

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 10, 2022 6:30 P.M.
MEETING MINUTES**

Members Present:

*Brian Murphy, Chair
Stephen Feeney
Larry Keane
Christopher Belezos
Grover Hensley, Jr.*

Also Present:

*Andrew Stewart, Building Commissioner
Atty. Anthony Riley for Town Counsel
Edward Pesce, Peer Reviewer*

MARSHFIELD TOWN CLERK
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Mr. Murphy called the meeting to order at 6:39 P.M. and introduced the Board. He explained that Zoom was provided as a courtesy and the meeting will not be suspended if there are technical issues. He gave the meeting ID information and advised callers to use *6 to mute and unmute.

Mr. Murphy took attendance by roll call. He thanked Ms. Fidler for her years of leadership and service and said that she would be missed.

#22-29: Anthony Durkin: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18' x 6' front dormer and a 9'3" x 10'10" rear dormer to create a half story on the property located at **75 Marginal Street** which is further identified on the Assessors' Maps as being on parcel M06-03-08 and is located in an R-3 zoning district.

Mr. Murphy read **Case #22-29** into the record again. Mr. Steve Bjorklund represented Mr. Durkin and said this was the third meeting and they had made an adjustment in the plan. He met with Mr. Stewart and asked to calculate the plan like Ocean Street did. He said they need to be at 515 square feet and they are. Mr. Bjorklund said they added an exterior deck and took out some inside. Mr. Murphy asked if there were any questions from the Board or public. Mr. Stewart said that for clarification, one set of plans shows 29' and another shows 30'. He said that he recalculated and they are at 415 square feet. Mr. Murphy made a motion to close which was seconded by Mr. Keane; Murphy, Feeney, Keane, Belezos and Hensley were in favor. Mr. Murphy made a motion to grant the Special Permit which was seconded by Mr. Keane; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor. Conditions of the Special Permit will be a Certificate of Occupancy and a Building Permit; no As-Built is required.

#22-36: Patrick Connolly: The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to construct a large-scale ground-mounted solar photovoltaic installation on the property located at **Commerce Way** which is further identified on the Assessors' Maps as being on parcel D09-01-36A and is located in the I-1 zoning district and the Planned Mixed Use District (PMUD).

Mr. Murphy read **Case #22-36** into the record again. Patrick Connolly said that they have done the cross sections at the request of the Town Planner, Greg Guimond. They have reached out to Mr. Corbo for a letter from the Fire Department but have not heard back as yet. Mr. Stewart said that would be part of the normal building permit process. Mr. Connolly said that Mr. Stewart has requested a data sheet but that is out of his specialty. He said this stores energy that can't go directly to the grid. Mr. Keane said that last time Mr. Connolly said that the life span was 20-30

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years and asked what the span was for the battery. Cameron Knowles said that they would get that information. Mr. Keane said he was concerned that the batteries out of commission be removed; he wouldn't want them to stay there for twenty (20) years. Mr. Connolly said that per the Bylaw they would remove the panels, etcetera. Mr. Feeney asked about the storage capacity of the battery and Mr. Knowles said 2.702 KW hours. Mr. Feeney asked what that meant in layman's terms and Mr. Knowles said he would get that information. Mr. Feeney asked what kind of damage dead batteries could do and asked if they could cause harm. Mr. Connolly said that they are widely used and he will follow up on that. Mr. Feeney said he was concerned that in twenty (20) years we will find out they cause cancer. Mr. Stewart said all of these have been UL tested and safety tested and there are building protocols; it will be his responsibility to keep up. Mr. Hensley asked if there was any concern being so close to the gas company; Mr. Connolly said no.

Mr. Belezos said this was an unmanned site and asked what they were doing to secure it. Mr. Connolly said there would be gates and a fence and that it would be hard to walk off with a panel. Mr. Belezos said he wasn't worried about the panels, that he was more worried about the batteries. He asked if there would be cameras and Mr. Connolly said that he did not think cameras were part of the plan; he also said they would be bolted to the ground. Mr. Feeney asked how old the technology was and Mr. Connolly said 1970s but it was now vastly different. He said it was an inert thing with only neutrons running through; Mr. Knowles said nothing is emitted from the panels.

Mr. Murphy asked Ms. Porreca about peer review; she said usually 30 days and there is a meeting on June 14th. Mr. Murphy advised Mr. Connolly that they would submit the information to him. Mr. Murphy made a motion to continue the hearing to June 14, 2022 at 6:30 PM and Mr. Keane seconded the motion; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor.

#22-24: Marshfield Commerce Way, L.L.C.: The Petitioner is seeking a Comprehensive Permit in accordance with M.G.L. Chapter 40B for the construction of seven (7) three-story buildings, seven (7) townhome buildings, and one (1) clubhouse building. This development will consist of one hundred and seventeen (117) one-bedroom units, one hundred and sixteen (116) two-bedroom units and sixty-seven (67) three-bedroom units, which will total 300 units in all, seventy-five (75) of which will be considered affordable according to the Boston Metropolitan Statistical Area Index, as determined by HUD, on the property located on an approximately 12.68 acre site off of **Commerce Way** which is further identified on the Assessors' Maps as D08-01-11A and is located in I-1 and R-1 zoning districts and within a PMUD – Planned Mixed Use Overlay District.

Mr. Murphy asked if Mr. Pesce would be attending and opened the hearing for questions. Kathy Gasper of 17 Snowy Owl Lane said that there are 125 people living in that area who will be impacted and she is expressing to the Zoning Board of Appeals, the Planning Board and the Conservation Commission that they are the keepers. She feels that this is rammed down their throats because it is a 40B; she asked why not a disabled and elderly. Ms. Gasper said that this is

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300 units on a small parcel with 500 bedrooms. She mentioned that the first project was sold last year and she does not think they have an investment in this town. Ms. Gasper mentioned there would be twenty-five (25) new students and that boxed turtles were an issue but they aren't now. She said the Town Administrator said they were relocated to Couch Cemetery but they missed the one that was dead. She said there is a day care a private school and a dog park going up there. Ms. Gasper does not think the traffic study is accurate and they didn't take into consideration of summer; she said they promised before to do something at that intersection. She trusts the ZBA to keep density in line with Phase I. Ms. Gasper said that we aren't a city, we're a seaside community. Ms. Gasper knows they can't stop this but she would like to scale it down.

Bernie Dupuis of 6 Weathervane Lane said that he has noticed a drop in water pressure since the first one has been built. He said there is trouble at the intersection of Roche Brothers with school buses and people going to work; he said there is no left turn light that was promised. Mr. Dupuis said that we need to judge them by what they haven't done; there is no paved way into the ballfields. He said there are 55 units at the Seasons, 22 units at Highland Green – that's 77 units on 17 acres; they want 300 units on 12.6 acres which would be 23.7 units per acre. There are traffic issue and water issues. Where will the water drain? It's getting close to the Mt. Skirgo watershed.

Phyllis Burns of 11 Hayloft Lane asked if they heard from Greg Guimond with suggested changes. Mr. Murphy said yes and they sent to an outside reviewer; there were no answers today. Ms. Burns said she was fearful and there was a need for a left turn signal. She said the Town needs to take responsibility. Mr. Murphy asked if anyone else had comments or questions. Joseph Peceovich of Wilson Road said that he seconds all of the excellent comments and this is not an out of sight, out of mind project. He said a complete analysis of the underwater needs to be done and they need an estimate on the impact to the schools. He said he has always asked where the follow-up was. There needs to be follow-up from Modera 1 and the projected enrollment for this phase.

John Considine of 14 Seth Sprague Drive asked if there were protocols in place to pause development. He asked how they know the promises made will be upheld. Dennis Chateaufneuf of 43 Snowy Owl Lane said that he heard promises made to the town and how it was a contractual agreement that the developer would address the issues at Route 139. He said there was one way to mitigate if it was part of a contract – if you don't meet the commitments, you don't get the occupancy. He asked who is liable if there is an accident. Mr. Murphy said he couldn't answer and deferred to Attorney Anthony Riley. Mr. Riley said that as a legal matter it would be who caused the accident. Mr. Chateaufneuf asked if there was a contractual obligation to amend the intersection. Mr. Riley said that he did not know the answer to that but he doubts it. Mr. Murphy asked Mr. Pesce who said all off-site work conditioned in the Permit was completed because he inspected it. He said the traffic light at Roche Brothers was a timing adjustment/synchronization.

Mr. Chateaufneuf said there was no agreement. Mr. Stewart said he could speak to that and that the Planning Board was pushing for it. Maureen O'Malley said they were told the intersection would be widened with a left turn and a straight lane. She is not sure if it was in the final document but they were told that. Ms. O'Malley said that when she asked about the number of

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students she was told they were professional people. Mr. Pesce said that Jeffery Dirk of Vanasse Associates knows Route 139 and we can ask him to recap at the next meeting; they could devote a night to traffic.

Mr. Dupuis said that the original development was for 270 units and it was reduced to 248; did they increase the number of bedrooms for capacity? Mr. Murphy said yes. Mr. Pesce said that he was part of a three (3) member team. He said that Patrick Brennan is also a consultant for the Town, has consulted for the Planning Board and knows a lot about the area. Mr. Pesce said the total package is 115 pages; he said there is a letter responding to the original peer review dated April 22nd that is attached with information from the Division of Fisheries dated October 2005. He said there is a separate report from his traffic consultants Ron Mueller and Hancock Associates response to Mr. Brennan's water and storm water comments. Mr. Pesce said the highlights are water and sewer; a second means of egress and Fire Department review; a fair amount of topographic relief – taking advantage of the slope in the southeast corner; asked them to do an earth work analysis; during Phase I some earth was removed but not a lot; the applicant is allowed to apply with preliminary design plans so not a lot of detail provided yet.

Patrick Brennan of Amory Engineers said that he assisted mainly because of his experience up there with drainage, roadway and network. He said that he found the original plans for Enterprise Park. He said that he summarized the rates based on storm events and sent to the applicant. Mr. Brennan said that it looks like runoff from the roof will be captured. He said the system will work correctly as long as they stay below [unknown]. Mr. Brennan said that he looked at the Town's water usage, what the Town is allowed to withdraw on a daily basis. He said he didn't have 2021 and that 2020 and 2021 numbers were impacted by COVID. He said a hydrant flow test is important and mentioned a "jockey pump". He said that he would confirm the information when he gets the numbers. Mr. Pesce said that they did say in their letter of May 9th that the test was done but not results as yet; results will come in separate cover. Mr. Momnie asked Anthony [last name not noted] if he had anything to add about water and stated that he knows Mr. Pesce needs to review it.

Anand Boscha said that they were working on an earth work analysis and will have a future submittal. Mr. Momnie said they would provide more information as it comes in. Mr. Murphy asked if he understood that there were no elevators in the first phase. Mr. Boscha said that was correct and that they are not required to have them. Mr. Feeney asked why not and Mr. Boscha said it was a cost/benefit analysis. Mr. Feeney asked Mr. Boscha if he knew the purchase price of the first phase; Mr. Boscha said he was not sure. Mr. Feeney asked if it were more than \$50 million, \$70 million, \$100 million and Mr. Boscha said yes. Mr. Feeney said he doesn't know the guy who knows all about Route 139 but it is brutal all of the time; he thinks different turning lanes should be done this time. [The audience clapped.] Mr. Feeney asked if their Quincy, Hopkinton and Medford projects were all on public transportation and asked if they know if there were plans to move the T from Scituate to Marshfield. Mr. Boscha said some are close to transportation. Mr. Momnie said it wasn't an exhaustive list, that Needham doesn't have access. Mr. Feeney said Marshfield will be the only town without public transportation.

Ms. Gasper asked if they weren't putting in elevators, what about a person in a wheelchair that

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wants to rent on the second floor. She said to her previous point, eight (8) of the towns where they have built have been sold; she said it wasn't Madison that came before us. Mr. Belezos asked if they could provide future information on density in their other communities. If they have similar density in other towns, could they give a breakdown on school children. Mr. Momnie said that the applicant was here to ensure problems are mitigated. They are more than happy to provide information on water usage but the other is not within their scope. Mr. Belezos asked if he did not want to give the information and Mr. Momnie said he just wanted to give a caveat.

Gerald Allen of 12 Old Woodlot Lane asked where they did the flow test, what hydrant and at what time. Mr. Donato said that they worked with the Water Department and used a hydrant closer to the site. Mr. Allen said that they are at the other end and the concern is that there won't be enough water if there is a fire. He asked if when they are talking about a second egress if that was for the whole area; Mr. Murphy said it was specifically for their property. Mr. Dupuis said that he heard the phrase "not scope of 40B"; there is a dangerous intersection and problem with water; for them to sit there and say "not scope of 40B"...

Mr. Pesce said the Division of Fisheries and Wildlife would be online; October 2005 and amended in 2019. Ms. Gasper asked about the box turtles being relocated to Couch Cemetery on Union Street. Mr. Murphy said they weren't removed; they took this area and protected another area; Conservation Restriction. Mr. Pesce said during construction they need to do turtle management plan and training; if turtles are found they will be relocated. Ms. Gasper said she had pictures of the black sheeting from Verocchi; Mr. Pesce explained that was not Mill Creek or the Board. Ms. Gasper said she wasn't really concerned with the sheeting but she is concerned about a name and phone number. Mr. Pesce explained it was a silt fence for erosion control. Mr. Murphy asked if there were anything else and Mr. Dupuis said that black barrier has been there for almost three (3) years.

Mr. Pecevich said that CMP issued it for a new project or was there a CMP for Phase 1? Mr. Momnie said the larger Enterprise Park was intended to be built in two (2) phases; an athletic center and three (3) other properties were Phase 1. The current seller paid mitigation for all four (4) properties but Phase 1 was not built. He said Modera is Phase 2; they don't have to pay now because mitigation was already paid. Mr. Pecevich asked if this location was on the same lot as the athletic center; Mr. Murphy said they are saying it's part of that area. Mr. Pecevich said that without having a plot plan in front of him, he doesn't know how this CMP is transferrable. Mr. Momnie said that some of the land has shifted which was part of the intent for including the letter from Natural Heritage. Mr. Boscha said yesterday's plan has the parcel. Mr. Pecevich said he is not sure how many years CMP is valid. He wanted to caution people that turtles are an indicator of the environment they are in.

Someone from Seth Sprague Drive said that he had a turtle in his backyard. He asked Mr. Pecevich what CMP is and what he should be looking for. Mr. Pecevich said he was not an expert but it's a Conservation Management Plan under Natural Heritage. Mr. Murphy said we would have this on the website and people can ask questions. Mr. Pesce said that Mr. Murphy can ask the applicant to bring their expert to the next meeting.

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Eric Kelly of Peterson Path said that the school can already day no but Martinson is overcrowded and will need to relocate. He said that he already sees the Modera issue; he can only imagine what will happen after this is built. Mr. Kelly said he looked on line and the acquisition costs are \$6 million; if you look at the P&S the price will be equal to \$28,000 per unit; he said that it appears VRT will get \$28,000 per unit, using 240 as the number he will receive over \$6 million. He is selling land based on the number of units. Mr. Kelly would like to see the town get 50% and VRT get 50%. Mr. Kelly asked what the back parcel plan is on Exhibit B. Mr. Murphy said there was another six (6) acre parcel but he does not think that is in play. Mr. Momnie said the Purchase and Sale agreement is included in the application. He said the seller owns the parcel behind theirs and the plan just identifies the seller's parcel that he will continue to own. Mr. Momnie said that parcel has some of CMP, is heavily restricted and he believes there is no structure; they can do grading but no structure.

Mr. Kelly asked if the turtles were relocated when they did the ballfields; Mr. Murphy said they don't move them, they designate another spot for the Conservation Restriction (CR). Mr. Kelly asked why the cost of the land isn't in the Purchase and Sale. Mr. Momnie said the \$8 million that you see includes the hard and soft costs; that \$8 million won't be paid to the seller; it will include other costs like title and survey review. Mr. Kelly asked about the cost of the units; are they basing the estimate on 240 units. Mr. Murphy said they believe it is 300 units because that was what was submitted to MassHousing. Mr. Dupuis said he thinks we need to look at the aquifer and look at the makeup of people there; he said it's a dangerous area.

Mr. Murphy asked Ms. Porreca when the next meeting would be and she replied that it would be June 14th. Mr. Pesce said he was okay with that date and he has heard the concern about traffic and the previous traffic. He mentioned the CMP process, updates on drainage and water; he asked the applicant to see the Fire Department this week; he said the Planning Board provided an alternate plan with lower density and two (2) egresses; that may be attractive to neighbors. Mr. Feeney asked for a list of cities and towns where they have projects. He said they were a national company and asked in what other states they are in and the relation of those projects to public transportation. Mr. Feeney said it's hard to understand that this is the only location not on public transportation. Mr. Boscha said it's a seaside community, it's pretty, with access to the highway. Mr. Keane said that at last meeting we didn't have the latest percentage towards the 10%. Mr. Momnie said the 2020 numbers have not been finalized and that will put it downward; he said the number moves every ten (10) years. Mr. Pesce said it was in the project eligibility letter; Mr. Momnie said it was 8.7%. Mr. Keane asked if they were saying that 300 units would only give the town a 1.3% bump. Mr. Momnie said the total number of units is approximately 8,000 to 9,000 so they could figure a 2% increase. Mr. Keane asked about that water, 2020 and Covid; Mr. Brennan said that more people were home. Mr. Pesce asked about architectural review and if the town had asked for extra money; Mr. Boscha replied yes.

Mr. Pesce mentioned a fiscal review and Mr. Feeney said he has that as a request. Mr. Pesce said not having children at the original Modera was never discussed. Ms. Gasper said that there were twenty-five (25) not including Special Education. Mr. Murphy asked if they were amenable to a fiscal review and Mr. Momnie said yes. Ms. Gasper asked if the food service department could give numbers for low income. Mr. Pesce said that was for a different income

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level; that it was for people on assistance for free meals. He explained Area Median Income (AMI) is affordable housing. Ms. Gasper said someone on Social Security was told they didn't make enough for Phase 1. Mr. Murphy made a motion to continue to June 14, 2022 at 6:30 which was seconded by Mr. Keane; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor.

Mr. Murphy turned to the remaining items on the Agenda. He advised that **Case #22-10**, 36 Everson Road, had requested to withdraw without prejudice. He made a motion which was seconded by Mr. Keane; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor.

Mr. Murphy advised that **Case #22-11**, 5 Columbia Road, had requested to withdraw without prejudice. He made a motion which was seconded by Mr. Keane; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor. Mr. Murphy read the request for an extension for **Case #18-63**, 24 Brighton Street and made a motion to grant the extension until June 10, 2023. Mr. Keane seconded the motion and the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor.

Mr. Murphy said the only thing left on the Agenda was the reorganization. Mr. Keane nominated Mr. Murphy as Chair which was seconded by Mr. Belezos; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor. Mr. Murphy nominated Ms. Conway as Vice Chair which was seconded by Mr. Keane; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor. Mr. Murphy nominated Mr. Keane as Clerk which was seconded by Mr. Hensley; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor.

Mr. Murphy made a motion to adjourn which was seconded by Mr. Keane; the Board voted 5-0 with Murphy, Feeney, Keane, Belezos and Hensley in favor.

The meeting adjourned at 9:00 PM.

Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

These minutes were approved by the Board on August 9, 2022 by a

5-0 vote.

Signed:  Date: 8/9/22