

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MAY 31, 2017 7:30 p.m.
MEETING MINUTES**

Members Present:

*Mark Ford
Francis Hubbard
Heidi Conway
Brian Murphy
Richard Murphy
Mark Stiles*

Also Present:

*Jerry O'Neill, Bldg. Commissioner
& Code Enforcement Officer
Edward Pesce, Peer Review*

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Mr. Ford opened the meeting and stated that the primary purpose of the meeting was to begin deliberations on the Matlin 40B case. He said that the hearing had been closed; the Board could not take any more evidence including comments from abutters but the abutters were entitled to observe the deliberations. Mr. Ford said that a 40B requires three (3) votes and that he, Mr. Hubbard, Ms. Conway, Mr. B. Murphy and Mr. R. Murphy would be voting.

Mr. Ford said that the first question is, would the Board permit the 355,000 cubic yards requested or less. He said that they could take an informal vote after the discussion or defer the vote. Other questions to consider would be: would the Board require that some money be put into escrow to cover wear and tear on the streets as a result of the trucks; would the Board waive fees for earth removal if granted. Mr. Ford said that if time remained, the Board could go through the rest of the draft and that he expected to have revisions after this. Mr. B. Murphy said that he thought that the Board would be having a workshop with Attorneys Galvin and Witten and Mr. Ford said that he did not know about that.

Mr. Ford said that he wanted to hear from the rest of the Board regarding earth removal, including the amount to be removed. Mr. R. Murphy said that he was concerned about water resource protection; if removing earth we need to make sure the wells are protected. He said that he thinks they have answered that with Mr. Pesce's presentation. Mr. B. Murphy said that he is also concerned about the water protection issue. He said that we bought the piece across the street to protect that; he was not sure why we didn't buy this piece and he finds that interesting. Mr. B. Murphy said that judging by Greg Guimond's guesstimate and Mr. Little's 3-D presentation, it was hard to decide between Mr. Guimond's number and the applicant's number.

Mr. Hubbard said that he had told Mr. Ford earlier that he had just had surgery and wanted to listen to the other Board members; he has spoken on this before. He said that the only thing he would say regarding Mr. B. Murphy's comment about Mr. Guimond was that Mr. Guimond is not an engineer and he would have to discount his plan because of that. Mr. Hubbard said that it was a nice looking thing but it wasn't based on engineering. Mr. Hubbard said that he would like to hear from the other members. He also said that he did not expect to take a vote tonight, did not want to take a vote tonight and just wanted more input from the five (5) members and Mr. Pesce.

Ms. Conway is concerned that earth removal is funding the project; she thinks that the removal should be the amount necessary to build. Mr. Stiles said that he didn't see a lot of evidence about earth removal but he did see evidence of what Ms. Conway was talking about. He asked Ms. Conway if the thought was that the applicant is taking more than necessary to fund the

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project and Ms. Conway said that was what she was struggling with. Mr. Stiles said that he understands the environmental concerns but as a landowner, he said it was like taking out a line of credit on your existing land to fund it. He said that he did not have a fundamental problem with that piece.

Mr. Ford said that he was close to where Ms. Conway is and wanted to go through his view of the facts and his view of the relevant law. Mr. Ford stated that the history of this parcel goes back to 1984 when there was a decision by the Board of Selectmen to deny earth removal because of concerns about the impact on the neighborhood. He said that was thirty (30) some odd years before the first affordable housing proposal. Mr. Ford said that the applicant purchased the parcel in 2005 and made his first request to remove 200,000 cubic yards in 2007. At the time the applicant said that he had no plans for the property after the earth removal. He ended up withdrawing that permit before it was voted on. In 2009 the applicant pursued a larger request for removal of 460,000 cubic yard and paired it with soccer fields and that was rejected. Mr. Ford said that as he looks at this, it is not an affordable housing project where earth removal is facilitating it. This is an earth removal project or an affordable housing proposal being used to facilitate earth removal.

Mr. Ford said that he appreciated and agreed with Mr. R. Murphy's view that revisions have mitigated the environmental issues. He said that he appreciated land rights and land ownership that Mr. Stiles mentioned. Mr. Ford said that in 2011 Town Meeting voted to categorically prohibit earth removal in all residential districts and that this was a residential district. Mr. Ford said that this was the decision of our neighbors at Town Meeting – that we were not to permit earth removal in residential districts. Mr. Ford said that you can think what you want of the wisdom or the motives behind it, but that was the vote. That was the vote of the people and Mr. Ford questions if the Board has the authority to overrule that. He said that this wasn't a case where the voters passed fifty-six (56) things and may not have considered the impact of one (1) provision. Mr. Ford stated that the voters were asked one (1) question which is whether commercial earth removal should be permitted in a residential district and they gave one (1) answer that is incredibly important and the Board cannot lost sight of that. Mr. Ford said that he thinks the factual question for the Board should be exactly what Ms. Conway pointed out – is earth removal necessary for the construction of affordable housing. Mr. Ford said that he appreciated Mr. Hubbard's point but he thinks that the evidence is clear that 355,000 cubic yards is not necessary. There is a letter from the Town Engineer saying that amount of earth removal is not necessary for construction of the project. We have a letter from the Planning Board saying that amount of earth removal is not necessary. Mr. Ford said that Mr. Guimond stated that his presentation was in conjunction with the Town Engineer and it showed that it could be done with an estimated 180,000 to 200,000 cubic yards and Mr. Little's presentation was compelling. Whether the 180,000 is the number supported by expert testimony or educated guess is the second question. The question that has to be answered is whether the 355,000 is proven by the applicant to be necessary and I don't think there is a case. Mr. Ford stated that when he asked the applicant straight out at the first substantive hearing if it was necessary from a construction standpoint and the applicant said, "I can't afford it without earth removal". That was telling and exactly what Ms. Conway said. This was his preferred means of raising capital. He didn't contend that earth removal was truly necessary for the construction. If you look at the statute,

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there's nothing in the 40B statute that permits the Board to waive local restrictions. The law only permits the Board to waive local restrictions that are necessary for the construction of affordable housing. Mr. Ford said that it all comes from a Supreme Court case that says the Board may modify or ignore local restrictions that hamper the construction of lower, moderate income housing. He asked if the restriction hampers the construction and he does not think that it does. Mr. Ford said that the 40B regulations empower the Board to grant waivers that are consistent with local needs and are required to permit construction. Is granting a waiver required to permit the construction of affordable units? Mr. Ford stated that the regulations go on to say with respect to non-residential elements of a project, the Board does not have any heightened restriction in imposing typical regulations; Mr. Ford thinks that this is a non-residential component of the project. Mr. Ford thinks that every shovelful that exceeds what is necessary to build this project is a finance venture. He said that the Board is being asked to approve a two (2) to three (3) year business of earth removal that is otherwise prohibited because it is the applicant's preferred means of raising capital. Mr. Ford stated that he did not believe the law permits the Board to overlook or overrule or otherwise nullify the vote of the public for that reason. He said that the Board should not permit the requested earth removal. He said that the Board should permit affordable housing on the property but it should be less or none; the Board can decide later what amount they could permit based on the evidence.

Mr. Hubbard said that he was not planning on speaking a lot but was compelled to speak on two (2) issues. He said that first of all he appreciated what Mr. Ford said about the vote at Town Meeting as far as what the Town wants and the Board shouldn't go against that. Mr. Hubbard stated that Town Meeting has passed and amended Zoning Bylaw that doesn't allow apartment buildings in these zones; that we have R-1, R-2 and R-3 districts. There are no apartment buildings allowed and no condominium buildings allowed. By nature, anything the Board does with this application will go against the view and opinion of the voters. Secondly, he said that he appreciated what Mr. Ford said about earth removal and what the applicant says that he needs. Mr. Hubbard said that this question should be posed back to the applicant – what does or doesn't make this project uneconomical. Until the Board gets that information it does not have all of the information to vote.

Mr. Ford said that the Board has the power and in some instances can waive restrictions that prohibit construction; imposing restrictions on apartment buildings or condominiums does not prohibit affordable housing. Earth removal does not prohibit building affordable housing the way restrictions on apartment buildings and condominiums would. Mr. Ford said that part of what bothers him is they should consider the slippery slope the Board would be on if they permitted an otherwise prohibited use simply because it is a means of raising money or capital. Any undeveloped hill in the Town would become a target for any underfinanced developer. What if the next developer says that they want to build a strip mall in a residential neighborhood and will take the rent from the strip mall and build affordable housing in the back. You could say it is clearly offensive but the public has already said, by voting, that earth removal in residential neighborhoods is clearly offensive to the neighborhood.

Mr. Hubbard said that once they get the sense of the Board they have an obligation to go back to the applicant and say, "show us"; this question hasn't been answered. Mr. Ford said that the

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question has not been answered but he has asked it a dozen times. Mr. Hubbard said that once they get the sense of the Board they should go back to the applicant and have him show us why it is uneconomic; he is owed that right. Mr. Ford said that he has been afforded that right and that he literally asked him at the last meeting, "this Board may vote to approve the project with a lesser amount of earth removal and you think that's uneconomic; he answered yes." Mr. Ford said that he had asked, "have you presented all evidence to prove that and he answered yes". His answer is that it is uneconomic because he requires that income, that \$1 million to subsidize his capital. Mr. Ford said that he knows the argument and he is not persuaded. Mr. Ford said that the applicant has been given every opportunity from the first meeting and he knows where Mr. Ford was going.

Mr. Hubbard said that they had been advised by Town Counsel that, as a Board, they could not ask that question until a certain time and he believes that they have reached that time. Mr. Ford said that they had reached that time at the last meeting if not many times before. When the Board said, "you contend that it is uneconomic and he said yes. And you have now presented all evidence to prove it is uneconomic and he said yes". Mr. Ford said that he asked that before they closed the hearing. Mr. Hubbard said that, with all due respect, he hasn't seen it. Mr. B. Murphy said that with the other 40B, Webster Point, there wasn't an earth removal issue in Marshfield but there was in Duxbury. He said that they were in trouble for not including that in their documents to the state because it has a value and that value wasn't applied to the property. Mr. Murphy said that he had gone to Duxbury and asked but did not get a clear answer as to how big the removal is and what the value of it is. He said that it was better material than what the Board is looking at.

Mr. Ford said that the biggest issue is that wasn't a prohibited use in Marshfield. Mr. Hubbard said that the earth removal was from the Duxbury side of the property. He said that in the Comprehensive Permit, Marshfield restricted truck travel but that earth removal was not an issue on the Marshfield side. Mr. Ford said that he was wary of adding evidence from Duxbury as he was not sure if the removal was necessary for construction or not. He said that if someone showed him that the removal of 50,000 cubic yards was really necessary to build then he didn't think that he would voice the objection. He said that it wasn't an issue if they need to grade the area and do cuts and fills. Mr. Ford said that the issue for him was, is the amount in excess of what is necessary for construct and that being a prohibited use.

Mr. B. Murphy said that he thought the cubic yards for the soccer fields was over 500,000; Mr. Ford said that it may have been but it was scaled back. Mr. Murphy said that he followed that, was at Town Meeting for the vote about earth removal and he has a question: how do you build in there without removing material? He said that he struggles with that. Mr. Ford asked Mr. Murphy that if, based on what he has heard, did he think 355,000 was necessary to construct affordable housing; nobody has contended that yet. Mr. Ford said that there has been testimony that it's not from the Planning Board and the Town Engineer and from abutters but nobody has actually said it, not even the applicant, that they need 355,000 to literally build, not just to be able to pay for the construction but to literally build. Mr. B. Murphy said that when he looks at the property, he can't see how they can build without removing, there has to be some removal. Mr. Ford said that his view was that there shouldn't be any earth removal; his view is that there

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should be no earth removal beyond that that has been proven for construction. He said that it was a harder question, but it isn't 355,000. Mr. Stiles asked what the range was. Mr. Ford said that the evidence before the Board was either 180,000-200,000 which the Town Planner presented as a proposal and an abutter presented a proposal that was less than 30,000. He said that his view was that they shouldn't go above 180,000-200,000 which was the only evidence that was presented. Mr. Stiles said that the applicant's argument is that he needs that otherwise it is uneconomical. Mr. Ford said that is how the applicant frames it and Mr. Stiles said that the question would go to the Housing Appeals Committee.

Mr. Hubbard said, yes, and the problem with that is that the applicant has been approved for forty (40) units in that spot removing 425,000 not 355,000. He said that the Board was in a dilemma and he appreciated that dilemma. Mr. Hubbard said that if the Board rejects it and the applicant appeals, the Housing Appeals Committee would consider the appeal based on the forty (40) units at 425,000 removed. Mr. Ford said that he remembers Mr. Hubbard making that point but said that they did not approve 425,000; they said that the applicant met the requirements and had to go to the local Boards to provide input on all aspects of the project including this. Number one (1), you can't reference the letter from Mass. Housing as "I'm golden". Number two (2), to Mr. R. Murphy's point the 425,000 in the initial proposal impacts the environment – hazards, the aquifer, wells – and the Board made that clear in the decision. Mr. Ford stated that he did not think that any appellate body would approve this over those finding particularly where he made another proposal with lesser removal. Mr. Ford does not think that the Town is taking an enormous risk of the applicant prevailing on appeal. He said that the Town has some pretty good lawyers working for them. Number three (3), Mr. Ford said that as a litigator sometimes fights are worth fighting; if the Board isn't going to vote for the Town where people said that they didn't want earth removal in residential neighborhoods, what are they going to fight for. Mr. Ford said that the Board represents their interests and maybe this is in the best interest of the Town; it permits affordable housing and has minimum impact on neighborhoods; it may get appealed but the Board has a good argument and it's worth fighting for.

Mr. Hubbard said that he agreed with Mr. Ford except for the 355,000 and forty (40) units. Mr. Ford said that the applicant has essentially said that he can't afford forty (40) units at 355,000. Mr. Hubbard said that was what his point earlier was, that as a Board if they are ready, on a straw vote or whatever they want to call it, to send a formal notice/letter saying that the applicant needs to show the Board why it is uneconomical not to remove 355,000. Mr. Ford said that he was with Mr. Hubbard but that, procedurally, they couldn't do it because they had closed the hearing. He asked Mr. Hubbard to go back and look at the last meeting where he provided the applicant with every opportunity. Mr. Ford said that Mr. Armstrong has been provided every opportunity to present any scintilla of evidence he wanted to present to support the earth removal knowing full well that Mr. Ford would make this argument today and Mr. Ford raised this issue the first time he spoke about it. Mr. Ford said that they have heard the Town Planner's presentation, Mr. Little's presentation and at every opportunity the applicant just said that he needed the money.

Mr. B. Murphy asked if they were voting on whether they vote on the removal and Mr. Ford said that he had in mind an informal straw vote. He said that the Board has 40 days from the close of

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the hearing; Mr. Pesce said that he thought it was 45 days and Mr. Ford replied that it was 40 days. Mr. Ford stated that if folks weren't prepared today to say one way or the other, or if they want to think about it, the Board doesn't have to rush. He said that they still have 20 some odd days so they have time and he said that he really wants people to think about this.

Mr. B. Murphy said that if they say No then they aren't realistic, but they can say No to the 355,000. Mr. Ford said that he would not support saying no to the project or necessarily no to the earth removal. He said that they approve the project but can condition the earth removal but will have to put a number on it. Mr. B. Murphy said that Mr. Little is an opponent of this but he said that something had to be removed. Mr. Ford said that in Mr. Little's defense, he said that he was a little conservative; Exhibit 3 had 25,000. He stated that the Board should waive that which is not necessary. Mr. Hubbard said that he would rather not take a straw vote tonight, that because of his hand he is not able to take notes and he would like to put his thoughts in writing. Mr. Ford said that maybe they could get Mr. Galvin's opinion on sending a letter. Mr. Stiles asked if Mr. Galvin would be the one to represent the Town on appeal and Mr. Ford said that would be his pick. Mr. Stiles asked if Mr. Galvin had opined on the differential from 200,000 to 355,000. Mr. Ford replied that he did not think that he had formally opined on it publicly and he thought that Mr. Galvin may show at the meeting.

Mr. Stiles talked about the applicant risking units and said that he could always find funding; that there was no new evidence so they will see what the Board is seeing. Ms. Conway asked for confirmation that it was 180,000-200,000 for twenty (20) units and Mr. Pesce replied that it was. Mr. Hubbard pointed out that neither Mr. Guimond nor Mr. Little were civil engineers.

Mr. Pesce said that he had been looking at his watch and the Board had deliberated eloquently for 45 minutes which shows the level of importance this project has for them and he thought that was pretty impressive. He also said that the Town was lucky to have people like them doing this. Mr. Pesce said that a certain amount of removal is necessary to level the site and build on it. He said that there was some site restoration that was required by the Natural Heritage program; that there was a restricted area that the applicant can't touch but he can restore. He can't use it for building but he can put up a fence. It remains restricted from development in perpetuity. Mr. Pesce said that whenever we deliberate and get to this part they should look at things that would hold up under the scrutiny of the Housing Appeals Committee. Those are human health and safety issues or is something inconsistent with local needs; those are the things that they listen to and somewhat defer to the Zoning Boards. Mr. Pesce pointed out that the one he was most concerned with was depth to groundwater. He said that the water protection rules are pretty clear and the nitrogen loading rules are pretty clear for good reason; and they had to meet that with the revisions that they made and that met that threshold argument for him. Mr. Guimond and Mr. Little provided some compelling examples that this can be done with less, but you still have to do it with some removal. There's a certain amount of leveling that needs to be done at the site; the big question is, how much would you be comfortable with? There was a compelling argument at Town Meeting with the change in the Bylaw not to allow earth removal in a residential zone. He said that the Board was wrestling with if you approve it or deny it or approve it with conditions to remove no more than X, would that hold up? He said that they were all legitimate concerns.

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Mr. Pesce said that when Mr. Ford asked if the applicant could do it for less he said, Yes. He said that several Board members had asked Mr. Pesce the same question and he had said, Yes, it certainly could be done. They could tighten the site, they could make the buildings closer but not a lot closer, they could add a third floor to some of the buildings but he didn't think the Board really wanted that. He said there are a number of ways to shrink the footprint. They could also build underground retention (?) and not have a big open expanse. He said that it was possible but it would involve more dollars to construct.

Mr. Pesce said that the Board needs to wrestle with not just the earth removal question. He said that the Board is in general agreement that they don't want to make things difficult in the neighborhoods and that they want to be protective of human health and safety. Mr. Pesce said that if the Board was leaning toward approving with conditions to protect the town and protect the neighborhoods, what amount would they be comfortable with – Mr. Guimond's 200,000? If they are comfortable then why?. Mr. Pesce said that it was not his role to influence the Board either way because he does not know the answer to that. He said he was never asked, nor is it his role normally to design the site for them. His role has been to look at the site and come up with meaningful and reasonable engineering comments to help improve safety and constructability and make sure it complies with local regulations where applicable and good engineering practice. They have done a good job with the new design efforts with the site from raising the site another ten (10) plus feet to providing a well done landscaping plan. Mr. Pesce said that they had hired someone to do a professional landscape plan. He said that the Board now needed to think about what level of earth removal they would be comfortable with. If Mr. Galvin were here we could ask him about what the Board can approach the applicant on for clarification; you can ask for clarification on things that were submitted. Mr. Ford stated they should ask Mr. Galvin whether the Board can or whether they should.

Mr. R. Murphy said that Mr. Ford had asked the applicant if it was economically feasible. Mr. Pesce said that they were only allowed to do that before the hearing was closed. Mr. R. Murphy said that if the conditions the Board imposes triggers the economic instability, is this the point where the applicant has to provide this information? Mr. Hubbard said that he thought so, too. Mr. Pesce said that during deliberations they can ask for clarification on something the applicant has already given. Mr. Ford said that one of the reasons they did the draft was to give the applicant disclosure of the conditions. Mr. Ford said that he literally told the applicant that the Board might do this and he literally referenced Mr. Guimond's and Mr. Little's proposals and asked him to comment. He had the opportunity and declined to offer anything. Mr. Ford said that he was hesitant now to give the applicant another chance to do that. Mr. Ford said that he thinks the Board knows the applicant is going to say it's uneconomic; he thinks he has actually said that and he thinks the Board knows why. He said that they have asked him to send evidence and all the evidence is his P&L which is, I need a certain amount of revenue to build. Ford said that he can't tell how many times he asked if the applicant had any other evidence to offer and he declined. Mr. Ford is confident that he has had due process; and the applicant has said it is uneconomic because he couldn't afford to build it. Has he opined on the ceiling of what is necessary? No, he has not. Mr. Hubbard said that he agreed with Mr. R. Murphy, that they were advised by Town Counsel that we were not allowed to ask for that information until we made the determination. Mr. B. Murphy said that one of his fears is that whatever the number is,

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the 180,000-200,000 or whatever, is would the Board look irrational on how they came to their decision? Is that something that can come back and hurt them? If they pick 200,000, how did they do that, what is the basis in fact? Mr. Pesce said that he like what either Mr. Ford or Mr. Hubbard had said – how many thousand cubic yards do you need to build a site, not generate income. He asked what design could be achieved that would allow them to build twenty (20) units, maybe pull a little more to make way for a buffer zone; to build twenty (20) units and flatten the site to do that and to build an access road. He said that the Board has all asked if it could be done for less and it can. But how much less is it 50,000 less or 75,000 less? Would the Board be happy if he split the difference between 355,000 and 200,000? If he came up with 275,000 would the Board be happy with that and, if so, why?

Mr. R. Murphy stated, say they got to the baseline where the applicant says, this is what I need for construction. Then jump ahead and we are saying we are disturbing the site, we're doing earth removal to get a baseline for construction; then jump ahead to the affordability component.. Jumping ahead to the next level, we're disturbing the site, disturbing the town, disturbing the earth, doing what we voted not to do. So now the delta is, is there a little more that is now okay to build? Mr. Ford said that the burden is on the applicant to show the Board that the earth removal is necessary for construction, not a burden on the Board to redesign the project. The Board is only authorized to waive requirements that are consistent with local needs and necessary for construction. It's clearly the law and it is his burden to provide us the basis to do that and he has not. We could go back and say that based on all the evidence presented to us, the only rational condition we could make is the only proposal that was advanced by other members of the Town administration and we relied on that. Mr. Ford is not sure if he could overturn the Board on that but the burden is on him to provide evidence with each waiver that it's necessary for construction. Mr. Stiles said that isn't the applicant's argument; his argument is that it becomes uneconomic. Mr. Ford said that it was not the burden of the Board to say it was uneconomic. Mr. Ford said that unless the applicant says that it's necessary for construction and the Board doesn't waive and they insist on local regulations that may impair what he wants to do, then he thinks that the applicant can say that it is uneconomic and the burden would shift to the Board.

Mr. Ford said that he doesn't think the applicant should overcome that by just saying that it is uneconomic. He said that Mr. Hubbard has a due process issue but Mr. Ford does not. He thinks the Board has provided plenty of process and opportunity but he also thinks that there is a hurdle. He does not think the Board can or should waive any local restrictions, let alone one that was the focus of the vote. Mr. Stiles asked why allow one shovel. Mr. Ford said because it was necessary for construction and said they would accept 20,000; the best evidence has been provided by the Planner. They have not presented any evidence that would support waiving earth removal. Mr. Stiles said that the people have spoken. Mr. Ford said that they could waive restrictions that were necessary for construction. Mr. R. Murphy said that Mr. Hubbard had stated that he could build detached units but he wouldn't have as many units to make it economically feasible. Mr. Ford thinks this is an ancillary business to raise money. He said that asked the Board to move on because there were other things to consider.

Mr. Pesce referenced Page 20, item 23 regarding earth removal and said that he had discussed

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this with Mr. Procaccino and he is more comfortable with things. He tried to discuss the \$500,000 and he told Mr. Procaccino that the Board was interested in having some mitigation but \$500,000 was an unreasonable number. During the conversation he went over some of the substantive changes which he hadn't been completely informed about. They went over how it complies with the Water Resource Protection District and the calculations for nitrogen. During the discussion, we came up with a formula. He said that over a year and a half, the five (5) additional trucks on the road would be two (2) or three (3) times more per hour than what is happening today. Approximately one third of the trucks are there and two-thirds are being added as new volume of trucks on the road. They looked at the truck trip plan and there is a credit for a reduction in the trucks coming into town because now the sand and gravel sources would be more local. Mr. Pesce said that the applicant doesn't have anything to base it on, there was no contract and it's more of an estimate on his part, but we did give him some credit for that. We came up with a number of approximately \$37,500 that would be needed to help defray the \$500,000 cost over a fifteen (15) year buildout or repair for Furnace Street. We said we would give credit for two (2) of the five (5) trucks that aren't coming so they will only be paying sixty percent (60%) which is where the \$22,500 came from. For over a year and a half, \$22,500 will be provided to the Town to help defray the expense of rebuilding and repaving Furnace Street for fair wear and tear caused by the additional impact of forty (40) trucks per day going up and down Furnace Street. Mr. Pesce said that Mr. Procaccino asked him to stay and brief the DPW Board of Directors meeting and he told them about the groundwater, the wastewater and nitrogen calculations; he read some of the proposed conditions to them re: noise, dust control, no refueling and so on so that they would have some comfort level as to what level this Board was taking in scrutiny of the project. He said that he discussed a number with Mr. Galvin and Mr. Armstrong will say that there are other earth removal permits in town that don't have a mitigation requirement. They could be a different scale or duration and we didn't think this was unreasonable. Mr. Pesce said that the DPW felt this could be one of the Board's conditions or if they aren't comfortable, when they go to apply for the license to go through the salt shed area they could condition their license. Mr. Hubbard asked if Mr. Procaccino and the Board felt comfortable with this number and Mr. Pesce replied, Yes.

Mr. Ford said that he brought this up at the last meeting and the applicant talked about insurance; this is more than wear and tear. Mr. Pesce said that insurance would cover taking out a sign, etc., and he isn't saying this is the best number; this is to cover the slow wear and tear of the road over time. Mr. Hubbard said that unlike the \$500,000 number this was rational. Mr. Pesce said that Mr. Procaccino was comfortable with this and had a formula. Mr. Ford asked the Board what they thought; the applicant said that he shouldn't have to do it because nobody else does. Mr. B. Murphy asked if the applicant was upset with the \$22,500; Mr. R. Murphy asked if he knew about the \$22,500. Mr. Pesce said that he did not know but he did mention it during the hearing. The Board did not have any issues with this.

Mr. Ford said that the next request from the applicant was to waive the initial application fee and the renewal fees. Mr. Hubbard said that the draft said the first year, yes but for multiple years they would waive it. Mr. Ford said he thought it was paragraph sixteen (16) that was drafted. There was a discussion that it was on pages nineteen (19) and twenty (20). Mr. Ford said that this looked like what the draft would be if they accepted the applicant's proposal waiving the fee.

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Mr. Hubbard said that their intention here was to say "notwithstanding the initial fee", he would pay the initial fee. Mr. Pesce said "which may be required". Mr. Ford asked if anyone knew what the annual fee was and Mr. Hubbard said that nobody did, that it was recently changed by the Board of Selectmen. Mr. Ford said that he would want to know. Mr. Hubbard said that the applicant thought that he could be facing multiple thousands of dollars every year. Mr. Ford thought the rationale for the waiver was for the Board of Selectmen to get input from the consultant, essentially paying for what Mr. Pesce was doing. Mr. Hubbard said that applicant is paying for Mr. Pesce and has to pay going forward. Mr. Ford said that they need to dig in to what the fee is and what it pays for. He said that if the fee is say \$1,000 and \$800 is used to get input, \$200 is intended to do postings and public notice, or defraying fees for administrative expenses then he thought they could discount the piece that he is already paying for. We can figure it out at the next meeting; what is the fee and what is the accounting of that fee. Mr. Ford agrees that the applicant shouldn't have to pay twice. In other words the applicant is pre-paying the fee already. Mr. Pesce said that his initial application fee was \$10,000 or \$15,000 and he paid \$15,000 a few years ago and was denied; the money was used to hire Woodward and Curran. He has done that again and he will be continuing to fund an escrow account to manage it and monitor it. Mr. Ford said that this is what he really wanted to understand, there's the initial fee and the subsequent fee. The fact he made a proposal and payment in 2011 and was denied, he doesn't get credit for that. Mr. Hubbard said that did not come up in the working group discussions. Mr. Ford and Ms. Conway said that he had made that argument at the hearing. Mr. Pesce also said that this did not come up in the working sessions. Mr. Ford doesn't want the applicant to double pay but he also does not want the Town to discount one penny beyond what they should. Mr. Ford said that they need to find out what the initial fee is, what it is for; he thinks a discount is appropriate.

Mr. Ford said that he also remembers the time of the project being raised, a time window for week day, weekend for general construction and earth removal trucking. Mr. B. Murphy said that on page 20 it says, "the applicant may only engage in trucking or hauling activities occurring on a school bus route..." Mr. Hubbard interjected and said that there still was a typo that he had raised before. On line four (4) where it says Duxbury, it should say "when" and the words between "when" and "Marshfield" should be deleted. Mr. Ford asked if this was just a vestige because they used Webster Point for an example and the answer was yes. Mr. Ford said that he remembers that someone from the Public pointed out that school may not actually begin at the same time, depending on the year. Mr. Ford said Martinson Elementary is there and Mr. B. Murphy said that the elementary schools rotate a later start time every two (2) years. Mr. Ford thinks that this portion of the draft should be adjusted and thinks that they want to have no trucking until the kids are actually in school, and not when they are going back and forth. Mr. Hubbard stated that they need to make sure the permit holder knows this and is adequately notified. Mr. Ford said that it's not like it changes every day and Mr. B. Murphy mentioned the summer. Mr. Ford said that they can work with the language and he assumed that everyone was okay with that revision. Mr. Murphy asked if that would end in the summer and Mr. Ford and Mr. Hubbard replied that it said when school was in session. Mr. Ford asked what schedule would be in the summer and said that the Board could condition what time they started. Mr. B. Murphy asked Mr. O'Neill what time was allowed for construction. Mr. O'Neill said that the state says 7:00 A.M. to 9:00 P.M. Mr. Ford said that paragraph 21 is generally applicable and would be an applicable schedule even for hauling even during the summer or when school is not

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MAY 31, 2017 7:30 p.m.
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in session. Mr. Hubbard said that it would be further conditioned with the school schedule. Mr. Ford asked if the Board was okay with 7:30 on weekdays and Mr. Hubbard said that state law allows 7:00. Mr. Pesce said that he thought they took this out of a previous permit; he said that 7:00 is applicable but 7:30 is reasonable. Mr. Ford said that they should be consistent with what they normally require. Mr. Pesce said that he looked at Article 20 but did not see anything about fees and was trying to find it on line. Mr. Ford said that he has tried and failed looking on line. Mr. B. Murphy asked if it was Article 22; Mr. Ford said Article 20 under the General Bylaw to see what the fee was. Mr. Hubbard said that it was a ruling by the Selectmen. Mr. Ford asked if there were any other comments after looking at the initial or recent view of the draft. Mr. Pesce said that Mr. Galvin's initial comment when he sent the draft was that they should think about the waivers that needed to be added and would like to endorse. Mr. Hubbard said that they hadn't discussed those yet. He said the file inventory was a technical thing between Ms. Porreca and the Board to make sure there is an inventory of everything that was submitted. Mr. Ford thought the applicant provided the draft list; Mr. Hubbard said they provided the waivers. Mr. Ford asked if there was something in the draft that said it is a requirement for the applicant to obtain the conservation and management permit from Natural Heritage. Mr. Pesce said that it was in the list of conditions to start construction, the pre-construction requirements; it's under Section 9, item 1-F on page 10 – a conservation and management permit issued by the Massachusetts Division of Fisheries and Wildlife. Mr. Ford asked if there was anything else the Board wanted to discuss and they replied, No. Mr. Ford determined when the forty (40) days expired – they closed on the 16th. Mr. Hubbard said that they had 25 more days; the next meeting is on the 6th for Modera. Mr. Hubbard asked if there were a regular meeting on June 13th – yes, and the next regular meeting was on June 27th. Mr. Hubbard asked how busy the schedule was on the 13th and Ms. Porreca replied that it was very busy – at least six (6) or seven (7) cases. Mr. Ford said that they may have to go to a different night other than Tuesday. Mr. Ford suggested that it go on the Agenda for June 13th; Mr. B. Murphy asked if it could go on the Agenda for June 6th after Modera. The Board decided to put it on the Agenda for June 6th. Mr. Pesce said that he had completed his preliminary review of Modera and would be writing it up the next day. Mr. Ford said that there are two (2) draft minutes for the last couple of meetings to be distributed. Mr. Ford made a motion to adjourn which was seconded; all were in favor.

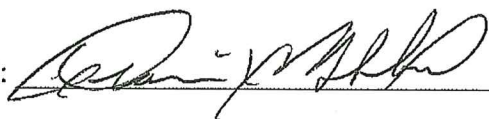
Respectfully submitted,

Nanci M. Porreca
Zoning Administrator

I attest the foregoing minutes were approved by the Zoning Board of Appeals at their

March 27, 2018 meeting by a 3 - 0 vote.

Signed:



Date:

3/27/2018