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Westford Board of Selectmen

Town Hall

55 Main Street

Westford, MA 01886

RE: Westford Gateway

Dear Members of the Board:

As you know, this office represents Westford Gateway, LLC regarding the discussions with the Board associated with its property on Boston Road. I have had an opportunity to review the video of the June 14th Selectmen's meeting regarding a revised "Charge" to the Drew Gardens Task Force. Although the debate and discussion veered off the scope of the agenda item, our client looks forward to a thoughtful review of his revised proposal by the Task Force.

Meanwhile, we felt it would be appropriate to go on the record regarding two of the comments that were made at the Selectmen's meeting.

We heard some mention that the failure of Town Meeting to approve Article 24 should prevent our client from bringing another proposal to Town Meeting for a period of two (2) years. Although no citation was provided in support of the assertion, we surmise that the speaker was referring to a provision within MGL Chapter 40A S 5 which states:

"No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board."

There was nothing in Article 24 that constituted a proposed zoning ordinance or bylaw. The Article was limited to proposed changes to APR 3. Therefore, the provisions of Chapter 40A S 5 do not apply and the Selectmen and/or our client are free to place the matter before the next Town Meeting.

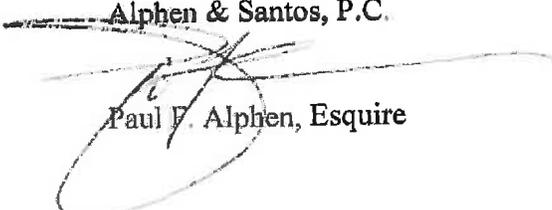
Also, we heard assertions that our client's proposal was unlawful "spot zoning". Again, there was nothing in Article 24 that constituted a proposed amendment to the Town's Zoning Bylaw or the Zoning Map. Therefore, the case law that has developed over the years which prohibits a city or town from amending its zoning ordinance or bylaw as it applies to one lot or a small area to provide for less onerous treatment than that imposed on nearby, indistinguishable properties without mitigating factors or a benefit to the general public, is not applicable.

Moreover, even if a zoning change had been proposed, the Courts impose a balancing test when faced with spot zoning challenges, and as Professor Mark Bobrowski has written "...the odds are quite strong that the municipality's decision will not be invalidated." Bobrowski, Mark, Handbook of Massachusetts Land Use and Planning Law, Third Edition, Wolters Kluwer (2011).

We look forward to an open and thoughtful discussion regarding our client's proposal and the opportunity to address the various questions being raised by opponents, proponents and interested citizens. Although perhaps we will not make everyone happy, we are confident that our client will be able to address almost every issue in a reasonable fashion.

Thank you for your attention to this matter.

Very truly yours,
Alphen & Santos, P.C.



Paul F. Alphen, Esquire