

Zoning Board of Appeals
 One Liberty Lane
 Norfolk, MA 02056
 July 31, 2019
 7:00 P.M.

Christopher Wider – Chair ----- Present	Medora Champagne – Associate Member--Present
Michael Kulesza – Vice Chair ----- Present	Daniel Hill – 40B Consultant Attorney ---- Present
Joseph Sebastiano – Clerk----- Present	Betsy Fijol – Administrative Assistant----- Present
Donald Hanssen – Member ----- Present	
Devin Howe – Member ----- Present	

The duly posted meeting of the Norfolk Zoning Board of Appeals convened at 7:00 P.M. Room 124 of the Norfolk Town Hall. Mr. Wider announced that the meeting was being video- and audiotaped

PUBLIC HEARINGS:

144 Lakeland Hills – 40B Comprehensive Permit (cont'd from 6/5/19)

Mr. Wider called the continued public hearing to order, stating that the town received a revised set of plans from the applicant on Monday evening [July 29, 2019] which were currently being reviewed. Present were Dan Hill, Attorney for ZBA; Christopher Agostino, Attorney for applicant; Travis Brown, Andrews Survey & Engineering (ASE), Engineer in Training & Lead Contact; Kristen LaBrie, ASE. Plans presented and referred to were entitled “Lakeland Hills, A Comprehensive Permit Plan, Norfolk, MA,” prepared by Andrews Survey & Engineering, dated November 19, 2018, rev. through 7/25/19.

Atty. Agostino noted that, subsequent to the last hearing on June 5, the plan had been to submit to plans in early July, but that did not happen, due in part to personnel changes at Andrews Survey & Engineering (ASE). Steve O’Connell is no longer with ASE; Travis Brown, and Kristen LaBrie are now working on the project. Atty. Agostino said that a Cut & Fill Analysis had been completed, and was ready to be sent to the reviewer in a few days.

Mr. Travis reviewed the plan; some units have been turned to face the street to accommodate the stormwater system; soil testing has been done. Basins are in the same location as previously, but some have been expanded; a new basin has been added to accommodate off-site runoff that comes into the site. Based on preliminary grading details, the cut/fill analysis equals about 44,000 cubic yards in excess material. The project is still at 96 units, which includes 24 affordable units. Stand-alone units have been combined into duplexes.

Atty. Hill recapped that the applicant had asked the ZBA not to review the original plans, but instead to wait for revised plans, which were to have been supplied in early June; the traffic report was also to have been provided at that time, but was not; the applicant has agreed to provide an extension of the 180-day timeline. Reviewing the 40B process, Atty. Hill said the ZBA’s main function is to consider requests for waivers from town bylaws.

Mr. Howe noted that the stormwater report said that most of the soils found in testing were Class D, but earlier sand and loamy sand had been reported from soil testing. Class D soils can act as impervious and sometimes overestimate predevelopment conditions, resulting underestimation of the size of the stormwater system. Atty. Agostino said the design team would discuss that with the reviewer to determine the appropriate classifications. Mr. Howe also reiterated a previous request for locating the septic systems on the adjacent properties; the one to the north was found to be a cesspool outside of 50’ and the one to the south still needs to be tracked down. Mr. Howe expressed concern regarding the stormwater basin proposed on the southerly side at the entrance, saying it looks like it discharges to the abutting neighbor’s property; Mr. Brown said that would be addressed if it was brought up during peer review. Mr. Kulesza asked if the fire chief had comments on the entrance, and asked to see the chief’s comments at the next meeting. Mr.

Hanssen said the area between lots 49 and 25 appears to be designated as wetlands, and continues through to lot 39, and then stops; Atty. Agostino said that is the area delineated through the Conservation Commission process; it does extend off-site, but they didn't continue to delineate it off-site. Atty. Agostino noted that there was a wetlands review proposed by the ZBA. In response to Mr. Wider, Atty. Agostino said the traffic report was complete and would be sent in the next couple of days. Atty. Agostino said the feasibility of installing sidewalks on Seekonk Street had not been thoroughly examined.

Rich Tobin, 179 Seekonk Street, asked where the entrance comes out in relation to his house and whether there would be a traffic light; he also expressed concern about property values in the area, particularly with regard to traffic. Atty. Agostino and Mr. Wider said a traffic study report would be prepared for the board, and the town would hire a traffic engineer to review and comment on the report.

Kathy Reinhardt, 20 Stop River Road, asked about the breakdown of the 96 proposed units; how many buildings, how many 2- and 3-bedrooms units, etc., and what are the requirements for living in the buildings. Atty. Agostino said the final bedroom count would be dictated in part by the stormwater treatment system; there are 70 buildings proposed, some of which are duplexes. 25% of the units will be designated affordable, income and sale price on the remainder are not constricted. A minimum of 10% of the units must be 3-bedrooms, but this board cannot dictate the number of bedrooms per unit aside from that; property values cannot legally be considered as part of this project.

Kathy McKenna, 24 Stop River Road, asked if the gas main going in on Seekonk Street was for this development; Mr. Wider said no, it is not for this development, it was proposed several years ago. Atty. Agostino said the intent is for this development to tie into the gas company. Mr. Wider said the DPW would be the best source for how long Seekonk Street will be closed for that project.

Patrick Keenan, 66, 68, 70, & 72 Seekonk Street and 2 Campbell Street, asked if the cluster mail box will be installed right in the beginning; Atty. Agostino said the Postmaster General would determine how best to service the site. Mr. Keenan asked about subsidies to the builder and Atty. Agostino responded; Mr. Keenan addressed the tax base of the town, and Mr. Wider said that yes, the burden on schools, public safety, etc. will be increased, but the board is limited as to what it can address.

Diane McElwee, 152 Seekonk Street, said the new drive would be abutting her driveway and swimming pool, asked where the town stands with regard to an enforcement order issued to the developer last year; Atty. Hill explained that the Building Inspector had issued an Enforcement Order to the developer, which was appealed by the developer to the ZBA; the ZBA affirmed the Building Inspector's decision, but no additional fines were assessed. The ZBA's decision was then appealed to superior court by a neighbor, and that appeal is still pending in court, but the ZBA's participation in it is completed, and it has no bearing on these 40B hearings. Mr. Kulesza asked if the Norfolk Conservation Commission (NCC) is currently looking into this, and Atty. Hill said yes, in a separate process regarding if any wetland violations occurred on the property in the past, and it, too, has no bearing on these 40B hearings at this time; depending on the outcome, it may or may not impact the project. Mr. Kulesza affirmed that the ZBA "handed over" the project to NCC and does not have jurisdiction over that any more. Atty. Agostino said he disagrees with Atty. Hill's characterization of the NCC process and with Mr. Kulesza's statement that the ZBA does not have jurisdiction over local conservation-related issues, and stated that the conservation issue is still under active litigation. There are plans in this 40B proposal that delineate the wetlands, and the ZBA will be hiring a peer reviewer.

Paul McDonoyl, 6 Stop River Rd, asked if the engineers were aware of any stormwater issues in the area when they did an evaluation. Mr. Brown said existing site conditions were taken into account, and briefly explained the process for analysis. Mr. McDonoyl asked if there were any areas of concern; Mr. Brown said behind the site, there is some runoff from adjacent property which has been mitigated, with some of it entering the site's stormwater system; Mr. McDonoyl said that his end of Stop River Road has issues from water running down from the higher elevation, and suggested the area between 6-10 Stop River Road be focused on; Atty. Agostino said that if any of that drainage is coming from the subject property, it will likely be improved from this project. Mr. McDonoyl asked about blasting; Atty. Agostino replied that Mass Housing, in their Project Eligibility Letter (PEL) advised the developer to evaluate the situation with regard

to concerns about ledge. The developer found there was less ledge than initially anticipated, though there will likely be some blasting, and reviewed some of the processes that go along with that, noting it is a highly state-regulated process. Mr. Wider added that the Construction Management Plan (CMP) will include a blasting plan.

Michael Kozikowski, 24 Stop River Road, said over the past 5 years 3 nearby homes had been built which included some blasting; he said someone came to the surrounding homes and took pictures, but the gentleman said that “under no circumstances will you be able to file a claim that will be paid, it’s impossible to prove that the site created damage.” He also said that the project went on for 5 years, with little response from the developer regarding a pile of logs, noise, diesel fumes, etc. Mr. Wider said the CMP will ensure that permits do not get issued if issues are not addressed. Mr. Kulesza added that there was no leverage with respect to the developer Mr. Kozikowski referred to, but in the case of these 40Bs, there is leverage, and the developers do know that, and do work cooperatively with the board.

Mr. McDonoyl asked about the zoning, and was informed that it is residential, not farming. He also asked about water supply to the development, and was told that they will hook up to town water, and have done some testing with regard to pressure, etc., and the DPW will be providing more feedback on that. Mr. McDonoyl asked if that could affect his water pressure, and Mr. Wider said the DPW could answer that.

Ann Fletcher, Meetinghouse Road, asked if the project is bonded. Mr. Wider said that bonding will be required.

Lorraine Sweeney, 14 Stop River Road, asked why, between proposed townhouses #15-16 and #17-18, the roadway is shown extending out to 10 Old Cart Path, expressing concern that it might be extended in the future; Atty. Agostino said they do not have control over that property, and the double-barrel entryway was created to alleviate concerns about access; they would probably agree to a condition of no future access via Old Cart Path.

Tristan Carpenter, 120 Seekonk Street, expressed concern about sewage disposal plans, and ensuring backup plans for a wastewater treatment plant (WWTP.) Atty. Agostino said all of those concerns are covered in the states permitting process for WWTPs. Dr. Carpenter asked if a bond would be put in place; Atty. Agostino said part of the state permitting process does require additional funding and the ability to lien properties if proper maintenance isn’t done.

Larry Clark, 130 Seekonk Street, asked if the board has any authority to control construction traffic; Mr. Wider said that would be addressed in the CMP.

Karen Clark, 130 Seekonk Street, asked about wetland research done on this property by Patrick Garner, and asked if NCC will have meetings on that; Atty. Hill said there is an ongoing investigation by the NCC; apart from that, this project will require permitting via an Order of Conditions by the NCC. The ZBA is also “stepping into the shoes of” the NCC with regard to local wetland bylaws and regulations for this 40B process; the board’s wetlands consultant will be looking at whether or not waiver requests have merit. Ms. Clark asked if it would be possible for the applicant to mark on the plan any trees that would not be cut down, and Mr. Wider said that could be done. Atty. Hill noted that there is also a wetland in the middle of the site in which there are trees that will not be allowed to be cut down.

Debra Gursha, 143 Seekonk Street, said the two detention basins near Seekonk Street are directly across from her house, and she is concerned about water issues if they fail. Ms. Gursha also expressed concern with traffic, particularly with regard to the project at 84 Cleveland Street in addition to this project.

Silvana Dell Camera, 134 Seekonk Street, expressed concern about her well and asked about plans to protect abutters if wells fail after the project goes in, or if the WWTP fails and contaminates nearby wells. Mr. Wider said that will all be addressed during the civil engineering review. Mr. Howe asked if the board could bond connection to town water in the event that blasting caused a private drinking water well to fail; Atty. Hill said various conditions to protect neighboring drinking water wells could be imposed.

George McLaughlin, 16 Stop River Road, asked about the length of construction and asked if it was contingent on selling units. Atty. Agostino said yes, it is subject to market conditions, but they will use a phasing plan to build in a logical order; bonding elements for infrastructure and phasing address concerns of abandonment; there is not a current phasing plan, but they will prepare one.

Mr. Wider turned to discussing peer reviewers. Wetland Peer Review came in at \$9,820 and Landscape & Architecture at \$9,850.00. Atty. Agostino said they are generally fine with BETA, but asked to see the scopes of work, particularly with regard to wetlands; he pointed out a subsection of the wetlands review regarding stormwater, which seems to be duplicative with the civil engineering & stormwater review.

Mr. Sebastiano made a motion to approve TEPP, LLC, to do the traffic review @ \$3,900.00 per traffic study; BETA Engineering to do landscape & architecture reviews at \$9,850.00 (combined); BETA Engineering to do wetland peer review for an amount less than \$9,820.00 [to account for excluding stormwater review from proposal]; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.

Atty. Hill noted that a hydrogeological peer review may be required at some point, and the process was briefly discussed. Atty. Agostino asked about Mr. Reardon's schedule, and Mr. Wider responded that Mr. Reardon should finish reviewing the plans by the end of August.

Mr. Hanssen made a motion to continue the hearing to September 4, 2019, at 7:15 P.M.; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.

Mr. Howe asked if a site walk could be scheduled. Mr. O'Harte said he would be happy to meet with board members on any Saturday or Sunday.

The previous motion was amended to include "and to review an updated wetlands proposal at the August 7, 2019, ZBA meeting." ***Mr. Hanssen made the amended motion and Mr. Sebastiano seconded; the vote on the amended motion was unanimous.***

Mr. Howe made a motion to adjourn the meeting at 9:29 P.M.; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.


Joseph Sebastiano, Clerk