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*ADMITTED TO PRACTICE IN
MASSACHUSETTS AND NEW HAMPSHIRE

February 18, 2015

Hamilton Planning Board
Town Hall
577 Bay Road
Hamilton, MA 01936

The Planning Board has received the following communications regarding the Groundwater Protection Overlay District ("GPOD") and its relationship to the application before the Board for a senior housing special permit on a portion of the Patton Farm:

1. December 13, 2011, May 5, 2014 and February 27, 2015 memoranda from Town Counsel, Donna Brewer, in which she consistently concludes that the project as proposed meets the requirement of the Hamilton Zoning Bylaw and the GPOD standards as to building lot size.
2. February 10, 2015 memorandum from Lisa L. Mead, Special Town Counsel, in which she states that the applicants' proposal is fully consistent with and not violative of the GPOD. She further opines that this question is not one on which the Board should dwell.
3. January 19, 2015 decision letter from the Hamilton Building Inspector, who is the Zoning Enforcement Officer, in which he concludes that the senior housing project as proposed conforms to the Zoning Bylaw and that zoning relief is not required as to the GPOD.
4. February 17, 2015 letter from attorney George A. Hall, Jr, who represents four families who are not "parties in interest", but who oppose the issuance of a senior housing special permit as to Patton Farm. His letter repeats the remarks that he made at the last session of the hearing on the senior housing application.

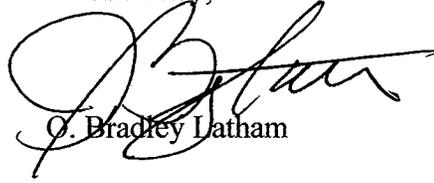
The Town's professional staff has been consistent in their interpretation of the Zoning Bylaw and the GPOD standards. All opine that what is before you meet those standards.

Without intending to be repetitive, I do want to point out certain facts:

1. The Senior Housing By-law has its own dimensional standards. The dimensional Requirements in Section VI.B (dealing with lot size per dwelling) do not apply to a senior housing project. The senior housing bylaw states that the Senior Housing development standards "*shall supersede all dimensional standards in the underlying zoning district.*" [V.E.14 –page V-42]
2. The Groundwater Protection Overlay District states that "*...there shall be a minimum lot area of 80,000 square feet for a building lot in the Groundwater Protection Overlay District.*" (emphasis added) [V.D.4.a-page V-31] The condominium lot will always be and remain one building lot with more than 80,000 square feet.
3. Opponents argue that we must look at the wording used in Section VI.B.1.a, which states that "*For each dwelling unit there shall be a lot area.*" However, that argument is specious for two reasons. First, the GPOD by-law does not use the same wording that is used in Section VI.B.1.a. The GPOD establishes a gross "building lot" size, not an area required for each building. Second, Section VI.B.a.5 itself states expressly that "Lot Area" for a GPOD is not dealt with in that section, but is dealt with in GPOD section V.D. Section V.D does not state that the lot area is a per dwelling unit measure, but is per "building lot."
4. "Lot" is a defined term in the Hamilton Zoning By-law. A lot "*shall mean an area of land in one ownership with defined boundaries, used, or available for use, as site for one or more buildings.*" (emphasis added) [Section VII-page VII-3]. Each building in the senior housing development would not be on a separate lot. Inasmuch as this would be a condominium development there is one lot with defined boundaries. The definition of *lot* in the Hamilton Zoning Bylaw is taken verbatim from the Massachusetts Subdivision Control Law. The question has been asked, how it can be one lot if there are multiple owners because the definition of lot says "one ownership." One needs to recognize that the Bylaw uses the words, "one ownership", not one owner. It is well established, not just in Hamilton, but throughout the Commonwealth, that a *lot* can be owned in common by more than one person and still remains as one *lot*. For example, it is common for a husband and wife to own their home in joint ownership. That does not result in there being two lots because there are two owners.

We respectfully request that the Board consider the advice given to it by the Town's attorneys and the interpretation of the Building Inspector on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Bradley Latham', written in a cursive style.

G. Bradley Latham

TOWN OF HAMILTON



ZONING BY-LAW

FIRST ADOPTED 1954
INCLUDING AMENDMENTS AS OF MAY 2012

ADOPTED PURSUANT TO THE MASSACHUSETTS ZONING ACT
M.G.L. CHAPTER 40A AS AMENDED

ZONING BY-LAW
TOWN OF HAMILTON

HAMILTON ZONING BYLAW HAMILTON ZONING BY-LAW

If any land shown on the Zoning Map as being in the Conservancy District is proven to the satisfaction of the Board of Appeals, after reference of the proof to and report by the Conservation Commission, Planning Board and Board of Health, as being in fact not subject to flooding or not unsuitable because of drainage conditions for residential use, and that neither construction activities nor the use of such land for residence will interfere with the general purposes for which Conservancy Districts have been established, and will not be detrimental to the public health, safety or welfare, the Board of Appeals may, by grant of a special permit, permit the use of such land for single family residence under all the provisions of this By-law applying to the Residence District in which said land lies.

If for any reason the restrictions or requirements contained in this Section C shall be or become invalid as to any land shown on the Zoning Map as being in the Conservancy District then such land shall thereafter be subject to the regulation for the district in which the land lies.

D. Groundwater Protection Overlay District (Revised May, 2000)

1. Purpose

The purposes of the Groundwater Protection Overlay District are:

- a. To promote the health, safety and general welfare of the Town by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and business of Hamilton.
- b. To preserve and protect existing and potential sources of drinking water supplies and recharge areas;
- c. To conserve the natural resources of the Town; and
- d. To prevent temporary and permanent contamination of the environment.

2. Scope of Authority

The Groundwater Protection District is an overlay district and shall be superimposed on the zoning districts established by this by-law. This overlay district shall apply to all new construction, reconstruction or expansion of existing buildings, and new or expanded uses. Applicable activities or uses which fall within the Well Head Protection District must additionally comply with the requirements of this district. Uses that are prohibited in the underlying districts shall not be permitted in the Groundwater Protection District.

3. Location

The Groundwater Protection Overlay District shall consist of those areas shown on the Hamilton Groundwater Protection Overlay District Map, dated May 1985, amended May 2000 to include the aquifer protection districts of neighboring communities, that lie within the Town of Hamilton. Said map is hereby incorporated into the Zoning By-law by reference, and shall be on file with the Town Clerk. (Ed. Note: Every Zoning By-law book sold after 1985 includes a Groundwater Protection District map and a regular Zoning District map. Zoning By-law books sold after May 2000 reflect the additional areas of protection.)

4. Dimensional Requirements

- a. Regardless of the minimum lot size of the underlying zone, there shall be a minimum lot area of 80,000 square feet for a building lot in the Groundwater Protection Overlay District (Amended May 7, 1990).

HAMILTON ZONING BYLAW HAMILTON ZONING BY-LAW

- f. **Location of Wastewater Treatment:** All wastewater shall be treated and discharged on-site. Off-site wastewater treatment is not allowed. An exception to this is for parcels located in the Business District, where wastewater treatment may be located off-site.
 - g. **Paths and Trails:** Shall be connected, preserved, and increased when possible.
 - h. **Conversion to Apartments:** Dwellings constructed by Special Permit under this section shall not be eligible for subsequent conversion to add apartments under Section V.11.e.1, 2, 3 or 4 of this Bylaw
 - i. **Reuse of Existing Buildings:** Existing buildings and dwelling units may be reused and rehabilitated for the purposes of this Bylaw section, provided all standards and requirements are met.
 - j. **Homeowners Association and/or Condominium Documents:** Prior to submitting an application to the Building Inspector and prior to construction of infrastructure, the Applicant shall submit to the Planning Board and receive approval of all Homeowners Association and/or Condominium Documents. The Planning Board or legal counsel shall review and approve the documents to ensure that the intent of the Bylaw section and the relevant sections of the Decision of the Planning Board are incorporated into the documents.
13. Exemptions
A proposal for a Senior Housing Special Permit shall be exempt from Section V.12, Open Space and Farmland Preservation Development, and Section VI.H., Site Plan Review.
14. Dimensional Standards
The following dimensional and other standards shall supersede all dimensional standards in the underlying zoning district and shall be applied to any Senior Housing development:

TABLE OF DIMENSIONAL REQUIREMENTS

	A	B	C	D	E	F	G	H	I
	Zoning District	Underlying Zoning District Requirement (s.f.)	Minimum Parcel Size (sq. ft.) to be eligible for development	Min. Parcel Frontage Req'd. (feet) to be eligible for development	Front Setback (feet) from perimeter property line	Side & Rear Setbacks (feet) from perimeter property line	Vegetated Buffer (feet) around perimeter of parcel	Min. Open Space Req'd of total acreage	Max. Lot Coverage of entire parcel
1	Bus. District		None	site specific	0	0 ¹	0 ¹	0	site specific
2	R-1a	20,000	80,000	125	25	25 ²	20	0	25%
3	R-1b	40,000	80,000	175	25	25 ²	20	15%	25%
4	RA	80,000	80,000	175	50	25 ²	20	25%	25%

SECTION VI. DEVELOPMENT REGULATION

(See also Sec. I, "Purposes", Items A and B)

A. Height Regulations

1. The height of any structure shall not exceed thirty-five (35) feet or not in excess of three stories.
2. Building height shall be measured as the vertical distance from the average elevation of the finished lot grade at the front of the building to the highest point of the top story in the case of a flat roof, and to the mean height between the plate and the ridge in the case of a pitched roof.
3. Each story shall be deemed to be the portion of a building being between the upper surface of any floor and the upper surface of the floor next above, having more than one-half of its height above the average elevation of the finished grade adjoining the building, provided that any part of a building between the topmost floor and the roof shall be deemed a half-story.
4. Limitation of height shall not apply to such structures as churches, belfries, flagpoles, chimneys, radio and television antennae, windmills, silos, water tanks and similar non-habitable structures. See Section VI.I for height regulations for windmills.

B. Lot Dimensional Regulations

1. Lot Area

a. For each dwelling unit there shall be a lot area:

1. in the R-1a Residence District of not less than twenty thousand (20,000) square feet except as provided under Special Permits by the Board of Appeals, under the provisions of Section V.A.11.e. above;
2. in the R-1b Residence District of not less than forty thousand (40,000) square feet.
3. in the B Business District of not less than twenty thousand (20,000) square feet except as provided under Special Permits by the Board of Appeals.
4. in the R-A Residence-Agricultural District of not less than eighty thousand (80,000) square feet.
5. in the GP Groundwater Protection Overlay District, of the size set forth in Section V.D. above.

b. The minimum lot area for business uses within the Business Districts shall be in accordance with an approved site plan submitted pursuant to Section VI.H below.

HAMILTON ZONING BYLAW HAMILTON ZONING BY-LAW

Four-family dwelling: A building containing four dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

Multi-family dwelling: A building containing five or more dwelling units, except as otherwise defined in this bylaw.

ELDERLY: for the purposes of this bylaw, persons who are 55 years of age or older, except as otherwise defined in this bylaw. (Added January 31, 2005)

ELDER HOUSING (definition deleted May 6, 2008, Article 2008/5 3-2) (formerly 14)

FAMILY. Any number of persons living together as a single economic unit and ordinarily using a single cooking facility. (formerly 15)

GARAGE, PRIVATE: Covered space for the housing of motor vehicles, no more than two of which belong to others than the occupants of the lot on which such space is located. (formerly 16)

GASOLINE SERVICE STATION: A structure or lot used for the sale of gasoline, oil, or automobile accessories or for servicing or storing motor vehicles, other than a private garage. (formerly 17)

GROSS FLOOR AREA, (BUSINESS): The floor area within the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. (formerly 18)

GROSS FLOOR AREA, RESIDENTIAL: The area of a residential structure used for living space, excluding basement and attic area. (formerly 19)

GROUNDWATER PROTECTION OVERLAY DISTRICT: The Groundwater Protection Overlay District shall consist of those areas shown on the Hamilton Groundwater Protection Overlay District Map, dated May 1985, amended May 2000 to include the aquifer protection districts of neighboring communities, that lie within the Town of Hamilton. Said map is hereby incorporated into the Zoning By-Law by reference, and shall be on file with the Town Clerk. (ed. Note: Every Zoning By-Law book sold after 1985 includes a Groundwater Protection District map and a regular Zoning District map.) (formerly 20)

IMPERVIOUS SURFACE: Material or structures on, above or below the ground that do not allow precipitation or surface water to penetrate directly in the soil. (formerly 21)

INTERIM WELLHEAD PROTECTION AREA (IWPA): Where the Zone II has not yet been delineated and approved by the Massachusetts Department of Environmental Protection (DEP), an interim wellhead protection area shall consist of the area within a one-half mile radius (2,640 feet) measured from the well or wellfield for sources whose approved pumping rate is 100,000 gpd or greater. Regulations applying to a Zone II shall apply equally to an interim wellhead protection area. (formerly 22)

LOT: Shall mean an area of land in one ownership with definite boundaries, used, or available for use, as site for one or more buildings. (formerly 23)

MINING: The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores or bedrock. (formerly 24)