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May 12, 2021

Town of Glen Planning Board
7 Erie Street
Fultonville, New York 12072
Attn: Mr. Tim Reilly, Chair

**Re: Western Supreme Buddha Temple Site Plan Application
Town of Glen, Montgomery County**

Dear Chairman Reilly and Members of the Planning Board:

This office has recently been retained by Friends of Our Lady of Martyrs Shrine, Inc. regarding the above referenced site plan application. The project site is located at 174 Shrine Road, Fultonville, New York, off NYS Route 5S, and is adjacent to property owned and operated by my client, on which is located the Auriesville Shrine, also known as Our Lady of Martyrs Shrine and the National Shrine of the North American Martyrs.

Please note that my office has filed a request pursuant to the New York Freedom of Information Law ("FOIL") for the complete application record in this matter. We have not yet been provided the records responsive to that FOIL request, and thus have not had the opportunity to review the full application record to date. The comments set forth below are based on our review of documents available on the Town of Glen website.

Regarding the site plan application for the proposed Western Supreme Buddhist Temple, the Glen Planning Board has already held the public hearing on this action, with that public hearing having been closed at the Planning Board's April 15, 2021 meeting. However, based on a review of the publicly-available records, the public hearing held by the Planning Board for this application was premature, as all information required under the Town of Glen site plan regulations had not yet been submitted by the applicant, and therefore was not available for public review and comment. Accordingly, this correspondence is to respectfully request that the Glen Planning Board require the supplementation of the application materials by the applicant to comply with the Glen site plan regulations, and to thereafter re-open the public hearing on this action to allow full public review and comment on all required site plan information.

Town of Glen Code, Chapter 87, Land Use Management, Section 87-22(E), requires that the following items, among others, be submitted in connection with a site plan application:

- The location of all present and proposed utility systems, including the following:
 - a) sewage or septic systems.
 - b) water supply system.
 - c) telephone, cable and electrical systems.
 - d) storm drainage system, including existing and proposed drainage lines, culverts, catch basins, head walls, end walls, hydrants, manholes, and drainage swales. The Planning Board may also require soil logs, soil profile analyses (deep hole test pits), percolation tests and stormwater run-off calculations for large developments or developments in environmentally sensitive areas.
- Plans to prevent the pollution of surface or ground water, erosion of soil both during and after construction, excessive run-off, excessive raising or lowering of the water table, and flooding of other properties, as applicable. There shall be pre- and post-drainage calculations for the site done by a certified engineer. From this the engineer must show how there will be no increase in run-off from the site. The use of ponds, drywells, etc. shall be used, but all sites shall have zero increase in run-off so as not to disturb neighboring properties.
- Existing and proposed topography at five-foot-contour intervals. If any portion of a parcel is within the 100 year flood plain the area will be shown and base flood elevations given. Areas within the site where ground removal or filling is required shall be indicated, and their approximate volume in cubic yards shall be given.

Town of Glen Code Section 87-23, pertaining to standards of review by the Planning Board on site plan applications, provides that the Planning Board shall review the site plan and supporting documents, taking into consideration the fulfillment of stated objectives, including:

- Legal: conformance with the provisions of the local laws and ordinances of the Town, the Town Law of New York State, and all applicable rules and regulations of state and federal agencies.
- Pollution Control: adequacy of methods of sewage and refuse disposal and the protection from pollution of both surface waters and ground water. This includes minimizing soil erosion both during and after construction.

- Nuisances: protection of abutting properties and town amenities from any undue disturbances caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, glare, stormwater run-off, etc.
- Existing vegetation: minimization of the area over which existing vegetation is to be removed. Where a tree removal is required, special attention shall be given to planting of replacement of trees.

Here, the site plan application materials submitted on the Western Supreme Buddhist Temple application are incomplete as a matter of law and a matter of fact. The Glen Planning Board review engineer, in his letter dated February 3, 2021, noted that:

- The site plan application materials did not include required detail on stormwater management systems, lacked information as to how new impervious surfaces would handle additional run-off, a full stormwater pollution prevention plan should be submitted for review; and that percolation test results, test pits (with locations shown on plans), and existing soil conditions need to be included as part of the design criteria.
- Percolation test results, test pits (with locations shown on plans), and existing soil conditions should be included as part of the septic system design, and submitted for review.
- No design drawings or details of the water system and well plans had been provided for review.
- Documentation of soil conditions, depth of existing water table, and soils information much be submitted for review.

In response, the applicant's engineer, in his letter dated February 18, 2021, confirmed that more than one acre of area will be disturbed as a result of this action; however, neither a stormwater pollution prevention plan (SWPPP) nor an erosion and settlement control plan appear to have been prepared or to have been submitted for review. The applicant's engineer conceded that due to the onset of winter weather, soil testing could not be completed and would resume later in the spring of 2021; however, field data addressing that required information is not available on the Town of Glen website for the public to review, and appears to be absent from the record available during the public hearing.

The issue of stormwater management and erosion control is of the utmost significance on this project, as both removal of existing trees and grading on slopes are being proposed. In this regard, while the plans available on-line depict what appears to be existing topography on the project site, no pre-construction or post-construction

topographic information is available, and no information concerning a cut and fill analysis has been provided. Information regarding stormwater design and adequacy, erosion controls, final topographic data, and a grading/cut and fill analysis should have been available for public review and comment during the public hearing. The lack of this required information in the public record has prejudiced the opportunity for complete public review and comment in violation of the Town's own site plan submission requirements. It is not adequate for the Planning Board to conclude that this information is to be submitted in conjunction with building permit applications; in this regard, such an approach illegally defers site plan review information to an administrative and ministerial review by the building department, rather than discretionary review by the Planning Board during site plan review and eliminates the opportunity for adequate public review and comment.

Further, the issues of stormwater management and erosion control give rise to issues of soil conditions and depth to groundwater on the project site. However, the applicant's engineer concedes that field data regarding soil conditions and groundwater elevation would be added to the plans as data has not yet been available. The site plans available on the Town of Glen's website do not have this data available for public review and comment. Again, this lack of required information on the site plan submittal has prejudiced the public's right to adequate review and comment on this action.

Regarding the proposed well and septic design, both the applicant's engineer and the Planning Board review engineer concede that information on water and septic design was not available for public review and comment during the public hearing, although those items are required in order to have a complete site plan application under the Town of Glen site plan regulations. Again, deferring review of this detailed information until the time of building permit application does not comply with the Town of Glen site plan regulations, and prejudices the public's right to review and comment on this action.

It is also noted that the project site is located within Zone A for base flood elevation purposes. The Planning Board review engineer's March 3, 2021 letter asserts that this was discussed at the Planning Board's February 18, 2021 meeting, and that "burst panels" would be used to address this issue. However, Town of Glen Code, Chapter 74, Flood Damage Prevention, identifies Zone A as an area of special flood hazard. Town of Glen Code Chapter 74 establishes a Flood Control Officer, and requires that a development permit be obtained before the start of construction or any other development within an area of special flood hazard. The record in this matter does not include any referral to the Town of Glen Flood Control Officer for review and comment, and no mention of a development permit requirement is in the public record available on the Town of Glen website.

It is clear that this application was moved to public hearing without critical

information required under the Town of Glen site plan regulations available for public review. The public is entitled to have this information available for review prior to a public hearing, and its absence renders the prior public hearing on this proposed project incomplete as a matter of law. To address this deficiency on the record, the Planning Board must ensure that **all** information required under the Town of Glen site plan regulations for a complete site plan application be submitted by the applicant, and that following adequate opportunity for public review of that information, the Planning Board must re-open the public hearing on this application to comply with the requirement for adequate public review and comment.

It is acknowledged that this site plan application was referred by the Glen Planning Board to the Montgomery County Planning Board for review and recommendation. However, given the lack of application information as discussed above, it is clear that the Montgomery County Planning Board should be afforded the same information as outlined in this correspondence so that it can comply with its legal obligations under New York General Municipal Law 239-m. The Montgomery County Planning Board is accordingly copied on this correspondence.

Finally, it is noted that the applicant has confirmed that this project will be phased, and will be subject to available funding. In light of this comment, there is no basis to rush to a determination on this action. To the contrary, the Glen Planning Board should require full compliance with the Town of Glen site plan regulations and provide the public its right to fully understand, analyze, and comment on all aspects of this proposed action. In this regard, the current record before the Town of Glen Planning Board fails to meet these legal requirements.

We look forward to the opportunity to review the required supplemental application materials, and to continue in the public review and comment process before the Glen Planning Board on this proposal. Thank you in advance for your attention.

Very truly yours,

GILCHRIST TINGLEY, P.C.

By: 

Andrew W. Gilchrist