



T O W N O F  
**S T O N E H A M**  
M A S S A C H U S E T T S  
Town Hall  
35 Central Street  
Stoneham, Massachusetts 02180  
**BOARD OF APPEALS**  
**781-279-2695**

**Stoneham Board of Appeals Executive Session Minutes**  
**Thursday, January 26, 2023**  
**Town Hall Hearing Room**  
**6:00 PM**

Members of the Board present: R. Michael Dufour, Vice Chairman Robert Saltzman, Chairman Tobin Shulman, Kevin McLaughlin and Associate Members Mark Russell and William Sullivan.

Members of the Board not present: Eric Rubin as an abutter to the Weiss property had recused himself.

Also present: Town Administrator Dennis Sheehan, Town Counsel, Attorney Robert Galvin and Town Clerk Maria Sagarino acting as Clerk to the Board of Appeals.

Mr. McLaughlin made a motion to go into executive session for Weiss Farm and not to return to regular session. [To discuss strategy with respect to all pending litigation where an open meeting may have a detrimental effect on the bargaining or litigating position of the Town and the chair so declares; pursuant to M.G.L. c. 30A, sec. 21(a)(3) to wit: Weiss Farm (Stoneham Board of Appeals v. Housing Appeals Committee, et al)]. A roll call vote was taken. All members present voted in favor (Sullivan, Russell, McLaughlin, Saltzman, Dufour, Shulman).

The regular meeting adjourned at 7:13PM and the Board waited for Attorney Galvin to enter the room before beginning the executive session.

The Chair called the executive session to order at 7:17PM.

The Chair invited Attorney Galvin to speak. Mr. Galvin began by stating that earlier in the week he had sent Mr. Saltzman a final draft of what he was calling a compromised comprehensive permit which are the results of four or five months of discussions on a reduced size project that might be acceptable to the Town. He continued to say that he hoped that the Board members had a chance to look at it and that he'd be happy to talk about any aspect of it. He stated that he had emailed Ms. Sagarino earlier with the revised site plan showing the reduction by thirty units, from 259 to 229 units. Mostly achieved by the elimination of the fifth story on two of the apartment buildings. Other than that there is a pull back from the development of about twenty five feet from the edge of the bordering vegetative wetlands that was required by the Board initially and upheld by the Housing Appeals Committee and is incorporated into this plan.

Mr. Galvin continued to say that the discussions went on during the summer, up until the end of the summer, broke for a bit when there was an issue of an appeal, then there was a concern they wouldn't do anything but build their 259 unit project, but much to his own surprise they continued to want to negotiate. So to the extent that we were able to negotiate with them, we did. Mr. Galvin believes it has now gone as far as it can possibly go.

Mr. Galvin continued to say that if the Board would like that he could go over the agreement. He said that everybody's talked about the money as if it were the most important thing and he doesn't agree. The density is probably more important than anything else. The money is equivalent or close to the equivalent of what you would get if they built this as 259. The way it has been calculated out in this agreement compared to what he understands the costs would be with Mr. Sheehan being able to speak to the Building Inspector to get some estimates as to how much an equivalent 200 unit project would cost with building permits, electrical permits, plumbing and gas. He stated a figure of \$597,000 with \$500,000 in building permit fees, \$41,000 in electric fees and \$56,000 in plumbing and gas fees. Obviously it would be slightly more because there would be 29 more units. Under this 229 unit project we've agreed to fix the building permit fees at a cap of \$150,000. They are giving us \$400,000 that we've earmarked for drainage improvements in this Franklin Street area. They initially came in with \$25,000 for peer review and monitoring. The last time Mr. Galvin met with the Board he believed he was told that they didn't believe that was an adequate amount. They have since come back and added another \$25,000 for a total of \$50,000 for peer review and monitoring. He added that as part of the final order of conditions they are required to also have environmental monitoring. That is separate from this \$50,000 and is the subject of a different order. Lastly, they discussed and agreed conceptually on a payment of \$200,000 for water and sewer connection and infiltration inspection fees. He went on to say that if you are looking at the money portion, if that's important to you, it's not to me, but if it's important to you, it's somewhere around \$700,000 for their 259 unit project and a total of about \$800,000 in financial benefits coming to us for 229 under this compromised comprehensive permit.

Mr. Galvin further explained that if we reach an agreement with them, the Selectmen have certainly said they concur with the compromised comprehensive permit, the Conservation Commission's enforcement case is going to disappear. Mr. Galvin continued to give the Board the 30 second synopsis of what happened. There were wetlands violations that preceded the filing of this project on the site. Mrs. Weiss had done some things that resulted in an enforcement order which was outstanding at the time this was filed with your Board in 2014. When the project was approved, there were some conditions that required them to address those enforcement orders. They tried those issues at the Housing Appeals Committee (HAC) and the HAC was convinced to the extent that we had any local concerns of an environmental nature, they did not outweigh the regional need for affordable housing. Those issues were adjudicated against the Commission, against the Board's conditions even though we have an enforcement case with them now, but he said frankly he had no argument to defeat that because the HAC has adjudicated those issues. He continued to say that he had explained that to the Conservation Commission. So our enforcement case with them would be wrapped up as part of this agreement.

Mr. Galvin continued to say that as far as he is concerned, if this agreement, which the Weiss Farm Apartments people want your Board to approve, is signed, we will take this compromised comprehensive permit back to the Superior Court judge and say that the developer, the Town and the HAC have all agreed that this is the permit that they will build off of and we expect that the judge will approve that but it's not 100% but likely. They will have to do some filings, some state permitting and extend the order of conditions with DEP. If all of those things happen then they will construct a 229 unit project sometime beginning in the Summer/Fall of 2023. He was told it would be about 18 months of construction.

Mr. Galvin concluded by saying that the applicant does want the Zoning Board of Appeals approval on this in addition to the Select Board and Mr. Sheehan's approval. Mr. Galvin informs the Board that he has given an opinion that Mr. Sheehan is the Town Administrator and has authority under the charter to resolve all cases but is not something he exercises at this point. He meant it in no way to disrespect this Board but it is his opinion when interpreting our charter and its plain language that essentially makes Mr. Sheehan a Town Manager with the ability to prosecute and defend and compromise all litigation and issues involving the Town.

At this time Mr. Saltzman has a question to that point. He asked if Mr. Galvin was saying that the Town Administrator has the authority to litigate, compromise and act even where the Board of Selectmen or the Town itself, are a party, that would make all the sense in the world, however in this case the Board of Appeals is the party to the litigation and Mr. Saltzman continued to say that he thinks that's the issue, that's why Corcoran wants the Board of Appeals to sign off on this, irrespective of the opinion, he thinks they've run it by their people and they've found that neither the Town Administrator nor the Board of Selectmen have that authority. The Board of Appeals is the only ones with that authority because we're the ones in court. The Board of Selectmen found it but the Board of Appeals were the ones that were the party to the litigation and Mr. Saltzman believes that this has been misplayed in a big way by the Board of Selectmen because they have acted on that opinion to the Town's detriment.

Mr. Saltzman continued to say that we are now at 230 units. A year ago they asked us for a number, what would we agree to and Mr. Saltzman said that he didn't know what that number was but at that time he was negotiating for the Board of Appeals before the Board of Selectmen decided that they were going to negotiate on behalf of everybody. But at that time Mr. Saltzman had said he didn't know what that number was but the first number is a 1. He continued to say when they came back to us the number was 199. How did we get to 230? They came back in and they proposed 199 and now we're at 230 and he thinks that's a problem in this room. It's a big problem in this room and he continued to say that the Board of appeals has not been treated fairly and we have been involved in this for almost ten years. He went on to say, as the person here who was probably involved the most, as he had been negotiating, the fact that we find ourselves here with this agreement on one side versus what Corcoran proposed, if we get to the end of this and wind up with 259 units, we were fools not to have nodded our heads when they walked into the auditorium that first night. Everybody in the Town showed up in mass in opposition to a project that size. We had it down to 199 and now we've lost ground and he doesn't know how our negotiators on the Board of Selectmen managed to take us from 199 to 230. He would say not through sound negotiating and not through learning what had gone on for the ten years before. He continued to say that it's a disgrace what they did. Neither one of them made an effort to learn what was going on. Neither one of them, he would guarantee you, ever read this Board's decision for the 124 units. None of them bothered to learn the issues at hand and here we are. It's really not a good choice. Mr. Saltzman said that he's held his tongue for a lot of this but he's not happy with a lot of this at all. And let's finally get this out once and for all, if this Board doesn't have the authority to litigate and we can't compromise and we can't act on our behalf then what are we doing here? Why don't we all just walk out the door because that is complete garbage as far as the law that he's seen and certainly Corcoran doesn't think that's the case. Mr. Saltzman then adds that he is really disappointed at where we are. If this is where we are going to find ourselves, we should have just said bring it on that first night. We are going

to lose all around. The people negotiating for the Town are not going to put us in a better position.

Mr. Galvin states that he was not at the negotiating table. There was no attorney on behalf of the Town at the negotiating table.

Mr. Sullivan interjects that that was wrong to not have an attorney at the negotiating table for what this is. He repeats that it was wrong that an attorney wasn't present on behalf of the Town. There should have been an attorney there for the Town.

Mr. Sullivan continued to speak to the money. He was looking at the numbers that came out in the judgment. The cost of this development is stated as \$57,960,000. So at \$13 per thousand which was the fee before they changed it, that's \$753,000. If you get it at \$15 a thousand it's \$869,000. Mr. Galvin guaranteed him that it's a number they put in their testimony but will not be the number they put in their application for the building permit. Mr. Sullivan responded of course they won't, they can put whatever they want, but you have testimony that's saying this is what it is. Mr. Galvin is just telling him that they will never put \$57 million on the building permit application.

Mr. Sullivan asked Mr. Galvin why they would exempt all local fees that any other developer has to pay. Any developer that comes into the Town pays all applicable fees plus they're usually paying money for remediation of other things. But no, we lose in court and it's like we lost in court big deal, you think thirty units is such a big difference. Mr. Galvin answered that he thinks it is. Mr. Sullivan stated that he doesn't and doesn't think the Board of Selectmen did either because they went from 199 to 230. That's the same thing, but oh yeah, we're going to get that left hand turn lane. They're going to reline Franklin Street, our DPW could do that. And why do they want three years to commence? Mr. Galvin stated that they have additional permitting that they have to get. Mr. Sullivan said that Mr. Galvin stated that they are looking to start in spring or summer and he's reading in this agreement that they have three years. Mr. Galvin was just repeating what he was told in discussions that have taken place in the last 35-45 days.

Mr. Sullivan tells Mr. Galvin that the Board made a motion at their last executive session to strike certain lines and stuff and then he finds out about this agreement today and read it and said, oh wow they went from \$25,000 to \$50,000 for the peer review. Mr. Saltzman stated that he did receive a copy of the agreement a week earlier but that his understanding was that he was to hold on to it and not disseminate it, because it terminated litigation and if it left the room problems would result. Mr. Saltzman made it clear that he wasn't holding it out from the Board.

Mr. McLaughlin speaks up and says here again we got screwed over again. He continued to say that the Board didn't get what they were supposed to get before this meeting. We found out right before Mr. Galvin is talking to us. Mr. Saltzman adds that he wants to be clear that he didn't hold this back from them. Mr. McLaughlin says we've been told we can't do this. That's garbage. We are a Board for the Town. He represents his Town. Not their Town and he points to both Mr. Galvin and Mr. Sheehan reminding them that they don't live in town. He continued to say that we live in town and it's for our town. Mr. McLaughlin says he's angry, it's just not right. Now you have three of us knowing what's going to happen.

Mr. Saltzman stated that now that we have made our feelings known, we have to put those feelings aside for purposes of deciding what we are going to do here and decide recognizing that it's one thing to be mad but it's more important to do what is in the long term interest of the town. This agreement, flawed though it is, is better than what Corcoran walked through the door carrying in their binders. If we say no to this we are allowing our feelings to color our vote and he doesn't believe that to be in the town's best interest. If we are going to count the beans on one side versus the other it's a mistake. Mr. Saltzman then stated that it was his understanding that Bob Parsons said that \$200,000 would fix the water issue. We would now have \$400,000 for that specific purpose. \$400,000 may not ultimately fix it but if we don't get that money and spend it on the water what will happen is that the town will never spend it. The money for fees goes into the general fund. It would never get spent on the water and all the people downstream from this will never get it fixed. It'll never get done and it will only get worse. If we do this now it should be cheaper than it's going to be in twenty years or thirty years. We'll all be dead and the water will still be an issue. We can do this now no matter what our feelings are about it. This is in the best interest of the Town and 230 will probably be about 45 cars less coming out of there every day. The left hand turn lane is going to have to happen no matter what here. It's not for the residents of the project, it's for the residents of the community otherwise you'll never get down Franklin Street. So we find ourselves not in the best possible position but the worst would be if we accepted the Housing Appeals Committee's decision and allowed them to just dictate.

Mr. Galvin reminds the Board that they don't have to build the left hand turn lane, they fought the Town on that and they won. We had the best traffic engineer in the State, he said we absolutely needed it and Corcoran has offered to build it as part of the 229. They don't have to build it as part of the 259 HAC decision. They will dedicate part of their frontage and include it in the public way in order to make the turn lane. That's how the extra room is being created. There's an additional thing that they won on that we didn't prevail on at the HAC, they claimed that some of the fees the Town charged them were overcharged and the HAC agreed with them. They are waiving that fee too. Mr. Sullivan added that it's \$7,000. Mr. Sullivan also added that he read it and speaks as an educated person. He didn't come in here not knowing what he's talking about. He tries to do research but it's tough when he's given stuff four hours before the meeting and he has a real life before the meeting that he has to deal with.

Mr. McLaughlin adds that he still feels the Building Permit fees should be exactly what he, Mr. Sullivan or any of us would pay. Mr. Sheehan responded to that statement and explained that when he and Mr. Saltzman were meeting with Corcoran months ago and the 199 units were mentioned, the developer put forth a list of financial concessions to get to 200. Deferred assessments, deferred taxes and he couldn't think of what else. Mr. Galvin added that they didn't want to pay taxes. Mr. Saltzman added that they wanted our first born on Franklin Street. Mr. Sheehan continued to say they wanted fixed taxes for a certain number of years. Mr. Sullivan said so they wanted us to pay for it. Mr. Sheehan agreed stating sarcastically that they wanted us to build it for them. Mr. Sheehan then stated that we weren't looking at anything like that but thought maybe we would fix the building permit fees to a dollar amount. This conversation was happening when we were at 200 units. Mr. Sheehan stated that he's not going to argue about the building permit fees. He tells the Board that he reiterated the Board of Appeals position at the last Select Board meeting. Mr. McLaughlin added that it fell on deaf ears. Mr. Sheehan continued to say that the Board will have to decide fundamentally if they'd like a bigger project or what is being proposed. He does acknowledge that he made a critical error when they

had that very finite period of time when the appeal period was ending, we didn't know if Corcoran was still at the table or not, they had all of the leverage at that point when the appeal period had surpassed. We had one or two days' time. Mr. Saltzman added that that window was going to land on our fingers. We were trying to resolve as many of the issues as we could.

Mr. Sullivan brings up that when the numbers were back at 219-220, the Board of Appeals asked to go back to the Board of Selectmen to further appeal, he points to Mr. Galvin and states that he didn't want to do that. He then continued to say was all we wanted to do was extend the appeal to give us time to negotiate but we got shut down.

Mr. Galvin stated that they had made issue in all of their briefs about the dilatory actions that the Town has taken to stop this project. He was convinced and still is convinced that if we threw up another road block they wouldn't negotiate with us anymore and they would come after us claiming bad faith.

Mr. Sullivan asked how the Board tried to derail the project. Mr. Galvin responded that the only issue we raised on appeal was the issue that came about with discussion with some of the people in this room. The Supreme Judicial Court ruled against another Town arguing the same reason in July. That ended our appeal. There were no other issues raised. That was the issue we thought we had the best chance of winning on, we were convinced it was the right argument.

Mr. Sullivan reminds Mr. Galvin that we were here [at a Bi-Board Executive Session with the Conservation Commission] talking about throwing an appeal in to keep negotiations going and not filing after. It would have given us a couple of weeks to continue the negotiations at the place we were at at that time.

Mr. Saltzman then added that that would have allowed us to wrap up the deal.

Mr. Galvin disagreed. He believed it would have resulted in them causing more problems for us claiming it was a bad faith appeal. Again he disagreed.

Mr. Saltzman responded that Peter Mahoney would disagree with Mr. Galvin's interpretation because he was the person who assented to it. Mr. Saltzman understood that it would not be an issue. They made it clear that they would not raise that issue but here we are and he believes that we are in a worse position.

Mr. Shulman agreed with Mr. Saltzman. We could keep looking back and assigning blame. He shares the Board members wish that there had been a different outcome and negotiations could have gotten us into a better position, but it didn't and we can't go back. This is it. The choice on the table is the choice on the table. We get 229 or 259 with fees.

Mr. Sullivan stated that if the Board makes no decision then the HAC decision is the decision. Mr. Galvin agreed. Mr. Saltzman added that that decision is basically their original proposal. Mr. McLaughlin added that for almost ten years we're doing nothing. Mr. Saltzman agreed. He said if they had just nodded their heads that first night this is the same place they'd be. It's unbelievable, absolutely unbelievable.

Mr. Galvin stated that the law and regulations tie your hands, tie your feet together and make it impossible for you to protect the people that you are looking to protect and it's not your fault. You tried. You put conditions that with the advice of counsel would be sustained. You did your very best. You fought them in every form and category and you lost. It wasn't just your Board that fought them. The Select Board fought them over other aspects, the Conservation Commission fought them. These projects in most cases don't fit. They leave marginal land. That doesn't bother the Housing Appeals Committee. They've made excuses. They've changed the law. They said it's okay to come in with an uneconomic project to prevent you from putting in any reasonable conditions. The Housing Appeals Committee said the Town's evidence wasn't credible. You didn't adequately argue this point. They even talked about their own self-made rule that an uneconomic project can be made significantly more uneconomic. It doesn't exist in the law but in their HAC decisions.

Mr. Sullivan stated that the bottom line is why even bother appealing. Open the floodgates, let all of the 40Bs in and let's meet our quota.

Mr. Shulman stated that there is an argument to be made and a large part of what the Town Planner should be doing, is to have friendly 40Bs in places that we can stomach them. Mr. Sullivan agreed and said that we have that now that a planner was hired and you got rid of some members of the Planning Board. We tried for many years to get these little projects included and it was fought tooth and nail by a particular member.

Mr. Sheehan added that he and Mr. Saltzman laugh all of the time at how 95 Maple Street was approved like that. 270 units.

Mr. Shulman continued his thoughts that we get stuck with these projects because there is no comprehensive plan in place for where these projects are going to go.

Mr. Galvin mentioned that some communities have a housing production plan. Mr. Sullivan responds that we have one.

Mr. Saltzman stated that it really comes down to the water and that it would long last be addressed with this agreement. Their position throughout the negotiations was that they weren't making it worse. That's been the developer's position at all of these projects. You've got Donna Weiss who had no money to devote to the water. We dragged her into court and nothing was happening. The only time this is ever going to happen is when somebody comes along with money in their pockets to make it happen and they're saying the law doesn't make us do this, so we'll never do this. The Town's never going to do it either. Getting it done now at the front end of this is the best thing.

Mr. Sullivan says Corcoran's the hero, he's going to give us \$400,000 of our own money. Mr. Saltzman agreed. Mr. Sullivan added that like Corcoran, he is a business man, he runs a business. Mr. Sullivan said last time, bring it back to Corcoran and see what he says. He's a business man, he's not going to do anything. Mr. Saltzman says, the question is, what is the Board going to do?

Mr. Sullivan says he knows how he feels. He continued to say that he personally doesn't see a big difference from 230 to 259. Mr. Saltzman answers that no one's saying he's wrong. Mr. Sullivan thinks there would be other ways to get that money. He tells Mr. Sheehan that he could earmark some of the building permit fees towards remediation. Mr. Sheehan asks to that point if we would get people thinking that we are facilitating the development of Weiss Farm. He mentioned the wetlands restoration that's taking place with the High School Building project. In looking at it, it's the whole area from Franklin Street to behind the High School. They will turn the pump on and the weir dam and it'll just pump to nowhere. Mr. Sullivan thinks that it'll pump down into Melrose and you have a whole other issue of Rustic Road and Perkins Street. Mr. Sullivan added when the pump works it works fine. He'd be more concerned with cleaning the ditches.

Mr. McLaughlin thinks we should do something instead of going round and round. Mr. Shulman agreed.

In the spirit of the Board, Mr. Sullivan made a motion to approve what was in front of the Board [A document referred to as "the compromised comprehensive permit" but titled "Final Comprehensive Permit" which was brought to the Board by Attorney Galvin]. The motion was seconded by Mr. Saltzman.

The Chair took a roll call vote. Mr. Sullivan vote against, Mr. McLaughlin voted against, Mr. Saltzman voted in favor. Mr. Dufour asked if it would be 229 if he voted in favor or 259 if he voted against. The Board members responded in the affirmative. Mr. Dufour then voted in favor. The Chair, Mr. Shulman also voted in favor. Motion carries. The vote was 3-2 in favor of signing the Final Comprehensive Permit.

After the vote was taken, Attorney Galvin stated that someone needed to be designated to sign on behalf of the Board. Mr. Shulman indicated that the Chair at the time the Comprehensive Permit application was heard should sign. Mr. Saltzman agreed to sign.

Ms. Sagarino asked if the Board would be able to release their executive session minutes. Mr. Galvin said they should be held until the Superior Court approves the amended comprehensive permit and then he thought they should release them to the public.

Mr. Saltzman asked when that would go into the court. Mr. Galvin was told that the Housing Appeals Committee and the Assistant Attorney General have to approve this permit, the Weiss Farm people already have, the Select Board already have and the Board of Appeals just now. He said it would go in as soon as they prepared a joint motion to vacate the existing judgment and replace it with a new judgment and a new comprehensive permit.

Mr. Saltzman then asked if there would be anything else left for the Board of Appeals to sign off on to get the project going. Mr. Galvin responded that they will appoint a peer review monitor and at some point see a final set of plans. Mr. Saltzman asked if they'd have to write a final decision. Mr. Galvin said that this Final Comprehensive Permit they just voted on is their final decision. The Superior Court will be issuing it.

Mr. Shulman asked if we know if they have the money to build this thing. Financing is terrible right now. Mr. Galvin doesn't know if they will wait or try to build, but he wouldn't be shocked. They would have to ask for an extension. No matter what you do, the HAC would allow for an extension.

Mr. Saltzman made a motion to adjourn which was seconded by Mr. McLaughlin. All members present voted in favor.

The meeting adjourned at 8:02 PM

Documents and other exhibits used by the Board of Appeals during this meeting to be made part of the official record but not attached to these minutes:

Town of Stoneham, Zoning Board of Appeals, Final Comprehensive Permit  
Applicant: Weiss Farm Apartments, LLC  
Decision Date: January 26, 2023

Respectfully submitted:

Maria Sagarino  
Town Clerk