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May 18, 2022

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Via Electronic & 1st Class Mail

Jane Fisher Carlson, Chair
Weston Zoning Board of Appeals
11 Town House Road
P.O. Box 378
Weston, MA 02493

Re: 518 South Ave, LLC Comprehensive Permit

Dear Ms. Carlson and Members of the Board:

On behalf of the applicant in the above-referenced matter, 518 South Ave, LLC (“the Applicant”), this letter is written to transmit the reports of the Applicant’s experts in response to the various comments raised by the town’s consultants. As an initial matter, we must remind the Board once again that it has strayed well outside of its jurisdiction and authority under G.L. c. 40B and the accompanying regulations by deliberating upon and requiring the Applicant to respond to (*and pay for*) consultant reports that review matters that are not valid local concerns.

We know definitively that the wetland, downstream water quality, wastewater mounding, treated effluent, and groundwater discharge concerns raised by the consultants are not matters of local concern because Weston has no local bylaws or regulations governing these matters. *See Weiss Farm Apartments, LLC v. Stoneham Zoning Board of Appeals*, No. 2014-10, slip op. at 31, March 15, 2021, citing *Herring Brook Meadow, LLC v. Scituate*, No. 2007-15, slip op. at 26, May 26, 2010, for the requirement that “a board must show that the local concern set out in local bylaws or regulations applies to the proposed development, and that the specific interests identified in the local regulation are important at the site. If the Board has not articulated the local concern, nor identified the specific applicable local requirement, and, where there is state regulation, has not shown a local requirement to be stricter than the state standard, nor explained the purpose of the stricter standard or its applicability to the project or the project site, the Board has failed to demonstrate a valid local concern applicable to the project, much less that such a concern outweighs the need for affordable housing.”)

Instead, the matters repeatedly identified by the Board’s consultants are closely regulated and reviewed by state agencies, who apply state regulations, and it will be up to the Applicant to demonstrate to those agencies that the project meets the state standards. To be sure, this Board

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does not have legal authority to review these matters which are governed by state regulation and are well outside a local zoning board's jurisdiction. This Board's *sole* job when reviewing Local Comprehensive Permit applications is to assess the project's anticipated impacts on matters of valid *local* concern and to ascertain whether those *local* concerns outweigh the Town's need for affordable housing. As this Board knows, when a town (like Weston in this instance) has not met the minimum threshold requirements for affordable housing stock within its borders, it is presumed that even valid local concerns are not outweighed by the affordable housing need. *Zoning Board of Appeals of Holliston v. Housing Appeals Committee*, 80 Mass. App. Ct. 406, 413 (2011) (holding that a zoning board denying a comprehensive permit application must prove a specific local health or safety concern "of sufficient gravity to outweigh the regional housing need.")¹.

Instead of focusing on matters of local concern, the Board has instead unnecessarily focused its hearings for months on matters that are governed by state (not local) regulation and matters which require additional permits from state agencies. The Board does not possess the expertise nor the jurisdiction to make decisions concerning these state-regulated matters. Rather than continue to dwell on these state issues, the Board should instead rest assured that the state agencies will conduct their own thorough and comprehensive review of the project to ascertain whether its components meet the state standards. If, as the Town's consultants contend, the Applicant's experts are wrong and the project does not meet the relevant state standards, this is a risk for the Applicant to bear because, in that event, the project cannot proceed because it won't have the necessary permits. There is no need, therefore, for the Board to continue to insist that the Applicant's experts demonstrate how they meet the state regulations or to continue to demand that the Applicant make such demonstration with fully engineered plans². These matters are simply outside the Board's jurisdiction.

Nevertheless, and despite the clear black letter law governing this Board's jurisdiction in reviewing comprehensive permit applications, the Applicant has accommodated the Board's

¹ The fact that Weston does not meet the statutory minima regarding affordable housing establishes a rebuttable presumption that a substantial regional housing need outweighs any valid *local* concerns. G. L. c. 40B, §§ 20, 23; 760 CMR 56.07(3)(a). When considering a denial of this project, the Board should keep in mind that in defending that denial on appeal to the HAC, it must overcome a rebuttable presumption that a substantial regional housing need outweighs any local concerns the Board might identify. 760 CMR 56.07(3)(a); see *Zoning Bd. of Appeals of Lunenburg v. Housing Appeals Comm.*, 464 Mass. 38, 42 (2013) (stating there is a rebuttable presumption that there is a substantial housing need outweighing local concerns if statutory minima are not met), citing *Boothroyd v. Zoning Bd. of Appeals of Amherst*, 449 Mass. 333, 340 (2007) and *Board of Appeals of Hanover v. Housing Appeals Comm.*, 363 Mass. 339, 346, 365, 367 (1973).

² Even before the Housing Appeals Committee, the developer is only required to prepare preliminary plans showing that its proposal conforms to generally recognized standards." *Id.*, at 415, citing 760 Code Mass. Regs. §56.05(2) (2008).



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repeated requests for months and has produced extensive testimony from qualified experts demonstrating that the Project meets the state standards. It has also spent tens of thousands of dollars paying for the Town's consultants to review state-regulated matters that are well outside this Board's jurisdiction. Moreover, throughout the entire hearing process, the Board has refused to let our team experts discuss concerns directly with the town's peer reviewers. This refusal has produced a tortured and extended hearing process, for which the applicant has paid the bill.

While recognizing that the Board has no authority to require reports regarding state-regulated concerns, and indeed no jurisdiction to make decisions regarding these matters, the Applicant has still patiently endured months of needless hearing and testimony in attempt to address the Board's questions. The Applicant continues to cooperate with the Board's requests, even though the bulk of the Board's review has not involved matters of valid local concern. To that end, enclosed herewith are additional reports from each of the Applicant's experts, addressing the mostly state-regulated issues raised by the Town's consultants. Specifically, please find the following reports from the Applicant's experts:

1. The responses to the Civil and Stormwater comments, addressing the stormwater infiltration basins, retaining walls, and snow storage from Nate Cheale, of Tetra Tech;
2. The responses to the Groundwater Mounding comments, from Luke Norton, of Sanborn Head & Associates;
3. Additional comments from Dr. Thomas Ballestero, from the University of New Hampshire, regarding the site hydrology; and
4. Retaining wall section from Nate Cheale.

With these submittals, we believe we have fully addressed all the outstanding comments proffered by the Town's consultants, even though the bulk of the comments concern state-regulated matters well outside this Board's jurisdiction.

Our project team will be at the next hearing, currently scheduled for May 24, 2022, to further answer any questions the Board might have. Thank you in advance for your consideration of these matters.



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Very Truly Yours,

A handwritten signature in blue ink that reads "Sarah A. Turano-Flores".

Sarah A. Turano-Flores

cc: James Ward, Esq.
Valerie Moore, Esq.
Jonathan Buchman
David Hall