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TOWN OF STONEHAM
BOARD OF APPEALS

Public Hearing Re

Comprehensive Permit Request by
Weiss Farm Apartments, LLC
With Regard to 170 Franklin Street

Board Members Present:

Robert Saltzman, Chairman
Lawrence Rotondi
Tobin Shulman
William Sullivan
Michael Dufour
Nate Cramer

Catherine Rooney, Secretary

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for the Applicant.

Held at:

Stoneham Town Hall
35 Central Street
Stoneham, Massachusetts
Thursday, July 24, 2014
8:12 p.m.

Carol H. Kusinitz
Registered Professional Reporter

ATTORNEY NOTES

Calendar for year 2014

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P R O C E E D I N G S

CHAIRMAN SALTZMAN: Good evening, everybody. Welcome to the Stoneham Board of Appeals. My name is Robert Saltzman. I am the Chairman of the Board. To my right is Larry Rotondi. To his right is Tobin Shulman. To my left is Bill Sullivan, and to his left is Michael Dufour. All the way to my far right is Nate Cramer.

Just very briefly, as everybody knows, tonight we are opening the hearing on the application for a 40B permit, 170 Franklin Street, the property known as Weiss Farm. I would just point out that this is the only meeting I would anticipate where the 40B and a regular Board of Appeals hearing will be occurring on the same night. So after tonight, we anticipate that the 40B hearings will be held separately.

I would also point out that at our hearings, usually what happens is we hear from the moving party, the Petitioner, and that will occur after a fashion in this case. The person who is the moving party, the entity which is attempting to move forward with the 40B application, they will be the ones to go first in this.

And I would just point out that first what we're going to be doing is, I will read the petition, the legal notice, into the record. We will deal with some preliminary matters as a Board. Attorney Jon Witten has reviewed the proposal, the application, on the issue of completeness, and that will be addressed, along with some other preliminary matters.

So, "On Thursday evening, July 24, 2014, at 8:00 p.m. in the Stoneham Town Hall Auditorium, pursuant to General Laws Chapter 40B, Sections 20 through 23, and Chapter 18, Article VI, of the Stoneham Town Code, the Stoneham Board of Appeals will hold a public hearing on the application of Weiss Farm Apartments, LLC, seeking a comprehensive permit for 264 dwelling units on a 25.6 acre parcel commonly referred to as 'Weiss Farm,' located at 170 Franklin Street, Stoneham, Massachusetts."

The above noted application is available for public inspection afternoons, except Friday, at the office of the Board of Appeals, and daily at the and Town Clerk's office, except for Friday afternoon.

It's my understanding that Mr. Tobin

Shulman would like to make an announcement.

MR. SHULMAN: Yes. Thank you.

Mr. Chairman, pursuant to the rules governing special municipal employees, I wish to disclose a relationship that my architectural firm has with one of the consultants retained by the Applicant for the Weiss Farm Apartments, LLC, matter pending before the Board of Appeals.

My architectural firm, Siemasko and Verbridge, is engaged with SEB Consultants in a matter in Weston. I am not an owner of the architectural firm, nor did I have decision-making authority regarding the contractual relationship with SEB. In addition, I am not now nor will I be in the future working on the firm's project with SEB.

I do not believe that I have a conflict of interest in participating in the Weiss Farm Apartments, LLC, matter, pursuant to the rules governing special municipal employees, and I'm making this disclosure to dispel any appearance of a conflict of interest. I have also filed a written disclosure with the Board of Selectmen.

CHAIRMAN SALTZMAN: Thank you.

At this time, Mr. Sullivan will also be making a disclosure.

MR. SULLIVAN: Likewise, I have filed an ethics disclosure with the Board of Selectmen for my participation in this comprehensive permit of Weiss Farm. I filed a request for a written determination pursuant to Section 19B of Chapter 268A that my interest is not so substantial as to effect the integrity of the services that the municipality may expect from an employee.

I went in front of the Board of Selectmen. I have a letter from the Board of Selectmen that states that "The Board of Selectmen, at our meeting on July 8, 2014, unanimously voted that we find that, with respect to the matter of the above noted application for a comprehensive permit for Weiss Farm (170 Franklin Street), your financial interest and that of your immediate family in and with respect to 152 rear Franklin Street is not so substantial as to affect the integrity of your performance as a member of the Board of Appeals in this matter." That's dated July 11, 2014, by the Chairman of the Board of Selectmen.

I do not own a piece of property there. My

father owns No. 152 Franklin Street, which is landlocked, and it is on the abutter's list. The tax bill comes to my house, because my father lives in Florida. It's a whopping $17 and change a quarter, and that's where my interest lies. It could be my inheritance, I suppose.

CHAIRMAN SALTZMAN: I would also like to inform, on behalf of an absent member of the Board, Eric Rubin, who learned, when he saw the proposal, that he is on the list of abutters -- it's my understanding that Mr. Rubin has made disclosure of this fact, but I would also anticipate, however, that Mr. Rubin will be recusing himself, given that his primary place of residence is within the list of abutters.

Attorney Jon Witten has reviewed the application and will be making a presentation as to its completeness and what, if anything, is missing.

MR. WITTEN: Thank you, Mr. Chairman. Good evening, Members of the Board.

The Board of Appeals has adopted comprehensive permit regulations pursuant to relevant regulations, and the regulations that the Board adopted were recently updated after a public

hearing, an advertised public hearing. Those comprehensive permit regulations are relevant to the application that's before the Board, and one of the first procedural matters that's before a board, when a comprehensive permit application is made, is whether the application is complete.

So by memorandum dated July 24th, a copy of which I provided to Attorney Cicatelli, I've gone through the comprehensive permit regulations adopted by the Board and itemized those areas that, in my opinion, are complete or incomplete, and very briefly, Mr. Chairman, I'll identify those for the record.

This is Section 18-33, which relates solely to the procedural filing requirements under the comprehensive permit regulations, Subsection A, Preliminary Site Development Plans. It's my opinion that they are incomplete. The existing wetland area, vernal pool area, and areas of wetland resources within 100 feet of the site are not labeled. It's incomplete because of Subsection 4, relating to existing significant environment features, such as ledge outcrops, scenic views and large trees.

With respect to 18-33B, the application is not complete, because it does not contain a report on existing site conditions.

With respect to Subsection C, the application does contain preliminary scaled architectural drawings.

With respect to Subsection D, as in David, there is not a tabulation of proposed buildings with respect to size, type, floor area, bedrooms and ground coverage.

With respect to Subsection E, Subdivision Plan, that wouldn't be relevant. The project does not propose a subdivision.

With respect to Subsection F, Utility Plans, the application is incomplete. It does not show or the application does not show adequate supporting information to demonstrate that all utilities and related infrastructure meet all applicable federal and state laws and regulations, and in addition, the application does not contain a utility plan or separate utility plan that identifies the itemization included in the regulations.

Subsection G, under Project Eligibility,

the first item is "Evidence that the Applicant is a public agency, a non-profit organization or limited dividend organization." There is no evidence for any of those three findings. Presumably the Applicant is claiming status as a limited dividend organization.

With respect to Subsection H, the Applicant has provided the Board a purchase and sale agreement.

With respect to Subsection I, the Board is not in possession -- at least upon information and belief the Board is not in possession of the materials the Applicant has submitted to Mass. Housing.

Subsection J, Project Eligibility Letter, the Board is in possession of a project eligibility letter.

Subsection K, Pro Forma, the pro forma has been submitted or a pro forma has been submitted, but it is not signed and dated by the Applicant or its agent under the pains and penalties of perjury, nor does it contain the statement required in Subsection K relating to pro formas.

Subsection L, Evidence of Local Housing

Need, there is no material provided to the Board as to evidence of local housing need.

Subsection M is incomplete in that the application does not provide supporting documentation as to the requested waivers. The regulations clearly state that the waiver request must include a statement why, but for the waiver, the project would be uneconomic.

Subsection N, as in Nancy, Environmental Impact Analysis, is not complete. There is no environmental impact analysis within the application.

Subsection O, Traffic Impact Report, a traffic report or traffic analysis has been provided.

Statement of Impact on Municipal Facilities is incomplete. No such statement has been provided.

Subsection Q, Roster of Development Team Members, is incomplete. While there is a list of proposed team members, the required itemization as found in the regulations has not been provided.

Subsection R, 25 copies of the application have been provided to the Board, but they do not contain cross-sections, nor do they contain

full-sized, scalable plans.

Subsection S is an abutter's list, and that has been provided.

Mr. Chairman, it's my opinion that the Board, after its discussion and deliberations this evening, continue the matter to a date certain, which the Board would do anyway, but, in the interim period of time, request the Applicant to provide the Board with a complete application so that, prior to your continued hearing, the Board would have the application materials as required by your regulations.

CHAIRMAN SALTZMAN: Thank you, Attorney Witten.

Would the Applicant wish to respond?

MR. CICATELLI: Mr. Chairman, we'll probably just take it under advisement at this point and not respond. Thank you.

CHAIRMAN SALTZMAN: Attorney Witten, the Board can take action here with reference to the items that have been identified. We can, I suppose, deliberate on that motion among ourselves.

I trust everybody has a copy of the items that Attorney Witten has identified?

MR. SULLIVAN: I don't.

MR. ROTONDI: I don't have a copy of that either.

CHAIRMAN SALTZMAN: These are the items that Attorney Witten was referring to (indicating). You got those, right?

MR. ROTONDI: I didn't get it.

CHAIRMAN SALTZMAN: If we could just take a very short recess, and everybody can be provided with a copy. We'll just take a minute.

(Recess)

CHAIRMAN SALTZMAN: As we go through the itemization of materials that Attorney Witten has identified as missing from the application, I would just ask that we take note of the fact that we have, during the past year, revised our regulations concerning 40B applications. The purpose in doing so was to put the Board of Appeals in as good a position as Mass. Housing in our assessing such projects. And it would seem to me that we should be entitled to everything that Mass. Housing received, as well as any additional items that members of the Board feel are important at this time.

I would point out, among other things,

that, although Attorney Witten indicated that the traffic study was presented in full, I would point out that the Board of Public Works reviewed that and stated that they thought that -- Mr. Grover indicated that of some vital importance would be a reporting of traffic accidents on Franklin Street in which less than $1,000 in property damage was done. And the reason for that would be because fender-benders on the road stop traffic. It doesn't matter whether it's $1500 or $500; everybody winds up stopping. And the Board of Public Works indicated that they considered that to be significant information that was omitted.

Does anybody have any other items?

MR. SULLIVAN: They also mentioned the fact that "The finished floor elevations of the three larger buildings are approximately 10 to 12 feet lower than Franklin Street, which will have the effect of significantly reducing the visual impact of proposed building elevations when viewed from surrounding areas. The finished floor elevations of the five-story buildings is 172 feet, while the elevations of Franklin Street at the entrance to the site is 176 feet, which results in a height

difference of only 4 feet. This eight-foot difference, based on Mass Housing's own words, would have a significant visual impact."

There is also, on the Site Approval Letter they make reference to "The Site is located immediately across the street from Stoneham High School and is within walking distance to a daycare center, convenience store, laundromat and recreational facilities. An assisted living facility is currently being constructed approximately a quarter of a mile from the site. The convenience store and laundromat were demolished in the construction of the assisted living facility, which puts the nearest replacement facilities over three quarters of a mile away."

That's just to touch on the front part of that. There are many others with storm water run-off, waste water treatment, crash reports, traffic, parking. As far as Department of Public Works was concerned, there's a lot of missing documents. There was -- due to error, omission, misrepresentation of the project by the developer to Mass. Housing. So that's just from the DPW.

CHAIRMAN SALTZMAN: Does it make sense that

we put together a list of items that we're looking for and we take it from there? I think that -- you know, some of the comments identify things that department heads, such as the Department of Public Works, which seemed to work pretty hard on this, would have been looking for in order to make a fair assessment.

I don't know that there would be an objection to producing the initial application for Mass. Housing, but --

MR. GEOFFREY ENGLER: I think that would be -- for the record, this is Geoff Engler from SEB. I think that's a great idea. I mean, certainly if there are items that the Board feels like it needs to make an informed decision or analysis, we would be happy to look at that and consider that.

Honestly, I'm a little confused by the assertion that the Board did not receive the same materials that Mass. Housing did when -- I'll be happy to furnish the stamped copy of the cover letter from the Clerk's office. I personally dropped off that application that went to Mass. Housing. It's part of -- before you can submit something to Mass. Housing, you have to submit it to

the municipality. And, as I think Counsel Witten would attest, the communication between Mass. Housing and the municipality was extensive during the site approval review process.

So I think the characterization that the Town did not receive the same information that Mass. Housing did is just -- from our perspective, I'm confused by that.

And then secondly, the greater point is, yes, we acknowledge and will be happy to appease your concerns. And if Mr. Witten would provide us with a list of those items, we'll endeavor to get to work on that right away.

MR. WITTEN: Mr. Chairman?

MR. ROTONDI: It might be a good idea to meet with Public Works. You people have never met with the Superintendent or Town Engineering, with their concerns, before this application was even put in. So I think that would have been a step that you would have taken already, which you haven't done.

So, you know, before you start coming, maybe you should meet the Public Works. They have concerns about the water. They want to clover-leaf water coming from other towns. Drainage they're

concerned about, the separators, the water separators. They have a lot of concerns with the drainage, where the run-off is. I think it would be a good thing to set up with them first and see what their ideas are on this.

MR. CICATELLI: Mr. Chairman, one point I would just like to make, if I could, the first step is to file with this Board and begin the public hearing process and to basically produce all the information that was included in the 40B application.

At that point, there will be questions. And I do agree, Mr. Grover did put a lot of time in his memorandum. He raises a variety of issues that we can certainly look at. But, again -- and we haven't gotten to this point -- he makes the point in his letter that he's not a traffic consultant. And obviously we're going to at some point be talking about consultants, and I think at that point, you know, we might want to have the consultants speak.

So to meet with Mr. Grover may not have been appropriate without first meeting with you and submitting the drainage plans, but I'm assuming that

he'd be part of that process, once we identify consultants and we move forward.

In terms of Jon's memorandum, he's going to give us some more specifics so that we know, within a category, exactly what the Board is requiring, and then we can consider it at that time.

CHAIRMAN SALTZMAN: Thank you.

Attorney Witten.

MR. WITTEN: Mr. Chairman, the issue on the material to the subsidizing agency is the Board's regulations require any material submitted to the subsidizing agency. So there is no question, and I don't think that the Board is challenging that it received the same application that you submitted to Mass. Housing, but what the Board doesn't know is what else you submitted to Mass. Housing. So that would be anything from the beginning of your Project Eligibility Application until you actually submitted the application to the Town of Stoneham. So the regulations are quite clear. It's any material submitted.

Mr. Chairman, the purpose of this conversation is a completeness check, and it's my opinion, respectfully to the Board, that the

application is incomplete. And with the Board's permission, I will provide written correspondence, in addition to the memorandum to Counsel, as to why it's incomplete, and the Board will be on record with the Applicant that it deems the application incomplete, and that has important ramifications down the road.

The substantive reasons for incompleteness are not relevant at this point in time. What is relevant is the Board's finding that the application is incomplete.

CHAIRMAN SALTZMAN: At this time the Chair will entertain a motion from the Board.

MR. SULLIVAN: I would make a motion that we agree with Mr. Witten and numerous other boards that the application is not complete as noted, and that he will give these to the Petitioner. I don't know if the next step will be to continue until a date and time certain. What will be the purview of the Board?

CHAIRMAN SALTZMAN: I think the first thing that we would be doing is making a finding that the application is not complete, and we will be authorizing Attorney Witten to identify what items

are missing and to pursue obtaining those by a date certain, presumably two weeks before our next meeting.

Can I have a second?

MR. DUFOUR: Second.

CHAIRMAN SALTZMAN: It has been moved and seconded. Mr. Shulman?

MR. SHULMAN: Yes.

CHAIRMAN SALTZMAN: Mr. Rotondi?

MR. ROTONDI: Yes.

CHAIRMAN SALTZMAN: Mr. Dufour?

MR. DUFOUR: Yes.

CHAIRMAN SALTZMAN: Mr. Sullivan?

MR. SULLIVAN: Yes.

CHAIRMAN SALTZMAN: The Chair is in favor.

You have that authorization, Attorney Witten.

MR. WITTEN: Thank you, Mr. Chairman.

CHAIRMAN SALTZMAN: Do you have any other items?

MR. WITTEN: Mr. Chairman, the next item is the Town status with two out of the several categories in the Chapter 40B regulations called Consistent With Local Needs.

As the Board knows -- and I'll just be very brief, just to be helpful to the public -- under the comprehensive permit statute, if a town or city is consistent with local needs, then an applicant for a comprehensive permit cannot appeal an unfavorable decision from the Board of Appeals to the Housing Appeals Committee. That consistent-with-local-needs threshold is often referred to as the 10 percent threshold. But there are other thresholds as well, and it's my opinion, which I'll explain in just a moment, that the Town of Stoneham has met two of those other thresholds.

One of those thresholds is the so-called 1.5 percent calculation, which means that 1.5 percent of the qualifiable land area of the Town of Stoneham contains housing that is identified by the Department of Housing and Community Development as subsidized. The 1.5 percent calculation is an important milestone. It's hard to achieve, because it measures land area. But in smaller towns, land area towns such as Stoneham, it's achievable, and based on the numbers that we have from the Department of Housing and Community Development, based on the Metropolitan Area Planning Council

report from a few years ago, it's my opinion that the Town has achieved the 1.5 percent calculation.

It's important for the Board, if the Board agrees with my calculation -- I have a memorandum which I'll hand out to the Board and to Counsel -- it's important for the Board to so inform the Applicant that the Town is consistent with local needs, and it must do so within 15 days of the opening of the public hearing.

So my advice to the Board would be, if you agree with my advice, to vote that this evening. The Applicant then has 15 days to challenge the Board's determination, and the regulations provide for a process from there on.

So it's my opinion that, based on the numbers made available to the Town, that the Town is consistent with local needs for the land area calculation. It's also my opinion that the Town of Stoneham is consistent with local needs, because this project is a so-called related application. And it's a related application because, in December of last year -- excuse me, November of last year, and recorded at the Registry of Deeds on December 24th of last year, the Planning Board in Stoneham

endorsed an Approval-Not-Required Plan, carving out a portion of the Weiss Farm property as a house lot. That is a related application pursuant to the regulations.

A related application means that an application that is not a 40B application precedes by less than 12 months the application of a comprehensive permit. Certainly 12 months have not elapsed since December of last year or November of last year and the filing of this application.

So for those two reasons, it's my opinion that the Town of Stoneham is consistent with local needs, and the Board should, if it agrees with me, should so inform the Applicant.

I will hand Attorney Cicatelli a letter to that effect, with the Board's permission, if the Board so votes. I will then send by certified mail to the Department of Housing and Community Development that same letter that I'll hand to Attorney Cicatelli, and then the Applicant has its procedural rights if it chooses to follow those.

I would like to add one more point, if I could, Mr. Chairman. The definition of consistency with local needs does not mean that the Board can

reject the application out of hand. The Board must still deliberate, must still make a decision. What it does mean, if the Town is upheld under this determination, what it does mean is that the Applicant does not have an appeal from an unfavorable decision.

So, Mr. Chairman, I'm going to hand to the Board a memorandum summarizing what I just said, and I'll hand a copy to Counsel in just a moment.

CHAIRMAN SALTZMAN: Just a very quick question, Attorney Witten. If the Board does not act within the 15 days, what happens to a challenge on this basis?

MR. WITTEN: If the Board does not inform the Applicant within 15 days of tonight and a copy of the same to the Department of Housing and Community Development, the Board will have waived forever, on this application, that claim.

CHAIRMAN SALTZMAN: And if we make this application -- if we make such a finding, if we agree with what you're proposing, who makes the ultimate decision?

MR. WITTEN: The ultimate decision is at the Department of Housing and Community Development,

DHCD. They will receive -- because, with the Board's permission, I will send it to them tomorrow, they will receive it on Monday. They and Attorney Cicatelli's clients will review whether they agree with us or not.

If they choose to disagree, there is an appellate process, an internal appellate process, which may involve the Board of Appeals. We may be requested to provide additional information, which of course we'll be happy to do. All that while, your 180-day time clock from tonight will be stayed.

CHAIRMAN SALTZMAN: How long a period of time does the appeal take?

MR. WITTEN: As a general rule, it's 30 to 45 days.

CHAIRMAN SALTZMAN: So assuming that the Applicant disagrees with the finding, they have 15 days from tonight?

MR. WITTEN: Yes, sir.

CHAIRMAN SALTZMAN: And then the HHS, whoever they are --

MR. WITTEN: DHCD.

CHAIRMAN SALTZMAN: -- they would have an additional 30 days?

MR. WITTEN: Yes. DHCD. And the reason that number is not necessarily set in stone is, if the Department asks for further information from the Town, then that period of time may be extended. I've seen it extended sometimes for several months. Sometimes it's very quick. Sometimes it may take longer.

CHAIRMAN SALTZMAN: Thank you. If I could just take a moment.

(Pause)

CHAIRMAN SALTZMAN: Mr. Sullivan.

MR. SULLIVAN: Mr. Witten, I have a question for you. As far as meeting the 1.5 percent of the land area, if we held the developer -- if we feel we met that, what is that? Is that to stay this permit in front of us?

MR. WITTEN: So in either case, the 1.5 percent or the related application, if the Board is correct, then the Applicant will still be able to move forward with its application before you. You will eventually render a decision, but the Applicant will not have any appeal rights, no appellate rights whatsoever. So if you deny or approve with conditions, reducing dramatically the density, the

Applicant either accepts those or walks away. By being consistent with local needs, the Applicant's appellate rights are removed.

So that's the Holy Grail in 40B parlance. That's why towns are encouraged to get to this status, and if you get to this status, it turns the table in terms of the power struggle from the Applicant to the Board.

CHAIRMAN SALTZMAN: Attorney Witten, with reference to 760 of the Court of Mass. Regulations, that other challenge, if that were to be upheld by the appellate authority, that would simply stay the application until the end of the year?

MR. WITTEN: No. Very good question, Mr. Chairman. And that's one of the interesting things about the other ways of protecting consistency with local needs. There is a decision from the Housing Appeals Committee that, if you're consistent with local needs when the application was filed, you're consistent with local needs for the entirety of that application process.

So in this case, the related application is for this application for as long -- if upheld by DHCD, for as long as the Applicant maintains this

application before the Zoning Board of Appeals.

CHAIRMAN SALTZMAN: Thank you.

Does the Board have any discussion with reference to the memo that is in front of us?

MR. SULLIVAN: A question on the vote. What would we be putting in front -- if we were to agree with Mr. Witten, it would be to notify the Petitioner that we feel that, because of the 1.5 calculation found under the General Laws 40B, Section 20, and the related application provision of 760 CMR 56.037, would put us in that we are consistent with local needs? Is that what my understanding is?

CHAIRMAN SALTZMAN: That's correct.

MR. WITTEN: Mr. Sullivan, Mr. Chairman, yes, that's exactly right. I suggested language on Page 2 of the memo. Mr. Sullivan's language is perfect, but if it's easier, that's my recommended language to the Board, just to read as a motion.

MR. SULLIVAN: You made it too easy.

At this time, Mr. Chairman, I would move that, pursuant to the General Law Chapter 40B, Section 20, and 760 of CMR 56.038, I move the Stoneham Board of Appeals authorize Special Town

Counsel to provide written notification to the Applicant, with a copy to the Department of Housing and Community Development, that the Board of Appeals believes that the Town of Stoneham is consistent with needs as set forth in the General Laws Chapter 40B, Section 20, 760 CMR, 56.00 and others.

CHAIRMAN SALTZMAN: Is there second?

MR. ROTONDI: I second.

CHAIRMAN SALTZMAN: All right. It has been moved and seconded. We'll take a vote.

Mr. Dufour?

MR. DUFOUR: Yes.

CHAIRMAN SALTZMAN: Mr. Sullivan?

MR. SULLIVAN: Yes.

CHAIRMAN SALTZMAN: Mr. Shulman?

MR. SHULMAN: Yes.

CHAIRMAN SALTZMAN: Mr. Rotondi?

MR. ROTONDI: Yes.

CHAIRMAN SALTZMAN: The Chair is also in favor. You are so authorized, Attorney Witten.

MR. WITTEN: Thank you, Mr. Chairman.

Mr. Chairman, I will hand now to Attorney Cicatelli that letter that the Board has just authorized me to produce or provide, and I will send

a copy of this by certified mail to DHCD tomorrow.

Mr. Chairman, these are -- I will hand out copies of the letter I just handed to Attorney Cicatelli, and this is the same letter that I'll send to DHCD tomorrow.

CHAIRMAN SALTZMAN: Thank you.

Mr. Witten, I would ask that, as there are six Board members sitting here tonight -- generally it's a five-member Board, but this may be a process that goes to many months. I would point out that illness is not a far-fetched concept, nor any of the other events of nature. And I would ask that we be permitted, with the Applicant's approval, to sit six, pretty much in the way that one would sit alternate jurors, and if anything happened to any one of us -- certainly hopefully nothing will -- but that the alternate would then be permitted to sit.

Is there any objection to that?

MR. CICATELLI: That would be fine, Mr. Chairman. That would be fine.

CHAIRMAN SALTZMAN: Thank you.

Attorney Witten, do you have anything else?

MR. WITTEN: Thank you, Mr. Chairman. The Board is in possession of a third memo from me,

dated July 24th -- a copy has been provided to Attorney Cicatelli -- regarding consultants for the Weiss Farm Apartments project. And, Mr. Chairman, as the Board knows, and as the Board has experienced in the past, under Chapter 44, Section 53G, the Board and other boards in town has the right to ask the Applicant to provide funds for a special account, Chapter 44 Section 53G, to enable the Board to hire experts in its review of an application.

For simple applications, the Board often doesn't need much help. For complicated applications, the Board often wants outside help. It's solely up to the Board. The only prohibition, as funny as it may sound, against consultants is legal fees. The Housing Appeals Committee and the Court has ruled that the Town can't use 53G money for comprehensive permit reviews for legal fees. But every other imaginable consultant is available to the Board if it feels it's relevant.

So I've provided the Board a suggested list, and only suggested list, in terms of topical areas that the Board might want to consider retaining a consultant for the Board's review, for the Board's help in reviewing this application.

And I should say, Mr. Chairman, that the most important part of Chapter 44, Section 53G, is what's happening right now, which is the Board providing the Applicant with its interest in retaining consultants, identifying the names of consultants it is interested in, and asking the Applicant, through Counsel, whether the Applicant objects to the hiring of those consultants for only two possible reasons: one, that the requested consultant or interested consultant has a conflict of interest, or, two, that the consultant is not qualified. With no other reasons can the Applicant object to the Board's request for outside consultants.

So it's always important, in my opinion, to ask the Applicant right up front, provide the list of consultants the Board is considering, and ask the Applicant whether they believe there's a conflict of interest or a lack of qualifications. Other than that, the Board has the freedom to choose consultants as it sees fit.

The other piece of information is the Board should set a reasonable amount of money it wants to fund this special account up front. The Applicant,

two months, three months, four months later, can always be asked to put more funds into the account. Any excess funds, by statute, always gets returned to the applicant. It can never go into the General Fund. It's held in escrow by the Town of Stoneham on the Applicant's behalf.

So, Mr. Chairman, on the three pages of that memorandum I've identified, by topical areas, traffic engineer, civil engineer, land use planner, architect, landscape architect, hydrogeologist and/or hydrologist, a wetland scientist, a financial consultant and a stenographer.

Now, we have a stenographer here this evening that the Town is paying for, but the Board has the right to ask the Applicant to pay for stenographic services from here on in. We have a stenographer from Doris Wong Associates this evening, so obviously the Board would recommend that we retain Doris Wong to continue to be the stenographer.

Other than that, Mr. Chairman, the Board certainly can add additional consultants to the list or, if it feels two months down the road it needs an additional consultant, you're not locked into that

list right now.

CHAIRMAN SALTZMAN: Just having looked at the list, there's one individual that I would ask that the Applicant review as well, and that is a gentleman named Robert Griffin. It's my understanding that he's an engineer -- I believe he did some work for the Planning Board. He would be familiar with the property at 170 Franklin Street. I think he has some familiarity with it. I don't know him. I don't -- I've just heard of him as somebody who is familiar with the area.

MR. WITTEN: Mr. Chairman, the procedure that I would recommend to the Board, if the Board is comfortable, is to ask the Applicant whether Mr. Griffin or any of these other consultants pose a conflict or lack qualifications, and then, if the Board is comfortable, authorize the Chairman, in consultation with the Town Administrator, because of procurement laws, to then make a selection based on the Chairman's prerogative.

MR. ROBERT ENGLER: Mr. Chairman, could I speak to that for a second?

CHAIRMAN SALTZMAN: Please.

MR. ROBERT ENGLER: Bob Engler, the 40B

consultant with SEB. I've been through many of these hearings. They are supposed to be cooperative between the applicant and the zoning board relative to consultants. And while I agree with Attorney Witten there are only two reasons to turn down a consultant, there is also the cooperation, since it's the Applicant's money, to review the scope of services being proposed and the fee basis and work with them on whether, you know, that's legitimate or not.

And the second point of that is, these reviews are supposed to be consistent with what other boards have done in the Town for other like projects, other major rental projects, under special permit or other kinds of reviews. What's been the history being spent? We don't know that yet.

So we have a right to say, "You're asking for $50,000, and you've spent $10,000 on other reviews of 300-unit projects. What's the difference?" So we certainly want to be cooperative, but we want to understand the fairness principle of all these reviews.

And I understand Mr. Witten has just made a laundry list of consultants. We don't have resumes,

so we can't say they're qualified. If Mr. Witten thinks I know them all or all of us know them all, we don't. So if he has made that or if you're making the recommendation on any specific topic, we would like to see the qualifications of the people that you're going to, that's all, so that we can know who they are.

And I assume, if we're going to look at this as an issue at a time, you're going to do a review at a time of who these consultants are. So we don't have to pick them all in any one night. But if traffic comes up, who are you going to pick for traffic and what are their qualifications and what is their scope; and then you're going to do civil engineering and whatever else.

That's all fine. Let's just take it a step at a time, and I'm sure we can work this kind of thing out.

MR. WITTEN: Mr. Chairman, not to get into an argument with Mr. Engler, but the Board has 180 days pursuant to the regulations. 180 days for a volunteer board is a very short period of time.

If the Applicant is willing this evening to extend that time clock, then I certainly would agree

with Mr. Engler that the Board can review each item substantively one at a time.

But that's not how it works, and that's not how it works in the Board's world. The Board needs a review of each of these substantive areas comprehensively from the beginning, not ad infinitum so that seven months down the road the Board is stuck without having a financial consultant on board.

So there's no suggestion that the Board is going to spend all of the Applicant's money up front, but the Board needs to select the consultant, needs to make sure that there's no objection to the consultant, and then when the time is ready, have the consultant ready to produce a substantive report.

Because the Applicant will fully remind the Board of the 180-day period. If the Applicant takes that off the table, then by all means, the Board can take its time and work cooperatively with the Applicant.

CHAIRMAN SALTZMAN: Is that an acceptance?

MR. CICATELLI: Mr. Chairman, we just received this a short while ago, and, again, I think

what Bob is trying to say is to ask for resumes and perhaps a scope of work and fees is not unreasonable. So I don't think we're prepared to answer the question this evening, but I think if we can be provided that information, we certainly can answer the question. The intent is not to drag that out.

CHAIRMAN SALTZMAN: Would it make sense that, irrespective of what happens -- I mean, the clock is stopped on this for, it would appear to be, somewhere in the neighborhood of 45 days -- 30 to 45 days, with what is being filed tonight. Would it make sense that, at the next meeting, if we schedule a meeting, say, 45 days from tonight, that there is an agreement that the clock will be stayed until that next meeting, and we could then take up the issue of the consultants and can get a resolution on that before we start the clock?

MR. CICATELLI: I don't think we would be willing to stay the clock at this time, no.

MR. ROBERT ENGLER: Well, it's stayed anyway, because if we're appealing, as Mr. Witten has already said, it's stayed until that decision is made.

So I agree at that point, if it's over -- and it might be more than 45 days. It could be three months before we get an answer. When we come back to convene, we can, in the interim, get the resumes of whoever you're interested in and be ready to go. That would be the topic to get going.

CHAIRMAN SALTZMAN: What I'm saying is, I think, just speaking to Attorney Witten's point, in the event that we get the rarest of rarities, an expedited decision, that the clock will not certainly begin until we have sat down at that next meeting.

MR. ROBERT ENGLER: That's up to Counsel. I can't answer that for the client, because he's not here. But we certainly can take it up at the next hearing in terms of what that is.

We're more concerned about getting the right result than we are about whether it's 180 days or 200 days. So that's more of a concern. So let's see how this goes, and we can raise that in 45 days at the next hearing and see where we are.

CHAIRMAN SALTZMAN: Delay is certainly preferable to error.

MR. ROBERT ENGLER: Correct. And, you

know, I respect Mr. Witten's position, you don't want to do it one at a time -- because we want speed too. We're not trying to say, "Oh, you just ran out of time." So if you want to get people ready to go, fine, but let's just see who they are and what they look like.

CHAIRMAN SALTZMAN: So, as I understand this, we're seeking to not lose any time before we get this issue resolved. Can we at least have that agreement, that even if we get an expedited decision, that the clock will not run at least until the next meeting?

MR. ROBERT ENGLER: They want the 180 to start in September rather than tonight. Is that what you're asking, Mr. Chairman?

MR. WITTEN: Yes.

CHAIRMAN SALTZMAN: I'm saying that the clock is stopped tonight until we get a decision on the motion that Attorney Witten is filing tonight.

If we get an expedited decision, say, in 30 days, I am asking for a commitment from the Applicant that, if we scheduled a meeting 45 days, that the clock will not begin until the 45th day, because we do want to resolve this particular issue.

MR. ROBERT ENGLER: The question for Mr. Witten, if the clock started tonight, does it run 15 days until we file, and that's the date it gets stayed? So you've only incorporated or only expended 15 days until it's stayed. And then if you want 15 days to hold a hearing after the decision comes down, we're not going to quarrel about that. That's not a big number. So I think we're okay with all of that. It's not -- we're not adding 60 days to this process.

CHAIRMAN SALTZMAN: Fair enough.

Mr. Witten.

MR. WITTEN: Thank you, Mr. Chairman. The only other thing I would like to bring to the Board's attention is the creation of the record. And I advise the Board, while we have the stenographer here and at subsequent meetings, that every piece of written information that the Board's received, including from the Applicant, including from the public, including from the Board seeking submissions, be accepted by the stenographer and marked as an exhibit.

It's somewhat painstaking, but it's important, and if we wait too long, then the list of

exhibits becomes somewhat voluminous. So we don't have to assemble all the exhibits. We can just simply read them into the record. The stenographer can then identify those, and we could have them marked and then we can proceed.

CHAIRMAN SALTZMAN: Fair enough. I would say we could do that. But the one thing I would ask is that we ask the Applicant, the stenographer, that seems to be a reasonably related expense?

MR. GEOFFREY ENGLER: Fine.

CHAIRMAN SALTZMAN: I see nodding of heads.

MR. ROBERT ENGLER: We'll pay for the stenographer. She is finished right now. (Laughter) That's fine. I don't have a problem with that.

We need all the information in the record. I assume you mean not the whole body of everything, just the identification of what it is?

MR. WITTEN: Correct.

MR. ROBERT ENGLER: Excuse me, Mr. Chairman. I would like to ask that we make sure, as the Applicant, we get copies -- sometimes those fall through the cracks -- that we get a copy of everything that's turned in to you and made

available to Counsel.

MR. WITTEN: And one of the benefits of identifying for the record is to make sure you do that. So we will do that.

CHAIRMAN SALTZMAN: (To a member of the audience) I'm sorry, sir, right now, this is not -- we're not having public comment right now.

FROM THE FLOOR: I would observe that the time specified for the assembling of the Town Meeting has come on quite some time ago, and I wish to inquire what business you have for us that requires us to remain.

CHAIRMAN SALTZMAN: This is a public hearing. We're conducting this publicly. This is not a Town Meeting, sir. This is a Board of Appeals meeting. I apologize for any confusion you might have.

MR. WITTEN: Mr. Chairman, I would ask that the Board enter into the record first the public hearing advertisement for tonight's meeting, that would be Exhibit 1. Exhibit 2 would be the Application for a Comprehensive Permit submitted by the Applicant, Weiss Farm Apartments, LLC, dated June 2014.

(Documents marked as Exhibits 1 and 2 for identification)

MR. WITTEN: There are comment letters from the public that -- my advice to the Board is that those be identified as a separate exhibit and numbered thereafter. There are comment letters from individual boards and commissions from the Town of Stoneham, including the letter dated July 24th from the Building Commissioner, a letter dated July 24th from the Chairman of the Planning Board on behalf of the Planning Board, a letter from the friends of Stoneham, I believe, dated July 24th.

(Documents marked as Exhibits 3 and 4 for identification)

MR. WITTEN: The Board received, this evening, three memoranda from me, one discussing consistency with local needs, the other discussing the retaining of consultants, and the third discussing the completeness of the application.

(Documents marked as Exhibits 5, 6 and 7 for identification).

(Documents marked as Exhibit 8 for identification)

MR. WITTEN: And I believe, Mr. Chairman,

that those are the materials received by the Board to date with the kind of macro category of comments from the public and comments from the Board being held in a separate category. Whatever documents are part of the record, we will make a copy and make sure that the Applicant gets a copy of each.

CHAIRMAN SALTZMAN: Thank you, Attorney Witten.

Attorney Cicatelli, I thought we would be getting to this point sooner than we are. You are absolutely free, if you wish, to make an opening statement at this time.

MR. CICATELLI: Mr. Chairman, thank you. Basically I think at this point, given the various procedural issues that have been raised by Attorney Witten, that it doesn't make sense to make a presentation. Mr. Mahoney, unfortunately, was not able to attend due to a family emergency. So to do the PowerPoint I think tonight might not make sense.

So why don't we just deal with all the issues that have been raised. If Attorney Witten can give us some clarification, again, on the issues of what items are incomplete, that would be helpful, and we will just wait for the continued hearing.

And, again, in the interim, if we can get more information regarding consultants, that would be helpful.

CHAIRMAN SALTZMAN: At this time, it probably makes sense to set another date. We are open to suggestions, but --

MR. ROBERT ENGLER: Mr. Chairman, I think we had a preliminary discussion with Mr. Witten. Everybody's schedules have to be confirmed, but we are looking around the week of September 16th. Whatever day that week works best for the Board, we'll make ourselves available.

CHAIRMAN SALTZMAN: How is the 17th? That's a Wednesday.

MR. ROBERT ENGLER: Sounds okay at this point. We'll make ourselves available.

CHAIRMAN SALTZMAN: Actually, let me just check that. I may have spoken too soon.

(Pause)

CHAIRMAN SALTZMAN: How about Wednesday the 17th? And we don't have to start this at eight o'clock. How about 7:30?

MR. ROBERT ENGLER: Fine.

CHAIRMAN SALTZMAN: There is one final item

we should get to. Our State Senator, Jason Lewis, he has stayed around all this time, and he would like to speak in connection with the process.

Senator Lewis.

(Applause)

SENATOR LEWIS: Thank you, Mr. Chairman and Members of the Board. Good evening, everybody.

My name is Jason Lewis, and I'm privileged to serve as Stoneham's State Senator and previously as the Town's State Representative.

This is actually my first time ever appearing before the Board of Appeals. Most of the matters that you deal with I don't feel it's appropriate for me to stick my nose in. This matter that is before the Board tonight, however, is different, and it's quite extraordinary, and therefore I wanted to make sure I was here tonight to express my strong and continued opposition to the project, to the development as currently proposed by the Applicant. (Applause) Put simply, the project as currently proposed is too large, too dense and is out of character with the neighborhood where it would be located.

Let me state in slightly more detail the

three major concerns that I have and that I know are shared by the good residents of the Town who are here tonight, and actually of the City of Melrose as well who are here tonight, and many others who are at home tonight.

First is environmental and flood concerns. As we know, the Weiss Farm site is -- much of it is not appropriate for residential construction because over 50 percent of the area is federally and state regulated wetlands. 50 years of documentation and experience that we have show that these wetlands have been prone to flooding time and again. Adding fill to over 6 acres of land in the surrounding area will exacerbate the flooding risks to the community and to the neighborhood and direct abutters.

Second, traffic concerns. Franklin Street is already a heavily traveled artery that is home to local businesses, many residential dwellings, the main entrance to the Boys and Girls Club, Stoneham High School, and many other homes and businesses. It features heavy traffic during peak times of the day but also shows consistent use of traffic even at other times. Franklin Street is inadequate to support the increased vehicular traffic that would

be caused by such a large development and the residents who live there.

And then third is concern about housing density. Mass. Housing guidelines indicate that the appropriate density for a development of this nature would be approximately 8 units per acre. The proposed development that the Applicant has put forward far exceeds this guideline at 20 units per acre.

Additionally, this level of density is completely inconsistent with the density of the surrounding Stoneham neighborhoods and community. It appears to many of us that this density mirrors a similar design of a project by the same applicant in Lynnfield, demonstrating to many of us the developer's apparent lack of interest in truly considering, promoting and accommodating the local community character.

And then finally, in conclusion, I would also like to mention my disappointment in the fact that the Applicant has not made an attempt to work with the Town of Stoneham, with the Board of Selectmen, the Planning Board, with the residents to really engage in a constructive dialogue about the

needs of the community and about what would be appropriate for this site.

Stoneham, the Town and the residents want to see more affordable housing for young families, for seniors and for others, but they want to make sure that that affordable housing and housing in general is provided in the right size, the right scale and the right character that promotes the wonderful quality of life that we already enjoy in the Town of Stoneham.

So it is my concern and disappointment that that kind of a process has not been undertaken, and I hold out hope that we may still have constructive dialogue and collaboration between the developer and the Town and its residents. (Applause)

At this point, with the project as currently proposed, again, I reiterate my serious concerns and reservations and continued opposition to moving forward with this current project.

Thank you again for the opportunity to testify tonight. I appreciate it. (Applause)

CHAIRMAN SALTZMAN: At this time the Chair will entertain a motion from the Board?

MR. SULLIVAN: I make a motion to adjourn.

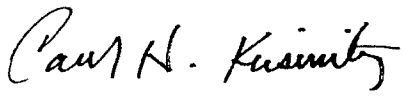
MR. DUFOUR: Second.

CHAIRMAN SALTZMAN: All those in favor? (Chorus of ayes) All those opposed? (No response) We are adjourned.

(Whereupon the hearing was adjourned at 9:27 p.m.)

C E R T I F I C A T E

I, Carol H. Kusinitz, Registered Professional Reporter, do hereby certify that the foregoing transcript, Volume I, is a true and accurate transcription of my stenographic notes taken on July 24, 2014.



Carol H. Kusinitz

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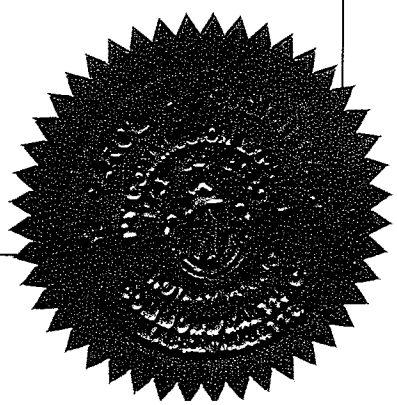
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