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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,

This office represents Settler's Glenn, LLC ("LLC"). I have reviewed the letter dated January 6, 2022, written by Attorney David Gay on behalf of the Onset Water Department objecting to the authority of the Wareham Zoning Board of Appeals ("Board"). In this letter he states that "The Board of Water Commissioners will insist that Settler's Glenn meet the Water Department's water connection requirements and pay the Water Departments required connection fees". As the Onset Water Department and its staff are acutely aware, the Onset Water Department Regulations, in effect when the Comprehensive Permit was approved and at the time of the LLC's application for a water connection, **have no written requirement that new water mains must be extended to another main in the system to create a looped connection.** The expansion of the proposed water main to create a looped connection is an ad hoc requirement of the Onset Water Department. With respect to fees, the LLC has never indicated that it was unwilling to pay water connection fees and recognizes that the Comprehensive Permit requires the payment of fees. On several occasions, the LLC has requested from the Onset Water Department confirmation of what the actual water connection fees will be and has never received any response.

The Onset Water Department believes that the Wareham Zoning Board of Appeals does not have jurisdiction over this water connection and relies upon case law and administrative decisions that pre-date the 2008 changes in the regulations as the basis for its objection. As the Onset Water Department notes, the purpose of the regulations is to codify issues that have been decided by judicial and administrative changes. The 2008 changes do in fact do so by clearly and unequivocally defining that a "Local Board" includes "All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards."

The Onset Water Department's suggestion that it is not subject to the jurisdiction of the Wareham Zoning Board of Appeals because it operates independently from the Town is

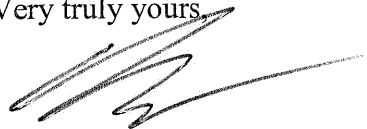
misplaced. The Onset Water Department “is a municipal quasi corporation...”. Seaver v Inhabitants of Onset Fire District, 282 Mass. 209 (1933) whose purpose is to provide water to the inhabitants of the Onset Fire District. These districts “are created to provide more efficiently the same services usually furnished by cities or towns provide, in our view, municipal services. This is equally true whether a district is composed of more than one city or town or is located entirely within the boundaries of a single city or town.” Perini Corp. v Building Inspector of North Andover, 7 Mass. App. Ct. 72 (1979). The Onset Water Department was established by an act of the legislature and performs a municipal function and meets the definition of a “local board” under the 40B regulations.

Under 40B caselaw, the test to be applied is whether or not the Onset Water Department granting an approval is one that is “typically given on application to, and evaluation by, separate local agencies, boards, or commissions whose approval would otherwise be required for a housing development to go forward.” Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35 (2008). Approval of the water connection is necessary for the Settler’s Glenn housing project to go forward. Because the Onset Water Department is a local board and because approval is necessary for the project to go forward, the Wareham Zoning Board has the jurisdiction and authority under the regulations and caselaw to approve the water connection.

More importantly, the Supreme Judicial Court has established that under G.L. c. 40B that the power to issue permits and approvals is broader than just the power to grant zoning relief. “The provisions in G.L.c. 40B allowing a local zoning board to issue “permits or approvals,” and to dispense with certain “requirements or regulations to be completed” enable a zoning board of appeals to issue the types of authorizations usually issued by local agencies. This authority is intended to simplify the application process and to ensure that local obstacles are not put in place thus enabling more affordable housing projects” 135 Wells Ave., LLC v. Housing Appeals Committee, 478 Mass. 346 (2017). If the Onset Water Department is exempt from the comprehensive permit scheme, it would “leave in place the very form of local impediment to the development of affordable housing that the comprehensive permit act sought to eliminate” Dennis Housing Corp. v. Zoning Board of Appeals of Dennis, 439 Mass. 71 (2003).

Based upon all of the foregoing, I respectfully ask the Board to approve the water connection and authorize the LLC to connect to the waterline in Red Brook Road and to establish the water connection fee as requested in my previous letter.

Very truly yours,



Michael O'Shaughnessy

cc: David Riquinha, Wareham Building Commissioner (by email inspections@wareham.ma.us)
Attorney David Gay (by email at david@ggflaw.com)
Mr. David Candeias, Onset Water Department Superintendent (by email Superintendent@onsetwater.com)
Ken Fontes, Chairman Onset Water Commissioners (by email kwf1488@gmail.com)