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November 10, 2023

BY ELECTRONIC AND CERTIFIED MAIL

Debi Joyce, Principal Clerk
Holbrook Planning Board
Holbrook Town Hall
50 North Franklin Street
Holbrook, MA 02343

Re: TLA-Holbrook LLC – Stipulation Regarding Planning Board Conditions for TLA-Holbrook LLC Project; Request for Extension of Construction Completion Deadline

Dear Ms. Joyce:

On behalf of TLA-Holbrook LLC, we are writing to request an extension of the construction completion date, pursuant to General Condition 9 of the November 12, 2020 Stipulation Regarding Planning Board Conditions for TLA-Holbrook LLC Project. TLA has diligently pursued substantial use of the Site Plan Approval through various legal appeals and seeking an Authorization to Construct (ATC) from the Massachusetts Department of Environmental Protection on August 13, 2021. Unfortunately, MassDEP substantially violated its own internal time policy and issued the ATC just this week, two years after the original application. TLA's diligence in pursuing the necessary permits (and associated litigation) combined with MassDEP's extraordinary delay in issuance of the ATC constitutes good cause for this request.

General Condition 9 requires that construction work be completed within three years of the entry of the stipulation. The Site Plan Approval, therefore, is scheduled to expire on November 11, 2023. General Condition 9, however, provides "[e]xtension of this completion time may be granted by a majority vote of the Planning Board upon petition by the Applicant, without any further public hearings and notices." Under Holbrook Zoning Bylaw § 10.6.17, "Site plan approval shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause..."

As guided by determining whether there exists substantial use under a special permit, *see* Holbrook Zoning Bylaws, § 10.5.7; M.G.L. c. 40A, § 9, substantial use exists when an applicant pursues other required permits for a project. *See Spencer Solar Farm, LLC v. Zoning Board of Appeals of the Town of Spencer*, No. 21 MISC 000435, 2022 WL 2062998, *7 (Mass. Land Ct.

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June 8, 2022) (finding that permitholder made substantial use of a special permit when it pursued and, ultimately, received site plan approval); *Evergreen Douglas, LLC v. Reynolds*, No. 12 MISC 472697, 2013 WL 4681760, *9 (Mass. Land Ct. Aug. 29, 2013) (finding that special permit did not lapse while permitholder was pursuing other municipal approvals). Here, TLA's diligent pursuit of the ATC permit from MassDEP constitutes a substantial use of the Site Plan Approval.

Even if the Planning Board disagrees that substantial use exists, in the alternative, good cause for delay also exists. *Ware Real Estate, LLC v. Town of Ware*, 2012 WL 751739, *4 (Mass. App. Ct., Mar. 9, 2012) (holding good cause for delay existed where permitholder was diligently pursuing additional permits, including an ATC permit from MassDEP). TLA submitted the ATC permit application to MassDEP on August 13, 2021, shortly after receiving two special permits from the Zoning Board of Appeals, and securing permits from the Planning Board and Conservation Commission. TLA stayed in regular contact with MassDEP, requesting issuance of the ATC permit. MassDEP finally approved the permit on November 8, 2023. TLA was prohibited from beginning work, and certainly could not complete construction, until MassDEP issued the ATC permit.

Ultimately, the Planning Board should grant TLA's request for an extension of the construction completion deadline under the Site Plan Approval. TLA's diligent pursuit of an ATC permit from MassDEP constitutes substantial use, and MassDEP's abnormally long approval process amounts to good cause for delay. Now that MassDEP approved the ATC permit, TLA requires additional time to complete construction.

Sincerely yours,



Marc J. Goldstein

cc: David A. DeLuca, Esq. (via email)
John G. Bulman, Esq. (via email)
Michael S. Campinell, Esq. (via email)