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VIA EMAIL TO CASSIE HAMMOND at chammond@townofbourne.com

December 1, 2021

James Beyer, Chairman
Town of Bourne
Zoning Board of Appeals
24 Perry Ave.
Bourne, MA 02532-3441

Re: POAH and HAC Comprehensive Permit Application
Cape View Way, Sagamore

Dear Mr. Beyer and Board Members:

I am in receipt of a copy of the letter to you from Jonathan D. Witten, Esq. dated November 29, 2021 concerning the North Sagamore Water District. As I stated to the Board in my letter dated March 28, 2021 in response to Mr. Witten's letter to you dated March 21, 2021, I staunchly disagree with his position that the North Sagamore Water District is not a "local board" under M.G.L. c. 40B, §§20-23 and 760 CMR 56.02. Please see copy of my March 28, 2021 letter, attached hereto.

I will not repeat what I stated in that later. Suffice it to say, neither Mr. Witten's letter dated November 29, 2021 nor his interim letter dated April 6, 2021 to me (with copy to the Board) changes my position. However, I will cite further to the case of *Lever Development, LLC v. West Boylston Zoning Board of Appeals*, "Housing Appeals Committee Docket No. 04-10, Decision December 10, 2007:

"The Board argues that the Water District's enabling statute gives it jurisdiction over the Wachusett Reservoir, a state resource, which supplies water to the greater Boston area through the Massachusetts Water Resources Authority. St. 1933, c. 352, pp. 631-632. It argues that because it administers a state statute, protecting a state resource, the Water District is not a local authority or board that can be supplanted by the Board or the Committee under Chapter 40B.

****13** As the Supreme Judicial Court pointed out in [Dennis, supra, 439 Mass. 71](#), Chapter 40B's definition of "local board" does not contain an exhaustive or exclusive list of the local agencies and officials who qualify as local boards:

The "local boards" whose ordinary jurisdiction may be exercised by the zoning board under [G.L. c. 40B, § 21](#), are defined as "any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen." [G.L. c. 40B, § 20](#). The list of local agencies and officials that comprise the definition of "local board" is not intended to be a list of the precise names of

such local agencies, but rather encompasses local agencies and officials performing comparable functions to the listed forms of “local board.” *Id.* at 78.

The Court also noted that the Committee similarly interprets the term “local board” to include all boards that “perform functions usually performed by locally created boards.” [760 CMR 30.02](#). The Committee has previously determined that a town sewer department constitutes a local board for the purposes of [Chapter 40B](#). See *Wilmington Arboretum Apts. Associates Limited Partnership v. Wilmington*, No. 87-17, slip op. at 25-28 (Mass. Housing Appeals Committee June 20, 1990). Also see *Peppercorn Village Realty Trust v. Hopkinton*, No. 02-02, slip op. at 13 n.10 (Mass. Housing Appeals Committee Jan. 26, 2004). Lever points out that Chapter 352 provides that the inhabitants of the Town of West Boylston “shall constitute a water district ... for the purpose of supplying themselves with water for the extinguishment of fires and for domestic and other purposes.” Exh. 78. It also states that the inhabitants of the water district may elect a board of commissioners with authority to act for the water district “subject, however, to such instructions, rules and regulations as the district may by vote impose.” Exh. 78, §§ 1, 8, 9.

There is no reason why the Water District should be outside the scope of [Chapter 40B](#); its functions and role in the Town are comparable to those of boards listed in the statute. We find that it is a local board within the meaning of [Chapter 40B](#) and our regulations. We therefore conclude that the Committee has the authority to order the issuance of a water connection permit.”

I would also like to address, and refute, what I believe are inaccurate and unfair descriptions of my clients’ actions with regard to the Application for a comprehensive permit and our interactions with the North Sagamore Water District. Mr. Witten falsely states:

“Rather than work with the Water District to address those concerns and seek approval from the Water District, it appears that the Applicant has elected to try to cut the Water District out of the process and seek unlawful approval for water connection from the Board, without necessary mitigation.”

In fact, the Applicant *has* sought approval from the Water District for the connection. By letter from Joe Henderson of Horsley Witten Group to Matt Sawicki, Superintendent of the Water District dated March 3, 2021, the Applicant, while reserving its rights under Chapter 40B, provided the District with the application materials for a water connection. Fairly soon thereafter (I believe it was in April of 2021), we (myself, the Applicant, and Horsley Witten engineers) had a meeting with the District Commissioners and Mr. Sawicki. There were then additional meetings or communications between our Horsley Witten engineers and Mr. Sawicki, and at least one more meeting with the Commissioners and Mr. Sawicki (on October 14, 2021).

Prior to that time, the Applicant retained Greg Wozny of Wozny/Barber & Associates, Inc., a water system specialist. At the request of the Water District, we conducted a water flow test to investigate the adequacy of water for fire protection purposes for the Project; and then Mr. Wozny issued a memorandum with calculations based on the flow test which indicated that the water pressure and capacity was sufficient for fire protection purposes. A copy of the memorandum was submitted to both the Water District and to the Bourne Fire Chief, and the Chief agreed with the conclusion that the existing water supply was sufficient. At the October 14 meeting with the District Commissioners, Mr. Wozny and the District’s consulting engineer were also present, and it was very evident that there was no refutation of Mr. Wozny’s memorandum, there was mere speculation from the District’s consulting engineer.

That meeting ended cordially, with no vote being taken, and the Chairman stated that the District would continue to review this matter and that we should keep them apprised of any changes in the project. As you know, we have reduced the number of units by 9 and thus also reduced the daily water flow; and we have contacted Mr. Sawicki again about further meetings.

Thus for Mr. Witten to state that we have not worked with the Water District and that we have cut them out of the process is patently false. We will continue our good faith efforts to work with the Water District; but as I have repeatedly stated to Mr. Witten, the Water District, and to your Board, the Zoning Board of Appeals *does* have the authority to provide the Applicant with the water connection for the Project, and we continue to reserve the Applicant's rights under Chapter 40B.

Thank you.

Very truly yours,



Peter L. Freeman

cc: Jonathan D. Witten, Esq.
David Quinn, Housing Assistance Corp.
Cory Fellows, POAH
Brian Kuchar, Horsley Witten