

# **ZONING BOARD OF APPEALS / TOWN OF PEMBROKE**

## **MEETING MINUTES: MAY 18, 2021**

**BOARD MEMBERS PRESENT:** Frederick Casavant (Chair), Christopher McGrail (Clerk), and Arthur Boyle, Jr. (Alternate).

**ALSO PRESENT:** Sabrina Chilcott (Assistant Town Manager), Matthew Heins (Planning Board Assistant), Amy Kwesell (Town Counsel, KP Law), Peter Palmieri, James Winn, Brian Murphy, Kimberly Kroha, Warren Baker, Susan Spratt, Bradley McKenzie, Jeffrey Dirk, Sharon Spadorcia, Robert Spadorcia, Jace Wilson, Kathleen Aicardi, Daniel Mahoney, "roseann," Martin Cournan, George Howe, John Kan, Christine Kan, Shannon Wilson, Carol DeFranca Chapman, Heather Pratt, Christopher Graham, Scott Horsley, and others.

Due to the coronavirus pandemic, this meeting of the Zoning Board of Appeals was held by remote participation using the internet, through the Zoom software platform arranged by PACTV, with nobody in physical proximity.

### **OPENING THE MEETING**

At 7:00 pm, Mr. Casavant opened the meeting. He read a modified version of the Chairman's statement, adjusted for the circumstances of the coronavirus pandemic and remote participation:

This meeting of the Pembroke Zoning Board of Appeals on May 18, 2021, is now open.

Please note that this meeting is being made available to the public through an audio and/or video recording which will be used to ensure an accurate record of proceedings produced in the minutes of the meeting. All comments made in open session will be recorded.

Pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020, Order imposing strict limitations on the number of people that may gather in one place, this public meeting of the Pembroke Zoning Board of Appeals is being conducted via remote participation.

The public can view and listen to this meeting while in progress. PACTV is providing this service on Comcast Government Access Channel 15, and for those without cable, via livestream at <https://www.pactv.org/pactv/towns/pembroke> or [www.pactv.org/pactv/watch/meetings-streamed-live-youtube](https://www.pactv.org/pactv/watch/meetings-streamed-live-youtube).

Members of the public attending this meeting virtually will be allowed to make comments if they wish to do so, during the portion of any public hearing designated for public comment, by emailing [mheins@townofpembroke-ma.org](mailto:mheins@townofpembroke-ma.org). The public also has the option to participate interactively through the Zoom software application, if technically feasible; for the necessary Zoom access information, go to <https://www.pembroke-ma.gov/RiverMarsh> and pre-register as an attendee.

All votes taken during this meeting will be roll call votes. At the start of this meeting, and at any time when a member of the Zoning Board of Appeals enters or leaves the meeting, we will identify the board members participating and note the time.

**PUBLIC HEARING FOR CASE #48-18 COMPREHENSIVE PERMIT [40B] FOR “RIVER MARSH VILLAGE” PROJECT AT 0 AND 274 WATER STREET**

Mr. Casavant identified himself as Chair of the board, and the other two board members, Mr. McGrail and Mr. Boyle, confirmed their presence.

Mr. Casavant reopened the public hearing (continued from January 12, 2021, January 25, 2021, March 9, 2021, and April 13, 2021) for Case #48-18 comprehensive permit [40b] for the proposed “River Marsh Village” project at 0 and 274 Water Street.

Amy Kwesell, who is Pembroke Town Counsel with KP Law, Peter Palmieri, who is the board’s peer review engineer for this project, and James Winn, who is the board’s peer review traffic engineer for this project, were present.

Also present were Brian Murphy, the manager of River Marsh, LLC (the entity which is the applicant), his attorneys Warren Baker and Kimberly Kroha, the project’s engineers Susan Spratt and Bradley McKenzie, and the project’s traffic engineer Jeffrey Dirk.

Mr. Casavant asked Mr. Palmieri to go over his latest review report of April 12, 2021. Mr. Palmieri explained that most of his previous comments had been satisfactorily addressed, but a few issues remained. He mentioned that the landscaping plan does not specify the size, number or type of plants, and that sidewalks have not been provided within the project. He suggested that the Fire Chief be consulted regarding fire access and fire truck sizes. He said that certain calculations for suspended solids were still needed for a portion of the site.

Mr. Baker gave a progress report on what had been done since the last substantive hearing. He said they had submitted a response to the letter from the North and South Rivers Watershed Association, and stated the project is totally outside the 300-foot river corridor. He explained that the engineers have performed soil testing. He said the project was being redesigned to not have an adverse impact on the vernal pool on the site, to not cross the wetlands area, and to shift the location of the treatment plan to the northwest corner. He explained that the new design documents had not yet been prepared.

With regard to easements, Mr. Baker said the driveway easement will be honored and noted an alternative option. He said the other two easements do not impact the project.

Ms. Spratt explained that the existence of the vernal pool was causing some changes to the design, since its water line was higher than realized. She said that the soil testing results have been favorable, but are still being reviewed. She said the design revisions would be done within two weeks. She explained that adding more details to the landscape plan could be discussed with the applicant, that having sidewalks in the project would be addressed by Mr. Dirk, and that she would look into the TSS (total suspended solids) calculations requested by Mr. Palmieri. Mr. McKenzie confirmed that the soil testing had been done and the results were generally favorable.

Mr. Palmieri noted that the projected changes to the design seemed substantial and might be an improvement in terms of drainage and environmental protection.

Mr. Boyle and Mr. McGrail had no questions or comments at this time, and so Mr. Casavant indicated the discussion about traffic would begin.

Mr. Winn, of Ron Muller & Associates, introduced himself and gave a summary of the peer review traffic report issued by Ron Muller & Associates.

Mr. Winn said that one entrance to the project (the southern driveway) would affect driver sight distances and trip distribution. He recommended the traffic study be expanded to include the intersection of Water Street and Cross Street. He suggested the intersection of Water Street and Route 139 be improved. He stated that sidewalks should be built along Water Street between the project and Route 139.

Mr. Winn recommended that sidewalks be built at least along one side of the project's internal roadways, and that signs be placed to ban on-street parking. He suggested a turning path analysis be done to ensure large trucks (fire trucks, garbage trucks, etc.) are able to travel through the project. He noted the conflict between two driveways. He mentioned that the dead-end streets proposed could be a problem for fire trucks turning around. He emphasized the issue of the school bus waiting area.

Mr. Winn noted that the traffic report (dated March 4, 2021) contains additional details and more technical information.

Mr. Dirk, of Vanasse & Associates, introduced himself. He explained that he was working to prepare a written response to the peer review traffic report by Ron Muller & Associates. He said that he did not object to any of the issues raised by Mr. Winn, especially the technical analysis. He noted the original traffic study was completed in March of 2019.

Mr. Dirk stated that he and Mr. Winn agreed on the amount of traffic the project would produce. He noted the project would generate about 30 to 35 peak hour trips, which he explained is not a large traffic impact. But he emphasized that access to the project should be appropriate, that sight lines should be correct, that there be safe access for fire trucks and other large vehicles, that pedestrians should be protected, and that school children have a safe location to wait for school buses.

Mr. Dirk explained that his formal response would update the traffic study and reflect the current site plan for the project. He estimated this would be issued in about two weeks.

In reply to Mr. McGrail's question, Mr. Dirk said the figure of 35 vehicle trips is the amount of traffic during the busiest one-hour period of the week, which is roughly between 4:30 pm and 5:30 pm on weekdays.

Mr. Winn said he had no reply to Mr. Dirk's comments at this time, and that once Mr. Dirk had completed a written response then his firm would issue a response to that.

Mr. Baker suggested the next public hearing take place after the revised design was submitted and the peer review comments also were received.

Mr. Casavant and Ms. Kwesell talked about the situation and how to proceed.

Mr. Boyle noted that a similar 40b project on the site (from this applicant or the applicant's father) was rejected about ten years ago, and suggested obtaining a copy of the letter of denial from that time.

Mr. Baker explained that this design differs in various ways from the previous proposed project which was denied, and for that reason the state had approved it and issued an eligibility letter.

Ms. Kwesell asked for a copy of the previous letter of denial, and Mr. Baker agreed to submit it. Mr. Boyle opined that it would be important to see why the previous project was denied about ten years ago, given that many of the relevant issues are still the same.

At this time, Mr. Casavant opened the hearing to comments from the public. Mr. Heins and Ms. Chilcott worked out the technical Zoom mechanics of moving people from “attendee” to “panelist” so they could address the meeting.

Sharon and Robert Spadorcia, members of the public who live in the vicinity of the project, addressed the board. Mr. Spadorcia expressed doubt about the figures presented by the two traffic engineers. Mr. Dirk gave a more detailed explanation of how the figures were calculated.

Scott Horsley, an environmental wetlands consultant hired by some of the project’s neighbors, briefly addressed the board, but Mr. Casavant told him that the board preferred to focus on the topic of traffic for this meeting.

Jace Wilson, a member of the public residing at 248 Water Street, addressed the board. Mr. Wilson stated that he disputed the account of the easements presented to the board. He also expressed concern about the turning radius of one of the access drives (“road B”), and how trucks could make a left turn there. In addition, he said that a cesspool has been discovered underneath or near this access drive.

Mr. Boyle and Mr. Casavant clarified that Mr. Wilson’s reference to Mr. Boyle was probably meant to refer to Mr. Baker.

Kathleen Aicardi and Daniel Mahoney, members of the public who live near the project, addressed the board. Ms. Aicardi described the difficulties and hazards of a truck getting onto and off Water Street from Route 139. Mr. Dirk said the project’s design will address truck access and that construction truck movement could be a condition of approval.

Mr. Mahoney noted the history of the site and the previous 40b project rejected for it, and said that Water Street is a very narrow road.

A member of the public whose Zoom identification was “roseann” expressed concern about water and the drought. She also emphasized that Water Street and Route 139 already suffer from too much traffic, which the project would make worse.

Martin Cournan, a member of the public who lives at 260 Water Street, asked whether the changes to the plan extend the 180-day timeframe for the board to make its decision. Ms. Kwesell explained the factors relating to the deadline and how it can be extended.

Mr. Cournan expressed doubt about various aspects of the traffic figures presented by the two traffic engineers, in particular the ratios for Cross Street and Water Street. Mr. Dirk gave a detailed explanation of the expected movement of traffic and how the ratios were calculated. This led to further conversation between Mr. Cournan and Mr. Dirk about traffic.

George Howe, a member of the public living at 285 Water Street, criticized the traffic engineers and pointed out that they do not reside in the neighborhood. He said that when a similar 40b

was proposed in 2005, the state (MassHousing) rejected it partly due to traffic concerns. He read aloud from the document from MassHousing at that time describing the traffic problems. He emphasized that the size of the neighborhood would effectively be doubled by the project, and stressed the dangers posed by traffic. The amount of traffic in the vicinity, he noted, has increased in recent years.

Christine Kan and John Kan, members of the public residing at 275 Water Street, addressed the board. Mr. Kan described the hazards of traffic on Water Street and Route 139.

Shannon Wilson, a member of the public living on Water Street, said that traffic movement, in particular the use of Cross versus Water Street, depends on the time of the day. She expressed concern about traffic in general, and said that the traffic study does not capture all the nuances of traffic movement.

Mr. Dirk explained that he is a professional traffic engineer with extensive experience, and that moreover he is very familiar with traffic in this area of Pembroke, especially on Route 139, having advised on several nearby projects. He said that the burden is on him and the applicant to demonstrate to the board that the project's traffic can be handled properly and safely. Mr. Winn also spoke, and assured all present that his review will be thorough and appropriate, and that he takes into account the concerns raised by the public.

Carol DeFranca Chapman, a member of the public living at 226 Water Street, described the car accident she suffered at the intersection of Water Street and Route 139 about twelve years ago. She said that the traffic has only gotten worse since then.

Heather Pratt, a member of the public and Pembroke resident, emphasized her concern about preserving the river and said she opposed the project.

Christopher Graham, a member of the public living at 271 Water Street (the intersection of Route 139 and Water Street), talked about the dangers of traffic in the area. He criticized Mr. Dirk, Mr. Palmieri and Mr. Murphy, and expressed opposition to the project.

Mr. Horsley addressed the board. He explained that he represents Robert Schmidt and some other abutters, and that he specializes in hydrology, wetlands and water quality. He described his background and credentials. He said the project is in wetlands jurisdiction and thus triggers the DEP stormwater standards, one of which is for low impact development. This project, he added, is not a low impact development design. He suggested that a groundwater mounding analysis be required. He also said the delineation of the river's setback is questionable due to the terminology of "natural bank," which means it should be measured from the edge of the marsh. He said he would hold off on additional comments pending the anticipated changes to the plan.

Mr. McKenzie said there is no requirement for low impact development, but that rather it is encouraged. He disagreed regarding whether a groundwater mounding analysis is required. He said the project's wetlands scientist believes the 300-foot corridor (setback) properly extends from the mean edge of the high tide of the river. He added that the changes to the design will render some of Mr. Horsley's written comments irrelevant.

Mr. Casavant, Ms. Kwesell, Mr. Palmieri, Mr. Winn and Mr. Heins discussed when to hold the next session of the public hearing, given the expectation of when the revised design will be

received, the amount of time needed for peer review, and the anticipated changes to the open meeting law when the state of emergency ends. After discussing a few alternatives, it was agreed to stick with the original date of June 8.

Mr. Casavant made a motion to continue the public hearing to June 8, 2021, at 7:00 pm, to be held virtually via Zoom. Mr. Boyle seconded the motion, and the board voted unanimously in favor by roll call.

The meeting was adjourned.