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November 3, 2009

By Facsimile (617) 727-6095
& Regular Mail

Board of State Examiners of Plumbers and Gas Fitters
239 Causeway Street
Boston, MA 02114

RE: Newton North High School – 457 Walnut Street, Newton
 Variance Request

Gentlemen:

On October 7, 2009, representatives of the City of Newton appeared before your Board requesting a Variance from an interpretation of the State Plumbing Code in regards to the rainwater harvesting system being installed at the new Newton North High School ("the Project"). The basis for the Variance Request was detailed in the Background Information to the Variance Application submitted by the City and discussed at length during the hearing on the Variance Request. Accordingly, I will not repeat that information in this letter.

However, it was made very clear both in the Application and at the hearing that all actions by the City and the Project Team had been undertaken in good faith based upon the Team's understanding of the Board's previous interpretations of the Plumbing Code with regard to rainwater harvesting systems, which are not mentioned in the Code. The City's representatives also advised the Board that prompt action on the Variance Request was critical because the Project's timetable called for hardscape to be installed over the area where the piping in question is located within days. Strict adherence to the Project timetable is critical to insuring that the new high school will be ready for the start of the 2010-2011 school year.

At the conclusion of the hearing, the Board voted to allow the City to secure a plumbing permit for the portion of the rainwater harvesting system that was the subject of the Variance Request and to allow certain testing of the piping in question subject to

inspection by State Investigator Scott Padden. Action on the Variance Request was to be subject to the results of this testing.

The City promptly secured the plumbing permit and arranged for the inspection by Investigator Padden. That inspection occurred on October 14, 2009, at which point Investigator Padden told the Project Team to take no further actions until he got back to them regarding the piping's bedding matter. Since then, the City has heard nothing further from Investigator Padden or anyone else from the Board as of the date of this letter.

At this point the Project cannot be delayed further and the City must act in order to keep construction activities moving in accordance with the Project's schedule. Accordingly, the City intends in the short term to use the rainwater being collected from the building's roof drains to irrigate the high school playing fields rather than to provide flushing for toilets and urinals.

Use of the piping in question for this purpose will remove that portion of the Project's rainwater harvesting system for which the Variance was requested from the jurisdiction of the Board and will permit the Project to go forward as scheduled. However, the City reserves the right to take whatever legal steps are necessary to restore use of the rainwater harvesting system to its original intended purpose.

Given the City's forthright and good faith efforts to resolve this very time sensitive matter in accordance with the Board's interpretations of the Plumbing Code, I am surprised that there were no follow-up communications to the City after Investigator Padden's inspection and his directive to the City to wait for further instructions. The City has recently heard from various third parties that the Board has, in fact, acted on the Variance Request and has denied the same. Frankly, if this is true, I am surprised that no notice of the decision to take up discussion of the Variance Request was given to the City, and that formal notice of the denial has not been sent as of this date.

I look forward to receiving an explanation as to what action the Board has taken on the City's Variance Request, as well as the basis for that action.

Very truly yours,



Ouida C.M. Young
Associate City Solicitor

cc: A. Nicholas Parnell, Public Buildings Commissioner
Brad Dore, Project Architect, Dore & Whittier
Trip Elmore, Turner Construction
Frank Allard, Dimeo Construction