

BELLINGHAM PLANNING BOARD
BELLINGHAM, MASS.

PUBLIC HEARING OF November 18, 1965

RE: Section I -Schafer Heights

Members present:- Francis J. Prior

J.E. Corriveau

Robert M. Chase

Public Hearing was called to order by the chairman at 8:00P.M. Chairman Francis Prior stated that notification had been sent to abutters and the notice was read as it appeared in the newspapers. The reason for this special hearing was in reply to the Board of Selectmen's petition, contained in a letter to the Planning Board.

Joseph Scolovino, Chairman of the Board of Selectmen, stated that the Board had hired Attorney Abraham T. Handverger of Medway to represent them.

Speaking for the Selectmen, Handverger stated that the matter was given due publication. It had been before the courts on two different occasions and is again in the process of litigation. The original plan presented in 1956 shows no record of approval by any Planning Board. Handverger went on further to state these additional facts:

"No attempt made to record the plan and no requests for building permits were received. Plans lay dormant."

"In 1964, 38 house-lots were presented as Approval Under Subdivision Control Not Required. This plan as such did not comply with the law because all lots do not front on a Public Way nor does the plan show previous approval."

"Schafer claims plan approved by default but there is good reason why the Planning Board did not act hurriedly on the plan. - - Streets were not in existence and action taken by prior boards was that more information was needed and plan had never been approved."

"Superior Court had ordered Town Clerk, Lionel Trudeau, to sign the certificate stating the 14-day grace period had elapsed but it did not ascertain that the plan was ever signed in 1956."

"Selectmen feel that a fraud may have been perpetrated. The board was fooled by action taken by Schafer, by the manner in which the plan was presented for signatures. For this reason, the Board of Selectmen are petitioning to rescind this plan."

Attorney Eugene L. Tougas of Waltham, representing Morton Schafer was then given the floor. He said he would like to hear more from the petitioners before making any statements.

Chairman F. Prior asked if any of the abutters wished to speak in favor of the selectmens' action but there was no response. Attr. Tougas then questioned the authority of the Planning Board to hear this petition or the Selectmen to

J. E. Corriveau
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invoke this petition. He said only an owner of land may request revision of a plan and the Selectmens' request of the Planning Board to rescind the plan was not provided for by statute.

He questioned if the Selectmen desired the Planning Board to rescind the plan that was not approved in 1956 or take other action. He inquired of the board if any of the owners of the lots had given assent of the action the board has been asked to take. Chairman F. Prior answered in the negative.

Tougas further stated that several lots are not owned by Mr. Schafer and are mortgaged.

A plan presented as Planning Board Approval Not Required has several facets, many alternatives. He referred to Chap. 41 -Sect. 81P.

"Let courts decide if Morton Schafer is entitled to building permits." "No fraud was committed and if Schafer abided by the laws, he is entitled to his permit."

Chairman F. Prior then asked if any abutters were in favor or against this petition. No response. He then referred to Sect. 81W. of the General Laws -- Mortgaged lots are not affected by any decisions of this petition.

Mr. Handverger stated that "Tougas has never said that the plan was ever approved" and could not furnish the board with a date of approval.

Tougas said that the certificate was signed by the Town Clerk and this is conclusive of the matter. Any attack on this fact is an attack on the court.

E. Corriveau said the court merely ruled on the fact that the Planning Board had not acted on the plan as presented in 1964. "Court did not consider the question of prior approval."

Handverger: Lots were said to have been mortgaged subsequent to approval in 1956. The petition alleged that the plan had been approved in 1956.

R. Chase: Petition states "Failure of the Board to take action." Does this mean failure to rule or failure to take action? Minutes of the Planning Board prove that negative action was intended.

Selectman D. Tuttle, Jr.: "If approval had been given as stated on plan, all other action would be unnecessary. This denotes an attempt to deceive."

R. Chase: "Why had this plan been submitted?"

Tougas: "I will not go beyond the decree of the Court." He said Slander of Title could be cited.

Handverger: "The Board is not to be frightened by threats. If anyone could show proof of approval of this plan, then we can terminate this meeting."

R. Chase: Does Tougas feel that the plan does not have to comply with Subdivision Rules and Regulations?

Tougas: "I will not go beyond the decree of the court."

F. Prior: Any further questions? PUBLIC HEARING closed. A motion made by R. Chase to take the matter under advisement seconded by E. Corriveau. Vote unanimous.

APPROVED AS READ:

Francis J. Prior
E. Eugene Corriveau

Respectfully submitted,
Joan M. Giard, Clerk

Joan M. Giard
Robert Chase