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April 6, 2021

Jonathan D. Witten  
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BY ELECTRONIC MAIL ([peterfreeman@freemanlawgroup.com](mailto:peterfreeman@freemanlawgroup.com))  
AND FIRST CLASS MAIL

Peter L. Freeman, Esq.  
Freeman Law Group LLC  
86 Willow Street  
Yarmouthport, MA 02675

Re: Bourne Board of Appeals/North Sagamore Water District – “Cape View Way”,  
Application for a Comprehensive Permit

RECEIVED  
2021 APR - 7 AM 10: 04  
TOWN CLERK BOURNE

Dear Mr. Freeman:

Thank you for your comments on the status of the North Sagamore Water District (“Water District”), by letter dated March 28, 2021. It is always a pleasure to discuss the finer points of G.L. c. 40B law with you.

In this case, your opinion, with respect to the status of the Water District is wrong; therefore your opinion with respect to the authority of the Zoning Board of Appeals to waive the Water District’s rules and regulations is also wrong.

You suggest that the Water District is a “local board” pursuant to the definition contained in 760 CMR 56.02, and point to various phrases in that definition for support – for example, the phrase “including boards created by special acts of the legislature or by other legislative action,” emphasized in your letter. You are mistaken as to the Water District’s position. In distinguishing the Water District from “local board,” as that term is used under G.L. c. 40B, we do not rely solely on the fact that the Water District was created by the General Court (specifically, by Chapter 290 of the Acts of 1939). Rather, we rely on the *nature* of the body created. Unlike the boards falling within the definition supplied in 760 CMR 56.02, the Water District is not a regulatory body. Rather, it is a “body corporate,” with statutory authority to act in ways unknown to regulatory board. For example, the Water District “*may take by eminent domain under chapter seventy-nine of the General Laws*, or acquire by lease, purchase or otherwise, the waters or any pond, spring or stream. . . and may take as aforesaid, or acquire by purchase or otherwise, and hold, all lands, rights of way and other easements necessary. . . .” Chapter 290 of the Acts of 1939, Section 2 (emphasis supplied). In addition, the Water District may construct water lines “under or over any land, water courses, railroads, railways and public or other ways, and along such ways” within the Town of Bourne and within a portion of the Town of Plymouth. I am sure you will agree that in so doing, the Water District does not “perform functions usually performed by locally-created boards.” See 760 CMR 56.02. Likewise, I am sure you would agree that in so doing, the Water District does not



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“perform comparable functions to the listed forms of ‘local board’” in 760 CMR 56.02. Please see your letter at p. 2 and Dennis Housing Corp. case cited therein. Further distinguishing the Water District from the entities characterized as “local boards,” the Water District receive no funding from the Town of Bourne.

As the Water District is not a “local board,” its rules and regulations cannot be waived by the Zoning Board of Appeals, and it would be fruitless to make any such request. Of course, as stated in my letter dated March 25, 2021, the Water District will, as always, cooperate and seek to assist prospective customers.

Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jonathan D. Witten".

Jonathan D. Witten

JDW/smm

cc: Board of Appeals  
North Sagamore Water District (by electronic mail only)  
Robert S. Troy, Esq. (by electronic mail only)

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