

August 29, 2017

By email: [stockman.n@westonmass.org](mailto:stockman.n@westonmass.org)

Winifred I. Li, Chairwoman  
Town of Weston Zoning Board of Appeals  
Weston Town Hall  
11 Town House Road  
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RE: 104 Boston Post Road, Weston, MA; MassHousing ID No. 906  
Objection to “Site Analysis” by Planning Board

Dear Chairwoman Li:

My client, 104 Stony Brook, LLC, has been made aware of last week’s decision by the Board of Selectmen to request, at the Planning Board’s urging, that the Planning Board conduct a “site analysis” of my client’s property in connection with the pending application with the Zoning Board of Appeals for a comprehensive permit under G.L. c. 40B. As we understand it, under the guise of needing additional information, the Selectmen have directed the Planning Board to conduct an unnecessary “analysis” of the project site, which has already been analyzed by this Board, its numerous peer reviewers, the City of Cambridge Water Department and its peer reviewer, and, at the state level, by MassDEP and MassDOT. This 11<sup>th</sup> hour decision by the Selectmen comes five months after this Board commenced its hearing on the Stony Brook Weston project, and nearly eight months after the proposed project received a Project Eligibility/Site Plan approval from the Massachusetts Housing Finance Agency (“MassHousing”). 104 Stony Brook objects to this site analysis, which appears to be merely a pretext for interfering with this Board’s ongoing review in order to inject additional delay and costs into this proceeding. We urge the Board to disregard the Selectmen’s latest maneuver, and to move forward with a discussion of the requested waivers and draft decision in order that it may issue a timely and appropriate decision.

Historically, the Selectmen have sought to obstruct this project from the outset, first writing a letter of opposition dated January 11, 2017,<sup>1</sup> urging MassHousing to deny 104 Stony Brook’s application for project eligibility. In its letter dated February 21, 2017, granting Project Eligibility/Site Approval, MassHousing identified the town’s specific concerns as being the building’s scale and footprint, stormwater and septic issues, traffic, and the relocation of the Sibley House. MassHousing determined, however, that the project and site are generally eligible to apply for a comprehensive

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<sup>1</sup> The Selectmen’s letter was sent after the Town Manager requested additional time from MassHousing to respond.

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permit to this Board, and that applicant should be prepared to explore such issues and others as part of the public hearing process.

As you know, the public hearing opened on April 6, 2017,<sup>2</sup> and has been continued over six nights, most recently on July 17, the last night before the Board recessed for the remainder of the summer. At these hearings, 104 Stony Brook has presented detailed information on all aspects of the Project identified by MassHousing, and more, including architectural and building design issues by architect Clay Smook, of Smook Architects and Urban Planners, site design issues including stormwater and landscaping by Tim Williams of Allen & Major Associates, and life-safety, and building and fire code analysis by Rock Edwards of Consentini Associates. 104 Stony Brook also provided the Board with information on traffic issues by Giles Hamm of Vanasse Associates traffic engineers, and wastewater and waste treatment plant issues by Meredith Zona of Stantec Engineers, even though this Board does not have jurisdiction over state traffic or wastewater treatment concerns. In addition to the applicant's experts, the Board also retained a number of peer review consultants, including Nitsch Engineering and Horsley Witten for stormwater and water quality issues, MDM Transportation for traffic, and Sebastian Landscape for landscaping review. Additionally, the Cambridge Water Department retained Kleinfelder Engineering as a peer review consultant for water quality and stormwater-related issues concerning its abutting reservoir property. Indeed, even the Selectmen were apparently involved in obtaining two further peer review reports on this project by Chessia Consulting, the costs for which total \$5,391, even though the Board never formally voted to approve such further review. Finally, those aspects of the project within the state's sole jurisdiction – traffic and wastewater treatment – have also been addressed by peer review engineers at MassDEP and MassDOT.<sup>3</sup>

These multiple experts have addressed not only this Board's comments on the project over the past six months, but also those of the town's Selectmen, the Board of Health, Fire and Police Departments, Conservation Commission, Affordable Housing Trust, Historic Society, School Committee, and the Planning Board among others. In fact, the Planning Board has been represented on many hearing nights by the Town Planner's attendance, and also sent a lengthy letter to this Board dated June 7, 2017 with comments on nearly every aspect of the Project – except the comments went to the previous version of the Project that was supplanted in March by the redesigned project that has been the subject of this Board's review. As such, the majority of the Planning Board's comments were irrelevant as they concerned impacts to the wetlands resource area that no longer exist as a result of the re-design.

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<sup>2</sup> The application was filed with the Board on February 22, 2017, however, at the Board's request the applicant agreed to a 30-day continuance to open the hearing. The 180-day clock on the application runs on September 20, 2017.

<sup>3</sup> It should be noted by the Board that final submissions for required state approvals are made only after all local permits are obtained.

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In short, this project has been the subject of considerable, extensive peer review at every level, in some cases multiple times, in direct contradiction with the expedient, one-stop procedure required by the Affordable Housing Act. Still, 104 Stony Brook has consented to every additional peer reviewer demanded by the Board, to every condition the Board has discussed or the City of Cambridge has raised, and to every request for further presentation on elements of the project that have been previously discussed. This latest effort by the Selectmen, however, should be recognized for what it is – to grind this process to a halt – and rebuked.

While it is no secret that the Selectmen have opposed the Stony Brook Project from the outset, favoring the larger project proposed by Boston Properties<sup>4</sup> and according it “friendly 40B” status, this Board should be immune from further entreaties by the Selectmen to wrongfully intrude in the ongoing approval process for the Stony Brook Weston project, especially since Weston is far from reaching the state’s 10% goal. As the Board knows, since the town has not met the minimum 10% statutory threshold, “a developer may override bulk, height, dimensional, use, and other limitations often invoked as a pretext to exclude affordable housing.” *Standerwick v. Zoning Bd. of Appeals of Andover*, 447 Mass. 20, 25 (2006). This is in keeping with the legislative intent to minimize “lengthy and expensive delays... by those seeking to exclude affordable housing from their own neighborhoods.” *Id.*

The Selectmen will no doubt protest that their latest, purported concerns about stormwater, traffic and wastewater should be addressed by the Planning Board even though only this Board has statutory jurisdiction under Chapter 40B to review the project, precisely because the Planning Board does not have an official role. That rationale should be unavailing. As you know, the well-settled purpose of the comprehensive permit act, G.L. c. 40B, § 21, is “to provide relief from exclusionary zoning practices which prevented the construction of badly needed low and moderate income housing.” *Bd. of Appeals of Hanover v. Housing Appeals Comm.*, 363 Mass. 339, 354 (1973). To eliminate obstacles such as the need to obtain permits and approvals from multiple local agencies, Chapter 40B, § 21 “provides that a qualified developer proposing to build low or moderate income housing may submit to the zoning board of appeals a single application to build housing in lieu of separate applications to the applicable local boards.” *Dennis Housing Corp. v. Zoning Bd. of Appeals of Dennis*, 439 Mass. 71, 77 (2003). This Board has the same power as local boards to issue such permits, and may also in limited circumstances request that the developer pay for peer review of certain aspects of a project. 760 CMR 56.05(5).

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<sup>4</sup> In fact, the Planning Board issued a Public Hearing Notice stamped August 21, 2017 of a hearing scheduled on September 20, 2017 to consider the application by Boston Properties “to construct a new +/- 250,000sf Office Building with 1,711 parking spaces some of which are to be located in a new parking structure, at 133 Boston Post Road (Biogen Idec Campus)... The applicant is also proposing a 345-unit housing development which is under consideration by the Zoning Board of Appeals as a Comprehensive Permit under Chapter 40B.”

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Here, there has already been ample peer review over any “major” concerns the Selectmen may purport to raise.

This Board’s authority plainly derives from the legislative intent underlying Chapter 40B to streamline the approval process to circumvent obstacles to providing affordable housing. Where, as here, the municipality has not met its 10% minimum affordable housing obligations, there is a “rebuttable presumption that there is a substantial Housing Need which outweighs Local Concerns,” such as health, safety, environmental, design, and open space. *See* 760 CMR 56.07(2)(b)(2).<sup>5</sup>

One could argue that this Board’s review of the Stony Brook project has been far from streamlined, with the Board even requiring peer review of aspects of the project over which it has no jurisdiction, such as traffic and wastewater. Whatever “site analysis” the Planning Board would purport to conduct, it will hardly serve to further streamline this process, and has likely already been the subject of existing comments, studies, and proposed modifying conditions. For instance, the site’s zoning analysis and proposed waivers have been part of the drawings for the redesigned project from the beginning. In addition, a detailed waiver list was provided to the Board months ago, and recently revised to further address certain waiver requests under the town’s stormwater bylaw. All of this information and more has been part of the public record in this case since filed with this Board. Yet the detailed discussion of the requested waivers that this Board continues to point to as necessary to its decision has yet to take place in order to allow yet another peer reviewer the opportunity to comment on aspects of the project that have been thoroughly vetted.

While 104 Stony Brook has endeavored to timely respond to all of the Board’s requests for additional information and monies for yet more peer review, we continue to be concerned that these requests exceed the Board’s permissible review and hinder the Board’s ability to render a timely and thoughtful decision, without excessive costs to the applicant. In fact, it may already be too late as far as excessive costs go with the complete redesign of the project, let alone the costs of multiple peer reviewers. Accordingly, we request that the Board consider the voluminous information already in the record in context of the requisite streamlined process under Chapter 40B, and the presumption that the need for affordable housing in Weston outweighs any purported local concerns, and that the Board reject any requests by the Planning Board for additional time or peer review with which to conduct a “site analysis” of the project.

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<sup>5</sup> Even with purported safety concerns such as the lack of a ladder truck sufficient to access the roof of a proposed affordable housing project, which are not present in the Stony Brook Weston project, the Supreme Judicial Court has found that, in the context Chapter 40B, a town may not effectively deny a comprehensive permit “by refusing to approve fire construction documents based on the height of a proposed building.” *Zoning Bd. of Appeals of Sunderland v. Sugarbush Meadow, LLC*, 464 Mass.166 (2012).

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In sum, the information provided to the Board demonstrates that the Stony Brook Project either addresses or can be conditioned to address all local concerns to the extent practicable while meeting the town's local need for affordable housing. We urge the Board to press ahead to close the hearing within 180 days, and issue a comprehensive permit with such reasonable conditions as recommended by the peer reviewers and agreed to by the applicant.

Very truly yours,



Julie Pruitt Barry

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Board of Selectmen (by email)  
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