

ZONING BOARD OF APPEALS Ipswich, Massachusetts

March 25, 2021
Special Meeting Minutes

Pursuant to a written notice posted by the Town Clerk and published in the Ipswich Local News, a newspaper of general circulation; the Ipswich Zoning Board of Appeals held a meeting on Thursday March 25, 2021 at 7:00 p.m. remotely via Zoom Video Conferencing, in accordance with the Governor's 3.12.20 Order suspending provisions of the Open Meeting Law to promote public health and safety and social distancing during the public health emergency.

Members tuned in were Chair Robert Gambale, Benjamin Fierro, Lewis Vlahos, Rob Clocker and Justin Planasch.

Also, Administrative Assistant Marie Rodgers. Attorney Barbara Carboni was present as special counsel representing the Board.

This meeting was broadcast live and recorded by ICAM.

Citizen Queries: Marine Klipenger, 242 Argilla Road questioned the procedural process when the applicant does not provide further extension of time and the Board hasn't finished reviewing the project. Chair explained the process.

Continued Public Hearing:

26 Essex Road (Assessor's Map 54A, Lot 14A) **36 Essex Road** (Map 54C, Lot 22); **38 Essex Road** (Map 54C, Lot 22A) **42 Essex Road**, (Map 54C, Lot 23) and **44 Essex Road** (Map 54C, Lot 24) **Essex Pastures, LLC** requests Comprehensive Permit approval, pursuant to MGL Ch. 40B, to construct one hundred ninety-four (194) residential rental units, of which forty-nine (49) units would be affordable to households earning no more than eighty-percent (80%) of the area median income. (continued from the June, 2018 all of 2019; all of 2020; January 21, and 28, 2021, February 18, 2021)

Chairman Gambale read the legal ad and re-opened the public hearing at 7:00 p.m.

Attorney John Smolak was present representing the applicant John Bruni, Manager, Essex Pastures, LLC who was present as well. As was Joe Peznola Hancock Engineering and Ed Marchant Financial Advisor.

Chair announced emails for the record: March 19, 2021 email from Christine and Timothy Driscoll, 31 Upper River Road, Ipswich, MA; March 19, 2021 email and letter from Landis Van Alen, 39 Lakemans Lane, Ipswich; March 19, 2021 email from Amanda (and) Bill Harrington, 21 Meadowview Lane, Ipswich; March 21, 2021 – email and letter from Chris Florio, Fellows Road Ipswich; March 22, 2021 email and letter from Paula Jones, Robert Spurrier, 40 Lakemans Lane, Ipswich ; March 22, 2021 email from Allison Hubbard Philip Ramasci, 8 Farley Avenue, Ipswich; March 23, 2021 – letter from Hill Law, Dennis A. Murphy, Esq. dated 3.23.2021; March 24, 2021 – email and 6 pages from Keri MacRae; Wed 3/24/2021 12:28 PM email comments from Brendan Lynch, Conservation Agent; March 24, 2021 email from Margi Nealon, 3 Turkey Shore Rd, Ipswich.

Chair recognized Attorney Dennis Murphy from Hill Law representing opposition to the project. He spoke to the two letters he submitted cited the history of the applicant efforts to rezone the lots at town meeting and planning board in which a 2009 decision was appealed and upheld. Attorney Murphy made his case as cited in his letter dated 3/16/2021 (hereby incorporated by reference) Attorney Smolak expressed his disagreement.

After a brief discussion concerning the method of reviewing the waivers and vote will be take place at a future date.

Chair identified the voting members Fierro, Vlahos, Clocker and Gambale; a majority vote is needed to pass and a tie vote would not pass.

Attorney Smolak explained waivers 1-40; the Board asked questions and discussion was held concerning a member of the historic commission to view the old buildings on site; Attorney Carboni suggested returning to the waiver for the storm water bylaw for a longer conversation, for more specificity; it's a complicated subject.

Recommendations from Vickie Halmen were cited concerning sewer connections and fees.

The Board requested additional details for waiver #6 Joe Peznola Hancock Associates spoke to several aspects of the waiver request under the wetlands local and the State requirements for setback in buffer zones and resource areas. He said the project was abiding to the no-disturb zone under the State requirements and serves to protect the wetland resource. He spoke to specific encroachments and reasoning.

Chair recognized Jennifer Hughes Conservation Commission Chair who asked the Board not to waive the storm water bylaw, and require the applicant to be more specific. She cited lack of infiltration; large rainfalls and soil conditions need to be addressed by the Commission.

Chair recognized Helen Weatherall Planning Board member who said there were many people wishing to speak and asked the Board to take into account what they have to say; she applauded Jen Hughes and urged the Board to consider her suggestions.

Attorney Smolak described the Dimensional & Density relief was calculated for one single lot making it easy to identify required setbacks for principal and accessory structures. He cited the percentages of maximum building area in RRA, percentage of open space.

Attorney Carboni voiced her concern in waiver 17 request for "as depicted on the plan", for proposed screening. Latest plan dated 3/1/21 were there hard copies or just electronic copies. Mr. Bruni would have submitted a plan set. Mr. Peznole described the landscaped areas and screening requirements that were not met. At the Chair's request, he said he would provide details of compliance and non-compliance.

In response to the Board, Attorney Carboni clarified that once the hearing is closed no new materials or testimony will be allowed.

Chair expressed his urgency to review all the waivers and requested Attorney Smolak to continue to another meeting. Discussion ensued regarding process and procedures.

Waiver request # 25 in response to Mr. Clocker question regarding screening, Attorney Carboni asked the applicant to explain and illustrate why the proposal doesn't meet the requirements for screening. When working with peer reviewer at Davis Square Architects, it was never envisioned that this requirement would be needed.

Attorney Carboni recommended not to waive #36; she suggested it was a reasonable request; she deferred to the Board's practice.

Waiver request #39 Pro Forma – Attorney Carboni spoke to the process envisioned, whereby the Board reviews the pro forma in response to the applicant claiming a stipulation renders the project uneconomical.

Chair responded to Waiver request #40 concerning waiver of fees, he related that the Board has not waived fees in the past and he will not vote to waive any fees.

Discussion took place concerning the water regulations, the Board has recommendations from Vicki Halmen, Water and Waste water Director and requested more specificity from the applicant. The Board determined that more clarification will be required concerning the eight inch pipe supplying the required volume of water to the site. And extending a twelve inch pipe up to Heartbreak Road where it would be an eight in pipe.

Discussion took place concerning the draft decision with additional conditions highlighted. Attorney Smolak indicated that he was not prepared and was unaware this would be on the agenda. Again the issue of closing the public hearing and review without the applicants input was discussed. The deadline to close the public hearing was tonight, the Board discussed the waivers and would like to review of conditions, but it does not make sense to discuss conditions, if applicant is not prepared.

Attorney Smolak requested a brief recess to speak with the applicant, he returned and agreed to one more meeting. After some discussion the Board and Attorney Smolak agreed have one more meeting on April 15th, 2021.

Attorney Smolak spoke to filing with the conservation Commission is not allowed until the Comprehensive Permit is issued or denied. The ORAD is on file. Chair recognized the Chair of the Conservation Commission Jennifer Hughes who disagreed, stating her understanding, is that, the applicant only has to file the Comprehensive application and does not need a decision.

Attorney Smolak cited a Supreme Court Decision a week and a half ago, contrary to that; he will forward it to her and the Board.

Attorney Smolak said for the record he will grant an extension of time to April 15, 2021 as well, agreeing to continue the public hearing to the same time.

Mr. Planasch compiled a list of audience members wanting to speak in the order of raised hands. Chair called Attorney Murphy – there was no answer – Chair called Suzie Glessner, there was no answer.

Chair recognized the following residence, who all spoke in opposition; John Wigglesworth 283 Argilla Road, Joyce Kippen 50 Lakemans Lane, Helen Weatherall, 44 Fellows Road, Paula Jones Lakemans Lane, Chris Florio 44 Fellows Road, Paul Meneghini 60 Prospect Street, Keri MacRae Heartbreak Road, Elizabeth Townsend 217 Argilla Road, Timothy Driscoll 31 Upper River Road.

Attorney Murphy agreed with Attorney Smolak and reference the case that was his, with regards to the timing of an NOI.

The Board heard from the ICC Chair two times, she asked the Board not to grant a waiver from the storm water bylaws. Granting a waiver would effect compliance with the federally issued MS4 permit for the town.

The 3D pictures submitted were viewed and comments were made on the poor rendition.

MOTION:

Chair moved to continue the public hearing to a special meeting, only for Essex Pastures, LLC to April 15, 2021 at 7:00 p.m. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote.

The Board thanked Attorney Carboni for her guidance and assistance.

The Board thanked Justin Planasch for his valuable service as a member of the Board; this was his last meeting.

Documents and exhibits used by the Appeals Board: March 18, 2021 Extension of time and continuation from Attorney Smolak; March 19, 2021; March 25, 2021 email from John Bruni with 3 attachments titled: Essex Pastures, Ips. MA Architectural Drawings by the MZO Group; Civil Index Joseph D. Peznola, PE; Landscape James Emmanuel and Associates. email from Christine and Timothy Driscoll, 31 Upper River Road, Ipswich, MA; March 19, 2021 email and letter from Landis Van Alen, 39 Lakemans Lane, Ipswich; March 19, 2021 email from Amanda (and) Bill Harrington, 21 Meadowview Lane, Ipswich; March 21, 2021 – email and letter from Chris Florio, Fellows Road Ipswich; March 22, 2021 email and letter from Paula Jones, Robert Spurrier, 40 Lakemans Lane, Ipswich ; March 22, 2021 email from Allison Hubbard Philip Ramasci, 8 Farley Avenue, Ipswich; March 23, 2021 – letter from Hill Law, Dennis A. Murphy, Esq. dated 3.23.2021; March 24, 2021 – email and 6 pages from Keri MacRae; Wed 3/24/2021 12:28 PM email comments from Brendan Lynch, Conservation Agent; March 24, 2021 email from Margi Nealon, 3 Turkey Shore Rd, Ipswich opposed

Adjourn - It was moved, seconded and unanimously voted to adjourn at 10:40 p.m.

Respectfully submitted,

Marie Rodgers
Administrative Assistant

The Board approved these minutes on April 29, 2021

Pursuant to the 'Open Meeting Law' the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting; the members present or absent; the findings made and actions taken. Any other description of statements made by any person, or the summary of the discussion on any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.