

**Supreme Judicial Court of Massachusetts
SUPERIOR COURT DEPARTMENT
County: NORFOLK**

Jocket Number

PLAINTIFF(S)
West Street Group LLC

DEFENDANT(S)
Stoughton Zoning Board of Appeals, Town of Stoughton,
Richard H. Heaton, H&H Associates Consulting LLP, and
Horsley-Witten Group, Inc.
ATTORNEY (if known)

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE
Joseph F. Krowski, Esq.
30 Cottage Street, Brockton, MA 02301 508-587-3701
Board of Bar Overseers number: 280540

Origin code and track designation

Place an x in one box only:

- | | |
|--|---|
| <input checked="" type="checkbox"/> 1. F01 Original Complaint | <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X) |
| <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F) | <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/
Order (Mass.R.Civ.P. 60) (X) |
| <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct.C.231,s.102C (X) | <input type="checkbox"/> 6. E10 Summary Process Appeal (X) |

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?	
<u>C02</u>	<u>Zoning Appeal, G.L. 40A, §17</u>	(F)	() Yes	(X) No
<u>E03</u>	<u>Tort - Claims Against Municipality</u>	(A)	(X) Yes	() No
<u>B99</u>	<u>Tort - Claims for Interference with economic, and G.L. 93A, §11.</u>	(F)	(X) Yes	() No

The following is a full, itemized and detailed statement of the facts on which the plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

- A. Documented medical expenses to date:
- Total hospital expenses..... \$ _____
 - Total Doctor expenses..... \$ _____
 - Total chiropractic expenses..... \$ _____
 - Total physical therapy expenses..... \$ _____
 - Total other expenses (describe)..... \$ _____
- B. Documented lost wages and compensation to date..... Subtotal \$ _____
- C. Documented property damages to date..... \$ _____
- D. Reasonably anticipated future medical and hospital expenses..... \$ _____
- E. Reasonably anticipated lost wages..... \$ _____
- F. Other documented items of damages (describe)..... \$ _____
- Engineering, consulting, and legal cost; land purchase deposits, carrying costs, and construction managers fee.* \$ 1,750,000.00
- G. Brief description of plaintiff's injury, including nature and extent of injury (describe)..... \$ 5,190,399.75
- The Plaintiff is appealing pursuant to G.L. c. 40A, §17 the imposition of certain conditions to a comprehensive permit issued by the Stoughton Zoning Board of Appeals under G.L. c. 40B. The Plaintiff asserts certain claims for certain civil rights violations by the Town of Stoughton in the pursuit of its comprehensive permit. Also, the Plaintiff asserts claims for tortious conduct of certain consultants retained by the Town of Stoughton during the approval process. The damages caused to the Plaintiff in the form of lost profits from development of its proposed project, estimated in its application to the Zoning Board to be at least \$5,190,399.75.*
- TOTAL: \$ 6,940,399.75**

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL: \$ _____

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods.

Signature of Attorney of Record

Joseph F. Krowski

DATE: 12-3-07

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

NORFOLK, ss.

C.A. No. _____

WEST STREET GROUP LLC)

Plaintiff)

v.)

SHERM EPRO, JERALD S. SAVAGE, HERBERT)
MUSMON, PETER BARRON, and ROBERT O'REGAN,)
as they are members of the Town of Stoughton Zoning)
Board of Appeals and not individually,)

THE TOWN OF STOUGHTON,)

HORSLEY WITTEN GROUP, INC., RICHARD H.)
HEATON, and H&H CONSULTING ASSOCIATES,)
LLP,)

Defendant)

COMPLAINT

Introduction

By this action, the Plaintiff West Street Group LLC (“WSG”), pursuant to G.L. c. 40A, §17 appeals certain conditions contained in a comprehensive permit issued to WSG by the Stoughton Zoning Board of Appeals. Additionally, WSG asserts separate claims against the Town of Stoughton as well as certain consultants to the Zoning Board of Appeals, Conservation Commission, and Open Space Committee, who engaged in a calculated effort of wrongful coercion, interference, and influence of public boards and processes to defeat WSG’s development of The Villages at Stonegate comprehensive permit project and cause substantial economic damage to WSG.

Parties

2. The Plaintiff, West Street Group LLC (“WSG”), is a Massachusetts limited liability company, duly organized and existing under the laws of the Commonwealth, with its principal place of business at 10B Porter Street, Stoughton, Norfolk County, Massachusetts.

3. The Defendant, Sherman Epro (“Epro”) is an individual resident of the Commonwealth and resides at 5 Macarthur Street, Stoughton, Norfolk County, Massachusetts. Epro is the Chairman of the Town of Stoughton Zoning Board of Appeals (“ZBA”) and is sued in this capacity and not individually.

4. The Defendant, Jerald Savage (“Savage”), is an individual resident of the Commonwealth and resides at 81 Old Maple Street, Stoughton, Norfolk County, Massachusetts. Savage is the Vice Chairman of the ZBA and is sued in this capacity and not individually.

5. The Defendant, Herbert Musmon (“Musmon”) is an individual resident of the Commonwealth and resides at 190 Greenbrook Drive, Stoughton, Norfolk County, Massachusetts. Musmon is a member of the ZBA and is sued in this capacity and not individually.

6. The Defendant, Robert O’Regan (“O’Regan”) is an individual resident of the Commonwealth and resides at 26 Freely Drive, Stoughton, Norfolk County, Massachusetts. O’Regan is the Secretary of the ZBA and is sued in this capacity and not individually.

7. The Defendant, Peter Barron (“Barron”) is an individual resident of the Commonwealth and resides at 955 West Street, Stoughton, Norfolk County, Massachusetts. Barron is a member of the ZBA and is sued in this capacity and not individually.

8. The Defendant Town of Stoughton (“Stoughton”) is a municipal corporation, duly incorporated and existing under the laws of the Commonwealth, with an address at 10 Pearl Street, Stoughton, Norfolk County, Massachusetts.

9. The Defendant Horsley Witten Group, Inc. (“Horsley-Witten”) is a Massachusetts corporation, duly organized and existing under the laws of the Commonwealth, with its usual address at 90 Route 6A, Sextant Hill, Unit 1, Sandwich, Barnstable County, Massachusetts 02563. At all times relevant hereto, Horsley-Witten was engaged as a consultant to both the Town of Stoughton Open Space Committee and the Town of Stoughton Conservation Commission.

10. The Defendant H&H Consulting Associates LLP (“H&H”) purports to be a Massachusetts limited liability partnership, with a business address at 178 Ballville Road, Bolton, Massachusetts 01740. H&H has failed to file any annual reports with the Secretary of the Commonwealth since 2001 and would appear to not be in good standing under the laws of the Commonwealth. At all times relevant hereto, H&H was engaged by the Zoning Board of Appeals as a “pro forma review” consultant.

11. The Defendant Richard H. Heaton (“Heaton”) is an individual resident of the Commonwealth with a business address at 178 Ballville Road, Bolton, Massachusetts 01740. At all times relevant hereto, Heaton was providing “pro forma services” consulting to the Zoning Board of Appeals.

Factual Allegations

(Local Initiative Program Endorsement)

12. In July 2005, WSG began planning of a multifamily residential development to be situated on a parcel of undeveloped property located on West Street in Stoughton,

Massachusetts. Over the course of the next several months, WSG negotiated the purchase of land from certain landowners and began survey and engineering, all with the purpose of compiling a plan for development to be submitted to the Town of Stoughton for approval.

13. In September 2005, having accumulated under purchase and sale agreement a tract of land of approximately 30 acres, consisting of several individual landowners, WSG completed the initial plans for "The Villages at Stonegate" – a multifamily residential development to be filed under an application for comprehensive permit pursuant to G.L. c. 40B.

14. As a necessary jurisdictional requirement of an application for comprehensive permit under G.L. c. 40B, WSG was required to provide evidence of a "subsidy," which it intended to accomplish through the Local Initiative Program (LIP) – a program which counts a local endorsement by the Stoughton Board of Selectmen as a valid "subsidy," by virtue of its community support.

15. In September 2005, WSG appeared before the Stoughton Board of Selectmen and presented its plans for endorsement. After presentation and discussion, the Board voted unanimously to endorse The Villages at Stonegate under the Local Initiative Program for construction of 140 condominium units.

16. Following endorsement by the Board of Selectmen, several politically active neighbors to the proposed project began lobbying the Board of Selectmen to reconsider its endorsement.

17. In September 2005, the Stoughton Open Space Committee, a committee charged with the duty of compiling an "open space plan" for the Town, scheduled a meeting at Town Hall. The membership of the Open Space Committee included both direct neighbors and direct abutters.

18. At their September 2005 meeting, the Open Space Committee invited discussion on The Villages at Stonegate project with a group of approximately 50 neighbors. These discussions in the first floor conference room at Stoughton Town Hall consisted of Open Space Committee members suggesting ways that neighbors could fight against the development of the Villages at Stonegate. The committee members even introduced to the neighbors a woman who had experience appealing another comprehensive permit project in the Town of Stoughton.

19. Following its meeting with the neighbors, the Open Space Committee adjourned to a separate conference room where discussion on The Villages at Stonegate continued. Following the discussion, the committee members voted unanimously to send a letter to the Board of Selectmen requesting that the Board rescind its endorsement of The Villages at Stonegate.

20. The Open Space Committee member drafting the letter to the Board of Selectmen, Ardis Johnston, is a direct abutter to the Villages at Stonegate land. Additionally, two members of the Open Space Committee, members John Morton and John Linehan, also serve on the Stoughton Conservation Commission and, in later months, would sit in hearing on Stonegate matters filed before the Commission, while having voted earlier as Open Space Committee members to send recommendations letters for denial of WSG's applications.

21. Soon after the LIP endorsement, following intense lobbying by opponents, WSG received word from the Board of Selectmen, that it had scheduled the LIP endorsement matter for reconsideration. After a presentation and discussion, the Board of Selectmen voted to reconsider and rescind its LIP endorsement.

22. Upon rescission of the LIP endorsement, WSG was instructed by the Board members to meet with the neighbors to discuss any concerns with the development and then return to the Board for reconsideration of the LIP endorsement.

23. Over the next several weeks, through January 2006, WSG scheduled more than a dozen meetings with neighbors including planning sessions, question and answer sessions, site visits, off-site visits with neighbors to view other housing designs, and email and telephone correspondence. All interested persons were invited to these meetings, and some of WSG's most vigorous opponents took part in the discussions.

24. Following its meetings and discussions with the neighbors, WSG revised its plans to encompass many of the suggestions of the neighbors including such changes as: a reduction in the number of units from 140 to 120; redesign to create additional buffer zones, redesign to move common facilities, and, generally, adjusting the design to be removed from view of West Street, some 900 feet off of the public way.

25. In January 2006, WSG reapplied for LIP endorsement. WSG's application sat idle on a filing cabinet without action by the Board until May 2006. WSG made several inquiries on the status of its application, without response.

26. In May 2006, the Board of Selectmen scheduled hearing on WSG's LIP application and, on or about May 9, 2006, the Board of Selectmen voted, by a 3-2 vote, to once again endorse the LIP application for The Villages at Stonegate, with the revisions incorporated by WSG.

27. WSG's application was thereafter signed by the Chairman on behalf of the whole Board and forwarded to the Massachusetts Department of Housing and Community Development for approval.

28. On or about September 12, 2006, DHCD issued a determination of site eligibility and preliminary approval of The Villages at Stonegate under the Local Initiative Program, amounting to the “subsidy” required of WSG as a jurisdictional requirement of its application for comprehensive permit.

(Application for Comprehensive Permit and Opening of the Public Hearing)

29. On or about September 18, 2006, WSG filed its application for comprehensive permit with the Zoning Board of Appeals.

30. In accordance with G.L. c. 40B and the Regulations promulgated thereunder, the ZBA was required to open the public hearing on WSG’s application within thirty days of filing application. The ZBA failed to open the meeting in the time required by statute, but WSG agreed, after informal discussion with the Board, to allow the ZBA an extension of time.

31. WSG’s assent to an extension of time for opening the public hearing was granted after informal discussions with ZBA and its counsel that the plans and materials filed with the application would be sent out for peer review, as has been the ZBA’s customary procedure with comprehensive permit applications. Notwithstanding the discussion, WSG’s application was not sent out for peer review as discussed.

32. The ZBA held its first substantive public hearing on WSG’s application in January 2007 – nearly four months after WSG filed its application. During the public hearing, WSG presented evidence and testimony on its application, and the matter was thereafter continued to March 15, 2007.

(Conservation Commission Matters - ANRAD Filing)

33. With the ZBA public hearing continued for two months, WSG chose to use the time productively by filing an Abbreviated Notice of Resource Area Delineation (ANRAD) with the Stoughton Conservation Commission, in order to delineate the wetlands and resource areas for the project.

34. WSG filed its ANRAD with the Conservation Commission and, at its first public hearing on the ANRAD, the Commission discussed sending the ANRAD and plans to a private consultant for review on the Commission's behalf. The Commission discussed a number of consultants on its "approved list" of consultants.

35. During the discussion of potential consultants, counsel for WSG represented to the Commission that it would have no issue with any consultant chosen by the Commission, with the exception of Defendant Horsley-Witten Group, LLC. The reason for WSG's objection was that the neighborhood opposition group had retain Jonathan Witten as counsel and, even if no longer legally affiliated, the hiring of Horsley-Witten – a company with whom he had a prior ownership interest – gave the appearance of bias.

36. The Commission agreed during the hearing to discuss its choice of consultants with WSG; however, notwithstanding such agreement, the Commission voted to hire Horsley-Witten over WSG's objection, and without consulting WSG as it had represented it would.

37. At the time of its hire, Horsley-Witten had also been retained by the Open Space Committee, and was working directly with member Ardis Johnston – a direct abutter to The Villages of Stonegate – on preparation of an "open space plan." The "open space plan" which was eventually drafted and approved by the Open Space Committee included the privately-owned land encompassed by The Villages at Stonegate development plans.

38. Two members of the Open Space Committee approving the “open space plan” (which included the Stonegate land) were also members of the Conservation Commission. Two other members of the Open Space Committee were nearby abutters to The Villages at Stonegate and active members of the organized opposition group.

39. The Conservation Commission held hearings on WSG’s ANRAD the winter of 2006, and into the spring of 2007. Obfuscating the issue of WSG’s ANRAD was the issue of an order of conditions dating back to 1990 – some 17 years earlier – raised by the Commission. On its own motion, the Commission voted to refer the issue of the 1990 order of conditions to its Horsley-Witten consultant and to charge WSG with the cost of Horsley-Witten’s review.

40. In February 2007, WSG presented evidence that (a) the order of conditions had been satisfied in full, and (b) even if it had not, G.L. c. 131, §91 prescribe a statute of limitations which prevented enforcement.

41. In addition to the legal issues of enforceability, the Horsley-Witten consultant had prepared an amended review memorandum for the Commission, wherein she opined on inadequacies with certain work performed 17 years prior. It was later revealed and acceded-to by the Horsley-Witten consultant that her opinion was flawed in that she had reviewed the wrong parcel of land.

42. After several meetings and discussions, the Horsley-Witten consultant issued a revised (and final) review memorandum opining that (a) the 17-year-old order of conditions had been substantially fulfilled, and (b) WSG’s wetlands delineation was substantially accurate as presented.

43. It was revealed through her correspondence to the Commission, as well as her testimony during the public hearings, that the Horsley-Witten consultant had been

communicating with Ardis Johnston, a direct abutter and active member of the opposition group, during the period of her review.

44. After several public hearings, and several cancelled public hearings, where a sufficient number of Commission members failed or refused to appear and no quorum could be achieved, the Commission approved WSG's ANRAD with several amendments offered by WSG.

45. The Commission's approval of WSG's ANRAD was only after it was clear that its Horsley-Witten consultant could no longer support a contrary position and no expert opinion had been presented to rebut the presumptive wetlands delineation submitted by WSG. The final vote of the Commission was 4-1 in favor of the amended delineation, but the Commission made a specific point to exclude a determination of the status of a stream transecting the property, despite Horsley-Witten's opinion that the area could be clearly categorized as an "intermittent stream."

(Continued ZBA Public Hearing)

46. The ZBA continued its public hearing on WSG's application on or about May 3, 2007, whereupon it referred WSG's plan to an engineering consultant for review. Additionally, the ZBA discussed obtaining the review of an environmental consultant and voted to contact Defendant Horsley-Witten for such environmental review. The public hearing was thereafter continued to June 2007.

47. The public hearing on WSG's application was reopened June 21, 2007, at which time, the Board's engineering consultant reported to the ZBA that WSG had substantially complied with all engineering and planning recommendations of the Board's consultant. During the May public hearing, neighborhood opposition focused extensively on wetlands and wildlife

issue – more specifically, vernal pools. At the prior May 2007 public hearing, the Board voted to retain Horsley-Witten as an environmental consultant to opine on wetlands and wildlife issues.

48. After attempts were made to retain Horsley-Witten's services for environmental review, Horsley-Witten decline to work with the ZBA. As a result, the ZBA had no environmental consultant hired for its June 2007 public hearing.

49. Appreciating that the Board would not have an environmental consultant working on its behalf for its June meeting, and in the attempt to preempt further delay, WSG retained a new wetlands and wildlife consultant to review the plans. Its new consultant, Michele Grenier of Wetlands and Wildlife Consultants, had formerly served as the Town of Stoughton Environmental Affairs Officer, and currently serves in that capacity for the Town of Mansfield.

50. At the June 2007 Michele Grenier spent much of its time discussing the non-existence of "vernal pools" on the property, which the neighborhood opposition had continued to allege existed. The neighborhood opposition submitted claims about the existence of a rare species of salamander on the Stonegate property. The public hearing was thereafter continued to August 2007. This June meeting was the last time WSG was afforded the opportunity by the ZBA to present evidence in support of its application.

51. WSG proactively engaged Ms. Grenier to perform an additional evaluation of salamander habitat on the Stonegate premises and found none to exist on-site.

52. At the August 2, 2007 public hearing, Ms. Grenier reported to the Board that no salamanders or salamander habitats existed on site. Ms. Grenier's testimony was given over the objections of Member O'Regan, who suggested that the opposition be provided the forum for presentation.

53. Following Ms. Grenier's testimony, at the behest of Member O'Regan, WSG yielded the floor to the neighborhood opposition. This would be the second such time the neighborhood opposition group was afforded time for its presentation, and several of the presentations and speakers were mere repetition of prior opposition testimony.

54. WSG made a specific request for time following the opposition's presentation for the purposes of presenting WSG's rebuttal. The ZBA agreed; however, no rebuttal time was provided to WSG and, in fact, from the June 2007 through the close of the public hearing in October 2007, WSG was only afforded a few short minutes for Ms. Grenier to discuss the allegation of salamanders on-site, and even then, over the objections of Member O'Regan.

55. The August 2007 public hearing was spent almost in its entirety on presentation by the neighborhood opposition.

56. At the end of the public hearing in August 2007, the ZBA instructed all parties – both WSG and as many opposition representatives as desired – to submit draft decisions for the ZBA's review. WSG requested the opportunity to work cooperatively with the ZBA's counsel on a draft decision, as has been the ZBA's practice in comprehensive permit matters, but was refused. In fact, the procedure outlined for drafting decisions in the Stonegate matter were unprecedented in any other comprehensive permit application.

57. The public hearing was continued to October 5, 2007, whereupon the ZBA would review and discuss draft decisions. Prior to adjourning its August 2007 meeting, the ZBA instructed that it was not seeking new material, and that draft decisions filed with the Board would need to cite, with specificity, where in the record the proposed factual findings were presented.

58. WSG presented, for its part, a draft decision which cited testimony and evidence – substantially un rebutted – in support of a decision to approve the application for comprehensive permit.

59. Following the August 2007 public hearing, the neighborhood opposition continued to flood the ZBA files with new material for consideration; although, WSG was told by the ZBA secretary that she was instructed that no new material was to be accepted for filing.

60. Attached to one of the multiple draft decisions submitted by the neighborhood opposition was a newly-generated engineering review, ostensibly intended for the opposition group to account for the absence of competent submitted by the opposition group during any of their several prior presentations. With the exception of this last-minute engineering opinion, the neighborhood opposition groups had otherwise provided no evidentiary substantiation for any of the draft decisions submitted.

61. Upon opening of the October 5, 2007 meeting, Member Barron immediately moved to close the public hearing without any further testimony. The motion was seconded by Member O'Regan and passed by a unanimous vote. As a result, excluding the few minutes WSG was afforded at the beginning of the in August 2007 meeting, WSG had no opportunity to provide evidence or testimony since June 2007.

62. Following the close of the public hearing, counsel for the ZBA solicited further input from the neighborhood opposition attorney, Jonathan Witten, on a draft decision, essentially providing the neighborhood opposition a second attempt –after having submitted several versions prior – of a draft comprehensive permit decision for denial.

(Final Vote of the ZBA)

63. On or about November 8, 2007, the ZBA scheduled its meeting for the purpose of discussion and vote on The Villages at Stonegate. At the time, Member Musmon was hospitalized, so the meeting was postponed and scheduled to be held in a conference room at New England Sinai Hospital in Stoughton.

64. The ZBA was presented with a draft decision consisting of WSG's draft, combined with input from the neighborhood opposition group's counsel, much of which was provided after the close of the public hearing.

65. Over the course of several hours, the ZBA engaged in discussion over the proposed drafts, and took several individual votes on certain elements of the application, as well as a several more general and conclusory votes on the application as a whole.

66. The process of making several component votes in addition to several conclusory and general votes generated a number of contradictory votes in the ZBA's decision. Notwithstanding the contradictory votes, the factual findings adopted by the ZBA acknowledge that WSG had successfully addressed any and all health, safety, and welfare concerns, and that the project was entirely consistent with local needs.

67. As one of the component votes concerning the number of units approved by the Board, Member Barron made a motion, seconded by Member O'Regan, to reduce the number of units from 120 to 80. The motion to reduce the number of units passed by a vote of 3-2, with Member Musmon voting to join Members O'Regan and Barron.

68. Among the conclusory votes – in fact, in what would be considered the “final” vote – Members Barron and O'Regan both voted against approval of the project, even at the reduced number of units which their earlier motion and vote had produced.

69. Member Barron's statement upon his final negative vote was, "Great project, wrong location."

70. After more than two years since its initial LIP endorsement, The Villages at Stonegate had been approved by the ZBA with a number of conditions, among them, notably, a dramatic reduction of units.

71. In addition to the reduction of units, Member O'Regan had offered a condition that WSG be required to file an action in court for a declaration that it had the legal right to use an appurtenant easement as an emergency accessway for The Villages at Stonegate. The justification provided by Member O'Regan was site control, a jurisdictional threshold matter, "had not been satisfactorily proven"; notwithstanding that the ZBA's contradictory vote that WSG had, "satisfied the jurisdictional prerequisites under 760 CMR 310.01(1)(c)."

72. As a result of the process for taking the final vote, the two members who were opposed to the application (as we would later learn) were effectively allowed to introduce negative information and harmful conditions throughout the discussion, thereby weakening the final vote of the ZBA and watering-down a decision that they had no intention of approving.

(Zoning Board Members Barron and O'Regan Misconduct)

73. In the days following the ZBA vote, WSG obtained information that Member Barron had presided over and was a member of the neighborhood opposition group. WSG had further learned that Member Barron applied for his position with the ZBA specifically as a result of his opposition to The Villages at Stonegate Local Initiative Program approval.

74. In addition to his membership in the neighborhood opposition group, Member Barron's home is located approximately 700 feet from the Stonegate property on West Street and, at the time of his vote, was being marketed for sale.

75. At the last public hearing date in October 2007, prior to any WSG presentation, Member Barron moved to close the public hearing without hearing from WSG (second provided by Member O'Regan). As a result, any presentation by WSG was foreclosed from the June 2007 public hearing date through to the final decision date in November 2007.

76. At the June 2007 public hearing, it was revealed that the neighborhood opposition group had filed a complaint with the Inspector General for the Commonwealth, although the content of that complaint and the allegations therein are both anonymous and unknown. Following that revelation, Member O'Regan, surreptitiously contacted a local newspaper office by telephone and spoke with a news reporter, feeding this news story to the local newspaper reporter with the intention of casting a negative light on WSG's application and to encourage public opposition as it progressed through the public hearing.

77. In November 2007, in advance of the final Stonegate ZBA vote, Member O'Regan submitted an opinion article to a local newspaper on the eve of the ZBA vote, expressing his negative thoughts on projects such as The Villages at Stonegate. The intention of the article was to induce negative public response toward the pending application immediately before the ZBA vote.

78. During the pendency of the public hearing, Member O'Regan pressed for the hiring of Defendant Heaton as a "pro forma review consultant," justifying his suggestion by representing that Defendant Heaton was a certified public accountant, a prerequisite set by another board member. On information and belief, Member O'Regan knew that Defendant

Heaton was not a certified public accountant and, additionally, Member O'Regan had knowledge that WSG lodged its objections to the hiring of Defendant Heaton.

79. During the pendency of the public hearing, when the Town of Stoughton was still below its statutory housing goal for affordable housing, Member O'Regan lobbied local legislators to assist in obtaining an exception from the Department of Housing and Community Development on how DHCD determines Stoughton's Subsidize Housing Inventory. Member O'Regan's intention was for DHCD to waive its regulations and include 240 apartment units in Stoughton's housing count, notwithstanding that these units did not otherwise qualify under the regulations. Member O'Regan stated to a local legislative aide that his goal was to facilitate the ZBA's denial of another project "in the woods." On information and belief, Member O'Regan was referring to The Villages at Stonegate.

80. During the pendency of the public hearing, and specifically during WSG's presentation before the Board, Member O'Regan continuously took steps to interfere with WSG's presentation, in favor of presentation by the neighborhood opposition group. WSG, in all cases, yielded the floor and asked for an opportunity to rebut any opposition presentation. No opportunity for rebuttal was ever granted.

81. In addition to his ultimately negative vote on the application, Members Barron and O'Regan engaged in a pattern of disingenuous conduct during the discussion of the draft decision, whereby they pressed for certain conditions to the comprehensive permit which would make the project uneconomic to build, including, without limitation, the removal of 40 condominium units from the project.

82. Since WSG's purchase and sale agreements for the land encompassed in its filing were a matter of public record, Members Barron and O'Regan engaged in a pattern of conduct

during the public hearing intended to extend the public hearing, delay approval and frustrate WSG's performance under its purchase and sale agreements, thereby effectively extinguishing WSG's application.

(Conservation Commission, Open Space Committee and Horsley-Witten Misconduct)

83. The Stoughton Open Space Committee, including members John Morton, John Linehan, and Ardis Johnston, in October 2005 with a large group of opposition neighbors and coached the neighbors on the number of ways they could successfully oppose The Villages at Stonegate project.

84. Following their meeting with the opposition group, the members of the Open Space Committee adjourned to a separate conference room and voted to send a letter to the Board of Selectmen requesting that the Selectmen rescind their endorsement of The Villages at Stonegate.

85. The Open Space Committee, including Messrs Morton and Linehan, Ms. Johnston and other members, in later months, voted to send letters to the Conservation Commission in opposition of The Villages at Stonegate.

86. John Morton and John Linehan are also members of the Conservation Commission – the very commission to which they had voted to send their letter of opposition as Open Space Committee members.

87. The Open Space Committee, in the months following the Selectmen's endorsement of The Villages at Stonegate, took steps, with the assistance of the Committee's consultant, Horsley-Witten, to amend the Committee's draft "open space plan" to include veiled references negative to the Stonegate application.

88. Ardis Johnston, herself a direct abutter to the Stonegate land, worked intimately with Horsley-Witten to revise the open space plan to serve her purpose of opposition to Stonegate and limiting development in the land immediately adjacent to her backyard.

89. In the months following the ZBA filing, WSG filed an ANRAD with the Conservation Commission (discussed in ¶¶39-51 above), and the Commission retained Horsley-Witten as a consultant, over WSG's objections. WSG's objection were based upon an apparent Horsley-Witten bias as a result of its affiliation with counsel for the neighborhood opposition group, as well as its relationship and work with Ms. Johnston and Messrs. Linehan, and Morton – all stated opponents to the Stonegate project.

90. In its initial review of WSG's filing, Horsley-Witten expressed to the Commission that, in its opinion, having examined the wetlands line by walking the property in its entirety, WSG's wetlands delineation was substantially accurate.

91. Following its oral report to the Conservation Commission, Horsley-Witten changed its opinion and included within its opinion consideration of a certain order of conditions for a portion of the property dating back to 1990.

92. Horsley-Witten's revised opinion stated that work under the 1990 order of conditions had not been completed. It was only after meeting with the land owner and representatives of WSG that it was discovered Horsley-Witten had opined on the wrong parcel of land. Even then, Horsley-Witten reluctantly amended and corrected its opinion, and yet charged WSG, through the Conservation Commission, additional fees for correcting its flawed work.

93. The Conservation Commission, with the assistance of Horsley-Witten, and facilitated by Commission members Morton and Linehan, engaged in a pattern of missed

meetings, continuances and extensions of the public hearing without substantive action by the Commission, all with the intention of delaying The Villages at Stonegate project.

94. Since WSG's purchase and sale agreements for the land encompassed in its filing were a matter of public record, Messrs. Morton, Linehan, and the other Conservation Commission members engaged in a pattern of conduct intended to delay approval and frustrate WSG's dates for performance under its agreements.

95. Ms. Johnston pursued her Stonegate opposition by maintaining contact with Horsley-Witten and pressing for unfavorable review for WSG's ANRAD. Upon WSG's statutory public document requests for Open Space Committee records, following a delay of over two months, Ardis Johnston provided documents only upon the condition that WSG pay her more than four hundred dollars for her records production, which included her "mileage to Cambridge" to retrieve Town of Stoughton public documents.

(Richard Heaton and H&H Consulting Associates Inc. Misconduct)

96. Defendant Heaton and H&H market themselves to municipalities and opponents of comprehensive permit development projects for "pro forma review" – whereby Heaton and H&H review the financial estimates for the development of the project and offer an opinion on whether the project may be economic to build.

97. Defendant Heaton and H&H typically analyze proposed construction estimates, land costs, estimate home sale prices or rental rates, and such other matters encompassed in a comprehensive permit pro forma.

98. Neither Defendant Heaton nor H&H has any experience in the construction industry, in construction estimating or estimating development costs; nor are either licensed to

perform auditing; nor are either licensed to perform real estate appraising; nor does either have any particular professional licensure or qualifications in any of the disciplines encompassed in the expert review of a construction pro forma.

99. Defendant Heaton has been advised on more than one occasion by way of findings issued in decisions of DHCD's Housing Appeals Committee that his methodology for pro forma review is inappropriate and contrary to law.

100. In addition to his flawed and legally unsupportable methodology, Defendant Heaton has been advised by the Housing Appeals Committee of errors in his mathematic calculations.

101. Defendant Heaton, in addition to performing pro forma review for hire, is involved in a number of anti-40B advocacy endeavors such as "Municipal Coalition for Affordable Housing" and the "Reform 40B" movement – organizations which are opposed to the current comprehensive permit process and which seek to amend laws to make development of affordable housing more difficult.

102. As a result of his affiliations, Defendant Heaton's consulting opinions are routinely slanted against development of affordable housing, and continue to utilize methodology that is contrary to law.

103. In addition to his other affiliations, Defendant Heaton teams with counsel for the Stonegate opposition group, Jonathan Witten, for speaking engagements and presentations to municipalities or other 40B opposition groups on ways to encourage a determination that a comprehensive permit project for affordable housing may be found "uneconomic," thereby allowing denial of such projects.

104. In the case of The Villages at Stonegate, Defendant Heaton and H&H engaged in a series of conduct intended to delay, extend, and prejudice WSG's Stonegate Application, all with the intent on frustrating WSG's application, including, without limitation: (a) refusing to meet with WSG until the date of the August 2007 public hearing – more than two months after he had already issued his written opinion; (b) failing to attend public hearings to explain his findings; (c) charging excessive fees to WSG (through the ZBA) for his services; (d) discussing his findings with board members outside of the public hearing; (e) performing auditing and appraisal without proper licensure; (f) engaging in fundamentally flawed methodology in his review, intended to cast affordable housing development projects in a negative light; and (g) conducting his consultation with a conflict of interest, to wit, his work producing “anti-40B” seminars without public disclosure to the ZBA, and consulting work along with the neighborhood opposition's attorney, Jonathan Witten.

(The Town of Stoughton's Misconduct)

105. Over the two-year period where The Villages as Stonegate progressed through the public process, the Town of Stoughton engaged in a systematic and calculated pattern of interference and coercion of public boards and processes, all with the intention of causing financial hardship and damage to WSG and frustrating its pending applications before other Town boards and committees. Examples of such conduct include, without limitation:

- (a) Providing neighborhood opposition members with immediate copies of all documents filed by WSG in support of its applications. Opposition members were routinely provided public documents free of charge and, in the case of the Town

Manager, copies of WSG's filings were electronically scanned and immediately emailed to opposition members without any request ever having been made.

(b) Engaging in a system of delay and interference with WSG's applications. As one example, WSG's LIP application sat idle for a period of nearly four months. In the case of the Conservation Commission, members would routinely skip meetings, causing adjournment for lack of quorum, or refuse to act on WSG's application when all consultant opinions supported approval.

(c) Incorporating certain amendments and conditions in WSG's LIP endorsement at the written request of the neighborhood opposition, without providing WSG any notice or opportunity to be heard.

(d) Expediting review and approval of certain other projects for rental housing and relaxing the process of review in order to frustrate WSG's Stonegate application, and thereafter, lobbying for DHCD waivers of its regulations in order to facilitate the denial of WSG's application.

(e) Systematically refusing to provide copies of public documents to WSG, upon formal request. In the case of the Conservation Commission, the Town's Environmental Affairs Officer advised WSG that he had been "instructed not to provide any documents, because Stonegate is going to litigation."

106. Examples such as those above were intended to create an environment within the Stoughton Town Hall hostile to WSG's development of The Villages of Stonegate, and intended to increase costs, add delays, and frustrate approval of WSG's application in a manner unprecedented in the Town of Stoughton, all with the ultimate goal of maintaining the Stonegate land as open space.

COUNT I

Appeal Pursuant to G.L. c. 40A, §17

107. WSG hereby incorporates the allegations set forth in the paragraphs above as if more completely set forth herein.

108. WSG is a party aggrieved by certain conditions set forth in the ZBA's decision on The Villages at Stonegate comprehensive permit application, to wit:

(a) Section II.A.2.: that WSG be required, "to obtain declaratory relief from a court of competent jurisdiction to confirm that the Applicant has the right to perform the proposed construction and use of the emergency access and that the determinations shall be finally obtained before any clearing of construction occurs."

(b) Section IV.A.1.: "The total number of units that may be constructed on the Site shall be limited to a maximum of 80 condominium units, with a maximum of 160 bedrooms, of which 44 shall be townhouse units and 36 shall be garden style units, to be developed, constructed, completed and managed in conformance with the Application and the Plans (as revised) and any and all conditions of approval set forth herein. Each unit shall have a maximum of 2 bedrooms."

(c) Section IV.A.1.: All parking for the garden style units shall be below grade and no building shall exceed 2½ stories. The plans shall be revised to move the buildings as far away from the wetlands as the resulting decrease in units and parking will allow.

(d) Section IV.B.13. Prior to issuance of any building permit, the emergency access way shall be installed and paved. The litigation confirming the right of the Applicant to construct and use the emergency access way shall be finally resolved in the Applicant's favor before any construction or clearing or removal of vegetation begins.

These "Conditions" are hereinafter referred to collectively. WSG's appeal encompasses only these Conditions, and nothing herein should be construed as an appeal of the approval of WSG's application.

109. In addition to WSG's appeal of the Conditions, WSG further appeals the insertion of a "dissent" opinion of Members Barron and O'Regan in the ZBA decision – unprecedented in any prior ZBA decision, and inserted into the decision without the vote of a majority of the ZBA.

110. The Conditions are arbitrary, capricious, unsupported and unsupportable by any evidence in the record below and contrary to established law insofar as:

(a) No competent evidence was submitted to support the imposition of the Conditions and, to the extent that any evidence may have been provided, the weight of the evidence tips so dramatically against such Conditions, it suggests no rational connection to either the evidence or the ZBA's factual findings exists.

(b) The Conditions themselves stand in stark contradiction to the balance of the decision, where the ZBA made such votes as:

(i) Section II.A.2.: "[T]he Applicant has satisfied the jurisdictional prerequisites. . . for applying for this permit." Voted 5-0 in favor.

(ii) Section VII: "[T]he Board shall exercise its discretion to grant a comprehensive permit to the Project because it is consist (sic) with some of the goals of the 2006 Town Housing Plan." Voted 5-0 in favor.

(ii) Section VII: "[T]he Project meets the requirements for a comprehensive permit under G.L. c. 40B." Voted 4-1 in favor (Member Barron dissenting).

WHEREFORE, WSG hereby requests that this Courts (a) enter judgment for it and against the Defendant ZBA; (b) annul the Conditions in the ZBA's decision, (c) affirm the decision absent the Conditions, or (d) remand the matter to the ZBA with an instruction to amend its decision in accordance with the order of this Court, (e) award it cost of litigation and reasonable attorney's fees, or (f) take any further action which may be fair and equitable.

COUNT II

Violation of 42 U.S.C. §1983

Vs.

Town of Stoughton

111. WSG hereby incorporates the allegations set forth in the paragraphs above as if more completely set forth herein.

112. By the intimidation or coercion of certain public officials including, without limitation, ZBA Members Barron and O'Regan, Conservation Commission Members Morton and Linehan, Open Space Committee Member Ardis Johnston, and The Town of Stoughton, acting under color of law, WSG's rights secured under the United States Constitution were interfered with and affected, all as alleged herein.

113. The Town of Stoughton acting under color of law, interfered with WSG's rights secured under the United States Constitution by, among other means, denying WSG a fair and unaffected process on its application, and engaging in a calculated effort of coercion of public boards and processes, all with the intention of causing financial hardship and damage on WSG and frustrating its pending applications before other Town boards and committees.

114. As a direct and proximate result of The Town of Stoughton's interference with WSG's Constitutional rights, WSG has been substantially damaged, for which the aforesaid defendant is liable.

WHEREFORE, WSG hereby requests that this Courts (a) enter judgment for it and against the Town of Stoughton; (b) award it damages in an amount to be determined; (c) order that the defendant's interference be immediately abated, (d) award it cost of litigation and reasonable attorney's fees, or (e) take any further action which may be fair and equitable.

COUNT III

G.L. c. 12, §111

Vs

Town of Stoughton

115. WSG hereby incorporates the allegations set forth in the paragraphs above as if more completely set forth herein.

116. By the intimidation or coercion of certain public officials including, without limitation, ZBA Members Barron and O'Regan, Conservation Commission Members Morton and Linehan, Open Space Committee Member Ardis Johnston, and The Town of Stoughton, acting under color of law, WSG's rights secured under the United States Constitution and the General Laws of the Commonwealth were interfered with and affected, all as alleged herein.

117. The Town of Stoughton, acting under color of law, interfered with WSG's rights secured under the United States Constitution and General Laws of the Commonwealth by, among other means, denying WSG a fair and unaffected process on its application, and engaging in a calculated effort of coercion of public boards and processes, all with the intention of causing financial hardship and damage on WSG and frustrating its pending applications before other Town boards and committees.

118. As a direct and proximate result of The Town of Stoughton's interference with WSG's Constitutional rights and right secured under the General Laws of the Commonwealth, WSG has been substantially damaged, for which the aforesaid defendant is liable.

WHEREFORE, WSG hereby requests that this Courts (a) enter judgment for it and against the Town of Stoughton; (b) award it damages in an amount to be determined; (c) order that the defendant's interference be immediately abated, (d) award it cost of litigation and reasonable attorney's fees, or (e) take any further action which may be fair and equitable.

COUNT IV

Tortious Interference of Economic Relations

Vs.

Horsley-Witten, Heaton, and H&H

119. WSG hereby incorporates the allegations set forth in the paragraphs above as if more completely set forth herein.

120. WSG had contracted with several landowners for the purchase of their lands, all of which were to be incorporated into The Villages at Stonegate condominium development. WSG's purchase and sale agreements were a matter of public record and all of the defendants to this action were aware of the existence of such contracts.

121. Each of the defendants, Horsley-Witten, Heaton, and H&H intentionally engaged in a calculated effort of wrongful coercion, interference and influence of public boards and processes, all with the intention of causing financial hardship and damage on WSG and frustrating its pending applications before other Town boards and committees.

122. As a direct and proximate result of the defendants' conduct WSG has been substantially damaged, for which the aforesaid defendants are liable.

WHEREFORE, WSG hereby requests that this Courts (a) enter judgment for it and against the Defendants Horsley-Witten, Heaton, and H&H; (b) award it damages in an amount to be determined; (c) award it cost of litigation and reasonable attorney's fees, or (d) take any further action which may be fair and equitable.

COUNT V

Tortious Interference of Advantageous Relations
Vs.

Horsley-Witten, Heaton, and H&H

123. WSG hereby incorporates the allegations set forth in the paragraphs above as if more completely set forth herein.

124. With the proposed development of The Villages at Stonegate project, WSG had both contractual and business interests intended for its economic benefit.

125. Each of the defendants Horsley-Witten, Heaton, and H&H intentionally engaged in a calculated effort of wrongful coercion, interference, and influence of public boards and processes, all with the intention of causing financial hardship and damage on WSG and frustrating its pending applications before other Town boards and committees.

126. As a direct and proximate result of the defendants' conduct WSG has been substantially damaged, causing actual financial damage to WSG for which the aforesaid defendants are liable.

WHEREFORE, WSG hereby requests that this Courts (a) enter judgment for it and against the Defendants, Horsley-Witten, Heaton, and H&H; (b) award it damages in an amount to be determined; (c) award it cost of litigation and reasonable attorney's fees, or (d) take any further action which may be fair and equitable.

COUNT VI

G.L. c. 93A, §11

Vs.

Horsley-Witten, Heaton, and H&H

127. WSG hereby incorporates the allegations set forth in the paragraphs above as if more completely set forth herein.

128. Horsley-Witten, Heaton, and H&H are all engaged in business or commerce as defined by G.L. c. 93A.

129. The defendants named above all engaged in unfair and deceptive acts and practices in business or commerce by, among other things: (a) engaging in a pattern of conduct intent upon the delay, defeat, or frustration of WSG's development of The Villages at Stonegate project and the construction of affordable housing; (b) utilized intentionally flawed and improper methodology in the conduct of their consulting work; and (c) charging excessive fees to WSG for its flawed work.

130. As a direct and proximate result of the defendants' conduct WSG has been substantially damaged, for which the aforesaid defendants are liable.

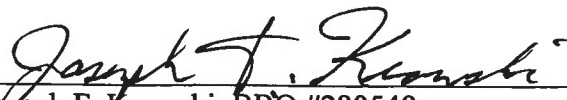
WHEREFORE, WSG hereby requests that this Courts (a) enter judgment for it and against the Defendants Horsley-Witten, Heaton, and H&H; (b) award it damages in an amount to be determined; (c) order that damages be doubled or tripled, as appropriate (d) award it costs of litigation and reasonable attorney's fees, or (e) take any further action which may be fair and equitable.

Jury Demand

The Plaintiff hereby requests a jury trial for all matters so triable.

Respectfully submitted
WEST STREET GROUP LLC
By its attorneys,

December 3, 2007



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