



**TOWN OF WAYLAND**  
MASSACHUSETTS  
01778  
**BOARD OF APPEALS**

TOWN BUILDING  
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**ZONING BOARD OF APPEALS MINUTES**  
**TOWN BUILDING LARGE HEARING ROOM**  
**41 COCHITUATE ROAD, WAYLAND**  
**July 17, 2018**

**7:00 p.m.** Application of Eden Management, Inc. for a comprehensive permit pursuant to G.L. Chapter 40B filed for sixty (60) units of rental housing, of which fifteen (15) are proposed to be restricted as affordable to households under 80% of the area median income (AMI), to be constructed on the property located at 113, 115, 117 and 119 Boston Post Road, Wayland, MA (the site of the Mahoney's Garden Center), containing 6.49 acres +/- of land area. This property is located in the Single Residence (40,000 SF area and 180 feet of frontage) Zoning District as shown on Assessors' Map 30, Parcel Nos. 70-71. Case #17-19 (Cont'd from 8/22/17, 9/26/17, 10/26/17, 11/29/17, 12/20/17, 1/25/18, 2/27/18, 3/29/18, 4/25/18, 5/22/18 and 6/28/18)

Present were Jonathan Sachs (Jonathan S), Jim Grumbach (Jim G), Thomas White (Thom W), Aida Gennis (Aida G), David Katz (David K), Town Counsel Amy Kwessell (Amy K) and Mass Housing Consultant Joe Peznola (Joe P). The meeting was audio and video recorded by WayCAM.

**7:00 p.m.** There were no minutes to review

Consideration of Procedural matter (in another case): There are representatives present for the Verizon Cell Tower project, which was not listed on the agenda. Town Counsel has advised this matter will be continued to July 24<sup>th</sup> regarding the Peer Review Consultants appointment. The Board apologizes to Applicant or the public for any inconvenience.

Since the last meeting a number of documents have been received by the Town. The list is set out in a letter from Hancock Associates (Joe Peznola) dated July 16, 2018, which describes all documents received by the Town since February 27, 2018. The letter can be found on the ZBA Cascade drop box at:

<https://www.dropbox.com/sh/ndxoxf9wvzcm7z/AAAJrJOy7FzjLjSYt4nTDKiOa/07-17-2018/Peer%20Reviews?dl=0&preview=Cascade-Hancock+Letter+to+ZBA-7-16-18.pdf>

The meeting started off with a presentation by the Applicant that covered his response to Department Head comments, Revised Waiver list, Hydrogeo study and Flood plain.

The PowerPoint presentation can be found on the ZBA Cascade drop box at:

<https://www.dropbox.com/sh/ndxoxf9wvzcm7z/AAA7M5J7uTuFuboXiURHYvnMa/07-17-2018/Applicant%20Submissions?dl=0&preview=July+17%2C+2018+Presentation.pdf>

The applicant's presentation covers:

- 1) Building and program tabulations
- 2) Response to Base Flood Elevations (BFE)
- 3) Updated Requested Waivers
- 4) Hydrogeological Study (selected sections)
- 5) Response to Department Head Comments
- 6) Work Delivered in support of Cascade

Base Flood Elevations - It is the applicant's position that under the Wayland Zoning bylaws it is not obligated to furnish a base flood plain elevation. The Wayland Zoning Bylaws are based on the 2010 maps; the Applicant says the development is less than 5 acres (4.6), and the building is outside of the flood plain.

Updated waiver list- The Applicant reviewed the complete list of waivers being requested from the Zoning Bylaws, Wayland Stormwater and Land disturbance Regulations, Wayland Wetland Bylaws, Water Resource By-Laws and Board of Health Regulations.

Hydrogeo study- The Applicant is referencing and reviewing the October 31, 2017 Proposed Scope of Work document that was written with input from the Health Director.

<https://www.dropbox.com/sh/ndxoxf9wvzcem7z/AAA7M5J7uTuFuboXjURHYvnMa/07-17-2018/Applicant%20Submissions?dl=0&preview=Final+Hydro+Scope+of+Work+Cascade+Wayland+10312017.doc>

Geosphere, the company that performed the Hydrogeo study, approached DEP and spoke with Marybeth Chubb, DEP acting section chief, regarding DEP Regulations as they relate to the effects on the cold water fishery. In the analysis of the groundwater and its flow, the data is assembled in a model. The Applicant states that the results are trustworthy, since there are several instances in which the model is overly conservative in its results.

Responses to department heads:

The majority of comments were related to other jurisdictions at subsequent time periods. Most of the Department Heads' comments will be addressed when the Applicant applies for a Building Permit, a Septic Permit with the Board of Health, and applications with the Conservation Commission. The plans that have been presented are Preliminary Site Plans with proposed locations.

The Applicant expects to have discussions with Con Com regarding the riverfront area, specifically as to what area is to be considered a redevelopment site.

**Jonathan S:** I have a question regarding the flood plain study; it was passed over, Joe, can you please explain?

**Joe P:** At the start of the process, the Applicant committed to submit a Flood Plain Study. The building size, shape and location have changed and it is the Applicant's position that the building is now outside the Flood Plain and a study is not required for the ZBA Comprehensive Permit. Such a study may be done at a later time, as this application may be subject to Federal or State jurisdiction, and may not be in the local flood plain designation.

Mr. Peznola provided the Board specific information regarding various types of FEMA flood studies, who can perform such studies and the information they provide.

The Applicant is requesting that the Flood plain be delineated per the 2010 map and not the updated 2014 map. With regard to the local bylaw language regarding flood plains that do not have an assigned elevation, the Applicant believes that base flood elevations are only required for subdivision proposals or developments of 5 or more acres within Zone A. This project does not involve development of 5 or more acres within Zone A.

Mr. Peznola continued to educate the Board regarding the Federal flood plain statutes, FEMA mapping, and the wetland regulations and their requirements. He also discussed the Board's potential decision regarding a waiver, if it remains on the list. Both the Building Code and Wetlands Regulations govern the project and its performance standards. The Board must decide if it can undertake its job, to act upon requested waivers, without this information, and may expect that such work will be completed prior to the building being constructed, either through the Building or Conservation application process.

**Jim G:** What is the timing by which this decision needs to be made? **Joe P:** As early as possible; you can request the FEMA study, the applicant can say it is beyond the purview of the Board and it is not preliminary information required in a Comprehensive Permit.

**Jonathan S:** Joe, what is your recommendation as a consultant, if we cannot require, can we request that the information be provided?

**Joe P:** There is a redundancy in local bylaws, state wetland and federal regulations, in the protection measures, for the site and downstream environments. Given what I believe to be the position of the Applicant, I believe the Board can be certain this study will be completed further along in the application process. The Tetra Tech peer review will also present some new information.

**Paul Haverty, Attorney for the Applicant:** The applicant will review all requested waivers, it may withdraw the request for the local bylaw flood plain waiver and rest upon what is required by FEMA and the Wetlands Protection Act.

**Jim G:** What is the cost of the study, how long will it take and what is the burden on the applicant to do it? **Joe P:** There is FEMA guidance on how to perform the study, it is based on available data and there will not be any additional field work required. If the applicant withdraws the waiver (local flood plain zoning requirements) it is no longer in your purview.

**Amy K:** I have a lot of issues with the Exhibit A waiver list. Any waiver that is not required or is not necessary is to be denied. When the Board is making its decision, ipanelists will vote on each individual waiver as listed. **Paul Haverty:** I agree with Town Counsel, waivers that are not necessary should not be granted. I understand what you are saying; I will cull the list. With regard to be base flood elevation, there may not be a different requirement as to the local, federal and state regulations; if there is no difference, there will be no waiver request.

Attorney Kwessell and Mr. Peznola provided the Board with specific information regarding the Flood Plain regulations, mapping and which Boards and Commissions would be reviewing them in future applications.

**Sean Reardon (Sean R):** VP Tetra Tech- ZBA Hydrogeologic Study Peer Review: Letter dated July 17<sup>th</sup> can be found at:

[https://www.dropbox.com/sh/ndxoxf9wvzcem7z/AAAJrJOy7FzjLjSYt4nTDKiOa/07-17-2018/Peer%20Reviews?dl=0&preview=Cascade+Hydrogeo+Review+Letter+\(2018-7-17\).pdf&subfolder\\_nav\\_tracking=1](https://www.dropbox.com/sh/ndxoxf9wvzcem7z/AAAJrJOy7FzjLjSYt4nTDKiOa/07-17-2018/Peer%20Reviews?dl=0&preview=Cascade+Hydrogeo+Review+Letter+(2018-7-17).pdf&subfolder_nav_tracking=1)

**Mr. Reardon** educated the Board about the Hydrogeological Study evaluation, how it is prepared and what information it is providing.

This study was professionally done, we are familiar with the people who undertook it, and with the quality of their work.

- 1) The people doing the study did a great job evaluating how the groundwater will change and move through the site, currently and in the future. We are confident that their conclusions are valid.
- 2) The study was done by quality people, their input parameters and analysis were done properly.

We feel that the study did not evaluate how the contaminants (nutrients) move through the ground and if they are traveling somewhere that we do not want and/or expect them to go. We recommend the Applicant evaluate nutrient processes, and the performance and size of the system. The Applicant did not do any concurrent measurements of the stream elevation and groundwater. Concurrent measurement is important to confirm if the groundwater is feeding the stream (contaminants may migrate into the stream) or if the stream is feeding the groundwater (no migrating nutrients). We would like to see a monitoring plan, with a series of wells to demonstrate that everything is working properly in the future.

**Mr. Haverty** commented that there has not yet been time to review Tetra Tech's comments, so the applicant will not respond to these comments this evening. A scope of work was established for the study, and he believes the scope has been followed. The issues raised by Tetra Tech may be fleshed out during the Septic approval process, or answered by way of communications between our Hydrogeologist and the Peer Reviewer.

**Sean R** explains to the Board that the hydrogeo study is a local BOH requirement. If the Board does not address this waiver, the matter is not covered by Title 5 and will not be addressed during the Board of Health Permitting process. **Jonathan S:** Joe, please confirm that this will be an open issue, so that if these questions are not addressed, the Board will not have sufficient information to make a decision on the requested waiver. **Joe P:** The requirement for a full hydrogeo study is a Board of Health local regulation, which is why it is before the Board to waive the BOH local regulation. The Board may need to impose a condition regarding this waiver, but first needs to see the Applicant's response, followed by a reply from Tetra Tech. After that the Board must craft a condition that will memorialize the commitment for additional treatment. I strongly suggest that the Board compel the applicant to provide the additional information requested in the Tetra Tech report.

**Sean P:** These are not significant items, I believe they can be addressed as responses to comments. **Paul H:** We have not had the opportunity to discuss this report with our consultant. We need to see how much time is needed to obtain this information, and the cost.

**Jonathan S:** Joe, can this wait until our next scheduled meeting? **Joe P:** I think open discussion between the hydrogeologists, which should be done in the form of emails, with the Building Department copied, or a phone discussion with the substance memorialized in an email to the Building Department, to be posted so that the public can track the process. **Jonathan S:** We will need

