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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, September 29, 2022
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.

Also present: Town Clerk Maria Sagarino acting as Clerk to the Board of Appeals

Mr. Saltzman made a motion to go into executive 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) and not to return to open session. A roll call vote was taken. All members voted in favor 5-0. (McLaughlin, Rubin, Saltzman, Dufour, Shulman)

The regular meeting adjourned at 7:27PM and as an abutter, Mr. Rubin left the meeting and did not take part in the executive session.

The executive session began at 7:29PM.

Mr. Saltzman updated the Board on what had transpired after the Executive Session the previous evening that was held with the Conservation Commission. The Board had voted to have Town Counsel, Attorney Bob Galvin, file a notice of appeal with the court to buy some time to further negotiate with the developer if they agreed to continue. Attorney Galvin wanted reassurance that their Attorney wouldn't come back at us saying that we were acting in bad faith and that the appeal was a further stall tactic. It was agreed that Mr. Saltzman and Town Administrator Dennis Sheehan would reach out to Peter Mahoney immediately following the executive session. They were to ask for a non-aggression pact, agreeing that if we entered an appeal, they would not come back and say that it was a tactic to delay the project. Mr. Saltzman reminded the Board that we'd have about forty days according to Attorney Jon Witten. Ten days for the notice of appeal and thirty days to assemble the record before it was put on the docket. The hope was that they could have everything negotiated in two meetings, we could even through in Conservation and deal with that because the parties were so close.

Mr. Saltzman and Mr. Sheehan called Peter Mahoney around 9PM last night and he said it would be no problem, he would have Attorney Bowen speak to Attorney Galvin.

Mr. Saltzman stated that over the course of the day on Friday it was slow to get the attorneys together. At 4:10PM Attorney Bowen stated that he was glad the settlement discussions were

progressing and he was hoping for the best but they cannot waive any rights, but that his client would refrain from bringing any claims in the next thirty days provided the settlement discussion are progressing. Mr. Saltzman continued to say that nobody would be meeting in that day or the next day. Mr. Saltzman adds that he never got the impression for one minute that Attorney Galvin was interested in this appeal and believes that it was apparent to the Board as well. Mr. Sullivan added that that was why Attorney Galvin wanted something in writing.

Mr. Saltzman continued to remind the Board that Attorney Witten had stated that there was another issue as to whether the Housing Appeals Committee can overrule the Wetlands Protection Act. Mr. Saltzman stated if that issue were raised it might have been a stronger issue. We could have raised more than one issue. Now whether Conservation can get anywhere at this point, we do not know.

Mr. Saltzman stated that the negotiations had the potential to resolve all of the global issues. He continued to say that at the Executive Session the Select Board held at 5PM that evening. Mr. Saltzman was informed by Dennis Sheehan that the Select Board was not interested in pursuing this any further and that Attorney Galvin would not be proceeding any further with this appeal. He added that between now and Monday (the deadline to file an appeal) is to ask the Corcoran people for their last best offer.

Mr. Shulman said here come the 259. Mr. Sullivan said that we should make them build the 259 and let Conservation deal with them.

Mr. Saltzman stated that Attorney Galvin said that we got played. Mr. Saltzman doesn't agree. He believes that we got beat on the appeal. The other issue is that Corcoran wanted the appeal as much as we did. They don't want to deal with every little issue. They don't want scorched earth and having an agreement would do that. He continued to say that he didn't know if they'd come down from 259 to 230 and maybe throw money in for the water issue. We will have something closer to the 259 than the 200 they were at during negotiations. The 200 wasn't our demand, it was their number.

Mr. Saltzman again mentioned that Attorney Galvin thought we got played and that he didn't want to do the appeal. Mr. Sullivan added that that would be the reason that the Select Board decided not to appeal. Mr. Saltzman said that we have no vote. Mr. Saltzman and Mr. Sullivan both said that the Board had no support. Mr. Saltzman added that you had three people in the room that didn't do their homework. Mr. McLaughlin questioned if one of the people was Town Counsel. Mr. Saltzman believed it was. He again mentioned that Attorney Witten had stated that there was a possible Wetlands Protection Act issue that could have been raised. Mr. Sullivan said that Attorney Witten also said that the Board had until November 3rd to file an amended decision. Once that decision is written and filed, somebody Martyesque could appeal. Mr. Saltzman agreed that someone in Marty Wantman's shoes (direct abutter to the property) could appeal and it would be chaos without the Town being involved. Mr. Saltzman reminds the Board that he was at all of the meeting. He would have thought he would have appealed the 124 units but he didn't. Mr. Saltzman continued to say that if they had come to an agreement with Corcoran even on 258 units, it wouldn't have been a material change. If we have finalized a settlement, one of Corcoran's conditions during

the negotiations was that the Board not file an amended decision because a decision would put an appeal period out there.

Mr. Saltzman is frustrated because an agreement was in sight. They were at the point that they were going to bring in the attorneys. They believed there would be an agreement in September.

Mr. Sullivan didn't think it was a big deal to file an appeal to buy time and withdraw before the brief was due. Mr. Saltzman added that it's no big deal, it's just putting your foot in the door. Mr. Shulman said it was clear that Attorney Galvin didn't want to file the appeal. He then asked Mr. Saltzman to provide clarity. What would the consequence be for filing an appeal that wasn't in good faith but for the purposes of delay? Mr. Saltzman said that the other side would criticize and say look they appealed to delay this, this is spite. The Town originally voted to use \$250,000 to defend against the Weiss Farm project which we had a right to do. Mr. Saltzman adds that the Town could say that we want to appeal this all the way to the US Supreme Court. The only way you can do that is if you have a final judgement in the jurisdiction where you are. So the Superior Court judge isn't the final judgement, he is if we don't appeal. If we want to get to the Supreme Court we have to go to the top here. In order to go further with that we need a judgement against Stoneham which at this point there was only a judgment against Milton. So as far as this being in bad faith, Mr. Saltzman does not believe it would be in bad faith.

Mr. Saltzman then explained that Corcoran never wavered on as long as there was an appeal they could negotiate. Once there was no appeal and they had a final judgement, they could not talk any further. The final judgement triggered rights for Donna Weiss under the purchase and sale agreement. The one good thing going on was that their side thought it was a 30 day appeal period but it was actually 60 days because the Commonwealth was a party to the appeal. So in early September when they thought that we couldn't talk anymore there was still 30 days in which Stoneham could appeal. As the deadline was approaching we could have appealed again but Galvin refused to do it. Mr. Saltzman adds that even Attorney Witten said it was not in bad faith. The Corcoran people fully understood when we talked to them after last night's executive session that this appeal would give us time to talk. So that's where we are.

Mr. Sullivan adds that it's over. Mr. adds a final point that the difference between 230 or more units and the 200 will be another building and five stories high instead of four.

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

The executive session adjourned at 7:49PM.

Respectfully submitted by:

Maria Sagarino
Town Clerk