



## Planning Board

### Meeting Minutes of July 18, 2022

#### Board Members:

**Present:** Al Patenaude, Casey Campetti, Joyce Morrow, David Ganong, Joan Ladik, and Tiffany James

**Staff:** Jenny Gingras (Town Planner), Cheryl Lutcza

**Attendees:** Gerald Couper (Pepperell Community Media), various members of the public and Town staff/officials.

#### 1. Call To Order:

**7:00P.M.** The remote public meeting (recorded for future broadcast by Pepperell Community Media) was called to order by Mr. Patenaude (Chair).

#### 2. Consent Agenda:

- a. Mr. Patenaude asked for a motion to accept the items on the Consent Agenda: Acceptance of Meeting Minutes of July 5, 2022. So moved by Ms. Ladik, seconded by Mr. Ganong. All in favor, none opposed.

#### 3. Action Items:

##### a. Heritage Estates Bond Determination:

- Attorney Paul Alphen (Alphen & Santos, Westford, MA), legal counsel for the applicant, addressed the Board, and stated that there was a Tri-Party Agreement from 2018, that was extended due to executive orders of the pandemic to January 2022.
- The Extended Performance Secured by Lender's Agreement will be \$497,497.00, which will be in addition in the 201,948 in the Tri-Party Agreement.
- They also submitted a schedule of construction.
- The interim as-built plans will be submitted in the fall.

Mr. Patenaude asked if the Board Members had any questions regarding bond numbers. Ms. Morrow said she reviewed it rather quickly, however where it came in so late, she wasn't able to review it completely. Mr. Patenaude said the numbers received in the three spreadsheets were done by the Town Engineer after reviewing Mr. Tully's initial response and have been updated since the Board's Site Visit to the property. These numbers are what the Town Engineer feels will be necessary to complete the project. Ms. Morrow said she has only seen Attorney Alphen's numbers. Mr. Patenaude said there are three different spread sheet sections that cover three different sections of the project (Bacon Street, East Street and Minigel Circle). Mr. Ganong said that this aligns to Ken Kalinowski's email regarding the estimated bond amount. Mr. Patenaude asked if the Board had any other questions. Ms. Ladik said that she hasn't had a chance to review the materials.

Mx. Campetti said she saw the numbers on the website, and she had a question on the table that's been prepared and the note from Ken Kalinowski that accompanied with this. It sounds like there has been some kind of compromise since the Site Visit. She asked if someone could fill the Board in on how that got settled and the best way to go forward. She said that she is concerned with the relative risk to the Town. Mr. Patenaude said there was not a compromise element. He spoke with the Town Engineer and the Highway Department to cut out and remove part of the road and the steps that would follow to get the road in good order. The Town Engineer will have the applicant do four core samples, which the Town Engineer will examine and they will be tested to see if the structural aspect of the asphalt is still sufficient. If the Town Engineer finds it to be insufficient, it will be addressed in the future by the Planning Board. Mx. Campetti asked if there was an issue that became apparent after the core samples are examined, what would the Town's recourse be for additional costs for work that might need to be done there; would the Bond be revisited again. Mr. Patenaude said that was one of the concerns that was reviewed. Over the next few months, while Mr. Tully is moving forward on repairing the asphalt and site-wide interim as-built of the project, we would be examining the core samples and we have set a date for a review and status update of the work and the Bond, and the Town Engineer was amenable to that concept. Mx. Campetti asked about the handwritten schedule detailing the items on the punch list, with related dates. Are we able, as a Board, discuss having time limits on what is under the purview of the Board? Mr. Patenaude said that the handwritten outline is just a beginning phase of where we are at the moment. We had listed substantial completion of all work by August 2023 and full documentation submitted to the Town by September 2023. A review would be done by the Town in October 2023. The interim review that would be done a few months from now, would be to try and keep things moving along and identify any concerns, and we could adjust if we feel it's allowable. Mx. Campetti asked if these dates are part of the agreement documentation. Mr. Patenaude said that the final dates that we have would be items that would be applicable to having in a decision.

Mr. Patenaude reviewed the items on the spreadsheet (shown via screen share) for the sections for Bacon Street, East Street and Minigel Circle, showing the items that need to be addressed by the Applicant.

Mr. Patenaude asked if members of the public had questions on the Bond values:

Paula Terrasi (77 Jewett Street) asked if the manhole framing covers, that need to be stamped USA, were included. Mr. Patenaude said they were. Mx. Campetti had a question on manhole covers that were improperly placed on Bacon Street. Mr. Patenaude asked if \$1400.00 is something that needs to be reflected in bond value or are we good with the bond value as it sits. Mr. Ganong said he didn't think we need to revisit the bond items for those, but any that were improperly stamped need to be replaced.

Mr. Patenaude asked for a motion for the bond value of \$699,445.00. So moved by Mx. Campetti. Seconded by Ms. Ladik. All in favor.

**Roll Call vote taken as follows:**

Mx. Campetti: Aye  
Ms. Ladik: Aye  
Ms. Morrow: Aye  
Mr. Ganong: Aye  
Mr. Patenaude: Aye

Mr. Patenaude said the Board is looking at substantial completion by August 2023, September 2023 and October 2023. He provided a description of the work to be completed. Mr. Patenaude asked Mx. Campetti if she had any questions/concerns. Mx. Campetti said that the goal would be to have enough work done by fall 2022, so that there wouldn't be impacts to snow removal for the winter season, and the rest of the work would be completed next year when the construction season starts again. Mr. Patenaude provided an overview of some of the items to

be accomplished. Mx. Campetti asked what sort of mechanism would be used to verify that the Board is satisfied with the performance. Mr. Patenaude said that he would like to have the Town Planner work with the Town Engineer, on a weekly basis, to obtain updates. He would also like to see the Board do some more site visits to the property in late summer/early fall. Mx. Campetti said that was a great idea and she was very supportive of that.

Mr. Patenaude asked if the Board has any questions on the extension of the project as outlined.

Ms. Morrow asked where project has gone on as long as it has, has the Town Engineer checked off the boxes as far as the Stormwater Bylaw. Mr. Patenaude said that the drainage was approved due to design constraints at that time.

Ms. Gingras said that she has a note that one of the conditions would be for the curb cuts be done for the empty lots/remaining lots (for the entrance for future driveways), prior to the completion of the project. Mr. Patenaude said that was correct.

Mr. Patenaude asked if Ms. Ladik or Mr. Ganong had any questions. Both were all set.

Mx. Campetti asked if there is a drafted list of possible conditions. Mr. Patenaude said that there weren't. The curb cuts came up due to the concern of the Town Engineer. Ms. Gingras asked if the Board could state the Conditions before the Board votes.

Mr. Patenaude asked if members of the public had any questions on what was just discussed regarding extension of the project.

- Patrick McPhillips, 36 Bacon Street, asked if any of this was about timeline for completion of houses. Mr. Patenaude said no it was just for completion of the roadway.
- Emily Winters, 5 Minigel Circle, Asked if these will be conditions for completion of the development. Mr. Patenaude said that they would be for the road and all associated pieces of the development, anything that is part of the subdivision requirements.
- Jen Arsenault, 35 Bacon Street, asked if the timeline given is only to complete roadway and associated drainage easements, what is the timeline for the completion of the houses, and what guarantees can we have of the finishing of this project. Mr. Patenaude said that the Planning Board does not have the authority to enforce a time constraint on the construction and/or sale of land or homes. Our control is fully in regard to the development of itself, for roadway, drainage, sewer curbing. The developer has the right to build or develop, or not build or develop at his schedule. This is outside of the Board's purview. Ms. Arsenault said they are all eager to see this completed and lots not being dumping grounds for debris and scrap materials. Mr. Patenaude said the lots themselves can remain unbuilt, but they cannot be utilized as contractor's yards. It cannot be used as an interim drop point for equipment or materials.
- Cory Dows, 12 Bacon Street, asked what would meet a satisfactory requirement for the Board to reach for an extension, as this project started in the 1990's. What would be a reason(s) the Board would consider valid, or not valid for an extension. Mr. Patenaude said he can only answer as the Chair, it would have to be a Board decision. With the timeframe that has been outlined for the completion of the project, presently all materials that would be needed are available. The Town Engineer, working with the Town Planner and himself, tried to be realistic with the developer to come up with dates/deadlines that could reasonably be reached, however we cannot anticipate everything.

Mr. Patenaude asked Ms. Gingras regarding the Conditions:

The outline of the schedule as provide by Mr. Tully along with the milestone dates that we were looking at for substantial completion, submittal of final as-builts, as well as adding in curb cut, water/sewer and driveways being brought into any lots that haven't been constructed substantial completion was August of 2023. As-builts completed by September 2023. Submission of Interim as-built would be mid-Fall 2022. Ms. Gingras said she would like to tie this to a specific month for this in the agreement. Mr. Patenaude said he would like to consult with Town Engineer on this, but maybe mid-September. Mr. Tully said he believes that it would reasonable that the interim as-builts would be ready the first week of October. Mr. Patenaude asked if the Board was okay with that specific date. All Board Members agreed with that date. Mr. Patenaude said that the interim as-builts should be in by October 7, 2022. Mr. Patenaude asked when Mr. Tully the structural repairs of pavement would be completed. Mr. Tully said the end of November. Mr. Patenaude said documentation of this would need to be submitted by November 30, 2022. Mr. Patenaude said it would be good to see updates, by the developer, once a month. Mr. Tully said that was fair.

Ms. Gingras asked If the Board would like a Condition that no other extensions will be given. Discussion ensued. Mr. Patenaude asked Ms. Gingras to consult with the Town Engineer regarding reviews of the project as it progresses.

Mr. Patenaude asked for a motion with regards to the extension of Heritage Estates and time schedule that has been outlined. So moved by Mr. Ganong, seconded by Ms. Ladik.

**Roll Call vote taken as follows:**

Mx. Campetti: Aye  
Ms. Ladik: Aye  
Ms. Morrow: Aye  
Mr. Ganong: Aye  
Mr. Patenaude: Aye

Mr. Patenaude thanked the attorney and developer and said if anyone has any questions, they can reach out to the Town Planner.

**4. Reports/Correspondence/Discussion:**  
*(Matters may arise that the Chair did not reasonably anticipate)*

**a. Discussion on Town Center Zoning and 40-R:**

Mr. Patenaude said that this is just going to be an overview of where we are at with Ms. Gingras, and this will be a Board only discussion. The Board will have a public hearing on July 21<sup>st</sup> and public comments will be taken at this time.

Mr. Patenaude asked Ms. Gingras to provide a status update.

Ms. Gingras provide the following status:

- A draft was sent out along with density summaries that were prepared by Chris Hayes, Northern Middlesex Council of Governments (NMCOG). Units per acre are based on density but have not been taken into consideration as that would still need to go through a site plan review by the Planning Board. If the Board approves the article on July 21<sup>st</sup>, it will be submitted to DHCD as part of a Preliminary Eligibility. Changes can be made after the submittal to DHCD; however, they shouldn't be substantial changes.
- For the 40R, the Board will have a public discussion/forum on August 2<sup>nd</sup>. The Town Center Zoning, which is a separate article, will have a public discussion/forum on July 26<sup>th</sup>.

Mr. Patenaude asked if the Board had any questions.

Ms. James said that when she was reading about the potential sites, she was trying to get an idea of the area of what was being looking at. Mr. Patenaude said the 40R identifies five location/parcel numbers specifically on the map that would be tied to 40R Zoning. Ms. Gingras provided a screen share of the map that showed the five sites presently listed for the 40R zoning proposal. Mr. Patenaude described the sites (Senior Center, Leighton Street/Lowell Road, Hotel Place Parcels, Mill Street/Main Street parcels, and the Peter Fitz parcels) that are the sites presently listed within the 40R Zoning article.

Mr. Ganong asked if there was a way that the Board could better explain the importance of putting 40R Zoning in place, and without this in place, how something else could happen. Ms. Gingras said that she can explain that, and she is creating a presentation for Thursday, which is a simpler breakdown. This proposal started out because the developer on Leighton Street came to the Town and was interested in doing a 40B project, which the Town really doesn't have control over. In talking with the developer we talked about the option of doing a 40R Zoning proposal, which would be more complicated and time-consuming for a developer, however what 40R would do for the Town is allow the Town to have control by a site plan review to control the density, require an impact analysis for traffic studies, conservation impacts, water and sewer impacts, where with a 40B you have little control over that. One of the better parts of 40R is the Town would receive incentive payments, a rough calculation for the Leighton Street project, would be \$750,000 from the State just for that project. Then once built there would be a payment of \$3,000 per unit. These can be homeownership or rentals. For Leighton St he is proposing 180 apartments, and all of those would count towards our HIS, which we have to be at 10% for our number of housing units. Right now, Pepperell is just under 3%. If we don't show the State that we are increasing by a specific percentage, or we don't meet the 10%, we are ineligible for many grant opportunities, including water and sewer infrastructure. There are many more benefits that I can outline on Thursday.

Mr. Ganong said if we don't do a 40R, the developer can come in and do a 40B for whatever they want and we would have no control. Ms. Gingras said that is correct and the developer would not have to adhere to design guidelines or density. For the Leighton Street and Senior Center projects, we are going to get them either way.

Mr. Patenaude summarized and said that 40R is a zoning article within the Town itself which sets specific guidelines for a project. He encouraged the Board Members to thoroughly review the information. He said that having the ability to have true zoning control and a much more stringent review of a plan/project is a benefit. He said he had a question on 40R not restricting whether it is a for sale or for rent project,

and he asked Ms. Gingras if a project comes in as a 40R rental project, once a project is approved, are there any restrictions on converting it to a for sale project. A deed restriction would eliminate the potential of it being converted from rental to sale in the future. He said another benefit is the ability of the Board/Town to phase a project, to set controls with how the phasing is done, to help control smart growth, impact on schools and services, etc.

Mx. Campetti said she was going to be very interested in seeing examples on the specifics of development impacts, and regulations for plan approval process and design standards specifically for 40R developments. Impact and standards are very important. She said she was also curious about the timeline if we were to go to Fall Town Meeting, so that voters could see the complete package with everything that would be proposed as far as the standards these projects would be held to. Ms. Gingras said that the plan is to have all of the Planning Board Rules and Regulations and Design Guidelines to the Board for approval sometime late September or early October, before Town Meeting. This is also important for the Town Center Zoning as well. You can't ask anymore in a 40R than you can in base zoning. If they don't get adopted, then our existing site plan review rules and regs would apply. She will be planning to add that to the agenda for the next couple of meetings. Mx. Campetti asked if there would be a new section in the Rules and Regs that would cover what this new plan approval process would look like. Ms. Gingras said it is a site plan review. Discussion ensued. The Planning Board still controls it as a site plan review, it wouldn't be by right (this was NMCOG's recommendation). Mx. Campetti asked if some of the language that is in there, regarding extraordinary adverse impact, is there case law/precedent on that. What would the process the Board would go through to evaluate something like that? Ms. Gingras said she would see if there were examples of other Towns that have had a denial. Discussion ensued. Mx. Campetti asked what parts of the template zoning article we have more flexibility in. Ms. Gingras said that language was taken from Woburn's 40R, which was adopted by the Woburn Mall. They spoke with the DHCD representative, and he was comfortable with how it was worded. The other parts could have design standards put right into the bylaw. There is flexibility on the project phasing. The Dimensional Controls were taken from the Town Center Zoning that was worked on with the Working Group. She also discussed other items that would be customized to Pepperell, as discussed by the Working Group. Discussion ensued. Mx. Campetti said that it looks like we have flexibility in the most important components of this. Discussion ensued.

Mr. Patenaude spoke on the requirement that the developer share in some of the costs for the Town under 40-R, as opposed to 40B.

Ms. Morrow asked if Ms. Gingras could address the difference between 40R and 40B in relation to schools in the area and how it counts and doesn't count. Would it be helpful, when educating the public, to have a table showing the differences between 40R and 40B? Ms. Gingras said that is an excellent idea and a table will be part of her presentation on Thursday. The school payments under 40R, are if you see an increase in students where the schools have not budgeted or have the room for those students, DHCD will provide 40S payments, which is a calculation based on the cost of a student and the number of students in the district they are in and will provide that to the Town so that the Town doesn't see an increase in students and not be able to handle the actual cost of adding those students. There are a couple of towns that have had to go through that. We are working on getting those numbers to the public. There would be no 40S payments with a 40B project. Ms. Morrow said that having been on the Master Plan Committee, she believes it is anywhere from \$17,000 to \$25,000 per capita, the cost of which is borne by the Town via real estate taxes.

Mr. Patenaude said the one thing they want to make sure everyone understands is that State money isn't always there, and the State promises a lot. Outside of some financial benefit from a 40R, a 40B could be in the same place without any financial benefit. With a 40R project, only 10% can be three-bedrooms, the rest would be one and two bedrooms.

Ms. Ladik said that she noticed on social media that there was a lot of erroneous information. At Thursday's meeting we need to make sure that we have information on whether water supply and sewer is covered. Mr. Patenaude said we will need to look at the impacts of these. Each of the projects would be evaluated on an individual basis regarding these impacts. 40R Regulations do promote the more environmentally friendly aspect of development, and we can enhance these in our regulations for Pepperell.

Ms. Gingras said that the reason we are choosing five sites right now to look at, is the Town Meeting process takes a lot of time to look at these articles and we don't want to have to go through this each year.

**b. Discussion on Hybrid Meetings:**

Mr. Patenaude said that the ability to hold remote meetings has been extended, however he personally likes in-person meetings, and wanted to see how the rest of the Board felt about hybrid meetings, which would allow Board Members and members of the public to be remote. Mr. Ganong asked if this would save time. Discussion ensued. Mr. Ganong said he would be okay with hybrid meetings. Ms. Ladik said she liked the hybrid meetings, so that she would have the capability of attending the meeting remotely. Ms. Morrow said that she has been to both in-person and remote meetings, and she believes that remote meetings have much more efficiency. They are recorded and you do not need to worry about adverse weather conditions. She thinks hybrid is definitely the way to go. Mr. Patenaude said hybrid would allow the Board to have both in-person and remote attendance by the Board and public. Ms. Campetti said she fully supports hybrid meetings. We get a lot more engagement and it is easier for people to attend remotely, for both the Board Members and the public. It is the best of both. She said she likes having the electronic presentations. Mr. Patenaude said that the Board could chose a meeting that doesn't have a lot on the agenda, and he will work with Jenny to work on this.

Mr. Patenaude asked the Board's opinion on starting meetings at 6:00p.m., instead of 7:00p.m.? All Board Members said they would be fine with starting meetings at 6:00p.m. The Board decided that the August 1, 2022, meeting would start at 6:00p.m. Ms. Morrow asked if the Board Chair and Clerk need to be in person for hybrid meetings. Ms. Gingras said she thought it was just the Board Chair.

**c. Staff Updates:**

Ms. Gingras said we received a grant from MA Historical for the renovation of the third floor of Town Hall and there may be extra funds available that they would be interested in funding.

Ms. Gingras said we received the \$400,000 grant from Complete Streets for the rotary work and it will be a fantastic project for the Town.

**5. Future Meetings:**

- a. July 21, 2022 (Thursday)

**6. Adjournment:**

Mr. Patenaude asked for a motion to adjourn the meeting. So moved by Mr. Ganong, seconded by Ms. Ladik. All in favor. Meeting adjourned at 9:15p.m.

**Planning Board Meeting Minutes of July 18, 2022, respectfully submitted by Cheryl Lutcza**