

Volume II
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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, Alternate

William Solomon, Esq., Town Counsel
Catherine Rooney, Secretary

Huggins & Witten, LLC (by Jonathan Witten, Esq.)
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jon@hugginsandwitten.com, 781.934.0084,
for the Board.

Cicatelli & Cicatelli (by Steven L. Cicatelli,
Esq.) 266 Main Street, Stoneham, MA
02180-3502, scicatelli@cicatelli.com,
781.438.4060, for the Applicant.

Held at:

Stoneham Town Hall
35 Central Street
Stoneham, Massachusetts
Wednesday, September 17, 2014
7:33 p.m.

Carol H. Kusnitz
Registered Professional Reporter

ATTORNEY NOTES

Calendar for year 2014

Horizontal lines for attorney notes.

January

Calendar grid for January 2014.

February

Calendar grid for February 2014.

March

Calendar grid for March 2014.

April

Calendar grid for April 2014.

May

Calendar grid for May 2014.

June

Calendar grid for June 2014.

July

Calendar grid for July 2014.

August

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Calendar grid for December 2014.

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1 P R O C E E D I N G S

2 CHAIRMAN SALTZMAN: If everybody could take
3 a seat, we'll get started.

4 Good evening, everybody. Welcome to the
5 Board of Appeals. My name is Bob Saltzman. I'm the
6 Chairman of the Board.

7 Board members to my left are Bill Sullivan
8 and Tobin Shulman. To my right is Larry Rotondi.
9 To his right is Mike Dufour. And also sitting as
10 the alternate is Nate Cramer.

11 Tonight, as you know, is a continuation of
12 the Weiss Farm 40B Comprehensive Permit Application.

13 Before we get started, I want to let
14 everybody know that we do post the agenda for our
15 meetings on the website. Tonight we're going to be
16 doing the consultants, the beginning of the
17 consultants for the project. We're also going to be
18 determining the completeness of the application.

19 Now, I don't know if everybody that showed
20 up here tonight knew that that's what we're going to
21 be doing. This is going to be a long process, and
22 so I would just point out to people that I'm glad
23 you're all here, and I want you to be glad that you
24 were here when the meeting is concluded, but this is

1 what we're doing tonight.

2 The hearing is being video recorded, and
3 the Board has also engaged a court reporter to
4 record the minutes.

5 Is there anybody here who is also
6 recording? If you could stand up and identify
7 yourself.

8 MR. HARTLEY: Ethan Hartley, reporter with
9 the Stoneham Sun.

10 CHAIRMAN SALTZMAN: And how are you
11 recording?

12 MR. HARTLEY: Digital audio recorder.

13 CHAIRMAN SALTZMAN: Audio recording. All
14 right.

15 At this time I would call upon Attorney
16 Witten with reference to recent correspondence which
17 is going to be marked as exhibits.

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

20 Mr. Chairman, the Board is in receipt of a
21 series of letters from either the Applicant or
22 myself, and I believe Cathy can identify if there
23 are any letters that I leave out. We ask that the
24 court reporter note these as exhibits as she sees

1 fit in terms of order.

2 There is a letter from the Applicant in
3 opposition to the Board's claim that the Town is
4 consistent with local needs. That's dated August 7,
5 2014. There is a letter from the Department of
6 Housing and Community Development ruling that the
7 Town of Stoneham is not consistent with local needs.
8 That's dated September 2nd, received by the Town
9 electronically on September 5th, and then in paper
10 copy on September 8, 2014.

11 There is a letter from the Applicant
12 claiming conflicts of interest exist with two
13 consultants that the Board had included in its list
14 of recommended consultants. That letter is dated
15 August 8, 2014. The letter identifies CBI
16 Architects and PCS, which is misspelled. It should
17 read PSC, Inc.

18 There is a letter from the Applicant
19 objecting to the number of categories for peer
20 review under consideration by the Board. That
21 letter is dated September 11, 2014.

22 There's a letter from the Applicant
23 supplementing the original Application and raising
24 objections to requirements for submission of certain

1 materials. That letter is dated September 11, 2014.

2 There's a letter from myself to counsel for
3 the Applicant responding to the Applicant's claims
4 of conflict with respect to certain consultants, the
5 fact that the Application remains incomplete,
6 contains insufficient data and remains incomplete,
7 and that the Board of Appeals voted on September 11,
8 2014, to appeal the decision of the Department of
9 Housing and Community Development's decision
10 regarding the Town's status as consistent with local
11 needs.

12 Mr. Chairman, that is the correspondence
13 received to and from the Applicant in this matter.

14 CHAIRMAN SALTZMAN: Thank you very much.
15 Have the exhibits been marked?

16 MR. WITTEN: They will be.

17 THE STENOGRAPHER: I will put stickers on
18 them.

19 (Documents marked as Exhibit 9
20 through 14 in evidence)

21 CHAIRMAN SALTZMAN: Next we have the issue
22 of the consultants. I believe that there's been
23 some discussion between the Applicant and Attorney
24 Witten with respect to the consultants.

1 MR. WITTEN: So, Mr. Chairman and Members
2 of the Board, the discussion we had at the opening
3 hearing was the Board's authority to require the
4 Applicant to pay into a special fund, a Chapter 44,
5 Section 53G fund, so that the Board could hire
6 consultants to review the project. The Board
7 discussed fairly quickly a large range of categories
8 and a whole list of recommended consultants that I
9 had prepared for the Board.

10 The Applicant has come back and objected to
11 two of those consultants, those two being those I
12 mentioned earlier, CBI Architects and the PSC
13 engineering firm.

14 Tonight my recommendation to the Board is,
15 because the Application in my opinion still remains
16 incomplete but nevertheless there is an Application
17 before the Board, my recommendation to the Board is
18 that you start on two of the more macro issues
19 relating to this project, and that is traffic impact
20 and the other being civil engineering, site
21 engineering issues.

22 With the traffic issue, I had recommended
23 three consultants. The Applicant has objected to
24 one of them. I've spoken to Counsel this evening

1 and recommended Vanasse & Associates, and the
2 engineer is named Jeffrey Dirk. The Board has a CV
3 from Mr. Dirk, who is a well-experienced, well-known
4 civil engineer, as well as his firm's profile.

5 So my recommendation to the Board, if the
6 Board is comfortable, is to request funding from the
7 Applicant to pay for the initial consulting services
8 of Mr. Dirk through the firm of Vanasse &
9 Associates.

10 The second is an engineer named Robert
11 Griffin, who is very familiar with both the locus
12 and the Town of Stoneham. He has been the
13 Conservation Commission's engineer for quite a
14 while. I have spoken to Mr. Griffin. The Board has
15 Mr. Griffin's CV and his rate sheet as well.

16 So my recommendation, if the Board is
17 comfortable, is to ask the Applicant to pay for the
18 services of Mr. Griffin to provide generalized civil
19 engineering services at this point in time.

20 Then the third consultant the Applicant has
21 already agreed to, and that is the court reporter
22 from Doris Wong Associates. That can be paid for
23 through, say, three or four advance meetings.

24 So my recommendation to the Board tonight

1 is to ask the Applicant to pay for Jeffrey Dirk from
2 Vanasse, Robert Griffin from Griffin Engineering and
3 a court reporter from Doris Wong.

4 CHAIRMAN SALTZMAN: I believe that at least
5 Mr. Griffin submitted, I think, a fee schedule? I
6 did see something that came in today. I don't know
7 if that was forwarded to Mr. Cicatelli.

8 Can you speak to that.

9 MR. CICATELLI: Yes, Mr. Chairman. Thank
10 you. I believe Jon handed it to Rich Gallogly a
11 moment ago. We do have a fee schedule. I'm not
12 sure if we have a complete scope of work.

13 MR. GALLOGLY: We don't.

14 MR. CICATELLI: So the two items that we
15 had requested were the scope of work and the fee
16 structure. So certainly we can review that, but we
17 don't have a scope of work at this time.

18 MR. GALLOGLY: I think in principle the two
19 consultants mentioned are acceptable.

20 CHAIRMAN SALTZMAN: I'm sorry?

21 MR. GALLOGLY: The two consultants
22 mentioned by Attorney Witten are acceptable.

23 CHAIRMAN SALTZMAN: They are acceptable?

24 And --

1 MR. GALLOGLY: We need to work out a scope
2 of work and how much you're requesting in fees.

3 CHAIRMAN SALTZMAN: I think on the -- what
4 would appear to be, under the circumstances -- well,
5 let's do the easy one. We'll start with the
6 stenographer.

7 MR. GALLOGLY: That one's okay.

8 MR. CICATELLI: We're in agreement with
9 that.

10 CHAIRMAN SALTZMAN: Maybe we'll put \$3,000
11 in escrow, start us off on that? Does that seem
12 reasonable?

13 MR. CICATELLI: That's fine, Mr. Chairman.

14 CHAIRMAN SALTZMAN: I'm guessing that there
15 will be probably a request for more at some point.

16 With reference to the traffic study, it
17 would seem -- and I think that the Board members may
18 also wish to comment on this -- but as far as the
19 scope of work, I mean, the difficulty with limiting
20 the scope of work on something like this up front is
21 that, if we're just going to study the impact of
22 traffic on Franklin Street, we may well miss the
23 point; because as things stand already, we have a
24 lot of people cutting through Stoneham from Melrose,

1 and they don't go down Franklin Street, they go down
2 Spring Street, which, as Mr. Cicutelli at least is
3 very well aware, is parallel to Franklin Street.

4 So it would seem to me that the idea of the
5 scope of work would be to look at that side of the
6 community, at least as far as the traffic is
7 concerned.

8 MR. ROBERT ENGLER: Mr. Chairman, could I
9 speak to that?

10 CHAIRMAN SALTZMAN: Please.

11 MR. ROBERT ENGLER: This is Bob Engler of
12 SEB.

13 We have every confidence that Mr. Dirk is a
14 first-class reviewer. I think the reason we look at
15 the scope is, in a way, opposite of what you might
16 say, not for him but in general. Suppose he said,
17 "Let's look at the whole town and three other towns,
18 and let's look at all those intersections," even
19 though they have nothing to do with our traffic. We
20 have a right to say, "That scope is a little broad,"
21 the same way you have a right to say, "Well, you
22 can't limit him to just one street or the access."

23 We agree that, once we look at the scope,
24 chances are from him we have no problem with the

1 scope, because he's a professional; he knows the
2 intersections that need to be looked at. We just
3 need to look at it and see what the fee is. So I
4 don't think there will be any issue with him at all.

5 CHAIRMAN SALTZMAN: You know, on something
6 like that, it would appear that, with a study,
7 certainly if we were to request an escrow amount, it
8 would seem reasonable under the circumstances that
9 \$10,000 might make sense in connection with the
10 traffic, and --

11 MR. ROBERT ENGLER: It's not a big deal,
12 because we get back anything he doesn't spend. He
13 might start with 5, go to 7, and it may end up at
14 10. I don't think it's worth arguing about it in
15 terms of that amount. I don't think it will be 10
16 from the beginning, but, you know, as I say, there's
17 a way to get it back if it's not spent. So that's
18 not a problem.

19 CHAIRMAN SALTZMAN: I don't think he's
20 going to spend the 10 between now and the next
21 meeting.

22 MR. ROBERT ENGLER: No, I don't either. I
23 mean, even the first report. But at any rate, we're
24 certainly cooperating with that, because he's fair,

1 he's good, and we'll see what he has to say.

2 CHAIRMAN SALTZMAN: With respect to the
3 other, the engineer, Mr. Griffin, I believe that
4 there was -- I don't know how much opportunity you
5 have had to look at his credentials and whether
6 there's any kind of a possible issue. I think he
7 even has a fee schedule in there.

8 MR. GALLOGLY: He's got a hourly rate, \$140
9 per hour.

10 MR. ROBERT ENGLER: He's got an hourly
11 rate, not an upset. You know, it's nice to get kind
12 of a fee, but if you want to put in another \$10,000
13 for him to get going, we haven't really had a chance
14 to review his stuff, because it's just come in, but
15 that's probably a reasonable request.

16 CHAIRMAN SALTZMAN: So ask for 10 for him?

17 MR. ROBERT ENGLER: Yes.

18 CHAIRMAN SALTZMAN: Ask for 10 on the
19 traffic and 3 for the stenographer?

20 MR. ROBERT ENGLER: Yes.

21 CHAIRMAN SALTZMAN: And if there is any
22 additional -- I don't think we need anything else to
23 get started on this thing, it would seem to me.

24 MR. MAHONEY: Peter Mahoney with John

1 Corcoran and Company. Just, we would like to see
2 the scopes. We're happy to put the money up in
3 escrow, but we would like to see the scope from both
4 of those two consultants.

5 CHAIRMAN SALTZMAN: I think we can provide
6 that.

7 MR. WITTEN: Mr. Chairman, what I will do
8 is, once the escrow has been placed with the Town
9 Accountant, I will make sure that both consultants
10 prepare a scope of work for the Board's approval,
11 and obviously for the Applicant's review, but at the
12 end of the day it's the Board's approval.

13 It's a little bit of the cart before the
14 horse. So once the escrow account is funded,
15 including for the court reporter, then we will
16 produce -- we will ask the consultants to produce
17 the scopes of work for your review. And then, if
18 the Board votes that this evening, these two
19 engineers can commence their work between now and
20 the next hearing so there won't be a lag time.

21 So the triggering event is the filing of
22 the escrow funds. They can't begin work until the
23 money is in hand with a special account set up by
24 the Town Treasurer.

1 CHAIRMAN SALTZMAN: I mean, the Board
2 can -- if necessary, we can vote on this issue.
3 We'll take up -- first of all, we can take up the
4 stenographer.

5 We'll have a voice vote that the
6 stenographer in this case, the consultant will be
7 Doris Wong reporting.

8 Mr. Dufour.

9 MR. DUFOUR: Yes.

10 CHAIRMAN SALTZMAN: Mr. Rotondi.

11 MR. ROTONDI: Yes.

12 CHAIRMAN SALTZMAN: Mr. Sullivan.

13 MR. SULLIVAN: Yes.

14 CHAIRMAN SALTZMAN: Mr. Shulman.

15 MR. SHULMAN: Yes.

16 CHAIRMAN SALTZMAN: The Chair is in favor.
17 Congratulations.

18 Now, on the issue of the engineer, there's
19 an application by Mr. Griffin to be our consultant,
20 and there would be \$10,000 in escrow put there by
21 the Applicant for that purpose.

22 Mr. Shulman.

23 MR. SHULMAN: Yes.

24 CHAIRMAN SALTZMAN: Mr. Sullivan.

1 MR. SULLIVAN: Yes.

2 CHAIRMAN SALTZMAN: Mr. Rotondi.

3 MR. ROTONDI: Yes.

4 CHAIRMAN SALTZMAN: Mr. Dufour.

5 MR. DUFOUR: Yes.

6 CHAIRMAN SALTZMAN: The Chair is in favor.
7 5-0 vote. Mr. Griffin will be the engineer.

8 Last but not least it would be Vanasse
9 corporation would be conducting the traffic study,
10 and, again, \$10,000 would be placed into escrow by
11 the consultant for that purpose -- by the Applicant
12 for that purpose.

13 Again, same voice vote. Mr. Shulman.

14 MR. SHULMAN: Yes.

15 CHAIRMAN SALTZMAN: Mr. Sullivan.

16 MR. SULLIVAN: Yes.

17 CHAIRMAN SALTZMAN: Mr. Dufour.

18 MR. DUFOUR: Yes.

19 CHAIRMAN SALTZMAN: Mr. Rotondi?

20 MR. ROTONDI: Yes.

21 CHAIRMAN SALTZMAN: The Chair is in favor.

22 So \$23,000 in all will be placed in escrow, and that
23 would be at the Town Hall.

24 MR. ROBERT ENGLER: We'll get that in

1 within a day or two. But I want to be clear --
2 Attorney Witten agrees with this, I'm sure -- that
3 we would like to get from them, once they know the
4 money is in escrow, to get us a scope, or you send
5 us a scope.

6 CHAIRMAN SALTZMAN: Sure.

7 MR. ROBERT ENGLER: So we know they're
8 starting, we know there's money in there, but we
9 still want to see --

10 CHAIRMAN SALTZMAN: You still want to know
11 the scope of the work.

12 MR. ROBERT ENGLER: Yes.

13 CHAIRMAN SALTZMAN: I can't see why that
14 would take any length of time for you to get that
15 information.

16 MR. ROBERT ENGLER: Well, I don't know.
17 Whatever time it takes them to put it together,
18 we'll accept it and look at that when it comes --

19 CHAIRMAN SALTZMAN: Are you saying you're
20 holding off on the money until you get the scope?

21 MR. ROBERT ENGLER: Oh, no, no. We're not
22 saying that. We're just saying so we see a scope
23 that they're working against that \$10,000 with.
24 We're okay with that.

1 CHAIRMAN SALTZMAN: Sure.

2 MR. ROBERT ENGLER: Mr. Chairman, can I
3 have another thought here, without rocking the boat?
4 I mean, we're happy and we accept that the peer
5 review for traffic and civil and wetlands is
6 appropriate. I think Attorney Witten said earlier
7 that's just a start. That's for now.

8 We want to be clear that, according to the
9 regulations, you ought to be reviewing things that
10 you typically or other boards and special permits or
11 whatever review in Town and not do much more than
12 what you're typically expected to do, which we
13 understand. Certainly civil and traffic and
14 wetlands are part of that. Eventually it could be
15 financial review.

16 But other reviews, if they come in later
17 on, we just want to be on the record saying we're
18 not sure that that's what you've done in other --
19 you or other boards have done in other situations.

20 So that might be more problematic, and I'm
21 just putting that out there right now.

22 CHAIRMAN SALTZMAN: You know, I would just
23 say that, tonight it makes sense to get started on
24 this, to get started on certainly the two major

1 issues that jump out at everybody. And if there is
2 anything else that needs to be done, I would say
3 we'll make every effort to get it to you ahead of
4 time or certainly take it up at the next meeting.

5 MR. ROBERT ENGLER: Fine. Fine.

6 CHAIRMAN SALTZMAN: And then we have the
7 issue with the Application. There has been an
8 exchange of paperwork in connection with the
9 Application. I would submit that this is something
10 that we would like to bring to a conclusion tonight,
11 if at all possible. If there is anything else that
12 we need and if there is anything else that you can
13 agree to give us, then even if we -- let's at least
14 see if we can resolve this issue tonight.

15 And I know that there has been an exchange.
16 I would just submit -- I know that it's your
17 position that the Application is complete. If Mr.
18 Cicatelli would like to make a brief presentation on
19 that issue, we'll hear also from Attorney Witten,
20 and we'll take the matter up and see if we can
21 resolve it tonight.

22 MR. CICATELLI: Thank you, Mr. Chairman. I
23 think I would probably refer to Rich's letter to Jon
24 dated September 11, and basically several or a few

1 categories were established. There was a category
2 basically indicating that there was requested
3 information, and that's been provided as of
4 September 11th.

5 There was a category of information that
6 was required under the local regulation but in our
7 opinion perhaps not required under the state
8 regulations, but nonetheless the Applicant provided
9 it.

10 And then there are some items that we feel
11 are not required under the state regulations.

12 So I don't know if Jon wants to address it
13 first and then Bob or Rich can comment on it, but we
14 feel very confident that our initial Application was
15 complete; we feel, by virtue of this supplemental
16 submission dated September 11th, it certainly is
17 complete; and we feel that if there is other
18 information -- there certainly will be more
19 information that will come in during the course of
20 the public hearings. So clearly the Application is
21 not the entire presentation, but we just want to
22 move forward, and we would like the Board obviously
23 to deem our Application complete so that we can do
24 so.

1 But perhaps Jonathan might want to address
2 the September 11th issue and state why it is, in his
3 opinion -- or maybe the Board should take a position
4 on that, what further information the Board is
5 looking for.

6 CHAIRMAN SALTZMAN: First of all, does
7 anybody from the Board have a question in connection
8 with the completed Application or Attorney
9 Cicatelli? (No response)

10 If I might very quickly, on the last page
11 of the letter, I can see, with reference to Category
12 No. 4, the Statement of Impact on Municipal
13 Facilities. I do recognize that the Application can
14 either rise or fall on that basis, and it's with
15 some hesitation that I would request that
16 information on behalf of the Board.

17 But I would say that right next to that
18 we've got the Environmental Impact Analysis. And
19 strictly looking at this from a practical viewpoint,
20 it would seem to me that the environmental impact is
21 going to be something that is subject to much of the
22 Board's deliberations here. Obviously the sooner
23 that we can get that information, the better.

24 And I would certainly be looking at this

1 and saying, All right, if you don't want to give us
2 the effect on the school system, well, we can't
3 consider that anyway. But certainly something
4 that's of great interest to everybody, everybody in
5 this Town and in this room, is the environmental
6 impact.

7 It would seem to me that that would be
8 something that, if I were submitting an application,
9 I would rather bring it to the Board's attention
10 than have them find it out on their own.

11 So I don't know what your position is with
12 that.

13 MR. ROBERT ENGLER: Can I speak to that,
14 Mr. Chairman?

15 It may be the words we're talking about,
16 about a separate environmental impact analysis
17 report. We think that what we've given you in terms
18 of our planning and our comments and our
19 engineering, there's enough for your environmental
20 reviewers to look at the plans, the civil and
21 wetlands and whatever. Those are the impacts.
22 Those are going to be looked at by your reviewers,
23 your peer review consultants.

24 Typically what happens, if they come back

1 and say, Listen, I need some more information to
2 really make a finding here, and we think we can do
3 that for them, that evolves during the course of the
4 hearings. We don't necessarily -- I've not turned
5 in an environmental impact analysis up front. We're
6 waiting to see what the consultants say they need.
7 Some things they can't have, because we're not going
8 to give them stuff beyond what 40B is very
9 deliberately saying and has said for 35 years.

10 This is preliminary engineering and it's
11 preliminary architecture, and after you're
12 permitted, you do all the detailed work. You don't
13 have to do it up front. So there's give-and-take on
14 that with your consultants and our consultants.
15 We'll talk about it through the course of the
16 hearings.

17 All we're saying is, we're not turning in a
18 report that 40B is very clear is not part of the 40B
19 requirements, but we may be covering the substance
20 of those things through the discussions anyway.
21 It's not called environmental review analysis, but
22 there will be environmental review throughout the
23 whole part and parcel of our discussions. So I
24 think that's what we're hoping to get to.

1 Let me also add, while I'm speaking, that
2 if we can't solve this tonight and you want to solve
3 it -- and we'd love to solve it -- but if Mr. Witten
4 and the Board say, "We want this," and we say,
5 "We're giving you everything we have," there's
6 something in the regulations that's very clear that
7 allows the Department of Housing and Community
8 Development, DHCD, to provide a nonbinding opinion
9 or advice on whether your requirements are in
10 keeping with the 40B and consistent with them or
11 excess.

12 We're happy to submit what you're looking
13 for and what we've provided to them for what is
14 called -- "A board may seek nonbinding advice from
15 the Department as to whether the application is
16 complete or not."

17 So we would say, fine, if you want to do
18 that, get another point of view, whether we're wrong
19 in not giving you what you want or whether you're
20 excessive in asking for things we don't think are
21 necessary, if we don't come to an agreement tonight.
22 I just throw that out, because we're happy to be
23 part of that discussion.

24 CHAIRMAN SALTZMAN: That's why -- for

1 example, I said the impact on local facilities is
2 something that we would potentially be able to get
3 past and say, "That's something that maybe we don't
4 need." But I just wonder if, in exchange for that,
5 there would be any movement on the part of the
6 Applicant to provide us with some of this
7 environmental impact information.

8 MR. ROBERT ENGLER: Well, if your
9 consultant does the review and says -- and you ask
10 your consultant the question, "What's the impact on
11 the facilities?" and he says, "I don't have enough
12 information here," then he would bring that to our
13 attention, and we can talk about it. If he says,
14 "They've given me enough to make a determination on
15 this," then we don't need to do that.

16 So we're preferring to wait to see what
17 your experts say they want and need, and then we can
18 have that conversation. And we may provide it. It
19 may be very important, so we may provide it. But
20 we'd rather have that process evolve.

21 CHAIRMAN SALTZMAN: Does anybody from the
22 Board have a question with reference to this?

23 MR. SULLIVAN: I do. Is it correct that
24 the environmental impact analysis is a requirement

1 of the Town of Stoneham's Comprehensive Permit
2 Application?

3 MR. ROBERT ENGLER: Is it a requirement of
4 the Town?

5 MR. SULLIVAN: Yes.

6 MR. ROBERT ENGLER: Yes, it is.

7 MR. SULLIVAN: So you're saying that the
8 state has a lesser requirement and the Town can't
9 exceed that, basically?

10 MR. ROBERT ENGLER: The state rules which
11 we're following say the Town can impose local
12 requirements but they shall be consistent with the
13 purpose of 40B and streamlining the permitting
14 process.

15 We don't think what you've passed, which
16 was done specifically for our project a few weeks
17 before we came in, is in that consistent nature of
18 what the 40B requirements are. We think they're
19 excessive to some degree. So that's why we're
20 saying we're happy to work with you, but some of
21 these things you're asking for are well above and
22 beyond what's required by the state, which we have
23 to follow.

24 Some rules, local rules, don't have to be

1 followed. We can ask for a waiver from local rules.
2 Your requirements here are what we consider in
3 excess of what's required of the Application.

4 MR. SULLIVAN: I've read that there are a
5 lot of 40B projects you people have done. I'm just
6 curious, how many have you done starting the process
7 off going through an area where most of the property
8 is considered wetland?

9 MR. GEOFFREY ENGLER: I think I understand
10 the question. And I know every 40B application is
11 different and municipalities don't like to be
12 compared to one another, and I certainly understand
13 that.

14 Our firm obviously represents lots of
15 different 40B application developments, many of
16 which are more complicated than this, as hard as
17 that might be to believe. But wetlands -- here
18 there's sewer, they have septic, all sorts of
19 different endangered species.

20 And I think we're getting caught up a
21 little bit here on the nomenclature relative to the
22 environmental impact report, because a lot of what
23 the civil engineers look at is just that,
24 environmental issues. And we certainly agree that

1 that needs to be vetted.

2 But there is something specific called an
3 environmental impact analysis, which is different
4 than that civil engineering dialogue that occurs.
5 So as my father indicated, as we engage in the
6 process, or more accurately as the engineers engage
7 in the process, if there's additional information
8 that Mr. Griffin says is critical and he can't make
9 a finding without it, I have every confidence that
10 we'll be able to get that information.

11 It's just from day one to provide this
12 report I think is unnecessary and frankly very
13 uncommon in other situations that have similar
14 environmental considerations as this.

15 MR. SULLIVAN: Thank you.

16 CHAIRMAN SALTZMAN: With reference to Page
17 2, underneath where it says "Category 2," that first
18 paragraph, "Memo Item (a)," I'm looking at the last
19 sentence in that paragraph, and it says, "The
20 Applicant will not provide information on
21 uncertified wetlands or vernal pools not located on
22 the site." That's a slightly ambiguous sentence,
23 and I was just wondering if you're just referring to
24 wetlands and vernal pools that are not located on

1 the site. Is that all we're talking about here?

2 MR. MALONEY: We're talking about those
3 items off of the site, not on the site.

4 CHAIRMAN SALTZMAN: Fair enough.

5 Does anybody else have any questions of the
6 Applicant? If not, we will have -- Attorney Witten
7 will speak.

8 MR. WITTEN: Thank you, Mr. Chairman.

9 I think maybe we should start, if we could,
10 with the prior conversation on the environmental
11 impact analysis.

12 I understand what both Mr. Englers have
13 said, and respectfully I just couldn't disagree
14 more. The purpose of the application process is so
15 the Board has a completed application, not so that
16 the Board starts a process and then decides what
17 else it needs to fulfill the application.

18 The purpose of the regulations was to make
19 sure that the Board had a complete, robust
20 application before it so that then its engineers
21 could review the project, not so that the Town's
22 engineers could do the Applicant's work for them.

23 So the purpose of the environmental impact
24 statement in the regulations, which is very common

1 across the Commonwealth, very common and almost
2 always required, is to make sure that the issues
3 enumerated in your regulations that the Board
4 adopted are complied with. They deal with hydrology
5 and hydrogeology, soils, wetland science, topography
6 and issues relating to environmental impact.

7 It's common. It's always done for any
8 large project and increasingly for any small
9 project. The Applicant has to do this for its bank.
10 It has to do it for its own due diligence. The
11 Board is entitled to this information, because it's
12 at the core of whether the site can support the 264
13 units the Applicant is proposing.

14 So the fact that this information is
15 required in the Application on its face does not
16 violate any state regulations. In fact, the Housing
17 Appeals Committee regulations are quite clear: The
18 Applicant cannot take an appeal of the local rules
19 and regulations in the initial stage. It can always
20 reserve a right later to challenge these
21 requirements. But at this stage of the process, the
22 Board is entitled to compliance with its reasonable
23 rules and regulations.

24 And in this case, this is perfectly

1 reasonable. In fact, it's an ultimate necessity to
2 determine whether the carrying capacity of the site
3 can handle 264 units.

4 Mr. Engler's statement that the regs were
5 done for, quote, our project I just want to say is
6 categorically wrong. The Board of Appeals adopted
7 these regulations to protect itself from 40B
8 projects. The fact that this project came after
9 those regulations were adopted has no bearing at all
10 on the Board's adoption of these regulations.

11 The completeness of the Application is the
12 Board's determination. It's certainly true that in
13 Counsel's letter to me, to the Board, challenging
14 some of the requirements, the Board can negotiate
15 for things that are irrelevant. That is the Board's
16 prerogative. And it's up to the Board to decide
17 whether, for example, the environmental impact
18 analysis is irrelevant. My opinion is, for this
19 site in particular, it's not; in fact, it's
20 tremendously relevant.

21 Then working backwards -- this is on Page 3
22 of Counsel's letter to the Board making it clear
23 that the Applicant would not provide justification,
24 economic or otherwise, justification for the list of

1 waivers. I would say, Mr. Chairman, that along with
2 the requirement for the environmental impact
3 statement, this is equally as important.

4 An applicant for a comprehensive permit is
5 entitled to ask for waivers, but it has to justify
6 what those waivers are all about; otherwise, what's
7 the point of ever adopting a zoning bylaw again in
8 the Commonwealth? Town Meeting adopted these
9 regulations. The Conservation Commission, the
10 Planning Board, the Board of Health adopted these
11 regulations.

12 The Applicant wants waivers from them.
13 They get to ask for those waivers, but they have to
14 explain why and, but for the waiver, whether the
15 project would be uneconomic. That's a rejection of
16 the most basic principle of how a 40B works, and I
17 would urge the Board to require that economic
18 justification for the waivers.

19 On the other objections that are contained
20 in Counsel's letter -- and, Mr. Chairman, you raised
21 the issue of the off-site wetlands or uncertified
22 vernal pools -- that's up to the Board. And I would
23 agree with Bob Engler that may come out during the
24 consultant review, but off-site wetland impacts are

1 just as important as on-site wetland impacts. So I
2 don't know how the Applicant would not want to
3 provide the Board with that information.

4 With regard to the list of team members'
5 experience, I think that's an easily waivable
6 request. It seems not at all inappropriate to ask.

7 But then on the Applicant's objection to
8 the continued eligibility status, the Board has
9 asked for the materials that the Applicant submitted
10 to Mass. Housing, not just the project eligibility
11 application. That's a perfectly reasonable request,
12 and frankly I do not understand why there is any
13 objection to it.

14 And then lastly, the Applicant's reluctance
15 to sign under the pains and penalties of perjury,
16 that speaks for itself, Mr. Chairman. That's up to
17 the Board whether you want to pursue it, but
18 apparently the Applicant is not willing to make that
19 statement.

20 That, Mr. Chairman, I think, covers their
21 general objections to the Board's conclusion that
22 the Application is incomplete.

23 And I should just say that I think both
24 parties want to reach a consensus on when the

1 Application is complete, because it's my opinion
2 that the 180-day time clock doesn't commence until
3 there's a complete Application. I would urge the
4 Board to be very cautious with that statement,
5 because the Housing Appeals Committee is not going
6 to take that lightly, but I think where the Board
7 identifies substantive incomplete provisions, I
8 think that's very, very important to make it clear.

9 And then the last thing, Mr. Chairman, Mr.
10 Engler's --

11 CHAIRMAN SALTZMAN: One quick question. We
12 were talking -- just to back up a little bit, in
13 connection with the environmental impact, what
14 documents will you anticipate would be included in
15 that section?

16 MR. WITTEN: Well, I think for this site --
17 so I'm looking at the Board's regulations on Page
18 4 -- I think on this site, the enumerated, beginning
19 with No. (i), surface and groundwater quality;
20 groundwater recharge; I think open space I would
21 agree with Mr. Engler, that's clearly identified in
22 the plan; recreational areas and space, that's
23 identified in the plan to the extent that there is
24 any; wildlife habitats and corridors; wetlands and

1 bodies of water, including streams and rivers, both
2 localized and general; watershed management;
3 watershed planning; especially in this particular
4 watershed; species of special concern, to the extent
5 that there are any; and historic structures.

6 CHAIRMAN SALTZMAN: Just on that point, I
7 know that the Applicant has indicated that the maps
8 that have been provided contain the requested
9 information. I mean, that's the position I believe
10 that they're taking.

11 Maybe one needs to be an engineer to know
12 where that information is contained. I was an
13 English major, and I will be the first person to say
14 that, when I look at that map, it tells me nothing.
15 And it could very well be that this is my ignorance
16 that I can't find it, but I'm -- I was kind of
17 expecting something that was written in the English
18 language that I could read and understand those
19 various points.

20 MR. WITTEN: And that, Mr. Chairman, is
21 what it's all about. "The environmental impact
22 analysis shall assess the impact." It's a
23 quantitative analysis. This is as old as the 1970
24 Earth Day movement, that an Applicant for a

1 development project provides a reviewing body with
2 an assessment of impact, not just maps and figures.

3 This is a quantitative and qualitative
4 analysis, an environmental impact assessment. And I
5 don't know how anybody can review a development
6 project of this magnitude without that assessment.
7 And again I would say, it's to the Applicant's
8 benefit to provide that information so it can get
9 peer reviewed and reviewed by the Board.

10 MR. CICATELLI: Mr. Chairman, I guess the
11 question would be, is this required of other
12 developments? And to my knowledge, in the Town of
13 Stoneham, it is not.

14 I think what we're saying is, we have
15 presented a great deal of information in the initial
16 Application. The Board deemed that the Application
17 was incomplete. And Jon and I do agree on this one
18 point this evening: It is the Board's decision as
19 to whether the Application is complete.

20 We have supplemented it with additional
21 information, and all we're saying is -- whatever we
22 submit at this point, it will be subject to peer
23 review. So what we're saying is, we would like to
24 move forward. We respectfully request that the

1 Board deem the Application complete. And then as
2 your consultants review that which we have
3 submitted, if they require additional information,
4 we can certainly look at it at this point. We're
5 just trying to get this process started, and we're
6 getting sort of bogged down in procedure.

7 But clearly, any information we give you,
8 impact statement or not, is going to be reviewed by
9 your consultants, and there are going to be
10 questions and perhaps requests for further
11 information.

12 So we feel that all the information will
13 come out, but we prefer that your consultants review
14 it and then request for other information, and we
15 can address that request at that time.

16 CHAIRMAN SALTZMAN: I would just say, just
17 in response, that the first sentence that I'm going
18 to be reading about this site is going to be from
19 our peer review. And I would just submit to you
20 that this is your opportunity to grab the high
21 ground in this debate. And I just -- I'm a little
22 bit surprised that people don't want to do that,
23 because if something does come up, and -- you know,
24 you guys have been in control of the site for a

1 fairly lengthy period of time, and you've had this
2 opportunity to come and bring this to our attention.

3 And I would just say that, again, I can
4 only do my best to put myself in your position; I
5 would want to bring this to the Board's attention
6 before the Board finds things out on its own.

7 (Applause)

8 MR. ROBERT ENGLER: Mr. Chairman, it's very
9 clear, from listening to Attorney Witten, he doesn't
10 agree with our position. We don't agree with his
11 position. We both have been in many, many, many
12 hearings. He says it's always required. I say it's
13 never required.

14 We want to get an answer? Ask the DHCD.
15 On a nonbinding opinion, they'll give you an answer
16 fairly quickly, is this excessive or not.

17 We think it is. We think we've given you
18 everything you need to review. And if that's not
19 correct, we'll do more. But we just disagree with
20 his position.

21 Let me just cite an example. Asking for
22 pains and penalties of perjury for signing a pro
23 forma, which I have done at least 150 times in my 30
24 years, nobody has ever asked me to sign a pro forma

1 under the pains and penalties of perjury. It would
2 be like DHCD asking Mr. Witten, when he submitted
3 documentation on the land area, "Would you sign that
4 under pains and penalties of perjury?" They only
5 wanted to know he was wrong, not that he was
6 perjured. That's the same thing on the pro forma.
7 That's excessive.

8 CHAIRMAN SALTZMAN: Mr. Engler, I get your
9 point on that, and what I would say is that I think,
10 to get the environmental information, we would waive
11 that requirement too. I would ask the Board to
12 waive that requirement. I mean, that's how
13 important it is.

14 I think we're just -- we're down to -- we
15 would give a fair amount of ground to get to the
16 bottom of what's there, just at least to the
17 starting point. And I think -- you only get one
18 opportunity to make a first impression, and we would
19 like to know what's there, what you think of the
20 place and what you've seen when you've looked at it.

21 I don't think that's an unreasonable place
22 to be. I don't think I can -- I don't seem to be
23 able to get you there tonight.

24 MR. ROBERT ENGLER: If we turned in an

1 environmental impact analysis, you'd turn it over to
2 your consultants to look at. We're saying the same
3 thing. We've given a lot of information to look at.
4 Let's get them started on looking at it, Let them
5 see what's missing. We don't think we're missing
6 anything.

7 CHAIRMAN SALTZMAN: Can you make that
8 available by a date certain? I think that that may
9 get us a long way in a short time.

10 MR. ROBERT ENGLER: Giving you what by date
11 certain? I missed that.

12 CHAIRMAN SALTZMAN: Your environmental
13 impact information?

14 MR. ROBERT ENGLER: Well, we will take --
15 we have time now. We'll take a look at that while
16 we're being stayed, as I understand it. And so
17 we'll see whether there's stuff in there that we
18 haven't provided you. We'll take another look at
19 it.

20 MR. CICATELLI: Mr. Chairman, can we take a
21 five-minute recess just to discuss this one issue?

22 CHAIRMAN SALTZMAN: Absolutely. Sure.

23 (Recess)

24 CHAIRMAN SALTZMAN: Attorney Cicatelli.

1 MR. CICATELLI: Thank you, Mr. Chairman,
2 for that time to discuss this matter amongst us.

3 What we would be willing to do in exchange
4 for the Board voting that the Application is
5 complete is to provide -- I want to just reference
6 the Board's attention to Section (n), Page 7 of the
7 memo. We would specifically provide Roman numerals
8 (i) through (viii) on Page 7.

9 In exchange for that, if the Board would
10 deem the Application complete -- and of course it
11 would be upon your receipt of that -- then I think
12 we could move forward and pass some of these issues.

13 CHAIRMAN SALTZMAN: All right.

14 MR. CICATELLI: And, Mr. Chairman,
15 basically the sections on surface and groundwater
16 quality; groundwater recharge; open space;
17 recreational areas and space; wildlife habitats and
18 corridors; wetlands and bodies of water, including
19 streams and rivers, both localized and general;
20 species of special concern; historic structures or
21 historic areas.

22 CHAIRMAN SALTZMAN: Okay. The Board will
23 consider that in the form of a motion, that we will
24 deem the Application complete upon receipt of the

1 items specified in Attorney Witten's memo, as
2 outlined by Attorney Cicutelli. That will be a roll
3 call vote.

4 MR. SOLOMON: Mr. Chairman.

5 CHAIRMAN SALTZMAN: Could I have a second.

6 MR. SOLOMON: Just a word with counsel, if
7 I might.

8 CHAIRMAN SALTZMAN: Please.

9 (Mr. Solomon consults with Mr. Witten)

10 (Mr. Solomon consults with the Chairman)

11 MR. CICATELLI: Could Attorney Solomon come
12 to the microphone so we can hear what's being said?

13 CHAIRMAN SALTZMAN: I'm sorry?

14 MR. CICATELLI: Can Attorney Solomon come
15 to the microphone so we can hear the discussion.

16 MR. SOLOMON: William Solomon, Town
17 Counsel. In fact, I think the Chairman will
18 probably discuss what I just said to him, and I
19 think that's more appropriate than my discussing it
20 as his counsel.

21 So with that said, Mr. Saltzman, if you
22 just want to discuss what our discussion was. So
23 you can ask the Applicant if they can clarify what
24 "upon receipt" means.

1 CHAIRMAN SALTZMAN: Upon receipt and -- I'm
2 sorry. Mr. Witten, would you like to discuss...

3 MR. WITTEN: Sure. Thank you, Mr.
4 Chairman.

5 I think there's two things, Mr. Chairman,
6 that I would ask for clarification. One is, I
7 suggest to the Board that, on this motion, the Board
8 include, if the Board is comfortable, that you are
9 not granting any concessions to request the other
10 information that is contained in both my memo on
11 behalf of the Board and objected to by the
12 Applicant. In other words, there are other elements
13 that at some point during the process the Board may
14 need that information. So by agreeing to state that
15 the Application is complete, the Board is not
16 waiving its right to raise those issues.

17 And then the second piece is, when -- maybe
18 it's a question to you, Attorney Cicatelli. When do
19 you intend on delivering the environmental impact
20 report that you're referring to now so we have a
21 date certain so then we could measure the clock
22 from -- a starting point from a date certain?

23 MR. CICATELLI: When it's complete,
24 Attorney Witten, which I would assume would be a

1 couple of weeks. But I don't think we could give
2 you a date certain, because that would sort of fall
3 in the face of what you're asking for, which is a
4 complete document. So if it takes two and a half
5 weeks, I don't want to say two weeks. But we're
6 hoping between -- a couple of weeks, but that's what
7 we're hoping for.

8 On the first point, that's understood, Mr.
9 Chairman.

10 MR. GALLOGY: It's also an environmental
11 impact analysis; it's not an environmental impact
12 report, just to be clear. It's not a MEPA or NEPA
13 document.

14 MR. WITTEN: Well, it's whatever the
15 regulations call for, and you could --

16 MR. CICATELLI: It's what we just read.
17 It's what we just outlined.

18 MR. GALLOGY: It's called an environmental
19 impact analysis in the regulations.

20 MR. WITTEN: Yes, well, some people would
21 also call it an analysis or report. So you can
22 style it as you see fit, as long as it meets the
23 purpose of the regulation.

24 CHAIRMAN SALTZMAN: As we were. Could that

1 be -- yes?

2 MR. SOLOMON: Chairman Saltzman, as I sat
3 there, I wasn't clear. Just so it could be
4 clarified, when it's stated, "upon receipt," does
5 that mean that you would receive it, review it and
6 then deem that it was a complete application? Would
7 it mean that, whatever you get, once you receive it,
8 that's deemed complete, no matter what it is? I
9 just wanted to understand that better.

10 MR. CICATELLI: Mr. Chairman, what we're
11 indicating is that this is a quid pro quo. The
12 Board is waiving a few items so that we can continue
13 with this process.

14 We're agreeing to give something that we
15 feel the Board isn't entitled to under the
16 regulations. When we submit it, it will be what
17 we've promised. But, again, when the Board submits
18 it, the Application is complete. That was the
19 discussion.

20 Now, again, your consultants will review
21 that and maybe want more information, but that was
22 what we have put on the table in the spirit of
23 cooperation.

24 MR. WITTEN: Mr. Chairman, if I might,

1 because the Board will be filing an interlocutory
2 appeal of DHCD's decision -- that will be filed most
3 likely on Friday -- that will stay the process. So
4 to Attorney Sullivan's I think important question, I
5 think in this case it's not going to really matter
6 whether or not the Applicant submits an incomplete
7 environmental impact analysis or report, although we
8 trust it won't be incomplete, because the Board is
9 not going to meet again on this matter until after
10 the Housing Appeals Committee rules on the
11 interlocutory appeal.

12 So the Board will have the right to review
13 what gets submitted, and I think we're all hopeful
14 that it will be a complete report, subject to the
15 Board's review.

16 CHAIRMAN SALTZMAN: I would just submit
17 that I have no reason to expect that this will be
18 submitted in other than good faith, and I think
19 that's the spirit in which we entered our agreement,
20 and that is the expectation as to what we're going
21 to be getting. And obviously if we don't get that,
22 then we all have more problems than we want to think
23 about right now.

24 So I would just ask that the motion be made

1 and let the Board consider the motion on the merits.

2 MR. SULLIVAN: So I suppose I will make a
3 motion that we will accept the Application as a
4 complete Application upon the receipt of Section
5 18-32 of the Comprehensive Permit Rules as amended,
6 under Section (n), and then the subsections Roman
7 numerals (i) through (viii), which Attorney Witten
8 had listed as not being complete, with the
9 understanding that this motion does not waive any
10 other conditions that were not provided -- we're not
11 releasing ourselves from requesting those at a later
12 date -- and the environmental impact analysis shall
13 be complete as reviewed by the Board of Appeals, and
14 it will be deemed, upon all those conditions, as a
15 complete Application at that time.

16 CHAIRMAN SALTZMAN: So moved. Do I hear a
17 second?

18 MR. ROTONDI: Second.

19 CHAIRMAN SALTZMAN: It's been moved and
20 seconded. We'll do a roll call vote.

21 Mr. Shulman.

22 MR. SHULMAN: Yes.

23 CHAIRMAN SALTZMAN: Mr. Sullivan.

24 MR. SULLIVAN: Yes.

1 CHAIRMAN SALTZMAN: Mr. Rotondi.

2 MR. ROTONDI: Yes.

3 CHAIRMAN SALTZMAN: Mr. Dufour.

4 MR. DUFOUR: Yes.

5 CHAIRMAN SALTZMAN: The Chair votes in
6 favor.

7 One other thing that we need to do before
8 we do anything else is set another date to come
9 back, with the understanding that where the Board
10 voted to take an appeal on the issue of consistent
11 with local need, that the clock has effectively
12 stopped, and we would be looking at picking a
13 tentative date in October, probably a 30-day date,
14 with the understanding that we may not actually be
15 able to have a meeting that night.

16 That being said, a 30-day date from tonight
17 is Wednesday, October 15th. Is that a good date for
18 anybody? Is that a bad date for anybody?

19 We might have some problems with that date,
20 I'm told.

21 How about Thursday the 16th? Does that
22 work?

23 MR. CICATELLI: Yes.

24 CHAIRMAN SALTZMAN: More to the point, does

1 that not work for anybody?

2 MR. CICATELLI: That's fine, Mr. Chairman.

3 CHAIRMAN SALTZMAN: Does anybody here have
4 a problem with the 16th? Same time, 7:30? Does
5 that work? And we will do that in the same
6 location.

7 Perhaps one of the things that we could ask
8 would be that the consultants also buy us a new
9 sound system so we can all hear each other.

10 I don't know if there is any other
11 business?

12 MR. WITTEN: Mr. Chairman, just one
13 housekeeping point, and this is really directed, I
14 think, to Mr. Engler. I think he said it twice,
15 maybe it was once and I heard it twice. All the
16 correspondence that I've written to DHCD which
17 you've suggested was wrong -- it's now subject to
18 appeal, of course -- that was written on behalf of
19 the Board of Appeals. So it wasn't on my own. It
20 wasn't individualized. It was following the vote of
21 the Stoneham Board of Appeals.

22 So I would respectfully ask you not to
23 personalize this matter. This matter is before the
24 Stoneham Board of Appeals. I represent the Stoneham

1 Board of Appeals. This isn't about me. So from
2 here on, I would ask you to direct those kind of
3 comments to the Board of Appeals.

4 CHAIRMAN SALTZMAN: I would note that --
5 (Applause)

6 CHAIRMAN SALTZMAN: The Chair will
7 entertain a motion to adjourn.

8 MR. DUFOUR: I'll make a motion to adjourn.

9 CHAIRMAN SALTZMAN: Do I hear a second?

10 MR. ROTONDI: Second.

11 CHAIRMAN SALTZMAN: All those in favor?
12 (Chorus of ayes) We're adjourned.

13 (Whereupon the hearing was
14 adjourned at 8:40 p.m.)

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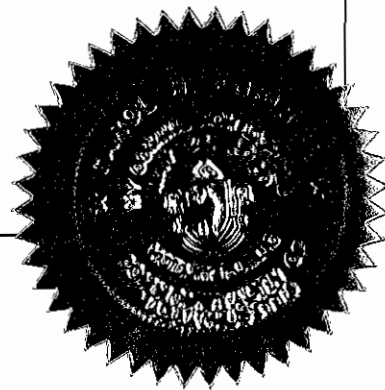
C E R T I F I C A T E

I, Carol H. Kusnitz, Registered Professional Reporter, do hereby certify that the foregoing transcript, Volume II, is a true and accurate transcription of my stenographic notes taken on September 17, 2014.

Carol H. Kusnitz

Carol H. Kusnitz
Registered Professional Reporter

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