

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

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

**Absent:** Donna Lambert

Chairman Graham called the Zoning Board of Appeals meeting to order at 6:45 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.

**Lucy & Quentin Lord - RE: Continuation of an application request for an Administrative Appeal of the Building Commissioners' decision regarding 0 Old Bedford Road, Westport, MA determining the lot to be unbuildable under Zoning Bylaw Article 7.5. The property is shown on Assessor's Map 5, Lot 1M.**

Chairman Graham called the continued hearing to order at 6:55 PM. Applicants present were Lucy & Quentin Lord. Board members hearing the petition were Christopher Graham, Gary Simmons, Larry Kidney, Roger Menard and Gerald Coutinho. Abutters present were: Joseph Miranda, 395 Old Bedford Road.

Mr. Lord presented an original deed from 1995. Mr. Coutinho stated the properties were purchased in 1995 but the important issue now is the merging of the non-conforming lots. Mr. Coutinho stated that a legal opinion was sought from Town Counsel and according to the opinion, the Zoning Board of Appeals does not have legal jurisdiction to vary this. Mr. Coutinho stated he believes that Mr. Souza, Building Commissioner did the right thing.

Mr. Menard stated that according to the classification of the lots on the tax bill; the property was taxed as developable and the other lot as a residence, so it was taxed as a house lot.

Mr. Graham stated per legal counsel, the Zoning Board of Appeals can't override Article 7.5 of the bylaws. Mr. Coutinho stated he was concerned because the Zoning Board of Appeals varies dimensions and use.

Discussion continued regarding what could be done on the lot. Mr. Menard stated the legal opinion now gives the applicant a new avenue to pursue. Attorney Quirk stated she would recommend that the Lord's seek an attorney who has zoning experience if they decide to move forward.

**Closing of Hearing**

**Motion** made by Mr. Coutinho to close the hearing at 7:05 PM. Second by Mr. Simmons. The Board voted unanimously in favor.

**Vote Taken**

**Motion** made by Mr. Coutinho that the Zoning Board of Appeals denies the Administrative Appeal due to the fact that the Building Commissioner made the right decision as it relates to the two non-conforming lots merging. Second by Mr. Simmons. The Board voted unanimously in favor.

7:10 PM

**Brookmeadow Westport, LLC - RE: Continuation of a Determination Request of a Comprehensive Permit for Brookmeadow Estates – Notice of Project Change; revised plans and waivers for a reduction of project from 52 houses to 12 houses. Review of Horsley Witten's Technical Review Report.**

Board members hearing the continued request were Gerald Coutinho, Heather Salva, Christopher Graham, Gary Simmons and Larry Kidney. Also present: Attorney Ilana Quirk-Town Counsel, Janet Bernardo-PE (Horsley Witten Group), Attorney Peter Freeman, Alan Heureux-PE (Boucher & Heureux).

Attorney Freeman stated his client was here requesting approval of an insubstantial change to a Comprehensive Permit; my client agreed to go through a Peer Review and to hopefully work out whatever suggestions were made. Attorney Freeman stated that Mr. Heureux would be reviewing with the consultant, Janet Bernardo.

Mr. Heureux stated since the last meeting, we have not changed the Definitive Plan that shows the lots, metes and bounds of the road, the easement around detention facility and subsurface system, etc. and that plan is dated April 7<sup>th</sup>. The onsite sewage disposal system plan has not changed either and there are no changes required by the Board of Health; this matter is on the BOH Agenda for September 21<sup>st</sup> for approval. This is an onsite shared sewage system and that plan (7 sheets) is dated April 7, 2015. The sheets that did change are the construction plan. Mr. Heureux stated there was a public hearing last night with the Conservation Commission which followed our submitting a Notice of Intent back in June. We asked for a postponement with the Conservation Commission until we heard review comments from Horsley Witten, which we did; so at last night's meeting we addressed those comments which primarily related to the stormwater management facilities. In addressing those comments, we revised the construction plans (3 sheets dated August 10, 2015). Mr. Heureux stated that a point by point response (dated August 26, 2015) to Horsley Witten's comments was rendered by Field Engineering, who Mr. Heureux subcontracted out to for a response to the stormwater management design. The response is filled with technical information for Horsley Witten in response to the revised plans. Mr. Heureux stated in addition, an addendum to the stormwater management report was filed on August 10, 2015. Mr. Heureux stated to this point, those are the record plans. In summarizing, the plans were submitted to the Conservation Commission and the ConCom are sort of looking to the ZBA to take some action; Mr. Heureux stated he did not get any kind of feeling from the ConCom that there was any major problems with the proposal that was submitted; but they have continued the hearing for two weeks to see what the ZBA is going to do. Mr. Heureux stated this plan has also been submitted to the National Heritage and Endangered Species Program under a separate set of regulations, we are working through that process with them. We are not anticipating any changes there either, it is primarily restricting additional land because any acreage is considered a take of primary habitat; we responded by restricting 1.5 times the amount of acreage. Mr. Heureux stated some of the technical responses and changes to Horsley Witten were in regards to basins, infiltration standards, details of the profile of the stormwater management basins, corrected some calculations; these are minor changes from the ZBA's perspective; there have been no changes to the road, lots and things of that sort.

Chairman Graham asked Mr. Heureux if all the concerns of the Town's consultant (Horsley Witten) have been addressed. Mr. Heureux stated he believed so. Mr. Heureux stated the revised plans were submitted just last week.

Mr. Coutinho asked for a clarification that the Board has not voted whether this change is substantial or insubstantial yet; Mr. Graham responded correct. Mr. Coutinho stated he had a basic question in his mind, in the Board's prior approval of this 40b along time ago, was there an approved connection to Brookwood Drive. Mr. Graham stated to his recollection it was not approved; Mr. Coutinho stated that is what he recalled also but wanted to be clear on that point. Mr. Coutinho stated this plan, even though it goes from 52 down to 12, is proposing to make that connection; is there anything being proposed that stops that connection. Mr. Heureux stated we have always been connecting to Brookwood Drive; in the

previous subdivision we were extending a much longer cul-de-sac. Attorney Freeman stated in the previous plan there was an emergency connection but that is gone. Attorney Quirk stated that back in June, the existing Comprehensive Permit which dates to 2003 was for 52 units on 83 acres and now it is going down to 12 units on 24 acres; the issue that we have, and Attorney Quirk stated she has spoke to Attorney Freeman on this, is in order for this Board to act on this plan, the Board needs to see the original 82 acres to be shown and to show where the dividing line is for the 24 acres, which would alleviate any confusion. Attorney Quirk stated the plan is only showing the 24 acres but in order to act, the Board needs jurisdiction over the whole plan. Attorney Freeman stated his client understands that and he did speak with Attorney Quirk about it and apologizes for the oversight. Attorney Freeman stated, if approved, there could be a condition to deliver within 30 days, the original plan to compare with the new acreage. Attorney Freeman stated he would take care of this. Attorney Quirk stated the question is, whether the Board would make a determination before seeing that plan; this will depend on the Board's comfort level. Attorney Quirk stated she wanted to have prepared for the Board a new draft decision because there are many conditions in the existing permit that don't apply to this new proposal; some of those conditions will need to be eliminated. Attorney Quirk stated she will provide the Board with a draft and the same draft will be given to Attorney Freeman so it can be worked through. Chairman Graham asked if a little more could be exposed on the letter dated July 28, 2015 – Request for Extension. Attorney Freeman stated that October is what the current permit was extended to previously, so being where we are with this matter today, he thought it appropriate to send this request now for an extension of the current permit until next October. In addition, Attorney Freeman stated his client is also stating that they are granting an extension of time for a decision. Attorney Freeman stated it is the hope that this will be the last extension request. No action was taken.

Janet Bernardo, PE Horsley Witten group reviewed her report. Ms. Bernardo stated she did a Peer Review of the Brookmeadow project and she understood the Board was looking at a determination of whether this was a substantial or insubstantial change. Ms. Bernardo stated the plan is insubstantial because they have reduced the project but it will not be insubstantial if they come back with a plan to do something with the remaining acres. As far as the technical review, Ms. Bernardo stated they have responded adequately to my technical comments and concerns. Ms. Bernardo stated she had a couple of minor questions, relating to what is in Town regulations, such as any additional stormwater going into the municipal system; Brookwood Drive has a catch basin at the cul-de-sac and a portion of the runoff will be going into it; this is a municipal system; also, she had a concern of anything going out of that system and in response, the applicant has increased a depression area to handle any additional runoff; this led to another question as to whose property the depression is on (it looks like an easement). Ms. Bernardo stated she did not believe the entire property was controlled by the applicant. Ms. Bernardo stated she is interested in the decisions of the Conservation Commission. Ms. Bernardo stated she would encourage erosion controls around the detention basin, which is so close to the wetlands; there is high ground water and handling infiltration and maintenance should be paid attention to especially in the recharge system. The stormwater system is designed with DEP standards. There should be a maintenance program for the wet ponds. Ms. Bernardo stated there will be Homeowners Association who will be maintaining all. Again, Ms. Bernardo stated the proposal was insubstantial but should anything be done with the remaining acreage that would change this proposal to substantial, which is a decision to be made by this Board.

Mr. Coutinho stated we don't have a lot of knowledge with common septic systems in Town, it is not an issue if the engineer feels it is workable; his concern, however, is the infiltration system and even though there is a Homeowner Association, what happens if the homeowners don't contribute and maintain it, what is the enforceability; he did not want the Town getting the bill to have to fix it. Attorney Quirk stated it would be a Title V issue and it would relate to whether there were sufficient reserves in the Homeowner Association account to deal with the problem. Mr. Graham asked if the Town had to do the work, could the Association be charged. Attorney Quirk stated if it is written that way but normally, with a private system on a single family lot, the Board of Health would order the homeowner to do what is necessary; she stated she has never seen a situation where the Town has gone in and done the work; there

may be a condemnation of the property is the work is not done in a timely manner but she stated she has also not seen a failure of a common system in the past but the Homeowner Association documents should be looked at carefully to make sure the wording is in there that it is the homeowner's responsibility to maintain and keep up the system; there should also be some kind of reserve in place. Ms. Bernardo stated that a stormwater system is above ground and if it fails, it will go into the wetlands and it then becomes a Conservation issue and will go against the Homeowner Association; if it is septic system problem, the Board of Health will have to monitor it. Discussion ensued regarding failed systems. Mr. Menard asked if someone could point out the changes on the plan. Attorney Freeman stated this was addressed at the first meeting; this is a reduction of impact to the neighborhood; the overall impact is insubstantial with everything being reduced so much. Mr. Heureux stated there was a proposal of 52 lots, with each lot being a 1/2 to 3/4 acres, etc., now the proposal is for 12 lots, with each lot consisting of 10,000 to 12,000 sq.ft. and each having their own well and one has their own primary and treatment septic tank which are over and above Title V and which will be required to be pumped every two years; the road has been shorten to 800 ft. Mr. Heureux explained the septic system to be used, stating there will be less disturbance on the lots. Mr. Heureux stated these are smaller lots and less clearing is needed; these systems do not have to be raised and are aesthetic to the eye.

Mr. Graham asked what the use of the remaining acreage would be. Attorney Freeman stated his client is not seeking development of that land, even though it is a possibility that it could be developed; the remaining land would fall under the Town's laws, if anything, it would be subject to any future approvals. Attorney Freeman stated his client is not willing to agree to any conditions or restrictions on the remaining land for future development. Attorney Quirk stated the difficulty with DHCD regulations that the Board works under, is that you have to make the determination of insubstantial or substantial within 20 days of receipt of that application, which is nearly impossible and most of the ones she has dealt in the past have resulted in a public hearing. Attorney Quirk stated that over time, we have developed a procedure where the applicant agrees to extend the 20-day deadline to allow sufficient time to have a Peer Review, look at the issues and then based on the facts, make a determination. Attorney Quirk state the Peer Review has been done and the applicant is willing to provide the bigger picture (the plan) and they are agreeable to amending the original decision; her recommendation would be to continue this so the plan can be reviewed and the amended decision, after it has gone back and forth with the applicant can be reviewed also; unless the Board feels they can make a determination tonight.

Attorney Quirk then explained that what the procedure would be if the Board determined this to be a substantial change – a public hearing would be noticed and opened within 30 days of that determination. Mr. Coutinho stated what we are really doing is allowing the abutters and neighbors an opportunity to address the issues and ask questions; on the surface when you go from 52 to 12, it seems like a great thing but we find other things that could be affected and one of those things is what will happen to the rest of the property, which could be potentially developed and cause an overburdening in neighborhoods; also we get a decent view of the connection or lack of connection to the private road that comes out. Mr. Coutinho stated he felt it was important to understand what effect it would have on the neighbors. Mr. Coutinho stated what they are proposing within is not so much what he is concerned about, as to what the impact will be now and in the future. Attorney Freeman stated what is being proposed is what can be addressed only; what his client has requested is modification to an existing permit. It is not proper under the regulations to restrict what is not being proposed; there are no plans waiting and there are no present plans ready to be pulled out; there is no potential connection to Brookwood Drive; Land Court determined the property as being developable and there is an easement to go over a certain portion of Brookwood Drive which is still public. Mr. Carrigg explained the plan showing Brookwood Drive and where he will be developing; Mr. Carrigg stated that Land Court determined that the easement dating back to the 1800's allows us to access the portion of land they own. Attorney Quirk stated the Board needed to confine themselves to the modification, however, part of the modification concerns the remaining 50 acres; the confusion resulting is that the larger plan is needed; the Board may be able to restrict this area by saying any plans would need to come back to the Board; the area you have some control over would be the section of Brookwood Drive, it is an 800 ft. cul-de-sac with a narrower width

than you normally see, certainly it would not be unusual to have a condition imposed on that, that no other lots would be allowed to access it or use it as frontage; or at least to say there shall be no further connection to it because of the narrowness of it without coming back to the Board. Attorney Quirk again stated that the bigger plan was needed to show how this all interacts. Mr. Coutinho questioned whether restrictions/conditions would require a hearing. Attorney Quirk stated it is possible to amend the permit with an agreement by the applicant, when an insubstantial change is done.

Attorney Freeman stated at this point, his client would like a public hearing and to be allowed to hear from the abutters, so he is respectfully requesting on behalf of his client for a public hearing to be held. Attorney Freeman stated his client is willing to pay for the newspaper advertisement and abutters list, etc. The abutters will be notified by the ZBA. Mr. Simmons asked about the remaining lot; is there any other way to access the back property. Mr. Carrigg stated no, it is landlocked and he has no answer for the remaining land as to what he will do with it; right now, he does not have any answer; he has been approached by abutters, asking if he was interested in buying but right now, the only thing he can say he is going to do, is the proposal before the ZBA.

Stephen Soares, 76 Brookwood Drive stated he owns the house at the cul-de-sac; this project has been trying to be done for 14 years; he was speaking for the majority of his neighbors, they would like the opportunity to speak on this project; we appreciate the fact that it is going from 52 to 12 houses but Attorney Freeman stated this is an improvement, this is not an improvement for Brookwood Drive, which is a private way from Main Road to the cul-de-sac; we have a Homeowner Association that maintains that road for plowing and paving, etc. Mr. Soares asked if there has been any involvement with the Fire Department – Mr. Graham stated yes. Mr. Soares asked what is the percent of houses with a 12-house 40b - Attorney Quirk stated it must be 25% affordable. Mr. Soares stated with 12 houses, you can have 24 vehicles, with the possibility of making 48 trips a day, who will maintain the road – Mr. Graham stated the original application had a road study done for 52 houses and the road was found adequate for the original 52, so the reduction should be that much less. Attorney Quirk stated at the public hearing, there may be discussion regarding the existing cul-de-sac. Mr. Soares stated that all abutters, according to his understanding, own to the center; and the last thing is the stormwater depression. Mr. Soares stated there is an existing culvert which tops off from existing water and runoff, rain, etc., what will happen when 12 new homes are put in, does my cellar and my neighbor's flood. Mr. Soares stated he credits Attorney Freeman for wanting a public hearing, all he would like is fairness to those who live there. Mr. Heureux clarified the depression and culvert and drainage easement. Mr. Heureux stated that three years ago, this went to the Planning Board and was an approved definitive subdivision, which eliminated the cul-de-sacs to build five houses on already approved lots; this has not begun to be developed. Discussion ensued regarding what will be needed if the Board decides that a full-blown public hearing should happen. Ms. Bernardo asked if the Board wanted to review the big plan, which was originally approved also. Mr. Coutinho stated yes, take a look at the full plan to see if there is any cautions the Board should look at; one of his main concerns was the additional traffic. Discussion ensued regarding the guidance they would be look to the engineer for. Ms. Bernardo stated she was not sure if there was anything else that she could contribute. Mr. Coutinho stated we are only going to be looking at the new 12 lots. Ms. Bernardo stated that technically, this new plan works, it stands alone. Ms. Bernardo stated that if the Board thinks of anything, just forward it to her with the concern; and she will also look at the new plan once again and alert the Board if anything triggers her.

**Motion** made by Mr. Coutinho that the Board has determined the proposal is substantial change that requires a public hearing with the applicant assenting to the determination. Second by Mr. Simmons. The Board voted unanimously in favor. **Motion** made by Mr. Menard to hold the public hearing on Wednesday, September 23, 2015 at 7:00 PM. Second by Mr. Simmons. The Board voted unanimously in favor. The public hearing will be advertised on the 8<sup>th</sup> (Standard Times) and 15<sup>th</sup> (Chronicle). This matter is closed at 8:30 PM.

**Approval of Minutes** – None.

**Action Item**

1. **Motion** made by Mr. Simmons to approve the bill voucher for Horsley & Witten in the amount of \$810.00. Second by Mr. Menard. The Board voted unanimously in favor.

**Correspondence**

1. The letter of Stephen J. Soares was addressed during the Brookmeadow discussion.
2. The request for extension from Brookmeadow will be addressed at the next hearing.

**Other business**

1. The Board has received an application from Edward Howe for an Administrative Appeal. The date of this public hearing will be Wednesday, October 14, 2015 at 7:00 PM.

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

**Motion** made by Ms. Salva to adjourn the Zoning Board of Appeals meeting at 8:45 PM. Second by Mr. Simmons. The Board voted unanimously in favor.

**Adjournment.**

Respectfully submitted,

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Diane Pelland, Principal Clerk to the Zoning Board of Appeals

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