

**Town of Stoneham, Massachusetts
Zoning Board of Appeals**

TOWN CLERK
REGISTRARS

Decision on Application for Comprehensive Permit

2016 APR 28 A 7:29

Applicant: Weiss Farm Apartments, LLC

Decision Date: April 27, 2016

I. BACKGROUND

On or about June 30, 2014, Weiss Farm Apartments, LLC (the “Applicant”), applied for a comprehensive permit, pursuant to G.L. c. 40B, s.20-23, to construct 264 rental dwelling units on a roughly 25.67 acre parcel (the “locus”) in a Residence District “A” zoning district in the Town of Stoneham. Thereafter, the applicant revised the application to consist of 259 dwelling units to include 66 below market rate rental dwelling units. The Decision that follows is based upon the Applicant’s 259 dwelling unit submission and the project plans identified as “Conservation Commission [sic] Notice of Intent Submission [sic], The Commons At Weiss Farm, June 25, 2014 with a final revision date of April 4, 2016, consisting of twelve (12) sheets at varying scales. The public hearing in this matter was opened on July 24, 2014 and closed, following agreed upon continuances, on April 13, 2016.

The above noted application was submitted in reliance on a project eligibility letter issued by MassHousing dated June 23, 2014 and is entitled, “The Commons at Weiss Farm” (hereinafter “the Project”). The application contained a “Purchase and Sales Agreement”, dated April 10, 2013, an Assignment of the same and three Amendments, the last Amendment, entitled “Third Amendment of Purchase and Sales Agreement is dated January 21, 2015¹. In reviewing the application for the Project and in reaching the findings and conditions contained in the present Decision, the Stoneham Board of Appeals (the “Board”) relies on the representations contained in the Purchase and Sales Agreement and Amendments for evidence of site control and financial information contained therein.

As of the date of this Decision, the Board was informed by the Applicant that the Applicant refused to pay for certain professional services obtained by the Board pursuant to G.L. c.44, s.53G, notwithstanding the Applicant’s commitment to pay for such services. The Applicant’s refusal to pay for these professional services is based upon a clearly wrong reference to portions of Section 18-21 of the Board’s regulations (as found in the Stoneham Town Code) that the Board “may not require Weiss Farm to pay a review fee related to the MEPA filing”.

The Board has no hesitation concluding that the unambiguous portions of Section 18-21, that states, “When conducting any hearing including those for...comprehensive permits (pursuant to G.L.c.40B, secs.20-23) or deciding any issue raised by an application, petition or appeal...the

¹ In its initial comments to MassHousing prior to MassHousing’s issuance of the Project Eligibility letter for this Project, the Town brought to MassHousing’s attention that the claimed land value of \$7,686,200 was in gross violation of MassHousing’s Acquisition Value Policy. MassHousing thereafter limited the “maximum permissible acquisition value” for the locus to \$1,800,000. See Project Eligibility letter, page 3.

Board of Appeals may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of the proposal or because of its potential impact". (Emphasis added).

Quite obviously, the MEPA process, and the issues raised by the MEPA process more fully discussed herein—triggered by the size, scale, complexity and potential impact of the Weiss Farm proposal—constitutes an “issue raised by” the Weiss Farm comprehensive permit application. Moreover, every issue addressed by the consultants whose invoices are being challenged, including maintaining a stenographic record, relate to issues squarely before the Board of Appeals as raised by the comprehensive permit application. Section 18-21(c) states in relevant part, "Failure of the applicant to pay a review fee shall be grounds for the denial of the variance, special permit or comprehensive permit at issue".

Rather than deny the comprehensive permit application as is the Board’s authority pursuant to the Board’s Regulations, the Board requires as a condition of this approval the full payment of all fees owed for the payment of the Board’s consultants employed during the review of this project, said payment to be made within twenty (20) days of the recording of this Decision with the Stoneham Town Clerk. The Board reserves all rights in equity and at law to pursue collection of these fees. Moreover, failure to pay these fees within the required time period constitutes a violation of G.L. c.40, s.57 and the Board shall notify the Building Department, Conservation Commission, Tax Collector and other relevant boards and departments, as well as the Housing Appeals Committee, if relevant, of the Applicant’s failure to make payment as discussed above.

II. THE RECORD AND EVIDENCE ASSEMBLED BEFORE THE BOARD OF APPEALS

The materials identified in Appendix A have been assembled and submitted during the public hearings in this matter, and include materials submitted during hearings before the Stoneham Conservation Commission and the Board of Selectmen that are relevant to the Board’s deliberations. In addition, the record before the Board is deemed to include evidence assembled during the Board’s 2014-2015 appeal of the Department of Housing and Community Development’s decision to the Housing Appeals Committee with respect to the Town of Stoneham’s status as consistent with local needs pursuant to both statutory and regulatory standards. All of these materials are incorporated herein.

III. SUMMARY OF DECISION

This Decision approves the construction of one hundred and twenty-four (124) rental dwelling units with conditions as specified herein.

IV. STATEMENT OF RELEVANT MATERIAL FACTS

A. The Town of Stoneham is Consistent with Local Needs

Pursuant to G.L. c.40B, s.20, the Board voted on April 13, 2016 that the Town of Stoneham is “consistent with local needs” as that term is defined with respect to the Town’s status with the statute’s “1.5%” status. The Board previously asserted this status pursuant to 760 CMR 56.00 et seq.

On appeal at the Housing Appeals Committee, currently pending before the Middlesex Superior Court (see Town of Stoneham and Stoneham Board of Appeals v. Housing Appeals Committee, et al., 1581CV05104, “Complaint”) and now again, the Board restates its belief that the regulatory requirements contained in 760 CMR 56.00 requiring the Board’s assertion of “consistent with local needs” status must occur within 15 days of the opening of the public hearing is impermissibly inconsistent with G.L. c.40B, s.20. See Transcript and record developed before the Housing Appeals Committee dated December 11, 2014 and January 9, 2015, hereinafter referenced as “Tr. Vol.” and “Exhibit”, all of which is incorporated herein.

Accordingly, the Board has challenged the validity of portions of 760 CMR 56.03(3) and (8). See Complaint at para. 62-86 and Count II. Specifically, the Board challenges those provisions of 760 CMR 56.03 imposing procedures that a Board must follow *prior* to hearing a comprehensive permit application, should the Board seek to assert achievement of any of the "safe harbors" found in the statute (e.g., 1.5% land area minimum). These proceedings under 760 CMR 56.03 - including a requirement that the Board make such assertion within 15 days of opening public hearing - conflict directly with G.L. 40B, s. 20, which explicitly defers such assertion until *after* the Board has heard the application. See G.L. c. 40, s. 20; see also Town of Wrentham v. Housing Appeals Committee, 69 Mass. App Ct. 449, 454 (2007)("[t]he conclusive presumption afforded to a community that has already met its minimum housing obligation only arises "*after comprehensive hearing*")(emphasis in original).

1. Consistency with Local Needs under G.L. c. 40B, s. 20

G.L. c. 40B, s. 20 provides in relevant part:

“Consistent with local needs”, requirements and regulations shall be considered consistent with local needs if they are reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing. *Requirements or regulations shall be consistent with local needs when imposed by a board of zoning appeals after comprehensive hearing in a city or town where (1) low or moderate income housing exists which is in excess of ten per cent of the housing units reported in the latest federal decennial census of the city or town or on sites comprising one and one half per cent or more of the total land area zoned for residential, commercial or industrial use or (2) the application before the board would result in the commencement of construction of such housing on sites comprising more than three tenths of one per cent of such land area or ten acres, whichever is larger, in any one calendar year; provided, however, that land area owned by the United States, the*

commonwealth or any political subdivision thereof, or any public authority shall be excluded from the total land area referred to above when making such determination of consistency with local needs.

G.L. c. 40B, s. 20, "Definitions" (emphasis supplied). Pursuant to G.L. c.40B, s.20, the Board asserts that the Town is consistent with local needs in that "low or moderate income housing exists . . . on sites comprising one and one half per cent or more of the total land area zoned for residential, commercial or industrial use." G.L. c. 40B, s. 20.

A. The Starting Point - Total Land Area Zoned for Residential, Commercial or Industrial Use

The DHCD regulation providing guidance on the calculation of statutory minima restates the formula contained in G.L. c 40B, s. 20:

"General Land Area Minimum. For the purposes of calculating whether SHI Eligible Housing exists in the city or town on sites comprising more than 1-1/2% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. c. 40B, § 20:

1. Total land area shall include all districts in which any residential, commercial, or industrial use is permitted, regardless of how such district is designated by name in the city or town's zoning bylaw[.]

760 CMR 56.03(3)(b)(1). Under both G.L. c. 40B, s. 20 and 760 CMR 56.03, therefore, the "numerator" (the 1.5% target) is land area containing SHI-eligible housing; the "denominator" (100%) is "the total land area zoned for residential, commercial or industrial use," subject to certain adjustments under 760 CMR 56.03(3)(b). The starting point for the denominator is *not* the total area of the municipality, nor is it the total land area of the municipality.² Rather, the starting point is a *subset* of the municipality's total area, containing exclusively land zoned to allow the enumerated uses. See G.L. c. 40B, s. 20 and 760 CMR 56.03(3)(b)(1).

The Legislature *could have*, but *did not* craft the statute to provide that the denominator (the 100%) is a municipality's total area or total land area; these are more expansive and would thus provide a larger area against which the numerator (the 1.5%) would be measured. A statute is presumed to mean what it says. See Commonwealth v. Williamson, 462 Mass. 676, 679 (2012)

² The Board concludes that any analysis that takes as its starting point the *total area* of the Town of Stoneham is fundamentally flawed. Beginning the analysis with the *total area* of the Town of Stoneham, as oppose to the "*total land area zoned for residential, commercial or industrial use,*" inflates the denominator beyond the value dictated by both statute and regulations. The result is a grossly incorrect denominator, to the Town's disadvantage. As discussed *infra*, the methodology employed by the statute (and to a lesser extent, the regulations) was clearly designed to provide municipalities containing sizeable tracts of land prohibiting residential, commercial, or industrial development (for example, state parks) to nevertheless reach the 1.5% threshold. In Stoneham, 1,400 plus acres are owned by the Commonwealth; none of this property is zoned for residential, commercial or industrial development. If the denominator were to include the total area of a municipality, it would be nearly impossible for a municipality with large tracts of land not open to development to achieve the 1.5% threshold.

Commonwealth v. Young, 453 Mass. 707, 713, (2009); Collatos v. Boston Retirement Bd., 396 Mass. 684, 687 (1986) ("We presume, as we must, that the Legislature intended what the words of the statute say"). Section 20 of G.L. c 40B *could have*, but *was not* written to provide that consistency with local needs is established where "low or moderate income housing exists . . . on sites comprising one and one half per cent or more of the total land area" of the city or town. Rather, the Legislature included additional language to provide that the denominator is "the total land area *zoned for residential, commercial or industrial use.*" G.L. c. 20 (emphasis supplied). Each word of the statute must be given effect. Ropes and Gray LLP v. Jalbert, 454 Mass. 407, 412 (2009). See also Wolfe v. Gormally, 440 Mass. 699, 704 (2004) ("A statute should be construed so as to give effect to each word, and no word shall be regarded as surplusage"); Bankers Life & Cas. Co. v. Commissioner of Ins., 427 Mass. 136, 140 (1998).

The Legislature's clear intent in G.L. c. 40B, s. 20 was that the area dedicated to affordable housing (the 1.5%) would be measured not against the city or town's *total* area, but rather against a subset of that area: *developable* land.³ The denominator in the 1.5% calculation is thus unambiguously defined as the "total land area zoned for residential, commercial or industrial use." G.L. 40B and 760 CMR 56.03(3)(b)(1). "Where the language of a statute is unambiguous, it is conclusive of the Legislature's purpose." Ropes and Gray LLP v. Jalbert, 454 Mass. 407, 412 (2009); Pyle v. School Comm. of S. Hadley, 423 Mass. 283, 285–286 (1996).

The "total land area zoned for residential, commercial or industrial use" in Stoneham is 2,437.34 acres. Tr. Vol. I at p. 41; Exhibit 15, line 7. This figure is derived by subtracting all land *not zoned for residential, commercial or industrial use* from the total land area of the Town. The total land area of the Town is 6.14 square miles or 3,929.60 acres. See Ex. 9; Tr. Vol. I at p. 32–33.⁴

Land *not zoned for residential, commercial, or industrial use* in Stoneham includes: land held by the Department of Conservation and Recreation (1,408.47 acres; see Ex. 3; Ex 15, line 2; and Tr.

³ This Legislative choice makes sense when it is considered that the Commonwealth's cities and towns vary greatly in composition with respect to water bodies; federal, state, and local parks, forests, and other natural areas; and areas otherwise not available for development. A law that did not take such factors into consideration would produce inconsistent and inequitable results. Providing that the baseline in all cities and towns is *developable* area - that is, the area within the municipality upon which something might actually be built - was the Legislature's rational and sensible means of placing all cities and towns on equal footing. See Goodridge v. Department of Public Health, 440 Mass. 309, 385–86 (2003)(discussing "rational basis of fact that can be reasonably conceived" to support a legislative finding; noting that "Legislature may be supposed to have known relevant facts").

⁴ For this reason, it would be wrong to suggest that the Town has "double counted" excluded areas. Such "double counting" is precluded by 760 CMR 56.03(3)(b)(7). Such argument would be that by beginning the analysis with "total land area," as opposed to "total area", water bodies are being excluded twice. Yet as the analysis above makes clear, the starting point designated by both statute and regulation is neither the Town's "total area" nor its "total land area." Rather, the starting point is the *total land area zoned for residential, commercial or industrial use*. See G.L. c. 40B, s. 20 and 760 CMR 56.03(3)(b)(1). The entire DCR reservation - including the 381 acres of water contained within it - is zoned Recreation Open Space, in which residential, commercial and industrial uses are prohibited. See Exhibits 1 and 2 (Zoning Bylaw and Map); Tr. Vol. I, p. 11; 34–35. Accordingly, the 381 acres of water within the DCR reservation *form no part of the denominator* as established by the statute and regulation: "total land area zoned for residential, commercial or industrial use." See G.L. c. 40B, s. 20 and 760 CMR 56.03(3)(b)(1). There is no "double counting" or "double excluding" of water bodies within the DCR land, where such water and land - not being zoned residential, commercial or industrial - formed no part of the denominator in the first place. As the water bodies were never included in the denominator, they could not be (and were not) subtracted from the denominator in subsequent calculations.

Vol. I at p. 35). The DCR land is zoned Recreation Open Space. Tr. Vol. I at p. 34-35. Residential, commercial, and industrial uses are not permitted in Recreation Open Space. Tr. Vol. I at p. 11.

Land *not zoned for residential, commercial, or industrial* also includes the Bear Hill Golf Course (55.48 acres, zoned Recreation Open Space; see Ex. 12; Ex. 15, line 3 and Tr. Vol. I at p. 36-37); the Railroad Right of Way (8.81 acres, zoned Recreation Open Space; see Ex. 2; Ex. 15, line 4; and Tr. 38-39); and the St. Patrick's Cemetery (19.5 acres, zoned Recreation Open Space; see Ex. 2; Ex. 15, line 5 and Tr. Vol. I at p. 39).

The total land *not zoned for residential, commercial or industrial use*, determined by adding the above four properties, is 1,492.26 acres. See Tr. Vol. I at p. 39-40; Ex. 15, line 6. Subtracting the total *land not zoned for residential, commercial or industrial use* (1,492.26 acres) from the Town's total land area (3,929.60 acres) provides the "total land area zoned for residential, commercial or industrial use": 2,437.34 acres. See Tr. Vol. I at p. 41; Exhibits 2, 3, 9, 12, and Ex. 15, line 7.

B. Adjustments to the denominator pursuant to 760 CMR 56.03(3)

This figure - the statutory and regulatory "denominator" - is subject to several adjustments specified in 760 CMR 56.03(3)(b). First, certain categories are excluded from the denominator. That is, the area of such parcels are *subtracted* from the denominator - which, as discussed above, is the "total land area zoned for residential, commercial, or industrial use," or 2,437.34 acres in this case. 760 CMR 56.03(3)(b)(3) provides for the exclusion of "land owned by the United States, the Commonwealth or any other political division thereof, the Department of Conservation and Recreation or any state public authority."

Land conforming to this exclusion in Stoneham includes public roads (480.16 acres; see Tr. Vol. I at p. 41-42; Ex. 4 and 5; Ex. 15, line 8); land owned by the Town of Stoneham (349.29 acres; see Tr. Vol. I at p. 43-44; Ex. 7; Ex. 15, line 9); and land owned by the Town of Wakefield within Stoneham (26.46 acres; see Tr. Vol. I at p. 43-44; Ex. 7; Ex. 15, line 10).⁵

The total land subject to the exclusion of 760 CMR 56.03(3)(b)(3), computed by adding the above three figures, is 855.91 acres. See Tr. Vol. I at p. 44; Exhibits 4, 5; 7 and Ex. 15, line 11. The subtraction of this excluded area (855.91 acres) from the denominator (the "total land area zoned for residential, commercial, or industrial use," 2,437.34 acres in this case) yields an adjusted denominator of 1,581.43 acres. Tr. Vol. I at p. 44; Ex. 15, line 12.

760 CMR 56.03(3)(b)(3) provides for a further adjustment to the denominator. In particular - and contrary to G.L. c. 40B, s. 20 - this regulation provides for the *inclusion* - that is, the *adding back in* of "any land owned by a housing authority and containing SHI Eligible Housing." In Stoneham, land owned by the Stoneham Housing Authority containing SHI housing comprises 16.55 acres. Tr. Vol. I at p. 44-45; Ex. 6; Ex. 15, line 13. The addition of this area (6.55 acres)

⁵ Note that the acreage in Stoneham owned by the Department of Conservation and Recreation is *not* claimed by the Board as excludable under this provision. This is because the DCR-owned acreage was never included in the denominator in the first place, as such land is not zoned for residential, commercial, or industrial use.

back into the adjusted denominator of 1,581.43 acres (see preceding paragraph) yields a figure of 1,597.98 acres.

C. Calculation of the 1.5% "target"

The denominator has been calculated by determining the "total land area zoned for residential, commercial, or industrial use" and making the adjustments specified by G.L. c. 40B, s. 20 and 760 CMR 56.03(3)(b). See sections A and B above. The 1.5% "target" - that is, the acreage that must be equaled or exceeded for the Town to be deemed "consistent with local needs" pursuant to the 1.5% statutory minimum - is next determined by multiplying the denominator (1,597.98 acres) by 1.5. That 1.5% target is 23.97 acres. See Tr. Vol. I at p. 45; 54; Tr. Vol. II at p. 14; Ex. 15, line 15.

4. Calculation of the numerator

Having determined the denominator, and from it, the 1.5% target (23.97 acres), the final step in determining whether the Town has achieved this statutory minimum is a calculation of the numerator: the area of "sites" containing SHI-eligible housing units. See G.L. c. 40B, s. 20. Land on which SHI Housing exists, *not* including the land area of fourteen group homes known to exist in Stoneham, totals 24.98 acres. Tr. Vol. I at p. 46; 53; Ex. 10; Ex. 11A-J; Ex. 15, line 16. This includes a parcel at Washington Street and Washington Avenue, DHCD identification number 9648, containing 4.95 acres. Tr. Vol. I at p. 47, 52; Ex. 10, 11A, 11J. This parcel is built out. Tr. Vol. I at p. 47.

This further includes a parcel on Prospect Street, DHCD identification numbers 3042, 3043, 3044 and 3045, containing 8.77 acres. Tr. Vol. I at p. 47-50; Ex. 10 and 11B-11E. This parcel is "developed to its current capacity" with road access, residential structures, parking lots, and open space insufficient to support further development. Tr. Vol. I at p. 49.

This further includes a parcel on Duncklee Avenue, DHCD identification number 3046, containing 2.83 acres and one hundred units. Tr. Vol. I at p. 50; Ex. 10 and 11F.

This further includes a parcel on Mountain View Terrace, DHCD identification number 3049, containing 8.17 acres and one hundred and ninety-four units. Tr. Vol. I at p. 51; Ex. 10 and 11G.

This further includes a parcel on Christopher Street, DHCD identification number 9094, containing 1.017 (1.02) acres, only 0.26 of which are counted for purposes of this calculation. Tr. Vol. I at p. 52; Ex. 10 and 11I.

Group Homes

Fourteen group homes are located within the Town of Stoneham and are included on the Town's SHI.⁶ See Ex. 10. Although these group homes are listed by DHCD on the Town's SHI,

⁶ According to DHCD's "Comprehensive Permit Guidelines," a "Group Home" is:

the location and land area associated with these group homes are unknown to the Town, save one. See Ex. 10; see also Tr. Vol. I, p. 11, 14-15; 51; Tr. Vol. II at p. 41-43. This is because, despite the fact that DHCD is charged with maintaining the SHI, that agency does not possess records of the location of these units. The Department of Developmental Services has refused to provide information regarding the location of the group homes. The Town is thus prevented by two agencies of the Commonwealth from obtaining information relevant to its burden of proof in this appeal: establishing the area of "sites" on which SHI-eligible housing exists. This is a violation of due process under the United States Constitution and the Commonwealth's Declaration of Rights. It is particularly egregious where DHCD has 1) promulgated regulations assigning itself "keeper of the list" and providing that the SHI is presumptively accurate, see 760 CMR 56.03(2) and (3); 2) placed the burden on the municipality to establish that sufficient SHI housing exists to satisfy the statutory minima, see 760 CMR 56.03(8); and then 3) refused to provide the municipality with the information necessary to satisfy that burden. Notwithstanding that the Board has established that the land area on which SHI housing exists, *not* including the land area of the group homes, exceeds the 1.5% statutory threshold.

The total area on which SHI-eligible Housing exists in Stoneham (excluding group homes), 24.98 acres, exceeds 1.5% of the Town's "total land area zoned for residential, commercial, or industrial use," 23.97 acres. Tr. Vol. I at p. 54. The Town is thus "consistent with local needs" pursuant to G.L c. 40B, s. 20.

The undisputed evidence is summarized as follows:

| | | |
|---|--|--------------------------------------|
| 1. Total Land Area | 6.14 square miles or 3,929.60 acres | Source: Exhibit 9⁷ |
| 2. Land Area NOT Zoned Residential, Commercial or Industrial | 1,408.47/DCR Land | Source: Exhibit 3 |
| 3. | 55.48 ac./Bear Hill Golf Course | Source: Exhibit 12 |
| 4. | 8.81 ac./Railroad Right of Way | Source: Exhibit 2 |

"A residence licensed by or operated by the Department of Mental Health or the Department of Mental Retardation for adult individuals who are capable, both mentally and physically, to take action to preserve one's own life as defined by the Massachusetts State Building Code, and that, pursuant to the Massachusetts State Building Code, is treated as a single-family residential building for building code purposes."

⁷ Exhibit 13 (United States Census Bureau) identifies the total land area for the Town of Stoneham as 6.02 square miles or 3,852.80 acres. The calculations summarized above are based upon the larger land area, that is, that the Town of Stoneham land area consists of 6.14 square miles or 3,929.60 acres. See Tr. Vol. II at p. 52.

| | | |
|---|---------------------------------|--|
| 5. | 19.5 ac./St. Patrick's Cemetery | Source: Exhibit 2 |
| 6. Total Land Area NOT Zoned Residential, Commercial or Industrial | 1,492.26 acres | Source: Addition of Lines 2 through 5 |
| 7. Total Land Area Zoned Residential, Commercial or Industrial | 2,437.34 acres | Source: Subtraction of Line 6 from Line 1 |
| 8. Public Roads in Stoneham | 480.16 acres | Source: Exhibits 4 and 5 |
| 9. Land Owned by the Town of Stoneham | 349.29 acres | Source: Exhibit 7 |
| 10. Land Owned by the Town of Wakefield within Stoneham | 26.46 acres | Source: Exhibit 7 |
| 11. Total Land Area of Roads, Stoneham and Wakefield-owned land. | 855.91 acres | Source: Addition of Lines 8-11 |
| 12. Total Land Area Zoned Residential, Commercial or Industrial less Land Area of Roads, Stoneham and Wakefield-owned land. | 1,581.43 acres | Source: Subtraction of Line 11 from Line 7 |
| 13. Land owned by the Stoneham Housing Authority with SHI Housing | 16.55 acres | Source: Exhibit 6 |
| 14. Land owned by the Stoneham Housing Authority with SHI Housing added to Total Land Area | 1,597.98 acres | Source: Addition of Lines 12 and 13 |

| | | |
|--|--------------------------------|---|
| Zoned Residential, Commercial or Industrial less Land Area of Roads, Stoneham and Wakefield-owned land. | | |
| 15. 1.5% of 1,597.98 acres | 23.97 acres | Source: Line 14 multiplied by 1.5% |
| 16. Land Area on Which SHI Housing Exists, <u>Not Including</u> Land Area of 14 Group Homes | 24.98 acres⁸ | Source: Exhibits 10 and 11A-11J |

For these reasons and based upon the evidence discussed above and incorporated herein, the Board of Appeals asserts that the Town of Stoneham is “consistent with local needs” pursuant to G.L. c.40B, s.20 and, therefore, the Housing Appeals Committee lacks jurisdiction to hear an appeal of this decision brought pursuant to G.L. c.40B, s.22.

B. The Project Is Inconsistent with Stoneham’s Town Center Strategic Action Plan and Is Therefore Not Consistent with Local Needs

Prepared by the Metropolitan Area Planning Council (MAPC) and issued December of 2014, Stoneham has gone to great lengths to implement the "Stoneham Town Center Strategic Action Plan". The applicant has ignored this Plan in its entirety.

The Town Center Strategic Action Plan identifies Stoneham's Town Center - where, the Plan directs, residential and economic development should be targeted - as centered along Route 28 (Main Street), and including Stoneham Square, the Town Common, primary entry corridors, and

⁸ Line 16 includes 0.26 acres for the Christopher Street condominium project whereas the locus contains 1.017 acres. Tr. Vol. I at p. 51-52. This project contains 8 dwelling units, 2 of which are included on the SHI. Ex. 10, Ex. 11I. According to the regulations (760 CMR 56.03(3)(b)), the total qualifying area for this parcel should be 0.26 acres. Requiring that only a proportion of the land area count toward qualifying SHI housing—e.g. in this case, 25% of the land area—is inconsistent with the statute which states, in relevant part, “or on sites comprising one and one half percent or more of the total land area zoned for residential, commercial or industrial use”. G.L. c.40B, s.20 (emphasis added). In any event, the Town of Stoneham has achieved the 1.5% threshold even with compliance with the above-noted regulation, and without inclusion of the acreage attributable to group homes.

surrounding blocks.⁹ While noting that the Town Center remains the "civic center of the town," the Plan further notes that development just outside the Town Center area has "drawn much of the area's vibrancy away," specifically, "drawing businesses and consumers away from the Town Center." The Town Center Plan calls for increased residential uses and densities in the Town Center to support an active retail environment, while also providing housing in "a walkable, amenity-rich Town Center." The Plan also calls for improved transportation options serving the Town Center.

The Project locus is outside the Town Center. As such, it is directly at odds with the Town Center Plan. The proposed project places dense residential development in area where it will serve neither goal of supporting retail or providing a "walkable, amenity-rich" housing option in the Town Center. In fact, in its location outside the Town Center, the project will draw vibrancy away from the Town Center, as indicated by the Plan. The proposed project is thus wholly inconsistent with the Plan with respect to economic development. Further, by locating dense development outside the Town Center - where, presumably, the benefits of concentrated development, such as open space, should manifest - the proposed project in fact eliminates open space and is incompatible with the adjacent single-family land use. The project is thus wholly inconsistent with the Plan with respect to "open space impacts" and "compatibility with adjacent land uses."

In its submission to the MEPA, the Applicant relied on a few lazily-selected generalities from the 2008 MAPC "MetroFuture" Plan, which - not surprisingly - is consistent with MAPC's recommendations in the Town Center Plan. The Applicant's problem is that the proposed project does not conform even to those principles the applicant has extracted from the MetroFuture Plan. Like the Town Center Plan, the MetroFuture Plan calls for targeted, transit-oriented residential development in existing town centers. By contrast, the project site is outside the Town Center; is more than half a mile from a bus stop, and almost one mile from a rail station. As such, it is automobile-dependant; at odds with the goal cited by the Applicant;¹⁰ and inconsistent with the MetroFuture Plan with respect to "adequacy of infrastructure." Further, where the project is outside the Town Center, it does not constitute or support "economic development with a Smart Growth perspective," nor is it consistent with the MetroFuture Plan's recommendations for economic development - unless every addition of housing units, anywhere, is said to promote economic development.

Further, the proposed Project eliminates all functional open space from the parcel, cramming buildings, roadways, parking areas and other infrastructure into an historically agricultural and undeveloped parcel. This is entirely inconsistent with the MetroFuture principal cited by the applicant in its ENF filing that "new growth will occur through reuse of previously developed land and buildings." The applicant's statement that "the existing open space on the site will remain as open space" is inaccurate and misleading. The "open space" referenced by the

⁹ A primary Town Center along Main Street and surrounding blocks was identified as the core of the district; a larger, secondary area included this core and extended to the "gateway corridors into the Town Center." The project locus lies outside both areas.

¹⁰ In its submission to MEPA, the applicant cites to a goal relating to "low income households" and a related objective that affordable housing units "be located within 1/2 mile of fixed-route transit service." See ENF at p. 15. The proposed project consists of 75% market rate units and 25% moderate-income units, none of which will be priced for "low income households".

applicant consists of remnants of land, like carpet scraps, left over following the placement of buildings surrounded by acres of parking lots, drainage structures, and roadways. These remnants of open space are accessible only by traversing active parking lots and roadways, and as such, are unrelated to the preservation of open space as that term is used in the MetroFuture Plan.

C. The Project Does Not Comply with the Commonwealth’s “Sustainable Development Principles” and Therefore Does Not Comply with MassHousing’s Project Eligibility Letter Requirements

Based upon the evidence before it, the Board concludes that the Project scores an unenviable zero (0) when evaluated pursuant to the Commonwealth’s “Sustainable Development Principles” as the same are incorporated into MassHousing’s “Smart Growth Scorecard”. As compliance with the Commonwealth’s “Sustainable Development Principles” is a requirement of MassHousing’s Project Eligibility approval (see page 3, ¶7), the Board has included as a condition of approval the submission of revised plans that comply with MassHousing’s requirement.

- The project does not “contribute to revitalization of town center”;
- The project is not “walkable” or “located in a municipally approved growth center”;
- The project does not “concentrate development” most notably in that the proposed development is not “compact and/or clustered so as to preserve undeveloped land”;
- The project does not “restore and enhance environment [sic]”;
- The project is not “fair”; it does not “improve the neighborhood”;
- The project does not “conserve resources”;
- The project does not “provide transportation choice” and is totally “unwalkable” to public transportation;
- The project does not “increase job opportunities”;
- The project does not “foster sustainable businesses”; and
- The project does not “plan regionally”, rather, as the evidence made clear, the proposed project will have dramatic regional impacts and will permanently destroy the Town of Stoneham and the region’s ability to create a safe bicycle corridor along Franklin Street.

D. Project “Economics”

The Applicant submitted two “development budgets”, dated June 14, 2014 and November 20, 2015. As discussed by the Board’s retained expert, a certified public account and forensic accountant, the November 20, 2015 budget, while based upon a project containing fewer dwelling units than the June 14, 2014 budget, presents a budget with a cost increase of \$12,295,700. Support for this increase was not provided the Board.

Moreover, the Applicant’s consultant, while refusing to provide the Board with support for the inputs provided in either budget, but most notably the November 20, 2015 budget, remarked during the Board’s April 7, 2016 public hearing, “the truth is, it’s a de novo hearing and we can turn in a new budget based on April’s or May’s number, not last November, and we can provide as much backup as we feel necessary to support our case at the Housing Appeals Committee.

Totally different. Totally new. We're not going in with two pages from November".

Thereafter, on April 12, 2016 the Applicant's consultant provided the Board with a two page letter containing excerpts from a MassHousing report and policy together with a one half page supplement, again without source or attribution, to the inputs identified in the November 20, 2015 budget for "Site Work". In submitting the April 12, 2016 response to the Board, the Applicant's consultant neither shed light on the foundation or credibility of the inputs contained in his November 20, 2015 budget nor answered the questions posed by the Board's expert, that is, what is the "granularity"—the origin or source—of the numbers found in the November 20, 2015 budget.

The Board's expert was asked, using the Applicant's submitted metrics, to analyze the project "economics" as that phrase is defined in G.L. c.40B, s.20, for a development density of 125 dwelling units. The density of 125 was selected based upon the testimony of the Board's traffic engineer whose testimony the Board found significantly more credible than the Applicant's traffic consultant particularly as it related to the level of development that would obviate the need for a "left turn lane" on Franklin Street. Discussed in detail in the section entitled Density; Dwelling Units, below, construction of a "left turn lane" on Franklin Street would require the Town of Stoneham to abandon and/or convey a property interest in Franklin Street, an action that is beyond the authority of the Board to implement or impose as a condition. Accordingly, the Board inquired as to the project "economics" of a development density that would not require the abandonment or conveyance of an interest in Town owned real property.

Complicating the "economic" analysis is the fact, as admitted by the Applicant's financial consultant, that the November 20, 2015 development budget illustrates a project that is already—at the time the project was submitted to the Board—"uneconomic" pursuant to DHCD's "Comprehensive Permit Guidelines" (December 2014).

The Applicant's consultant testified that in his opinion the Board cannot render an already "uneconomic" project "*significantly*" more uneconomic. The Applicant's consultant provided no clarity was provided as to how to evaluate or measure what conditions would render an already uneconomic project, "significantly more uneconomic". Moreover, the Applicant's consultant conceded that the project was "uneconomic" prior to the imposition of conditions imposed by, for example, Massachusetts DEP or MEPA as contained in the January 22, 2016 ENF Certificate.

In *Avalon Cohasset, Inc. v. Cohasset*, No. 05-09, slip-op at 7 (Mass. Housing Appeals Committee September 18, 2007), the Housing Appeals Committee stated, "Under the facts presented here, where the denial of a change is at issue, we rule that to sustain its burden the developer is required to establish not only the ROTC for the development as approved is uneconomic, but also that the ROTC for that development is significantly *more* uneconomic than the development it proposes to build." (Emphasis in original). Although Avalon involved an applicant's petition to the Board to modify a previously approved comprehensive permit and the Cohasset Board of Appeals denied that petition, the HAC's decision in Avalon is precisely on point as to the present matter. Since Avalon, the HAC concluded similarly in *Cozy Hearth Community Corporation. v. Edgartown*, No. 06-09, (Mass. Housing Appeals Committee April

14, 2008) and Autumnwood, LLC v. Sandwich, No. 05-06 (Mass. Housing Appeals Committee, March 8, 2010).

In each matter, the HAC has stated that an already uneconomic project cannot be made “significantly more uneconomic” than the developer’s submitted project. Putting aside the fact that a prohibition on making a project already deemed “uneconomic”, “significantly more uneconomic” does not exist anywhere in the statute, relevant regulations or policies of DHCD, in the present case, imposition of the most significant of the Board’s conditions, stated above and below regarding the project’s overall density (approved at 125 dwelling units), renders the resulting project less—not more—“uneconomic” than the Applicant’s original proposal.

As illustrated on the Applicant’s development budget (November 20, 2015) proposing 259 dwelling units, and using DHCD’s definition for calculating Return On Total Costs (ROTC)(see DHCD Comprehensive Permit Guidelines, December 2014), the ROTC for the development is 5.06%. As analyzed by the Board’s financial expert, a development density of 125 dwelling units, results in an ROTC of 5.57%.

Quite simply, even if the Board were to accept the HAC’s fabricated standard that a project “uneconomic” when submitted cannot be rendered “significantly more uneconomic”, the project as conditioned by the Board herein results in a “significantly *less* uneconomic” proposal. Accordingly, the Board concludes that the imposition of the conditions contained herein will not render the revised project “significantly more uneconomic”, as the phrase has been applied by the Housing Appeals Committee.

V. REQUESTED WAIVERS AND EXEMPTIONS

1. Massachusetts General Laws c. 40B, §§20-23 empowers local Boards of Appeals to grant waivers from local rules and regulations, where the waivers would not threaten public health, safety or welfare. The Board understands that reasonable waivers from valid local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is used in G. L. c. 40B, §§ 20-23.
2. The Board believes that, under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic."
3. The Applicant provided the Board with a revised list of waivers and exemptions sought from local rules, regulations and bylaws as identified in the “Waiver Requests”, undated and received by the Board on March 18, 2016. The undated “Waiver Requests” was without any substantive explanation for the need for each waiver and no “uneconomic” justification was provided by the Applicant within the “Wavier Requests” or at any time during the public hearing process. The Applicant’s failure to provide to provide such support is in violation of Section 18-33 (m) of Board’s Comprehensive Permit Rules, which state in relevant part, “a list, stated with particularity, of requested exceptions to Stoneham’s requirements and regulations, including by-laws, policies or regulations, including these Regulations and a written explanation of why, but for the failure to grant

the requested waiver, the Project would be rendered uneconomic pursuant to G.L. c.40B, s.20.” Section 18-33(m), Stoneham Board of Appeals Comprehensive Permit Rules.¹¹

4. Although the Applicant has not provided information to demonstrate that the project would be rendered uneconomic but for the specifically requested waivers and exceptions, the Board has reviewed the above noted waiver requests and has granted those that are consistent with protection of the general health, safety and welfare.
5. The Board has denied requests that do not appear necessary to construct the Project. The Board finds, in the absence of any substantiation to the contrary, that the waivers not granted does not either alone or in the aggregate render the project uneconomic.
6. The Board decision as to each of the waivers and exemptions specified in the request identified as “Waiver Requests” , undated, is set forth in Attachment “B”.
7. In the event that the Applicant or the Board determines that the final design of the project necessitates further waivers, the Applicant shall submit a written request for such waiver(s) to the Board and the Board may grant or deny such additional waivers in accordance with applicable rules and regulations and the judgment of the Board.

VI. GRANT OF PERMIT AND CONDITIONS THERETO

Subject to the conditions set for hereinafter, the Board grants this comprehensive permit (the “Permit”) to Weiss Farm Apartments, LLC, (the “Applicant”), for a development, located in Stoneham, Massachusetts. The development is referred to herein as “the Project.”

Without the written consent of the Board, this Permit is non-transferable and non-assignable.

The Board notes that 760 CMR 56.05(8)(d) provides that:

“The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic...”.

In reaching this Decision, the Board has endeavored to insure that the conditions herein do not render the project uneconomic (and as discussed above, not “substantially more uneconomic”) and that the conditions are consistent with local needs.

In reaching this Decision, the Board has concluded that the requirements found at 760 CMR 56.04(1) have been as discussed below, subject to the concerns noted.

1. With respect to 760 CMR 56.04(1)(a), the Applicant has suggested that it “is” or “will become” a limited dividend corporation. The Board’s interpretation of the regulations is based upon a literal reading of the same, such that the words, “The Applicant shall be a

¹¹ In addition to the Applicant’s failure to comport with the Board’s adopted Regulations, the Applicant has refused, in part, to pay the Board’s peer review engineering fees (see February 23, 2016 letter from Rackemann Sawyer & Brewster stating in relevant part, “Weiss Farm will not pay any invoices from peer review consultants related to either MEPA Review...”). See also, electronic correspondence to the Board dated April 25, 2016 from Steven Ciatelli, Esq. See discussion of same in the Background discussion on page 1.

...Limited Dividend Organization” when read in conjunction with the preceding paragraph (“To be eligible to submit an application to a Board for a Comprehensive Permit...the Applicant and the Project shall fulfill, at a minimum, the following project eligibility requirements...”)) creates a present, not simply a future requirement, that the Applicant be a limited dividend corporation. Accordingly, the Board requires as a condition of this Decision that the Applicant execute the regulatory agreement required by this Decision within thirty (30) days following the issuance of this Decision, regardless of whether the Decision has become final.

2. With respect to 760 CMR 56.04(1)(b), the Applicant has provided a project eligibility letter from MassHousing dated June 23, 2014. By its own terms, the letter is “effective for two years from the date of this letter”. To ensure that MassHousing will continue to endorse this project, the Board requires that the Applicant demonstrate that MassHousing has provided a continuous extension of the June 23, 2014 letter within thirty (30) days of the issuance of this Decision, regardless of whether the Decision has become final.
3. With respect to compliance with the site control requirements of 760 CMR 56.04(1)(c), the Applicant has stated that the locus is the subject of a purchase and sales agreement described previously. This Decision relies upon the uninterrupted existence of this purchase and sales agreement.

General

4. The Comprehensive Permit application was based on a project eligibility letter issued to the Applicant on June 23, 2014 from MassHousing pursuant to the New England Fund program. This Permit is conditional upon receipt of Final Approval from MassHousing and the grant of subsidy funding through the New England Fund. Grant of subsidy funding by the New England Fund are condition precedents to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.
5. The Applicant shall comply with the terms of a Regulatory Agreement complying with the requirements of MassHousing and/or DHCD, to which the Town of Stoneham shall be made a party and beneficiary, prior to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.
6. The Decision is based on, and this Permit is issued based on, the real property identified on the Comprehensive Permit Plans, described below (hereinafter referred to as the “locus” or the “site”).
7. Except as otherwise specified in this Decision, the Project must substantially conform to the Comprehensive Permit Plans entitled “Conservation Commission [sic] Notice of Intent Submission [sic], The Commons At Weiss Farm, June 25, 2014 with a final revision date of April 4, 2016, consisting of twelve (12) sheets at varying scales.
8. Substantive revisions to the Project or the Plans, such as relocation (except relocation within the building “envelopes” as proposed) or deletion of dwellings (except as specified

in this Decision), material changes in unit architecture, style or materials, relocations of more than one property line, relocation of the right of way or other substantive changes from the approved Plans shall not be permitted without the written approval of the Board. If, between the date that this decision is filed with the Office of the Town Clerk and the completion of the Project, Applicant desires to change any details of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested. Changes will be administered or addressed pursuant to 760 CMR 56.00 et seq.

9. Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents to the Board, the Board shall review and provide a written response as to whether such plans or other documents are consistent with this Decision within forty-five (45) days of the Board's receipt of such plans or other documents.
10. Nothing in this Decision permits the removal of sand or gravel from the locus or waives or modifies any local by-laws, rules, regulations or requirements with respect to the removal of sand or gravel.

Compliance With Federal and State Requirements and Law

State and Federal Requirements

11. Development of the Project shall comply in all respects with the conditions contained in the Project Eligibility approval for the Project issued by MassHousing and dated June 23, 2014. As the Project does not comply with MassHousing's requirements as they relate to the "Commonwealth's Sustainable Development Principles", the Applicant shall submit a revised plan that conforms to the same.
12. The Project, and all construction, dwelling units, utilities, roads, drainage, earth removal or relocation of structures and all related appurtenances with respect to the Project, shall comply with all applicable state and federal regulations. The Applicant shall promptly provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.
13. The Project shall comply with all rules, regulations, filing and permit requirements and certifications pertaining to regulations governing the disturbance and/or restoration/replication of wetlands on the site required by the U.S. Army Corps of Engineers, Section 404 of the Clean Water Act and, as applicable, Section 404(b)(1) guidelines that are established by the U.S. EPA to demonstrate that no less environmentally damaging, practicable alternatives exist.
14. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Endangered Species Act, G. L. c. 131, § 23, 321 CMR 10.00.

15. The Project shall comply with the Massachusetts Wetlands Protection Act and related regulations, G. L. c. 131, § 40-40A, 310 CMR 10.00.
16. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Department of Environmental Protection with respect to wastewater disposal, storm water disposal, resource protection, water supply and low impact development best management practices.
17. The Project shall comply with the rules and regulations of the Stoneham Board of Health not otherwise granted a waiver herein and dwelling floor plans shall be provided for review and approval by the Board of Health.
18. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, § 61-62H).
19. The Project shall comply with the Massachusetts Public Shade Tree Act (G. L. c. 87).
20. The Project shall comply with the Massachusetts Scenic Roads Act as adopted by the Town of Stoneham, G. L. c. 40, §15C.
21. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Historical Commission.
22. Copies of all approvals from State and Federal agencies shall be submitted to the Board prior to recording of final plans.
22. As the Project has been issued a Project Eligibility pursuant to the “New England Fund” and the Project Eligibility letter from MassHousing requires that “financing for the Project shall originate from a subsidizing lender that is member of the FHLBB [Federal Home Loan Bank of Boston], development of the Project shall comply with the requirements of the Davis-Bacon Act, 40 U.S.C. § 3142 et seq. and 29 C.F.R. §5.1. See Middleborough v. Housing Appeals Committee, 449 Mass. 514 (2007) and 12 U.S.C. § 1433.

Local Requirements

23. Except as expressly waived by this Decision:
 1. The development of this Project, including the construction of all dwelling units, utilities, roads, drainage structures and other appurtenances, shall comply with the Stoneham Zoning By-Law in effect at the time of this Decision and Permit.
 2. The development of this Project, including the construction of all dwelling units, utilities, roads, drainage structures, and other appurtenances, shall comply with all

other rules, regulations, bylaws and policies in effect at the time of this Decision and Permit.

24. Except as waived by this Decision or a decision of the Stoneham Board of Health, the Project shall comply, in all respects, with the rules, regulations, filing and permit requirements and certifications of the Stoneham Board of Health governing private wells, storm water disposal and wastewater disposal.

Density; Dwelling Units

Discussion:

The record contains extensive testimony from the Applicant's traffic engineers and the Board's peer review traffic engineer regarding the Applicant's proposal to create a "left turn lane" on Franklin Street for motorists entering the proposed project from Stoneham center. As repeated by the Board's traffic engineer on several occasions, the requirement for the "left turn lane" is a direct consequence and only a consequence of the number of dwelling units proposed for the project. Put otherwise, but for the density proposed by the project, the "left turn lane" on Franklin Street would not be required.

The Board's traffic engineer further testified that based upon accepted engineering practice and standards, most notably those established by the Institute for Traffic Engineers, a left turn lane on Franklin Street would not be required with a development density of fewer than 125 dwellings units. As explained by the Board's traffic engineer, at a density of fewer than 125 dwelling units, the volume of traffic turning left into the project locus from Stoneham center would be insufficient to warrant, for reasons of public safety, a constructed left turn lane.

The Board heard extensive testimony from the Applicant's and the Board's traffic engineers as to the Applicant's proposals to mitigate the impacts of the traffic generated by the proposed project, including: (1) the construction on Franklin Street of a "left turn lane", (2) the synchronizing of approximately 12 traffic signals in Stoneham to ease the traffic congestion on and about Franklin Street created by the proposed project and (3) the installation of a "HAWK" traffic signal and painting of a cross walk proximate to the project locus to provide for pedestrian crossing of Franklin Street.

As confirmed by the Applicant's and the Board's traffic engineers, each of the three proposed steps to mitigate the project's traffic impacts require either a dedication of Town property, an encumbrance of Town property or an action by Stoneham Town Meeting. As confirmed by the Board's traffic engineer, each of the three proposed mitigation requirements are essential to the accommodation of the proposed project. Put otherwise, without each of the three proposed mitigation measures, the proposed project would constitute a direct, measureable and concrete threat to public health and safety.

With respect to the construction of a left turn lane on Franklin Street, the Applicant's proposal would require, for a distance of 250 linear feet, the reduction of the two travel lanes along Franklin Street and the construction of a third travel lane, that being the "left turn lane" from Franklin Street into the project locus. The creation of three travel lanes where two currently exists requires the reduction of the two travel lanes, from their current paved width to eleven (11)

feet. The proposed left turn lane would be ten (10) feet in width. In order to accomplish the creation of three lanes where two currently exist, the applicant proposes to permanently alter the northerly portion of Franklin Street such that the shoulder existing along Franklin Street would be incorporated into the travel lane.

In so doing, this portion of Franklin Street would no longer safely support bicycle traffic as the combined shoulder and travel lane width would be below fourteen feet, the minimum width necessary to support vehicular and bicycle passage. Rather, bicycle traffic traveling along this portion of Franklin Street would be within the now narrowed travel lane of eleven feet. The Board's traffic engineer testified that this result—forcing bicyclists to travel within a narrowed paved way—would constitute a safety hazard as bicyclists travelling along this portion of Franklin Street would be forced into an already narrowed travel lane, thereby requiring motorists trying to pass a bicyclist into either oncoming traffic waiting in the “left turn lane” or heading eastbound on Franklin Street. The Board concurs.

The Board heard extensive testimony from residents of Stoneham and Melrose regarding the frequent use of Franklin Street for bicycle passage and the fact that the applicant's proposal would remove, permanently, safe bicycle passage along this portion of Franklin Street. The Board's own experience with travelling on Franklin Street—one of Stoneham's principal and heavily travelled ways, supports the recorded testimony: Franklin Street is used extensively by bicyclists, particularly this portion of Franklin Street, due to its immediate proximity to the Stoneham High School.

In addition to the risks to public health and safety created by removing one of the very attributes of “complete streets” required by G.L. c.90I (“Complete Streets Program”) —fostering, not inhibiting bicycle travel—the proposed “left turn” imposes a permanent servitude on the Town of Stoneham's real property and precludes the Town of Stoneham from complying with the statutory requirements found in G.L. c.90I.

If constructed as proposed by the Applicant, the Town of Stoneham will have lost—permanently and irrevocably—a real property interest in this portion of Franklin Street and will—permanently and irrevocably—be precluded from meeting the requirements of G.L. c.90I and thereafter qualifying for program funding from the Commonwealth.

The Town of Stoneham owns the fee in the road layout known as Franklin Street. This fee ownership is an interest in land. An interest in municipal property can be conveyed, restricted or otherwise transferred only pursuant to the unambiguous provisions of G.L. c.40 §§ 3 and 15.

As clearly set forth in G.L. c.40 §§ 3 and 15, in towns, an interest in real property can only be conveyed, restricted or otherwise transferred by a two-thirds vote of the town's legislative body. In this case, the Town of Stoneham's legislative body is Town Meeting. According, the Board of Appeals lacks the authority to convey, restrict or otherwise transfer an interest in Franklin Street.

Moreover, G.L. c.40B §§20-23 is intended to remove *locally imposed* “barriers” to below market rate housing, “not State law governing the disposition or transfer of land, or interests in land, owned by municipalities”. Zoning Board of Appeals of Groton v. Housing Appeals Committee,

451 Mass. 35, 41 (2008). Put otherwise, while G.L. c.40B §§20-23 allows the Board to waive provisions of the Stoneham Zoning Bylaw and other locally adopted regulations, the statute does not grant the Board with the authority to waive or otherwise ignore state (or federal) law. The conveyance of a real property interest in Franklin Street is most clearly not a locally imposed barrier to the proposed project.

Accordingly, because the Board lacks the authority to approve the Project as proposed, specifically as it relates to the conveyance of an interest in Town-owned land, the Board has conditioned approval of this Project such that a “left turn lane” will not be required.

25. The total number of dwelling units, each of which shall be dwelling units available for rent, shall not exceed one hundred and twenty-four (124).

“Affordable Units”

26. Not less than twenty-five (25%) percent of the total number of dwelling units constructed and rented shall be affordable to individuals and/or families earning no more than eighty (80%) percent of the median income of current residents of Stoneham. (The “affordable dwelling units” or “affordable units”). The calculation of what constitutes the median income of the current residents of Stoneham shall be based on formulas or the methodology published by the Department of Housing and Community Development (DHCD), as revised.
27. No dwelling unit identified as an “affordable unit” may be rented to anyone other than a qualified tenant as required by this Decision and consistent with the requirements of MassHousing, DHCD and other relevant state agencies governing the rental of below market rate units in a comprehensive permit project.
28. The affordable units will be evenly distributed within the locus and shall be indistinguishable in architectural style, exterior finish materials, and exterior appearance from market units.
29. Each affordable unit shall be rented pursuant to an affordable housing restriction, more fully described below, ensuring that only income eligible individuals or families may rent the dwelling unit.
30. An affordable housing restriction, enforceable by the Town of Stoneham, requiring that the affordable units remain affordable in perpetuity and in a form approved by the Board, shall be recorded senior to any liens on the Project locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale.
31. Upon the rental of an affordable dwelling, the Applicant or its successors or assigns shall provide written notice to the tenant that the premises are subject to an affordable housing restriction and is subject to the terms and provisions of the affordable housing restriction and that any amendment purporting to alter, amend or delete the restriction shall be void and of no effect.

Management Documents

32. The Applicant shall prepare documents in a form that conforms to this Decision and applicable law designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.
33. The management documents shall provide that the Town of Stoneham shall not have any legal or financial responsibility for, operation or maintenance of roadways, driveways, parking areas, storm water management systems, snow plowing, landscaping, trash disposal or pick up, street lighting or other illumination, or other roadway infrastructure within the Project or the locus.

Profitability

34. The Project shall be limited to the profit allowed under the Regulatory Agreement (the “allowable profit”).
35. Any profit that is above the allowable profit pursuant to the Regulatory Agreement, shall be returned to the Town of Stoneham for use by the Town. The profit limitation may be enforced the Town or its agencies, boards or commissions at anytime.
36. The Applicant shall provide the Board with a copy of all financial documentation required by the Regulatory Agreement. The Board requires a full compilation and certification of total development costs and total revenues on a federal income tax basis according to generally accepted accounting standards within 30 days after the end of each tax year.

Marketing

37. No construction of any dwelling under this Permit shall commence until the Applicant has submitted to the Board and any and all other relevant public agencies for review and final acknowledgment of consistency with this Decision a marketing plan for the affordable dwellings, such plan to conform to all affirmative action requirements or other requirements as imposed by federal or state regulations.

Conditions Precedent to Commencement of Project

38. The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until:
 1. Final Review -- Prior to commencement of any construction and granting of any permits for the Project, the Applicant has submitted detailed construction drawings to the Board to ensure that said drawings are consistent with this Permit, with local requirements not waived in the Permit, and with state and federal codes and requirements of state and federal agencies and their respective decisions. Copies of the detailed, approved construction drawings (the “Final Plans”) shall also be filed in hard copy (20 full-scale sets) and in digital form with the Board

and the Building Department for record keeping purposes. The Applicant must secure Board approval prior to construction and allow the Board forty-five (45) days to review the detailed construction drawings. The Final Plans shall include a Building Code review.

2. The Applicant has posted with the Town Clerk a bond or surety in the amount needed to complete the ways, utilities, drainage, shade trees in the right of way, and as-built plans of the Project as approved, plus a ten percent margin of error plus an appropriate rate of inflation over a five-year period. The performance bond or surety shall contain the following provision: "If the Principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein as specified in all the covenants, agreements, terms and provisions as set forth in the Decision of the Board in this matter, as attached hereto, then this obligation shall be void, otherwise it shall remain in full force and effect, and, in the absence of completion of the above work, the aforesaid sum shall be paid to the Town of Stoneham in order to complete the construction in accordance with the plans and specifications."
3. The Final Plans, including phasing plans, way and underground utilities plans (water system, stormwater system, gas, telephone, electric and cable systems), entrance/intersection streetlights and signs, have been reviewed and have received approval consistent with this Decision by the Board, and consistent with their respective jurisdictions by the Conservation Commission and any and all relevant federal and state agencies, departments, boards or commissions for matters not otherwise approved or waived by this Decision.
4. The Applicant, the Board and DHCD have executed a Monitoring Agreement, similar in form to the Monitoring Agreement published by MassHousing but revised in content as required for consistency with this Decision. The Monitoring Agreement shall be subject to review and approval by the Board, said approval not to be unreasonably withheld.
5. A Regulatory Agreement, similar in form to that published by MassHousing or DHCD but revised in content as required for consistency with this Decision and subject to the terms and conditions of this Decision, has been executed by the Applicant and DHCD and has been recorded with this Decision. These documents shall contain, at a minimum, the following terms:
 - i. The affordable units shall be restricted as affordable in perpetuity to households with less than 80% of the applicable area median income.
 - ii. The Monitoring Agent for this Project.
 - iii. An identification of the affordable units.

The Regulatory Agreement shall be subject to review and approval by the Board as to form and consistency with this Decision, said approval to not be unreasonably withheld.

6. A NPDES Storm Water Pollution Prevention Plan, erosion control plan and stormwater management systems operations and maintenance plan has been submitted to the Stoneham Conservation Commission together with a Notice of Intent, and an Order of Conditions has been obtained from the Commission for the final design plans has been recorded.
7. The Applicant has submitted to the Board and the Stoneham Conservation Commission, and all other relevant public agencies, for review and final acknowledgement of consistency with this Decision, final and detailed stormwater management plans and improvements and consistent with DEP's Storm Water Management standards, policy and handbooks, to the detail required for use as on-site construction drawings and to obtain approval under the Massachusetts Wetlands Act and the Stoneham Wetlands Bylaw. These plans and improvements shall address the effects on abutters and assure that there will be no detrimental drainage or erosion impact on abutting properties. Additional requirements regarding required improvements to the stormwater system serving the project are presented in detail, below.
8. Final and detailed landscaping improvements and plans prepared by a Landscape Architect registered in the Commonwealth of Massachusetts to the detail required for use as on-site construction and planting drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed, have been submitted to the Board and all other relevant public agencies for review and approval, including acknowledgment of consistency with this Decision. Such plans shall include shade trees along roadways, and shall specify the types, number, size and location of all proposed landscaping plants, trees and shrubs at the time of planting, the location and type of fence or other screening materials, plans and profiles of all planting and screening materials and details of any and all other proposed landscape materials. Such plans indicate the specific types of active/passive recreational equipment to be installed within the open space and recreational areas located on the approved plans. Such plans shall also indicate the location of mailboxes, dumpsters and other appurtenant structures to be located within or integral to, the project.
9. Identification of all areas of the site proposed for vegetative clearing.
10. A detailed plan showing landscaping improvements, open areas, limit of construction activity, edge of clearing, sedimentation and erosion controls, a soil stockpiling area, and construction staging, refueling and storage area(s), for verification that such plan conforms with this Decision. Tree protection measures shall be stated with details for tree wells around existing trees to be protected included in the plan set. The removal of trees, shrubs, and natural ground cover on the site shall be minimized to preserve the natural environment to the highest degree possible. All trees over 8" in caliper within the limits of work shall be flagged prior to tree clearing. A representative or agent of the Board shall have the opportunity to identify trees that need to be protected and preserved during construction.

11. An Infrastructure Operations and Maintenance Plan has been submitted for review and approval by the Board. The Plan shall include, at a minimum, maintenance during and post construction as well as perpetual maintenance and monitoring of the roadway, roadway infrastructure and drainage systems (routine and seasonal). The Operation and Maintenance Plan shall bind the Applicant. The Stormwater Operation and Maintenance Plan shall include specific tasks and time lines associated with inspection and maintenance of all proposed stormwater management structural and non-structural measures, a repair and replacement plan for the system with estimated costs as well as identify the owner and party responsible for inspection, operation, maintenance, repair, and replacement including certification of acceptance of legal responsibility for the afore mentioned.
12. A construction schedule identifying the sequence and approximate dates of all key stages of construction has been submitted to the Board. This submission also will include:
 - i. Identification of all contractors, field engineers, construction managers, surveyors, wetland and biology specialists, and other professionals that will be involved in the implementation of the Project;
 - ii. Staking driveways, dwelling foundations, parking areas, drainage basins and other drainage structures, and well(s) location(s);
 - iii. Placement of sediment and erosion controls and limit of construction fencing;
 - iv. Identification and approval of significant trees to be cut on the site and/or in the bordering vegetated wetland buffer zones;
 - v. Removal of vegetation and top soil;
 - vi. Drainage system construction;
 - vii. Major stages of roadway construction;
 - viii. Excavating dates for building foundations;
 - ix. Sewer line and water line installation; and
 - x. Inspection dates
13. The Applicant has provided the Town of Stoneham, in form and substance approved by counsel for the Town of Stoneham, Applicant's agreement that the Town of Stoneham shall be free of any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with relation to this Project, and that Applicant on behalf of itself and its successors and assigns has consented and agreed to indemnify the

Town, its employees and officials for any harm, damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project.

14. The Applicant has granted to the Town easements giving the Town the right to enter the locus to repair and maintain water lines as necessary to ensure the health and safety of the residents therein. The easements shall be shown on a site plan provided to the Board and shall be recorded by the Applicant.
15. Cuts and fills have been designed to preserve the existing land elevations to the extent reasonably possible based on the Final Plans as approved, and the use of retaining walls is optimized to preserve existing vegetation wherever practicable.
16. The Final Plan has addressed constructability with regard to infrastructure damage due to settlement in substantial fill areas.
17. All local zoning lines have been identified on the Final Plan for reference purposes.
18. The interior roadway layout and parking areas have been approved by the Fire Chief, to facilitate emergency access and increase fire safety.
19. Easements have been provided on the Final Plan to facilitate utility installation and slope maintenance outside the rights-of-way.
20. The Final Plans indicate that roadway construction materials and thicknesses conform to town standards as set forth in the Planning Board Rules and Regulations.
21. The Final Plans shall include limitations on lawn areas, and limitations on regrading of areas tributary to the bordering vegetated wetlands located on the locus. The Final Plans also shall include the use of bioretention areas at any down gradient lawn limits within the 100' wetland buffer, for nutrient and sediment uptake prior to discharge to wetland areas.
22. The final site plan submission has included an acceptable snow management plan protective of the resource areas. The Board rejects as unacceptable the proposed "Snow Storage Plan" submitted by the Applicant (April 4, 2016) as calling for the placement of plowed snow proximate to if not within, wetland buffer zones.
23. The Final Plans have been reviewed and accepted by the Fire Chief and the Water Department for hydrant and valve locations; hydrant locations shall provide a 10-foot minimum separation from storm drains or other approved means of protecting the water supply from storm drains.
24. The Applicant has obtained all necessary private utility permits and final designs but not limited to gas pipeline, electric, telephone and cable service required by the respective utilities prior to the commencement of construction. Documentation

of all Permits/approvals issued by private utilities pertaining to the development of the Project shall be provided to the Board prior to any construction.

25. The Applicant has submitted to the Board and all other relevant public agencies for review and final acknowledgement of consistency with this Decision, all requests for approval, and upon receipt of all approvals, has provided to the Board copies of all necessary approvals from all local, state and federal agencies, departments or commissions pertaining to this Project.
26. The Final Plans shall include the location and design (including materials to be used) of all retaining walls to be used within the project.
27. The Final Plans shall identify the location of all guard rails to be constructed within the proposed road system. All guard rails shall be constructed of timber.
28. The Final Plans shall identify the location of all street lighting fixtures. Lighting on poles shall be allowed, but poles shall not exceed fourteen (14) feet in height and light from these poles shall be downcast with cut-off shields.

Additional Analysis and Conditions Relating to Stormwater Management

Introduction

The Commons at Weiss Farm borders an extensive wetland system north of Franklin Street which has a tributary area of approximately 250 acres. There are two outlets to this system which convey runoff to the south across Franklin Street. One the Franklin Street culverts is an 18 inch RCP culvert located on the east side of the Weiss Farm at 175-177 Franklin Street (Weiss Farm Culvert) and the other Franklin Street culvert is located approximately 800 feet west of Weiss Farm at 136-140 Franklin Street (West Culvert). The inverts of these two culverts are at a roughly comparable elevations and the discharge through these culverts depends on hydrology in the wetland area as well as stormwater management practices related to operation of a stormwater pump station at the Weiss Farm Culvert.

The entrance invert of the Weiss Farm Culvert is situated above the elevation of the land and drainage channels on Weiss Farm immediately upgradient of the culvert. Additionally, the culvert has a negative slope with an entrance invert of 159.8 and two inline manholes with inverts of 160.1 and 160.9. Discharge into the Weiss Farm Culvert is facilitated by a 500 gpm stormwater pump station which lifts stormwater into the culvert, which means that the pump station must lift stormwater above the entrance invert and an additional 1.1 feet above the interim high invert before it can flow by gravity.

Weiss Farm is responsible for operation of the stormwater pump station. The Board understands that the primary management objective of the pump station is to control flooding on Weiss Farm itself although it also limits the elevation of flooding on properties on Gerald Road. The stormwater pump station is operated in various modes. During the winter presumably when surface water is low, the stormwater pump is not operated. When surface water elevations increase, the stormwater pump station is operated lifting stormwater into the Weiss Farm Culvert. When surface water elevations increase above the interim high elevation of 160.9

within the culvert, the stormwater pump station is turned off and stormwater flows south by gravity through the Weiss Farm Culvert.

The West Culvert is a 36 inch diameter pipe and has less obstructed flow conditions south of Franklin Street. A 1935 plan shows Meetinghouse Brook flowing to this location and across Franklin Street in a culvert. Following construction of the drainage channel in the large wetland system in the 1950s, it is likely that the West Culvert accommodated much of the discharge from the large wetland system. However, a segment of the drainage channel was blocked by fill placed at residential properties to the west of Weiss Farm. The Board has information as to whether this filling was authorized, but under current regulations, extensive filling of bordering vegetated wetland would not be permitted. Lack of maintenance of the drainage channels is likely to further inhibit drainage flow toward the West Culvert.

The Weiss Farm Culvert conveys flows across Franklin Street flowing south and discharging between 175 and 177 Franklin Street. The flow path for drainage discharged from the Weiss Farm Culvert is extensively obstructed causing stagnant ponded water conditions and localized flooding. The Director of Public Works has informed the Board that this is a major concern for his Department.

The localized flooding affects the multifamily structure at 177 Franklin Street and reportedly other downgradient areas. A large area of ponded water was observed at the downgradient end of the Weiss Farm Culvert which was nearly at the surface of the parking lot at 177 Franklin Street which was not caused by a recent storm event. The ponded water area is eutrophic and presents a health mosquito breeding threat. The area is silted with no defined channel and no apparent gradient to convey stormwater to the south. Further downgradient and to the south there is an 18 inch diameter vitrified clay (record) culvert 450 ft. long in the Sunset Road Area. It was installed with an entrance invert elevation (160.73) higher than the exit invert of the Weiss Farm Culvert and with a flat slope (0.00038 ft. /ft.). As a result there is a lack of hydraulic gradient to convey flow to and through the culvert. The 18 inch diameter culvert connects to a 36 inch diameter culvert. The invert of the 36 inch diameter culvert is approximately 7 ft. below the invert of the 18 inch diameter culvert.

If flow constraints between the Weiss Farm Culvert and this downgradient 36 inch diameter culvert can be removed, there is the potential to solve the ponded stagnant water and localized flooding problems.

The flow path for drainage discharged from the West Culvert is reportedly less problematic and may be able to accommodate existing and increased flows without damage to property and without water ponding problems. Immediately downgradient of the West Culvert, runoff is discharged to an open channel. Further to the south runoff is conveyed through the Stoneham High School campus in a culvert. The culvert in turn discharges to an open channel which flows to Doleful Pond.

Pursuant to a 2006 DEP consent order, a 4 ft. high 20 ft. long precast concrete dam with flashboards was constructed across the drainage channel near the east edge of Weiss Farm (approximately 1,700 ft. north of Franklin St.) in an effort to force more stormwater runoff towards the West Culvert. The effectiveness of this dam is compromised because runoff can

bypass the dam on the south end of the dam and other structural deficiencies. The H. W. Moore Stormwater Pump Station and Dam Improvements report (4/28/2015 revised 6/8/2015) provides recommendations for reconstruction and repair of the precast concrete dam and the Board incorporates those recommendations as conditions of approval, herein.

29. The Applicant shall expand the stormwater runoff analysis to encompass the wetland system north of Franklin Street extending to the Weiss Farm Culvert and the West Culvert. The analysis for both pre-development and post development should recognize that the 4 ft. high 20 ft. long precast concrete dam divides the channel with flow discharged south of the dam under most hydrologic conditions flowing to the Weiss Farm Culvert and flow discharged north of the dam under most hydrologic conditions flowing to the West Culvert. The analysis shall encompass management practices such as operation of the stormwater pump station. The analysis should provide the flow through the Weiss Farm Culvert and the West Culvert including the impacts of channel improvements discussed below.
30. The Applicant shall submit an engineering feasibility report identifying deficiencies in the stormwater conveyance system downgradient of the Weiss Farm Culvert to the point of free discharge. The report shall include recommendations for necessary upgrades to eliminate ponding and localized flooding and convey existing and proposed peak flows to the point of free discharge. It should identify property ownership and preliminary construction cost.
31. The Applicant shall submit an engineering report identifying deficiencies in the stormwater conveyance system downgradient of the West Culvert to the point of free discharge. The report shall include recommendations for necessary upgrades to convey existing and proposed peak flows to the point of free discharge as well as identify property ownership and preliminary construction cost.
32. The Applicant shall revise the site Operation and Management Plan to encompass operation of existing and proposed controls to convey stormwater to the Weiss Farm Culvert and the West Culvert.
33. The Applicant shall complete final design and reconstruct and repair the low precast dam in accordance with the H. W. Moore recommendations so that the dam is capable of controlling the direction of flow in the on-site drainage channel in accordance with the DEP Consent decree. The Applicant shall revise the site Operation and Maintenance Plan to encompass the precast concrete dam.
34. The Applicant shall submit an engineering feasibility report for reconstruction of the drainage channel through the wetland north of Franklin Street reestablishing connectivity from east to west specifically to the West Culvert. The report shall identify property ownership and preliminary construction cost. If the channel

improvements are constructed, the Applicant shall expand the Operation and Maintenance Plan to encompass the reconstructed channel.

35. The Applicant shall develop a plan and upgrade the stormwater pump station.
36. The Applicant shall submit an engineering feasibility report for restoration and maintenance of the channel upgradient of the West Culvert by dredging silt and debris and removing logs, trees, and other debris. The report shall identify property ownership and preliminary cost. If the channel is restored, the Applicant shall expand the Operation and Maintenance Plan to encompass the restored channel.
37. Under Pre Development conditions, the submitted stormwater model routes runoff from the Development Footprint to the COE Channel as a single catchment. For the Post Development condition, the submitted stormwater model routes runoff from the Development Footprint to the Development Footprint at five discharge points. However, the COE Channel acts as a detention basin whose surface elevation will rise with increased runoff. The stormwater calculations show no increase in the peak rate of discharge at the discharge points. However, volumetric increases have not been modeled and will be a key factor in determining the elevation of the COE Channel during storm events. To properly model detention within the COE Channel, inflows from all tributary areas shall be quantified.
38. The outlet control device for detention in the Development Footprint is a stormwater pump station on the Project Site in close proximity to Franklin Street which is owned, operated, and maintained by Weiss Farm (Weiss Farm Stormwater Pump Station.) To properly quantify detention in the Development Footprint, the design discharge characteristics of the Weiss Farm Stormwater Pump Station the Applicant shall incorporate into the model the discharge rate, capabilities staged discharge through multiple pumps, and pump on/off elevations.
39. It is the Board's understanding that the Weiss Farm Stormwater Pump Station located on the Project Site is owned, maintained, and operated by Weiss Farm. There is no Agreement in place between Weiss Farm and the Town of Stoneham governing operation and maintenance of the stormwater pump station. Proper operation of this stormwater pump station is required to control the surface elevation of ponded water in the COE Channel and to comply with Stormwater Management Standard 2; that the post-development peak discharge rates do not exceed pre-development peak discharge rates. The stormwater management report shall be expanded to include evaluation of the age, condition, and operation of the stormwater pump station. Any outmoded or poorly operating equipment shall be replaced. Staged discharge may be required for compliance with Stormwater Management Standard 2. Each required pump shall have an alternate pump and pumps shall operate in alternating mode. The Weiss Farm Stormwater Pump Station shall be set as a design point for the overall stormwater analysis

with the peak rate post-development peak discharge rate designed to be less than the pre-development peak discharge rate for the 2-year frequency storm event and the 10-year frequency storm event and the peak rate of discharge for the 100-year frequency storm event being set to avoid increased flooding. A natural gas fired generator shall be required for standby power, unless unavailable.

40. To address mechanical failure or power loss, the Applicant shall provide detention capabilities that are modeled with no discharge for a 48 hour period.
41. The geotechnical testing conducted for the locus does not include all information required to accurately quantify seasonal high groundwater. While groundwater was recorded when observed in test pits and soil borings, the individual logging the test pits data was not a Licensed Soil Evaluator and did not record redoximorphic features such as mottles. Groundwater was monitored from one to three years at test locations; however, mottles which develop over very long time periods must also be used to confirm the elevation of seasonal high groundwater. No less than two additional test pits shall be excavated at each infiltration basin with mottles recorded by a Licensed Soil Evaluator and the results provided to the Board.
42. Low impact design shall be incorporated in the design of the proposed improvements.
43. Stormwater within the interior open space between buildings shall be disconnected from the storm drain system and recharged within the open space area. Porous walkway pavement shall be used for walkways within the interior open space area. Rain gardens located within the interior open space area shall be used for infiltration of as much roof-water as practicable.
44. At the water quality basin at southwest corner of the locus, the logs of Borings 300 and 301 show that there is a fill layer starting at elevation 160 of varying thickness of 3 to 4.3 feet . The bottom of the proposed water quality basin is at elevation 163 ft. The Applicant shall review this issue and determine if any special construction measures are required to provide long term stabilization and functioning of the basin.
45. At Infiltration/Detention System C-4 near proposed Building B, the logs of Borings 304, 305, and 306 show a layer of fill varying in thickness from 4 to 5 feet. The fill will be below the bottom of the system. The design engineer should review this issue and determine if any special construction measures are required to provide long term stabilization and functioning of the system. The Applicant shall remove fill within 5 feet horizontally and below the bottom of the system extending from the top of the fill downward to native soil and replacement with Title 5 sand.
46. At Infiltration/Detention System D-3 near proposed Building C, the logs of Borings 307, 308, and 309 show a shallow layer of fill varying in thickness from

1 to 1.5 feet. The fill will be below the bottom of the system. The design engineer should review this issue and determine if any special construction measures are required to provide long term stabilization and functioning of the system. The Applicant shall remove fill within 5 feet horizontally and below the bottom of the system extending from the top of the fill downward to native soil and replacement with Title 5 sand.

47. At Infiltration/Detention System E-3 near proposed Building C, the log of Borings 310 shows a 4.5 ft. thick layer of fill below the bottom of the system. The design engineer should review this issue and determine if any special construction measures are required to provide long term stabilization and functioning of the system. We recommend removing fill within 5 feet horizontally and below the bottom of the system extending from the top of the fill downward to native soil and replacement with Title 5 sand.
48. The Operation and Maintenance Plan should be augmented to include provisions for operation and maintenance of the Weiss Farm Stormwater Pump Station.
49. Subject to requirements of the Order of Conditions, the Operation and Maintenance Plan should provide for maintenance of the COE Channel in terms of removal of debris and obstructions that limit flow.

Additional Analysis and Conditions Relating to Compliance with the Wetlands Protection Act and Stoneham Wetlands Bylaw

Introduction

The Board concurs with the findings made by the Stoneham Conservation Commission with regard to the historic and existing wetland and stormwater management issues within the locus and their relevance to the proposed Project and incorporates the Conservation Commission's findings made during the Applicant's application for a Notice of Intent for the Project submitted to the Conservation Commission. In addition, as the Board acts on behalf of the Conservation Commission with regard to the Stoneham Wetlands Protection Bylaw (see, G.L. c.40B, s.20), the Board has made the following findings of fact and has conditioned this Decision accordingly and as follows:

- A. The site contains wetland resource areas, specifically Bordering Vegetated Wetlands (BVW), Land Under Water Bodies and Waterways (LUW), Bordering Land Subject to Flooding (BLSF), and Bank.
- B. The practices and activities conducted on the Weiss Farm property have resulted in changes to hydrology, alteration of wetland resource areas, and have been the subject of enforcement actions taken by the Massachusetts Department of Environmental Protection. More specifically, an Administrative Consent Order with Penalty and Notice of Noncompliance was issued in 2006 (File No.: ACOP-NE-06-6W018) ("the 2006 ACOP") and an Administrative Consent Order and Notice of Noncompliance was issued in 2010, which remains in effect (File No.: ACO-NE-10-6W002) ("the 2010 ACO").

Paragraph 5. J. of the 2010 ACO states “However, this Consent Order shall serve to supplant and replace in its entirety the 2006 ACOP except that Exhibit A of the 2006 ACOP shall remain in full force and effect and shall be incorporated as part of this ACO.” In addition, on July 9, 2015, the Stoneham Conservation Commission issued an Enforcement Order against the Weiss Farm property pursuant to G.L. c.131, s.40 and the Stoneham Wetland Bylaw alleging violations of the both the Act and the Bylaw. This Order is the subject of pending litigation in the Middlesex Superior Court (1581CV5342).

- C. Several former and ongoing activities have impacted state and local wetland resource areas. By failing to comply with the provisions of the 2006 ACOP and 2010 ACO; by failing to comply with the requirements of the Stoneham Wetlands Protection Bylaw; and by failing to restore the illegally altered wetlands to their original conditions, Weiss Farm continues to violate the Massachusetts Wetlands Protection Act and its wetlands regulations and Stoneham Wetlands Protection Bylaw.
- D. The Massachusetts Wetlands Protection Act, G.L. Chapter 131, Section 40, states, in relevant part,

“No person shall remove, fill, dredge or alter any bank, riverfront area, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, sewer, water, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed.”

The Wetlands Protection Act defines several purposes, which are to determine if proposed activities are “...significant to public or private water supply, to the groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or to the protection of fisheries ...” These are referred to as the interests of the Act and are also included in the Wetlands Protection Act regulations at 310 CMR10.01 (2).

And further:

“In addition to the other duties provided for in this section, a conservation commission and its agents, officers, and employees; the commissioner, his agents and employees; environmental officers, and any officer with police powers may issue enforcement orders directing compliance with this section and may undertake any other enforcement action authorized by law. Any person who violates the provisions of this section may be ordered

to restore property to its original condition and take other actions deemed necessary to remedy such violations.

No person shall remove, fill, dredge or alter any area subject to protection under this section without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this section. Each day such violation continues shall constitute a separate offense except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the conservation commission and the department shall not be subject to additional penalties unless said person thereafter fails to comply with an enforcement order or order of conditions.”

E. The Town of Stoneham Wetlands Protection Bylaw states, in relevant part, in Chapter 11

“A continuous strip no less than twenty-five (25) feet in width, untouched and in its natural state, shall be left undisturbed adjacent to those areas meeting the description of a “wetland” as identified in the Wetlands Protection Act, G.L. Ch 131. §40, and regulations hereunder (310 CMR 10.00). No person shall remove, fill, dredge, alter or build upon or within this strip.” (Unnumbered section)

The purpose of the Wetlands Protection Bylaw includes the following “resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community.” These are collectively referred to as the resource area values protected by the Bylaw.

“Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands abutting any of the aforesaid resource areas as set out in Section 11.8. (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.” (Section 11.2)

And further, in Section 11.12:

“No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place

unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued hereunder by violation notices, non-criminal citations under G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.”

- F. The Regulations implementing the Wetlands Protection Act are located at 310 CMR 10.00 and with the regulations each wetland is defined as a resource area (e.g. Bordering Land Subject to Flooding, Bordering Vegetated Wetland). Each resource area is defined and has certain established presumptions of significance. Activities proposed within the resource areas must meet certain performance standards. The regulations specific to Bordering Vegetated Wetland are established at 310 CMR 10.55; the regulations specific to Bordering Land Subject to Flooding are established at 310 CMR 10.57; the regulations specific to Bank and Land Under Water are established at 310 CMR 10.54 and 10.56, respectively. Each is incorporated herein by reference.
- G. Weiss Farm’s unpermitted activities, as documented below, have altered, impaired and have had an adverse effect on Bordering Vegetated Wetland, Land Under Water, and Bordering Land Subject to Flooding (“Resource Areas”), and in doing so, have adversely impaired and effected the interests of the Massachusetts Wetlands Protection Act and the resource area values of the Stoneham Wetlands Protection Bylaw. By failing to restore the wetlands to their original conditions, the alteration and impairment continue to have an adverse effect on each of the Resource Areas.

In addition, those activities mandated by the 2010 Administrative Consent Order and Notice of Noncompliance (File No.: ACO-NE-10-6W002) required approval under the Stoneham Wetlands Protection Bylaw. Specifically, Section 10 states “Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state and local laws, regulations and approvals.”

- H. Work Within the Wetlands Protection Act Buffer Zone and Local Bylaw 25 foot No-Disturb Zone has been conducted without a permit and there has been a failure to restore the illegally altered land to its original condition leading to the following violations:

- 1) Two stockpiles are located within 25 feet of Wetland Flags 28 and 31.3 as shown on the Existing Conditions Plan prepared by H. W. Moore for "The Commons at Weiss Farm", and title Topographic Plan Weiss Farm, 170 Franklin Street, Stoneham, MA Scale 1" = 60', dated May 20, 2013, prepared by Feldman Professional Land Surveyors, signed and stamped by Karl A. McCarthy, PLS on June 25, 2014 ("the Feldman Plan").

The wetlands shown on the Feldman Plan extend up to the base of the stockpiles and are in an area shown on the U. S. D. A. Soil Survey Map for this site as Freetown Muck, which is defined by the National Cooperative Soil Survey, in part, as "very deep, very poorly drained organic soils formed in more than 130 centimeters of highly decomposed organic material." Given that the limit of the stockpiles is also the limit of the flagged wetlands shown on the Feldman Plan, it is probably that the stockpiles are evidence of fill within the Freetown Muck.

Placement of fill over areas of Bordering Vegetated Wetlands and Bordering Land Subject to Flooding results in adverse impact to the ability of these Resource Areas to contribute to the Interests of the Massachusetts Wetlands Protection Act and of the resource area interests of the Stoneham Wetlands Protection Bylaw. The Wetlands Protection Act regulations establish the significance and functions of Bordering Vegetated Wetland at 310 CMR 10.55, which are incorporated herein by reference and include roles such as removal or detention of sediments, nutrients, providing an exchange of groundwater and surface water, acting to slow down and reduce the passage of flood waters during periods of peak flow. Additionally, during dry periods, the water retained in Bordering Vegetated Wetlands contributes to the maintenance of base flow levels in streams and rivers. Bordering Vegetated Wetlands play a role in wildlife habitat as well.

The Wetlands Protection Act regulations establish the significance and functions of Bordering Land Subject to Flooding at 310 CMR 10.57, which are incorporated herein by reference and include such values as provision of temporary storage for flood water which may overtop a stream, and by both retaining and detaining flood waters. Certain portions of Bordering Land Subject to Flooding play a role in wildlife habitat.

Placement of fill within and on top of Bordering Vegetated Wetland and Land Subject to Flooding results in the loss of the areas to perform the documented roles performed by both of these areas.

50. The stockpiles shall be removed and once removed, soils in the location where the stockpiles were placed shall be evaluated to determine whether the wetland extended interior from that shown on the Feldman plan and whether the stockpiles

resulted in filling of Bordering Vegetated Wetland and Bordering Land Subject to Flooding. At least four (4) soil pits, distributed evenly across the area where the stockpiles were located, shall be conducted to a depth of 5 feet below existing grade and the soil profile shall be documented by a professional wetland/soil scientist. Photographs shall be taken.

- I. Work with the Wetlands Protection Act and Local Bylaw Bordering Vegetated Wetland and Land Under Waterway has been conducted without a permit and there has been a failure to restore the illegally altered land to its original condition resulting in the following violations:
 - 1) Concrete debris was placed within Bordering Vegetated Wetland, Land Under Waterway, and Bordering Land Subject to Flooding. Although under the MassDEP 2010 ACO the DEP does not require removal of the concrete debris, under the local bylaw, the placement of the concrete debris is in violation of the bylaw Section 11.12 which states in part: “No person shall...leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition...” and of the 2010 ACO which requires compliance with local law and regulation.
 - 2) The concrete debris is resulting in displacement and compaction of hydric soils, and is altering the vegetative community and has been doing so for the past two (2) years, thereby resulting in the inability of the resource area to function to support wildlife habitat (Section 11.10, which states in part “Except as otherwise provided in this bylaw or in regulations of the Conservation Commission, the definitions of terms and procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR10.00), which states under 310 CMR 10.56 (1): “The plant community composition and structure, hydrologic regime, topography, soil composition and water quality of land under water bodies and waterways provide important food, shelter, migratory and overwintering areas, and breeding areas for wildlife. Certain submerged, rooted vegetation is eaten by waterfowl and some mammals. Some amphibians...attach their eggs to such vegetation. Some aquatic vegetation protruding out of the water is also used for nesting, and many specie use dead vegetation resting on land under water but protruding above the surface for feeing and basking. Soil composition is also important for hibernation and for animals which begin to burrow their tunnels under water...” Additionally, 310 CMR 10.55 (1) (incorporated herein by reference) states that the Hydrologic regime, plant community composition and structure, soil composition and structure, topography, and water chemistry of Bordering Vegetated Wetlands provide important food, shelter, migratory and overwintering areas, and breeding areas of many birds, mammals, amphibians and reptiles.
 - 3) The concrete debris is resulting in displacement and compaction of hydric soils, and altered the vegetative community, thereby resulting in the inability of the resource area to function to prevent pollution (Section 11.10, which states in part “Except as otherwise provided in this bylaw or in regulations of the Conservation

Commission, the definitions of terms and procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR10.00), which states under 310 CMR 10.56 (1): “The plants and soils of Bordering Vegetated Wetlands remove or detain sediments, nutrients ... and toxic substances...that occur in run-off and flood waters...Some nutrients and toxic substances are detained for years in plant root system or in the soils...).

51. Concrete debris shall be hand removed or removed with small equipment to minimize disturbance to vegetation. All work shall be conducted during low-flow periods. The applicant shall prepare a work plan documenting the extent of concrete debris and presenting the mitigation methods proposed. To the extent that vegetation is growing on fill resulting from placement of the concrete debris, such vegetation shall be documented and may need to be removed in order to restore the bordering vegetated wetland and bordering land subject to flooding to original conditions.

J. Work within Wetlands Protection Act and Local Bylaw Bordering Vegetated Wetland has been conducted without a permit and there has been a failure to restore the illegally altered land to its original condition resulting in the following violations:

- 1) Excavation of ditch in Bordering Vegetated Wetland [and BLSF]. Weiss Farm excavated a ditch adjacent to flags WF A1 through A11, as shown on as shown on the Existing Conditions Plan prepared by H. W. Moore for "The Commons at Weiss Farm", and title Topographic Plan Weiss Farm, 170 Franklin Street, Stoneham, MA Scale 1" = 60', dated May 20, 2013, prepared by Feldman Professional Land Surveyors, signed and stamped by Karl A. McCarthy, PLS on June 25, 2014.
- 2) It is not clear that the ditch was dredged in response to the 2006 and 2010 ACOs. The ditch resulted in removal of hydric organic soils and is currently and has for the last two (2) years resulted in changes in hydrology, inability of the soils to function to address the interests of the Wetlands Protection Act and the Stoneham Wetlands Protection Bylaw, and has overall changed the condition of the wet meadow, thereby altering wetland resource areas without a permit and causing a change in area to function to contribute to the interest of the Wetlands Protection Act and the Stoneham Wetlands Protection Bylaw.

52. The 2010 ACO required the preparation of a “Drainage Study” (Paragraph G.) A Drainage Study was prepared by R. J. O’Connell dated November 2, 2009 (“the O’Connell Report”). Mr. Martin H. Wantman, an abutter, requested Benchmark Survey to review the R. J. O’Connell Report. Benchmark’s report was prepared on March 8, 2010 (“the Benchmark Drainage Study”). The two studies differ in their assessment of the watershed divide on the property. Because the changes in the hydrology associated with the dredging of a new ditch in Bordering Vegetated Wetland and Bordering Land Subject to Flooding, it is required that a current

drainage study be prepared that determines where, on the property, the drainage divide is located.

K. Construction and Maintenance of Pump Station Access Road and Weir has been conducted without a local wetlands bylaw permit and there has been a failure to maintain the roadway as specified in the ACOP resulting in the following violations:

- 1) Construction of the access road to the pump station was conducted in response to the 2006 Administrative Consent Order with Penalty and Notice of Noncompliance (File No.: ACOP-NE-06-6W018).
 - 2) The 2010 ACO states “this Order does not negate the need for obtaining all other permits...No permit from the Stoneham Conservation Commission was obtained.
 - 3) The 2010 ACO specifies that the August 11, 2009 “Sedimentation Control Plan” be adhered to in order to “better manage the accumulation and treatment of stormwater runoff prior to pumping into adjacent resource areas”. The access road has not been maintained, and the Commission is unaware of the installation of a “check dam in the North/South drainage ditch that runs along the East side of the Weiss Farm property to address the accumulated stormwater to maintain a condition that does not allow flooding of the pump access road or further degrade wetland resource areas.” Paragraph E of the 2010 ACO. There is a backwater control dam (also referred to as “the weir”) in the North/South drainage ditch but it is in a state of disrepair. (See also Item 12 below.)
 - 4) Construction of the pump access road resulted in the displacement of wetland and flood storage capacity. No permit was obtained from the Stoneham Conservation Commission to conduct the work. In addition, no mitigation was provided.
53. The access roadway shall be brought to grade such that it meets the conditions specified in the ACOP. In addition, the impact to floodplain altered by the construction of the access road shall be calculated and mitigation shall be provided as specified in the regulations implementing the Wetlands Protection Act (310 CMR 10.57) and the Stoneham Wetlands Protection Bylaw (Town Code Section 11). Specifically, mitigation shall be provided on an increment by increment basis for displaced floodplain.
54. The Backwater Control Dam shall be maintained to meet the conditions specified in the ACOP. In addition, the impact to floodplain altered by the construction of the backwater control dam shall be calculated and mitigation shall be provided as specified in the regulations implementing the Wetlands Protection Act (310 CMR 10.57) and the Stoneham Wetlands Protection Bylaw. Specifically, mitigation shall be provided, if necessary, on an increment by increment basis for displaced floodplain.
55. The 2015 Enforcement Order issued by the Stoneham Conservation Commission relating to alleged violations of the Wetlands Protection Act and Stoneham

Wetland Bylaw shall have been satisfied in full as documented by the Conservation Commission.

Additional Analysis and Conditions Relating to Vehicular and Pedestrian Traffic and Safety

Introduction

See discussion in “Density; Dwelling Units”, above, regarding the Applicant’s proposal to construct a 75-foot long left-turn lane on the Franklin Street south-eastbound approach to the Project site driveway that would maintain one (1) through travel lane in each direction, but otherwise permanently remove the Town’s ability to maintain safe and convenient bicycle travel and resulting in the less than required width for shared vehicle and bicycle travel.

56. The Applicant shall ensure that signs, landscaping and other features located within the sight triangle areas of the Project site driveway intersection with Franklin Street shall be designed, installed and maintained so as not to exceed 2.5 feet in height. The Applicant shall promptly remove snow windrows located within the sight triangle areas that exceed 2.5 feet in height or that would otherwise inhibit sight lines.
57. The Applicant shall design and implement an optimal traffic signal timing and phasing plan at the following intersections, which shall include an assessment of the yellow and “all-red” clearance intervals at each intersection and a review of pedestrian crossing times and bicycle accommodations:
 - Franklin Street/Main Street/Central Street
 - Franklin Street/Summer Street
 - Franklin Street/Franklin Place
 - Main Street/Marble Street/Summer Street
 - Franklin Street/Pine Street

The above noted improvements shall be completed prior to 60 percent occupancy of the Project and the traffic signal timings shall be re-evaluated and adjusted as may be necessary after 80 percent occupancy of the Project.

58. As offered by the Applicant, the Applicant shall contribute \$8,250 to the Town for the purpose of designing and/or constructing improvements at the Pleasant Street/Spring Street intersection.
59. The Applicant shall design and construct a pedestrian crossing of Franklin Street at an appropriate location proximate to the Project site that shall include the installation of a High-Intensity Activated Crosswalk (a.k.a. “HAWK”) pedestrian beacon to facilitate the safe conveyance of pedestrians across Franklin Street. In addition, the Applicant shall enter into an agreement with the Town to fully reimburse the Town for all energy charges associated with the HAWK beacon for the life of the beacon’s operation.

Additional Analysis and Conditions Relating to Building Height and Massing

Introduction

The scale, mass, and height of the proposed buildings are not compatible with the adjacent residential neighborhoods. For the portion of the site near Franklin Street, townhouses are used to create a transition presenting residential scale when viewed from Franklin Street. However, the residences at the end of Beacon Street that are elevated up to 40± ft. above the typical finished grades of the Project and the houses on Ellen Road are elevated up to 60± ft. above the typical finished grades of the Project Site and will be significantly impacted by Building B and the easterly wing of Building C which are five stories in height along the easterly edge of the Development Footprint given that the intervening land between the residences and these buildings generally slopes continuously downward.

This change in grade substantially negates the buffering effect that would otherwise arise from the intervening treed buffer. Greater building height can be considered for Building A and the westerly wing of Building C which are located along the westerly edge of the Development Footprint because they are more remote from neighboring residences.

To mitigate the impacts discussed above, revised plans shall be submitted that:

60. Restricts buildings over three stories in height to the westerly edge of Development Footprint.
61. Limits the height of the currently labeled “Building B” and the westerly wing of “Building C” should be limited to 2 to 3 stories in height.
62. Reconfigures “Building B” and the westerly wing of “Building C” to reduce their mass which could be achieved by breaking the building into smaller distinct forms.
63. Reconfigures “Building B” and the westerly wing of “Building C” to reduce their mass which could be achieved by breaking the building into smaller distinct forms.

Additional Analysis and Conditions Relating to Site Planning and Civil Engineering

64. The landscaped courtyard connecting Building A, Building B, and the clubhouse and the courtyard for Building C are key elements of the site design and is a significant site amenity. The function of this space is adversely impacted by the parking bay which bisects this space. The Applicant shall submit revised plans that remove the east-west oriented parking field.
65. Separate and distinct playgrounds or other facilities should be provided to accommodate preschool and school age resident and visitor children.

66. The crushed stone path through the pedestrian bridge as shown on the Landscape Plan shall be surfaced in order to provide required handicapped access.
67. The Applicant shall provide written documentation that the Stoneham Fire Chief or his designee has approved the plans with respect to access to each of the buildings for fire fighting purposes as well as compliance with the site layout for fire truck ingress and egress.
68. Written concurrence of the Stoneham Fire Department shall be provided with respect to hydrant locations and fire lane designations. Fire lanes should be shown on the plans including pavement markings and signage.
69. Written documentation shall be submitted from the Fire Department attesting to the ability of Stoneham's current fire apparatus to reach the tallest floor of the proposed buildings.
70. Written determination shall be obtained from the Stoneham Police Department stating the Department's satisfaction with access and safety issues during construction and during operation of the Proposed Project.
71. To account for bumper overhang, sidewalks at the head of perpendicular parking spaces as shown on the plans shall be widened to 8 ft. wide minimum to maintain an accessible route.
72. Snow storage areas shall not be permitted in wetland buffers zones within the locus.
73. Retaining walls are shown but are not designed. The plans should note requirements for a building permit for certain retaining walls and shall state that final plans, sections, and elevations for all walls will be submitted to the Building Inspector prior to construction. All wall designs shall be based on site specific geotechnical investigations and their design cannot be conditioned on determination of soil conditions by others following completion of the design drawings. If unit masonry walls are used, the design shall address horizontal impact loads for guardrail posts.
74. The walkway and parking area grades shall adhere to all current Architectural Access Board regulations and in particular grades should be provided at accessible parking spaces limiting slopes to 2 percent.
75. A second site entrance off of Franklin Street shall be provided, either for regular or emergency access.
76. A parking ratio of 1.66 parking spaces per unit is provided whereas the Board has been informed that a parking ratio of 1.8+ parking spaces per unit is desirable. Of greater significance the Stoneham Zoning Bylaw requires 2.1 parking spaces per dwelling unit (§6.3.3 1). Additionally, for "Land Use 221 for suburban Low/Mid Rise Apartment," ITE shows an average peak period parking demand of 1.23

spaces per dwelling unit and an 85th percentile peak period parking demand of 1.94 vehicles per dwelling unit (Institute of Transportation Engineers (ITE), Parking Generation, 4th Edition). The ITE data also includes a range of unit types from three unit townhouses to large apartment blocks and may not accurately represent this development. Accordingly, the Board is concerned that parking demand may exceed the available supply. The applicant shall provide an outline of a Parking Plan that can be implemented if demand exceeds supply.

77. The proposed site grading will require substantial cuts and grading and shall be adjusted to the extent practicable to achieve a balanced site. The net volume of cut/fill to be imported or exported shall be estimated and provided to the Board.
78. The wooded hill in the north portion of the Development Footprint rises 30 feet above the surface of the adjacent site. Subsurface explorations in this area shows the presence of bedrock at shallow depth. For two test pits, bedrock was encountered at depths of 6.5 feet and 1 to 2.5 feet. A significant quantity of bedrock must be removed in order to construct proposed improvements in this location. The volume of rock to be removed and the duration of blasting required to achieve removal of rock shall be estimated and provided to the Board.
79. A surety in the amount to be determined by the Board following the Applicant's submission of a blasting and earth removal plan shall be required for use in repairing structural damage to abutting properties arising from blasting activities.
80. On-site rock crushing shall be permitted only if the Applicant can demonstrate that no other financially feasible option is available.
81. The submitted planting plan (Preliminary Landscape Plan) does not show species of trees and shrubs but designates the plantings in broad categories such as shade tree, ornamental tree, evergreen tree, large shrub, etc. The Plan also limits all plant materials to plants native to Massachusetts and precludes plants on the Massachusetts "Prohibited Plant List." A detailed Landscape Plan, suitable for construction and prepared by a Massachusetts Registered Landscape Architect (Final Landscape Plan) shall be submitted to the Board for the Board's review and approval.
82. A Turf Management Plan shall be provided that adequately protects the adjacent wetland areas from nitrate and phosphate loadings.
83. Final plans shall detail anticipated impacts to abutters and parties in interest from construction noise, vibration, and required blasting.
84. Due to the extent of wetlands lying along three sides of the Development Footprint, sodium chloride shall not be used for ice and snow control.
85. The Board is not in possession of sufficient details regarding the sanitary sewer pump station and force-main located north of Townhouses 10-12 and 13-15. The

sanitary sewer pump station shall have a wet well separate from the pumps, dual-alternating grinder pumps, emergency power, and odor control filters.

86. A detail shall be provided for encasement at water-sewer crossings.
87. A photometric plan shall be submitted to the Board that demonstrates compliance with the 1 foot-candle requirements for all parking facilities and no light trespass across the property line.

Conditions Precedent to Making Application For Building Permit(s)

1. All conditions precedent to commencement of Project have been fulfilled as per this Decision and to the satisfaction of the Board;
2. The Applicant shall provide proof that the Final Plans, as approved by the Board, have been recorded at the Middlesex County Registry of Deeds and three (3) copies of the Final Plan, exactly as it recorded, shall be provided to the Board.
3. Not later than the date on which the first request for a building permit is filed, and before any building permit is issued, the Applicant shall file with the Board and all other relevant public agencies for review and for consistency with this Decision:
 - A. A copy of the request for a building permit. The building permit application must include a complete set of engineering drawings, plans and specifications (hereinafter "Complete Plans") for use by contractors, inspectors, permit compliance officers and purchasers of the proposed dwelling units. These drawings, plans and specifications shall be stamped by a Registered Architect or Professional Engineer, as appropriate, licensed in the Commonwealth of Massachusetts, and contain, at a minimum, the following information: an existing conditions plan that shows and labels all easements and wetlands located on abutting property or located on the subject property. The Board shall review the Complete Plans for conformance with this Decision. The Building Department shall not issue a building permit until receipt of the Board's report that the Complete Plans conform to this Decision.
 - B. A copy of site layout plans and profiles, shown at scales considered adequate for review purposes, of all private roads and parking areas. The Board shall review the layouts and profiles for conformance with this Decision. The Building Department shall not issue a building permit until receipt of the Board's report that there is conformance with this Decision. Roadway layouts shall include properly labeled horizontal and vertical curves and stationing. The location of these facilities shall be as identified in the above-noted layout plans.
 - C. A copy of site layout plans, and final and detailed architectural drawings (including plans and elevations) shown at scales considered adequate for review purposes, of all structures containing dwelling units as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required for use as on-site construction drawings

and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed (hereinafter "Structure Plans"). The Board shall review the Structure Plans for conformance with this Decision and so notify the Building Department. The Building Department shall not issue a building permit until receipt of an affirmative report from the Board. Housing plans for dwelling units shall also be submitted to the Building Department in accordance with the State Building Code.

- D. Final and detailed utilities plans and profiles including properly labeled drainage components and all site utilities including electric, gas, water supply lines, wetland delineation, wastewater disposal connections and appurtenances and dwelling unit connections thereto indicating that all utilities servicing this Project shall be underground within the locus of the Project and to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed.
- E. Submit to the Board and all other relevant public agencies for review and final acknowledgement of consistency with this Decision a long-term property management plan for the entire development.
- F. Submit to the Board plans and elevations of all proposed signs, including the entranceway sign, sufficient to determine their compliance with the Stoneham Zoning By-Law, and the design, size and location of any intersection lighting.

Conditions Precedent to Building Construction

- 4. For each phase of the Project, prior to the start of construction of any building, roads to and within that phase of the Project will have at least the first course of pavement, all hydrants in that phase of the Project will be operational, street signs will be in place and dwelling unit numbers will be provided at the building site to avoid conflict with building and lot numbers. Street names and house numbers shall be approved by the Stoneham Fire Department.
- 5. Prior to the commencement of any work at the site, an erosion control barrier (hay bales staked end to end and siltation fence firmly anchored with six (6) inches of soil on the uphill side) shall be installed in a location reasonably acceptable to the Stoneham Conservation Commission or its representative. The erosion control barrier shall be inspected by the Conservation Commission or its representative prior to work commencing on the site and shall be maintained until all disturbed areas have been stabilized to the satisfaction of the Conservation Commission or its representative.
- 6. Limit-of-work construction fencing shall be installed in accordance with the Final Plan locations for the particular building lot.

Conditions Relating to Construction

- 7. All dwelling units shall be built by the Applicant, and its agents or contractors over it will exercise supervision and control and the acts of which for which it will be responsible, in

accordance with this Permit and the Regulatory Agreement. During construction, the name and mobile telephone number of the site manager or clerk of works employed by the Applicant shall be filed with the Building Department, the Board, and the Stoneham Police Department, and such name and mobile telephone number shall be kept current.

8. At least forty-eight (48) hours prior to any initial site work, a pre-construction meeting shall be held with the Applicant, Applicant's contractor, a representative of the Board of Appeals, its consulting engineer, and representatives of the Town departments having an interest in the plan. Said meeting shall be for the purpose of familiarization with the project, the conditions of approval, and the project's construction sequence and timetable.
9. Prior to commencement of construction, the Applicant shall provide to the Board:
 - The name, address, e-mail and business telephone number of the individual(s) responsible for all activities on Site;
 - A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Site have been paid;
 - Proof that all required federal, state and local licenses and permits have been obtained;
10. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:00 AM or on Saturday before 9:00 AM. Construction activities shall cease by 6:00 PM on all days. No construction or activity whatsoever shall take place on Sunday.
11. The Applicant shall submit to the Board, the Building Department and the Fire Chief, for review and final acknowledgement of consistency with this Decision, final and detailed scaled architectural drawings for all structures as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed.
12. Regrading of the site shall not result in any finished slope exceeding 25 percent in fill (4:1) or 33 percent in cut (3:1). Slope stabilization methods in addition to grass shall be utilized to the extent feasible. Design of the development shall preserve existing natural features to the maximum extent possible.
13. The Applicant shall provide soil examination and testing as needed to ascertain the suitability of the parcel for development, prior to Board's approval of Final Plans.
14. Storm water management systems shall meet the design and performance requirements of the Stoneham Subdivision Rules and Regulations unless otherwise waived by this

Decision, and shall meet the requirements of the DEP Storm Water Management Policy and Handbook (Vols. 1 & 2), as revised.

15. Interior Ways - Roadway design plans and construction details (inclusive with the Final Plans) shall be provided for approval by the Board. Except as otherwise provided by this Decision, roadway design and construction standards shall conform to the requirements of the Stoneham Planning Board Subdivision Rules and Regulations. All proposed roadway and utility construction, grading and appurtenant work shall be described in complete detail to readily enable peer review and construction. A note shall be placed on each pertinent sheet of the Plans stating that the Project is the subject of a comprehensive permit under G.L. c. 40B §22-23, that the roads and ways within the Project in some cases may and in other cases may not, conform to the standards and requirements of the Stoneham Subdivision Rules and Regulations. Sidewalks shall be provided as per approved plans and shall conform to the requirements of the Stoneham Planning Board Subdivision Rules and Regulations. The roadway cross section shall include four (4) foot grassed stabilized shoulders on each side. Complete development roadway profiles shall be provided for existing centerline and sideline grades, and proposed centerline grade. The Applicant may submit plans for pedestrian paths on one side of the ways, and any such paths shall be separate from the stabilized shoulders and shall respect existing trees. Street parking shall be prohibited.
16. Utilities -All electric, cable and telephone utilities shall be underground, and shall conform to the private utility companies' requirements.
17. Proposed underground gas, electric, cable, and telephone service, shall be shown in cross-section on the way; utilities plan and construction details shall be provided.
18. Normal water service pressure within the Project shall be a minimum thirty-five (35) psi under all conditions except fireflow. Available service pressure under peak water demand and fire flow conditions, including any additional development currently anticipated in the vicinity shall be demonstrated by use of the Town's hydraulic model.
19. Water system design and construction shall meet the requirements, standards and regulations of the Stoneham Department of Public Works and the Massachusetts Department of Environmental Protection's Guidelines and Policies for Public Water Supplies.
20. All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the locus. No stumps or other debris shall be buried on the locus.
21. A written submission shall be submitted to the Board describing all easements and covenants affecting the use of the subject Stoneham site, referring to such covenants and locating such easements on a site plan. The Applicant also shall submit to the Board any written or recorded instruments granting or agreeing to such easements and covenants.
22. To ensure compliance with the terms and conditions of this Decision and any approval or order by any federal or state agency, the Applicant shall, no less than thirty (30) days prior to the request for Certificate of Occupancies for any of the structures approved in

this Decision, submit to the Board a complete and detailed "As-Built" Plans of the roadway and associated infrastructure, as set forth in the Stoneham Planning Board Subdivision Rules and Regulations and approved by the Board's consulting Engineer together with a certification from a Professional Engineer or Architect registered in the Commonwealth of Massachusetts that the Project "As-Built Plan" complies in all substantive respects with this Decision and any other approval or order by any federal, state or local agency. Progress as-built plans may be submitted for the extent of roadway and associated infrastructure serving those dwellings for which certificates of occupancy are sought. Any damage to public roads and walkways shall be repaired and/or replaced to the satisfaction of the Department of Public Works.

23. Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, street signs and house numbers are in place and all required inspections have been completed by the Fire Department.

Administrative

24. Within fourteen (14) days of receipt of a statement of costs incurred by the Town prior to the date of this Decision in connection with reviewing the application for a Permit, the Applicant shall submit a certified check made payable to the Town of Stoneham in an amount to compensate the Town of Stoneham for such costs.
25. The Applicant shall pay the expenses incurred by the Board and Town in evaluating the plans required by this Decision and in evaluating monitoring construction for this Project. These expenses will be deducted from the special account established by the Town Treasurer for the Applicant. Prior to any clearing, grading or construction, the Applicant must pay to the Town, by certified check, \$30,000 as an advance deposit to cover at least a portion of these expenses. The Applicant will pay any additional costs to the Town as required; and if at any time the amount of the advance deposit is reduced below \$5,000 Applicant, upon request, shall within five (5) business days pay to the town an amount sufficient to increase the amount of the deposit to \$5,000, and if the Applicant fails to pay such amount within such period all work on the project shall cease until such amount has been paid. Any excess remaining at the completion of the Project will be returned to Applicant.
26. Inspections and testing during the construction of ways and installation of utilities and the stormwater management system in accordance with the schedule set forth in the Stoneham Planning Board Subdivision Rules and Regulations shall be conducted at the expense of the Applicant. The Board may appoint an agent to conduct such inspections.
27. The Applicant must post a performance guarantee for each phase of work to be undertaken, satisfactory to and reviewed by the Board to be noted on the Plan to ensure that any construction related damage to adjacent roads is repaired by the Applicant in a manner satisfactory to the Board. This performance guarantee is to be received by the Board prior to the commencement of any of the improvements approved in the Plan and

will be required until the Board decides that the Applicant has completed all of the improvements approved in the Plan. The form of the performance guarantee, adequacy and or amount may be varied from time to time by the Applicant subject to an agreement satisfactory to the Board and reviewed by the Board's counsel.

28. The following aspects of the Project shall remain private and that the Town of Stoneham shall not have any legal or financial responsibility for operation or maintenance of:
 - A. Roadways, driveways or parking areas
 - B. Stormwater management system and appurtenances
 - C. Snow plowing or removal
 - D. Landscaping
 - E. Trash disposal or pickup
 - F. Street lighting or other illumination
 - G. Maintenance requirements of easements, access and appurtenances associated with any of the above.
29. The water system shall be constructed by the Applicant, and granted to the Town of Stoneham upon the Town's acceptance of the installed watermain and appurtenances and all required testing results. Such acceptance shall not serve to constitute acceptance of the infrastructure contained in the preceding paragraph.
30. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the Project.
31. Time limit to build: The Applicant shall complete construction within three (3) years from the date this Permit becomes final, unless such time shall be extended in writing by the Board.
32. The Applicant has provided to the Town of Stoneham, in form and substance approved by counsel for the Town of Stoneham, Applicant's agreement that the Town of Stoneham shall be free of any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with relation to this Project, and that Applicant on behalf of itself and its successors and assigns has consented and agreed to indemnify the Town, its employees, agents and officials for any harm; damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project.
33. The fees for the engineering reviews and the Town's construction oversight shall be the obligation of the Applicant. Prior to the commencement of work by a particular consultant, the Applicant shall pay the estimated fees for the required work. No site disturbance or clearing shall commence until all past and estimated future fees are paid,

including all fees owed the Board and Town of Stoneham for peer review services completed pursuant to G.L. c.44, s.53G. See also discussion in Background section above.

34. The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the Site and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.
35. Construction, once commenced, shall progress through to completion as continuously and expeditiously as possible and in accordance with the construction sequence and timetable approved.
36. Construction equipment shall not be parked or stored within one hundred feet (100') of any drainage channel, drainage inlet, or wetland area. Maintenance of construction equipment involving transfer of fluids and fuels shall be conducted in areas away from drainage channels and inlets and wetland buffer areas. Contractor's on-site personnel shall immediately notify the Town of any hazardous material spill, regardless of size.
37. All earth stockpiles shall be established in locations greater than fifty (50') feet from the wetlands as approved by the Board or its designee. Earth material stockpiles shall not be allowed immediately adjacent to perimeter siltation barriers or drain inlets. Long term stockpiles over 30 days shall be shaped stabilized and circled by siltation fence and haybales and shall be stabilized by temporary seeding, sheeting or netting.
38. Prior to beginning construction on any phase of the Project, the Applicant will submit to the Board for its approval a plan showing the location of all construction storage and stockpiling areas for that phase, together with details of the planned use of such areas.
39. All areas to be protected from encroachment from construction shall be marked on the ground as shown on the approved construction plans and these barriers shall be maintained by the Applicant throughout the construction phase of the project.
40. Excavation dewatering shall be in a workman like manner and such water shall be free of suspended solids before being discharged into either a wetland or any storm water drainage system. This condition applies to all forms of dewatering including pumping and trenching. No direct discharge to the wetlands is allowed. Such discharge shall be consistent with the Applicant's NPDES Notice of Intent.
41. The infiltration rate for any infiltration system proposed on site shall not exceed that recommended by Schuler et al. and by the Stormwater Management Policy, based upon soil observations and permeability testing. Soil infiltration rate shall be correlated from the percolation rate from the most restrictive soil horizon in each of the stormwater disposal areas. The design of any infiltration system shall comply with DEP Stormwater Management Policy and regulations, as revised.

Prior To the Issuance of a Certificate of Occupancy

42. The Applicant shall provide the Board with proof that an appropriate budget has been established and funded to maintain the systems, dwelling units, ways and improvements in the Project consistent with that required by the subsidizing agency.
43. No building shall be occupied until the improvements specified in this Decision and set forth on the plans of record are constructed and installed so as to adequately serve said building or adequate security has been provided, acceptable to the Board, to ensure such completion. Any such performance guarantee shall be approved as to the amount and form by the Board.

Performance Guarantees

44. Prior to full surety release, satisfactory as-built Plans shall be provided to the Board as required under the Stoneham Planning Board Regulations.
45. All sureties shall contain the following provision:

“The Principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified all the covenants, conditions, agreements, terms and provisions set forth in the Decision of the Stoneham Board of Appeals dated April 27, 2016.
46. No building shall be occupied until the building utilities specified in this Decision and set forth on the plans of record are constructed and installed so as to adequately serve said building or surety provided by the Applicant, in the amount and form approved by the Board.
47. In determining the amount of any surety, the Board shall be guided by the following formula in setting the sum of the security:
 - A. An estimate of the cost to complete the work that is satisfactory to the Board; plus
 - B. A ten percent margin of error; plus an appropriate rate of inflation over a five-year period.
48. This Decision shall not substitute for compliance with the Subdivision Control Law, G.L.c. 41, s. 81-L, et seq. regarding the division of land into two or more lots.

VII. DECISION ON WAIVERS

The Applicant has requested certain waivers from various rules, regulations and bylaws lawfully adopted by the Town’s regulatory agencies, including its Legislature (see “Waiver List”, undated and received by the Board on March 18, 2016, incorporated herein). The Board has endeavored to grant waivers from those rules, regulations, and bylaws only to the extent necessary to keep the project from becoming uneconomic and so as, wherever possible, to minimize harm and disruption to the locus and real property abutting the locus.

The Board's decision as to the waivers requested is found in Appendix "B", attached hereto and incorporated herein.

VIII. CONCLUSION

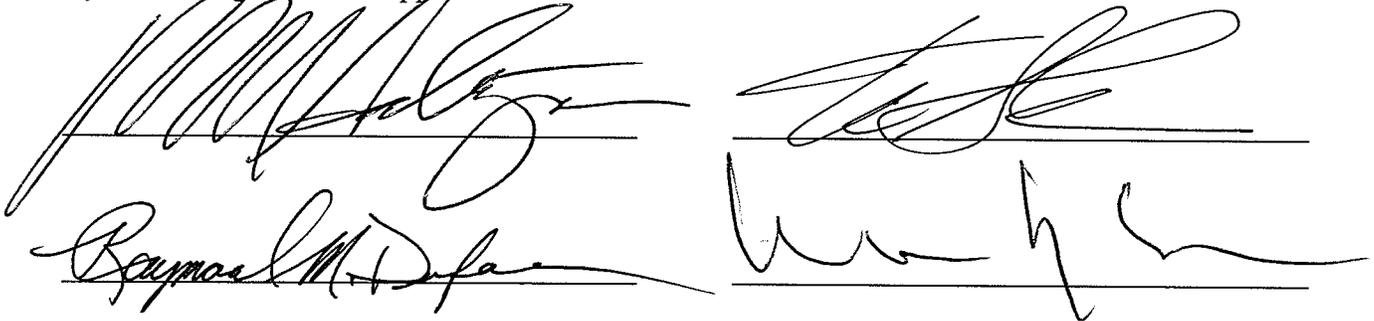
This Permit is granted with conditions. This Decision was approved by the Stoneham Board of Appeals at a meeting of the Board on April 27, 2016. This Decision must be recorded at the Middlesex County Registry of Deeds.

Any person aggrieved by this Decision may file an appeal pursuant to the provisions of General Laws, c. 40A, Section 17. Such appeal must be filed within twenty (20) days of the filing of this decision in the Office of the Town Clerk.

The Applicant has the right to appeal this Decision pursuant to the provisions of General Laws c. 40B, Section 22. Copies of this Decision and notice thereof must be recorded by the Applicant at the Middlesex County Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must thereafter be filed with the Board of Appeals.

**THIS CONCLUDES THE DECISION OF THE BOARD OF THE APPEALS.
SIGNATURES OF THE BOARD MEMBERS ARE FOUND IMMEDIATELY BELOW.**

By the Zoning Board of Appeals of the Town of Stoneham

Four handwritten signatures are shown, each written over a horizontal line. The signatures are in black ink and appear to be cursive. The first two signatures are on the left, and the last two are on the right.

DATED: April 27, 2016

--End of Decision--

APPENDIX A: BOA Weiss Document Submission

| Date | Document Name | Author | Company Name |
|-------------|---|----------------------------|-------------------------------|
| 7/10/2014 | Affadavit of Notice to Abutters | Steven Cicatelli | Cicatelli & Cicatelli |
| 04/24/14 | Letter to Mass Housing | William Solomon | Stoneham Town Counsel |
| 6/27/2014 | Comprehensive Permit Amended | Jon Witten & BoA | Board of Appeals members |
| 6/30/2014 | Application for a Comprehensive Permit | Weiss Farm Apartments, LLC | John Corcoran Co |
| 06/30/14 | Citizen comment letters | various | |
| 07/11/14 | Ethics Disclosures | Sullivan, Shulman, Juliano | Board of Appeals members |
| 07/24/14 | Department and Board comment letters | various | |
| 07/24/14 | Completeness review | John Witten | Huggins and Witten, LLC |
| 07/24/14 | Consistent with local needs To Mr Cicatelli | John Witten | Huggins and Witten, LLC |
| 7/24/2014 | Letter to BoA re Consistene wtl local needs | Jon Witten | Huggins and Witten, LLC |
| 7/24/2014 | Letter to BoA re Completeness review | Jon Witten | Huggins and Witten, LLC |
| 08/07/14 | Letter to DHCD | Richard Gallogly | Rackemann Sawyer & Brewster |
| 08/08/14 | Rackemann letter to Mr Witten re: consultants | Richard Gallogly | Rackemann Sawyer & Brewster |
| 09/02/14 | DHCD letter to Mr. Witten grounds for denial | Leverett Wing | DHCD |
| 09/11/14 | The Commons at Weiss Farm | Richard J. Gallogly | Rackemann Sawyer & Brewster |
| 09/11/14 | Rackemann letter to Mr Witten re: fee schedule | Richard Gallogly | Rackemann Sawyer & Brewster |
| 09/11/14 | Rackemann letter to Mr Witten re: incomplete ap | Richard Gallogly | Rackemann Sawyer & Brewster |
| 09/14/14 | The Commons at Weiss Farm | Jonathan D. Witten | Huggins and Witten, LLC |
| 09/14/14 | Witten letter to Mr Gallogly responses to 8/8 & 9/11 | Jon Witten | Huggins and Witten, LLC |
| 9/18/14 | Housing Appeals Committee Department of Housing and Community Development | Jonathan D. Witten | Huggins and Witten, LLC |
| 9/18/14 | In the Matter of Stoneham Board of Appeals and Weiss Farm Apartments, LLC | Jonathan D. Witten | Huggins and Witten, LLC |
| 09/23/14 | Email Updated Trip Distribution Summary | Heather Monticup | GPI |
| 10/07/14 | The Commons at Weiss Farm | Steven L. Cicatelli | Cicatelli & Cicatelli |
| 10/07/14 | Environmental Impact Analysis | Steven L. Cicatelli | Cicatelli & Cicatelli |
| 10/10/14 | Traffic Engineering Peer Review | Jeffrey S. Dirk | Vanasse & Associates, Inc. |
| 10/17/2014 | Public Records Request Fallon Rd & Arbors | Steven Cicatelli | Cicatelli & Cicatelli |
| 12/03/14 | Letter to Mass Housing | Jason Lewis | Mass House of Representatives |

| | | | | |
|-----------|---|--|--|---|
| | Commonwealth of Massachusetts Housing Appeals Committee in the Matter of Stoneham Board of Appeals and Weiss Farm Apartments, LLC | | | |
| 1/2/15 | Motion in Limine | Jonathan D. Witten | | Huggins and Witten, LLC |
| 01/05/15 | | Jon Witten | | Huggins and Witten, LLC |
| 01/10/15 | Hardiman vs DDS to Ellman Pearl | Jon Witten | | Huggins and Witten, LLC |
| 01/21/15 | Third Amendment of Purchase & Sale | Donna Weiss & Richard High | | Weiss Farm & John Corcoran Co |
| | Conservation Commission Decision regarding the Notice of Intent, pursuant to the Stoneham Wetlands Bylaw, for the "Commons at Weiss Farm" | | | |
| 04/08/15 | email from Bob Griffin re HW Moore response | Robert Parsons | | Town of Stoneham |
| 4/8/2015 | Stormwater Pump Station and Wier Dam Improvements | Bob Griffin | | Griffin Engineering |
| 04/28/15 | Weiss Farm Watershed Study | James White | | H.W Moore Associates, Inc. |
| 05/06/15 | In the Matter of Stoneham Board of Appeals and Weiss Farm Apartments, LLC | James White | | |
| 5/8/15 | Stormwater Pump Station & Wier Dam Improvmts | Shelagh A. Ellman-Pearl | | Department of Housing & Community Development |
| 6/8/2015 | Email to Cathy Rooney re Weiss Consent Order | James White | | HW Moore |
| 6/9/2015 | Decision on Interlocutory Appeal Regarding Applicability of Safe Harbor | Ron Stelling | | DEP |
| 6/26/15 | Decision on Interlocutory Appeal Regarding Applicability of Safe Harbor | Shelagh Ellman-Pearl | | Commonwealth of Massachusetts Housing Appeals Committee |
| 6/26/15 | Decision on Interlocutory Appeal Regarding Applicability of Safe Harbor | Werner Lohe, Joseph P. Henefield, Constance Kruger, James G. Stockard Jr., Shelagh A. Ellman-Pearl | | Commonwealth of Massachusetts Housing Appeals Committee |
| 7/1/2015 | Email to Jim White re topography of west wetland | Ingeborg Hegemann | | BSC Group |
| 7/9/2015 | Operation and Maintenance Schedule | James White | | HW Moore |
| 07/31/15 | Request for Superseding Order of Conditions | Richard J. Gallogly | | Rackemann Sawyer & Brewster |
| 8/13/2015 | Letter to BoA Meeting schedules | Steven Cicatelli | | Cicatelli & Cicatelli |
| 08/27/15 | City of Melrose comment letter to Mr Witten | John Tramontozzi | | Melrose Board of Alderman |
| 09/03/15 | Traffic Engineering Peer Review | Jeffrey S. Dirk | | Vanasse & Associates, Inc. |
| 09/14/15 | Email traffic peer review | Heather Monticup | | GPI |
| 09/18/15 | Email traffic peer review | Jeffrey Dirk | | Vanasse & Associates, Inc. |
| 9/20/2015 | Email to BoA re memory wall | Marcia Wengen | | Historical Commission |
| 09/22/15 | Response to Peer Review Comments | Heather L. Monticup | | Greenman-Pedersen, Inc. |
| 09/22/15 | Email traffic peer review | Jeffrey Dirk | | Vanasse & Associates, Inc. |
| 09/23/15 | Email traffic peer review | Jeffrey Dirk | | Vanasse & Associates, Inc. |

| | | | | | |
|------------|--|--|------------------------------|--------------------------|---|
| 09/23/15 | Trip Distribution Journey to Work data | | | | GPI |
| 9/24/2015 | Disc of documents sent to Mr Houston | | Steven Cicatelli | | Cicatelli & Cicatelli |
| 9/26/2015 | email to Jill Provencall DEO Superceding OOC | | Marty Wantman | | Abutter |
| 10/01/15 | Peer Review | | Thomas C. Houston | | Professional Services Corporation, PC |
| 10/15/15 | Traffic Engineering Peer Review | | Jeffrey S. Dirk | | Vanasse & Associates, Inc. |
| 10/20/15 | What is a Hawk Signal | | Jeffrey Dirk | | Vanasse & Associates, Inc. |
| 10/21/15 | Email traffic peer review | | Jeffrey Dirk | | Vanasse & Associates, Inc. |
| | The Commons at Weiss Farm Response to Peer Review Memorandum Prepared by Professional Services Corporation | | | | |
| 10/23/15 | Corporation | | Richard J. Gallogly | | Rackemann Sawyer & Brewster |
| 10/27/15 | Parking spaces @Lynnfield Commons | | Jayme Petijean | | Corcoran Management Co |
| | | | | | |
| 10/30/15 | Environmental Notification Form | | Dennis J. Lowry | Senior Wetland Scientist | AECOM |
| 11/01/15 | Opposition to State's Motion to Dismiss | | Jon Witten | | Huggins and Witten, LLC |
| 11/01/15 | Current ProForma | | Peter Mahoney | | John M Corcoran & Co |
| | | | | | |
| 11/05/15 | Response to Second Round of Peer Review Comments | | Heather Monticup | | Greenman-Pedersen, Inc. |
| 11/09/15 | Traffic Engineering Peer Review | | Jeffrey S. Dirk | | Vanasse & Associates, Inc. |
| 11/09/15 | Second Peer review comments | | Susannah Theriault | | GPI |
| 11/12/2015 | Stormwater Mgmt Standards | | James White | | HW Moore |
| | Alternative Discussion to the Environmental Notification Form (ENF) | | | | |
| 11/16/15 | Notification Form (ENF) | | Dennis J. Lowry | Senior Wetland Scientist | AECOM |
| | | | | | |
| | Town of Stoneham Board of Appeals | | | | |
| 11/25/15 | Re: Commons at Weiss Farm proposed development | | Robert Stankus CPA, CVA, CFE | | CBIZ Tofias (Accounting/Tax/Consulting) |
| 11/28/15 | Status of Responses to Comments | | Thomas Houston | | PSC |
| 12/10/15 | Markup by PSC of plans prepared by HWMoore | | Thomas Houston | | PSC |
| 12/10/2015 | Email re: MEPA Site Visit | | Alexander Strysky | | Comm of Mass EOEAA |
| 12/11/15 | Comprehensive Permit Application | | Richard J. Gallogly | | Rackemann Sawyer & Brewster |
| 12/21/15 | EEA 15444, Environmental Notification Form | | Matthew A. Beaton | | Huggins and Witten, LLC |
| 12/21/2015 | Letter to Mathew Beaton re ENF | | Jon Witten | | Huggins and Witten, LLC |
| 12/31/2015 | Email to Strysky Alexander, EOEAA | | John Eaton | | Citizen |
| 1/22/2016 | letter from EOEAA to Corcoran ENF Certificate | | Mathew Beaton | | Comm of Mass EOEAA |
| 02/01/16 | Email Bicycle Accomodations map | | Heather Monticup | | GPI |
| 3/15/2016 | Letter to EOEAA re: Environmental Impact report | | Jon Witten | | Huggins and Witten, LLC |
| 03/16/16 | Preliminary Assessment of ProForma | | Robert Stankus CPA, CVA, CFE | | CBIZ Tofias (Accounting/Tax/Consulting) |
| 03/22/16 | Status of Revised Plans | | Thomas Houston | | PSC |

| | | | |
|----------|--|------------------------------|---|
| 03/22/16 | Response to Rackemann 2/1/16 letter | Thomas Houston | PSC |
| 03/25/16 | Response to R Stankus' Analysis of ProForma | Robert Engler | SEB |
| 04/04/16 | Supplemental info to Draft & Engler's Response | Robert Stankus CPA, CVA, CFE | CBIZ Tofias (Accounting/Tax/Consulting) |
| 04/04/16 | Revised plans April 4, 2016 | James White | HW Moore |
| 04/05/16 | Response to PSC Peer Review of 3/22/16 | James White | HW Moore |
| 04/06/16 | Updated Snow Storage Plan | James White | HW Moore |
| 04/07/16 | Recommended Conditions of Approval | Thomas Houston | PSC |
| 04/07/16 | Conceptual Improvement Plan | | GPI |
| 04/12/16 | ProFprma backup | Robert Engler | SEB |
| 04/13/16 | 2nd Supplemental Information Response | Robert Stankus CPA, CVA, CFE | CBIZ Tofias (Accounting/Tax/Consulting) |
| 04/16/16 | Offsite Mitigation Commitments | John Diaz | GPI |
| 04/18/16 | Extension agreement to 5/2/16 | Richard Gallogly | email |
| 04/20/16 | List of Waivers | Jon Witten | Huggins and Witten, LLC |
| | Consultant Resumes | various | |

Documents Submitted for The Commons at Weiss Farm

| Date | Document Name | Author |
|--------------------|--|--|
| October 16, 1985 | Drainage Study Ellen Road and Tamarock Terrace | Author Unknown (Submitted by Martin Wantman) |
| March 8, 1999 | Letter: Possible Pollution of Stream on Weiss Farm | Dominic Ottavi, Stoneham Conservation Commission (Submitted by Martin Wantman) |
| July 6, 2007 | Wantman V. Weiss Farm Engineering Report | Benchmark Survey (Submitted by Martin Wantman) |
| August 1, 2007 | Certificate of Compliance | Sylvia L. Lynch, Assistant, Stoneham Conservation Commission |
| March 18, 2009 | Compliance Inspection Summary | Martin Wantman |
| November 2, 2009 | Letter: Weiss Farm Drainage Study Observations | RJ O'Connell and Associates |
| March 24, 2011 | Administrative Consent Order & Notice of Noncompliance | Executive Office of Energy & Environmental Affairs |
| September 29, 2011 | Plan of Land Weiss Farm | Hancock Associates |
| October 10, 2011 | Plan of Land Weiss Farm (Revised) | Hancock Associates |
| November 18, 2011 | Plan of Land Weiss Farm (Revised) | Hancock Associates |
| December 5, 2011 | Plan of Land Weiss Farm (Revised) | Hancock Associates |
| December 29, 2011 | ANRAD Application Weiss Farm | Hancock Associates |
| January 5, 2012 | Plan of Land Weiss Farm (Revised) | Hancock Associates |
| January 11, 2012 | Additional Independent Review-Abbreviated Notice of Resource Area Delineation | REC Rimmer Environmental Consulting, LLC |
| May 6, 2013 | Letter to Steven Cicatelli: Waiver for Test Pitting | Robert Conway |
| May 17, 2013 | Boring Report No. B-1 | McPhail Associates |
| October 18, 2013 | Letter: New England Fund Site Approval Application (Project Eligibility) for The Commons at Weiss Farm | Camille Chesnick, Resident, 2 Sparhawk Circle |
| November 2, 2013 | Letter: The Commons at Weiss Farm Mass Housing Project #SA-13-006 | Gale Spadafora, Resident, 21 Stonewood Ave. |

Documents Submitted for The Commons at Weiss Farm

| Date | Document Name | Author |
|-------------------|--|--|
| November 5, 2013 | Letter: Environmental Protection Agency to Corcoran & CO | Raymond Putnam, Environmental Scientist, EPA |
| November 12, 2013 | Letter: The Commons at Weiss Farm/170 Franklin Street | Mayor Dolan, City of Melrose (Mayor's Office) |
| December 2, 2013 | Letter: Development of the Weiss Farm site | Jason M. Lewis, State Senator |
| February 7, 2014 | Letter: Commons at Weiss Farm (to Conservation Commission) | John Eaton, Resident, 18 Citation Ave. |
| April 27, 2014 | Updated Hydrocad Calculations and Stormwater Summary Due to Minor Modifications to Infiltration/Detention System B (Updated Mounding Calculations) | H.W. Moore Associates, Inc. |
| June 17, 2014 | Commons at Weiss Farm Comprehensive Permit Application Comments | Robert Grover, Director, Department of Public Works |
| June 25, 2014 | Notice of Intent PLAN Submission | H.W. Moore Associates, Inc. |
| August 12, 2014 | Letter: Water pump at Weiss Farm to John Fralick, Stoneham Health Department | Donna Weiss |
| August 12, 2014 | Letter: DEP Site Inspection Notice to Weiss Farm Apartments, LLC | Jill Provencal, Environmental Analyst, Wetlands Program NERO |
| November 3, 2014 | Storm Runoff Analysis & Operation and Maintenance Plan | H.W. Moore Associates, Inc. |
| November 12, 2014 | Notice of Intent PLAN Submission (Revised) | H.W. Moore Associates, Inc. |
| December 1, 2014 | Notice of Public Hearing, NOI | Cicatelli & Cicatelli |
| December 18, 2014 | Notice of Intent | AECOM |
| December 22, 2014 | NOI 11x17 sets pf plans | John M. Corcoran |
| December 22, 2014 | Notice of Intent | John M. Corcoran |
| December 22, 2014 | Storm Runoff Analysis & Operation and Maintenance Plan | John M. Corcoran |
| January 6, 2015 | Certified List of Abutters | Cicatelli & Cicatelli |
| January 6, 2015 | Letter: Department of the Army Corps of Engineers from Martin Wantman 2/3/2006 | Martin Wantman |

Documents Submitted for The Commons at Weiss Farm

| Date | Document Name | Author |
|-------------------|--|---|
| January 6, 2015 | In the Matter of:Weiss Farm ACO No. ACO-NE10-6W002 | Martin Wantman |
| January 6, 2015 | John Astley memo from M. Wantman 1/05/2006 | Martin Wantman |
| January 6, 2015 | Original Certified Mail Receipts | Cicatelli & Cicatelli |
| January 6, 2015 | Original Certified Mail Return Receipts | Cicatelli & Cicatelli |
| January 6, 2015 | Storm Runoff Analysis | Martin Wantman |
| January 6, 2015 | Weiss Farm Memo to Stoneham Conservation 1/12/2005 | Martin Wantman |
| January 21, 2015 | Third Amendment of Purchase and Sale Agreement | John M. Corcoran |
| February 16, 2015 | Letter: Weiss Farm Apt. LLC's Notice of Intent is Prematurely Filed and Should Be Rejected By the Conservation Commission In Accordance With 310 CMR | William Solomon, Esq., Counsel, Town of Stoneham |
| February 20, 2015 | Notice of Intent and Drainage Review | Robert Griffin, P.E. Griffin Engineering Group, LLC |
| March 4, 2015 | Notice of Intent Plan Submission (Revised) | H.W. Moore Associates, Inc. |
| March 6, 2015 | Storm Runoff Analysis & Operation and Maintenance Plan (Revised) | H.W. Moore Associates, Inc. |
| March 10, 2015 | Response to 2/20/15 Griffin Peer Review | H.W. Moore Associates, Inc. |
| April 1, 2015 | Letter: Heidi Zisch, Esq., Chief Regional Counsel, MassDEP - Northeast Region Office, Re: Construction of 310 CMR 10.05 (4)e MassDEP | Huggins and Witten, LLC |
| April 2, 2015 | DEP Notice of Intent Comments-File No. 297-0371 | H.W. Moore Associates, Inc. |
| April 8, 2015 | Conservation Commission Decision regarding the Notice of Intent, pursuant to the Stoneham Wetlands Bylaw, for the "Commons at Weiss Farm" | Robert Parsons, Chair, Stoneham Conservation Commission |
| April 8, 2015 | Notice of Intent and Drainage Review of 3/10/15 by Griffin | Robert Griffin, P.E. Griffin Engineering Group, LLC |
| April 17, 2015 | Proposal to Provide Peer Review Services | BSC Group |

Documents Submitted for The Commons at Weiss Farm

| Date | Document Name | Author |
|----------------|---|---|
| April 28, 2015 | Stormwater Pump Station & Weir Dam Improvements | H.W. Moore Associates, Inc. |
| April 28, 2015 | Stormwater Pump Station at Franklin Street | H.W. Moore Associates, Inc. |
| April 30, 2015 | Notice of Intent Submission (Revised) | H.W. Moore Associates, Inc. |
| May 1, 2015 | Response to Peer Review Report Dated April 8, 2015 | H.W. Moore Associates, Inc. |
| May 5, 2015 | Boring Report No. B312 | McPhail Associates |
| May 7, 2015 | Weiss Farm Watershed Study | H.W. Moore Associates, Inc. |
| May 7, 2015 | Compliance Inspection Summary: Weiss Farm - Stoneham - ACOP-NE-06-6W018 (March 18, 2009) | Martin Wantman |
| June 8, 2015 | Stormwater Pump Station and Weir Dam Improvements (Revised June 8, 2015) | John M. Corcoran |
| June 10, 2015 | Weiss Farm Watershed Study (Revised) | H.W. Moore Associates, Inc. |
| June 10, 2015 | Pump Station and Weir Dam Report (CD) | H.W. Moore Associates, Inc. |
| June 17, 2015 | Engineering Review-Proposed Drainage Modifications | Robert Griffin, P.E. Griffin Engineering Group, LLC |
| June 26, 2015 | Decision on Interlocutory Appeal Regarding Applicability of Safe Harbor | Commonwealth of Massachusetts Housing Appeals Committee |
| July 2, 2015 | Additional Topography of Weiss Farm (West) PDF | H.W. Moore Associates, Inc. |
| July 6, 2015 | Existing Conditions with Abutters | H.W. Moore Associates, Inc. |
| July 7, 2015 | Notice of Intent and Drainage Review | Robert Griffin, P.E. Griffin Engineering Group, LLC |
| July 8, 2015 | Copy of Newspaper Article: Joint Committee Approves Many Projects (Article references Meetinghouse Brook Drain) | Martin Wantman |
| July 9, 2015 | Response to Peer Review Report Dated June 7, 2015 | H.W. Moore Associates, Inc. |
| July 9, 2015 | The Commons at Weiss Farm: Operation and Maintenance Schedule for Constructed Site | John M. Corcoran |

Documents Submitted for The Commons at Weiss Farm

| Date | Document Name | Author |
|---|--|--|
| July 16, 2015 | Certification Pursuant to M.G.L Regarding Participation in a Session of an Adjudicatory Hearing | Robert Parsons, Chair, Stoneham Conservation Commission |
| July 16, 2015 | Certificate Pursuant to MGL c. 39 23D Regarding Participation in a Session of an Adjudicatory Hearing | Town of Stoneham |
| July 22, 2015 | WPA Form 5 - Order of Conditions for Weiss Farm Apartments, LLC (Denial) | Stoneham Conservation Commission |
| July 27, 2015 | Pro Forma | Cicatelli & Cicatelli |
| July 29, 2015 | Request to view or copy files by Steven Cicatelli, Esq. (Requested proposed draft approval/OOC and proposed draft denial/OOC with accompanying notes discussed at July 22, 2015 Conservation Commission Mtg) | Steven Cicatelli, Esq. |
| July 31, 2015 | Request for Superceding Order of Conditions | Rackemann Sawyer & Brewster |
| September 18, 2015 | Superseding Order Request - Infiltration System Capacity DEP File No. 297-0371 | Robert Griffin, P.E. Griffin Engineering Group, LLC |
| September 22, 2015 | Letter: DEP Information Request to Peter Mahoney c/o Weiss Farms Apartments, LLC | Jill Provencal, Envirmental Analyst, Wetlands Program NERO |
| October 13, 2015 | Stormwater Management Standards, Revised September 21, 2015, submitted to Jill Provencal, Mass DEP -NERO | H.W. Moore Associates, Inc. |
| November 12, 2015 | Letter: To Secretary Beaton, EOEEA, (attention MEPA Office): Alternative Discussion The Commons at Weiss Farm | Dennis Lowry, AECOM |
| December 14, 2015 | Letter: Requesting ENF from Secretary Beaton | Robert Dolan, Mayor, City of Melrose |
| December 21, 2015 | Letter: Requesting ENF from Secretary Beaton | Paul Brodeur, State Representative |
| December 21, 2015 | EEA 15444 "The Commons at Weiss Farm" December 21 2015 Response from the Stoneham Board of Selectmen | Huggins and Witten, LLC |
| January 22, 2016 | Certificate of the Secretary of Energy and Environmental Affairs on the ENF | Executive Office of Energy & Environmental Affairs |
| January 28, 2016 | Notice of Intent Submission (Revised) w/ Operations and Maintenance Schedule (Revised) | H.W. Moore Associates, Inc. |
| December, 2015 | Letter: Requesting ENF from Secretary Beaton | Michael Day, State Representative |
| December, 2015 | Letter: Requesting ENF from Secretary Beaton | Jason M. Lewis, State Senator |
| January, 2015 (No specific date provided) | Letter: The Commons at Weiss Farm | John Eaton, Resident, 18 Citation Ave. |
| June 11,2015 | Stormwater Pump Station & Weir Dam Improvements (Revised June 8, 2015) | H.W. Moore Associates, Inc. |
| June 11,2015 | Weiss Farm Watershed Study (Revised June 10, 2015) | H.W. Moore Associates, Inc. |
| No Date | Letter: To Mr. Sweeney, Board of Selectmen | Robert Conway |

Documents Submitted for The Commons at Weiss Farm

| Date | Document Name | Author |
|---------------|---|-----------------|
| No Dates | Photos Submitted by Martty Wantman | Martin Wantman |
| Various Dates | Various Documents(submitted by Marty Wantman) | Various Authors |

Waiver Requests and DECISION OF THE BOARD OF APPEALS AS TO EACH REQUESTED WAIVER: APPENDIX B

Through the Comprehensive Permit, the Stoneham Board of Appeals has the authority under M.G.L. chapter 40B and its implementing regulations to waive requirements of local bylaws; further, the Board of Appeals can act on behalf of any local permitting authority through the Comprehensive Permit process. The project plans reflect an attempt to minimize the number of waivers requested and we believe reflects a plan that is contextually appropriate on several different levels. Following please find a preliminary table of the waivers necessary to permit the proposed project; the Applicant reserves the right to supplement this list will be updated as necessary as permitting proceeds.

WAIVERS FROM ZONING

| | REQUIREMENT* | PROPOSED | SIGNIFICANCE/EXPLANATION | DECISION OF THE BOARD |
|--|---|---|---|--|
| 1. Chapter 15; 4.2.2 -Permitted Use in Residence A | One family dwelling and accessory garage structure | Three multi-family apartment buildings, one with an integral parking garage as shown, five multi-family townhouse buildings with integral parking garages as shown, one detached parking garage structure as shown, one clubhouse/leasing/sales office building and one maintenance building. | Needed for plan as proposed | Granted for the project as conditioned and approved. |
| 2. Chapter 15; 5.2.1 -Table One - Minimum Lot Area per Dwelling | 10,000 sf/unit | 4,315 sf/u | Needed for plan as proposed | Granted for the project as conditioned and approved. |
| 3. Chapter 15; 5.2.1 -Table One- Maximum Building Height | 30 feet | 62 feet at larger apartment buildings, 35 feet at townhouse buildings and 30 feet at clubhouse building | Needed for plan as proposed | Granted for the project as conditioned and approved. |
| 4. Chapter 15; 5.3.7.1 -Space Between Buildings | 30 feet | 22 feet between Building B and Clubhouse | Needed for plan as proposed | Granted for the project as conditioned and approved. |
| 5. Chapter 15; 6.3.3 -Parking Requirement for Multi-Unit Development | 2.1/unit | 1.65/unit | Needed for plan as proposed | DENIED. |
| 6. Chapter 15; 6.3.4.1 -Parking Space Size | 9'x 18' | Generally 9'x18', but columns encroach 1' into some spaces in Garage C | Needed for plan as proposed | DENIED. |
| 7. Chapter 15; 6.3.4.2 #10 - Parking Layout, Snow Storage | Allow for storage within parking areas | Storage will be handled onsite, not necessarily in parking areas | Needed for plan as proposed | DENIED. |
| 8. Chapter 15; 6.3.5.2 -Parking Screening | 4' w x 4' tall screening at all parking areas from adjacent lots | Sufficient screening is provided, as shown on sheet L-1 | Parking areas are screened from adjacent residences by 100'+ of natural vegetation with the exception of Weiss residences, where screening is proposed as shown | DENIED. |
| 9. Chapter 15; 6.3.5.1, 6.6.2.1, 6.8.7.1 -Parking Lighting | Minimum 1fc over entire lot, no trespass on street or abutting property | Lighting is provided as shown on sheet L-2 | 1 fc over entire site would be too bright, some spillover occurs at driveway entrance and Weiss abutting homes | DENIED. |
| 10. Chapter 15; 6.3.6 - Driveway Access Permit | Permit required from DPW | Permit requested from ZBA | | Granted for the project as conditioned and approved. |
| 11. Chapter 15; 6.3.7.1 - Loading Bay | One required per 25,000 sf of building | None provided | Loading will be done through main and side building entries | Granted. |
| 12. Chapter 15; 6.7, Table 2 - Number of Signs, Size of Signs | One sign per lot | One primary entry monument sign, one building identification monument sign, four directional monument sign and six building mounted identification signs as shown on the architectural, site and landscaping plans | Needed to identify and market community and to aid in traffic flow | DENIED. |
| 13. Chapter 15; Sec. 6.8.10 - Alteration of Land | Suitably landscape areas of land alteration | Landscaping as shown on plans | To clarify requirement | DENIED. |
| 14. Chapter 15; 6.10- Land Fill Permit | Permit required from Building Inspector | Permit requested from ZBA | | DENIED. |

WAIVERS FROM LOCAL BY LAWS

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| 15. Chapter 6; Sec. 6.3-3 - Recycling | Recycling to be separated between "Paper" and "CoMingled" items | All recycling materials will be handled through "single stream" recycling where all recyclables are placed into a single container and sorted offsite | All materials are recycled results in higher recycling percentage | Granted. |
| 16. Chapter 11, Wetland Protection By-Law | No disturbance within 25 feet of a wetland resource area | Allow for the restoration of degraded areas within 25 feet of the wetlands, and allow for pedestrian path to cross through the 25 foot strip. | The site has at least two locations where there are stockpiles of miscellaneous fill adjacent to the wetlands which should be removed. The pedestrian path is necessary to access the property on the opposite side of the wetlands at the existing pedestrian bridge | DENIED. |
| 17. Chapter 13-1 - Streets and Sidewalks, Excavation | Permit required from Board of Selectmen | Permit requested from ZBA | | Granted for the project as conditioned and approved. |
| 18. Chapter 13-15 - Streets and Sidewalks, Street Opening | Permit required from DPW | Permit requested from ZBA | | Granted for the project as conditioned and approved. |
| 19. Chapter 13A -Earth Removal | Permit required | Permit requested | | Granted for the project as conditioned and approved. No approval granted for any activities regulated pursuant to the Wetlands Protection Act or Stoneham Wetland Protection Bylaw. |
| 20. Chapter 18; Sec 18-33(!), Comp. Permit Submittal Requirements | Utility Plan including supporting information that utility connections meet federal, state and local regulations | Utility plan provided shows nature and location of all utilities | Level of detail is not required by 760 CMR:56.05 | DENIED. |
| 21. Chapter 18; Sec 18-33(k), Comp. Permit Submittal Requirements | Pro Forma | Provided | Not required by 760 CMR:56.05 | DENIED. |
| 22. Chapter 18; Sec 18-33(n), Comp. Permit Submittal Requirements | Environmental Impact Analysis | Provided | Level of detail is not required by 760 CMR:56.05 | Granted for the project as conditioned and approved. No approval granted for any activities regulated pursuant to the Wetlands Protection Act or Stoneham Wetland Protection Bylaw. |
| 23. Chapter 18; Sec 18-33(p), Comp. Permit Submittal Requirements | Statement of Impact on Municipal Facilities and Services | Not provided | Level of detail is not required by 760 CMR:56.05 | DENIED. |
| 24. Chapter 18; Sec 18-34 - Filing Fee | \$3,000 base fee plus \$100 per unit proposed | Fee being paid, but waiver requested | In keeping with 760 CMR: 56.05, fee of this magnitude (\$29,400) is not "reasonable" for an affordable housing development. | DENIED. |
| 25. Chapter 20; Secs. 20-28 & 32 - Location and Siting of Dumpster | Location to be submitted for approval | Location shown on Sheet C-2 and approval requested. | To clarify requirement | Granted. |
| 26. Chapter 20; Secs 20-34 & 35, Board of Health, Dumpster Permit | Permit required from Board of Health | Permit requested from ZBA | | DENIED. |

*To the extent that the plans show work requiring additional waivers not expressly set forth above, these waivers are also requested. We further request waivers from any permit requirements that may arise from conditions of approval imposed by the ZBA and recommendations of peer review consultants that have been agreed to by the Applicant. **DECISION OF THE STONEHAM BOARD OF APPEALS WITH RESPECT TO THE FOREGOING "CATCHALL" REQUEST: DENIED.**