible for maintenance and trash dumping issues.

The third is to transfer the property known as Gardiner Lane to the Association, but the County would require that Easement Deeds be given by the Association to the abutting properties for ingress and egress, or the County would retain a Public Easement over the entire strip. The one owner on April Lane whose access is on Gardiner Lane will need specific provisions. The County would require that these Easements be drawn-up, executed, and accepted by the County in the same Board item that transfers the parcel to the Association. These Easements would run with the land. Membership in the Association would not be required. The County would ensure proper recording of the documents. The Association would then be responsible for the road maintenance and for monitoring the trash dumping problem. The abutting owners would continue to have access to Gardiner Lane.

What ever action the Board decides to take, it is important to ensure the continued access rights of the April Lane property owner whose only access is on Gardiner Lane.

Location Map

R42

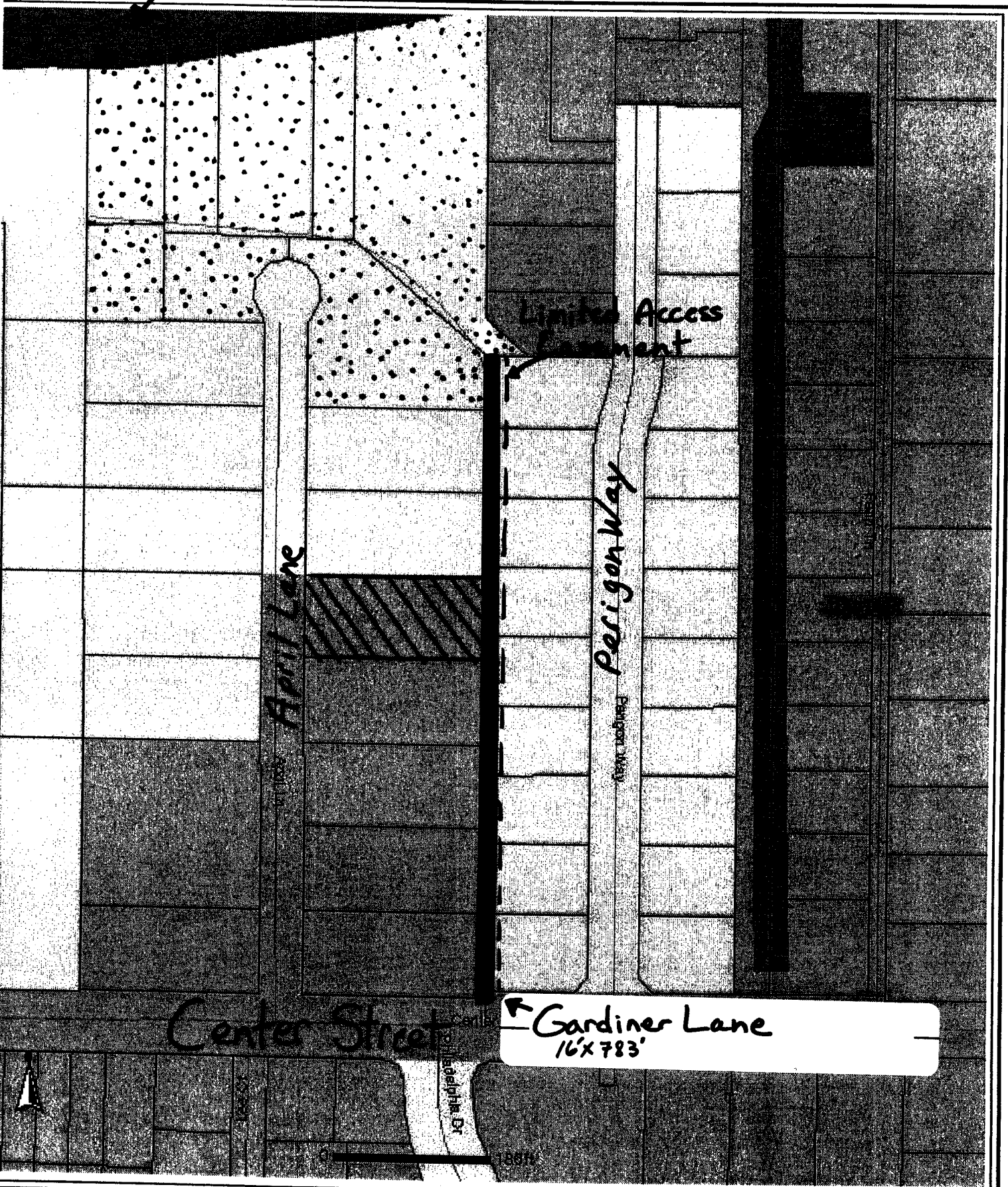
No Cont. map



R42



Loxahatchee River

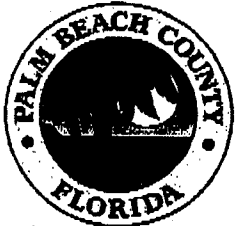
N



-  - Association Members
-  - Access on Gardiner Lane

Map Scale 1:2237

Map produced on 1/19/2007



PROJECT 11A

September 21, 2006

CERTIFIED MAIL

JOSEPH J. AND DONNA S. GREEN
18008 APRIL LANE
JUPITER, FLORIDA 33458-4342

RE: GARDINER LANE TRANSFER
PARCEL 11

Dear Mr. and Mrs. Green:

Palm Beach County is considering granting a request by the Gardiner Lane Property Owners Association, Inc., to transfer the County's interests in Gardiner Lane to the Association. This Association represents owners along the Loxahatchee River Waterway.

This strip of land was originally created as an access for these properties to the north of Center Street along the Waterway. However, the County acquired it, through default, by a Tax Deed. The owners say they were unaware of the delinquent taxes. It is not a County maintained road, and the Association would assume improvement and maintenance responsibilities.

The Association is willing to grant specific rights to you, as a property owner abutting Gardiner lane, as part of the transfer process. Please respond to Kat Chopin, Specialist, at (561) 478-5795, within the next 30 days and advise her of any specific rights you may require. Thank you.

Sincerely,

Tanya N. Mc Connell, P.E.
Deputy County Engineer

ec: Commissioner Karen T. Marcus
Kat Chopin, Right-of-Way Specialist

**Department of Engineering
and Public Works**

P.O. Box 21229
West Palm Beach, FL 33416-1229
(561) 684-4000
www.pbogov.com



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Commissioners**

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Addie L. Greene, Vice Chairperson

Karen T. Marcus

Jeff Koons

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Mary McCarty

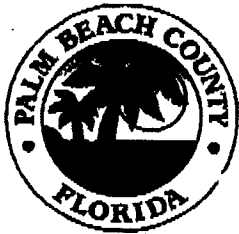
Burt Aaronson

County Administrator

Robert Weisman

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September 14, 2006

CERTIFIED MAIL

**CORODON M., JR. AND PATRICIA BEEBE
18149 PERIGON WAY
JUPITER, FLORIDA 33458-4360**

**RE: GARDINER LANE
PARCEL 25**

Dear MR. and Mrs. Beebe:

Palm Beach County is considering granting a request by the Gardiner Lane Property Owners Association, Inc., to transfer the County's interests in Gardiner Lane to the Association. This Association represents owners along the Loxahatchee River Waterway.

This strip of land was originally created as an access for these properties to the north of Center Street along the Waterway. However, the County acquired it, through default, by a Tax Deed. The owners say they were unaware of the delinquent taxes. Gardiner Lane is not currently a County maintained road, and the Association would assume improvement and maintenance responsibilities.

Your property currently has a limited access easement, dedicated by Plat, abutting Gardiner Lane. The Association is willing to grant limited use of Gardiner Lane for specific purposes and durations, upon receipt of a written request.

If you have any questions or comments, please contact Kat Chopin, Specialist, at (561) 478-5795, within the next 30 days. Thank you.

Sincerely,

Tanya N. Mc Connell, P.E.
Deputy County Engineer

ec: Commissioner Karen T. Marcus
Kat Chopin, Right-of-Way Specialist

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PROJECT FILE

14967

**Department of Engineering
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September 14, 2006

CERTIFIED MAIL

KENNETH J. AND BETTY J. SCHERGER
18101 PERIGON WAY
JUPITER, FLORIDA 33458-4360

RE: GARDINER LANE
PARCEL 22

Dear Mr. and Mrs. Scherger:

Palm Beach County is considering granting a request by the Gardiner Lane Property Owners Association, Inc., to transfer the County's interests in Gardiner Lane to the Association. This Association represents owners along the Loxahatchee River Waterway.

This strip of land was originally created as an access for these properties to the north of Center Street along the Waterway. However, the County acquired it, through default, by a Tax Deed. The owners say they were unaware of the delinquent taxes. Gardiner Lane is not currently a County maintained road, and the Association would assume improvement and maintenance responsibilities.

Your property currently has a limited access easement, dedicated by Plat, abutting Gardiner Lane. The Association is willing to grant limited use of Gardiner Lane for specific purposes and durations, upon receipt of a written request.

If you have any questions or comments, please contact Kat Chopin, Specialist, at (561) 478-5795, within the next 30 days. Thank you.

Sincerely,

Tanya N. Mc Connell, P.E.
Deputy County Engineer

ec: Commissioner Karen T. Marcus
Kat Chopin, Right-of-Way Specialist

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OCT 02 2006

September 27, 2006

Palm Beach County, Department of Engineering and Public Works
Tanya N. Mc Connell, P.E., Deputy County Engineer
P. O. Box 21229
West Palm Beach, Fl. 33416-1229

RE: GARDINER LANE, PARCEL 22

Dear Ms. Mc Connell:

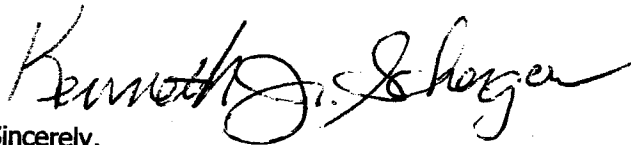
I object to Palm Beach County granting the Gardiner Lane Property Owners Association, Inc. the County's interest in Gardiner Lane to the Loxahatchee River Waterway owners association.

My family and I have lived at 18101 Perigon Way, Jupiter for 27 years and have used my Gardiner Lane limited access easement to maintain my yard, fence, walk the dog, receive building material deliveries and I plan to park a boat and trailer on my property using my access. I am not willing to give up my limited access to Gardiner, nor am I willing to give written request for permission to access or maintain my property to a home owners association. The new trespassing laws have me very concerned about the intentions of these waterway folks.

I will suggest that to ease the tension in this neighborhood that this issue has created, the County maintain control of this easement, but allow the Association the right to improve and maintain the easement with unlimited access, but please don't deprive me of the easement access that I have used for 27 years.

If this is not acceptable, please include 18101 Perigon Way, Parcel 22 in the grant with the same rights and privileges as the Gardiner Lane Property Owners Association.

If you have any questions or concerns about this request, please contact Ken Scherger, 18101 Perigon Way, property owner, at (561) 355-2839 or (561) 747-2311. Thank you.



Sincerely,

Kenneth J. Scherger
18101 Perigon Way, property owner

cc: Commissioner Karen T. Marcus

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County Administrator

Robert Weisman

September 21, 2006

CERTIFIED MAIL

GARY S. AND BONITA M. PARKER
17964 APRIL LANE
JUPITER, FLORIDA 33458-4372

RE: GARDINER LANE TRANSFER
PARCEL 15

Dear Mr. and Mrs. Parker:

Palm Beach County is considering granting a request by the Gardiner Lane Property Owners Association, Inc., to transfer the County's interests in Gardiner Lane to the Association. This Association represents owners along the Loxahatchee River Waterway.

This strip of land was originally created as an access for these properties to the north of Center Street along the Waterway. However, the County acquired it, through default, by a Tax Deed. The owners say they were unaware of the delinquent taxes. It is not a County maintained road, and the Association would assume improvement and maintenance responsibilities.

The Association is willing to grant specific rights to you, as a property owner abutting Gardiner lane, as part of the transfer process. Please respond to Kat Chopin, Specialist, at (561) 478-5795, within the next 30 days and advise her of any specific rights you may require. Thank you.

Sincerely,


Tanya N. Mc Connell, P.E.
Deputy County Engineer

ec: Commissioner Karen T. Marcus
Kat Chopin, Right-of-Way Specialist

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1

September 28, 2006

Gary S. and Bonita M. Parker
17964 April Lane
Jupiter, FL 33458-4372

Department of Engineering and Public Works
PO Box 21229
West Palm Beach, FL 33416-1229
(561) 478-5795 / [fax] (561) 684-4166
ATTN: Kat Chopin

RE: Gardiner Lane Transfer - Parcel 15

Dear Kat,

This is to confirm our conversation concerning our position on the transfer of Gardiner Lane to the Gardiner Lane Property Owners Association, Inc.

At the time that we purchased our lot and built our home Gardiner Lane was a Palm Beach County right of way. We inquired as to whether it was permissible to have a driveway and or entrance onto our April Lane property from Gardiner Lane and we were told that it was. We currently have a graveled parking area and gate entrance to the rear of our property from Gardiner Lane. We also maintain a strip of property outside of our fenced property along Gardiner Lane and also at the corner of Center Street.

Should the County transfer Gardiner Lane to the Gardiner Lane Property Owners Association, Inc. we would want to continue to have this Gardiner Lane access to our property that we currently have and also maintain the right to pass these same conditions on to any future owners of our property.

To further assure a free access to our property this way, should Gardiner Lane Property Owners Association, Inc. or any future party choose to "gate" their Gardiner Lane then we would request that we have free access through this gate should it be between our Gardiner Lane access and Center Street and if this gate were placed beyond our property access then it should be positioned beyond the north property line so as to allow at least 50 feet of clearance where as a vehicle and trailer would be able to pull down Gardiner Lane and then be able to back onto our property for storage or delivery.

We would further request that there would be no restrictions as to the placing of lawn and landscape trimmings and debris, or restrictions as to the storage and parking of equipment and vehicles all within our property boundaries along Gardiner Lane.

Sincerely,



Gary S. Parker