



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 July 13, 2022

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

Member Not Present: All Members Present

Staff Present: Town Planner, Sue Brown, Administrative Assistant, Gail Hunter, DPW Director, Chuck Dam, Town Engineer, Nate Desrosiers

Guests: Geoffrey Engler, SLV School St. LLC., George Pucci, KP Law, Patrice Murphy, Executive Director, METC, Dan Hill, Hill Law, METC, Counsel, Carlton Quinn, Allan & Major Associates, Dave Formato, On Site Engineering, Stacey Minihane, Beals + Thomas

PUBLIC HEARING – 40 B CONTINUED APPLICATION

Ms. Mellish called the ZBA meeting to order at 7:00 p.m. on July 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.

Ms. Mellish stated she had received many letters from residents, and they will all be posted to the Town 40B website with materials received. Ms. Mellish noted many letters raised concerns about the financial impact to the District Schools and Town services those issues are not considered under the 40B Law, and she will take no comments on additional services and school enrollment.

- **Connection to Municipal Water and Sewer**

Mr. Engler stated that Mr. Quinn, Allen & Major Associates, Inc., and Mr. Formato, Onsite Engineering, Civil Engineers for the project had been working closely with the Town's DPW

Director, Mr. Dam, Town Engineer, Mr. Desrosiers, and Town's consultants, Tata & Howard, he will leave it to the team to discuss the scope of work and conclusions.

Mr. Quinn stated two months ago analysis of the existing water and sewer systems was initiated. The water system analysis was conducted by the Town's consultants Tata & Howard. Mr. Quinn provided Tata & Howard with the scope of work needed for the Development and Tata & Howard concluded the length of proposed pipes and needs of the Development could be adequately met by the existing system. The complete Water Capacity Analysis is in the PDF below.



Water Capacity Analysis.pdf

Mr. Quinn stated monitors were placed in the existing Sewer System and studied at intervals of 15 minutes for 24 hours. It was concluded that the existing system and the proposed work for the Development would result in no problems or issues with capacity. The complete Sewer Capacity Analysis is in the PDF below.



Sewer Capacity
Analysis.pdf

Mr. Formato indicated there had been questions around the means and methods of crossing Route 128. He clarified that the technique that will be used is directional drilling with staging areas set up and drilling taking place between the two highway clover leaves. He has confirmed with Enterprise Directional Drilling a company in ME that the 500 feet of drilling can take place between two pits at the sides of the highway.

Mr. Dam stated he has been working with Mr. Quinn and in addition to the work referred to in the Water and Sewer Capacity analyses which took into consideration the current work on School Street he has worked on a fire flow analysis and concluded there will be no significant capacity issues with the addition of the project. He added he will have a number of Conditions for permitting around construction materials and the proposed directional drilling. The directional drilling on the north side of Route 128 will require extensive permitting due to intermittent streams and other environmental concerns.

Board Questions

Mr. Binieris asked how long the directional drilling would take? Mr. Formato stated it would depend on the length of drilling per day, assuming 30 to 40 feet a day drilling through rock for a distance of 500 to 600 feet the directional drilling will take a few weeks.

Mr. Diedrich stated he assumed the directional drilling would be under Route 128. Mr. Formato replied that is correct. Mr. Diedrich also asked if there would be two pipes drilled, one for water

and one for sewer. Mr. Formato answered that too is correct. Ms. Mellish clarified that the Developer is responsible for extending both pipes from the end of School Street to the project.

Mr. Zahn asked about the amount of clearing that would be required on the north side of Route 128 to create work areas and would the clearing involve cutting down trees. Mr. Formato stated typically there are receiving and drilling pit areas, and the drilling pit area is larger because of the staging needed for equipment. He proposed starting on the south side of Route 128 which is more open and could accommodate the drilling pit with a smaller area of about 20' x 20' for the receiving pit. There would be minimal clearing through the woods on the north side of Route 128.

Mr. Mitchell asked about irrigation for lawns and was that calculation included in the water capacity analysis. Mr. Engler stated that was a detail not yet contemplated, however, he would like to have some irrigation system. He noted that in other projects he has included an on-site well for irrigation and added irrigation would be required only for modest plantings around the building. Mr. Quinn stated when calculating the sewer flow 10% was added for concerns like irrigation.

Ms. Howe asked about the Town's capacity for water and sewer specifically interested in knowing what the remaining capacity will be if this project moves forward. Mr. Dam replied the current permitted water capacity is 720K gallons per day and the Town averages 600K – 650K gallons a day. The project is estimated to use 25K gallons per day which will use about 25% of the Town's permitted capacity. For wastewater the permit allows for 630K gallons per day and currently the Town's use fluctuates between 450K to 500K gallons per day. The project is estimated to use 20% of the Town's excess capacity for sewer.

Ms. Howe's second question was around maintenance of the proposed extension for both the water and sewer lines and who would be responsible for maintenance. Mr. Dam indicated the Town would review all design work on the extensions for water and sewer lines and when that work was completed the Town would assume responsibility for the work completed in the right of way with the Developer responsible for work beyond a valve at the projects driveway. Mr. Engler agreed with Mr. Dam and indicated that was consistent with SLV's previous work.

Mr. Sollosy read a section from the initial 2013 CWMP letter suggesting no sewer extensions in Town except for very specific areas. Mr. Dam corrected Mr. Sollosy stating that provision was in place while the Town was under a Consent Order. The Consent Order was lifted and when lifted one area recommended for water and sewer line extensions was the Limited Commercial District (LCD).

There was a question about what letter was being referenced. Ms. Mellish stated the letter being referenced is the December 6, 2021 CWMP letter lifting the moratorium.

Mr. Diedrich stated he had received comments from residents that residents would be denied hook up to the system because SLV is being given preference.

Mr. Dam explained there are five areas in Town defined in the most recent CWMP letter: LCD, Raymond Street, Smith's Point, Bridge Street to Beverly city line and he believes Hickory Hill area. These areas are identified for sewer connections each area with a defined estimated capacity. He cautioned that the Town has finite water and sewer capacity but there is a plan in place for each defined area. He added anyone who wants to apply for connection can do so by filling out an application. However, extending a line would require a Town appropriation and vote at Town Meeting.

Mr. Formato agreed with Mr. Dam and stated the CWMP identified the LCD with a reserved capacity of 31K gallons and 62K gallons when fully built out. He added the plan referenced in the CWMP letter was approved by the State.

Mr. Zahn asked about the extension of the water line and would it be necessary to add additional fire hydrants along the route. Mr. Dam stated the Developer is adding hydrants every 500 feet which was the recommendation of Tata and Howard. Mr. Zahn also asked about irrigation and would a well impact the ground water supply for the Vernal Pools. Mr. Dam stated he recommended no irrigation from within the water system suggesting roof leaders to collect rainwater or any other consideration or means that would result in not using Town water for irrigation. Mr. Engler stated he agreed with that.

Ms. Mellish stated she has concerns given the complexity of directional drilling under Route 128 and with the need for permits from the State the process is somewhat of an unknown. She is suggesting that the Board consider imposing a requirement that the infrastructure pipes be completed up to the valve at the end of the driveway prior to initiating work on the site. Mr. Engler stated he could not agree to that. Adding it is not unusual to put in infrastructure for water and sewer and the work being done is by different contractors and the work is usually completed simultaneously. Ms. Mellish concluded that the Board would need to discuss this because there have been lots of concerns raised.

Public Comment

Dan Hill, Hill Law, MECT Counsel – Mr. Hill stated he had recommended a peer review of the sewer capacity and he does not see that has been done. Mr. Dam stated that the analysis took place this spring. The Town was already metering in Town and used the subcontractor to work with the consultant to relocate meters. Mr. Dam received reports and reviewed the data as it came in. He is comfortable with the data presented. Ms. Mellish informed Mr. Hill that the Board relied on Mr. Dam and DPW. Mr. Hill stated he reviewed the data and believes there are major errors in the report and believes Tata & Howard should review the data analysis.

Mr. Hill indicated the plant is at 90% capacity on some dry days and there was no metering assessment during a rain event. Mr. Dam stated the capacity of the plant is based on a 12-month rolling average and is consistently below 670K gallons. He added he would have preferred a longer analysis with rain events but concluded the Town does not have a capacity issue. Mr. Hill stated the 12-month rolling average is not in the current CWMP letter.

Mr. Hill stated that 4 or 5 months ago Mr. Dam stated the water and sewer capacity would require a peer review analysis by a wastewater engineer. Mr. Hill believes there is a water quality issue and under the Water Protection Act and the Ocean Sanctuary Act the Town is required to monitor water quality that comes out of the pipe 9K feet out in the Ocean. That is a critical piece of data that needs to be addressed and the questions around water quality answered.

Susan Harrington, 0 Woodholm Road – Ms. Harrington asked how many bedrooms there were in the proposed building. Ms. Quinn replied there were 232 bedrooms, and each bedroom was calculated to use 110 gallons of water a day. Mr. Quinn indicated that is a standard set by MA DEP under Title V.

Dave Formato, On Site Engineering – Mr. Formato added two points regarding capacity. He indicated CWMP required the Town to look at facilities and performance those issues have been addressed relative to the current and future processes. The sewer capacity proposed for the SLV project will be able to set and schedule the flow rate from the project. The system proposed is tailored to work around a preferred discharge schedule to meet the capacity of the sewer system.

Denison Hall, 20 Masconomo Street – Mr. Hall asked if the Developer would provide a payment and performance bond for the project and would the prevailing wage be placed on the site for contractors. Mr. Engler stated he would comply with the Town's usual operating protocol for performance bonds. He added he has not selected a General Contractor, so he does not have an answer to the wage question.

Mary Foley, 1 Pulaski Drive – Ms. Foley asked about excess capacity related to the CWMP report noting that the projects volume was based on commercial use not a Development of this scale. She asked how much excess capacity would remain after the Development is built. Ms. Mellish responded the Town has 150K gallons a day and the project will take 25K gallons. She suggested Ms. Foley estimate the number of bedrooms the remaining 125K gallons could accommodate.

Sheila Hill, 2 Running Ridge Road – Ms. Hill stated in the absence of a peer review by a wastewater engineer she found Mr. Dam's comment that he was reasonably comfortable with the analysis to be an unacceptable standard for what is before the Town. She believes a peer review would raise the benchmark for the project.

Mr. Quinn replied that the capacity for School Street has a 91% peak flow. The Development will not contribute to that capacity because it can and will hold wastewater in a tank and disburse it at night.

Valerie Matthews, 202 Bridge Street – Ms. Matthews asked how many bedrooms in Town did not have service. Mr. Dam replied he could not answer that question. He clarified Mr. Hill's comment that the Town 12-month rolling average is not in the current CWMP letter. Mr. Dam said it is and additionally he reports monthly use levels to remain in full compliance with the permits.

David Comb, 1 Norton's Point – Mr. Comb stated he is concerned about the capacity of the system especially during an unusual rainy season and asked if in the event of a major storm would overflow go into Manchester Harbor untreated and would the Town be subject to fines for polluting the harbor. Mr. Dam assured Mr. Comb that the plant has the capacity to treat the daily and peak flows. Over 12-months there are peaks and valleys, and the plant does not move untreated wastewater into the harbor.

Mr. Engler added he has spent two months studying the data and there is no issue with the capacity and the existing infrastructure can work with the project. The pump station at the project will move wastewater in a strategic way the Town working with Tata & Howard has addressed any issues and provided supporting data. Mr. Dam asked anyone with a question to come into the office and discuss their concerns with him.

The Board had no additional questions for Mr. Dam, Mr. Quinn, or Mr. Formato.

- **Environmental Peer Review**



B&T Supplemental
Environmental Peer

Ms. Minihane outlined the key points in the above letter. Noting that the back and forth of previous letters has been left off. Ms. Minihane stated the final information is summarized in the following sections:

- Vernal Pool Considerations
- Wildlife Habitat Assessment
- Blasting and Site Operations Protection Measures
- Waiver Requests – Highlighting the requests with Necessity of relief, Alternate methods of compliance and Adverse impact of approval

Ms. Minihane walked the Board through the following:

- **Potential Conditions**

B+T respectfully submit for the Board's consideration the below suggested topics to be addressed in conditions. As applicable, we recommend that the Board coordinate with legal counsel as to whether these conditions can be incorporated into the Comprehensive Permit decision.

11. Additional stormwater management information should be provided for third-party review during the Notice of Intent process as indicated in the Vernal Pool Considerations section herein.

12. The Wildlife Study lists additional mitigation measures available to protect the habitat functions of the resource areas and their surrounding Buffer Zones. These include deploying additional silt fence at specific points in the breeding period to preclude amphibians being stuck

within the limit of work; and creating additional dead woody debris piles on the forest floor. B+T recommends that these items be considered as potential conditions.

13. Prior to the start of work, we recommend that the Applicant provide the Town with the documentation outlined in the Rubicon Builders memorandum and supplemented by our Comment 8. Given the sensitivity of the down-gradient vernal pools, we recommend that the Town consider third-party review of these construction documents and thirdparty oversight during the construction phase. Ms. Sue Brown, Town Planner Manchester-by-the-Sea July 12, 2022 Page 20

14. The environmental waiver review has generated dialogue regarding the invasive species on-site, particularly the Japanese knotweed (*Fallopia japonica*) in the northeasterly portion of the Property. We recommend that an invasive species management plan be provided for Town and third-party review, especially as it relates to the stockpiling and management of soil throughout the site.

15. We recommend that permit-level documents, especially subsequent stamped site plans, undergo third-party review when submitted to the Town as part of the Notice of Intent process with the Manchester Conservation Commission or prior to the issuance of a building permit.

16. We recommend that the Applicant and Board consider whether certain aspects of the work such as the blasting can be subject to time of year restrictions proximate to the vernal pool areas. We understand that the Applicant previously maintained that construction means and methods for preserving the vernal pools are not seasonal; however, we note that such construction-level detail has not been provided at this time.

17. As the Applicant has agreed to the Conservation Restriction as outlined in the Wildlife Study, we recommend that the Board include establishment of the CR as a condition.

18. If approved, the Project will be subject to the 2022 Construction General Permit (CGP) under the EPA's National Pollutant Discharge Elimination System (NPDES) Program. Using the US Fish and Wildlife Service's IPaC tool and using the locus as an Area of Interest, it appears that the range of the Norther long-eared bat (*Myotis septentrionalis*), the small whorled pogonia (*Isotria medeloides*), and the candidate species monarch butterfly (*Danaus plexippus*) fall within the area of interest. The Applicant will be required to demonstrate compliance with the federal Endangered Species Act and others (e.g., the Migratory Bird Act) through the NPDES permitting process. We recommend that the Board be kept apprised of the compliance process with both the 2022 CGP and the relevant US Fish and Wildlife requirements.

19. We recommend that the Applicant undertake additional evaluation of the erosion controls during the Notice of Intent process, pursuant to our Comment 9 herein. Ms. Sue Brown, Town Planner Manchester-by-the-Sea July 12, 2022 Page 21

20. As part of this permitting interaction, a significant amount of data collection and reporting has been undertaken with respect to the potential vernal pools on-site. It is unambiguous that these potential vernal pools satisfy the NHESP standards for certification. We recommend that these

features be submitted to NHESP for certification to memorialize the findings and update the inventory of certified vernal pools within the Town.

21. Quantify other proposed aspects of the Project that may count toward mitigation, such as the meadow habitat.

22. Pre- and post-construction monitoring of the vernal pools will provide valuable information as to whether the Project ultimately does or does not impact these resource areas. Therefore, we recommend that pre- and post-construction monitoring of the vernal pools be undertaken annually, with the time period to include at least three non-drought years post completion of construction. During such monitoring, visual assessment of the resource area health, breeding amphibian surveys (for vernal pools), and measurement of water level, pH, temperature, salt, and other relevant chemicals used on-site should be undertaken. If impacts are observed that affect the successful breeding of species using the pool corrective measures should be identified and undertaken by the Applicant. The Applicant should submit a proposed monitoring plan for review by the Town. Ms. Sue Brown, Town Planner Manchester-by-the-Sea July 12, 2022 Page 22 We thank the Board of the opportunity to assist with its review of the Project.

Following Ms. Minihane's presentation Mr. Binieris had no additional questions and stated he agreed with the need for a third-party review throughout the construction process. Mr. Diedrich agree with Mr. Binieris. Mr. Sollosy thanked Ms. Minihane for the excellent review as did Mr. Mitchell. Ms. Howe had no additional questions and agreed with the Board.

Mr. Engler stated in general he was comfortable but had a few clarifications which he would submit in writing in the next week. Mr. Engler added that B+T would be an excellent third-party review resource for the Town given their familiarity with the project.

Ms. Mellish opened the meeting for Public Comment

Alan MacMillian, Rockport – Mr. MacMillian stated he was concerned about the number of trees that will be cut down and the impact of salting the steep driveway and sidewalk will have on water quality.

Elizabeth Pyle, Hill Law asked that letter from Mr. Horsley be added to the record. The letter was added and is below.



Horsley Ltr.
7.12.2022.pdf

Mr. Gardner stated he has submitted two letters to the Board. He continues to be concerned about the water budget both biometric and quality of water. Both are regulated by the State and case law. He believes this has not been addressed or viewed adding this is critical to Vernal Pools. He noted that alterations of water coming into the Vernal Pools is not allowed and this project will result in substantive changes. He trusts that the Wetlands Protection Act will confirm his concerns.

Patrice Murphy, MECT Executive Director – Ms. Murphy noted that she believes the Wildlife Habitat Study was generic in the information provided and the conclusions drawn were not based on scientific method.

Luke Legere, Counsel for CIMAH – Mr. Legere stated that Mr. Horsley and Mr. Gardner were both well respected experts in their field. Their letters speak to the substantial alterations and degrading of the volume and quality of water for the Vernal Pools. He encouraged the Board to require conditions that commit to environmental compliance and that the project be closely monitored during construction.

Julie Scofield, Essex, MA, and Trustees of MECT – Ms. Scofield stated she considers the land around the project her neighborhood. She moved to Essex in the 1980's and was impressed by the work of environmentalists to create and protect the green corridor and admired how much hard work must have contributed to the beautiful, protected area. This was not an accident. There is no way for the 40B project to be integrated into the existing green space and encourages the Board to deny the project.

Mr. Engler stated the Town and Board requested the Wildlife Habitat Study and what had been submitted in professionally done. Mr. Engler stated he agrees with the conclusions, and comfortable that he State Regulations have been met.

Mr. Pucci reminded the Board they are acting as the Conservation Commission and the Conservation Commission treats Vernal Pools as a resource area. He agrees with Attorney Legere that the framework for looking at a waiver and whether to consider the waiver or not is the resource area location specific to the site. The Board then determines if a waiver is needed and if the Board will grant a waiver specific to for instance the roadway. The Board is applying performance standards based on local By-Law and resource area.

Mr. Pucci recommended that the Board request third-party consultants tie their comments to recommendations for waivers and conditions and if a waiver or condition is needed state why.

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 July 27, 2022 at 7:00 p.m. Mr. Diedrich seconded the motion. The motion passed unanimously by roll call vote.

ADMINISTRATIVE MATTERS

- **Review and approval of meeting minutes:**

Ms. Mellish requested the Board's approval to correct minutes previously approved by the Board. The Board approved the edits.

Ms. Zahn moved to approve the Meeting Minutes for May 11, 2022, May 25, 2022, and June 8, 2022; Mr. Sollosy seconded the motion. The motion passed unanimously with Ms. Mellish, Mr. Zahn, Ms. Howe, Mr. Binieris, Mr. Diedrich, Mr. Sollosy, and Mr. Mitchell voting affirmatively.

Ms. Mellish reminded the Board there was a site visit scheduled for July 18th at 5:30 p.m. at 2 Woodholm Road. Mr. Binieris stated he would be in CA next week and would not be able to attend the meeting. Ms. Howe stated she would be recusing herself from the hearing, she lives in the neighborhood.

- **Any other administrative matters that could not reasonably be anticipated in advance of the meeting.** There were no additional matters to discuss this evening.
- **Adjourn --** *Ms. Mellish moved to adjourn the meeting; Mr. Diedrich seconded the motion. The motion passed unanimously by roll call vote.*