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June 23, 2016

Gregg J. Corbo
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Ms. Jodi Ross
Town Manager
Westford Town Hall
55 Main Street
Westford, MA 01886

Re: Drew Farm APR Amendment – Spot Zoning

Dear Ms. Ross:

I am writing in response to your inquiry as to whether the proposed amendment to the Drew Farm Agricultural Preservation Restriction constitutes “spot zoning.” Before explaining the concept of spot zoning and how it relates to this proposed project, I wish to point out that the matter pending before the Board of Selectmen does not directly implicate the Town’s zoning bylaws. As with any other type of project proposed in Town, the project proposed for the Drew Farm property will require a number of licenses, permits and approvals from Town boards and commissions, and it will have to comply with all applicable laws. While an amendment to the APR may be a necessary requirement for the project to go forward, it is not the only requirement. If the Board of Selectmen decides to amend the APR, in my opinion, that decision will not excuse the property owner from compliance with all other applicable laws, including the Town’s zoning bylaws. In fact, the agreement between the Board of Selectmen and the property owner specifically states that “[t]he Buyer acknowledges and agrees that certain discretionary permits, licenses and approvals will be required to complete the Project and nothing herein shall be deemed to waive the Buyer’s obligations to apply for and comply with all such permits, approvals and conditions governing the Project, and the Town does not hereby promise or guarantee that any such permits, licenses or approvals will be granted.” Therefore, even if the Board of Selectmen approves the APR amendment, the proposed project cannot go forward unless it complies with all other applicable laws, including the Town’s zoning bylaws.

With regard to the question of “spot zoning,” it is my opinion that the rule against spot zoning does not apply in this context. Spot zoning occurs when a particular parcel of land is arbitrarily singled out for special zoning treatment different from that of similar surrounding land without any apparent circumstances warranting such treatment. Rosco v. Marlborough, 355 Mass. 51 (1968). Spot zoning is prohibited by the Zoning Act, M.G.L. c. 40A, s. 4, which provides that “any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures permitted.” Rando v. North Attleborough, 44 Mass.App.Ct. 603 (1998). The prohibition against spot zoning, however, applies only to legislative amendments to the Town’s zoning bylaws. It does not apply to discretionary permitting decisions. Kiss v. Board of Appeals of Longmeadow, 371 Mass. 147, 156 (1976). As observed by the Supreme Judicial Court, the decision to grant a variance or special permit does not reclassify the land or in

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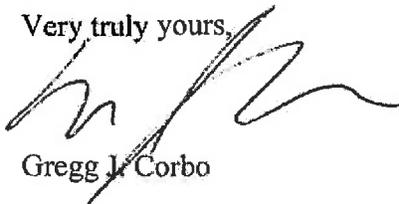
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any way amend the bylaw with respect to the uses which are permitted in the district. The Board does not usurp the legislative power of the Town in granting the special permit or variance; rather, it exercises the discretionary power which the voters of the Town expressly delegated to the Board. Id.

In this matter, it is my understanding that the subject property is in the Residence A zoning district and that a restaurant/function hall use may not be allowed in that district. Section 9.2.2(2) of the Town's zoning bylaws, however, allows the Board of Appeals to grant use variances to authorize uses or activities not otherwise permitted in the district in which the land or structure is located. Whether or not the project qualifies for a use variance is a decision that the Board of Appeals will have to make if and when a proper variance application is presented. As previously discussed, if the use is not allowed as of right, the property owner will have to go through that process prior to proceeding with the project, even if the Board of Selectmen decide to amend the APR. Therefore, because neither the APR amendment nor the granting of a variance results in an amendment to the Town's zoning bylaws, in my opinion, the rule against spot zoning does not apply.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,



Gregg J. Corbo

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