Town of Norfolk
Zoning Board of Appeals
One Liberty Lane
Norfolk, MA 02056
May 18, 2016

Zoning Board Members	**Others**
Michael Kulesza –Chairman ----- present	Amy Brady--Administrative Assistant --Present
Robert Luciano –Vice Chairman---present	Ray Goff – Town Planner – Present
Mr. Wider – Clerk ----------present	Paul Haverty, 40B Expert Attorney - Present
Joseph Sebastiano –Full Member - present	John Weddleton – Conservation Commission Liaison - Present
Jeffrey Chalmers – Associate Member- present	
Donald Hanssen – Full Member – present	

The duly posted meeting of the Zoning Board of Appeals convened at 7:16 p.m. in room 124 at the Norfolk Town Hall. Mr. Kulesza announced that this meeting was being audio and video recorded.

Mr. Kulesza announced that there were a couple of changes to the agenda to make everyone aware of:

The 7:05 P.M. 27 Pine/0 Valley Special Permit – The applicant was on the schedule to come in for an appointment, but it was determined that extension of the special permit does require advertisement, and a full Public Hearing. This will be advertised, and placed on the agenda for next month.

The 8:30 P.M. 123 Seekonk Street, Request for Special Permit - Withdrawn
Mr. Kulesza announced that the Board had received correspondence in which the applicant respectfully requested that their application be withdrawn without prejudice, prior to opening a public hearing.

The 8:45 P.M. 14 Cottage Avenue – Special Permit – has been rescheduled; it will be withdrawn and re-submitted as a request for Variance.

PUBLIC HEARINGS:

7:20 P.M. Bristol Pond Estates – Variance, Case Snow Management - Mr. Wider read the Public Notice into record. Present were Atty. Edward Casey representing Case Snow Management; Daniel Campbell of Level Design Group in Plainville; Mr. & Mr. Sevigny, abutters; Daniel Seigenberg, representing Mr. & Mrs. Sevigny; Rob Truax, GLM Engineering; Bill Carello, Case Snow Management; Tom Colvin, Case Snow Management. Mr. Campbell gave a brief overview of the project, addressing how the homes came to be built too close to one another. The plan entitled "Single Family Dwelling, Assessors Map 19; Block 71; Lot 19-13, 6 Bristol Pond Drive (Lot 13), Norfolk, Massachusetts," prepared by Level Design Group of Plainville, MA, dated 4/27/16, was entered into the record. Mr. Campbell stated that the new single family home had been framed, sided, and roofed and when it was discovered that, although the residence meets property line setbacks within the lot it's on, it does not meet house-to-house criteria; Mr. Campbell stated the application submitted includes reasons the applicant believes this case meets

the criteria for granting of a variance, citing watershed and wellhead protection areas, making the odd-shaped lot somewhat unique; Mr. Campbell also stated that there is an agreement with the closest neighbor. Members of the Board asked questions to clarify which lot was built first, when building permits were issued, if there will be a domino effect. Mr. Seigenberg, representing Mr. & Mrs. Sevigny, the affected abutters, noted that the development was somewhat unusual due to multiple builders for different lots. Mr. Seigenberg stated that when the error was discovered, it was brought to the attention of all parties involved, including the Building Inspector, the developer, and the neighbors, and an agreement was reached, which is acceptable to the neighbors, Mr. & Mrs. Sevigny. Mr. Kulesza opened the meeting to questions from abutters; being none, Mr. Kulesza questioned which criteria the variance will be based on; Mr. Campbell answered that the criteria will be the unusual shape of the lot, which is an L-shape, with approximately half taken up by an easement and drainage area, another area taken up by the well head protection area, and because the lot is adjacent to the open space aspect of the subdivision, there are greater setbacks than usual in the rear and on the side. Discussion continued with the Board and Mr. Campbell in clarifying questions regarding the lot. ***Mr. Wider made a motion to close** the variance request for Case Snow Management at 7:35 P.M. on May 18, 2016;**Mr. Sebastiano seconded; the vote on the motion was unanimous.***

Mr. Kulesza stated that this hearing will be deliberated and voted upon at the next meeting of the Zoning Board of Appeals.

7:30 P.M. – 84 Cleveland Street, Lakeland Farms, Comprehensive Permit - Mr. Wider read the Public Notice into record at 7:43 P.M. Present were Paul Haverty, Attorney; John Weddleton, Conservation Commission Liaison; Attorney Rob Knapik & Frank Niro, Knapik Law Office; Edward O'Harte, Applicant; Stephen O'Connell & Travis Brown, Andrews Survey & Engineering.

Mr. Kulesza began by welcoming all present, and giving a little background on the 40B process, noting that, as law dictates, the ZBA will handle the entire process. The ZBA will have 180 days to hear, analyze, and make a determination, but can request an extension; the last 40B heard by the town was completed within 180 days. Mr. Kulesza requested that people try to limit the questions tonight to general overview-type questions, stressing that there will be plenty of time for all questions to be answered over the length of the project. Mr. Kulesza introduced the ZBA members, Mr. Haverty and Mr. Weddleton, and referred to Judi Barrett, another 40B expert who will be present next month. Mr. Kulesza further stated that peer reviews, engineers and other professionals will all be brought in as necessary and the project will be very thoroughly reviewed. Mr. Kulesza reminded all present that all questions must be addressed to the Chair.

Rob Knapik, attorney for the applicant spoke first, introducing the applicant, Mr. O'Harte, Mr. O'Connell and Mr. Brown from Andrews Survey & Engineering, and Mr. Niro, also from Mr. Knapik's law office. Mr. Knapik stated that Lakeland Farms is a comprehensive permit pursuant to MGL 40B; 40B has been in existence since 1969 in response to need for affordable housing; it allows communities to grant single permit to construct housing, provided the applicant agrees to sell 25% to persons under 80% of local median household income, and limits profit to 20% of development cost. As shown, the current project proposes a mix of 40 stand-alone single-family and duplex-style or attached dwellings. 10 of them (i.e. 25%) will be sold to persons meeting the reduced income guidelines. To apply to the ZBA board, the applicant must satisfy three (3) requirements: 1) applicant must have control of the site - the applicant is a limited liability company that has entered into purchase and sale (P&S) agreement with the owners, pursuant to which, upon the grant of the comprehensive permit, the applicant will acquire the property and

construct the project. (At this point, Mr. Haverty noted that a copy of the P&S was not included in the package, and requested that it be included); 2) applicant must be a public agency, a nonprofit entity, or a limited dividend organization. Lakeland Farms is a limited dividend organization because it agrees to limit profits to 20%; 3) applicant is required to subject the project to an initial level of review, and obtain a letter of project eligibility or site approval – this letter has been received. Mr. Knapik stated that Mass Housing found that the project's site is suitable for residential development and compatible to surrounding area; the relationship of the site to Cleveland Street does not present public safety concerns; the density, 6 units per buildable acre is acceptable; site has no significant adverse conditions; the topography of the site is not an impediment to development; and the project is financially feasible. Mr. Knapik stated that he believes the project was carefully laid out, using a looped roadway design, traditional architectural styles, and with a common area reminiscent of a "village green," and further stated that the applicant is confident this is a project the town can be proud of, which will contribute to much needed stock in affordable housing.

Mr. O'Connell of Andrews Survey & Engineering spoke next, providing an overview of the layout, characteristics, approach, and utility service details. Mr. O'Connell gave an overview of the property, which is approximately 8.81 acres, 1 mile north-northeast of Route 115; currently consist of a single family dwelling, garage, numerous farm buildings; bounded on the north by Cleveland Street, on the east by undeveloped residentially-zoned property, on the south by a large electric transmission and gas easement, and on the west by undeveloped residentially-zoned property, with a small pond and wetlands. Wetlands were delineated by B&C Associates, and consume about 2 of the 8.81 acres. The remainder of the property, other than the buildings, consists of a gravel access, maintained lawn, wild grasses, and deciduous trees. The property is located entirely within a mapped endangered species area; they have met with National Heritage and Endangered Species representatives, and were informed that this would be a "conditional take," meaning that it could proceed, with conditions. The property is not located within any other environmentally sensitive areas, including the 100 year flood plain, outstanding resource waters, areas of critical or environmental concern, or within Zone 2 of a public drinking water supply. Mr. O'Connell stated that the site will be served by one (1) access road off Cleveland Street, and the layout is a "traditional neighborhood design." Dwellings are close together, deep houses, close to street and/or open area; different styles are included, with affordable units in each style. Stormwater will be primarily collected in catch basins and piped, however, due to the design of the roadway, there are limited runs of pipe, which he feels is a well thought out component. Project will be served by an on-site sewage disposal system; sewage will flow to a localized chamber and pump tank, and be pumped up to the leaching field in the common area. Property will be serviced by municipal water, with complete loop and fire hydrants; there will be three (3) stormwater basins; a bus shelter at the entrance, with pulloff for up to 3 vehicles; offstreet parking; central mailboxes; playground; walking trails; elaborate landscaping plan. Driveways leading to houses will be on backsides facing street. There will be 2-car garages and 2 parking spaces for each residence. Need for retaining wall on west to avoid work getting too close to wetlands; also a couple were added as landscaping features; referred to artist rendering.

In response to a question from Mr. Hanssen, Mr. O'Connell responded that there will be a mix of 2&3 bedroom units. At Mr. Kulesza's request, Mr. Goff read into record his letter of May 5, 2016, addressed to Mr. O'Harte, expressing initial concerns. Mr. Knapik responded that the applicant would like to provide a written point-by-point response to the letter. Mr. O'Connell presented a "flyover" view of the project, and answered questions with regard to visitor parking, exterior patios, garden spaces, trees. In response to questions, Mr. Knapik responded that there would be a homeowners' association. Mr. Kulesza and Mr. Haverty addressed a memo dated 5/18/16, from the Conservation Agent, Janet DeLonga. A notable concern in the memo is an

existing culvert across the front of property, which may enter into a perennial or intermittent stream, which will impact the ability to develop the site; Mr. O'Connell responded that the applicant is familiar with it, and provisions have been made for it. Mr. Weddleton reference another pipe, which passes underneath Cleveland Street. Mr. O'Connell responded that they are aware of that pipe, and it is 109' or 114'; Mr. Weddleton noted that if the stream is perennial, then you can't divert the water into it; Mr. Weddleton also noted that the wetland lines are very different from the plan submitted a year ago for this property. Mr. Weddleton noted that the classifications and origin of all of these things are very consequential; and questioned why they are not on the plan. Mr. O'Connell stated that it was believed they are all non-jurisdictional, but will be happy to add. Mr. Weddleton inquired as to whether soil testing was done before the wetlands flagging, noting that the pond is now 2-1/2 feet lower than it was, which would have affected groundwater on that property. Mr. O'Connell replied that the new flagging is more conservative on the current plans, as compared to earlier plans; Mr. Weddleton agreed that it was more conservative in some areas, but said that it is less conservative in others.

Mr. Kulesza informed Mr. O'Connell and the applicant that we are about to move forward with engineering peer review, and asked if they would like to make any changes first; the reply was no, they would like to move forward with engineering peer review at his point. Mr. Haverty asked where they are in the process with Natural Heritage. Mr. O'Connell responded that they have had preliminary meetings, and have been told that it would very likely be deemed a "conditional take,' meaning that there is enough impact on property that they cannot provide onsite mitigation, or offsite by land owned by the area in a similarly mapped area, the applicant can choose to make a financial contribution to Natural Heritage for research. Mr. Weddleton stated that the land was clearcut prior to obtaining a farm designation, and that will be made known to Natural Heritage by the Conservation Commission. With no further questions or comments from the Board, Mr. Kulesza opened the meeting to the public.

Kathy Kubit, 88 Cleveland Street, asked for clarification as to "extra" parking spaces, and inquired if the drainage, or culvert, is properly feeding the pond, and was told that it does. Jennifer Wynn, 3 Hemlock Lane read prepared statements, and followed up with questions. The letter from Ms. Wynn, dated 5/18/16, addressed to the ZBA, was entered into the record. (Update: a newer letter, dated 5/23 with "corrected typos" was submitted on 5/23/16.) First question was why 40 units are being discussed when the eligibility letter states 44; Mr. Knapik explained that Mass Housing agreed that the site could accommodate 44 units, but the applicant and engineers decided that a 40 unit layout was a better plan, yielding "better" development. Mr. Haverty asked for the total number of bedrooms, and was informed that it was 90, which he observed would be the maximum that could be built, accommodating the 10,000 gallon per day water limit. Ms. Wynn stated that Mass Housing is not recognized to certify safety. Ms. Wynn next addressed the fact that Norfolk's Housing Production Plan expired in 2014; if there were a current one, the town could apply for safe harbor from 40B. Mr. Haverty briefly reviewed the intricacies of safe harbor requirements. Arthur Blacket, Boardman Street, asked if there is an "arm's length" between the applicant and the property owner; Mr. Haverty replied that Mass Housing does not look at the relationship, only the appraised value of the property as of the date of the application. Mr. Blacket followed up with questions regarding the purchase price, and Mr. Haverty explained that the purchase price only counts toward determining the 20% profit of the seller, and does not enter into the subsidizing agency's valuation of the project. In response to Dave Poggi, 89 Cleveland Street, Mr. Haverty reviewed the pro forma peer review process the ZBA can tan undertake if they have significant concerns that the development is too busy for the property, or the applicant can take if they feel the project is rendered uneconomic by conditions imposed. Mr. Poggi expressed concerns with the number of wildlife and other waivers, cars parked on Cleveland Street, and availability of water, stating that the project seemed very

inwardly focused. Mr. Haverty responded that while the ZBA has authority to grant all permits necessary for this project, the Conservation Commission still have full authority enforcing state requirements, and gave the floor to Mr. Weddleton. Mr. Weddleton noted that some of the culverts, etc., left off this plan actually are jurisdictional, and the Con Com will be looking into that; with regard to traffic studies, Mr. Haverty stated that while the ZBA does not have the authority to require the applicant to pay for the Board to hire someone to do a traffic study, they can instruct the applicant that they must submit a traffic study, and then the ZBA can obtain a peer review of the study, paid for by the applicant. Similarly, the Board can request the applicant to provide information on water availability, with input from the local Water Department. Mr. Knapik did stress that with regard to 40B, the applicant is not obligated to "fix" pre-existing water and traffic capacity issues. Midora Champagne, Seneca Street, asked if this project has any of the sustainable building designs that Boyde's crossing has; Mr. O'Connell replied that the architect would be better able to answer that, at future meeting. Ms. Champagne asked if the marketability study was done with regard to single family homes, or a homeowners' association (HOA), or condominiums; who would control the HOA, what would the fees be, etc.. Mr. Knapik stated that there is no requirement to do a marketability study with that level of detail, but Mass Housing did require some analysis and proof that the units can be sold at the price they will be marketed at; discussion ensued with regard to condo vs. single family designation. Ms. Champagne noted that the house was built in 1941 (according to Norfolk Assessors), qualifying it for the Historical Commission's "demolition delay," and inquired if the Board will work with the Historical Commission for a historical significance assessment of the property. Mr. Haverty said that if it is applicable, the applicant can request a waiver from the ZBA; if not granted, then the applicant can simply wait out the delay. Louise Lawson, Day Street, asked about the process for evaluating elementary school impact for this, in addition to the recently approved Boyde's Crossing; Mr. Kulesza answered that that is not within the Board's purview; Mr. Haverty validated that that is not a condition that has ever been used to stop a project. Donna McDonough, asked about the process for peer review studies; Mr. Haverty responded that the ZBA can request the applicant to fund an account under MGL 53G that the Board will use to hire consultants to review the information being submitted by the applicant. Mr. Haverty responded that generally civil engineering, traffic, lighting (photometric plan), landscaping, and other issues. Ms. McDonough asked what the peer review timeframe is. Mr. Goff responded that the project was put out to two companies to bid; one did, one did not bid. The peer review process will begin at the next meeting.

Mr. Weddleton asked if a landscape architect designed it, noting that from a planning perspective, they have designated open space in two areas; one is a septic field, and one is in the no-build zone resource area. Mr. Weddleton noted that 10 units do not have access to open space; the walking trail is within the wetlands; Mr. Weddleton expressed his concern that the primary focus of the plan was to maximize putting in units , without enough thought to the people who would be living there; drainage is up on Cleveland Street in wooded area with 2-3 acre lot homes, where it should be down in the lower part of the site. Mr. Weddleton noted that if the septic fails, there is no place for the kids to play; the limited parking at the front of the site, from his perspective as a Planning Board member, is unrealistic.

Mr. Kulesza stated that the next meeting of the ZBA will be 6/22/16, when the engineering review will begin. Mr. Weddleton informed the applicant that the Conservation Commission will be hiring a wetland consultant, a stormwater team, and a surveyor to reflag the wetlands; with everything so close to the no-build zone, the lines become very consequential.

Mr. Kulesza informed the applicant that the ZBA would be requesting a traffic study; Mr. O'Connell responded that he didn't think a traffic study was required in a project of this size; Mr.

Haverty responded that Mass Housing does not have any authority to say what will or will not be reviewed by the Board during its process; Mr. O'Connell stated that he would go back and look, but he thought it was correspondence with the town, that said a traffic study would not be necessary.

Mr. Wider made a motion *to continue the hearing to 8:00 P.M. on June 22, 2016;* ***Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.***

MINUTES:

Mr. Hanssen made a motion *to accept, as printed, the minutes for the Town of Norfolk Zoning Board of Appeals meeting on April 28, 2016;* ***Mr. Chalmers seconded*** *the motion;* ***the vote on the motion was unanimous.***

Mr. Wider made a motion to *close the Zoning Board of Appeals meeting of April 28, 2016, at 9:45 P.M.;* ***Mr. Chalmers seconded*** *the motion;* ***the vote on the motion was unanimous.***

Mr. Christopher Wider, Clerk

In accordance with the requirements of G.L. 30 § 22, approval of these minutes by the Board constitutes its certification of the date, time and place of the meeting, the members present and absent, the matters discussed, and the action taken by the Board with regard to those matters (if any). Any other information contained in these minutes is included for context only. Notes memorializing deliberation or discussion of any matter are in the summary form and may include inaccuracies or omissions. Where proof of the content of a statement is required, a tape recording or transcript should be consulted, if available.