



# 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 13, 2022

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

**Member Not Present:** James Diedrich

**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 13, 2022 and introduced the Board.

Ms. Mellish opened the Continued Public Hearing on the 40B 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.

- Beals + Thomas Engineering Peer Review

Ms. Mellish acknowledged Mr. Cote's letter of April 6, 2022 and asked Mr. Cote to highlight the areas of concern. Mr. Cote noted the following areas of concern:

- ✓ Initially the Applicant had proposed a Wastewater Treatment Plant for the project. He is now proposing to connect with Town Water and Sewer with a pump station off of School Street. B+T takes no exception to the station noting it is not designed and will require design and waivers.

- ✓ Water and Sewer supply will come from long dead ends to the site with significant elevation change. Mr. Cote indicated the Board will need to see design to consider waiver requests.
- ✓ The booster station is up the hill and is an ancillary structure within roadway setbacks. This too will require a waiver and additional information. Specifically, around size dimensions and how impactful the structure will be when considering waiver requests.
- ✓ Mr. Cote spoke with DPW Director, Mr. Dam who will request a detailed Design and Capacity Analysis for the proposed hook up to Town water and sewer. Mr. Dan added the project may require upgrades from the standard 6-inch pipe to an 8 inch or 10-inch pipe. Conceptually Mr. Cote saw no problem with the request noting the Design and Capacity Analysis would be part of the building permit.
- ✓ The proposed sidewalk impervious area will require a waiver.
- ✓ Clarification around snow storage and trash was provided.
- ✓ B + T reviewed storm water. Groundwater and test pit information requires more information around infiltration and retention. Mr. Cote added the information seems adequate but additional information will be required as the design progresses.
- ✓ Geotechnical requires additional information and retention wall concerns still need to be addressed and that will happen in the Building Permit process.

### Board Questions

Ms. Mellish asked if blasting would result in a change in topography and impact the drainage plan by creating new fissures. Mr. Cote indicated drainage was in an area of fill and he does not see an issue given there is no blasting in that area. Ms. Mellish also asked about the need for a waiver to connect to Town Water and Sewer and if the Select Board did not grant the request would that impact the peer review. Mr. Cote stated the project would be back to the Wastewater Treatment Plant and that would impact the environmental review due to multiple leeching fields in environmentally sensitive areas.

Mr. Cote also noted information around blasting would be addressed in the Construction Management Plan. He added as this relates to blasting near vernal pools it is a concern and there will need to be a plan for protecting the areas during blasting requiring information on how the areas will be protected.

Mr. Binieris stated he understands the Construction Management Plan will come later when there is a general contractor on the project, however, he would like to understand how many tons and truck loads of fill will be leaving the site and how much fill will be staying on site. He is also concerned about the 25 foot retaining walls proposed for the site and is not comfortable without additional information around the walls. Mr. Binieris added the geotechnical issues have not been addressed and now that the project is proposing tying into the sewer system, he is interested in seeing how that discussion unfolds.

Mr. Mitchell is interested in additional around the retaining walls noting that the design and engineering of the retaining walls is a massive part of the project. Mr. Cote stated that would be part of the building inspection for the project and is not part of the initial schematic design process.

Mr. Binieris added there is not a lot of slack available in the project and approvals now during the design phase may change if the building needs to shift around. He is concerned about the impact that will have on the surrounding environment given how tight the project is.

Mr. Engler stated he will work to provide cut and fill analysis stating the project will be taking fill from the cut and he will provide a high-level overview. He respectfully disagreed noting that by converting the project to hook up with Town water and sewer the building now has some slack and can be moved it is not accurate to state there is no slack.

Mr. Zahn stated his primary concern is the sidewalk and additional impervious surface. He is also interested in hearing more around stormwater runoff.

Ms. Howe asked about stormwater runoff and the difference between the 25-year storm model and 100-year storm model noting there appeared to be inconsistencies. Mr. Cote clarified that pipe sizing is evaluated in the 25-year storm runoff model and the objective of the model is to evaluate pipes and water flowing. The 50-to-100-year models evaluate if the pipes will surcharge. Ms. Howe asked about the impact environmentally of runoff and did the proposed system have the capacity for a 100-year storm. Mr. Cote replied that the system does have capacity and is designed for 100-year storm from a volume perspective.

Diane Rodier, 13 Rosedale Ave. – Ms. Rodier had a question around the project hooking up with Town water and sewer. Ms. Mellish indicated the Board would be discussing that during the April 27<sup>th</sup> meeting and asked Ms. Rodier to hold her question for that meeting.

Mr. Hill stated he is concerned about comments that substantive issues can be deferred to later. Mr. Hill added that the law is clear that the ZBA may not defer judgement until after the permit is issued. Recent court decisions have ruled that Boards cannot impose conditions that would require the Applicant to go through additional approval processes by issuing conditions subsequent. All decisions must go through and be fully vetted during Public Hearings as part of the 40B process.

Mr. Hill stated he had provided questions and comments from two experts for the Board this afternoon and would like to put the concerns of MECT on the record this evening. He introduced Mr. Horsley who commented on the adequacy of test pits and Mr. Chessia who has a list of 40 deficiencies that he has flagged on storm water design which is different from the peer review as related to overall hydrology. The reports from the MECT consultants are contained in the PDF's below.



Horsley Letter.pdf



Chessia Letter  
40B.pdf

Mr. Talerman, Counsel for the Applicant, replied to Mr. Hill's statement regarding conditions subsequent clarifying that agents of the Town would be allowed to access more detailed plans. Indicating that the Housing Appeals Committee has endorsed this as part of the normal process and conditions for technical review are proper.

Mr. Pucci, Counsel for the Board weighed in stating that typically permit conditions are several pages and the comprehensive permit is detailed and focuses significantly on Construction Management. He hopes the Applicant takes stock and provides additional information. He added there are only two months left in the hearing process and there have been relevant comments on inadequacies in the proposed project made this evening.

Mr. Engler interjected that he agrees every comprehensive permit has lots of conditions, but a Construction Management Plan is premature now. Mr. Pucci indicated to the Chair that the Applicant was speaking without being recognized by the Chair; and continued his comment that the Board was looking for sufficient information to detail conditions in the permit and the deficiencies noted were serious issues and needed to be addressed. Mr. Engler apologized to the Chair and stated his objective is to satisfy B + T and there is more work to do to represent the Town's interest and he will do everything to satisfy B + T.

Mr. Hill stated the retaining wall is an issue and emphasized that Mr. Chessia noted the infiltrations system is against the retaining walls. He noted this is a massive infiltration system and the issue is whether the walls are even feasible where they are given, they need to hold back water, that is not something you want to see with a retaining wall. He asked if the Applicant planned to complete a water capacity analysis and would that element be part of the peer review.

Ms. Mellish stated she would discuss the question with DPW. Mr. Binieris stated that both Mr. Horsley and Mr. Chessia had provided great information and he appreciated hearing from them.

Mr. Sollosy stated he appreciated working with other consultants and the Town was fortunate to have citizens who work to put together additional information and suggested that the peer reviewer work to address the additional information. Mr. Pucci stated he recommended against the peer reviewer answering questions from an outside reviewer noting that the points taken from third party consultants are part of the evidence and the opinions will matter. It is up to the Applicant to contest or take a position; Mr. Pucci added valid issues had been raised. The Board is within their right to rely on information received. Mr. Sollosy added that the comments this evening are as important as B + T, Mr. Pucci agreed.

Mr. Engler indicated he will respond to the letters stating the characterizations are false. Ms. Mellish stated the Board needs to look at all the information. Mr. Mitchell stated the deeper we look the more questions we have. Ms. Howe agreed with Ms. Mellish adding that clearly everyone has their own interests in mind including Mr. Engler. Ms. Zahn agreed.

Michael Carvalho, 2 Jersey Lane – Mr. Carvalho expressed concern about the number of issues raised this evening adding he appreciated the work of the Board. He noted that Mr. Engler appeared to be insulting to both the Board and residents of the Town.

- Beals + Thomas Environmental Peer Review

Andrew Gorman of B+T stated since the last meeting they have received a statement of methodology from Goddard Consulting which speaks to their intent to conduct vernal pool surveys and a wildlife habitat assessment. Additionally, B+T has been requested to have a

presence while the study is taking place and were on site April 1, 2022 and April 8, 2022 and anticipate being on site in the later phase of the study. At this time, they are focusing their efforts on an Environmental Peer Review letter and reviewing revised waiver requests. B+T understands the focus of the study is on vernal pools some of which have been certified.

B+T questions are related to the ORAD order which is comprehensive and speaks to the entire property. B+T's interpretation of the ORAD is condition #2 which seems to imply there is an opportunity for additional resource areas to be identified beyond those which are confirmed under the ORAD.

One of the comments that B+T has outstanding is on the resources area boundaries delineated as C series on site and isolated land subject to flooding and have requested additional information. Isolated flooding is an engineering calculation which will determine how much water an area will hold. Additionally, without a full Construction Management Plan B+T is interested in what engineering solution is proposed for the ledge up corps vernal pools indicating what was originally proposed a silk fence cannot be keyed into ledge that will not work. Mr. Gorman looks forward to providing additional comment at a future meeting.

Ms. Mellish confirmed that on May 25, 2022 the Environmental Peer Reviewer would be in a position to provide additional information. Mr. Gorman confirmed that would be possible. Ms. How asked if Mr. Gorman anticipated identifying additional areas of protected resources. He replied he does not the majority of the vernal pools have been identified and he is not anticipating any changes.

- Discuss Additional Information Required for Engineering Peer Review

Mr. Cote replied that no additional information is required for the Engineering Peer Review.

- Receive Input on Any Conditions/Waivers Discussed

Ms. Mellish stated at this time not in a position to discuss waivers.

Mr. Hill requested to ask a question related to the status of the Wildlife Habitat assessment. Mr. Gorman replied the assessment is ongoing adding that Goddard Consulting had established trail cameras on the property to provide the Board with GIS maps that speak to the habitat within the area of disturbance and areas that will be preserved on site. Mr. Gorman believes that Goddard Consulting is targeting the end of April into May for the deliverable of the study.

Mr. Hill asked about the vernal pools on site noting that if any new vernal pools had been certified that they were not showing up on the Natural Heritage website. Mr. Gorman stated that the vernal pools may not be certified yet. His understanding is that if the vernal pools are certifiable and functioning and providing spotted salamander habitat they will be certified and the vernal pools throughout had egg masses as well as wood frog egg masses.

Mr. Hill had one additional question noting that in the recent waiver request for vernal pools the applicant stated on the waiver table filed on April 5, 2022 that the project will not impair vernal

pool function and Mr. Hill asked at what point will the consultant be demonstrating that to the Board. Mr. Rosen of Goddard Consulting stated once we complete the vernal pool habitat study that information will be provided and will show the project will not impair function. That consideration will be at the end of the study in a few weeks.

Ms. Howe had a question about recharge to ground water and areas being destroyed and new areas being created to mitigate and increase recharge areas. Mr. Cote replied stating B+T will take a closer look at how the applicant is addressing that. Ms. Howe asked if B+T is not clear if the new areas are sufficient. Mr. Cote replied that he does not have the answer but understood the proposed recharge areas versus existing seemed to be adequate.

Patrice Murphy, Executive Director of MECT asked what species were being considered in the Wildlife Habitat Assessment. Mr. Gorman stated the study was a two prong the first a focus on vernal pools plus a holistic view of all wildlife including mammals and birds.

- Next Meeting Continue Public Hearing

Ms. Mellish outlined the remaining meeting schedule:

April 27, 2022 – Sewer Strategy and Water Supply Issues

May 11, 2022 – Architectural Peer Review and Environmental Waiver Requests

May 25, 2022 – Close out Engineering and Architectural and Discuss Environmental Review

Additional meetings will be scheduled on June 8, 2022 with the Close of the Public Hearing scheduled for June 22, 2022.

*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 April 27, 2022 at 7:00 p.m. Ms. Howe 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

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

