



BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

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ANNE M. MORSE
JOHN P. MURRAY

MINUTES OF REGULAR MEETING

January 11, 1990

Meeting was called to order at 8:00 p.m. EM, GG, EN and AM were present.

MAPLEBROOK COMMON DEFINITIVE SUBDIVISION

Thomas Real of R.B. Walden Group, states they would like their definitive subdivision plan which was previously filed with this Board *withdrawn* without prejudice.

EN questions if that was because of the discussion which they had the last time.

T. Real indicates that is correct.

EM explains that the applicant feels they no longer need to go the subdivision route so they want to withdraw it.

EN makes a motion to accept the withdrawal of the definitive subdivision plan for Maplebrook Common without prejudice. AM seconds. Vote of 4.

EM states that Mr. Real also has a paper for the Board to sign.

T. Real states it is the reaffirmation of the special permit which was voted and signed at the last meeting by 3 members of the Board. They had discussions with Mr. Herr about this.

EM received a phone call from P. Herr on this. Apparently, at the last meeting EN was not sure he should sign this paper. The other 3 members signed it. P. Herr said there was no problem with signing it.

EN asks if that was the one which P. Herr was supposed to check on. Do they need another vote on that?



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EM indicates that is correct. That is why P. Herr called him.

AM asks if there are any changes.

EM states there are no changes but it requires 4 signatures. EM is an abutter.

EN believes the minutes should show that he is signing it.

EM states it will be reflected tonight that EN is signing it tonight after it has been checked.

EN asks if he should indicate the date on which he is signing.

T. Real states it is already dated.

EN notes that he is not signing it on 12/14/89.

EM indicates EN should sign it and date it with today's date next to his signature. The paper is a reaffirmation of the special permit.

ONORATO

SPECIAL PERMIT

SOUTH MAPLE STREET

EM opens the public hearing. Since Mr. Murray is not here and this requires a vote of 4 out of 5 members, EM will have to entertain a motion to postpone this until he arrives. EM is not sitting on this hearing and it requires 4 members.

EN makes a motion to postpone the public hearing until JM arrives. GG seconds. Vote of 4.

JM arrives at 8:30

EM removes himself from the public hearing.

GG will act as Chairman in EM's absence. This public hearing has been continued from December 14, 1989.

B. Lord, attorney, representing, the Onorato's for this special permit. The property is on Maple Street, just below Bradford Lumber. It is presently zoned B-1, commercial, 20,000 square feet required. The reason for the special permit is because this particular lot is in the water resource district. In order to divide the lot to the level allowed under the zoning, they need a special permit to go to 40,000.



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They are below that in two instances. The lots they are requesting to be allowed on 40,000 square foot lots and 48,000 square foot lots to put a duplex with two bedrooms on each side. The other lot is 26,000 which is 6200 larger than the requirements of zoning will be a single family. The 4th lot contains the present house facilities and is 75,000 square feet. All of the lots will be a large enough size to take care of the particular situation.

JM questions what the zoning requires.

B. Lord responds the zoning is 20,000 square feet for a single family lot. For a duplex it would be double. The area is in a water resource district. The nearest water wells would be the wells below Silver Lake in between this particular lot and this whole side of the street. They are in between another development, Maplebrook and the Silver Lake area. Anything which would be put into the ground in this area would be negligible as far as affecting the water supply to the town of Bellingham. Across the street is Bradford Lumber.

JM questions where this property is in relation to Maplebrook.

EN states that this is across the street. It abutts Franklin.

B. Lord states that is correct. He points out Franklin.

EN questions where the parcel is swampy.

B. Lord responds it is wet in the back, in the Franklin area. Essentially, most of the Bellingham area is dry.

? states it starts to get wet in the Franklin area and the it drops off.

B. Lord explains it requires a determination relative to nitrates. He believes the Board has a letter from Mr. Herr who has looked at the various computations they have sent in. That pretty much answers the question relative to the nitrates. It clearly is a reasonable situation for this type of development.

GG reads letter from P. Herr, dated December 22, 1989. He concludes from the analysis that the proposals are not at all unreasonable. The Board wishes to see the nitrate level at or below 5 parts as set in the bylaw guideline. It could be achieved by requiring that the initial lawn and garden areas and tree structures total not more than 15,000 square feet, that pavement runoff be recharged to result in a credible estimate of 16% recharged. Analysis was done using a model they have



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developed based upon the same intentions as underlined in the zoning bylaw reflecting a great deal of learning since the bylaw numbers were developed actually a number of years ago. The key part is whether to insist upon 5 parts per million rather than the federal 10 parts per million. In this case we know that the impact to these units is further reduced by proportionate share of street and undevelopable land in the water shed. A level of 5 parts per million is really super safe. The materials provided by the Onorato surveyor were helpful in developing this parcel. They would be happy to make it available at the cost of reproduction to any further applicants. In time, they will develop texts to help in this use. In further time, they should also develop revised language in the zoning bylaw to reflect current understandings.

B. Lord introduces Paul Josephson, the engineer from Drake. If anyone has any questions, Mr. Josephson can better explain the formula relative to the nitrates better than he can. Essentially, it is figuring out the nitrates effect on the land.

B. Lord states the other discussion which they had at the last meeting was the Lapio relative to the drainage. They talked to the Town Engineer about it. He suggested that the best way to handle it would be to fill in the area. Basically, now this area does not drain. If fill is required for some sort of a level, prior to construction a profile and plan will be submitted to the Town Engineer to review. That would ensure Mr. Lapio.

GG asks if Mr. Lord is stating that his client has made promises so that no drainage will be resulting from this property on Mr. Lapio's property. This will all be o'kayed prior to construction.

B. Lord indicates that is correct. The Town Engineer indicated that he would be willing to accept that stipulation in the special permit if it were required on the property.

EN questions if Mr. Megalli went down to the property.

B. Lord responds that he has not looked at it. Basically, the way it is set up now, the drainage is away from the Lapio property.

? indicates it is basically straight back, away from the street.

B. Lord states there is a possibility they might need fill which will not be a problem.

GG states his only concern is the difference in grade change right now



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between this parcel and the Lapio property.

B. Lord responds it is level.

GG states that a drainage problem could result from not really filling, just regrading.

? states that is what they want to take care of. For the preliminary test for the septic system design, they will be bringing in some material.

GG indicates that the applicant is saying no matter what happens there, they will get the o'kay from the Town Engineer before it goes to construction.

? indicates that is correct. In all probability they will be going in front of the Conservation Commission also.

B. Lord explains that he talked to the Town Engineer about the other situation which developed. Bradford and Van Lumber drainage is going down into his driveway. The Town Engineer pulled the plans out of the Building Inspector's office and he is going to look at it today.

GG is concerned that a change would create a swale and will start sending water back to the neighbor's property as well. The general consensus is that the Town Engineer will review no matter what happens. The Board has not received a response from the Town Engineer regarding the letter which the Board sent explaining the drainage problems from Van Lumber. At the last meeting, the Board had requested they look into the problem.

? states it was looked into last year, just before Moe got sick. They got together with the two brothers from Celtic and their engineer. They were supposed to take care of something.

B. Lord explains there is also a second problem. When they put the water line in, they also raised the road. It is now above Mr. Lapio's driveway which makes it even worse.

Mr. Lapio explains the land was all low land. There was a water catch and when it rained or snowed all that water built up. At one point that water would rise, come right across the road and come into his property. He has a drain line that takes it to the back. They went up over 8' here and they cut the low land. There is just a little retention there now which does not do anything. Bradford is not bad. They have a detention pond which takes the water out of their driveway



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and their parking lot. Van Lumber has their driveway perpendicular to his driveway but no drainage. That water pours out, goes right across the street into his property every time it rains or the snow melts. He understood when they built that the reason they built so high was because they were putting in huge pipes to divert this water to these two detention ponds. But they have no storage in there at all to divert any water anywhere. He does not know why they went so high. They are slab buildings. There are no cellars.

GG states it is the developers responsibility.

Mr. Lapio states the developers were getting together with him and kept promising to do something about the problem, but they never did anything about it. When Celtic was building, they knew there were alot of problems then. They said they were going to take care of it and it would be better, not worse. He even asked them if they wanted to go on his property and trench and lay a line to divert the water. They said they would not have to do that. He gave them that option.

AM asks if there is anything they can do about that now.

GG feels it is now all up to Van Lumber to go after Celtic, not the town.

B. Lord believes the town has a right to enforce it. He suspects that when Van Lumber is pushed a little bit, they will take care of it.

EN indicates they have not answered the letter yet.

GG states this must have had that problem even before Van Lumber occupied.

Mr. Lapio states that when they put their driveway in, it became worse. Then they bermed the driveway and it was even 10 times worse. That is when he saw W. Arcand who sent him down to see Moe. They got together with those guys and they were supposed to take care of it.

GG asks if Mr. Lapio has any objection to this present proposal.

Mr. Lapio is only concerned about the water. If the applicant can build this and divert the water so it is not going on his land, it is fine with him.

GG believes approval should be conditional upon the Town Engineer review prior to construction.



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Mr. Lapio points out the dry and wet portions of his property. He diverts water to the back. If the dry part becomes wet, he is in a circle of water. 2 1/2 acres of wet land does not do him any good.

EN asks if they have an agreement between the applicant and Mr. Lapio in case this problem arises.

B. Lord states that clearly with the Town Engineer looking at it, it will be o'kay.

GG states it will be with the Town Engineer's approval. He would rather see him review it no matter what.

B. Lord suggests the Board make it subject to the Town Engineer's approval.

AM makes a motion to approve the special permit in the water resource district contingent on approval from Makram Megalli's office on the impact from the drainage from Mr. Lapio's property, lot 24.

B. Lord explains that one of the reasons for the detail on the plan because they are also Land Court plans.

EN seconds motion. Vote of 4. EM not present.

B. Lord explains that this lot is also an 81-P lot. The signing of the 81-P has nothing to do with the special permit. They are entitled to the 81-P whether it is buildable or not. The water resource is in addition to this. The plan as presented conforms fully with zoning. All of the lots have the property frontage, they are in compliance. The fact that they may not be buildable is not a problem as far as approving an 81-P. Approval of the 81-P does not make it buildable. It is an indication that the lot is conforming according to zoning.

GG states that even though this is a plan not requiring Planning Board approval, the Building Inspector will probably need it because it is a buildable lot.

B. Lord indicates they still have to go over to Franklin to get their approval. Approval and signing of an 81-P does not make this buildable. They have to have the completion of the water resource.

EN states that this public hearing along with the Town Engineer make these lots buildable.

B. Lord indicates that is correct.



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GG states the special permit is just a rider on the 81-P.

B. Lord points out they are asking for the signature on the 81-P tonight.

EN asks if this was not in the water resource, would this have only been an 81-P.

B. Lord responds that is correct. The reason why they did not come in with the 81-P first is why waste the time if it still had to be approved for the special permit.

EM returns to the meeting.

B. Lord explains these are the same lots for an 81-P. He explains that the special permit has been approved. Obviously there is a waiting period of that but it should not hold this up.

EM asks them to point out the parameters and number of lots.

B. Lord points out Maple Street. There are 4 lots. It is business zoned. They have 125' frontages with 20,000 square feet. They also have 125' with 48,000 square feet.

EM asks if 20,000 is required.

B. Lord responds it is 20,000.

EM states for the minutes that lot 28 and lot 30 have a building on the lot line which is going to be removed as shown on the plan.

EN makes a motion to sign the 81-P. JM seconds. Vote of 5.

307 FARM STREET SITE PLAN

EM reopens the hearing for the site plan review for Farm Street. Anyone who wishes to speak, please state your name for the minutes.

EM states there were questions which were raised last time. The Board received 2 letters from the Town Engineer. The Board sent a letter to the Town Engineer on December 16, 1990 requesting his input. EM reads letter dated January 10, 1990 from the Town Engineer stating that the plans were approved by his office subject to any further comments from the other departments stipulated in Section 1422. Since then he has not received any comments, therefore, tactical approval was considered.



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He forwarded a copy of this communication along with a copy of Section 1422 to the other concerned departments.

EM explains that the Board sent a letter to the Town Engineer asking for his response. The Town Engineer sent a copy of that letter and his response to the other Boards. We do not have anything from any other Boards. We have a letter from a resident on Farm Street.

AM states that since the Town Engineer's letter is dated yesterday, the other Board's would not even have received it yet.

EM is saying it is in compliance from an engineering standpoint. He asks for any other questions from the Board. EM reads letter from the Conservation Commission dated November 11, 1989. The Conservation Commission continued the original notice of intent. The applicant filed a notice of intent and had a hearing on December 13, 1989.

S. Michilutti was here December 14, 1989. She gave the Board a copy of the order.

EM has a copy of the special conditions from the Conservation Commission. EM asks for comments from the neighbors.

Russ Hawley, lives at 306 Farm Street, which is right across from the building. He asks if the Board is stipulating anything as far as noises or anything else. If it is anything like the building on lot 1, near the gas line, that is a travesty of privacy. There is a fence there but unfortunately the spotlights are higher than the fence. He talked to the neighbors up there and they do not feel as though they have the right or the time in town to complain. He asked them what they do about the situation. They have to conform their lifestyle by the building that is there by drawing their blinds at 6:00 or 7:00 p.m. at night. He will not do that. He will not conform his lifestyle by a nonexistent building.

EM asks what he means by a nonexistent building. Is the building there yet?

R. Hawley states it is a foundation only.

EM explains the town has a bylaw which provides protection for the neighbors. Whether or not it is being enforced is the question. There is supposed to be screening. Lights are not supposed to shine out of the line. Spotlights are supposed to shine in the lot, not out of the lot. Parking requirements, loading requirements and screening requirements which are all zoning requirements. If it is not done,



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then there are zoning violations. He understands that there is a problem with that. The problem is that it is not being enforced. The Board will have to send a letter and notify the Zoning Agent that Mr. Hawley was here and voiced his concerns. He questions if he has written to the Zoning Agent or talked to him at all.

AM thinks it is the other neighbors that have the problem now.

R. Hawley states the other neighbors have not complained to the town.

AM states they should speak to the Zoning Agent about the problem.

EM states that Mr. Hawley can not complain until it happens.

Thomas Palli, lives at 310 Farm Street, would like to know how they are at this stage of the site plan when Farm Street is on a scenic road. There have been a number of road cuttings to get to this foundation without a public hearing. They should have come before the Planning Board for a scenic road.

S. Michilutti, on behalf of applicant, Abbey Realty Trust, responds that they did not cut down any trees on the town land.

T. Palli believes the applicant has to prove that to this Board. According to the scenic road bylaw, they have to prove to the Planning Board of the town that they are not going to remove any trees to get into that.

S. Michilutti has pictures. She had the Tree Warden out there. The Tree Warden marked the trees.

T. Palli questions if the Board has a letter from the Tree Warden.

EM states that S. Michilutti has been to the Tree Warden.

S. Michilutti indicates that is correct.

EM indicates that at the last meeting Ms. Michilutti had pictures of the trees marked and circled. He asks if she has anything from the Tree Warden stating that the trees in the public way were not cut.

S. Michilutti does not.

EM states the Board will have to follow up on that.

T. Palli states that on that entire road there is not a 6' spot which



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either belongs to the town under the public shade tree law or belongs to the people of the town under the scenic road law. Before a builder cuts into a piece of property, according to the scenic road bylaw or even the public shade tree law, they have to prove to this Board. For the public shade tree, they have to prove it to the Tree Warden. For the purposes of the scenic road, they have to prove it to the Planning Board. It is not up to this Board to prove that those trees which the applicant is talking about belong to them. It is up to the applicant to prove to the Board that the trees which were cut down belonged to them. The trees are already gone. Who knows whose trees every tree which has been cut for a 1,000 feet on Farm Street which these people have owned.

AM states that Ms. Michilutti is saying the Tree Warden came to look it over.

T. Palli asks if the Tree Warden was there at the cutting.

S. Michilutti responds that the Tree Warden marked the Trees. They did not cut any trees that the Tree Warden marked.

T. Palli indicates that is not the way the scenic road law works. He just wants to make sure the Board knows how that law works. It is not up to the Tree Warden. He is not the enforcer under the scenic road law. The Tree Warden is the enforcer under the public shade tree law.

AM states it is new to her that someone has to come before the Board every time. If there are no trees to be cut, why are they going to come.

T. Palli states the bylaw is 2 years old.

EM explains that everything which takes place on the scenic bylaw, before the trees are cut, they should go to the Tree Warden and asks if there are any trees in the scenic road. The Tree Warden should send a letter to us.

AM states that Mr. Palli is saying that the applicant should come to the Board and say they are going to cut a road but there are no trees in it.

EM indicates that is true. That is part of the Development Plan Review process. If they had come for a site plan before they put in a foundation and before they cut a road in, then we would have been able to tell them.



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T. Palli states the Board is looking at this after the fact. Whether or not they did or did not cut the trees can not be proven because they are already there.

EM states that it is also the case that this new bylaw, Development Plan Review, took effect as this project began.

T. Palli points out that the scenic road law was already in.

EM states the scenic road law was in but the Development Plan was not. Once again the Building Inspector apparently gave a building permit and who knows what other permits without it going through site plan review. The problem is not here.

T. Palli believes that this developer should have been more than well aware of the public shade tree law and the scenic road law because he has been to this Board and every Board in town for every tree which they have cut down up there. For all of the trees which they have cut down, they have paid a bargain. They paid a \$500.00 fine. That is a bargain for any developer in town.

EM points out that the Tree Warden fined them for one tree on one of the other lots. The same situation will be coming up on Maple Street with the golf course. They take tractor trailers and go in and out but they claim they have not cut a tree.

EN states they notified the developer of the golf course that they are supposed to come here.

EM explains that the developer was told they did not have to come to the Planning Board by the Building Inspector. There are still tractor trailers going in and out. They can cut trees on their own land. The question is did they cut any trees to get into their land.

EN questions how they can say that when we have a law which says they must come here.

EM responds that the developer says they did not cut any trees. We can not prove that they did because the tree is no longer there. For anything which takes place on any of the scenic roads, they are supposed to come in first before they cut the trees. Apparently, that is what this developer is saying they did. They had the Tree Warden go out and he marked the trees. He should have sent a letter telling the Board that. The Board is supposed to see that on the development plan. It is the same thing with the golf course. He should have presented his plan first. The Board should be the ones telling him if it is



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alright and when he needs to come in. Instead, he will come in 6 months after it happens. There is a problem with that. He is not sure how it can be addressed. The Board keeps sending letters to the Building Inspector. The Board may have to send a letter to the Board of Selectmen, Town Administrator and the Building Inspector.

AM questions if the developer still has to come if the Building Inspector goes out and tells them are not cutting any trees in the scenic road. She thought they only had to come if they were going to cut trees.

EM states that if it is a field and there are no trees to be cut, then it is o'kay. However, Mr. Palli is saying that there is no place on Farm Street in that area where there are no trees.

AM states that S. Michilutti is saying that she called the Tree Warden and showed him in the area where the road was cut, there were no trees. She questions if that was done prior to cutting in.

S. Michilutti responds that is correct.

AM does not understand why they have to come here if there are no scenic road trees to be cut.

EM responds because that is not what the scenic road law says.

JM questions what happens if they cut a tree.

EN responds there is the scenic road law which states they will be fined \$500.00.

JM states the law says they can not go crazy and cut down a number of trees. Do you think they will tell someone they can not cut a tree and therefore land lock somebody?

EM states the scenic bylaw which was adopted at the Town Meeting says that they have to go to the Planning Board. He was against the scenic road bylaw.

AM states that is if there are trees to be cut. S. Michilutti is saying that no trees were cut.

EM indicates there are trees.

GG explains that if a developer has 100' of frontage and there is one tree, then they have to come before the Planning Board. It does not



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matter where the road is on one side and the tree is on the other. They still have to come before the Board.

AM states that S. Michilutti is saying they did not cut any trees on town land.

S. Michilutti explains they put the driveway where the pavement comes right up against the property line. There is no place to have a tree there.

GG questions where the frontage is.

S. Michilutti points it out on the plan.

GG states that Mr. Palli is saying that within the whole frontage, there had to have been a tree there.

S. Michilutti indicates that is correct. There are a whole bunch of them.

GG states that is what they are saying. If there is one tree, then the bylaw states they have to come before the Planning Board.

S. Michilutti questions if they still would have to come even though they were not cutting any trees.

GG responds that is correct. The trees are in the frontage.

EM explains if the developer had come to the Board and said they wanted to put a driveway in and there may or may not be trees to be cut. The Board would have said that they want the Tree Warden to go out and look at it. Then he would come back to the Board. If he says yes or no, he imagines the Board would go along with it.

EN points out that this was done the other way around.

EM states the correct procedure is for the Board to send the Tree Warden out.

EN states they just want to make sure the right tree is cut.

JM feels the Tree Warden should be able to do this himself.

EN indicates there is a procedure which they must follow for the Tree Warden to do this.



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AM feels they should ask the Tree Warden for some correspondence relative to this.

JM does not know if there was a tree there or not. It is gone now if there was.

EM states this issue is going to come up again at the next meeting on Maple Street.

T. Palli questions if the Board is going to say then that it was o'kay for this developer but it is not o'kay for the Maple Street guy or the golf course guy. These people know better than anybody in town what the scenic road bylaw is. They know exactly what it is. They have cut in 3 roads, but they are saying they never touched a tree.

EN states the Board is not saying they can not do this except there is a procedure to follow. He thinks the procedure is simple.

EM states that even if this was done properly, we do not have anything from the Tree Warden saying they were done right or wrong. The Board should know prior to it being done.

R. Hawley states that the Board said they were going to notify contractors about this new law. They should also include surveyors. When the surveyors were laying the lot line for this particular property, for the sake of moving the tripod 3", they cut down a tree. They took a chainsaw and cut down the tree for 3".

EM questions the size of the tree. There is a certain size which they must not cut.

R. Hawley indicates that the tree is still there. He took a picture of it and sent it to the Tree Warden. He never received a response.

EM states the whole thing is that they received a building permit. The guy that gives the building permit knows what street he is giving a permit on. He is the guy who knows that there is a scenic road there. The Board does not have to notify contractors about where the scenic road is because they go to the Building Inspector's office to get a permit. The Building Inspector is supposed to tell them. That is the problem. That is where everything starts.

R. Hawley questions if that is the same for the surveyor.

EM states that does not refer to the surveyor, but they are not supposed to cut trees.



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T. Palli believes that EM is saying that if the developer had come to the Board with their site plan with the trees up and with no foundation, the Board would have sat down and approved the site plan. They would have cut whatever they had to cut to get in there. They would have built their building and no neighbors would be here because we would have nothing to say.

EM points out the only way that would have happened was if the developer did not get their building permits. They went in and got the building permits and did not have to come here. It is the same thing on Maple Street. We have a golf course going in because the Building Inspector told the guy it was no problem. Now we have neighbors saying you never used to be able to drive trailer trucks in there, but now you can. We have a golf course going in because the Building Inspector told the guy that is no problem. He told him not to worry about coming in until he wants a building permit. It is pretty hard to penalize everybody who comes along unless they do something wrong. If there are zoning violations such as screening and that stuff, then they are wrong.

EN states that ignorance of the law is no excuse. If they violate it, they are liable.

EM states the problem is the town's problem. It is the town's Building Inspector. They can not blame anybody for getting away with anything they can.

GG points out the building down at Cook's Corner definitely had zoning violations. The abutters were here. The developer was brought before the Board. It took awhile but they finally complied with the laws. They do get acted upon.

EM believes the Board recommended no occupancy permits in that case until the zoning violations were addressed. They can do the same thing on this. Technically, the way the bylaw is written, after they build their building, they should not get an occupancy permit until they do the screening and the lighting and all that stuff.

EN believes the fact that they get a building permit, if they know they are doing anything wrong, they are still violating the law. They are not exempt from breaking the law because they have their building permit.

EM states the point being made here tonight is that there are violations and they are not being brought before the Board.



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EN believes the developer is still liable even though they get their building permit.

AM would like to know if the Tree Warden said it was o'kay. He probably would have had to have told the Building Inspector that no trees were to be cut. That is why the developer has a building permit.

EM states that is not the way the bylaw is written. The Tree Warden is supposed to tell the Planning Board that no trees were to be cut. We are supposed to tell him it is o'kay.

AM suggests they ask for correspondence from the Tree Warden.

S. Michilutti points out that there was a 45 day limit on this Development Plan Review.

EM states the Board understands that. They are going to send a letter to the Tree Warden and ask for a response from him. It has nothing to do with tying this up. The Board does have a letter from the Town Engineer saying that this is in compliance.

EN wants to point out that if any developer or contractor knows they are doing something incorrect even if they get a permit, they are violating the law regardless of their permit.

EM states that is only if the laws are being enforced.

EN does not think that is correct.

B. Lord explains that a builder is required to follow the law even if they receive a building permit. The town can not be sued for giving a building permit. It is assumed that if the developer comes in and gets a permit and something is wrong, the developer is at fault. In this case, if there is any easement there, and S. Michilutti explaining their driveway is 2' - 3' off the road, he doubts very much that there were trees there.

EM indicates that was the question - whether the trees were in the road easement. Everything that is here is correct, as long as it is built this way. If it is not built this way, they should not get an occupancy permit. If they do follow the plan and the letter of the law, they should get an occupancy permit.

GG states that this plan is showing a 6' stockade fence. Mr. Hawley said there is one in front of the other building and it is not working.



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EM asks if Mr. Hawley would like to look at the plan.

JM indicates that maybe the developer could put shields on the lights so it does not shine in Mr. Hawley's property.

EN states they can do that with the other lot too.

S. Michilutti points out the foundation which is already there, hay bales.

EM questions where Mr. Hawley's house is. He points out the residential property and Mr. Hawley's property on the plan. S. Michilutti points out the question area. They are not going to be shining any lights.

EM states the plan shows undisturbed vegetation. He asks if those trees are already cut.

S. Michilutti states they are right where the septic system is.

EM points out that prior to this developer buying this, it was all treed.

S. Michilutti indicates all the trees were taken out.

EM explains that even though they are screening the parking area from the road for the other people, they may have to extend the fence to screen the other people.

S. Michilutti states that if it is a problem, they will do that.

EM states that any exterior lighting would have to face towards the building.

GG believes that approval should be conditional upon them putting the fence in.

EM questions why the fence would have to go all the way when all it would have to do is curve. They could just take a couple of sections and put them the other way.

GG states that is fine.

EM asks what the other side is.



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S. Michilutti responds it is wetlands.

EM explains that is also industrial so it does not have to be screened on that side.

EM states that it should reflect in the minutes that if it is necessary to extend the stockade fence or add something on an angle to screen the building from any of the neighbors on the opposite side of the road. Also, any of the exterior lighting will be directed toward the building not away from the building.

GG feels that definite screening should be included.

EM indicates that the town has a bylaw which says that.

GG states that they should screen the building from all existing residential.

S. Michilutti explains there is no way they can screen the whole building. The bylaw says they have to screen the parking area.

EM points out that the parking is not screened unless they put in another section.

S. Michilutti states that is not a problem.

EM states the 6' high stockade fence in front of the parking lot will screen it from these houses but does not do anything for another house. It is not big enough, it should come all the way across.

JM questions what that is going to hide.

EM explains that they do not have to hide the building. The bylaw says they have to screen the parking area.

S. Michilutti states she could stand in any driveway in all of Bellingham and look straight into the site.

T. Palli indicates that she could not see anything if she stood in his driveway.

S. Michilutti states it is impossible to berm everything.

EM states it may need a fence with a gate if that is what it takes to screen it.

S. Michilutti states that if the lighting is shining directly into



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people's houses, then that is not the way it should be done. She will change it.

R. Hawley refers to the pictures of the other lot which he brought in. When they turn the lights on with no trees in front of the building or very little vegetation especially at this time of year, it just shines out.

S. Michilutti responds that the police department requires that lighting ^{for} safety.

EM indicates that the police department also says that the lighting has to be hooded. He states that the engineer draws it one way, but when the guy goes down and puts up the light, he may not put it in the same way. The flood light should be on the pole shining toward the building.

EM states that the fence to continue in a way that it blocks it from all of the residential across the street, particularly the ones on the curve. Also, any lights are to be hooded.

R. Hawley indicates that a 6' fence may not be high enough.

EM states it is high enough to screen the parking. That is all that is required. Anything that is higher than that would require a special permit.

GG states the screening has nothing to do with the lights. If you have the lights on a pole shining inward. It is a lot different from having the lights shine out.

T. Palli questions why the developer did not put a road on an angle like across from his house which could have had a berm which could have blocked it and settled this. Now the Board is dealing with this after the fact. It is already there. They already cut a road in. Now this Board is bending over backwards trying to screen something which could have been done the first time through.

EM states they are screening the parking area and not the road or the entrance.

GG states that this road would not have worked coming in on an angle. It has to come in perpendicular.

EM indicates it would not have been approvable. The driveways are supposed to be in the legal area.



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T. Palli wrote a letter in August. The Board has the reply to it. There is nothing in there that mentions any type of zoning. R. Hawley wants to make sure that this does not turn out to be what we consider to be the two nightmares up the street.

EM questions what he is referring to.

T. Palli states there are already buildings on one and two.

EM questions when they had site plans.

T. Palli responds that they did not have to. That is why they are not being discussed. That is why there are zoning violations.

EM asks if they have occupancy permits.

T. Palli responds they do.

EM asks how they can have occupancy permits if they have zoning violations.

T. Palli does not know. He asked the Building Inspector if there was an on-site. The only thing he found out from the Building Inspector and the Zoning Agent is who issued the building permits and who issued the occupancy permits. They do not tell him anything else which happened in between. They did not tell him if there was an on-site. He did not get any answers to any of the violations on those properties.

EM did not realize that there were two buildings up there. He thought this was the last one on the way up the street.

T. Palli explains the reason they are concerned ^{about} the lot is because it is a nonconforming lot. Once this building is built, it is built to stay there. They want to see it done right now.

EM states that none of these buildings will be able to have additions. He does not know why anybody would buy one knowing that it is a pre-existing nonconforming use.

T. Palli also wants to point out that they do have another road. He does not know if it is a construction road. He wants to make sure it is gone. They cut a road in which they use to go from one lot to another.



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EM questions if these lots are being sold.

S. Michilutti responds they are.

EM indicates that would do away with any connection roads.

T. Palli does not believe that selling the lots would do away with any existing roads. The first building has a usable road which goes from their building to the gas line which they use daily. They are going from an industrial lot to an agricultural lot.

EM states that the Board is ready to act on the site plan which is in front of them now.

T. Palli wants to make sure that an on-site inspection is done. The occupancy permit should be granted after there is an on-site inspection and after it conforms to the zoning bylaw.

EM states the occupancy permit should not be granted until after the zoning issues are addressed. That is the way the laws are written. They are just not being followed.

EM asks for a motion for this site plan. It is in compliance.

AM makes a motion.

EN indicates they have to make some restrictions.

EM states it is reflected in the minutes that the fence will be extended on the parking area and curbed so that it screens all of the residential houses across the streets. Any exterior lighting will be directed into the lot and not away. They should just have a note saying that this lot must meet all zoning requirements before an occupancy permit is issued.

EN thinks the motion should reflect that and also that there should be an on-site.

EM states there should always be an on-site inspection before an occupancy permit is issued. He assumes that is the way it is done.

EN wants to make that part of the motion.

S. Michilutti states the Zoning Inspector usually goes out there.

EM states that apparently he has not. He asks if they have occupancy



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permits for the other two buildings.

S. Michilutti responds they do. The Zoning Inspector went out there and did his inspections.

EM points out that those buildings are not in compliance.

EN states there are more things to look at. They have to be aware of the laws to make sure they are in compliance.

EM states the motion should be to approve the site plan but the occupancy permit should not be issued until an on-site inspection is done to be sure the site is in compliance with the zoning bylaw.

AM does not know if that is necessary.

EM believes that is is.

T. Palli states it is necessary because he can prove than an on-site inspection was not done on buildings one and two.

AM states that should be done without the Board saying it. She makes a motion to approve.

EN seconds motion. Vote of 5 to approve the site plan.

AM states there should be some follow up from the Tree Warden.

T. Palli indicates the Tree Warden notified the Building Inspector for work stoppage August 30, 1989.

AM questions if that was on this particular lot.

S. Michilutti indicates they did stop work. That is why they are here.

T. Palli states that is why they went to the Conservation Commission.

Members sign site plan.

EM states the Board received a letter from the Town Engineer regarding William Way. That will come up at a later time. It says there have been letters sent back and forth between D. Troast, the engineer and the Town Engineer. M. Megalli is supposed to meet with Clark's engineer. M. Megalli is suggesting that an on-site visit may be necessary.



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AM thinks that all members of the Board should be involved. She thinks that all members should go to the on-site visit.

EM agrees. He also thinks it should be on a Saturday, not a Thursday when someone may not be able to make it. This is if an on-site visit is necessary. The meeting between the Town Engineer and Clark's Engineer is scheduled for Thursday, January 18, 1990 at 10:00 a.m. They may make an on-site visit.

EN has to work and will not be able to make it.

EM believes that whether the Board makes that on-site visit or not, they can rely on the Town Engineer. For whoever wants to attend that meeting, it is open.

ROWE SPECIAL PERMIT FOR BACKLOT CONVERSION

EM discusses the decision for the Rowe special permit for a backlot conversion.

GG states the Board's only condition was that only a single family unit be built.

EM states there was another condition - subject to Conservation Commission approval. L. Ambler said that had to be removed.

GG makes a motion to sign the special permit decision. EN seconds. Vote of 4.

EM indicates the applicant appeared before the Conservation Commission last night. He found out after the Board's meeting that Rowe had hired a botanist to flag everything. Rowe mailed everything to the Conservation Commission but the post office stamped it in red and mailed it back to him because no one signed for the registered letters.

GENERAL

EM reads letter from the Finance Committee regarding unaccepted streets. It states that at the meeting of December 20, 1989, the FINCOM was informed that the town plows roads which have not yet been accepted at Town Meeting. They have also been informed that this is a big expense to the town. Considering the town's fiscal problems, the FINCOM believes that if the town is to continue to plow these unaccepted, incomplete roads, the the contractor should be charged a fee. This could be done by continuing to plow the roads and send the



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contractor a bill. If the contractor refuses or does not pay the bill, then the town could deduct the cost from the contractor's bond. If the contractor does not want to pay the town, then the contractor could plow the roads. This procedure would continue only until the roads are voted upon and accepted at a Town Meeting. If this is feasible, this should be started in January 1990 since the town also has fiscal problems for this year. EM states they can not deduct it from the bond. That bond is to make the road, not to plow the road.

AM points out that her subdivision, for instance, is 2/3 occupied. They are all taxpayers.

EM states that is the other issue. Those people are paying property taxes for police and fire protection. If the road is not plowed, supposedly a fire truck can not get in there. EM plowed for the town for 20 years. He plowed many unaccepted streets if there was a house on it.

AM also points out that she is paying taxes on her raw land. Why shouldn't they plow it? They have it assessed high enough.

EM explains that the law says the town does not have to maintain them. He does not know to what degree.

AM states the town does maintain them. She frequently does her own road because they are earlier than the town. The only problem with the town not plowing is if the developer does not get to it for some reason. 2/3 of the street is completed. The town can not penalize her because she has not finished her development with today's market.

EM states it is not only that issue. If the road is icy and needs sanding. There are 15 houses on that road.

AM indicates that she pays taxes on the road as well.

EM believes that the FINCOM is reaching in every corner which is their job.

EN thinks they should be clearing this with Town Counsel first before sending letters like this.

EM points out that the FINCOM did not even send a letter to the Highway Dept. and they are the ones involved. There is no way the money can be taken from a bond. He does not know what the answer is.

EN states the answer is the developer has to plow it.



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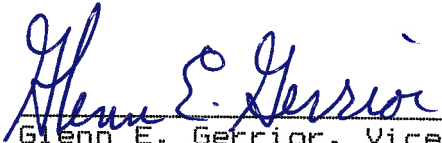
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AM reiterates that she is paying taxes too.


JM lives on a street which is not an accepted street. It is being taken care of.

Meeting adjourned at 9:50 p.m.


Edward T. Moore, Chairman



Glenn E. Gerrior, Vice-Chairman



Emile W. Niedzwiadek



Anne M. Morse

John F. Murray