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LISA L. MEAD  
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TO: Planning Board  
FR: Lisa L. Mead, Special Town Counsel  
CC: Board of Selectmen  
Michael Lombardo, Town Manager  
RE: Determination of Application of Zoning Bylaw Provision / Groundwater Protection Overlay District  
DA: January 16, 2015

Reference is made to the above caption matter and the application before the Planning Board concerning the so-called "Patton Estate" development by CP Berry and the Town of Hamilton (collectively, the "Applicants"). In that connection, a question has been raised about the applicability of the Hamilton Zoning Bylaw (the "Zoning Bylaw") provisions related to the Groundwater Protection Overlay District ("GPOD"). Specifically, it is the Applicants' contention that their proposal does not trigger the requirements of the GPOD; accordingly, they have not applied for a Special Permit thereunder.

Specifically, I have previously provided the following opinion:

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**D. Does the Ground Water Overlay District restrict the number of housing units being proposed for the Patton Property?**

The proposed development is located in the Residence-Agricultural Zoning District. Senior Housing may be constructed in this district by issuance of a Special Permit from the Planning Board. Additionally, the Property is located within the Groundwater Protection Overlay District ("GPOD"). The question comes as to the applicability of the provisions of the GPOD on the proposal and how the requirements of the GPOD interplay with the Special Permit criteria for Senior Housing and the allowed uses in the underlying district. Specifically, a question has arisen as to the requirement in section V(D)(4)(a) which provides "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 Ground Water Protection Overlay District." The term "lot" is defined in the bylaw in section VII as "Lot: Shall mean an area of land in

partially

one ownership with definite boundaries, used, or available for use, as site for one or more buildings." ✓

→ ✓ In the case at hand there are two lots which are part of the proposal, one at 4.5 +/- acres and one at 9 +/- acres. The Senior Housing Permit allows for a base number of one dwelling per acre with density bonuses based upon a number of other factors. In this case as part of a special permit for the RA district under Senior Housing the minimum lot size would be one acre. Nonetheless, given the applicability of the GPOD, the minimum lot size would be 80,000 sq. ft. and the proposal exceeds that requirement. Further, the GPOD does not prohibit greater density on a lot of 80,000 square feet nor does it speak to density at all. As a result, by the very language of the GPOD, "uses or activities permitted in the underlying district are controlled by the underlying district" allowing the property to be used for Senior Housing in accordance with the bylaw, does not conflict with the requirements of the GPOD so long as the lot is greater than 80,000 square feet. To impose any other meaning on the word "lot" in the GPOD would be interpreting the bylaw in a manner inconsistent with the terms thereof. One must give plain meaning to the terms of a bylaw and not try to contort it to mean something not intended by the legislative body. (See Halebian v. Berv., 457 Mass. 620 (2010): In interpreting a statute, "[w]e begin with the language of the statute." Commonwealth v. Raposo, 453 Mass. 739, 743, 905 N.E.2d 545 (2009). We give effect to each word and phrase in a statute, and seek to avoid an interpretation that treats some words as meaningless.) If the Town wanted to control density and except certain allowed uses in the underlying district from the GPOD, the Town would have done so, they have not. Further, if the Town meant to limit the number of buildings on a lot in the GPOD, they would have specified same in the bylaw itself, they did not. The GPOD limits the size of a lot in the GPOD and further limits what can happen on that lot in section 6 of the GPOD. Nowhere in those limitations are there limits on the number of units on a lot. As such, a meaning different than what is evident from the plain meaning of the bylaw may not now be imposed in the implementation of the bylaw. The proposal to place twelve units in six buildings on a lot in the R-A district, pursuant to a Senior Housing Special Permit is fully consistent with and not violative of the provisions and prohibitions of the GPOD. ✓

★ The question now comes as to whether or not the Planning Board, on its own initiative, can determine if the Applicants must apply for a GPOD Special Permit. The short answer is "no." The Planning Board has no authority to make such a determination. ✓

★ " [T]he administrative process begins with the 'zoning enforcement officer.' The Zoning Act and local provisions alike confer upon the zoning enforcement officer, who most typically is the building inspector, the role of applying zoning requirements. . . . [T]he zoning enforcement officer plays the initial role in interpreting the zoning ordinance or bylaw. . . and in determining if a particular use or structure complies with the requirements of the zoning regulations. . ." Healy, Massachusetts Zoning Manual, § 13.01 (MCLE) (1997). By providing a procedure for appeal of a zoning enforcement officer's determination to a municipality's zoning board of appeals, "the Zoning Act establishes a local

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✓ That the Planning Board is not authorized to require what-it-determines-to-be zoning compliance is further evidenced by the references in G.L. c. 40A, § 8 to "any person including an officer or board of the city or town" (emphasis added) as among those who may appeal the action(s) of the zoning enforcement officer. Like any other, the Board has a right to appeal a zoning determination made by the Building Inspector. It does not have the right to render such a determination itself, in these circumstances.

I look forward to discussing this matter with you further.