

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
DECEMBER 02, 2015**

**Members Present:** Christopher Graham, Chairman  
Gerald Coutinho, Vice Chairman  
Donna Lambert  
Gary Simmons  
Larry Kidney  
Roger Menard  
**Absent:** Heather L. Salva, Clerk

Chairman Graham called the Zoning Board of Appeals meeting to order at 7:10 P.M. in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance by all present.

**Pledge of Allegiance**

**Chairman's Announcement** - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

**Brookmeadow Westport, LLC – RE: A continued public hearing to consider a request to modify the May 30, 2003 Comprehensive Permit issued to Brookmeadow Westport, LLC to construct 52 dwelling units on approximately 83.2 acres of land owned by Carricorp Industries, LTD, as Trustee of 190 CW Trust, that are located off of Brookwood Drive and Meadowbrook Lane, in Westport, MA and are currently shown on Assessors Plat 68, Lots 24 and 18C; Plat 69, Lots 10A, 10B, 10C, 10F, 10G, 10H, 10J, 10K, 10L, 11, and portions of Lots 5 and 10; Plat 70, Lots 53, 54, 56, and a portion of Lot 11; The modification request is set forth in a May 20, 2015 Notice of Project Change from Attorney Peter L. Freeman of Freeman Law Group LLC on behalf of Brookmeadow Westport LLC and proposes to modify the 2003 Comprehensive Permit by: (1) reducing the number of units approved under the Comprehensive Permit from 52 units to 12 units and by reducing the acreage for the project from 83.2 acres to 24 acres and to modify the permit to reflect that a portion of the original acreage has been subdivided and to seek the waivers set forth in the "Brookmeadow Westport, LLC Waiver Requests May 12, 2015" attached to the aforesaid Notice of Project Change.**

Hearing the petition: Graham, Coutinho, Lambert, Simmons, Kidney, Menard  
Also present: Attorney Ilana Quirk, Town Counsel, Kopelman & Paige  
Ralph Souza, Building Commissioner  
Attorney Peter Freeman, representing petitioner  
Robert Carrigg, Carricorp - applicant  
Alan Heureux, Boucher & Heureux, Inc., representing applicant  
Mark Boucher, Boucher & Heureux, Inc., representing applicant

\*Note: Ms. Lambert arrived at 7:15PM.

The continued public hearing was called to order at 7:11 PM with Chairman Graham reading aloud the Public Hearing Notice. Mr. Graham explained the procedure for the hearing; and asked if anyone wanted to be heard on this petition, that they identify themselves by name and address and only when recognized by the Chair.

Attorney Freeman stated the first item to be addressed tonight would be the clarity of the requested color-coded plan to delineate what is now the 12 lot subdivision and show what has happened to the rest of the property; secondly, there is the waiver requests, which were submitted on May 12, 2015. Attorney Freeman stated at last meeting, two questions arose; one, do we need the waiver from the Zoning Bylaw for Low Impact and Site Plan Approval and the answer is yes, which Mr. Heureux will be reporting on; the other question was on the Fire Protection of the subdivision, about the subsurface fire cistern, we don't need the waiver from having the tank, but the section says the location must be approved by the Fire Department and the Planning Board, and we have no problem with the Fire Dept. but we want the Planning Board to waive this. Attorney Freeman stated there was a question in the terms of the Land Court Case of the easement that was granted to my clients; the decision basically addressed the responsibilities of the owners of this land and exercising the easement including the right to put in utilities, drainage and so forth and that they are responsible for any destruction to the road, so there is no obligation to contributing to the existing road and its maintenance.

Mr. Heureux presented the revised plans marked as "Lotting and Construction Plan" dated 10/29/15 which have minor revisions. The exhibit plans will hopefully clarify for the Board, what has happened to the 87 acres, which was originally part of the Comprehensive Permit. Mr. Heureux stated the black-outlined area is the original 87+/- acres from 2003; the green outlines the proposed 2015 modification to the 12 lot residential subdivision and all associated drainage, shared septic system, public and private utilities, everything including the open space at the westerly end of Brookwood Drive; the area highlighted in blue, was part of the original subdivision located at the end of Meadowbrook Lane and Post Granite Road (Meadowbrook Farms), which was subdivided into 5 new lots and was approved by the Planning Board several years ago, all designed according to the Town's Rules and Regulations, the septic systems have been designed and sent to the Board of Health, and there is no work within the Conservation's jurisdiction (this was peer reviewed by Tibbetts) and they are no longer a part of this project but is shown on this exhibit as part of the Meadowbrook Farms Phase III subdivision project; the area highlighted in red is an area titled "land conveyed by agreement deed", it was a boundary settlement with an abutter (Szaro) and is no longer part of this project. Mr. Heureux stated what was 87 acres has been boiled down to 13.6 acres of land on which we are proposing the 12 lot subdivision. Mr. Heureux stated the next plan shows the 12 single family house lots and a 900 ft. roadway extension; the yellow depicts the end of Brookwood existing, the orange depicts the proposed road and lots and the green shows the utility, common area parcel which encompasses the shared water basins, subsurface sewage disposal system and the fire cistern; this meets the required open space under Title V. Mr. Heureux stated lastly, there are 3 sheets of plans that entitled "the construction plan of land" dated 10/29/15 which shows the proposed engineering design for the road and will have Mr. Heureux's stamp, which is in accordance with Town standards, it shows the onsite sewage disposal system, some basins, a small retention area at the end of Brookwood Drive (this was moved entirely onto his client's lot), in red, is the 10,000 gallon fire cistern (this was proposed in the prior 5 lot subdivision and was approved by the Fire Dept); Mr. Heureux stated the reason we are seeking the waiver, is because under the Regulations, they are very specific about the locations of the fire cisterns but what it really boils down is where the Fire Chief wants them located. Lt. Ledoux stated the cistern will not only serve all the homes in this project but it will provide for a reduction in their homeowners insurance premiums and it may help to reduce the insurance for people who live on Brookwood Drive; it will be up to the homeowner to mention this to their insurance company because it is like having a fire hydrant within so many feet of your home; Lt. Ledoux met with us last week, and he is completely happy with the location of the fire cistern. Mr. Heureux stated that basically, the minor changes are we have moved the retention area onto our property; we have widened the travel aisle around the cul-de-sac so a fire truck can drive around, thus reducing the size of the cul-de-sac; the road is a 20 ft. width with a cape-cod berm on both sides, we have widen the travel way around the cul-de-sac to 24 ft. with a gravel base under the entire cul-de-sac for travel which reduced the size of the island, which the Fire Chief approved; there are no shoulder trees, it will be grass on the shoulders and islands; the cul-de-sacs are of 60 ft. radius; this exceeds the Town's Planning Board

standards. Mr. Heureux stated this a safe design that meets standards. Mr. Menard asked how the green gets out of the black overlay. Mr. Boucher stated it is important to understand that the black line is not the boundary of the original submittal; the property extends beyond that; what we did was, we created the black line based on the comments from the previous meeting where there was confusion about where the actual limit of the open space parcel; this is still on the Carrigg's property but it is now defined on the lotting plan. Mr. Boucher stated it was his understanding that the open space parcel may be conveyed to the Homeowners Association (he was not sure of this?) or to whatever entity will be responsible for the upkeep of it. Mr. Boucher continued to explain the plan and the lines on it. Mr. Graham questioned the wetlands line. Mr. Boucher stated the back of the lots that are to be developed for home sites, are far away from the wetland lines (shown in orange and green). Mr. Graham stated he understood the lines on the plan now. Mr. Coutinho asked what was the necessity or purpose of the bump-out on the north boundary. Mr. Boucher stated it was part of the drainage design for stormwater overflow; it was intended to be contained in the open space parcel, this will be conveyed to the Homeowners Association. Mr. Coutinho stated probably one of the biggest concerns would be the individual lot sizes; what is the typical or average lot size proposed. Mr. Boucher stated the average is around 10,000 sq.ft. and some are slightly larger and the smallest one being around 9,500 sq.ft. Attorney Freeman stated for the most part, the lots are 11,000 sq.ft. and 12,000 sq.ft., etc., so the average would be over 10,000 sq.ft. Mr. Coutinho asked if there was a legal reason, such as land court decision or whatever was went through, that truncates that property or is it the topography of the property itself. Attorney Freeman stated that is two-part answer: the Land Court did say parcels that were part of the Carrigg's larger collection of parcels, certain parcels that are part of the 40b portion, were given the easement rights over Brookwood Drive, so everything was on that parcel; the other reason is that quite a bit of land must be kept on the same parcel as this project because of the Title V requirements that has been now approved by the Board of Health; in order to have the shared system, there are certain open space requirements which accounts for the large amount of land. Mr. Coutinho said in summarizing that, there really is not a practical or legal way to increase the project in order to increase the lot size; the only way would be to reduce the number of lots. Attorney Freeman agreed.

Attorney Quirk asked for a clarification from the last discussion for the potential of a separate deeded restriction that would say the cul-de-sac would be accessed into any other property in the future. Attorney Freeman stated that was discussed and the answer is this; it is not appropriate and does not have any impact on the project, to have a deeded restriction if you felt it would impact the project but it really only impacts the future use of the land; a condition to that effect might be reasonable and maybe acceptable to his client. Attorney Freeman stated that a deeded restriction, he felt, goes beyond what he feels is appropriate; we don't know what the future holds; right now, his client can't use Brookwood Drive in consistency with what the Land Court said but theoretically, if there are further agreements with neighbors or changes, we just never know what might happen or what circumstances might present themselves. Attorney Freeman stated that in discussing a deeded restriction with his client, they would have to say no, it is not appropriate, perhaps, if the Board feels strongly about this, a condition may be amendable to his client. Attorney Freeman stated with a condition, the permit must be complied with and it would require his client or owners to come back with any change if needed. Attorney Quirk stated all that is true, if a special permit is issued with a condition, we all know after the appeal period with no one appealing the relief and the condition takes final effect, then someone comes back with an appeal of the decision to take out that relief, the Board has the ability to say no and in the event there is an appeal, unless there are changed circumstances, then the appeal is seen as an untimely appeal but with a 40b that rule does not apply; the ability is always there by the developer or successor in interest to come back seeking a change. Mr. Graham stated so basically, we would be doing this all over again, such as we are doing now. Discussion ensued. Attorney Quirk stated this is an application for a Comprehensive Permit, to modify it down to 13.6 acres with 12 lots; one issue, we needed a complete plan showing all of the property showing all parcels (A,B,C,D & open space); the applicant has been amendable so far; but if the modification is granted, one concern is not all of the owners of the original 83.2 acres have assented. Before 2008, before the regulations changed, site control was a matter for the Board and post 2008, it is

for the subsidizing agency to look at; this is a pre-2008 situation, there may not be a lot of stringent opposition to the 12 proposed lots. The Board may want to ask for a signed/stamped plans, what kind of acreage is being dealt with and to assign reference of parcel owners. Attorney Quirk stated she is assuming that the old lots are still owned by the applicant. Attorney Freeman stated the applicant still owns the parcels (B, C, D). Attorney Quirk stated it is important to have some kind of delineation of the parcels that are no longer owned; there should be a conveyance by agreement deed; this is important in giving notice. Attorney Freeman stated he agreed to a point; a delineated plan with a signed endorsement and stamped by the engineer will be created showing all owners and acreage; there are no issues in terms of control because the legal advertisement included all 83 acres and an abutters list included everyone, so there is no risk or reason for any legal concern; Szaro got land that was part of the 40b, so no rights were taken away from anyone (they were notified) and there was the Land Court decision; there are some other lot owners but the Planning Board did approve this, right or wrong, so the land was taken away by action of the Planning Board; there is no risk and no control issues; the remaining property is certainly all controlled. Attorney Freeman stated it is all shown on the plans that are being asked to be endorsed and he does not see any risk. Attorney Freeman asked that this be approved as presented and if there is any risk, it will be on his client; although, he does not see any.

Mr. Simmons asked if Parcel C would be landlocked. Attorney Freeman stated that is part of the overlay and the parcels above "C" would lose all rights and benefits because of the changes, if allowed. Mr. Graham stated originally, there were 52 lots, now 17 of those lots have been taken out, so we are reducing the 35 lots that are left down to 12 lots. Attorney Freeman stated that seemed right. Attorney Quirk asked if Attorney Freeman could email to her copies of the court decisions so she could read them herself; because Parcel C, if the Land Court or settlement agreement provides that part of the modification is due to court decision, so there is no reason that the owners have to assent to this; her concern is this developer still owns a majority of the land in the subdivision; Attorney Quirk questioned if that was the case. Mr. Carrigg stated no, Meadowbrook Farms was developed and sold with the roads approved; the three lots in between Granite Post Road and Meadowbrook were taken out of the 40b while we still owned it; it was subdivided out of that piece of land about 14 years ago. Mr. Carrigg stated the ones on the outside that were recently developed, about two years are still owned by himself.

Attorney Quirk stated the question is, the area outlined in blue, what portion of that is not owned by the applicant. Mr. Boucher stated the three lots have been conveyed out and the remainder outlined in blue are still held in ownership. Attorney Quirk stated the only site control issue would be, as to those three lots and as she understood, notice went out to everyone who was abutting the 83.2 acres; what we don't know is if notice went out to those within the 83.2 acres; certainly the legal ad covered what this petition was all about but we should look at the abutters list to see if those three lots were noticed. Discussion ensued. Attorney Quirk stated she needs to read the decisions, which Attorney Freeman has provided tonight, to see that basically the court decision reads that they can't be part of this; in that case, the Board can modify that particular part. Discussion again ensued with a clarification by Mr. Carrigg regarding the Szaro settlement, Parcel C owners, control issues and notice to all parties involved. Mr. Coutinho stated that initially, he felt the notice was sufficient for Parcel D of the subdivision; however, he was not so certain because if the Planning Board did not know this was subject of a Comprehensive Permit and allowed subdividing of an existing 40b plan, then how can we expect people who bought in this do know about this; maybe if notices were sent to all of the abutters it would be a cleaner situation. Attorney Quirk stated that all should get specific notice of the decision citing there was a decision, naming the three lots and their owners, so that they are aware of this. Attorney Freeman stated he can appreciate the good analysis but he does not agree 100% in terms of any legal concern, part of which is, because it was never owned before the plans were changed; lastly, there could not have been any rights that were compromised. Attorney Quirk stated there are potential control issues and she understands the three owners, who were within the subdivision, their interests in the Comprehensive Permit for developing the 52 lots, which is not going to be built obviously, it is understandable that the applicant feels there is very little risk but proper notice needs to be given to everyone, including Parcel C so they understand that the four corners of the 83.2 acres, with the right to do 52 Comprehensive Permit lots, is being evaporated for

them; and the applicant has said over and over again that the parties that own Parcel C and the lot owners in the subdivision have no objection; so if they have no objection and are given notice, then perhaps the Board is satisfied with the idea of going from 83.2 acres to 13.6 acres and 52 lots down to 12 lots, then this part of the project and the five up in the subdivision and notice should be given. The list of abutters was then reviewed for the owners. Attorney Freeman stated he understood and agreed it was the way to proceed. Attorney Freeman stated the owners did not have rights in the 52 lot subdivision; it was all part of the Land Court decision. Discussion again ensued.

Mr. Graham stated at the end of the cul-de-sac, where it is showing Lots 2 & 3 (original decision), which is now Lots 9 & 10, what is the frontage between them. Mr. Boucher stated there is no frontage.

Attorney Quirk stated there is one other matter, there should be in her opinion should this be granted, a condition that final approval by the subsidizing agency has to be given; considering there is a change here; so, a letter would be appropriate from DHCD stating the units would be SHI eligible. Attorney Freeman stated he had no problem with that but his first concern is that there never was a letter of eligibility from MA Housing; he stated he did check with MA Housing and they said to work it out with the Town in the terms of the regulatory agreement. Attorney Quirk stated she was not talking about MA Housing, she was referring to the bank approval and the DHCD-SHI units because the original permit had a provision in it, it had local preference for affordable units and if there were too many units, they would not be eligible for SHI; she would recommend language for local preference shall be provided for the affordable units which is allowable by law and provided the units will still be available for SHI eligibility. Attorney Freeman stated he did not have any problem with that language.

Mr. Coutinho stated that a letter was sent to the Fire Department for the cistern and all the other matters under their purview; his question is that he did not see any response from the Fire Department for approval. Mr. Carrigg stated we did have a meeting but there is no letter yet.

Attorney Quirk recapped tonight's meeting; the plans will be signed and stamped, the plans/exhibits will show the owner(s), the reduction of Parcel C-Meadowbrook Farms and the amount of acreage involved; also, the letter of approval from the Fire Chief. Attorney Freeman stated he had no more to add, except the Board of Health minutes submitted for the twelve lots (Title V system has been officially approved).

Mr. Aguiar, 60 Brookwood Drive stated his and his neighbors main concerns is the quality of life and use of the road for safety. Mr. Aguiar stated at the last meeting there was a lot of dialogue and discussion about the Board writing in their decision no further development of the road, which left the residents leaving the meeting fairly happy. Mr. Aguiar stated what he is hearing tonight, the applicant does not want anything in writing as to no further development of the road causing his radar to go up. Mr. Aguiar stated he is looking at the way the road is designed, it comes right to the edge of the property, which screams for access, which means we could be back in two years taking another bite of the elephant; as for the Brookwood Drive perspective, it seems to keep getting longer and longer, we also have another cul-de-sac with two ears off of that with paper streets that go into the land, so we don't have something in writing, there is the potential of more lots; another concern is use and abuse of the road; what the residents would like to do is to get this a public road again through Town Meeting; the Land Court decision, is predicated their building, if the road goes public again, does that open up this whole thing. Mr. Aguiar asked the Board to please consider the fact that they do not want a super-highway dumping into Central Village and everything should be done to make sure that does not happen.

Mr. Coutinho asked how does the Homeowners Association meld somehow to the cost of the road maintenance, plowing and so forth; it is not fair to use but not contribute; his main concern was not adding traffic to this existing private road; we should try to provide protection of those families. Mr. Coutinho stated if anyone has ever driven up this road, you will see it is not built for traffic. Attorney Quirk stated that if the applicant is not willing to be part of the beginning part, perhaps the Board could beseech the applicant in terms of snow-plowing, so long as they are private; also, there was a discussion prior as to the existing cul-de-sac as to whether it would be staying or will it be going away when connected, normally when you have a subdivision and there is a cul-de-sac, when there is a connection, the cul-de-sac goes away. Attorney Quirk stated she did not recall what the resolution was. Attorney Quirk stated there can be a condition that provides protection and under 40b, it can be brought back to

request a change; remember, a condition is not a deed restriction and a condition can be modified by the Planning Board. Attorney Quirk continued to explain the condition vs. a permanent deed restriction. Mr. Simmons stated that most other Homeowners Associations that he has dealt with usually pay dues to handle maintenance and snow-plowing. Ms. Susan Morse, 64 Brookwood Drive, Treasurer of the Homeowners Association, stated there are dues of \$100/year but not everyone pays because it is not an enforced thing (there are 25 homes-7 did not pay); Mr. Potter plows and charges \$150 each time and it will be more if the road is extended; we barely have enough to cover our expenses with what we have now. Discussion ensued. Mr. Jerry Morse, 64 Brookwood Drive stated that is there is something to deter future expansion, it would solve all these issues. Attorney Freeman stated in response to Attorney Quirk's question, that the cul-de-sac will be staying. Mr. Coutinho asked if the Homeowners Association was a legal entity because you can't force the people to contribute. Mr. Morse stated it is strictly voluntary. Ms. Morse stated it is an association that was formed and we do have a legal document but not in association with the dues. Ms. Morse did note that the cul-de-sac does slow traffic down. Discussion ensued again regarding the Homeowners Association dues. At this time, there is no further discussion or input from the petitioner or abutters. **Motion** made by Mr. Coutinho to continue this hearing to December 23, 2015 @ 7:00 PM in the Town Hall. Second by Mr. Simmons. The Board voted 6 in favor, 1-absent (Salva). The matter is closed at 8:40 PM.

**Approval of Minutes** – None.

**Action Item**

1. **Motion** made by Mr. Coutinho to take no action on a filing by Dennis R. Callen for a variance due to an incomplete application (no filing fee, no denial letter from the Building Inspector, no supporting documents or plans). Second by Mr. Simmons. The Board voted 6 in favor, 1-absent (Salva). It was noted that Mr. Callen was contacted in regards to the improper filing.

**Correspondence** – None.

**Other business** - None.

**Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting** – None.

**8:43 PM**

**Motion** made by Mr. Coutinho to adjourn the Zoning Board of Appeals meeting. Second by Mr. Simmons. The Board voted 6 in favor, 1-absent (Salva).

**Adjournment.**

Respectfully submitted,

\_\_\_\_\_  
Diane Pelland, Principal Clerk to the Zoning Board of Appeals

**APPROVED:** \_\_\_\_\_  
Heather L. Salva, Clerk