



MANCHESTER-BY-THE-SEA

ZONING BOARD OF APPEALS

Manchester-by-the-Sea, Massachusetts 01944-1399

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MINUTES

ZONING BOARD OF APPEALS – 40B

ZOOM Meeting April 27, 2022

Members Present: Sarah Mellish (Chairperson), John Binieris, James Mitchell, Brian Sollosy, Kathryn Howe, Jim Diedrich, and Sean Zahn

Member Not Present:

Staff Present: Town Planner, Sue Brown, Administrative Assistant, Gail Hunter

Guests: Geoffrey Engler, SLV School St. LLC., George Pucci, KP Law, Daniel Hill, MECT, Attorney, Matt Cote, Beals + Thomas

PUBLIC HEARING – 40 B CONTINUED APPLICATION

Ms. Mellish called the ZBA meeting to order at 7:00 p.m. on April 27, 2022 and introduced the Board.

Ms. Mellish opened the Continued Public Hearing on the 40B Continued Application of Geoffrey Engler of SLV School St. LLC, to be known as The Sanctuary at Manchester-by-the-Sea, for a comprehensive Permit under M.G.L. Chapter 40B, Sections 20-23 to construct a 136-unit apartment complex for which the Massachusetts Housing Finance Agency issued a Project Eligibility Decision on September 16, 2021, at School Street, Assessor's Map No. 43, Lot No.18 filed with the Town Clerk on September 27, 2021.

- Discuss Applicant's request for connection to Municipal Sewer

Ms. Mellish stated this evening the Board will be discussing the Applicant's request to connect to Municipal Water and Sewer. In April 2020 the State issued a new permit under the National Pollutant Discharge Elimination System recognizing the substantial work the Town had done to reduce the inflow and infiltration which was entering the system through the sewer, freeing up capacity at the Wastewater Treatment Plant, in December 2021 DEP lifted the Town's moratorium on new connections.

Ms. Mellish informed members of the public on Zoom that most of the documents the Board will be referencing are in the 40B section of the Town website under Water and Sewer. The Board will be taking public comment on the Water and Sewer request later in the meeting.

Ms. Mellish stated the original application included an onsite Wastewater Treatment Facility. On March 25, 2022, Mr. Engler sent the ZBA a letter requesting connection to the municipal sewer, with adjustments to his waiver requests and the previously submitted architectural and landscape design plans. Ms. Mellish asked Mr. Engler to explain why he decided to make this change.

Mr. Engler replied, his decision to eliminate the Wastewater Treatment Facility was partly in response to environmental concerns expressed by residents and partly in response to the Architectural Peet reviewer's comments around the need for additional slack. Mr. Engler noted the project always planned to hook into municipal water but with the now available capacity in the sewer system his plans pivoted.

Ms. Mellish stated the State DEP, the Town's Comprehensive Wastewater Management Plan and the Select Board acting as Water and Sewer Commissioners stated the first preference is for an on-site treatment facility to recharge the aquifer and decrease the amount of discharge being sent into the ocean. If a property owner can document that an on-site facility is not possible, connection to the municipal sewer will be considered. Ms. Mellish asked Mr. Engler if he was in a position to discuss why an on-site facility is not possible.

Mr. Engler replied he believed the Board has been discussing the on-site treatment plant for several months and with the Town's adequate capacity connecting to the sewer plant became the preferred approach. He believes connecting to municipal sewer benefits the project and addresses environmental concerns expressed by residents. Ms. Mellish also asked what Mr. Engler's plans are for connecting to the municipal sewer, and what his plan is regarding how you will access the hook up? Additionally, she asked how he planned to cross Route 128?

Mr. Engler asked Ms. Mellish if Mr. Quinn with Allen & Major Associates, Inc. who has been working with Mr. Dam, the Town's DPW Director could answer the questions. Mr. Quinn stated wastewater will be collected on site and moved by gravity into a pump system at the bottom of the hill and pumped down School Street to Hidden Ridge Road where the existing sewer system for the Town is connected. He added it is not a complicated system. Ms. Mellish asked if Mr. Quinn had done any type of hydraulic capacity analysis with respect to capacity of pipes. Mr. Quinn stated he had not and usually the Town would provide that information.

Ms. Mellish asked Mr. Dam to comment. Mr. Dam stated he had received a letter with the request and engineering wise it would be possible to connect. The pipe going down School Street would need to be analyzed along with an analysis of the amount of flow. He added the capacity of pipes is different from the capacity of the plant. The current permitted capacity of the plant is 670K gallons the Town's current 12-month average is 508K gallons and infiltration and inflow improvements are ongoing.

Mr. Formato, President, Onsite Engineering stated he had read the Comprehensive Sewer Analysis Report completed in 2016 and noted that the report looked at and targeted the area

north of Route 128 as an area for expansion of water and sewer systems into the municipal systems. The Town's consultants indicated this area of Town should have access to the additional capacity recommending between 30K to 60K reserved for development. Additionally, the study identified a sewer connection is preferred to subsurface disposal.

Board Comment

Mr. Mitchell stated he would defer to the experts adding it makes sense not to have an onsite Wastewater Treatment Plant.

Mr. Binieris noted that there would be an estimated 230 bedrooms and asked what the 25K gallons per day usage is based on given we do not have a flow analysis. Mr. Engler stated that is a DEP prescribed and industry standard number. Mr. Formato added the per day flow would likely be 15K to 21K gallons. Mr. Binieris also asked what the turning point was away from the onsite Wastewater Treatment Plant. Mr. Engler replied initially the onsite plant was the only option but with the lifting of the Consent Order it was decided to pivot to the municipal option.

Mr. Sollosy asked who paid for the infrastructure costs related to the connections. Mr. Engler replied given there is no system in place the project will absorb the costs and that is part of his financial burden.

Ms. Howe asked if it was reasonable to rely on data from a 2016 report and was that data still relevant. Mr. Dam replied that the Town was required as part of lifting the Consent Order to update the report and the updated report was completed in 2021. He stated the current data is good.

Mr. Diedrich asked Mr. Dam if connecting a homeowner's sump pump and/or gutters is illegal. Mr. Dam stated in his office it is referred to as illicit. He added it is not allowed and is discouraged. Additionally, the Town has a By-Law prohibiting such connections.

Mr. Diedrich complimented Mr. Engler on his decision to connect to the municipal sewer system and asked if there was a significant cost savings to the project with the connection. Mr. Engler indicated there would likely be some costs savings although the initial hook up process will be more costly. While the on-going maintenance costs of running a wastewater plant will result in a savings. There was some mention about future development in the LCD and speculation about shared costs. Ms. Mellish ended that discussion stating it is not relevant to the SLV project.

Mr. Zahn asked how often the plant exceeds capacity. Mr. Dam replied during the 12-month rolling average the plant has never exceeded capacity. There were times this past summer when the month of July was extremely wet that the plant's monthly capacity was exceeded but not the 12-month rolling average. Mr. Sollosy asked Mr. Dam to confirm that the proposed pumping station is the responsibility of the Applicant. Mr. Dam replied, it would be.

Mr. Binieris asked if the capacity of 670K gallons was a fixed number or would the State increase or decrease that number. Mr. Dam indicated the number of gallons for the plant is assigned by the State it is not a negotiation. He does not see that number changing. Mr. Diedrich

asked if the 670K gallons is based on the plant's capacity. Mr. Dam stated it is not the plants capacity is 1.2M gallons per day.

Mr. Mitchell indicated that the elimination of the onsite Wastewater Treatment Plant allowed for the addition of open space and a nature themed play area. However, he was surprised to hear that the change would cost more. Mr. Engler responded that there are efficiencies, and the infrastructure costs will be millions of dollars, but the management of the system once hooked up to municipal water and sewer will alleviate the issues around managing an onsite plant.

Public Comment



MECT Hill Ltr.
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Mr. Hill mentioned key issues raised in the above letter:

- Mr. Hill is concerned that the project is moving one environmental problem to another potential environmental problem. Indicating there has been no analysis of the sewer line capacity or pollutant loading analysis and that should be peer reviewed for the Board
- Mr. Hill added that the Ocean Sanctuary Act will require permitting for the project noting that the Town's current pipe was exempt from the prohibition of pipes discharging into the ocean. Mr. Hill noted the increase in flow will be subject to a rigorous review process
- He requested a Capacity Hydraulic Analysis adding that the CWMP had conducted no analysis specific to the area north of Route 128
- Mr. Hill stated the review process needs to take place during this time.
- Mr. Hill recommended that the Board request a hydraulic flow analysis to be reviewed by Tata & Howard, the Town's peer reviewer and a water capacity analysis which was requested in February and has not been provided.

Mr. Legere, representing CIMAH echoed Mr. Hill's comments and added that specific analysis needs to be done around all costs and if there are costs to the Town those costs need to be reviewed. He added that the proposal needs to be reviewed by the Board's peer review consultant. He noted that the Select Board acting as Water Commissioners had requested additional information before vetting this project and cautioned that the project may have implications around the Town's ability to comply with State and Federal regulations.

Mr. Bodmer-Turner, Chair, Select Board, asked how the project proposes crossing Route 128 and who is responsible for repairs to the road. Additionally, he added there would need to be permits for crossing Town, State, and privately held land. Mr. Bodmer-Turner asked his questions as a Town Sewer Commissioner.

Mr. Quinn replied that the crossing of Route 128 would be achieved by directional drilling and the State provides for the right of way. SLV will be responsible for the pump station on School Street and as needed State DEP has jurisdiction for permitting and approving projects.

Mr. Pucci asked the Chair to request a commitment for peer review of the proposal. Ms. Mellish indicated she would make that request at the end of Public Comment.

Ms. Harrison, Select Board and Water Commissioner asked why there has been no mention of recharging the Aquifer. Adding it was the expressed opinion of the Commission that onsite Wastewater Treatment is preferred to recharge the Aquifer. Mr. Bodmer-Turner added it is not a preference of the Commission it is a Policy, and the Commission needs to know specifically prior to any connection to the sewer system why an onsite system is not possible.

Mr. Engler answered that the connection was being requested in direct response to the environmental concerns expressed by the Board and he has no plans of going back to an onsite system and no plans of going through a list of why. Ms. Mellish stated the Board is in a difficult position when the application was submitted and an onsite system was proposed with lots of waivers and then, the Applicant asked to connect to the sewer system and the Board does not have to grant that waiver. Mr. Engler interjected that request is not a waiver.

Mr. Pucci stepped in and requested that the back-and-forth initiated by Mr. Engler stop. He added that the project is not in the Sewer District and the Applicant needs to make the case for adding a project outside of the Sewer District and define the benefits the Town is getting. After that threshold has been met detailed plans, and a review and analysis needs to be completed prior to granting the requested relief and how the request is conditioned. He noted that the meeting has been going smoothly up to this point and complimented Mr. Engler on his respect for the process.

Mr. Engler asked to respond stating that Tata & Howard are in the process of doing a water analysis and he would be comfortable asking Tata & Howard to expand that analysis to include a sewer and capacity analysis.

Mr. Formato added while ground water Aquifer recharging is important the CWMP process the Town and State engaged in identified two options and the part of Town north of Route 128 was identified as primarily being connected to the sewer system. This recommendation was vetted and presented to the State and approved as an area to connect to the sewer system when development took place. Mr. Formato stated that much of what Mr. Hill referred to is already taking place in the Town's Wastewater facility and part of the plants parameters. He concluded that the flow from the pump station at the bottom of the SLV hill can be set to whatever is appropriate to be managed by the Town's system.

Ms. Mellish agreed to forward the Board's request regarding additional information on municipal water and sewer hook ups to Mr. Engler in writing. Mr. Pucci added that the Board will need engineering analysis and details from the peer review analysis. Additionally, the Board will need sufficient detail and information on infrastructure costs and who is paying for what.

Ms. Mellish agreed that Mr. Quinn would coordinate directly with Mr. Dam for a review of the current systems. Mr. Quinn projects it will take six weeks to complete the analysis. Ms. Mellish asked if it would be appropriate to request an extension of the hearings to July 28, 2022. Mr. Engler replied, no.

Mr. Hill stated the Applicant has proposed a substantial change five months into the process and he is outraged and disappointed by his position as should be the Board. Mr. Sollosy agreed with Mr. Hill.

Mr. Engler stated his shift to municipal sewer was in response to concerns from the Town and neighbors he did not arbitrarily or nefariously change the plan.

Mr. Lane, 50 Beach Street stated the Applicant selected the location, which is not ideal and given his change in the application he suggested the Applicant grant an extension.

- Next meeting, continue public hearing

The next meeting is scheduled for May 11, 2022. The Board will be discussing the Architectural Peer Review.

Ms. Mellish moved to continue the Public Hearing on the application of Geoffrey Engler of SLV School St. LLC, to be known as The Sanctuary at Manchester-by-the-Sea, for a comprehensive Permit under M.G.L. Chapter 40B, Sections 20-23 to construct a 136-unit apartment complex for which the Massachusetts Housing Finance Agency issued a Project Eligibility Decision on September 16, 2021, at School Street, Assessor's Map No. 43, Lot No.18 filed with the Town Clerk on September 27, 2021 to May 11, 2022 at 7:00 p.m. Mr. Mitchell seconded the motion. The motion passed unanimously with Mr. Binieris, Mr. Sollosy, Ms. Howe, Mr. Mitchell, Mr. Zahn, and Ms. Mellish voting affirmatively.

ADMINISTRATIVE MATTERS

- Review and approval of meeting minutes:

Minutes were submitted and will be reviewed at the next meeting.

- Any other administrative matters that could not reasonably be anticipated in advance of the meeting.

There were no additional administrative matters discussed this evening.

- Adjourn

Mr. Zahn moved to adjourn the meeting; Mr. Sollosy seconded the motion. The motion passed unanimously by roll call vote.