



Seaport West
155 Seaport Boulevard
Boston, MA 02210-2600

617.832.1000 main
617.832.7000 fax

Tad Heuer
617-832-1187 direct
THeuer@foleyhoag.com

November 29, 2021

By Electronic Mail

Carolyn Britt, Chair
Planning Board
Town of Ipswich
25 Green Street
Ipswich, MA 01938

Re: 55 Waldingfield Road — Ora, Inc. Proposed Development

Dear Chair Britt and Members of the Board:

I write on behalf of the Friends of Waldingfield regarding the merits of the application of Ora, Inc. for a special permit under the Great Estate Preservation Development Bylaw (the “GEPD Bylaw”).

This project is the right concept but in the wrong location. For the reasons explained below, the GEPD special permit should be denied.

The first stated purpose of the GEPD Bylaw is to “encourage the preservation and *appropriate* development of the building and lands” of the great estates. Each great estate is unique. Some may lend themselves to office space; others may be more suitable for multi-family dwellings. Still others may not be suitable for intensification of use at all. The reason the GEPD Bylaw establishes a detailed special permit process is precisely because the Town recognized that an identical use can be both entirely compatible with the traffic patterns, neighborhood character, and open space of one great estate, but entirely incompatible with those of another.

Under Section XI.J of the Protective Zoning Bylaw, before granting any special permit the Board must affirmatively find that the “benefit to the Town outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.” On *three key factors* — traffic, neighborhood character, and open space, all of which must be evaluated under the Protective Zoning Bylaw and GEPD Bylaw — the impact of granting a special permit for Ora’s proposed development of Waldingfield will be more detrimental than beneficial to the Town, the Waldingfield Road neighborhood, and the Waldingfield great estate. For each of these reasons individually, and

certainly collectively, the GEPD special permit for this particular proposed use of Waldingfield should be denied.

Finally, Ora has presented its proposal as being the only alternative to an inevitable cookie-cutter residential subdivision of Waldingfield. Ora has even helpfully provided the Board with plans of a particularly hideous subdivision that implicitly awaits the Town if Ora's application is not approved. *This binary choice is false.* There are citizens who are prepared to purchase Waldingfield with the intent of preserving it in a manner more in keeping with the existing neighborhood character. While these citizens had of course hoped that Waldingfield would have been purchased by a buyer intending a more compatible use, in the face of what they view as entirely incompatible use, they have mobilized to place this third option on the table. In short, the Board should not presume that the inevitable outcome of denying Ora's application is subdivision.

I. The Traffic Impacts on Non-Automotive Users of This Town-Designated Scenic Road Will Be Adverse and Significant

Ora asserts that based on its traffic study, there will be "negligible impacts" from the traffic increases on Waldingfield Road resulting from its proposed development. This conclusion overlooks and ignores the significant adverse impact of the projected traffic increase on the use, safety and enjoyment of Waldingfield Road by *non*-drivers: neighbors, walkers, cyclists and equestrians. All of these factors are critical to the Board's required analysis of traffic impacts under Section XI.J of the Bylaw, which is not limited to a mechanistic evaluation of optimal local roadway function for motor vehicle throughput and site accessibility. The Board's traffic evaluation must consider impacts of the proposed project on the entire Waldingfield Road neighborhood, including the multi-use roadway on which the great estate is located.

First, Ora's conclusion simply does not follow from GPI's facts. GPI projects 656 additional daily average vehicle trips based upon Ora's 200-employee population, and 1,228 daily average trips based upon Ora's proposed 124,199 square footage. GPI concedes that this means an increase from the current 6 vehicles per hour during the a.m. and p.m. peak period to the site, to between 69 and 83 projected peak hours trips to the site via Waldingfield Road. These are increases of 1150% and 1380%, respectively. Whether the result is adding 600 extra cars per day or 1,200 extra cars per day to Waldingfield Road, neither is "negligible" in any common sense usage of the word.

Second, Ora's conclusion does even not follow from GPI's conclusion. The scope of GPI's analysis is exceptionally narrow, focused on the impacts of additional trips on intersections, queue lengths, and roadway "levels of service" (the technical term for "traffic jams"). GPI's "negligible impacts" conclusion is similarly narrow: that the proposed development will result in "negligible impacts on *study area intersections.*" It is worth reviewing exactly what GPI has concluded (emphasis added):

The full build-out of the proposed project is expected to have a negligible impact on the *study area intersections*. Increases in delay at all *study area intersections* are

expected to be less than one second, all v/c ratios are expected to be well below 1.00 indicating there will be adequate capacity to accommodate the anticipated traffic volumes, and *all queue lengths are expected to be two vehicles or less with the addition of the proposed project.*

Yet from GPI's narrow technical conclusion limited to queue lengths at *intersections*, Ora has extrapolated to assert that there are "no traffic issues" with the development in *general*. But the adverse impact on Waldingfield Road of a tenfold increase in additional trips comes not from impact of additional traffic on other drivers at its *intersections*, but from the adverse impact of such additional traffic on the many *non-automotive* users of the Road *itself*. Indeed, as even a project proponent has conceded in a letter to the Board:

Waldingfield is narrow and enjoys extensive use by equestrians, cyclists and walkers. Walkers include residents AND Appleton Farms visitors who must cross the railroad bridge to return to the County Road parking area. Traffic – especially at the railroad bridge is hazardous, as both approaches have obstructed sight lines.

The GPI analysis simply fails to address the broader impacts from the predicted tenfold increase in peak hour motor vehicle traffic on the character and safety of this rural road and on local residents, pedestrians, bicyclists and equestrian riders. GPI itself admits that "[t]here are no pavement markings providing directional travel lane separation along Waldingfield Road. There are no sidewalks or bicycle accommodations in the vicinity of the proposed project site. Land uses along Waldingfield Road consist of residential uses and wildlife reservation area." Indeed, Waldingfield Road is a designated Scenic Road under the Town's Scenic Road Bylaw, and has the classic characteristics of a traditional country road: winding, limited sight lines, and a low 25 miles per hour speed limit. These characteristics of Waldingfield Road are in sharp contrast to the access to other Ipswich properties that have been reviewed under the GEPD Bylaw.

The impact of a significant increase in automotive traffic volumes on Waldingfield Road will affirmatively discourage pedestrian, cyclists and equestrian users, due to the introduction of new and real safety concerns that are entirely absent today. Moreover, such safety concerns will only be exacerbated and compounded during the winter months, when snowbanks and snowpush further diminish the already narrow road width and increase the hazards present on Waldingfield Road for drivers and non-drivers alike. These safety issues are critical — and indeed, mandatory — considerations for the Planning Board's review of Ora's application, yet are ones that the GPI analysis simply does not address.

Third, Ora has repeatedly represented that it anticipates minimal traffic and site impacts due to its widely-dispersed operations and its intent to use the site for corporate retreat purposes. Yet traffic and site impacts must be evaluated based on the maximum *potential* use the special permit would allow "by-right," not merely upon the non-binding (even if good faith) assertions by the applicant of its own present intentions.

To be clear: the approval Ora seeks from the Planning Board *is not limited to Ora's particular operational philosophy or Ora's currently proposed uses of the property*. A

special permit runs with the land, not the owner. If approved, the special permit will authorize 124,000 square feet of Waldingfield to be used by any owner whose intended use meets the definition of “business offices” and a “conference center” (the two primary requests made by Ora in its July 12 application).

While Ora contends that it plans to have “only” 200 employees on the property upon full build-out who will generate “only” 1,228 additional average vehicular trips per day, there is no guarantee that Ora will remain the owner of the property. Nothing prevents the property from being sold by Ora, Inc. after completion of Phases II and III to a new owner who wishes to utilize the property as a more traditional corporate headquarters, and who elects to utilize or renovate the already-built 124,000 square feet more in accordance with the industry average of 200 square feet per office employee. Doing so would easily more than double (and even triple) the number of individuals on site than currently proposed by Ora. Yet while Ora may be long gone in that scenario, the adverse effects will remain for the Town and for the Waldingfield Road neighbors.

II. The Impacts on Neighborhood Character of the Proposed Development Will Be Adverse and Significant

Under Section XI.J of the Protective Zoning Bylaw, the Board must affirmatively find that the “benefit to the Town outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.” One of the six criteria the Board must apply is “compatibility with neighborhood character” (Section IX.J.2.b.v). Ora’s proposal is simply incompatible with the neighborhood character of Waldingfield Road.

First, since 1974 the Town has designated Waldingfield Road as one of only 23 scenic roads under Chapter 185 of its General Bylaws. The express purpose of the Bylaw is “to maintain the rural, natural, historic and scenic character of the Town’s roadways,” and this designation recognizes that Waldingfield Road’s particularly scenic and historic nature contributes to the special rural character of Ipswich. The Bylaw’s criteria for scenic road designation include “overall scenic beauty” (and in particular the contribution of trees and stone walls), age and historic significance of roads, trees, and stone walls, “built features such as historic buildings, historic monuments, historic burial grounds, historic structures, farm buildings and fencing,” and “road features such as historic layout, surface, carriage width, use restrictions, [and] non-historic bridges.”

The impact of a tenfold increase in trip generation to the project site on Waldingfield Road will fundamentally and irrevocably change the character and use of both the Road and the surrounding neighborhood, especially for pedestrians, bicyclists and horseback riders. Moreover, because of Waldingfield Road’s scenic road status, the usual means for ameliorating significant roadway safety concerns — road widening, road straightening, and the addition of sidewalks — cannot be deployed without destroying the stone walls, trees, historic layout, and historic carriage width that are the foundation of Waldingfield Road’s scenic road designation.

Nothing in the GEPD Bylaw remotely suggests that its intent was to protect historic great estates at the expense of historic scenic roads. The detrimental impact of Ora's proposed development on Waldingfield Road and the quality of life in the Waldingfield Road neighborhood must be considered adverse and inconsistent with the special permit requirements.

Second, at just over 62 acres after the required discounting of wetlands, Waldingfield is one of the smallest (if not *the* smallest) great estates that qualifies for consideration under the GEPD Bylaw. Unlike the vast acreage of Turner Hill and the Proctor estate, which effectively were neighborhoods unto themselves, Waldingfield is located just off a scenic public road at the heart of an existing residential neighborhood. Unlike many other great estates in Ipswich that are isolated from abutting properties and whose locations are remote from the general public, Waldingfield is directly adjacent to two crown jewels of Ipswich's public lands, the Bird Reservation and Appleton Farms.

The purpose of the GEPD Bylaw is to provide the Town with an alternative mechanism to preserve historic, large land assemblages, with historic buildings and significant open spaces, from development pressures and subdivision. The GEPD Bylaw is an innovative preservation tool for the Town to apply in appropriate circumstances to protect properties that contribute to its historic and rural character. Yet nothing in the GEPD Bylaw indicates that its intent is to treat great estates as islands, prioritizing their preservation even if doing so will detract or derogate from the existing character of their surrounding residential neighborhoods. To the contrary, the fact that the general special permit criteria enumerated in Section XI.J — including “compatibility with neighborhood character” — expressly continue to apply in *addition* to the GEPD criteria indicates that the affirmative intent of the Bylaw is to encourage GEPD developments that are harmonious with their neighborhoods.

While alterations to larger great estates under the GEPD Bylaw may have no impacts on neighborhood character whatsoever, the same is simply not true at Waldingfield. The significant increases in traffic, the continued resistance to establishing legal protection for the existing views of (and from) the paddocks along Waldingfield Road, and the planned insertion of 124,000 square feet of office and conference space into an existing residential neighborhood are all incompatible with the character of the Waldingfield Road neighborhood. This *particular* proposed use of this *particular* great estate is not compatible with the neighborhood character. The special permit should be denied.

III. The Bylaw Prohibits Previously-Protected Open Space From Being Counted, and Requires Protection of the Paddock Areas

Ora's open space proposals have been the subject of significant discussion, including correspondence from Ora's counsel of July 28 and November 5, Open Space Committee (“OSC”) memos from October 20 and November 8, and the Building Inspector's letter of October 19. The Friends identify two new and crucial issues here, both of which raise serious questions about the viability of Ora's proposal.

First, much of the discussion about open space has focused on whether the 8.8 acres currently under conservation restriction abutting the Ipswich River is or is not countable under clause (iv) of Section IX.H.5.c. However, less attention has been placed on an entirely separate and independent legal reason for why the 8.8 acres are not countable: the provision of Section IX.H.5.c that expressly states “[i]n designating the open space, the applicant shall apply the guidelines adopted by the Planning Board in May of 1997, entitled CRITERIA FOR EVALUATING PROPOSED OPEN SPACE.”

As a matter of applying the fundamental legal principles of statutory interpretation, this sentence unambiguously precludes Ora from proposing that either the 8.8 acres, or *any* land designated as wetlands, be counted toward the 40% minimum open space requirement. Ora was dismissive of this sentence in its November 5 letter, claiming that the 1997 guidelines “are not dispositive” because “the Bylaw does not require strict compliance with the criteria, but only indicates that the applicant shall apply the guidelines.” (Emphasis by Ora). Ora intentionally overlooks the legally dispositive word in this key sentence of the Bylaw: “shall”.

Section III (Definitions) of the Protective Zoning Bylaw (of which the GEPD Bylaw is a part) provides that “[f]or the purposes of this bylaw . . . the word ‘shall’ is mandatory.” In other words, while the 1997 guidelines may indeed be merely advisory for many *other* municipal purposes, the Town has intentionally decided to make their provisions *binding* upon a GEPD applicant for purposes of the Section IX.H.5.c calculation. The Town did so by using the word “shall” to mandate — in the text of a duly-adopted Bylaw — that the guidelines must be applied in making this calculation.

The fact that the 1997 guidelines are binding upon GEPD applicants is legally crucial, because the 1997 guidelines are explicit and unambiguous on one essential point: “[L]and already protected, such as wetlands, will not count toward the open space to be proposed in the plan.” Notably, this sentence is *not* one of the ten enumerated criteria that the Board is instructed to merely “give particular attention to,” nor do the 1997 guidelines leave to the Board’s discretion the question of whether this sentence should be applied or not. Instead, this sentence is a stand-alone affirmative requirement, separate and distinct from the ten criteria and beyond the discretion of the Board to disregard.

In short, the GEPD Bylaw mandates that applicants *shall* apply the 1997 guidelines, and the 1997 guidelines unambiguously require that already-protected land and wetlands *will not* count toward proposed open space. As a consequence, Ora is precluded as a matter of law from proposing that the 8.8 acres already protected by a conservation restriction — as well as any additional land designated as wetlands — be included in the 40% open space calculation.

Perhaps recognizing its tenuous legal position on this point, Ora warns in its November 5 letter to the Board that “a decision to adopt a different application of the open space provisions of the Bylaw than for other GEPD projects is arbitrary.” Such an assertion is striking: Ora seems to contend that if the Board erred in its interpretation of the Bylaw in a *previous* matter, the Board is nonetheless legally bound to perpetuate that erroneous

interpretation in every *subsequent* matter. As should be obvious, this is not the law. The Board's obligation is to apply the Bylaw as it is written, not as Ora wishes it were.

Second, all of the open space Ora proposes for protection is at the literal margins of the property, much of which is *already* protected as open space because it is located within the mandatory setbacks established by the Protective Zoning Bylaw. This is particularly notable not only on its own terms, but because Ora has been studiously unwilling to offer legal protection for the paddock areas — despite repeatedly stating on the public record that Ora has no present intent to build on the paddocks.

Establishing legal protection for paddocks so as to preserve the existing views of (and from) the paddocks along Waldingfield Road is essential at the bare minimum for protecting the neighborhood character and adhering to the intent and purpose of the GEPD Bylaw. As noted, the scenic road character of Waldingfield Road itself, as well as the neighborhood character of the rural Waldingfield Road residential community, is defined by the pastoral views of the paddocks and farmland on either side of the Road, including at Waldingfield.

Yet rather than offer to *protect* the paddocks from development, Ora has instead inexplicably sought to *minimize* the value of the paddocks, contending that they meet only one of the ten 1997 guideline criteria, while asserting that the land abutting the Ipswich River at the rear of the estate meets all ten. Yet nothing in the 1997 guidelines remotely suggests that the preservation value of a given parcel is calculated mechanistically by giving equal weight to each of the ten criteria, and then adding up the number of points. As is clear from the text of the guidelines, *each* of the ten criteria constitutes an *independent* basis for concluding that land should be protected as open space.

Regardless, Ora's obsessive focus on whether the river land is more worthy of open space protection than the paddocks distracts from a broader and crucial legal point. Under Section IX.H.7, the Board is required to review every GEPD application on three criteria: whether the proposal's "design and layout" will preserve open space, protect natural features, *and* preserve landscape features:

[T]he Board shall review the special permit application in accordance with the following criterion: the proposed GEPD will, by its design and layout, succeed in: (a) preserving open space for conservation and/or recreation purposes, and providing appropriate public access to the open space; (b) protecting natural features of the land which are important to the character of the town; and (c) preserving the buildings, structures, and landscape features of the large estate properties in the RRA District."

Importantly, these three criteria are *not* synonymous, but are independent of one another. The fact that *certain* land is designated as "open space" for purposes of meeting the required 40% threshold under Section IX.H.5.c is thus necessary but not sufficient for the Board to grant a GEPD special permit. In addition, the Board is further required under the Bylaw to determine that the proposed GEPD will also succeed in *both* protecting important natural features of the land, *and* landscape features of the large estate.

Here, regardless of whether the paddocks are protected as “open space,” they are indisputably both key “natural features of the land which are important to the character of the town” that the Bylaw instructs the Board to protect, and key “landscape features of the large estate properties” that the Bylaw instructs the Board to preserve. Ensuring legal protection of the paddock areas as both key natural features and key landscape features of Waldingfield is thus a legally essential minimum component of any GEPD proposal for Waldingfield. Ora’s unwillingness to provide such protections notwithstanding the requirements of Section IX.H.7 should be viewed as significant.

IV. A Third Preservation Option Exists Besides Ora’s Proposal or Subdivision

Don Curiale’s efforts to work with Ora and not sell to a developer speak to his and the late Arthur Finkelstein’s long-term commitment to Ipswich and Waldingfield Road. Ora’s insinuation — that the only viable options are between its proposal and subdivision — is false. There is a third option that would avoid subdivision of the property shown by Ora at the November 10 meeting, avoid the traffic and adverse neighborhood impacts that would result from the Ora proposal before the Board, and continue that long-term commitment to Ipswich and Waldingfield Road.

There are citizens who are prepared to purchase Waldingfield with the intent of preserving in perpetuity much more of the property than Ora has indicated a willingness to protect, and doing so in a manner more in keeping with the existing neighborhood character. It is true that Waldingfield has been on the market for several years without a buyer — these citizens had of course hoped that Waldingfield would be purchased by a buyer whose intent was to put Waldingfield to a more compatible use than that being proposed by Ora. Yet in the face of what they view as entirely incompatible use, they have mobilized to place this third option on the table.

In short, in evaluating Ora’s GEPD special permit application, the Board should not presume that the sole and inevitable outcome of denying Ora’s proposal is subdivision.

This project is the right concept but in the wrong location. Ora’s proposed development will generate significant and sustained adverse traffic impacts on a designated Scenic Road and its numerous non-automotive pedestrian, cyclist, and equestrian users; is not compatible with the character of the existing residential neighborhood; and fails to permanently preserve the open space and viewsheds that are the most central to the historic and scenic character of Waldingfield Road. The GEPD special permit should be denied.

Thank you for your consideration of this letter. Please do not hesitate to contact me or my colleague Doug McGarrah if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thaddeus Heuer', with a stylized flourish at the end.

Thaddeus Heuer

Cc (by email):

Ethan Parsons, Director of Planning and Development
Kristen Grubbs, Town Planner
Anthony Marino, Town Manager
Tammy Jones, Chair, Select Board
Gordon Harris, Chair, Historical Commission
Andrew Brengle, Co-Chair, Open Space Committee
Wayne Castonguay, Co-Chair, Open Space Committee
Molly Shea, Open Space Protection Manager
Beth O'Connor, Open Space Steward