

CORCORAN, PECKHAM, HAYES, LEYS & OLAYNACK, P. C.

ATTORNEYS AND COUNSELORS AT LAW

PATRICK O'N. HAYES, JR.  
JOSEPH H. OLAYNACK III  
MATTHEW H. LEYS

43-B MEMORIAL BOULEVARD  
NEWPORT, R. I. 02840  
TELEPHONE 401-847-0872  
FAX 401-847-5810  
www.cphnpt.com

SENIOR COUNSEL  
EDWARD B. CORCORAN  
WILLIAM W. CORCORAN

OF COUNSEL  
WILLIAM J. CORCORAN

July 7, 2021

Chairman Paul A. Croce  
and Members of the Town of Middletown Planning Board  
c/o Ronald Wolanski  
350 East Main Road  
Middletown, RI 02842

Re: Application of Horan Building Company; 208 Howland Avenue,  
TAP 129, Lot 53 ("the Howland Farm Property").

Dear Chairman Croce and Members of the Planning Board:

As you know the above referenced application has been remanded to the Planning Board for a rehearing following the decision of the Zoning Board, sitting as the Board of Review, dated June 9, 2021.

We understand that the application will be on the Planning Board agenda on July 14, 2021 for scheduling purposes only. We wish to address an issue that we believe should be considered before this matter is scheduled for a hearing.

In particular, at the prior hearing, the Planning Board debated whether the applicant was required to demonstrate the number of lots that could be developed in a conventional subdivision taking into account all of the subject property's land development constraints pursuant to Article 3, §302(E) of the Subdivision Regulations. With respect to this issue, the Zoning Board was clear that the applicant was required to do so and that the applicant could only meet its burden by submitting a new more detailed conventional subdivision plan. Specifically, the Zoning Board wrote that:

"An applicant's conventional plan must show that viable conventional lots can be created despite land development constraints. To do this, the plan must depict the relevant constraints. These constraints could be things such as: i.) the need for septic and wells properly spaced apart from each other and from wetland features; ii) how dramatic changes in grade will be handled; a iii) that setbacks frontage and other dimensional requirements are met, etc..

On Remand, the Planning Board should ensure that the Applicant meets this requirement. The Applicant submitted a conventional plan that did not include a depiction of the various land development constraints related to the subject parcel. The conservation plan shows possible location of wells, septic facilities, residences, and some wetland features. Without this same information on the conventional plan, it is impossible for the Planning Board to determine if the ‘lots as depicted on the conventional plan are capable of supporting the proposed development.’ Art. 3, §302(E). Consequently, the Planning Board needs this information to determine how many lots should be allowed in a conservation subdivision....

This matter is remanded to the Planning Board with instructions that the Applicant resubmit the Application with the additional information regarding land development constraints on the conventional plan.” Zoning Board decision, 6/9/21, pg. 6-7.

Accordingly, before this matter is scheduled for a re-hearing, the applicant must submit one or more new plans with the required information. As the determination of developability and the existence and effect of land development constraints will involve technical engineering considerations, the newly-submitted plans should be referred to the Technical Review Committee (TRC) for review with the aid of the Town’s consulting engineers, Crossman Engineering, before the Planning Board considers the application again.

Because there is substantial work to be done before the matter is ready for rehearing, we believe it would be premature to schedule the application for Master Plan consideration until the applicant complies with the Zoning Board’s decision as quoted in part above.

Once it is determined how many conventional lots could be developed given any land development constraints, other appropriate issues can be considered by the Planning Board. For example, because the Howland Farm Property is one of the character-defining, historic agricultural landscapes of Middletown, the number of lots should be reduced far below what has been requested by the applicant to conform the application to the Comprehensive Plan. The Zoning Board decision correctly stated that the Planning Board can take such issues into consideration and given the recognized unique nature of the Property and surrounding area, the Planning Board should do so.<sup>1</sup>

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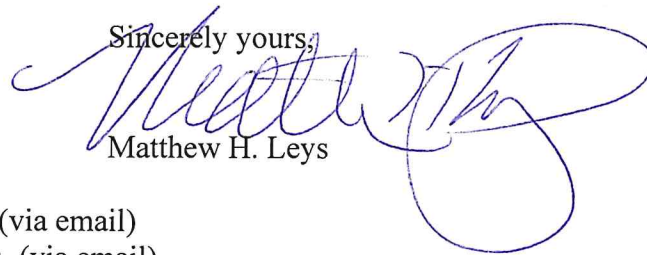
<sup>1</sup> See Zoning Board decision, 6/9/21, pgs. 3-4. The Zoning Board found that the “Planning Board can approve the Master Plan with changes or conditions, including approving it with a reduction in the number of lots allowed.” In making this determination, the Planning Board must consider the criteria in Section 404 of the Subdivision Regulations (“Required Findings”), including without limitation, conformity with the Comprehensive Plan. *Id.* at pg. 4.

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Thank you for your consideration.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Matthew H. Leys", with a large, stylized flourish at the end.

Matthew H. Leys

cc: Jeremiah C. Lynch, III, Esq. (via email)  
Stephen J. MacGillivray, Esq. (via email)  
Girard A. Galvin, Esq. (via email)