



# TOWN OF HINGHAM

## Board of Appeals

### MEMORANDUM

**TO:** Zoning Board of Appeals  
Joe Fisher, Joe Freeman, and Mario Romania

**CC:** Susan C. Murphy, Special Town Counsel

**FROM:** Emily Wentworth  
Senior Planner: Zoning Administrator/Special Projects

**DATE:** March 22, 2018

**RE:** Review of Peer Review Fund Submittal Requirement for March 26, 2018 ZBA Meeting

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In addition to other updates which I will summarize for the Board in a separate memo, there is a procedural issue with respect to the River Stone application on which the Board will need to make a determination. Below I am providing the relevant information for the Board's review in advance of your discussion of this issue at the hearing:

#### **APPLICABLE REGULATIONS**

##### **760 CMR 56 (Comprehensive Permit Regulations)**

56.05(5) Consultant Review:

"(c) The Board's rules shall set out procedures for inviting proposals by qualified outside consultants, and for the deposit of review fees in a special municipal account. ***The Board's rules may provide that if the Applicant fails to pay the review fee within the stated time period, the Board may deny the Comprehensive Permit.*** Any unspent excess in the account, including accrued interest, shall be reimbursed to the Applicant upon the issuance of the Board's decision or withdrawal of the application."

##### **Zoning Board of Appeals Rules and Regulations**

Section II-G (3<sup>rd</sup> paragraph):

"If the account is depleted prior to completion of the technical review, the applicant will be required to supplement the account in an amount the Zoning Administrator feels is reasonably necessary to complete the review. ***The failure of the applicant to make the initial deposit and to maintain the account in accordance with this Section shall be grounds, in the Board's discretion, for denial of the Comprehensive Permit or continuance of the public hearing until such deposit and/or additional deposit is made and the professional review is completed.***"

**FACTUAL SUMMARY**

1. At the **February 27, 2018** hearing:

- At the Board's request, I reviewed a list of outstanding materials needed for review by the Board and peer review consultants. These included:
  - Responses to outstanding technical peer review items;
  - Response to Board comments from prior meetings in narrative form or through plan revisions;
  - Supplement to or revised drainage report;
  - Supplement to or revised traffic report;
  - Narrative responses to outstanding peer review comments raised by the Board's civil and traffic engineers and wetland scientist;
  - Narrative responses to comments from Town Departments/Boards;
  - Complete and specific waiver list, including wetlands differences; and
  - Additional \$9,100 to support peer review of the expected 6<sup>th</sup> iteration of plans.
- **The Applicant represented revisions to the plans and updated submissions would be submitted to the Board during the week of March 5, 2018, but in no event later than March 9, 2018.** The deadline for delivery of the payment and the submittal of documents was extended at the Applicant's request to March 9<sup>th</sup>.
- The Board then voted as follows:

Joe Fisher: "I will entertain a motion that we request that the applicant provide peer review funds in the amount of \$9,100 to be submitted on or before the end of that week of March 5th so that would be by March 9, 2018, 1:00 because the office closes early on that Friday."

Joe Freeman: so moved

Mario Romano: second

All those in favor: unanimous

2. On **Friday, March 9, 2018**:

- No payment was received by 1:00 p.m. on March 9, 2018, or at any time that day.
- McKenzie Engineering Group made an electronic submission received at 5:48 p.m., after 1:00 p.m. (close of business), which did not include most of the required information outlined at the hearing on February 27, 2018.

3. On **Monday, March 12, 2018**, I received an email from the Applicant inquiring as to the amount of peer review funds he was required to submit by March 9, 2018. In responding to the Applicant, I indicated that, given the Board's vote on February 27, 2018 and the governing provisions of the Board's Rules and Regulations, I did not have the authority to process the payment and authorize peer review. My complete response is found in the email chain attached hereto as Exhibit A.

4. On **Tuesday, March 13, 2018**, Hingham Town Hall was closed due to weather conditions.

5. On the afternoon of **Wednesday, March 14, 2018**, the Applicant submitted hard copies of the materials previously submitted electronically, including revised plans, responses to engineering peer review comments, and an updated drainage report, each dated March 9, 2018. He also submitted a check in the requested amount of \$9,100.
  - When the Applicant filed the above described materials, I verbally reminded him that we had yet to receive the following:
    - Response to Board comments from prior meetings in narrative form or through plan revisions;
    - Supplement to or revised traffic report that would explain the expected impacts of the revised plans in terms of traffic safety, volumes, and circulation;
    - Narrative responses to outstanding peer review comments raised by the Board’s wetland scientist;
    - Narrative responses to comments from Town Departments/Boards; and
    - Complete and specific waiver list.
  - With respect to the request for a complete and specific waiver list, the Applicant indicated that he intended for the submission dated February 12, 2018 to fulfill that requirement. We discussed that the Board found the prior submission to be both incomplete and unspecific, particularly with respect to requests for relief from local Conservation Commission and Board of Health Regulations. I also noted that the plan as revised through March 9, 2018 made many of the previously requested waivers from the Zoning By-Law inaccurate. We discussed a particular example. On the southeasterly portion of the property, proposed structures were shifted closer to the property line shared with 90 Ward Street. The change effects the extent of relief requested from the 20’ side yard setback from 15’ to 10’. The Applicant indicated that he would have his engineer review the waiver list and respond.
6. As of today, **Thursday, March 22, 2018**, the Applicant has not made any additional submittals.

EXHIBIT A

**Wentworth, Emily**

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**From:** Brian Murphy <brianmurphy@unicornrealty.com>  
**Sent:** Tuesday, March 13, 2018 8:20 AM  
**To:** Wentworth, Emily  
**Subject:** Re: River Stone Submittal

Hi Emily

So you are not processing our hard copies and payment but you are receiving or accepting our hard copies and payment. Got it. If town hall is open today with the snow then I will bring them down. If not then I will bring them tomorrow.

Brian

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Wentworth, Emily" <wentworthe@hingham-ma.gov>  
**Date:** 3/12/18 21:27 (GMT-05:00)  
**To:** Brian Murphy <brianmurphy@unicornrealty.com>  
**Subject:** RE: River Stone Submittal

Brian,

As requested, attached are the scanned peer review invoices received through March 9. I also attached an additional invoice from South River Environmental, which was received this afternoon.

As to the delivery of the hard copy submittals and payment, I note the following:

At the February 27, 2018 hearing, at the Board's request, I reviewed for you a list of outstanding materials needed for review by the Board and peer review consultants.

- At the February 27, 2018 hearing, the Board voted to request the amount of \$9,100 in additional peer review funds for peer review of the anticipated revisions to the plans and updated submissions that you represented would be submitted to the Board during the week of March 5, 2018, but in no event later than March 9, 2018. In addition to the specific amount of peer review funding, the Board's vote set forth a stated period for the delivery of the funds, such period being on or before 1:00 p.m. on Friday, March 9, 2018.

- At the February 27, 2018 hearing, the deadline for delivery of the payment and the submittal of documents were extended at your request to the March 9<sup>th</sup> date and time.

- The electronic submission received after 1:00 p.m. (close of business) on Friday, March 9, 2018 did not include most of the required information outlined at our hearing on February 27, 2018. No payment was received by 1:00 p.m. on March 9, 2018, or at any time that day. Likewise, we did not receive the payment today, nor did we receive the additional documents.

Pursuant to Article II, Section G of the Board's Rules and Regulations: "The failure of the applicant to make the initial deposit and to maintain the account in accordance with this Section shall be grounds, in the Board's discretion, for denial of the Comprehensive Permit or continuance of the public hearing until such deposit and/or additional deposit is made and the professional review is completed."

As the applicant did not make the payment within the period stated by the Board in its vote of February 27, 2018, I have no authority to process any payment or authorize peer review until there is a further determination of the Board in accordance with its Rules and Regulations as stated above.

On February 27, 2018, the Board continued the hearing until March 26, 2018 at 7:00 p.m. Pursuant to state law, the Board can take no further action related to this application until such date and time.

Therefore, as stated in my email below, "I am not authorized to process late payments or to proceed with work on this application." It is up to the applicant to submit the hard copies of the revised submissions and peer review payment to the Zoning Board office. However, any submissions that may be received or accepted by our office will be without prejudice to the Board's authority to deny or continue the public hearing in accordance with regulations.

Thank you,

Emily



**Emily Wentworth**

Senior Planner: Zoning/Special Projects  
Town of Hingham  
210 Central Street  
Hingham, MA 02043  
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Fax: (781) 740-0239  
[wentworthe@hingham-ma.gov](mailto:wentworthe@hingham-ma.gov)  
[www.hingham-ma.gov](http://www.hingham-ma.gov)

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**From:** Brian Murphy [mailto:brianmurphy@unicornrealty.com]  
**Sent:** Monday, March 12, 2018 1:15 PM  
**To:** Wentworth, Emily <wentworthe@hingham-ma.gov>  
**Subject:** Re: River Stone Submittal

Hi Emily

Yes. Please email me the scanned invoices. As for acceptance of our paperwork, the tact of not accepting the submittal or payment today does not seem to help anyone in this process. Let me know when the Board gives you permission to accept our hard copies and payment and we will bring them down.

Brian

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Wentworth, Emily" <[wentworthe@hingham-ma.gov](mailto:wentworthe@hingham-ma.gov)>

Date: 3/12/18 12:28 (GMT-05:00)

To: Brian Murphy <[brianmurphy@unicornrealty.com](mailto:brianmurphy@unicornrealty.com)>

Subject: RE: River Stone Submittal

Brian,

Copies of invoices were available for you to pick up on Friday, March 9, 2018. This is the date when you, or your representative, were scheduled to come to Town Hall to drop off a check for peer review and to deliver copies of the plans and other required materials. If you prefer, I can scan the invoices and send them to you by email.

As for peer review funds, the amount presented to you at the Board meeting on February 27, 2018, was \$9,100 in connection with the most recent revision of your plans.

As you know, the deadline for submission of fees for peer review of your application was March 9, 2018. This deadline was agreed to by River Stone and voted upon by the Board at its meeting on February 27, 2018. The deadline has passed and the required fees were not received. At this point I am not authorized to process late payments or to proceed with work on this application. I will request further instructions from the Board, in accordance with the Board's rules and regulations governing comprehensive permits, at its next meeting on this application, which is currently scheduled for March 26, 2018.

Thank you,

Emily



**Emily Wentworth**

Senior Planner: Zoning/Special Projects  
Town of Hingham  
210 Central Street  
Hingham, MA 02043  
Voice: (781) 741-1494  
Fax: (781) 740-0239  
[wentworthe@hingham-ma.gov](mailto:wentworthe@hingham-ma.gov)  
[www.hingham-ma.gov](http://www.hingham-ma.gov)

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**From:** Brian Murphy [<mailto:brianmurphy@unicornrealty.com>]  
**Sent:** Monday, March 12, 2018 10:18 AM  
**To:** Wentworth, Emily <[wentworthe@hingham-ma.gov](mailto:wentworthe@hingham-ma.gov)>  
**Subject:** RE: River Stone Submittal

Hi Emily,

I will bring things down when copies are ready at McKenzie Engineering. Can you confirm the amount of the check? Also, could you provide me copies of invoicing to date?

Thank you,

Brian

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**From:** Susan Spratt [<mailto:sspratt@mckeng.com>]  
**Sent:** Friday, March 09, 2018 5:48 PM  
**To:** Wentworth, Emily  
**Cc:** Warren F. Baker; Letizia-Eddy, Sue; Kehoe, Jeanne; Gianibas McDonald, Theresa; McKenzie, C. Bradley; Brian Murphy  
**Subject:** RE: River Stone Submittal

Emily,

Attached is the drainage report and response to comment letter.

Eight sets of the plans and four copies of the drainage report will be delivered on Monday.

Please let me know if you require additional information.

Regards,

Susan B. Spratt, P.E.

Project Manager



Assinippi Office Park  
150 Longwater Drive, Suite 101  
Norwell, MA 02061  
P: 781.792.3900  
F: 781.792.0333

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**From:** McKenzie, C. Bradley  
**Sent:** Friday, March 09, 2018 10:49 AM

**To:** Wentworth, Emily <[wentworthe@hingham-ma.gov](mailto:wentworthe@hingham-ma.gov)>; Brian Murphy ([brianmurphy@unicornrealty.com](mailto:brianmurphy@unicornrealty.com)) <[brianmurphy@unicornrealty.com](mailto:brianmurphy@unicornrealty.com)>  
**Cc:** Warren F. Baker <[WarrenB@bbb-lawfirm.com](mailto:WarrenB@bbb-lawfirm.com)>; Letizia-Eddy, Sue <[eddys@hingham-ma.gov](mailto:eddys@hingham-ma.gov)>; Kehoe, Jeanne <[KehoeJ@hingham-ma.gov](mailto:KehoeJ@hingham-ma.gov)>; Gianibas McDonald, Theresa <[mcdonaldt@hingham-ma.gov](mailto:mcdonaldt@hingham-ma.gov)>; Susan Spratt <[sspratt@mckeng.com](mailto:sspratt@mckeng.com)>  
**Subject:** RE: River Stone Submittal

Emily,

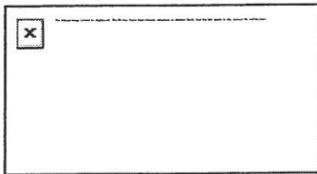
We are working diligently to complete the revised plan set, drainage report and supplemental information for today's submission.

The engineering has taken considerably more time than anticipated. As such we will only be able to provide electronic copies this PM with hard copies to be hand delivered to your office on Monday.

Regards,

Bradley C. McKenzie, P.E.

President



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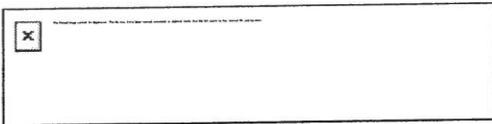
**From:** Wentworth, Emily [<mailto:wentworthe@hingham-ma.gov>]  
**Sent:** Friday, March 09, 2018 9:54 AM  
**To:** Brian Murphy ([brianmurphy@unicornrealty.com](mailto:brianmurphy@unicornrealty.com))  
**Cc:** Warren F. Baker; McKenzie, C. Bradley; Letizia-Eddy, Sue; Kehoe, Jeanne; Gianibas McDonald, Theresa  
**Subject:** River Stone Submittal

Brian,

I wanted to touch base about your expected submittal. The Zoning Office is not generally open on Fridays, including today. Town Hall, however, is open until 1:00 PM. As a result, you will need to submit your revised application materials, including plans, reports, responses, and peer review funds, to the Building Department. Please also send me a digital copy of these materials by email so that I can distribute to our peer review consultants and Board members for review in advance of the weekend.

Thank you,

Emily



**Emily Wentworth**

Senior Planner: Zoning/Special Projects  
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