

DEPARTMENT OF
HOUSING &
COMMUNITY
DEVELOPMENT

HOUSING APPEALS COMMITTEE

Werner Lohe, Chairman
Shelagh A. Ellman-Pearl, Hearing Officer
Lorraine Nessar, Clerk
617-573-1520



Deval L. Patrick, Governor
Timothy P. Murray, Lt. Governor
Tina Brooks, Undersecretary

October 23, 2007

Al Bangert, Chair
Zoning Board of Appeals
600 Chief Justice Cushing Highway
Scituate, MA 02066

RE: Herring Brook Meadow, LLC v. Scituate Zoning Board of Appeals; H.A.C. No. 2007-15


Dear Mr. Bangert:

Pursuant to 760 CMR 30.06(2), I am enclosing a copy of the Initial Pleading filed in the above case, appealing the decision of your Board. Attached to the Initial Pleading is a copy of the Board's decision, which appears to be authentic. If it is accurate, there is no need for you to send us another copy.

Since Jason Talerman, Esq., has represented the Board thus far in this matter, I have taken the liberty of sending him a copy of this letter and the enclosed Initial Pleading, in case he should represent you in this case, as well. Pursuant to Sections 30.08(3) and (4) of the Regulations, Attorney Talerman should also provide us with a Notice of Appearance.

Also enclosed is a scheduling notice for the Conference of Counsel in this case.

Sincerely,


Lorraine Nessar
Clerk

Enclosures

cc: Jason Talerman, Esq.

DEPARTMENT OF
HOUSING &
COMMUNITY
DEVELOPMENT



Deval L. Patrick, Governor
Timothy P. Murray, Lt. Governor
Tina Brooks, Undersecretary

HOUSING APPEALS COMMITTEE

Werner Lohe, Chairman
Shelagh A. Ellman-Pearl, Hearing Officer
Lorraine Nessar, Clerk
617-573-1520

Docket No.: 07-15
Date: October 23, 2007

NOTICE OF

- X Receipt of Appeal under G.L. c. 40B, §§ 20-23
- X Conference of Counsel
- Pre-Hearing Conference
- Site Visit
- Hearing Session
- Motion Session

Herring Brook Meadow, LLC

v.

Scituate Zoning Board of Appeals

The above matter has been scheduled as follows:

Thursday, November 8, 2007
10:00 AM

100 Cambridge Street, 3rd Floor, Conference Room F, Boston, Massachusetts
Please Report to 3rd Floor Receptionist

Presiding Officer: Shelagh Ellman-Pearl

Please refer to the rules and regulations of the Housing Appeals Committee, 760 CMR 30.00, 31.00, for appropriate action. 760 CMR 30.06(3) provides for an answer to be filled within ten days. Copies of all filings must be served upon all parties.

Lpclw-n.d 040296

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

HOUSING APPEALS COMMITTEE
DOCKET NO. _____

Herring Brook Meadow, LLC

Appellant

v.

Town of Scituate
Zoning Board of Appeals

Appellee

SEP 13 2007
LN

APPEAL FOR CONSTRUCTIVE GRANT OR
CONSTRUCTIVE DENIAL
OF COMPREHENSIVE PERMIT

I. Parties

1. The Appellant is Herring Brook Meadow, LLC, a Massachusetts limited liability company with an address of 265 Newbury Street, Peabody, MA 01960.
2. The Appellee is the Town of Scituate Zoning Board of Appeals, Town Hall, 600 Chief Justice Cushing Highway, Scituate, MA 02066.
Their attorney is Jason Talerman, with Blatman Bobrowski & Mead, 9 Damonmill Square Suite 4A4, Concord, MA 01742.

II Statement of Prior Proceedings

3. The Appellant (hereinafter "the Applicant") submitted an application for a Comprehensive Permit under M.G.L. Chapter 40B, Sections 20-23 to the

Appellee (hereinafter “the Board”) on or about November 8, 2006, for a 60 unit condominium project under the MassHousing Housing Starts Program and the Federal Home Loan Bank of Boston New England Fund (NEF) Program on a site that consists of approximately 15.34 acres on Chief Justice Cushing Highway (Rt. 3A) in Scituate, MA.

4. Submitted with the application, among other things, was a Project Eligibility Letter from MassHousing under the NEF Program.
5. Notice of a public hearing was duly advertised by the Board and notices sent to all abutters in accordance with M.G.L. Ch. 40A.
6. The public hearing was opened on or about November 29, 2006.
7. Continued public hearings were held on or about: January 3, 2007; March 22, 2007; May 24, 2007; June 12, 2007; August 2, 2007; and October 4, 2007.
8. During the course of the public hearings the Applicant provided all information and analysis required pursuant to Chapter 40B.
9. At the June 12, 2007 public hearing the Applicant submitted a letter to the Board (See June 12, 1007 letter from Janet R. Stearns attached hereto as Exhibit A) expressing concerns with peer review expenses; noting that the Applicant had expressly not agreed to pay the Board’s legal fees; and stating that the Applicant anticipated that the Board should be prepared to close the public hearing at the conclusion of the next scheduled hearing session the following month in July 2007.

10. At the October 4, 2007 public hearing, the Applicant again asked the Board to close the public hearing, both verbally and in writing. (See letter from Janet R. Stearns to the Board dated October 4, 2007 and attached hereto as Exhibit B.)
11. At the October 4, 2007 public hearing, the Board declined to close the public hearing and scheduled a continued public hearing on November 1, 2007.
12. At the October 4, 2007 public hearing, in response to the Board's action to continue the hearing, the Applicant put the Board on notice, both verbally and in writing, that it believes that the hearing should be considered closed and a decision issued. (See Exhibit B).

II. The Applicant's Objections to the Actions of the Board

13. The Applicant objects to the Board's failure to close the public hearing as being in violation of G.L.c. 40B, ss. 20 and 22, and the regulations promulgated pursuant thereto, and the action of the Board, or its failure to act, is not consistent with local needs under said statute and regulations.
14. The Applicant further objects to the actions of the Board, and its failure to act to close the public hearing, because it exceeds the authority of the Board and is not consistent with local needs.
15. The Applicant further objects to the action of the Board because, as of the end of the hearing session on October 4, 2007, all information required under Chapter 40B had been provided, there was no additional information to be provided by the Applicant. Therefore there was no valid reason for continuing the public hearing, and the Appellant objects to the continuance and failure to close the hearing

because it was done solely for the purpose of delay and obstruction of the application for a Comprehensive Permit.

16. The Applicant objects to the failure of the Board to act on the Comprehensive Permit application in a timely fashion and therefore reserves its right to claim that a Comprehensive Permit has been constructively granted after forty (40) days from the date of the last public hearing session on October 4, 2007, due to the failure of the Board to close the public hearing and act on the pending comprehensive permit application with forty (40) days of the close of the hearing.
17. The Applicant also claims that, due to the failure of the Board to act in a timely fashion, the Applicant claims, in the alternative, that a Comprehensive Permit has been constructively denied.

Prayers for Relief

WHEREFORE, the Appellant prays that the Housing Appeals Committee issue the following relief:

1. Upon the expiration of the forty (40) days following the public hearing session on October 4, 2007, issue the Comprehensive Permit as applied for on the grounds that it has been constructively granted because the Board failed to issue its decision within forty (40) days of the date of the close of the public hearing as required by M.G.L. c. 40B, s. 21; or
2. Find that the Comprehensive Permit has been constructively denied and that such denial is not consistent with local needs, and issue the Comprehensive Permit as applied for; and
3. Such other relief as this Committee deems just and equitable.

Dated: October 19, 2007

By its attorneys,



Peter L. Freeman
BBO#179140

Janet R. Stearns

BBO#639302



Freeman Davis & Stearns LLC

1597 Falmouth Rd, Ste. 3

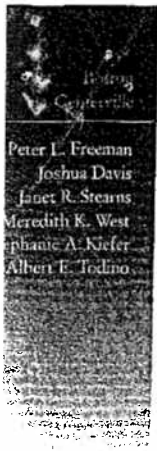
Centerville, MA 02632

(617)775-5010

(617)775-9105(fax)

jstearns@freemandavislaw.com

Exhibit A



Freeman Davis & Stearns LLC

1597 Falmouth Road, Suite 3, Centerville, MA 02632 p: (508) 775-5010 f: (508) 775-9105 www.freemandidavislaw.com
236 Lewis Wharf, Boston, MA 02110 p: (617) 227-5070 f: (617) 227-5001

June 12, 2007

Scituate Zoning Board of Appeals
Town Hall
600 Chief Justice Cushing Highway
Scituate, MA 02066

Re: Herring Brook Meadow LLC Comprehensive Permit Application

Dear Members of the Board:

In response to your letter of June 8th regarding peer review fees for the above referenced project, I summarize below our understanding of engineering peer review fees incurred by the Board to date.

Invoices Received by Applicant to Date

1.	Pennoni Associates (3/28/07)	\$10,540
2.	Pennoni Associates (4/18/07)	2,281.28
3.	Woodard & Curran (W&C) (4/9/07)	9,764.56
Total		\$22,585.84

We note that in a letter from the Board dated May 3, 2007, signed by Richard Agnew, that you had indicated that there was a "deficit" in the peer review account of \$1,237.34. We later clarified with the ZBA office that in fact there was not an actual deficit in the account at that time, but that the balance had dropped below \$10,000, which, at the start of the peer review process, was the amount of the balance the Board requested be maintained in the account. In response to the Board's request for an additional deposit, the applicant deposited an additional \$6,237.34 for peer review costs.

The initial deposit by the applicant of \$25,000, plus the second deposit, as shown below, are more than adequate to cover the initially approved contracts by your two engineering peer reviewers as follows:

Total Amount Deposited to Date	\$31,237.34
Pennoni Contract Amount	15,000
W&C Contract Amount	<u>11,250</u>
Remaining Balance on Account	\$4,987.34

Remaining Engineering Peer Review

The Board's letter of June 8th also indicated that your peer review reports of May 24th pointed out "gaps in information that had been previously requested." On May 14, 2007, the project engineers, SITEC Environmental, provided a complete response to your peer reviewers request for information. In that May 14th response by the applicant, we identified several areas of information that were beyond the scope of preliminary engineering that is required pursuant to Chapter 40B and information that is appropriately under separate review as part of various state environmental permitting processes. Specifically, we note the following categories of responses from our previous submissions:

- Adequate preliminary engineering plans have been submitted. The Board's peer review consultants have made more detailed recommendations that the Board may consider including as permit conditions, to which the applicant may respond in preparing final plans following receipt of a final decision on the comprehensive permit.
- Traffic issues have been adequately analyzed and reviewed. Any remaining detailed comments on internal traffic circulation within the site can be accommodated at the final plan preparation stage, as a condition of a comprehensive permit.
- Coastal flooding and wetlands issues have been extensively reviewed by the Board and the Scituate Conservation Commission pursuant to the Wetlands Protection Act. The conservation Commission has issued an Order of Conditions and appeals are pending with the Massachusetts Department of Environmental Protection (DEP). It is our position that we have provided a level of analysis that far exceeds that typically required to address these issues under the Wetland Protection Act and Chapter 40B.
- Groundwater and water supply issues will be addressed by the DEP in the Groundwater Discharge Permit application process and will not be further addressed by the application as a part of the ZBA consultant review process.
- Regarding MEPA, the applicant will soon be filing an Environmental Notification Form (ENF) due to the 10,000 GPD threshold for the proposed treatment plant. It is our position that we do not exceed any other MEPA thresholds, as we have already sufficiently documented and, therefore further SITEC response to the ZBA consultants regarding MEPA is unwarranted.
- In advance of our next hearing, SITEC intends to provide a final response to issues raised by the peer reviewers related to flooding and the DEP Stormwater Policy. While we believe we have provided adequate information to date on this issue, this is an attempt to respond to the latest correspondence.

Review of Financial Pro Forma and Remaining Peer Review Fees

Included in our submission to the Board on May 14th was a revised pro forma for the project. We understand that the Board has not yet addressed the issue of peer review fees for review of the pro forma. In our experience, these financial peer fees generally are in the range of \$3,000 to \$4,000. Based on the above calculation of peer review fees on account, the applicant should have sufficient funds on account to any for any financial peer review by the Board.

Nevertheless, in an effort to respond to the Board's request for additional peer review funds, the applicant would agree to a final deposit to bring the balance on the peer review account to a current total of \$10,000. Based on our calculation of peer review fees expended to date, this payment would be as follows:

Balance on Account	\$ 4,987.34
Additional Deposit	<u>5,012.66</u>
Total Proposed Balance	\$10,000

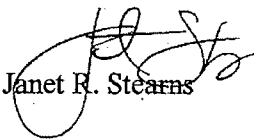
We would appreciate confirmation of all invoices received by the Board to date. In addition, we note that the applicant has not agreed to include the Board's legal fees as a part of our peer review fees.

Conclusion of Hearing Process

Finally, we would anticipate that, if the Board decides to proceed with a financial peer review consultant, the applicant would be prepared by the next scheduled hearing date in July to respond to any issues or concerns of the Board related to the pro forma. We would then anticipate that, upon completion of a hearing session focusing on any pro forma issues, the public hearing on this application would be concluded.

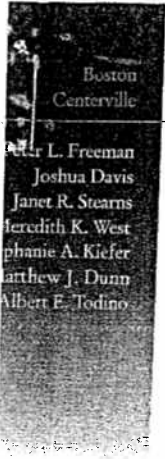
We would appreciate the opportunity to discuss these issues with the Board at its continued public hearing this evening.

Sincerely,


Janet R. Stearns

Cc: client

Exhibit B



Freeman Davis & Stearns LLC

1597 Falmouth Road, Suite 3, Centerville, MA 02632 p: (508) 775-5010 f: (508) 775-9105 www.freemandidavislaw.com
236 Lewis Wharf, Boston, MA 02110 p: (617) 227-5070 f: (617) 227-5001

October 4, 2007

Scituate Zoning Board of Appeals
Town Hall
600 Chief Justice Cushing Highway
Scituate, MA 02066

Re: Herring Brook Meadow LLC Comprehensive Permit Application

Dear Members of the Board:

Over the past eleven months, since Herring Brook Meadow LLC (the "Applicant") submitted its comprehensive permit application on November 8, 2006, we have attempted to work diligently with you and other town officials to address issues of concern with our proposed development. I will not review in detail here all of the correspondence, meetings and hearings that have occurred over the eleven past months, for this proposed 60 unit affordable homeownership project, to be located on an approximately 15.34 acre site on Chief Justice Cushing Highway (Route 3A) in Scituate.

However, I summarize below the Applicant's most critical concerns at this point in time and, in light of the concerns listed below, we respectfully request that the Board close the public hearing on this application.

- **Public Hearing Sessions.** The continued hearing this evening is the Board's seventh scheduled hearing session on the application. In my letter of June 12th to the Board (see Attachment #1), I summarized the status of the extensive peer review of the project that had occurred as of that date. In that letter, I expressed the Applicant's concerns with both the costs and scope of peer review, including reiterating that the Applicant had not agreed to pay the Board's legal fees as a part of the peer review fees. At the fifth scheduled continued hearing session on the evening of June 12th, we reviewed and discussed that letter and representatives of your two technical peer review firms, Pennoni Associates and Woodard & Curran presented the results of their second round of peer review.
- **Alternative Three Building Site Plan.** At the hearing on June 12th, both of the Board's peer reviewers expressed a preference for a revised concept plan that the Applicant had been working on, but had not intended to formally submit to the Board. The Board's peer reviewers recognized that by reducing the number of proposed buildings from five (5) to three (3) and reconfiguring the parking and circulation that there were potential benefits in terms of improved circulation, greater setbacks, reduced building height and reduced impacts.

- **Pennoni Comments - June 2007.** Notably, the June 7, 2007 Pennoni report, expressed a preference for the alternative site plan. In addition, the June 7 Pennoni report indicated that all of Pennoni's previous comments regarding traffic impact study review had been adequately addressed. The extensive June 7 Pennoni Report, in addition to commenting on issues related to the traffic and the site plan also commented upon issues associated with grading and stormwater management and drainage.
- **Woodard & Curran Comments – May/June 2007.** Similarly, the May 24, 2007 Woodard & Curran report presented at the June 12th public hearing commented that the Applicant's alternative conceptual site plan presented an option that had the potential to address several key elements of the project design. In addition, the Woodard & Curran review commented on many of the same issues related to stormwater management that were addressed in the Pennoni report. The Woodard & Curran report also went on to extensively comment on issues that are appropriately addressed by state permitting processes, including: issues that were addressed in the Applicant's Notice of Intent to the Scituate Conservation Commission, and subsequently issued Order of Conditions and appeal to DEP; issues related to the projects on-site wastewater treatment plant and discharge; and issues related to MEPA and Chapter 91.
- **Peer Review Fees and Costs.** Following the June 12th hearing, on behalf of the Applicant, I sent another letter expressing concerns to the Board on June 26th, along with another check from the Applicant in the amount of \$5,012.66. (*See Letter of June 26, 2007 - Attachment 2*). With that deposit, the total amount paid by the Applicant to date to the peer review escrow account was \$36,250. On July 30, 2007, the Board made a request to the Applicant for an additional escrow deposit of \$15,102. (*See ZBA Summary Memo of 7/30/07 – Attachment 3*). At the August 2, 2007 continued hearing of the Board, the Applicant made an additional deposit of \$10,000, bringing the total amount of \$46,250 paid in to the peer review escrow account.
- **July 25th Work Session and August 2, 2007 Hearing.** Following the June hearing, the Applicant's representatives met in an open public meeting with town representative to review the benefits of a revised three building site plan. It was agreed that the applicant would present a more detailed revised site plan. On July 30, 2007 the Applicant's engineers submitted the proposed plan and backup materials on site flooding and hydrogeology. All of this material was presented and discussed at the August 2, 2007 hearing. Based on the discussions at that hearing session, it was agreed that a public hearing session would be scheduled for October 2, 2007 to address any remaining concerns regarding issues related to stormwater, flooding, and hydrogeology. At the August 2 hearing, although some Board members expressed their opinion that

the revised site plan was an improvement, questions were also raised related to fire safety and access for emergency and fire protection purposes. Board members also raised issues and concerns related to the architectural design and the proposed exterior building elevations.

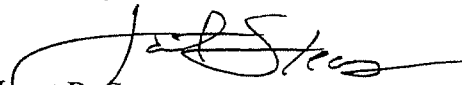
- **Final Scope of Peer Review.** At the August 2 hearing, the Applicant also discussed with Board members and the Board's counsel concerns about peer review expenses and the length of the hearing process to date. In light of those discussions and subsequent discussions with Board's counsel, it is the Applicant's understanding that pro forma review will not be appropriate for this project. This is consistent with the Massachusetts Housing Partnership (MHP) Guidelines and applicable DHCD regulations. As the Applicant has continued to state, and our pro formas have shown, this 60 unit project would result in a projected profit to the Applicant of approximately 10% and would be uneconomic if any fewer units were proposed. Therefore it is the Applicant's position that pro forma peer review is not necessary.
- **Fire Department Comments.** The Applicant continued to work with town officials to clarify and resolve any outstanding concerns related to fire safety. As indicated by the attached memo from the Fire Chief (*See Attachment 4 – memo dated September 25, 2007*) and the response from the Applicant's engineers (*See Attachment 5 – memo dated October 3, 2007*), the Applicant has addressed and resolved these issues.
- **September 12, 2007 Design Review Session and Revised Architectural Plans.** On September 12, the Applicant's representatives met in a public meeting with representatives of the town to discuss potential changes to building design. Following that session, the Applicant's architect worked to develop revised building elevations and floor plans that responded to concerns expressed by Board members and other town representatives. These changes involved no changes to building footprints or total bedroom count and therefore had no site planning impacts. Those revised architectural plans were submitted to the Board earlier today.
- **Revised List of Waivers.** As a supplement to and update of the list of waivers submitted with the original comprehensive permit application, I enclose the attached updated waiver list. (*See Attachment #6*). As with the original submission, we request that the Board grant any and all such waivers listed and otherwise may be deemed necessary by any local official pursuant to any local bylaws or regulations that may be interpreted as being applicable to the project as proposed in the most recent revised plan submissions.
- **October 4, 2007 Hearing.** The Applicant's engineers submitted all relevant and requested technical materials related to stormwater, flooding and hydrogeology, in accordance with the Board's request, two weeks prior to the

Letter to ZBA
October 4, 2007
Page 4

continued hearing this evening. These materials were forwarded to the Board's peer reviewers for a third and final round of peer review. With the presentation by the Applicant's experts this evening, we will have submitted and presented all that is required and necessary during the public hearing process.

In conclusion, we reiterate that the Applicant has addressed all issues raised by the Board and we conclude our testimony at this hearing session. We respectfully request that this evening the Board close the public hearing and begin its deliberations on the comprehensive permit application and issue its decision within the applicable 40 day regulatory time period.

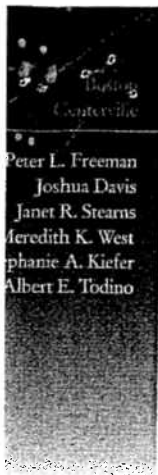
Sincerely,



Janet R. Stearns

cc: James Motzkin, Herring Brook Meadow LLC

ATTACHMENT #1



Peter L. Freeman
Joshua Davis
Janet R. Stearns
Meredith K. West
Stephanie A. Kiefer
Albert E. Todino

June 12, 2007

Scituate Zoning Board of Appeals
Town Hall
600 Chief Justice Cushing Highway
Scituate, MA 02066

Re: Herring Brook Meadow LLC Comprehensive Permit Application

Dear Members of the Board:

In response to your letter of June 8th regarding peer review fees for the above referenced project, I summarize below our understanding of engineering peer review fees incurred by the Board to date.

Invoices Received by Applicant to Date

1.	Pennoni Associates (3/28/07)	\$10,540
2.	Pennoni Associates (4/18/07)	2,281.28
3.	Woodard & Curran (W&C) (4/9/07)	9,764.56
Total		\$22,585.84

We note that in a letter from the Board dated May 3, 2007, signed by Richard Agnew, that you had indicated that there was a "deficit" in the peer review account of \$1,237.34. We later clarified with the ZBA office that in fact there was not an actual deficit in the account at that time, but that the balance had dropped below \$10,000, which, at the start of the peer review process, was the amount of the balance the Board requested be maintained in the account. In response to the Board's request for an additional deposit, the applicant deposited an additional \$6,237.34 for peer review costs.

The initial deposit by the applicant of \$25,000, plus the second deposit, as shown below, are more than adequate to cover the initially approved contracts by your two engineering peer reviewers as follows:

Total Amount Deposited to Date	\$31,237.34
Pennoni Contract Amount	15,000
W&C Contract Amount	<u>11,250</u>
Remaining Balance on Account	\$4,987.34

Remaining Engineering Peer Review

The Board's letter of June 8th also indicated that your peer review reports of May 24th pointed out "gaps in information that had been previously requested." On May 14, 2007, the project engineers, SITEC Environmental, provided a complete response to your peer reviewers request for information. In that May 14th response by the applicant, we identified several areas of information that were beyond the scope of preliminary engineering that is required pursuant to Chapter 40B and information that is appropriately under separate review as part of various state environmental permitting processes. Specifically, we note the following categories of responses from our previous submissions:

- Adequate preliminary engineering plans have been submitted. The Board's peer review consultants have made more detailed recommendations that the Board may consider including as permit conditions, to which the applicant may respond in preparing final plans following receipt of a final decision on the comprehensive permit.
- Traffic issues have been adequately analyzed and reviewed. Any remaining detailed comments on internal traffic circulation within the site can be accommodated at the final plan preparation stage, as a condition of a comprehensive permit.
- Coastal flooding and wetlands issues have been extensively reviewed by the Board and the Scituate Conservation Commission pursuant to the Wetlands Protection Act. The conservation Commission has issued an Order of Conditions and appeals are pending with the Massachusetts Department of Environmental Protection (DEP). It is our position that we have provided a level of analysis that far exceeds that typically required to address these issues under the Wetland Protection Act and Chapter 40B.
- Groundwater and water supply issues will be addressed by the DEP in the Groundwater Discharge Permit application process and will not be further addressed by the application as a part of the ZBA consultant review process.
- Regarding MEPA, the applicant will soon be filing an Environmental Notification Form (ENF) due to the 10,000 GPD threshold for the proposed treatment plant. It is our position that we do not exceed any other MEPA thresholds, as we have already sufficiently documented and, therefore further SITEC response to the ZBA consultants regarding MEPA is unwarranted.
- In advance of our next hearing, SITEC intends to provide a final response to issues raised by the peer reviewers related to flooding and the DEP Stormwater Policy. While we believe we have provided adequate information to date on this issue, this is an attempt to respond to the latest correspondence.

Review of Financial Pro Forma and Remaining Peer Review Fees

Included in our submission to the Board on May 14th was a revised pro forma for the project. We understand that the Board has not yet addressed the issue of peer review fees for review of the pro forma. In our experience, these financial peer fees generally are in the range of \$3,000 to \$4,000. Based on the above calculation of peer review fees on account, the applicant should have sufficient funds on account to any for any financial peer review by the Board.

Nevertheless, in an effort to respond to the Board's request for additional peer review funds, the applicant would agree to a final deposit to bring the balance on the peer review account to a current total of \$10,000. Based on our calculation of peer review fees expended to date, this payment would be as follows:

Balance on Account	\$ 4,987.34
Additional Deposit	<u>5,012.66</u>
Total Proposed Balance	\$10,000

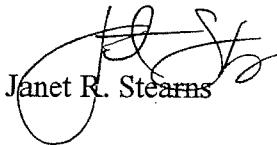
We would appreciate confirmation of all invoices received by the Board to date. In addition, we note that the applicant has not agreed to include the Board's legal fees as a part of our peer review fees.

Conclusion of Hearing Process

Finally, we would anticipate that, if the Board decides to proceed with a financial peer review consultant, the applicant would be prepared by the next scheduled hearing date in July to respond to any issues or concerns of the Board related to the pro forma. We would then anticipate that, upon completion of a hearing session focusing on any pro forma issues, the public hearing on this application would be concluded.

We would appreciate the opportunity to discuss these issues with the Board at its continued public hearing this evening.

Sincerely,


Janet R. Stearns

Cc: client

ATTACHMENT #2

Freeman Davis & Stearns LLC

Attachment 2 *jele*

1597 Falmouth Road, Suite 3, Centerville, MA 02632 p: (508) 775-5010 f: (508) 775-9105 www.freemandavislaw.com
236 Lewis Wharf, Boston, MA 02110 p: (617) 227-5070 f: (617) 227-5001

June 26, 2007

VIA FEDERAL EXPRESS


Scituate Zoning Board of Appeals
Town Hall
600 Chief Justice Cushing Highway
Scituate, MA 02066

Re: Herring Brook Meadow Comprehensive Permit Application

Members of the Board:

On behalf of my client, Herring Brook Meadow LLC, I enclose a check in the amount of \$5,012.66 to be deposited in the account established by the Board to pay agreed upon consulting peer review expenses for the above referenced project. I appreciate that, at the last public hearing on this matter, the Board agreed to accept this amount to replenish the peer review expense account. As we have previously stated at public hearings before the Board, to date my client has not agreed to pay legal fees incurred by the Board in connection with the review of the Herring Brook Meadow comprehensive permit application. While we appreciate receipt of the agreement dated June 21, 2007, which was prepared by Mr. Taleran through the law firm of Blatman, Bobrowski & Mead LLC and signed by the town administrator, we have concerns with this open ended agreement.

This fee agreement is of particular concern in light of the correspondence we received from the Board on June 25th. We were informed on June 25 that an invoice for Mr. Taleran's services, which was dated May 28, 2007 and in the amount of \$1,147, had been paid using funds from my client's peer review account. This payment was made from the account despite the fact that my client had never agreed to pay legal fees and had never seen a proposal for such services. These invoices included services such as the following item, which was described as involving .6 hours of time: "review of latest correspondence re: developer's reluctance to pay additional consulting fees; email Town Administrator re: same." Presumably these services reference a review of a letter the ZBA sent to my client on May 3. We have continued to emphasize that my client has not agreed to pay for such services, particularly to an open-ended agreement that includes

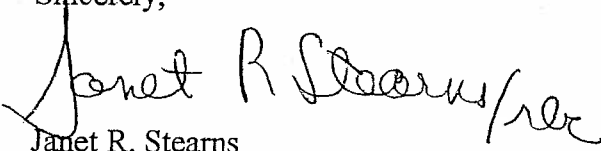


legal services such as “responding to legal positions and arguments raised by the Applicant’s legal counsel.”

As we have expressed, my client would like to try to work cooperatively with the Board to complete the technical peer review process. That said, we are concerned with the unusually high peer review expenses that have been incurred to date and would like to find a way to work more efficiently and effectively with the Board to complete the review process. As we agreed at the last hearing on June 12, we will be contacting your engineering peer reviewers to try to address and resolve issues raised at the last hearing. Prior to the authorization for payment of additional peer review fees pursuant to proposals for services received after the June 12th hearing, we would like to clarify with the town a more specific estimate of the costs of the remaining peer review.

I will contact your office to confirm the current peer review account balance after deposit of the enclosed check and to clarify how we will proceed with future peer review payments. Again, I would like to emphasize that we would like to work cooperatively with the Board to resolve both issues related to the review procedures and costs and the technical aspects of the application review process.

Sincerely,



Janet R. Stearns

cc: James R. Motzkin
Jason Talerman, Esq.

SECURITY ENHANCED DOCUMENT - See back for details.

HERRING BROOK MEADOW LLC
265 NEWBURY ST.
PEABODY, MA 01960

143

60-447/113
970

DATE June 13, 2007

PAY
TO THE
ORDER OF

Town of Scituate

Five Thousand Twelve & 66/100

\$ 5012.66

Rockland Trust

DOLLARS

Money orders
Cash on hand

FOR Young Board Peer Review Acct

James R. Metzger

⑈000143⑈ ⑆011304478⑆ 2970002008⑈

MP

ATTACHMENT #3

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
(781) 545-8716



Herring Brook Meadow Peer Review

as of 7/30/07

Funds on deposit

2/5/07	25,000
5/17/07	5,000
5/17/07	1,237
6/28/07	<u>5,013</u>
	36,250

Funds disbursed

<u>W&C</u>	5/17/07	8,817	
(contract: \$18,250)	5/17/07	947	
	7/16/07	4,572	
			14,336
<u>Pennoni</u>	5/17/07	10,540	
(contract: \$24,800)	6/7/07	2,281	
	7/16/07	7,785	
		1,611	
			22,217
<u>Counsel</u>	thru May	4,799	<u>4,799</u>
			41,352

Deposits	36,250
Disbursements	<u>41,352</u>
Account Balance	-5,102

Amount needed:

5,102 to cover deficit
10,000 to replenish acct to agreed upon level
15,102

ATTACHMENT #4

Town of Scituate

Fire Department

Edward J. Hurley
Chief of Department
Chiefsfd@scituate.mec.edu

149 FIRST PARISH ROAD
SCITUATE, MASSACHUSETTS 02066-4045
TELEPHONE (781) 545-8748
FAX (781) 545-2546



Charles W. Curran, Jr.
Deputy Fire Chief
depchsf@scituate.mec.edu

Attachment 4

September 25, 2007

TO: Steven D. Gioiosa, P.E
FR: Richard A. Judge
Fire Chief
RE Site Plan Administrative Review
Herring Brook Meadow

A suitable system of hydrants will be required at points that will facilitate fire department connection for structural firefighting.

According to 527 CMR 25.07, each building built for residential occupancy shall include a suitable paved access on at least one side of the structure.

A copy of turning specifications for the Scituate Fire Department ladder truck is attached. The paved access should be suitable to accommodate operation of a vehicle at least this size.

S.A.E. Turning Radius Calculations

110' Aerial without Pump with Hurricane Chassis (S/A)

Chassis:	215"
Front Axle Wheel:	FL-941
Front Wheel Type:	Steel
Front Tire Size:	425/65R22.5
Front Bumper Size:	12" Bumper
Front Bumper Extension:	16" Extension
Rear Wheel Type:	Steel
Rear Tire Size:	315/80R22.5

Inside Cramp Angle	S.A.E Turning Radius	Tire Curb Clearance	Bumper Swing Clearance	Minimum Inside Radius
33	38.28016	38.96766	42.4136	26.32636
34	37.37595	38.06345	41.58415	25.29966
35	36.52335	37.21085	40.80485	24.32476
36	35.71804	36.40554	40.07141	23.39729
37	34.95614	35.64364	39.38	22.51333
38	34.23423	34.92173	38.72721	21.6691
39	33.54919	34.23669	38.10997	20.86235
40	32.89825	33.58575	37.52554	20.08936
41	32.2789	32.9664	36.97143	19.34788
42	31.68887	32.37637	36.44541	18.63558
43	31.12611	31.81361	35.94545	17.95038
44	30.58876	31.27626	35.46971	17.29036
45	30.07511	30.76261	35.01654	16.65377

LADDER:

Axle weights:

Front 18,000 lbs
 Rear 31,000 lbs
 GVW 48,250

Platform is biggest truck at 80,000 GVW

Length - 38'
 Height - 11'
 Width - 8'

ATTACHMENT #5

SITEC

Civil and Environmental Engineering
Land Use Planning

SITEC, Inc.
449 Faunce Corner Road
Dartmouth, MA 02747
Tel. (508) 998-2125 FAX (508) 998-7554

Unit C
769 Plain Street
Marshfield, MA 02050
Tel. (781) 319-0100 FAX (781) 834-4783

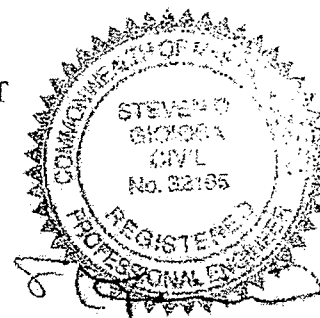
MEMORANDUM

TO: CHIEF RICHARD A. JUDGE
TOWN OF SCITUATE FIRE DEPARTMENT

FROM: STEVEN D. GIOIOSA, P.E.

DATE: OCTOBER 3, 2007

SUBJECT: HERRING BROOK MEADOW



Thank you for your prompt review of the Herring Brook Meadow site layout plan and your subsequent September 25, 2007 memorandum. We have reviewed your comments and offer the following response:

1. The final utility plan for this project will include a water main connection to the municipal system and an extension of this main into the project. Fire hydrants will be included as part of the water supply design for this project. Upon completion of this design, we will provide you with a layout plan for your review and approval of the proposed hydrant locations.
2. As required by 527 CMR 25.07, a paved area is proposed for at least one side of each building.
3. We have reviewed the turning specifications for the Scituate Fire Department's ladder truck and the site layout is suitable for the access of this vehicle. When we provide you with the previously referenced hydrant layout, we will also provide you with a plan depicting the required truck turning radii.

Please feel free to contact me should you have any questions or comments.

cc: Zoning Board of Appeals
Janet Stearns, Esq.

ATTACHMENT #6

SITEC ENVIRONMENTAL

Civil and Environmental Engineering, Land Use
Planning, Hazardous and Solid Waste Consulting

SITEC ENVIRONMENTAL, Inc.
769 Plain Street, Unit C
Marshfield, MA 02050
Tel. (781) 319-0100 FAX (781) 834-4783

12 Welby Road
New Bedford, MA 02745
Tel. (508) 998-2125 FAX (508) 998-7554

Attachment 6

LIST OF REQUESTED WAIVERS AND EXEMPTIONS

(Revised October 3, 2007)

ZONING BYLAWS – TOWN OF SCITUATE, MASSACHUSETTS

Revisions voted at the Annual Town Meeting: November 13, 2006

Approved by the Attorney General: February 15, 2007

Section 420 – Residence District Uses – 420.1 Permitted Uses
Request Exemption for the construction of Multi-Family Dwellings.

(NOTE; Section 460 – Saltmarsh and Tideland Conservation District – 460.1
Only the salt marsh and tidelands portion of this property falls within this District. All
proposed construction will be 200'+ from salt marsh and tidelands and therefore will not fall
within this District. Accordingly, no exemption is requested.)

Section 470 – Flood Plain and Watershed Protection District – 470.5 Permitted Uses
Request Exemption for the construction of Multi-Family Dwellings.

(NOTE; Section 480 – Flood Insurance District – 480.1 Purpose B.
A portion of the proposed construction will fall within the upper edge of a mapped Flood
Insurance A-Zone. This proposed work is permitted by the State Building code and will meet all
applicable requirements. Accordingly, no Exemption is requested.)

Section 600 – Dimensional Regulations – 610 Lot Size Regulations for Dwellings
*Request Exemption to required lot area of 40,000 square feet per dwelling and required lot width
of 175 feet per dwelling.*

Section 600 – Dimensional Regulations – 610.2 Lot Frontage Requirements A. General
Requirements
Request Exemption to the required 100 foot minimum per dwelling lot frontage and width.

Section 600 – Dimensional Regulations – 610.2 – Lot Frontage Requirements C. Special
Requirements
Request Exemption to Chief Justice Cushing Highway greater frontage requirement.

Section 620 – Height and Open Space Requirements – 620.1 Building Heights
Request Exemption to the maximum allowed number of stories (3-stories allowed), building height (35-feet allowed), and roof height (40-feet allowed). (NOTE; Proposed residential buildings maximum number of stories reduced from 4 to 3.)

Section 620 – Height and Open Space Requirements – 620.3 Setback and Yard Requirements
Request Exemption to required distance of 100 feet between buildings and the exterior line of Chief Justice Cushing Highway. (NOTE; Closest distance from Chief Justice Cushing Highway exterior line and proposed buildings increased from 26 feet to 76 feet. Closest distance from side yard property line and proposed building increased from 13 feet to 27.3 feet.)

Section 620 – Height and Open Space Requirements – 620.4 Modifications and Exceptions C.
Request Exemption to cornices and eaves projecting into any required yard or open space.

Section 620 – Height and Open Space Requirements – 620.4 Modifications and Exceptions D.
Request Exemption to parking areas, visual buffering, acoustical buffering and tree removal within 50 feet of the exterior line of Chief Justice Cushing Highway

Section 710.1 – Signs in Residential Districts
Request Exemption for Premise Identification Sign

Section 710.5 – General Provisions Pertaining to Signs in All Districts J
Request Exemption for Premise Identification Sign from the setback restrictions in Section 620.4.B

Section 730 – Site Plan Review
Request Exemption to Planning Board Site Plan Review

Section 750 – Cushing Highway Egress Control
Request Exemption to Board of Appeals Special Permit for an alternate egress configuration onto Chief Justice Cushing Highway. (NOTE; MA Highway Curb Cut Permit will be required.)

Section 760.4 Parking Lot Planting
Request Exemption

Section 770 – Site Plan Special Permit
Request Exemption to Planning Board Site Plan Special Permit Review

Section 780 – Common Driveways
Request Exemption to Planning Board Common Driveway Special Permit and/or Site Plan Administrative Review.

Section 950 – Design Review for Business, Commercial, Mixed Use and Multi-Family Development
Request Exemption from Design Review. (NOTE: Project plans have been informally presented to the Design Review Committee. Building design revisions have been made by the project architect to accommodate comments and suggestions from the Committee.)

Waivers from General Bylaws

Section 30630 of General Bylaws regarding Earth Removal

Waiver requested to the extent needed to allow project as proposed.

[NOTE; Section 30770 of the General Bylaws regarding Wetlands Protection.

The type and boundary of wetland resource areas subject to regulation under the Wetlands Protection General Bylaw Rules and Regulations, revised October 1998, were approved by the Conservation Commission in an Order of Resource Area Delineation (ORAD) issued on November 16, 2007. The proposed project is designed to meet all applicable requirements of these Rules and Regulations for the type and boundary of wetlands resource areas approved under this ORAD. Specifically, there are no jurisdictional isolated vegetated wetlands on the property and the requirement for a 50 undisturbed Buffer Strip set forth under Section 10.05(10)(b)(1) does not apply to Bordering Land subject to Flooding, Isolated Land subject to Flooding and Land Subject to Coastal Storm Flowage. Accordingly, no waiver of this General Bylaw is requested.]