

J. WILLIAM W. HARSCH & ASSOCIATES

J. William W. Harsch, Esq.*

Attorney at Law

harschlaw@necoxmail.com

*also licensed in D.C.

2258 POST ROAD
2ND FLOOR
WARWICK, RI 02886
PHONE: (401) 921-5636
FAX: (401) 921-5639

September 26, 2017

via email & fax

Peter Ruggiero, Esquire
Town Solicitor
Town of Scituate
c/o Ruggiero, Brochu & Petrarca
20 Centerville Road
Warwick, RI 02886

Re: Scituate Zoning Board
Case No. 1200
Paramount Development Group

Dear Mr. Ruggiero:

We are writing on behalf of our clients, John N. and Mary E. Allan, both of 103 Main Street, Hope, Rhode Island, and Brian Martin, of 75 Main Street, Hope, Rhode Island, all persons requiring notice of the referenced application, and Hope Mill Concerned Citizens, concerning the public meeting scheduled this Wednesday, September 27, 2017. We recently learned that the Zoning Board of Review has scheduled a "possible executive session" purportedly to discuss matters pursuant R.I.G.L. § 42-46-5(a)(2): pending and potential litigation and related to "correspondence dated September 15, 2017 received from Receiver of New England Development RI, LLC."

First and foremost, we object to an "executive session" by the Zoning Board of Review. The Zoning Board is in the middle of a public hearing related to certain requested relief from the Zoning Ordinance. The fact that a decision of the Zoning Board may result in an appeal of its decision is certainly not cause for a closed session. The Receiver is clearly using veiled threats to intimidate the Zoning Board into granting unsupported relief. The discussion of the Zoning Board with regard to this Petition and how the Zoning Board may act is not protected as a closed meeting under the Open Meetings Act.

The Receiver relies on an “automatic stay” in place for “the commencement, prosecution, or continuance of the prosecution, of any action, suit arbitration, proceeding, hearing . . .” Receivership Order Paragraph 12. The Zoning Board hearing is not a proceeding contemplated by this stay; rather, the stay is meant to protect the property from actions against the property. Here, the Receiver himself is “prosecuting”/pursuing the application in an effort to make the property more valuable. Zoning processes are not pre-empted by court-ordered receiverships. Such a broad interpretation is unreasonable and would lead to absurd results.

In reviewing the Receiver’s correspondence, it seems the Receiver now relies on a 2006 Zoning Board decision, which has clearly expired both by time and by failure to meet conditions of approval, as well as a non-existent January 19, 2016 “confirmation” of the 2006 Decision. First, we take the position, as should the Zoning Board, that the 2006 Zoning Board had did not have the jurisdiction to hear an application requiring both a special use permit and dimensional variances and, therefore, the 2006 Decision is void. We rely on our memorandum previously submitted to the Zoning Board.

We also object to the Zoning Board parsing “items in the current application which [the Zoning Board] believe[s was] decided . . . in 2006,” and even more so in a closed-door meeting. As you know, the 2006 Decision is conditioned upon the then-Applicant “appear[ing] before the Board to provide an annual status report . . . at the Board’s first meeting in January of each ensuing year, beginning in 2008, until such time as the Board give the Applicant its final approval.” Although the then-Applicant appeared in January 2008, there is no record of then-Applicant appearing in or around January 2009 as required by the 2006 Decision and, therefore, the approvals expired at that time. Importantly, there is no record of the Zoning Board confirming the 2006 Decision.

The 2006 Decision specifically states that the decision is not “final” and that the Applicant must obtain “Final Site Plan approval(s)” and is “required to appear before the Board in the event that any changes are made to the site plan and layout that impact or effect any of the conditional relief granted herein.” See Conditions 10, 11, 12 of the 2006 Decision. The 2006 Decision is also inapplicable at this time because the Applicant cannot meet the condition to obtain approval from West Warwick Sewer Authority for the provision of sewer to the project. Condition 2.

The 2006 Decision was based on facts and specifications that do not exist with the current application. The Zoning Board reviewed all of what the then-Applicant proposed at the time, including adequate parking, smaller-sized scattered buildings, provision of sewer to the project and to other parts of the Town, among other things, when it granted increased density. The current Application is for an entirely new proposal, with higher buildings, less parking and no provision for sewer. The Town has changed in the last 10+ years, and the proposal has also

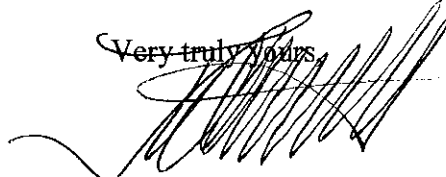
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changed significantly. The Zoning Board must review this proposal under the required standards and as a new application.

We also object to limiting the public's presentation on Wednesday evening. A review of the transcript evidences that the public hearing was not closed at the last meeting. Moreover, the Zoning Board allowed comment from Applicant's representatives and stated that additional comment from Applicant would be allowed on Wednesday night, so in fairness our client is entitled to a short presentation. We can commit to a 15-minute presentation to the Zoning Board, including our land use expert and myself.

We appreciate your consideration of our concerns and respectfully ask the Zoning Board to consider the complete Application (including jurisdictional issues as presented in our previously-submitted brief), in the public's view, and allow the public to fully participate.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. William W. Harsch", written over a horizontal line.

J. William W. Harsch

cc: Dennis Charland, Acting Chairman

JWWH: cms