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March 3, 2022

VIA EMAIL (Karen Kelleher — kkelleher@stow-ma.gov)

Town of Stow
Board of Appeals
380 Great Road
Stow, MA 01775-2127

RE: Appeal from Unfavorable Action (dated January 6, 2022)
Applicant: Mark D. Forgues
Property: 84-102 Great Road
Owner: Presti Family Limited Partnership

MOTION TO STRIKE “PRESENTATION” Materials
Submitted by the Applicant Mark D. Forgues

Dear Chair and Members of the Stow Zoning Board of Appeals:

We represent Richard Presti and the Presti Family Limited Partnership (hereafter “Presti”), the owner of the Property involved in this Appeal.

Presti hereby moves to strike those portions of the Applicant’s 85-page “Presentation” materials, submitted on or about February 28, 2022, that raise issues or make arguments that were either (i) never raised in his original Enforcement Request to the Building Commissioner (and thus never acted on by the Building Commissioner), or (ii) not raised in the Applicant’s January 6, 2022 Appeal to the ZBA.

It is fundamental that this Appeal can only involve those issues raised or asserted at the very inception of this matter. Thus, the scope of the Appeal is limited to what Mr. Forgues presented to the Building Commissioner. In his October 4, 2021 email to Mr. Ramsbottom, Mr. Forgues refers to the number of Class II Licenses on the Property (and that they constitute an increase or change in use), and also raises the concept of *abandonment* of the automobile-related uses on the Property. (Notably, in this email he never mentions the argument that Lot B and Parcel 1-A are not grandfathered based on who owned those abutting properties in 1968.)

In responding to Mr. Forgues's request for zoning enforcement, by email on October 5, 2021, Mr. Ramsbottom declined to act, citing the ongoing, separate litigation. Mr. Forgues appealed, on November 2, 2021, and this Board decided that the matter should be remanded back to Mr. Ramsbottom to decide on the initial enforcement request. (Notwithstanding the remand, the Board's Findings included adopting its own prior conclusions on the abandonment issue and acknowledging that the Board has already limited the number of automobiles allowed for each Class II License holder.)

On remand, Mr. Ramsbottom issued a letter on December 21, 2021. He concluded that the issue of abandonment of automobile uses had already been decided by the Board (in the prior Fisher appeal), and that the issue of multiple licenses "does not itself translate into an increase in use." He therefore declined to issue a Cease-and-Desist Order for the sale and storage of automobiles.

From that new denial of his original enforcement request, Mr. Forgues then filed another appeal. In this appeal (including his attached letter, mistakenly dated January 6, 2021), but filed with the Town Clerk on January 6, 2022, Mr. Forgues makes no mention whatsoever about the argument that the automobile uses at the Property were abandoned or discontinued. (Accordingly, that particular issue is not part of this appeal and should not be considered by the Board.)

Instead, Mr. Forgues argues that there has been an increase or change in use based on the identity of a new Class II license holder, and/or based on the number of cars specified in the Board's decision. He also offers a brand new theory — *which has never been raised or presented to the Building Commissioner* — about the ownership of Lot B and Parcel 1-A, and who owned them in 1968. As this

Board does not have the benefit of Mr. Ramsbottom's ruling on this specific argument about the history of the Presti Property, the Board should also disregard that argument.

In addition, in his Presentation materials Mr. Forgues appears to be attempting to have this Board declare *all* activities and uses on the Property to be zoning violations. His voluminous Presentation materials include references and comments (added in red) about bus storage, landscaping activities, container storage, and lighting, all of which should be disregarded by this Board, for two reasons: (i) this form of relief was not presented to the Building Commissioner with the request for enforcement, and (ii) these uses were dealt with specifically in the Board's 2017 Decision (in the Fisher appeal), and determined to be outside the protection of grandfathering — but which were appealed by Presti and are now pending in the Land Court. The decision of the Land Court will preempt any decision this Board may make concerning these issues, and the Board should not deal with them as part of this Appeal.

Thus, the only issue actually before this Board in this appeal is the issue of the Class II licenses, and the apparent limit of 82 total vehicles on the Property. To the extent that Mr. Forgues's challenge is based on the identity of a license holder, this Board should reject that challenge. To the extent that the current Class II licenses issued by the Town seem to allow for a total of 92 vehicles (80 for Car Lot Express, Inc. plus 12 for YOLO Moto Co.), this is not a *substantial* increase over the 82 vehicles specified in the Board's December 16, 2021 Decision. Presti submits that the Board should therefore vote and uphold the Building Commissioner's December 21, 2021 Decision (declining to issue a Cease-and-Desist Order).

Thank you for your attention and consideration of this matter.

Very truly yours,

/s/ Robert E. McLaughlin, Sr.
Robert E. McLaughlin, Sr.