

December 29, 2014

Mr. David Ragucci
Town Administrator
Town of Stoneham
35 Central Street
Stoneham, Ma. 02180

Dear Mr. Ragucci,

I would like to thank you for your input and concerns regarding the Safety issue which impacts the proposed Rail trail, located at 47 Montvale Avenue.

You are well aware that Cleveland Fence Company has been located at this property for forty years. We have delivery trucks 6 to 10 times a week in our peak season. Since the termination of our lease June 30th, 2014 it is very difficult and sometimes impossible to get the trucks in our yard to off load. It was suggested that a small strip 15' wide x 60' long be left open for the town to allow us to use for the loading off loading of trucks. Technically this will not work the area would have to be 30' wide x 75' long.

Trucks would have to pull up onto Rafferty Road and back in, which will stop traffic in both directions. Several residents on Rafferty have stated concerns to us regarding the impact that this may have on them.

Would the Town consider making this strip of land a Municipal Parking area for public use. This would help parking for local merchants and rail trail users. And allow trucks to load and off load in our yard without impacting the trail. This actually makes perfect sense, as there is no parking at this end of town for the trail users to start the trail use. There would be ample parking on the weekends, which is when I would suspect it needed most when families have time to enjoy the Greenway.

I would hope this is given great consideration for it makes perfect sense. Above all safety is the number one goal for all of us.

Sincerely,
Clayton C Cleveland
Owner Cleveland Fence Company

Cc: Carrie LaValle , MA.,DOT
Linda Walsh, MA., DOT

Sinclair, Erin

From: robertoc1492@aol.com
Sent: Friday, January 02, 2015 1:39 PM
To: Sinclair, Erin
Subject: BOS Tri-Community Greenway in Stoneham
Attachments: scan0001.pdf

Dear Clair,

My name is Robert Columbus. I am the eleventh grade class president at Stoneham High School. I have been living in Stoneham my entire life. I started this petition for the greenway because it has been slow to start for what seems like many years. I love to ride my bike, train for sports, and most importantly I love the people of my town. I heard about the vote coming this January 12th and I just had to take the initiative to make sure the bike trail would become a reality. The petition contains over 250 signatures of students from SHS and a few students from Woburn High. This petition shows that the future generation cares about Stoneham and that they really want to help make it an even better town for everyone. The people that signed it are primarily at my lunch period but it is undeniable that the people of SHS think that this greenway would be a great asset to our town.

I was told that I could send this to the Board of Selectmen and that they would be happy to broadcast this at the meeting. I am also sending this to the Stoneham Independent and they are going to publicize this in the paper. I hope that the BOS will publicize this anyway they can to help move a great cause for the town.

If you have any questions or concerns feel free to email me back. It was also my first time scanning a document so if there are any problems please let me know because I really want to help advocate for the greenway. If you need me to or think it would help if I hand in the hard copy of the petition please let me know.

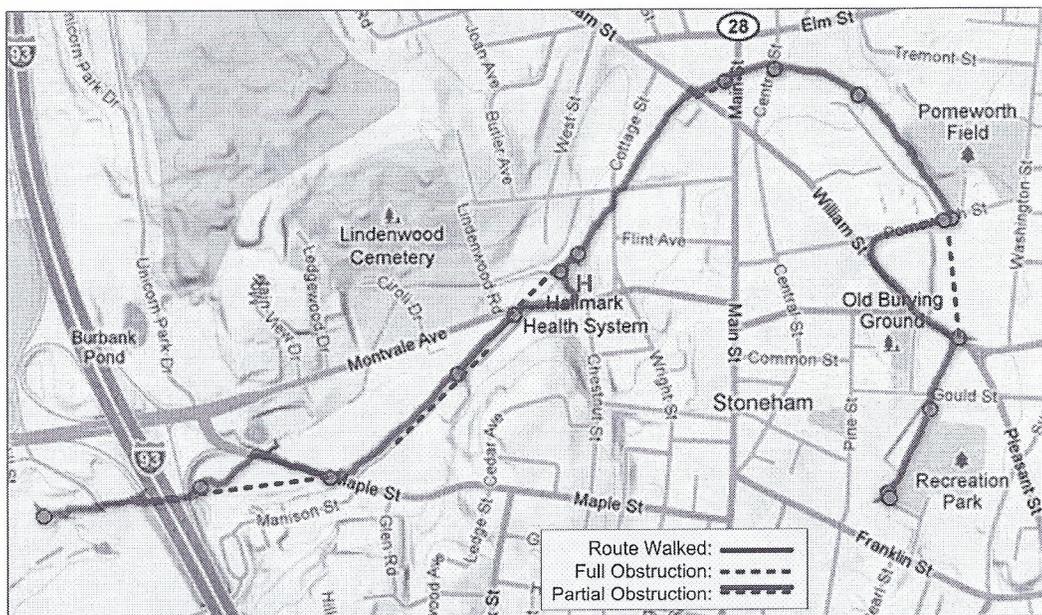
Happy New Year,

Robert Columbus

robertoc1492@aol.com

Petition Tri-Community Greenway in Stoneham

The Greenway would be a great asset in the town of Stoneham. It would help boost the economy of the town as a whole. The path would start in Stoneham and connect with other trails in surrounding towns. It would bring recreational space to Stoneham, Woburn, and Winchester, and would eventually link up to the Minute Man trail which leads to Boston. This would provide residents with an area to walk, bike, skate, or just relax along the environmentally friendly path. The bike trail is safe and will encourage people to stay fit. People training for sports can run along the trail worry free from the danger of cars thus increasing home values in Stoneham. In addition, the trail does not interfere with any fields or private houses because much of the trail is space previously allocated by the old train tracks and Stoneham Train Station for recreational purpose only.



The Path will help make Stoneham a better town for all residents and businesses. This petition is designated for the residents of Stoneham. **By signing this petition you agree that a bike path should be added to your town of Stoneham.**

Name	Signature
1) Robert A. Columbus	Robert A. Columbus
2) Erin McDermott	Erin McDermott
3) Tina Maurer	Tina Maurer
4) Paige Calkins	Paige Calkins
5) Martynas Baranuskas	M. Baranuskas
6) Richard Colarusso	Richard Colarusso
7) Jeffrey Hom	Jeffrey Hom
8) Robert J. Columbus	Robert J. Columbus
9) Edward Doherty	Edward Doherty
10) Alex Shipp	Alex Shipp
11) Sonny Badwal	Sonny Badwal
12) Jonathan Schores	Jonathan Schores
13) Robert Borenstein	Robert Borenstein
14) Edward H. Ye	Edward H. Ye
15) Dylan Desch-Emmel	Dylan Desch-Emmel
16) Marc Anthony Aronis	Marc Aronis
17) Mairead O'Neill	Mairead O'Neill
18) Delia Perillo	Delia Perillo
19) Jennifer Overlan	Jennifer Overlan
20) Mike Reilly	Mike Reilly
21) Elizabeth Green	Elizabeth Green
22) Patrick Cann	Patrick Cann
23) Marielle Avola	Marielle Avola
24) Gabrielle Tammaro	Gabrielle Tammaro
25) Jack Kruse	Jack Kruse
26) Melissa Lin	Melissa Lin
27) Gregory Hoffman	Gregory Hoffman
28) Davis Patel	Davis Patel
29) Joe Carroll Joe Carroll	Joe Carroll
30) Ryan Nolan	Ryan Nolan
31) Emily Simpson	Emily Simpson

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|-----|--------------------|--------------------|
| 32) | Sarah Tek | Sarah Tek |
| 33) | Meg Cleary | Meg Cleary |
| 34) | Kaitlyn Driscoll | Kaitlyn Driscoll |
| 35) | Cecilia Berniac | Cecilia Berniac |
| 36) | Juliana Chi | Juliana Chi |
| 37) | Grace Mullane | Grace Mullane |
| 38) | Samantha Scheel | Samantha Scheel |
| 39) | Brendan O'Neil | Brendan O'Neil |
| 40) | Nina McCarthy | Nina McCarthy |
| 41) | Alexis Brown | Alexis Brown |
| 42) | Lydia Hamilton | Lydia Hamilton |
| 43) | Alex Aborn | Alex Aborn |
| 44) | Matt Turner | Matt Turner |
| 45) | Erminia DiDonato | Erminia DiDonato |
| 46) | Stefania Molinaro | Stefania Molinaro |
| 47) | Foad Nasr | Foad Nasr |
| 48) | Nicola DeBuglielmo | Nicola DeBuglielmo |
| 49) | Michelle Yip | Michelle Yip |
| 50) | Daniel Labiscia | Daniel Labiscia |
| 51) | Katherine Im | Katherine Im |
| 52) | Giuliana Sannella | Giuliana Sannella |
| 53) | Jennifer Rohan | Jennifer Rohan |
| 54) | Lauren Gorse | Lauren Gorse |
| 55) | Samantha Lamothe | Samantha Lamothe |
| 56) | Erminia Yoder | Erminia Yoder |
| 57) | Katrina Skidmore | Katrina Skidmore |
| 58) | Michael Green | Michael Green |
| 59) | Nick Grace | Nick Grace |
| 60) | Jes Brown | Jes Brown |
| 61) | Ben Rafia | Ben Rafia |
| 62) | Emily Manfra | Emily Manfra |
| 63) | Megan Laham | Megan Laham |
| 64) | Steven Clemens | Steven Clemens |
| 65) | Noah Coccoluto | Noah Coccoluto |
| 66) | Anthony Di Vito | Anthony Di Vito |

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|------|---------------------------|--------------------------------|
| 67) | Matthew Lasney | Matthew Lasney |
| 68) | Zachary Ciampolillo | Zachary Ciampolillo |
| 69) | Domenic Martiniello | Domenic Martiniello |
| 70) | Brendan Mulla | Brendan Mulla |
| 71) | Matt Ricci | Matt Ricci |
| 72) | Kyle Stumke | Kyle Stumke |
| 73) | Jason Kawa | Jason Kawa |
| 74) | Jaraffa | Jaraffa |
| 75) | Nicholas Medeiros | Nicholas Medeiros |
| 76) | Elizabeth Witherell | Elizabeth Witherell |
| 77) | Caitlin McLaughlin | Caitlin McLaughlin |
| 78) | Kevin Dalton | Kevin Dalton |
| 79) | Janelle Clark | Janelle Clark |
| 80) | Elizabeth Sutherland | Elizabeth Sutherland |
| 81) | Rebecca Colwell | Rebecca Colwell |
| 82) | Patrick Grady | Patrick Grady |
| 83) | Matthew Porter | Matt Porter |
| 84) | Michael Phelan | Michael Aiv-Hokiti |
| 85) | John Johnson | John Johnson |
| 86) | Michael Turner | Nike Turner |
| 87) | Steph Hassan | |
| 88) | Gabrielle Carpinella | |
| 89) | Michael Young | Michael Young |
| 90) | Thomas Kuroci | Thomas Kuroci |
| 91) | Ashley Driscoll | Ashley Driscoll |
| 92) | Joseph Desante | Joseph Desante |
| 93) | Kara Rock | Kara Rock |
| 94) | Matt Piliberti | Matthew Piliberti |
| 95) | Kayla Shepherd | Kayla Shepherd |
| 96) | Daneshany | Daneshany |
| 97) | Kathryn Piasecki | Kathryn Piasecki |
| 98) | Mara Antoniou | Mara |
| 99) | Reiko Laski | Reiko Laski |
| 100) | Theresa Poon | Theresa Poon |
| 101) | Olivia Gaughan | Olivia Gaughan |

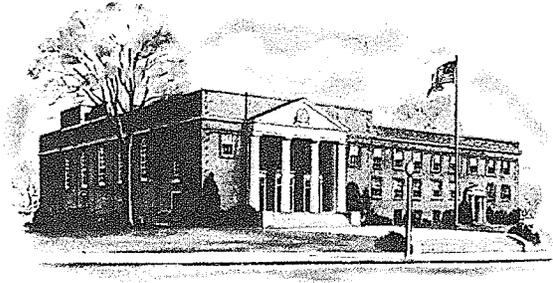
102)	Gina DiCarlo	Lia DiCarlo
103)	Lauren Buccelli	Lauren Buccelli
104)	Cory Sanon	Cory Sanon
105)	Cassie Susi	Cassie Susi
106)	Gabe Araujo	Gabriel Araujo
107)	Jimmy O'Brien	Jimmy O'Brien
108)	Nick Ford	Nicholas Ford
109)	Jacob Jackson	Jacob Jackson
110)	Emily Cunningham	Emily Cunningham
111)	Maggie McAllister	Mary McAllister
112)	Elizabeth Cullen	Elizabeth Cullen
113)	Jon Sherry	Jon Sherry
114)	Nettaly Perez	Nettaly Perez
115)	Matt Moreira	Matt Moreira
116)	Jack DeLuigi	Jack DeLuigi
117)	Alex Avola	Alex Avola
118)	Kevin Markiewicz	Kevin Markiewicz
119)	Haley Clapp	Haley Clapp
120)	Khadija Ramdani	Khadija Ramdani
121)	Mary-Kate Pizzi	Mary-Kate Pizzi
122)	Bimpe Asupoto	Bimpe Asupoto
123)	Eden Perbeji	Eden Perbeji
124)	Alanna Olton	Alanna Olton
125)	Sophia Olton	Sophia Olton
126)	Emily Emily Cloonan	Emily Cloonan
127)	Edwin Mores	Edwin Mores
128)	Jacob Casey	Jacob Casey
129)	Kelsey Long	Kelsey Long
130)	Mackenzie Galvin	Mackenzie Galvin
131)	Cayla Barretto	Cayla Barretto
132)	Emis Lubega	Emis Lubega
133)	Javaughn Beal	Javaughn Beal
134)	Mark Snyder	Mark Snyder
135)	Kylie Leydon	Kylie Leydon
136)	Frank D'Amico	Suzanne D'Amico

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| 137) | John Brohan | |
| 138) | Ally Little | Allison Little |
| 139) | Whitney Villagran | Whitney Villagran |
| 140) | Lindsey Duhamel | Lindsey Duhamel |
| 141) | maeve kelly | Maeve Kelly |
| 142) | Nicole Cronin | Nick Cronin |
| 143) | Brittany chavel | Brittany Chav |
| 144) | Angelina DeVincent | Angelina DeVincent |
| 145) | Dominique Del Vecchio | Dominique Del Vecchia |
| 146) | Emily Woodworth | Emily Woodworth |
| 147) | Taylor Schon | Taylor Schon |
| 148) | Jared Palone | Jared Palone |
| 149) | Michael Leung | Michael Leung |
| 150) | Nike Asupoto | Nike Asupoto |
| 151) | Casey Moriarty | Casey Moriarty |
| 152) | Henderson | Pat Louis |
| 153) | Ben Doucette | Ben Doucette |
| 154) | Ashley Doherty | Ashley Doherty |
| 155) | Kena Kadima | Kena Kadima |
| 156) | Dan Hudson | Dan Hudson |
| 157) | Sarah Stockbridge | Sarah Stockbridge |
| 158) | Elise Scalfani | Elise Scalfani |
| 159) | Catie Rappa | Catie Rappa |
| 160) | Kelsey Wojdakowski | Kelsey Wojdakowski |
| 161) | Peter Kruse | Peter Kruse |
| 162) | Soe Sheldon | Soe Sheldon |
| 163) | Brendan Tenz | Brendan Tenz |
| 164) | Catherine Filgore | Catherine Filgore |
| 165) | Alexandra Flammia | Alexandra Flammia |
| 166) | Angela Cutone | Angela Cutone |
| 167) | Danielle Clough | Danielle Clough |
| 168) | Nick Federico | Nick Federico |
| 169) | Billy Burridge | Billy Burridge |
| 170) | Eric Roberts | Eric Roberts |
| 171) | Tommy Finn | Tommy Finn |

172)	Justin Penney	Justin Penney
173)	Ryan O'Leary	Ryan O'Leary
174)	Sean O'Grady	Sean O'Grady
175)	Sally Parsons	Sally Parsons
176)	Brianna McCarthy	Brianna McCarthy
177)	Lara Santos	Lara Santos
178)	Laura Higginson	Laura Higginson
179)	Kaylie O'Connell	Kaylie O'Connell
180)	Courtney Casavant	Courtney Casavant
181)	Nicole Costello	Nicole Costello
182)	Amanda Jordan	Amanda Jordan
183)	Jackie Junta	Jackie Junta
184)	Jenny Shannon	Jenny Shannon
185)	Nina Castano	Nina Castano
186)	Jami Pelosi	Jami Pelosi
187)	Allison Beaudin	Allison Beaudin
188)	Alexia Gianolis	Alexia Gianolis
189)	Molly Maloney	Molly Maloney
190)	Tia Annunzio	Tia Annunzio
191)	Toni Magno	Toni Magno
192)	Louisa Melchionno	Louisa Melchionno
193)	Shaughn O'Halloran	Shaughn O'Halloran
194)	Jon Burns	Jon Burns
195)	Colin DiGangi	Colin DiGangi
196)	Andrew Scarpa	Andrew Scarpa
197)	Joe McLaughlin	Joe McLaughlin
198)	Sara Kapery	Sara Kapery
199)	Jackie Flynn	Jackie Flynn
200)	Zoe Miller	Zoe Miller
201)	Kathryn Porter	Kathryn Porter
202)	Sophie Blauvelt	Sophie Blauvelt
203)	Sami Vetrano-Olsen	Sami Vetrano-Olsen
204)	Missy Cerasoli	Missy Cerasoli
205)	Erin Cleary	Erin Cleary
206)	Joe Egitto	Joe Egitto

207)	Brian Cann	Brian Cann
208)	Liz Lowe	Liz Lowe
209)	Alyssa Limony	Alyssa Limony
210)	Olivia Bergin	Olivia Bergin
211)	Hailey Padne	Hailey Padne
212)	Mary Trant	Mary Trant
213)	HOLLY DUNN	HOLLY DUNN
214)	Allison Ryan	Allison Ryan
215)	Hayden Kilty	Hayden Kilty
216)	William Corino	William Corino
217)	Michaela Gearin	Michaela Gearin
218)	Gianna Egitto	Gianna Egitto
219)	Brenda Medeiros	Brenda Medeiros
220)	Victoria Garcia	Victoria Garcia
221)	Emma Fuchs	Emma Fuchs
222)	Clara Dooley	Clara Dooley
223)	Taylor Doherty	Taylor Doherty
224)	Maeve Bonneau	Maeve Bonneau
225)	Katie Hayman	Katie Hayman
226)	Jesse Rhuda	Jesse Rhuda
227)	Michael Joseph Clemence	Michael Joseph Clemence
228)	Evan Josep'n Resendes	Evan Resendes
229)	Allison Simboli	Allison Simboli
230)	Michael Mosca	Michael Mosca
231)	Brianna Mota	Brianna Mota
232)	Jennifer Nguyen	Jennifer Nguyen
233)	Nicholas Polinsky	Nicholas Polinsky
234)	Zachary Mearville	Zachary Mearville
235)	Patrick Prandeville	Patrick Prandeville
236)	Hunter Wend	Hunter Wend
237)	Maximo Didz	Maximo Didz
238)	Kris Haddad	Kris Haddad
239)	Patricia Kenney	Patricia Kenney
240)	David Eustace	David Eustace
241)	Dan O'Riordan	Dan O'Riordan

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|------|-----------------------|-----------------------|
| 242) | Paul Jackson | Cal Jackson |
| 243) | Natalie Daniels | Natalie Daniels |
| 244) | Dallan Degen-Portney | Dallan Degen-Portney |
| 245) | Jamie Gondall | Jamie Gondall |
| 246) | Briana DiMartino | Briana DiMartino |
| 247) | Tanica Kemp | Tanica Kemp |
| 248) | Steff Bamforth | Steff Bamforth |
| 249) | Leah Humphreys | Leah Humphreys |
| 250) | Mythreayl Shan | Mythreayl Shan |
| 251) | Daiyan Su | |
| 252) | Paul Bilbo | Paul Bilbo |
| 253) | Gianna Akerberg | Gianna Akerberg |
| 254) | Ryan Butler | Ryan Butler |
| 255) | Ryan Rowland | Ryan Rowland |
| 256) | Danny Breslin | Danny Breslin |
| 257) | David Agostini | David Agostini |
| 258) | Ethan Lombardi | Ethan Lombardi |
| 259) | Matt Bergin | Matt Bergin |
| 260) | Alex Arcandis | Alex Arcandis |
| 261) | Justin Bettencourt | Justin J. Bettencourt |
| 262) | Zach Keegan | Zach Keegan |
| 263) | | |
| 264) | | |
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| 276) | | |



TOWN OF
STONEHAM
MASSACHUSETTS

www.stoneham-ma.gov

OFFICE OF TOWN ADMINISTRATOR
35 CENTRAL STREET
STONEHAM, MA 02180-2087
TEL: 781-279-2600
FAX: 781-279-2602
dragucci@ci.stoneham.ma.us

DAVID RAGUCCI

TOWN ADMINISTRATOR

MEMO

DATE: December 19, 2014
TO: Tom Boussy, Chairman, Board of Selectmen
FROM: David Ragucci, Town Administrator
SUBJECT: Town Planner

2014 DEC 19 P 12:54
TOWN OF STONEHAM
BOARD OF SELECTMEN

As is the procedure to notify the Board pertaining to employee hires, this memo is notification that the Town will be appointing Erin E. Wortman, 15A Dirlam Circle, Tewksbury, MA 01876 as Town Planner for the Town of Stoneham.

Ms. Wortman will be working 37.5 hours per week at an annual salary of \$67,213 at Grade 61, Step A.

If the Board has any questions or concerns, please don't hesitate to contact me.

Thank you.
/dp

COMMONWEALTH OF MASSACHUSETTS

HOUSING APPEALS COMMITTEE

IN THE MATTER OF STONEHAM BOARD OF APPEALS AND

WEISS FARM APARTMENTS, LLC, NO. 2014-10

MOTION IN LIMINE OF THE STONEHAM BOARD OF APPEALS

Introduction

The Stoneham Board of Appeals ("Board") respectfully moves for the exclusion from hearing of all exhibits and witness testimony by the Applicant Weiss Farm Apartments ("Applicant") in this case. As grounds, the Board states that the Applicant was required to identify all exhibits and witnesses on or before October 17, 2014, per direction of the Presiding Officer. The Applicant elected to identify no exhibits or witnesses at that time. The Applicant, having been granted a continuance by the Presiding Officer at the close of the Board's case - over the objection of the Board - now seeks to introduce certain exhibits and witness testimony. This should not be permitted. Allowing the Applicant to hear the Board's case, and then prepare its own, violates principles of fairness and due process, as well as the Presiding Officer's explicit instruction, to the Board's prejudice. The Board accordingly requests that the Presiding Officer exclude any and all exhibits, witness testimony, or any other form of evidence not identified in the Prehearing Order and/or produced as of October 17, 2014.

Relevant Facts and Procedural History

1. On or about June 30, 2014, Weiss Farm Apartments, LLC filed a comprehensive permit application with the Town of Stoneham for the development of 264 rental dwelling units on a 25.657 acre parcel of land with an address of 170 Franklin Street, Stoneham, Massachusetts.

2. Within fifteen days of opening public hearing on the application, and otherwise pursuant to the provisions of 760 CMR 56.03(8)(a), by letter dated July 24, 2014, the Board informed the Department of Housing and Community Development (“DHCD”), with a copy of the same to counsel for Weiss Farm Apartments, LLC, (“Applicant”) that it believed the Town of Stoneham consistent with local needs, as that term is found at G.L. c.40B, s.20 and 760 CMR 56.00 et al, as the Town of Stoneham met the statute’s “1.5% General Land Area Minimum” and the regulation’s “related application” provision.

3. By letter dated September 2, 2014 (distributed to the parties by electronic mail on September 5, 2014) DHCD informed the Town of Stoneham “the Board has not met the burden of proof in its assertion that a denial with conditions [sic] would be consistent with local needs.

4. On September 18, 2014, pursuant to 760 CMR 56.03(8), the Board filed its interlocutory appeal of DHCD's finding with the Housing Appeals Committee.

5. By letter to counsel dated September 26, 2014, the Presiding Officer directed the parties to pursue the possibility of "stipulated facts and agreed-upon exhibits") as the basis for hearing. The Presiding Officer further directed that should this approach "prove impractical", "counsel for the parties shall appear at the Conference of Counsel with all exhibits that they intend to introduce into evidence and a list of any witnesses they intend to produce on the day of hearing." See letter dated September 26th, 2014 from Presiding Officer Shelagh Ellman-Pearl.

6. A Conference of Counsel was scheduled for October 9, 2014 and continued by agreement to October 17, 2014.

7. The Board's counsel, pursuant to the Presiding Officer's instructions, brought exhibits intended for introduction at hearing, and a list of witnesses, to the Conference of Counsel on

October 14, 2014. The Applicant's counsel brought no exhibits, nor identified any witnesses for hearing.

8. Counsel for the Board and for the Applicant executed a Prehearing Order dated October 17, 2014, containing several stipulated facts and addressing other matters for hearing. The Board's witnesses were identified. The Applicant identified no witnesses and stated its intent to rely on cross-examination of the Board's witnesses.

9. Hearing commenced before the Presiding Officer on December 11, 2014. The Board put on its witnesses, commencing with Cheryl Noble, the Town Building Inspector. Inspector Noble was examined directly by counsel for the Board and cross-examined by counsel for the Applicant. Counsel for the Board then examined directly Brian Macdonald, the Town's Director of Assessing. Exhibits previously identified by the Board to the Applicant were submitted through the Board's witnesses.

10. At the close of the Board's case, the Applicant's counsel moved for a continuance on the grounds that one figure testified to by the Board's witnesses differed from that stated in the Board's initial pleading. Applicant's counsel stated that he needed time to respond to this figure. Over the objection of Board's counsel, and to the prejudice of the Board, the Presiding Officer granted a continuance of approximately one month (until January 9, 2014).

11. Through electronic correspondence dated December 19, 2014, counsel for the Applicant has indicated an intent to introduce various documents into evidence, and to present a witness, when hearing resumes on January 9, 2014, notwithstanding the Presiding Officer's instruction that all exhibits and witnesses were to be identified and brought to the Conference of Counsel over two months ago, on October 17, 2014. The aforementioned documents, identified in counsel's December 19, 2014, have not been provided to undersigned counsel as of this date.

Argument

I. The Applicant is precluded from introducing documents into evidence, having failed to identify such exhibits in timely manner and as directed by the Presiding Officer

The Applicant and the Board are bound by the same rules. If the Board was required to produce all exhibits on a date certain (October 17, 2014), then the Applicant was required to do so as well. The Applicant elected to produce no exhibits and identify no witnesses as of that date, and should bear the consequences of those choices. Even under the relaxed procedural rules of the Housing Appeals Committee, the parties are presumably held to the same rules. Any other outcome - that is, allowing the Applicant to introduce exhibits or identify previously undisclosed witnesses, two months after the Presiding Officer's deadline - violates any notion of due process or fairness. Permitting the Applicant to hear the Board's case, and then have a month to prepare exhibits and cross-examination is further violation of due process and fairness.

Moreover, the Committee has repeatedly emphasized that the Pre-Hearing Order signed by the parties controls the content of the hearing; anything omitted from the Pre-Hearing Order is precluded from hearing and from the Committee's consideration. See, e.g., Archstone Communities Trust v. Woburn Board of Appeals, 2003 WL 25338645 (Housing Appeals Committee No. 01-07, June 11, 2003) ("Pre-Hearing Order and related Stipulation do not allow for consideration of [Board's witness's] alternative analysis to the MassHousing methodology"); Autumnwood, LLC v. Sandwich Zoning Board of Appeals, 2010 WL 1003191 (Housing Appeals Committee No. 05-06, March 8, 2010) (Board's argument "was not adequately raised prior to the hearing so as to put the developer on notice that it would be required to present a defense on this issue; if it had been, the issue would have been included in the Pre-Hearing Order"); Sugarbush Meadow, LLC v. Sunderland Board of Appeals, 2010 WL 3212908

(Housing Appeals Committee No. 08-02, June 21, 2010)(Board precluded from litigating issues not "explicitly includ[ed] . . . in the Pre-Hearing Order"); O.I.B. Corporation v. Braintree Board of Appeals, 2006 WL 3520369 (Housing Appeals Committee No. 03-15, March 27, 2006) (question regarding looping of water main "was not included in the Pre-Hearing Order . . .and has therefore been waived"). The Applicant, as well as the Board, is bound by the terms of the Pre-Hearing Order, and cannot be permitted to present witnesses or testimony not identified in the Pre-Hearing Order.

This appeal is de novo, and the case is decided on the evidence presented at hearing. The Board's initial pleading is the equivalent of the "well-pleaded complaint" in a courts of law; as such, it was required only to provide sufficient notice to the Applicant of the Board's claims. See, e.g., Nordberg v. Massachusetts Dept. of Education, 76 Mass.App.Ct. 216, 218 and n. 5. The fact that certain acreage values provided by the Board's witness - out of the dozens of acreage values entailed in this case - differed from those stated in the initial pleading is not good cause to allow the Applicant to introduce exhibits it did not identify in October of 2014. Although the burden of proof is on the Board, the Applicant was still responsible for preparing its own case in support of DHCD's finding. It is simply not credible that the Applicant's entire case and preparation for hearing could be derailed by any such discrepancy, as claimed by the Applicant.¹ Moreover, to the extent the Applicant believed such discrepancy significant, the proper course would have been to pursue the matter on cross-examination. The wrong course is

¹ Had the value stated in the Board's initial pleading been part of a stipulation contained in the Prehearing Order, the Applicant's request might have some traction. However, it did not appear in the Prehearing Order. Upon information and belief, the Committee has never held that a developer appealing to Committee is bound by the statements in its initial pleading. Rather, it has been the Committee's practice to bind the parties to the contents of the Prehearing Order, carefully prepared and negotiated by counsel, and approved by the Presiding Officer. See cases cited above.

to allow the Applicant to prepare its case and submit exhibits at this late date - after hearing the Board's direct case, and several months after the deadline observed by the Board.

The Board objected to the Presiding Officer's grant of a continuance of the hearing, which provided the Applicant with a month to prepare its cross-examination of the Board's witnesses. The Board here renews its objections to the grant of such continuance. If coupled with allowing the Applicant to submit exhibits not previously identified and contrary to the Presiding Officer's direction, the Board will be doubly prejudiced. There is simply no precedent for a body purporting to be "an impartial forum"² to 1) allow one party to hear the other side's direct case at hearing; then 2) provide that party with a month's continuance to gather evidence and prepare for cross-examination; and 3) to submit exhibits and witnesses not previously identified in utter disregard of a months-passed deadline; 4) with no legitimate basis for either the continuance or the late-filed exhibits.

Conclusion

The Applicant should not be allowed to submit exhibits or call previously undisclosed witnesses at this time, in disregard of the deadline set by the Presiding Officer and observed by the Board. It is grossly unfair for the Applicant to have the benefit of hearing the Board's case before assembling its own (and the benefit of a month to prepare for its presentation and for cross-examination). That certain figures in the testimony of the Board's witness differed from

² "The mission of the Housing Appeals Committee is to provide, within the parameters of the comprehensive permit process established by G.L. c. 40B, §§ 20-23, an impartial forum to resolve conflicts arising from the siting of new affordable housing. In doing so, it will carefully balance the need for such housing and legitimate local concerns-planning, environmental, open space, design, health, safety, and other local concerns."

From the Committee's website: <http://www.mass.gov/hed/economic/eohed/dhcd/hac.html> (last reviewed on December 29, 2014).

those stated in the initial pleading is no excuse for allowing the Applicant to submit exhibits or call previously undisclosed witnesses where it elected not to do so by the deadline set by the Presiding Officer. The Presiding Officer should not add to the Board's prejudice by allowing the Applicant to submit exhibits or call previously undisclosed witnesses at this late date. Any such action would further the impression - already traced - that the Board cannot expect a fair hearing of its appeal.

Respectfully submitted,

For the Stoneham Board of Appeals,
By its attorneys, acting as special Town Counsel

HUGGINS AND WITTEN, LLC

/s/ Jonathan D. Witten

Jonathan D. Witten, BBO 636337
Barbara Huggins, BBO 562535
156 Duck Hill Road
Duxbury, MA 02332
781-934-0084

DATED: January 2, 2015

CERTIFICATE OF SERVICE

I certify that I sent a true copy of the above noted Motion in Limine to counsel for Weiss Farm Apartments, LLC, this day by US Mail, postage prepaid.

/s/ Jonathan D. Witten

Jonathan D. Witten

January 3, 2015