

**Zoning Board of Appeals Minutes
February 28, 2018**

Attendees:

Present: Anthony Aveni, Chairman; Gerry Chipman, Member; Brian Heath, Member; and Michael Mainvielle, Member; Anna Klimas, Associate Member

VIVA Bridgewater 40B

Mr. Anthony Aveni, Chairman, opened the continued public hearing on application filed by Claremont Lakeside Bridgewater, LLC, One Lakeshore Center, Bridgewater, MA 02324 for the a proposed 40B Comprehensive Permit filed under MGL Chapter 40B § 20-23 known as Viva Bridgewater for property located at Lakeshore Center, Route 104, as identified on Assessor's Map 96, Lot 17 and portions of 16, 18 and 19.

Mr. Edward Church, Attorney, was present on behalf of Attorney Peter Freeman and representing the applicant, was present. Mr. Church noted that the last significant issue was the resolution of the how to address the pump station on pleasant street – the sewer pump stations. That issue was resolved this afternoon with Stantec, the peer review engineer and somebody on the water commission and provided a letter attached, and added it to the decision letter as Exhibit F. The letter dated February 28, 2018 from Elias Patoucheas, President, Claremont Companies, to Town of Bridgewater Water and Sewer Board, stated the following: *"Claremont Companies has had a long-standing relationship with the town of Bridgewater and is committed to satisfying the requirements for Claremont's development. Over the next several days, Claremont, the town of Bridgewater and its consultants will work together to confirm what upgrades are necessary to the Pleasant Street Pump Station in order handle the flows from Claremont's development. In the spirit of moving Claremont's development along, Claremont agrees as a condition to our Comprehensive Permit for VIVA, to spend up to \$75,000 to upgrade the Pleasant Street Pump station in order to accommodate the usage created by Claremont's development."*

The Board along with Attorney Church, Mr. Patrick Carney, and Mr. Ed Marchant, 40B Technical Consultant reviewed and discussed the final revisions to the draft and had no further comments or concerns.

The hearing was closed. Mr. Gerald Chipman, Member, made a motion to approve the decision letter for the Viva Bridgewater 40B Comprehensive Permit. Mr. Brian Heath, Member, seconded the motion. The vote was recorded as follows: Mr. Anthony Aveni, Chairman – in the affirmative; Mr. Brian Heath, Member – in the affirmative; and Mr. Gerald Chipman, Member – in the affirmative.

Jasmine 40B – Appeal of Building Inspector's Decision

Mr. Anthony Aveni opened the public hearing at 7:00 p.m. on to review an application filed by Scotland Meadows, LLC, c/o William H. Sheehan III, Esq., MacLean Holloway Doherty and Sheehan, PC, 8 Essex Center Drive, Peabody, MA 01960 who sought to appeal the building inspector's decision to deny the issuance of a building permit application for the proposed 40B Comprehensive Permit filed under M.G.L. Chapter 40B Section 20 through 23 for property situated at 0 Jasmine Way, Map 72, Parcel 104, to construct 24 single-family residential homes ranging in size from 1640 to 1964 square feet. Each home will have a two-car garage and full basement. Said 40B Permit was approved on December 20, 2013 and no work has been completed within the required three-year period, and therefore the permit has lapsed. The area is zoned Business B. Board members present, and voting were Anthony Aveni, Chairman, Brian Heath, Member, and Gerald Chipman, Member. Michael Mainvielle, Associate Member, was absent. The following occurred:

1. The application was filed with the Town Clerk on January 18, 2018.
2. The abutter's listing is public record, therefore, Brian Heath, Member, motioned to waive the reading of the abutters list and Gerald Chipman, Member, second the motion. The vote was unanimous.

3. A letter dated January 17, 2018 from Mr. Steven Solari, Inspector of Buildings/Zoning Enforcement Officer to Mr. Peter Nechtem, Esq, MacLean Holloway Doherty, P.C., 8 Essex Center Drive, Peabody, MA 01960 was reviewed by the Board and read into the record. It stated the following: *"After reviewing and researching the application for a building permit for 0 Jasmine Way, Bridgewater, MA, I will have to deny your permit application. In accordance with 760 CMR 56.05 (12) Scotland Meadows, LLC's comprehensive permit has expired. The Town of Bridgewater's Zoning Board of Appeals approved the comprehensive permit on December 20, 2013 and no work has been completed within the required three-year period. You have the right to appeal my decision to the Zoning Board of Appeals. If you have any questions, please contact my office. If you have any questions, please contact my office."*
4. Mr. William H. Sheehan III, Esq, representing the applicant, made a presentation to the Board, contending that the permit did not lapse. Mr. Sheehan reviewed his memorandum of petitioner dated February 28, 2018 with the Board, along with the accompanying exhibits dated. Mr. Sheehan, stated in particular, that work had commenced on the site prior to December 19, 2016, citing paragraph 55 of the comprehensive permit decision letter filed with the Town Clerk's office on December 20, 2013, which expressly provides as follows: *"This Comprehensive Permit shall expire three years from the date thereof, subject to tolling in the event of any appeal, unless construction on the project has commenced within such period. The applicant may apply to the board for reasonable extensions to this comprehensive permit for good cause."* Mr. Sheehan stated that this echoes the language of Housing and Economic Development Regulation 760 CMR 56.05(12)(c); "If construction authorized by a Comprehensive Permit has not begun within three years of the date on which the permit becomes final except for good case, the permit shall lapse..." Mr. Sheehan asserted that construction had commenced based on the installation of the waterline and paving of Jasmine Way in October 2015. Mr. Sheehan added that substantial field survey and excavation work was performed as well.
5. Attorney Sheehan also noted Condition 17 of the decision letter that states: *"The Project will tie into the municipal sewer system and municipal water system. The Applicant shall pay all applicable tie-in/connection fees associated with these improvements,"* and Condition 41 that states: *"All utilities serving this development shall be installed underground, including any extensions from existing lines or poles external to the subject property,"* both which recognize that the project would require off-site work.
6. Attorney Sheehan added that Condition 51, Finding 11, and Finding 31 of the original decision letter further support the applicant's position.
7. Attorney Robert Pellegrini, representative for Bridgewater Pediatrics contended that substantial construction had not commenced, and any work that was done was due to Bridgewater Pediatrics opening; after litigation and a subsequent settlement to have Jasmine Way LLC perform the work required by a shared easement.
8. Mr. Ed Marchant, 40B Consultant, stated that the Zoning Board of Appeals has no authority to extend the permit once it has expired. The cure is to obtain advice from Town Counsel and the Building Inspector. The cure would be to resubmit the application and have an accelerated hearing.
9. Mr. Anthony Aveni, Chair, stated that the Board would need additional time to review the *"Memorandum of Petitioner"* and the accompanying exhibits that were submitted, as well as have Town Counsel provide a legal opinion.

Mr. Gerald Chipman, Member, made a motion to accept the applicant's request to continue the hearing to March 28, 2018 at 7:00pm on the second floor of the Municipal Office Building located at 66 Central Square, Bridgewater, MA. Mr. Brian Heath, Member, seconded the motion. VOTE: All in favor, none opposed.

Duxburrow Estates 40B

Mr. Anthony Aveni, Chairman, opened the continued public hearing for the Duxburrow Estates Comprehensive 40B permit request from the January 10, 2018 meeting.

Mr. Larry Silva, PE, Silva Engineering Associates, representing the applicant, informed the Zoning Board of Appeals that the applicant has filed an Abbreviated Notice of Resource Area Delineation with the Conservation Commission to have the wetland line reviewed and approved. The approval of the wetland line will impact the drainage calculations and design.

Mr. Larry Silva, PE, submitted and discussed a letter dated January 31, 2018 that memorialized that the feasibility of an alternative access for Summer Street was not an option. The letter has been posted on the Town of Bridgewater document center. Mr. Rodney Larcom, 50 Curve Street, expressed concern about who validates the assessment that the Summer Street access was not feasible. Mr. Aveni, Chair, stated that one of the requirements of a Comprehensive 40B Permit process is to show that they have control over the land. The applicant does not have control over the site. The Summer Street access land is not available for public purchase, nor is it under the control of the applicant. Mr. Silva elaborated on the contents of the

Mr. Larry Silva, PE, submitted plans to accompany the summary letter dated February 8, 2018 from ATC Phase One regarding the *"Former Bridgewater Farm, Curve Street"*.

Mr. Paul Cusson provided and discussed an exhibit depicting the school impact study of other developments by the applicant that are the size of Duxburrow Estates. Mr. Cusson stated that the average number of students per household is .43 students. Mr. Cusson also noted that he referenced the Town of Bridgewater's Housing Production Plan, stating that the document lists 8,288 households in Bridgewater and 3,158 students which is equivalent to .38 students per household. Mr. Cusson made the inference that what is happening within the town now, is proposed and what the experience has been all fall in the similar range.

Ms. Kim Chermesino, 35 Curve Street stated that she had emailed the School Superintendent Derek Swenson and the Police Chief Chris Delmonte. Ms. Chermesino stated that the email response from Mr. Derek Swenson stated that he was worried about the economic impact it will have on the operational budget. That development may require its own bus depending on the grade levels of the students living there. I suggest a mitigation deal ... "My last concern is the student population. I don't believe that the developers have taken into consideration on the increase numbers it will have on our class size." Mr. Larry Silva, PE, stated that he would like to see a letter directly from the Superintendent to the Zoning Board of Appeals addressing this issue. Mr. Tony Aveni, stated that he would like to have the Mr. Swenson attend a meeting.

Mr. Peter Colombotos, 15 Plymouth Street, spoke to the matter of the number of students attending the school system and the turnover involved.

Mr. Brian Heath, Member, stated that the number of kids that go into the school is irrelevant to the approval of this process. It is more a safety concern as to how many children and where the pickup location for the school bus stop. The school impact was debated and discussed with no resolution. Mr. Larry Silva stated that the resolution of the impact will affect the design. Mr. Cusson stated that the development is phased in – so the impact will be over a 5-6 year period.

Ms. Cheryl Devereaux, 55 Curve Street, expressed her concerns regarding current safety issues at school bus pick up times. Mr. Tony Aveni, stated that the developer was intending on trying to make that intersection safer anyway, with an island and making it a one way, as well as additional parking spaces within Duxburrow. Another suggestion was to have a shuttle bus system inside the Duxburrow Estates subdivision.

Mr. Tony Aveni, Chairman, asked about recreation areas for children to play. Mr. Silva pointed out on the engineered plans the open space areas and how it inter-connects throughout the development. Mr. Cusson noted that the open space would be maintained through the homeowners' association.

Mr. Mark Bartlett from Stantec, along with the Board and Mr. Larry Silva from Silva Engineering reviewed and discussed in detail the status of the peer review as outlined in the third peer review letter dated February 22, 2018.

Mr. Tom Hennessy, 143 Curve Street, expressed his concern regarding the maintenance of the landscaping for the project.

The Board and applicant discussed the construction sequence plan, and work hours, and stated that the first phase would be to work on the Curve Street infrastructure. The construction management document will be submitted.

Mr. Larry Silva stated that from Solar Way, westerly to Auburn Street will be widened and renewed. The opposite direction will be widened as needed. Solar Way, westerly to Auburn Street, to Laurel, there will be about 51 existing homes where there is the potential for them to have connections to a lower pressure system, adjacent to the force main that Duxburrow will install. The resource will be there for tie-in for those that would want that service. Mr. Aveni asked if they would be stubbed or would the road need to be dug up again. Mr. Silva stated that that is being worked out.

The school issue, landscaping plans – specifically what trees would be removed, and what a typical house lot would look like, and the status of drainage and water and sewer will be discussed at the next meeting.

Ms. Connie Wilder expressed her concerns regarding buffer vegetation. Mr. Aveni stated that is a concern and this will be addressed with the landscape plans, with natural vegetation and some trees.

Mr. Gerald Chipman, Member, made a motion to accept the applicant's request to continue the hearing to April 25, 2018 at 7:30pm on the second floor of the Municipal Office Building located at 66 Central Square, Bridgewater, MA. Mr. Brian Heath, Member, seconded the motion. VOTE: All in favor, none opposed.

Zoning Board of Appeals Business

There was no board business for discussion.

Mr. Brian Heath, Member, made a motion to adjourn the regular meeting at 9:30pm. Mr. Gerald Chipman, Member, seconded the motion. VOTE: All in favor, none opposed. Chairman Anthony Aveni closed the meeting. Next Zoning Board of Appeals meeting will be held on March 14, 2018 at 7:00pm in the Council Chambers located on the second floor of the Municipal Office Building, 66 Central Square, Bridgewater.

Respectfully submitted,



Jane K. Brown
Administrative Assistant