

**Board of Selectmen
Hearing Room (1st Floor)
Stoneham Town Hall
35 Central Street
Tuesday, October 25, 2016
7:00 p.m.**

ITEM	TIME	DESCRIPTION	DISPOSITION
Open Session (Hearing Room – 1st Floor)			
1	7:00 p.m.	Pledge of Allegiance	
2		Stoneham Theater – Easement for Theater Accessibility – Weylin Symes	
3		Trash Contract – Tom Boussy/Anthony Wilson	
4		Social Media Policy – Anthony Wilson/Ann Marie O’Neill	
5		Town Counsel Positon – George Seibold	
6		Approve Minutes – Open Session: 9/6/16; 9/29/16; 10/17/16	
7		Senior Center Barn Lease of Portion Thereof (136 Elm Street) For Cellular/Wireless Equipment to Cellco Partnership d/b/a Verizon Wireless – William Solomon	
8		Selectmen’s Senior Citizens’ Holiday Party – Ann Marie O’Neill	
9		Meeting Calendar for 1/17-6/17 – Ann Marie O’Neill	
10		Report of Town Administrator – Thomas Younger	

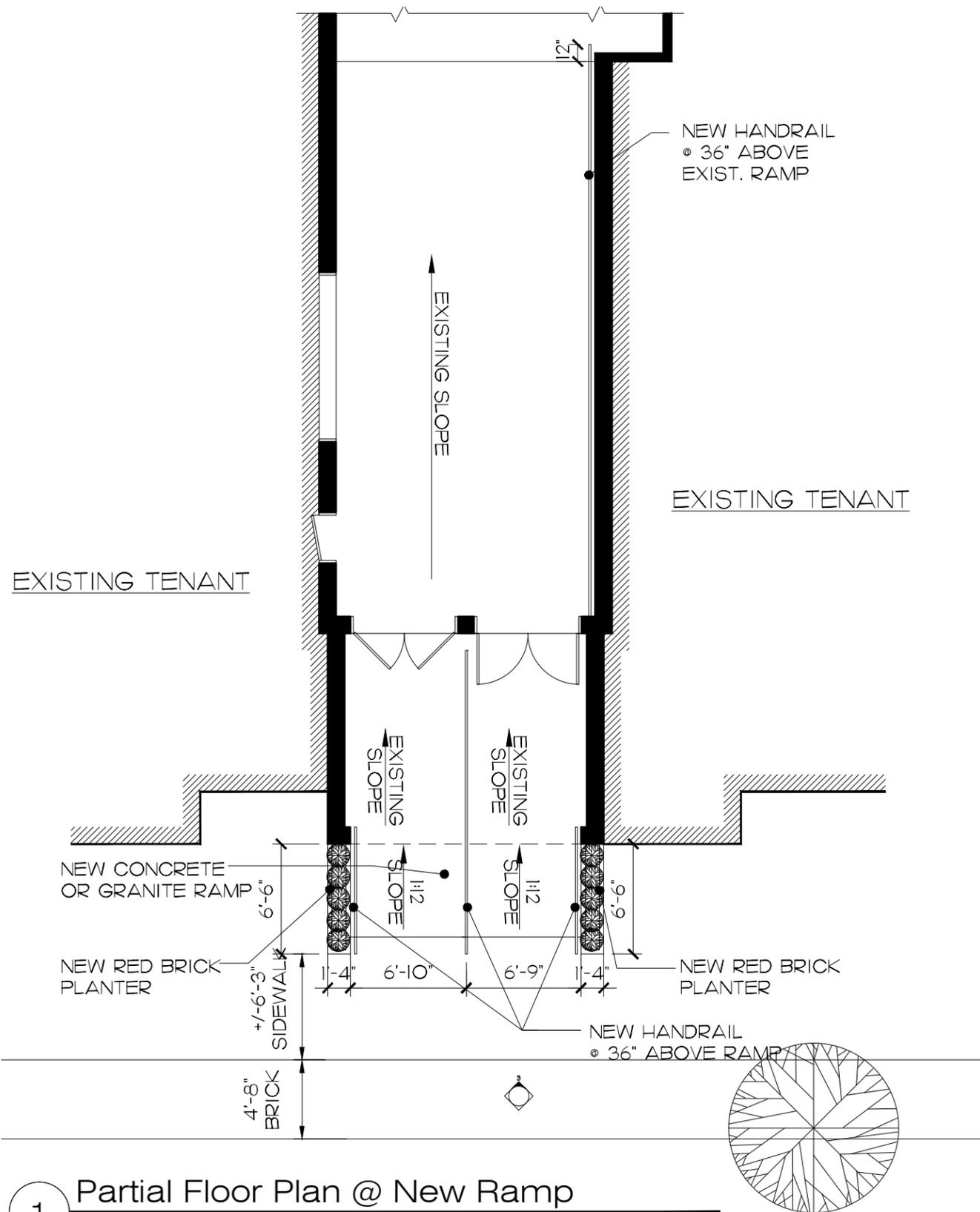
11

Miscellaneous

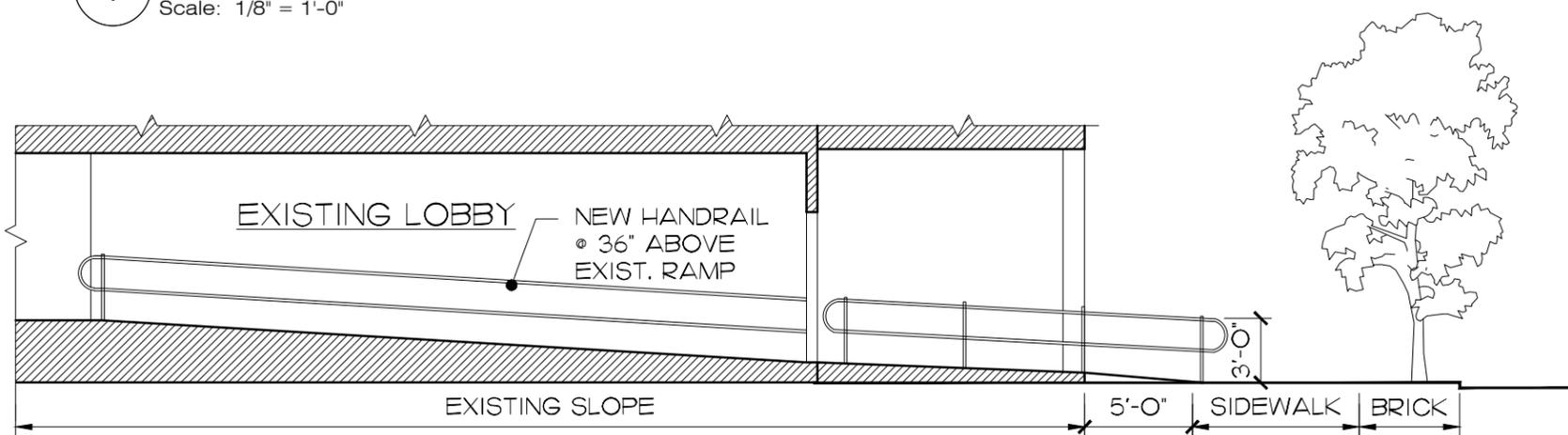
Executive Session (Hearing Room – 1st Floor)

12

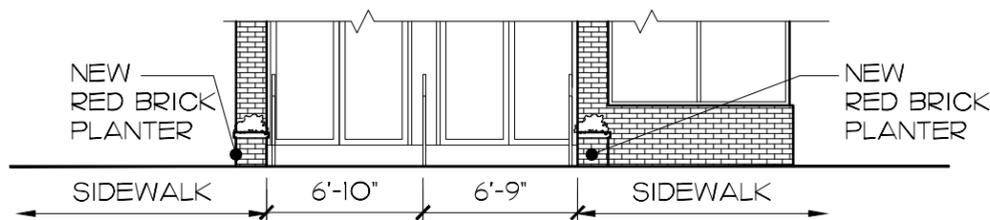
To consider and discuss the lease and specifics thereof of a portion of the Senior Center Barn Lease (136 Elm Street) For Cellular/Wireless Equipment to Cellco Partnership d/b/a Verizon Wireless – pursuant to M.G.L. c. 30A, sec. 21(a)(6) - William Solomon



1 Partial Floor Plan @ New Ramp
Scale: 1/8" = 1'-0"



2 Partial Section @ Existing Ramp
Scale: 1/8" = 1'-0"



3 Partial Elevation @ New Ramp
Scale: 1/8" = 1'-0"



Kilbride, Dava

From: Weylin Symes <weylin@stonehamtheatre.org>
Sent: Thursday, October 06, 2016 12:22 PM
To: Kilbride, Dava
Subject: RE: Symes Meeting/Theater Accessibility
Attachments: StonehamTheatreStep.jpg; Ramp_Option3_revised2.pdf

Hi Dava,

Thanks again for your help with this. Here's some language regarding our request:

As you can see from the attached photo, the primary front entrance to Stoneham Theatre currently requires patrons to negotiate one 6-inch step. This is the way the building was built in 1917. Because of the step, we have no permanent wheelchair access and need to use a portable ramp for wheelchair patrons.

We serve a large number of senior citizens and disabled patrons and eliminating the step in favor of a permanent ramp would greatly enhance the safety and access for all of our patrons. We approached an architectural firm to come up with a plan to eliminate the step and they proposed the attached plan which provides for a permanent ramp for access to the Theatre for all patrons. This proposal does require building a ramp on the public sidewalk. We are requesting approval from the town to build the ramp, as seen in the attached plans, on the public sidewalk. With the ramp in place there remains more than 4 feet of brick sidewalk and 7 feet of concrete sidewalk for pedestrian traffic in front of the Theatre.

We have met with Bob Grover, Bob Markel and William Solomon regarding this manner and they have approved this idea in concept as it provides for greater safety and access for our patrons. Their suggestion was that the best way to move forward was for the town to sell us the land on which the ramp would sit through an easement which would also stipulate that, if the Theatre ceases to operate, ownership of the land would revert back to the Town.

We understand that we will most likely need to put a warrant article before a Town Meeting in order to move forward with this plan, but we are seeking approval from the Board of Selectmen for this plan in concept before we move forward with the warrant article.

Let me know if you need anything else from me to move forward. And please let me know if the language I have used makes sense. Many of these terms are new to me.

Thanks,

Weylin



Weylin Symes
Producing Artistic Director

Stoneham Theatre
781-587-7903

From: Kilbride, Dava [mailto:DKilbride@stoneham-ma.gov]
Sent: Tuesday, October 04, 2016 9:35 AM
To: Markel, Robert; Grover, Robert; (attywhs@comcast.net); Pettengill, Debbie
Cc: Weylin Symes
Subject: Symes Meeting/Theater Accessibility

Gentlemen,

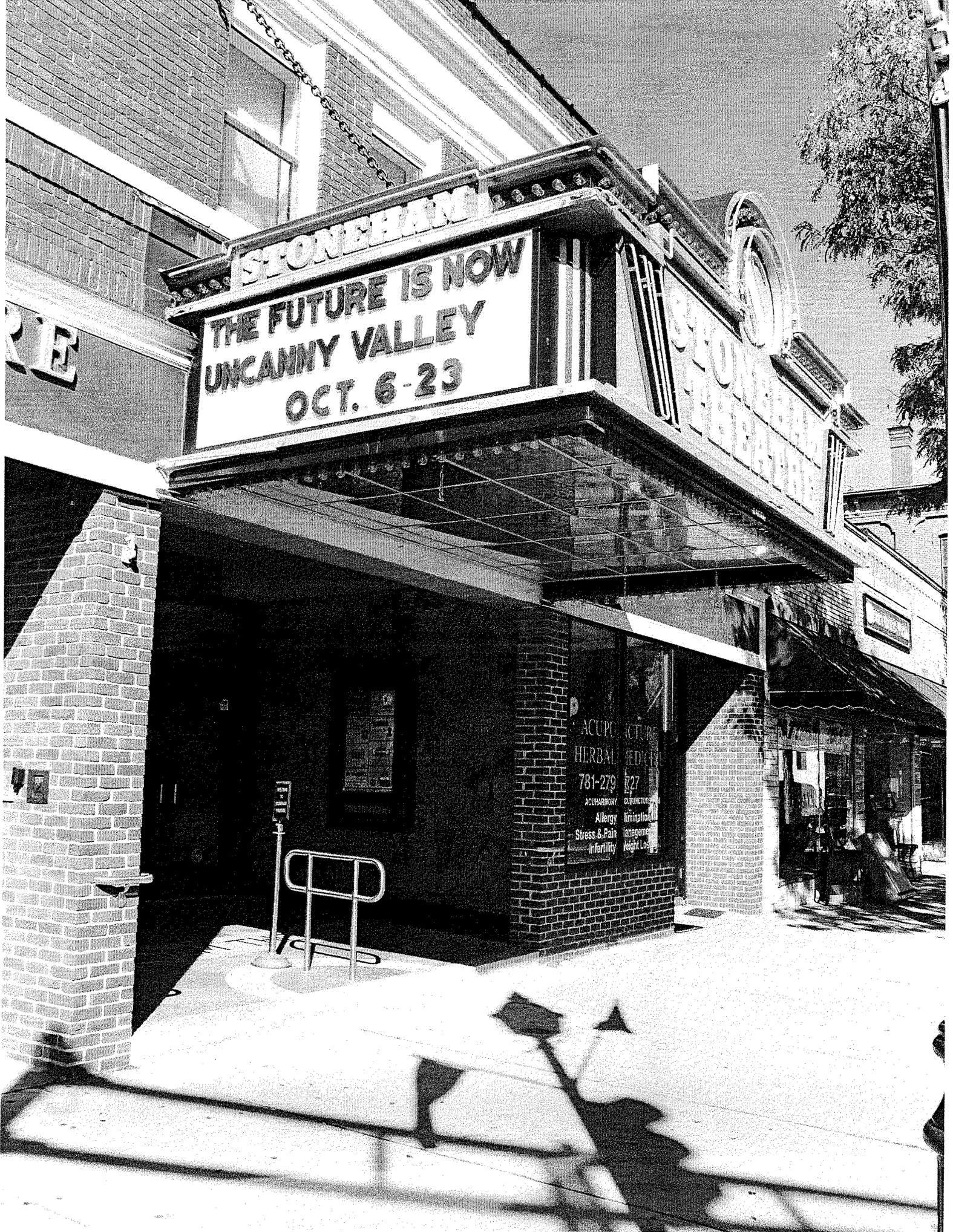
Weylin Symes is available to meet at 3:05. Thank you.

Dava F. Kilbride
Secretary – Board of Selectmen
dkilbride@stoneham-ma.gov | www.stoneham-ma.gov
o: 781-279-2680
f: 781-279-2681

Please take a moment to help us improve your experience with town services by taking this short [survey](#).

Confidentiality Notice

This electronic message and any attached files contain information from the Town of Stoneham that may be privileged and/or confidential. The information is intended for the recipient named above, and use by any other person is not authorized. If you are not the intended recipient, any disclosure, distribution, copying or use of this information is strictly prohibited. If you have received this message in error, please notify the sender by e-mail immediately. Also, please be advised that the Secretary of State's office has determined that most e-mails sent to and from municipal officials are considered to be public records and consequently may be subject to public disclosure.



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UNCANNY VALLEY
OCT. 6-23

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Allergy
Stress & Pain
Infertility

ACUPUNCTURE
HERBAL MEDICINE
ACUPHARMACY
Allergy
Stress & Pain
Infertility
Weight Loss

STONEHAM

THE FUTURE IS NOW
UNCANNY VALLEY
OCT. 6-23

STONEHAM
THEATRE

RE



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Allergy Elimination
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WTFSA CAFE

STONEHAM THEATRE

Town of Stoneham

Office of the Town Administrator

35 Central Street
Technology
Stoneham, MA 02180

(781) 279-2644



Information

Social Media Policy

1. PURPOSE

The following policy pertains to official (“Town”) and non-official (“Personal”) use of social media services and tools.

The Town permits the use of social media sites as a means to disseminate information from the Town to the members of the public. Consequently, the Town has both an expectation and a responsibility regarding the integrity and presentation of information posted on its social media sites and the content that is attributed to the Town, its Departments and its officials.

2. DEFINITIONS

“Social media sites” means content created by individuals using publishing technologies through and on the internet. This includes but is not limited to websites, mobile applications, tablets or any other device that connects to the internet. The types of content and examples of services to which this policy applies include, but are not limited to

- Social Networking (e.g. Twitter, SeeClickFix, Facebook, LinkedIn, Pinterest, Snapchat, Yik Yak);
- Multimedia sharing (e.g. Flickr, YouTube, Vimeo, Picassa, Shutterfly);
- Blogs (e.g. Wikipedia, PBwiki, Wikispaces, wordpress);
- Forums and discussion boards (e.g. Google Groups, Yahoo! Groups, Yammer);
- Comment sections of any website, app or blog (i.e. a news website, blog, SeeClickFix);
- Personally managed websites, blogs, etc.
- On-line polls and surveys (e.g. Survey Monkey, Doodle)
- Any other web site or application on which user can post texts, media, etc.

“Official Social Media” is:

Any of the sites or services listed in the definition section of this policy and their affiliated accounts which were established by and through the Town of Stoneham or are maintained by the Town of Stoneham, its employees, officials, committees, commissions or boards.

3. GUIDELINES FOR OFFICIAL SOCIAL MEDIA SITES

1. The establishment of Town social media sites is subject to approval by the Town Administrator or his/her designee.
2. The Town reserves the right to edit the content of or terminate any Town social media site at any time without notice.
3. The content of Town social media sites shall only pertain to Town-sponsored or Town-endorsed programs, services, and events. Content includes, but is not limited to, information, photographs, videos, and hyperlinks.
4. All Town social media sites shall adhere to applicable federal, state and local laws, regulations and policies. This includes, but is not limited to laws pertaining to Copyright and Fair Use.
5. Any content maintained on a Town social media site that is related to Town business, including a list of subscribers, posted communication, and communication submitted for posting, may be considered a public record.
6. Employees representing the Town on official Town social media sites shall conduct themselves at all times as a professional representative of the Town and in accordance with all Town policies. These policies include but are not limited to the Town's Ethics Policy and the Discrimination and Harassment Prevention policy.
7. Postings must contain information that is freely available to the public and not be proprietary or confidential as defined by any Town policy or state or federal law.
8. Any person authorized to post items on any of the Town's social media sites shall review, be familiar with, and comply with the social media site's use policies and terms and conditions.
9. Any person authorized to post items on any of the Town's social media sites shall not express his or her own personal views or concerns through such postings. Postings shall only reflect the views of the Town.
10. Town social media sites will use authorized Town contact information for account set-up, monitoring and access. A designee of the Town Administrator shall setup all accounts, maintain a list of accounts and store access credentials.
11. The use of personal email accounts or phone numbers by any Town representative is not allowed for the purpose of posting, setting-up, monitoring, or accessing a Town social media site.
12. Any reference requests received through any Social Media site for current or former employees must be directed to the Town's Human Resources Department.
13. Private messaging of any kind is not allowed over official Town social media accounts.
14. Though information and notices may be posted on official social media accounts, official Town social media sites do not replace the Town's required notices and standard methods of communication.
15. Any posted content on Official Social Media sites that include pictures, photographs, likenesses, or images cannot under any circumstances depict children under the age of 18, and cannot include the names unless the individual or guardian first sign a release form which expressly authorizes the Town of Stoneham to use such image and likeness online.
16. If possible, public comments will be turn-off to prevent the possibility of inappropriate messages appearing on social media channels.
17. Absent prior authorization, postings to Town social media sites shall NOT contain any of the following:
 - Comments in support of, or opposition to, political campaigns, candidates or ballot measures;
 - Profane language or content;
 - Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, military services, national origin, physical or

mental disability, sexual orientation, as well as any other category protected by federal, state, or local laws;

- Sexual content or links to sexual content;
- Solicitations of commerce;
- Conduct or encouragement of illegal activity;
- Information that may tend to compromise the safety or security of the public or public systems; or
- Content that violates a legal ownership interest of any other party.

4. MONITORING

There is no guarantee of privacy on official social media channels. The Town reserves the right to monitor content on all Official Social Media sites and to modify or remove any messages, posting, or images that it deems in its sole discretion and judgment to be abusive, defamatory, violation of copyright, trademark, or other intellectual property rights, or otherwise in violation.

Any post, comment, or remark that contains obscene or sexual language, personal attacks, insults, profane language, racist or discriminating language, or personal or private information will also be removed.

The Town reserves the right to take appropriate disciplinary action for any violation of this Policy on any Official Social Media Site or non-Official Social Media site which comes to its attention.

5. NON-OFFICIAL / PERSONAL USE

Town employees, officials, committee members, commission members or board members who use social media and social networking services and tools for strictly personal use outside of the workplace do not require approval to do so. However, the Town recognizes that these types of tools can sometimes blur the line between professional and personal interactions. Therefore, employees, officials, committee members, commission are reminded that as representatives of the Town of Stoneham the above rules and guidelines must be taken into consideration when participating in these services at any time, particularly when identifying themselves as representatives of the Town or when context might lead to that conclusion. Use discretion and common sense when employing social media to help prevent inadvertently compromising professional, legal, or ethical standards.

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In a publicly accessible forum, Town employees may not disclose any Town-related information that is not already considered public information. This rule applies even in circumstances where password or other privacy controls are implemented. Failure to comply may result in disciplinary action. This policy does not, however, prevent Town employees from discussing the terms or conditions of their employment, unfair labor practices, or otherwise exercising their rights to collective bargaining.

Commission, committee and board members should make it clear that they are speaking of their own opinions and not for the board or commission when using personal social media channels.

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- Removal of posts or social media accounts; and/or
- Corrective or disciplinary actions and sanctions, as defined in the Town Personnel Policies.

7. POLICY CHANGES

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8. ABOUT THE POLICY

This policy was adopted by the Board of Selectmen on: XXXXX

If you have any questions about this policy, please consult with your Department Head.

9-01-16

Town of Stoneham
Office of the Town Administrator

35 Central Street

Information Technology

Stoneham, MA 02180

(781) 279-2644



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mental disability, sexual orientation, as well as any other category protected by federal, state, or local laws;

- Sexual content or links to sexual content;
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Open Meeting Law. Be aware of the Open Meeting Law and possible violations for improper deliberations outside of a posted meeting. A series of individual postings on a social media site cumulatively may convey the position of a quorum of a governmental body regarding a subject within its jurisdiction, and may constitute improper deliberation among the members of a board or committee.

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Defamation. Be aware that employees acting in their individual capacity (not on behalf of the Town of Stoneham) are not immune from defamation claims. Under Massachusetts law, defamation is established by showing that the defendant published a false, non-privileged statement about the plaintiff to a third party that either caused the plaintiff economic loss or was of the type that is actionable without proof of economic loss. Some statements, like imputation of a crime, are defamatory per se. Avoid statements that may be interpreted as defamatory.

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8. ABOUT THE POLICY

This policy was adopted by the Board of Selectmen on: XXXXX

If you have any questions about this policy, please consult with your Department Head.

10-199-01-16

**You are cordially invited to the
Stoneham Board of Selectmen's
Annual Senior Citizens' Holiday Party
Sponsored by Marty Murphy and Family of Montvale Plaza**

**Monday, December 5, 2016
11:00 a.m. – 2:00 p.m.
Montvale Plaza**

You must be a Stoneham resident at least 65 years of age
No telephone calls to Selectmen's Office, please
Tickets will be mailed to your home address
One ticket per person - First come, first served, while they last!

*All forms must be completed and received **no later** than November 11, 2016*

**Applications for tickets are available at the Stoneham Senior Center,
Stoneham Public Library, Town Hall Offices
or your local newspapers**

**Stoneham Board of Selectmen
Schedule of Meetings**

2017

January 3, 2017

January 17, 2017

February 7, 2017

February 21, 2017

March 7, 2017

March 21, 2017

April 4, 2017 Town Election

April 11, 2017

April 25, 2017

May 1, 2017 Annual Town Meeting

May 9, 2017

May 23, 2017

June 6, 2017

June 20, 2017

92 MONTVALE, LLC

v.

WILLIAM SULLIVAN, ROBERT SALTZMAN, RAYMOND DUFOUR, LAURENCE ROTONDI, TOBIN SHULMAN, NATHANIEL CRAMER, and ERIC RUBIN, as they are members of THE TOWN OF STONEHAM ZONING BOARD OF APPEALS, and THE TOWN OF STONEHAM

14 MISC 488957

July 29, 2016

Alexander H. Sands III, Justice

Signage-LED-Monument Sign-On Premise Sign-Commercial Directory-Flashing Sign—Justice Alexander H. Sands III agreed with the Stoneham Building Inspector that Plaintiff's proposed 10' by 8' LED monument sign for a commercial complex was not permitted under the bylaw because it would be a flashing on-premise sign. An exception allowing for flashing signs is provided by Stoneham bylaws but they must be of the "off-premise" or "billboard" variety.

DECISION

Plaintiff 92 Montvale, LLC ("Plaintiff") filed its unverified Complaint on December 19, 2014, pursuant to G. L. c. 40A, § 17, appealing a decision (the "ZBA Decision") of Defendant Town of Stoneham Zoning Board of Appeals (the "ZBA"), which affirmed the denial (the "Denial") by the Stoneham Building Inspector (the "Building Inspector") of Plaintiff's request for a building permit to erect an LED monument sign (the "LED Sign") on Plaintiff's property located at 92 Montvale Avenue, Stoneham, MA (the "Property"). Plaintiff also sought a writ of certiorari pursuant to G. L. c. 249, § 4, challenging the legality of the ZBA Decision and seeking a correction of an error of law committed by the ZBA in affirming the Denial. Defendants ZBA and the Town of Stoneham (the "Town") (together, "Defendants") filed their Answer on January 23, 2015. A case management conference was held on February 24, 2015.

Plaintiff filed its Motion for Summary Judgment on March 1, 2016, together with supporting memorandum, Statement of Material Facts, and Appendix containing the Affidavit of Dennis A. Clarke (manager of Plaintiff). On April 5, 2016, Defendants filed their Opposition to Plaintiff's Motion, together with supporting memorandum and Appendix containing Affidavits of Erin Wortman (Stoneham Town Planner), David Lizotte (Stoneham Operations

Engineer), Joseph Ponzo (Stoneham Police Department Safety Officer), Maria Sagarino (Stoneham Town Clerk), Cheryl Noble (Stoneham Building Inspector), and Bryan J. Katz (sign expert for the Town). At the same time, Defendants filed their Cross-Motion for Summary Judgment, together with supporting memorandum and Statement of Material Facts. On April 19, 2016, Plaintiff filed its Reply to Defendants' Opposition, Opposition to Defendants' Cross-Motion, and Affidavit of Philip M. Garvey (sign expert for Plaintiff). A hearing was held on both motions on April 21, 2016, and both motions were taken under advisement.

On May 13, 2016, Plaintiff filed a Notice of Amendment of Applicable Zoning By-law (the "Notice"). Defendants sent an email to the court on May 23, 2016, stating that the Notice was not filed with a motion seeking a hearing or the right to file such Notice. Defendants asked this court for the opportunity to respond to the filing if it were to be accepted by the court. The court has determined that the new legislation, taken at a Special Town Meeting on May 2, 2016, was not applicable to the issues in this case since it was enacted after the filing of the Application (defined, *infra*) and also after all briefing and hearings on the summary judgment motions. As a result, I DENY the filing of the Notice.

I find that the following material facts are not in dispute:

1. Plaintiff is the record owner of the Property.¹ The Property contains a single multi-tenant commercial building containing approximately thirty-six tenant firms and has approximately 120,000 leasable square feet and an attached parking garage. Pursuant to the Stoneham Zoning Bylaw (the "Bylaw"), the Property is located in the Commercial I zoning district.²
2. On June 17, 2014, Plaintiff filed with the Building Inspector an Application for Building Permit to Erect a Sign (the "Application"). The Application was for the construction of a two-sided monument sign containing a light-emitting diode panel (the LED Sign) to replace an existing monument sign in the same location.³ The dimensions of the LED Sign were 126 inches wide by ninety-nine inches tall, with the LED panel comprising thirty-six square feet. The LED Sign conformed to all area, dimensional, and setback requirements of the Bylaw.
3. The LED Sign is an on-premise sign⁴, meaning that it identifies or advertises information relative to uses on the Property.⁵ The messages on the LED Sign would change at intervals of once every eight seconds.⁶
4. On July 1, 2014, the Building Inspector issued the Denial. The Denial stated:

1. The summary judgment record does not contain a copy of the deed, but this fact is not disputed.

2. Section 4.8.1 of the Bylaw states, in part, that: "[t]he purpose of the Commercial District I is to provide areas for light manufacture, assembly, research, industrial parks, office parks, high technology and similar uses."

3. A monument sign is defined in the Bylaw in Section 6.7.4.23 as "[a]n outside sign identifying a development, business(es), service(s), or home(s), the bottom of which is attached directly and permanently to the ground and physically separated from any other structure."

4. An on-premise sign is defined in the Bylaw in Section 6.7.4.26 as "[a] sign that pertains to the use of the premises on which it is located or maintained."

5. The on-premise nature of the LED Sign is implicit in the fact that it is a monument sign, which, by definition, is a free-standing sign identifying a business. See footnote 3, *supra*. The Katz Affidavit states that the "sign is depicted to provide messages, including tenant information, of which there are currently 36 tenants on the property."

6. Plaintiff stated that the Application would be changed to provide for lighting intervals of once every ten seconds, but the Application was never so amended.

1. The proposed sign will feature LED technology and the ability to change messages, which are proposed to change at intervals of not less than once every 8 seconds. Each time the sign changes falls under the category of a flashing sign. Flashing signs are prohibited from town.⁷

2. These signs also have the ability to have animation and scrolling messages which are also prohibited.

5. Plaintiff appealed the Denial to the ZBA on July 22, 2014. The ZBA held a hearing on August 21, 2014 and voted 3-2 not to overturn the Denial. On August 22, 2014, Plaintiff filed a request for reconsideration of the Denial with the ZBA. At a hearing on the request for reconsideration on October 23, 2014, the ZBA voted 3-2 not to reconsider. The ZBA issued the ZBA Decision on December 11, 2014. The ZBA Decision stated:

what constitutes a flashing sign in Stoneham must be interpreted within the limited context of Stoneham. Here, there is no dispute that the sign is illuminated. There is no dispute that the sign changes every eight seconds, thus changing the character of the light emanating from the sign. Having considered the petitioner's arguments in full, the Board voted against the petition by a 3-2 vote.

6. Section 6.7.5 of the Bylaw (entitled *Prohibited signs*) states:

The following are prohibited.

(a) Animated, moving, flashing and revolving signs, beacons, searchlights, pennants, portable signs, and balloons . . .

(f) Any sign not specifically permitted in this bylaw is prohibited.

7. Section 6.7.6 of the Bylaw (entitled *Permitted signs*)⁸ states:

(a) Table 2- Permitted Signs by Zoning District . . .

(e) Off-Premise and billboard signs are permitted by Special Permit in the Commercial I Zoning District, subject to the procedures and requirements in Section 6.7.8.

8. Section 6.7.8 of the Bylaw (entitled *Off-Premise and billboard signs*)⁹ states:

6.7.8.1 Applications: Off-Premise and billboard signs . . . shall be permitted in the Commercial I Zoning District only by grant of a Special Permit issued by the Planning Board . . .

7. A "Flashing sign" is defined in the Bylaw in Section 6.7.4.16 as "[a] sign that contains an intermittent or sequential flashing light source." "Intermittent" is not defined in the Bylaw but is defined in the American Heritage Dictionary as "stopping or starting at intervals." Am. Heritage Dictionary of the English Language (5th Ed. 2015). "Flashing" is not defined in the Bylaw but is defined in the American Heritage Dictionary as "[t]o give off light or be lighted in sudden or intermittent bursts." *Id.* The Town may want to consider amending the Bylaw to make it clear that an overnight change in a digital sign is acceptable.

8. In the Commercial I zoning district, a Monument sign as defined in Section 6.7.4.23 of the Bylaw is allowed by building permit, provided that the sign meets the dimensional requirements stated therein (Section 6.7.6).

9. "Off-premise sign" is defined in the Bylaw in Section 6.7.4.25 as "[a] sign that pertains to a use which is not located or maintained on the premises . . ." A "Billboard" is defined in the Bylaw in Section 6.7.4.5 as "[a] sign which does not advertise a business or profession conducted, a service offered or a commodity sold upon the premises where such sign is located."

6.7.8.2 Dimensional Restrictions and Design Guidelines: All signs shall be in compliance with the following requirements: . . .

6. The following types of signs are prohibited:

(i) Animated, projected, moving or giving the illusion of movement (including any moving parts), scrolling, flashing, revolving, blinking, and intermittently illuminated signs, beacons (or any light directed at any location other than the sign itself), searchlights, pennants, and inflatable signs, including balloons; . . .

(iii) Changeable copy or message signs that change at intervals of more than once every eight (8) seconds. Changes of image shall be instantaneous as seen to the human eye and shall not use fading, rolling, window shading, dissolving or similar effects . . .

9. Plaintiff has not applied for a variance for the LED Sign.

* * *

Plaintiff argues that the LED Sign meets all the requirements of the Bylaw, that Section 6.7.4.16 of the Bylaw¹⁰ is unenforceable on its face and as applied, and that the ZBA Decision and the Denial were arbitrary, capricious, unreasonable, and not in compliance with the Bylaw.¹¹ Defendants argue that the LED Sign violates the provisions of the Bylaw, which is enforceable, and that the Building Inspector and the ZBA acted within their discretion in denying the Application. In support of this claim, Defendants focus on the difference between an on-premise sign and an off-premise sign, whereas Plaintiff ignores this distinction and argues that any digital sign should be allowed some form of intermittent or flashing component, so long as such changes occur not less than eight seconds apart.

As discussed above, Section 6.7.6 (entitled *Permitted signs*), which applies to all zoning districts and all uses, allows, in the Commercial I zoning district, monument signs meeting certain dimensional requirements (which the LED Sign meets) by building permit. It also allows off-premise and billboard signs, but only by special permit, and subject to the conditions enumerated in Section 6.7.8. Section 6.7.8 adds an additional requirement that an off-premise or billboard sign, if allowed by special permit, not change images more than once every eight seconds. Section 6.7.8 applies exclusively to off-premise and billboard signs. Section 6.7.5 (entitled *Prohibited signs*), which applies to all zoning

10. In its Motion for Summary Judgment, Plaintiff requested that the court determine that § 6.7.4.16 of the Bylaw is invalid on its face and as applied. However, as § 6.7.4.16 of the Bylaw is purely definitional, this court assumes, for the purposes of this Decision, that Plaintiff intended to request a declaration that § 6.7.4.16 as applied to § 6.7.5, which prohibits flashing signs in the district, among other things, is invalid.

11. In its Complaint, Plaintiff argued that the ZBA Decision was arbitrary, capricious, unreasonable, and not in compliance with the law under both G. L. c. 40A, § 17 and G. L. c. 249, § 4. However, neither party discussed or argued the issues under G. L. c. 249, § 4 in their summary judgment briefs or at oral argument. Further, G. L. c. 249, § 9 applies only to proceedings that are not otherwise reviewable on appeal; Plaintiff could and did appeal the ZBA Decision with this court under G. L. c. 40A, § 17. Thus, this court will consider these issues only in regards to G. L. c. 40A, § 17 and will deem the issues under G. L. c. 249, § 4 to be waived.

districts and uses, states the general rule that any flashing sign is prohibited,¹² with no distinction given to length of intermittent change (i.e., flashing) in the sign; the provision in Section 6.7.8 related to signs changing messages at intervals of more than once every eight seconds does not apply to any part of Section 6.7.5. Section 6.7.5 also states that any sign not specifically permitted is prohibited.

Both parties agree that the LED Sign has intermittent digital changes. Plaintiff argues that the length of the intermittent change is critical. There is no dispute between the parties that the LED Sign is a monument, on-premise sign. Without the flashing component, the LED Sign, since it meets all dimensional requirements, would be allowed by right in the Commercial I zone. However, the flashing component puts it in a different category since all flashing signs, except certain off-premise or billboard signs allowed by special permit and other conditions, are prohibited by the Bylaw. As a result, the LED Sign has no benefit of the Bylaw provisions relating to length of an intermittent change and is not allowed.

Plaintiff, however, argues that the duration of the intermittent change is critical, contending that every sign (except a traditional non-digital sign) has a change in message whenever the sign goes blank, even if it is only when the sign is turned off at night, so that the key factor in interpreting whether a sign is flashing, and thus in violation of the Bylaw, is the duration of one message on the digital sign before there is a change in the message. As a result, without a distinction in the duration of a change in message on a digital sign, Plaintiff argues, there would be absolute discretion by the ZBA in its interpretation of the validity of a digital sign and, thus, the ZBA Decision would violate the uniformity provisions of G. L. c. 40A. See G. L. c. 40A, § 4; *SCIT, Inc. v. Planning Bd. of Braintree*, 19 Mass. App. Ct. 101, 108 (1984). Plaintiff, however, does not distinguish between off-premise and on-premise signs, and focuses instead on the validity of off-premise signs in the district that change at intervals of more than once every eight seconds (without a corresponding provision relative to on-premise signs). Defendants counter, arguing that the only signs that change message once every eight seconds that are allowed are billboards and off-premise signs (even if they are located in the same zoning district as on-premise signs) because the Bylaw treats these kinds of signs differently from on-premise signs—namely, by requiring for off-premise signs and billboards a special permit and a series of criteria for approval. Defendants also claim that the provision related to eight second intervals does not apply to on-premise signs or Section 6.7.5.

12. Again, the American Heritage Dictionary defines “flashing” as “[t]o give off light or be lighted in sudden or intermittent bursts.” Am. Heritage Dictionary of the English Language (5th Ed. 2015).

13. The Denial, however, seems somewhat ambiguous because it declares that “[f]lashing signs are prohibited from town.” In reality, flashing signs of a certain duration are not prohibited for off-site or billboard signs.

14. Though not necessary my finding in this case, the Affidavits submitted by both sides suggest a rationale for distinguishing between off-premise and on-premise signs. The Affidavit of Philip M. Garvey, Plaintiff’s sign expert, states that “[t]

I agree with Defendants. It is clear on the face of the Bylaw that no type of flashing sign, except off-premise or billboard signs (allowed by special permit under § 6.7.8, with a flash occurring no more than eight seconds apart) is permitted by the Bylaw. The eight second exception from Section 6.7.8 does not apply to on-premise signs. As a result, I find that the LED Sign, because it would be a flashing, on-premise sign, is not permitted under the Bylaw.

Plaintiff also argues that the ZBA has been inconsistent in its interpretation of the Bylaw and that the Building Inspector and the ZBA have “a roving and virtually unlimited power to discriminate between landowners similarly situated,” in violation of G. L. c. 40A, § 4, because the ZBA has granted permits to a number of flashing signs that have intervals of greater than eight seconds. It appears, however, that every approved flashing sign cited by Plaintiff is either an off-premise or billboard sign, or, if an on-premise sign, the applicant for such sign was either granted a variance or the sign’s message changed only once per day (i.e., overnight). As a result, it appears that the ZBA has been reasonably consistent in holding that any on-premise digital sign with a changing message of any duration (except overnight) is not a valid sign under § 6.7.5 of the Bylaw.¹³ In adhering to this reasonable interpretation of the Bylaw and setting specific and uniform criteria for off-premise signs or billboards, the ZBA and the Building Inspector have been consistent in their interpretation and application of the Bylaw, and do not seem to have discriminated between similarly situated landowners.

In addition, local zoning boards have discretion in interpreting their own zoning bylaws, and courts give deference to these interpretations. See *Shirley Wayside Ltd. P’ship v. Bd. of Appeals of Shirley*, 461 Mass. 469, 470 (2012); *Wendy’s Old Fashioned Hamburgers of N.Y. v. Bd. of Appeal of Billerica*, 454 Mass. 374, 383 (2009); *Pendergast v. Bd. of Appeals of Barnstable*, 331 Mass. 555, 558 (1954); *Buccaneer Dev., Inc. v. Zoning Bd. of Appeals of Lenox*, 87 Mass. App. Ct. 871, 876 (2015); *Britton v. Zoning Bd. of Appeals of Gloucester*, 59 Mass. App. Ct. 68, 73 (2003); *Davis v. Zoning Bd. of Chatham*, 52 Mass. App. Ct. 349, 361-62 (2001). Since both the Building Inspector and the ZBA followed a reasonable interpretation of the Bylaw in denying Plaintiff’s Application, I find that the ZBA Decision and the Denial were not arbitrary, capricious, or unreasonable, and were in compliance with the Bylaw.¹⁴ I reject all other arguments raised by the parties.^{15, 16, 17, 18}

Based on the foregoing discussion, my review of the undisputed facts, and my consideration of the parties’ arguments, I

he proposed LED sign creates no transportation or human safety issues and will not obstruct, impair, obscure, interfere, or otherwise have any adverse effect on vehicular or pedestrian traffic, abutting roadways, other persons or properties, and/or any traffic control signal(s).” The Affidavit of Bryan J. Katz, Defendants’ sign expert, states that “[t]he LED sign will likely interfere with vehicular traffic . . . the LED sign with multiple messages will cause increased driver distraction.” The Katz Affidavit gives a detailed analysis of the reasons that the LED Sign will be a safety concern, whereas the Garvey Affidavit merely states Garvey’s opinion without any factual foundation for such opinion.

15., 16., 17., 18. [See next page.]

DENY Plaintiff's Motion for Summary Judgment and ALLOW Defendants' Cross-Motion for Summary Judgment.

KEITH FLORIAN and ANA FLORIAN

Judgment to enter accordingly.

v.

LIBBY COOPER, JOANNE COOPER, and SUSAN COOPER

Craig J. Ziady, Esq.
Senior Vice President & General Counsel
Cummings Properties, LLC
200 West Cummings Park
Woburn, MA 01801
Appears for Plaintiff

16 MISC 000242

July 29, 2016
Karyn F. Scheier, Justice

William H. Solomon, Esq.
319 Main Street
Stoneham, MA 02180
Appears for Defendant

R*es Judicata-Identity of Subject Matter-Newton Easement Dispute-Previous Litigation in Superior Court*—Justice Karyn F. Scheier dismissed a lawsuit seeking relocation of a Newton easement under *M.P.M. Builders* since this easement dispute had already been litigated in Superior Court and the Plaintiff should have raised the issue of the location of the southern boundary at that time.

* * * * *

DECISION ALLOWING DEFENDANTS' MOTION TO DISMISS

In this action, Plaintiffs, who reside at 57 Clifton Street in Newton, seek to have this court determine the extent of easement rights (Easement) held by Defendants, who own and reside at abutting property at 20 Westgate Road. This is not the first case about Defendants' Easement over Plaintiffs' property. Plaintiff Ana Florian together with Augustin Florian, previously brought action against Defendants in Middlesex Superior Court, which was tried to the court jury-waived, resulting in a detailed written decision after trial, in which the court held in favor of the Coopers. Eventually an Appeals Court decision issued, also in favor of the Coopers.¹

Apparently dissatisfied with the results, Plaintiffs filed this action three months after the Appeals Court decision issued, asking this court to alter the boundary of the Easement Area by invoking their right to alter it pursuant to *M.P.M. Builders, LLC v. Dwyer*, 442 Mass. 87 (2004). Plaintiffs filed their two-count complaint on May 4, 2016, seeking in Count I the elimination of a portion

15. The Denial also stated, as a basis for the determination of the Building Inspector, that the LED Sign had "the ability to have animation and scrolling messages which are also prohibited [emphasis supplied]." I see no basis for denying an otherwise valid sign that might have the "ability" to violate the Bylaw if the proposal does not include such prohibited activity and the approval makes it clear that such activity is proscribed.

16. Defendants also argue that the LED Sign is "animated", and Plaintiff does not argue this issue. Since this court has found that the LED Sign is flashing and thus a violation of the Bylaw, there is no need to address the issue of an "animated" sign.

17. Plaintiff points out that the Defendants incorrectly labeled Plaintiff's request a variance in several of their documents (including legal notices, revised agendas, etc.), when in reality Plaintiff was claiming the LED Sign was in compliance with the Bylaw and did not require a variance. Since this distinction was corrected, and has no effect on the outcome of the case regardless, this court will not address the alleged inconsistencies.

18. Plaintiff's Complaint also includes an argument that because, in its view, the ZBA singles out property for treatment more onerous than other parcels in the same zoning district, it constitutes unlawful reverse spot zoning. As the court has already determined that the Defendants are consistent in their interpretation and application of the Bylaw, there is no need for the court to address this issue.

1. The Superior Court Case (MICV2011-02431) Memorandum of Decision issued May 12, 2014. Judgment entered May 14, 2014, and, after hearing, an Amended Judgment issued July 31, 2014. The Amended Judgment was appealed to the Appeals Court in Case 15-P-519, where it was affirmed in large part, by Memorandum and Order Pursuant to Rule 1:28 on March 16, 2016. (Together these cases are sometimes referred to herein as "Previous Litigation.")



TOWN OF
STONEHAM
MASSACHUSETTS
Town Counsel

To: Ann Marie O'Neill
Chairwoman

From: William H. Solomon *William H. Solomon*
Town Counsel

Date: October 21, 2016

Subject: Massachusetts Land Court Decision and Appeal Thereof By The Plaintiff To Massachusetts Appeals Court – *92 Montvale, LLC [Cummings Property Entity] v. William Sullivan, et al. as they are the Stoneham Zoning Board of Appeals and the Town of Stoneham (14 MISC 488957) (Land Court Reporter 24 LCR 461)*

I am forwarding herewith, as previously discussed, the Massachusetts Land Court decision in *92 Montvale, LLC [Cummings Property Entity] v. William Sullivan, et al. as they are the Stoneham Zoning Board of Appeals and the Town of Stoneham*. The Plaintiff, a Cummings Property entity has appealed the Land Court's decision to the Massachusetts Appeals Court.

With respect to the appeal by the Plaintiff, the case was just entered by the Appeals Court (October 13, 2016) and the Appellant's (92 Montvale) brief is due within 40 days (by Tuesday, November 22nd) and the Appellee's brief (ZBA and Town) is due within 30 days after the service of the Appellant's brief (which would be no later than December 22, 2016 if the Appellant takes the full 40 days), subject to a motion to extend the date(s).

Additionally, the parties are in discussions to see if this matter (as well as another Land Court case filed by another Cummings Property entity regarding a similar sign at 41 Montvale Avenue) can be resolved. I have met with the Board of Appeals regarding this litigation twice to date, the most recent being last evening.

I will update the new Town Administrator regarding this litigation next week, and as may be warranted or requested, update the Board regarding these matters at its meeting of November 1st or November 15th.

Please feel free to contact this office if there are any questions or if I can be of assistance.

Enclosure

cc: Town Administrator