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September 25, 2017

VIA EMAIL ONLY

Alden C. Harrington, Esquire
RICHARDSON, HARRINGTON & FURNESS
182 Waterman Street
Providence, Rhode Island 02906-4015

RE: Hope Mill Development; Scituate ZBR Application No.: 1200

Dear Attorney Harrington:

In my capacity as the Town Solicitor, I acknowledge receipt of your letter dated September 15, 2017, regarding the above-referenced matter (“Case No.: 1200”) presently pending before the Scituate Zoning Board of Review (“ZBR”). In your letter you make a series of assertions and statements concerning a prior ZBR decision for a different project for the Hope Mill than that which is presently pending before the ZBR. Relevant parts of your assertions and statements include, but are not limited to, “the special use permit and variances granted to this project in December of 2006 in Application No. 987, as confirmed by the Zoning Board of Review on January 19, 2016 and as set out in the letter of January 20, 2016 from Gorham & Gorham, Town Solicitors, remains in full force and effect.” You state further that “[a]ny action taken which diminishes, restricts or reduces in any way the development rights afforded by those decisions would be a violation of the Receivership Injunction issued by the Superior Court in the Order Appointing Permanent Receiver entered on August 31, 2010.”

Following from these assertions and statements, you present the following questions, in relevant part, as follows:

1. Will the ZBR seek to “obtain relief from the Receivership Injunction, so-called, in Case No.: 1200 before it may take any actions which restricts the development authority contained in the December 2006 and January 2016 decisions of the Zoning Board of Review?”
2. “Please identify the items in the current application which you believe were not decided by the Board in 2006 and 2016 and which you claim to be outside the scope of the Injunction?”

As you know, I was appointed Town Solicitor on January 26, 2017. Upon appointment, in addition to my other duties and actions, I had occasion to review this project. I identified several procedural and substantive deficiencies with the project and requested that the Town Council

hire a professional planner to review the project. At a duly held meeting, the Scituate Town Council requested the West Warwick Town Council to loan their Town Planner to review this project. Mark Carruolo, the West Warwick Town Planner, formerly the Director of Planning for the City of Warwick (retired), reviewed the project and issued a memorandum, dated February 28, 2017, attached, which details his findings. This memo was shared with the project attorneys, who did not object or otherwise seek to restrain, delay or contest Mr. Carruolo's findings. In fact, they indicated concurrence and urged the Town to proceed with the course of action outlined in Carruolo's memo. Accordingly, the Town moved to file a "corrective master plan decision letter" to remedy substantive defects with the prior decision taken at this stage of the project's regulatory review and to then process this project for consideration by the ZBR. The corrective master plan decision letter was recorded in the Scituate Land Evidence Records on March 22, 2017. No appeal of that action was filed as required by law.

The ZBR application for Case No.: 1200, a new and different project than that proposed in Case No. 987, was filed and signed by the owners of the properties included in the project, along with applicant. As you know, the Receiver signed the ZBR application in this matter as an owner. After advertisement and notice of the application for Case No.: 1200, the ZBR convened the public hearing on August 1, 2017. Due to the length of the testimony and public comment, the public hearing was continued to August 29, 2017. Again, due to the length of the testimony and public comment, the public hearing was continued to September 27, 2017. Over the course of these two public hearings, none of the comments, assertions or objections raised in your September 15, 2017, letter were raised by either the Receiver or applicant's representatives who were present. It is very discouraging to learn of your positions at this late date during the ZBR process, especially the allegations of improprieties by various Town officials. (Your email message dated Sept. 15, 2017, letter to the Town Council dated September 14, 2017, and Open Meeting Act complaint filed with the Rhode Island Attorney General on September 18, 2017). Your September 15, 2017, letter is troubling from a legal perspective and is disruptive to the ZBR proceedings from a due process perspective.

It is well settled in Rhode Island that upon the submission to the jurisdiction of a regulatory body by an owner and/or applicant, the authority of that regulatory body cannot be subsequently challenged by the owner and/or applicant. See, e.g. Easton's Point Assoc. v. Coastal Resources Mgmt. Council, 522 A.2d 199 (RI 1987). By signing the ZBR application for Case No.: 1200, the Receiver submitted to the jurisdiction of the ZBR and cannot now challenge their authority to act on that application for relief. It is also well settled in Rhode Island that a zoning board cannot interpret questions of law, and if they should, a court is not bound by any such interpretation. See, e.g. Hassell v. Zoning Bd. Of Review of East Providence, 108 R.I. 349, 275 A.2d 646 (1971). The legal status of the December 2006 decision of the ZBR in Case No. 987 is a question of law which the ZBR cannot answer. Likewise, whether the Receivership Injunction applies to the authority of the ZBR to act in this petition is also a question of law which cannot be answered by the ZBR. Since the ZBR cannot determine whether the Receivership Injunction applies to their authority to act on this petition, they accordingly cannot determine whether court relief to act is required. Since the Receiver has asserted these statements, it is my opinion that the Receiver must seek relief or resolutions on these matters elsewhere, but not before the ZBR.

It is the applicant's obligation to explain the petition for relief presented to the ZBR. In this case, the applicant has neither raised the status of the 2006 ZBR decision nor its relationship to the present petition in Case No.: 1200. As it presently is before the ZBR, Case No.: 1200 is a standalone petition for a different project than that which was approved in Case No. 987. If the project application requires a modification it is the responsibility of the applicant. Any modification of the project at this time in the course of the ZBR hearing process implicates issues of jurisdiction (whether the advertisement and notice for any modified project are adequate) and due process (procedural and substantive unfairness).

As you know, I have scheduled a meeting with the ZBR for a possible executive session at 6 pm on September 29, 2017, prior to the continuation of the public hearing on the present application, to discuss these issues and present them options for action.

Sincerely,

/s/ Peter D. Ruggiero

Peter D. Ruggiero, Scituate Town Solicitor

Cc: Scituate Zoning Board of Review
Scituate Town Council
K. Joseph Shekarchi, Esquire