

**COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE**

In the matter of

WALTHAM ZONING BOARD OF
APPEALS

and

ALLIANCE REALTY PARTNERS, LLC.

No. 2016-01

**RULING ON ALLIANCE REALTY PARTNER'S MOTION IN LIMINE – EVIDENCE
OF GROUP HOME ACREAGE BASED ON ADDRESS DATA FROM WCI**

and

**WALTHAM ZONING BOARD OF APPEALS' MOTION IN LIMINE – SETTLEMENT
GROUP HOME LAND AREA**

This is an interlocutory appeal brought by the Waltham Zoning Board of Appeals (Board) claiming a “safe harbor” provision that would prohibit an appeal of a Board decision to the Housing Appeals Committee (Committee). 760 CMR 56.03(8)(c); see G.L. c. 40B, § 20. The Board claims that Waltham has met the threshold of having at least 1½% of its land available for industrial, commercial, and residential development dedicated to use by SHI properties. Alliance Realty Partners, LLC (Alliance) refutes the Board’s claim of having reached the 1½% SHI land area threshold.

Alliance has moved *in limine* for the exclusion of evidence of land area (WCI Group Home land area) derived from addresses provided by Waltham Community, Inc. (WCI) on the grounds that the addresses are unsubstantiated and the land area bears no connection to group homes on the Department of Housing and Community Development’s (DHCD) Subsidized Housing Inventory (SHI) for Waltham. Alliance also moves to strike certain portions of Amanda Mason’s pre-filed testimony related to group homes. The Board believes that it is imperative that it proffer group home land area to prove that it has reached the 1½% SHI land area threshold.

The Board moves *in limine* for an order allowing admission of group home land area

(Settlement Group Home land area) for group homes included in Waltham's SHI housing count which it has acquired from DHCD under a settlement agreement in a Superior Court case entitled, *Zoning Bd. of Appeals of Waltham v. Department of Housing and Community Devl.*, Case No. 1681CV01177 (Suffolk Superior Court 2016). The Board also seeks a determination that the Settlement Group Home land area data is "legally sufficient to establish" group home land area in this appeal before the Committee. The Board further alleges that the data is "substantive evidence" to be admitted into evidence to support its contention that Waltham has met the 1½ % land area safe harbor threshold. However, due to claimed statutory privacy concerns, neither DHCD, the Department of Mental Health (DMH), nor the Department of Developmental Services (DDS) will release the addresses of the group homes that are on Waltham's SHI affordable housing count under a protective order. Instead, DHCD gave the Board the cumulative group home land area along with affidavits from DMH and DDS personnel, describing how this number was calculated by DMH and DDS.


Even though the presiding officer may address issues related to the admission of evidence under 760 CMR 56.06, these motions were brought before the Committee because they raise issues of first impression. Upon review of the motions and after deliberation, the Committee makes the following ruling:

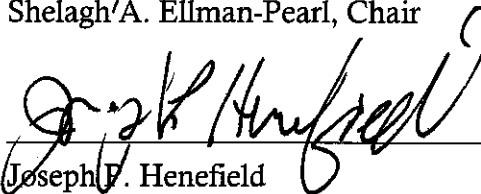
1. Alliance's Motion in Limine regarding the WCI Group Home land area is denied. The parties can put on evidence and argue about the weight that the Committee should give to this evidence;
2. The Committee allows the admission of Settlement Group Home land area on the condition that Alliance is given the opportunity for full cross-examination of the affiants from DMH and DDS, and the person at DHCD most knowledgeable about the inclusion of group home data on the SHI and the identity and land area of DMH and DDS group homes that are included on Waltham's SHI affordable housing count, subject to the Committee's protective order;
3. The Committee denies the motion in part as premature, regarding the sufficiency of the Settlement Group Home land area, which goes to the weight of the evidence brought before the Committee at hearing;
4. The Committee denies the Board's request that the Committee waive the requirements found in 760 CMR 56.00;

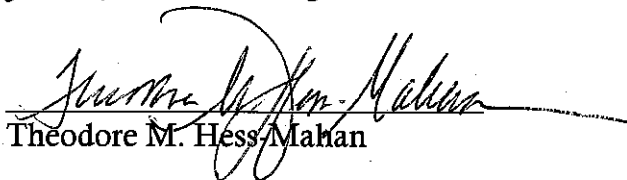
5. If, as the Board contends, it cannot proceed under these conditions, it must notify the Committee in writing by close of business day, Friday, October 21, 2016; the Board may then seek an order from the Superior Court compelling the agencies to disclose full information regarding SHI group homes subject to a protective order of the Court or the Committee; and
6. In light of Alliance's claim that the Settlement Group Home land area data will not bring Waltham to the 1½% threshold and the Board's assertion by testimony and evidence that Waltham has achieved the 1½% land area threshold without including SHI group home land area, both parties shall file post-hearing briefs without group home data by November 18, 2016.

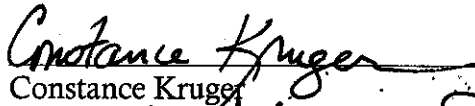
Housing Appeals Committee

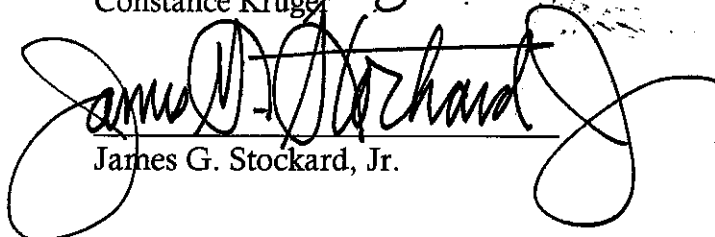
Issued: October 18, 2016

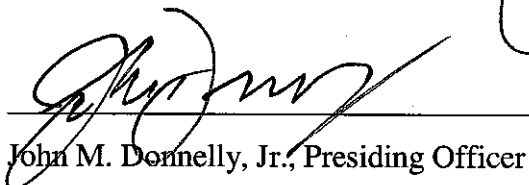

Shelagh A. Ellman-Pearl, Chair


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John M. Donnelly, Jr., Presiding Officer

Certificate of Service

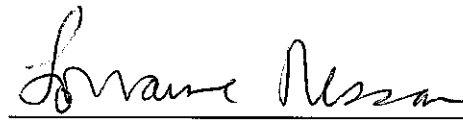
I, Lorraine Nessar, Clerk to the Housing Appeals Committee, certify that this day I caused to be mailed, first class, postage prepaid, a copy of the within Ruling on Alliance Realty Partner's Motion in Limine – Evidence of Group Home Acreage Based on Address Data From WCI and Waltham Zoning Board of Appeals Motion in Limine – Settlement Group Home Land Area in the case of In the Matter of Waltham Zoning Board of Appeals and Alliance Realty Partners, LLC, No. 2016-01, to:

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Dated: 10/19/16


Lorraine Nessar, Clerk
Housing Appeals Committee