

February 28, 2022

Glenn R. Clancy
Community Development – Building Division
Director, Inspector of Buildings
19 Moore Street
Belmont, MA 02478

Re: McLean Hospital – Upham Bowl Storm Water Detention Improvements
Request for Zoning Enforcement

Dear Mr. Clancy,

This letter is in follow-up to our e-mail correspondence of 3 and 4 February 2022 regarding stormwater issues at the McLean Hospital Campus and our adjacent property at Woodlands II. As discussed, the Belmont Planning Board has taken a narrow view in their review of the site plan for the McLean District Zone 3 Overlay District with respect to the stormwater management. In particular, the consideration was limited to within Zone 3 exclusively and did not consider the documented deficiencies in the adjacent zones brought to their attention during the public comment period. Thus, the trustees of the Woodlands at Belmont Hill II Condominium Trust ("Woodlands II") are herewith requesting that the Town consider the issuance of a Zoning Enforcement Order to McLean Hospital for failing to adequately design and install certain necessary stormwater measures required by the Zoning By-Law Section 6A, and subsequent Site Plan Approval, and for failure to comply with certain stormwater regulations required by the DEP Stormwater Management Standards.

ZONING BACKGROUND/ENTITLEMENT

The Town of Belmont Zoning By-Law Section 6A. – **McLean District**, adopted by Special Town Meeting in 1999 established the framework for privatization and redevelopment of certain portions of the McLean Campus. Subsection "6A.4 Design and Site Plan Review" establishes requirements for site plan submittal and review relative to the Campus redevelopment and establishes the requirements relative thereto. Subsection "6A.5 Stormwater Management Facilities" similarly establishes standards and requirements relative to stormwater design and management for the various development zones of the Campus.

On 03 December 2001 after a lengthy submittal and approval process the ARC – Belmont Campus Senior Living Housing Development Project was approved by the Belmont Planning Board (ARC-Approval). While it has been argued by the Office of Community Development and the Planning Board that this Approval is applicable only to Zone 3 and was abandoned, and is no longer in force, we do not support that thinking and believe that making this conclusion is unsubstantiated. The submittal materials and subsequent review included components of the greater development outside of the limited footprint of Zone 3; specifically the submitted plans included, the design of Olmsted Drive including the intersection with Pleasant Street, and the section of Olmsted Drive within Zone 4, and all of the related

infrastructure within and adjacent to the private roadway; including but not limited to, walkways, stormwater drainage, domestic water distribution, electrical power, natural gas distribution, roadway lighting, communication, and sewer services, all of which are required elements of the Site Plan Approval described in the Zoning By-Law. The submittal also included graphic design (drawings) as well as hydraulic calculations demonstrating conformance with the Massachusetts Stormwater Handbook Volume 1.

In a recent letter addressed to Mr. Robert Eckert, 68 South Cottage Road, Belmont, MA 02478 dated February 11, 2022 you stated;

"The American Retirement Corporation Site Plan was never acted on. The project was never built and therefore any conditions associated with the project are no longer valid."

Having conducted extensive research including multiple "requests for public information", we are unaware of any other submitted Site Plan Review that address the design and construction of Olmsted Drive, its infrastructure and more specifically its stormwater drainage system. Therefore, our opinion is that the ARC – Site Plan Approval dated 03 December 2001 is the only relevant Planning Board approval that could grant the authority to construct Olmsted Drive and its related infrastructure which includes the stormwater management system. As such all conditions of the approval were in force at the time Olmsted Drive was constructed and remain in force today. As far as we are aware there are no 'self-termination' provisions within the Zoning By-Law, or expiration periods established by the Site Plan Review. Based on the preceding information we believe the Hospital as Owner of the land has full benefit of the original approval as granted, as well as conformance responsibility related thereto.

UPHAM BOWL – STORMWATER MANAGEMENT REQUIREMENT

In the memorandum from Sharon Raymond dated September 4, 2001, of Fay, Spofford & Thorndike, the Engineering firm hired by the Town of Belmont to conduct the stormwater management peer review, to Kenneth J. Buckland, AICP, of The Cecil Group the Town's Technical Consultant Review Team Leader, Exhibit B of the ARC-Approval, states:

"The stormwater management system for the ARC site and access driveway incorporates a proposed modification of the Upham Bowl area by the Hospital to provide detention of stormwater runoff from Hospital property. The proposed use of the Upham Bowl for detention will help to alleviate an existing problem caused by uncontrolled runoff from the Hospital property at the intersection of Trapelo Road and Pleasant Street. Although not part of Zone 3, the Upham Bowl detention area is an integral part of the overall stormwater management system and the construction of these facilities need to be implement concurrent or prior to the access road. The design of Upham Bowl detention basin is complete with the exception of a detailed final design drawing that should be provided prior to construction."

On September 05, 2001, Kenneth J. Buckland, AICP the Team Leader for The Cecil Group, the Town's Technical Consultant Team, conveyed their Final Report with draft recommendations to Mr. Timothy Higgins, Town of Belmont, Office of Community Development the following was conveyed in its draft findings Section f § (d) (misabeled c):

"The stormwater design is found to be acceptable according to current engineering practice. The stormwater management plan is predicated on construction of a management system in and for the McLean Hospital subdistrict. Based on the consultants team review, it is recommended that the Planning Board find the design acceptable to this standard."

The 03 December 2001 ACR -Approval memorializes the requirement from Fay, Spofford & Thorndike's Peer Review memorandum of September 04, 2001, and the correspondence from the Cecil Group in its findings, Section f § (d):

"There was coordination in the drainage designs between development Zones to keep storm water in its respective watershed. However, each Zone generally has its own, independent drainage system and large structures were avoided wherever possible and practical. The plans were modified in response to concerns expressed with the proposed drainage from the Upham Bowl area. (The Upham Bowl drainage will be addressed in a separate Agreement between the Town and McLean.) The Board's consulting team stated that this requirement has been adhered to and recommended approval of the storm water management system (Exhibit "B").

Based on the preceding referenced documents we believe there is a clear zoning requirement for the construction of a Stormwater Detention System in Upham Bowl and that its construction was required to be precedent to or concurrent with the construction of Olmsted Drive. We also believe that without this system installed as anticipated, the post-development peak offsite stormwater runoff will exceed the pre-development values and violate DEP design standards.

Construction of Olmsted Drive – 2005-2006 Correspondence

On August 10, 2005, then again October 7, 2005, Vanasse Hangen Brustlin, Inc. (VHB) representing McLean Hospital sent you letters informing you that McLean Hospital was "moving ahead" with plans to construct Olmsted Drive and related infrastructure (attachments A & B). The assertion and statement in the letters are that the work to construct Olmsted Drive was proceeding in compliance with the Zoning By-Law (6A), and Site Plan Approval:

"“Design & Site Plan Approval for the ARC Belmont Campus Senior Living Housing Development @ McLean District, Belmont, MA”, as granted by the Belmont Planning Board and filed on December 3, 2001, with regards to Conditions, as these might apply to the proposed construction of Olmsted Drive."

Additionally on October 07, 2005, VHB submitted a memorandum to the Office of Community Development with hydraulic calculations (Attachment C), the conveying memo states that the temporary condition being created by the construction of Olmsted Drive would only increase impervious surface by .57 acres and proposed temporary measures to address the interim condition additional stormwater.

After the submittal of the above referenced letters VHB proceeded with development of construction documents for the roadway work. The Drawings titled "Construction Documents" with a revision date of January 18, 2006, appear to be the plans that Olmsted Drive was permitted under through the Office of Community Development. Drawing C-5 the Utility Plan indicates the Stormwater and other utilities, CB

B4 is indicated in the top right-hand corner of the drawing which contains the note "SEE UPHAMS BOWL DETENTION BASIS PLANS BY OTHERS". (Attachment D).

Non-Compliance / Potential Violations of Site Plan Approval Conditions

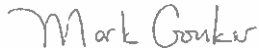
We believe the following items required by the Olmsted Drive Construction Documents and/or the Site Plan Approval or the By-Law itself are not in compliance:

- On Drawing C-4 (Attachment E) the area highlighted as "Remove Existing Pavement Loam & Seed", also the area indicated as "Truck Tire Washing Facility", indicates the removal of the previously existing Central Street and parking area from the MRI Facility to Olmsted Drive and a new sidewalk alignment. The removal of these two sections of previously installed impermeable surfaces were necessary support work to arrive at the .57 Acres of new impervious surface which the interim stormwater design calculations were based (Attachment C). This contributes to an increase in the post-development peak stormwater discharge rate, a violation of the Massachusetts Stormwater Management Standards, and a violation of the Site Plan Approval Conditions.
- On the attached blow-up of Drawing C-5 (Attachment D) Catch Basin CB-B4 is indicated adjacent to an area designated by the note "SEE UPHAMS BOWL DETENTION BASIS PLANS BY OTHERS", the plan clearly shows contours indicating a detention basin with an approximate six to eight foot depth, which would allow for a significant amount of stormwater detention, contrary to the zoning approvals and the design intent on the Construction Documents catch basin CB-B4 was installed at an existing low point in in Upham Bowl. This contributes to an increase in the post-development peak stormwater discharge rate, and most likely exceeds the capacity of Stormwater Structure 11 which design relies on the upgradient detention of the Upham Bowl discharge to address Zone 5 stormwater. As far as we are aware the Town has not been able to produce any documents indicating that the Upham Bowl stormwater receives any treatment to meet Stormwater Management Standard 4, for removal of Total Suspended Solids prior to discharging into the Town's municipal stormwater system. Along with being violations of the DEP standards these oversights are violations of the Site Plan Approval conditions related to Stormwater Management within each Zone.
- Also, on Drawing C-5 the temporary outfall, FES TEMP4 was not constructed in accordance with the Construction Documents, this section of the stormwater system collects stormwater from upper Olmsted Drive in Zone 4, and without detention conveys the discharge into Zone 3, which is a violation of the By-Law requiring all stormwater being treated within each specific development zone, it also increases post-development flow to the east. This outfall was submitted and approved as a temporary measure however in the currently pending Zone 3 Site Plan Approval this small system is being treated from an engineering standpoint as a pre-existing condition and detention of this outfall is not reflected in the current design.

In summary we are requesting that the Town follow-up on the requirement to have McLean Hospital complete the following (a) design and construct the Upham Bowl Stormwater Detention Improvements, including providing current hydraulic calculations of all flows into Upham Bowl, (inclusive of the outfall adjacent to the Chapel), (b) to complete an engineering review of the Olmsted Drive Stormwater Management System, which should include addressing all of the current 'as-built' connections to the

pipingsystem including but not limited to, (i) Meadows Lane, (ii) South Cottage Road, (iii) Waverly Woods, (iv) Lower Olmsted Drive, and (v) the currently anticipated Zone 3 discharge flows; the objective being to confirm that Structure 11 is adequate to effectively manage all of the flow it receives and that the necessary detention and treatment standard is being met. (c) to remove the paved area between the Hospital's MRI Facility and Olmsted Drive and Construct the walkway consistent with the approved Construction Plans and hydraulic calculations (area to be loamed and seeded), and (d) that the Hospital propose a methodology or condition to address either now or in the future how the Zone 4 temporary discharge will be brought into Zoning conformance.

We feel strongly that construction of the Upham Bowl Detention Improvements are a requirement of the Zoning By-Law, the REA, and the Massachusetts Stormwater Management Standards, which are all applicable. We have not been able to find any evidence that the Town ever received full engineering plans and hydraulic calculations supporting the hydraulic connection of Upham Bowl to the Olmsted Drive stormwater management system. We believe that the delays in the development schedules and the shifting of project phasing has allowed the construction of the Upham Bowl Stormwater Detention Improvements to effectively 'slip through the cracks.' Further, since the Planning Board has conducted a Zone 3 centric site plan review for the current proposed development, a zoning enforcement path is now the appropriate recourse for resolving this issue. Finally, we would like this issue resolved prior to the Construction of Zone 3 proceeding, after which trying to figure out who may have caused what stormwater events or problems will be difficult to unravel and could ultimately land on the financial shoulders of the Owners of Condominiums in Zone 2 & 3 and Waverly Woods.



Mark Gouker
Chair, Board of Trustees
Woodlands at Belmont Hill, II

cc: Scott Rauch, President, McLean Hospital
Lori Etringer, Chief Development Officer, McLean Hospital
Belmont Select Board
Belmont Planning Board
Woodlands at Belmont Hill, II Board of Trustees
John Gahan, Sullivan & Worcester LLP