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April 12, 2017

RECEIVED

APR 12 2017

Via Email & Hand Delivery

Hon. Chris Burdick, Supervisor and
Members of the Town Board
Town of Bedford
321 Bedford Road
Bedford Hills, NY 10507

LISBETH FUMAGALLI, TOWN CLERK
TOWN OF BEDFORD, NEW YORK

Re: Historic Building Preservation Commission/Amend Legislation

Dear Supervisor Burdick and Members of the Board:

As you know, this Firm represents Denise C.R. and Camillo M. Santomero, III, the owners of an approximately 26-acre property and the improvements thereon with a street address of 393 Guard Hill Road, identified on the Town of Bedford Tax Assessment Map as Section 83.8, Block 1, Lot 1 ("the Property").

I submitted a letter to your Board on March 20, 2017 setting forth our clients' concerns about the inclusion of their Property on the survey of historic houses in the Town, the role of the Historic Building Preservation Commission ("the Commission"), and the proposed revisions to the Historic Building Preservation Law (the Law). I also appeared at your Board's Work Session on March 20, 2017 and reiterated and expanded upon our clients' concerns about the proposed changes to the Law.

At the March 20th Work Session, reference was made by members of the Commission to other municipalities that have adopted similar historic building and landmark preservation laws, in particular the City of Ithaca and the Town of Southampton. We have reviewed the relevant ordinance provisions in those municipalities and find that there are some distinct differences that we must bring to your Board's attention.

Significantly, pursuant to the existing Chapter 71 of the Bedford Code, the Commission is authorized to "create, maintain and update the Survey prepared by the Town in connection with the adoption of this article." In other words, even if the original Survey of historic buildings was reviewed and adopted by your Board along with the creation of the Historic Buildings Preservation law in 2003, any revisions or updates to that Survey have been handled by the Commission without any oversight by your Board. By way of comparison, the

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building/landmark designation process in both Ithaca and Southampton is subject to public hearing and the final determination is made by the City Council/Town Board. Specifically, pursuant to Chapter 73 of the Ithaca Code, the Landmarks Preservation Commission is charged with conducting surveys of landmarks, but is limited to “[r]ecommending designation by Common Council of identified structures or resources as landmarks and historic districts.” (Emphasis added.) Furthermore, once a recommendation is made by the Commission, there is a public process that must be followed pursuant to Chapter 228 of the Ithaca Code and individual landmark may be designated. There must be notice of proposed designation, public hearing, review and recommendation by the Planning and Development Board to ensure compliance with the Comprehensive Plan, and finally a decision by the Common Council to “approve, disapprove, or refer the proposed designation back to the Commission for modification.” The Town of Southampton grants similar powers to its Landmarks and Historic Districts Board in Chapter 330 of its Code, and follows a similar procedure for the Town Board to designate a landmark or historic district.

We submit that the procedure followed by Ithaca and Southampton ensures that there is a full review and opportunity to be heard before a designation is made that imposes significant restrictions on an existing building. Furthermore, the fact that the designation is decided upon by a legislative body upon recommendation from the Commission and review by the Planning Board ensures fairness and compliance with municipal objectives while protecting the property owner’s inherent property rights. There is no such process in place in Bedford at this time. Rather, there is only an appeal that may be made to the Town Board of a decision made by the Commission. Such an appeal puts the onus on the property owner to show lack of historical value, which shifting of the burden we submit is improper and contrary to well established protected property rights.

While the proposed draft Local Law includes a new historic designation procedure similar to Ithaca and Southampton, it also calls for an “en masse” adoption by your Board of the Commission’s revised inventory of historic buildings. This is inappropriate as these properties are not part of an overall historic district in the Town and your Board has not reviewed each and every property identified by the Commission. To ensure due process, your Board must notice and hold a public hearing to consider each and every one of the affected properties. We caution your Board against foregoing a thorough review of the historic significance of each property now and simply adopting a procedure, as has been done in other states, to delay issuance of a demolition permit to allow a piecemeal review of historic significance. Such an approach does not give the applicant sufficient notice, creates significant delays, and discourages responsible development. Rather, we submit that any property identified by the Commission must be subjected to a full public hearing process before the Town may adopt a historic designation for said property.

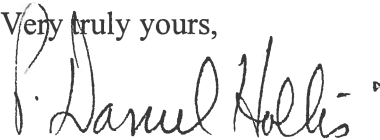
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We urge your Board to consider carefully the procedure for a “historical building” designation under your Code and to provide for an opportunity for each and every affected property owner to be heard prior to adoption of the revised inventory.

Lastly, it is unclear whether there has been a sufficient analysis of the proposed amendments under the State Environmental Quality Review Act (“SEQRA”), which requires that your Board consider the potential environmental impacts of the action, including socio-economic impacts. *See, e.g., Chinese Staff & Workers Ass’n v. City of N.Y.*, 68 N.Y.2d 359, 509 N.Y.S.2d 499 (1986). In fact, such socio-economic impacts are one of the reasons why the Westchester County Executive intends to commence a proceeding against New York State for the State’s failure to conduct a full environmental review for the closure of the Indian Point nuclear power plant. *See* “Astorino Announces Lawsuit to Stop Closure of Indian Point” at <http://www3.westchestergov.com/component/content/category/233-press> .

We have been directed by our clients to seek judicial review of this proposed legislation if it is enacted in its present form.

Very truly yours,



P. Daniel Hollis III

PDH:kc

- c. John Stockbridge, Chairman of
Historic Building Preservation
Commission (via hand delivery)
Mr. and Mrs. Camillo Santomero (by email)

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Re: Historic Building Preservation Commission/Amend Legislation

Dear Supervisor Burdick and Members of the Board:

This Firm represents Denise and Camillo Santomero, the owners of an approximately 26-acre property and the improvements thereon with a street address of 393 Guard Hill Road, identified on the Town of Bedford Tax Assessment Map as Section 83.8, Block 1, Lot 1 ("the Property"). The Santomeros are longtime residents of the Town, and purchased the Property in August 2006, after selling a prior home in the Town.

Our clients are very concerned about the inclusion of their Property on the survey of historic houses in the Town, the role of the Historic Building Preservation Commission ("the Commission"), and the proposed revisions to the Historic Building Preservation law.

By way of background, the Property is improved with a main house and additional accessory buildings. The Property is comprised of the main residence, adjoining terraces and entrance court, a gatehouse, a guest house, a greenhouse, a stable, two garages, a pool house, an entrance drive, service courts and formal gardens. The main house was constructed in or around 1926, and is the former country home of noted architect Mott B. Schmidt, its designer. The pool house was also constructed also in 1926. After purchasing the Property in 2006, the Santomeros engaged in extensive restoration and renovation of the Property, with great respect for its existing architecture, while bringing the interior and technology of the buildings into the 21st Century. There was no exterior demolition at the Property, with the majority of the work affecting the interior of the buildings. However, should the Santomeros decide to make any exterior changes in the future, they would surely find themselves before the Commission, whether under the existing law or any amendments thereto.

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As you know, the Commission came into existence in 2003, when your Board adopted the Historic Building Preservation Law and appointed the Commission to issue approvals under the new Law. In short, affected properties could not be demolished or substantially altered without prior approval by the Commission. As written, the Law applied to historic buildings located outside the Bedford Village and Katonah Historic Districts that were in existence prior to 1900, registered on the National Register of Historic Places, or constructed after 1900 and listed on the Survey of Historic Buildings prepared by the Town (the "Survey"). This Survey prepared by the Commission was not readily available to the public and, in fact, was often referred to by residents as a "secret" list. One only became aware that one's property was included when one sought to demolish a building on a property listed on the Survey. In fact, at the time they purchased the Property in 2006, the Santomeros did not know that their home was included on the Survey, nor were they informed of inclusion on the Survey when they applied for permits to make renovations to their Property. Because of the fact that the Survey's existence was not known to all, there could be the potential for liability claims to be asserted by unknowing property owners against the real estate agents who listed and marketed the property without any indication of the property's presence on the Survey.

Last year, when the Commission released its new Draft Survey of Historic Buildings, the Property was listed as "individually significant" and thus subject to the same review and approval process by the Commission as when it was listed on the original Survey. As you know, there has been quite a bit of public opposition to the new survey, which included many more properties than before, and was, in fact, the first time that many property owners became aware of the existence of the Survey and the associated regulatory burden on their properties. In response, the Commission has proposed a revised Draft Survey and Law, which the Commission says will result in a reduction of its authority and in the number of regulated properties.

The proposal envisions two classes of properties: Tier 1 (individually significant) and Tier 2 (contributing). According to this new proposal, there would still be 258 properties requiring the Commission's approval for "demolition" or "substantial alteration" and 349 properties requiring an administrative permit for "demolition." This is regulation of homes *in addition* to those within the historic districts in Katonah and Bedford Village. We understand that there may also be a list of properties that will not be subject to regulation but that are considered to have some historic value. The Santomeros' Property is listed currently on the revised Survey as Tier 1, which means it is still burdened by the full force of the Law. While we understand that the Commission is working hard to clarify the existing Law, the decision to designate a property as historic is still within its purview.

Respectfully, we submit that the Historic Building Preservation law itself is not the best or most reasonable way to achieve the stated purpose of historic preservation. It is established that a local regulation must "substantially advance legitimate State interests." *Seawall Assocs. v. City of N.Y.*, 74 N.Y.2d 92, 544 N.Y.S.2d 542 (1989). It is also established that municipalities

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have the right to enact ordinances for the preservation of historical features, and in fact that New York encourages such preservation. See *Trustees of Union Coll. in Town of Schenectady in State of N.Y. v. Members of Schenectady City Council*, 91 N.Y.2d 161, 667 N.Y.S.2d 978 (1997). However, preservation for the sake of preservation is not a valid purpose. There must be a reason why particular properties are singled out to be preserved and may not be altered or demolished without prior approval. The public's interest in preservation must be weighed against important private property rights which are affected, and the restrictions in the particular regulation must "substantially advance" the goal of historic preservation. The Town of Bedford has not only identified specific historic districts and imposed restrictions thereon, but it has also placed restrictions on a large number of homes outside of those districts. These property owners are thereby involuntarily bearing the burden of these restrictions on the use of their property in furtherance of historic preservation, which is a burden that should be borne by everyone who owns property in Town, not just a select few.

Furthermore, even as revised, the Historic Building Preservation Law gives too much discretion to the Commission in designating a house as historically significant. There are objective criteria in identifying historic houses, and we submit that this is the appropriate approach. For example, the Commission may designate as historical and seek to preserve a house constructed prior to a certain date (i.e. 1900), or a house listed on the National Register of Historic Places. However, the current law also includes the following subjective criteria: "[w]as constructed after the year 1900 and is listed on the Survey of Historic Buildings (the "Survey") prepared by the Town." As mentioned, no one knew how that Survey was prepared or what the criteria were for being included on said Survey. The proposed revisions to the Historic Building Preservation Law provide more specifics as to the factors considered by the Commission but these factors are very subjective and the Commission has the discretion to impose a historic designation on a home that it feels possessed "special character" or has "historic value" or represents a certain style of construction. This is unfair to the tax payers of this Town, who find themselves unreasonably restricted from constructing additions or otherwise demolishing portions of these "historic" homes.

The Santomeros have, and always will, value the historic character of the Town, and in fact it is the reason why they purchased the Property and have spent a large sum of money to restore it to its original floor plan and design using original materials and methods where possible, making the Santomeros the exemplars of voluntary adherence to historic preservation. However, the Santomeros feel strongly that such historic preservation should be a voluntary step, and not a regulatory burden. As other concerned citizens have stated, the restriction on what one can do with the buildings on one's property, in addition to existing zoning and environmental restrictions, creates a dramatically negative impact on the value of one's property and is highly detrimental to the marketability and value of the property.

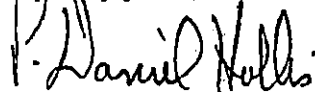
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Respectfully, the Commission could function as an advisory body, as is the case in other Towns, and thereby be available as a resource and for guidance to property owners who choose to preserve the character of their historic homes.

We respectfully request that this Board consider financial and other incentives to encourage historic preservation in the Town and leave historic or landmark status to a select few properties that are in fact historically significant. We understand that the Commission has proposed such options, but they are simply insufficient, if not insignificant. At this time, the HBPC recommends a reduction of building permit fees for affected owners and a participation in the assessment abatement program for historic preservation as permitted by New York law. While we recognize that your Board may not have the authority to direct an assessor to reduce property taxes, we urge you to consider all available legal avenues to achieve a fair result for owners affected by this historic building preservation law. As I am sure your Town Attorney will advise you, taxing authority is vested in the State legislature, unless specifically delegated, and a local law granting additional tax abatement or a reduced assessment may not be possible, therefore this issue needs additional inquiry and research by your Board and your counsel.

In the interest of our community, we urge you to take this opportunity to revise the Law in its entirety simply to reflect the goals of historic preservation rather than prohibitions, and to change the role of the HBPC to an advisory commission.

Very truly yours,



P. Daniel Hollis III

PDH:kc

c. Mr. and Mrs. Camillo Santomero (by email)