

## **Initial Municipal Considerations Regarding Applications for a Comprehensive Permit**

*The commentary below is one of series of updates provided on behalf of the Town of Stoneham relating to the status of the “Commons at Weiss Farm” and the comprehensive permit process in general. By Jonathan Witten, Esq., Huggins and Witten, LLC acting as special town counsel.*

There are several actions that Town boards, commissions and officials as well as the public can take while the Town awaits MassHousing’s decision to deny or issue project eligibility approval for the application of John Corcoran and Company for the “Commons at Weiss Farm”. These steps are relevant to “Commons at Weiss Farm” and to other comprehensive permit applications.

Town boards, commissions and public officials currently have an opportunity to review the plans submitted by the Applicant to MassHousing. While the plans submitted to MassHousing are clearly incomplete (and do not satisfy the requirements for submission to the Board of Appeals), it can be assumed that the plans submitted to MassHousing will resemble those submitted to the Board of Appeals. As a result, review of these plans may allow various Town boards and officials a “head start” should MassHousing grant project eligibility approval and should a comprehensive permit application be submitted to the Board of Appeals. This "head start" will assist local boards and commissions in providing their required comments to the Board of Appeals during the Board's public hearing on the comprehensive permit application.

Second, while the applicant's attendance cannot be required, various boards could invite the applicant to make a public presentation as to its plans and allow these boards and the public to comment on the same prior to any filing with the Board of Appeals

Third, the public, unrelated to any connection with the Town and prior to any filing with the Board of Appeals, could invite the applicant to make a presentation as to its plans and discuss the same at the parties’ convenience.

Once a comprehensive permit application is filed with a board of appeals, the board’s actions are governed by a series of important procedural steps, summarized briefly below:

Within 30 days of the filing of a complete comprehensive permit application, the board will advertise for and open a public hearing to begin its review of the application.

During the public hearing process, the board has the opportunity to probe into the details of the application in a number of ways, including assuring that the application is complete, requiring the payment of funds for the hiring of outside consultants to assist the board, requesting comments from other municipal boards, commissions and officials and invite comments from the public.

Subject to the discretion of the board, the public hearing process is often divided into substantive areas, such that hearing sessions focus on specific areas of importance to the

board and the municipality. For example, public hearing sessions could include focus on traffic and roadway engineering, wetland and natural resource protection, stormwater and wastewater disposal, design and aesthetic considerations, review of the applicant's pro forma and related financial information and other substantive issues identified by the board, other town boards and officials and the public. In many cases, the initial hearing session(s) focus on the applicant's required case—often referred to as its *prima facie* case—where the applicant must demonstrate compliance with basic requirements of the statute and regulations as well as assurance that the application is complete and in compliance with the board's rules and regulations governing comprehensive permit filings.

The relevant regulations require that the board of appeals close the public hearing within 180 days of the filing of a complete application, unless that time period is extended by the applicant and agreed to by the board.

Once the public hearing is closed, the board is precluded from accepting or reviewing new information or testimony from the applicant, the public or other public entities. Once the public hearing is closed, the board must render a decision within 40 days and file the same with the town clerk. A board of appeals can approve a comprehensive permit application with conditions or deny the application.

Within 20 days of the filing of the board's decision with the town clerk, the applicant and aggrieved parties may file an appeal of the board's decision.

An appeal of the board's decision by a comprehensive permit applicant is brought to the Housing Appeals Committee, an agency of the Department of Housing and Community Development.

An appeal of the board's decision by an "aggrieved party" is brought to the Superior or Land Court.

If both appeals are brought—the applicant to the Housing Appeals Committee and an "aggrieved party" to Court—the Court appeal is automatically stayed pending resolution of the Housing Appeals Committee appeal.

The comprehensive permit law, adopted in 1969 and never revised, is notably brief. The current status of the law has been shaped by decisions of the Supreme Judicial Court and the Appeals Court as well as by attempts of the Department of Housing and Community Development to increase the authority of the Housing Appeals Committee and limit the jurisdiction of municipal boards of appeals. As a result, there is no one source for a board of appeals to rely on in its review of a comprehensive permit application. Rather, the board typically rests its analysis on a variety of sources—legal, planning, design and public policy—to arrive at a decision that respects the law and protects the health and safety of the immediate neighborhood and community at large.

Next: A Discussion of Recent Judicial Decisions Governing the Comprehensive Permit statute.