

January 20, 2022

Town of Wareham  
Zoning Board of Appeals  
Attn: Mr. Nazih Elkallassi, Chairman  
54 Marion Road  
Wareham, MA 02571

RE: Settlers Glenn 40B Project

Dear Mr. Elkallassi,

I have taken the time to consider matters discussed at our last meeting and agree the best approach is to try and accommodate a fair solution to the water main loop matter. We in no way agree there is any evidence or requirements to install a looped water main in the Rules and regulations published by the Onset Water Department upon issuance of our comprehensive permit or when my water application was submitted on 9/28/2021. However, upon reflection, it will be in the best interest of Wareham and my project to end up with a looped main. I just ask that a fair and equitable approach to the issuance of a connection permit and related fees be considered.

The Board should be aware, I have authorized Ken Buckland to process any reasonable invoices necessary to use my current 53G account to have Mr. Rowley review this matter for the Board, or use in connection with counsel needed to opine on the many letters from the Onset Water Department asserting the ZBA does not have jurisdiction over them. In addition, I did also put \$10,000.00 in an escrow fund for the Onset Water Department to use in connection with their department review which they have used to hire a review engineer names Mr. Osbourne. I want to make it clear I am cooperating and offering whatever support is necessary to help properly review and conclude this matter.

To make things easier on the Board members, I took time to create a quick site plan outlining systems and items to discuss. (see *Exhibit W-1 attached*). Our comprehensive permit has been approved with the attached system piping and layout highlighted in green. It shows an 8" Main within the roadway and 1" service taps to each unit. (*red dots shown*) I have met with the Onset Fire Department who asked that I add another hydrant to the adjacent abutters property as that site has no water mains and therefore no fire protection. I will accommodate that request and have prepared my final plans to include the hydrant just on the edge of my property for them to access.

Rather than burdening you with the full Rules and Regulations, I have attached two rate sheets from the Onset Water Department. One is dated April 1, 2019 and the other is dated November 1, 2021. The comprehensive permit was issued in May of 2021 and therefore is reliant on the 2019 rate sheet and should be our document of reference. The application I filed for water system connection with the Onset Water Department is dated 9/28/2021 and well before the 11/1/2021 rate changes as well. This information is already within the binder I supplied the board for this

enforcement hearing process including all plans, permits, regulations, legal opinions, engineer review and detailed correspondence.

The last page of the 4/2019 rate sheet shows “New Service System Development and Access Fees”. The only fee I should be required to pay for connection to Red Brook Road is the \$42,840.00 amount for an 8” service fee if I were not being asked to extend water mains even further than required. Therefore, my request to reduce the fee to \$30,000.00 has to do with the costs I will be enduring for system expansion and ownership. Another reason to justify the reduced fee is that our comprehensive permit calls for all roads, utilities and systems to remain private and be repaired by the owners. We are not allowed to request the road be accepted at Town meeting and therefore are responsible for all water piping, sewer and connections within our property.

We should not be burdened with then paying an additional \$3,570.00 for each of the (20) 1” service taps {totaling \$71,400.00} off the 8” Line I am paying a system development fee for. I should only be charged for what I have asked to tap onto the public way, not internal privately owned distribution systems. These distribution services could just as well be 1” lines run within a 20-unit building. The combined requested fee from Onset Water is a total of \$114,240.00. All this prior to the second water tap and fee the water company wants to impose of \$42,840.00 at Cranberry Highway for a total of \$157,080.00 in tap fees. If I simply ran 20 1” service lines to red brook road, it would be { $\$3,570 \times 20 = \$71,400$ } for a total fee. I am being punished financially because we have a design that starts with an 8” line distributing to 1” lines.

Now another way to look at this is simply to have one meter for the property on the 8” line as a meter pit and back flow preventer at the property line. I would simply tap Red Brook Road, run an 8” line 20’ to a meter pit and put an 8” meter and back flow inside the pit. I would then bill the units separately by radio meters tracking each 1” line at the house. It is a common approach and done for multifamily buildings all the time. That would simply be the 8” system development fee of \$42,840.00.

The attached “**Exhibit W-2**” sketch shows what could have been permitted on the site. There could have simply been (1) 20-Unit Building which only needs a 2” Domestic Water Main servicing the building along with a 6” tap for a fire hydrant and suppression. The rate sheet costs for that connection would be { $\$8,568.00$  for the 2” tap and  $\$28,560.00$  for the 6” tap = **\$37,128.00**} That results in close to \$600,000.00 for the water mains, services and roadway system needed to build a townhouse style development. Because the applicant has provided the Board and the neighborhood with an alternative that is more complementary to the size and architecture of the surrounding properties, we are being punished by the request for excessive infrastructure improvements and fees. Not to mention I have been trying to cooperate with the Onset Water Department since July of 2021 {6-months now} whereas the entire comprehensive permit process only took 5-months. {January to May of 2021}. The intent of the 40B statute is to have one comprehensive permit granting authority to ensure a simplified and fair process take place. It may be in this applicant’s best interest to reconsider if a permit modification saving hundreds of thousands of dollars in unnecessary water system and road improvements is not the best option.

A compromise I would like to offer is shown on the attached plan “**Exhibit W-1**” as a blue line representing the 8” looped main extended from my approved water system and run to the property line of cranberry highway. I would agree to run that line from the hydrant located in the cul-de-sac and move the sewer line from the center of the easement as required for water separation. It involves a more complicated installation as I may have additional costs for the sewer line sleeving and will need to shear protect the neighbor’s property when I dig that close to the property line to prevent collapse. The sewer line is a 12’ deep dig. If I did install this looped main to the property line, the Onset Water Department would continue across Cranberry Highway as needed and absorb any connection fees as it would then simply be the water department expanding its own service. I merely have a port of acceptance ready for convenience.

I want to further mention that I have voluntarily paid for my review engineer to file the Mass DOT Highway design and approval for the 8” line across Cranberry Highway saving the Water Department thousands of dollars. The reason I did this was to show good faith as that process will take 4-6 months to complete. I have also already paid all application fees associated with the design and permit submission to MassDOT so if and when the Water Department wants to install the 8” Line, it can have approvals in hand. The actual permit is in the name of the Onset Water Department and Mr. Candeias has signed the application last month for this process to move forward. I am making every effort possible to conclude this matter amicably.

As mentioned in the last hearing, I have responded to the Onset Water Department review engineer comments and modified our design to incorporate all requests, except the looped water main. The remaining system design is exactly what their rules, regulations and construction specifications call for. We will submit the looped water main changes if a decision of the ZBA is accepted and favorable to our goals.

***I am before your board requesting a water system connection permit be approved and issued along with confirmation that a system development fee of \$30,000.00 total should be paid to the Onset Water Department for the total of all water services required in our development.***

I understand that you cannot make everyone happy. Mr. Candeias wants all fees paid and all work completed by the applicant, and I do not want to do anything more than has been approved under my comprehensive permit. I will of course leave it up to the Board, but should a compromise not be reached, unfortunately I can only pursue the ZBA as the permit granting authority and as statutory requirement for a process to appeal. Technically the onset water department is simply an ancillary advisor to the Board of Appeals. They have misrepresented to the Board that they will be fighting me to the Superior Court. In fact, they will have to pursue a law suit against the Town of Wareham as a matter of due process. I don’t know that it would be prudent for everyone to sue each other and hope is does not come to that.

I think the following motion offers a compromise to all parties involved.

To move and approve an 8" water line connection permit from the 8" water main in Red Brook Road to service Settler's Glen, LLC with the following conditions;

- a.) A total system development fee of \$30,000.00 shall be paid to the Onset Water Department for the connection of the 8" water main service and all associated 1" unit services to be installed by the applicant,
- b.) The applicant shall install a water system extension from the approved system under the current comprehensive permit now ending at the cul-de-sac to the property line of the adjacent easement area leading to Cranberry Highway,
- c.) The applicant shall complete all necessary comments, designs and permits under the MassDOT requirements in the name of the Onset Water Department and cooperate with any reasonable needs to complete a looped water main system from Cranberry Highway to Red Brook Road;
- d.) The applicant shall add the additional fire hydrant requested by the Onset Fire Department from the existing water system to the property line of the adjacent Garden Home Estates, LLC property; and
- e.) All rules and Regulations and Rate Sheets published under the April 19,2021 date shall be applied to this project.

I hope you will consider my request and we can work amicably towards a mutual agreed upon approval. If you need any further information, please feel free to call anytime.

Respectfully,

James V. O'Brien, on behalf of  
Settlers Glen, LLC