



# BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

GLENN E. GERRIOR, CHAIRMAN  
EDWARD T. MOORE, VICE CHAIRMAN  
EMILE W. NIEDZWIADK  
ANNE M. MORSE  
JOHN P. MURRAY

## MINUTES OF REGULAR MEETING

January <sup>16</sup>~~24~~, 1991

Meeting was called to order at 8:44 p.m. All members were present.

### GENERAL

GG states that Attorney Bruce Lord is here to present a copy of the revised plan for Riverview Park, Phase 4. He reads letter from Bruce Lord dated January 10, 1991 requesting a continuance for Lakeview Estates from January 24, 1991 to June 27, 1991 with an extension to July 15, 1991. Attorney Lord has also presented continuances for Riverview Park, Phases 1, 2, 3, and 5 which are also scheduled for the next meeting. The Board will act on these at the next meeting. They are public hearings which have been continued to January 24, 1991. The Board will sign the decision for Riverview Park, Phase 4 at the next meeting. They are waiting for a revised decision from Lee Ambler. The final draft will be here at the next meeting.

B. Lord is presenting the requests for continuances and extensions tonight to give the Board notice.

EM points out that the public hearings still have to be on the agenda.

B. Lord asks if the Board has any objection to the continuances. He asks if he should have Fafard people at the next meeting.

EM states that the Board will talk about it at the next meeting.

B. Lord points out that Lakeview Estates subdivision is approvable with revisions on the plans. Fafard is trying to do all the work inside. They are no longer using outside help and it is taking a little longer to get the revisions done.

### SILVER HEIGHTS

#### DISCUSSION RE: STREET ACCEPTANCE

#### BRION ROAD



# BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 2

January 24, 1991

GG states that Abram Rosenfeld is here to request street acceptance for Brion Road. A public hearing is scheduled before the Board of Selectmen on January 14, 1991.

Clerk reads letter from the Highway Superintendent, dated September 10, 1990 indicating that Brion Road had been inspected and said road meets and satisfies all Planning Board prerequisites in compliance for street acceptance by the Board and the Bellingham Town Meeting.

EM makes a motion to recommend street acceptance for Brion Road. AM seconds motion. Vote of 4.

EM signs letter recommending street acceptance for Brion Road.

GG reads and signs letter recommending the Scenic Road By-Law for the January 23, 1991 Town Meeting.

## PERFORMANCE BOND DISCUSSION

### SILVER HEIGHTS

### BALD HILL ESTATES

### ELM ESTATES

### BEECHWOOD

GG states that at the last meeting the Board decided to send letters to the 4 subdivision developers who no longer have road bonds in place. The letters were sent to Silver Heights, Bald Hill Estates, Elm Estates and Beechwood requesting that bonds be posted for the lots which have building permits and covenants be put in place for the remaining lots. The Board was promised some type of security for 2 of the developments who had building permits issued. So far, only one developer has posted bond for the lot for which he has a building permit.

### Silver Heights

A. Rosenfeld presents a Letter of Credit from Milford National Bank in the amount of \$31,171 which covers Florence Street of the Silver Heights development.

EM makes a motion to accept Letter of Credit Number 134 from Milford National Bank, dated January 10, 1991 in the amount of \$31,171. AM seconds motion. Vote of 5.

### Bald Hill Estates

GG reads letter from Town Treasurer, dated January 8, 1991 indicating that Mr. Bixby, developer of Bald Hill Estates has put on deposit



# BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 3

January 24, 1991

\$7,000 escrow for Lot 3 at Ben Franklin Savings Bank. He requests that future accounts to be held on deposit be all located at that bank as it is done to protect the town. Too many accounts are spread around. If anyone has a problem with this, he requests that they post bond.

JM feels there is a problem with developers who do business with a different bank trying to get a bond from Ben Franklin. The other problem is if there is more than \$100,000 in a passbook. Developers will want to get the bond for the road from the bank they are dealing with for their loan.

GG thinks that Town Treasurer is talking about the escrow accounts right now.

JM states they would have to look into what happens if the amount of the bond exceeds \$100,000.

AM does not think that will happen for awhile.

JM states that Mr. Bixby will put in \$7,000 every time he sells a lot.

GG instructs Clerk to send a letter to Mr. Bixby indicating that the covenant is missing. According to P. Herr, the money which is now in the account is in the hands of the town. A letter should be sent to Mr. Bixby indicating that no future permits will be issued unless a covenant is put in place for the remaining lots.

EM reads letter from the Planning Board to Mr. Bixby, dated December 22, 1990 which asks him to present a new covenant and a passbook for \$7,000 at the meeting of January 10, 1991 at 8:30 p.m. If the covenant and security for Lot #3 is not presented at this meeting, the Board has voted to take steps to rescind Definitive Subdivision approval for Bald Hill Estates. The Board will immediately advertise for a public hearing to rescind this subdivision. EM thinks that the letter was not clear enough. Maybe the developer did not know that he had to come in with a covenant tonight. The new letter should state that he has to come in with a covenant and security for the remainder of the lots. There are 9 additional lots other than the one which the developer has a building permit for. He should come in with the covenant and security for these lots by the next meeting or at the next meeting the Board will move to schedule a public hearing to rescind the subdivision.

GG states that the Town Treasurer did receive the \$7,000 payment. The covenant is needed for the 9 remaining lots.



# BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 4

January 24, 1991

EM makes a motion to send this letter to Mr. Bixby because he did not come with a covenant for the other 9 lots. If he does not come in to the next meeting with a covenant or security, the Board will take action to rescind the subdivision.

EN thinks they should give the developer the benefit of the doubt. The town did get the security. He thinks the letter should state that if the covenant or sufficient security is not presented by January 24, 1991, the Board has voted to take steps to rescind the subdivision.

EM states that the letter should also note that this is the second notice. The Board will acknowledge receipt of the \$7,000.

EN seconds EM's motion to send letter. Vote of 5.

GG states that the Town Treasurer wants all passbooks to go to Ben Franklin. He asked that the Board vote on this.

AM states that the Board can request it but they can not demand it .

JM thinks it makes it look like they are in cahoots with the bank.

AM states that the Town Treasurer does not like to withdraw the money on his own so there will be no question of what he took. He wants the contractor to go to the bank with him to withdraw the money. He called them up to go to the bank to withdraw the money for their development.

Mr. Roger Bixby, developer Bald Hill Estates enters the discussion at 8:30 p.m.

EM states it is convenient for the Town Treasurer to have deposits in Ben Franklin. However, different developers work with different banks. The Board can not tell them to use Ben Franklin.

R. Bixby indicates that he has no problem with it personally.

GG points out that Mr. Bixby only put in \$7,000. He wonders if Mr. Bixby would feel the same if it were a large amount.

R. Bixby states that the Town Treasurer told him he is tired of running all over the state. He could always do it by mail, but he wants to be there physically.

EM asks Mr. Bixby what he is going to do about the other 9 lots. The Board is looking for a covenant.



# BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 5

January 24, 1991

R. Bixby questions what a covenant will accomplish.

AM states that he would have to post bond before release of another lot.

GG states that Mr. Bixby received a building permit 7 days prior to coming before the Board with the agreement to put up \$7,000 for the release of lot 3.

R. Bixby points out that was not his doing. The permit was not in his name. He had no knowledge of it and did not know what was going on.

EM states that according to P. Herr and Town Counsel other towns are putting covenants back in place.

R. Bixby states that the FDIC closed his checking account that he had at Home National Bank, took all the money and put it toward his loan. He has no money to hire a lawyer to prepare another covenant. He is living off his savings. He asks if they can just use the original covenant and eliminate the lots which he already sold.

EM asks which lots are to be deleted.

R. Bixby will tell the Board which lots are to be eliminated. There were 17 all together. The lots to be eliminated are 3, 4, 6, 7, 8, 9, 11, 17 and 18. There is no lot 1. Lot 4 has no building on it.

GG states that means he sold off 9 lots. Out of 10 lots, one is unbuildable and there is no lot 1.

R. Bixby states that the lots on the subdivision plan start at 2 and goes to 18. Lot 1 is a conservation lot.

GG states there should be 9 more building permits to be issued.

R. Bixby states there is no building permit for lot 4. He sold it but it has not been built on.

GG asks if they could include 4 in the covenant.

AM indicates that they can not covenant someone else's lot. It has been sold.

GG suggests the Board send a letter to Town Counsel asking him to do the covenant.



# BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 6

January 24, 1991

R. Bixby states they can ask him to rerecord the old covenant and eliminate the lots from the old covenant.

EM points out that if Mr. Bixby sells a lot he will have to come in with \$7,000 for the release of a lot to obtain a building permit.

GG states they should ask Town Counsel for a response by January 24, 1991.

R. Bixby explains that he has a person interested in buying another lot but has a problem with the FDIC. The person who was assigned to his case is out closing banks in Boston. He has no response from the FDIC. Everytime the guy gets back, he gets shipped out again. He will not leave a number where he can get back to him.

EN states that if Mr. Bixby does not want to put in a new covenant, they can rescind the permits.

AM indicates that they would have to rescind the subdivision.

Roger Gagnon, Elm Estates, suggests they use the old covenant.

R. Bixby indicates that he does not have the money to hire a lawyer to do the covenant. When he sells a lot, \$7,000 goes into escrow and he pays his taxes. After that, the FDIC takes every penny. Everyone is trying to get this finished up and on the tax roll. He asks Clerk if she has received a response from Town Counsel relative to the bond which the town is holding for Rolling Hills.

Clerk responds that Town Counsel has not responded. He is looking into it because Rolling Hills is in litigation. Also he is researching whether or not the town can apply that bond to this development.

R. Bixby indicates that if he had the money he would use it to hire a lawyer to prepare the covenant.

AM does not see how they can legally transfer the money.

GG states they are all trying to come up with a workable solution. He schedules Bald Hill Estates for further discussion for the next meeting on January 24, 1991 at 8:00 p.m.

## Elm Estates

Roger Gagnon, developer, states that the FDIC called him and asked him if he had a preference on which bank he wanted the escrow account in.



## BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 7

January 24, 1991

They called this morning and asked him who they should talk to about accepting the book. He told them to talk with Town Treasurer.

AM asks if it will be an actual cash book.

R. Gagnon responds that it will. He states that the Building Inspector called the FDIC to ask about the bond.

EM states that the letter which Mr. Gagnon brought in from the FDIC did exactly what he thought it would - nothing. It said they would do something but they have not.

R. Gagnon indicates that when he has his closings he will have to put \$7400 in an escrow account. He can not pass until he does that.

AM states that Town Treasurer filed a Municipal lien.

R. Gagnon will have to pay off the \$7400 or \$35,000 before he can pass. He is closing on two lots at \$3700 for each.

EM indicates that the \$35,000 will cover the road bond with no covenant. Without that, they will need a covenant for the remaining lots. They will release each lot individually. He can not believe the FDIC is going to give him \$35,000.

R. Gagnon points out that the FDIC is taking \$50,000 of each lot released.

GG asks if everything will be all set by the next meeting.

R. Gagnon indicates that it should be. He is ready to close on 2 lots.

EM questions how Mr. Gagnon pushed the FDIC to move on this.

R. Gagnon responds that he goes right to the FDIC to talk to the guy in charge of his case. He had the same bank as Mr. Bixby - Home National Bank. His commercial loan officer from the bank is now working for the FDIC so he is dealing with the same guy as before. They closed his construction account.

GG schedules Mr. Gagnon to return to the next meeting on January 24, 1991 at 8:30 p.m. with \$7400 and a covenant for the remaining lots or \$35,000 in a passbook or the Board will take action to rescind the subdivision.

EN indicates the Board will need \$35,000 on a passbook.



# BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 8

January 24, 1991

AM points out they will still need a covenant for the other lots.

R. Gagnon understands that he will have to present \$7400 and a covenant for the other lots. He will not get clear title and can not pass if he does not do that.

## Beechwood

GG reads letter from Sally Dmytryck, Trustee of Onallam Realty Trust, dated December 31, 1990 regarding Beechwood Estates. The letter indicates that she is unable to attend the discussion relative to the bond for Beechwood on January 10. She further indicates that she no longer owns any of the lots at the Beechwood subdivision and, therefore does not believe she has any authority to sign a new covenant. She asks that the Board clarify the type of security which will be accepted.

EM thinks that she probably sold the lots to her other companies.

EN thinks the town can still rescind the permits.

AM states they can not because the developer does not own the lots.

GG suggests a copy of this letter be sent to Town Counsel and P. Herr. They should be asked to determine how the Board should handle this situation since all the lots have been sold. A response should be received by the next meeting. Afterwards, the Board can ask Mrs. Dmytryck to appear before the Board. There will be at least a one month interim.

EM does not think she can come up with a Letter of Credit. Town Counsel and P. Herr should be asked for their opinion on how to handle this since the lots are sold.

## GENERAL

GG reads first paragraph of a letter from the Building Inspector dated January 10, 1991 regarding the Farm Street Industrial sites. He is enclosing a copy of his findings on the Farm Street industrial sites. He requests that he be placed on the Board's agenda to publically address the concerns which Mr. Palli raised at a meeting in the fall. He asks that Mr. Palli be invited to the meeting so the concerns can be formally addressed to see if he is satisfied with the results. He found that 311 Farm Street was quite a mess for research and confusing at times. GG will not be here at 2 meetings in February 1991.





## BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 9

January 24, 1991

EM indicates that the building across from Palli is fine. It's the ones up the street that are a problem.

GG thinks it would be better to discuss this when P. Herr is here. The Building Inspector also wants Selectmen Tony Mazzola here and Mr. Palli here. If there are questions, P. Herr may be able to answer them. He suggests the Board schedule this discussion for the next meeting on January 24, 1991 at 8:45 p.m. A copy of the report should be sent to P. Herr and letters should be sent to Selectmen Mazzola, Mr. Palli and the Building inspector notifying them of the meeting and requesting their presence at the meeting. He will ask the Building Inspector to send Selectmen Mazzola and Mr. Palli a copy of his letter. The Building inspector did say that he only found one zoning violation. He did find a problem with trailers sitting out there on the lot line between 2 lots.

EM states that Sylvie (their engineer) came in and talked about extending the fence and said there would be no problem, but they have not done that either.

JM points out that a copy of the Building Inspector's letter already went to the Board of Selectmen, Tony Mazzola and Mr. Palli.

GG indicates that he also included a copy for the Board to send to P. Herr.

EN refers to the last page of the report where it states that the increase of 10 to 20 spaces before site plan approval before the Planning Board was a mistake.

GG believes that the Building Inspector means that it should have been kept at 10 spaces so they would have to come before the Board.

EM states that at some point in time it was 10 and then it was increased to 20 spaces. All of these buildings which had 19 spaces did not come before the Board.

GG states that it is the Building Inspector's opinion that it was a mistake to go from 10 to 20 spaces.

EM points out that even the buildings which did come before the Board did not get done as they were supposed to be done, but the permits were issued anyway. He feels that the issue was always screening and trees. The developer got the permit by default. It set off a chain of events. He felt as if he could do whatever he wanted.



## BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 10

January 24, 1991

GG reads letter from Town Counsel, dated January 10, 1991 relative to the decision for Riverview Park - Phase 4. He has concerns dealing with the provision 1b concerning the earthen berm being provided between Maple Street and any parking or buildings erected on lots abutting Maple Street. He is specifically concerned with the possibilities of intervening yet miniscule lots which will by definition exclude the requirement as the buildings are not erected on lots which abutt Maple Street. It may be advisable to deal with a distance requirement in lieu of the requirement contained therein. Provision 1d. are contemplative and should either be specifically spelled out or deleted. Paragraph 3a, b and c deal with the fee structure for the widening of Maple Street. He states that his overall concerns with regard to a phase by phase approval is that we never deal with the overall impact of traffic generated by the entire project. Further, the formula which is based upon square foot gross floor area does not incorporate all traffic usages and specific reference should be made to the use contemplated by the Fortune 500 proposal for the sale of cars and an auto auction. There is a tremendous generation of traffic contemplated by that use which would not fall within the scope of this formula. He stresses the necessity of contemplating the entire picture of the various phases of Riverview Park as opposed to each being decided on an isolated basis without consideration to the subsequent approvals of future phases.

AM questions if Town Counsel is trying to discourage approval.

GG responds that he indicated that the decision should be a little more crisp.

EM points out that the formula which was worked out uses the square footage of the building. Maybe a different formula should be used. The auto auction facility will generate the most traffic. The fee structure was set up the wrong way.

JM is familiar with car auctions. He does not see them as bad.

EN makes a motion to accept the minutes of December 20, 1990 with a note to insert the word not on page 8 where it says "EN thinks it will (not) stay as a contractor's yard." EM seconds motion. Vote of 5.

GG reads letter from the Building Inspector to Selectmen Betty Lowry regarding Crestview Commons dated December 20, 1990 wherein he explains the status of the case of Town of Bellingham vs. Oakview Realty Trust. The Judge determined that Oakview Realty Trust was not in contempt on October 25, 1990 because of the July 12, 1990 Order stating that when



## BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

MINUTES OF REGULAR MEETING

page 11

January 24, 1991

the FDIC released monies they will perform all the necessary work to secure the buildings. Judge Martin voiced his opinion that "Substantial progress must be made by November 29, or he would hold them in contempt. On November 29, 1990, I requested that Building #3 be secured on the lower floors to prevent anyone from entering the building. The Judge requested that we both get together and settle it between ourselves. If it was not successful, he would hear the case again."

GG instructs Clerk to prepare motion for the Scenic Road By-Law which is on the warrant for the Town Meeting of January 23, 1991. He reads letter from the Town Engineer, dated January 8, 1991 relative to the Water Resource District revisions to the zoning bylaw. He has reviewed the proposed amendment and found no objection. He reads letter from the Highway Dept., dated December 18, 1990 indicating that the final paving of the roadway at the end of Pickering Avenue (Extended) was inspected. It is in compliance with town regulations and is submitted to the Planning Board for street acceptance. GG notes that this is the Oak Knoll Development.

Bills/Correspondence.

AM makes a motion to adjourn at 9:45 p.m. EM seconds motion. Vote of 5.

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Glenn E. Gerrior, Chairman

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Edward T. Moore, Vice-Chairman

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Emile W. Niedzwadek

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Anne M. Morse

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John P. Murray