



ZONING BOARD OF APPEALS

Public Hearing

2 Fairgrounds Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Commissioners: Ed Toole (Chair), Lisa Botticelli (Vice chair), Susan McCarthy (Clerk), Michael J. O'Mara, Kerim Koseatac
Alternates: Mark Poor, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Tuesday, March 26, 2019

4 Fairgrounds Road, Public Safety Facility Community Room – 4:30 p.m.

Called to order at 4:40 p.m. and Announcements made.

Staff in attendance: Eleanor Antonietti, Zoning Administrator;
Attending Members: Toole, Botticelli, McCarthy, Koseatac, Thayer, Mondani
Absent: O'Mara, Poor
Town Representative: Ed Marchant, Chapter 40B Advisor; George Pucci, K&P Law, P.C.

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

1. March 11, 2019: **Motion to Approve.** (made by: Botticelli) (seconded by: Thayer) Carried unanimously

II. OTHER BUSINESS

Consideration and possible vote on issues involving Applicant's counsel in Surfside Crossing 40B application and in pending appeals with the Housing Appeals Committee (Department of Housing and Community Development) relating to Beach Plum Village 40B and Rugged Scott, LLC.

Voting Toole, McCarthy, Botticelli, Koseatac
Alternates Poor, Thayer, Mondani
Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Discussion **Toole** – Counsel for the applicant, Peter Freeman, has withdrawn. Asked if there were any questions or comments. Mr. Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP is now representing the applicant.
Motion **No action taken.**
Vote N/A

III. OLD BUSINESS

20-18 Surfside Crossing, LLC Surfside Crossing 40B Freeman / Reade
ORIGINAL APPLICATION: The Applicant is seeking a Comprehensive Permit in accordance with M.G.L. Chapter 40B, pursuant to a project eligibility letter issued by MassHousing, in order to allow a multi-family project consisting of 156 for-sale dwelling units comprised of 60 stand-alone single-family cottages on fee simple lots and 96 condominium units in 6 multi-family buildings, with 25% (39 units, 15 cottages and 24 condominium units) designated as affordable units, with a total of 389 bedrooms. The existing lots will be subdivided into 60 fee simple lots, 4 open space lots, and a 3.6-acre condominium lot. Off-street parking will consist of 2 spaces per cottage and 148 spaces designated for the condominiums. Infrastructure and amenities will be provided; however, the proposed project is proposed to connect to municipal water and sewer infrastructure.

MODIFIED PROPOSAL under consideration: The Applicant is seeking a Comprehensive Permit in accordance with M.G.L. Chapter 40B, pursuant to a project eligibility letter issued by MassHousing, in order to allow a multi-family project consisting of 100 for-sale dwelling units comprised of 40 standalone single-family cottages on fee simple lots and 60 condominium units in 5 multi-family buildings, with 25% (25 units, 10 cottages and 15 condominium units) designated as affordable units, with a total of 285 bedrooms. The existing lots will be subdivided into 40 fee simple lots, a 3.3-acre condominium lot, a 0.5-acre community lot, and 2.8 acres of open space lots. A total of 244 parking spaces will be provide consisting of 80 off-street parking spaces (2 per cottage), 124 spaces for the condominiums, 20 spaces for the recreational community building, and 20 overflow-on-street spaces. Infrastructure and amenities will be provided; however, the proposed project is designed to connect to municipal water and sewer infrastructure.

The application and supporting materials are available for public review at the Zoning Board of Appeals office at 2 Fairgrounds Road between the hours of 7:30 A.M. and 4:30 P.M., Monday through Friday. The Locus is situated at 3, 5, 7 and 9 South Shore Road and is shown on Assessor's Map 67 as Parcels 336, 336.9, 336.8, and 336.7 and is shown as Lots 4, 3, 2, and 1 on Plan Book 25, Page 50 as recorded at the Nantucket Registry of Deeds. The total lot area of the combined parcels is approximately 13.5 acres. Evidence of owner's title is recorded in Book 1612, Page 62 at the Nantucket Registry of Deeds. The property is located in a Limited Use General 2 (LUG-2) and within the Public Wellhead Recharge District.

Voting Toole, Botticelli, McCarthy, Koseatac, Mondani
Alternates Thayer
Documentation PowerPoint® presentation, and 40B Comprehensive Permit application documentation.

- Representing Don Bracken, Bracken Engineering, Inc.
Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Marianne Hanley, Reade, Gullicksen, Hanley, & Gifford LLP
Jamie Feeley, Cottage & Castle, Proponent
- Public Bruce Perry, 14 South Shore Road
Cormac Collier, Nantucket Land Council
Patrick Taaffe, 21 Okorwaw Drive
Ron Bamber, 28 Washing Pond Road
Linda Derensis, Nantucket Tipping Point
Joan Stockman, 13 Wherowhero Lane
- Discussion **Reade** – Since the last meeting, the applicant has submitted various information including: a memorandum stating that the applicant feels this matter is ready to be closed at today’s meeting; a stormwater analysis in response to comments from John Chessia, Chessia Consultant Services, LLC; memorandum from counsel relating to housing issues restricting the condo units to year-round Island residents.
Toole – Asked which plan will be reviewed tonight.
Bracken – We will be discussing the last official set of engineering plans submitted October 25, 2018; this is the 100-unit proposal.
Toole – The memo states the applicant wants the ZBA to vote on the 156-unit proposal; then we received a packet base on the 100-unit proposal. He’s disappointed because he thought we were getting close to an agreement on the 100-unit plan.
Reade – The 156-unit plan has always been before you. The 100-unit plan is an alternative that would be acceptable to both parties. You can take any action on either proposal that the Board wants to do within its jurisdiction.
Botticelli – The 156-unit plan is the one with the condos close to the road.
Toole – Read the memorandum asking for a decision on the original proposal. Then we get all this information on the 100 units. Being asked to vote on the 156-unit proposal feels like a waste of one year of my life.
Reade – There are two plans before the ZBA: the original and an alternative.
Pucci – Asked why we aren’t working up the 92-unit plan that was result of the workshop.
Feeley – There was still a lot that was requested which we felt we couldn’t do so didn’t develop it further. The two plans – 156 units & 100 units – we have submitted sufficient information for the Board to make a decision. Any other concept plans submitted along the way can also be considered in the decision.
Koseatac – Asked Mr. Pucci if it is common practice for an applicant to have multiple plans on which the ZBA is to make a decision.
Pucci – No, he’s surprised. It isn’t unusual for a developer to keep the original plan on the table for a potential appeal. If you go through the process this Board has gone through in good faith, including the design workshop, and end up with plan to work off, it doesn’t make sense to ping-pong back and forth. It would make sense to work off the 92-unit plan which came out of the workshop and everyone worked on in good faith to come up with a palatable design. The other problem is now the Board is left with a situation to discuss waiver requests; if you’re precluded from working off the 92-unit plan, you need to now discuss that in the context of the 100-unit plan. Another issue is sewer; there is no way of completing the process in good faith if you’re left unclear which plan is being dealt with. Weston and Sampson, the Town’s sewer consultant, is confused which plan they are working off; what review they are supposed to do; they need to complete a technical analysis and get their recommendation back so the ZBA can act as the sewer commission within the 40B process. He would urge the applicant to engage in a more realistic, good-faith process: work up a plan that came out of the design workshop and identify remaining issues that need to be reviewed and considered by the Board. The ZBA can’t do that with the applicant insisting the hearing be closed tonight. You need a commitment from the applicant about which plan they are working on, their willingness to work with the Board, and then the Board can discuss waivers on that specific plan. Then the Board can decide to approve or deny the application.
Marchant – He has worked on more than 150 40B projects representing both sides. He has never worked on a project where the applicant is requesting the hearing be closed without an agreement on which plan is to be reviewed. It is impossible to think about waivers; it’s a waste of time. He too is disappointed having been involved in the design workshop that worked very hard to evolve a plan that was better for everyone.
Toole – He agrees; he thought were getting close to a win-win plan, and then we get this.
McCarthy – She agrees with Mr. Toole.
Mondani – This past year has been bad faith; this move is bad faith. We’ve been going down this road in good faith and suddenly we are called on to decide on the plans from last April; that is bad faith and he will go on the record saying that.
Thayer – He thought with the 92-unit plan we were close; if the applicant came back with some concession on that plan, he could have supported it.
Koseatac – He agrees with Mr. Mondani. He feels he’s wasted a year and everyone in the room has been slapped in the face.

Toole – We thought we were close to a resolution and wrapping this up, then we get this letter asking us to issue a decision on the original proposal. Read the final sentence of the letter. He doesn't see how they can hope the "difficult process" will result in a plan we "both like" if you want us to close the hearing.

Reade – The 100-unit plan is the one we are prepared to go forward on and we want the hearing closed tonight.

Toole – We have an extension to April 4th so we could meet again whether or not you want to close tonight.

McCarthy – Now we have to do all the work we've been doing in one night. It feels like we are reinventing the wheel as we are meeting. Every meeting has been completely confusing; there has been no clear path; we've been trying to push the path forward. Reading the memo is a slap in the face. At the end of the last hearing, she thought we would get a plan that we could all agree on. You want us to close the hearing and accept the 100-unit plan with no concessions; that isn't working the process.

Reade – You can put on any comments and conditions you want if they are acceptable to us.

McCarthy – You have already said it won't be; you've said it is acceptable as submitted.

Toole – The conditions on the 100-unit plan won't make it uneconomical. In the letter, it states that the 92-unit plan would "undermine the project's economic feasibility"; asked if that is a statement saying we are making it uneconomic and therefore we can review the economics of the project.

Pucci – The statement is vague. Conditions imposed on the project that might not be consistent with the applicant's concept isn't the same as rendering a project uneconomic. The language might be specifically vague, so they don't have to submit economic *pro forma*. You need clarity from the applicant on what they are arguing. Also, it's a complete sham to say the hearing will be closed tonight; because if you are imposing conditions that are uneconomic, there needs to be at least one hearing for them to prove that. If they don't, there's nothing to appeal; the Housing Appeals Committee (HAC) doesn't have jurisdiction to talk about the economics of the project until the applicant is specific. Suggested a short recess to talk to the applicant about how they actually want to proceed or work off the 92-unit plan that came out of the workshop; the ZBA has the jurisdiction over the site plan issues. Determine what further information you need for that site plan to render a decision, do as much as possible tonight, and be geared up for another hearing to be in a position to render a decision at that time.

Marchant – If the applicant cites conditions that they believe makes the project uneconomic and the ZBA disagrees, the ZBA exercises its right for a financial peer review. Based upon that review, the ZBA makes a decision on adjusting the conditions accordingly. The difficulty is timing; once the hearing is closed, you can't accept further information. The crucial issue is a plan that is acceptable. He expected the applicant to come back with a list of conditions that they could accept and, in the spirit of fair play, come up with a plan.

Toole – Asked for clarification on the notion of making a project uneconomic.

Marchant – Under the 40B process, the applicant gets benefits in exchange for meeting certain requirements. 40B limits the profit an applicant can make on the project to 20%, but HAC has issued decisions that say anything below 15% is considered uneconomic. The applicant and the builder, one and the same in this case, are allowed to make a profit.

Toole – The second part of this is that the applicant has said the project is infeasible because they also want to provide for a specific market; there's a difference between uneconomic and infeasible. Do we have to care about "infeasible" if the developer isn't make as much money as they wish?

Marchant – He thinks providing housing for year-round residents is terrific. What concerns him about the program is: 1) a year-round resident is defined as someone who lives on Island for at least 182 days and isn't restricted for Island residents; 2) there's no income restriction; and 3) there's no teeth to make it work.

Toole – There is this piece putting a lot of pressure on everything; how do we get by that.

Pucci – If your design review indicates the site is overburdened, the fact that you might cut down on the amount of or limit the concept of year-round housing isn't jurisdictional for 40B; those aren't affordable units and not the reason the ZBA has jurisdiction over this project. If the applicant had been acting in good-faith about their year-round housing, that would be an important point of discussion about the least number of year-round housing they could accept. Either eliminating the concept or reducing the number of year-round housing doesn't give them the right of appeal. Changing the concept is not the same as rendering uneconomic. You can impose conditions that are reasonable and that don't render it uneconomic.

Toole – The concept is laudable but puts pressure on every part of this project. He doesn't think the intention is enough for us to approve 100-foot long buildings, impervious surfaces everywhere, and underground units. It should be on a smaller scale to prove that the concept works. Asked the applicant to reconsider the notion of closing the hearing and continuing the dialogue.

Feeley – His understanding is that the ZBA can consider any concept plan submitted along the way. The first 100-unit plan was submitted October 3, 2018; that's six months ago. Since then, we've submitted many iterations that for us meets the minimum criteria to satisfy their mission. He believes they have operated in good faith throughout this project; we came up with a plan that we thought put our best foot forward, but we can't reduce it further. There's been this tug of war between density and our desire to create a middle-income community.

Toole – Asked if it is an undue burden to reduce that component a bit and get to a mutually acceptable plan.

Feeley – We can't reduce it. As far as the design itself, we've show incredible flexibility. He doesn't think there is undue pressure on the lot.

- Toole** – At present, the 92-unit plan is 20 bedrooms an acre; that is significantly higher than any place here. Ticcoma Green is a work-force rental housing that all counts against the Subsidized Housing Inventory (SHI).
- Botticelli** – Richmond isn't a 40B.
- Feeley** – This level of density does exist and addresses affordable housing and middle-income housing.
- Pucci** – Recommends the Board start working off the 92-unit plan and conduct the hearing the way it should. If the applicant isn't satisfied, they can appeal after the hearing is closed at the next meeting. Start working off the plan the applicant agrees was developed in good faith. When we start working on issues such as sewer where Town consultants are providing feedback, present a plan that is being recommended off the plan the board will vote on. You need to get into a public hearing on the waivers being requested.
- Toole** – The waiver list refers to the 100-unit plan.
- Pucci** – Go under the latest waiver requests submitted and what would be needed under the 92-unit plan as identified by the applicant.
- Bracken** – There was discussion about tying into a 6-inch or 12-inch main; we wanted a sewer consultant to put together a design plan to use one of those mains but never received a response as to which main until March 25, 2019. He has looked at it but doesn't think it is the all the information we need; we need more information to finalize a sewer design.
- Thayer** – In his opinion, there is no other option than to pump sewage directly to the Surfside plant.
- Bracken** – Another option discussed is to tie into the 12-inch main that takes sewage from Monomoy Pump Station; we need to investigate if that is viable. We don't know what lines to design for. Another option is to store sewage on site to be pumped during off hours.
- Pucci** – On January 25, 2019, Weston and Sampson gave an analysis, which he produced to the applicant's attorney. That is consistent with Mr. Thayer's comments about what is a viable option and is consistent with Town planning. The Sewer Department has made it very clear that what the applicant is talking about is not a viable option. One viable issue in terms of HAC is the Town's pre-existing long-term planning commitment, this information was provided to the applicant; if they chose not to go with that, the ZBA acting as the sewer commission can impose conditions against which they can chose to litigate or not. There is no missing information or delay in responding; there is a design recommendation.
- Toole** – Can we go so far as to require a gravity line be installed to the pump from this development.
- Pucci** – You're first requirement is if that is a reasonable condition; it is based upon the technical review by Weston and Sampson. If the applicant says that renders the project uneconomic, that is a legitimate economic argument.
- Toole** – He's not sure we need to discuss sewer tonight.
- Bracken** – He would like to have the technical information supporting the Weston and Sampson recommendation to provide to their consultant. The original plan showed a force main going all the way to the Surfside plant.
- B.Perry** – His objection is the ZBA is designing the project for the developer; it is up to the developer to propose a project to be conditioned. He thinks for the ZBA to spend time on the 92-unit plan the developer has said they don't want to do is a waste of time.
- Marchant** – The applicant said they would go with it.
- Toole** – They did submit it which indicates it works for the them as long as our conditions don't render it uneconomic. Unfortunately, there is a large body of material that has not been made available.
- Mondani** – The biggest issue is the condo buildings; he would prefer to see them reduced. Consensus agrees about cutting the number of 4-module condo buildings down to eight buildings and the appropriateness of design and landscaping.
- Toole** – He would like to see the single-family homes changed down to 40 or up; though he prefers the 40. He thinks they'd be worth more if there were breathing room.
- Botticelli** – Parking was never shown so it was hard to get a sense of how they would work together. Some lots could get wider and some narrower; she had hoped to see this plan more developed. A reduction down to 40 would be nice. Larger lots allow for more amenities.
- Toole** – A condition on tiny lots could be no spas. Asked about the cost of the duplexes.
- Feeley** – He thinks all the lots are all 5,000 square feet (SF). Somewhere around \$1M to \$1.5M each unit.
- Toole** – You can make money, fulfill the 40B requirement, provide year-round housing, and have a project everyone could agree is acceptable and be proud of. He wants to see the argument that it is uneconomic.
- Mondani** – He would prefer more green space, a rain garden, etc.
- Toole** – Under-burdening the site would be a better design objective.
- Botticelli** – We need a new plan showing affordable housing, parking, sheds.
- Toole** – We talked about parking briefly; thinks they can meet the parking requirement: 2 per house, 3 on the duplexes, and 0.75 per bedroom on the condos. There's enough room with the reduction of units.
- Mondani** – He thought there were concerns about parking for the 5 houses along the front road.
- Toole** – You can have a mixture of tandem parking and side-by-side parking.
- Botticelli** – There was talk about one of the streets becoming a 2-way street; right now, it's all one way.
- Toole** – What we've described provides for adequate space for parking, outdoor space, sheds. All we can do is ask the applicant to provide more information on this 92-unit plan.
- Feeley** – We are not going to make further revisions to this plan if it means changing the program.

Botticelli – We need a plan that shows all the information if we are going to make a determination.

Toole – If you provide a plan with all the information and make a case it is a great plan, we would still have the right to condition it; that condition might be not all these big buildings. We can get behind the concept of this plan; but there are specifics that need to be worked out.

McCarthy – That’s where we were at the last meeting.

Thayer – He doesn’t see a need for 60-foot frontage for every lot; some lots will be small lots.

Botticelli – You still need to show parking in relation to the building.

Toole – Looking at the 100-unit plan; this shows setbacks and parking details that we want to see on the 92-unit plan. Some say we’re stuck on the numbers and the applicant is stuck on number; he thinks the 92-unit plan will be economic and will be a better product for the Island and residents living there.

Feeley – What he’s hearing is adjust the cottages, reduce the number of units from 92 to 80... He thinks in that scenario, we should close the hearing.

Toole – We are going to vote on the 92-unit plan. We could look at the notion of a straight up denial based on the lack of information; we don’t have sufficient information to make an informed decision.

Marchant – The more orderly process is to ask for more details on the 92-unit plan. We might not reach an agreement on 80 versus 92 but could make an informed decision and craft conditions. The discussion about if those conditions make the project uneconomic would happen at HAC.

Toole – A well thought-out decision is better for everyone.

Reade – We think you should act on the 100-unit plan which has adequate information and is our preferred plan.

Botticelli – We don’t have adequate plans; we don’t have architectural drawings of the large structures; don’t have a complete landscape plan; affordable units are marked on the plan; we don’t have the layout for the single-family units: types A, B, & C. We have so many drawings in front of us; we need one complete set.

Toole – We did not get a complete set and it hasn’t been clear what we’re supposed to vote on: 156 units, 100 units, 92 units. It is a disservice to the Board to give us a bunch of unrelated stuff. If you want us to vote on 100-unit submission tonight, every bit of information should be there; we still don’t know what the rec building will look like, we don’t know where the Affordable units are,

Feeley – In the memo we referred to March 11 that included an index of everything that has been submitted and what was to be submitted; this is a supplement of that information. Asserts they have all the information. Where market versus affordable units has been submitted in the past.

Botticelli – To expect us to find all the information in a huge stack of information is unfair to the Board. It would have been appreciated if all the information had been submitted. Last week we were trying to get the information we need on the 92-unit plan; we were hoping to see that this week.

Toole – We want a single complete package that starts with the 92-unit plan and provides all the information we need.

Marchant – We are moving backward if you need to write a decision; the weaknesses of the 100-unit plan have been discussed. If time is important to all, it will save time for them to provide information needed on the 92-unit plan even if you can’t reduce the number of units; have the board draft a decision and fight it out at HAC. It doesn’t make sense to make the Board make a decision on the 100-unit plan. In terms of where parking is, that’s not a big deal.

Toole – This 100-unit plan has been floated around for a while. Asked if the engineering has been started.

Bracken – No.

Toole – In your opinion, can you fulfil the engineering requirements with this plan.

Bracken – We can handle that. The geometry of the roadways and entries, we have to do some analysis.

Collier – A Nantucket Land Council area of focus is water quality and we hired a peer review; we’ve not received a response from the applicant on our report submitted in December. If the applicant is going to make a stormwater design based upon this plan and the applicant is going to push for closing on April 4, the process is a disservice to the public and NLC because we can’t comment on that plan.

Bracken – By April 4, all we could do is to layover the existing plan over this plan.

Toole – That is why we thought that would be ready for this meeting and ideally another extension. He thought we were getting close on the site plan. We like the 92-unit plan though there seems to be some disagreement on specifics.

McCarthy – We are wasting everyone’s time asking for information again, which we asked for at the last hearing.

Feeley – It has been a year. At the last hearing, we indicated we would analyze your thoughts and might or might not come back with a revised plan. Before the workshop started, we stated we were willing to give it a shot.

Botticelli – But you were comfortable with the 92-unit plan, otherwise why propose it.

Feeley – Thematically, we have deleted condo units but would have to add more cottages. If the duplex lots were single-family lots, that would be 88 units.

Toole – Asked if the Board could craft a comprehensive permit based on what information they have.

Pucci – He doesn’t think so; he doesn’t understand the argument about not providing further information on the 92-unit plan. If the applicant doesn’t complete the engineering, you don’t know this is the bottom-line plan. You have people on board with the 92-unit site plan so should flesh it out to prove it all fits and works. An unfortunate fall back, if you insist on going forward with a plan with sufficient detail, the 100-unit plan, the move forward on it; that would be unfortunate.

Marchant – The only alternative here that makes any sense is to present the 92-unit plan with the information and waivers required on that plan; that will save time. In the future, it will allow you to draft a decision more efficiently. If this ends up at HAC, we have a good base to begin with. You don't have to draft a decision on a plan you really don't like. You like the basic structure of the 92-unit plan; he doesn't understand why the applicant won't work with you on it. The Board should tell them right now what additional information you need to see and do a decision on this plan.

Koseatac – Asked if HAC would require the basis for the denial.

Marchant – There's a distinction between denying the permit and granting the permit with conditions. You might approve this plan with conditions; instead of arguing here, the applicant makes the argument at HAC.

Pucci – If the applicant agrees to provide this plan with sufficient information to act on the plan and waivers, go forward on that. If they refuse, the option is to go forward on the 100-unit plan, identify what information you have and what is needed to make a decision on that. His experience with HAC, denials for lack of sufficient information puts HAC in the position of being the permitting authority and they usually rule in favor of the applicant.

Feeley – The 92-unit plan is not our favorite; we looked at it as a good-faith plan to come to agreement. We prefer the 100-unit plan, which meets our target. We think the 92-unit plan is reducing the project to below what we think is viable. If we can all get behind the 92-unit plan, tell us what we need.

Toole – There is consensus to speak to the 92-unit plan; we need to see a reasonable level of information to see it all works. We can't get totally behind it without all the information. We need: architectural plans for all buildings; explanation of exterior building materials: unit square footage for all homes and units; parking; identification of affordable units; floor plans with room dimensions, confirmation that building designs satisfy building code requirements; which buildings have sprinklers systems; table showing allocation of affordable units for each condo and cottages; a table showing percentage of total habitable square footage; engineering plans, i.e. sewer, water, and drainage.

Feeley – Stamped architectural plans is beyond what's required.

Antonietti – Read the posted Town of Nantucket comprehensive permit requirements for architectural plans which require the architects stamp.

Toole – We need a narrative explanation along with graphics clarifying proposed patios and terraces; landscape plans for all structures and the overall site and the buffer areas; storage shed elevation; reasonable accessibility accommodations; outline building specifications explaining differences in equipment and appliances between market and affordable units; updated recreation building drawings; governance documents; explanation who is responsible for sewer privilege fees for affordable units; waivers needed for the 92-unit plan; and trash, lighting, etc.

Taaffe – About the 92-unit plan, he is sensing an unwillingness from the developers to present anything regarding the 92-units. He feels they were going through the motions, so they could tell the HAC they tried to work with the ZBA.

Feeley – He went to the workshop in good faith to find common ground with the Board. As a result of the workshops, we ended up with 92-units; that is our threshold. The 88-unit plan is a different design that changes the 4-module condos to single family or duplex. The difference between the 88 and 92 is those duplexes. Explained the proposed price points for the various marketable units.

Toole – If the applicant does plans based on the minimum they feel they can do, at least we have the information to make an informed decision. Asked if they are going to do new plans for the 92 units.

Feeley – Our intention was to close today. If the Board wants to schedule another meeting between now and April 4 based upon the 92-unit plan, he thinks it's worth scheduling another meeting.

Toole – He's good with saying the Board likes the concept of the 92-unit plan; we want the information.

McCarthy – Questions whether or not this board would be able to close at the next hearing if they haven't had the opportunity to discuss the plans. She doesn't think that provides the Board enough time to review the information.

Pucci – Once it's worked about among Don Bracken and David Gray and Weston and Sampson, the Board will need time to discuss any issues. You are being faced with an impossible time frame; several things need to happen: need an answer if they are going to provide sufficient information on 92-unit plan and contemplate at least another hearing session within the current timeline and that all information on the 100-unit plan is provided so that if the Board is forced, you can make a decision. There is a recommendation in the January proposal for a gravity line.

Mondani – We were lulled into thinking we were moving forward and suddenly we are jammed up with making a decision within two weeks; to him that is bad faith.

McCarthy – She can't understand why it has been so hard to get the necessary information on the project.

Toole – The critical issue has been the site plan because we had not come to a consensus. There is a consensus that the concept of the 92-unit plan is something we want to proceed with.

Feeley – This has been coming for a while, can we agree on a program; the answer continues to be we aren't quite there yet. The term good faith keeps coming up; regarding the septic, Mr. Bracken and I met with David Gray and Weston and Sampson and were told we could run a force main; we have planned on that. We just got an email that acknowledges we were told a force main was viable. We've been trying to get answers for a long time on sewer.

Pucci – The January 25, 2019 proposal from Weston and Sampson is for a gravity main, which is consistent with Town Planning. That has been provided and it is time for them to respond to that; you will need public hearing time to allow the Board to address issues and the applicant to respond to Weston and Sampson's proposal. Weston and Sampson sent an itemized list of information they need on the latest proposal. If they are not going to agree to provide requisite

information on the 92-unit plan, get on the record now that whatever information is needed on the 100-unit plan is provided and the Board should be ready to act on it if April 4 remains the closing date.

McCarthy – You want us to agree on the 92-unit and we are willing to get behind the concept, but we can't make a decision on the program without the information. At the last meeting, we thought we were working with the 92-unit plan.

Feeley – Our goal from the beginning has been to work with the board but this has been a long time.

Botticelli – We have asked for longer extensions, but we only got a little bit at a time like 2-weeks at a time.

Toole – Some extensions have been unrealistic in that no one could put the information together in that time. We must have the information. We aren't trying to elongate the process, we want the information on a reasonable site plan to be able to move forward.

Thayer – He feels the applicant has a program they have stuck with; they been unwilling to listen to what the Board and the public wants. The buildings proposed are too big for this site, for this Island, at this time. The applicant could make the 92-unit plan happen in a minute by reducing the year-round units.

Bamber – He has asked that with the 154 lots on file that are paying taxes, if this project would go ahead of those people if there isn't enough room in the sewer treatment plant. The landfill is contaminating wells and sludge is being trucked to the landfill. Approving this will destroy this Island.

L.Derensis – At the last hearing, she read the letter that ZBA had been asking for from the Applicants' lawyer and found a few things in it that were troubling to her; the letter states that there is no way to back up a guarantee for middle income. If they really want to help the middle income, they could make the affordable units 50%. When she hears about the proposed price points, she can't understand how a duplex could be worth \$2M and the cottages \$2.5M and yet they claim they can't make any money. The property was purchased for \$4M; if they stuck with what was legally allowed to go in there, they would make an enormous profit. Asked to see the financials.

Toole – The way the 40B law is written, the applicant doesn't need to show their financials until there is a condition they feel makes it uneconomic. That should be done during the public hearing, but we don't have time. He finds it difficult to assimilate all the permutations we've looked at. Going down this road is a mistake; they are going to alienate the community and be tied up possibly for years in some process. He thinks it's wiser to come up with a program that is more agreeable.

McCarthy – We have said repeatedly in different ways we can get behind this plan, but we need information with which to make a decision. If the applicant doesn't like that decision, they can appeal it.

Feeley – The intention was to close tonight; asked if they want another meeting on the fourth, he will talk with his partner.

Pucci – If you have a meeting on April 4th, you would have to close or have another extension. It was an ill considered position to come in tonight and ask the Board to close on the 100-unit plan. Even on that plan, it wasn't a reasonable expectation to close it. Asked for a reasonable extension to early May that allows time for Mr. Bracken to work with Mr. Gray and Weston and Sampson and Mr. Pucci and provide an engineering plan. He cautions the Board about allowing HAC to become the permitting agency; however, the HAC process is not as favorable to an applicant as one might think. There is the potential of their ruling being appealed to Superior Court. It doesn't make sense for an applicant to force a decision and push the project into that process. Respectfully suggests an extension to early May and key up some hearing dates.

Botticelli – Feels the Board needs at least two more meetings.

Feeley – Asked for a 5-minute break to call his partner.

(02:35:37 to 02:47:00)

Reade – We reiterate that we believe you have all the information necessary to act on the 100-unit plan based upon the submission at the March 11 meeting. We do not agree to an extension.

Toole – We have the room on April 4 or sooner. We do not believe we have all the information. He's been through the list and it is now on the applicant to provide the information we need.

Botticelli – Asked that the requirements for a CP application be emailed to the Board members.

Antonietti – It is posted on the Town website for all to be able to access. She will forward.

Toole – We will have to do all the review in one meeting. We have this room reserved for 4 p.m.

Discussion about time and dates for another hearing.

Mondani – Give them 48 hours to get us everything. Asked what happens if we approve an incomplete application.

Pucci – They haven't provided the required level of information the Board has asked of them.

Toole – As a courtesy to the Board, put all the information in one packet.

Reade – We expect and submit a reorganized and compilation of the same material.

Koseatac – Asked that if the applicant thinks the information has already been submitted, asked that a note be made of when to compare to the minutes and the meeting.

Toole – Friday, March 29 is available.

McCarthy – It shows a willingness of the Board to do what has to be done to come to a decision. This process is a collaborative process and it has felt adversarial the whole time.

Mondani – We should have a full draft of the master plan and homeowners' association (HOA) documents.

Marchant – The full homeowners plan would normally be in the decision. They should provide a narrative to describe the process by which common costs will be allocated between the HOA and the funding.

Toole – If that information has been submitted, it should be in his in-box tomorrow.

Discussion about the time to start the meeting.

Stockman – Asked if it is true the Board is being forced to review the 100-unit plan and if they can make conditions on the plan that will bring it closer to what the Board wants.

Toole – Yes, everything is open for discussion. The information will be posted to the website.

Motion

Motion to Continue to Friday, March 29, 2019 at 4:30 p.m. at 4 Fairgrounds Road Community Room. (made by: Thayer) (seconded by: Botticelli)

Vote

Carried unanimously

IV. ADJOURNMENT

Motion to Adjourn at 8:40 p.m. (made by:) (seconded by:) Carried

Submitted by:

Terry L. Norton