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OFFICE OF THE  
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September 9, 2005

Kelli E. Gunagan, Esq.  
Assistant Attorney General  
Office of the Attorney General  
1350 Main Street  
Springfield, MA 01103

Re: Town of Framingham Zoning By-Law Amendments  
Adopted at Special Town Meeting on August 3, 2005

Dear Ms. Gunagan:

Enclosed for your consideration, please find a copy of a letter dated August 11, 2005 from the Building Commissioner for the Town of Framingham confirming the very fear voiced in my letter to you dated August 25, 2005 with respect to the August 3, 2005 Framingham by-law amendment currently under consideration by your office. Our client, South Middlesex Non-Profit Housing Corporation ("SMNPHC"), a non-profit, educational corporation protected by the Dover Amendment, applied to the Town of Framingham for a change of use building permit. As you can see in paragraph no. 2 of the Building Commissioner's letter, the Building Commissioner has determined that under the new by-law, SMNPHC must undergo site plan review despite its educational mission.

I also enclose a copy of our response to the Building Commissioner's letter. I draw your attention especially to the portion of our letter highlighted starting at the bottom of page 4 where we asked specifically for the basis of the determination that site plan review is required and the identity of the specific portions of the site plan review by-laws which the Town believed were applicable to the project. As you will note, the by-law amendment does not specify whether all or only certain portions of site plan review apply to Dover Amendment protected projects, assuming, *arguendo*, that any application of the site plan review requirements can be applied to projects such as this one. The by-law amendment before you is fatally flawed because it does not offer any standard for how Site Plan Review applies to a Dover Amendment protected use. The Building Commissioner's letter underscores this issue. Our client does not know which section of this expansive Site Plan Review procedure will be applied to its proposed educational use and the Building Commissioner can offer no guidance because the by-law is without any standards for the dimensional scrutiny that might be permissible under the Dover Amendment. Our client cannot look to the by-law for guidance on what to submit in its application or which of the five impact assessments are required. While there is a provision requiring the Building Commissioner to advise an applicant as to the "pertinent sections of the

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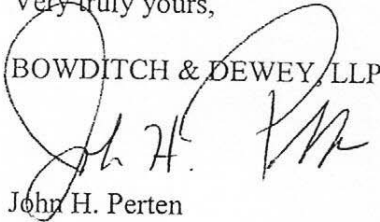
by-law", there is nothing in the by-law itself which would offer the Commissioner any guidance in making such determination. Unfortunately, to date we have received no clarification from the Building Commissioner.

It is our position that application of the August 3, 2005 by-law amendment to mandate site plan review on a Dover Amendment protected project is impermissible and the position of the Building Commissioner on the SMNPHC project is a graphic example of why the Attorney General should disapprove the by-law.

Thank you for your continued consideration.

Very truly yours,

BOWDITCH & DEWEY, LLP

  
John H. Perten

JHP/

Enclosure