

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss

LAND COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO:

DAVID BLOOMGARDEN, JANE)
BLOOMGARDEN, BARNEY EDMONDS,)
JULIE EDMONDS, RICHARD GRAUSMAN,)
SUSAN GRAUSMAN, JOSEPH A.)
JACKSON and THOMAS A. SEBESTYEN,)
)
Plaintiffs)
)
v.)
)
SHAWN LEARY CONSIDINE, CLIFFORD)
SNYDER, AL HARPER, ROBERT FUSTER, Sr.,)
ROBERT FUSTER, Jr., as they are members of the)
Zoning Board of Appeals of the Town of Lenox,)
and FRONT YARD, LLC,)
)
Defendants.)
)

COMPLAINT

This is an action by David Bloomgarden, Jane Bloomgarden, Barney Edmonds, Julie Edmonds, Richard Grausman, Susan Grausman, Joseph A. Jackson and Thomas A. Sebestyen (the "Plaintiffs") against Shawn Leary Considine, Clifford Snyder, Al Harper, Robert Fuster, Sr., and Robert Fuster, Jr., as they are members of the Zoning Board of Appeals of the Town of Lenox, and against Front Yard, LLC, the applicant for a special permit to allow a "Resort" use of its property, seeking to annul a special permit granted by the Zoning Board to Front Yard on the grounds that the Board's decision was arbitrary, capricious and in excess of the Board's authority.

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiffs David and Jane Bloomgarden are individuals residing at 4 Stone Hill Road,

Lenox, Massachusetts. The Bloomgardens are abutters to the proposed resort development, and are persons aggrieved within the meaning of General Laws Chapter 40A.

2. Plaintiffs Barney and Julie Edmonds are individuals residing at 316 Old Stockbridge Road, Lenox, Massachusetts. The Edmonds are persons aggrieved within the meaning of General Laws Chapter 40A.

3. Plaintiffs Richard and Susan Grausman are individuals residing at One Stone Hill Road, Lenox, Massachusetts. The Grausmans are persons aggrieved within the meaning of General Laws Chapter 40A.

4. Plaintiff Joseph A. Jackson is an individual residing at 66 Old Stockbridge Road, Lenox, Massachusetts. Mr. Jackson is a person aggrieved within the meaning of General Laws Chapter 40A.

5. Plaintiff Thomas A. Sebestyen is an individual residing at 261 Old Stockbridge Road, Lenox, Massachusetts. Mr. Sebestyen is an abutter to the proposed resort development, and is a person aggrieved within the meaning of General Laws Chapter 40A.

6. Defendant Shawn Leary Considine is a member of the Zoning Board of Appeals of the Town of Lenox and has a usual place of business at 6 Walker Street, Lenox, Berkshire County, Massachusetts.

7. Defendant Clifford Snyder is a member of the Zoning Board of Appeals of the Town of Lenox and has a usual place of business at 6 Walker Street, Lenox, Berkshire County, Massachusetts.

8. Defendant Al Harper is a member of the Zoning Board of Appeals of the Town of Lenox and has a usual place of business at 6 Walker Street, Lenox, Berkshire County, Massachusetts.

9. Defendant Robert Fuster, Sr. is a member of the Zoning Board of Appeals of the Town of Lenox and has a usual place of business at 6 Walker Street, Lenox, Berkshire County, Massachusetts.

10. Defendant Robert Fuster, Jr. is a member of the Zoning Board of Appeals of the Town of Lenox and has a usual place of business at 6 Walker Street, Lenox, Berkshire County, Massachusetts.

11. Defendant Front Yard, LLC, is a corporation organized and existing under the laws of Delaware, has a usual place of business at 1050 17th St., Suite 2300, Denver, Colorado, and has appointed Corporation Service Company, 84 State St., Boston, Massachusetts, as its resident agent for service of process in Massachusetts.

II. THE PLAINTIFFS' CLAIM

A. The Elm Court Project and Special Permit Application.

12. Front Yard owns the premises known as "Elm Court," which is located at 310 Old Stockbridge Road, Stockbridge and Lenox, Massachusetts.

13. Elm Court is known as the "largest American Shingle Style home in the United States" and was originally built as a summer cottage by a member of the Vanderbilt family in the late 1800s. Since that time, it has undergone various renovations and uses, including operating as an inn and occasionally an event space. More recently, Elm Court has been closed intermittently and undergoing further renovations.

14. The Elm Court property consists of approximately 90 acres of land, 87 acres of which are in Stockbridge and 3 acres of which are in Lenox. Elm Court is accessed from a private way that extends from Old Stockbridge Road and the entire frontage for the Elm Court property is located in Lenox. Elm Court's frontage and the entrance of the access road are located in an R-

1A zoning district as designated by the Town of Lenox Zoning Bylaw.

15. On or about September 10, 2014, the Town of Stockbridge granted Front Yard a special permit to operate a resort use on the Elm Court property, which included the addition of a 96 guest room wing and spa facility attached to the existing “Main House.” In total, the Elm Court resort is designed to consist of 112 guest rooms. The Stockbridge special permit also authorizes the use of a portion of the Main House as a new 60-seat restaurant within the existing first floor.

16. On or about December 29, 2014, Front Yard filed an application for a special permit pursuant to Sections 3.1.C.7 and 9.4 of the Town of Lenox Zoning Bylaw to “permit access to a Cottage Era Estate Resort at Elm Court in Stockbridge, MA, all as permitted by a Special Permit granted by the Stockbridge Board of Selectman dated September 10, 2014[.]”

17. Section 3.1.C.7 of the Lenox Zoning Bylaw provides that a “resort” use may be permitted in an R-1A zoning district “as a special permit only if the Board of Appeals so determines and grants a special permit therefore as provided in Section 9.4 of this Bylaw subject to such restrictions as are set forth elsewhere in this Bylaw, and such restrictions as said Board may establish.” (See Lenox Zoning Bylaw, Section 3.1.2.) Section 9.4 of the Lenox Zoning Bylaw sets forth the procedure and criteria for obtaining special permits.

18. Following several public hearings before the Lenox Zoning Board of Appeals between February 18, 2015 and June 29, 2015, the Board issued a decision on July 14, 2015 granting a special permit to Front Yard subject to several conditions (the “Conditions”). A certified copy of the Board’s decision is annexed hereto as Exhibit A.

B. The Board’s Flawed Traffic Impact Analysis, Findings and Conditions

19. The Board determined that “[t]he proposed Resort will not create undue traffic

congestion or unduly impair pedestrian safety.” The Board noted that “according to traffic studies performed and submitted by applicant’s traffic engineer . . . and confirmed by peer review by the Town’s traffic engineer . . . the site traffic can be accommodated at intersection along Old Stockbridge Road and the surrounding area without a significant impact to the intersection level of service.” The Board deferred certain aspects of its traffic analysis and “imposed Special Conditions to th[e] permit to assess and address traffic speed and volume along Old Stockbridge Road before and during operation of the Resort use.”

20. The Board’s findings were based on an inadequate traffic study. Among other things, the data relied upon to estimate the project traffic generation trip rates was not reliable. Contrary to the recommended practice of collecting a sufficient sample size of local data for similar properties, the Board relied on generic trip data for a resort hotel based on a single observation conducted sometime between 1970 and the 1990s. There was also no consideration given to the additional level of trip activity generated as a result of the 60-seat restaurant facility located on the property or to the commercial truck activity the resort is likely to generate. Furthermore, the Board’s traffic analysis did not include studies of the traffic impact resulting from the years of construction related activities that will be needed to complete the project (*e.g.*, safety issues associated with dump trucks, wide loads, etc.) or from special events held at the proposed resort.

21. The Board’s traffic analysis was also inadequate because inadequate volume, speed and vehicle classification data was collected with regard to traffic on Old Stockbridge Road. Speed data is necessary to validate sight distance requirements and other safety related issues caused by the project. Vehicle classification is required to properly assess trucking conditions on the road and any impact resulting from added deliveries to the proposed resort.

22. The traffic related conditions imposed by the Board are vague, improperly defer

consideration of the traffic impact until after the project is completed and improperly delegate determinations reserved for the Board to other Town bodies. Among other things, the Board ordered that Front Yard conduct traffic related data collection at four locations *after* the special permit was granted. Specifically, Front Yard is required to collect traffic data during the summer of 2015 and perform a post-occupancy traffic analysis within the two years of the completion of construction or the public opening of the resort, whichever is earlier.

23. The post-occupancy traffic analysis is required to include data for “large events,” but the Conditions fail to specify what constitutes a large event.

24. Upon completion of the post-occupancy traffic analysis, the Conditions set forth vague criteria for determining whether mitigation measures must be undertaken (*e.g.*, it is not clear whether mitigation measures are required if either the volume or speed thresholds are exceeded, or if both must be exceeded) and provide that various unspecified mitigation measures be implemented if traffic is adversely impacted.

25. The Conditions also provide that “if the Event Data reveals that level of service at any of the intersections . . . is reduced to a level ‘F’, then the Board will have the power to amend the number of permitted Outdoor Events from 3 per week to 2 per week.” Section 5.1.8(5)(a) of the Lenox Zoning Bylaws, however, provides that traffic may not “lower level of service on the town way or at any nearby intersection below a level of service C at peak hour.” Accordingly, the effect of the Board’s decision is to permit a level of traffic service less than is permissible under the Bylaws.

C. The Board’s Failure to Consider the Bylaws’ Dimensional Requirements

26. Section 4.1.4 of the Lenox Bylaws is entitled “Land Split by Town Line” and provides: “When a lot is situated in part in the Lenox and in part in the adjacent municipality, the

provisions of this By-law shall be applied to the portion of such lot in Lenox in the same manner as if the entire lot were situated in Lenox.”

27. Despite Section 4.1.4’s mandate, the Board failed to consider whether the Elm Court project complied with the Bylaws’ dimensional requirements. Among other things, the proposed Elm Court project exceeds the maximum height restriction permitted for an R-1A zoning district, which provides that structures shall not exceed 35 feet or 2 stories. The Elm Court addition is 50 feet tall and is comprised of 4 stories.

D. Elm Court’s Proposed Use as a Spa is Impermissible in an R-1A Zoning District

28. The Bylaws define a “Resort” as a “[b]uilding or group of buildings, a portion thereof designed for serving food in a public dining room and containing 15 or more sleeping rooms for transient guests together with both indoor and outdoor recreational facilities with a variety of activities provided which could be judged self-sufficient for the entertainment of the guests therein.”

29. The Bylaws define a “personal service establishment” as “[a] facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, tailor show, shoe repair, laundry, self-service dry cleaning or pick-up agency, in every case an all indoor operation.”

30. The Lenox Bylaws do not permit personal service establishments, such as the spa Front Yard proposes to operate on the Elm Court property, to be located in R-1A zoning districts. Therefore, the Board’s grant of the special permit to Front Yard for the project, which includes the construction and operation of a spa, was in excess of the Board’s authority.

E. Other Errors in the Board’s Decision

31. The Board’s decision improperly delegates material aspects of the project for future

consideration by other boards or departments of the Town of Lenox. For example, Condition 12 provides that the “[s]izing of storm drainage components shall be based upon a drainage study conducted by the applicant, and reviewed and approved by the Town.” The Board does not specify who in the Town or what Town entity is responsible for reviewing and approving the study. Similarly, Condition 14 delegates to the Board of Selectman the determination of whether “a sidewalk from the northern most curb cut of Elm Court to Hawthorne Street is desirable[.]”

32. In addition to deferring consideration of various aspects of the traffic impact of the Elm Court project, the Board’s decision also defers review of noise, outdoor lighting and snow related issues. For instance, Front Yard is required to fund an escrow account if there are multiple violations of the noise restrictions set forth in Conditions 19 and 20. The escrow funds are then to be used for vague, unspecified noise mitigation measures. The Board’s decision does not provide for any method of further recourse should the escrow funds be exhausted and the mitigation measures fail to alleviate the noise problem.

F. Conclusion

33. Based upon the foregoing, the decision of the Zoning Board was arbitrary, capricious and in excess of the Board’s authority. The decision of the Zoning Board is vague and has impermissibly left material aspects of the project open for future consideration by the Board or has impermissibly delegated to other boards or departments of the Town approval of material aspects of the development proposal. The Elm Court project also fails to satisfy the standards specified in the Town of Lenox Zoning Bylaws, including dimensional and special permit requirements. Finally, the Board’s traffic impact analysis was inadequate and failed to properly assess the effect of the Elm Court project on local traffic patterns. For all of the foregoing reasons, the Board’s finding that the adverse effects of the project proposed by Front Yard’s

application will not outweigh its beneficial impacts to the Town of Lenox was arbitrary and capricious.

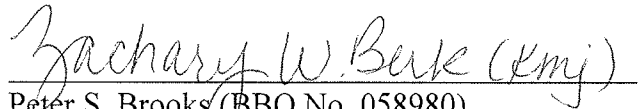
III. RELIEF REQUESTED

WHEREFORE, the Plaintiffs demand:

- (a) That the decision of the Zoning Board filed with the Town Clerk on July 14, 2015 be annulled; and
- (b) That the Court grant such other and further relief as it deems just and appropriate.

DAVID BLOOMGARDEN, JANE
BLOOMGARDEN, BARNEY EDMONDS,
JULIE EDMONDS, RICHARD GRAUSMAN,
SUSAN GRAUSMAN, JOSEPH A. JACKSON
and THOMAS A. SEBESTYEN,

By their attorneys,



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Dated: July 31, 2015

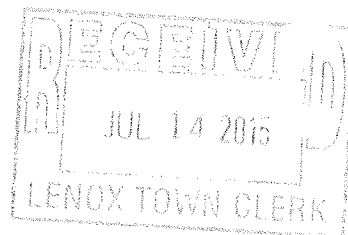
EXHIBIT

A

A true copy:

Attest: *Henry L. Sullivan*

Town Clerk



TOWN OF LENOX

ZONING BOARD OF APPEALS

Town Hall | 6 Walker Street | Lenox | Massachusetts | 01240

DECISION

Special Permit Application of Front Yard LLC, 310 Old Stockbridge Road

Applicant, Front Yard, LLC ("Front Yard"), filed an application on December 29, 2014, for a special permit at Elm Court, 310 Old Stockbridge Road, Stockbridge and Lenox, Massachusetts, (Map 3, Parcel 4 in Lenox and Map 204, parcel 61 in Stockbridge) pursuant to Lenox Zoning Bylaw (the "Bylaw") Sections 3.1.C.7 and 9.4 for access to a Cottage Era Estate Resort located on the Stockbridge portion of the estate consisting of a 112 guest room hotel, spa and restaurant comprising the resort. The property is located in the R-1A Lenox zoning district.

Elm Court is deemed a "Cottage Era Estate" in the Town of Stockbridge, akin to a Great Estate in the Town of Lenox, consisting of 90 acres, 87 of which are located in Stockbridge and 3 of which, including the property's entire frontage, are located in Lenox. The Main House at Elm Court is located entirely in the Town of Stockbridge, occasioning the applicant's need for access through the Lenox portion of the property.

Front Yard obtained a special permit for its proposed Resort use from the Town of Stockbridge Board of Selectmen pursuant to Stockbridge Zoning By-Laws Section 6.3 "Special Permits" and Section 6.6 "Cottage Era Estate Adaptive Re-Use or Rehabilitation", dated September 10, 2014 (the "Stockbridge Special Permit")(A copy of which is annexed hereto). The Stockbridge portion of the property is designated an R-4 "Residence" zoning district by the Stockbridge Zoning By-Laws. The Stockbridge Zoning By-Laws permit the "Adaptive Re-Use or Rehabilitation" of "Cottage Era Estates" in the R-4 zoning district by special permit and further provide that qualifying properties may establish a "Resort" use, among others. The Lenox portion of the property is designated an R-1A "Residential District" by the Lenox Zoning Bylaw. Section 3.1.C.7 of the Bylaw permits a "Resort" in the R1-A zoning district, by special permit.

The Petition was filed on December 29, 2014, notice was published in the Berkshire Eagle on January 14, 2015 and January 21 2015, and appropriate notice was sent to abutters. The following members of the Zoning Board of Appeals heard the Petition: Shawn Leary Considine, Clifford Snyder, Al Harper, Robert Fuster, Sr. and Robert Fuster, Jr. The public hearing was

open on February 18, 2015 and continued until June 29, 2015, between which the applicant appeared before the Zoning Board of Appeals five times on March 17, 2015, April 9, 2015, May 6 2015, and June 10, 2015, and June 17, 2015.

The Lenox Zoning Board of Appeals (the "Board") finds that the grant of a special permit to access the use permitted on the Stockbridge portion of the property is not barred by the legal doctrine established in Harrison v. Building Inspector of Braintree, 350 Mass. 559 (1960), because both zoning districts at issue are "residential" and both districts permit "Resort" uses by special permit. In addition, the Board finds, based on submitted documentary evidence and hearing testimony, that the proposed project meets the definition of a "Resort" use as defined in the Bylaw.

The decision meeting was held on May 6, 2015. At that time the Board voted four (4) in favor and one (1) opposed to grant the applicant's petition for a Resort use by special permit, with conditions as provided hereinafter.

In assessing the merits of Front Yard's petition for a special permit, through review of submitted documentary evidence and hearing testimony from the applicant and members of the public, the Board finds that the adverse effects of the proposed Resort use by Section 3.1.C.7 of the Bylaw will not outweigh its beneficial impacts to the town or neighborhood. The Board further finds that the special permit criteria as outlined in Bylaws section 9.4.2, have been satisfied as follows:

1. The community will benefit in many ways by the proposed Resort project, such as through the rehabilitation, enhancement and preservation of the historic Elm Court estate, including preserving and maintaining the vast majority of the expansive open space and vistas on the property, stonework, gardens and original exterior features of the mansion; the creation of new jobs at the Resort's hotel, spa and restaurant; access to the public to the Elm Court estate for patronage and enjoyment of the hotel, spa and restaurant and the estate's grounds; increased patronage of local businesses; and improvements of and extensions to municipal utility infrastructure, including the sewer line and waterline along portions of Old Stockbridge Road. The applicant has also agreed to construct a sidewalk along Old Stockbridge Road from Hawthorne Street to its northern curb cut, if deemed beneficial and necessary by the Town of Lenox.

2. The proposed Resort will not create undue traffic congestion or unduly impair pedestrian safety. The additional traffic generated by the proposed Resort can be accommodated at the existing driveway located at the north end of the property, which will be widened in accordance with Town Bylaw requirements. Additionally, according to traffic studies performed and submitted by applicant's traffic engineer, Fuss & O'Neill, Inc., and confirmed by peer review by the Town's traffic engineer, BETA Group, Inc. (Hereinafter "BETA"), the site traffic can be

accommodated at intersections along Old Stockbridge Road and the surrounding area without a significant impact to the intersection levels of service. However, to further ensure such findings, the Board has imposed Special Conditions to this permit to assess and address traffic speed and volume along Old Stockbridge Road before and during operation of the Resort use. Parking and loading requirements have been met by the parking plan submitted with the applicant's application, and location of parking has been sited and screened so as to minimize visual impacts on neighboring properties and on Old Stockbridge Road.

3. The proposed Resort will not overload public water supplies or sewer systems, as concluded by the Town's engineer, Weston & Sampson, who found that there is sufficient capacity within the Town of Lenox sewer collection, pumping and treatment systems and the domestic water supply to accommodate and support the proposed project, conditioned on the applicant's observance and compliance with the recommendations and upgrade requirements of Weston & Sampson, as further detailed in the Board's Special Conditions to this permit. Both the Lenox Police Chief and Lenox Fire Chief have testified that the proposed project will not unduly impair or otherwise negatively impact public safety or their ability to continue to adequately and properly serve the public.

4. The proposed Resort is compatible and consistent with the character of the neighborhood because it will be constructed so as to minimize any visual impacts of the new construction to neighboring properties and to Old Stockbridge Road, and the additional traffic generated will not significantly impact the existing traffic conditions based on the traffic engineers' reports and peer review studies. The adaptive reuse and renovation of the property will prevent further deterioration of the property from occurring, which in the absence thereof would result in a public nuisance.

5. There will be minimal impacts on the natural environment, as illustrated by the applicant's plans which preserve the property, including the open space thereon, to a great and significant extent. The west facing hillside and south lawn will be preserved completely, and the new addition will be out of direct view from Old Stockbridge Road and abutters and will not be at an elevation higher than the existing structures. Further, the Stockbridge Conservation Commission has reviewed and approved the plans and issued an Order of Conditions pursuant to the Berkshire Scenic Mountain Act allowing the proposed project consistent with the applicant's plans.

6. The proposed Resort will have beneficial economic and fiscal impact to the Town of Lenox. The development of the property will create numerous full and part time jobs at the Resort's hotel, spa and restaurant. Due to the property's proximity to downtown Lenox, the project will likely lead to increased patronage of local restaurants and other businesses. Additionally, the Town of Lenox will benefit from the significant expenditures to improve municipal infrastructure by Front Yard in extending and/or improving the Town's sewer and

water lines along Old Stockbridge Road, as well as the future receipts to the Town for Front Yard's usage of these municipal services.

This Special Permit is granted with the following conditions:

A. Traffic Flow And Safety

- 1) The applicant shall complete the recommended BETA data collections regarding vehicle speed and classification in peak season condition during the summer of 2015 at the applicant's expense. The applicant will conduct a special Automatic Traffic Recorder (hereinafter "ATR") traffic count at four locations in order to provide additional base-line confirmation of the current (before site construction) traffic conditions. These counts will be conducted at two locations on Old Stockbridge Road (just north of the site driveway and just south of Frothingham Crossing Road), one location on Frothingham Crossing Road and a location on the main driveway to 310 Old Stockbridge Road.
- 2) The applicant shall be required to conduct a post-occupancy traffic analysis during the summer season within two years of the completion of construction or the public opening, whichever event occurs first. The applicant shall bear the cost of the post-occupancy traffic analysis. Said analysis shall be done in accordance with the Town's traffic consultant pursuant to the BETA memo of March 17, 2015 (a copy of which is annexed hereto). Said analysis shall include:
 - a. The same ATR traffic count locations as described in 1, above, except at a time 12 months (or longer) after completion of construction or the public opening, whichever event occurs first, at a time of full occupancy of the site, during peak operating season in the summer;
 - b. Conduct turning movement counts of traffic at the intersection of Old Stockbridge Road/West Street/Walker Street during a weekday afternoon period (3:30 PM – 5:30 PM) and a Saturday mid-day period (11:00 AM – 1:00 PM).
 - c. Conduct the ATR counts for a 4-day period (Thursday thru Sunday) at the locations as described in 1, above.If the Town of Lenox requests a peer review of said analysis, the applicant shall bear that cost.
- 3) The post-occupancy traffic analysis shall include data, not only for a typical study, but specifically for large events on the premises on at least one weekend, during a special event on the premises and a performance at Tanglewood.

If said post occupancy traffic study differs by more than a traffic volume increase of 10% or more, speed (85th percentile) increase of 10 miles per hour or more over the

posted speed limit, the applicant shall pay for the construction, design and installation of traffic calming devices at Frothingham Crossing, Old Stockbridge Road and the intersection of Old Stockbridge Road and Main Street as provided in the March 17, 2015 BETA memorandum (the "BETA Memo") (a copy of which is attached hereto). The applicant shall provide an escrow amount of \$68,000 to pay for the construction, design and installation of the traffic calming devices referenced in the BETA Memo. Should the Town's Traffic Engineer determine, pursuant to the results of the monitoring study required by Section A.2, that the traffic calming measures suggested in the BETA Memo have not or may not adequately mitigate traffic impacts pursuant to the standard identified in the preceding paragraph and in the BETA Memo, then Applicant shall pay, at the request of the Lenox Board of Selectmen, an additional sum of \$25,000 into the existing escrow amount for payment of additional mitigation measures. Further, the Lenox Board of Selectmen may request within 12 months after the first additional payment, a second and final additional payment by the Applicant of up to \$15,000 into the escrow account if additional funds are required to implement the remaining additional mitigation measures.

- 4) Signage indicating the commercial vehicle exclusion described in Schedule VI "Commercial Vehicle Traffic" of the Lenox Bylaw shall be posted on OSR, just south of the Paterson-Egelston Monument. A sign is currently in place at Bean Hill Road. The applicants shall make application for a sign consistent with this requirement prior to commencement of construction and shall use all good faith effort to comply with this requirement.
- 5) The applicant shall be responsible for the installation of two or three pole mounted radar signs along Old Stockbridge Road, to be installed after consultation among BETA, Fuss & O'Neil, the Lenox Chief of Police, the Lenox Fire Chief and the Lenox Department of Public Works, to mitigate any potential increase to traffic volume and speed prior to construction and occupancy.
- 6) The applicant shall require, as a term of employment, that all staff must access Elm Court from the south during construction and during operation. This shall include all service vendors, contractors, and construction workers and shall be added as a condition to their contracts.
- 7) The applicant shall reimburse the cost of the construction of a sidewalk between the northern most curb cut of the Elm Court property and Hawthorne Street, as approved by the Lenox Department of Public Works, in conjunction with Board of Selectmen's approval. The funds for said construction project are to be placed in escrow, by the applicant, pursuant to an estimate established by Town of Lenox authorities.

8) The applicant shall stagger its employees' shift times and delivery times to minimize traffic congestion during peak times, i.e., 7:00 AM to 9:00 AM and 3:00 PM to 6:00 PM.

9) No on-street parking shall be permitted in front of the applicant's premises, i.e., the Elm Court Estate, at any time. Parking shall be in designated areas only.

B. Infrastructure and other Public Utilities

10) A Certificate of Occupancy is not to be issued and the applicant shall not commence to "open" or operate the proposed project for public use unless and until its compliance with the work cited in the Weston & Sampson memoranda dated September 4, 2014 and November 18, 2014 (copies of which are annexed hereto) regarding upgrades and additions to the public water distribution and sewage systems have been completed at the applicant's cost to the satisfaction of the Town of Lenox Department of Public Works.

11) The site's wastewater pumping station shall be provided with a flow meter, wastewater grinder unit, and odor control system to the satisfaction of the Lenox Department of Public Works. The facility's flow meter shall continuously record discharged wastewater flows and shall transmit flow data to the Town quarterly, unless another mutually accepted schedule is determined. This shall all be at the applicant's expense.

12) The applicant shall reimburse the Town for reconstruction of any public roadways disturbed or otherwise modified as a result of the site improvements at Elm Court. Design, public bidding, construction and inspection of the improved roadway on Old Stockbridge Road shall be administered by the Town of Lenox or the Town's designated authorities. Proposed reconstruction shall be configured to include wedge joints and safety edge, and all paving shall be conducted utilizing Superpave. Design shall meet all applicable Town, State and Federal regulations, details and specifications. Design shall include replacement and enhancement of the storm drainage system along all reconstructed portions. Sizing of storm drainage components shall be based upon a drainage study conducted by the applicant, and reviewed and approved by the Town. Construction documents shall be subject to satisfaction of the Lenox Department of Public Works prior to public bidding. Bidding and construction of the upgrades shall be administered by the Town, and shall be paid by the applicant.

13) Any and all easements (both temporary and permanent) required to implement utility, roadway, and sidewalk improvements shall be fully described and depicted on documents (stamped plans and legal descriptions) prepared by the applicant and submitted to the Town for negotiation and acquisition. All expenses incurred by the Town in acquiring the easements, including, but not limited to, legal fees, acquisition costs, and other general expenses, shall be

fully reimbursed to the Town by the applicant.

14) The applicant shall post a performance bond acceptable to Town Counsel for the improvements to the water and sewer infrastructure. If the Board of Selectmen determines that a sidewalk from the northern most curb cut of Elm Court to Hawthorne Street is desirable, a performance bond acceptable to Town Counsel will also be posted by the applicant for the sidewalk project.

C. Neighborhood Character

15) The applicant shall be limited to holding no more than three (3) outdoor events per week on the property. There shall be no outdoor events on any of the property within the Town of Lenox.

16) The applicant shall take reasonable steps to mitigate blowing of snow onto Old Stockbridge Road.

17) Employees of Elm Court, both during construction and operation, shall be requested to smoke in an area unobtrusive to abutting neighbors.

18) The applicant shall require delivery trucks and construction drivers to access Elm Court no earlier than 7:00 AM.

19) Outdoor activities performed at the property shall be limited to those activities that generate natural sound, further defined as those activities that do not produce sound generated by a combustion or electrical motor or engine with the exception of activities required for the maintenance of the property and grounds. There shall be no outside broadcasting of amplified sound, including from under tents or other temporary structures. Furthermore, there shall be no outdoor music of any kind, fireworks, or other similar outdoor noise after 10:00 PM. Fireworks shall be permitted only by approval of the Lenox Fire Chief with notice to abutters.

20) No use or activity shall produce a day time average sound level greater than 65 decibels, as measured over an eight (8) hour period or a night time average sound level greater than 50 decibels, as measured over an eight (8) hour period when measured at the property line. This condition shall not apply to activities required for the maintenance of the property and grounds.

21) With respect to outdoor lighting, consistent with its obligations under the Stockbridge Special Permit paragraph K and Section 5.3. "Lighting" of the Lenox Zoning Bylaw, the applicant shall ensure that the edge of the lamp shield is below the light source; direct radiation from the light source is confined within the boundaries of the Property; direct radiation is prevented from escaping toward the sky; and no high intensity discharge lighting is used. There shall be no spotlighting of the premises, except as required for public safety.

22) No construction work shall be performed on weekends, State or Federal holidays. No construction work or deliveries to the site shall take place prior to 7:00 AM or after 5:00 PM.

23) The applicant shall share the construction schedule with the Town of Lenox Zoning Code Enforcement Officer prior to commencement of work. Any deviation from this schedule shall be shared with the Town of Lenox.

24) The applicant shall share their dust control plans for the construction period with the Lenox Zoning Code Enforcement Officer. They shall notify the Building Commissioner of any deviation from these plans.

25) The applicant expressed, on the record, and in a document dated June 26, 2015, that they would agree to two fully noticed reviews of the conditions in order to evaluate the effects of the resort's operation on the neighborhood, and to consider amendments to specific conditions of the special permit.

The applicant will notify the Town of Lenox and the Zoning Board of Appeals when it has opened. It will return for a review within two (2) years from the opening date, and will return for a second review four (4) years after the date of opening.

26) The applicant presented that it acknowledges the power of the Board to review and revise the following specific conditions: Condition 15, 16, 19, 20 and 21 so long as the Board adheres to the following criteria:

- Any condition that will be subject to review must be specifically identified within the original conditions;
 - Any condition so identified must also contain specific criteria for what factors may trigger the need for a revision and what specific modifications of the condition would be allowed if it is determined that such a revision is necessary.
- a) **Review of Traffic Impacts Related to Outdoor Events:** Regarding Condition 15, the scope of the reviews will be to identify the effect on the traffic levels of service along Old Stockbridge Road as a result of "Outdoor Events". Therefore, in addition to the data that will be collected pursuant to the BETA Memo dated March 17, 2015, the Applicant will be required to collect data ("Event Data") at the same locations ((a.) Frothingham Crossing; (b) Main Site Driveway; (c) Old Stockbridge Road North of Site; (d) Old Stockbridge Road South of Site)) during two (2) Outdoor Events measuring traffic volume and turning movements. Turning movement counts during the two Elm Court events will be conducted at the intersection of Old Stockbridge Road with the main site driveway, and at Frothingham Crossing with Old Stockbridge Road.

At the first review, if the Event Data reveals that level of service at any of the intersections noted above is reduced to level "F", then the Board will have the power to amend the number of permitted Outdoor Events from 3 per week to 2 per week. At the second "review", if the Event Data reveals that the level of service at any of the intersections noted above has remained at level "F", then the Board will have the power to amend the number of permitted Outdoor Events from 2 per week to 1 per week.

- b) **Review of Snow Mitigation onto Old Stockbridge Road:** Regarding Condition 16, the scope of the two reviews will be to identify any safety issues related to drifting snow documented by the Town of Lenox Chief of Police in consultation with the Town of Lenox Highway Superintendent, to allow the Board to determine whether additional mitigation measures are necessary for public safety. At the first review, if the Board determines that the Chief recommends additional mitigation measures to be implemented, the Applicant will fund an escrow account with \$25,000 for the implementation of additional measures. At the second review, if the Board determines that the Chief recommends further additional mitigation measures to be implemented, the Applicant will fund the escrow account with an additional \$25,000 for the implementation of additional measures.
- c) **Review of Noise Related to Outdoor Activities:** Regarding Conditions 19 and 20, the scope of the two reviews will be to identify any documented violations of these conditions, which shall be documented in writing by either the Town of Lenox Police Department or Code Enforcement Officer, identifying the specific violation. At the first review, if the Board determines that there are more than ten (10) documented violations of Conditions 19 and 20, the Applicant will fund an escrow account with \$50,000 for the implementation of additional landscape planting for the purpose of screening and noise attenuation along the sidelines of the Elm Court property at mutually agreeable locations to the Board and the Applicant. At the second review, if the Board determines that there are more than five (5) subsequent documented violations of Conditions 19 and 20, the Applicant will further fund the escrow account with an additional \$25,000 for the implementation of additional landscape planting for the purpose of further screening and noise attenuation along the sidelines of the Elm Court property at mutually agreeable locations to the Board and the Applicant.
- d) **Review of Outdoor Lighting:** Regarding Condition 21, the scope of the two reviews will be to identify any violation of the applicant to comply with the terms of the specific condition, which violations shall be documented in writing by the Town of Lenox Code Enforcement Officer, identifying the specific violation. At the first review, if the Board determines that there are any uncured violations of Condition 21, the Applicant will fund an escrow account with \$25,000 for the purpose of modifications or replacements to non-compliant lighting fixtures, which remedial work must be completed within sixty (60)

days of the review. At the second review, if the Board determines that there are any remaining or new violations of Condition 21, the applicant will further fund the escrow account with an additional \$25,000 for further remedial work to ensure compliance with Condition 21, which work must be completed within 60 days of review.

27) The Special Permit issued to Front Yard, LLC shall be personal to the applicant for a period of five (5) years from the issuance date hereof after which time said Special Permit shall run with the land. In the event the Applicant enters into a contract with another party for the sale and purchase of the Elm Court property within the above period, the applicant shall be required to notify the Board in writing within seven (7) days of such occurrence and shall appear before the Board within thirty (30) days of said notice along with the proposed buyer of the property to allow the Board to conduct the second review of the conditions and inform the said buyer as to the terms, conditions and bylaws applicable to the property, including the expectation by the Town of Lenox and the Board that said terms, conditions, and bylaws require strict compliance therewith. This second review shall be a fully noticed public hearing. This condition shall not be applicable or enforceable in the event of the initiation of foreclosure proceedings by a mortgagee, or in the event of a transfer of the Elm Court property by deed in lieu of foreclosure in order to satisfy any mortgagee, lender or other creditor, or in the event of the insolvency of the applicant requiring liquidation of its assets.

Additionally, all terms and conditions imposed by the Town of Stockbridge are hereby incorporated in and affirmed by this decision, unless so modified above.

Any appeal from this Decision must be made pursuant to MGL Chapter 40A, Section 17, as amended, and must be filed within twenty (20) days of the filing of this Decision with the Lenox Town Clerk. The Applicant is responsible for the filing, at least twenty (20) days after this Decision is filed with the Town Clerk, of a certified copy of this Decision with the Berkshire Middle District Registry of Deeds in Pittsfield, if no appeal has been filed within the aforementioned twenty (20) days.

Filed, electronically, this 14th day of July, 2015, with the Lenox Town Clerk, the Planning Board, the Building Inspector and the Zoning Board of Appeals, by electronic transmission.

Robert M. Fuster, Jr.
For the Lenox Zoning Board of Appeals



MEMORANDUM

Date: March 17, 2015
To: Chris Ketchen, Town Manager
Town of Lenox
From: Kien Ho, P.E., PTOE
Tyler de Ruiter, EIT
Subject: **Elm Court Estate Special Permit Application Review – Escrow Fund Estimate**

BETA Project #: 4924

As requested, we have estimated the construction and design cost associated with the installation of traffic calming devices on Frothingham Crossing, Old Stockbridge Road and the intersection of Old Stockbridge Road and Main Street. The construction and design cost will be used for future implementation of traffic calming devices in the event that the traffic monitoring study revealed significant traffic impact (traffic volume increase of 10% or more, speed (85th percentile) increase of 10mph or more over the posted speed limit) to the study area roadway/intersection. Two traffic monitoring studies shall be conducted. The first study shall be conducted 12-month after completion of the project with full occupancy of the facility during the peak operating season and the second study to be conducted 12-month after the first study. The traffic monitoring study shall consist of collecting 48-hour automatic traffic volume count, speed data and vehicle classifications. Turning Movement traffic count (weekday afternoon and Saturday Midday peak periods) shall also be collected at the intersection of Old Stockbridge Road/Main Street at Walker Street/West Street. The 48-hour traffic data collection shall be collected at the following locations:

- a. Frothingham Crossing
- b. Main Site Driveway
- c. Old Stockbridge Road (North of Project Site)
- d. Old Stockbridge Road (South of Project Site)

The estimated escrow fund for post mitigation implementation is listed as follow:

1. Frothingham Crossing = 2 speed Humps (\$20,000)
2. Old Stockbridge Road = 2 Electronic Speed Check Signs (\$25,000)
3. Old Stockbridge Road and Main Street Intersection (\$15,000)
4. Review Traffic Monitoring Studies (2) prepared by Proponent (\$8,000)

The total estimated traffic calming implementation cost = \$68,000.00

NOTE: A total of four (4) Electronic Speed Checks signs are recommended for Old Stockbridge Road. Two will be installed prior to the completion of the project and the remaining two will be installed pending on the outcome of the traffic monitoring results.



MEMORANDUM

Date: March 17, 2015 BETA Project #: 4924
To: Chris Ketchen, Town Manager
Town of Lenox
From: Kien Ho, P.E., PTOE
Tyler de Ruiter, EIT
Subject: **Elm Court Estate Special Permit Application Review – Response to Comments**

As requested, BETA Group, Inc. (BETA) has reviewed the *Response to BETA Memo*, dated March 16, 2015 prepared by Fuss & O'Neill (F&O). In their memorandum, F&O responded to comments submitted by BETA in a memorandum dated February 24, 2015.

For ease of review, the format of this memorandum is arranged in the following sequence:

- **BETA original comments in bold**
- Fuss & O'Neill responses in standard text (March 16, 2015)
- *BETA comments in bold italics (March 17, 2015)*

1. **BETA: Display all study intersections on one Study Area map.**
BETA: Comment was addressed previously.

2. **BETA: Analyze all study intersections together in one Study Area network. This will require adjusting/balancing volumes that have been collected during different months and years.**

F&O: We analyzed the traffic impacts by area in stages according to the review process in the Towns of Stockbridge and Lenox, and followed standard practice for each part. Further analyzing the intersections by balancing the traffic will not change our study results or conclusions regarding traffic operations. We have reviewed the project as one network, comparing the traffic volumes of all the study intersections and roadway links. Comparing the four count periods in which we did field counts (and traffic analyses) shows a close comparison of traffic in the northern section of Old Stockbridge Road, where the traffic volumes are greatest. Accordingly, when balancing the traffic thru this OSR corridor for the different count periods, the traffic at the southern end of the area (from the Elm Court site south) would decrease in traffic volume, compared to the traffic volumes that we actually used. Accordingly, the traffic volumes at the southern area would be less than those used in our analysis. Therefore, we do not feel it is necessary to further balance and reanalyze the southern intersections (i.e. south of the project site) because it would make the traffic level of service (based on delays at the driveways and intersections) better, not worse, than we have reported in our study. See *Attachment 1* which shows the comparison of various count periods. *Attachment 2* shows our estimate of the traffic volumes in a network context, if we were to balance the traffic through the network.

BETA: We reviewed the traffic data comparison and concur with the Applicant.

3. **BETA:** The Applicant should provide Volume, Speed, and Vehicle Classification as part of the ATR data collection effort. Speeds are important to validate sight distance requirements and any other safety related issues that may be exacerbated by the construction of this project. Vehicle classification is important to validate the trucking conditions on this roadway and any issues that may be caused by added deliveries in regards to the retail/commercial related construction.

F&O: We are happy to conduct additional automatic traffic recorder (ATR) counts in order to establish a larger data base for speeds and percent of truck volumes on Old Stockbridge Road. For clarification, as stated previously, the use of the radar speed sampling we conducted was to estimate typical operating speeds on Old Stockbridge Road for sight distance evaluation. The purpose of our speed data collection was NOT for a detailed speed zone study, relative to establishing speed limits. When the snow and ice is gone from the roadside shoulder areas, we can obtain additional ATR data in the site area.

BETA: A 48-hour ATR speed data collection should also be conducted during the peak season traffic period. Due to the posted speed limit variation along Old Stockbridge Road, a minimum of two ATR locations (one to be located south of the project main entrance and the other north of the entrance) should be conducted. The traffic data will also serve as the base line condition for the post-traffic monitoring program.

4. **BETA:** Typically the weekday evening peak period data is collected from 4:00PM – 6:00PM, while the Saturday mid-day peak period data is collected from 11:00AM – 2:00PM. Given the hotel/resort characteristics of this project, the adjacent Tanglewood activity, and examination of the ATR counts, it is expected that traffic volume would be higher during the Friday evening peak hour. BETA questions why TMC were not collected for these peak periods.

BETA: Comment was addressed previously.

5. **BETA:** Though using network peak hours is consistent with industry standards when analyzing a corridor, no clarification is given within the study that notes this methodology. The Traffic Study should clarify the peak hours used are network averages between the observed intersections.

BETA: Comment was addressed previously.

6. **BETA:** To provide a conservative analysis for impacts to the nearby highways, the Applicant should analyze conditions at the intersections of Route 7 and Route 7A during the later commuting peak hours.

BETA: Comment was addressed previously.

7. **BETA:** The attached TMC sheets for many of the intersections along Old Stockbridge Road were completed by hand. The Applicant should compile this data into a summary table that clearly displays the volumes, peak hour factors, and heavy vehicle percentages for ease of use and review.

Elm Court Estate Special Permit Application Review – Response to Comments

March 17, 2015

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F&O: While using manual traffic count forms and incorporating them into the traffic study document is clearly acceptable and often part of standard practice when electronic counts are not used, we have put our manual count data into a spreadsheet format for the intersection of Hawthorne Street, for the weekday and Saturday count periods. See *Attachment 3* (weekday counts) and *Attachment 4* (Saturday counts). The manual count forms were used basically for the low volume locations.

BETA: We have reviewed the traffic data spreadsheet and find them acceptable.

8. **BETA: It is not clear if the network peak hours for this study were adopted from the previous study or if they were recalculated using the new data. The Applicant should clarify if the peak hours have changed based on the new data.**

BETA: Comment was addressed previously.

9. **BETA: See Comment 7.**

10. **BETA: The Applicant should provide the MassDOT Count Station data in the Appendix for review.**

BETA: Comment was addressed previously.

11. **BETA: This intersection was not studied as part of the Applicant's June 18, 2012 addendum.**

F&O: Springlawn traffic as presented in the VHB traffic assessment for the weekday 2018 condition was added to this intersection. The resulting traffic volumes and Level of Service summary is included in *Attachment 5*.

BETA: We have reviewed the revised analysis and find them acceptable as the LOS did not change with the exception of small increase in delays (one second).

12. **BETA: The Applicant should provide the Springlawn Estates project trip generation network in the appendix for comparison purposes. It is unclear if trips generated from the Springlawn Estates will impact the intersection of Old Stockbridge Road/Main Street (Route 7A) at Walker Street/West Street (Route 7A/Route 183) in the center of Lenox.**

F&O: Springlawn traffic as presented in the VHB traffic assessment for the weekday 2018 condition was added to this intersection. The resulting traffic volumes and Level of Service summary is included in *Attachment 5*.

BETA: See Comment 11.

13. **BETA: The Applicant should provide trip generation calculation sheets as part of the appendix.**

F&O: This entry and exit traffic distribution was estimated based on the ITE land use category "Hotel" (ITE LUC 310) for the Saturday peak hour of the generator (by rooms), since ITE has no entry / exit distribution for the "Resort Hotel" category during the Saturday site peak. This distribution is felt to be reasonable (56% entering, 44% exiting).

BETA: The trip distribution is reasonable. The post traffic monitoring program will validate the trip distribution.

14. **BETA:** BETA recommends collecting empirical data at two to three similar facilities (such as Canyon Ranch and the Cranwell Resort) during the afternoon peak period and the Saturday peak period to better estimate the trip generation for this facility. This effort should also capture trip generation for deliveries and any other heavy vehicle activity generated by the site and its components.

F&O: Fuss & O'Neill has discussed with BETA the fact that the other sites suggested for possible counting (Canyon Ranch and Cranwell Resort) have differences from Elm Court that do not necessarily make them comparable relative to the Elm Court trip generation. Cranwell Resort, for example, has a golf course with a Golf Club, a Spa, and a large meeting and banquet spaces which host many public and private events. The two driveways to Cranwell also provide access to many separate condominium units on site. Based on information on the proposed site characteristics for Elm Court provided by the project owner, the ITE trip generation land use code that was used is an accepted standard methodology, and resembles adequately the proposed project. The other concern with counting other sites in the area, if we could find one comparable to Elm Court, is the seasonality of the use, and the fact that late winter, early Spring counts would not reflect the peak traffic use of the site or the surrounding Old Stockbridge Rd. area.

We would be happy to consider traffic monitoring counts at the Elm Court site driveways after the construction of the project, to verify the trip generation characteristics, and address traffic mitigation measures if necessary.

BETA: We concur that if the facilities are not comparable to the Elm Court facility, the trip generation calibration exercise would not be beneficial. We agree that the post traffic monitoring program can be used to validate the estimated trip generation utilized for the traffic study. We want to note that the proposed post-traffic monitoring program and estimated escrow fund dated March 17, 2015 is attached for reference.

15. **BETA:** Relative to trip distribution, more explanation of the distribution of vehicles from the north via Route 7 & 20.

F&O: The ADT's that were used for the trip distribution were taken from MassDOT historic traffic counts (rounded) summaries on the major surrounding roadways. The distribution of traffic arriving from the north and south along the Route 7 & 20 and Route 20 corridors was made considering current and anticipated direction guide signage along those routes that would direct site traffic to the Elm Court destination via major routes. For example, we felt that more than half of the site traffic arriving from the north (i.e., Pittsfield area) would stay on the route 7/20 bypass and be directed to the site via Route 7; a smaller percentage from that direction would enter the site via Route 7A, downtown Lenox, rather than being guided in via Walker St. We are happy to work with the Town of Lenox in establishing traffic guide sign locations on the main roadways approaching the site.

BETA: To ensure the Project related trips would not increase in downtown Lenox in the future, we have included the intersection of Old Stockbridge Road at Walker Street as part of the post-traffic monitoring program. Establishing new traffic guide signs should be coordinated with the Town.

16. BETA: The Applicant should discuss trips generated or associated with Tanglewood and other nearby tourist generators such as Shakespeare & Company, The Mount, Kripalu Center, the Norman Rockwell Museum, or others.

F&O: Relative to trip making for Elm Court patrons to other tourist and cultural attractions in the area (i.e., Tanglewood, Shakespeare & Company, etc.), Elm Court is certainly willing to consider use of travel demand management services such as using a shuttle van or similar type of carpooling or vehicle trip sharing methods, depending on demand for such off-site trips. Elm Court patrons will be staying onsite for many of the activities and services which the resort will be offering.

BETA: We concur with the use of travel demand management by using shuttle services to reduce vehicle trips. We recommend that this be included in the condition of approval.

17. BETA: The appended Synchro worksheets do not follow the same formatting such that some sheets contain varying information which makes comparison cumbersome.

BETA: Comment was addressed previously.

18. BETA: BETA recommends that these values be updated to represent the network peak hour values.

F&O: There were two locations in question during the weekday afternoon peak hour and one location during the Saturday midday peak hour. We have re-run the analyses for those locations using a different peak hour factor. There was no significant difference in the level of service at those locations, compared to our original analysis. Attachment 7 shows the resulting analysis.

BETA: We have reviewed the updated analysis and find them acceptable.

19. BETA: Sight distance should be determined by the measured 85th percentile speed. As noted above, the Applicant should collect speed data via ATR units along Old Stockbridge Road to determine the measured 85th percentile speed and re-evaluate the available sight distance.

F&O: We can collect additional data using ATR machines when the winter weather subsides, due to the problem of ice and snow impacting the installation and operation of this equipment. We can also collect supplemental data via use of a radar gun, but feel that the field observations and data used to date gives us sufficient information to determine the sight distance requirements for this project at the subject driveway location.

BETA: See Comment 3. Based on the radar gun speed information, the field measured average speed on Old Stockbridge Road range from 34 mph to 38 mph on a posted 25 mph to 35 mph speed zone area. Hence, the 34mph is close to 10 mph above the 25mph speed zone area. While we do not have a detailed 85th speed study, we recommend that two (2) electronic speed check sign (one in each travel direction) be installed on Old Stockbridge Road to discourage speeding and calm traffic. The electronic speed check sign shall be mounted with a regulatory speed limit sign. Solar speed check is not recommended due to the poor sun light condition along Old Stockbridge Road as a result of thick tree canopy.

20. BETA: The Applicant should clarify why Table 5.1 shows the required stopping sight distance for Driveway #3 as 246 feet instead of 250 feet for a speed of 35 mph.

Elm Court Estate Special Permit Application Review – Response to Comments

March 17, 2015

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F&O: We did collect speed data at these driveways during previous study efforts, as reported in the April study. We can collect additional speed data if the use of the south driveway becomes part of this project, but as of this time, the project proponent prefers to use the main site driveway to the north for all site traffic. The sight distance at the main driveway location is adequate based on the speeds discussed in the report.

BETA: 48-hour ATR speed data should be collected to validate the sight distance analysis.

21. **BETA: For completeness, the Applicant should note any observed pedestrian activity at this intersection.**

BETA: Comment was addressed previously.

22. **BETA: The Applicant should discuss the proposed commercial delivery schedule and the proposed construction schedule to ensure that the required truck traffic is minimized along Old Stockbridge Road. This language should be part of the conditions of the Special Permit.**

BETA: Comment was addressed previously.

23. **BETA: It is our understanding that the existing driveway gate area contains two historic stone pillars. The preservation of these historic pillars should be considered.**

F&O: The site engineer has provided preliminary design details of the widening of the main driveway, and will be coordinating this design with the Town and others.

BETA: No further comment.

24. **BETA: BETA notes that the provided ADT of 1,900 vehicles per day was taken on Saturday, July 14, 2012. The data shows a considerable amount of vehicles traveled on Old Stockbridge Road between the hours of 11:00PM and 1:00AM (on Sunday). As noted previously, this was due to a heavily attended event at Tanglewood. As such, this ADT is not an accurate representation of average ADT. The Applicant's volume data shows typical weekday traffic to be much lower, around 1,600 vehicles per day. This provides a better representation of average traffic conditions rather than peak traffic conditions as this is a seasonal area.**

BETA: Comment was addressed previously.

Ref: O:\4900s\4924 - Lenox - Elm Court Traffic Review\Engineering\Reports\4924 Response to Comments March 2015.docx

Edited: TdR



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WESTON & SAMPSON, INC.
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Weston & Sampson

September 4, 2014

Mr. Sean VanDeusen
Superintendent of Public Works
Lenox Department of Public Works
275 Main Street
Lenox, MA 01240

Re: Proposed Sewer Extension for Elm Court Estate (Front Yard, LLC)
Lenox, MA

Dear Mr. VanDeusen:

Weston & Sampson Engineers, Inc. (Weston & Sampson) was retained by the Town of Lenox to evaluate the proposed sewer extension from the Elm Court Estate to the Lenox sewer collection system. A summary of our analysis is provided below.

Background Information

The Elm Court Estate is located on Old Stockbridge Road about one mile south of the intersection with West Street and Walker Street in Lenox. A map showing the location of the project site was provided by White Engineering and is included within Attachment A.

Based on information provided by White Engineering the Elm Court Estate is looking to undergo an expansion that will include a 112 room hotel/resort, a 60 seat restaurant, a spa facility, and (3) three bedroom homes. The proposal includes the following elements as outlined in Attachment A:

- Installation of sewer pump station that would be located on the Elm Court Estate property. This pump station would be designed, constructed, operated and owned by the Elm Court Estate. Based on information provided the maximum pumping rate will be 28 gallons per minute.
- Installation of a sanitary sewer force main from the Elm Court Estate property to the sanitary sewer manhole located in general at the intersection of Old Stockbridge Road and Bishop Estates (sanitary sewer manhole 74).
- Replacement of the existing sanitary sewer piping with a new PVC sanitary sewer from the intersection of Old Stockbridge Road and Bishop Estates (sanitary sewer manhole 74) to sanitary manhole 40, as shown on Figure 1.
- Abandonment of the septic system on the existing property and possible reuse of tanks for storage during high flow periods.

Wastewater Flow Estimate

White Engineering provided a wastewater flow estimate for the overall project, which is outlined below:

<u>Usage</u>	<u>Estimated Wastewater Flow</u>
(3) three bedroom homes	990 gallons per day
112 room hotel	12,320 gallons per day
60 seat restaurant	1,200 gallons per day
Spa Facility	<u>1,500 gallons per day</u>
TOTAL FLOW	16,010 gallons per day.

Back-up documentation for the proposed flows is provided in Attachment B.

Assessment of Impact to the Sewer Collection System and Pumping Station

The proposed flow would discharge into the sewer collection system at sanitary sewer manhole 74 and flow from that point by gravity sewer to the Brunell Avenue Pumping Station (BAPS) (see Figure 1). An assessment for each of these components is provided below:

Gravity Sewer Assessment

The gravity sewer collection system from sanitary sewer manhole 74 to the BAPS was evaluated using the existing sewer collection system model developed in SewerGEMS. The new flows were entered into the model and evaluated in the wet weather model. The wet weather model includes base wastewater, infiltration, inflow and rain induced infiltration flows that are experienced at BAPS. A summary of the capacity remaining within each pipe segment along the sewer run is shown on Figure 1. The modeled analysis included the pumped flow from Canyon Ranch as there is the possibility in an emergency basis to redirect flows to BAPS. As shown on Figure 1 there is one section of piping between manholes 231 and 241, which exceeds 90% capacity. It should be noted that this piping also exceeds 90% capacity during the existing condition with the connection of Elm Court.

Based on the sewer modeling completed, the sewer collection system can accept the additional flow of 28 gallons per minute.

It should be noted that all systems to be connected to the new pumping station should be tested to ensure that no infiltration or inflow will enter the sewer collection system.

Brunell Avenue Pump Station Assessment

The Brunell Avenue Pump Station (BAPS) has had issues related to overflows during heavy precipitation events. BAPS is presently under construction to increase the wet well storage and pumping capacity. Once the construction is completed the BAPS will be capable of pumping 700 to 1200 gpm.

The peak daily flows recorded at BAPS are summarized below:

Peak Daily Flow Recorded at BAPS in 2013/2014 without Canyon Ranch pumping station flows going to BAPS:

Daily Flow Recorded	824,800 gpd
Average Daily Flow	572 gpm

Peak Daily Flow Recorded at BAPS in 2011 with Canyon Ranch pump station flows going to BAPS:

Daily Flow Recorded	1,109,000 gpd
Average Daily Flow	770 gpm

It should be noted that the sewershed for BAPS has infiltration and inflow issues that result in higher peak flows than noted above. No new connections should be made to BAPS until the pump station construction is complete and more capacity at the pump station is available.

As demonstrated above, BAPS has sufficient capacity to accept and pump the additional 28 gallons per minute once the pump station is upgraded. It should be noted that the above evaluation is based on pumped flows from Canyon Ranch being directed to the sewer interceptor that flows by gravity to the WWTF and not to the BAPS.

Crystal Street Wastewater Treatment Facility (WWTF) Assessment

The WWTF is permitted for an annual average daily flow of 1,190,000 gallons per day or 1.19 MGD for average daily flow. The WWTF is designed for a capacity of 910,000 gallons (0.910 MGD) per day. Based on a review of daily flow records provided by the Town of Lenox from 2010 to 2014 (present) the WWTF average daily flow during this period is 660,000 gallons per day. The WWTF does experience high flows during rain events. The proposed project is replacing a old 6-inch vitrified clay (VC) pipe, which will remove infiltration and inflow from the existing sewer collection system.

The WWTF has sufficient capacity to accept the additional flow of 16,010 gallons per day from Elm Court Estate.

Summary

The proposed sewer connection from Elm Court Estate is estimated at 16,010 gallons per day with a peak pumping rate of 28 gallons per minute. Based on the review of available information there is available capacity within the sewer collection, pumping and treatment systems to accept these additional flows, with the following considerations:

1. The proposed pumping station should have the ability to collect flow information on influent flow to the pump station at 15 minute increments and the total flow pumped each day. If any storage system is utilized the measurements for flow will be taken either prior to the storage tank(s) or will take into account the storage utilized.
2. Prior to connection to the Lenox sewer collection system building inspections of existing and new buildings must be completed to verify no roof drains, yard drains, cellar drains, footings drains, sump pumps or other such facilities are connected. A letter must be submitted to the Town of Lenox with the date of the inspection and the associated result of the inspection.

3. The sewer pipeline and manholes from sanitary sewer manhole 74 to sanitary sewer manhole 40 are replaced as part of the project.
4. All components of the sewer collection system to be installed or used must be tested to verify they will not allow infiltration or inflow into the Lenox sewer collection system.
5. The total flow from the proposed connection should have a pumping rate no greater than 28 gallons per minute and have an average daily flow not exceeding 16,010 gallons per day.
6. The connection cannot be completed until the BAPs construction is completed. Construction is on-going and expected to be completed in 2015.

We appreciate the opportunity to be of service to the Town of Lenox. If you have any questions or need additional information please feel free to give me a call at 860-513-1473.

Very truly yours,



Daniel Lawrence, P.E.
Project Manager/Senior Associate
Weston & Sampson Engineers, Inc.

TECHNICAL MEMORANDUM

TO: Sean Vandeusen, Chris Ketchum
FROM: Chris Wester, P.E.
DATE: November 18, 2014
SUBJECT: Elm Court Utility Review

Sean / Chris:

Per your request, Weston & Sampson Engineers, Inc. (Weston & Sampson) has examined the information provided regarding the proposed expansions of the Elm Court facility, and we provide herein our observations and suggestions regarding the developer's request to service the site via the Town's drinking water and wastewater systems.

Our understanding is that the site developers are requesting permission to connect to the Lenox water and wastewater systems. Information provided by the Town indicates that the envisioned development will include:

- 112-Room Hotel / Resort
- 60-Seat Restaurant
- Day Spa
- Three 3-Bedroom Homes
- Total Wastewater Flow of 16,010 gallons per day (Title 5 basis)

The developers have proposed the following utility improvements to support the expansion:

- On-Site Sanitary Sewer Pumping Station (28 gpm capacity)
- Sanitary Sewer Forcemain from Site to existing Lenox Manhole 74
- Replacement of Existing Clay Sanitary Sewer from MH 74 to MH 40.

In September of 2014, Weston & Sampson reviewed these proposed improvements, and found that the sewer collection, pumping, and treatment system provide sufficient capacity to accept the flows as proposed. In addition to this finding, the September 2014 report also made several recommendations related to the collection of flow data from the pumping station, verification of clean flow removal from site facilities, replacement of sanitary sewer piping, limitations of proposed pumping rates, and schedule requirements for the proposed connection of flows.

In addition, the developer has requested that the site's drinking water be provided via the Town's water system. Review of existing documentation and recent reports indicates that the water main currently fronting the site consists of a 123-year old 6-inch cast iron main. This main has been a



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concern for the Town as described in the 2005 Hydraulic Modeling Study of the Lenox Water Distribution System, which states, "Of particular concern are the cast iron water mains along Old Stockbridge Road (6-inch) and New Lenox Road (8-inch), which have been in service for over 75 years." Based on this information, it is apparent that an increased demand in the Old Stockbridge Road system will require upgrades in order to support the higher flows, especially if fire flow capacity is required.

In conclusion, Weston & Sampson has reviewed the proposed utility needs required to support the development of the Elm Court facility, and finds that the proposed wastewater flows and domestic water demand can be supported within the overall systems, following the completion of upgrades as noted.

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STOCKBRIDGE, MASSACHUSETTS
NOTICE OF DECISION

BOARD OF SELECTMEN

(To be mailed forthwith to the petitioner, abutters, and owners of land within 300 feet of the property line, the Planning Board, Building Inspector, Board of Health, and the Planning Boards of every abutting municipality and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent, as provided in Section 15, Chapter 40A as amended.)

APPLICANT: Front Yard, LLC

DATE: September 8, 2014

AFFECTED: 310 Old Stockbridge Road
Stockbridge, MA

REFERRING to the above application for property of Front Yard, LLC. Located at 310 Old Stockbridge Road. The applicant is requesting authorization, pursuant to Section 6.3 and Section 6.6, Cottage Era Adaptive Reuse or Rehabilitation of the Zoning Bylaws. Property is located in the R4 Zone.

At a public hearing on June 23, 2014 the Board of Selectmen continued the hearing to August 4, 2014 at which time it was again continued to September 8, 2014. At the public hearing held on September 8th the Board of Selectmen unanimously approved the issuance of a special permit and findings and special conditions incorporated therein.

The decision of the Board together with detailed record of its proceedings stating the reasons for the decision shall be filed within 14 days after hearing in the Office of the Town Clerk.

IMPORTANT:

Any appeal from the decision of the Board of Selectmen can be made pursuant to Section 17, Chapter 40A (G.L.) as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

BOARD OF SELECTMEN


Charles R. Gillett, Clerk

Elm Court Proposed findings

With respect to Zoning By-Law 6.6.4 we find as follow:

- A. ~~The property qualifies as a Cottage Era Estate as defined in Section 2.2 of the~~ Zoning By-Law. It is situated on approximately 90 contiguous acres, is located in the R-4 Zoning District, and has a principal one family dwelling dating from "America's Gilded Age" constructed in 1886.
- B. The lot on which the project is to be located satisfies the requirements of Section 6.6.4(b) of the By-Law
- C. No new structures will be constructed in violation of Section 6.6.4(c) of the By-Law.
- D. The proposed use will alter existing buildings, structures or grounds to the least extent practicable. The Cottage is to be restored, the grounds preserved, and the new hotel wing is to be located in a wooded area leaving the adjacent meadow land and views generally unaffected.
- E. The distinguishing original qualities and character of the principal building, the Cottage, will not be destroyed. The project will enable the restoration and renovation of the Cottage to occur in furtherance of the purpose of Section 6.6.4 of the By-Law.
- F. No historic material or distinctive architectural features of the Cottage will be removed or altered.
- G. Deteriorated architectural features of the Cottage will be repaired rather than be replaced.
- H. There is no proposal before this Board to replace missing architectural features.
- I. All off street parking is screened, located at locations of least visual impact on neighbors and abutting streets. The Stockbridge Conservation Commission is to consider an amendment to the development plans regarding the location of a parking area regarding Scenic Mountain Act compliance and thus this Special Permit is subject to approval of the amended plans by the Commission.
- J. No new detached structures will be erected within 200 feet of the Cottage. The hotel wing to be constructed is to be connected to the Cottage by a bridge. The spa building is to be connected directly to the Cottage and to the bridge to the hotel wing.
- K. The requirements of Section 6.6.4(k) with respect to outdoor lighting have been met. The edge of the lamp shields are below the light source; direct radiation from the light source is confined within the boundaries of the property and is prevented from escaping toward the sky; and no high intensity lighting will be used.
- L. There will be no outside broadcasting of amplified sound, including from under tents or other temporary structures and there shall be no outdoor music, fireworks or other similar outdoor noise after 10pm. All outdoor music shall otherwise comply with Town By-Laws relating thereto and fireworks shall be permitted only by approval of the Town.

- M. The proposed uses of the property meet all applicable standards set forth in this By-Law.
 - N. The project meets the definition of "resort" as defined in the By-Law;
 - O. The project satisfies the dimensional requirements of Section 6.6.3(d) of the By-Law in that 1. The height of 50 feet and four stories is permitted for a structure, the hotel wing, at a distance of 250 feet or more from the nearest lot line; 2. The hotel wing is permitted as it is connected by the connecting corridor to the Cottage; 3. The hotel wing does not exceed the highest elevation of the Cottage; 4. The height of one structure, i.e., the hotel wing, does not exceed 50 feet; 5. The gross square footage of the hotel wing and the connecting corridor do not exceed the gross floor area of the Cottage as it existed on May 20, 2002. According to the records of the Assessor the Cottage contains 53,538 square feet and according to the plans submitted by the applicant the hotel wing and connecting corridor contain 52,630 square feet or 931 square feet less than the Cottage.
2. Findings under Section 6.3.6 of the By-law:
- A. The proposed use is in compliance with all provisions and requirements of the Zoning By-Law and is in harmony with their general intent and purpose.
 - B. The proposed use is desirable to the public convenience or welfare in that the proposed addition of a hotel wing and connecting corridor with a separate spa structure will lead to a preservation of a significant cultural and architectural asset of the Town. The project will generate new jobs, room and real estate taxes which will inure to the benefit of the Town and its residents.
 - C. The proposed adaptive reuse of the property will not be detrimental to adjacent uses or to the established or future character of the neighborhood. The new construction will be located so as to minimize visual impacts. No neighbors will see the hotel wing addition from existing homes nor will passersby from the street or be visible from the Stockbridge Bowl. The reuse of this property will prevent further deterioration from occurring which would in the absence of renovation result in a public nuisance. The traffic studies make it clear that traffic impacts are negligible and that the levels of service at driveways, intersections will not decrease.
 - D. There will be no traffic congestion nor adverse impacts on pedestrian safety as established by the traffic studies referred to above. Parking requirements have been met with the required minimum off street parking spaces. Parking has been sited to the rear of the Cottage in locations which minimize visual impacts on neighboring properties and Old Stockbridge Road to the East. Site lines from the principal entrance to the property are clear and not impacted by construction. The applicant in response to claims of impacts to pedestrian safety has agreed to construct a sidewalk from the Elm Court property to the intersection of Hawthorne St. and Old Stockbridge Road.
 - E. The proposed additions and renovations to the Cottage will not overload public water supplies, drainage or sewer systems in the Town nor will the reuse of the property for a hotel/spa be subject to hazards affecting public health, safety or the general welfare. We are aware of the need for a sewer

connection permit from the Town of Lenox, the absence of which will prevent the issuance of a certificate of occupancy.

- F. The construction of the proposed facility will not be in greater nonconformity with open space, yard, height and off-street parking requirements or any other requirement of the Zoning By-law. We note that this project has been designed to contain water discharge emanating from the creation of new impervious surface and as will be noted in special conditions which follow those systems must be fully functional before a certificate of occupancy is issued.

3. Special Conditions:

- A. The findings made above are to be considered as conditions to the Special Permit and any violation of them, or modification made to the plans submitted by the Applicant or the construction of any structures not shown on the plans or any deviation therefrom shall be considered a violation of the Special Permit granted.
- B. A construction schedule shall be submitted to the Board of Selectmen and to the Building Inspector for review and approval which shall comply with the provisions of 6.3.8.1 of the bylaw. No construction or deliveries of materials or equipment shall take place prior to 7a.m. nor after 5p.m. . No work shall be undertaken on weekends or on National Holidays.
- C. Except as set forth in Paragraph D below, a certificate of occupancy may not be issued until all construction has been completed and is in compliance with this Special Permit. The Board of Selectmen shall be provided with a certification from the project architect that construction of the improvements to the Cottage have been completed in accordance with the plans filed with this Board and a certification from a Civil Engineer shall also be provided to the Board of Selectmen that all site improvements have been completed and that all drainage facilities are completed in accordance with the plans.
- D. In the event that the Town Of Lenox shall permit construction of a sidewalk in the Lenox Right of Way of Old Stockbridge Road, the applicant shall construct this sidewalk not later than two years following receipt of approval for such construction.
- E. If following completion of construction and installation of the planting at parking lot D, the parking lot and/or lighting is still visible to neighboring properties additional screening will be planted.