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OCT 03 2016  
PERMITTING

September 29, 2016

Westford Board of Selectmen  
Town of Westford  
55 Main Street  
Westford, MA 01886

RE: Westford Gateway, LLC/66-68 Boston Road, Westford

Dear Town Manager Ross and members of the Board of Selectmen:

Please accept this letter in response to the discussions held at the September 27<sup>th</sup> Selectmen's meeting in anticipation of the Board seeking a second legal opinion regarding the Town's ability to amend APR 3. At that meeting our client asked the Selectmen to remove the Article regarding the amendment to APR 3 from the Warrant. Our client would like the opportunity to review and revise his proposal, investigate alternatives and examine the more closely the issues contained in the recent letter from the Commissioner of the Massachusetts Department of Agricultural Resources.

Over the months, Mr. Masalehdan and I, and other members of his team, have spent many nights attending Selectmen's meetings and meetings of the Task Force. We have periodically responded in writing to some of the more salient questions that have been raised from time to time. I hope the Board and the Task Force have found our client to be polite and patient starting from your initial discussions with him last year and throughout all of the meetings to the present. He purchased the property in accordance with his agreement with the Selectmen and spent considerable time and money cleaning up the site and working on the planning process, and he will continue to spend money on the property. We appreciate the dedication of the members of the Board and the Task Force, all of whom have spent a great deal of time and energy trying to find the best way to revive the Boston Road parcels. We hope those efforts have not been in vain.

**With this letter, we respectfully request that the Board table further discussions regarding the pursuit of a second opinion. We would like the opportunity to review the applicable laws and regulations and determine if there are alternative proposals that would more precisely fit into the intent and purpose of the APR and the desires of the community. We feel that seeking a second opinion now, knowing that the proposal may change significantly in the near future, would be counterproductive.**

Our client is not giving up on finding an appropriate, but economically viable use, of the property. Some of the reasons that he remains optimistic include:

1. The Town Meeting Article was defeated at Town Meeting by five (5) votes. A swing of three (3) voters would have changed the outcome. More recently our client submitted a petition signed by over 100 Westford voters. Obviously there are many residents who support the concept.
2. Westford's Town Counsel in his letter of June 13, 2016, further supplemented by the question and answer session held on June 28, 2016, opined that the Town has the authority to make certain amendments to APR 3. His is the only legal opinion provided to the Town of Westford by an attorney engaged by the Town with professional and ethical obligations to the Town. We intend to perform additional legal research, and we remain optimistic because of our collective respect for Town Counsel and his firm.
3. APR #3 is a unique document. The "Retained Rights" provisions alone allows "the maintenance of the existing farmstand country store building and the continuation of the present use thereof [and] the maintenance of three existing hoop greenhouses and the use thereof as greenhouses." We have not been provided with a definitive description of the uses allowed in the country store. We all have our own memories of the variety of things that were sold at the store in 1999, and the allowed uses may not fit squarely within a definition of "agriculture". Furthermore, as evidenced by the attached historical Google Earth pictures, the APR #3 parcel has been used for a variety of uses that don't seem to fit into the conservative definition of "agriculture".
4. The recent letter from the Commissioner of the Massachusetts Department of Agricultural Resources concludes by saying that "Each proposed amendment must be reviewed by the Department on a case by case basis". Perhaps in the final analysis, if it is established that approval of the MDAR is required, our client's modified plans may satisfy the MDAR.
5. We believe that it is inaccurate to make a broad statement that a restaurant may never be maintained on the property. There is no question that a restaurant is considered to be an "agricultural use" provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been

produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located. For more detail see MGL Chapter 40A Section 3. Any statement that a restaurant can never be an agricultural use is a false statement. There is obvious debate surrounding the size of the restaurant and the menu, but such are details that we would like more time to address.

Thank you for your attention to this matter.

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



Paul F. Alphen, Esquire

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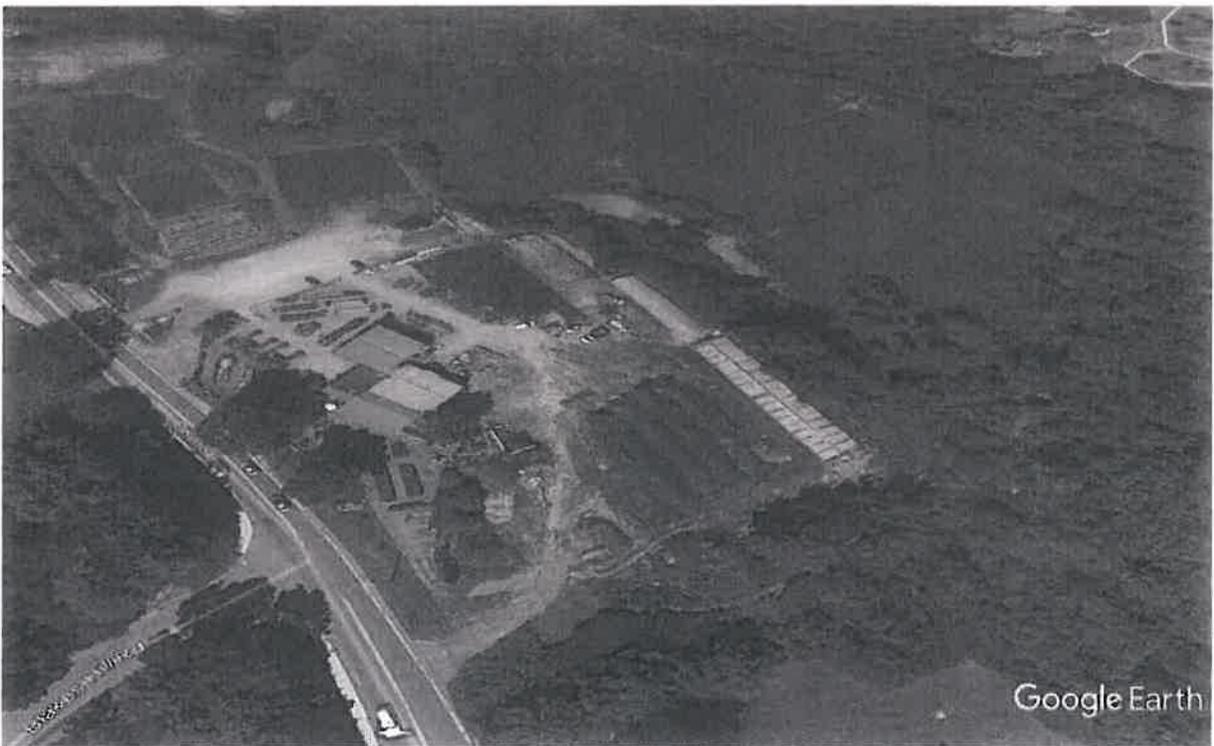
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