

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING APPEALS COMMITTEE
NO. 2019-07

SURFSIDE CROSSING, LLC,

Appellant,

v.

NANTUCKET BOARD OF APPEALS,

Appellee

PRE-HEARING ORDER

I. INTRODUCTION

1. Pursuant to 760 CMR 56.06(7)(d), this pre-hearing order formalizes matters agreed to by the parties at and following the Preliminary Conference of Counsel on July 23, 2019 and Pre-Hearing Conference on September 16, 2020 in the above case. Its purpose is to facilitate the presentation of evidence at the *de novo* hearing before the Housing Appeals Committee.

2. For good cause, either party may at any time request modification of this order. Any such request for modification of Stipulations, Issues in Dispute, or Proposed Witnesses shall be by written motion as provided in 760 CMR 56.06(5)(a) and (c). A request for modification of Exhibits may be made orally during an evidentiary session of the hearing, provided that five days prior notice has been given to opposing counsel.

II. STIPULATIONS

1. By decision filed with the town clerk on June 14, 2019 with regard to the parcel of land located at 3, 5, 7, and 9 South Shore Road in Nantucket, Massachusetts, the Town of Nantucket Zoning Board of Appeals (the "Board") approved with conditions the Applicant's application for comprehensive permit pursuant to G. L. c. 40B, §§ 20-23 (see Exhibit 2).

2. At the time of the Appellant's application for a comprehensive permit, the Town of Nantucket had not satisfied any of the statutory minima defined in sentence two of the definition of "consistent with local needs" in G.L. c. 40B, § 20.

3. The project has received a determination of Project Eligibility issued by MassHousing pursuant to 760 CMR 56.04 under the New England Fund, dated April 12, 2018, fulfilling the project eligibility requirements of 760 CMR 56.04(1). (See Exhibit 1).

4. Evidence introduced by the parties during the hearing concerning costs and revenues in relation to the economics of the Project will, to the extent possible, be current as of the date of the execution of this Pre-Hearing Order. Land Valuation shall be determined as of the date of the submission of the application for Project Eligibility.

5. The project has met the project eligibility requirements of 760 CMR 56.07(2)(a)(1), 56.04(1), and 56.04(6). (See Exhibit 3).

III. MOTIONS

As further specified in the pleadings on file with the Committee, the parties have moved as follows:

1. Motions that have been Ruled Upon:
 - a. Nantucket Land Council's Motion to Intervene. Filed July 23, 2019. Denied per ruling dated July 12, 2020.
 - b. Motion to Intervene filed by eighteen residents. Filed July 22, 2019. Denied per ruling dated July 12, 2020.
 - c. The Board's Motion to Dismiss. Filed September 6, 2019. Renewed Motion to Dismiss filed on February 12, 2020. Second Renewed Motion to Dismiss filed June 23, 2020. Denied per ruling dated July 13, 2020.
 - d. The Applicant's Notice of Project Change. Filed April 7, 2020. Allowed per ruling dated July 31, 2020.
 - e. Board's Motion to Stay the Committee Proceedings Pending the Resolution of the Board's Chapter 30A appeal in Nantucket Superior Court. Filed 09/01/20 - Ruling 09/03/20: Denied.
 - f. Board's Motion for Reconsideration of the Ruling Entitled "Determination of Insubstantial Change (filed 08/07/20) – Ruling 08/10/20: Denied.

g. Board's Motion to Vacate Reassignment (filed 06/15/20) – Ruling: Denied.

h. Board's Motion for Remand to the Board for Determination of Insubstantial Change (filed 05/13/20) – Ruling: Denied.

Should this matter be subject to appeal to the courts, the parties reserve their rights with regard to motions that have been ruled upon.

The parties reserve the right to file motions to strike objectionable portions of prefiled testimony if necessary.

IV. ISSUES IN DISPUTE AND BURDENS OF PROOF

1. Pursuant to 760 CMR 56.07(1)(a), the central issue in this case is whether the decision of the Board was consistent with local needs.

2. Pursuant to 760 CMR 56.07(2), the issues below are the sole issues in dispute, and the parties shall have the burden of proving their cases as follows:

Applicant's Case

3. The parties disagree over which party, under 760 CMR 56.07(2), has the burden of persuasion on the issue of whether certain conditions, waivers and other requirements are beyond the power of the Board to impose, intrude impermissibly into areas of programmatic concern of governmental agencies, or are otherwise in violation of the Comprehensive Permit Law. The Appellant submits that the Committee should decide this legal issue as part of the hearing, but it is the Board's position that the Appellant shall prove that the following conditions are beyond the power of the Board to impose, intrude impermissibly into areas of programmatic concern of governmental agencies, or are otherwise in violation of the Comprehensive Permit Law.

4. to prove that the following conditions, in aggregate, make the building or operation of the project uneconomic, and that each condition individually has more than a *de minimus* economic impact.

In the meantime, the Applicant will assume the burden of going forward with evidence substantiating its objections to the following conditions, waivers and other requirements, without prejudice to its position that the Board bears the burden of persuasion:

(a) Conditions Which, in the Aggregate, Render the Project Uneconomic

Section V Requested Waivers and Exemptions

(5) Denies requested waivers that the Board arbitrarily determined are not necessary to construct the Project as modified by the Board's decision.

(6) Denies requested waivers that the Board arbitrarily determined are not necessary to construct the Project as modified by the Board's decision.

(7) Requires the Applicant to seek additional waivers, if necessary, based upon the Project as modified by the Board's decision.

Section VI Grant of Permit and Conditions Thereto

Preface – Arbitrarily reduces the number of units to sixty (60) units.

(7) Requires each condition of the Decision to run with the land (including, but not limited to, the reduction to sixty (60) units).

(10) Requires the Project to conform with the Decision, as modified by the Decision (including, but not limited to, the reduction to sixty (60) units).

(12) Requires the submission of plans in conformance with the Decision (including, but not limited to, the reduction to sixty (60) units).

(13) Imposes limitations on single-family buildings, including the number of bedrooms.

(14) Limits the number of condominium units to twenty (20) units.

(15) Limits the utility of amenity spaces.

(16) Prohibits spas; limits size of pool.

(17) Imposes landscaping requirements beyond that proposed by the Applicant.

- (20) Buffer Zone Requirements; requires 25'-50' buffers; imposes additional planting requirements; reserves right to require additional plantings.
- (21) Requires one (1) additional parking space per dwelling unit.
- (22) Imposes design changes on the proposed maintenance building.
- (30) Prohibits location of air conditioning units within lot setbacks.
- (32) Limits ground coverage based upon the revised Project as required by the conditions imposed in the decision.
- (35) Requires 40' roadway right of ways.
- (38) Limits impervious area subject to the conditions limiting the number of units to sixty (60).
- (54) Prohibits connecting the sewer for the Project to the Town's existing force mains.
- (55) Requires the Applicant to connect to a hypothetical new gravity sewer along South Shore Road rather than to the existing sewer line.
- (56) Requires the Applicant to connect subject to the satisfaction of the Nantucket Sewer Department.
- (57) Requires final design plans depicting a connection to the hypothetical new gravity sewer along South Shore Road to be submitted to the Nantucket Sewer Department for review and approval.
- (58) Requires sewer connection fees to be charged based upon fees in place at the time of construction rather than at the time the comprehensive permit application was filed.

(59) Requires compliance with sewer application and permit requirements, and requires review and approval by the Sewer Director.

(63) Requires the sewer to be constructed pursuant to the Town's preferred option (connection to the hypothetical sewer line to be constructed along South Shore Road.

(64) Requires the proposed sewer system for the Project to be submitted for review and approval by the Sewer Director, including the requirement of paying allocated costs of the hypothetical sewer line to be constructed along South Shore Road.

(69) Requires the Applicant to fund an Environmental Monitor during construction phases.

(70) Requires the use of vegetated swales and bioretention basins rather than the use of stormceptor infiltration methods.

(75) Prohibits the commencement of construction until the final resolution of the administrative appeal filed by the Nantucket Land Council (and the Town of Nantucket, which was subsequently dismissed from the matter) of the determination made by Natural Heritage.

(79) Requires construction of the Project in compliance with all local requirements and regulations not waived as part of the Board's decision.

(80) Requires compliance with all rules, regulations, filing and permit requirements of the Nantucket Sewer Commission and Wannacomet Water Department.

(81) Denies waivers of any building permit fees.

(83) Limits the number of units to sixty (60) dwelling units.

(89) Requires the preparation of documents in compliance with the Board's decision, which reduces the number of units to sixty (60) dwelling units.

(97(a)) Requires the submittal of construction drawings for a development reduced to sixty (60) dwelling units.

(97(b)) Requires the Applicant to post a bond or surety for the completion of ways/drainage/street trees and as-built plans, plus a 50% margin of error over a five-year period.

(97(i)) Requires the submittal of a tree protection plan, requires the flagging of all trees over 8" caliper and allows the Board or its agent to identify trees that will be required to be preserved/protected.

(97(l)) Requires the Applicant to indemnify the Town of Nantucket from any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees during construction of the Project.

(98) Requires compliance with all conditions of the Comprehensive Permit.

(101) Requires the Applicant to submit for review and approval the Homeowners Association Declaration of Trust and the Condominium Master Deed/Rules and Regulations. This condition also requires the Applicant to gift the Homeowners Association/Condominium Trust the amount of \$400 per unit (for a total of \$24,000).

(128) Requires the Applicant to repay the Town of Nantucket for costs incurred for review of the permit.

(129) Requires the Applicant to pay for expenses relating to monitoring and evaluating construction for the Project. This condition requires an initial deposit of \$30,000, plus includes allowances for further costs beyond the initial \$30,000 payment.

(130) This condition allows the Board to appoint an agent to conduct inspections during construction of ways and utilities, the expenses of which is required to be paid by the Applicant.

(131) Requires the Applicant to post a performance guarantee for each phase of work.

(136) Requires construction to be completed within three years of the date the permit becomes final.

(137) Requires the Applicant to pay for engineering reviews and construction oversight.

(147) Requires the Applicant to make a traffic “mitigation” payment of \$200,000.

(150) Requires the provision of sureties containing provisions stating that the Project complies with the conditions imposed by the Board.

(b) Arbitrary, Vague, Contrary to Law, Improperly Redesigns the Project

Section IV

(B) – This section improperly places the burden on the Applicant to support the number of proposed units. This section also shows that the Board arbitrarily reduced the number of units for reasons unrelated to legitimate issues of Local Concern, in direct violation of 760 CMR 56.05(8)(d)(2).

Section V

(2) This condition contains an improper legal standard, placing the burden on the Applicant to affirmatively demonstrate during the local hearing process the need for the grant of waivers to avoid rendering the Project uneconomic. Again, this provision shows a clear violation of the prohibition contained in 760 CMR 56.05(8)(d)(2).

(3) This condition expressly states that the Board's decision was made because the Applicant did not provide economic justification for each requested waiver. The Board relies upon Section 5.04 of its Comprehensive Permit Rules, which places the burden on the Applicant to demonstrate that the waiver of any particular local regulation, by-law or ordinance is necessary in order to maintain the project's economic viability[.]” This rule is in direct violation of the provisions of 760 CMR 56.05(6), which allows review of financial statements only in limited, discrete circumstances. This condition is also an admission that the Board reduced the number of units for reasons outside of issues of Local Concern, in violation of 760 CMR 56.08(d)(2).

(c) Impermissible Intrusion into Subsidizing Agency Domain or Without Authority

(1) Requires the execution of a Regulatory Agreement as required by the Board's decision, rather than as required by the Subsidizing Agency.

(6) This condition (and the preface to Section VI) purports to make the comprehensive permit “non-transferrable and non-assignable” without the “written consent of the Board”. This provision violates 760 CMR 56.05(12)(b), which allows transfer of a comprehensive permit subject only to the approval of the Subsidizing Agency.

(84) This condition purports to dictate issues within the exclusive jurisdiction of the Subsidizing Agency, such as distribution of affordable units and differences in finishes between affordable and market-rate units.

(85) This condition purports to dictate the details of the affordable housing restriction, which is within the exclusive jurisdiction of the Subsidizing Agency.

(87) This condition requires an Affordable Housing Restriction/Deed Rider in the form proscribed by the Board in its decision, which improperly infringes upon the exclusive jurisdiction of the Subsidizing Agency.

(91) This condition addresses the profit limitation, an issue within the exclusive jurisdiction of the Subsidizing Agency.

(92) This condition seeks to impose requirements relating to the profit limitation, in violation of the exclusive jurisdiction of the Subsidizing Agency.

(94) This condition requires a local preference for the sale of affordable units, an issue with the exclusive jurisdiction of the Subsidizing Agency. As written, this condition would survive even if the Subsidizing Agency denied the local preference request.

(96) This condition addresses the lottery and Affirmative Fair Housing Marketing Plan, issues within the exclusive jurisdiction of the Subsidizing Agency.

(97(d)) This condition requires the execution of a Monitoring Agreement revised in content from the standard form, to comply with the requirements of the Board's decision. The details of the Monitoring Agreement are within the exclusive jurisdiction of the Subsidizing Agency.

(97(e)) This condition purports to dictate the terms of the Regulatory Agreement, in violation of the exclusive jurisdiction of the Subsidizing Agency.

(100) This condition purports to dictate the terms of the Limited Dividend Monitoring Agreement, in violation of the exclusive jurisdiction of the Subsidizing Agency.

(101) This condition purports to dictate how the sales prices for the affordable units shall be set, in violation of the exclusive jurisdiction of the Subsidizing Agency.

5. Alternatively, after proof of the economics of the project, to prove that the local requirements or regulations have not been applied as equally as possible to subsidized and unsubsidized housing with regard to the following conditions and waivers:

Section VI

(13) This condition prohibits pools and/or spas, prohibits air conditioning units from being visible from the street, and limits the number of bedrooms per unit despite not regulating these issues for unsubsidized housing developments.

(14) This conditions restricts the number of condominium units per structure, prohibits living space in basements, requires three parking spaces per duplex lot, prohibits air conditioning units from being visible from the street and limits the total number of duplex structures, despite not regulating these issues for unsubsidized housing developments.

(15) This condition places limitations on the proposed recreational building, despite not regulating this issue for unsubsidized housing developments.

(16) This condition places restrictions on the proposed pool for the Project, despite not regulating this issue for unsubsidized housing developments.

(17) This condition places landscaping requirements on the Project that are not placed on unsubsidized housing developments in Nantucket.

(19) This condition places lighting requirements on the Project that are not placed on unsubsidized housing developments in Nantucket.

(20) This condition imposes buffer zone requirements on the Project that are not placed on unsubsidized housing developments in Nantucket.

(21) This condition imposes parking requirements on the Project that are not placed on unsubsidized housing developments in Nantucket.

(25) This condition prohibits the conversion of non-livable space in the units to livable space, despite no similar restriction being applicable to unsubsidized housing developments in Nantucket.

(26) This condition prohibits home occupations in the units, despite no such restriction being applicable to unsubsidized residential dwellings in Nantucket.

(27) This condition prohibits the parking of campers, trailers, boats, storage trailers of storage units, temporary garage structures or shelters, panel trucks, recreational vehicles, or commercial vehicles on the Project Site, despite no similar prohibition being generally applicable to unsubsidized residential dwellings in Nantucket.

(28) This condition purports to prohibit changes to the Homeowners Association, despite no similar prohibition being applicable to unsubsidized housing in Nantucket.

(30) This condition requires trash barrels to be stored out of view, despite there being no similar requirement for unsubsidized dwelling units in Nantucket.

(54) This condition prohibits connecting the wastewater collection system to existing municipal force mains, a prohibition not applicable to unsubsidized dwellings in Nantucket.

(69) This condition requires the Applicant to fund an independent Environmental Monitor during construction phases, a requirement that is not generally imposed upon unsubsidized developments in Nantucket.

(70) This condition directs the Applicant to utilize vegetated swales and bioretention basins rather than stormceptor units, a requirement that is not generally imposed on unsubsidized developments in Nantucket.

(97(b)) This condition requires the Applicant to provide surety that is inconsistent with the requirements of G. L. c. 41, § 81U, and which is not required of unsubsidized developments in Nantucket.

(97(i)) This condition imposes conditions relating to tree clearing that are not applied to unsubsidized developments in Nantucket.

(97(l)) This condition requires the Applicant to provide an indemnification to the Town that is not required of unsubsidized developments in Nantucket.

(97(t)) This condition requires a limitation on lawn areas, a requirement that is not applicable to unsubsidized developments in Nantucket.

(107) This condition prohibits construction workers at the Project Site from parking on public ways, a requirement that is not applied to unsubsidized developments in Nantucket.

(129) This condition requires the Applicant to provide an initial payment of \$30,000 for monitoring and evaluating construction of the Project, a requirement that is not applicable to unsubsidized development in Nantucket.

137. This condition provides broad discretion for the Board to require peer review of submittals and construction oversight, in a manner which is not applicable to unsubsidized housing development in Nantucket.

150. This condition imposes a surety requirement inconsistent with G. L. c. 41, § 81U, and which is not required of unsubsidized housing developments in Nantucket.

152. This condition imposes a surety requirement inconsistent with G. L. c. 41, § 81U, and which is not required of unsubsidized housing developments in Nantucket.

Board's Case

6. If and only if the Appellant has proven that the conditions imposed by the Board render the project uneconomic, the Board shall prove that valid health, safety, environmental, design, open space, or other local concerns which support the conditions in ¶ IV-4, above.

For each such issue, the local bylaw, regulation, requirement, or other restriction upon which the Board relies and the Board's position with regard to it is as follows:

As a preliminary matter, the Board objects to the requirement of itemization of "Local Concerns," as such a requirement is not found in either the statute or regulations governing these proceedings, 760 CMR 56.06(3)(a)-(g); 760 CMR 56.06(2)(b).

Additionally, the burden of proving that any local requirements or regulations have not been applied equally actually falls on the Applicant, not the Board. 760 CMR 56.07(2)(a)(4). Notwithstanding the Board's objections in this regard, the Board asserts generally as follows:

(a) Conditions Which, in the Aggregate, Render the Project Uneconomic

– The Board's conditions are supported, without limitation, by G.L. c. 40B, §§ 20-23 and its implementing regulations, Section 139 of the Town's Zoning By-laws, Sections 3.01 through 5.04 of the Town's Comprehensive Permit Rules and Regulations, Appendix C to the Board's Comprehensive Permit Decision in its entirety, including all local rules and regulations of the Historic District Commission, Board of Water and Sewer Commissioners, Trees and Shrubs, and Lighting Code, Subdivision Control Laws and Subdivision Control Rules and Regulations, and Board of Health Regulations cited therein, and reports and recommendations from the Town's Peer Review Consultants on Wastewater and Sewer, Traffic, Water, Fire and Emergency Access, Landscape Design, and Open

Space and Recreational Planning. Nothing herein should limit the Board's ability to support its imposition of conditions after receiving the Applicant's evidence with respect to project economics, which, in any event, has been waived as it was not raised in the underlying proceedings, particularly but not limited to, the Appellant's voluntary reduction in the number of proposed units to 92.

(b) Arbitrary, Vague, Contrary to Law, Improperly Redesigns the Project

– The Board's conditions are supported, without limitation, by G.L. c. 40B, §§ 20-23 and its implementing regulations, Section 139 of the Town's Zoning By-laws, Sections 3.01 through 5.04 of the Town's Comprehensive Permit Rules and Regulations, Appendix C to the Board's Comprehensive Permit Decision in its entirety, including all local rules and regulations of the Historic District Commission, Board of Water and Sewer Commissioners, Trees and Shrubs, and Lighting Code, Subdivision Control Laws and Subdivision Control Rules and Regulations, and Board of Health Regulations cited therein, and reports and recommendations from the Town's Peer Review Consultants on Wastewater and Sewer, Traffic, Water, Fire and Emergency Access, Landscape Design, and Open Space and Recreational Planning. Nothing herein should limit the Board's ability to support its imposition of conditions after receiving the Applicant's evidence with respect to project economics, which, in any event, has been waived as it was not raised in the underlying proceedings, particularly but not limited to, the Appellant's voluntary reduction in the number of proposed units to 92.

(c) Impermissible Intrusion into Subsidizing Agency Domain or Without Authority

– The Board’s conditions are supported, without limitation, by G.L. c. 40B, §§ 20-23 and its implementing regulations, Section 139 of the Town’s Zoning By-laws, Sections 3.01 through 5.04 of the Town’s Comprehensive Permit Rules and Regulations, Appendix C to the Board’s Comprehensive Permit Decision in its entirety, including all local rules and regulations of the Historic District Commission, Board of Water and Sewer Commissioners, Trees and Shrubs, and Lighting Code, Subdivision Control Laws and Subdivision Control Rules and Regulations, and Board of Health Regulations cited therein, and reports and recommendations from the Town’s Peer Review Consultants on Wastewater and Sewer, Traffic, Water, Fire and Emergency Access, Landscape Design, and Open Space and Recreational Planning. The Board submits that it is not without jurisdiction or authority to condition the Appellant’s permit on compliance with all applicable laws and regulations. The Board and/or Town officials have authority under the 760 CMR 56.00, interpreting decisional law, and its local by-laws, regulations, and planning goals to: require written notice and consent to transfer the permit where the plans were unfinished; require the submission of finished plans regarding exterior architecture, distribution of units, and more in accordance with its local planning efforts and zoning by-laws; require compliance with deed restrictions and deed riders as set forth by MassHousing and the Subsidizing Agency’s authority; require any profits in excess of the regulatory agreement to be paid over to the municipality; require a local preference option and lottery in accordance with law; monitor and enforce the use restrictions after

the subsidizing agency's term has expired; ensure conditions precedent to site disturbance, including that a final regulatory agreement contain those conditions provided by law or planning needs; require copies of documents ensuring compliance with the Subsidizing Agencies regulatory and monitoring agreements; and ensuring that affordable units are sold in accordance with Chapter 40B. Nothing herein should limit the Board's ability to support its imposition of conditions after receiving the Applicant's evidence with respect to project economics, which, in any event, has been waived as it was not raised in the underlying proceedings, particularly but not limited to, the Appellant's voluntary reduction in the number of proposed units to 92.

7. If and only the Appellant has proven that the conditions imposed by the Board render the project uneconomic, the Board shall prove that such local concerns outweigh the regional housing need.

8. If and only the Appellant has proven that the conditions imposed by the Board render the project uneconomic, the Board prove that existing municipal services or infrastructure, namely, sewer, water, wastewater, and traffic, are inadequate to meet local needs, and that provision of such services is not technically feasible, unless they are constructed in accordance with the conditions of the Comprehensive Permit.

Applicant's Rebuttal

9. To prove that preventive or corrective measures have been proposed which will mitigate the local concerns.

V. EXHIBITS

Exhibits Admitted into Evidence

1. Determination of Project Eligibility dated April 12, 2018.
2. Decision of Nantucket Zoning Board of Appeals, and Comprehensive Permit Plans Referenced and Attached Thereto, dated June 14, 2019.
3. Site Development Plans for 156-unit Condominium Development entitled "Surfside Crossing a Proposed 40B Development in Nantucket, Massachusetts,"

dated February 15, 2018, with revisions through February 28, 2020, prepared by Bracken Engineering, Inc.¹

4. Architectural Plans for 156-unit Condominium Development.
5. List of Requested Waivers of local requirements, revised for 156 Condominium Units.
6. Original application, dated April 12, 2018.
7. Comprehensive Permit Plans prepared by Bracken Engineering, Inc., entitled “Surfside Crossing” dated February 15, 2018.
8. Architectural Plans/Floor Plans prepared by Emeritus, prepared for Surfside Crossing, LLC, dated February 15, 2018.
9. Traffic Impact Assessment Memorandum prepared by MDM Transportation Consultants, Inc., dated February 16, 2018.
10. Stormwater Report Prepared for Surfside Crossing, LLC, prepared by Bracken Engineering, Inc., dated March 19, 2019.
11. Recommended Final Decision from the Department of Fish and Game dated April 24, 2019.
12. Environmental Notification Form dated March 23, 2020.
13. Memorandum from MDM Transportation Consultants, Inc. to Surfside Crossing, LLC.
14. Letter from Bristol Engineering Advisors, Inc., dated September 19, 2018.
15. Town of Nantucket Zoning Bylaws
16. Town of Nantucket Subdivision Rules and Regulations
17. Town of Nantucket Wetlands Bylaw
18. Ltrs. to Zoning Board of Appeals fr. Fire Chief – 02/09/2018 and 05/13/2019
19. Peer Review Report on Traffic for Surfside Crossing, prepared by Tetra Tech – 08/17/2018
20. Peer Review Report on Wastewater and Sewer for Surfside Crossing, prepared by Weston & Sampson – 08/17/2018 and 4/11/2019

¹ The Board disputes Exhibits 3 through 8 insofar as they reference the 156-unit plans, on the grounds set forth in the Board’s Motion to Remand. Exhibits 3 through 8 should be those related to the 92-unit plan.

21. Peer Review Report on State and Local Regulations, Design Standards, and Stormwater Drainage, prepared by Chessia Consulting Services, LLC – 08/20/2018 and 4/10/2019.
22. Ltr. and Attachments to Town Manager fr. Avalon Consulting – 09/21/2018
23. Traffic Impact and Access Study fr. BETA Group, Inc. – 09/2018
24. Town of Nantucket Master Plan and Appendices – 04/06/2009
25. Town of Nantucket Open Space and Recreation Plan – 08/25/2007, and as revised
26. Town of Nantucket Sewer Master Plan – 04/2020
27. Town of Nantucket Comprehensive Wastewater Management Plan and Appendices – 10/2014

Proposed Exhibits (Admissibility to be Ruled Upon at the Pre-Hearing Conference or during the Hearing)

For the Applicant

The parties continue to review potential exhibits for inclusion in the record, and will supplement this list as necessary. The parties do not anticipate any major points of disagreement or objection.

For the Board

The parties continue to review potential exhibits for inclusion in the record, and will supplement this list as necessary. The parties do not anticipate any major points of disagreement or objection.

VI. PROPOSED WITNESSES

For the Applicant

1. James Feeley, Project Manager for Surfside Crossing, LLC. Testimony will cover development and operating proformas; proforma comparisons; density/building counts/unit counts and Comp Permit conditions affecting development and operations.
2. Laurie Gould, VIVA Consulting. Testimony will cover pro forma analysis
3. Donald Bracken, Jr., P.E., Bracken Engineering, Inc., civil engineer on the Project. Testimony will cover: compliance with federal/state requirements and generally accepted engineering practices; costs associated with the re-design of the Project consistent with the decision imposed by the Board; civil engineering details.

3. Andrew Kotchen, Workshop/ADP, Project Architect. Testimony will cover: architectural redesign costs; architectural details; typical administrative review practices with respect to buildings and overall development; Comp Permit conditions bearing on architectural plans.
4. Robert Michaud, P.E., MDM Transportation Consultants, Inc., Traffic Consultant for the Project. Testimony will cover all impacts relating to traffic and parking for the Project.
5. Brian T. Madden, LEC Environmental, Environmental Consultant for the Project. Testimony will cover compliance with federal and state requirements relating to environmental law; environmental impacts of the Project.
6. Kevin Klein, Stantec. Testimony will cover sewer design and all issues relating to the proposed connection to the municipal sewer system.
7. Dan Picciano, P.E., Code Red Consultants. Testimony will cover fire access requirements.

For the Board

1. Andrew Vorce, Director of Planning and Land Use Services, Town of Nantucket
2. Clifford Boehmer, AIA, Davis Square Architects, Inc.
3. Courtney E. Jones, Traffic Peer Review Consultant and Project Engineer at Tetra Tech
4. Danielle O'Dell, MSc, Wildlife Ecologist, Kelly Durfee Cardoza, MSc Avalon Consulting
5. Daniel E. Sheahan, Weston and Sampson, Nantucket Wastewater Engineering Consultant
6. David C. Gray, Sewer Department Director, Town of Nantucket
7. Jeff Thibodeau, Helois Land Design
8. John C. Chessia, P.E., Chessia Consulting Services
9. Kien Y. Ho and/or Tyler de Ruiter, Peer Review Traffic Consultants at BETA Group, Inc.
10. Leslie Snell, Deputy Director of Planning and Land Use Services, Town of Nantucket
11. Mark Willet, Director of Wannacomet Water, Town of Nantucket

12. Paul Murphy, Building Commissioner, Town of Nantucket
13. Brett Pelletier, CFE, MRA, FRICS, Pro Forma Consultant, Kirk&Co.
14. Robert McNeil, Director of Department of Public Works, Town of Nantucket
15. Stephen A. Murphy, Fire Chief, Town of Nantucket Fire Department
16. Tucker Holland, Housing Specialist, Town of Nantucket
17. Emily Molden – Executive Director of Nantucket Land Council
18. Bruce W. Perry, 14-16 South Shore Road, Nantucket, MA – Environmental Consultant/Local Conditions and Concerns

VII. SCHEDULE FOR PRE-FILED TESTIMONY AND HEARING

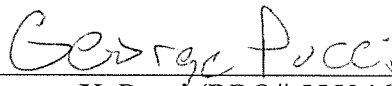
1. The Applicant's direct case shall be filed on or before November 4, 2020.
2. The Board's direct case shall be filed on or before December 16, 2020.
3. The Applicant's rebuttal case shall be filed on or before January 20, 2021.
4. The Board's rebuttal case shall be filed on or before February 17, 2021.
5. A teleconference regarding scheduling of witnesses shall take place at 10:00 a.m. on February 24, 2021.
6. The oral portion of the hearing shall convene at 10:00 a.m. on March 3, 2021 at Nantucket Town Hall, 16 Broad Street, in the Town of Nantucket. This session shall be preceded by a site visit. Additional sessions will be scheduled at the Committee's offices in Boston on consecutive days thereafter.

FOR THE APPELLANT, SURFSIDE CROSSING



Paul J. Haverty, BBO No. 652359
Mark Bobrowski, BBO No. 546639
Christopher J. Alphen BBO No. 691813
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BY THE HOUSING APPEALS COMMITTEE,

September 24, 2020

Warner Lohe
Presiding Officer