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Admitted in: RI, MA, NY

August 13, 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:

We are writing on behalf of the objectors because we are confused by the Applicant’s apparent intention to proceed on August 17, 2021 without first resubmitting its application as directed by the Zoning Board of Appeals. We also want to direct the Planning Board’s to the law that governs its role and duties on remand and, when applied to this case, prevent the Planning Board from going forward without first receiving the resubmitted application.

R.I. Gen. Laws § 45-23-70(c) states that “[i]n the instance where the board of appeal overturns a decision of the planning board ... the proposed project application is remanded to the planning board ... for further proceedings before the planning board ... *which shall be consistent with the board of appeal’s decision.*¹ Put another way, the Planning Board has no discretion as to whether it must act in accordance with the Zoning Board of Appeals’ decision.

In its unanimous decision, Zoning Board of Appeals directed that:

1. The Applicant must “resubmit the Application with additional information regarding land development constraints on the conventional plan” (p. 7);
2. The Planning Board must “ensure” that the Applicant resubmits the conventional plan with additional information so that the Planning Board can make the requisite Master Plan stage finding that “lots as depicted on the conventional plan are capable of supporting the proposed development” (p. 6);

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3. The Planning Board must rehear the matter once it has the new information (p. 8);
4. The Planning Board must consider fewer lots than the Applicant seeks (p. 8); and,
5. The Planning Board must correct certain other the “enumerated” errors (p. 8).

Before the Zoning Board of Appeals, the Applicant and the Solicitor (on behalf of the Planning Board) argued that additional information was not required at the Master Plan stage and, therefore, remand was unnecessary. The Zoning Board of Appeals did not agree with them and issued the decision outlined above. If they felt that the decision was erroneous, the Applicant and Solicitor had the right to appeal to the superior court. *See* R.I.Gen. Laws § 45-24-69. They chose not to. Failing to appeal, the law is clear that they are now bound by the decision of the Zoning Board of Appeals. *See Town of Richmond v. Wawaloam Reservation, Inc.*, 850 A.2d 924, 933 (R.I. 2004); *see also Department of Corrections v. Tucker*, 657 A.2d 546, 550 (R.I. 1995) (“the decision of the board was not appealed, it became a final decision and was binding on both [parties].”).

For these reasons, the Planning Board cannot proceed on the application until it receives a resubmitted application with the additional information as directed by the Zoning Board of Appeals. If the Planning Board proceeds without first requiring resubmission, the objectors will reserve their rights and seek appropriate legal and equitable remedies.

Sincerely,



Stephen J. MacGillivray

Cc: Jeremiah C. Lynch, III, Esq.
Girard A. Galvin, Esq.
Matthew H. Leys, Esq.

¹ Middletown Ordinance Section 319(E) states that “[t]he standards of review for a Planning Board appeal shall be as required by R.I. Gen. Laws § 45-23-70.”