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

RE: Settlers Glenn 40B Project/Onset Fire District/Our file 3536.16

Dear Chairman Elkallassi and Members of the Zoning Board of Appeals:

This office represents the Onset Fire District (“District”) Board of Water Commissioners. The Board of Water Commissioners is the elected body responsible for the operations of the Onset Water Department.

We are writing to state our client’s opposition to Attorney Michael P. O’Shaughnessy’s letter dated December 20, 2021, in which he requests on behalf of his client Settler’s Glenn, LLC (“Settler’s Glenn”), that the Board enforce the Comprehensive Permit dated May 26, 2021, and approve a water connection and a water connection fee that have not been approved by the Board of Water Commissioners.

We respectfully submit that the ZBA does not have jurisdiction under M.G.L. Chapter 40B to grant the relief that Settler’s Glenn is requesting. The Board of Water Commissioners does not assent to any purported exercise of jurisdiction over it by the ZBA. The Board of Water Commissioners will not comply with any requirement of the ZBA purporting to apply to the Onset Water Department that is not also approved by the Board of Water Commissioners

Under M.G.L. c. 40B, comprehensive permits are binding upon “local boards”. The term “local board” means “any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.” M.G.L. c. 40B, § 20.

The Board of Water Commissioners does not meet the above definition of a local board — is not a “town or city board”. The District exists as an independent entity from the Town of Wareham. Its geographic area is not co-extensive with the town. The Commissioners are elected by the residents of the District at District Meeting – not at a town election. The District Meeting operates as the legislative body for the District – totally separate and distinct from Wareham Town Meeting. The District is independent financially from the Town. The Town of Wareham has no managerial or financial oversight role with respect to the District. Neither the Town’s Board of Selectmen, nor its Town Meeting, have any authority with respect to the District. The

Town of Wareham does not support the District financially. The Onset Water Department exists as a part of the Onset Fire District pursuant to Chapter 408 of the Acts of 1924. Said act establishes that the Water Department operates under the leadership of the Board of Water Commissioners and the voters of the District, with no management or oversight role by the Town of Wareham.

The above points are important for understanding why the regulation that Attorney O'Shaughnessy cites is not dispositive of this issue. Although 760 CMR 56.02 itemizes "water . . . commission or district" as a "local board", the regulations also indicate, in section 56.01, that the purpose of the regulations is to codify "issues that have been decided by judicial or administrative decisions." Judicial and administrative decisions indicate that whether an entity is a "local board" requires a case-by-case analysis of, among other things, the extent to which the entity is integrated into local municipal government. The Onset Fire District/Board of Water Commissioners is not a "local board" because it operates independently from the Town.

The leading case on whether an entity separate from a Town may be deemed a "local board" under M.G.L. c. 40B is Dennis Housing Corp. v. Zoning Board of Appeals of Dennis, 439 Mass. 71 (2003). In that case the Supreme Judicial Court concluded that the Old King's Highway Historic District Committee was a local board because it was integrated into town government in important ways – it was not independent from the town and as such it was effectively a town board. Other administrative and judicial decisions follow a similar analysis. See Cohasset Water Commission v. Cohasset Zoning Board of Appeals, 68 Mass. App. Ct. 1103 (2007) (holding that town water commission was a local board under c. 40B because "the town retains a significant level of control over the commission"); Lever Development LLC v. W. Boyleston Zoning Board of Appeals, HAC No. 04-10 at p. 20 (12/10/2007) (ruling that West Boyleston Water District was a local board but resting said conclusion on belief that "because the District ultimately is controlled by town meeting vote, it is a local board within the meaning of Chapter 40B"); Wilmington Arboretum Apts. Associates L.P. v. Board of Appeals of Wilmington, HAC No. 87-17 at p. 31 (June 20, 1990) (ruling that the Wilmington Board of Water and Sewer Commissioners was a "local board," in pertinent part, because it was "controlled by the Town of Wilmington").

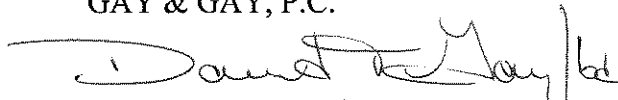
Under the above precedent the Board of Water Commissioners is not local board because it, the Water Department, and the District generally, are independent from the Town of Wareham.

The Board of Water Commissioners is an elected board responsible to the voters of the District for the operation of the water department. The Board will not yield its authority to approve the water connections and to require its fees be paid. The Board of Water Commissioners will insist that Settler's Glenn meet the Water Department's connection requirements and pay the Water Departments required connection fees. The Water Department is an enterprise, and the fees are necessary to support its operations. The Water Department's connection requirements are enforced to protect the public water supply system.

For all of the above reasons the Board of Water Commissioners requests that the Wareham ZBA deny Settlers Glenn's request.

Respectfully submitted,

GAY & GAY, P.C.



David T. Gay, Esquire
Legal Counsel Board of Water Commissioners
Onset Water Department

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