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December 8, 2023

Groton Zoning Board of Appeals
c/o Mr. Takashi Tada
Town of Groton
173 Main Street
Groton, MA 01450

RE: Heritage Landing 40B/MIT Email of November 21, 2023

Dear Members of the Board:

Reference is hereby made to the email dated November 21, 2023 from Annalisa Bhatia, Associate Director, Government and Community Relations, Massachusetts Institute of Technology. Reference is also made to the ZBA's hearing on November 29th wherein it was stated that there are "Dark Sky" like regulations that could apply to our client's project.

We searched the Zoning Bylaw for terms such as "Dark Sky", "lights" and "lighting" and we found the following:

Within **§ 218-2.5. Site plan review,** applicable to any application for a building permit, special permit or certificate of occupancy (for a change of use) involving a commercial, office, industrial, institutional, or multifamily use, or structure, when such use of structure requires a Special Permit, the requirements for a "Major Site Plan Review" call for:

- A photometric lighting plan shall be submitted that indicates the illuminations throughout the site and onto abutting ways and properties.
- The plan shall indicate the lighting hours of operation, especially shutoff times.
- Minimize glare from headlights through plantings or other screening.
- Minimize lighting intrusion onto other properties and public ways with proper arrangement and shielding, while providing for security and public safety.
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However, Heritage Landing is a single family development that is not subject to Site Plan Review. The development contains no multifamily dwellings. The Bylaw defines Multifamily Use as "a building containing three or more dwelling units".

And although the Special Permit requirements pertaining to multifamily uses state that "Outdoor lighting fixtures shall be the cutoff type, mounted no higher than 15 feet, oriented and shielded to avoid glare on adjoining premises", Heritage Landing does not contain any multifamily dwelling units.

We also searched the Planning Board's Subdivision Rules and Regulations for terms such as "Dark Sky", "lights" and "lighting" and we found the following:

"The construction standards for electrical service lines and appurtenances, including street-lighting facilities, shall be designed according to specifications of the Groton Electric Light Department. Conduit with cable shall be installed anticipating future cable service. Light base and conduit for future streetlights shall be installed as specified by the Groton Electric Light Department. The streetlights within the subdivision may be of an alternative design acceptable to the Groton Electric Light Department."

In summary, we have not found that "Dark Sky" standards apply to development such as Heritage Landing. Please correct any misunderstanding or misinterpretation of the applicable bylaws and regulations that we may possess, and we will respond accordingly.

We would also like to add to the information provided in our November 28th letter regarding the Board's authority to impose conditions of approval that are outside the scope of requirements applicable to other residential developments.

You are already aware that conditions, for example, that impose additional parking, require construction of a loading dock, impose more stringent design standards for a project driveway may be found to impose "additional direct tangible costs on the project" and may be overturned by the Housing Appeals Committee or the courts. Zoning Bd. of Appeals of Brookline v. Hous. Appeals Comm., 79 Mass. App. Ct. 1129, 950 N.E.2d 905 (2011). Similarly, conditions of approval that would impose more stringent lighting limitations on homeowners than the published regulations that would be applicable to a typical home, or restrictive covenants not mandated by published regulations that would allow a third party to enter a home to remove consumer electronic equipment or appliances, would create a chilling effect on the marketability of the units and reduce the potential buyer pool and negatively impact pricing.

"In cases where the locality has not met its minimum housing obligations, the board must rest its decision on whether the required need for low and moderate income housing outweighs the valid planning objections to the details of the proposal such as health, site design, and open spaces." Zoning Bd. of Appeals of Sunderland v. Sugarbush Meadow, LLC, 464 Mass. 166, 171, 981 N.E.2d 690, 696 (2013). We have not found a decision that concludes that the business plan of a private party operating thousands of feet away from a proposed residential development would be considered a health or safety concern that would outweigh the need for affordable housing.

Generally, the applicable regulations and decisions have concluded that (a) in the case of a denial of a 40B application, the applicant may establish a *prima facie* case by proving, with respect to only those aspects of the project which are in dispute, that its proposal complies with federal or state statutes or regulations, or with generally recognized standards as to matters of health, safety, the environment, design, open space, or other matters of Local Concern, and (b) in the case of an approval with conditions, relative to which the applicant has presented evidence that the conditions make the project uneconomic, the Board shall have the burden of proving, first, that there is a valid health, safety, environmental, design, open space, or other Local Concern which supports such conditions, and then, that such Local Concern outweighs the Housing Need. But, as cited above, where the locality has not met its minimum housing obligations [as is the case in Groton], the board must rest its decision on whether the required need for low and moderate income housing outweighs the valid planning objections to the details of the proposal such as health, site design, and open spaces. Plus, the Board cannot impose requirements that are not part of the published regulatory requirements.

The applicable 40B regulations also state that the "weight of the Local Concern will be commensurate with the degree to which the health and safety of occupants or municipal residents is imperiled, the degree to which the natural environment is endangered, the degree to which the design of the site and the proposed housing is seriously deficient, the degree to which additional Open Spaces are critically needed in the municipality, and the degree to which the Local Requirements and Regulations bear a direct and substantial relationship to the protection of such Local Concerns…" 760 Mass. Code Regs. 56.07. With due respect to the work of MIT, their proposed conditions of approval do not involve the imperiled health and safety of the residents, or danger to the environment, or to address serious deficiencies in the plan.

MIT has been aware of the development potential of the subject site for at least as far back as the 2004 "Residences at Oliver Wight Meadows" project proposal, but did not purchase the land or purchase restrictions upon the land. MIT should not now ask the Town of Groton Zoning Board of Appeals to assist them in their business planning to the detriment of a private party and an affordable housing development.

Thank you for your attention to this matter.

Very truly yours,
Alphen & Santos, P.C.

Paul F. Alphen, Esq.