

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
April 19, 2018**

Members present:

Donald Foster, Chair; David Curtis, Vice-Chair; Janice Swanson, Vice-Clerk; Jim Gouveia, Member; Chris Carmichael, Associate Member; Daniel Gillis, Associate Member; Joseph Urbanski, Associate Member

Members absent:

John Olivieri, Jr., 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.

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

Mr. Foster opened the continued Nature's Remedy of Mass, Inc. hearing at 7:04. He read the April 18, 2018, letter from Mr. Robert Carr of Nature's Remedy into the record. Mr. Carr had requested their hearing be continued until the May meeting. They were waiting for their Community Host Agreement to be approved by the Board of Selectmen.

Mr. Curtis made the motion, seconded by Mr. Carmichael, to continue the Nature's Remedy of Mass, Inc. hearing until May 17, 2018.

Mr. Foster then read the April 18, 2018, letter from the Town Administrator into the record. It advised that the Board of Selectmen were in the process of negotiating a Community Host Agreement with Nature's Remedy but it would not be finalized until after the ZBA's meeting.

The vote was **unanimous for.**

The hearing closed at 7:05.

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

Mr. Foster opened the continued Residences at LeBaron Hills, LLC hearing at 7:05. Mr. Foster asked if there was anyone present representing LeBaron. No one spoke. Mr. Foster advised that he had been hoping Mr. Lanney could convey to the petitioner and the engineers some findings and also deal with some questions tonight. Apparently, this would now have to be handled via email. Mr. Foster then read the April 17, 2018, letter from Atty. Mather into the record. It requested a continuance until their next scheduled meeting in May.

Mr. Carmichael then made a motion, seconded Mr. Urbanski to continue The Residences at LeBaron Hills, LLC hearing until May 17, 2018 at 7:00 p.m. The vote was **unanimous for.**

The hearing closed at 7:07.

Mr. Foster advised that they had before them two petitions for Comprehensive Permits. He understood that it was the same project but it had been broken in half. Mr. Poillucci said that was correct, and it was in the same park. Mr. Foster asked Town Counsel if these petitions could be opened at the same time so that common issues that came up for discussion would not have to be repeated. Atty. Kwesell thought it was fine to open them both up but the issue would be having two separate records, and there would be two separate Decisions. They do want to try to keep the records as separate as possible. She has spoken with the attorney and he is okay with hearing them at the same time and possibly, when they present, they could present one and then the other. However, they cannot get around the matter that there are common issues.

Nemasket River Landing, LLC, hearing – 27 & 31 Commercial Drive:

Mr. Foster opened the Nemasket River Landing, LLC, hearing at 7:09 and read the legal ad into the record.

Riverside Lakeville, LLC, hearing – 29, 32-36 Riverside Drive:

Mr. Foster opened the Riverside Lakeville, LLC, hearing at 7:09 and read the legal ad into the record. Atty. Michael O'Shaughnessy was present and representing both applicants. He advised that there were two projects before them. One was a 26 unit town house project that is being proposed by Nemasket River Landing, with the manager being Mr. John LeBlanc. The second project is for 84 units proposed by Riverside Lakeville, with the manager being Mr. Bob Poillucci. This is a mix of duplex and town house units.

Mr. Bob Forbes from Zenith Engineering was the engineer for the project and was also present.

Atty. O'Shaughnessy then indicated how the project would be laid out. Lots A, B, C, and D would be the larger 84 unit project. It is a mix of duplex units and townhouses. There would be 18 units on Lot A, 16 units on Lot B, and 20 units on Lot C. On Lot D there would be 4 duplex units and 4 buildings with townhouse style units. There is also a structure that would be an office/garage for the office manager of the site. On Lot E, which is the separate project, there will be 26 townhouse style units.

Atty. O'Shaughnessy advised that the townhouse style units are similar to what was constructed on Water Street. Regarding the duplex units, they have the following 3 styles that are proposed: a base model with approximately 1,700 square feet, a larger model with 2,000 square feet, and a hybrid unit with the smaller unit having a single car garage and the larger unit having a two-car garage. There is sufficient parking for all the units. Atty. O'Shaughnessy noted that they have met with the Police Chief and the Fire Chief and they have their comments which have been submitted for the record. The Board of Selectmen has allocated water for this project, and they also have approved curb cuts by the Director of the DPW.

Mr. Poillucci then addressed the issue of traffic. He stated that the Police Chief had indicated in his letter that he did not feel traffic would be an issue. He advised that there were only 6 lots on this plan but there were still an additional 8 lots for sale that make up these lots. They merged them together to make this project work. Originally, there were over 1,800 parking spots just on those 8 lots. The park did not go the way it had been planned but on that type of build out, if the park had continued that way which is approved by right, there would be on average another 800 spots. They have 333 spots for the whole project.

Mr. Poillucci advised that he had also hired the company Vanessa Associates that had done the traffic study for the gas station a couple of years ago. He told them what the project encompassed. He stated that with the gas station the lot had been designed for a house and a traffic study was needed as the project was building a gas station, but now they were doing the opposite. The park was designed for the highest traffic use you can have and now they were putting in residential houses. However, he still did have the report done which identified that on an average day there will be a 71% reduction in what is currently allowed there by right and with peak traffic there will be an 82% reduction. Included as part of the study when the project is complete, they will come back and review the traffic light and see if any adjustments need to be made. Mr. Poillucci said he is offering that as a condition to have that review done when the project is 80% complete. Mr. Foster asked Mr. Poillucci to make sure that Mr. Lanney also received this information.

Mr. Foster said that they will want to talk about drainage. Mr. Lanney said that he has finished the drainage studies and the concern is the existing pond in the southwest corner of the site. It was designed for detention and infiltration. He has been out there several

times and it has water in it. The water table is supposedly several feet below the bottom of the sediment four bay, which is the first one that is overgrown with reeds and the infiltration basin. They both should be dry a day or two after a rainstorm. The reeds have grown up because somehow the water table is much higher than when they did their groundwater studies because it is supporting that vegetation. That needs to be cleaned up and restored back to its original condition.

Mr. Foster asked if this was in the list they had been given. Mr. Lanney replied it was. He talked to the engineer at Zenith and the idea was to go in the summer time and do some test pits and find out why it's not draining. He noted that the Town owns the basin so he was unsure who would have the responsibility to fix it.

Mr. Forbes from Zenith Consulting Engineers then gave an overview of the project. The site is about 22 acres and it consists of five future lots. Lots A, B, C, and D are the Riverside project. Lot E is the Nemasket project. This site is vacant other than the roadways that were designed, constructed, and approved by the Planning Board back in 2006. The roadway was taken somewhere around 2010. The road was extended with the idea of it being developed at some point in time and some build out was anticipated. Detention basins were designed and constructed with the intention of being able to handle all of the flow from the buildout of the entire site. It was anticipated that there would be similar buildings like the office buildings in the area that have parking around them. This would mean a lot of impervious area so these basins are huge and designed to handle a lot of flow.

Mr. Forbes advised that there were wetlands off the site and over 200 feet away. All of the land between their site and Nemasket River has a Conservation restriction on it and is owned by a Trust. Nothing can ever be done on it so it will be preserved, and it will be a buffer between this project and that river. There are bordering vegetated wetlands associated with the river, and he has highlighted the delineated wetland so they can see there are very little wetlands on the entire property.

Mr. Forbes said another important part of the wetlands he wanted to discuss was the vernal pool. This is one of the most highly protected wetland systems. There was a letter received that stated there was a vernal pool on the property. Any certified vernal pool or potential vernal pool is mapped on the Mass GIS system under the Natural Heritage Endangered Species program. He advised the closest certified vernal pool is inside the drive-thru to Mary Lou's Coffee associated with the gas station. That is approximately 1,500 feet from their site. There are two other potential vernal pools mapped and they are approximately 1,000 feet from their site but there are no existing or potential vernal pools on this site.

Mr. Forbes said that he would next like to highlight some of the surrounding areas to the project. He indicated the abutters were the T Station, the apartment complex, the Post Office facility, and the FBI Building. There is one residential neighborhood near them which is Sunset Lane. There is a parcel that is owned by the State, which is vacant, and it appears parts of it are being used for farming. He felt that the most sensitive abutters

were the residential ones on Sunset Lane. They do want to try to minimize the impact to them as much as possible by the location of the buildings and by mimicking the design of Sunset Ave. They also want to try to keep as much of the tree line as possible to provide a buffer.

Mr. Forbes advised that the project would be served by municipal water and Middleboro Gas & Electric. All of them will be serviced by on-site sub surface sewer systems, or a large shared septic system on each lot. Regarding drainage, Mr. Forbes said that he wanted to stress that these existing detention basins were designed for a certain amount of flow going toward them. The original analysis from 2006 indicated that they accounted for 7.35 acres discharging into these two ponds divided between the two. This project proposes 5.83 acres. That is a reduction of over an acre and a half over what these detention basins were designed for. They are minimizing the impact to these basins and they should be able to handle the flow that is directed toward them.

Mr. Forbes then displayed the breakdown of the lots which was as follows:

Lot A	18 units	2.52 acres	35% coverage	65% lawn/open space
Lot B	16 units	2.57 acres	35% coverage	65% lawn/open space
Lot C	20 units	6.36 acres	18% coverage	82% lawn/open space
Lot D	30 units	5.41 acres	31% coverage	54% lawn/open space and 15% wetlands
Lot E	26 units		26% coverage	62% lawn/open space and 12% wetlands

Regarding parking for Lot D, Mr. Forbes advised 85 spaces have been provided for 30 units which is a 2.8 ratio per unit. They are showing five handicapped spaces but that number is flexible to what the Board would like. 64 parking spaces have been provided for Lot E which amounts to a 2.4 spaces per unit.

Mr. Carmichael asked when the wetlands had been delineated and if that would need to be redone. Mr. Forbes replied this line was brought before the Conservation Commission with the request for determination of applicability in January. Mr. Foster asked for an elaboration on the septic system. Mr. Forbes replied it was to be a shared system or one septic system per lot. They are planning on having individual tanks at every unit and that is going to go by gravity or pumps to the leaching area. Mr. Foster asked if there is enough space at each lot for a backup system. Mr. Forbes said there was and it was a requirement of their design.

Mr. Poillucci noted that although these systems are small enough that the Board of Health can sign off, to show there is no appearance of conflict, they are having Presby and Mr. Lanney review the plans. Therefore, there will be two independent reviews done. Atty. O'Shaughnessy added that although each lot will have its own septic system, each lot will also have its own Condominium Association. He advised the project will be built in phases. Mr. Foster asked if they had a schedule for the roll out of these phases. Mr. Poillucci said his hope was to start digging holes soon. He displayed on the plan what

was to be built first, and indicated it would be built section by section. He noted they had a lot of interest in the plan so they would like to begin work while the economy was good. He estimated the project would take two years to complete or six months per section.

Mr. Foster asked what the plan would be for sidewalks and street lights. Mr. Poillucci replied there were already large street lights on the Town approved road. Lights would also be installed on the garages that would go on and off automatically. There were also hydrants on the site, but he added some additional ones to what was there.

Mr. Poillucci noted that they were talking about going to a 40R but that would involve going to Town Meeting and the Planning Board. He has been working with the Town on this as it would be a financial benefit to the Town. His legal obligation with Canpro is a 40B so that is what they are doing now. He is willing to wait and work with the Town if they need an additional month or so but he wants to move forward.

Mr. Poillucci then spoke to the drainage issue that had been discussed previously. They had just found out about the problem a couple of days ago from Mr. Lanney. However, these basins are owned by the Town. Legally, he cannot go in there and do anything without the Town's permission. If there is an issue and they need to be cleaned out they can work out how that can be done, but they will not be dried out for at least a few months. Mr. Poillucci said if they want him to help with this maybe they could condition before the last phase gets a building permit it is addressed. The basins will be clean and working, or Mr. Lanney and the DPW can advise what they think the solution is. This is something he would be willing to do. After further discussion, Mr. Foster stated they have identified the problem. As the season changes and the project progresses, they will have to continue to look carefully at.

Mr. Foster asked if there was a plan to put safety barriers around the basins as had been done at Bridge Street. Mr. Poillucci replied that the basins were the Town's. He thought that right now there was a gate but there was not fencing around them. Mr. Foster said there might be potential for a safety issue right now so he would want to keep that on the list for consideration later. Selectman Powderly stated that the Town could convey to Mr. Poillucci the ownership of those retention ponds. Mr. Poillucci replied that the basins are not just for his project but are for the entire park. These units would be sold, and he did not think it would be fair to leave the burden of maintaining the basins for the entire park to the homeowners.

Atty. Kwesell asked what the basis was for being able to use those detention basins. Mr. Poillucci replied that was how the park was designed, and there is a pipe on every lot. Atty. Kwesell asked if there was any documentation as it was private property going into a Town system. Was there room on his lots to put in his own detention basins? Mr. Poillucci stated that those are on two of his lots. Mr. Foster noted to Mr. Poillucci that he had said they are on his land, doesn't that imply that he owns them? Mr. Poillucci said that the Town owns them and has easements over them.

Mr. Foster said that it is his interpretation that it is not an issue of sizing; it is an issue of relaxed maintenance over the years. Atty. Kwesell said that right now they did not have that data, what they have is that they are not functioning. She agreed that it was probably because of lack of maintenance. Selectman Powderly said that it could also be a water table issue which would be something completely different. Mr. Forbes wanted to make it clear that the basins were functioning. Atty. Kwesell said didn't she hear that the infiltration was not working? Mr. Forbes replied they are designed as a dual system, infiltration and detention. He noted on basin 3, no water has ever come out of it as far as he can tell. It is infiltrating, just not as well as he and Mr. Lanney would like to see. Atty. O'Shaughnessy suggested that before they got bogged down on this issue tonight that Mr. Forbes and Mr. Lanney have a continuing conversation and meet down at the site. They can then form a better opinion as to what is going on and develop some way to address the problem.

Mr. Foster asked what else should be covered tonight. Atty. Kwesell questioned the phasing of the project. Atty. O'Shaughnessy replied that currently it is contemplated that Lot C and Lot E would be the first phase and then Lot B, Lot A, and Lot D. Mr. Foster asked if there were any additional questions. Atty. Kwesell asked regarding the septic plan, doesn't a shared system require approval from DEP? Mr. Poillucci said it was not big enough. He noted that although the Board of Health could approve it, he felt it was a conflict. They are, therefore, going to have both Presby and Mr. Lanney review each system. Atty. Kwesell noted that they were doing a separate Condominium Association for each shared system. Isn't that because DEP requires it? Mr. Forbes said there is a threshold that goes to that amount, and they do not meet it. Atty. Kwesell said if it is not required by DEP then they are doing this for convenience. She asked would they all have the same rules and regulations or would she be reviewing five separate Associations? Atty. O'Shaughnessy said that although there would be five Associations, they would be the same.

Mr. Foster asked if any of the neighbors were present. No one spoke. He then asked if anyone would like to speak for or against the project. Ms. Sandra Fry asked what they would be voting for on April 30th. Mr. Poillucci said the State has 40B which can go anywhere. They also have 40R which has to be close to transit stations. If the Town residents vote for it, the Town will receive money from the State. Selectman Powderly clarified that it does require a Zoning change which can only be done at Town Meeting. He advised that he does support this development as proposed. Mr. Poillucci advised, regardless, this is the plan and nothing will change in it.

Mr. Brian Hoeg, of Reed Farm Road and Chairman of the Planning Board, stated that he also supported this project. He felt the drainage problem could be solved with the cooperation of the Town Highway Surveyor and the engineers. He would like to see them find a copy of the plans for the existing basins to see what the idea had been when they were built. He was also in support of this going from 40B to 40R because it would be more beneficial for the Town.

Mr. Foster asked if the project converted to a 40R would the petitioners have to start the whole process over again or could what was discussed tonight be used. Atty. Kwesell replied that they would present to the Planning Board but they would not have to start all over again as they already have their drainage calculations, traffic, etc. Mr. Hoeg noted that they have already done this whole site. This is an approved subdivision through the Planning Board. He would like to hear from Mr. Lanney as far as what they determine with the drainage. He personally, would not be opposed to lowering the street lights. Mr. Foster replied it might be the right time to put in some more efficient, modern technology. There was also a discussion about how to come to an equitable solution in regards to the basins.

Mr. Foster asked if there was anything else. No one spoke.

Mr. Carmichael then made the motion, seconded by Mr. Curtis, to continue the Nemasket River Landing, LLC, hearing until May 17, 2018. The time would be at 7:00. The **vote** was **unanimous for**.

The hearing closed at 8:19.

Mr. Curtis then made the motion, seconded by Mr. Carmichael, to continue Riverside Lakeville, LLC, hearing until May 17, 2018. The time would be at 7:00. The **vote** was **unanimous for**.

The hearing closed at 8:19.

Mr. Foster adjourned the meeting at 8:20.