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BY EMAIL

John Lee, Chair
Walpole Zoning Board of Appeals
135 School Street
Walpole, MA 02081

RE: Application for Comprehensive Permit – M.G.L. c. 40B
Darwin Commons – Darwin Lane, Walpole, MA

Dear Chair Lee and Board Members:

As you will recall, this office represents Wall Street Development Corp. (“Wall Street”) in its application in this matter.. In that capacity, we have been asked to provide a legal opinion regarding whether the proposed development of Darwin Commons off Darwin Lane in Walpole, MA (“the Project”) is permitted under, and/or in compliance with, the Massachusetts Water Management Act’s Regulations issued pursuant to G.L. c. 21G, § 3 (“Regulations,”) and the Town’s analogous zoning bylaws. This opinion along with supporting information to be submitted by Wall Street’s consultants also addresses comments raised by the Town’s peer reviewers, Tetra Tech.

RELEVANT BACKGROUND

The Property is located at the southerly end of Darwin Lane in the town of Walpole and consists of two parcels of vacant land totaling 3.45 +/- acres shown on Walpole Assessor’s Map 42, Parcels 240 and 227-13. Darwin Lane is a public way that intersects with Common Street and has a paved travel way of 26 feet in width with one sidewalk. Darwin Lane is approximately 753 +/- feet in length from its intersection with Common Street ending with a cul de sac. The Property has direct frontage on, and access from, the cul de sac at the end of Darwin Lane. The Property is located entirely within the Residence B (RB) zoning district in the Town of Walpole.

The Property features a rolling and downward sloping topography, varying from elevation 240 on the northside closest to Darwin Lane, to elevation 200 to the southerly rear portion of the Property. The proposed development will be blended to the existing contours and finished grading will limit any significant sloping on the Property. Any disruption to the Property during construction will be stabilized using best management practices.

It is our understanding the Property is not located within any formally mapped environmentally sensitive areas and there are no vernal pools or priority habitat of endangered or rare species as mapped by the MA Division of Fisheries and Wildlife on the Property. Moreover, there are no state-designated Areas of Critical Concerns. However, the Property is located in Area 1 of the Town of Walpole’s Water Resource Protection Overlay District (“WRPOD”), and is mostly within an MA Department of environmental Protection (“DEP”) Groundwater Supply Protection Zone II, with a corner of the lot touching Zone I, of Well 4307000-08G. In addition, it is our understanding the Property and proposed Project will be serviced by municipal water and sewer service.

Newburyport Office
30 Green Street
Newburyport, MA 01950

ANALYSIS

Based on the location of the Property in Zones I and II, it is our opinion the proposed development meets the Regulations' performance standards as follows:

1. The DEP is charged with the regulation of water use and conservation in the state in order to ensure adequate water volume and quality. G.L. c. 21G, § 3. To achieve that goal, the DEP is charged with the authority protect the natural environment of the water in the commonwealth by comprehensively and systematically planning and managing water use and by allowing the continued and sustainable economic growth throughout the state. *Id.* The DEP is empowered to adopt regulations to carry out that responsibility. *Id.*

2. The DEP has adopted such Regulations at 310 CMR 22.00. Those Regulations define certain Zones within proximity to public water supply wells and aquifers and afford certain protections to the groundwater within those Zones. 310 CMR 22.02(1), 21.

3. As previously mentioned, a corner of the Property where the Darwin Commons development is situated touches Zone I of Well 4307000-08G, but Wall Street does not propose any alteration of, or development within, that small intersecting area. As such, the Regulations do not prohibit the Project with respect to Zone I. 310 CMR 22.21(3)(b).

4. The Regulations outright prohibit a list of uses (landfills, etc) within Zone II. 310 CMR 22.21(2)(a). Although the Project is within Zone II, none of those outright prohibitions apply to the Project.

5. The Regulations also prohibit a second list of uses unless they can meet associated performance standards. *Id.* at (2)(b). One such use applies to the Project: "land uses that result in the rendering impervious of more than 15% or 2500 square feet of any lot or parcel, whichever is greater, unless a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality." *Id.* at (2)(b)(7).

6. According to Wall Street's List of Requested Waivers, the Project consists of 45.2% impervious coverage. The Regulations would prohibit the Project unless Wall Street provides a complying artificial recharge system. Standard No. 3 of the Massachusetts Stormwater Handbook provides performance standards for such systems, as follows:

3. Loss of annual recharge to groundwater shall be eliminated or minimized through the use of infiltration measures including environmentally sensitive site design, low impact development techniques, stormwater best management practices, and good operation and maintenance. At a minimum, the annual recharge from the post-development site shall approximate the annual recharge from pre-development conditions based on soil type. This Standard is met when the stormwater management system is designed to infiltrate the required recharge volume as determined in accordance with the Massachusetts Stormwater Handbook.

7. In addition, Standard No. 6 provides further performance standards regarding stormwater discharges within a Zone II or Interim Wellhead Protection Area of a public water supply. Standard No. 6 states the following:

6. Stormwater discharges within the Zone II or Interim Wellhead Protection Area of a public water supply, and stormwater discharges near or to any other critical area, require the use of the specific source control and pollution prevention measures and the specific structural stormwater best management practices determined by the Department to be suitable for managing discharges to such areas, as provided in the Massachusetts Stormwater Handbook. A discharge is near a critical

area if there is a strong likelihood of a significant impact occurring to said area, taking into account site-specific factors. Stormwater discharges to Outstanding Resource Waters and Special Resource Waters shall be removed and set back from the receiving water or wetland and receive the highest and best practical method of treatment. A “storm water discharge” as defined in 314 CMR 3.04(2)(a)1 or (b) to an Outstanding Resource Water or Special Resource Water shall comply with 314 CMR 3.00 and 314 CMR 4.00. Stormwater discharges to a Zone I or Zone A are prohibited unless essential to the operation of a public water supply.

8. According to the revised Site Plan dated November 13, 2023 and Stormwater Management Report, last revised December 7, 2023 (the “Stormwater Report”) prepared by Glossa Engineering of East Walpole, MA and filed with the Board on or about December 18, 2023, Wall Street’s engineer has updated the Project design to include an infiltration and recharge system in full compliance with the Regulations, specifically Standard No. 3 and No. 6.

9. Additionally, the Stormwater Report was filed in accordance with the Regulations and provides supporting documentation and calculations that the Stormwater Management System (the “Stormwater System”) complies with all the standards in the Regulations, specifically Standard No. 3 and No. 6 and meets the criteria of a system for artificial recharge of precipitation that will not result in the degradation of groundwater quality.

10. Towns with public water supplies are generally required by DEP to adopt an overlay zoning district regulating future land uses in Zone II with the objective of protecting the quality and quantity of water derived from the wells. In connection with the provisions of 310 CMR 22.21(2), the Town of Walpole adopted Section 12 of the Walpole Zoning Bylaws (the “Bylaw”) titled “Water Resources Protection Overlay District” (the “WRPOD”). The purpose of the WRPOD Bylaw is to protect the quality and quantity of drinking water supplies in Walpole.

11. The WRPOD Bylaw lists various uses, including; A - Uses Allowed by Right, B - Prohibited Uses, and C - Uses requiring Special Permit from the Zoning Board of Appeals or Planning Board. The proposed project, if proposed conventionally (rather than under c. 40B) would require a special permit pursuant to Section 12.3.c(5) of the WRPOD Bylaw which provides that “Any residential use that will render impervious more than 15% or 2,500 ft² of the lot, whichever is greater.” Special permits, if applicable, may be granted if the applicant can demonstrate that a system of artificial recharge will be provided that will not result in degradation of groundwater quality.

12. If applicable, Section 12.4 of the Bylaw outlines certain criteria that are to be considered in connection with the issuance of a special permit. Notwithstanding the list of materials, i.e. plans, reports, etc. that must be submitted in connection with the application for special permit, Section 12.4 lists the following information that is required to be provided in compliance with the WRPOD Bylaw:

1. A complete list of all chemicals, pesticides, fuels, and other potentially toxic or hazardous materials to be used or stored on the premises in amounts greater than normal household quantities;
2. A description of measures proposed to protect all storage containers/facilities from vandalism, corrosion, and leakage, and to provide for control of spills;

3. A description of potentially toxic or hazardous wastes to be generated, indicating storage and disposal methods;
4. A plan showing the storage location and, where storage is indoors, approximate floor elevation of any storage facilities for toxic or hazardous materials, fertilizers and waste;
5. Where applicable, typical schematic profile for any storage facility or structure designed to contain potential spills;
6. Evidence of approval by the Massachusetts Department of Environmental Protection (MassDEP) of any industrial waste treatment or disposal system or any wastewater treatment system over fifteen thousand (15,000) gallons per day capacity;
7. For underground storage of toxic or hazardous materials, evidence of qualified professional supervision of system design and installation;
8. Where applicable, all necessary engineering reports that demonstrate compliance with the Massachusetts Stormwater Policy as amended;
9. Where applicable, a description of the phasing of earth removal and replacement;
10. Analysis by a technically qualified expert, such as a registered professional engineer, certifying that the integrity of the underlying groundwater resources will not be degraded.

14. It is my understanding that the Project Engineer will be submitting, forthwith, the information required by Section 12.4 of the WRPOD Bylaw, including an analysis from a technically qualified expert. And, it is my further understanding that such information will demonstrate that the Project will be in compliance with the Bylaw and that no waiver will be required in connection with the application for the Comprehensive Permit for this Project. To the extent that a waiver is required, however, it may be granted under c. 40B without adversely impacting local concerns.

SUMMARY AND CONCLUSION

In light of the foregoing and review of the Regulations and the Walpole Zoning Bylaws, our conclusion is as follows:

- A. The Property is located in DEP's Groundwater Supply Protection Zones I and II is subject to the provisions of Regulations.
- B. The Project does not include work within Zone I but does contemplate work in Zone II. As indicated by the site development plans, the Project will exceed 15% or 2,500 square feet of impervious surface upon full development.
- C. The proposed project, if proposed conventionally, would require a special permit pursuant to Section 12.3.c(5) of the WRPOD Bylaw which provides that "Any residential use that will render impervious more than 15% or 2,500 ft² of the lot, whichever is greater." With the filing of the required additional information outlined in Section 12.4 of the WRPOD Bylaw, Wall Street would satisfy the conditions for a special permit, if one were to be required.

D. The proposed project has been designed with a an artificial infiltration and recharge system, with supporting documentation and calculations that demonstrates compliance with Standard No. 3 and Standard No. 6, specifically, of the Massachusetts Stormwater Handbook, the Regulations and the WRPOD Bylaw

E. To the extent the stormwater management system is determined to be in compliance with the Regulations and Standard No. 3 and Standard No. 6, the Project is fully permittable under the aforementioned Regulations and Bylaw.

We appreciate the opportunity to provide clarity on this subject. While consideration of state regulations is not within the Board's purview, we appreciate that discussion of these issues will be helpful as the Board considers the application and/or waiver of any analogous zoning bylaws.

Sincerely,



Jay Talerman, Esq.

cc: Wall Street Development Corp.

John Glossa – Glossa Engineering, Inc.