

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

Members Present:

Mark Ford
Lynne Fidler
Francis Hubbard
Heidi Conway
Brian Murphy
Richard Murphy

Also Present:

Jerry O'Neill, Bldg. Commissioner
& Code Enforcement Officer
Robert Galvin, Town Counsel

Members Absent:

Joseph Kelleher, Chairman

MARSHFIELD TOWN OFFICE
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Mr. Ford called the meeting to order and advised that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded. Unless noted, Mr. Ford was the Hearing Officer and he noted that the other members were signified by their nameplates.

#16-50: Peter Armstrong, Matlin, LLC: The Petitioner is seeking a Comprehensive Permit, in accordance with M.G.L. Chapter 40B, for the construction of nineteen (19) duplex buildings, two (2) single family homes and one (1) commercial/office building; this development will consist of twenty-eight (28) one-bedroom units, eight (8) two-bedroom units, and four (4) three-bedroom units, which will total 40 units in all, 10 of which will be considered affordable according to the Boston Metropolitan Statistical Area Index, as determined by HUD, on the property located Ferry Street Rear, which is identified on the Assessors' Maps as G12-29-02 and is located in an R-1 zoning district and the Water Resource Protection District. A copy of the application and the plans may be viewed at the Board of Appeals office in Town Hall.

Mr. Ford turned the meeting over to Edward Pesce for an update. He said the first thing they need to have is the final Conservation permit and the Department of Fish and Wildlife. That document will require two (2) things: 1) it will explain the restoration and 2) the Conservation restriction; they will need to find someone to be the holder. The NSTAR/Eversource easement has been added to the plans. Mr. Pesce said that under Conditions, the third earth removal, A-B-C, is listed on page 3. The proposed truck route was submitted by email; the mitigation for truck traffic and repair of the roads; off-street parking is mentioned but is not on the plans and Mr Grady will put that on the final plan set. There was a meeting with the Town and Mr. Armstrong has met with the Fire Department.

Mr. Ford read Kevin Feyler's email but isn't sure they have the Fire Department with the location of the fire hydrant. Mr. Armstrong said that Ms. Porreca has that email. Mr. Pesce said that page 4 of the application discusses the proposed landscaping with the Board and earth removal with Rod Procaccino. Berms and pavement are shown on plans as conditions of approval. There is a draft of earth removal conditions. Mr. Pesce said that the present perimeter buffer plans don't conform but he thinks they can do it. They don't conform with a 3:1 or 4:1 slope. He proposes 2:1 on a five (5) acre parcel; he believes this is buildable and doable. There

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MARSHFIELD TOWN HALL MAY 2, 2017 7:30 P.M.
MEETING MINUTES**

was discussion about planting pine trees but it is not practical. The drainage pattern is not practical. The frequency of reporting was bimonthly but Mr. Pesce thinks monthly is adequate. Mr. Pesce made the following points on earth removal:

1) no earth hauling beyond Clay Pit Road and there was a discussion about using it; 2) no hauling during the Marshfield Fair; 3) no parking of dump trucks; 4) no stump grinding or gravel crushing; 5) noise levels; 6) safety and excavation operation; earth removal conditions may sometimes say no to cuts; 7) engines for all vehicles not on before 7:00 AM weekdays and 8:00 AM weekends; 8) all truck and equipment maintenance.

He thanked Mr. Nunes for the site visit to Carver. He had a front end loader face him and they put it in reverse to measure. Mr. Pesce said the noise generated at the site was not objectionable for abutters at 250 feet; the closest abutter is at 270 feet. Mr. Pesce went through the truck traffic using maps and Mr. Ford asked Mr. Grady to walk the Board through. Mr. Armstrong said that if they looked at assumptions, it's an "a la carte" timeline. The map shows the amount of hours, the direction and overnight parking. The next one showed the direction of the truck traffic. Mr. Ford asked if there was a net benefit to 139 of 400-600 less cubic yards and Mr. Armstrong said 400 yards. Mr. Ford asked for supporting evidence because he doesn't have it and Mr. Armstrong said he won't have that until he has a contract. He said it would be correct if you divided all the truck traffic; if they don't the truck traffic won't change.

Mr. Pesce pointed out that it should read "355" and not "55" and said the top area is assumption. He talked about the month of completion; trucks per hour. Mr. Armstrong said he would take five (5) trucks and disburse them three (3) ways. Mr. Pesce said it wasn't unreasonable to say 15% more trucks. Mr. Ford asked Mr. Grady if he agreed with the 15% and Mr. Grady said they had discussed 5%. Mr. Armstrong said if they are off by 10% they were talking about 35 days. Mr. Pesce said the red routes were going to be used going towards Route 3 and yellow would possibly be coming up 3A. The map showed red and yellow routes; blue and green showed normal incoming that would normally occur. 20% reduction? Maybe, it would depend on what the Clay Pit customers purchased.

Mr. Ford asked if this put enough on the record and Mr. Pesce said slides one (1) and three (3) do. Mr. Pesce said they were looking at two (2) years which is a reasonable estimate; there's equipment downtime. Mr. Ford asked if there was anything else in the traffic plan and Mr. Armstrong said the traffic study they had done had zero impact.

Mr. Ford asked if there were any questions from the Board on traffic and there were none. He said the next thing on his list was the landscaping plan and the Board had a discussion. He asked Mr. Grady to walk them through the plan. Mr. Grady said there was a cul de sac and he showed areas of ground cover. Mr. Ford said there were zero trees on the road and near houses. Mr. Ford said he was going to close the hearing; he didn't think he needed anymore. He asked Mr. Armstrong if he would do trees if the Board asked him to. Mr. Armstrong said it would depend on how many and asked why they would do that. He said he needs to come up with a plan to plant some bushes and some trees per Mr. Pesce. Mr. Pesce said he is preparing a low maintenance landscaping; his opinion is it's rudimentary landscaping; a half dozen of different

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

things sprinkled around would add color and street trees would be pleasing. Mr. Ford asked if there was any reason and Mr. Pesce said there was no reason. Pine trees in the area off to the left would screen abutters.

Mr. Ford asked if there were conditions from Town Counsel and Mr. Armstrong said there were. Mr. Armstrong said there were some grading issues with Mr. Pesce wanting 3:1; Mr. Pesce said that was adequate. Mr. Armstrong mentioned a buffers strip and Mr. Pesce said there was no reason they couldn't go thirty feet (30') around with a buffer.

Mr. Ford said this was how they would proceed and they Board would give Mr. Armstrong the opportunity to weigh in. He said some are standard conditions which they may not have showed Mr. Armstrong. Mr. Ford said he, Mr. Pesce and Mr. Galvin drafted conditions. They would give Mr. Armstrong another opportunity to come back and convince the Board or if it makes it uneconomical. Mr. Armstrong said they should get all the public comments in and close the hearing. Mr. Ford said they won't close the hearing; the public needs an opportunity to weigh in. He said May 12th isn't feasible; it will probably take two (2) weeks to draft. He asked Mr. Armstrong if he was comfortable with that and Mr. Armstrong said he wasn't because the 12th is the last day. Mr. Ford said Mr. Armstrong won't have the opportunity to give feedback on conditions. He said Mr. Armstrong didn't have to give the Board an extension; Mr. Armstrong said he is making it look like he is reasonable; Mr. Ford said he was reasonable.

Mr. Pesce said it was in Mr. Armstrong's best interest to get a draft of the Comprehensive Permit to review; Mr. Ford agreed. Mr. Armstrong said the DPW comments were handed out today; Mr. Ford said he had the draft conditions for awhile. Mr. Ford said they would need at least a week to draft the permit; Mr. Pesce said he wasn't sure what the rules were once the draft was written. He said he know Mr. Armstrong can't add anything if the hearing is closed; he would have to appeal. Mr. Armstrong said he was down to twenty (2) units when he was approved for forty (40) and that's uneconomical. He has bent over and done what the Board wanted to do. He said they have to come up with a solution on conditions; it should be a couple of hours work. Mr. Ford didn't think so and said they all have day jobs; he leaves tomorrow and he doesn't get back until Sunday. He said he didn't think Mr. Armstrong or the public would have adequate time before May 12th.

Mr. Pesce asked if Mr. Armstrong could provide a draft and Mr. Armstrong asked when they could have a meeting before May 12th. He said he thought Mr. Ford said it was written; Mr. Ford said he never said it was written. Mr. Pesce said he could have it by May 9th and Mr. Armstrong asked if they could have a meeting on May 9th; Ms. Porreca advised that was a regular meeting night. Mr. Pesce said Mr. Ford would be travelling, he had active duty on Sunday and Monday but he would be available by email if they got something together. Mr. Ford said it wasn't feasible by May 12th and said they could close tonight. Mr. Ford asked if they got the draft by May 10th, could Mr. Armstrong meet on May 16th. He said that he was and they spent two (2) months and got nothing done. Mr. Ford said he was not responding to that. Mr. Galvin arrived at the meeting and Mr. Ford explained the plan to draft the conditions and get them to the applicant by May 10th. Mr. Galvin said that sounded like a plan and they also needed to draft an extension; Mr. Hubbard said that they already had one.

Mr. Armstrong asked Mr. Ford when the group would meet and said that he could meet with Mr.

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

Galvin and knock some out. Mr. Galvin said next Friday and said Mr. Ford was not available. Mr. Pesce said he could meet with Mr. Galvin on Friday and Mr. Hubbard could meet, too. Mr. Galvin said Mr. Armstrong needed to understand that it was a working group and it doesn't vote; Mr. Ford said they would have to vote them up or down. The decision was made that the working group would meet Friday afternoon at 2:00.

Mr. Ford and the Board reviewed the information they just got from the Town Engineer. Mr. Armstrong thought it was his main all the way in. Mr. Galvin said the Town will own the structure and will get an easement from Mr. Armstrong; it's a common practice in a subdivision; Mr. Armstrong said it's not a subdivision. Mr. Ford read #2 and Mr. Armstrong said it was right but he thought the numbers weren't. Regarding #3, Mr. Galvin said they haven't negotiated the terms of the license yet, there was not written document. They said #5 was addressed; #7 was addressed by Mr. Pesce; #8 was taken care of or would be. Mr. Ford wasn't sure he followed #9; Mr. Pesce asked Mr. Grady to comment. Mr. Grady said they were revised calculations and plans.

Mr. Lopes said there would be no fuel trucks on site; he thought they meant fuel tanks. Mr. Pesce said on page 3 of the Construction and Maintenance plan it says repair and fueling will be off site; that needs to be amended. Mr. Pesce asked about bulldozers and Mr. Armstrong said there won't be bulldozers.

Mr. Ford said they received numerous documents from the public – three (3) documents from Mr. Little and one (1) from Mr. Crowley. Mr. Ford said he would rather not read Mr. Little's three and a half (3½) page single spaced letter into the record. Mr. Little said he had one concern that Mrs. Huff raised – what if the applicant appeals the conditions. He also asked what happens if they grant the permit and the project shuts down.

Mr. Galvin said Mr. Pesce would be the watchdog through the process; he is paid by the applicant but obligated to report to the Board. Mr. Little said it's the applicant's burden to prove it is uneconomical. Mr. Galvin said the burden of proof shifts if the permit is approved or denied with conditions. The matter of local concern outweighs the need for affordable housing. The Housing Appeal Committee will uphold customary conditions. In a Norwell case, they can't use the back half because it is not safe; upheld. Our Board has a history with earth removal with Careswell Street.

Mr. Ford asked if anyone else wished to speak. Jackie Little of 343 Ferry Street said she had no problem with a 40B; she is against earth removal, truck traffic and noise. Mr. Feeney talked about a buffer zone and white pines. He said Eversource has marked many white pines along the bridal path for removal. If you take out all of the trees you won't have a noise buffer, he said this deeded right of way crosses the bridal path; Eversource has an easement and he spoke with them; if he's going to cross, he needs an easement. Before this goes forward there needs to be a permit from Natural Heritage, a permit from Eversource and something from the Town for access through the salt shed area. Mr. Feeney said Precast is not going to purchase this because it's not processed. He said the truck estimate is bogus; will have more trucks, not less. Mr. Ford asked what the license from Eversource was and Mr. Armstrong did not know. Mr. Feeney said he had spoken to Mr. Weaver from Eversource who retired; the new guy is Mr. Mork and he

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MARSHFIELD TOWN HALL MAY 2, 2017 7:30 P.M.
MEETING MINUTES**

spoke to him last Friday. Mr. Feeney said \$60,000 was spent on trails and recreation study; the bridal path is the backbone of the whole trail system; the path is used all day.

Mr. Jackman said the Board has a humongous problem to deal with; it's an ugly parcel of land. The problem is the business plan is dangerous; there needs to be written conditions that protect you from a plan for disaster. Mr. Ford asked him what condition he would recommend. Mr. Jackman said there are really two (2) different earth removal issues; he said the Board doesn't have the right to issue that permit and they know it. He said one thing missing from this plan is the absence of legal documentation; these legal document should not be disregarded. There is an issue of translational documents – how do you make a transition if you don't go through? Mr. Jackman said the applicant is approximately 55 years old; morbidity and disability kicks in. Mr. Ford said he isn't worried about the age. Mr. Jackman asked how he will carry through in the event of death or disability; there should be provisions. If sand is sold at 180,000 cubic yards, how is that money going to be attached to the process; he wants rigid conditions.

Mr. Ford said if Mr. Jackman had specific conditions they should look at,, he should submit them this week to be most efficient. Mr. Jackman said he thinks a financial institution will come in; there needs to be flexibility built in. Mr. Ford asked to submit his information by Thursday night and said he had a five (5) page memo there. Mr. B. Murphy said he should do like Mr. Little did. Mr. Jackman said Mr. Armstrong's name is not on everything; he mentioned KB and said this was Mr. Armstrong's primary builder. Mr. Jackman said they are going with rental and that is an approach you use for high capital; 15% of a \$17 million project is better than 15% of a \$10 million project; most builders run up cost. He is cash-strapped. It's set up as rental which is slowest way to get money back; he should build a piece meal process with condos.

Lawrence Whalen of Church Street is concerned about wells and runoff; there's also a question about Natural Heritage and they don't have a permit yet. There should be conditions on that. Mr. Ford said he wants to address that. Mr. Armstrong said to draft the permit in line with what they talked about. Mr. Feeney mentioned the escrow account and asked if anything happened with that. Mr. Galvin said they wrote up draft conditions with a trustee; money would be released for particular purposes. He is receptive to the potential profit but should make certain if he is out of money, some goes back to the Town.

Mr. Feeney talked about the illegal removal of earth over the years. He said at least two (2) times there were two (2) cease and desist orders not to remove gravel; 100,000 cubic yards were removed over the years and he asked if that would be included in his profit. Mr. Galvin said he would say it is a Board decision but he would say no. Mr. Robert Perry of Grove Street asked if the water became contaminated and they couldn't use water, the Town wouldn't be able to sell to other towns as it does now. There would be the legality of proving the contamination was from Mr. Armstrong or someone else. If this is sold, would the new owner be responsible because they didn't build the 40B; who would be responsible to correct this. Mr. Perry said the proposed intersection at the entrance is an accident waiting to happen; there's a 160 degree turn and you almost need to stop before turning; this should be widened for safety. Mr. Pecevich asked about utilities and aMr. Armstrong said natural gas and electricity. He asked about plans for snow removal and where would the excess snow go; Mr. Armstrong said the storm basin.

Mr. Ford moved to continue this to May 16 and then moved to close the meeting. Mr. Pesce said

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

when Mr. Armstrong responds to the conditions with pro forma, it will use up funds. He would like the Board to request \$2500; Mr. Armstrong said fine. Mr. Ford made a motion to adjourn.


Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

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

May 24, 2022 meeting by a 5-0 vote.

Signed:  Date: 5/24/22