

**STONEHAM CONSERVATION COMMISSION  
MINUTES OF MEETING  
APRIL 10 2023 REMOTE 7 PM**

**Executive Session if Necessary**

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 Mass. Gen. L. c. 30A sec. 21(a)(3) to wit: Rear Hillside v. Stoneham Conservation Commission and Weiss Farm v. Stoneham

Motion to move into executive session and not return to meeting made by seconded by Alex Rozycki Roll call yes Jessica Gerke, Alex Rozycki, Megan Day, Norman L'Esperance and Domenick Cimina 5/0

Bob Galvin Rear Hillside last Tuesday argued cross motion for pleadings. Attorney Bruce, Paul Checca and Ellen McBride attended. Brief filed, summarized case by saying SCC biased and commission changed rules midstream. Galvin responded to every point and explained that Juliano was on the Commission, was present when Galvin said rule didn't apply, missed 18 meetings, requested continuances, Attorney Bruce and Houghton both explained bylaw applied, consistent with bylaw. Judge asked some questions, not an issue a superior court sees every day, troubled by their presentation, as Juliano said we were misrepresenting what the bylaws were. Went thru record and said no one acted out of bias, explained why we were right under the law. Will take judge some time to decide, months before we see decision. Thinks we will prevail on case. Brief conversation with Bruce, McBride and Checca after, met what they had to say head on. Will let us know. If we don't win may have appellate issue.

Weiss Farm met with Alex Rozycki and Jessica Gerke about Amato's brief. Galvin said issues under local bylaw are important. They filed motion to dismiss and then argue the other side can't win. Galvin troubled by case, all issues under state regulations handled under final order of conditions. Commission appealed and final decision under act sent. Environmental monitor, someone on site reporting to dep and SCC. Significant amount of work in areas other than that in final ooc than need to come back to SCC or convince dep that its consistent with approvals. 20 special conditions. 5 or 6 issues in consent order. When matter before hac commission passed issues into zoning board of appeals. Included in conditions of decision. HAC ruled on issues SCC is trying to enforce in March 2021 struck conditions. Non compelling or not adequately explained. All stricken. Amato argues final order of conditions but didn't make that argument. Galvin believes they've been adjudicated. Galvin doesn't believe we have a leg to stand on.

Negotiations back and forth, 229 or 259 possible. ZBA rejected proposed plan because applicant was looking for break on building fees. Trying to urge commission that we can't win this case and believes it's already been adjudicated.

Jessica Gerke if we are conceding anything that we don't want to if we are agreeing to dismissal. Galvin said sept 22 applicant was strident, last 9 months they've tried to negotiate to clarify what HAC and superior court decided which lets Galvin believe they want to negotiate. Galvin thinks we already lost these issues.

Weiss Farm apartments may tell Amato. Will reflect poorly on commission if we try to sneak by. Alex Rozycki says the number of units is not a win as footprint doesn't change for conservation. Don't want to continue down the road of fighting, don't owe Donna Weiss or Amato Bocchino any favors. SCC has been fair in the past and we've been dragged on all those issues. Why do we have to give up?

Bob Galvin says fair, needs to file April 19<sup>th</sup> and can respond without bringing this up.

Alex Rozycki says ball is not in our court. Town should tell us what they want to do.

Megan Day says if it's a matter of time why would we wait? Alex Rozycki says construction is harder in the winter than the summer.

Alex Rozycki has no new information, DEP hasn't responded. Bob Galvin invited DEP. Heidi general counsel said we can't tell Town what to do about bylaw. Not waving any conditions but extended FOB for 3 years. SCC would oppose if they tried to extend again per Galvin. The only thing that changed is we lost critical members.

Megan Day said risk of denial is we are out of it. Long shot years ago, we accepted risk years ago. DEP kept commission involved. Local regulation lost when adjudicated by ZBA.

Galvin says agree to withdraw without prejudice. Alex Rozycki said let the cards fall where they may. Better to withdraw then get judgment against Commission. If Weiss farm doesn't build 40B all issues will need to be addressed. 40R would need to be rezoned, called a smart district, Town would get money but nothing from Corcoran indicates it won't be 40B. Galvin judgment trusted for best path forward.

Jessica Gerke asks if a motion needs to be made to allow Galvin to negotiate dismissal of case without prejudice with issues as part of future filing to be negotiated. Special comprehensive permit out window per Galvin.

Alex Rozycki concerned the site could become dilapidated mess and we have little regulatory jurisdiction. Every step things are taken away. Galvin says rules are tilted in favor of 40B, benefit of doubt on any disputed issues, Town lose these cases all the time.

Galvin says if they don't build 40B Mrs Weiss will have to address issues.

Roll call for dismissal Jessica Gerke, Alex Rozycki, Megan Day, Norman L'Esperance and Domenick Cimina yes 4/1

Roll call to leave executive session and adjourn seconded by Norm L'Esperance Roll call Jessica Gerke, Alex Rozycki, Megan Day, Norman L'Esperance and Domenick Cimina yes 5/0