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Walter R. Sevastian, Esq.
3 Main Street, Suite 1
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Re: Montefiore-Nyack Hospital w/ Village of Nyack
Parking Garage

Dear Village Attorney Sevastian:

This letter is provided to you in advance of the October 5, 2020 Village of Nyack Planning Board Meeting (the "Meeting"). After the most recent Meeting, the Montefiore-Nyack Hospital (the "Hospital") has made substantial submissions in response to all issues raised. I also note that what was referenced at the last Planning Board Meeting of September 14, 2020 was a certain correspondence from the Village's Traffic Engineer dated September 4, 2020 (the "Letter"). Since no Hospital Representatives were able to review that Letter prior to the Meeting and comments were made by the Planning Board Chairman, I would like to address that Letter as well so the Record of all proceedings herein is complete. Thank you for this opportunity.

I. SEPTEMBER 14, 2020 PLANNING BOARD MEETING

Since the Hospital has been before the Planning Board for many times before this past September 14, 2020 Meeting and has provided extensive documentation before this September 14, 2020 Meeting to address the concerns of the Village Professionals and Village Residents, it was significant that the Planning Board Chairman in his comments at the September 14, 2020 Meeting recognized the considerable efforts of the Hospital and its Professionals. The record will reflect (as my notes confirm) that I requested and was graciously provided by the Village with an audio copy of that September 14, 2020 Meeting. After listening carefully to that audio copy, it was certainly significant and appreciated for all the extensive work and submission of the Hospital Professionals to note that the Planning Board Chairman made the following remarks I memorialized in my Meeting Notes regarding how the Hospital had addressed all concerns:

"I think we have gone through things extensively. I am looking for comments from the Public that may or might find fault with any of these documents. I spent a lot of time reading this and it seems like the applicant has addressed every single comment in one way or the other".

“All public comments are part of the professionals’ comments. All professionals have commented. Rarely have I seen the studies” (as in this Hospital application) regarding sun, shadow, view-shed; the ground water study for the second site”

“If there is a question the applicant has been quick to address it”.

“This can be adjourned to the next month’s meeting to have final comments”/

“I do not think there is much left to go as far as what has to be considered and next month should clean up”.

It should be noted that on at least six occasions the Planning Board Chairman at the September 14, 2020 Planning Board Meeting asked if there were any comments from the public. No public comments ensued. Even when the Planning Board Chairman noted that there were “19 people” in the ZOOM Audience for this Meeting, there were no objections noted by any member of the public to any Hospital submissions to the Planning Board. In fact, from the beginning of this Meeting when the Planning Board Chairman noted “I am looking for comments from the public”, no member of the public raised any objection or concern about the Hospital Parking Garage application. A short time later in the Meeting the Planning Board Chairman again remarked, “If anyone wants any comments, concerns or otherwise” to be heard, no one from the public spoke up. Even when the Planning Board Chairman much later introduced the idea of the closure of Sickles Avenue and asked for public comment, there was no public comment. This is very telling that the Hospital has answered all public concerns.

It bears additional note that toward the end of the Meeting, I was ready and even invited by the Village Planner during the Meeting to address any additional public comments. I indicated that I was ready to do so. Still, the Planning Board Chairman noted that all of the public comments were addressed as part of the professionals comments or otherwise in the record of the Planning Board Meetings. As such, the purpose of the Public Hearings have been more than served as all public comments have been addressed in addition to all professional comments to date. The only outstanding issue was for the Village Traffic Engineer to attend the next Planning Board Meeting to address his September 4, 2020 Letter (which Letter was not shared with the Hospital prior to the September 14, 2020 Meeting).

In that regard, I would like to address the Village Traffic Engineer’s Letter now that the Hospital had an opportunity to review said Letter. Again as I stated at the September 14, 2020 Planning Board Meeting, the issues raised in this September 4, 2020 Letter of the Village Traffic Engineer raised issues about the jurisdiction and constitutionality of the Planning Board in considering comments about the closure of Sickles Avenue as well as the internal pricing operations of the Hospital’s Parking Garage. Those concerns are now again raised herein.

II. THE VILLAGE TRAFFIC ENGINEER LETTER

The Letter makes references to two separate issues. First is the “Parking Pricing Program Review”.¹ The second issue is the “Closing Sickles Avenue to Through Traffic”. (Id.) I will address each issue separately herein.

Parking Pricing Program Review

Within that section of the Letter references were made to the Hospital proposed internal Parking Garage pricing recommendations for the Hospital Garage. More specifically, the Letter referenced ‘comments regarding the proposed pricing program’ as well as “on street existing metered spaces”. The Letter also noted current parking prices on the “Main Lot” (which is Hospital private property) and referenced existing parking spaces only on Hospital Property. Likewise, that Village Letter made “recommendations” concerning the “current \$2.00 flat fee” in the Hospital’s Main Lot that “should be increased to \$5.00”. Additionally, the Letter also made further recommendations concerning “a discounted employee/staff month parking pass should be offered to those who wish to park in the proposed garage and surrounding surface lot”.

Closing Sickles Avenue to Through Traffic

The Letter furthermore made comments about changes to the on-street parking. For example, the Letter recommended regarding the “on street long-term metered spaces” that those on-street meter parking spaces “should be increased” an additional \$3.00 for 12 hours. And, continuing the Letter’s consideration of on-street parking (not Hospital property, but Village Streets), the Letter noted a requirement for the “continuous enforcement by the Orangetown Police Department to ensure that non-residents are not parking on designated residential streets”. Finally, on that section of the Letter, it was noted by the Village Traffic Engineer that the “proposed rates and regulations for the 5th Avenue and North Highland Avenue lot should be provided to determine their effect on the pricing program and above recommendation”.

III. RESPONSE TO THE VILLAGE TRAFFIC ENGINEER

In response to the Village Traffic Engineer’s Letter, I wish to note that the Hospital will be happy as a neighbor to help work with the greater Hospital community appropriately on non-site plan issues after all final Parking Garage Approvals. *Assuming arguendo* that the Planning Board has jurisdiction in the current Hospital Application (which the Hospital does not concede as set forth hereinafter) to lawfully mandate by Village *fiat* any of the aforementioned two issues raised by the Village Traffic Engineer, the Hospital with all rights reserved can only appreciate all suggestions of the Village Traffic Engineer. Yet, while we appreciate the suggestions of the

¹ Letter of September 4, 2020, page 4

Village's Consultant, the Hospital cannot lawfully commit to this Village Consultant suggested rates in advance of all Final Village Approval or the actual Parking Garage build-out.

While conceptually the Hospital agrees with the idea that increasing off-garage parking rates will create positive inflow to the Parking Garage, there is a need to set the rates (even potentially as now suggested by the Village Traffic Engineer) by using a sliding scale that creates the best rates for all concerned. Still, there are the legal issues that I know preclude the consideration of both suggestions by the Village Traffic Engineer before Final Approval of the Parking Garage as aforesaid. These legal issues are two-fold.

Response to the Parking Pricing Program Review

We assume that since you were not at the most recent Planning Board Meeting of September 14, 2020, you have not have time to discuss all these legal issues with the Planning Board and advise them of the applicable New York State and Federal Law requirements. More specifically, beginning with a case regarding a Land Use Board's limited powers only several feet away from the Hospital, our Second Department has made it clear that despite the best intentions of the Village and its Traffic Engineer, **the Village cannot lawfully regulate the internal operations of the Hospital Parking Garage with regard to pricing, rates or other internal Hospital Parking Garage Operations.** More specifically, our Second Department in *Summit School v. Village of Upper Nyack*, et al, 82 A.D.2d 463 (2nd Dept. 1981 noted, Land Use Board cannot as a matter of law regulate such internal operations:

"The power of a board of appeals to impose conditions in granting a special permit is not unlimited. The conditions so established must relate directly to, and be incidental to, the proposed use of the real property **and not to the manner of the operation of the particular enterprise conducted on the premises** which are the subject of the special permit (*Matter of Community Synagogue v. Bates*, 1 N.Y.2d 445, 154 N.Y.S.2d 15, 136 N.E.2d 488; *Matter of Schlosser v. Michaelis*, 18 A.D.2d 940, 238 N.Y.S.2d 433; *Matter of Oakwood Is. Yacht Club v. Board of Appeals*, 32 Misc.2d 677, 223 N.Y.S.2d 907; *Matter of Long Is. Light. Co. v. Voehl*, 27 Misc.2d 943, 211 N.Y.S.2d 576, affd. 15 A.D.2d 512, 222 N.Y.S.2d 589; *Matter of De Ville Homes v. Michaelis*, Sup., 201 N.Y.S.2d 129; *Bernstein v. Board of Appeals, Vil. of Matinecock*, 60 Misc.2d 470, 302 N.Y.S.2d 141, app. dsmd. 31 A.D.2d 650, 297 N.Y.S.2d 702, mot. for lv. to app. den. 23 N.Y.2d 646, 299 N.Y.S.2d 1025, 247 N.E.2d 498)." (Id. at p. 467) (Emphasis supplied).

This Second Department precedent has clearly been followed up to today. For example, our Second Department in *Long Island University v. Board of Appeals*, 122 A.D.2d 53 (2nd Dept. 1986) remarked that a Land Use Board in considering any land use application such as the Hospital has no jurisdiction to regulate "the manner of the operation of the particular enterprise

conducted on the premises. . . .” (Id.). Likewise, as our Appellate Division has also noted in the same precedent that prohibited Land Use Boards from regulating internal operations such as any pricing structure in the Hospital’s Parking Garage, “We find the imposition of this condition was no more than an impermissible attempt to regulate the details of the operation of the petitioner’s enterprise.” (*Old Country Burgers, Co., Inc. v. Town of Oyster Bay*, 160 A.D.2d 805 (2nd Dept. 1990)). As such, the Hospital respectfully submits it is fundamentally and clearly unlawful for the internal operations of the Hospital’s Parking Garage to be review or regulated by the Village Planning Board in this current application. Such efforts would not provide qualified immunity to any Board Members or others as I am sure you will counsel the Board Members before acting.

Response to Closing Sickles Avenue to Through Traffic

While the Hospital notes the expansive and presumed community minded thinking of our most respected Planning Board Chairman Peter Klose on the Village Traffic Engineer’s “Closing Sickles Avenue to Through Traffic”(the “Closing”), I also know that as a fellow Attorney Chairman Klose is aware of all legal implications from his stated comments at the most recent Planning Board Meeting of September 14, 2020 that may be “out of the box” and “am I crazy for saying this” opined closure of Sickles Avenue. First and foremost, as I have spent some time reviewing the audio of the recent Planning Board Meeting of September 14, 2020, I do note and applaud the said Planning Board Chairman for confirming on the Meeting Record that any issues regarding the close of Sickles Avenue would “**not be a condition of any approval**” for the Hospital in this Parking Garage application. In that regard, as previously noted, the Hospital welcomes continuing to be a good neighbor and after all Final Approvals for the Garage will meet along with all fellow neighbors at any Village Board of Trustees Meeting (that alone has jurisdiction on Village Street Closures) to consider all alternatives. I assume furthermore that the Planning Board Chairman sagaciously noted that whatever the Planning Board may consider on the Closing will only be passed on to the Village Board of Trustees as a “recommendation”.

Again, *assuming arguendo*, that some on any Village Board wish to make this Closure a condition for or otherwise delay and/or interfere with Final Approval for the Hospital’s Parking Garage, it is clear from well-established constitutional law that for the Village of Nyack or any of its Board Members, employees or consultants to extract as a condition of any Parking Garage Approval the Hospital’s involvement in any closure of Sickles Avenue vitiates any qualified immunity for any such person. The reason is that the United States Supreme Court precedents are absolutely clear that the Village cannot “extract” such a condition of any approval (as Planning Board Chairman and Attorney Klose so noted). Our United States Supreme Court in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) observed a condition on any development approval violated the Takings Clause where there was no ‘essential nexus’ to this Closure suggestion and the Hospital’s goal to help the neighborhood on local on-street parking with a Hospital Parking Garage. Likewise, our United States Supreme Court later noted in *Dolan v. City of Tigard*, 512 U.S.374 (1994) there must be some “rough proportionality” to the extraction

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and the municipal effort. As the Hospital's well recognized Expert confirmed on the record at the September 14, 2020 Meeting, this contemplated Closure issue has no impact on the already submitted Hospital Plans that have undergone extensive review already by all the Village Professionals and Board Members.

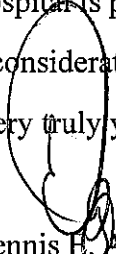
In summary, the issue of any Closure may be explored after all Approvals for the Parking Garage are finalized. The Hospital needs to address its financial and other obligations to the School District. In that regard, Board Members and the Village are expressly put on notice of the foregoing in lawfully rendering all Final Approvals for the Parking Garage.

CONCLUSION

The Hospital and all its Professionals (including the undersigned who was born at the Hospital, tried out for Little League at the "Ballfield" and set the Nyack High School Half-Mile Record at MacCallum Field) believe that this October 5, 2020 Planning Board Meeting should be the time to address any final outstanding Professional issues and move this matter to an approval which all the submissions confirm is appropriate. The Planning Board Chairman so said at the last Planning Board Meeting. There was no comment by the public in opposition to this Hospital Application at the past September 14, 2020 Planning Board Meeting. We ask only that the record and submissions be recognized and that this Planning Board take the lawful action required by all Federal and New York State Law. The Hospital continues its need to treat people during these most difficult times and having a Parking Garage for the sick, infirm and otherwise health compromised people to park right next to the Hospital is paramount for all concerned people.

Thank you and the Planning Board for all consideration of this letter.

Very truly yours,


Dennis E. A. Lynch, Esq.

Cc: Building Department