

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: SEPTEMBER 28, 2021

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

ALSO PRESENT: Matthew Heins (Planning Board Assistant), Amy Kwesell (Town Counsel, KP Law), Gino Fellini, Art Egerton, Thomas Feely, Lisa Feely, Louis Christian Carpenter, Herbert Robbins, Mary Breen, Breanne Dennis, and others.

OPENING THE MEETING

Chairman Mr. Casavant opened the meeting by reading the Chairman's statement.

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

Mr. Casavant reopened the public hearing (continued from January 12, 2021, January 25, 2021, March 9, 2021, April 13, 2021, May 18, 2021, June 8, 2021, and August 3, 2021) for Case #48-18 comprehensive permit [40b] for the proposed "River Marsh Village" project at 0 and 274 Water Street.

Mr. Casavant identified himself as Chairman of the board, and the other two board members, Mr. McGrail and Mr. Boyle, identified themselves.

Amy Kwesell, Pembroke Town Counsel of KP Law, was also present.

Ms. Kwesell explained that a written request was received from the applicant to continue the hearing to October 26.

Mr. Boyle made a statement. He said that this applicant, the developer of River Marsh Village, in his previous dealings in Pembroke and elsewhere, has demonstrated a willingness to violate local regulations. He added that MassHousing has issued a letter, dated September 21, suspending the developer from the state's subsidized housing programs.

Mr. Boyle made a motion to close the public hearing after accepting the materials that were delivered by this evening, and to deny the proposal of River Marsh, LLC, based on the poor quality of the proposal, the environmental risks, the traffic dangers, management's incompetence, and other comments as included in the letters of opposition to the project from the local authorities and local boards.

Mr. McGrail asked if the board jurisdictionally had the right to close the public hearing and deny the proposed project. Ms. Kwesell answered that the board has the right to close the public hearing and issue a decision at any time. However, she emphasized, such a decision should be defensible. Moreover, she noted that the applicant was not present, because a request had been communicated for an immediate continuance and it had been assumed that no

substantive deliberations would take place. Thus, she said, there would be a potential due process issue if the applicant could not respond to any criticisms.

Ms. Kwesell advised that the board not vote to close the hearing or deny the project at this time. She suggested that Mr. Boyle express his concerns at the anticipated next session of the hearing on October 26. She said that at this time there was not sufficient evidence to deny the project.

Ms. Kwesell noted that the applicant's attorney had submitted a letter asking to continue the hearing and also making various claims about the suspension letter received from MassHousing. Ms. Kwesell explained that she had prepared a motion to accept the continuance, but reserving the board's right to reach its own conclusions (and not waiving any rights) regarding the suspension letter received from MassHousing and related issues.

Ms. Kwesell suggested the board continue the hearing to October 26, by which time there should be more information to evaluate the suspension letter received from MassHousing.

Mr. McGrail asked if Mr. Boyle's motion could be tabled, and Ms. Kwesell replied that it could be withdrawn by Mr. Boyle or if it was not seconded then it would cease to be a motion.

Mr. Boyle quoted from the letter from MassHousing, and suggested it provided a sufficient reason for the board to deny the project. Ms. Kwesell referred to the letter's verbiage and pointed to its inherent uncertainties. She explained that if the board denied the project at this time then it could potentially be on weak ground, for various reasons, in the face of a possible appeal.

Mr. Boyle indicated he would not withdraw the motion, but Mr. Casavant and Mr. McGrail said they would not second it. Mr. Boyle stated for the record that he felt the board was missing an opportunity.

Mr. Casavant made a motion to accept the applicant's request to continue the public hearing for River Marsh, LLC, to October 26, 2021, at 7:00 pm in the Veterans Hall at Pembroke Town Hall. Further, by accepting said continuance request, this board does not waive any claim that the Project Eligibility Letter may be void due to the September 21, 2021, suspension letter from MassHousing to the applicant. 760 CMR 56.04(1)(b) requires that "the project shall be fundable by a subsidizing agency..." At this time, without any written confirmation from MassHousing, the September 21, 2021, suspension letter appears to render the project not fundable by a subsidizing agency.

Mr. McGrail seconded the motion. Mr. Casavant and Mr. McGrail voted in favor, Mr. Boyle voted in opposition, and the motion passed.

The meeting was adjourned.