

BELLINGHAM PLANNING BOARD
TOWN HALL ANNEX
BELLINGHAM, MASSACHUSETTS

Regular Meeting of July 27, 1978

Members Present: John P. Murray, Chairman


Sergio Rotatori, Vice-Chairman, Clerk

Gerald Brisson

Normand Langlais

Chairman Murray opened the meeting at 8:00 P.M.


Town Counsel Lee Ambler meet with the Board to discuss Center Park Estates. Murray asked Ambler what could be done to initiate action on calling the bond on the subdivision. Ambler told the Board they would have to bring a suit against the developer and naming as an additional defendant, the bonding company. In order to commence legal action, he would have to be instructed to do so by the Board of Selectmen. He stated there has been some dialogue with various members and himself over the matter, but has never been instructed formally to take any action by the Selectmen. The Planning Board had never officially asked the Selectmen to take any action. Rotatori asked Ambler if the bank owns the property why wasn't the bank responsible to fix the streets. Ambler stated the bank merely repossessed the mortgages, that doesn't in itself mean that the developer went bankrupt. Rotatori stated when the bank took over the property they wanted four occupancy permits. We felt at that time that we had some leverage on the bank to get the streets fixed, if we didn't give them the occupancy permits. The next thing we knew people were living in them. Borowski was instructed by the Selectmen on your advice to issue them. Ambler told the Board he never tells anyone what to do. His opinion at that time was that the Town had to legally issue them the permits. His legal opinion is that they were entitled to the permits. Once the Town of Bellingham gives them a building permit you have to give them an occupancy permit when the time comes. He did take the position that the bank would assume responsibility on the road. Rotatori told Ambler in order to get the street accepted, the town has to have a deed to the street. This is what the residents want. Ambler stated no there is an alternative method in that the town can take the land by eminent domaine. It would have to be established who owns the road. Is it held by the people who own homes on the road or does the developer still own it. If the developer is not bankrupt they still own it. It may be that the bank owns it. Rotatori asked what happens if the town meeting doesn't accept the street. Someone has to own the property how would you go about finding out. Ambler told the Board you can tell mainly by looking at one of the deeds of the property owners. Rotatori told Ambler that the Board did not want the town to end up paying to fix the road. It is going to cost a great deal of money. Ambler told the Board it was his understanding that the Conservation Commission owned some land. It may be feasible to accept that portion of the street where the homes now exist. The road continues down past these homes in a form of a paper street. It was his understanding that the road at this point near the homes has been constructed in conformance with the towns' laws. Rotatori told Ambler there is also a drainage problem. Langlais said there were also two or three existing foundations in the ground that could be a hazard to the children in the ares. Brisson asked Ambler if anyone has ever applied for



building permits on the remaining lots. Ambler said not to his knowledge. Rotatori questioned if there was any part of the road that was truly finished. Murray said he assumed that the reason why no building permits are being issued is because of the question of the streets. Something has to be done about the streets. Langlais stated if the question of litigation is going to be discussed they should call for an executive session. On a Langlais Rotatori motion the board voted unanimously to call for executive session to discuss possible litigation, Selectmen McElroy and Horan along with Town Counsel Ambler to be included in the meeting. Board members voted as follows: Murray, yes; Brisson, yes; Langlais, yes; Rotatori, yes.

Chairman Murray called the meeting back to order at 9:15 P.M. after executive session. On a Langlais-Rotatori motion the Board voted unanimously to direct the Secretary to write a formal letter to the Board of Selectmen asking them to have Town Counsel Ambler initiate litigation with the intention of completing Center Park Estates subdivision.

Dave Arnold, Chairman of the Board of Health and Paul St. George, Plumbing Inspector meet with the Board to discuss the proposed subdivision on the extension of Horseshoe Drive for four lots. Arnold read his letter dated June 16, 1978 to the Planning Board along with the answer to his letter from the Planning Board and also his final reply dated July 27, 1978. Arnold questioned if the land was under the wet lands act. They have a drainage easement that drains into lot 3. They would not be very responsive to building one house on the land let alone four houses. Consultant Philip Herr pointed out the contours of the land on the topo map. Arnold stated his Board was concerned with the water coming down and just sitting down on the four lots. Engineer Walter Sampson told Arnold he was not seeking approval of four lots, they were just making a plan for four lots to the Planning Board. Rotatori told Arnold the Planning Board has to sign any plan that meets our rules and regulations. After that then they have to apply for their other permits with the other boards in town. It is your Board that controls the lots after the Planning Board. He has seen a lot of lots with houses going on them that have no right to be there. Arnold told Rotatori if the land passes the perk tests it is very difficult for the Board of Health to say no to a permit. Rotatori said it was the same way with the Planning Board, if a plan passes our regulations we have to approve it. Langlais questioned what would happen to this plan if we don't approve it and it conforms to our rules. Brisson questioned Sampson if any further work has been done on the plan. Langlais stated at this point with the strong letter from the Board of Health of July 27th in which they state in writing their disapproving of the proposed subdivision, it is out of the Planning Board's hands. Herr told the Board that was not true because once the applicant resolves the concerns of the Board of Health the plan has to be approved. If the Board disapproves the plan, they must do so in writing stating the reasons for disapproval. If the only reason is because of the Board of Health, once that is resolved the plan must be signed as is. If there are any more concerns they should be so stated in the disapproval. Herr suggested these concerns be gone over with Sampson to clarify them. Langlais told Sampson the Board had walked the land and Lots 3 and 4 appear to be the wetter parts of the land. There appears to have been drainage going thru the railroad tressle and it was blocked. A section of the pipe goes thru Caroline Drive and it is blocked up half way. There should perhaps be a way of having the water drained under the



tressle. Herr pointed out on the topo map that there is a stream that goes to Beaver Pond. Arnold pointed out the drainage problem should be corrected now before four individual home owners are involved.

Plumbing and Gas Inspector Paul St. George pointed out if all four lots are built on, since the land lays in a hollow with the contours being substantially lower than the adjoining properties, the sewerage vents on the houses would tend to give off a strong and offensive odor. There would be a smell of sewerage coming off the vents in the roofs. Sampson told them the Planning Board can only act on the road and the lot sizes, as far as the filling in of the lots, we have to go before another board. We have to take one step at a time. Bill Sparrow of 400 Caroline Drive asked why the Board is supposed to approve a road that has four undesirable building lots on them. Why approve the road. Arnold stated the building of the road is what is making the lots undesirable. You could probably build one house back there. The question of fill should be resolved at this stage of the game.

Brisson told Sampson he would like to see a cul-de-sac off Caroline Drive, not Horseshoe Drive. Another abuttor stated he did not want to see any homes down there. Langlais told the people that the Board has to be fair with all parties. The land owner has rights also.

Selectmen McElroy questioned the Board to see if there was a state law as to the amount of fill that could be brought in on a lot. He also questioned if the land was in a flood plain zone. Herr stated as far as he was aware there was no limit to the amount of fill and the land is above the elevation of flood plain zoning. Arnold stated they could put in any amount of fill as long as it is compacted properly.

Mrs. Suzanne Anstine gave the Board a letter from Safety Officer Leo Gill regarding the safety factor. He felt the throughway would result in a serious safety hazard with increased traffic, higher rates of speed and the number of children in the area. He recommended that a deadend or turn around would be a suitable compromise to all parties involved.

Sampson told the Board that the developer has given him instructions that he would like to see it deadend off Horseshoe Drive.

Herr questioned when the time clock runs out on the plan. The Board has to either make a decision on the plan tonight or ask the applicant or his agent for an extension of time.

Sampson stated the only question he could see is do the plans meet the Board's rules and regulations.

Arnold told Sampson the Board of Health is willing to review various proposals. This piece of land is very tricky. He was not an engineer and would not recommend anything. That was up to an engineer.

Herr felt if the Board were to disapprove the plan at this time before further review it would not be the right way to handle. They could ask for an extension in the time to give the engineer time to develop grading and to revise the general plan.

Arnold questioned how a town like Dover can regulate so much like saying you can't build a home unless it costs \$40,000 and Bellingham can say nothing. He felt the plan should be denied and no extension of time given.

Then they would have to come back with a whole new plan. Herr stated in the event the Board wanted to disapprove the plan tonight they did not have in their possession at this time the facts to make a proper determination. The only thing a developer has to do after a plan has been disapproved is to satisfy the conditions of the disapproval and his plan has to be signed by the Planning Board.

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Langlais stated the Board has just taken action on another subdivision that is going to cost the town money. He wanted to do everything right. He wanted to make sure the Board followed proper procedure.

Herr stated it was not the Board who grants an extension of time, it is the developer who gives it to the Board. Murray wanted to be sure asking for an extension would be in the best interests of the town.

Herr told the Board one way of solving the grading problem would be to attach a covenant to the property that fill would have to be put in place before any building permits are given out. Anyone who would be buying the land would be aware of the conditions of a building permit.


Lynne Breault, 395 Caroline Drive told the Board she had sent a registered letter to the Conservation Commission and has received no answer. They are ignoring me and they are ignoring the Planning Board. What could she do about this. Selectmen Horan asked who had signed for the letter and Mrs. Breault said it was Barbara Jerrier. Horan said that was their secretary, so they could not be sure the Conservation Commission ever received the letter. Murray stated if the Board receives no answer from the Conservation Commission, he would have to assume everything is OK.

Sampson told the Board the applicant, Hart, was not in town but his partner Gerald Burke could sign the extension of time. Arnold questioned just who Burke was and if he had the authority to sign for Hart. Hart could come back and say he never gave Burke the authority to sign for him, then the plan is approved by default. Herr stated he had seen plenty of cases where the engineer signed for the applicant and there has never been any trouble. He felt sure the Board knew who Burke was and that he was a partner of Hart's. Herr did not think the Board should be concerned with Burke's signing the extension.

Both Gerald R. Burke and Walter E. Sampson signed a request for extension of time for action on the Definitive Plan located between Horseshoe Drive and Ruthellen Road as provided under Sec. 81-U, Ch. 41, G.L. such extension to be until August 25, 1978.

On a Langlais-Brisson motion the Board voted unanimously to grant an extension until August 25, 1978 on Horseshoe Drive Extension on behalf of James Hart, applicant.

A letter will be sent to Walter E. Sampson outlining the action taken as follows: 1) An extension until August 25, 1978 was granted and during that time the applicant is to look into the following: a) making the street a cul-de-sac on the Ruthellen Road side. Brisson stated this would make more sense due to the grading. b) investigate and report to the Board on a study of the drainage at the railroad bed, showing elevations on both sides c) make a study of the water run-off on the site on a five year storm cycle. Herr stated this would give the Board some idea of any drainage problem. d) Draw up a grading plan of the site at such a scale that it can be superimposed on the Town's topo map. Herr stated this would make it easier to see just what was what. and e) To apply to the Water Department and make an application for their approval of the water plans. A letter dated July 26th from the Water Department stated no application for the subdivision plan has ever been received by the developer. They were requesting an extension of the Planning Board's hearing pending submission to the Water Department of marked engineered approved drawings. Letters from the Board of Health of June 16 and July 27 and letter from the Water Board will also be sent.



Herr gave the Board a copy of a study POPULATION REVIEW done by his firm which showed the Growth History of the Town from 1950 to 1978, Growth Expectations, School Enrollments and Water Use. His study showed that the Town has had relatively little growth since 1970. Langlais asked Herr if it would be feasible to have some sort of a simple growth policy. Herr stated the town could say it wants to grow about 2% every year. You could adopt such a policy that you would not accept more than X number of homes per year. This could be done by adopting a by-law. That would make it rather difficult or impossible for any further growth that year once that quota was reached. Murray asked if such a thing were constitutional. Herr stated yes. Herr pointed out this policy of restrained growth would take place only after 100 permits were taken out in a year for Bellingham. Murray asked Herr if he felt that the Town could come up with 400 new homes on all the residential lands left. Herr stated the demand for suburban housing is going to increase. But with the exception of 1974 when Oak Woods and the housing for the elderly were built Bellingham has not given out more than 100 building permits. Herr asked the Board not to make the report public at this time since it was only a preliminary study.

Langlais asked Herr if the town could have some sort of a by-law which stated that foundations on a plan have to be where they say it is. Herr stated yes, and that he would bring it at their next meeting.

Gerald R. Brisson stepped down as member of the Board and presented a plan Approval Not Required of a perimeter plan of one lot containing 8.58 acres owned by Richard Lavalley and zoned agricultural, located on Wrentham Road. On a Rotatori-Langlais motion the Board voted to sign the plan with Murray approving, Brisson abstaining.

On a Brisson-Langlais motion a bill for \$5.00 to the Post Office for remainder of rental of P. O. Box 43 was approved unanimously.

Meeting adjourned at 12:05 on a Brisson-Langlais motion.

Respectfully submitted,



Sergio Rotatori, Clerk