



BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

EDWARD T. MOORE, CHAIRMAN
ANNE M. MORSE, VICE CHAIRMAN
EMILE W. NIEDZWIADK
GLENN E. GERRIOR
ROLAND R. LAPRADE

MINUTES OF REGULAR MEETING

MAY 27, 1993

Meeting was called to order at 7:45 p.m. All members except EN were present. Board's consultant, Philip B. Herr, was also present.

GENERAL BUSINESS

Members sign letter to the Registry of Deeds recording new member Roland LaPrade's signature as a full member of the Board and removing former Associate Member Norman McLinden's signature from the Registry.

KATHY DUFRESNE

DISCUSSION RE: POSSIBLE BACKLOT SPECIAL PERMIT

EM explains to P. Herr that this is not a submission yet. The Board looked at the plan last week at which time the Board had questions. There is an existing house with no frontage with a right of way. The lot in front also has a house on it. The question is if it is possible to create a third lot in the back. The house marked number 7 has no frontage.

GG notes that this is an existing lot which belonged to the owner's mother and father. It was deeded to Mr. Darling, their son. The deed says that there is a right of way to the parcel.

P. Herr states that number 7 is one lot. Everything else is one lot.

EM states that the question is whether it is contiguous because it is in the same ownership.

GG notes that it was deeded with the right of way. There is no frontage.

EM points out that if the owner wanted to sell, they would never get a mortgage without applying for a variance first.

RL states that it is a legal thing.



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EM reiterates that if they wanted to sell the property, they would have to apply for a variance first.

AM does not believe that is the case because the situation is pre-existing.

EM states that it would be pre-existing if it was owned by someone else and therefore not contiguous.

K. Dufresne believes that is just for the front.

P. Herr asks if lot 7 is in the same ownership as lot 6.

Mr. Darling, the landowner, states that it is. He owns the whole thing.

GG asks if he rents the front house out.

Mr. Darling responds that he does.

EM asks if the total frontage is 200'.

Mr. Darling responds that it is.

K. Dufresne explains that her father has two separate deeds. He lives in lot 7. There is one deed for lot 6 and another deed for lot 7.

Mr. Darling explains that his mother was the only heir. She gave him the back half and then he got the rest of it when his grandfather died.

GG asks if the landowner is paying two separate tax bills.

Mr. Darling responds that he is. It is taxed as a separate lot now. They want to make one of the lots bigger so they are taking more property away from the other.

RL notes that there is nothing on the plan about the right of way.

P. Herr explains that one way to do this would be to deed either lot 6 or 7 to someone else and then the land would not be in contiguous ownership. Then they could apply for a backlot



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special permit creating a new lot. If the special permit is granted, they could divide lot 6 into two parts. They would have to come in a third time to reduce lot 6 by adding lot 7.

EM asks if they would have to go to the Zoning Board of Appeals.

P. Herr responds in the negative because they still have enough area. They have two times the size. They could do it in three steps. Nothing but bureaucracy is keeping them from doing it all in one step.

GG states that since they receive a separate tax bill now and it became contiguous because of inheritance, it is not combined ownership because it is recognized as two separate tax bills.

EM talked with Attorney Ambler about this situation. He said there is no frontage in the backlot.

P. Herr states that it already exists. They are not transferring ownership on that one. What they are proposing to do is what the spirit of the law intends. They can apply for a backlot subdivision. There is some risk that they will go through with it and someone will do a title search and find that it is improper.

EM notes that if that happens it will set them back two years.

GG points out that the ownership of the land has been in the family for 4 generations.

EM states that they may have a problem after they build the house and go for a mortgage.

P. Herr notes that the new lot frontage should not be a problem.

EM states that maybe they should not have the extra lines on the plan when they come in for the meeting.

GG indicates that they will have to show what exists.

P. Herr states that if they increase lot 7 they will lose the grandfathering rights.

K. Dufresne states that she read the zoning book and notes that



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it adds existing lot as long as they are not increasing the nonconformity.

P. Herr indicates that is correct. The question tonight is whether or not they can properly seek a backlot special permit. It seems that they can.

RL states that to be safe they should do the 3 steps.

EM does not think that it would matter.

AM points out that they might want to talk to the neighbors to get their reaction.

K. Dufresne already did that.

GG states that abutter to abutter would have to be notified of the public hearing but anyone can come.

EM is only concerned with the lot which they are dealing with. They do not have to consider the other one.

P. Herr thinks that is right. They may not want to show that lot 7 is included at this time.

EM notes that they can do it with an 81-P later on.

P. Herr states that is correct, for a matter of clarity.

GG states that if they do not put the addition on now, once they get the special permit, they will have to come back in with an 81-P.

P. Herr indicates that this is a matter for the applicant and the neighbors to be clear about what is to be done. They should have a nice clear drawing which shows what is going on. The house and other house exists and the lot exists so people can visualize the situation.

K. Dufresne explains that her engineer drew this up to show the Planning Board. He is waiting for her o'kay before doing the surveying.

P. Herr does not see any reason why they can not do this.



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K. Dufresne asks about the bank. Why wouldn't they be able to do the title?

GG responds that because she would be applying for a mortgage, the bank would want to make sure that she owns the property.

K. Dufresne asks when they would do the 81-P.

P. Herr responds that they could come into the next meeting after the special permit is approved.

GG asks who her engineer is.

K. Dufresne responds that it is Norbert Therien from National Land Surveyors. She asks Clerk to mail her copies of the special permit application to Kathy Dufresne, 30 Pine Swamp Rd., Cumberland, RI 02864.

Clerk explains special permit submittal procedure of two copies of application, two copies of the certified abutters list, 8 copies of the plan for distribution to town officials and a \$50.00 fee. Applicant is also responsible for the certified abutters mailing fee as well as direct billing from the two newspapers for publication of the Notice of Public Hearing.

PINE MEADOW HOMES

DISCUSSION RE: PERFORMANCE BOND

Harland Smith, Attorney, represents Mr. DePrado, owner of the property.

AM abstains from the discussion because she has done business with Mr. DePrado.

H. Smith sent letters to the Board members relative to trying to do a road bond on this project. He also ran their proposal by Town Counsel who said that he had no problem with it from a legal prospective. W. Arcand, the Highway Director, said that it was o'kay also. The cost of the road is \$80,000. They have had bids for \$81,420 and \$74,350. The proposal complies with the provision for the bond. The idea is that the town will get something of value which will become the town's if the road is not completed. In the past, the Board accepted deposit accounts and surety bonds for performance bonds. Mr. DePrado has a piece



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of land worth \$400,000 appraised and unencumbered which he is willing to put up. The land is free and clear. They propose giving the town the first mortgage on the land. They expect completion of the road within 90 days at which time the town will release the mortgage.

GG points out that once the road is done and the 90 days have passed, what happens when construction starts and the heavy trucks damage the finished road?

H. Smith responds that when he says done in 90 days, he means it will be done with a base coat.

EM asks if he or the Board has anything in writing from Town Counsel.

H. Smith does not but Town Counsel did say that he has no problem with it from a legal standpoint.

EM talked with Town Counsel. He is not in favor of using real estate for collateral at all. The town would have to have the land appraised and a title search would be done. It is not a good practice for the town to get into the real estate business.

H. Smith notes that they have appraisals.

EM states that they are Mr. DePrado's appraisals. The town would have to have its own. This is a precedent setting thing.

H. Smith points out that they are not proposing using a piece of land in the project. However, the piece of land is within town lines. The assessment is different from the appraisal but the Board could look at the town's assessment of the land. They could then come up with a formula which would give the town adequate security. The property is five times the value of the road. The town could protect itself by using a formula. They would get all screwed up if they were proposing to use a piece of property within the project but that is not what they are proposing.

EM states that the town prefers a cash deposit for the bond. If the bank fails the money is still in the town's name.

P. Herr states that there are other means of security. He does



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not understand why they need to do this.

EM indicates that they want to be able to convey lots.

H. Smith states that they want to be able to put houses on the lots and that is why they want to supply the performance bond.

P. Herr points out that the Town Treasurer has to sign off on the performance bond. He is very skeptical about whether or not she will do that because of things which have happened in the past. This is not a very large deposit as developments go. He asks why they do not take that piece of property which they are proposing to put up for the bond and generate it into liquid form.

H. Smith responds that one of the reasons they do not do that is because of the closing costs and the other is the fact that the bank does not give the money up front.

P. Herr asks what happens if the town did accept the land as a performance bond and the developer did not perform.

H. Smith responds that there are 4 forms of foreclosure available. One of them would allow the town to have an auction sale within 3 weeks.

EM does not think that is the case with this development.

H. Smith notes that the other form is a tax title. It is different and there are more steps involved.

EM asks what Pine Meadow brought at the auction.

F. DePrado, owner, states that he paid \$50,000. The ratio was low.

EM notes that this is something which Town Counsel and Town Treasurer have to o'kay before the Board could do anything.

P. Herr is troubled that a piece of real estate is the best plan. Town Treasurer and Town Counsel are the ones with the expertise.

EM questions how the Board could keep someone else from doing the same thing which this developer wants to do. How would they keep one from putting up one of their own lots? What makes this



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different from someone else?

H. Smith responds that the Board could make a ruling on the assessment value ratio with a 90 day completion schedule and the threat of the 3 week foreclosure auction.

P. Herr notes that he had experience with someone who owed him money with the same situation. It took two years before he got anything. If the developer could get Town Treasurer and Town Counsel to approve this, then the Board could accept it.

EM has other questions pertaining to the estimate. The Highway Dept. usually supplies a letter stating that they have reviewed the estimate and the amount of work involved, and the estimate is adequate to cover that.

P. Herr notes that they would need an as-built plan and the bounds set. That should also be on the estimate.

GG points out that one of the estimates does not include the finish coat. The sidewalks, seeding and loaming are also part of that. The estimate is probably actually \$100,000.

P. Herr also states that they have to get a sign off from the Planning Board on the amount which would be increased 15% for the amount of inflation.

GG thinks that it will be over \$100,000 when they are done with everything.

P. Herr believes that it will be a number more than \$80,000.

H. Smith states that it is unlikely that the real estate market will drop within 90 days.

EM states that houses in Rawson Farm are selling. The Board wants to see this done.

F. DePrado states that maybe he will just do the road.

EM notes that he can put the base in without a bond.

F. DePrado asks what the finish coat will cost.



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GG responds that it will probably be about \$25,000 worth of work left.

F. DePrado needs two lot releases.

EM responds that he will get the releases when the road is in or a bond is in place.

P. Herr asks if the Planning Board would be willing to vote on the releases tonight contingent on receiving cash in hand.

EM responds that the Board would, but he questions the amount of the bond. They do not have enough information tonight.

GG reminds the Board about the situation with Beechwood Estates. The property owners say that they live on a street without a road. They have to protect the people who are buying a house.

EM suggests that Mr. Smith contact Grace DeVitt, Town Treasurer and Town Collector and Lynda Nardone, Chief Financial Officer as well as Town Counsel relative to accepting real estate as a performance bond.

EM asks if there are two lots fronting Pine Street.

F. DePrado responds that there is one.

EM states that he can start that one because there was an 81-P on that one.

GERALD MARCHAND

BACKLOT SPECIAL PERMIT DECISION

P. Herr received the decision which Clerk mailed to him and states that it was o'kay.

Board members sign the decision.

EM will file the decision with the Town Clerk in the morning.

DISCUSSION RE: ALTERNATIVE PRINTING AT HIGH SCHOOL

Clerk explains the fees for the Alternative Printing program at



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the High School. Basically, the cost is \$1.00 per book if the Board does not mind having information printed on two sides. Otherwise, the cost will be about \$2.00 per book which is more than half of what we are paying now.

GG has no problem with printing being double sided.

Clerk also asks if the large pages at the back of the book can be reduced to 8.5 x 11". If not, they will have to use plastic rings to keep the sheets together.

P. Herr responds that the plans would be unreadable if they were any smaller.

GG makes a motion to use the Alternative School for printing the Zoning Bylaws and Subdivision Rules and Regulations. AM seconds motion. Unanimous vote of 4 (EM, AM, GG and RL). EN was absent.

GG makes a motion for the Board to hold summer hour meetings for the months of June, July and August 1993. Therefore, the meetings will only be held on the fourth Thursday of the months noted above. AM seconds motion. Unanimous vote of 4 (EM, AM, GG and RL).

GENERAL DISCUSSION

P. Herr refers to an amendment when someone gets a variance from the Board of Appeals for frontage requirements. The Planning Board signs the plan and treats the plan as a subdivision plan, not an approval not required plan. The court says that the state law says that. The Board of Appeals is for the variance for frontage, but if they want to divide the land, they would have to go to the Planning Board. The Board can not treat it as an 81-P. This will distinguish between a backlot special permit and zoning. They would hold a public hearing and make the applicant submit all the required materials. Towns have a way to have a special permit under the Zoning Bylaw in the same manner that they do with a backlot special permit. There have been occasions where people do not meet the Planning Board requirements, go to the ZBA to get approval. The Planning Board may consider having a reduced set of procedures for people to legitimize that. The submittal requirements could have an application procedure reduction and fee reduction. The next ones which come in should be done the right way. There was another court decision which



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had a remedy that a small change be made in the rules. He will check to find out exactly what that was.

EM asks if there are two trials relative to the same piece of property, is that considered double jeopardy?

P. Herr responds that it is but they could still turn him down. He refers to the Franklin case where both Boards have independent jurisdiction. It hints on the frontage required by zoning. The variance makes a departure from the frontage required by zoning. It is no longer an 81-F but becomes a subdivision. He can stick a paragraph relative to a subdivision creating no new street frontage without doing this and this. There have been cases where the ZBA has given variances which the Planning Board was outraged by. This will deny some of those. He would like to make those changes to the Subdivision rules before any new copies are printed.

P. Herr refers to the Planning Board meeting with the economic development Task Force which has become the IDC.

RL is the Chairman of the IDC. They have someone who is looking for 150 acres with 1 million square feet for a distribution center. He asks if that would be allowed.

P. Herr asks if it would be in the area which is zoned industrial.

RL responds that it would be.

P. Herr responds that it would be allowed. D. Fraine spoke with him after the meeting. They are working to put together a grant application for a Strategic Planning Grant for which this Board would be applicant.

EM refers to RL's position as the Chairman of the IDC. He solicits business which has to come before this Board for approval. He questions if there is a conflict of interest.

RL is not personally soliciting business for himself. He is doing it for the town.

AM suggests that RL talk with the Ethics Committee.



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P. Herr notes that RL does not personally gain.

AM notes that the Ethics Commission logs all calls. Therefore, if a question ever arose, RL can note that he did contact the Ethics Commission.

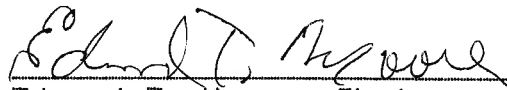
P. Herr states that RL should declare at the beginning of a hearing that he is the Chairman of the IDC and that he checked and there is no conflict.

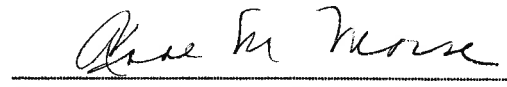
AM believes that it is good to check.

P. Herr states that D. Fraine is taking care of the processing for the Strategic grant for which the Planning Board will be the sponsor.

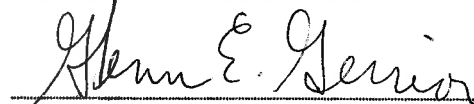
Board members sign invoices and pay vouchers for Clerk and stipend.

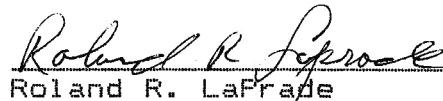
Meeting adjourned at 9:25 p.m.


Edward T. Moore, Chairman


Anne M. Morse, Vice Chairman

Emile W. Niedzwiadek


Glenn E. Gerrior


Roland R. LaPrade