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TOWN CLERK BOURNE

**Town of Bourne
Planning Board
Meeting Minutes
October 26th, 2023**

PRESENT: Chairman Daniel Doucette, Liz Brown (Vice Chair), David O'Connor (Clerk), Christopher Farrell, Catherine Walton, Jeanne Azarovitz, James Robinson Jr, Amanda Wing.

EXCUSED: John Duggan.

STAFF: Jen Copeland, Ken Murphy, Maurica Miller.

ALSO PRESENT: Peter Ryll, Carlos Skulty, Kristin LeClair, Tom LeClair, Erica Dimore, Scott Marra, Amy Ingemi, Polly Greene, Liam McGinnis, Jeff McGinnis, Craig Frost, Pat Frost, Wendy Morgan, Megan Farnworth, David Uitti, Susan Vaughan, Don Vaughan, William Hanson, Brian Hebb, Scott Hebb, Christine Kinnai, Paul Partano, Tricia Parteno, Arthur Budge, Lynne Budge, George Dorey, Neal Comeo, Denise Young, Chris Turner, Don Perry, Howard Guggenheim, Christopher Maccferri.

This meeting took place at Bourne Veterans Memorial Community Building, 239 Main Street, Buzzards Bay and also virtually via Zoom. Chairman Doucette called this meeting to order in open session at 7:00pm.

1. Meeting Minutes: 6.22.23

Mr. O'Connor Makes a Motion to Approve the Minutes. Ms. Brown Seconds the Motion.

Roll Call Vote as Follows:

Mr. Robinson – YES. Ms. Azarovitz – YES. Ms. Wing – YES. Ms. Brown – YES. Mr. Farrell – YES. Mr. O'Connor – Yes. Ms. Walton – YES. Chm. Doucette – YES.

The Motion Passes.

2. Special Town Meeting:

Review and Vote on Motion Proposed Marijuana Overlay District Article.

Chm. Doucette reads the recommended motion from the Town Counsel regarding the MOD. Town Counsel recommends to the Planning Board:

“We move that the Town vote to amend the Town of Bourne’s Zoning Bylaw as written in the Town Meeting warrant, and further, to insert the following text immediately after the proposed Section 4858 “Severability:” Town Meeting does not intend for, and Section 4850 shall not supersede or repeal, explicitly or impliedly, any other provision in the Town of Bourne’s general bylaws or zoning bylaw that prohibits non-medical marijuana establishments, including but not limited to Section 3.1.45 of the General bylaws. It is the Town Meeting’s intent that this Section 4850 shall not be immediately effective and shall only take effect for non-medical marijuana establishments after the Town shall repeal Section 3.1.45 of the general bylaws and any other general of zoning bylaw prohibiting non-medical marijuana establishments that may not or in the future be effect in the Town of Bourne.”

Chm. Doucette states that this is to prevent any type of confusion if the ban is not overturned, and then the zoning is put in place to protect the Town but is not their intent to get retail marijuana in.

Ms. Walton asks if the ban is not repealed, but in the future, it does get repealed, would they look at that zoning again to see if anything has changed. Chm. Doucette responds that in the future they could start from zero, or they could use this as a framework.

Mr. Robinson Makes a Motion that the Planning Board Supports the Marijuana Overlay District Article. Mr. Farrell Seconds the Motion.

Roll Call Vote as Follows:

Mr. Robinson – YES. Ms. Wing – YES. Ms. Azarovitz – YES. Ms. Brown – YES. Mr. O’Connor – YES. Mr. Farrell – YES. Ms. Walton – YES. Chm. Doucette – YES.

The Motion Passes.

3. Approval Not Required Plans MGL Chapter 41 Section 81P:

5 Naumkeag Ave and 553 Circuit Ave (Map 43.3 Parcels 179 &180)

Peter Ryll introduces himself as representative of this project with Canal Land Surveying. He states that the neighbor is selling the lot, and wants to retain a piece of the lot for his house across the street, but did not want to do a view easement, so he is going to cut it in half to create two non-buildable lots.

Ms. Azarovitz asks if anyone plans to store car or boats on these lots. Mr. Ryll responds that he does not know, but the view is the main point. Ms. Azarovitz asks why there are two lots, and Mr. Ryll responds that the southerly lot is going with the house, and the owner owns two houses across the street, so he wants to retain his view, so he will not park anything there.

Mr. Farrell Makes a Motion to Approve this Application with the Contingency that it is Recorded in the Barnstable County Registry of Deeds/Land Court that Lots 2 & 3 are Unbuildable and Returned to the Planning Department. Mr. Robinson Seconds the Motion.

Roll Call Vote as Follows:

Mr. Robinson – YES. Ms. Wing – YES. Ms. Azarovitz – Yes. Ms. Brown – YES. Mr. Farrell – YES. Mr. O'Connor – YES. Ms. Walton – YES. Chm. Doucette – YES.

The Motion Passes.

4. Enforcement: Ocean Pines Development – Wildwood Lane

a. Lot 61 Site Plan

Atty. Scott Marra introduces himself as representative of this project. They represent Ocean Pines Condominium Association. There are completed buildings along the east side Wildwood Lane, and Atty. Marra will refer to those as Phase One. He will refer to the seven buildings on Wildwood Lane that are under construction to the north as Phase Two.

Atty. Marra states that there are five or six issues they would like to address. The first of which is the detention pond and water retention issues. He states that there have been profound flooding issues in and about Phase One of the development and abutting properties.

Carlos Skulty, a civil engineer, will talk about the design flaw in the stormwater treatment and stormwater runoff; the deviation from the initial plans that were submitted; the deviation and noncompliance of the system in terms of best practices with standard engineering and the Massachusetts DP storm water requirements. He states that allowing the developer to continue with Phase Two will greatly exacerbate the flooding issues that have been occurring for the last several years on the condominium site and with the abutters' site.

Secondly, Atty. Marra wishes to talk about the open parcel issues. He states that there are five in total open parcel spaces, labelled A-E. The Open Parcel "E" that surrounds Phase One is color coded in yellow on a handout provided by Atty. Marra. As part of the Site Plan Approval by the Planning Board, it was indicated that the developer was to convey the open space parcels to an entity. What the developer did is conveyed it into a trust. The developer entity, Ocean Pines Trust LLC is the trustee, and there are two beneficiaries which are "owners" of the property. One is the condominium association and the other is a homeowners' association which Atty. Marra believes is comprised of many of the abutters in and about Ocean Pines Drive and Alpine Circle. However, despite repeated requests to

the developer's counsel, they have yet to receive confirmation regarding the homeowners' association. This is important because there are disagreements regarding who is paying taxes on these open parcels, who is to maintain these parcels, and who is to deal with liabilities and insurance. The Open Parcel "E" is the only section that the condominium association is concerned with because that is the only open parcel segment that truly abuts Phase One. It is unclear what is to be done with these other parcels of open land and who has maintenance rights.

Another issue with the open space parcels and one that they have asked the developer for clarification on involves that the developer entity became the trustee of the trust, Ocean Pines LLC, and was originally organized as a Delaware LLC. They have recently been told by the developer that they are organized as an LLC under the laws of the state of Florida. They do not know how this effects titles to open parcels, liability issues, and parcel transferability despite repeated inquiries to the developer. In summary, they need to know how those parcels will be taxed, considered liable, maintained, conveyed, insured, or elucidated.

b. Roadway Finishing Asphalt Topcoat

Atty. Marra states that the Planning Board has seen images of dangerous lips between the paved area of Wildwood Lane, as well as driveways leading into home garages, incomplete surfaces, and the developer has repeatedly denied requests to complete a topcoat. They do not understand why there is the resistance to lay the topcoat. The response given is that they do not want to engage in laying a topcoat until Phase Two is completed. However, an enormous portion of Wildwood Lane is to the east of Phase Two, so there should be no reason to not apply the topcoat.

Also, there was a bond placed in the year 2000 for \$38,000 for road completion. Clearly, since this bond was posted over 20 years ago, this will not be enough to cover the costs in 2023. They also would like to ask for the entirety of the Wildwood Lane to receive a new topcoat and roadway.

In terms of the road completion bond, they do not know what would cause this bond to be triggered. The developer states that there is sensitive financial information on the bond, and Atty. Marra asks the board to redact that information and release the documents so they can understand how the bond works.

Next, Atty. Marra discusses the deviations from the Site Plan Review approved by the Planning Board in regards to Phase Two, and what has actually been happening.

c. Drainage and Detention Pond Design

Next, Atty. Marra discusses the deviations from the Site Plan Review approved by the Planning Board in regard to Phase Two, and what has actually been happening. The permitting terms and conditions that were attached by the Planning Board to this project have not been abided by. The sloping of driveways involved in the Site

Plan Review has not been abided by. Atty. Marra also believes that there have been deviations between GFA and setbacks. Phase Two was also supposed to be comprised of five buildings and now there are seven. This also involves the water mitigation issue, because there is now a great deal more impermeable surface and cause more water runoff. As to the open space parcels and the construction of phase two, the developer is now using those parcels as a construction yard, which is a defined term under the Town of Bourne's zoning bylaw. They would like to know if a special permit has been granted.

Carlos Skulty of Civil and Environmental Consultants introduces himself as a civil engineer. He explains that what they were asked to do is look at the stormwater management system and the overall state of the current construction. They performed a site visit in order to document what the site currently looks like as well as the ongoing construction. They also reviewed materials that were submitted to the town for review over the course of the overall development dating back to the original design. They located documents that were submitted with the original special permit submission and also subsequent ones that were made along the way.

The first thing they noticed is there isn't really one comprehensive plan that shows where all these stormwater management systems. This brings up the issue of maintenance and how these systems are accessed, which makes matters difficult for the association. After some research and implementation of the MASS GIS program, they were able to determine that the development is part of a larger system. The design was implemented for a 10-year storm event, when today's standards are designed for a 100-year storm.

After more research to determine how these systems were designed, they found that there are some stormwater chambers that are part of roof drain connections to some of the buildings were connected directly to smaller recharge systems that were size for a one-inch storm event. Therefore, it is unclear how those are connected to the roof systems or how they're tied in. The second component was a significant amount of stormwater chambers that were proposed and those were designed for a 10-year storm event. The detention basin, which is one of the main concerns of the condominium association, has a stormwater basin that was evaluated for a 25-year storm. Mr. Skulty continues that this type of bits and pieces approach has caused there to be no real comprehensive picture to what drains to these basins. In the original analysis, volume was believed to be about 70,000 cubic feet. They were able to determine what exists on the ground today is only about 7,000 cubic feet. There is a stone retention wall which spreads out. It is not clear if this is intended to be part of the basin or if it's just an area of the ponds. This ends up being about 32,000sqft, which is roughly half of what the original analysis is included in the available capacity. What that includes is essentially ponding all the way up to the back of the units of Ocean Pines Development. Recently in storm events, residents have experienced flooding up to the fence lines. Mr. Skulty adds that there doesn't appear to be any sort of an overflow pipe, or any means for that water to exit without

essentially ponding right up to the buildings and then overflowing around the edges of the buildings.

Another issue that they also saw with the site visit is that the systems that are in the rear of some of these units consist of overflow drains in the window wells. It's not exactly known how the roofs drains from these systems, which all go underground, and if they connect to any sort of a recharge facility but presumably, they're piped to assist. However, the window wells are lower than the grade of the backyard so if the chamber systems don't have an overflow that's piped to a discharge, they will back up through the window wells. A resident experienced this situation, and many other residents have the same condition on their properties. Without really having any record or information on how these systems are tied together and correlate to the roof drains or how they're sized, it's unclear how often this situation is going to occur.

Mr. Skulty explains that there are some relatively minor grades in the development. He states that it is not exactly clear how much pitch there is that area. However, there are a few areas where it is relatively flat and the ground is soggy and not conducive to maintenance. He says that this may be something that the development has to contend with in the future, and along the back of the units where there are longer stretches of buildings which don't have the ability to drain out. This creates the condition where there's standing water. Consequently, larger storm events would create the same condition which currently exists behind several units in the development. Mr. Skulty believes that they must evaluate whether there's a need for more inlets, or if there's an opportunity to add some more grade, and potentially connect the pipes to some sort of an overflow.

They also analyzed the current construction as part of the Phase Two development, which are the lots that are located on the Lot 61 area. Mr. Skulty states that there was a stormwater management report that was put together with a very brief narrative which talked about the design for that system. This system consists of a series of infiltration chambers that are located behind the buildings. These were designed for a 25-year storm and not a 100-year storm. They also saw for this area 61 that everything drains to a natural low point. This low point is partially on the phase two site and partially on the abutter's site. There is a ponding up to elevation 86, and once it gets to that elevation, it overflows into the street and collects in some catch basins on Ocean Pines.

In the proposed conditions, with the new development, the overflow is going to be blocked off with the new construction. The overflow path will change and move further down Ocean Pines. Mr. Skulty states that if there is a large storm event, they will potentially exacerbate the height of the ponding. He adds that the Phase Two construction should be designed so those properties in question do not get stuck in a low position. Mr. Skulty also comments that they do not know if a SWPPP has been implemented, but would like for there to be acknowledgement that one has

been submitted because they are not supposed to start construction without having one in place.

Mr. Skulty states that there is a detention basin which is offsite and abuts a wetland area. This is off the corner of 3A and Ocean Pines which was repaired after the original construction. The developer upsized the stormwater detention basin which was identified as isolated land subject to flooding. This repair was made because the original system was slightly undersized, but the repair is slightly smaller than what would be constructed today.

Atty. Marra next discusses the items that they would like as remedies to this problems. Firstly, they would like all work on Phase Two to be staid until all of these issues that they have discussed have been addressed. Secondly, as for building plans and site plan approval for both Phase One and Phase Two, they would like for these approvals to be rescinded, withheld, or reissued with appropriate conditions. Thirdly, as indicated they would like to have a redacted form of the bonding delivered to the condominium association. Because the bond was issued in 2000, they would like the amount of the bonded monies to be increased to at least \$200,000. Lastly, they would like the developer to commit to a repaving of Wildwood Lane after the construction is completed.

Ms. Wing asks if their hope is to completely mitigate the ponding and if this is even possible. Mr. Marra responds that their report has recommendations, but he is unsure if all of those recommendations would completely mitigate the water remediation issues. He states that they would be happy to submit a complete report which would indicate what would be required to completely mitigate these conditions.

Mr. Robinson asks if silting could create a problem for the residents and for the town. Mr. Skulty responds that silting could absolutely cause more concerns for the residents and the town. Chm. Doucette asks if they know what the sizing of the storm which was required when this development was originally constructed. Mr. Skulty responds that they used an intensity of two-inches per hour, and this is done to size pipes, but this amount changes with the amount of time it takes for the water to fill up the catch basins. In today's standards, they would analyze for a 100-year storm. Mr. Farrell states that there was some controversy when the 2nd phase would be built because the builder never lived up to his promises.

Mr. O'Connor states that he would like to discuss the limits of top coating as a solution to this problem. He states that nothing from this neighborhood should pass the crown of Ocean Pines. He asks if when the topcoat is placed down, if the Cape Cod berms could be placed higher. Mr. Skulty responds that there are two issues with the top coat, which would be to improve the crown and the Cape Cod berms, and the longevity of the pavement as well. He states that it appears on the site walk that the driveways are pitched to just drain to Wildwood Lane. Mr. O'Connor comments that this puts a lot of responsibility on Wildwood Lane. Mr. Skulty

agrees and states that the catch basins which they have put a lot of responsibility on Wildwood Lane and believes that this is partially what's resulting in the problems that the Alpine neighbors have been facing. They are at the low point of that intersection and there's no fail safes in place.

Tom LeClair introduces himself as from 7 Alpine Circle. He states that to answer Mr. Robinson's question, the sediment is going to his property—into his driveway, basement, crawlspace, and everywhere into his yard. To answer Mr. O'Connor's question of what types of improvements can be made, he states that they could place a drain tile across the catch basin across the road and bring it to the detention pond. He states that Mr. Skulty explained how the system in place is insufficient to take the water mass which is coming down. Mr. LeClair states that he had sump pumps and trash pumps going for 12 hours during the last storm, which equaled 600,000 gallons and he was not able to get it all out. He suggests viewing the powerpoint presentation he created, but they board does not how they would show this presentation to the Zoom audience. Ms. Copeland states that she has made this presentation available on the Town of Bourne's website. Chm. Doucette states that they will play a short section of his PowerPoint presentation.

Mr. LeClair presentation states that they have experiences four catastrophic flood since September 2021. The dates of these floods are September 2, 2021; August 2 2022; August 3, 2022; and September 10, 2023. Mr. LeClair displays an image which shows the water flooding their property. He states that it was coming from 6 and 4 Alpine Circle from behind their fence, which made him believe that it was coming from Wildwood Lane. There were back-to-back storms on August 2nd and 3rd, and although he was able to purchase a couple more trash and sump pumps equaling 40,000 gallons an hour, he was not able to keep up. They added a new accessory dwelling in 2023. And there was over 21 inches of water in their driveway during the September of 2023 storm.

Mr. LeClair then goes over the extensive drainage improvements that he has made at 7 Alpine Circle, including new larger catch basins, changing grade of yards, and installation of new driveway. After spending thousands of dollars for extensive drainage improvements, they were not capable of handling the storm water runoff coming from the subdivision of Ocean Pines Condominiums. He adds that every time a new roof or asphalt went up, they experienced a difference at their property. He displays a photo and statement from his abutter at 4 Alpine Circle, which shows that the shed on this property lifts off the foundation and water flows through the property during any significant rainfall. Mr. LeClair also shows flooding at other properties on Alpine Circle. Next, Mr. LeClair shows complaints he has filed with the Town of Bourne and the Building Dept since 2021. The third and most recent complaint came in September 2023 and requested action against the Ocean Pines Condominium Developers. Mr. Leclair then lists recommendations to control the stormwater runoff. He suggests increasing the size of the detention pond, or adding a second detention pond. He suggests installing drain tiles across the road to catch the stormwater runoff and divert to detention ponds. He suggests constructing soft

berms on Wildwood Lane to divert the water to the catch basins and detention ponds. Finally, he suggests changing the pitch of the remaining parking lots away from Ocean Pines Drive so water will remain on the subdivision, or all of the above. He states that drainage improvements need to be finalized before the continuation of the final phase of the development. He is concerned that the construction company will finish the project without any accountability, or they file for bankruptcy before drainage improvements and complete.

David Utti introduces himself as the representative of the current builder. He states that this is not the classic situation in which the approval was given and the developer went completely out of their way to do the opposite. The big difference here is that the project was approved by this board almost 40 years ago. He states that if this was the way the world worked, every single subdivision in their community would be coming before the board requesting a new drainage system. He suggests consulting the Town Counsel because there weren't any of these conditions 40 years ago. Atty. Utti states that the original developer for this project built the drainage, utilities, and roadways for this development. The next thing that happened was part of the project was submitted to condominium status under chapter 183 and a condominium was created as well as a master deed was recorded. When this happens, it's on record at the registry of deeds and then units get sold. So these people who live in the condominium bought subject to all of this history. Atty. Utti recaps that in a condominium, the association takes care of the common area and the individuals take care of the unit, and drainage is part of the common area. The drainage was constructed pursuant to the original approval 40 years ago according to those specifications. Therefore, Atty. Utti says, it is up to the condominium association to fix the problem on their on their common area, and it is not up to the developer.

Atty. Utti addresses some questions from earlier in the meeting. He states that the Open Space Parcels ownership is to the HOA via a trust, and everything about who is responsible for maintenance is in the HOA trust document. He says that the single-family homeowners and the condominium association are supposed to share in the burden of taking care of these open space lots. Next, Atty. Utti states that it makes sense to put the final topcoat on when the construction is complete, and this is what his client plans to do. Thirdly, he says that claims were made that there are significant deviations from the original site plan for this original approval. He states that he did not hear any specific examples of drainage requirements in the original site plan that was required and then deviated from. What was said instead was that if this was built today, this is what would be done. As a matter of law, Atty. Utti states that he questions why this is even in front of the Planning Board. In regard to the bond, he states that his client is happy to increase that bond. They have an estimate of \$53,000 from a paving company, and they are willing to add on an extra 20% in case there are more unforeseen issues. In regard to the remedies proposed by Atty. Marra, Atty. Utti states that they do not seem proper or legal. He does not understand the legal basis to rescind the original approval.

Atty. Uitti recaps that this is not the case where approval was given a few years ago and then there was deviation from what was required in terms of drainage. Instead, this approval was given 40 years ago and was in compliance at the time. Therefore, the current members of the condo association bought their units which is subject to this history. It is the responsibility of the condo association to bring their drainage up to code for the 21st century.

Mr. Robinson asks if there is any way the developer could attempt to push the water away from the street. Atty. Uitti confirms that he is very happy to have this kind of discussion with his client. Mr. Robinson suggests some simple engineering solutions to divert the water.

The Town Counsel Maurica Miller states that their role as a board is to gather information and facts, and they do not have to make a decision tonight. She also states that it is important to parcel out what the approvals which were granted, the conditions, and has the developer complied with those conditions.

Ms. Brown asks the Town Counsel what the board's legal ability is, as suggested by Atty. Uitti. Atty. Miller responds that she will check on their legal responsibility, but she says when they grant an approval and they have conditions, this isn't the way to change conditions.

Ms. Walton adds that she would like to know what the conditions were for the original permit if there was compliance but wants to know how this information is gathered. Ms. Copeland responds that she has all of the files and they are electronic. Mr. Farrell comments that it would be helpful to have a timeline to show what the responsibilities were for those in over the years. Mr. O'Connor states that he does not believe there is a concept of implied warranty in a building permit, and he does not believe that when the building permit was issued there was a condition that the drainage system shall function. The core question should be what the expectation of the drainage system is.

Mr. LeClair comments that it was said that all of these permits were approved in 1987. He questions when the ground broke on construction for the Ocean Pines Condominiums. He states that the report from Existing Grade Inc showed a lot of fluff, and was performed on a sunny day. They found that all the catch basins are doing what they're supposed to be doing. He would like to question the validity of that report.

Craig Frost of 17 Ocean Pines Drive makes a comment, and states that he has been living through this nightmare for 22 years. He reads from the zoning book, citing building height and open space. He states that when 12 Ocean Pines was first constructed, he filed complaints with the building department that fill and excavation was dumped on lot 61. He says that his first complaint was responded to but his second complaint was not. He states that he has two documents that show that the grade of the site has changed over time. He says that the developer filled

the lot substantially from its original state, which would make the building heights not compliant to the zoning code. He states that it is the same engineer that provided two different sets of existing conditions. He adds that building 16, which used to be a hole, is now filled in and made level with construction materials. From what he can see from the site plan, they want to go up another 8-9ft from the street level. He states that the developer has denied that he does not intend on doing this. Finally, he adds that subsequent to approvals being given, they must still meet certain standards such as drainage. He believes that if the developer is doing something that is direct effecting neighbors, it should be the developers responsibility. Mr. Frost states that he has been trying to find out the street layout and drainage and was told that the book was checked out and not returned. Mr. Frost also states that no one knew that the homeowners trust was in place and points out several inaccuracies in the HOA trust document and states that it was thrown together with haste.

Mr. Murphy, the Building Inspector, states that he is very sensitive to the complaints of Mr. LeClair and Mr. Frost. He adds that he is doing his best to make sure that this is taken care of on their end.

The board discusses when their next meeting will be. Mr. Frost states that just in the last two meets, the work that has been done on lot 61 is substantial. Mr. Murphy states that he will go over building height with the developer and address the concerns made tonight.

Mr. Farrell Makes a Motion to Continue the Hearing to November 9th, 2023. Ms. Azarovitz seconds the Motion.

Roll Call Vote As Follows:

Mr. Robinson – YES. Ms. Wing – YES. Ms. Azarovitz – YES. Ms. Brown – YES. Mr. Farrell – YES. Mr. O'Connor – YES. Ms. Walton – YES. Chm. Doucette – YES.

The Motion Passes.

Mr. Farrell suggests that the public submits comments or questions to the Town Planner's Office.

5. Adjourn

Mr. Farrell Makes a Motion to Adjourn the Meeting. Mr. Robinson Seconds the Motion, with all in favor.

With no further business before the board, the meeting is adjourned at approximately 9:00pm.

Respectfully Submitted,
Ina Sullivan