

December 9, 2020

Via Email

Christian Klein, Chair
Arlington Zoning Board of Appeals
51 Grove Street
Arlington, MA 02476

**RE: ZBA Docket #3515
Thorndike Place, Arlington, MA**

Dear Chairman Klein and Members of the Board,

On behalf of the Applicant, we wish to thank the Board for a thoughtful and focused hearing last evening to discuss matters related to wetlands and floodplain regarding the Thorndike Place 40B project. I am writing today to clarify that certain actions that have been requested or suggested to be undertaken by the BETA Group would exceed the peer review function as set out in the 40B regulations and, as such, are not expenses for which the Applicant is responsible as part of its payment of peer review fees.

Per 760 CMR 56.05(5), when the Board determines that in order to review a comprehensive permit application, it would require technical advice on areas such as civil engineering, transportation, environmental resources and design review, it may employ outside consultants and request the Applicant to provide peer review funds. The 40B regulations impose parameters regarding the allowable uses of peer review funds. Section 56.05(a) generally states that the Board shall not impose “unreasonable or unnecessary time or cost burdens on the Applicant” and that “[l]egal fees for general representation of the Board or other Local Boards shall not be imposed on the Applicant. The regulations, thereafter, more specifically require that:

- (b) A review fee may be imposed only if:
 - 1. the work of the consultant consists of review of studies prepared on behalf of the Applicant, and not of independent studies on behalf of the Board;
 - 2. the work is in connection with the Applicant’s specific Project;
 - 3. all written results and reports are made part of the record before the Board,
 - 4. a review fee may only be imposed in compliance with applicable law and the Board’s rules.

760 CMR 56.05(5)(b) (emphasis added).

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During last night's hearing, John Hession presented the BSC Group's wetlands delineation and detailed how the BSC Group's wetlands scientists concluded that a small area formerly designated as Isolated Vegetated Wetland (IVW) (which is jurisdictional only under the local wetlands bylaw) did not presently qualify as isolated wetland. The BETA Group's Site Peer Review Report #3, dated November 20, 2020, likewise stated that the BSC Group evaluation was accurate.¹

Following discussion and comments presented to the Board by the Conservation Commission's Chair, Ms. Chapnick, the Board requested that BETA Group obtain additional soil samples from the area of the former isolated wetland. Should the Board seek to task the BETA Group to conduct such sampling, we respectfully remind the Board that such work is beyond the role of peer review, as it does not involve review of studies prepared by the Applicant, but instead is an independent study. Per 760 CMR 56.05(5)(b), such work is not review of a study and therefore the Applicant cannot be requested to fund such work.

On a similar vein, with reference to the written comments submitted by the Conservation Commission to the Board, the Commission recommended certain actions be undertaken by the BETA Group which likewise exceed the function of peer review. Specifically, with respect to the floodplain and compensatory storage, the Commission recommended that the BETA Group: "evaluate the efficiency of the proposed compensatory flood storage location(s) to act as flood mitigation in the future, taking into consideration potential climate change impacts..." and that the BETA Group "consider climate change impacts, in concert with BSC and in consideration of data available for Arlington in the Massachusetts Coastal Flood Risk Model... and information generated by Cambridge's Climate Change Vulnerability Assessment to propose even more robust mitigation..." See Conservation Commission letter, dated November 20, 2020, p.3 (Action Items 3 and 5). Further, with respect to the Commission's written comments on stormwater management, the Commission recommended that BETA Group "consider climate change flooding impacts using NOAA+ and NOAA++ precipitation rates to be resilient/protective for future extreme storms..." See Conservation Commission letter, dated November 20, 2020, p.5 (Action Item 4). Similar to the request for the BETA Group to undertake independent soil samples, the above-referenced action items suggested by the Commission to be undertaken by the BETA Group are beyond the role of peer review.

¹ The BETA Group's Site Peer Review #2 Report, dated November 2, 2020 states in pertinent part: "[d]uring the site visit BETA confirmed the wetland boundaries were field delineated in accordance with the definition and methods approved in the MA DEP Delineating Bordering Vegetated Wetlands Handbook (March 1995). BETA found BSC's evaluation of the previously delineated isolated wetlands, presented on the 2006 ANRAD Plan as Wetlands F, G, H and I, to be accurate in that the areas did not demonstrate a predominance of wetland vegetation or other indicators of hydrology." BETA Site Peer Review #2, p. 6 of 8. BETA Group's wetlands scientist made reference during her presentation last evening as to standing water possibly in the area of the former isolated wetland, but the BETA report does not indicate that a BETA consultant had first hand knowledge of the existence or characteristic of such standing water.

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Should the Board desire to engage the BETA Group to perform independent investigations with respect to the area formerly shown as IVW and/or to undertake the above actions suggested by the Conservation Commission, such services would be at the expense of the Town and are not peer review costs for which the Applicant is responsible. To ensure that record keeping is appropriately maintained, I would respectfully reiterate the Applicant's request for copies of all contracts entered into with the BETA Group as well as detailed invoices for all work performed to date as well as the future.

The Applicant looks forward to continuing the public hearing process with the Board. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

/s/ Stephanie A. Kiefer

Stephanie A. Kiefer

cc: Marta Nover, BETA Group
Paul Haverty, Esq.
Jenny Raitt, Director of Planning and Community Development