

BELLINGHAM ZONING BOARD

10 MECHANIC STREET BELLINGHAM, MASSACHUSETTS 02019

Minutes of Meeting **Thursday, September 3, 2020**

Members Present:

Brian Wright – Chairman Peter Gabrielle – Vice Chairman Brian T. Salisbury – Member Arturo Paturzo - Member

Also Present:

James S. Kupfer, Town Planner and Zoning Compliance Officer

Also Present Via Zoom

Rayan Shamas – Member Laura Renaud – Recording Secretary Timothy Aicardi, Building Commissioner

Chairman Wright opened the meeting.

Continuation Public Hearing:

Comprehensive Permit - 40B- 161 Mechanic Street

Members Present:

Brian Wright, Peter Gabrielle, Brian T. Salisbury and Rayan Shamas

Applicants Representatives via Zoom

Russel Dion, Campanelli Associates Jesse Johnson, Bohler Engineering Ron Muller, Muller Associates Counsel, Freeman Law Group

Town Planner/Zoning Officer Kupfer updated the board. The Board requested changes from the applicant to the plan set and those were made. The Board requested a favorable draft decision be compiled with all that was discussed and that is included for their review tonight. The applicant is in attendance with all the items the Boards requested. The draft decision will be ready to be reviewed once the hearing is closed.

Bohler Engineering, Jesse Johnson was in attendance and shared a screenshot of the requested changes. There was a request for additional screening and landscaping be

added. There were plantings added for shielding. They contacted the School Department regarding the proposed bus shelter, and they agreed on an area, which will be worked out in detail later. There will be 4-foot fencing installed along the existing tree line, which will help protect against the trash along wetland area. They spoke with the Fire Department about the circulation plan and hydrant locations. All the adjustments were made to the design that they requested. A new request was made by them to add a 4 to 5-foot grassy area along the sidewalk that goes through the spine. There is a place marker put on the plan to make sure they approve it where they would have to drive in case, they have to access the middle of the site. The DPW wanted separate fire services and domestics for the water system and they made those additions.

They looked at the 10-foot common use path. There is a bend with the 36-inch tree, which they can get the trail around. They could not use the 18-inch trees and make the grade to comply with the ADA Compliance, but they did add a cluster of trees to make up for that. The hedge line is now up against the parking to make it more effective and uniform, which is an improvement. They showed the lining of the trees more clearly on the plan set.

Chairman Wright asked what the material was along the roadway.

Mr. Johnson said they have not worked with MA DOT yet. Town Planner/Zoning Officer Kupfer stated that the DOT recommends that it be in the right of way. It would probably be raised granite curbing. The Board can make their recommendations on the path. Pervious pavement is not recommended.

Vice Chairman Gabrielle asked about the 10-foot pathway trees. The applicant explained they looked at how they could work around that and the 36-inch tree and effort is being put it to save these.

The Fire Department is good with all the turn radius.

Chairman Wright asked if all peer review concerns have been addressed. Town Planner/Zoning Officer Kupfer confirmed the concerns have been addressed.

The Board asked that a vegetated buffer be added to the back-parcel line, end to end and also on the western side. Planner/Zoning Officer Kupfer indicted that the southern side should keep the vegetated buffer. The trees as a screen should remain in perpetuity.

Chairman Wright stated there is a landscape schedule, which identifies the trees (see 705) quantity and size. Planner/Zoning Officer Kupfer stated they are covered in quantity and size.

Mr. Dion agreed there can be a condition that the landscape plan and trees can be kept in kind in perpetuity.

Town Planner/Zoning Officer Kupfer stated he would add that the quantity and character of landscape plan and trees remain in kind over perpetuity.

Member Salisbury inquired what the 10 -foot wide path would be filled with. Town Planner/Zoning Officer Kupfer stated it would be asphalt at a minimum.

Chairman Wright asked Town Planner/Zoning Officer Kupfer if there have been any comments or concerns brought up to him over this past month and Planner Kupfer confirmed that there have been none.

Chairman Wright confirmed there were no residents in attendance on Zoom.

On a motion made by Vice Chairman Wright and seconded by Chairman Wright the Board voted by roll call vote to close the Public Hearing.

Roll Call Vote:

Brian Wright aye Peter Gabrielle aye Brian T. Salisbury aye Rayan Shamus aye

Town Planner/Zoning Officer Kupfer informed the Board that the decision has been reviewed by Town Counsel.

The applicants' attorney of Freeman Law Group asked that the Board add (page 3 B1) a paragraph that the applicant is a dividend limited entity per the DHCD eligibility letter. The project is fundable by the state subsidized lending agency and the applicant controls the site per your finding. They would like this added for clarity sake.

Planner/Zoning Officer Kupfer didn't find it necessary, as it is more so for the applicant but will incorporate if the Board feels that it needs to be. (Under Determinations and Findings) It states the applicant is a limited dividend entity per the DHCD eligibility letter. The project is fundable by the state subsidized lending agency. The applicant controls the site.

The applicants' attorney stated that is an important set of findings under the regulation. (Page 7-finding 23). The final finding under this section is based upon all your findings that you have made before and after with the conditions stated here that the Board finds that approval of the project and the granting of the waivers is consistent will all local needs.

Mr. Dion states it is minor language, but it is important it be added if the Board will do so.

Planner/Zoning Officer Kupfer explained that it is a finding, but it has no concern to the town. It can be provided to the applicant. He will ask Town Counsel and then add it if Counsel agrees. This is just something they want to incorporate to protect themselves.

The Board questioned if it meets the state requirements why is it necessary. This is a friendly 40B and that is why it was never brought up. They don't want to make an optional finding if it is not necessary.

The applicants' attorney stated they should make it at this level because it is consistent with local needs. She suggested they can approve it subject by determination of your town counsel that is properly to form under the regulation. A delay would be of concern.

Mr. Dion explained that they need to go through a regulatory process. It is important. This Article 23 is addressing State law at a local level. This is consistent language, which means you are stating it is consistent with local needs. The regulatory agreement can take another few months.

The Board agreed to add:

- The Applicant is a limited dividend entity as per the DHCD eligibility letter.
- The project is fundable by a state-subsidizing agency as per the DHCD eligibility letter.
- The Applicant controls the site as per finding 4 under Determinations and Findings.

Mr. Johnson had questions on the water resource district. Planner/Zoning Officer stated that if you have the appropriate storm water management as per peer review it wasn't necessary.

Chairman Wright asked about the waiver for the street planting area. Planner/Officer Kupfer explained the plantings within parking they asked for islands of plantings. There really is no place to put the plantings in the islands. The street plantings don't meet the number or location. Mr. Johnson stated they went closer to the parking to offset the headlights.

The applicants' attorney asked that they insert the language (see page 7 paragraph 6) "modifications to the Comprehensive Permit".

It says no change shall be made. He asked to cite the statutory language for modifications as some are done through a simple modification, not done through the full approval process. Can you take out the language and recite the statutory or as approved to 760 CMR. The Board can send to town counsel for determination.

Planner/Zoning Officer Kupfer added "The southern border shall remain a vegetative buffer in perpetuity in accordance with the approved plan."

The following pages were reviewed:

- Page 11 number 17: Vice Chairman Gabrielle asked about the Saturday hours. Is that interior work only? It should state "Construction shall be permitted on Saturdays 7:00 to 4:00 PM. Mr. Dion stated that yes that is correct.
- Page 12 number 27 -The Board questioned what the snow removal plan would be. Mr. Johnson stated they would have the snow piles sheeted away from the

wetland area. They do have areas then move large piles to a mall. They do not keep it on site. Mr. Dion stated they work extensively with Property Management once they hire their snow removal contractor, they will comply with what Mr. Johnson spoke about.

Mr. Dion would like to withdraw their request of the findings on number 23 and also then on the decision number 6 he would like to add "from counsel as it relates to the state".

Chairman Wright stated the roadway is congested. The boards biggest concern is the traffic. The applicant did increase the donation by \$25,000 for a total of \$ 125,000.00. This is a nice design and project for the town. The roadway is a major concern. The Board asked the applicant if they would contribute anything more.

Mr. Dion stated they have already done 2 things:

- In the preliminary design work they agreed to create a water loop into the abutting condo association.
- The sewer system for the condo association limited anything else that could go in there and they agreed on an additional increase for that. Some fencing, trees, we did remove a few things that they liked but agreed to offer another \$10,000 to the route 140 fund.

The Board appreciates that offer.

The applicants are in agreement with the draft decision changes and review.

On a motion made by Vice Chairman Gabrielle and seconded by Member Salisbury the board voted by roll call to accept the decision per the amendments made by the Board.

Roll Call Vote:

Brian Wright	aye
Peter Gabrielle	aye
Brian T. Salisbury	aye
Rayan Shamus	ave

The Board agreed to sign the decision and the Planner/Zoning Officer Kupfer will make the changes and will provide it to the Town Clerk.

Continuation Public Hearing

Special Permit (animal kennel) – 65 Hixon Street Map 7 Lot 7

Members Present:

Brian Wright, Peter Gabrielle, Brian T. Salisbury, Arturo Paturzo and Rayan Shamas

Chairman Wright opened the continuation for the Public Hearing for 65 Hixon Street.

Town Planner/Zoning Officer Kupfer updated the Board. The Board Members that were absent watched that meeting and have sworn in that they have done so in order to vote on this hearing. The decision with conditions were discussed. If granted there will be a 3-month review and the applicant will return for status updates. The fencing will be put up within 6 months. There will be no more than 9 dogs and if any pass away or are given away they cannot add to it. There will be only 4 dogs out at one time to play or walk.

Chairman Wright asked if 4 dogs were out at a time would that lead to more noise with the others left behind. He also inquired if there was a number of complaints that would trigger the applicant having to come before the Board during the 3-month review period.

Applicant Nathan Crow was in attendance. Mr. Crow explained there would not be anymore dogs.

Animal Control Officer Patrick Sweeney was in attendance by Zoom. He and Officer Taddeo will take a look at the property as there are state laws regarding the number of animals you can have on one property. They are also concerned with the noise but they feel that the 3-month review is a good idea. The dogs are small and they do not see a problem but will be viewing the property. It is about 100 square feet per dog.

Chairman Wright confirmed the property is about an acre.

The Board was most concerned about the impact to the neighborhood. If this is approved it would be 3-month time frame from when he enters the country. Mr. Crow stated his arrival would be October 1, 2020. The Board will review in January 2021. There are no public comments. The town has not received any outside comments or complaints since the last meeting.

On a motion made by Vice Chairman Gabrielle and seconded by Chairman Wright the Board voted by roll call to close the Public Hearing.

Roll Call Vote:

Brian Wright	aye
Peter Gabrielle	aye
Art Paturzo	aye
Brian T. Salisbury	aye
Rayan Shamus	aye

The Board discussed the 3-month review period and if any complaints came in that were deemed significant by the Building Commissioner, they would call the owner into an earlier meeting.

On a motion made by Vice Chairman Gabrielle and seconded by Member Paturzo the members voted by roll call to grant the Special Permit for a non-commercial animal kennel with the above discussed conditions.

Roll Call Vote:

Brian Wright aye
Peter Gabrielle aye
Art Paturzo aye
Brian Salisbury aye
Rayan Shamus aye

New Public Hearing

Special Permit for Family Apartment - 24 Hartford Avenue Map 28 Lot 2 Applicant: Richard Dvarskas and Alexia Dvarskas

Chairman Wright opened the Public Hearing for 24 Hartford Avenue. Town Planner/Zoning Officer Kupfer read the public hearing notice.

On a motion made by Chairman Wright and seconded by Member Paturzo the Board voted to open the hearing.

Town Planner/Zoning Officer Kupfer explained the applicant is rehabbing the single-family home as is shown in the application, house plans and plot plan. The applicant would like the Family Apartment for his daughter.

Mr. Dvarskas and his daughter Alexia were in attendance by zoom. Mr. Dvarskas explained they are rehabbing the full home. It is a 300- year old home. The main front part of the home facing the street was saved. They are maintaining the 300-year-old structure but bringing it up to modern standards. The applicant will be living in the main home and his daughter will be living in the apartment. The apartment is in the lower level that faces the railroad tracks. It is connected to the main structure. His daughter can access the main living quarters through the "L". He stated this is for financial reasons to help his daughter as she has very high rent. Also as he ages, she can assist him if need be. Building Commissioner Aicardi was in attendance and stated the applicant has updated electrical, and plumbing. It is a standard self-sufficient Family Apartment. The applicant is not living in the home yet. It was purchased in November.

Town Planner/Zoning Officer Kupfer stated that they met the occupancy requirement as it is not a new structure and has been in existence for over 2 years.

Chairman Wright explained he would have to return in 5 years to renew.

On a motion made by Member Paturzo and seconded by Member Salisbury the members voted by role call vote to close the Public Hearing.

Roll Call Vote:

Brian Wright aye Peter Gabrielle aye Art Paturzo aye Brian Salisbury aye

Rayan Shamus aye

On a motion made by Member Paturzo and seconded by Member Salisbury the members voted by role call vote to grant the Special Permit for a Family Apartment as requested with the 5-year renewal.

Roll Call Vote:

Brian Wright aye Peter Gabrielle aye Art Paturzo aye Brian Salisbury aye Rayan Shamus aye

CONTINATION PUBLIC HEARING:

Comprehensive Permit – Extension Follow-Up Lakeview Estates

Members Present:

Peter Gabrielle, Arturo Paturzo, Brian T. Salisbury, Rayan Shamas

Applicant Representatives via Zoom:

- South Center Realty Attorney Angela Conforti
- Site Supervisor Alex Gow
- Ms. Elizabeth Mainini, Engineer Guerriere and Halnon

The Continuation Hearing for the Lakeview Estates Comprehensive Permit was opened.

Chairman Wright recused himself.

Planner/Zoning Officer Kupfer provided an update on the status of Lakeview Estates. The applicant is seeking a 6-month extension on their Comprehensive Permit along with a request of a determination of a minor or major change to the plan. A continuation was granted last month since the applicant indicated that they will be submitting a Notice of Intent with the Conservation Commission.

Vice Chairman Gabrielle stated that in August the drain system was discussed, and the applicant attorney made it extremely clear that the system would be performing as required. This past Sunday Mr. Garbielle drove by the site and saw many hoses coming out of the basin. He questioned if this system is working as required then why pumps were there. The Board was told it was the best design.

Attorney Conforti explained that the hose wasn't pumping water out of it was intended to drain the basin a couple of inches of water so that they could install the gravel.

Vice Chairman Gabrielle stated there was one hose in basin, one hose across the gravel six feet from Silver Lake Road and one coming out of the black pipe sticking up. He questioned if this was designed correctly then why pumps were running.

Guerriere & Halnon, Ms. Mainini explained that Bob Poxon from Guerriere & Halnon went out to site last week and he saw the pumps in the basin, but they were not being used at that time but were just in the basin. They did ask Fafard to remove all the pumps because of the perception of the pumps being there that it makes it look like not functioning properly. She just found out about the smaller pumping that went on later in the week. The basin is functioning as it is designed and as it needs to. It is much larger than it needs to be however there is a perception that things to need to change and get better. We have asked them to clean out the silt in the bottom. There is low point holding water, and an isolated area that they needed to clean and fill with gravel. It was a minor improvement but was something to make sure the basin continues to work as it is supposed to.

Vice Chairman Gabrielle requested an update on the schedule for the submission of the Notice of Intent.

Attorney Conforti stated they planned on submitting the NOI a month ago. The initial request was for taking the pipe from the oil water separator from a manhole and putting it into a headwall. Conservation Agent, Anne Matthews indicated in an email from July 30th that the NOI had to include the full storm water current calculations for Silver Lake Road and Lake View Estates in addition to what they were proposing. Based on the sheer amount of information it will take more time than 30 days.

Member Salisbury asked her to confirm that she is stating it would be ready by the October meeting.

Attorney Conforti stated the more information they have to submit the longer it will take them to look over.

Town Planner/Zoning Officer Kupfer stated the Board does not want it to be rushed, as they want it done correctly. He asked for a confirmed time frame.

Site Supervisor Gow explained that the pumps were installed to make sure the basin was percolating. The basin had some growth, silt and loom built up at the bottom. The pumps were put in at the low spot with the water then when go in and start working the water would chase them as the scrape out the loam.

Vice Chairman Gabrielle stated it has been 6 years since this project started. When the town takes this over it must be working properly.

Ms. Mainini of G & H stated that it could be January before there is anything final from the peer reviewer if all information is provided. The infrastructure in Phase 1 is substantially complete and is functioning, as it needs to meet storm water design. If that is the only piece a peer reviewer needs to look at then it would be a significantly shorter time. The peer reviewer could look at the big picture later on. She suggested they just focus on just get the peer review to say whether or not phase 1 is complete.

Member Salisbury stated that it could be that the basin is operating but the collection of the water is not. The Board needs the system as a whole.

Town Planner/Zoning Officer Kupfer stated that G & H may be correct that the basin is functioning, but it is not catching everything it should be. G & H is looking at it holistically to see what the entire watershed is doing. At the end of phase 1 it should be complete and working. The Board has been clear about that all along.

The Board agrees it needs to be 100 % working. They discussed continuing this to January. Planner/Zoning Officer Kupfer suggested that January might be too long. He recommended December may be better because the Board is not willing to provide Building Permits until such time there is real evidence of progress made.

Ms. Mainini of G & H asked what they mean by progress. Would that be the report back from the peer reviewer?

Member Salisbury stated that the progress is identifying and taking care of the problem.

Ms. Mainini stated there is no problem. Attorney Conforti asked if they could allow the peer review process to take place while they are building? She thinks that the peer review would speak to what is failing, if anything. She questioned the benefit of holding up building permits and prolonging the project under the assumption that Lakeview drainage is incomplete or not substantially complete. She stated all they want is another party input on the drainage system.

Planner/Zoning Officer Kupfer explained that at the last meeting it was discussed that this process must run concurrent with the Conservation Commission.

Ms. Mainini stated the applicant would like the Board to let them have a peer reviewer substantiate what she is saying relative to the drainage system that it is functioning and meets the storm water regulation requirements. She asked what is needed to be in place to have building permits in phase 2. She stated it shouldn't be more than a week to come to that conclusion that the infrastructure in phase 1 is working as it needs to and meeting all regulations.

Vice Chairman Gabrielle stated it is the majority of the Board that feels the infrastructure is not complete.

At the next meeting the Board would like something from a peer reviewer that Lake View Estate phase is installed and working properly.

The Board communicated that this could be continued to November.

Attorney Conforti asked if the Board would agree to speak with Don DiMartino of DPW or another engineer adding their input to this conversation to confirm it is working.

Public Comments:

Abutter, Brian Wright, Silver Lake Road:

Mr. Wright asked why they moved a number of trees. He did see they had equipment moving in the basin. This is the 2nd time they are taking silt out of the basin. They hydro seeded again. He would ask that they not hydro seed again as it is going into the lake. The timelines have changed. There have been 3 re-designs and each time they claimed there were no problems. He saw the hose was in the basin right before the storm and he did provide pictures to the Town Planner.

<u>Kristin Moore – 93 Silver Lake Road:</u>

Ms. Moore stated she is a direct abutter to the retention pond. Her property is continuing to be damaged due to flooding. She asked that if the retention basin is up to standards per the engineer then why is her property continuing to get flooded every time it rains. She asks to hold the building permits until this is take care of.

Member Salisbury made a motion to continue to November 5th meeting.

The applicant asked to allow building permits during that time frame or until a peer reviewer say it is not in full working order.

Planner/Zoning Officer Kupfer read the conditions of the Comprehensive Permit, which states that it shall be completed in 6 years. It has been over 6 years in phase 1. It states the Board can hold the applicant to whatever is outstanding. It is entirely up to the Board to extend the permit. The Board has been very generous. It is time to complete phase 1 and continue to phase 2.

Vice Chairman called for the next item on the agenda for Lakeview Estates.

Attorney Conforti explained they would like to make minor lot line changes to accommodate some requested house styles in phase 2. It is normally done through an ANR with the Planning Board but being a Comprehensive Permit it has to go through the ZBA. This involves submitting a written description of the changes, which she presented to Mr. Kupfer. The Board has 20 days to find that is a substantial or unsubstantial change. (See 760 CMR 56.05)

Member Salisbury asked if lot 72 A is bigger to accommodate the setbacks.

Attorney Conforti further explained that the houses are limited to 2,000 square feet. The footprint is wider than what is anticipated and that is why the lot line is moving. The width of the house on lot 72 is 40 feet and the existing distance between the 2 setbacks is 40 feet. The Board asked if this is a definitive plan. The applicant stated that if they agree it is not a substantial change then this is the Definitive Plan.

Planner/Zoning Officer Kupfer stated the applicant had 8 NOI's of the 19 lots being affected by this change.

Ms. Mainini of G & H stated that the lot line changes are not noticeable. Four of the lots should be approved by the Conservation Commission at the end of the month.

Planner/Zoning Officer Kupfer asked if in the NOI they would replace the plan set with the updated parcels and if they laid out the rain gardens.

Ms. Mainini of G & H stated it only impacted one of the rain gardens of the lots. They had to slide it over a few feet. The Conservation Commission at the last meeting asked for a revised plan. They already submitted showing the proposed lot lines. They have reviewed it.

Planner/Zoning Officer Kupfer asked if the footprint of the buildings is larger than anticipated and if that is due to the buyer's choice? Also, if this effects the affordable units. Are the smaller ones the affordable?

Attorney Conforti stated that more buyers chose the wider footprint styles than what was anticipated. They only moved the lots line.

Planner/Zoning Officer Kupfer stated if the board chooses to go forward with this plan that there are things that are not completed yet.

Attorney Conforti has a stamped set for signatures if approved. It has a certification by the Bellingham ZBA.

Building Commissioner Aicardi asked how many lots in total would this effect. He explained it may be a minor modification by moving this slightly, but this map has been submitted to GIS. The assessor has worked hours on this. This will be costly to change.

The applicant stated it is 19 lots. Ms. Mainini of G & H explained that 2/3 of the lots needed adjusting to fit the styles. They could significantly reduce the number of lot lines they are moving if the Board wants that. It would result in lot 73 becoming smaller.

Member Shamas explained some of this effects Conservation moving 19 lots The Board stated this is a draft and not the final one. Moving things around may effect Conservation. They would need to confirm with them.

Attorney Conforti stated moving the lot lines is not substantial. There is no change in bedrooms. Moving up to 10% is not substantial. Moving the lot lines a few feet is not substantial. You can ask Conservation how it effects them.

Planner/Zoning Officer Kupfer stated there are a lot of outstanding questions. He suggested that they withdraw this plan so the Board doesn't make a determination they may not want. Then provide a more comprehensive package for the Board at the next meeting.

Attorney Conforti stated that if the Board does tell us the changes are substantial then they would have to have a new Public Hearing. This actual plan review process doesn't even require them to be in front of them to talk about only if Board says it is a substantial plan.

Attorney Conforti stated they would submit additional information.

The Board questioned how it effected the cul-de-sac.

Ms. Mainini of G & H stated they are there to lessen the impact of the construction of those lots on the adjacent wetland. In that cul-de-sac area they had to get the houses as far from the retaining walls as possible.

The Board stated it would help to reduce the number of parcels affected and to come back with a better approach.

Ms. Mainini of G & H said they will reduce it as much as possible and get Conservation comments as to whether or not there is a substantial change to conservation. The applicant is requesting a withdrawal of the minor or major modification request as presented.

On a motion made by Member Paturzo and seconded by Member Shamas the members voted by roll call vote to allow a withdrawal of this request of a minor/major modification.

Roll Call Vote:

Peter Gabrielle aye
Art Paturzo aye
Brian Salisbury aye
Rayan Shamus aye
Brian Wright (recused self and did not vote)

On a motion made by Member Paturzo and seconded by Member Salisbury the members voted by roll call vote to continue the hearing until November 5, 2020.

Roll Call Vote:

Peter Gabrielle aye
Art Paturzo aye
Brian Salisbury aye
Rayan Shamus aye
Brian Wright (recovered a

Brian Wright (recused self and did not vote)

Approval of Minutes:

On a motion made by Member Paturzo and seconded by Member Shamas the members voted by role call vote to hold the approval of the September minutes to October.

Roll Call Vote:

Brian Wright	aye
Peter Gabrielle	aye
Art Paturzo	aye
Brian Salisbury	aye
Rayan Shamus	aye

Adjourn:

On a motion made by Member Paturzo and seconded by Vice Chairman Gabrielle the Board voted by roll call to adjourn the meeting.

Roll Call Vote:

Brian Wright	aye
Peter Gabrielle	aye
Art Paturzo	aye
Brian Salisbury	aye
Rayan Shamus	aye

Minutes Accepted on $\frac{10/1/2}{2}$	
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Brian Wright	Peter Gabrielle
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