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January 4, 2022

OF COUNSEL

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**Via Email & 1<sup>st</sup> Class Mail**

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

**Re: Ora, Inc., 55 Waldingfield Road, Ipswich, MA;  
Response to Letter from Friends of Waldingfield**

Dear Chair Britt and Members of the Planning Board:

This office represents Ora, Inc. (“Ora”) with respect to its Special Permit and Site Plan Review application for the project at 55 Waldingfield Road and further responds to the letter from Foley Hoag LLP on behalf of The Friends of Waldingfield Road (the “Opponents”) alleging that the Property and buildings do not qualify for the Great Estates Preservation District Bylaw. We would like to take the opportunity to confirm that Ora’s application is in compliance with the Great Estates Preservation Development Bylaw (Great Estates Bylaw) and that the Special Permit process can continue.

1. The Project is in compliance with the Bylaw’s Gross Floor Area Requirements per Section IX.H.3.a.iii.

The Opponents first take issue with whether the existing Property includes 30,000 square feet of gross floor area. The Bylaw is quite specific in requiring that in order to qualify for the Great Estate,<sup>1</sup> the Property:

“contains buildings constructed prior to December 31, 1996, which contain in aggregate, a minimum of 30,000 square feet of existing floor area, and of which at least 12,500 square feet is located in the Great Estate mansion that was constructed prior to January 1, 1948. For purposes of this GEPR bylaw, floor area is defined as the

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<sup>1</sup> The Bylaw was amended in May 2021 by Town Meeting to include the 12,500 square feet for a mansion and reduce the gross floor area required from 40,000 square feet to 30,000 square feet.

aggregate gross floor area of all floors within all principal and accessory buildings” (emphasis supplied)

There are a number of threshold questions for the Great Estates Bylaw eligibility, including gross floor area. Ora has presented its calculations<sup>2</sup> of existing floor area on the Property to meet the 30,000 square foot bylaw language by measuring and confirming floor area consistent with the above definition in principal and accessory buildings. The comprehensive process started with an instrument survey from Hancock Associates of building footprints which was followed by verification from the property cards on file in the Town Assessor’s Office and finally, site measurements, floor by floor, in every building for a total in excess of 32,781 gross square feet.

Building	Lower Level	Level 1	Level 2	Level 3	Total
Mansion	3,671 GSF	3,671 GSF	3,314 GSF	3,314	13,970 GSF
Carriage House		1,067 GSF	1,067 GSF	GSF	2,134 GSF
School House	1,830 GSF	919 GSF			919 GSF
Pool House		542 GSF	214 GSF		756 GSF
Farm House		2,785 GSF			4,615 GSF
Barn	2,937 GSF	3,965 GSF	3,485 GSF		10,378 GSF
Total					32,781 GSF

Not surprisingly, the Opponents seek to substitute their own definition of “gross floor area” by substituting Building Code standards for livable space in 2021. They then present a mathematical calculation based on the 2021 Building Code for habitable space of a certain height that concludes there is insufficient floor area in the mansion and other buildings to meet the 30,000 gross square foot threshold required to be a Great Estates property.

The Bylaw language does not support the Opponent’s argument for several reasons. First, for purposes of eligibility for the GEPD, the Bylaw language provides a specific definition of floor area to be the total (aggregate) of all floors within all buildings. The Bylaw’s use of the term “gross floor area” does not modify the definition by using the terms “livable floor area, habitable floor area or net floor area,” which are all terms used by towns and architects when seeking to restrict a floor area application. Second, the Bylaw includes several references to the term floor area which are known to the Planning Board and which were not used here; gross floor area is the term selected. Third, the purpose of the Bylaw is to preserve and rehabilitate large estate properties, including the floors without the reservations or the restrictions suggested by the Opponents. The Bylaw recognized that there is a cost associated with preserving and rehabilitating these estates and provided the mechanism to fund the rehabilitation while still preserving the estate. This is reflected in the limitation of additional space to 8% of the square footage of the Property.

While the Bylaw is clear that floor area means the aggregate gross floor areas of all floors of principal and accessory buildings for eligibility, the Opponents argue that gross floor area is not

<sup>2</sup> With a stamped certificate from a registered architect. (Exhibit 1)

defined and seek to replace the Bylaw language with State Building Code, modifying the gross floor area definition to instead be “habitable floor area”, which is entirely different. The Opponents then take the next step by informing the Planning Board that the intent of the Great Estate Bylaw language allowing additional space to be created to pay for the rehabilitation of the buildings is to be based up the Opponent’s purposefully selected “habitable space definition” (by citing height) to deny GEPD eligibility.

The gross floor area of the barn is 2,937 square feet measured from wall to wall. The floor of the barn, as explained by John Harden was used for livestock and storage consistently. While Ora does not see any restrictive language in the Bylaw to limit the term “gross” floor area, even if that portion of the existing barn floor which is presently not functional or accessible (approximately 60% or 1900 square feet) is removed from the equation, there is still substantially more than 30,000 square feet of gross<sup>3</sup> floor area with the Property’s principal and accessory buildings. (See Exhibit 1)

2. The Project is in compliance with Ipswich Historical Commission Requirements of the Bylaw.

The second allegation from the Opponents is that the Certification sought and received from the Ipswich Historical Commission in June 2021 was incomplete under the Bylaw. The Bylaw requires the Ipswich Historical Commission to provide certification of the Property in two instances and the Opponents argued last month that Ora had only secured the first certification with respect to historical buildings on the Property. That submitted certification that the five (5) buildings have historical and architectural significance was not challenged by the Opponents. We agree that the earlier correspondence and certification were not broad enough for the second certificate pursuant to IX(H)(6) that the Property:

“Contains a Great Estate as an estate residence, constructed prior to January 1, 1948, with formal landscaping features and supporting structures, which together have been certified by the Historical Commission as having historic or architectural significance.” (H)

Ora returned to the Historical Commission in December to seek the additional Certificate of the buildings and landscape features. The Commission agreed and voted to issue the certificate in December. Ora presented a narrative and historical description of the buildings and landscape features authored by Lolly Gibson. The package was referenced and endorsed by motion by the Historical Commission consistent with the Bylaw.<sup>4</sup>

3. The Open Space Conservation Restriction is a Condition of the Project and the Special Permit.

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<sup>3</sup> The ordinary meaning of “gross” is without deduction or limitation.

<sup>4</sup> The letter from the Historical Commission has not been filed to date but the meeting was attended by Mr. Ethan Parsons, Director. Of note, the pastures cited by the Opponents as historical features did not present any evidence of historical or architectural features as they were grassed pastures recently converted to paddock.

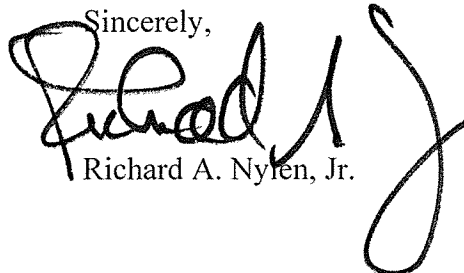
The third allegation in the Opponent's letter suggests that Ora has insisted that conservation restrictions which are part of the Great Estates project must be voluntary. While Ora has not heard these allegations repeated since counsel's letter in November, Ora wants to remove any doubt by stating that the Conservation Restriction presented to the Planning Board will be mandatory and not voluntary.

As the principal legal spokesman for the Project, I have reviewed the submissions made to the Planning Board by Ora to search for any suggestion by Ora that the 40% open space conservation restriction(s) to be placed on the Property "must be voluntary . . . ; or that Ora . . . specifically asked the Board not to impose a mandatory conservation requirement as an express condition of any GEPD special permit" as alleged by the Opponents. I found none. Ora has never stated to the Planning Board that the 40% open space requirement<sup>5</sup> will be or even can be met with a voluntary CR. In fact, the allegations in the Opponent's letter of Ora insisting on a voluntary CR do not cite language in any letter to the Board or cite public testimony to support this baseless charge. All discussions regarding the CR have been related to the acreage to be included in the open space plan. Ora's position that the CR will be a condition of approval has been consistent with the Planning Board throughout the entire process.

Further, to the extent that the Applicant supplements the open space CR required by the Special Permit with a voluntary CR at a later time, such voluntary CR shall not be counted toward the open space CR required as a condition of the Special Permit.

We will be available to answer questions on Thursday evening.

Thank you.

Sincerely,  
  
Richard A. Nylen, Jr.

RAN/kad  
Enclosures

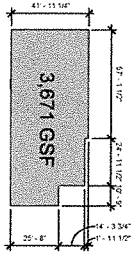
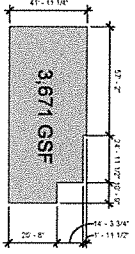
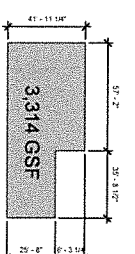
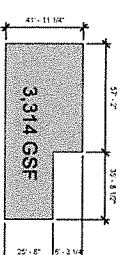

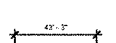
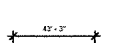
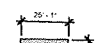


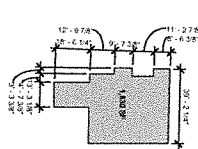
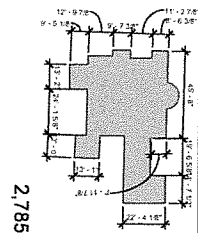
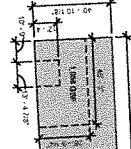
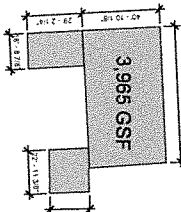
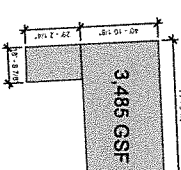
cc: Jennifer F. Williams, Sr. Manager-Special Projects/Ora, Inc.  
John Harden, AIA LEED AP – Principal/OLSON LEWIS + Architects  
Charles E. Wear, III, PE/Hancock Associates  
Ethan Parsons/Town of Ipswich


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<sup>5</sup> Ora will present its open space program pursuant to the Bylaw to the Planning Board at the next meeting.

**EXHIBIT 1**

	LOWER LEVEL	LEVEL 1	LEVEL 2	LEVEL 3	AREA TOTALS
Mansion	 3,671 GSF	 3,671 GSF	 3,314 GSF	 3,314 GSF	13,970 GSF
Carriage House	 1,067 GSF	 1,067 GSF	 1,067 GSF		2,134 GSF
School House		 919 GSF			919 GSF
Pool House		 542 GSF	 214 GSF		756 GSF
Farm House	 1,830 GSF	 2,785 GSF			4,615 GSF
Barn	 *1,056 GSF	 3,966 GSF	 3,486 GSF		8,497 GSF
				<p>* Area represented as dashed is the accessible area within the footprint of the lower level of the barn defined by an existing retaining wall and by the foundation of the original structure.</p>	<p>GRAND TOTAL: 30,891 GSF</p>

<p><b>EXISTING BUILDING INVENTORY</b></p> <p>Project Number: 17-001 Date: January 4, 2021 Drawn By: Anna Checked By: Charles</p>	<p><b>Ora</b> Waldingfield- Phase 1A, 1B, 2 + 3</p>	<p><b>OLSON LEWIS + ARCHITECTS</b></p> <p>architecture planning interiors 17 Elm Street Manchester MA 03104 603.526.4366 www.olsonlewis.com</p>	
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