

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

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| _____ |) | |
| SURFSIDE CROSSING, LLC, |) | |
| Appellant |) | |
| v. |) | No. 2019-07 |
| NANTUCKET ZONING BOARD |) | |
| OF APPEALS, |) | |
| Appellee |) | |
| _____ |) | |

**RULING CONCERNING SUPPLEMENTAL PRE-HEARING ORDER
AND
RULING ON MOTION BY RESIDENTS TO INTERVENE**

In response to the ruling of the court in *Nantucket Land Council, Inc., v. the Massachusetts Department of Housing and Community Development, the Housing Appeals Committee and Surfside Crossing, LLC*, No. 2075-0021 (Nantucket Super. Ct. Memorandum of Decision and Order... Jun. 22, 2021), this matter has been reopened for further hearing. In preparation, I issued an Order on Remand (July 30, 2021), a Ruling [Granting the Nantucket Land Council’s (NLC)] Motion to Intervene after Remand (September 10, 2021) subject to specification of the scope of intervention following the parties’ submissions of drafts for a supplemental prehearing order, and an Order in Response to Residents’ Statement [of Intention to Renew Motion to Intervene] (September 10, 2021). NLC and the Residents have responded to these orders. Surfside Crossing, LLC (the developer) has noted in a letter filed October 19, 2021 that the NLC’s responses are incomplete in certain respects, and has reserved its right to file further responses in the future.

Supplemental Pre-Hearing Order – On September 24, 2020, when the only parties in this matter were the developer and Board, I issued a 22-page Pre-Hearing Order. The NLC, in response to my ruling granting it permission to participate in the hearing as an intervening party,

has filed a draft Supplemental Pre-Hearing Order. It requests to participate on a range of open space issues, to introduce testimony from new witnesses, and recall witnesses who have already testified. The developer has objected to the scope and amount of evidence requested by the NLC. In my discretion, I have granted NLC intervention solely as set forth in the identification of issues in my draft Supplemental Pre-Hearing Order issued today, and as it may be modified after a supplemental Pre-Hearing Conference.

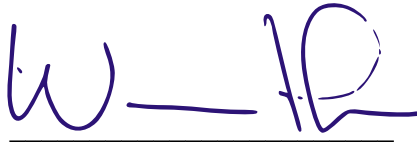
These preliminary evidentiary matters are both many and complicated—as can be seen from pleadings already filed—and in my judgment, in the interest of a fair and efficient hearing, they can best be addressed by my issuing a Supplemental Pre-Hearing Order after consideration of all of the arguments made by the parties. To ensure the most careful and productive consideration, today I am issuing a draft Supplemental Pre-Hearing Order based upon the written arguments made to date. I will discuss any and all aspects of the draft order with the parties at a supplemental Pre-Hearing Conference, and thereafter finalize and issue the order.

Residents’ Motion to Intervene – On September 30, 2021, eighteen residents who live in the area of the proposed housing (the Residents) renewed their motion to intervene, which I denied in my July 13, 2021 Ruling on Motion to Intervene. The renewed motion is supported by four affidavits representing nine of the Residents (including spouses and other relatives), and requests intervention to participate in the hearing on a very broad range of issues. In my discretion as presiding officer, and based upon the record submitted as of this date, I hereby grant the Residents’ motion to intervene solely as set forth in the identification of issues in my draft Supplemental Pre-Hearing Order issued today, and as it may be modified after a supplemental Pre-Hearing Conference.¹ Pursuant to 760 CMR 56.06(2)(b) and the Committee’s precedents, “the participation of an intervener may be limited to the extent and under terms determined in the discretion of the presiding officer.” As noted above, today, based upon the parties’ submissions, I am issuing a draft Supplemental Pre-Hearing Order that defines the scope of the Residents’ intervention, and I will discuss any and all aspects of the draft order with the parties at a supplemental Pre-Hearing Conference, and thereafter finalize and issue the order.

¹ “The Supreme Judicial Court ‘has repeatedly recognized that agencies have broad discretion to grant or deny intervention.’ *Tofias v. Energy Facilities Siting Bd.*, 435 Mass. 340, 346 (2001).” *Taylor v. Board of Appeals of Lexington*, 68 Mass. App. Ct. 503, 512, n.14 (2007).

The parties are ORDERED to appear at a remote supplemental Pre-Hearing Conference at 10:00 a.m. on Friday, November 19, 2021. Further, the NLC and the Residents are ordered to file each of the exhibits listed in my draft Supplemental Pre-Hearing Order by Wednesday, November 17, 2021. All matters concerning further proceedings in this case will be discussed at the supplemental Pre-Hearing Conference, and therefore, to ensure orderly, efficient proceedings, the parties are requested not to file further pleadings or written materials prior to that conference.

Housing Appeals Committee

A handwritten signature in blue ink, consisting of a large 'W' followed by a horizontal line and a stylized 'R'.

Date: November 9, 2021

Werner Lohe
Presiding Officer