

NEEDHAM PLANNING BOARD

Monday November 8, 2021

7:00 p.m.

Virtual Meeting using Zoom

Meeting ID: **826-5899-3198**

(Instructions for accessing below)

To view and participate in this virtual meeting on your phone, download the “Zoom Cloud Meetings” app in any app store or at www.zoom.us. At the above date and time, click on “Join a Meeting” and enter the following Meeting ID: **826-5899-3198**

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Or to Listen by Telephone: Dial (for higher quality, dial a number based on your current location):

US: +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 Then enter ID: **826-5899-3198**

Direct Link to meeting: <https://us02web.zoom.us/j/82658993198>

1. Vote to increase Project Peer Review Fee: Major Project Site Plan: Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, MA, Petitioner. (Property located at 1688 Central Avenue, Needham, MA).
2. Executive session under G.L. c.30A, §21(a)(1) to discuss/vote on response to Open Meeting Law Complaint filed by Joe Abruzese on November 2, 2021.



November 2, 2021

Ms Lee Newman
Director of Planning and Community Development
Needham Department of Public Works
500 Dedham Avenue
Needham, MA 02492

ATTN: Mr. Anthony DelGaizo, PE
Town Engineer

Ms. Lee Newman
Director of Planning and Community Development

SUBJECT: 1688 Central Avenue Peer Review
Amendment 1

Dear Ms Newman:

Greenman-Pedersen, Inc. (GPI) would like to request an amendment for the peer review services associated with above referenced project. The original scope of work assumed two (2) meetings with the Planning Board. To date, there have been at least six (6) meetings, as well as meetings with board members. In addition, multiple design revisions and traffic studies have been submitted for review.

Therefore, we would respectfully request an increase in the Task 1.0 – Peer Review of Traffic Memos and Task 7.0 – Meetings and Consultation as follows:

TASK	Requested		
	Original Fee	Amendment	Revised Fee
1.0 - Peer Review of Traffic Memos	\$ 1,933.36	\$ 1,023.88	\$ 2,957.24
2.0 - Site Visit/Assessment	\$ 1,041.04	\$ -	\$ 1,041.04
4.0 - Mitigation Plan/Concepts	\$ 1,552.98	\$ -	\$ 1,552.98
5.0 - Draft Report	\$ 3,034.46	\$ -	\$ 3,034.46
6.0 - Final Report	\$ 1,993.42	\$ -	\$ 1,993.42
7.0 - Meetings and Consultation	\$ 5,119.40	\$ 4,095.52	\$ 9,214.92
TOTAL	\$ 14,674.66	\$ 5,119.40	\$ 19,794.06
Expenses	\$ 300.00	\$ -	\$ 300.00
TOTAL PROJECT DESIGN COST	\$ 14,974.66	\$ 5,119.40	\$ 20,094.06

Should you have any questions, or concerns regarding this matter, please feel free to contact John W. Diaz at (978) 570-2953.

Very truly yours,

GREENMAN – PEDERSEN, INC.



John W. Diaz, P.E.
Vice President/Director of Innovation

[illegible]

From: [Evans Huber](#)
To: [Lee Newman](#)
Cc: [Alexandra Clee](#)
Subject: 1688 Central Ave request for additional peer review fees
Date: Monday, November 8, 2021 3:52:36 PM

Lee: please forward the following email to the members of the PB:

Members of the Planning Board:

I am writing on behalf of Needham Enterprises, LLC, in response to the request, received via voicemail today, for an additional \$5,000 from Needham Enterprises, for additional peer review fees to be paid to GPI. Needham Enterprises will not agree to pay this amount, for the following reasons:

1. Needham Enterprises ("NE") has already paid almost \$15,000 for the services of GPI to the Town. At the time this issue was first raised, NE objected to the scope of work that this fee was going to cover as being well beyond what NE should reasonably be expected to pay for. We were told that it was expected that the scope of review by GPI would be limited, and that NE might actually be refunded a portion of the fee. Based on this, NE paid the requested fee.
2. GPI has spent a lot of time and effort providing feedback on the site plan design and engineering, and discussing these issues both at meetings and between meetings with NE's engineer, John Glossa. This is entirely beyond the scope of the June 22 proposal from GPI, which says nothing about reviewing site plans for engineering and design issues. This is something NE was not asked to pay for; and did not agree to pay for. The Board should be relying on the Town engineering department for this type of review, and if the Board wants to pay an outside consultant to do engineering review, that is an issue between it and the Town.
3. This matter was originally scheduled to be heard on June 15. Since that time, there have been four substantive hearing dates on this matter. Of those four dates, at two of them a significant amount of time (particularly during the September 8 hearing) was spent on the issue of alleged ethical violations by Mr. Gluesing and Mr. Borrelli, even though the Chair had previously announced that the Board would not entertain discussion on that issue. The Board has now received the opinion of outside counsel, consistent with that previously expressed by Town Counsel, that the Board does not have the authority or discretion to consider allegations of ethical violations against an applicant; nor to delay the hearing while those allegations are addressed elsewhere. It is not appropriate or reasonable to expect the applicant to pay for GPI's time to sit at a hearing where matters are discussed that are beyond the scope of the Board's authority and jurisdiction.
4. Similarly, it is not appropriate or reasonable to expect the applicant to pay for GPI to appear at the October 19 hearing, where the only thing that occurred was that the Chair announced that the hearing was being continued in light of allegations of ethical violations made against the Chair.

5. IN NE's view, the need for GPI's involvement in providing feedback on traffic issues is essentially over. NE is not going to be making further changes to the design and layout of the site. The Board has the information it requested with respect to the impact of this site on traffic on Central Ave and on Charles River Street. Since, as noted above, there is no doubt whatsoever that the Town has spent a portion of the fees (that NE has already paid) having GPI provide review and feedback on engineering issues that should have been handled by the Town's engineering department, that portion of the already-paid fees should be more than enough to cover any additional GPI time on traffic issues that the Board chooses to utilize.

Sincerely,

Evans Huber
Frieze Cramer Rosen & Huber, LLP
60 Walnut Street
Wellesley, MA 02481
781-943-4000 (main)
781-943-4043 (direct)
781-799-9272 (cell)
eh@128law.com
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TOWN OF NEEDHAM
ADOPTED AMENDMENT TO THE SUBDIVISION REGULATIONS AND PROCEDURAL
RULES OF THE PLANNING BOARD
March 20, 2012

1. Amend the Subdivisions Regulations and Procedural Rules of the Planning Board, Section 4, "Planning Board Rules for Planned Residential Development Specials Permits, Residential Compound Special Permits, Flexible Development Special Permits, Site Plan Review Special Permits", Article II, "The Application", by inserting a new Section 9, entitled "Permit Review Fees" as follows and by renumbering the remaining sections accordingly:

"Section 9. Project Review Fees

Any applicant who submits an application pursuant to these Rules and Regulations may be required to submit a project review fee in accordance with the following provisions of this section:

(a) When reviewing an application for approval, the Planning Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's potential impacts or because the Town lacks the necessary expertise to perform the review work related to the approval. The Planning Board may require that applicants pay a "project review fee" consisting of the reasonable costs incurred by the Planning Board for the employment of outside consultants engaged by the Planning Board to assist in the review of a proposed project.

(b) In hiring outside consultants, the Planning Board may engage engineers, planners, traffic consultants, attorneys, architects, housing specialists, financial analysts, and/or other appropriate outside consultants who can assist the Planning Board in reviewing and analyzing the proposed project and to ensure compliance with all relevant laws, by-laws and regulations. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue, professional licensure or three or more years of practice in the field at issue or a related field.

(c) Funds received by the Planning Board pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose in accordance with the provisions of Chapter 44, Section 53G of the General Laws. Expenditures from this special account may be made at the direction of the Planning Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been collected from the applicant. Any accrued interest may also be spent for this purpose. At the completion of the Planning Board's review of a proposed project, any excess amount in the account, including interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest shall provide the Planning Board with documentation establishing such succession in interest.

(d) The Planning Board shall give written notice to the applicant of the selection of the outside consultant(s), which notice shall state the identity of the consultant(s), the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

(e) The fee must be received in its entirety prior to the institution of consulting services. The Planning Board may request additional consultant fees if the necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Planning Board within ten (10) business days of the request for payment shall be cause for the Planning Board to deny the application.

(f) Prior to paying the consultant fee, the applicant may appeal the selection of the outside consultant(s) to the

Board of Selectmen. The grounds for such an appeal shall be limited to claims that a selected consultant has a conflict of interest or that a selected consultant fails to possess the minimum required qualifications. The written appeal must be received by the Board of Selectmen within ten (10) days of the date consultant fees were requested by the Planning Board. A copy of the appeal shall be simultaneously provided to the Planning Board. The time limit for the Planning Board's action on the proposed project shall be extended by the duration of any administrative appeal to the Board of Selectmen. In the event that the Board of Selectmen makes no decision regarding the appeal within thirty days following the filing of such appeal, then the selection of the Planning Board shall stand."

2. Amend Section 3, Subdivisions, Sub-Section 3.2, Submission of Definitive Plans, Paragraph 3.2.2, by inserting a new second paragraph to read as follows:

"Any applicant who submits an application pursuant to these Rules and Regulations may be required to submit a project review fee in accordance with the regulations established for special permits pursuant to Section 4, "Planning Board Rules for Planned Residential Development Specials Permits, Residential Compound Special Permits, Flexible Development Special Permits, Site Plan Review Special Permits", Article II, "The Application", paragraphs (a) through (f)."

A True Copy

ATTEST


Theodora K. Eaton, Needham Town Clerk