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March 28, 2021

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Jonathan D. Witten, Esq.

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101 Arch Street

Boston, MA 02110

Re: POAH/Cape View Way c. 40B Application
North Sagamore Water District

Dear Attorney Witten:

Your March 25, 2021 letter to the Bourne Zoning Board of Appeals regarding the pending application for a comprehensive permit by Preservation of Affordable Housing, Inc. ("POAH") and Housing Assistance Corporation ("HAC") for land on Cape View Way has been referred to me for a response as Freeman Law Group LLC represents POAH and HAC in this matter.

You stated in your March 25, 2021 letter that it is your "opinion that the Board of Appeals lacks the statutory authority to grant waivers or any other form of relief from the [North Sagamore] Water District's duly promulgated rules and regulations." You asserted in your letter that because the Water District is an "independent 'body corporate' established" by the General Court (St. 1939, c.290), the Water District is "not a 'local board' pursuant to G.L. c.40B, §20 or 760 CMR 56.00 et seq." and, therefore, you opined that the "Board of Appeals lacks the authority to waiver or otherwise negate the powers and authority of the Water District."

In short, for the reasons noted below, your opinion is incorrect; and I request that you, forthwith, send a corrected opinion to the Board of Appeals, the North Sagamore Water District and the Bourne Town Counsel.

First, the term "Local Board" is a defined term under 760 CMR 56.02 and the definition explicitly includes water districts and commissions as Local Boards and expressly provides that the term Local Board: "means any local board or official, including, but not limited to any ... water, sewer, or other commission or district..." 760 CMR 56.02, Definition of Local Board (emphasis added.) Furthermore, this regulation also explicitly provides that: "All boards, regardless of their geographical jurisdiction or their source of authority (that is, *including boards created by special acts of the legislature or by other legislative action*) shall be deemed Local Boards if they perform functions usually performed by locally created boards." *Id.* (Emphasis added.)

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Second, while the term "Local Board," as set forth under G.L. c.40B, §20, does not explicitly mention water districts in the list of local boards, that statutory term was construed to include water districts even before the 40B regulations were amended in 2008 to add a specific definition of "Local Board" that explicitly includes water districts and commissions no matter what the source of their authority (i.e., via special act or other authorization).

In 2003, the Supreme Judicial Court noted that the definition of "Local Board" set forth under G.L. c.40B "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.'" Dennis Housing Corp. v. Zoning Board of Appeals of Dennis, 439 Mass. 71, 78 (2003). In 2007, the Housing Appeals Committee interpreted the definition of Local Board set forth under G.L.c.40B, §20, and determined that a water district, even one with an enabling statute that provided the district with jurisdiction to administer a state statute and to protect a state resource, was a local board within the meaning of G.L. c.40B, §20 because the water district's "functions and role in the Town are comparable to those of [the local] boards listed in the statute." Lever Development, LLC v. West Boylston Zoning Board of Appeals, 2007 WL 4925109. And, of course, as noted above, in 2008, the 40B regulations were revised to explicitly include water districts and commissions within the definition of "Local Board," including districts and commissions created through special legislation.

There can be no question that the North Sagamore Water District is a Local Board for purposes of G.L. c.40B, §20 and 760 CMR 56.00.

Please correct your erroneous March 25, 2021 opinion, as requested above, at your earliest possible convenience and please provide me with a copy.

Thanking you in advance for your courtesy in this matter.

Regards,



Peter L. Freeman

cc: Bourne Zoning Board of Appeals (via e-mail)
Robert Troy, Town Counsel