TUCZINSKI, CAVALIER & GILCHRIST, P.C.

ATTORNEYS AT LAW

Albany Office
54 State Street, Suite 803
Albany, New York 12207
[redacted]

Jonathon B. Tingley
[redacted]

Saratoga Office
63 Putnam Street, Suite 202
Saratoga Springs, New York 12866
[redacted]

June 20, 2016

VIA EMAIL – susan.barden@saratoga-springs.org
Zoning Board of Appeals
City of Saratoga Springs
City Hall – 474 Broadway
Saratoga Springs, New York 12866

Re: ANW Holdings, LLC, 27 Jumel Place; Area Variance Application

Dear Zoning Board of Appeals:

Please accept this letter on behalf of Samuel Brewton, Sandra Cohen, and Debra and Gerald Mattison in connection with the ANW Holdings, LLC application for area variances.

In her June 16, 2016 letter, Ms. Coreno states:

> "In a letter to the Board dated June 2, 2016, neighbors' counsel, Jonathon Tingley, Esq., attempts to obfuscate the representations made by the Applicant in its May submission by incorrectly characterizing the information stated on the record. Specifically, counsel states that ANW has taken the position that 7 units at $930,000 is supported by the market – a statement which is patently false" (Letter from Carter Conboy, June 16, 2016, at 5).

But that statement, which Ms. Coreno characterizes as "patently false" was made by her, in a presentation on May 23, 2016. In Ms. Coreno's May 23, 2016 presentation, the average home price of $930,000 was specifically excluded from the average home prices that Ms. Coreno claimed were not supported by the market (i.e., $1.08 million and above):

Price of Homes: 2013 to present

Number of Units	% of Land to Home Cost	Land Cost per Unit - 2013	Min Average Home Price -2013	Land Cost Per Unit -2016	Min Average Home Price -2016
7 units	20%	$129,377	$646,885	$186,197	$930,000
6 Units	20%	$150,940	$754,700	$217,230	$1.08M
5 units	20%	$181,128	$905,640	$260,676	$1.3M
3 units	20%	$301,880	$1.5M	$434,460	$2.18M
2 units	20%	$452,820	$2.2M	$651,690	$3.25M

- Average home prices not supported by the market
- Project remains practical and feasible at 7 units only as stated in 2013 and 2014

(Applicant Presentation, May 23, 2016, at slide 23).

The only one attempting to obfuscate here is Ms. Coreno, who presented financial numbers in an effort to justify a project of 7 homes, without realizing the numbers she provided actually demonstrates that a feasible alternative—namely, 5 homes—is available that would provide the applicant with the benefit it seeks (and sought in 2013).

Ms. Coreno also attacks the use of the term "net revenue" in my June 2, 2016 letter, claiming that it misrepresents the applicant's return on the project by not taking into account the cost to build each home (Letter from Carter Conboy, June 16, 2016, at 5). Actually, again, Ms. Coreno is obfuscating and misrepresenting. My letter was clear, making it known that the use of the term "net revenue" as I used it represented the home price, less land acquisition and development costs.

The purpose of presenting that "net revenue" was to provide an "apples to apples" comparison between the benefit the developer sought in 2013 and the benefit the developer seeks in 2016, with the aim of demonstrating that now, given the applicant's increased home prices, the same benefit it sought in 2013 with 7 homes can now be achieved with 5 homes. Below are the portions of my June 2, 2016 letter which used the term "net revenue". I made clear exactly what I meant by the term "net revenue"—namely, aggregate home prices, less land acquisition and development costs:

> "In 2013, the Applicant proposed an average home price of $640,000 for 7 units (Letter from Carter Conboy, dated May 20, 2016, at 7). The total revenue generated would therefore equal $4,480,000. ***After subtracting the claimed 2013 land acquisition and development costs of $905,640, the Applicant would have been left with a net revenue in 2013, based on 7 homes, of $3,574,360***.

> Now, in 2016, the Applicant indicates that its average home sale price will be $930,000, and that it will sell the homes at prices between $587,045 to $1.255 million, with a median home price of $921,022. If the Applicant is permitted to construct 7 homes and will sell at its stated average home price of $930,000, the total revenue generated will equal $6,510,000. ***After subtracting the claimed 2016 land acquisition and development costs of $1,303,380, the Applicant is left with a net revenue of $5,206,620.*** The 2016 net revenue for 7 homes is $1,632,260 more than the net revenue generated by the 2013 proposal for 7 homes.
>
> . . . .
>
> However, if the Applicant is permitted to construct 5 homes and sells those homes at the stated 2016 average home price of $930,000, the total revenue generated will be $4,650,000—which is still more than the revenue that would have been generated in 2013 for 7 homes. ***After subtracting the 2016 land acquisition and development costs of $1,303,380, the Applicant is left with a net revenue in 2016, based on 5 homes, of $3,346,620***—which is 94% of the net revenue it would have generated with 7 homes in 2013" (Letter from Tuczinski, Cavalier & Gilchrist, P.C., June 2, 2016, at 2).

There was no misrepresentation or inaccuracy in presenting these numbers. And notably, Ms. Coreno does not dispute any of these calculations.

Ms. Coreno also argues that my June 2, 2016 letter was unsupported by "empirical" or "expert" evidence (Letter from Carter Conboy, June 16, 2016, at 5). My June 2, 2016 letter ***used Ms. Coreno's numbers***, and ***assumed that Ms. Coreno's numbers were accurate***. In particular, Ms. Coreno stated in her May 20, 2016 letter:

> "The results indicate that the average home cost of $640,000 for 7 units reported in the 2013 application process was accurate at that time, but the rising cost development costs [sic] has increased the average home price to $930,000 in 2016. In order to address the varied market, ANW is proposing several price points ranging from $587,045 to $1.255M for a median price of $921,022" (Letter from Carter Conboy, May 20, 2016, at 7).

Ms. Coreno's argument, taken to its logical conclusion, is that her own financial data cannot be relied upon. No expert is needed to do simple multiplication and subtraction, followed by a simple comparison of the 2013 financial data to the 2016 financial data. The Board can undertake these same calculations without the assistance of an expert, and when it does so, it becomes clear that substantially the same benefit sought by the developer with 7 homes in 2013 is now available through development of 5 homes in 2016.

Importantly, these calculations do not rely upon the home sale prices supplied by the applicant on February 22, 2016, which the applicant stated would be between $700,000 and $1.5 million. The calculations rely exclusively on the data provided by the applicant's counsel, Ms. Coreno, in her May 20, 2016 letter.

The record reflects that ANW Holdings, LLC did rely on the financial data in 2013 to support its argument that the only feasible project was one consisting of 7 homes. Now, due to a material change in the project's financial data, the developer can secure the same benefit through development of just 5 homes on the same site. Thus, there is a feasible alternative available. ANW Holdings, LLC just does not want to admit it.

The Court's language in Katz v. Town of Bedford Zoning Board of Appeals is instructive:

> "The determination of the Zoning Board of Appeals denying the petitioner's application for an area variance is supported by substantial evidence, and it is not illegal, arbitrary and capricious, or an abuse of discretion. . . . [S]imply because the alternatives suggested by the Zoning Board of Appeals would be more expensive . . . does not mandate the granting of the variance. While financial hardship is a factor to be considered, proof that the desired improvement could more easily and cheaply be constructed if the variance were granted does not change the nature of the improvement from one that is merely desirable to one that is necessary for the practical utilization of the property" (202 AD2d 504 [2d Dep't 1994]).

Here, the Applicant's own financial data demonstrates that a project consisting of 5 homes is a feasible alternative, and the fact that the Applicant merely desires 7 homes does not mean that granting an area variance to allow 7 homes is necessary for the practical utilization of the property.

Accordingly, the Zoning Board of Appeals should deny ANW Holdings, LLC's area variance applications because there exists a feasible alternative that will provide the developer with the benefit it seeks and because the variances sought are not the minimum variances necessary.

Very truly yours,

TUCZINSKI, CAVALIER & GILCHRIST, P.C.

By: Jonathon B. Tingley