

Zoning Board of Appeals
 One Liberty Lane
 Norfolk, MA 02056
 January 29, 2020
 7:00 P.M.

Christopher Wider – Chair ----- Present	Josephine Cordahi – Associate Member---- Present
Michael Kulesza – Vice Chair ----- Present	Timothy Martin – Associate Member -----Present
Joseph Sebastiano – Clerk----- Present	Amy Brady – Administrative Assistant----- Present
Donald Hanssen – Member ----- Present	Daniel C. Hill – 40B Attorney -----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 Seekonk St, “Lakeland Hills,” CP (cont’d from 12/18/19)

Plans and documents presented and referred to were a “Wetlands Peer Review” letter from Marta Nover, BETA Group, to the ZBA, dated 1/17/19[sic] (should be 1/17/20); follow up “Wetlands Peer Review” letter from Marta Nover, BETA Group, to the ZBA, dated 1/28/19[sic] (should be 1/28/20); “40B – Civil Engineering Peer Review, Lakeland Hills...” letter from Tetra, to the ZBA, dated 12/24/19; Memo from Daniel C. Hill “Status of Sight Distance Analysis,” dated 1/29/2020; TEPP, LLC memo “Traffic Peer Review, 144 Seekonk Street,” dated 1/2/20; plans entitled “144 Seekonk Street, SB LT Turn Sight Distance, Available Within ROW,” 7 pp., prepared by WSP, dated Jan 2020; Speed Distribution; “Lowest Speeds Summary Report,” “Highest Speeds Summary Report,” and “Speed Distribution” graph as related to speed feedback sign located on Rockwood Road in Norfolk; letter from abutter, James Gursha, dated 1/28/2020

Present were Marta Nover, BETA Group; Kristen LaBrie, ASE; Ted O’Harte, applicant; Christopher Agostino, attorney; Philip Cherry, WSP USA

Atty. Agostino gave an overview of the project to date; they will be submitting an updated plan set and updated groundwater mounding information by February 15, 2020.

Ms. Nover stated that they have found that the project will likely have significant impacts to the bylaw resource areas, particularly the 100’ buffer zone to the vegetated wetland on the site. She specified that the buffer zone is a resource area under the bylaw, but under the state laws regulations, it is an area subject to jurisdiction. The wetland area on the site is a narrow area running northwest to southeast, with a thread through it, which was observed to have a flowing channel during the December onsite visit. The channel begins above the flagged boundary, and would be considered a stream under the local bylaw. Ms. Nover said the ZBA does not have enough information to determine if they should waive the bylaw, stating that the buffer zone in this case has a lot of significance to wildlife habitat, as well as providing protection to the small narrow wetland that goes through the property, the overstory of which has nut bearing trees; in addition, if you clear the buffer zone and change the drainage pattern, there will be an impact on the actual water budget of the stream that flows through it. In addition a bylaw vernal pool was observed in December, which she described as quite a large area with perhaps 18” of standing water, which likely holds water for 2 months during the breeding season, and which would be adversely affected by clearing up to the wetland line. Ms. Nover read from her follow up letter of 1/28/20, stating what she feels is needed from the applicant: A science-based buffer zone analysis which should include a description of the existing biological condition of the buffer zone and description and quantity of impacts to the buffer zone using the town bylaw definition of “alter”; other needs as described in the letter.

Mr. Howe asked if the noted stream was potentially impacted by the “road” that went in, in 2017; Ms. Nover said potentially, yes, it visually appears to begin right at the edge of that road. Mr. Kulesza said he felt the

information presented was significant, and Mr. Sebastiano concurred. Mr. Wider stated that the applicant only received it two days ago, but the applicant said they were prepared to respond.

Atty. Hill asked Ms. Nover to elaborate on the terms hydroperiod and water budget. Ms. Nover did, and added that standard methods to use in determining water budgets can be found in the Massachusetts Stormwater Regulations & Standards. Atty. Hill noted that one would want post-development water volume going into a wetland to mimic the pre-development water volume. Ms. Nover added that the quality of water flowing into a vernal pool pre- and post-development would make a difference to the breeding habitat over time. In response to Atty. Hill, Ms. Nover said that under the bylaw, a vernal pool needs to hold water for 2 months in order to be protected; the applicant could disprove that this is a vernal pool during the breeding season, in the spring, under normal weather conditions, but until then, it is protected under the bylaw. Under the state, it would have to be Certified under Natural Heritage. The town could document breeding during the 2-month season and get it Certified, which would prevent stormwater from discharging into it, per the Mass Stormwater Standards. Ms. Nover said that where towns do not have a buffer zone bylaw, the state tends to allow work right up to the wetland border, and that in order for an area to be classified as a bordering vegetated wetland (BVW) it must border on a water body. A picture in the January 17 letter shows the stream channel upgradient of the delineated BVW and Isolated Vegetated Wetland (IVW), and one shows the bylaw vernal pool, near flags #63 & #80. Mr. O'Harte said there is criteria with volume of water; Ms. Nover said it needs to hold water for 2 months during the breeding season. March and April would be the best time to see it. Ms. Nover feels it is more groundwater discharge than runoff from the forested area, and she feels it is important because it is the only wetland system out there. In response to Mr. Howe, Ms. Nover said that blasting of ledge on sight could affect the groundwater. Atty. Hill said that it would be helpful to hear from the Conservation Commission (ConCom) as to what level of investigation it would require.

Atty. Agostino said they break this into two categories: habitat and hydrology. He said habitat is upgradient to the delineated wetland, and not protected by the state, although he acknowledged that some wetland scientists do push to have that protected, as it does benefit some wetland wildlife. He said that, unless the board identifies a unique local concern, the applicant is asking for waivers from the local bylaws regarding habitat, and will comply with any state regulations, which do allow for alterations up to the wetland border. If ConCom would have any conditions they would like to impose, or elements of the ConCom bylaw they would like retained, then they would evaluate that during their Notice of Intent (NOI) process. He said this board, the ZBA, is considering whether to waive local wetland bylaws that would then "tie the ConCom's hand" if they wanted to protect habitats. He said the performance standards referred to by Ms. Nover are not part of the local bylaw.

Regarding hydrology, Atty. Agostino said the stormwater management plan they have developed continues to evolve. He said the potential vernal pool discussed earlier is not a Certified Vernal Pool. They do have a SORAD for the site, and he said "this area" was evaluated and did not qualify as a certified vernal pool, he and concluded that the performance standards referenced would not apply. Atty. Agostino said TetraTech's evaluation will show that state standards regarding stormwater management will be met, and they will not dry up the wetland. Regarding Ms. Nover's follow-up memo of 1/28/20, Atty. Agostino said items 1(a),(b), and (c) relate to the upland habitat, and he noted that the MACC's Buffer Zone Guidebook, which has some standards on these issues, is not referenced in Norfolk's bylaw. Atty. Agostino said they are open to discussing specific concerns that ConCom may have, but they will not commission a study such as that suggested by Ms. Nover on behalf of the ZBA at this stage.

Regarding Ms. Nover's mentions of an intermittent stream and a local vernal pool, Atty. Agostino said they disagree with those conclusions, saying the local bylaws require a definite channel, which he said no one to date has identified. He said that the applicant has taken some measures to protect some of the upland and did not completely propose grading up to the limit of the wetland in all area.

Referring to Tetra Tech's review letter of 12/24/19, Ms. LaBrie said they are working through issues, including moving a pond downgradient in order to prevent point discharge into the wetland area, and no roof runoff or is going into the wetland. They are aiming to keep pre-and post-design figures equal, not less than. Also, replacing wooded area for grass should increase the runoff into the wetland.

Atty. Hill said that all 40B developers do need to comply with local bylaws, unless they are waived, and the board only needs to grant waivers if the developer needs them to make the project economically viable. He believes Ms. Nover's requests for information to be reasonable. The potential vernal pool is protected under local bylaw until it gets certified by the state. Atty. Hill disagreed with Atty. Agostino's characterization of item 1(a),(b), and (c) of Ms. Nover's letter as only relating to habitat; he said it relates to the value of everything within the buffer. Stating that the upgradient channel does feed the wetland during weather events, and the current road design cuts across it, Atty. Hill questioned how the amount of water into the wetland would not decrease. Atty. Agostino said the calculations will show that.

In response to Atty. Hill, Ms. Nover said she believes the stream does qualify as a stream under local bylaw; there are areas where it cannot be seen, but the bylaw covers where it flows below, as well as above, ground. She also questioned how the state could label BVW, unless it was bordering a waterbody. Regarding the state not identifying the vernal pool, Ms. Nover said that since a vernal pool is not a resource area, that state cannot approve its boundaries, so it is not part of the ORAD process. Ms. Nover also noted the stream is fed by groundwater that slowly recharges it, as opposed to the quicker runoff from the new grass areas, so the flow to the wetland will be changed. Atty. Hill asked Ms. Nover when a wildlife habitat evaluation is required under state law, and if this project would trigger it. Ms. Nover said it is triggered when there is an impact to a resource area that's protected under the state, so where the street crosses the wetland, if more than 50 linear feet of bank, or 10% of the total bank, whichever is less, is altered, then a wildlife habitat evaluation is required. Atty. Hill suggested getting information from the ConCom Chair or Agent as to what extent the commission requires habitat assessment with regard to local bylaw. Ms. Nover said the regulations state that there shall be no adverse impacts to wildlife and wildlife habitat as a result of a change in runoff.

Atty. Agostino confirmed that the stream within the delineated wetland is protected, but they don't feel upgradient is a definite channel subject to protection. He reiterated that if ConCom recommends that a habitat study be done as a condition to final approval in the NOI process, then they will look at that at that time. Atty. Agostino also clarified that working right up to the boundary is not necessarily allowed in writing anywhere, and is only looked at by DEP upon appeal on a case by case basis.

Mr. Kulesza said enough concern has been raised in his mind to request the study recommended by Ms. Nover. Atty. Hill said that a lot of waivers are being requested, a lot of work is proposed within the buffer zone, and there is credible evidence of a vernal pool in the area; for these reasons, he agrees that the study should be performed. Input from ConCom will be requested. Atty. Agostino said they will not be offering an upland habitat study in order for the ZBA to evaluate whether or not they will grant waivers from ConCom's bylaw. Atty. Hill said that only a portion of item 1(d)(iv) in Ms. Nover's letter is specific to habitat, items 1(a),(b), and (c) are not, and neither are items 2, 3, and 4. Atty. Agostino said that a habitat study will not be done; and there will be an impact to upland habitat.

Mr. Howe clarified with Atty. Agostino that the landowner needs to request certification of a vernal pool. Atty. Agostino said if it is not certified on the date you get your ORAD, then it is not a certified vernal pool. Atty. Hill disagreed, saying if the ORAD does not address whether there is a vernal pool or not, then it is not binding on that point; he said ORADs are only binding on the areas addressed in the ORAD. Atty. Agostino said he would submit a letter on this matter.

Mr. Howe said based on testimony heard, there is a high probability that the subject stream is fed by groundwater, and reiterated his concern with blasting in that area, suggesting a condition to not allow blasting within the 100' buffer zone be considered.

Mr. Wider next turned to discussion of traffic.

Atty. Agostino said that since the traffic counts were done a few years ago, some things, such as signage changed; whereas the original study showed the 85th percentile to be 40 mph Northbound and 41 mph Southbound, more recent data show the 85th percentile speed to be 38.5 mph. The peer review expert requested to see data at the 40 mph design speed. Traffic calming measures, including a speed feedback device and other signage were discussed, and the board was provided with data from a road similar to

Seekonk Street, in Vermont. He said that some of the sight distances show de minimis encroachment at 40 mph, but they feel that is irrelevant, because they don't feel they should be using that speed; they should be using the lower speed since some signs have been installed they intend to utilize the additional calming measures noted above, which they believe will decrease speeds to 36 mph. All of the encroachment issues go away at 38.5 and 36 mph. Atty. Agostino reiterated his stance that the American Association of State Highway and Transportation Officials (AASHTO) Standards are guidelines only.

Mr. Cherry referred to the "intersection ahead" warning sign with a 25 mph plaque that was placed on Seekonk Street in 2018, saying there was probably a study done to suggest that 25 mph would be appropriate, and he noted that speed is an existing issue in this area. He reviewed where the speed feedback sign would be placed, stating that they have been proven to reduce speeds. Mr. Cherry showed information regarding a street in Vermont that he found to be very similar in characteristics to Seekonk Street, the data indicating that 6 years after installation, the signs still reduce speed by 6-8 mph. Vehicles traveling southbound meet the 40 mph standards for stopping sight distance (SSD); for vehicles traveling northbound, there is a 3' overlap into abutting property. There is 286' of unobstructed SSD, which is equivalent to the standard for 38.5 mph. Mr. Cherry proceeded to discuss the intersection sight distance (ISD) from various setbacks; they do not meet the standards at 14.5' setback, but they do at 12'. Mr. Cherry noted that vehicles don't generally have front ends as long as they used to.

With regard to making a left-hand turn into the site, Mr. Cherry said that is guided by the AASHTO "Case F" standard to determine if there is sufficient distance for someone to see you as you are turning in. The sightline within the right-of-way (ROW) in this case is 248' which Mr. Cherry said becomes greater as the vehicle is turning; SSD to the driveway for northbound traffic has been shown to be 286'. He said that federal highway standards recognize that in some cases, turns such as this don't meet the Case F standard, and mitigation standards are suggested.

Atty. Agostino said that the AASHTO standards are guidelines and case law says they do not need to be applied rigidly. He said they will proceed using a 38.5 mph design plan, although they believe they should actually use 36 mph, considering the planned mitigation measures. Atty. Hill referred to the statistics from the speed feedback sign currently posted on Rockwood Road, which he said appears to indicate that people still travel over the speed limit, despite the sign. Mr. Cherry said he wouldn't claim that a feedback eliminates all speeding, only that it reduces speeds, which in turn reduces the 85th percentile, so a before and after study would be more informative. Atty. Hill said he did not agree with not applying AASHTO standards rigidly, noting that could also mean being more conservative, rather than less. Atty. Hill referred to the concerns regarding the updated traffic study that were raised at a previous meeting: 1) the location of the strip in relation to the curve in the road, and 2) the weather was bad on the day of the readings, which could have contributed to the lower average speed. Atty. Hill concurred that the SSD meets the standards looking north, but not south. Although the applicant claims the areas of encroachment are de minimis, Atty. Hill demonstrated with a sheet of paper how the amount of blockage changes depending on the distance from which it is perceived; in addition, the minor encroachments are on private property, and nothing would prevent the owners from putting up a fence or planting a tree. Regarding ISD, Atty. Hill said AASHTO only refers to a 14.5' setback, and even says ideally it should be 18'. Atty. Hill also mentioned that although there is a certain clear distance from the driveway to a point to the south, there is actually a bend in the road that acts as a blind spot, where cars cannot be seen while traveling through that 100'+ curve, which is not de minimis. The sight line looking north is 249'; according to Mr. Cherry, the ISD at 36 mph is approx. 255'-260'. Regarding the left-hand turn into the property, AASHTO requires 325' with a 40 mph design speed; 248' is available. At 36 mph, the required sight distance would be around 290'.

Atty. Hill said this now becomes a legal question, weighing the safety issued with the need for affordable housing. He said the Housing Appeals Committee (HAC) has consistently said that you need to have safe stopping SSD, while also consistently rejecting the need for the developer to have the *recommended* ISD, which is higher. Atty. Agostino said the argument in the HAC cases always came down to design speed, and he would expect answers from Mr. Hazarvartian as to whether or not speed feedback signs and other traffic calming measures are a generally accepted method of reducing travel speeds, and whether or not the 10' setback for (ISD) is a generally accepted standard. After those questions are answered, then they will go ahead and work with meeting the Case F standard for a left-hand turn into the site. Atty. Hill agreed those

questions are important, but not dispositive. Even if the design speed it lowered, it does not account for the curve in the road. Mr. Wider noted that the town is seeing a recent increase in vehicular accidents, and the increase in the vehicles on this road need to be carefully considered. Mr. Wider asked Mr. Cherry to provide a chart that shows all the sight distances at the various benchmarks. Atty. Agostino asked for something in writing from Mr. Hazarvartian regarding the two questions noted above.

Mr. Howe disagreed that although speed feedback signs are effective in some areas, a speed feedback sign in a 35 mph zone would not necessarily to get someone who is doing 40 mph to slow down to 35 mph. Mr. Cherry concurred that they are most effective in slowing down the most egregious speeders, but said that just slowing those speeders will lower the 85th percentile speed. Mr. Howe and Atty. Hill disagreed, saying that although people may slow down to 40 mph or so, the number still above the 35 mph limit will not change.

Regarding “de minimis” encroachment, Mr. Howe said brush is not always maintained in the area, and may tend to creep into the encroachment area, and he does not feel this is a case where de minimis would work. He also said the blind-spot curve in the road is a substantial issue. Mr. Martin asked if any testimony will be presented showing work toward increasing the sight distances, such as easements with neighbors, or moving the driveway. Atty. Agostino said the only aspect that might induce them to move the roadway is the left-hand turn, or Case F, standard. Ms. Cordahi asked if a crosswalk was being considered for pedestrians going to the train center or downtown area; Atty. Agostino said a bus or other transportation has been considered, as well as sidewalk mitigation, but they are not pursuing that yet. She also mentioned that as you are exiting the driveway and preparing to take a left (southbound,) it is greater than a 90° turn, which can be quite uncomfortable for some people. She said people entering the site from the north, and people exiting in both directions need to come to a complete stop; she asked about stop signs, blinking lights, speed bumps, etc.

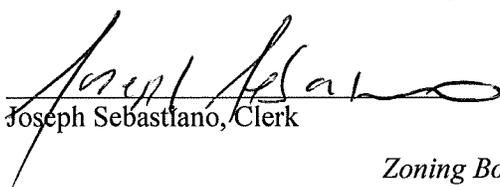
Larry Clark, 130 Seekonk Street, said nobody slows down as he is nosing out of his driveway. Debra Gursha, 143 Seekonk Street, directly across from proposed driveway, said that Seekonk Street is heavily traveled by visitors to Patriot Place, who are frequently speeding to get home, and may have been drinking. She also mentioned the difficulty a bus or van would have exiting the site and taking a left. Karen Clark, 130 Seekonk Street, said they are on the “straightaway” portion of the road, before the site when headed northbound, and said she has witnessed a lot of distracted driving on the street, particularly at commuter times. She asked if the town would consider doing their own testing, since the last study done by the applicant has been questioned due to location of the tube and the weather during which it was performed. Mr. Wider said the board would follow up with Mr. Hazarvartian on that question.

Atty. Agostino asked about survey work done by the town on Seekonk Street; Atty. Hill said there is a survey plan commissioned by the DPW Director, prepared by Dunn-McKenzie, but it has not been analyzed yet. Atty. Hill will forward it to Atty. Agostino

Mr. Wider reviewed the action items for traffic. In addition, hydrology should be replied to by February 15; Ms. LaBrie proposed working directly with Sean Reardon, Tetra Tech, peer review engineer; she hopes to have her preliminary plans to Mr. Reardon by next Wednesday, February 5. A next meeting date of March 18, 2020 was discussed. Atty. Agostino Mr. O’Harte said Steve Smith, GeoHydroCycle, will have his review to Mr. Reardon by 2/15/20. Atty. Hill mentioned that an extension in excess of March 31, 2020, (the current date) will be required. A complete list of action items will be decided offline. Atty. Hill asked if the architectural peer review could be started.

Mr. Sebastiano made a motion to continue the public hearing for 144 Seekonk Street to March 18, 2020, at 7:00P.M.; Mr. Howe seconded the motion; the vote on the motion was unanimous.

Mr. Sebastiano made a motion to adjourn the meeting; Mr. Howe seconded the motion; the vote on the motion was unanimous. The meeting adjourned at 9:55 P.M.


Joseph Sebastiano, Clerk