

Chairperson
Kenneth Aurecchia

Vice-Chairperson
Richard Fascia

Secretary
Douglas Jeffrey

Counsel for the Board
Joseph Ballirano, Esq.



Zoning Official
Bernard J. Nascenzi, C.B.O.

Zoning Board Members
Anthony Pillozzi
Joseph Anzelone

Alternate Board Members
Bernard Frezza
Costanzo Caparrelli, Sr.

Recording Secretary
Susan Leonardi

JOHNSTON ZONING BOARD OF APPEAL
100 Irons Avenue, Johnston, Rhode Island 02919
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MINUTES

May 14, 2008

The Zoning Board of Appeal held a meeting on the 14th day of May, 2008, at 7:12 p.m., in the library at the Ferri Middle School, 10 Memorial Avenue, Johnston, RI. All persons interested in the following proposals had been requested to be present at this time.

Present: Secretary Douglas Jeffrey, Anthony Pillozzi, Bernard Frezza, Joseph Anzelone, Costanzo Caparrelli, Sr.

Also present: Joseph Ballirano, Town Solicitor, Susan Leonardi, Recording Secretary, and Dianne Edson, Stenographer

Mr. Pillozzi made the motion that the Zoning Board of Review adjourn and reconvene as the Johnston Board of Appeals. Mr. Frezza seconded the motion. A voice vote was taken, all in favor.

Mr. Jeffrey detailed the appeals that the Board would be hearing that evening. He announced that no testimony would be heard. The appellant and the owner will be given the opportunity to state their cases. Their statements may only address the Planning Board record; no new evidence, documents or testimony will be entertained. The Planning Board record has been given to this Board, along with copies of the appeals. The Board of Appeals shall not substitute their own judgment for that of the Planning Board or of the Administrative Officer. The Board of Appeals shall not reverse a decision of the Planning Board or Administrative Officer except on a finding of prejudicial error, clear error, or lack of support by the weight of the evidence in the record.

Mr. Jeffrey read Title 45 Towns and Cities Chapter 45-23, Subdivision of Land, 45-23-70 Appeals, Standards of Review: As established by this chapter, in instances after Board of Appeals review of a Planning Board or Administrative Officer's decision on matters subject to this chapter, the Board of Appeals shall not substitute its own judgment for that of the Planning Board or the Administrative Officer, but must consider the issue upon finding and record of the Planning Board or Administrative Officer. The Board of Appeal shall not reverse a decision of the Planning Board or Administrative Officer except on a finding of prejudicial error, clear error, or lack of support by the weight of the evidence in the record.

B. The concurring vote of three of the five members of the Board of Appeal sitting at a hearing is necessary to reverse any decision of the Planning Board or Administrative Officer;

C. In the instance where the Board of Appeal overturns a decision of the Planning Board or Administrative Officer, the proposed project application is remanded to the Planning Board or Administrative Officer at the stage of processing for which the appeal was taken for further proceedings before the Planning Board or Administrative Officer and/or for final disposition which shall be consistent with the Board of Appeals decision.

D. The Board of Appeal shall keep complete records of all proceedings, including a record of all votes taken and shall put all decisions on appeal in writing. The Board of Appeals shall include in the written record for each decision.

File 2008-13A

Owner: Factory Mutual Insurance Company
 Applicant: Prefco II Limited Partnership
 Location: Central Avenue, AP 24/1- Lots 222, 114, 115& 122
 Lot Dimensions: Area: 93.04 acres
 Zone: Planned Use Development District
 Present use: Vacant Land
 Development
 Proposal: Construct the Corporate Headquarters of Factory Mutual Insurance Company

Approval: Master Plan by Planning Board 2-5-2008
 Appeal Petition: Appeal per Town of Johnston Subdivision Regulations, Section V, Article D, Subsection 6, and applicable Regulations. RIGL 45-23-66, and applicable law Ordinance, Article VII, A & B, as amended

Planning Board Decision Recorded: 3-28-2008—Land Evidence Book #1914, page 276
 Deadline for filing an Appeal: 20 days after decision is recorded
 Date Appeal Petition Filed with Johnston Board of Appeal: 4-04-2008

Bill Dolan, attorney for Prefco II, LP (CapLease) presented the appellant's case. He introduced Ed Pare, Esq. of Brown Rudnick, Brian Lamoureux, Esq. of Brown Rudnick and Gary Landriau, SVP of CapLease.

Mr. Dolan stated that CapLease is aware that FM Global will be moving out of their building when the current lease expires. It is inevitable and unavoidable. Mr. Dolan stated that the Chairman was correct regarding the standards of review that must be followed this evening. He would suggest that if there are clear errors of law in providing Master Plan approval, this Board can reverse that. He stated that the Board should look to the Constitution of the United States. We are a government of law, not of men; we are all bound by the same principles. The Constitution, the Fourteenth Amendment, the Rhode Island Constitution and the Declaration of Rights, all apply also. The Rhode Island Supreme Court has made it quite plain that any person appearing before an administrative board has the right to due process. A fundamental opportunity to be heard and articulate meaningful concerns. Mr. Dolan passed out documents to the Board to be viewed while he made his presentation.

The first tab in the binder refers exactly to the Chairman's remarks at the outset of the meeting. Tab 2 is the State law that outlines the procedure for meetings, votes, and decisions in respect to subdivision of land. There is an express command in that statute providing that all records of the Planning Board proceedings and decisions shall be written and kept permanently available for public review of the completed applications for proposed land development and subdivision projects. No limitations, no

conditions, no suggestions that they are only available when there's an opportunity to see them because the people involved are around.

Tab 3 is access to public record law. "The public's right to access the public records and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to records."

Tab 4 contains a portion of the Town of Johnston's Subdivision Regulations. Section 1, Article A, subparagraph 3, "The regulation provides that the land development and subdivision review regulations are designed to address certain purposes, each having equal priority and being numbered for reference purposes only". Mr. Dolan went on to read certain numbers.

As part of our appeal we have suggested that we have been denied access to public records, in particular the application that is the subject of this proceeding. There is an affidavit in the file that is part of the appeal.

Mr. Grimm, attorney for FM Global, stated that he objects. He stated that Mr. Dolan did not indicate that he wanted this affidavit added to the record. This is an attempt to get new evidence into the record. This should not be part of the Board's consideration.

Mr. Dolan stated that there is no way to evaluate whether or not they were given their due process rights before you inquire of the circumstances surrounding the efforts to get the application. The State law requires that the records be made available for inspection and they weren't. You must consider that in determining if the law was violated.

Mr. Grimm stated that the Board has a specific record in front of them. If the appellant was truly concerned about this, then they should have brought it up at a Planning Board meeting. Then this evidence could be presented and cross-examination could take place. But it is not in the record at this point.

Mr. Dolan stated that this is consistent with the effort to deny us the opportunity to be heard.

Mr. Grimm stated that due process requires notice and an opportunity to be heard. The appellants had a representative at both Planning Board meetings and they offered no testimony whatsoever in opposition to the Master or the Preliminary plans. They are trying to delay this project with any substantive basis.

Mr. Jeffrey stated that he is inclined not to allow the evidence because it is not in the Planning Board record. He does not want to expand that record. He requested a motion from the Board to allow the affidavits.

Mr. Pillozzi made the motion that no new testimony be accepted. Mr. Anzelone seconded the motion. A voice vote was taken, all in favor.

Mr. Dolan stated that he intends to make a proffer of what the evidence would have been for the record so that he preserves his right on appeal.

Mr. Jeffrey stated that this proceeding is related to the records of the Planning Board only.

Mr. Dolan verified that Mr. Jeffrey was refusing to let Mr. Dolan make a proffer of what the evidence would have been.

Mr. Jeffrey stated that he is not going to allow the expansion of the Planning Board record.

Mr. Dolan stated for the record that the facts upon which he would rely for purposes of demonstrating that they were denied access to public records are contained in pages 6 through and including 9 of the appeal that was filed in this case.

Mr. Dolan referred to a display board that referred to the Town's regulations and Ordinances, number of days in advance of a public hearing that an application must be certified complete.

Tab 5 provides that all of the submittals and accompanying materials made to the Planning Board at the beginning and during the ongoing review of the project must be received and certified as "complete" by the administrative officer at least 32 days prior to the meeting day. The deadline has been established to allow adequate time for solicitation of outside comment, review by staff, compilation and drafting of comments and distribution to board members. Also included in this section is a listing of items required for a Master Plan submission. The Master Plan submission was filed on January 10th. The application was certified complete on January 29th. The informational meeting was held on February 5th. 26 days after the application was filed and 6 days after it was certified complete. A direct violation of the Town's Ordinances.

Every time these violations take place, CapLease and other parties have to hire lawyers to make demands on the Town to get what they should have gotten to begin with. Access to public records as well as an application that's certified as complete, sufficiently in time in advance of the public hearing, so adequate comments can be made. Mr. Grimm suggested that only 7 days notice is required under State law of the initial meeting.

Tab 9 contains documents that require the Planning Board to allow for oral or written comments from the public. All public comments are to be made part of the public record of the projected application. Because we were denied access to public records, it was not certified complete at least 30 days before the meeting, we were unable to make comment at the public meeting. It is a denial of due process and is grounds in and of itself for a reversal of the Planning Board vote. Mr. Pare attended the meeting on February 5, 2008 and explained this to the Planning Board. It was explained in detail. He asked for sufficient time to review the documents and give his comment to the Board. At least one member of the Board expressed some concern over this, but in the end, he was denied his opportunity and was not able to offer comments to the Planning Board. There are additional points of law that establish that the decision ultimately made by the Planning Board did not comply with the requirements of Rhode Island General Law. The requirement for the extent and nature of findings is set forth at 45-23-60 at Tab 10. This law provides that all administrative, minor and major applications, the approving authorities responsible for land development and subdivision review and approval shall address each of the general purposes stated in 45-23-60 and make positive findings.

Tab 12 references the findings that are required to be made by Planning Boards when rendering a decision. Tab 11 references what the Rhode Island Supreme Court has stated about the extent of the detail of the findings. "Factual findings cannot be merely conclusional and the application of legal principles must be something more than the recital of a litany." There is nothing specific in the findings of the Planning Board and they merely mimic the provisions of the statute without regard of the requirement of laws expressed by the Rhode Island Supreme Court. That is a patent violation of law and in and of itself ground for reversal of the decision.

Mr. Dolan stated that the Planning Board voted on the application on February 5, 2008. The written decision was not issued until March 28, 2008. The decision indicates conditional approval, but there are no conditions stated in the decision. By contrast, the decision for Stonehill Marketplace, a copy of which is at Tab 13, was issued in August, 2005, includes 17 pages of detailed findings that relate specifically to the project.

He submits to this Board that the Planning Board showed a conscious disregard for their own rules and regulations. Access to public records was denied, the officer did not certify the application complete sufficiently in advance of the hearing as required by law. All my client wants is an opportunity to be heard in a meaningful way so that they can present evidence to the Planning Board in regard to concerns about traffic and drainage.

Bill Grimm, Esq. of Hinckley Allen Snyder, appeared on behalf of F. M. Global. Mr. Grimm stated that the Board of Appeal has the Planning Board record in front of them and the it is the Boards' responsibility to review that record and determine whether substantial evidence exists in that record to support the Planning Board's decision. The record at the Master Plan level consists of the application materials that F. M. Global submitted and the hearing testimony that was taken on February 5, 2008. At that hearing, Donald Oldmixon from the F. M. Global Real Estate Division testified; he gave an overview of the project to the Planning Board and the public regarding landscape and architecture, Robert Clinton, was there on behalf of the engineers. He talked about utilities, site design, and the access issues. David Prengaman, Architect, showed renderings of the planned project. Based on the evidence before it, the Planning Board made specific findings. Mr. Grimm went on to detail those findings in relation to the Comprehensive Community Plan of Johnston. F. M. Global is working to protect surrounding lots from any drainage problems. The other findings related to compliance with zoning, no negative environmental impacts, and sufficient dimensional setbacks were met.

Mr. Grimm stated that under these circumstances, the evidence in the record is not only clear, substantial, it's overwhelming and un rebutted. He asks that the Board uphold the Planning Board decision.

Mr. Dolan stated that is it hard to have evidence in the record that rebuts the contentions of the engineers when you are not given an opportunity to do so.

Mr. Pilozzi made a motion for a recess for the Board to confer. This was seconded by Mr. Frezza. A voice vote was taken, all in favor. (Recess taken from 8:10 p.m. to 8:16 p.m.)

Mr. Frezza made the motion to reconvene. This was seconded by Mr. Pilozzi. A voice vote was taken, all in favor.

Mr. Pilozzi made the motion to affirm the decision of the Planning Board regarding the Master Plan based on the following findings of fact:

- a. The proposed development is consistent with the Comprehensive Community Plan of the Town of Johnston, it's satisfactory, addressed the issues, where there may have been inconsistencies.
- b. The Board finds that the proposal would conform to the Comprehensive Community Plan of the Town of Johnston as the proposed use conforms to the Planned Use District Development Plan.
- c. F. M. Global sought to seek zoning change from B-1 to Planned Mixed Use Development prior to submitting its application for the Master Plan approval.
- d. The Planning Board heard unrefuted testimony of the project's scale and scope on the parcel. At the February 5, 2008 meeting, the architect showed renderings of what the project would look like. The buildings would be Class A office space. The building was located on the lot in such a way to minimize impact to the surrounding neighbors.
- e. The Planning Board heard testimony that this project will promote general welfare in the Town of Johnston.

f. Retaining F. M. Global as a business in Johnston encourages business development and the local economy in accordance with the Comprehensive Community Plan.

g. The proposed development is in compliance with the standards and provisions of the Zoning Ordinance # 941 of the Town of Johnston.

h. The proposed major land development would be in compliance with the standard provisions of the existing zoning regulations and have been adhered to within the Master Plan.

i. The evidence in the record supports my motion to affirm the decision of the Planning Board for Master Plan approval on February 5, 2008.

Mr. Anzelone seconded the motion.

A roll call vote was taken.

Mr. Frezza	Aye
Mr. Caparrelli	Abstain
Mr. Anzelone	Aye
Mr. Pilozzi	Aye
Mr. Jeffrey	Aye

Let the record reflect the vote is 4 -0 to affirm the decision of the Planning Board with one abstention.

Mr. Frezza, Anzelone, and Mr. Jeffery all agreed with Mr. Pilozzi’s findings of fact.

Mr. Dolan stated that as order by a requirement of binding law, to the extent that the appellant will be appealing this Board’s affirmance of the Planning Board decision, I am requesting a stay of your decision pending an appeal. The basis for the request is simply all the arguments that were set forth prior.

Mr. Grimm stated that F. M. Global opposed the motion. There is no statutory authority for a stay at this level. If they do appeal, there is a procedure to as the Superior Court for a stay of this issue. There is no basis for a stay.

Mr. Dolan stated that Evans vs. North Kingstown Planning Commission requires an appellant to ask the Zoning Board of Review for a stay before he can seek a stay from the Superior Court.

Mr. Pilozzi asked Mr. Ballirano for an advisory opinion regarding the stay. He would be more comfortable if he had a legal opinion.

Mr. Ballirano stated that a denial would be an appropriate motion. It is up to the remaining members of the Board to vote on the motion.

Mr. Pilozzi made the motion to deny the request for a stay of decision. Mr. Anzelone seconded the motion. A roll call vote was taken.

Mr. Frezza	Aye
Mr. Caparrelli	Abstain
Mr. Anzelone	Aye
Mr. Pilozzi	Aye
Mr. Jeffrey	Aye

Let the record reflect the vote is 4-0, with one abstention to deny the stay.

File 2008-16A

Owner: Factory Mutual Insurance Company
 Applicant: Prefco II Limited Partnership
 Location: Central Avenue, AP 24/1- Lots 222, 114, 115& 122
 Lot Dimensions: Area: 93.04 acres
 Zone: Planned Use Development District
 Present use: Vacant Land
 Development
 Proposal: Construct the Corporate Headquarters of Factory Mutual Insurance Company

Approval: Preliminary Plan by Planning Board 3-4-2008
 Appeal Petition: Appeal per Town of Johnston Subdivision Regulations, Section V, Article D, Subsection 6, and applicable Regulations. RIGL 45-23-66, and applicable law Ordinance, Article VII, A & B, as amended

Planning Board Decision Recorded: 3-28-2008—Land Evidence Book #1914, page 281
 Deadline for filing an Appeal: 20 days after decision is recorded
 Date Appeal Petition Filed with Johnston Board of Appeal: 4-16-2008

Mr. Dolan stated that the facts and issues in this appeal are similar to the facts and issues that were presented in the Master Plan appeal. There is a pattern and consistent pattern of denial of access to public records. There's a consistent pattern of the Planning Board and Town Officials failing to follow their own procedures. There's a consistent pattern of failing to provide of failing to provide the appellant a meaningful opportunity to be heard and a pattern of rendering decisions that fail to form with the requirements of law. Mr. Dolan handed the Board documents to be viewed as he presented his case.

Mr. Dolan stated that in the earlier proceedings, he brought to the Boards' attention that the provisions of Rhode Island law and the local Zoning Ordinances make clear that an interested party in a land use application is entitled to access to public records. Tab 7 includes the completed application. Tab 2 details that on at least 3 occasions, CapLease representatives made requests...

Mr. Grimm objected stating matters that are not in evidence. There was a previous ruling this evening that only what is in the Planning Board record should be considered.

Mr. Dolan stated that CapLease is being denied its opportunity to present its case and the requests made by Mr. Pare were not responded to. Mr. Dolan stated that CapLease is being denied their due process rights.

Mr. Jeffrey stated that he is asking that Mr. Dolan to restrict his statements to the record of the Planning Board from March 4, 2008. Mr. Jeffrey asked Mr. Dolan if he can cite examples in the Planning Board record that show the denial of due process. Mr. Dolan stated that he could not because the denials happened prior to the time of the hearing. Mr. Jeffrey asked if Mr. Pare testified at the March 4, 2008 hearing. Mr. Dolan stated that he did. Mr. Jeffrey asked if Mr. Pare alluded to the denial of public access to records. Mr. Dolan stated that he did. Referring to pages 63-65 of the transcript of the March 4, 2008 hearing, he explained his office had extreme difficulty in obtaining and accessing the file. Mr. Dolan

stated that Mr. Pare reiterated the objections that CapLease had advanced before the Planning Board regarding the difficulty it had obtaining the public records.

Mr. Jeffrey stated that if it is part of the record, it can be spoken about. If it is not, please leave it out.

Mr. Dolan quoted page 63 of the transcript of the March 4, 2008 Planning Board meeting regarding Mr. Pare's testimony. This testimony referred to the delay in receiving access to the public documents.

Mr. Jeffrey asked if Mr. Dolan felt that this denial of access to public records do demonstrative or irreparable harm to his client. Mr. Dolan stated that the law requires that his client exhaust all remedies and the Planning Board and this Board have obligations to ensure that due process is complied with. I think we have demonstrated, quite specifically, what they were denied in connection with this process and he would incorporate the affidavit of Mr. Simmons that was made in connection with this appeal. In addition to the blatant and repeated violations of our due process rights, the blatant and repeated violations of statute and law, which were not addressed in your decision approving the Master Plan decision, the Preliminary Plan process exhibits the same disregard for binding law as the Master Plan process did.

Mr. Dolan stated that in the transcript of the March 4, 2008 Planning Board meeting, Mr. Sasa asked if the applicant was in compliance. Mr. Cook stated that they were or they would not be at the meeting. Mr. Dolan stated that the applicant was not in compliance with the Zoning Ordinance and Subdivision Regulations.

Mr. Jeffrey asked Mr. Dolan if he felt that the language in the Subdivision Regulations relating to the 32 day deadline was vague. The deadline refers to internal review, not necessarily public comment. Mr. Dolan stated that he did not find the language vague. Mr. Jeffrey stated that review by staff is internal, compilation is internal, and drafting of comment is internal. Public comment is not necessarily outside comment. Mr. Dolan stated that the language is not vague and that he feels it directly applies to public comment. Mr. Jeffrey stated that if the regulation was specifically for public comment, it would state public comment.

Mr. Dolan stated that the 32 day deadline is also for an exchange of ideas between the developer and the Town, as put forth in the regulations. Mr. Jeffrey pointed out that that exchange is an internal process. Mr. Dolan stated that his client wanted an opportunity to comment.

Mr. Ballirano stated that the language in the regulations does not specifically say public comment. If it were written for the public, it would state so. It is Mr. Ballirano's opinion that the 32 day deadline is for internal processes only.

Mr. Dolan stated that the application could not have been determined complete when Mr. Cook stated it had been. This is because certain documents are required to be submitted before an application can be determined complete. The approval from the Department of Transportation had not yet been received, even though the applicant stated that it had been. The letter was received on March 6, after the Planning Board meeting. The certification of the application was incorrect, the approval had not been received. There has been some reference to a tripartite agreement. This is an agreement that allegedly exists between the Town and the developer of another project, Carpionato.

Mr. Jeffrey asked what the harm to his client was caused by the Planning Board not supplying the State approval. Mr. Dolan stated that if the approvals do not exist at the time that the proposal is being presented to the Planning Board, it is misleading. Any applicant is required to comply with the law. Mr. Jeffrey again asked what harm was caused to his client. Mr. Dolan stated that it was a patent misrepresentation that the approval had been received when it had not. The tripartite agreement had not

been signed by any party. These are crucial elements to the plan that FM Global proposed. Mr. Pare asked about the agreement at the February meeting and it was indicated that the Town had signed. This project has been infected with error from the beginning and my client has been denied the opportunity to be heard.

Mr. Grimm stated that the appellant has been aware of this development since last fall when there was a public hearing. It went through the Zoning process, Master Plan process and finally the Preliminary Plan process. These applications were very thorough and contained signed reports concerning engineering, drainage and site work. They have been a record of the Town since January and the applicant is still complaining about not having access to records.

There is a provision in both State Law and in Town Ordinances which calls for Public notice and the opportunity for the public to be heard. It is not 32 days. The 32 days is the period of time in which the Planning Board internally can get its act together concerning the application. The requirements for public notice are at least 14 days before the hearing. The Planning Board did not need the entire 32 days to analyze the file. There is no prejudice. The question is: Is there evidence in the record of the March 4, 2008 hearing that supports the decision of the Planning Board? The Planning Board findings, as required by law, are similar to that which they needed to find on the Master Plan, the Comprehensive Plan is complied with, and there is no significant environmental impact. We have given a summary of the evidence in the memorandum that was filed. There is unrefuted evidence of experts.

Mr. Grimm directed the Boards' attention to Exhibit 12 in Mr. Dolan's submission. There is a letter dated February 29, 2008 from DOT that specifically said that the office has reviewed the materials and finds them acceptable. The Planning Board understood that the access issues were approved by DOT through this letter. It had no prejudicial impact on this particular permit.

Mr. Grimm stated that this project will improve drainage in the area.

Mr. Pilozzi asked Mr. Grimm about statements that were made at the March 4, 2008 meeting regarding DOT approval dates and the Town's receipt of those documents.

Mr. Dolan stated that the letter marked as Exhibit 12 is not a permit. It does not provide that a permit exists and as of March 6, no permit had been issued. The DEM permit that issued was preceded by a hundred page filing that came in days before the meeting, which was a significant material fundamental change in the design in the water runoff system. There was not enough time for comment.

Mr. Pilozzi made a motion for a recess for the Board to confer. This was seconded by Mr. Frezza. A voice vote was taken, all in favor. (Recess taken from 9:17 p.m. to 9:32 p.m.)

Mr. Pilozzi made the motion to reconvene. This was seconded by Mr. Frezza. A voice vote was taken, all in favor.

Mr. Pilozzi made the motion to affirm the decision of the Planning Board based on the following finding of facts:

- a. Planning Board heard expert testimony that the project will promote the general welfare of the Town of Johnston.
- b. The engineers for F. M. Global testified that they evaluated the services and facilities for sewer, water, and electricity necessary to support the project.

c. David Prengaman presented images of the proposed building. He testified that the buildings will be built as Class A office space. The buildings were located on the property specifically to have a minimal impact on the surrounding properties.

d. The record demonstrates that F. M. Global has gone above and beyond the legal and environmental requirements to achieve LEED leadership in energy and environmental design accreditation.

e. The expert engineer also testified regarding traffic impacts. F. M. Global will be donating land to the Department of Transportation to accommodate the widening of Atwood Avenue.

Mr. Anzelone seconded the motion based on the same findings of fact.

A roll call vote was taken.

Mr. Frezza	Aye
Mr. Caparrelli	Abstain
Mr. Anzelone	Aye
Mr. Pillozzi	Aye
Mr. Jeffrey	Aye

Let the record reflect the vote is 4 -0 to affirm the decision of the Planning Board with one abstention.

Mr. Frezza, Anzelone, and Mr. Jeffery all agreed with Mr. Pillozzi's findings of fact.

Mr. Dolan stated that as order by a requirement of binding law, to the extent that the appellant will be appealing this Board's affirmance of the Planning Board decision, I am requesting a stay of your decision pending an appeal. The basis for the request is simply all the arguments that were set forth prior.

Mr. Grimm stated that F. M. Global opposed the motion. There is no statutory authority for a stay at this level. If they do appeal, there is a procedure to as the Superior Court for a stay of this issue. There is no basis for a stay.

Mr. Pillozzi made the motion to deny the request for a stay of decision. Mr. Anzelone seconded the motion. A roll call vote was taken.

Mr. Frezza	Aye
Mr. Caparrelli	Abstain
Mr. Anzelone	Aye
Mr. Pillozzi	Aye
Mr. Jeffrey	Aye

Let the record reflect the vote is 4-0, with one abstention to deny the stay.

Mr. Jeffrey stated that the Board will reconvene under Article XII, Section A.1 as the Review Board of the Administrative Officer.

Mr. Pillozzi made the motion to reconvene as the Review Board of the Administrative Officer. This was seconded by Mr. Anzelone. A voice vote was taken, all in favor.

File 2008-14A

Owner: Factory Mutual Insurance Company
 Applicant: Prefco II Limited Partnership
 Location: Central Avenue, AP 24/1- Lots 222, 114, 115& 122
 Lot Dimensions: Area: 93.04 acres
 Zone: Planned Use Development District
 Present use: Vacant Land
 Development
 Proposal: Construct the Corporate Headquarters of Factory Mutual Insurance Company

Approval: Preliminary Plan by Planning Board 3-4-2008
 Appeal Petition: Appeal per Town of Johnston Subdivision Regulations, Section V, Article D, Subsection 6, and applicable Regulations. RIGL 45-23-66, and applicable law Ordinance, Article VII, A & B, as amended

Planning Board Decision Recorded: 3-28-2008—Land Evidence Book #1914, page 281
 Permit # 08-080 Issued: March 26, 2008
 Deadline for filing an Appeal: 20 days after decision is recorded
 Date Appeal Petition Filed with Johnston Board of Appeal: 4-15-2008

Mr. Dolan stated that the statements he is about to make are in regard to the partial foundation permit, not the signage permit. We have filed an appeal to the signage permit, but there are no substantive arguments to be made. Mr. Jeffrey asked if Mr. Dolan wished to withdraw the appeal. Mr. Dolan stated that he did not. The record will stand on its own.

Mr. Grimm requested that the appeal be dismissed based on Mr. Dolan’s statements.

Mr. Pilozzi made the motion to affirm the Administrative Officer’s decision. Mr. Pilozzi based his motion on 23-27-3-114.7. Mr. Anzelone seconded the motion.

A roll call vote was taken.

Mr. Frezza	Aye
Mr. Caparrelli	Abstain
Mr. Anzelone	Aye
Mr. Pilozzi	Aye
Mr. Jeffrey	Aye

Let the record reflect the vote is 4 -0 to affirm the decision of the Planning Board with one abstention.

Mr. Frezza, Anzelone, and Mr. Jeffery all agreed with Mr. Pilozzi’s findings of fact.

File 2008-15A

Owner: Factory Mutual Insurance Company
 Applicant: Prefco II Limited Partnership
 Location: Central Avenue, AP 24/1- Lots 222, 114, 115& 122
 Lot Dimensions: Area: 93.04 acres
 Zone: Planned Use Development District
 Present use: Vacant Land
 Development
 Proposal: Construct the Corporate Headquarters of Factory Mutual Insurance Company

Approval: Preliminary Plan by Planning Board 3-4-2008
 Appeal Petition: Appeal per Town of Johnston Subdivision Regulations, Section V, Article D, Subsection 6, and applicable Regulations. RIGL 45-23-66, and applicable law Ordinance, Article VII, A & B, as amended

Planning Board Decision Recorded: 3-28-2008—Land Evidence Book #1914, page 281
 Special Permit # 08-097 Issued: March 26, 2008
 Deadline for filing an Appeal: 20 days after decision is recorded
 Date Appeal Petition Filed with Johnston Board of Appeal: 4-15-2008

Mr. Dolan stated that this appeal is centered on two points. The first point is that the Building Official had no authority under State or Local law to issue a partial permit for the foundation. RIGL state that no development project can be initiated until the plan of the project has been submitted to the Planning Board and that approval includes the exhaustion of any appeal period following the issuance of Master or Preliminary plan approval. Mr. Dolan quoted RIGL 45-24-7, Subparagraph B. The same requirement appears in the Johnston Zoning Ordinance. Upon the filing of appeal, an automatic stay of any further proceedings begins. The case of Hartunian vs. Matteson, 288 A2d. 485, Rhode Island Court Decision in 1972, states that furtherance of the approval includes construction. The Building Official is relying upon a separate provision of the State Building Code for the authority that he maintains he has to issue a partial approval for the foundation. It is RIGL 23-27-3. It provides that when an application and all documents necessary for the issuance of a permit to erect or add to a building structure have been filed as required, the Building Official shall issue a Special Permit for the foundation of the building or structure upon the request of the owner. The owner may proceed at his own risk. It is Mr. Dolan's understanding that an application and plans for the entire project must have been submitted in order for the partial to be approved. The only applications that were filed were for signage and partial approval for the foundation.

The second point is that the permit was based on an illegal agreement between the applicant and the Town. That agreement is in the form of a letter from counsel for F. M. Global to the Town Solicitor, dated March 26, 2008. Mr. Dolan quoted the letter. "On March 4, 2008, the Planning Board approved the Preliminary Plan. F. M. Global requests issuance of a foundation permit at this time." Mr. Dolan continued, "By this letter, F. M. Global agrees to indemnify and hold the Town of Johnston harmless from any claims of F. M. Global or any other party may have against the Town arising from the issuance of its building permit prior to the expiration of the time in

which appeals of Master and Preliminary plan approvals must be filed.”. This letter is an insurance policy. It’s a guarantee to the Town that even if the law is violated,.....we got you covered”. The decisions of the Master and Preliminary plans were posted after the permit was issued.

Mr. Dolan stated that the issuance of the partial approval was illegal and that this Board should reverse the decision.

Mr. Grimm stated that those are strong and false accusations against the officials in the Town of Johnston. Mr. Grimm stated that the laws that Mr. Dolan quoted were not quite correct. The law does not state that the appeal period must be exhausted before permits can be issued. There is no substantive basis for this challenge to issue partial permits. Statute 23-27.3-114.7 gives the Building Official authority to issue partial permits. There was no appeal pending at the time the permit was issued. There was a stay in place after the appeal was brought and that was adjudicated by Judge Silverstein.

I request that this appeal be denied.

Mr. Jeffrey asked that the record reflect that each member of the Board is in receipt of a memorandum from Makram Megalli, Director of the Department of Public Works, dated May 1, 2008, which states that a stay of all proceedings for the above-referenced appeals would cause eminent peril to life and property by creating significant risks to public safety at the site as well as risk to the structural integrity of the work done on the site and he references Cease and Desist orders and the four appellate actions.

Mr. Caparrelli asked when Mr. Jeffrey received the balance of his review package. He did not receive his until yesterday. Mr. Jeffrey stated that he believes he received it the day before. Mr. Caparrelli asked if Mr. Jeffrey’s package was delivered by the police. Mr. Jeffrey stated that he does not know, he was not home when it was delivered. Mr. Caparrelli stated that he was interrupted at work at lunchtime by the police with his package, he did not have adequate time to prepare for this meeting, which is why he abstained from the vote.

Mr. Jeffrey asked Mr. Ballirano for his opinion on the indemnification letter. Mr. Ballirano stated that many cities and towns use similar letters. The use of this letter is not out of the ordinary or unheard of and is an accepted practice.

Mr. Pilozzi stated that he agreed with Mr. Ballirano. It makes the Town run efficiently.

Mr. Pilozzi made the motion for a recess for the Board to confer. This was seconded by Mr. Frezza. A voice vote was taken, all in favor. (Recess taken from 10:07 p.m. to 10:13 p.m.)

Mr. Pilozzi made the motion to reconvene. This was seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

Mr. Pilozzi made the motion to affirm the Administrative Officer’s decision, with the same findings of fact as the prior appeal, 23-27.3-114.7. Mr. Anzelone seconded the motion, citing the same findings of fact.

A roll call vote was taken.

Mr. Frezza	Aye
Mr. Caparrelli	Abstain
Mr. Anzelone	Aye
Mr. Pilozzi	Aye
Mr. Jeffrey	Aye

Let the record reflect the vote is 4 -0 to affirm the decision of the Planning Board with one abstention.

Mr. Frezza, Anzelone, and Mr. Jeffery all agreed with Mr. Pilozzi's findings of fact.

Mr. Frezza made the motion to adjourn. Mr. Anzelone seconded the motion. A voice vote was taken, all in favor.

Adjourned at 10:17 p.m.