



TOWN OF DIGHTON

ZONING BOARD OF APPEALS

Meeting Minutes
September 16, 2015

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DIGHTON, MA

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Call to Order:

Chairman Peter Caron called to order the regular meeting of the Zoning Board of Appeals at 7:30 PM

Roll Call:

The following persons are present: Peter Caron, Kenneth Pacheco, Robert Adams Sr., Greg Logan and Zachary Caron.

The following persons were absent: None

Chairman Peter Caron introduced the Board and explained to the audience how the hearing process will be conducted

Old Business:

Case #06-09 Stoney Ridge Estates Release of Lots

Peter Caron explained that this is a 5 phase project. Phase 1 & 2 are just about completed. The Developer has requested the 5 lots that were held in phase 1 in lieu of Bond be released and also approve the next (3) phases.

Voting members Peter Caron, Joseph Pacheco and Greg Logan were the original voting members. Joseph Pacheco has retired and Kenneth Pacheco will now replace Joseph Pacheco.

Bisher Heshim presented the case asking the Board to release the 5 lots that are subject to the covenant in lieu of a Bond for phases 1 & 2. He would like the Board to move the (5) five or (10) Ten lots being held in the covenant to other phases regardless of where their location is.

Peter Caron: We have concerns that need to be addressed before we can consider this request.

Engineer Peter Williams: We still have some issues with the detention basins. These concerns are significant and should be corrected. We have requested additional calculations for the drainage basins.

K. J. Paul
11-4-15

Bisher Heshim: We have submitted those calculations. We have been trying to address these concerns and it is hard to discuss these with you through the Board. Our engineer would like to address these with you directly. Aside from the calculations what else is missing?

Peter Williams: The elevations of the berms around the basin need to be corrected and there is still modifications to the "weir structures before the basin can work properly. You need to address these issues.

Bisher Heshim: There was a communication problem. Would you mind if my engineer talks to you directly?

Peter Williams: He has emailed me. I feel that we have communicated with the project team.

Peter Caron: Of course your engineer can call and call and talk Peter Williams directly.

Bisher Heshim: Keeping in mind that there will be sufficient security can we release some lots so that we can continue to operate?

Peter Caron: I think we can. We are going to ask Attorney Mitchell to speak to that as well. There has to be some kind of contingency as to what is being held. In lieu of the bond it was 5 lots in phase 1 & 2. You are requesting that we release all of those and hold lots in phase 3 4 or 5.

Bisher Heshim: Those lots were held because of their value. So if I substitute the same value or greater in another phase I would assume that would be sufficient surety for the Board.

Peter Caron: Whatever lots we hold has to be equal to the cost of finishing and we have to hold those lots for a year. Why would you want us to change the comprehensive permit to release these lots? Why don't we just keep these lots that are already being held?

Bisher Heshim: I am sure the town would like to have the houses built in a harmonious way. Instead of some houses under construction here and empty lots there.

Robert Adams Sr.: You are asking us to release the lots that are held now and hold lots in the next phase so that you can finish the first phase. Yes.

Kenneth Pacheco: Aren't the lots in Phase 1 & 2 more valuable than the lots in phase 3, 4 & 5?

Bisher Heshim: Phase 3 4 & 5 have the same infrastructure as 1 & 2. The only difference is phases 1 & 2 have more houses built around them. Let's assume they do have different

value. Then hold twice as many or three or four times as many. Hold as many lots as you want to and lets us finish phase 1 & 2.

Kenneth Pacheco: I would like to hear from the Building Commissioner. With the exception of the bathroom issue how is everything going?

Building Commissioner James Aguiar: For the most part things are going smoothly. There have been some hiccups with code compliance but nothing that we have not been able to work out.

Robert Adams Sr.: You don't have anything against putting the lots held into the other phase? No.

Atty Mitchell: Last November 2014 when we were first talking about a performance guarantee for this development, the developer chose at that time to provide a covenant for phase 1 & 2 only. We had done some cost to complete estimates and drafts for the entire phase and that was a very high amount. The developer wanted to do the guarantee on a phase basis. What was done was GZA provided a cost to complete estimate for phases 1 & 2 only and the Board held lots based on that being complete.

Atty Mitchell submitted a letter to the Board tonight regarding her review of the request for the release of all 5 lots. She explained that she held off submitting the letter until tonight because she wasn't sure how much information was coming in from the developer on this request. She has reviewed emails that had been sent and received, paperwork that had been submitted from the developer, GZA's field inspection reports (and she commented that the turnaround time from GZA to respond to the developer with its comment letter was fairly quick in her opinion). She stated that she wasn't sure if something would be coming in as recently as yesterday. GZA also submitted an updated cost to complete estimate for phase 1&2 that shows a revised cost to complete amount of \$275,000 – the original value was \$401,000. GZA also submitted a cost to complete estimate for Phases 3, 4 & 5 with a value of \$253,000. The reason that is so much lower than the value for Phases 1 and 2 is due to the fact that much of the infrastructure has already been implemented for the entire development. There is only limited remaining infrastructure that would go into phases 3, 4, & 5. However last November, when the request for phasing of the guarantee was put into place that was a choice that the developer made so Atty Mitchell cautions the board to be very careful about releasing all lots in Phase 1 & 2 and instead transferring the lots being held into a new phase. Phase 3, 4 & 5's cost to complete estimate is related solely to the work in those phases, it does not include the work needed for Phases 1 & 2. Had the developer decided to provide a performance guarantee for the entire project from the beginning, what it is requesting tonight (exchanging the 5 lots being held in Phases 1 & 2 to lots in Phases 3, 4 and 5) could have been done? There is a concern right now that the developer decides to offer the town 15 or 20 lots and then finish phase 1 & 2 and maybe finish a couple more lots in phase 3 and then just walk away. The town doesn't want to be in the business of developing lots. It is not the type of guarantee that the town preferred to choose to have but it is a legal available guarantee that a developer can utilize. It was also the right of the

developer to provide the guarantee on a phased basis. . But Atty Mitchell does not suggest the town agree to eliminate the entire guarantee as doing so would be against the contingency requirement that the comprehensive permit conditions require - a 10% contingency on any guarantee to be held for a year after final build out. So only enough lots to cover 10% of the entire guarantee would need to be held for one year after final build out. "Final build out" could only happen when all of the lots are developed. Atty Mitchell encouraged the developer to complete the work that is needed on phase 1 & 2 and tonight to focus on working with the Board to determine which lots the Town is going to hold in reservation for phases 3, 4 & 5. Once the work in Phases 1 & 2 is completed, the developer could also consider providing an alternative form of guarantee. Atty Mitchell also suggested that given the updated cost to complete estimate for Phases 1 & 2 there is at least justification to release 1 lot or potentially 2 lots tonight from the 5 remaining lots being held for Phases 1 & 2. Lots are estimated at a value between \$90,000 & \$120,000.

Mr. Heshim: Explained the reason that phases 1 & 2 are not complete is that there is another 15 houses to be built and that will destroy the sidewalks the finish coat etc... and that is the reason why they are not done. I would love to finish them it is not convenient for me not to do them now and deal with bonds etc...it is not wise to do now but it will get destroyed.

Peter Caron: Explained that when the developer chose to have lots held instead of a performance bond he didn't have to come up with cash bond of 4 or 5 hundred thousand.

Bisher Heshim: Can I continue with that choice and move the lots from here to here?

Peter Caron: By all means that is what was agreed upon. By taking that choice comes with a down side that you have to complete.

Bisher Heshim: So the value of those lots is where they are at or the value the lots themselves.

Atty Mitchell: There is an element of where the lots are. If you had chosen to do a covenant for the entire subdivision the Board would have looked at the entire subdivision and chosen lots throughout. Some in phase 1, some in phase 2, some in phase 3 and 4 and 5.

Bisher Heshim: Can we do that now?

Atty Mitchell: No, because at this stage we have two (2) different covenants on record. You have the one already done for phase 1 & 2 that is already recorded at the Registry of Deeds. What you have left to do is phases 3, 4, & 5 and that can certainly be done.

Bisher Heshim: Can we release the covenant on record and put one whole one on record?

Atty Mitchell: That is something the Board will need to sit down and look and decide if it wants to do, however, such a decision would not result in the Board releasing all the lots in phase 1 & 2.

Bisher Heshim: I respect that but this is not wise. Because we are going to be building houses there will be three or four or five lots here and there separated that are frankly unsightly and they are going to cause ...

Peter Caron: you are not going to need that many lots

Bisher Heshim: In phase 1 & 2 there are 5

Peter Caron: We can probably make 4.

Bisher Heshim: I disagree with a few of the budget items. They were done. For example the water connection between the (2) sub-divisions that has been done and approved by the Water Department. The trees, we have met with the DPW and there is no way we can fit 100 trees in there at \$400 a tree. I can argue that this number is off with regards to the cost to complete. Even taking the 20% addition which I think is a fair number ... The Park cost \$20,000 but that was before we did the park and it has been put in we did the park it's just not completed. There is another \$5,000 worth of work left. I am not here to argue over 10 or 15 thousand dollars. Aside from the wisdom aside from technicalities from a practical, realistic point of view, what is the harm in moving 5 lots and building it so people can drive and have a clean roadway no mud, no nails banging and moving them to another area. Where is the risk to the Town in that?

Atty Mitchell: Part of the problem with that is what I am hearing from Peter Williams of GZA is that there are issues with phase 1 and it is not the sidewalks ... it is the detention basin. I also don't know that the Board is going to be comfortable moving all 5 lots. You have asked for a covenant and a covenant as a performance guarantee typically would involve lots being held in all of the phases until the end of the project.

Bisher Heshim: What difference does it make whether the lots are here or there as far as their value for the Town?

Atty Mitchell: Certainly if you want to provide a combination of guarantee's to be able to release lots you can do that.

Bisher Heshim: Please answer my question. What difference does it make if the lots are here or here?

Atty. Mitchell: The Town is not in the business of trying to sell lots. They want to make sure that you are going to complete the project.

Bisher Heshim: and leaving a lot at the beginning help to assure that?

Atty Mitchell: A lot at the beginning helps to make sure that ...if you were allowed to finish all the lots in a phase it is a lot easier for you to walk away. You've said alright I'm done. I've gotten everybody up to this point and I'm all set we can walk away. Now the Town is left without a finished development. The town doesn't take these guarantees because it wants to finish a development itself, it wants to ensure a developer completes a development it starts.

Bisher Heshim: So what are my options now? What would you like me to do?

Peter Caron: You have to finish, and you say that it is so easy, the work that Mr. Williams has recommended and I think we are prepared to release (1) one of the (5) five lots held. We can also discuss releasing the lots in Phases 3, 4 & 5 that he requested.

Atty Mitchell: There was a covenant form F that was submitted for the release of lots in phases 3 4 & 5 that appears to be appropriate and you would need to come in with a form F1. The Board would need to look at phase 3 4 & 5 and identify which lots it wanted to retain.

Bisher Heshim: I don't want to release any of them. Could you just release just 5 lots or 10 lots from phases 3 4 & 5. Anybody else would jump for joy to release all of them but because we endeavor to leave more security for the town further phases and finish these in the earlier phases. We are not looking to release all the lots. Which leaves 30 lots or so as security. This way we can finish phases 1 & 2 finish the houses, bring the road much closer to completion. Then we can go on with the rest of it. I think this a more orderly, wise way to do it.

Peter Caron: You don't want to do any performance bond, cash wise?

Bisher Heshim: This is why I put the rest of the road in. Rather than doing a cash bond it is wiser for the town and for me to have a project that is more complete. If I go defunct for some reason or if something happens to me wouldn't it be wise to have a road that is completed.

Robert Adams Sr.: The value of the property would be more for sure.

Bisher Heshim: I spent a lot of money to finish the road thinking that this would be sufficient security in place of posting a cash bond. Based on previous dealings with this Board.

Atty Mitchell: you have gotten the benefit of that because the cost to complete estimate reflects all of that. If you look at the cost to complete it is approximately another 4 or 5 lots in phases 3, 4, & 5. So the only amount of guarantee that you would need to provide to this town is a total of those 10 lots.

Bisher Heshim: I understand and appreciate that and it is very attractive, I am not denying that. All I am saying is rather than making it 10 lots make it 20 lots and let's do

it in order. If I am left with no other alternative I will take it. Let's assume those 5 lots have more value. How much more value, twice. Let's do it in a nice organized manner and let's condition it if you would like. When I finish phases 1 & 2 and start working on phase 3 for the sake of argument. I either post for further lot releases either post a bond or finish phases 1 & 2 completely. To finish it now while I'm building houses.

Peter Caron: You and I have talked so many times about this. It concerns the town and that is what we are here to represent. When have had 9 40B's and there are 3 that are getting close but we are gun shy. You seem awfully willing to throw everything on phases 3, 4 & 5 when your motivation is you want to finish this phase and then jump into phase three. Our concern is, are you walking away after phase 2 is done? For you to throw the performance guarantee over into phases 3, 4 & 5 if you don't put another shovel in the ground after phases 1 & 2 we have lost our.....

Bisher Heshim: If I was going to walk I wouldn't sink a million dollars into the road two months ago.

Peter Caron: Do you have a buyer for something in those 5 lots?

Bisher Heshim: Yes I do. I have 2 buyers interested in lots 11 & 8.

Peter Caron: Marguerite would you have to re-write condition # 36?

Atty. Mitchell: No, What 36 requires is the 10 %. To be perfectly honest if you were to release 8 & 11 you would still be holding 3 lots in phases 1 & 2, you would still even be holding a lot in phase 1 both of the requested lots are in phase 2.

Peter Caron: Then we would have to come up with something in phase 3, 4 & 5.

Atty. Mitchell: Right now he has given the Town nothing, no guarantee for the remaining phases, unless the Board signs the covenant tonight for Phase 3, 4 and 5 and then you are holding all of the lots in those phases until you release any of them to him.

Kenneth Pacheco: You are talking about signing a new covenant tonight?

Atty Mitchell: The new one that is being proposed. Once that gets signed and recorded then there is a guarantee of some sort. Did you bring that with you Bisher?

Peter Caron: Peter Williams's concerns need to be addressed. We don't know what happened between your engineer and his?

There was discussion between the developer and the Engineering Consultant Peter Williams regarding a timeline for inspections and work to be completed

Bisher Heshim: Please consider releasing 2 lots in phases 1 & 2 and 5 lots in phase 3. You will sign the F1 tonight and you will have 35 lots still held and by the next meeting

in October we will come back to you. You will still have 3 lots left and if you want to keep them I don't mind you keeping them.

Peter Caron: I would suggest to the Board that we release 1 lot and to meet again after Peter Williams is satisfied.

Bisher Heshim: How about the lots in phase 3?

Peter Caron: The 2 lots in phase 3?

Bisher Heshim: I need 5 lots released for the Bank to release money for the road that was done. Please release lot 11 in phase 2 and 4 or 5 lots in phase 3.

Atty Mitchell: you can have almost all of the lots in phases 3, 4 & 5 if the Board wants to do that tonight.

Peter Caron: which is what I would feel comfortable with. We don't want to continue to hold all of phase 3 and just release 5. Why don't we release Lot 11 in phase 2 and hold ...how much is the cost to complete for the development about \$500,000 and the value of the lots is between \$90,000- \$120,000 thousand. So \$100,000 plus one lot will need to be held.

Bisher Heshim: I don't want to release all of them. The minute they are released the clock starts ticking on taxes. I don't want to do that.

Peter Caron: Are there any abutters here that would like to speak? No. If we release lot 11 and nothing else or 4 lots in phase 3.

Kenneth Pacheco: what are we getting for releasing that one lot?

Peter Caron: We can because our cost is less

Bisher Heshim: Peter, Please help me accommodate me. Because of the delay the road was done in July. The road is done what is the harm in releasing 4 lots you have security and you can ask Peter how much it would have to take it is minor compared to the value of what is left.

Peter Caron: When are you going to start building if we release them tonight? We are more concerned about Peter William's issues being done. I know that you will do them and you will do them properly.

Bisher Heshim: I'm not going to start building in phase 3 at all.

Peter Caron: Why can't we release lot 11 and the ...

Bisher Heshim: Because the bank wants 5 more lots released before I can get the money.

Peter Caron: Two out of the 5 were the lots that you requested in phase 3. I don't have an issue

Kenneth Pacheco: One of those would have to be an affordable.

Bisher Heshim: Then make it 6 lots. The Bank wants 5 market rate lots before they will give me the money to pay for that road. Why not work together, what is the risk?

Kenneth Pacheco: you want 4 market houses all in phase 3. You can't complete those 4 without an affordable house.

Bisher Heshim: We have a lot more than our fair share of affordable homes completed already. We have so far built 4 affordable houses.

Kenneth Pacheco: How many market rate?

Bisher Heshim: 4,

Atty Mitchell: 20 lots were originally released. How many of the 20 are in the process or are built?

Bisher Heshim: 10

Atty Mitchell: So you have 10 more lots that have not been sold.

Robert Adams Sr.: As long as we have the 5 lots we have covered I don't want to hold the project up. I think it should move forward but we have to have some kind of surety if he can come up with that.

Kenneth Pacheco: Somewhere down the road you can come back to us for phases 1 & 2.

Peter Caron: It sounds like to me it's paying for the road. All this now is paying for the road

Bisher Heshim: I also have two clients that are interested in lots 11 & 8. They are ready to sign.

Peter Caron: Why don't we swap them out with another lot in phase 2?

Bisher Heshim: I am happy to do that.

Kenneth Pacheco: Why are they fixated on lots 11 & 8?

Bisher Heshim: You are asking me???

Atty Mitchell: You could exchange a lot if you want to. You could exchange lot 8 & 11 but there is paperwork that we would need to look at. Alternatively they have other lots you could choose to buy or you could release lots in phase 3 and maybe they want one of them, I don't know. That is for the developer to review with his potential buyers.

Peter Caron: We are going to release lot 11 right now. That takes care of one of your buyers. We want to see the work completed and at that point we will swap out something in phase 1 or 2 and release what you need in phase 3

Bisher Heshim: You won't release anything from phase 3 now?

Kenneth Pacheco: We will release 6 with 1 being an affordable. You actually only need 5 because we are releasing lot 11 also.

Bisher Heshim: Then once I resolve the issues we come back and discuss the other lots.

Peter Caron: Does that sound reasonable?

Peter Williams: Yes that sounds reasonable

Greg: Yes that is fine

Bob: I'm all set

Atty Mitchell: We need to sign the documents

Motion Kenneth Pacheco second Peter Caron to approve the covenant. Greg yes.

All in Favor

Aye

Motion Kenneth Pacheco second Peter Caron to release from the covenant lots 18, 19, 20, 49 & 50 in phase 3. Greg Yes

All in Favor

Aye

Motion Kenneth Pacheco seconded Peter Caron to release from the covenant for Phases 1 & 2 lot 11. Greg Yes

All in Favor

Aye

Case # 20-15 Stoney Ridge Modification Request

Request is to replace the house plan known as the Dalton with the Dalton II. This change would bump out the second floor and increase the 2nd floor by 2' feet.

Motion Kenneth Pacheco second Peter Caron that the requested change to the Dalton II is not a substantial change.

All in Favor

Aye

Motion Kenneth Pacheco second Peter Caron to delete the plan known as the Dalton and replace it with the Dalton II.

All in Favor

Aye

Case # 09-15 883 Main Street

Chairman Caron explained that last month the Board asked the applicant to go to the planning Board and return to the Board. They either chose not too or they were not ready. As opposed to denying it I want to give them one more month to square away with the planning Board.

Robert Adams Sr: Do we have the time to do that

Peter Caron: Yes they signed the letter of extension.

Motion to Robert Adams Sr. second, Kenneth Pacheco to continue case # 883 Main Street until October 21, 2015

New Business:

Case #13-15 Fatima Realty Trust

Chairman Peter Caron read the **Legal Notice** posted in the **Taunton Daily Gazette**. **Voting members** picked were **Peter Caron-Kenneth Pacheco-Greg Logan**.

Joseph Ferreira: Presented the case stating that this parcel is about 16 acres of land that was purchased between Elm Street and County Street south of Park Street. He mentioned that he had talked with the Town of Dighton Water Department to bring water in but the water ends at about Hart Street. It would be about another 800' feet. If we brought water in we would be able to do a 9 lot subdivision. We also knew that there is water on County Street so we went to Somerset Water Board and they said to check with Dighton and Dighton said no Problem if you get water from Somerset.

He explained that they had (2) options to bring in water and build a 9 lot sub-division. He stated that there were problems with bringing in water one being that they would have to dig up 800' feet of road on Elm Street or cross County Street the water is on the other side of County Street. There are a lot of wetlands on the property as well. He also explained that they had gone to the Planning Board and were advised that they could get (5) five form A lots as a matter of wright.

What we are looking for tonight is a waiver of frontage for lot # (2).

- Lot #1 has 250' feet of frontage and is two acres,
- Lot #2 has about 135' frontage on 4 acres,
- Lot #3 has 250' frontage on 1.34 acres
- lot #4 if developed later has 385' frontage with access from County Street

This lot has an irregular shape some of the frontage was taken away from lot #1 years ago when Elm Street layout was changed in 1994. A revised Street Layout was submitted to the Board and into the record.

The lot has ledge and on the County Street side a lot of wetlands. Soil conditions, Lots 1 & 3 were perc'd but lot 2 was not due to the possibility of a sub-division.

This parcel is 16 acres and all we are looking for is (4) lots total, three tonight leaving 1 remaining lot that would be accessed if at all from County Street. We are in conformity with other lots in the neighborhood.

The Board asked about the 5th lot. The developer explained that if they brought in water from either Dighton or Somerset the 5th lot would be on County Street.

Chairman Caron: I thought you said that you would have 9 lots if you brought in water?

Joseph Ferreira: If we did a sub-division, I was talking about 5 Form A lots. Through the Planning Board we could do 5 Form A lots without any doing any sub-division what so ever.

Peter Caron: Only if you bring in water?

Joseph Ferreira: Yes, because the frontage changes from 250' to 175' as a matter of wright. If we brought in water we have 385' on County Street that we could do two lots there and we could go back to the 175' frontage on Elm Street and get the 3 lots on Elm Street. That would be a total of 5 and we have the letter from the Planning Board that we can get 5 lots.

The Board explained what a hardship is and that you cannot create your own hardship. With this amount of frontage you are entitled to (2) lots and they also expressed concern about the 4th lot that that they are not really speaking about and future development that might happen there.

The Board asked if they were to approve the 136' variance for Lot #2 would they agree to a condition that the 4th lot would be limited to 1 lot.

The developer agreed the sign the plan that would be filed with the Registry of Deeds stating that they would limit that to 1 lot creating 4 lots in total.

Peter Caron: You have (3) Legitimate lots here. I would like Bob Adams to explain the Street Lot Plan that they submitted to the Board.

Bob Adams Sr.: I'm not sure why they brought this in as an issue. The town at some point granted the land that they own by right of the road. The road has never been changed it is as it has always been that way apparently they gave back frontage along this road. As you enter Hart Street there is a huge intersection and the Town owned that but Compose's house has been there since 1950.

Peter Caron: All these houses on Hart street look like they all have insufficient frontage, this must have been before zoning. Is it so packed in there that allowing this doesn't change the nature of the neighborhood?

Kenneth Pacheco: You have (2) two conforming lots and you are trying to create a third lot. When you talk about the hardship on the lot you created the hardship. You have (2) lots here and (1) lot on County Street. I'm not sure why we should grant this. There is case Law Warren vs the Town of Amherst. Where in Amherst you have to have 100' Frontage and someone had 98' frontage and the Town denied it and they won the case in court because there was no reason give them 98' just for two feet .The town still won it because there was no reason to approve. It was something that was created by the developer. There is no reason why the Board would have to give that variance. I feel the same way with this here. You have lots here and you can build houses on them and you can build (3) three houses and you want us to give you (4) four.

Joseph Ferreira: The option is we bring water in and get 9.

Peter Caron: Is County Street your frontage? How much frontage is on County Street? 385' Feet. He polled the Board to ask if they had any questions. No one did.

Abutters:

Ronald Carr: 2682 Elm Street Opposed

Mr. Carr explained how the 192' curve in the property line was created and asked to go on record as opposed.

Greg Araujo: 2575 Elm Street

Stated that his concern is how are they are going to get through the all that ledge? Jack Hammer/ Blast..... Maybe crack the walls in my foundation there is all of rock over there.

Kenny Pacheco: Which lot are you referring to...? All the lots?

Joseph Ferreira: There are not studies that say we would have to blast anything right now. There was a discussion about the drilling of wells and the effect of the drilling and it was explained that they have insurance that will cover all that if necessary.

Peter Caron: You said that you have a letter from the planning Board and that you have 5 Form A lots with water.

Joseph Ferreira: yes 5 form a lots without doing a sub-division. Because the frontage would change from 250' to 175'. 385' on County Street that would give us 2 lots and we would have 3 on Elm and wouldn't need a variance 5 as a matter of wright.

The Board asked for a copy of the letter from the Planning Board.

Susan Gustafson 3068 Elm Street:

What do you know about the water on Elm Street? Will you be drilling wells out there right? The developer explained that they have two options to get water from either Dighton or Somerset. She asked "but you are planning on wells if this approved" yes. She explained that she lives on Elm Street

Peter Caron: What is the reason why you have not had lot 2 perc'd yet? They explained that they were not sure if they would be doing the subdivision. They have perc'd north and south though. There is an observation hole for lot (2) two but no perc test has been ordered. Peter also asked where the house would be located on the lot. 200' feet off the road. Explained that he wanted to go out to see the property and what it would do to the neighborhood if approved.

Motion Kenneth Pacheco second Zachary Caron to take the case under advisement

All in Favor

Aye

Motion Kenneth Pacheco second Zachary Caron to close the Public Input and the Public Hearing.

All in Favor

Aye

Case # 14-15 2530 Maple Swamp Road Julie Pelrine & Neil MacDonald

Chairman Caron read the Legal Notice posted in the Taunton Daily Gazette. **Voting members** Picked were **Robert Adams Sr., Zachary Caron and Kenneth Pacheco.**

The Building Commissioner explained to the Board that the petitioner had asked if the Building Department would issue a permit on this property because there was an approved variance years ago. He stated that the decision had never been recorded at the registry of Deeds and therefore did not exist.

The Board asked when the variance was issued. 2005

The extension of time form was signed by Julie Pelrine.

The Board asked the secretary and Building Commissioner if they had seen a copy of the 2005 decision. Building Commissioner had seen the decision. The Board inquired if the applicant was paying taxes on (2) two lots. No the decision was not recorded so it was only (1) one lot.

Julie Pelrine: Presented the case explaining that the hardship was the shape of the lot. There is (4) acres of land and lot (1) is her grandfathers, Neil MacDonald's with the existing home, and Lot (2) is the proposed lot where she would like to build her home. The issue is she has only 35' Feet of frontage for a driveway to get back to the land.

Chairman Caron: Explained to her that she is requesting taking an already non-conforming lot and making it more non-conforming to create another non-conforming lot. It is very difficult to do and we have never approved it. We have by laws that state if already non-conforming you can't take it, not that it has never happened but....The problem is you are so far off from 250' feet of frontage. Where do the wetlands start on proposed parcel (2)? Way in the back.

Kenneth Pacheco: You are in a similar situation as the last case. You are creating the hardship. You have a lot here that already doesn't conform and by taking the 35; foot frontage you are creating another lot that doesn't conform. You are creating the hardship for yourself so you are asking for a variance you have created this hardship.

The Board asked what happened in 2005. It was approved. No one on the Board remembers this case. Why do you think that this request was approved?

Julie Pelrine: Stated that the Assessor's Office has it mapped as (2) two lots but it was just never recorded with the Registry of Deeds.

Robert Adams Sr. The map might be there but that doesn't mean that this was an approve lot.

Chairman Caron: Asked Mr. MacDonald, in 2005 we gave you an approval to put a house on lot (2) Two? Yes. The inspector has the decision, it is a matter of record.

Robert Adams Sr: The map shows this lot here is taken out of the existing lot.

Building Commissioner: stated that the Engineer, Mr. Delano produced a plan for him that he said he came to this Board with many years ago. That was the plan that I used to render my decision.

Robert Adams Sr.: They must have subdivided this whole lot creating this lot and creating this lot but that doesn't mean this lot was created too. It is just going to show the map that you only have 35' foot frontage. It doesn't mean that this was an approved lot.

Building Commissioner: Correct, to build a house I agree with you. But it was a created lot by some movement of this Board because this is an undersized lot. Some motion of this Board had to take place in order to do that. Whether or not it was to build a house or not I don't have anything to substantiate that.

Robert Adams Sr: Perhaps you can check the records on your deeds like your mortgage plot plan that would show something regarding this. He asked the secretary to check and see if we had any record of this variance request.

Rosalind Grassie: I just checked the data base and the card file and there is nothing on record with the ZBA.

Robert Adams Sr.: We do have a record of everything that has come before this Board since forever.

The Board reviewed the plan that was submitted and also the map from the Assessor's Office and they asked if there were (2) separate tax bills?

Zachary Caron: No Questions

Robert Adams Sr: I would like more information. The way it is now they don't have any evidence that a lot.

Greg Logan: Like I stated earlier if they could come back with a tax bill showing that they have been paying on this proposed lot.

Peter Caron: Where is the house going to go?

Julie Pelrine: Right in the middle of the (2) two existing houses so that there could only be (1) one house built.

There was a discussion about the possibility of putting a road in to access the land in the back.

Julie Pelrine: Stated that she only wants to put (1) one house in not develop the land in the back.

The Board asked if she would consider moving the house further back and Julie said that would not be a problem.

Abutters:

Ann Maggi 2500 Maple Street: We have just purchased the property next door. Behind us is protected wetlands. Would they have to go to Conservation? No this property is all uplands. Will this change the topography of the area? I know other abutters get water in their basement already.

Peter Caron explained that the area is very wet. The issue in front of us is this area you need 250' feet of frontage to build a house and this parcel only has 35' feet frontage. A couple of things concern me and I will be honest with you there are (2) two other people on that street that are looking for variances too. Everyone else on the street has 250' feet of frontage and now you are going to end up with at least (3) three lots that will be under the required frontage because if this is approved they will be in saying you gave them the relief with only 35' feet I have 55' feet or 100' feet why would you not grant it to me too.

Julie Pelrine: I would like to add that the reason we are requesting this relief is so that I can be near my grandfather to help take care of him.

Kenneth Pacheco: They are going to get that 2005 decision for us?

Peter Caron: I don't think that there is a one. I think that it may have been proposed at one time. Even if it wasn't recorded if it came in being proposed I'm going to guess that there was no written decision.

Kenneth Pacheco: I don't know why it is on the Assessors Map. I would like to see the deed for this property that shows...

Julie Pelrine: There is no registered deed for the second lot.

Robert Adams Sr.: I don't remember this coming before us in 2005 but if you can come up with something that could help us make a decision.

Peter Caron: We are going to take it under advisement. The voting members may want to go take a look at it. It is difficult with our bylaws, the bylaws are there for a reason to stop putting small lots in. The one thing in your favor is that it is a decent size lot. The bad thing is we require 250' feet frontage and you have 35' frontage not even 135' feet. You are taking an area that you don't have house on top of house and now you are changing the characteristics. That doesn't mean it won't happen it will just be a little more difficult. We have to look at some case laws as well as abutters concerns.

Motion Robert Adams Sr. second Zachary Caron take this case under advisement

All in Favor

Aye

Case # 1515 & 1517 1820 US Solar Works Pine Hill Road

The First case to be heard was for the Special Permit case #17-15

A letter of extension was signed

Peter Caron read the Legal Notice posted in the Taunton Daily Gazette. **Voting members** Picked were **Peter Caron – Greg Logan- Kenneth Pacheco**. The first thing we are going to vote on is the Special Permit because if it is denied then there is no reason for the variance. Peter explained the process regarding the Solar Array Permitting Process. He stated that a special permit is needed because the ZBA has been asked to control or to make sure that its fits the neighborhood. That is why you are here tonight. The variance aspect is that this is considered an accessory structure and an accessory structure needs to be 15' feet from the boundary line and when this rotates it will be about 3' feet from the boundary line.

Peter Fine presented the case and he explained that he works for US Solar Works out of Attleboro a small local company who specializes in high performance solar systems. This

system is a ground mount solar tracker in a compact form that sits on a single post and rotates to track the sun. The base of the tracker would be located 22' feet from the property line and when it moves the closest point to the boundary will be 11' feet not 3' feet. It is 20' tall x 20'6 inches wide. He explained that it is 20' feet tall when it is straight up but that it tilts to catch the sun as well so often it is lower than 20' feet.

Greg Logan: Asked is this a proposal or is this already in?

Peter Fine: This is a proposal, actually we started to put the base in and then we stopped.

Greg Logan: You did that without pulling a permit?

Peter Fine: He stated we applied for the permit and it was his understanding that the permit was issued. It turns out the electrical permit was issued but not the rest of the permit.

Greg Logan: You said that you do a lot of commercial work and you know that you need to have permit in hand before you do any type of work of any kind of project.

Peter Caron: Asked about the density of the area near the array and if there is any noise that is associated with this? They were told that it would be just a light hum.

Kenneth Pacheco: I just want to say that I think they have done a lot of work as far as the environment goes with the geothermal system and now coming in with solar power. That is commendable. I do want to hear from the abutters because it does impact them.

Abutters:

Thomas Ferreira 1830 Pine Hill Road: I don't have a problem with him putting that in but he should put one on my property now.

Joseph Estrella: 1825 Pine Hill Road: I live across the street. I would like to correct a few things that have been said tonight. They didn't start to put it up it was already up and they had to take it down because he didn't have a permit. I live directly across the street, I applaud him for putting up solar. I just wish it was in a different place. I don't want to look across the street and see this. It is great that he is doing it and I don't have a problem with it because it is his property providing he follows the zoning. You have a 15' foot side setback. You can put it somewhere else. There are not a lot of trees there. I think it is great what he is doing I just don't like where it is located.

The Board asked if he would be satisfied if he planted more trees. Yes. The Board asked the Building Commissioner for input.

Building Commissioner: All of the facts given here tonight are truly not facts. Thank you Mr. Estrella. Everyone know that his office doesn't stand in the way of law abiding citizens who have rights to things. This Solar System went up without a building permit and I needed to order it down. I understand that this is the first one as you mentioned Mr. Chairman and I understand that there is a learning curve with the process but none the less a permit was not given as Mr. Logan indicated. With that said this is the process. I believe the bylaw is well written. I think the reason for the special permit is exactly to hear the points like Mr. Estrella has because he is going to be impacted ecstatically by it. I would urge the Board to take that into consideration when rendering this decision.

Peter Caron: Discussed planting more trees to increase the density in front of the array or moving it into the back of the yard. Which would be ideal. No one would see it and you wouldn't need a variance. This is a large structure and it violates the neighborhood. Is there the possibility of putting this behind the house? They discussed shading and loss of economic value. They discussed planting arborvitaes and other foliage to block the site line. Mr. Lombardo stated that until the array is up he will not know what he needs to plant.

Building Commissioner: Explained that these arrays reflect some amount of sunlight. There will be some sunlight that is reflected off these panels onto abutting properties depending on the orientation of it and the time of year. Some of the impact can be reduced by having a fairly robust vegetative buffer. I also agree the site is limited due to the trees in back and the topography goes up substantially behind his property. To move it back further would reduce the efficiency of the panels. To the front I agree with the abutter it is wide open in the front. There is very little screening if at all from the house so there would have to be a concise plan in place by this Board if that is the route that they are going to go and I also suspect that if this is voted favorable upon to move forward with the solar installation I would want a condition of this special permit and or variance the building permit will not be signed off until the vegetative buffer is installed. That way he would have an open permit and then have an act of violation.

Peter Caron: That would certainly be made a condition because you have a neighbor that would have high impact.

Peter Caron: Jim what happens if this goes up and we start getting complaints? If it does reflect or it does make too much noise. What is our recourse?

Building Commissioner: Unfortunately after you render your decision and I issue a permit it would become a civil matter between two parties. Unless you wanted to write a long elaborate decision that would cover all bases.

Peter Caron: What would you want to see as a condition besides greenery that would solve a lot of problems for the neighborhood?

Building Commissioner: I am not certain that we could come up with that language right now without conversing with our Attorney. The reason for that is that we can't conceivably even you as the designer mimic real world activity with the angle of the sun the time of year, the angle of the panels ect.. we know you are an abutter and you are far away but you have vinyl siding on your house and this thing reflects at just the right time this could impact your siding. We do not know any of that yet.

There was a discussion regarding if the equipment is leased or owned and what happens if it malfunctions and is stuck in a certain orientation. It was explained that it will be owned and it is all under warranty.

The variance was to allow relief of the side yard setback. The side setback to be 11' foot from the boundary not 15' feet as the by law states.

Motion Kenneth Pacheco second Zachary Caron to continue the variance hearing until October 21, 2015 at 7:30 PM

All in Favor

Aye

Case # 16-15 1458 Somerset Avenue Police Station Easement Variance

Voting members Peter Caron Zachary Caron & Kenneth Pacheco.

Chairman Peter Caron read the legal notice posted in the Taunton Daily Gazette. Peter said

“I thought we already took care of this?”

We took care of the 75' foot front yard setback. The first variance is for access to the property “Driveway” through frontage created by an easement and also a waiver for a triangular parcel for which an easement has been granted. The building Inspector requested that access not through frontage had to be done through an easement and that a variance was needed for that. We heard this all last month and Bob Adams said that we should be hearing a variance for that.

Robert Adams Sr.: I don't think I wanted a variance for that at all. I clearly stated that you can't access public property through private property and I wanted you to come up with something or show me case law where you have another Police Station in the State of Massachusetts that enters through private property. You have more than sufficient frontage to access from Rt. 138. I don't understand why you would make people, people from out of town, come into town and see the front of the Police Station they pull in this bottom entrance and they have to pull in turn around and come back up the street. That is a very bad entrance. On the lower side where Elm Street comes in it's a very dangerous intersection.

Joseph Pacheco: that is not an entrance.

Robert Adams Sr.: No, It is an entrance for the Police Department.

Joseph Pacheco: No it isn't

Robert Adams Sr.: Well that is not what they told us.

Taylor MacDonald: This is your public entrance.

Robert Adams Sr.: Right and it is through the easement for the electric light company. I own property across the street. That is why I abstain from voting.

Taylor MacDonald: The reason that it is off the street is that if we had another curb cut here it would be too close...

Robert Adams Sr.: Jim, please help me out with this?

Building Commissioner James Aguiar: The Police Department as I've been explained wants the secondary access point here for egress only they can get out of the parking lot in a hurry but I agree that it is going to create confusion point for patrons visiting because even through it says do not enter we know they will be going in there. That is why this Board has to hear it.

Robert Adams Sr.: Away from that you are going through private property. You just made a statement here earlier tonight once we did the special permit this becomes a civil matter after this. If somebody else purchases that property it says in perpetuity we all

understand that the Police department have no authority over a civil matter. You need to enter this property through Rt. 138. I'm not a voting member but show me another Police Station in this State that does that or any state. When you have access to Rt. 138, what is the big deal with cutting a curb cut and putting a piece of tar there and entering it from the front, just because the Police Department doesn't want it.

Taylor MacDonald: We feel that Mass Highway will not allow it.

Robert Adams Sr.: We feel it? Get something from Mass Highway that says you aren't.

Taylor MacDonald: It is too close to the driveway for the power plant if we put another curb cut here. Mass Highway won't allow that.

Robert Adams Sr.: Will not allow what?

Taylor MacDonald: To have another curb cut as close to the entrance drive to the power plant. It's too close

Robert Adams Sr.: Why, don't they put this down in this place back here. What's the big deal with putting it up there?

Zachary Caron: Why can't we have the private way be the police entrance and the public entrance be in where the sally port is in the back.

Building Commissioner: We don't want the public on that side of the building.

Obviously that is why we are discussing the entrance issues.

Peter Caron: Correct me if I am wrong Zack, I think he is saying the exit on Rt. 138 why can't that be the entrance?

Robert Adams Sr.: For one thing Peter the main entrance for what would be communications, I am assuming is on the other side of the building. This on the back side is where they would be coming in if they were to have prisoners or whatever it was. The parking lot for their cruisers and other police department vehicles.

Taylor MacDonald: I am not the designer so I am speaking for him he is not here tonight. In police station design you like to keep the public and the police separate at all times. That would be the reason for having police parking out there.

The Board asked about moving the sally port from the left side of the building to the right.

Building Commissioner: The Sally Port is actually in the rear. The public will not be allowed past the (2) islands in the parking lot.

Robert Adams Sr.: Is there anything that you can get from Mass Highway that says you can't do that? You said that you feel as though they will not allow that.

Taylor MacDonald: That is what the engineers have told me. But I can get that from Mass Highway.

Peter Caron: So then I guess to follow through why can't the north entrance or is that south? Why can't the entrance be an entrance?

Zachary Caron: That is what I don't understand?

Dennis Maguy: In the Deed for the property, do you have a copy of the deed for this property?

Peter Caron: No.

Dennis Maguy: The deed gives explanation for the access A & access B. The original deed for this property shows a Police Station design with the access coming in allowed off the power plant entry and coming in this way. It is called access entry.

Robert Adams Sr.: But it is on private property sir.

Dennis Maguy: This is what they allowed in the deed. It is written in the deed as an access easement.

Peter Caron: Why can't that entrance or egress be ...Joe?

Joseph Pacheco: There are parking spaces here.

Peter Caron: You have a curb cut right there.

Joseph Pacheco: Where are you going to put the parking spaces?

Greg Logan: Over where the other driveway is.

Peter Caron: I guess what I am saying is that is there why can't that be made an entrance?

Dennis Maguy: It is the site line if you are coming down this road "heading south on Somerset Avenue" and you want to turn safely into this station....

Robert Adams Sr. I have property across the street and there is no easy way for people that don't live in the town to know where the front of the police station is. If you're coming from out of town.....

Dennis Maguy: There will be signage to say where it is going to be.

Robert Adams Sr.: We live in a country where a lot of people get drivers licenses that can't even read or write. The frontage should be on the street that it is accessing. We dealt with this thing ... the road takes on the identity of the destination. It is a private road taking on a public destination.

Dennis Maguy: I am just telling you what they originally designed it to be.

Peter Caron: are there going to be signs at that entrance that technically is the power plant that you are looking for an easement is there signs entrance, public entrance.....

Taylor MacDonald: Absolutely. I don't have that plan with me but there will be signage.

Peter Caron: I agree with Bob that there is nothing more frustrating that to think that you are going to be pulling in front of the building then realizing that you have passed and then you have to turn around somewhere.

Robert Adams Sr. Then you have to pull back out onto a road where the visibility coming the other way. Try to pull out of my yard its crazy.

Taylor MacDonald: You think if you pulled in here you would be confused?

Peter Caron: No, I think that if you are coming either way on Rt. 138 you are going to assume that the entrance to the Police Station is either one of those two entrances and when you realize there not you are going to go past it and have to turn around in someone's driveway or the nearest way to turn around and then have to come back and you are going to have to come back slower and that is when you are going to see the sign that says police entrance is here

Robert Adams Sr.: Do you know of any other police stations where they have access through private property?

Peter Caron: Bob, I don't know if that is such a big deal? We are granting an easement.

Building Commissioner: I don't have a side either way. I would love to inspect a building going up I really would but I think from a town we have to be responsible Mr. Adams has a valid point if something were to happen between to (2) patrons of the public and a police cruiser and the public and it happens on private property now what does that open up?

Peter Caron: No different than if something happens in someone's driveway. A police officer pulls in and hits a car in someone's driveway....

Building Commissioner: We created that.

Robert Adams Sr.: If the police officer didn't have a right to be there the Town would be liable. From another point of view you have a power plant that has business coming in all the time whatever it is. It been sold what 5 times since it has been built and I that the person is going to be in perpetuity on our deed from the towns perspective but if they come in and they park a truck there and say I am not going to move it the Police Department can't even have that towed because they own the property and I closes access. You don't access public property through private property and I won't say any more. Ok Peter, I won't beat a dead horse, it doesn't take a rocket scientist to figure that out.

Taylor MacDonald: Doesn't our easement extend that frontage? To let us access the point from that road.

Building Commissioner: It is illusionary frontage it is not your property.

Robert Adams Sr. it takes on the destination of what it is. If you have a public entity at the end of a private driveway I am on the Zoning Board here and (25) years down the road when something happens, when somebody went to turn in the front there and a car veers off the side of the road and drives into somebodys yard because he pulls back out into the middle of the road when you have the chance to change it. You are showing a curb cut there because there used to be a house there. Mrs. Wardell lived in that house there was already a curb cut you are creating another curb cut down at the bottom.

Joseph Pacheco: Where are you going to put the parking spaces?

Robert Adams Sr.: They can still access that there. You are only opening the frontage put the parking over there close it where you have the road in. You are only going to lose the amount of space wide you have for the opening now.

Peter Caron: how many parking spots are you going to lose? If you use the existing drive how many parking spots will you lose?

Robert Adams Sr.: You are going to gain it back when you close the driveway off over to your easement.

Taylor MacDonald: (12) Twelve plus the handicapped parking here. We would have to move the handicapped spot over to here. There are (7) seven spots here and (5) five here.

Robert Adams Sr.: They are still going to be there you are just going to drive in a (20) twenty foot entrance that same that you have on the other side.

Zachary Caron: It looks even doesn't it?

Robert Adams Sr.: I don't understand why they just don't change the plan.

Building Commissioner: What's this and I know that you have done your due diligence and I am not questioning you ok but I am just trying to clarify things. What is the dimension from here to the property line? Do you know that dimension? Because this Board could easily grant you encroachment on the side line set back for parking. Board you could allow him an encroachment on the sideline which he has his 15' foot right now which would easily give you the width that you need

Taylor MacDonald: To get parking and drive in

Building Commissioner: Exactly, they have the authority to do that you can gain 10' feet in an instant if they give you a 5 ' foot buffer, they could give you a 2' foot buffer if they wanted too so I think there are other ways here to skin a cat here that we need to talk about.

Robert Adams Sr. They want to bring sewage down that road as well

Peter Caron: You will certainly pick up some parking spots

Taylor MacDonald: We can rework it.

Building Commissioner: you are asking for a setback for the triangular piece so there would be no difference in granting the setback for this one.

There was brief discussion about the easement and the stub for the sewage

Robert Adams Sr.: Have you met with sewer Department yet?

Taylor MacDonald: No.

Abutter Input

Sue Gustafson 3068 Elm Street: Is that driveway to the Power Plant a road? Would it have to be redone with lighting and stuff like that in order to allow public to come in there now?

Peter Caron: It is just a driveway.

Sue Gustafson: Would they have to change it? Make it 40' wide, lighting snow plowing ECT....

Building Commissioner: Those are good questions, I'll elaborate a little bit. You need to put a stop sign up at that intersection for the public who is leaving there. I think it opens up another whole scenario

Robert Adams Sr.: The Police Department will not have the authority to enforce a stop sign on private property.

Building Commissioner: Another valid point.

Robert Adams Sr.: This is not a good thing

Robert Mullen: Main Street: The old driveway for the old residence that was there why can't we just go in and go both directions one for police one for the public?

Building Commissioner: there is no vehicular access to the front of this building. There is no room.

Taylor MacDonald: We have a lot of wetlands in the back we are very limited....

Bob Mullen: How about the old driveway that went to the house.

Taylor MacDonald: That is what we were just looking at, eventually using that.

Bob Mullen: If we are going to need one way for the police to come in and another way for the public..... go left or right.

Peter Caron: I think that it is a great idea to have the public entrance and police entrance. You have to get the prisoners out back I don't think that is a bad idea at all. I certainly think if there is a way to have that entrance moved to Rt. 138 I am going to say it is probably the best place to do it. Because it is in the front of the building. If it can't be done for whatever reasons there will have to be improvements on the driveway. Everything from repaving it to some kind of lighting and large enough signs which again they are going to affect the neighborhood, advertising this is the entrance to the police station. Because I can see people going past it and then just deciding to turn in even if it says police cars only. Even if it's just to turn around in there come out and go back to the regular entrance.

Kenneth Pacheco: You are going to have that problem whether you use the easement or the other entrance.

Taylor MacDonald: To me creating two entrances I've....

Peter Caron: it would just be that one.

Taylor MacDonald: You would have the power plant entrance and have the police right after it. To me that creates more confusion.

Robert Adams Sr.: It is no different than having two driveways. This exactly what you have two entrances. One for the power plant and one for the police department. The same as if you had neighbors in a residential area.

Bob Mullen: Another scenario, this place has been sold 5 or 6 times already. What happens if it gets sold again and this place becomes a union outfit and they decide to go on strike?

Peter Caron: They couldn't interfere with the easement

Building Commissioner: That would be a legal matter that you would have to....if they stand arm and arm on rt. 138 to make a statement you are not getting through. That is why we do this. This is the planning stage.

Robert Adams Sr.: Where this entrance is going to be for the police department to egress that is just to leave. They are going to have to enter for the other side of the street where everyone else is going to have to enter. While we are in the planning stage

Joseph Pacheco: We are ready to put the shovel in the ground.

Robert Adams Sr.: it hasn't been approved.

Joseph Pacheco: We are ready to go.

Robert Adams Sr.: The money has been approved but the plan has not been approved. Why are you here?

Taylor MacDonald: This has not been put out to bid yet, correct

Robert Adams Sr. You wouldn't be here if it was already approved. This entrance where that road is in the interest of the town of Dighton is a very bad one way street. That intersection people have died there. It should be brought out squared off and have an entrance so that they can come in from the right hand side. But that is cost thing. That entrance isn't over the hill is it? When you pull out can you see over the hill? That is why that is a one way street. You can't see over the hill.

Dennis Maguy: That is all going to be cleared for visibility.

Taylor MacDonald that whole corner will be cleared there is no visibility.

Dennis Maguy: all those trees are leaning over ready to fall on route 138 anyway.

Building Commissioner: There is a substantial amount of fill that is going to be removed from that area there is a lot of site work involved.

Taylor MacDonald: We are looking at building up the area of the station bring that up and your parking areas too.

Dennis Maguy: Let's get back to the parking and being able to maybe come back if we change the entry to right off of Rt. 138 right in the front and Jim eluded that we could come back to you for parking variations to move the parking to still gain the parking back so we don't lose that. So that maybe we could switch the entry a little further one way or the other there on that parking area.

Bob Adams Sr. how many public parking spaces do you have? Do you know?

Taylor MacDonald: Right now we have 48 and we need 43, 43 are required.

Building Commissioner: I am sorry Mr. Adams I was in another conversation. Parking on this building is dictated by law.

Taylor MacDonald: Can we talk about this entrance? Because in my mind this isn't a huge deal. Would there be something that we could get an approval on that portion of it. We have a lot of wetlands back there so we can't really go any further this way with it.

Dennis Maguy: That easement is easement B in the deed. That easement said that we can't build any permanent structure on that piece of property. We can use it and it is

shown on the deed in that same police station done by the original designer as having parking across it. I spoke with the plant manager and with Marguerite and she will attest to it as long as we don't put any permanent structure on it we can parking, pathways landscaping anything on there.

Peter Caron: Let's take a vote on it. There is actually (2) separate things that we are considering so I would say that I don't have an issue with that triangle piece.
Do you Zack? NO.

Bob? I'm not a voting member but no

Greg: No I don't have a problem

Do you Ken: No I don't have a problem.

Peter does somebody want to make a motion to approve that triangle portion

Motion Zachary Caron second Kenneth Pacheco to approve the triangular parcel

All in Favor **Aye**

Peter Caron: That triangle is put to bed. Thank you.

Now I am going to say if you can somehow reconsider that entrance. I Agree with Bob I know myself with the amount of traveling that I used to do it' frustrating to have people have to turn around it creates more of a hazard. Because now you've got them doing it twice and if you can come up with some other way to use it that is what you guys do?

Taylor MacDonald: I am concerned about Mass Highway requirement regarding the closeness of the drives here.

Joseph Pacheco: You have people parking there getting out of their cars and people rushing in.

Peter Caron: Are there going to be people rushing in?

Joseph Pacheco: Well a police cruiser could be coming in.

Peter Caron: I thought they would be coming in down below

Robert Adams Sr.: that is only an egress.

Joseph Pacheco: They are coming in here going there and going out

Building Commissioner: Could I say 2 things. First of all don't you have a curb cut already?

Taylor MacDonald: We have a curb cut application in.

Building Commissioner: there is an existing curb cut on that property already isn't there. Where is that? If you have an existing curb cut on the property I don't believe that Mass Highway can deny you access through that.

Taylor MacDonald: For an existing one.

Building Commissioner: Absolutely, I would think that maybe you don't need approvals from Mass Highway if you have an existing curb cut secondly you can maintain your using of the easement if you have the police use that easement only and not the public and that would remove some of the legal issues that come up. You could also narrow the width of that because it would only be for police entrance you are going to egress on the other side and you might actually be able to segregate the whole back of this building

from that parking lot with an island and the public won't have desire to go back there because they can't get back there.

Robert Adams Sr. You might even want to restrict that as only an entrance and make them all egress all the same way.

Building Commissioner: Exactly, have the police enter here and exit there and you won't have any cruisers passing each other. You couldIs this easement located specifically by location?

Dennis Maguy: Yes and no

Building Commissioner: So you could cheat this back a little bit I think that you would increase the efficiency of the site and reduce the confusion if you did something like that.

Bob Adams Sr. I am not opposed of having the access through there but I don't think it should be a public access. It should be in front of the building. We have talked about other things it just not proper. Please see what you can do.

Peter Caron: There are a lot of things that I can agree with and somethings that I don't. I don't think it's as big of a deal that you are going down a private road. Nobody is going to know. Unless something happens where there is an accident and there might be something civil. I think the odds are pretty slim that it is going to be that often. Again if proper signage was there that says this is the police entrance. Like they do a little further up the road in Somerset. They have a police entrance only and then the fire public entrance. But I guess if there is another way to use the 138 entrance because that is where people would expect it to be it makes it that much easier. If it can't be done then we will have to go

Taylor MacDonald: I will give you an example cuz you kind of asked for one. Marion Police station if you took this parking out it is very much the same site plan. Where you pull down an abandoned road that goes into the woods but public and police pull into here.

Robert Adams Sr. Someone else owns it?

Taylor MacDonald: Tabor Academy owns it once you get to a certain point.

Robert Adams Sr.: Who owns it between there and there?

Taylor MacDonald: The town of Marion

Peter Caron: Let's have you guys come back with it, Joe. As much as I would like to approve this tonight and get it done. If some how you can tweak it if you can't you can't and we go back to this. Jim your opinion is you come in off the front of the building

Building Commissioner: I know this has been delayed and I understand the frustration on many people who have put a lot of time and effort into this Joe and Mr. Maguy and everybody. This is part of the planning phase. We are trying to do what is best for the town long term this is a police station that is going to be with us 50-60 years. I think the site could be re-configured where it works a little better from separating the police from the public. There is a community room in this building. This building might be used for other purposes down the road. We really should look at the access and I am glad the Board is doing so. I don't want to delay this anymore between you and me I want to be inspecting this thing.

Peter Caron: is there a way you can do something sooner.

Taylor MacDonald: Is there a way to get something to you before the 21st that we could We are on kind of a tight deadline here.

Peter Caron: I have no issues with that who are the voting members

Bob Adams Sr. Peter -Ken -Zack

Zack Caron: If we are going to meet it would have to be Wednesday night

Peter Caron: How about a Wednesday night 2 weeks from now?

Taylor MacDonald: I'll have to talk to the designer

Peter Caron: We will set it up for 2 weeks from tonight. Again if it can't be done then our alternative is what you have. We don't mean to be a pain in the butt, but they have brought up some valid points.

Taylor MacDonald: I do want to check with Mass Highway and we will take a look at it and get back to you in two weeks.

Motion Kenneth Pacheco second Zachary Caron to continue the hearing until September 30, 2015 at 7:00PM so that the site could be reconfigured.

All in Favor

Aye

Approval of Minutes:

Motion Kenneth Pacheco second Peter Caron to approve the Regular Meeting Minutes of May 20, 2015

All in Favor

Aye

Motion Kenneth Pacheco second Peter Caron to approve the Special Meeting Minutes of May 26, 2015

All in Favor

Aye

Motion Peter Caron second Kenneth Pacheco to approve the Regular Meeting Minutes of July 18, 2015 with a change on page #5, change the she too he and correct the spelling of acreage.

All in favor

Aye

Motion Kenneth Pacheco second Zachary Caron to approve the Special Meeting minutes of June 24, 2015

All in Favor

Aye

Motion Kenneth Pacheco second Zachary Caron to approve the Regular Meeting Minutes of July 15, 2015

All in Favor

Aye

Chairman Peter Caron discussed with the Board the following changes that he would like the Board to consider.

- Increase in Application fee and eliminate the fee for drafting the decision

Motion Kenneth Pacheco second Robert Adams Sr. to raise the application fee from \$300 to \$750.00

All in Favor

Aye

- **When a vote is taken from now on the members will be asked why are you voting that way so that it can be documented for the lawyer to help draft the decision.**
- **Adjustment for the Secretary's wage /pay grade**

Peter explained that the suggested increase is not due to the increase in work volume it is due to the adding of a whole new element to the job description "40B Developments". This element that we have added deserves a pay grade increase.

He explained that he had met with the Selectmen and tried to get the grade increase on the Special Town Meeting Warrant but he was told some misinformation that only at Annual Town meeting could approve a grade change.

Building Commissioner: Asked that he had a few comments that may be noteworthy. He explained in addition to the 40 B's that may be coming in we have the 40B's that are in operation. Along with them as you know because you composed the Comprehensive Permits, Ros and I collaborate many times a day on compliance with those permits. I need to be able to lean on her from a technical standpoint because I try but I can't do it all. I rely on her to say give these people a call find out what is going on. The chairman does a great deal as well if he isn't available it falls back on her. This is an added work load that she didn't have before either.

Peter Caron: That brings another point. Our clerical staff works 20 hours for the ZBA and 15 hours for the Board of Health for a total of 35 hours. I think that we need our secretary for 35 hours a week. One of the biggest reasons is the 40B's that we have worked so hard on for so many years are getting away with murder because Jim cannot go in and inspect them because he has so much other work. I think that we can take advantage of the additional hours with Ros and I am going to use a prime example with Dighton Woods. They probably have 10 violations that they thumb their nose at us. Everything from mowing the detention basins to no parking on the streets and nothing has happened. One of the things we can do is where Ros knows the 40B's because she is here first hand for each one she can help the Board along with the Building Inspector and ZBA Chairman in policing them. Peter asked the Board to think about increasing the secretary's hours to 35.

Kenneth Pacheco: There is probably going to be another special town meeting and I don't know if maybe we should act on this tonight?

Motion Kenneth Pacheco second Robert Adams Sr. to increase the secretary's pay scale from a grade 4 to a grade 6.

All in favor

Aye

Motion Kenneth Pacheco second Robert Adams St. to increase the Secretaries hours to 35 hours a week for the Board of Appeals.

All in Favor

Aye

Motion Kenneth Pacheco second Peter Caron that Robert Adams Sr. be appointed as clerk of the Board of Appeals.

All in favor

Aye

Motion Peter Caron second Zachary Caron that the Vice- Chairman and the Clerk be able to sign payroll and bills if the chairman is not available

All in favor

Aye

Motion Peter Caron second Zachary Caron to adjourn the meeting at 11:50 PM

All in Favor

Aye