

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
March 15, 2018**

Members present:

Donald Foster, Chair; David Curtis, Vice-Chair; John Olivieri, Jr., Clerk; Jim Gouveia, Member; Chris Carmichael, Associate Member; Daniel Gillis, Associate Member; Joseph Urbanski, Associate Member

Members absent:

Janice Swanson, Vice-Clerk

Regular Meeting:

Mr. Foster opened the regular meeting at 7:00 p.m.

Roll called. Bills signed.

Mr. Foster stated that in accordance with the Open Meeting Law he was announcing that he and the secretary were making an audio recording of the meeting. He asked if anyone present was making a recording. There was no response. Mr. Foster advised that LakeCam was also making a video recording.

Mr. Curtis made the motion, seconded by Mr. Gouveia, to approve the Minutes from the October 19, 2017, meeting. The vote was **unanimous for**.

Nature's Remedy of Mass, Inc. hearing – 310 Kenneth Welch Drive:

Mr. Foster opened the Nature's Remedy of Mass, Inc. hearing at 7:04 and read the legal ad into the record. Mr. Bob Carr and Mr. John Brady of Nature's Remedy and Mr. PJ Pimentel, owner of the site were all present. Mr. Carr explained that they have gone through the process, met with the Planning Board and have site approval. They have met with the Health Department who has a contingency where they want to ensure that the septic system is adequate so a third party will go out and test the system.

Mr. Foster said they had several pieces of correspondence. He read the March 12, 2018, letter from the Board of Health into the record. It stated that the owner had agreed to do Title V inspections on two septic systems involved and look into a grease trap to be installed in the kitchen. The Board of Health must also approve the area for all of the waste stock piling. The applicant must also consent to unannounced periodic inspections

of the dispensaries and the kitchen by the appropriate Town Boards. Mr. Foster noted that in the memo it does state retail sales but was it correct that the petitioner was seeking permitting for medical marijuana only? Mr. Carr replied that was correct.

Mr. Foster stated that as he understood it if you have a facility for medical sales the product must be grown on site. Mr. Carr replied that you could have a dispensary and have your cultivation delivered to the site and that is what their plan is. Atty. Amy Kwessell, Town Counsel from KP Law, said that it is called a medical marijuana treatment center and the definition encompasses everything i.e. a dispensary, cultivation, but it doesn't have to have everything.

Mr. Foster said that what they, as well as other Towns in the Commonwealth, are faced with at the moment is they don't have a lot of regulations. Atty. Kwessell said that was correct, and the regulations for recreational marijuana do not come out until the 23rd of this month, March. Mr. Foster then read an October 12, 2017, letter from the Board of Selectmen to the Department of Public Health into the record. It stated that they were providing a letter of non-opposition for Nature's Remedy to operate at 310 Kenneth Welch Drive. The February 28, 2018, letter from the Planning Board reiterated that this would be a medical marijuana dispensary only. Any future plans for a recreational dispensary would need to be revisited by the Planning Board.

Mr. Foster wanted to point out for the record, regarding a registered marijuana dispensary, at the moment their bylaws only provide a definition which says the Special Permitting Granting Authority is the Board of Appeals, it is subject to site plan review by the Planning Board, to approval by the Board of Health, and conforming to applicable General Laws. Site plan shall be incorporated into the Special Permit by reference. Mr. Foster said the best they could do at this time is to take guidance from bylaws that are as close as possible to what they are considering which is essentially an agricultural establishment for growing things. Mr. Foster asked if Board members had any comments or suggestions. There were none.

Mr. Foster then read bylaw 7.4.1.3. He said that one of the issues that had come up in their meeting with the Board of Selectmen several weeks ago had been the concern about an unattractive smell. He said that at some point they need to make sure that there are proper engineering remedies in place to solve that problem. Mr. Brady said they were mitigating that issue before it even came up, and they will be instituting filters. The air coming from the rooms never leaves the rooms. It is completely circulated and cleaned in a closed loop that goes through the room. That mitigates a lot of the odor. Secondly, they will be installing filters of some sort, and they will determine which type will be the best kind. All of the air will be mitigated through a filtering system to eliminate the odors that are coming out of the facility.

Mr. Carr explained that their design is a box within a box. This means within the building there are buildings that he will call pods. These will be sealed with a closed air system. Other than opening the door to the pods, air doesn't come in and doesn't escape. All the ambient air will also be treated. Mr. Foster asked if this was their first

establishment. Mr. Brady replied that he had built a smaller one in Colorado, but this was their first in Massachusetts. Mr. Foster asked if similar equipment and remedies had been installed there. Mr. Brady said that they were in an area designated for marijuana so they were one of thirty in a row, so they really didn't need much. They recognize here as a stand-alone facility in the area where they will be located, they need to be good neighbors. That is why they have taken these steps to mitigate all the air going out and to eliminate any odor.

Mr. Foster asked if down the road the facility is producing unacceptable noise, smoke, odors, etc., what would be their plan to remedy those. Mr. Brady responded they would be subject to the same standards as anyone else. Any facility that puts a noxious odor out would have to be remediated. They do not think this will be an issue, but if it were, they are happy to sit down with the Town and invest whatever money is necessary to remediate that situation. That was a promise, and they would put it in writing.

Mr. Foster asked how often the filters would be replaced. Mr. Brady replied whenever it is necessary. He could not tell them as he did not know what kind of particulate they are going to absorb. He noted they are building what is called a clean room facility. Everything they are doing is to mitigate any type of mold, mildew, or spores. They don't co-mingle air. The air is circulated in each room and comes in one vent and goes out the other. Inside the vent is ultraviolet light to eliminate any type of mold, mildew, or bacteria that would grow in the facility. Every six minutes there will be a complete air exchange in the room. This is not like anything that has been built in the United States before.

Mr. Foster asked about security. Mr. Brady responded they are spending \$150,000 on a security system. You will not be able to walk anywhere in the facility, except the bathroom, where you won't be on at least two cameras which will tie into a central system. It will be monitored and the response time is approximately two minutes. Mr. Carr noted that all the doors will have card readers so that they can see anyone that is in the room or has gone into the room. This is all required by the Department of Public Health (DPH) who along with the local Police Department will have full oversight to come in at any time to do inspections as they see fit.

Mr. Foster asked if they had spoken to the Police Department. Mr. Brady said they had. Their normal process before they come into a Town is to sit down with the Town Manager and Police Chief to see if they are okay with the situation. They explain their security and make those security records available to the Chief. They do not progress any further unless the Police Chief is willing to support them in that process.

Mr. Foster then addressed the Board and said one of the things they should consider and decide is whether the Permit in this request is socially and economically acceptable and desirable. What were their comments regarding this? Mr. Curtis said that economically the answer was yes and socially he had no problem with this request. Mr. Foster said that he felt the way to decide on the social aspect is whether the benefits to the people who would receive this medication outweigh the concerns of others who do not use the

medication. He felt this was a sensitive topic, and they were in uncharted territory. Mr. Olivieri said this was being done in an allowed zone so he did not think it was their place to cast judgment on the facility. It was important that the petitioner had gone through all the correct channels and all their questions had been answered. Mr. Gillis agreed with Mr. Olivieri. He felt that his personal opinion did not matter. He noted that it appeared that the Town residents were split on this issue. He did want to point out that there was a Town Meeting vote regarding this and the vote there enabled this to move forward.

Mr. Carmichael asked if they would be growing and drying the marijuana and if this was increasing the fire load. Mr. Carr replied that every room would be sprinkled and the structure inside the structure has sprinkle systems. Mr. Gouveia asked how they dispose of the portion of the product they don't sell. Mr. Carr replied parts like the stems are useless. They would be ground up and there would be a compost pile in the back where it would be mixed into. This area will be fenced in and on camera. They could also have a roll off dumpster, fill it, and then send it off to a landfill. Mr. Carmichael asked if other departments were aware that there would be a compost pile. Mr. Carr said that they were.

Mr. Brady noted that they were looking for almost a zero carbon footprint at the facility. There is no electricity being drawn off the grid. All of this is being run by generators run by natural gas. They will be capturing the heat generated and then run it through an exchange unit where it will be turned into chilled water. They will circulate that water through the facility for their air conditioning. They could also run it through for heat as well as a dehumidification process. Within a couple of years, they will also be capturing the small amount of carbon dioxide that comes off the generator and introducing it into the system in each room for the plants.

Mr. Carmichael asked if in the future, odor became an issue with the compost pile, how would they address it. Mr. Carr replied it would then be put in the dumpster and go to the dump. Mr. Carmichael asked if they would put that in writing. Mr. Carr and Mr. Brady responded they would. Mr. Urbanski asked if any chemicals or hazardous materials were used during the manufacturing process. Mr. Carr replied they would be using natural based fertilizers. Within the process some states allow the use of butane for extraction of the oils. They will use a CO² under pressure which is not an explosive as butane is. The only solvent that they use will be alcohol based in a very limited amount. There will be no toxic chemicals within the facility.

Mr. Urbanski asked what happens to the pressure when it is relieved. Mr. Carr said that it is recycled back through a series of chambers. He noted the pressure is just enough to separate the oil from the leaves. The oil then attaches itself to the molecules of the CO² and goes through the process of depositing in a series of chambers depending on the weight. The CO² then evaporates off. Mr. Carmichael asked if they would need any special permits for the fertilizer being used. Mr. Carr did not believe so as it was the type that you could buy over the counter.

Mr. Foster asked if there were any other questions from Board members. There were none. Atty. Amy Kwessell, Town Attorney, then asked if any documents have been submitted to DPH regarding licensing. Mr. Foster said they did not have copies of any but was unaware if the Selectmen might have these. Mr. Carr said they have applied for a provisional certificate and after responding to some additional questions from the State are now waiting to hear back. Atty. Kwessell noted that it was unusual that they were at this juncture without that provisional certificate. She asked if they had yet negotiated a Host Community Agreement with the Town. Mr. Brady said that they were submitting that now. Atty. Kwessell advised that this is not an allowed use in the Industrial Zone but is only allowed by a Special Permit. She would suggest that the Special Permit not be granted until the Host Community Agreement is negotiated or if the Special Permit has to be granted that it be granted contingent upon the Host Community Agreement. However, the problem with that is any conditions put on the Special Permit could change. The Special Permit should be the last Permit obtained.

Mr. Foster then asked if there was any comment from the public. Ms. Diane Nichols, who owned the building next door, asked if a prescription would be needed as this was medicinal. Mr. Carr replied that you would need to go to a doctor that is certified by the State. That physician would have to deem that the condition you have qualifies you for a script. You would then come to the facility where you would be met by security in the parking lot. There it would be determined if you have proper identification and a medical marijuana card from the State. You would also be stopped at the door where your card would be checked again before you would be buzzed in. The first time you would need to fill out forms and be registered. After that, you could approach the counter if you had questions. There will be a consultation room where you can sit down with a qualified expert to talk about your condition and what would be the best product for that condition. When you purchase the product, your ID would be checked one additional time. He noted it was a very lengthy process, and you would not be able to just slip in.

Mr. Richard LaCamera then asked if they were going to propose recreational marijuana at this facility. Mr. Foster replied that he did not believe it would be proposed at this facility but it may be proposed elsewhere in Town. Mr. Carr replied that they would propose it only where the Town said it was properly zoned. Atty. Kwessell advised that one thing the Board should be aware of is that under the new regulations a medical marijuana facility can convert to a recreational facility. Mr. Foster asked if that was even though they don't allow retail operations in an industrial area. Atty. Kwessell replied the Town would have to take some positive steps such as banning recreational marijuana in Town or doing some type of overlay or zoning. Mr. Olivieri asked if that was still possible if the Special Permit specified medical marijuana only. Atty. Kwessell stated that they can convert under the State regulations so Towns will have to take positive steps to not allow that conversion to happen so easily.

Mr. LaCamera noted that he had been at the Selectmen's meeting when this was proposed. The proposal had then included both a medical and recreational dispensary. His concern was that a recreational dispensary could potentially generate 50,000 vehicles through the Industrial Park and through the Town. The Town does need to decide if they

want the type of volume that recreational marijuana would produce and where it could be located.

Mr. Foster then read the January 31, 2018, letter from Mr. Carr into the record. The letter explained the errors he had made in first applying under the incorrect name and then applying for a permit that allowed retail sales of medical and recreational marijuana. Mr. Foster wanted to clarify that at the moment Nature's Remedy was applying for a facility that would grow, prepare, process, and sell marijuana for medical purposes only. Mr. Carr replied that was correct. He noted, in addition, when they were in front of the Planning Board, they signed the plan which clearly indicates it is for medical purposes only. Although the State does give them permission, they cannot circumvent the local process and because of the local oversight and inspectional services, they would be unable to do anything that the Town does not want.

Mr. Carr also stated that in regards to the attorney's concern about the host agreement, they have agreed to give 3% back to the community which is the maximum allowed. In addition, the DPH has told him that they have been in contact with Lakeville staff in order to authenticate the approval process that they are going through. Mr. Foster felt that it would be prudent for the Board to pause until they have the host agreement and also the license from the DPH. Atty. Kwessell noted at the very least the host agreement. She noted that the agreement includes security measures with the Police Department, emergency measures with the Fire Department, hours of operation, as well as where that 3% would go.

Mr. Olivieri asked how long it takes to get that provisional certificate from the State. Atty. Kwessell replied it normally did not take too long but that it was not the license. Mr. Olivieri said that would at least give them the sense of what they were approving. Atty. Kwessell said that was correct and a provisional certificate turns into a license. Mr. Foster asked if there were any other comments or questions.

A resident asked what would happen if there was too much traffic or if there was trouble at the site. Would they be able to shut it down, or would they have to live with it forever? He asked if this would be in the host agreement. Atty. Kwessell replied not necessarily. The host agreement has certain requirements that have to be met. The Special Permit will also have conditions they have to meet. There is certain traffic that has been represented so the Special Permit could have a condition if traffic exceeds that; they will have to come back. There also could be a check in after a year.

Mr. Foster thought the concern about traffic would occur with recreational use. Atty. Kwessell agreed. Mr. Foster asked Mr. Carr what his view of the daily traffic would be for medical use. Mr. Carr estimated four to six patients per hour with the time they spend on site an average of 15 minutes. Mr. Foster asked what it would be with recreational use. Mr. Carr replied that they had not contemplated that as they would need additional parking, etc. He noted that as it had been stated this was not about recreational use but about medical use so they were not focusing on it. Mr. Foster said the issue had been raised and it's a valid issue. He could foresee at some point that they would require a

traffic study, but he agreed that was down the road. What they were faced with now is where they go tonight. He would suggest they continue until the other approvals were in place, or they had more clarity on the issues in question.

Mr. Olivieri then made a motion they continue the hearing until the host agreement and the provisional certificate were in place. Atty. Kwesell advised they would need to continue to a specific date and time. Mr. Carr asked if there was any willingness among the Board to have the Permit conditional upon the Community Host Agreement. Mr. Foster thought it best for everyone if they proceeded cautiously. It was his opinion, that there was not opposition from the Board, but there was a real concern about doing this as carefully and properly both for the petitioners and the community. He would recommend they continue with the motion and add the date for next month's meeting which was April 19, 2018. If it was not complete, they could continue again. Mr. Curtis seconded the motion to continue until April 19, 2018 at 7:00 p.m. The vote was **unanimous for**.

The Board then returned two checks to the petitioner that had been submitted with the original application. That application had been withdrawn but never advertised or acted upon.

The hearing closed at 7:59.

Flynn hearing – 19 Shore Avenue:

Mr. Foster opened the Flynn hearing at 7:59 and read the legal ad into the record. Mr. Flynn was present. He advised there was an existing shed, and he was looking for something a little larger in the same location. Mr. Foster noted the existing shed has a setback of ten feet and the setback for the proposed shed would be five feet. He asked why the shed could not be moved closer to the house. Mr. Flynn replied the stairs on the house go up and down, and that is the area that would walk through. Mr. Foster asked if this was a shed they would have built, or something they would purchase. Mr. Flynn said they had priced them at some local vendors that build them and then deliver them.

Mr. Foster asked who lived on the adjacent property. Mr. Flynn responded it was Don Desvergnés who was not present. Mr. Flynn said he had talked to the neighbors, and they did not have a problem with it. Mr. Foster then read the March 12, 2018, letter from the Board of Health into the record. They had no issues with the petition as the setbacks for the tight tank and septic components had been met according to the proposed plan. Mr. Foster said the Board's only concern would be going from the ten foot setback down to a 5-6 foot setback.

Mr. Foster asked if anyone present would like to speak for or against the petition. No one spoke. Mr. Foster asked Mr. Flynn if his neighbor had a shed or any construction near that property line. Mr. Flynn replied there is a bump out on the house that comes within five feet of the property line. Mr. Foster noted that one of the concerns they have when they allow people to build into the setback is that it begins to restrict access for an

emergency vehicle to get to the back side of a property. In this case, the pond was on the other side of the property. Mr. Foster asked how much setback there would be on the other side of the lot. Mr. Flynn estimated it to be at 10 feet with the neighbor having a shed at approximately 4 feet from the line. He stated that an ambulance or fire truck would be able to get down there. Mr. Foster stated that he had no concern at all with this request. He asked if there were any comments or concerns from the Board. There were none.

Mr. Olivieri then made the motion, seconded by Mr. Gillis, to approve the petition for a Special Permit as it had been requested. The **vote** was **unanimous for**.

Ms. Murray then explained the timing of the filings, the appeal period, etc.

The hearing closed at 8:07.

Johnson hearing – 3 Ledge Street:

Mr. Foster opened the Johnson hearing at 8:08 and read the legal ad into the record. He asked Mr. Johnson what he wanted to do, and why it was needed. Mr. Johnson replied he needed storage. Mr. Foster asked if there were any neighbors present. There were none. Mr. Foster noted that a 12' x 20' shed was rather large. Was it going to be a garage? Mr. Johnson replied it would have a floor making it unable to be a garage. He advised that he was a gardener and planned on using it to start plants and flowers early. Mr. Foster asked if it would be heated. Mr. Johnson said that it would. The shed would also have power and be insulated but would not have water.

Mr. Foster then read the March 12, 2018, letter from the Board of Health. The file shows an approved septic plan but according to the proposed shed's location, the septic tank will have to be moved to ensure a setback of five feet from the shed can be met. A revised plan will be needed prior to issuing the Disposal Works Construction Permit. Mr. Johnson explained a septic system had not yet been installed. He stated that when he gets water, he will install the system which has already been revised. Mr. Foster asked what the house currently has for a system. Mr. Johnson said it has the original beehive. Mr. Foster noted that it was stated on the plan that the old tank would be removed.

Mr. Foster said the concern he would raise is a building that is 12' x 20', is insulated, and has power could easily become living space for a future owner. This is a concern especially in that area. Mr. Johnson said you could not live in this shed. The roof and the walls are all glass. Mr. Foster asked if this was a greenhouse. Mr. Johnson responded that it was. Mr. Foster said he had asked for a shed but in his mind a shed and a greenhouse were very different.

Mr. Foster asked what Board members thought. Mr. Carmichael said he did not have a problem with a greenhouse, but he did have a problem with a heated shed that could be converted to livable space. He felt it needed to be labeled properly and possibly

eliminate the heat. Mr. Foster asked the Building Commissioner, Mr. Nate Darling, who was present if greenhouses were addressed differently from sheds in the bylaws. Mr. Darling replied they are considered accessory structures. Mr. Foster said he thought greenhouses were treated in a more liberal fashion than a shed because they are used for agricultural purposes. Mr. Darling stated they are in some Towns but here they are an accessory structure.

Mr. Foster asked if there were any further questions from Board members. There were none. Mr. Bob Poillucci who was present said he had heard the comments about the septic system and would ask that the Board make any decision subject to relocating the new tank and having the location approved. Mr. Foster said he did not have any problem with this whether it was a shed or greenhouse. He did want it noted, as with the previous applicant, that they always like to make sure there is sufficient space in the setback margins so that an emergency vehicle could get to the back of the property. Mr. Foster said that on one side of the property there appears to be adequate space.

Mr. Curtis then made the motion, seconded by Mr. Gouveia, to approve the request for the Special Permit for a shed/greenhouse, subject to the following condition:

1. The Board of Health must approve the location of the septic system.

The vote was **unanimous for**.

Mr. Foster then explained the timing of the filings, the appeal period, etc.

The hearing closed at 8:20.

The Residences at LeBaron Hills, LLC – M26-B3-L10:

Mr. Foster opened The Residences at LeBaron Hills, LLC hearing and read the legal ad into the record. It requested a modification to the Comprehensive Permit that had originally been granted in 2004. Robert Mather, Attorney; Mr. Mohammad Itani; Mr. Brian O'Leary; Mr. Jason Youngquist from Outback Engineering; and Peter Freeman, Attorney; were all present for the applicant.

Atty. Mather advised that they had sent the Board a Notice of Project Change seeking to modify the original Comprehensive Permit. This has been done each time they start a new phase. They acknowledge that a full phase is a substantial change which requires a public hearing. They are requesting a few different things. First, Mr. Itani has acquired four and a half acres of land on Rhode Island Road so they are asking to add that to the Comprehensive Permit. This would allow them to do Phase IV which is 16 duplex buildings that are identical to the duplexes in Phase I. That would be a total of 32 units. Phase V would be 4 Townhouse style buildings with for sale units. There would be 2 buildings with 14 units and 2 buildings with 12 units. Atty. Mather stated that in the past

when they have appeared in front of the Board, they have said they will have complete transparency with the property owners in Phase I and the subsequent phases and they have done that. There was a meeting with the residents last Friday so they could explain the project to them, and they received some good input.

Atty. Mather thought it was important that a recap of the whole project now be given. The original Comprehensive Permit was approved on June 17, 2004. That Permit approved 386 age restricted units. Phase I was 62 age restricted units consisting of 31 duplex buildings of which 6 were affordable units. Phase II was approved in 2008. It was a 56 unit apartment building. All 56 units were affordable and age restricted. The decision at that time specifically stated that the developer was not required to construct any additional affordable units until the number 248 was reached. In January of 2011, the age restriction was removed for the remainder of the project. In July of 2016, Phase III was approved by the Board. This was for 77 single family dwellings. At this point, they are up to a total of 195 approved units of which 62 are affordable. Currently, this is 31.79% affordable units.

Atty. Mather explained the reason they are here is Mr. Itani is proposing now to move forward with two additional phases. As he had mentioned, Mr. Itani was able to purchase over four acres of land, and he would like to add that to the Comprehensive Permit. He is not requesting additional units so the density will decrease. What they are proposing for Phase IV is 18 duplexes with 32 units. A significant change would be another main entrance. As they will recall, the original proposal was approved with one main entrance, the current one on Rhode Island Road. In the approval was a limited access on Fern Avenue. This is a carded entrance for emergency vehicles or home owners. Atty. Mather advised that there is not an age restriction on the project but Mr. Itani is voluntarily proposing a hybrid restriction as he wants to target the 55+ community. He would like to state that one of the owners has to be over 55 but that they could have children with 10% of the project being under 55. This would have to be approved by Mass Housing.

Atty. Mather stated the proposal for Phase V is four townhouse style buildings, for sale condo units. Two of the buildings will have 14 units and two of the buildings will have 12 units. That will put them over the 248 units and will bring them to 279 units meaning that eight of the units will be affordable. If the Board approves this, it will leave 107 units remaining. There are no plans for that but it would likely be a couple of midrise buildings with possibly a mixture of independent living units and assisted living units.

Atty. Mather said they understand there are some concerns that the project is completed properly and in accordance with Chapter 40B with 25% or 97 of the units counting toward the Town's subsidized housing inventory. They are aware of this concern. They will be speaking with Town Counsel and Mass Housing to make sure the project can be properly approved and that the Town will receive the proper count. He noted that Atty. Freeman is now part of the team and is a 40B attorney whereas he is not.

Atty. Mather said the first thing they are asking is to amend the Comprehensive Permit to allow them to include the 4+ acres. This would allow the second entrance which would

then take the stress off the original entrance. This would not decrease traffic but would disperse it. Atty. Mather said that he would ask Mr. Youngquist to continue. He will address the location of the entrance. As they might know, there are six houses across the street and the entrance is placed so that it faces the golf course. It does not face the houses. He also wants Mr. Youngquist to address the elevation. They will work with the neighbors for appropriate screening, and will agree to their preference.

Mr. Youngquist then approached the Board. He advised the acquisition of the additional land makes it possible for the second entrance. It also gives them sufficient sight distance in both directions of Rhode Island Road. They will be taking the elevation down significantly so that the road can tie into LeBaron Boulevard. They will be using the materials within the construction on site. They will also be creating a new infiltration basin down by the wetlands for Phase IV, and they will reconfigure an existing basin. All the additional flow from Phase IV and V is part of a groundwater discharge permit that is being increased as part of this project. All the runoff from the roadways and houses will be recharged to ground and retreated before it gets to the basins so there will be no contamination to the groundwater or the wetlands. Phase V would be a similar design. Mr. Foster asked if he had received any feedback from Nick Lanney. Mr. Youngquist replied that Mr. Lanney is away but is expected to return on Monday.

Atty. Mather then asked Mr. Itani to show the Board the townhouse style design. Mr. Itani then displayed the project and the layout. He noted they were doing the same project in Foxboro if any members were interested in visiting the site. He advised that typically newlyweds and empty nesters like the first level of the townhouses. Singles, particularly, females like the second level. The schools always come up so they contacted the School system in Abington and found that from the 220 units built, 19 new students began to attend the schools. He could provide them with contact numbers if they would like to know how those numbers were obtained.

Mr. Itani advised if the Board approves the two Phases they will be up to 279 units which would leave 107 units to be built in the future. They do not have any plans but they have tried to contact assisted living companies to see if they have any interest, but this is not what they do. If they are not successful, they will probably do two mid rise buildings side by side which would be the end of the project. If they are able to acquire more land, they would prefer to have more housing that is like what they have now and not do the buildings.

Atty. Mather stated they knew they had some work to do. They have to work with the Fire Department for fire access because they are proposing a new entrance. They will address the Waste Water Treatment to show that they do have the capacity. However, tonight they would just like an unofficial agreement to the concept, especially the new entrance.

Atty. Mather stated that right now they would also like to put in a construction entrance for the project. This would eliminate any construction vehicles that cannot make the Fern Avenue entrance turn from coming down LeBaron Boulevard. Mr. Foster asked what the

residents thought about this idea. Some that were present in the audience were supportive. Mr. Foster liked the idea of getting the construction vehicles off their road. He asked what Board members thought. Board members also supported this request.

Mr. Olivieri, then made a motion, seconded by Mr. Curtis to ratify the request for the immediate creation of a construction road. The **vote was unanimous for.**

Mr. Foster asked if there were any additional questions or comments. Mr. Poillucci said that he was not opposed to the project but last April; the project was allowed to build 77 homes and was allowed to count the rental building to cover the 25% affordable. Mass Housing says that the units are supposed to be mixed in but the Town petitioned Mass Housing and explained it was a financial matter where the project was in danger of going under and it was approved. Now, moving forward, the economy is doing well and now the project is moving forward with another 100 houses without any affordables. He did not think the Town should be giving away that rental bonus to the benefit of the developer.

Mr. Foster asked Atty. Kwessell if she could address that issue. Atty. Kwessell replied that when you have a rental project all of the units count in the Subsidized Housing Inventory (SHI.) She would agree somewhat with Mr. Poillucci. In Phase III, they received 77 single family homes, and none of them were affordable. It appears that Phase IV will also have no affordable units, and then Phase V will have affordable units. Phase IV should have some affordable units but where is the subsidizing agency in this. Is there a letter from them? They should have been notified of any change. She would also question if the subsidizing agency will have to approve the fact that they are adding four acres to the project.

Mr. Foster said they are several months away from any decision on this modification which will give Atty. Mather and Atty. Freeman plenty of time to take care of these issues. Mr. Poillucci said he was under the impression that Mass Housing would back whatever decision is made by the Town. Mr. Foster said at the time they were doing Phase III, they were under the impression that it was balanced off by the number of rental units in the apartment building.

Mr. LaCamera asked how in Phase III they were able to sell the land when under a Comprehensive Permit that is approved as common areas. Mr. Itani said the roadways, the entrances, and open space are all still common areas. The individual plots are owned by the home owner. Mr. LaCamera noted that the lots were too small to be allowed for single family homes. Mr. Itani replied that a waiver was requested and granted by the Board. Mr. LaCamera asked if they were proposing any additional single family homes. Mr. Itani replied that they were proposing duplexes with a hybrid age restriction. Mr. LaCamera said there should be an analysis of what the 77 units, and now the additional Phase, will cost the Town. He felt that it would be significant amount. He also asked what would be presented to the Town for mitigation of this project. Atty. Mather said that it would have been appropriate for Mr. LaCamera to bring up these concerns when they proposed the 77 single family units but that is done. The mitigation to the Town was

all negotiated in the original Permit, and he did not feel it was appropriate to add mitigation at this time. Mr. Foster asked that a summary be provided at the next meeting of what mitigation had been agreed to 14 years ago, and what the timeline for those mitigations were.

Mr. LaCamera noted that they have modified the Comprehensive Permit several times why couldn't the Town do the same. Atty. Freeman replied that the original Permit specifies there would be specific review as the Phases unfolded because it was expected to be a long build out with plans to be provided at that time. His second point would be under 40B you look at the proposal that is in front of you. You can't go back and change things. You do have a right to work on fees, plans, proposals, and buildings but you can't go back and change something that has already been approved in exchange for doing something that is before you.

Atty. Kwessell would point out that in the original Comprehensive Permit each phase did have an affordable component. Atty. Freeman did not disagree. He said they do like to get a feel from the Board before they move forward and speak to Mass Housing. He then noted the 2011 decision specifically states that the applicant is not required to construct any affordable units until the number 248 is reached. Mass Housing approved that change as the Board had, as well as the 77 units without the affordability.

Mr. Itani then asked the Board if they supported the concept that was in front of them. Mr. Olivieri said that he liked the concept but thought some of the issues discussed did need to be hashed out. Mr. Foster agreed. Mr. Poillucci said that he would like clarification from Mass Housing and DHCD regarding the issue of the affordable units in the new Phases. Mr. Foster asked Atty. Kwessell if she could look into that. After a continued discussion regarding that issue, Atty. Kwesell stated it is Mass Housing that decides on the affordability. As they had nothing from them for Phase IV and Phase V, she was not sure how the Board could move forward on this. Atty. Freeman agreed, and stated they knew they must talk to Mass Housing.

Mr. Olivieri then made a motion, seconded Mr. Curtis to continue The Residences at LeBaron Hills, LLC hearing until April 19, 2018 at 7:00 p.m. The **vote was unanimous**

The hearing closed at 9:32.

Mr. Foster adjourned the meeting at 9:33.