

BELLINGHAM PLANNING BOARD  
UPPER TOWN HALL  
BELLINGHAM MASSACHUSETTS

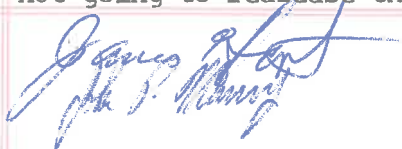
Regular Meeting of September 23, 1976

Members Present: James A. McElroy, Chairman  
James E. Hart  
John P. Murray

Chairman McElroy opened the meeting at 8:00 P.M. and dispensed with the regular order of business.


Engineer Charles Michaud and Roger Belanger spoke with the Board and Consultant Philip B. Herr regarding new drainage plans on Harmony Hills off North Street. The revisions were reviewed. Herr questioned just where the water flow would end up at and was reassured by Michaud that the final dumping place was not changed from the original plan. Herr also questioned if the town would have the right to go on to the abandoned railroad to service the open drainage. McElroy questioned if the original plan called for open drainage. Hart answered yes, he believed the Board was cooperating with the Conservation Commission in doing so. Herr pointed out Lot 12 may not be built on, but Lot 13 will be. The open ditch would be carrying a lot of storm water right in front of Lot 13 and the easement will belong to the owner of that lot. Easement was being used as part of the requirement for frontage. The flow of the water does follow the natural flow of the land Michaud pointed out. Belanger indicated he was willing to do what the Board wanted done. Herr also pointed out there was a distance of over 500' between catchbasins. Michaud and Belanger agreed they would draw up new drainage plans which would add two catch basins on the east side of the easement, and the drainage on Lot 13 would be revised and piped to the headwall.

Harry Blakely, John Fridlington of the Merchants National Bank in Worcester, and Bajard DeNalliye an attorney representing the bank spoke to the Board regarding Center Park Estates. DeNalliye told the Board the bank had acquired the property in Center Park Estates at a foreclosure in 1975. They had requested occupancy permits from the Building Inspector on houses that were already built. They had been informed by the Building Inspector that he would not issue them per the Planning Board instructions. He asked why the Board had taken this action. McElroy told the men it was their opinion that the terms and conditions for the completion of the subdivision had not been met. The Board could see no reason to complicate the issue by bringing in more people into the area until the conditions of the Board had been met. DeNalliye stated under the law the Board could look to the bond and the heirs and successors of the subdivision for relief. McElroy pointed out that the Board felt that as the successors of the developer they were responsible. Hart told the men the Board was not going to release the occupancy permits. They had been told what the Board wanted them to do and they knew the situation of the subdivision when they bought the lots. McElroy told them the next step is up to them. He felt something has to be done about it and the Board was not going to release the permits and leave the town holding the bag.



DeNalliye told the Board the bank's position was that the Board had a remedy to the problem on the surety of the bond. The Board had the option of either a covenant or a bond and had choosed a bond. Hart pointed out the subdividor had the option on that, not the Board and they had elected to go with the bond. We did not tell them to get a bond. DeNalliye stated the point was that the Board is secured with a bond for the completion of the road. They had lost two buyers for the homes already. He had spoken to Town Counsel and had been advised that Ambler told the Board to release the permits. McElroy told DeNalliye the Board was aware of Ambler's advice. DeNalliye asked McElroy to state to him what authority the Board has to tell the Building Inspector not to release the occupancy permits. He told the Board members they could each become liable personally. Hart told DeNalliye they were not lawyers and they were not going to get into a legal argument with him. The matter has been turned over to the Town Counsel. The Board had no intention of leaving the town holding the bag. All they wanted to do was sell the houses, make the money, and leave town. Blakely told the Board he wanted to make sure they were talking about the same thing. He was talking about occupancy permits and not building permits. When he was before the Board in February he was talking about Building Permits and Occupancy Permits. He was asking what the status of the occupancy permits were. McElroy stated the Board had asked the Building Inspector to hold off on issuing the occupancy permits, that was the latest situation. The Board has not voted on the issue since receiving the letter from Town Counsel. Hart stated the Board was not about to debate the issue with attorneys. Blakely told the Board he had also talked to the town counsel who told him he had sent the Board a letter advising them to release the occupancy permits. McElroy stated the Board has not reconsidered anything on it yet. Blakely asked if the Board could give him the time when they might reconsider this again. They were only trying to work out a difficult situation. They were only trying to sell some houses that are now built and to get some occupancy permits for them. The Board is telling the Building Inspector not to issue any occupancy permits. Hart told Blakely they knew what the problems were then they took over those houses. All the had to do was complete the roads and the occupancy permits will be theirs. Herr pointed out under Chapter 40A the developer has the obligation to live up to the rules. Blakely pointed out they didn't take over the subdivision they just bought up the houses. Herr told them there is a simple solution to their problem which was the appeal remedy. DeNalliye stated the point is in their opinion the Planning Board has no authority over the Building Inspector to order him to hold up on the occupancy permits. Blakely acknowledged there is a formal procedure but they wanted to avoid it. DeNalliye asked McElroy if it was true that he had instructed the Building Inspector not to issue the occupancy permits. McElroy stated no, he did not order him to hold up the occupancy permit.

A joint meeting was held with Developer Sanford Kaplan, members of the Zoning Board of Appeals and the Conservation Commission to discuss the plans of a cluster subdivision behind Pilgrim Village. Consultant Herr stated that the meeting was a before the preliminary plan hearing. When the plan is submitted formally, it goes simultaneous before the Planning Board for approval and before the Zoning Board for a special permit. Kaplan showed the Boards the plan and explained what he would like to see approved. Zoning Board member Philip Gallagher told Kaplan he had no



particular issue now, but did feel that the Board as a whole would be requiring Kaplan to submit another plan showing what could be done with the piece of land in the conventional way. Herr stated the question before Kaplan tonight was whether or not he should pursue the cluster development idea. Is the title to the green area which denotes the land to be given to the town of importance to the Town. There is a genuine concern about the number of houses in such a small area. If a cluster development is not approved, and if he could put in twelve conventional lots would it be better for the town or not. If the conventional lots are developed the green area would go towards the footage requirements for the lots. Herr asked the members of the Conservation Committee if they could use the land. Was there any purpose in being able to get to that land along the river. Edward Whalley stated you could put in a small playground in part of the area. Herr pointed out the Charles River Authority is planning to acquire land such as this, but it will be a while before they do anything about it. From a regional point of view it would be an advantage to have access to the river. Conservationist Barbara Gokey stated that her commission wanted to go on record that they would accept the land if offered to them. Zoning Board Chairman Brennan stated that his Board would request two plans for the land, the conventional one and the cluster development one. Kaplan stated he would take a few perk test just to get an idea of the land. Brennan told him to apply to the Zoning Board first and they would forward the plans to the appropriate boards. McElroy thanked the various boards for their excellent showing.

On a Hart-Murray motion the Board voted unanimously to approve the plan of David and Pauline Kumlin on Mohawk Street, Approval Not Required.

Letter was received from the Selectmen asking for a joint meeting at 7:45 PM on September 27th to appoint a member to replace Whitten.

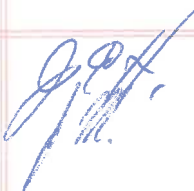
McElroy asked Herr about laws regarding fences around swimming pools. Herr stated they could draft such a by-law, take it to the Town Meeting and see if the Attorney General will pass it. Many Town Planning Board sponsor town by-laws. Hart stated he was not in favor of such a law. What about the person who owns a lot of land, it doesn't make sense to make him put up a fence. McElroy pointed out the Building Inspector does have the authority that he wants in Article I of the state building code. Herr pointed out if the Building Inspector is happy with that as an authority then we don't have to do anything about it. The agency plays with the laws and they get all the changes in the code and they haven't got any on this. If anyone takes the Building Inspector to court, Herr stated he felt he would have a hard time winning. McElroy stated if a law is to be passed it should be in the town by-laws not the zoning bylaws.

On a Hart-Murray motion the Planning Board voted to retain Philip B. Herr & Associates as planning consultant, unanimous.

Meeting adjourned at 10:55 P.M.

APPROVED AS READ:

Respectfully submitted:



Sergio Rotatori, Clerk