

## ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

### MEETING MINUTES: NOVEMBER 2, 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), Peter Palmieri, Brian Murphy, Warren Baker, Kimberly Kroha, Susan Spratt, Art Egerton, Carolyn Crossley, Charles Crossley, Richard Burrige, Susan Moore, Christine Perkins Kan, John Kan, Tyler Kan, April Czaplicki, Cliff Youse, Chad Johnson, Quentin Ricciardi, Amy Ricciardi, Jane Cournan, Martin Cournan, Robert Schmitz, Sharon Spadorcia, Shannon Wilson, Jace Wilson, Grace Wilson, Larry Jenkins, Paul Kernan, Karen McCormack, Michael McCormack, Dennis Murphy, Christopher Graham, David DeCoste, Samantha Woods, Andrew Marshall, Scott Chapman, and others.

#### OPENING THE MEETING

The 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, August 3, 2021, September 28, 2021, and October 26, 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.

Brian Murphy, Warren Baker (attorney), Kimberly Kroha (attorney), and Susan Spratt (engineer) were present on behalf of the application. (Brian Murphy controls or is tied to the applicant entity and thus was sometimes referred to as the "developer" or "applicant.")

Mr. Casavant mentioned the project eligibility letter ("suspension") issued by the state in regard to a 40b project in Norwell by an entity related to this applicant. Mr. Baker stated it should have no effect on the public hearing for this application, and Ms. Kwesell essentially agreed.

Mr. Casavant asked about site control and access. Mr. Baker said the subsidizing agency had recognized site control. He further explained that issues of site control and property title were outside the board's jurisdiction, and talked about the easement also. Ms. Kwesell said that such issues were not entirely outside the board's jurisdiction, but she also said that due to case law the applicant has the power to relocate the easement. Mr. McGrail asked about the easement and a brief conversation followed.

Ms. Spratt explained the revisions to the engineering drawings that had been made, which mainly related to traffic, a mounding analysis, and the stormwater system design.

Peter Palmieri (of Merrill Engineers and Land Surveyors), the peer review engineer for the project, said that most of his comments had been satisfactorily addressed. He spoke briefly about the soil testing, and the need for stormwater design calculations. He suggested the Fire Department should look at the road width within the project. He also recommended that the sidewalks be extended off-site to link with those on Church Street. He said the mounding analysis is satisfactory, but suggested a mounding analysis should also be done when the septic system is proposed. He said that other issues could be conditioned if the board approves the project.

Mr. McGrail and Mr. Boyle briefly discussed a septic failure that happened at a project in Kingston.

Ms. Kwesell asked why the applicant is not willing to extend the sidewalks beyond the site. Ms. Kroha described the improvements the applicant had committed to, and said the applicant would not pay to build sidewalks outside the project itself. Ms. Kwesell criticized this decision, and emphasized the developer's responsibility for the added traffic the project will cause. Ms. Kroha defended the applicant's position, and debate followed. Ms. Kwesell noted that for most comprehensive permits (i.e., "40b" projects), the developer does agree to make some external improvements. Ms. Kroha said this project's impact to traffic is not substantial enough, and referred to the state regulations.

Mr. Casavant and Mr. McGrail expressed their concern about the applicant's unwillingness to commit to external improvements. Discussion followed, including a debate about the nearby fence and whether it would be removed.

Mr. Boyle briefly talked about the likely fiscal impact of the project on the town, especially to the schools.

Mr. Baker requested that the board close the public hearing. He said that the applicant had submitted all the relevant materials and information, and that the public's testimony had also been received.

At this time, Mr. Casavant opened the hearing to public comment.

Dennis Murphy, an attorney representing certain neighbors to the project, spoke. He emphasized the issue of the easement, noting that two access drives were required by the state for this project. He discussed the precise way the easement was described in the original plan and deed. He argued that the board had the right to further scrutinize this issue and to contact the state about it.

Dennis Murphy referred to a letter from Mr. Garner, a wetlands specialist, about the project which criticizes how the design defines and/or deals with the wetlands. Mr. Murphy also said that the river corridor (i.e., for the North River) is not fixed in time and so its location should be delineated again. He discussed the issue of the river and associated wetlands, and their location and the setbacks to them, at length.

In sum, Dennis Murphy said the board at this time lacked sufficient information on these points to make a decision, and so the applicant should be asked to remedy this.

Ms. Kwesell and Dennis Murphy discussed the requirement for two entrances to the project, and Ms. Kwesell found the verbiage for this.

Mr. Palmieri spoke briefly about the wetlands and river location, and Ms. Spratt also described this and said the delineation is valid until 2024.

Mr. Baker spoke about the issue of site control, and explained why the applicant is unwilling to extend the sidewalks beyond the site. He said that site control is different from quality of access.

Ms. Kwesell asked whether building additional improvements beyond the site (the two recommendations of the peer review traffic consultant) would really make the project unprofitable, and Mr. Baker gave an explanation.

Mr. Casavant asked a member of the public who was repeatedly interrupting Mr. Baker to remain silent.

Ms. Kroha discussed the delineation of the North River and the wetlands.

Mr. Boyle and Dennis Murphy talked about the project eligibility letter (“suspension”) issued by the state regarding a 40b project in Norwell by an entity related to this applicant. Mr. Murphy emphasized that the location of the river and wetlands was still debatable, but Ms. Kwesell stated that she differed with him in terms of the SORAD map.

Quentin Ricciardi, a member of the public, asked about the fence which had been previously mentioned and the principle of adverse possession.

Robert Schmitz, an abutter, emphasized the environmental concerns raised by the project, especially as to water. He said that the developer (i.e., Brian Murphy) is a “bad actor” lacking integrity. He described the potential traffic impacts of the project.

John Kan, a resident of Water Street, talked about the likely negative effects of the project, especially as regards traffic and safety.

Shannon Wilson, a resident of Water Street, criticized the project in various ways. She explained that the fence on or near her property has been there for a long time. She strongly condemned the project and described how it would hamper her access to her own property.

Martin Cournan, a resident of Water Street, emphasized his opposition to the project and argued that it has many drawbacks. He noted that the developer had declined to submit a student enrollment study when the school committee requested it. He said the developer had inaccurately compared the project to the Packet Landing project, and he described the probable difficulties of a school bus accessing the project. He mentioned the possibility of endangered species being on the site. He noted that in 2005 a traffic consultant suggested that the intersection of Water Street and Route 139 should be squared off.

Mr. Cournan criticized certain calculations of the traffic consultants, and asked Mr. Palmieri about this. Mr. Palmieri said that he, not being a traffic engineer, lacked the knowledge to reply about that particular issue. (The traffic consultants were not present at this hearing.) Mr.

Cournan made more criticisms of the traffic calculations and traffic analysis, and also said the roads in the project would be too narrow. Mr. Cournan also cast doubt on the figures used in the developer's cost analysis for the project. In addition, he criticized the developer's ethics and history. He urged the board to deny the project, which he said exemplifies the worst aspects of the 40b program.

Scott Chapman, a resident of Water Street, expressed concern about the wetlands on the property and the project's likely impact on the environment.

Jane Cournan, who lives on Water Street, strongly urged the board to consider the interests of the longtime residents in the project's vicinity. These people, she emphasized, have been good, tax-paying citizens of Pembroke over the years.

Christine Perkins Kan, a nearby resident, talked about the precious natural qualities of the area, such as the birds, the bats, the deer, and the croaking of the frogs at night. She emphasized that many of these animals live on the property to be developed. She discussed the issue of wetlands and their location. She pointed out that Water Street is very narrow and sometimes two vehicles cannot pass each other. Moreover, she explained, drivers commonly speed on Route 139 which creates an added hazard.

A member of the public (who did not identify himself) suggested that the town purchase the property and make it into a park or other type of greenspace.

Christopher Graham, a resident of Water Street, said that a portion of Water Street does have sidewalks. Given that real estate values have increased, he suggested that the developer could easily afford to build sidewalks beyond the site. He made various other strong criticisms of the project.

Ms. Kwesell noted that a preliminary landscape plan had been submitted, but it was not detailed. She explained that the project eligibility letter has a condition stating "a landscape plan should be provided to address municipal concerns, including a detailed planting plan as well as paving, lighting and signage details, and the location of outdoor dumpsters and other waste receptacles." In light of this, and the need for screening for nearby abutters, she pointed out that the preliminary landscape plan is insufficient and a detailed landscape plan is needed.

Mr. Baker said that he sympathizes with the residents' concerns. He explained that the regulations governing the process specify that preliminary plans are all that are required at this stage, with final plans to be submitted later. He and Ms. Kwesell debated this point, and she again emphasized the condition in the project eligibility letter. He suggested the detailed landscape plan could be made a condition of approval.

A member of the public (who did not identify himself) emphasized that everything he had previously said was logical and not based solely on emotions.

Dennis Murphy mentioned the waivers the applicant is requesting, in particular those relating to landscaping. He suggested that the board denying these waivers would help ensure proper landscaping.

Mr. Boyle asked Mr. Baker why the board should trust the developer given his previous track record of violations and failing to meet his obligations. Mr. Baker emphasized that the power is in the town's hands to impose conditions.

At this time, public comment was essentially over. Given that the applicant's attorneys had already requested that the board close the public hearing, and that the deadline for the hearing to conclude expired on this day (having been previously extended a few times) and the applicant clearly would be unwilling to extend it again, it was now logical to close the hearing.

Mr. Boyle asked if the board could close the hearing and immediately vote to deny the project, and Ms. Kwesell recommended against this. Mr. Casavant said he wanted time to process the information and deliberate, rather than making a decision immediately.

The board and Ms. Kwesell decided to schedule a meeting of the board for deliberations on the project, and a possible vote to approve or deny it, on December 7 at 7:00 pm.

Mr. Casavant allowed one last comment from a person present. A member of the public (whose name was not audible) said that she once delivered mail on Water Street, and the narrow width of the street was a problem for traffic. Now, she noted, it is even worse. She recommended that there be more safety precautions.

Mr. McGrail made a motion that the board close the public hearing of the Pembroke Zoning Board of Appeals for the proposed River Marsh Village 40b project for the evening of November 2, and continue for deliberations on December 7, 2021, at 7:00 pm in the Veterans Hall at town hall. Mr. Casavant seconded the motion, and the board voted unanimously in favor.

The meeting was adjourned.