



TOWN OF  
**STONEHAM**  
MASSACHUSETTS

**PLANNING BOARD**  
**781-279-2695**

**STONEHAM PLANNING BOARD MINUTES**

*(in accordance with provision of M.G.L. c.30A, §§ 18-25)*

**Wednesday, April 20, 2022**

Town Hall  
Hearing Room  
**6:30 P.M.**

Members present: Chairman Frank Vallarelli, Vice Chairman Kevin Dolan, Daniel Moynihan and Marcia Wengen.

Member Absent: Terrence Dolan

Also present in person: Attorney Robert Galvin as Town Counsel, Attorney Charles Houghton, Conservation Co-Chair and resident Ellen McBride, Select Board member and resident Raymie Parker and Town Clerk Maria Sagarino acting as clerk to the Planning Board.

Present remotely: Attorney Brian McGrail, Donald Pinto, David Crotta and Landers Symes

The Chairman called the meeting to order at 6:36PM. Mr. Vallarelli introduced the Board members present and acknowledged that Town Counsel for the Town of Stoneham, Attorney Robert Galvin was in attendance.

The first order of business was to confirm the next meeting date in May. After some discussion, Mr. K. Dolan made a motion for May 18, 2022 at 7PM which was seconded by Mr. Moynihan. All members voted in favor of that meeting date.

Next item was a continuation of the public hearing for 371 Main Street which began on April 13, 2022. Attorney Houghton asked the Board to continue until their next meeting as he needs to seek a variance from the Zoning Board of Appeals on parking. Mr. Moynihan made a motion to continue the public hearing for 371 Main Street until May 18, 2022 at 7 PM which was seconded by Ms. Wengen. Mr. Moynihan, Ms. Wengen and the Chair voted in favor with Mr. K. Dolan abstaining as he had previously recused himself from this matter as a direct abutter.

The next item on the agenda was a continuation of the public hearing for Article 8 of the Annual Town Meeting which had been continued from April 13, 2022. The Chair read explanation of Article 8 into the record again as follows:

“Article 8 seeks to amend the Stoneham Town Code, Chapter 15, Zoning bylaw by amending Inclusionary Housing Section 6.12.3 Applicability, with deletions shown as strikethroughs, to read as follows:

6.12.3      Applicability

1. Division of Land. This Bylaw shall apply to the division of land into eight (8) or more lots and shall require a special permit from the Planning Board under Section 7.4 et seq. of the Zoning Bylaw. A special permit shall be required for land divisions under G.L. c.40A §9. as well as for ~~“conventional” or “grid” divisions~~

~~allowed by G.L. c.41 §81-L and §81-U, including those divisions of land that do not require subdivision approval.~~

2. Multiple Units. This Bylaw shall apply to the construction of eight (8) or more dwelling units, whether on one or more contiguous parcels ~~and shall require a special permit from the Planning Board pursuant to Section 7.4.~~

The Chair invited Mr. Houghton to speak. He began by mentioning the motion that he had emailed earlier:

“Move that the Town vote to amend the Stoneham Town Code, Chapter 15, Zoning By-law by amending Inclusionary Housing Section 6.12.3 to read as follows:

### 6.12.3 Applicability

1. Division of Land, notwithstanding anything to the contrary stated herein, this Bylaw and any requirements stated herein including but not limited to, the requirements of Section 4.24 and 6.12.4 shall not apply to the division of land and or subdivision of land pursuant to M.G.L. c. 41, Section 81K to 81GG and/or any dwelling constructed on any lot created thereby.
2. Multiple Units. This Bylaw shall apply to the construction of eight (8) or more dwelling units, whether on one or more contiguous parcels but shall not apply to a Division of Land as stated above.”

Mr. Houghton states that when he submitted the original article which is article 8, he was aware of the case of Wall Street Development Corp vs. the Planning Board of Westwood which clearly states that you cannot condition a subdivision on a special permit. He states that this bylaw clearly attempted to do that. He mentions that the theory is G.L. c. 41 §81 etc. says that the Planning Board shall approve and that is the way that the courts have interpreted it. If you have a subdivision and you meet the rules and regulations, the Planning Board shall approve. If you put it on a special permit, that’s a condition and if it meets the rules and regulations it is allowed without the special permit. Mr. Houghton continues to say that another case came along. He mentions that Brian McGrail an attorney that represents the seller for a piece of property on High Street brought another case to his attention which was brought against the Town of Concord. Mr. Houghton continues to say that forgetting the special permit, the inclusionary bylaw also states that you cannot subdivide the lot without an affordability component. He states that that is a taking. He reminds that Board that he had given them copies of the judgment in the Concord case. That was an affordable housing bylaw that was stricken down by the land court. He reminds the Board that they had asked Town Counsel to be present with his thoughts. Mr. Houghton continues to speak to 62 High Street which would be a 12 or 13 lot subdivision in the future and it would require two lots under the interpretation of that bylaw as written to be affordable. That’s why he says that the Board wanted a determination from Town Counsel.

Mr. Vallarelli introduces Attorney Robert Galvin, Town Counsel for the Town of Stoneham. Mr. Vallarelli continues to say that the Board wanted Mr. Galvin’s opinion on this article and the legality of the bylaw.

Mr. Galvin begins by stating that the Planning Board is being asked to provide a favorable or unfavorable recommendation at Town Meeting for Attorney Houghton’s article 8. He goes on to say that up until ten minutes ago, he believed it to be the article that he had in front of him but in looking at the motion that Mr. Houghton provided to the Board that night, it appears that there is a further

amendment. He believes that the motion is not his initial call but the Moderator's, although he felt confident that the Moderator would ask for his opinion as to whether the proposed amendment was within the scope of the article. Mr. Galvin goes on to say that he understood what was intended with the original article. It appeared that it was tailoring the existing inclusionary zoning bylaw to try to eliminate the requirement for someone looking to divide land under the subdivision control law without having to obtain a special permit when the proposed development had a certain density. Mr. Galvin states that he didn't have a particular issue with what was being proposed. He felt it was fair for the voters in Stoneham to decide. He thought it was fine the way it was worded. He was a bit concerned that the proposed motion was more broad than originally proposed. It looks like a blanket exclusion of all proposed subdivisions. He continues to say that if he was reading it correctly, it looked to him that if you had an ANR division or subdivision under the proposed amendment, the inclusionary bylaw would be exempted and he believes that that would be out of the scope of the article. He would opine further on that after speaking with the Moderator. Mr. Moynihan questions Mr. Houghton about what is in front of them. He mentions that the original article had strikethroughs and he thought that was to be the only change, but this is different. Mr. Houghton responds that the original article was to eliminate the special permit because you clearly cannot have that for the Westwood case. The second case also says that but states that if you do it in the case of a subdivision, it is a taking. The Planning Board shall approve, so the way he read the Concord case, it would become a taking. So he continues to say that would make the bylaw illegal and he was trying to take care of everything at once but now Town Counsel is saying that it is beyond the scope.

Mr. Galvin interjects to say he has not given a formal opinion as he would have to talk it over with the Moderator first. Mr. Houghton states that it wasn't his original intent, but this has evolved since he became aware of the Concord case. He thought the whole bylaw might be in jeopardy so this could address that. Mr. Houghton continues to say that it was not in his mind when he first submitted the article but it is now. He thought at that there are several cases in which Town Meeting articles can be liberally amended. He thought that if this bylaw stays on the books there would be a legal challenge given the Concord case and that's why he broadened it. Mr. Houghton states that he was trying to perfect the bylaw as there is clearly a defect. The Town Clerk then clarified that with this public hearing, the Planning Board is being asked to recommend favorably or unfavorably on the original article as it appears on the warrant not something that might be amended at Town Meeting. Town Counsel agreed that the Board is confined to what is on the warrant because you don't even know if the amendment would be allowed either by the Moderator or the town Meeting body. Mr. Moynihan states that there is both a procedural and a substantive issue and substantively they cannot decide until they have the procedural matter resolved. Mr. Galvin states that the Board can make a favorable or unfavorable recommendation on what he originally proposed as article 8 in the warrant and that you would probably make the same argument, that the Wall Street Case or the Concord cases make the inclusionary bylaw in town invalid.

Mr. K. Dolan interjects that it would be just subdivision. Mr. Houghton states that yes it would be just subdivision not multifamily like was talked about last meeting. Mr. K. Dolan believes that Mr. Galvin's concern with the proposed amended motion is the division of land could arguably include an ANR. So he believes that Mr. Houghton might reword it "division of land as defined by the subdivision control law". Mr. Houghton states that he could do that but he thought he had by quoting c.41 §81. Mr. Houghton's intent was to correct illegalities he found in the bylaw. Mr. K. Dolan says that Wall Street talked about the special permit requirement and Concord talked about inclusionary within a subdivision. Mr. K. Dolan asks Mr. Galvin's thoughts. Mr. Galvin states that with the Wall Street case, he has seen this argument before and even made this argument himself. The Concord case is a little different. He has read the Concord bylaw and the Concord decision. He is not sure it's actually apples to apples between our bylaw and theirs. For example, the Concord bylaw requires people to reserve for up to three years some park land in a subdivision which is authorized under §81U. It has a second element that 10% of the tract has to be reserved for affordable housing

purposes. Mr. Galvin continues to say when he looked at the land court judge's decision, an aspect of the park reservation was that they couldn't do any work on that lot for three years. Mr. K. Dolan adds that it would include finishing the road. Mr. Galvin agrees and says there would be no grading or anything else. The judge said that was wrong. You can tell them they can't build a building for three years because that is what the statute authorizes but you can't tell them they can't do any work on it. That would probably be a taking. Mr. Galvin continues on about the affordable housing requirement. They had a three year type of restriction that the judge thought might be a perpetual restriction. Again you couldn't do anything on that land without Planning Board approval. His understanding was that three lots had to be reserved for affordable housing purposes and nothing could be done on those lots. The judge voided their subdivision rule and regulation on that and said it was beyond the scope of their authority and in violation of the subdivision control law. Mr. Galvin sees a fundamental distinction between what we have here in Stoneham vs. Concord. Our bylaw is different. If you have eight or more units or lots, you have to comply with our affordability requirements. You have to get a special permit. He believes our bylaw to be valid. When this issue was raised, he read the case but he also conferred with a couple of colleagues including Attorney Witten. Attorney Witten also felt our bylaw was valid and that it was apples to oranges with Concord. Margaret Hurley, the chief of the Attorney General's Municipal Law Unit. Her office had originally blessed this bylaw when it was passed. She gave Mr. Galvin a history on the language in our bylaw. Most of the language came from Bob Ritchie, the former chief of the Municipal Law Unit. It appears in some variations in a whole number of communities. He doesn't believe anybody has ever attacked this version of the bylaw and the way it's formatted. Mr. Galvin can see why Concord's was a problem but it's very different from ours. Mr. K. Dolan says that Concord's was so much between the security issues while Mr. Galvin adds not being able to touch the land for three years and no compensation provided for not touching it. Mr. Galvin also says that the Planning Board wouldn't even endorse the plans until all of the special permits were granted. There are limits on what conditions you can impose on a subdivision. Mr. K. Dolan asks Mr. Galvin if he thinks that the entire zoning bylaw as it stands now is perfectly legal. Mr. Galvin states that he believes it is lawful. He knows it is going to be presumptively valid. He knows that before it was enacted, these types of issues were contemplated, the Wall Street case had been decided. These are things that the Attorney General's Office considered too at the time it gave a review of our bylaw. Your Board is sophisticated enough not to make the mistakes the Planning Board made in Concord where they refused to endorse subdivision plans until you went out and got something else that was required. Everybody in Concord agreed that the Earth Removal bylaw applied but they hadn't finished the process yet and they made it a condition or they wouldn't endorse the subdivision plan until they got it. You can't do that because the purpose of the subdivision control law is for adequate construction of a street and sanitary conditions.

Mr. Moynihan questions issue three in the Concord case. He wants to know if it's the same as what we are looking at here with Mr. Houghton's amendment. Mr. Galvin said that wasn't about a special permit for affordable housing that was a special permit on earth removal. Mr. Moynihan asks if that's where Mr. Galvin sees a distinction and Mr. Galvin responds that yes, he sees it as a big distinction. Mr. Galvin says that the way he read it both the developer and the Town agreed that the earth removal bylaw applied. The problem was that the Planning Board couldn't withhold its endorsement of the subdivision plan until it got that special permit for the earth removal. You couldn't make that a condition. Mr. Moynihan is trying to reconcile what Mr. Houghton is proposing with the Wall Street case. Mr. Galvin understands what Attorney Houghton is doing. He believes that the Town has a policy decision to make and you want to exclude the types of things that Attorney Houghton is proposing. It's a decision for you as a Board to make a recommendation to Town Meeting on but Mr. Galvin does not feel that it is appropriate to characterize out bylaw as invalid based on the Concord case or the Wall Street case. Our case is different. Will it lead to litigation at some point? Mr. Galvin hopes not but we wouldn't shy away from having this debate because he believes there is merit to our bylaw. It was done purposely and worded carefully. You have every right to divide or subdivide a parcel of land

that is less than eight units with no applicability. Our bylaw provision also has an exemption where the Planning Board may modify the number of affordable units required by 6.12.5. Attorney Galvin then quotes section 6.12.5(d).

Mr. Houghton states that you have to have ten or more affordable units in your project for that to be applicable. In no case shall the percentage of affordable units be reduced to less than twelve (12) percent. Mr. Galvin then reads the last sentence of subsection (d), "In no case shall the percentage of affordable units be reduced to less than twelve (12) percent." He believes that to be the only limitation. Mr. Houghton then asks about 6.12.5(c). Mr. Galvin states that he was looking at subsection (d). Mr. Houghton wants to understand how it doesn't conflict with (c). He would like to be able to work with the Board to reduce it. Mr. Galvin believes that they are cumulatively read. That they are different exceptions. Mr. Houghton likes that interpretation but didn't think he read it that way.

Going back to the Westwood [Wall Street] case. Mr. Houghton doesn't know how they get around requiring a special permit. The bylaw says you need a special permit but you can't condition a subdivision on a special permit. Mr. Galvin believes that is a bit more broad than he would attribute to the Wall Street case. Mr. Houghton stated that where c. 41 §81 says the Planning Board shall approve. A special permit is not shall approve, it is clearly discretionary. That alone knocks out the bylaw. The way it's written now. Mr. Houghton agrees that the Concord case is a little different but he thinks that if the Concord case stays in there, you just made our job easier.

Mr. Vallarelli asks if there are any comments from the Board. Mr. Moynihan asks when our bylaw was passed. Mr. Houghton answers that it was passed last year. Mr. Moynihan states that it's fourteen years after the Westwood case. Mr. Houghton agrees and mentions that the Concord case is new. Mr. Moynihan asks why there is a need for the amendment. Mr. Houghton talks about the Concord case. The judge said that not being allowed to do build on the land for three years was a taking. He believes that our affordable bylaw taking away two units would be a taking as well. Mr. K. Dolan says that the question is, is that a taking or not, making it affordable? He sees it as a diminution of value. Mr. Galvin doesn't see it as diminution of value but a stripping the land of all its appreciable investment backed value and every zoning bylaw that's ever been adopted takes away some rights. Mr. Houghton says that factually the subdivision in this case [High Street], it would be twelve lots, two would be affordable, today's cost building on a lot in Stoneham it would be a million and a half per lot per dwelling and that's for the developer to make a reasonable profit. Mr. Houghton feels that if you take away two of them that becomes a taking. The value goes from a million and a half to three fifty maybe. Mr. Galvin does not agree that that is a taking. He's been on both sides and he's seen land, mostly by Conservation regulation, deemed undevelopable and seen it still have enough appreciable value that it didn't result in a taking.

Mr. Galvin states that Stoneham is not above the 10% threshold and this was a way to advance the affordable housing and that's how it's styled. He continues to say he looked at Concord a lot more narrowly. He didn't see enough similarities between their bylaw and ours. He also saw some outs where the Planning Board could exercise its discretion saying they won't require that because you've convinced us that this is such a unique circumstance or it doesn't make any sense. He didn't see any of that language in the Concord bylaw. With theirs you couldn't touch the land for three years. Under the Stoneham bylaw you can build as soon as you get your special permit and the appeal period has expired. Mr. Houghton says that you still have to build two affordable units and he disagrees. Mr. Houghton goes onto say that they at least started with the agreement that we had a special permit requirement that shouldn't apply. Mr. Galvin states that he doesn't have any opinion on whether this should pass or not pass. That's up to the Planning Board and the voters in Stoneham to decide what they want. Mr. Houghton asks Mr. Galvin if he thinks the Westwood case would apply and Mr. Galvin does not agree.

Mr. Moynihan clarifies that they aren't the ones voting on this. They are just voting whether to endorse it, not endorse it or take no position. To the bylaw itself, we were all on the Board except for Mr. Vallarelli and Ms. Wengen but she was instrumental in pushing for inclusionary. The Board's thought process was that the town was below 10% and to get closer to the 10% we have to require inclusionary of more than 10% of what's built, so we came up with the one out of eight. That being said, Mr. Dolan continues to say that in thirty years on the Board he believes that there was only one subdivision of more than eight lots. Everything is two, three, four, five. We didn't have a High Street, the pink elephant in the room, in mind but clearly we didn't want to fall farther behind the 10%. So that is what he said he was thinking when they voted this bylaw in and supported it. They more had a 95 Maple or a Fallon Road, is going to get us closer to the 10% and much quicker, but they specifically included subdivisions. It was conscious even if they didn't imagine a piece of land. He mentions that he's had conversations with many attorneys and it's like the last one you talk to you agree with. He talked to a respected attorney out of Wakefield who says it's a taking and then listen to Attorney Galvin and he's very convincing too. We might end up going to a land court to find out which ones right. Based only what Attorney Galvin has told us, we might not vote favorable action to change it. He told us our bylaw is good. Mr. Galvin states that the one thing the Board must do is to make a recommendation to Town Meeting whether it be favorable or unfavorable on the article on the warrant. You have to give a report to Town Meeting otherwise Town Meeting will not be able to act on the article. Mr. Vallarelli asks about not ruling one way or another. Mr. Galvin states that you have to give a report one way or the other.

After stating her confusion, Ms. Wengen asks a question as to whether accepting the article with the strikethrough will that mean, for example with 62 High Street, if there is no special permit, are the two affordable units gone. Mr. Houghton answers that all his original article does is take away the special permit requirement. Ms. Wengen then asks if that means 62 High Street would not come before the Planning Board. Mr. Houghton states that it would for the subdivision. He mentions that the motion he showed the Board tonight, if it passes, would not have an affordability component. But the original article would still require it come before the Planning Board and still have the enforceability component. All he did was take away the special permit. Ms. Wengen wants the answer that there would be two affordable units reinforced. Mr. Houghton reiterates that, yes, his original article would require affordable unit. Ms. Wengen then asks what it would do to the future of Fallon Road. Mr. Houghton answered that it doesn't change anything. Mr. Galvin also states that Fallon Road is not affected by this. Mr. K. Dolan clarifies that it's limited to subdivisions of single family dwellings. Ms. Wengen asks what Fallon Road will be, will it be like 95 Maple Street? Mr. Houghton responds in the affirmative. Ms. Wengen asks what we would get for Fallon Road. Mr. Houghton answers that it would be 12% of the first 30 and 15% of the ones over.

Mr. Houghton believes the only time this bylaw runs into a problem is when you have a small subdivision, with a multi-family it works perfectly. That's what it was designed to do. Mr. Houghton mentions that if tonight the Board wants to rule on the original motion, that's fine.

Again there is conversation surrounding the need for the Planning Board to take a position for their recommendation to Town Meeting, either favorable or unfavorable. Mr. K. Dolan states that his only concern at this point in voting favorable action is that Town Counsel has told the Board that the bylaw is fine. Mr. Moynihan read Westwood and thought what Mr. Houghton was saying was valid but he respects attorney Galvin's position and states that they have him here for a reason. Mr. Moynihan acknowledges as Town Counsel, he knows more about this field of law. If we were to support it, it would go against the advice of counsel. Ms. Wengen then asks at the same time reminding that Mr. Houghton was removing this language because of the MBTA. Mr. Houghton answered that was why he did it originally. Without doing so would put the town in jeopardy relative to c.40A §3A. If we leave the special permit requirement in. Mr. Galvin states that Mr. Houghton was trying to make it

comply with the housing choice law. He remembers that is what they originally talked about. Mr. Galvin remembers that we were never dealing with the invalidity of the bylaw. Mr. Houghton was trying to eliminate the special permit requirement to advance the interests of the housing choice law. He agrees that that would be reasonable to offer the amendment but isn't sure he'd go so far as to say our bylaw's invalid. Mr. K. Dolan asks if Mr. Galvin feels we run afoul of c.40A §3A by including the special permit. Mr. Galvin does not think so. He states that the Town might have to find other land and put it in an additional overlay district.

Mr. Galvin talks about the Town being responsible under the housing choice law to come up with fifty acres of land where you can develop 15 units per acre by right. Mr. Houghton's first article would create a district with a large area toward that. Mr. Houghton said that you'd get about half the acres needed. Mr. Galvin mentions that you have two years to do so.

Mr. K. Dolan mentions that to the extent Mr. Houghton's original article was supported, all it does is require us to make our decision under the subdivision control law as opposed to also the special permit law. Mr. Galvin says that one way of looking at it to the extent that it facilitates housing choice goals and objectives, you support it. To the extent that it's viewed as invalidating the bylaw or suggests you have an invalid bylaw, you respectfully disagree. Mr. Moynihan asks if c.40A §3A changes Mr. Galvin's perspective. Mr. Galvin states that when he first saw it, he understood why Mr. Houghton was doing it. He doesn't know if he personally agrees with it. Mr. Houghton once again mentions that if we don't do it, we don't comply with c.40A §3A for Fallon Road.

Just to clarify, Mr. Vallarelli asks how the Town or any town is supposed to override the subdivision control laws that the State imposed. Mr. Galvin states that all of our bylaws have to be consistent with the subdivision control law and any rules that the Planning Board adopts also have to be consistent with the subdivision control law, but that's relating to subdivisions. There's another way to develop land and there are certain bylaw conditions. Remember any subdivision still has to comply with zoning and this is zoning. One of the problems with Concord was that they adopted inclusionary regulations that were not consistent with the subdivision control law. Mr. Galvin again states that Concord's bylaw is not Stoneham's and he is not convinced that because Concord's failed that Stoneham's would.

Mr. Houghton once again mentions that if we do not remove the special permit requirement, under c.40A §3A, the benefits go away for the Town. Mr. Galvin believes there are aspects the Town will have to do further work on in order to meet all of its obligations under the housing choice law. Mr. Galvin felt like Mr. Houghton was altering the meaning of the inclusionary bylaw with the original article but understood why he was doing it and understood that it was fair for the voters to decide. He wasn't ruling it of dubious legality. Mr. Houghton says that it was not taking away any inclusionary component. It did not touch it. Mr. Galvin would agree with Mr. Houghton there and reminds him that he didn't have a problem with the article as originally proposed, but he also stresses again that under no circumstances would he conclude that our bylaw is invalid.

Mr. Vallarelli asked if there were any more questions from the Board. Mr. K. Dolan asks Mr. Houghton if there was another article relative to Fallon Road. Mr. Houghton answers that the first article, article 7 rezones Fallon Road. By rezoning, Mr. Dolan asks if we are already complying with c.40A §3A because it's by right. Mr. Houghton says that if we leave article 8, it's on a special permit. Although Fallon Road would be by right, the inclusionary bylaw states that a special permit is required and under c.40A §3A, you cannot require a special permit. That's why he submitted Article 8. Mr. Dolan states that that is only with a division of land of eight or more lots. Mr. Dolan asks Mr. Houghton, by his bylaw passing doesn't that get him what he needs for Fallon Road by right without needing this amended? Mr. Dolan cites 6.12.3 as eight or more lots. Mr. Houghton cites 6.12.3.2 as construction of eight or more dwelling units. Mr. Houghton reminds them that c.40A §3A says

that you can't condition on anything but site plan. Mr. Galvin suggests that maybe the way around that is to say except for Fallon Road. That would be a reduction in the scope of the article. Mr. Dolan states that then you wouldn't be inadvertently overdoing it. The suggested language would be:

“6.12.3

Subsection 2.

Multiple Units. This Bylaw, except in the Fallon Road Mixed Use District, shall apply to the construction of eight (8) or more dwelling units, whether on one or more contiguous parcels ~~and shall require a special permit from the Planning Board pursuant to Section 7.4.~~

Mr. Galvin suggests that Mr. Houghton would take his original article and make this amendment. Ms. Wengen says that Fallon Road is only half of what we need, do we need to put something in for the future twenty five acres? Galvin states that you will have to find additional land in the Town of Stoneham. The planner will do a lot more work to identify an additional location to develop for this purpose. Mr. Dolan suggests what they would do in that case is amend the bylaw again to make an exception for the other district. Mr. Galvin suggests creating another overlay. Mr. Galvin mentions that his other communities are creating other overlay districts. Mr. Houghton mentions that we were trying to get away from overlays. Mr. Dolan believes this is a fair compromise to avoid unintended consequences.

Ms. Wengen asks what impact this has on 62 High Street. Mr. Dolan answers none. Mr. Houghton agrees if the motion he had presented tonight passed it would, but this does not. Ms. Wengen asks if we can still maybe get two affordable units out of it. Mr. Galvin also suggests that you might get an argument out of Attorney Houghton that this is a unique circumstance and they could ask for the Board's discretion to waive that requirement. Mr. Houghton interpreted it as having to have ten or more units but if each one is independent, the Board can make some reasonable distinctions or determinations.

Mr. K. Dolan asks Mr. Galvin about the strikethroughs Mr. Houghton has on 6.12.3 Subsection 1. Mr. Galvin thinks it goes beyond Fallon Road and strips the special permit requirement down. Going back to section 2, Mr. Houghton asks for clarification. Are we leaving subsection 2 with the strikeouts as is? Mr. Dolan says that we are talking about subsection 1. Mr. Moynihan clarifies that he is trying to settle subsection 2 first. Mr. Dolan says that 2 leaves the strikeouts and add excepting the Fallon Road District and subsection 1 leaving it alone and not adding strikeouts. Mr. Houghton asks how we get around c. 41 §81L etc. Mr. Galvin said that is premised on Mr. Houghton thinking the bylaw is invalid. Mr. K. Dolan states that by including the strikeouts in section 1, you are making it quite broad.

Mr. Dolan states that the thought is to support the proposal with no strikeouts in subsection 1. Agree with the subsection 2 strikeouts and then adding in the language limiting it or excepting out the Fallon Road District. Mr. Dolan asks Mr. Houghton his thoughts. Mr. Houghton believes he's between a rock and a hard place. But it at least saves Fallon Road. Mr. Dolan reminds him that was his original intent. Mr. Moynihan agrees this is where we are at with Town Counsel's recommendation. Mr. Houghton hears what Mr. Galvin is saying but doesn't agree.

Mr. Vallarelli opens the hearing up for questions or opinions from the public. Ellen McBride, 30 Butler Ave, Co-Chair of the Conservation Commission. She starts by saying what she has to say might not be necessary for tonight. Ms. McBride states that number one-we fought for a long time to get inclusionary zoning and we purposefully didn't exclude single family homes and she would see it as awful if we suddenly alter that. She goes on to say if the gentleman who bought the property knew this bylaw existed, he already knew what the rules were. He knew that if he were going to put eight plus or nine plus that he would need two affordable units. How can you all of a sudden say it's a regulatory taking when he bought it knowing that? We talked about things that are good for the future of Stoneham. We are under our 10%. We might be close to the 1.5 but we are under 10%. If we by

any chance prevail after nine years at Weiss Farm, what message would we be sending the State if we say oh by the way, we're not going to apply our inclusionary zoning, which is the first thing we've ever done toward affordable housing. Ms. McBride gets the developer wanting to make as much money as possible, but the Board as elected officials, she as an appointed official, have to do what's best for the Town and not developers.

Mr. Vallarelli now points out that the meeting is being livestreamed with remote access. He then recognizes Attorney Brian McGrail, with an office at 607 North Ave in Wakefield. Mr. McGrail represents the owner of the property at 62 High Street and thought it appropriate to make some comments. To address the last speaker, this bylaw as written clearly affects the value of the property to the owner. A woman who lived in Town for decades. The value is being diminished because of this bylaw. It doesn't affect the developer. The developer will only pay the value which is diminished because of the requirement of an affordable component which puts the impact on the property owner. Mr. McGrail mentions the potential waiver. In 6.12.5 (d), the last sentence says in no case shall the percentage be reduced to less than 12%. So there is a big penalty for subdivisions under this bylaw because they have less numbers. A twelve lot subdivision would have two affordable units that you cannot waive. He respects the Board for going with what Town Counsel advised but he respectfully disagrees. He goes on to say that even if you set aside the special permit, you arbitrarily say a subdivision of so many lots has to have affordable units which is a taking without justification and there's no yield incentive like if you give affordable units you can reduce your lot size. A by right subdivision requiring a special permit is subject to appeal coupled with affordable units and a taking. He also sees a problem under the uniformity requirement. Why wouldn't you tell a person selling a single family home that a portion of the sale would go to an affordable housing trust fund? Zoning is different from subdivision control law, zoning is to regulate use of land, creates dimensional requirements, what is an allowed use, but zoning doesn't dictate. If you want to do your subdivision you have to give the town two affordable units. In this case zoning is dictating a requirement with substantial financial ramifications to the land owner. There are significant damages here.

Mr. K. Dolan asks Mr. Galvin, to Mr. McGrail's point, 6.12.5 (d) which gives the Board some discretion but then says in no way shall it be less than 12%, hypothetically if there was a thirteen lot subdivision, he didn't see subsection (b) and (d) being inconsistent with each other. Would (d) allow the Board to ignore the round up in (b). Mr. Galvin's responds that (d) is pretty clear than in no way shall it be reduced to less than 12%. Mr. Galvin doesn't know how you would get around that. Mr. Dolan clarifies and asks if it was 12 lots could you still be at 12% but use discretion and not round up? Mr. Galvin states that he thinks you could. Mr. Galvin says that that provision obviously went in there for a reason. It intended to be some type of exception if the Planning Board saw it as a compelling case. Mr. McGrail says that that part of the bylaw makes no sense. The bylaw requires 12% but then gives discretion but it shall not be reduced to less than 12%. Besides the astute example that Board member Dolan just gave, he didn't see (d) as serving much purpose. He goes on to say, if 12% was required and we are going to give you discretion, you can't go below 10%, but the way it is doesn't make a lot of sense. Mr. Dolan states that it might be because we go beyond 12% at a certain number of units. Mr. Galvin says that it's 12% of the first 30 and 15% after that.

Mr. Houghton states that 12% of 12 units is 1.44. So you round up to 2. Mr. Dolan had asked Mr. Galvin if they could use discretion and not round up. Mr. Houghton then says the earlier section says you round up. Mr. Dolan specifically asked Town Counsel that question and Mr. Houghton missed that answer.

Mr. Moynihan takes the conversation back to the Board's recommendation. He states that Mr. Dolan proposed. To keep 6.12.3 subsection 1 as is and to modify subsection 2 as modified. Mr. Vallarelli clarifies that subsection 1 would be without the strikeouts.

Mr. Galvin states that the report would be to recommend and recommend with a change. Upon further discussion, Mr. Galvin offers that the report could be phrased in a favorable way. The Planning Board is in support of the proposed change to subsection 2 if it were limited to the Fallon

Road Mixed use District as amended by Attorney Houghton in Article 7 and would not be supportive of it if it didn't limit it that way. The Planning Board is not in favor of the proposed change to subsection 1. Mr. Moynihan says that that sounds accurate.

Ms. Wengen questions how their recommendation goes at Town Meeting. Mr. Galvin states that at Town Meeting someone will get up and give a report to say that on April 20<sup>th</sup> the Planning Board concluded its public hearing. Following the public hearing the Board voted not to recommend the proposed change to subsection 1 and to favorably recommend subsection 2 if it were changed to limit its application to the Fallon Road [Mixed Use] District.

Ms. Wengen asks about the strikeouts not taking affect. Mr. Galvin states that it would just be the Planning Board's report. Town Meeting still has to vote. This would require a majority vote under the Housing Choice law.

Mr. K. Dolan made a motion to close the public hearing which was seconded by Mr. Moynihan. All members present voted in favor.

Mr. K. Dolan made a motion that the Board issue a report to Town Meeting that it recommend unfavorable action on the proposed amendment to 6.12.3 subsection 1 and that it propose favorable action on 6.12.3 subsection 2 with the addition of excepting the Fallon Road [Mixed Use] District and we will further define it within the report.

Mr. Moynihan wants clarification about who is making the amendment. Mr. Galvin states that if the applicant were to make an amendment that was approved at Town Meeting, the Board would be supporting subsection 2. Mr. Moynihan clarifies that it is a conditional endorsement based on an amendment we anticipate at Town Meeting. Mr. Galvin states that you would be recommending an amendment. Mr. Moynihan refers to it as conditional support. Mr. Dolan thinks it would be a good idea once it's put together, to send it to Attorney Galvin. Mr. Moynihan seconds the motion with the addition that it's sent to Mr. Galvin for approval of the language. Mr. K. Dolan, Ms. Wengen and Mr. Moynihan voted in favor with the Chair abstaining.

Thank you to Attorney Galvin for his attendance. Mr. Houghton will email his motion ahead of time.

Motion to adjourn made by Mr. K. Dolan and seconded by Mr. Moynihan. The meeting adjourned at 8:02 PM.

Respectfully submitted:

Maria Sagarino  
Town Clerk