



TOWN OF MEDFIELD

Office of the

BOARD OF APPEALS

TOWN HOUSE, 459 MAIN STREET
MEDFIELD, MASSACHUSETTS 02052-2009

(508) 359-3027
(508) 359- 6182 Fax

MEETING OF:
February 27, 2020
MINUTES

Members Present: John J. McNicholas, Chairman; Michael W. Witcher, Member; Jared Gustafson, Associate Member

Members Absent: Charles H. Peck, Associate Member; William McNiff, Member; Jared Spinelli, Associate Member

Staff Present: Sarah Raposa, Town Planner; Marion Bonoldi, Recording Clerk

Others Present: Paul Haverty, Dan Hill, Jeff Hyman, Harriet Vogel, Russell Gontar, Patti Allan, Chris Allan, Carol Terry, Mark Freegood, Kay Bennett, Brian McMillin, Ben Tyman, Gus Murby, Brian Nixon, Kirsten D'Abate,

Location: Medfield Town House, 2nd floor meeting room

At approximately 7:00 pm, Chairman Jack McNicholas called the meeting to order and announced the meeting is being recorded. Chairman McNicholas explained the overall process of the hearing.

Administrative- Minutes

Mr. Michael Witcher made a motion to approve the minutes from November 20, 2019. Seconded by Mr. Jared Gustafson. The Vote: 3-0.

Mr. Michael Witcher made a motion to approve the minutes from December 12, 2019. Seconded by Mr. Jared Gustafson. The Vote: 3-0

Mr. Michael Witcher made a motion to approve the minutes from January 22, 2020. Seconded by Mr. Jared Gustafson. The Vote: 3-0

“The Rosebay at Medfield” from Rosebay at Medfield Limited Partnership (applicant), 30 Pound Street (owned by Medfield Housing Authority); Assessors' Map 43, Lot 077; RU Zoning District with Secondary Aquifer Overlay for a Comprehensive Permit under MGL Chapter 40B, Sections 20 through 23 as amended, to allow construction of a multi-family residential development that will consist of 45 age-restricted affordable rental units with appurtenant driveways, parking areas, landscaping, utility

systems, and stormwater management system. (Continued from 8/15/19, 09/12/19, 10/10/19, 11/20/19, 12/12/19, 1/22/20)

Chair McNicholas said a lot has transpired since the last meeting on January 22, 2020. Chair McNicholas noted the Board of Selectmen discussed Rosebay in their last meeting and links to the YouTube video of the BOS meeting have been posted on the website. The links to the BOS meetings are part of the public record. Chair McNicholas said the ZBA members have watched the BOS meeting but have had no discussion with one another.

Chair McNicholas said the letter from Attorney Dan Hill dated January 21, 2020 noted two possible violations of the Housing Authority regarding the RFP process. Chair McNicholas said the RFP is being challenged; the possible flaw in the RFP process is questioning the proposal. Mr. Hill's asked the Board, in the letter, to deny the Rosebay application. Chair McNicholas noted that the Board has no authority or jurisdiction to deal with the possible flaws in the RFP. Chair McNicholas said Ms. Candace Avery, Director of the Housing Authority, issued a response letter. Chair McNicholas said the letter indicated that the Housing Authority met with legal counsel to review the initial RFP and "did not render an opinion on the original RFP." The Housing Authority said, in the letter, that legal counsel urged the Housing Authority to issue a new RFP. NewGate said they are willing to pursue the new RFP. Chair McNicholas said there was a subsequent letter from Attorney Dan Hill that refuted the Housing Authority's response letter.

Mr. Gus Murby, Board of Selectman, gave a summation of the BOS discussion. Mr. Murby said the last time the BOS actual considered the Rosebay project officially was last fall. Mr. Murby said that in light of the importance of senior housing, countered by the concerns of the neighbors, the BOS took no official position on Rosebay. Mr. Murby said the BOS didn't take an official position to make the ZBA's job less complicated. Mr. Murby said at the BOS meeting in February, a group on neighbor's voices concerns about the disposition of land and the RFP process. Mr. Murby believes the neighbors hoped the BOS would back the neighbors however, the BOS felt the concerns were out of their jurisdiction. Mr. Murby said Ms. Candace Avery, Director of the Housing Authority, was at the February meeting and said she would review the land disposition and RFP concerns.

Mr. Murby noted that independent of the Rosebay project, the Hinkley property's RFP had no responses. Mr. Murby said the BOS raised the issue that if the Rosebay project didn't pass on Pound Street, it might be worth looking at possible development at the Hinkley property. Mr. Murby believes Mr. Michael Marcucci raised this thought about one year ago and felt that Mr. Brian McMillin was not interested in development on the Hinkley property at that time. Mr. Dan Hill, attorney for the neighbors, said the town meeting vote authorized an RFP for single family homes at the Hinkley property and doesn't feel Rosebay could be built there. Mr. Murby said the BOS discussion was meant to be strategic.

Chair McNicholas asked if anyone from the Housing Authority was present at the meeting. No responses.

Mr. Brian McMillin, NewGate, said the Board needs to focus on what is a 40B matter and what is a DHCD matter. Mr. Ben Tyman, 40B consultant for NewGate, said that Mr. Hill's letter raised issues however; site control is not one of them. Mr. Tyman said there is a P&S agreement between the landowner and the developer and it is not unusual that a P&S fall out of contract. Mr. Tyman said site control is determined at the final approval stage; if a comprehensive permit is issued, DHCD would look at site control. NewGate is proceeding with the Rosebay project in good faith and NewGate understands the rights of the property will go to the new

winner of the new RFP. Mr. Tyman said there is no reason why the Board should not proceed. Mr. Tyman said they recognize there is a “wrinkle” in the process that needs to be dealt with but the Board should not be impacted in moving forward.

Chair McNicholas said it is unfortunate that no one from the Housing Authority is present to speak on the issues. Chair McNicholas said Mr. McMillin does not want to speak for the Housing Authority and doesn't blame him for that decision. The Housing Authority indicated the best course of action was to issue a new RFP; the ZBA Board cannot determine the propriety of the RFP. Mr. McMillin said it is NewGate's position that the RFP was not defective however they respect the decision for a new RFP to be issued. Mr. McMillin believes the new RFP would be looking of this project. Mr. McMillin said if NewGate doesn't win the new RFP; they would assign development rights to whoever does win.

Mr. Whitcher asked if a new project is selected would NewGate litigate for their development rights. Mr. McMillin said the winner of the new RFP would step into NewGate shoes however; he has not looked into all of the outcomes at this point. Chair McNicholas said he is having a hard time wrapping his head around continuing this process if there is a new RFP. Chair McNicholas said that the Housing Authority is restarting the process and can't understand why NewGate would want to move forward. Mr. McMillin said all of the issues will be handled in the new RFP. Mr. Whitcher asked how quickly a new RFP will be issued. Mr. McMillin said he doesn't know how quickly the Housing Authority will issue the new RFP. Mr. Whitcher asked if the Housing Authority is restricted to the type of housing for that land. Ms. Raposa said she believes there is a restriction. Mr. Whitcher said that Mr. McMillin said at one of the first meetings that not many developers would do this type of project involving tax credits. Mr. McMillin said there are other developers. Chair McNicholas said a lot of the questions rest on the Housing Authority and they are not present tonight.

Mr. Dan Hill, attorney of the neighbors, said that are a lot of issues that need to be “unwound”. Mr. Hill said there is a “clean way and a dirty way” of correcting the issues. Mr. Hill said the RFP might not be defective but the disposition of land was wrong. Mr. Hill said there were 3 respondents to the original RFP; the RFP was for consulting to help develop 30 Pound Street. Mr. Hill said the response from NewGate to the RFP was to develop the property. Mr. Hill said the Housing Authority selected the wrong party and the process needs to be “unwound” first before the Board can proceed. Mr. Hill said the process wasn't followed at all and now needs to be cancelled and started over. Mr. Hill said, regardless of the wrong process, this is the wrong project for this site. Mr. Hill said there are better options. Mr. Hill said the Board needs to deny the Rosebay project and productive conversations need to begin. Mr. Hill said this is opportunity to take a step back and discuss the right project; maybe NewGate is a part of that conversation and maybe they are not. Mr. Hill said the Housing Authority is “going through the motions” with redoing the RFP. Mr. Hill said there are other developers that deserve a proper bidding. Mr. Hill asked the Board to deny the project or for the applicant to withdraw. Mr. Hill said his clients are reasonable and want a responsible project that works and fits in the community.

Mr. Ben Tyman said it does not make sense for NewGate to withdraw and start a square one. Mr. Whitcher said he is concerned that a new project could be larger and the town could fall out of Safe Harbor due to Rosebay. Chair McNicholas said a lot of this conversation goes back to the Housing Authority and again, they are not present. Mr. Jared Gustafson said he is concerned that the RFP needs to be redone and will be pointing to the existing project of Rosebay. Mr. Gustafson feels that process is not fair to all potential developers that could bid. Mr. McMillin said the issuing of the new RFP is not a “dirty way.” Mr. McMillin said he does have site control and the issuing of a new RFP is to clean up the process concerns. Mr. Ben Tyman said the reissuing of the RFP will correct any 30B issues that Mr. Hill addressed.

Chair McNicholas asked if Mr. McMillin has any interest in withdrawing the application. Mr. McMillin said no. Chair McNicholas asked if Mr. McMillin has any interest in pursuing this project at another site. Chair McNicholas said the answer is not relevant to this hearing but wants to know if that idea is feasible. Mr. McMillin said he has not looked at any other RFP's for the Town of Medfield. Mr. McMillin said he has a current agreement with the Housing Authority and has an obligation to it.

Mr. Whitcher asked if the process can be "stayed". Mr. Haverty said yes; until the DHCD makes a determination and if the applicant agrees.

Mr. Hill said the Town of Medfield has Safe Harbor and the Medfield State Hospital will offer more land. Mr. Hill said there are alternatives and the neighbor's thoughts are to expand Tilden Village with the same type of housing.

Mr. Brian Nixon, 57 Pound Street, asked if any other developer is known to be competing on the new RFP. Mr. Whitcher said that information is outside of the Board's knowledge.

Mr. Jeff Hyman, 1 Metacomet Street, said this is a messy process and not fun for anyone. Mr. Hyman said there is a "spark" when someone gets to say they are from Medfield. Mr. Hyman believes this development is a threat and doesn't fit on the land. Mr. Hyman said this needs to be about the health and well-being of people. Mr. Hyman said the RU district is under threat.

Ms. Kirsten D'Abate, 65 South Street, said she feels there are more options than moving forward with a new RFP. Ms. D'Abate said that the Housing Authority submitted the original RFP for consulting and consulting was never received. Ms. D'Abate feels all of the planning for any project was skipped over. Ms. D'Abate is frustrated that the Housing Authority is not at the meeting.

Chair McNicholas said that he feels they have heard from everyone and there are many issues that the Board has no jurisdiction on. Chair McNicholas said given the totality of the circumstances, the number of people affected and all of the issues, the Board is at a point that they cannot move forward.

Mr. Gustafson said he agrees with Chair McNicholas and said that if NewGate could move forward with another RFP; most of these ongoing issues could not be fully corrected.

Mr. Whitcher doesn't fully agree with Chair McNicholas and feels the Board could move forward.

Mr. Haverty said the Board could leave the hearing open or close the hearing. Mr. Haverty said to continue with the hearing the Board could initiate the process of determination of DHCD and have the process "stayed."

Mr. Tyman said the applicant hasn't been able to make a full presentation.

Chair McNicholas said there have been issues throughout this process. Chair McNicholas feels that "rushing to safe harbor" can muddle the process. Chair McNicholas said he has been torn about the project since the first meeting and cannot see himself voting to approve this project give the totality of the circumstances. Chair McNicholas said the bulk and mass of the building and the inability for NewGate to be able to reduce this

project due to economic-ability has always been his concern. Chair McNicholas said he is in favor of closing the public hearing.

Mr. Whitcher said he respectfully disagrees. Mr. Whitcher said he still has an open mind to this project. Mr. Whitcher said the site is ideal for senior housing because of the location and walkability to town. Mr. Whitcher said he understands the neighbors and realizes he would not ideally want this project in his neighborhood but feels the next generation needs to be considered. Mr. Whitcher is concerned as to what a new project might look like and believes a new project is risky. Mr. Whitcher said he is not ready to walk away from this project yet.

Mr. Gustafson said there is a good chance the Board is going to end up in the same place they are now however; maybe there are more proposals to see. Mr. Gustafson said the Board might be back in the same position but at least they will know if there are more options or no more options.

Mr. Haverty said Rosebay is what is before the Board and they shouldn't anticipate the applicant will come back with the same proposal while the town is in Safe Harbor. Mr. Haverty said if the Board "stayed" the project; the SHI could be maintained. Mr. Tyman said the applicant entered into this process knowing the town was in SHI. Mr. Tyman said this "hiccup" will work out one way or the other. Chair McNicholas feels this is not just a "hiccup" and doesn't understand the benefit to the applicant not withdrawing. Mr. Tyman said the applicant is hoping to pick up where they left off. Mr. Haverty said if the application is denied; the applicant would need to start over. If the application is "stayed;" the applicant could pick up where they left off.

Chair McNicholas said the issues rest with the Housing Authority and no one is present at the meeting to address the Board. Chair McNicholas said there is going to be a new RFP and feels the Board should make a clean break. Mr. McMillin said the assumption is that the new RFP will be written for essential for this project. The idea is to have this project continue. Mr. McMillin noted this is an assumption and the Housing Authority is not present to verify.

Mr. Dan Hill said this is not a hiccup or a wrinkle; this is a fatal flaw. Mr. Hill said this project is tainted and the only way to move away from it is to start over.

Chair McNicholas said he understands there is a risk to losing Safe Harbor but believes there are options. At approximately 9:15pm, Chair McNicholas made a motion to close the public hearing. Seconded by Mr. Gustafson. The Vote: 2-1.

The Board will deliberate on Thursday, March 12 at 7:00pm and Mr. Haverty will circulate a draft decision.

At approximately 9:25 pm, Mr. Gustafson made a motion to adjourn. Seconded by Mr. Whitcher. The Vote: 3-0.

ADJOURNMENT - Mr. Whitcher made a motion for adjournment at approximately 8:30 pm. Seconded by Mr. Gustafson. The Vote: 3-0.

Respectfully Submitted,

Marion Bonoldi, Recording Clerk