

November 29, 2021

Jonathan D. Witten
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James Beyer, Chair
Bourne Zoning Board of Appeals
24 Perry Avenue
Buzzards Bay, MA 02532-3441

RE: “Cape View Way”, Application for a Comprehensive Permit

Dear Chairman Beyer and Members of the Board of Appeals:

This Office represents the North Sagamore Water District (“Water District”) in regard to the above noted application for a comprehensive permit pending before the Bourne Zoning Board of Appeals (the “Board”).

We are in receipt of a draft comprehensive permit decision submitted to the Board by the Applicant’s counsel. As you are aware from prior correspondence submitted to the Board by the Water District, it is the Water District’s position that the Board does not have the authority to waive requirements of the Water District’s rules and regulations or otherwise grant approvals for a water connection to the Water District’s water supply. The Water District is an independent “body corporate” established by the General Court pursuant to Chapter 290 of the Acts of 1939. The Water District is not a “local board” pursuant to G.L. c.40B, s.20 or 760 CMR 56.00, *et seq.* and, accordingly, the Board lacks the authority to waive or otherwise negate the powers and authority of the Water District.

The Water District is concerned about several proposed findings in the draft decision submitted by Applicant’s counsel which, in the opinion of the Water District, exceed the authority of the Board. The problematic proposed findings are set forth in bold as follows:

19. The project will tie into the North Sagamore Water District municipal water system. No waivers regarding the technical aspects of installation of water infrastructure are sought by the Applicant from the Board.

Water District’s Response: It is the Water District’s position that the Board does not have the authority to determine what, if any, waivers are required for the Project. The sole authority to determine what waivers are required lies with the Water District. The Board should require the Applicant to seek approval for the Project from the Water District, including any necessary waivers as determined by the Water District.

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20. A water supply analysis to determine the sufficiency of the water supply for the project's fire flow and fire suppression system was performed by Wozny/Barbar & Associates, Inc., and summarized in a memorandum dated August 30, 2021, to Michelle Waldon, AIA, of Icon Architects, and reviewed by the Bourne Fire Chief, and it was determined and agreed that the water supply for the fire flow and fire suppression system at the property is sufficient.

Water District's Response: It is the Water District's position that regardless of whether the proposed water flow is sufficient to meet Fire Code requirements, the sole authority to determine whether the proposed water usage for the Project meets the requirements of the Water District's rules and regulations lies with the Water District. The Water District also maintains the authority to require mitigation from the Applicant to offset impacts to existing water customers.

21. This Decision shall constitute the necessary permissions to make the connection to said municipal water system; however, the applicant shall pay the connection fees as required by the North Sagamore Water District.

Water District's Response: It is the Water District's position that the Board does not have the authority to issue an approval for a water connection to the Water District's supply system. The sole authority to approve a connection to the Water District's water supply system lies with the Water District. The Board should require the Applicant to seek approval for a water connection for the Project from the Water District, including any necessary waivers as determined by the Water District.

While the Water District will, as always, cooperate and seek to assist prospective customers, the prospective customer, in this case the above noted applicant, will need to continue to engage with the Water District to discuss their proposal and seek whatever relief is needed from the Water District including any mitigation deemed necessary by the Water District. The Applicant is well aware of the Water District's concerns about the Project's impacts on the Water District's supply for current and future users. 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. While the Water District has the utmost respect for the Board and its authority, the Water District respectfully requests that the Board require the Applicant to obtain approval from the Water District for a water connection as the Board does not have the legal authority to grant such an approval.

On behalf of its customers, the Water District must retain all rights at law and equity should the Board exceed its authority and infringe upon the authority of the Water District to grant a water connection approval without mitigation deemed necessary by the Water District.



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Please let me know if you have any questions.

Respectfully submitted on behalf of the North Sagamore Water District.

Very truly yours,

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

Jonathan D. Witten

JDW/lmk

cc: Meena Jacob, Preservation of Affordable Housing, Inc. *(by electronic mail)*
Robert Troy, Esq., Town Counsel *(by electronic mail)*
Matthew Sawicki, Superintendent, North Sagamore Water District *(by electronic mail)*