

BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

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MINUTES OF REGULAR MEETING

DECEMBER 15, 1994

Meeting was called to order at 7:37 p.m. All members were present. Board's consultant, Philip B. Herr, was also present. Alternate Member Bill Wozniak was absent.

SILVER HEIGHTS BOND REDUCTION REQUEST
DEFINITIVE SUBDIVISION

AM abstains from discussing this matter due to a conflict of interest.

David Pagnini, Esquire, is here representing Mr. Abram Rosenfeld. Silver Avenue, Phase IV of Silver Heights, has been completed. He submits As Built plans. He asks the Board to sponsor an article approving Silver Avenue as a public way. He presents a letter from W. Arcand stating that the road is built according to the Planning Board Rules and Regulations.

EM asks if the road has gone through a winter.

P. Herr notes that it will by the next Town Meeting.

D. Pagnini submits a completed Form H, Inspection Form.

EM reads letter from Wilfred Arcand, Highway Dept., dated November 16, 1994 wherein he states that in his opinion all work has been done in accordance with Planning Board Rules and Regulations. The balance of the passbook funds being held in escrow may now be released from escrow and paid over to Silver Heights Development Corp. He also advises that Silver Avenue and the drainage easement appurtenant thereto are now ready for acceptance as a public way.

D. Pagnini presents the completed Inspection Report of the Water Mains and Service Installations, dated October 30, 1991 signed by Donald DiMartino and inspected by Emile Belanger, Bellingham Water Sewer Dept. contractor. He also presents As Built plans completed by Guerriere & Halnon, dated November 25, 1994.

P. Herr explains the street acceptance procedure. Selectmen hold

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a public hearing and ask for the recommendation of the Planning Board. The street acceptance request has to go before Town Meeting for approval.

RL makes a motion to send a letter to the Selectmen recommending street acceptance for Silver Avenue at the Annual Town Meeting since it has been built to specifications. EN seconds motion. Vote of 4 (EM, EN, RL and PC). AM abstains.

P. Herr figures that \$5,545.03 of the remaining bond may be released at this time leaving 15% of \$3,942.49.

PC moves to reduce the bond to \$3,942.49. RL seconds. Vote of 4 with AM abstaining.

Clerk to forward a letter to the Town Treasurer documenting the amount to be released. Mr. Pagnini will petition the Board of Selectmen for street acceptance. Clerk to send Board's letter of recommendation to the Selectmen upon receipt of a copy of that petition.

BALD HILL ESTATES

DISCUSSION RE: PERFORMANCE BOND WITH BURT RHODES

Burt Rhodes tried to get someone to finish the road but was unable to at this time. There should be \$42,000 held in the passbook by the Town Treasurer now.

Clerk reviewed the Town Treasurer's files and found that there is a total of \$36,627.90 held in the Ben Franklin passbook.

Bruce Lord, Esquire, does not believe that the last \$7,000 installment has been put in yet.

P. Herr points out that the question is whether or not the \$36,000 is sufficient.

AM asks how he received the release to buy and convey the properties from the FDIC without lot releases.

B. Rhodes bought the entire parcel not the individual lots so the lot releases were not needed. He has two more lots to sell.

Clerk indicates that the records reflect that there are 4 lots remaining including 2, 13, 14, 15.

AM asks why he does not put up \$28,000 for the 4 remaining lots.

B. Rhodes responds that the lots are not buildable until the septic is approved.

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B. Lord believes that the lot numbers are confused. He believes that the lot 2 bond was paid or else Mr. Rhodes would not have been able to obtain a building permit. There will be two more lots added bringing the total bond to \$56,000 which is more than adequate to complete the road. Even the \$36,000 is more than adequate to complete the road.

EN asks if Mr. Rhodes is building the houses or just selling the lots.

B. Rhodes is selling the lots.

P. Herr states that we have to know the numbers of the lots which have not been released yet and the exact amount being held in bond.

EM asks how they will know what is required.

P. Herr suggests they ask the Highway Dept. to come up with a figure.

AM thinks that they should come in with an estimate and ask the Highway Dept. if that is enough. The Board questioned the method for securing the performance bond since the ownership has changed but if there are only two lots remainining, that should not be an issue.

B. Rhodes believes that the money to complete the road is there.

B. Lord indicates that part of the problem is that there is nothing in the Registry of Deeds documenting this agreement to put up \$7,000 for each lot.

P. Herr points out that the town has a Covenant.

B. Lord states that at the time of subdivision approval, there was a bond and a lot release for the entire subdivision. The second agreement pulled back lots which are actually not on record.

EM continues the discussion to the January 12, 1995 meeting under General Business. Clerk to confer with Attorney Lord before the meeting to come up with the number of lots and amount currently held in bond.

EM notes that the Chestnut Hill Condominium Special Permit hearing will be continued because the engineering work is not done.

DISCUSSION WITH BUILDING INSPECTOR JOHN EMIDY
RE: DEVELOPMENTAL PLAN REVIEW PROCESS

J. Emidy distributes zoning changes which he would like to see

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implemented. He would like to see any change to a parking facility trigger Developmental Plan Review (DPR). There is a loophole in the Bylaw. He refers to Mostek Hardware and Hilltop Farms where they were allowed to go in and tear down the building.

EM points out that they created a parking area.

J. Emidy notes that it was not required additional parking. He discussed the Hilltop Farm situation with P. Herr who recommended that the owners come in and talk with the Planning Board. They did not follow through with that.

EN refers to a business which has gambling tables.

J. Emidy states that it is in a business zone.

PC notes that they have a license for the gambling.

EM does not believe that the parking area complies.

J. Emidy advises that the footprint did not really change. He would like to see any change requiring a DPR. The key word is required. He refers to Section 3360 referring to the number of square footage.

EM refers to Section 1422(c) where the Planning Board determines if a developmental plan complies.

J. Emidy believes that it really lies in applicability. It would be helpful to determine a better parking layout and traffic flow.

P. Herr refers to the Bylaw requirements which state that parking factor of 10 or more spaces and changes to parking in any physical way would trigger DPR.

B. Lord suggests they make the change for an additional 5 or 10 spaces, not for 1.

P. Herr thinks that J. Emidy is saying that even if there are already 11 spaces and they will still end up with 11 in the end but change the entrance, that would trigger DPR.

B. Lord explains that it is a very expensive process of \$5,000 to \$6,000. He agrees with what the Building Inspector wants so long as the Planning Board gives leeway and could waive. He has no problem with coming in.

J. Emidy has never seen anyone create 2 or 3 spaces. It is always 20 or more.

B. Lord believes that there should be a process to come in and

discuss what one intends with the Board.

J. Emidy's idea is to put it on the table to come in and talk about it.

P. Herr explains that many communities have a 2 stage DPR with a minor plan and major plan. That is not going to get everyone but will get more.

EM asks about the situation at the Pumpkin Seed.

J. Emidy explains that they went to the ZBA for approval. It is still in the ZBA's hands. He felt that it did not require Planning Board approval because it was already an existing building but now they are putting on a two story house and barn. He considers it remodeling.

AM asks how they can stop it if someone goes to the ZBA for a variance.

B. Lord explains that there is nothing which triggered that they come here.

EM refers to the Coachmen's which added a deck. He was told that did not require DPR but then read in the newspaper that the seating capacity increased by 165 people.

P. Herr will put something together with a minor and major review.

RL refers to Danny's Motors where they built a huge garage.

J. Emidy responds that they also went to the ZBA. There are no limitations on lot coverage and it is business zoned even though it is residential use in the back. Removal of existing ground cover should trigger Planning Board review.

AM notes that ZBA does earth removal permits.

P. Herr asks if he is suggesting that the Planning Board do a DPR on each removal.

B. Lord indicates that there is something in the regulations which requires that they bring in a topo. It is a requirement of the Bylaw.

EM states that the Board will continue this discussion after the Chestnut Hill Condominium continuance request.

CHESTNUT HILLS CONDOMINIUM SPECIAL PERMIT
CONTINUED PUBLIC HEARING

EM reads letter from Attorney Bruce Lord, dated December 15, 1994, requesting a continuance of the public hearing to January 12, 1995. The engineering and Amory Engineers review has not been completed yet. They will be submitting to the Conservation Commission before they come in with the DPR and continuation of the special permit. It has not gone to Amory Engineers yet.

EN suggests they put it off until January 26, 1995 to give them ample time for the review.

B. Lord explains that they hope to investigate different drainage areas. There are obvious ways to do it but they are looking at more beneficial ways. Site work is expensive and takes time.

EM went up there two weeks ago. There are holes there with people working.

AM notes that they are doing the percs. Her backhoe went across one of the neighbor's property.

Jean Glaude, 11 Partridge Trail, indicates that it was her property that the backhoe was driven through.

AM states that she was on vacation and does not understand why that was done. She asks for Mrs. Glaude's phone number and address. She has insurance and will investigate the matter.

J. Glaude asks how much this will continue. They are stripping the land.

EM notes that the Board can not approve without the engineering.

J. Glaude states that they are doing more than engineering. The buildings on the right are just about ready for occupancy. They are continuing to work and are cutting trees. They aren't just patching holes which were damaged.

B. Lord points out that everything is done at the owner's risk.

EM asks how they will put back the trees which have been cut down. The Board originally approved the condos because they would have less impact on the natural environment and less impact on the trees. He asked the workers why they were cutting and was told that was where the septic would go.

J. Emidy explains that they have an approved septic plan for Building 1.

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J. Glaude asks if there is any way to stop them until they get approval. The stop work order was removed in order for them to secure the buildings but they are doing more.

Tom Crane, 27 Chestnut Street, points out that the gas lines are secure. Who will stop them?

Gary Lamoureux, 23 Chestnut Street, states that they will be putting up more buildings if someone doesn't stop them.

B. Lord states that all the buildings are there and they are all constructed. A homeowner has a right to repair his house without a building permit.

J. Glaude notes that a homeowner has to obtain a permit to put in a pool. She thinks that they should make this developer stop until he gets a permit.

EM indicates that if the Board disapproves the special permit, the developer will sue the town and the Judge will say that they let him continue building.

J. Glaude asks who they should go to get him to stop.

P. Herr explains that the Board had a Stop Work Order in place. The Board then granted a partial release but it is now being exceeded. The owner can chop down trees without approval. The Board could ask B. Lord to talk with the developer in good will since it would be in his sincere interest to stop working.

EM reads letter from the Board to J. Emidy removing the Stop Work Order on June 6, 1994 for rehabilitative purposes only. The letter asks that no new paving be completed with no occupancy permits given. He can see where J. Emidy would allow them to continue working.

B. Lord notes that they are now going into the winter. The developer is putting in pipe lines at his own risk.

P. Herr suggests that the Board send another letter indicating that the Board's intention was for securing and rehabilitation of what is already there. The Board does not consider bringing in utilities or septic systems rehabilitative. Working inside is fine.

B. Lord explains that part of the tree removal is for doing the testing.

RL makes a motion to clarify the Board's original letter to secure the premises. Rehabilitative is a vague interpretation.

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EN asks why there is a concern about the utilities since they cannot turn them on.

P. Herr responds that the concern is that the Board is being pushed into a corner. His interpretation is they were allowed to secure the buildings for safety.

T. Crane notes that the workers are there everyday. He called the Building Inspector when they came over his property and he said it was not his jurisdiction.

Clerk to send a letter to J. Emidy with a copy to the applicant, his attorney and Town Counsel.

G. Lamoureux indicates that the lights are on at night shining in his backyard. Guys are working morning to night.

P. Herr explains that the rehabilitative work which the Board had in mind was for weatherproofing and securing the buildings from entry. The Board's intention was not to authorize interior work. It was also not the Board's intention to authorize site preparation work other than for engineering purposes.

AM doesn't think that they can stop someone from putting in a septic system.

Marie Ruggerio, 7 Partridge Trail, believes that AM has a conflict of interest since she is abstaining from the discussion. AM is discussing the legalities of site preparation only. She is not advocating the project.

EM can make it clear in the letter that the Board is not authorizing or condoning the work which is being done.

AM does not think that the Board can tell the developer not to do the septic system.

J. Emidy indicates that patching holes in walls, painting and putting in gas lines has nothing to do with him.

EN points out that the town has a gas inspector and electrical inspector who issue permits.

T. Crane has attended 5 meetings so far and does not know who he should talk to about this.

PC explains that usually nothing happens without a building permit.

G. Lamoureux wonders if things would be different if this guy were

from out of town.

J. Glaude asks who put the stop work order on.

EM states that no further building should be constructed except for engineering and testing for the special permit process. The developer should not do more building.

EN points out that the gas inspector issues the gas permit for the gas line. They met the criteria so the permit was issued.

EM thinks there is a lot of confusion because it is already built. The letter to the Building Inspector should also clarify that the developer may secure the premises and is at risk in gaining an occupancy permit. All work is done at his own risk. Cutting of additional trees is having an impact on the environment.

J. Emidy indicates that they have met all conditions of the permit for gas, electric, Planning Board, ZBA and Conservation Commission. The buildings are already there.

EM asks why are they coming to the Planning Board for approval if they already have all the permits.

J. Emidy responds that they need an occupancy permit and cannot get one without Planning Board special permit approval. They can get a plumbing permit without the building permits.

B. Lord states that they can do anything they want for the two completed buildings.

EM points out that the percentage of natural environment left is dramatically different than what was originally proposed.

? Resident asks what happens if they do not get the special permit in the end.

M. Ruggerio asks why they are continuing since they were so sure at the first meeting that they had a sure fire plan which would not cause more flooding or septic problems.

B. Lord explains that there is a simple solution but it may not be the best solution. They agreed to do the DPR at the same time as the special permit. They are required to outlay a lot of money to do the engineering at a heavy risk to the developer without the special permit approval. It is to the developer's benefit to look at all the options.

T. Crane asks why the developer does not save the money he is spending on rehabilitation.

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EM states that they will go to the Conservation Commission as soon as the plan is ready. There are a number of issues including the fact that the removal of trees increases the runoff.

J. Glaude asks how they can continue to work if there is no special permit.

EM responds that the issue is cloudy because the buildings are already there. When he talked to one of the workers, he was told that all the work was done inside.

G. Lamoureux believes that huge shingles have been buried on the premises.

B. Lord responds that they were removed by the FDIC. The lumber was also removed.

J. Glaude indicates that there will be more runoff because more trees are being cut.

M. Ruggerio points out that last Friday there was a backhoe at the back of the property but there are no buildings there.

AM explains that they are conducting deep hole testing for percing. They should have gone through their own woods.

EM thinks that they cut up the cul-de-sac because there is a fence there.

Sam Cucinotta, 9 Partridge Trail, states that it is obvious the developer does not have the same intent as the Board.

P. Herr explains that the Board put on a cease and desist order on the grounds that the terms of the special permit were violated since the Board is the special permit granting authority. Last time it was on the Board's edge. This time there is no special permit to put. They can now impress on the applicant that they are making it difficult for the Board to ever approve the special permit again. There is not a shred of authority to stop what the developer is doing now. The Board does not control the septic system installation. The Building Inspector is saying that the developer is not building, just painting and repairing.

EM believes that they are hurting their own case for getting a special permit.

PC would like to entertain a motion for the Chairman to sign the letter which will be forwarded to the Building Inspector with respect to the work which is being completed.

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RL includes in his motion that EM will sign the finalized copy of the letter. PC seconds motion. Vote of 4 (EM, EN, RL and PC). AM abstains.

EM explains that the independent engineering review is reviewing the proposals. They should know about the drainage when it is done. The Conservation Commission should hear the proposal simultaneously but it is not necessary to have a joint meeting.

EN makes a motion to continue the public hearing to January 26, 1995 at 8:00 p.m. RL seconds. Vote of 4 with AM abstaining.

CONTINUED DISCUSSION WITH BUILDING INSPECTOR

John Emidy points out that there is nothing in the Bylaw to delineate the size of a parking space for a Class II Motor Vehicle sales license.

P. Herr indicates that there is language relative to the dimensions for storage spaces for auto sales.

EN thought it was so many cars for so many square feet.

J. Emidy would like more clarification as to whether parking spaces should be paved or unpaved. He doesn't think they have to be paved.

P. Herr agrees that it is the owner's business.

J. Emidy states that Town Counsel told him it does have to be paved.

P. Herr points out that these aren't required spaces. If someone wants to pack in the cars to sell them, that is his business.

EM notes that the size of the lot restricts the number of cars.

J. Emidy is looking for an estimate for the number of cars.

B. Lord refers to Section 3331 which states that all parking will be paved except for single family. The question is interpretation.

P. Herr states that they can go to Town Meeting to clarify it so it won't be misread. He refers to Item 2, Review of Earth Removal Bylaws which the Board could do. He questions whether or not they would want to do that.

J. Emidy explains that this question was triggered by earth removal in a Water Resource District which did not have to come to the Board for approval. They really should have come.

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B. Lord suggests they have two topos, one at the beginning and one at the end.

EM states that not all gravel removal is reseeded and graded. They will not get grass if they pave it.

P. Herr can reword Section 4631 to show the existing topo, grades below the excavation that take place and the grades when they are all done. He will write it up and the Board can have a hearing to review it further.

RL moves to instruct P. Herr to clarify Section 4631 of the Zoning Bylaw. EN seconds. Unanimous vote of 5.

J. Emidy suggests that they could say that the ZBA may request the Planning Board's input. He refers to Item 3A, Define alternatives for non-conforming uses and structures. The alternative is to change the use group. What do they do without a special permit? He explains a situation with Mr. Palli's neighbor who is in a conforming use but has a structure which is nonconforming. The front setback is not conforming but it pre-dates zoning and is in an industrial zone. What type of interior work can they do before it triggers a special permit?

P. Herr explains that the reason for that Bylaw was statutory. He will look at some cases to clarify the wording better.

J. Emidy refers to nonconforming structures in conforming zones. What happens if they change a business use but do not change the building footprint. Section 2600, Intensity of Use Scheme allows use for a residence in a business zone but it requests a special permit or a variance for use. Items 4 for discussion is the Use Regulations Schedule. He thinks that there should be a footnote for commercial permissible use with no Class II licenses.

B. Lord indicates that it is a violation of state law but it not a violation of zoning.

P. Herr does not think that they really want to get into the issue of licensing. The Building Inspector may require evidence of the proper licenses.

B. Lord explains that the Selectmen are asking the Building Inspector to get into the licensing issue but that is not his function.

J. Emidy identifies Item 5, Signs and Banners for discussion. Some portable signs are illuminated. He thinks that the Board of Selectmen should approve temporary banners.

P. Herr agrees that most portable signs are illegal.

J. Emidy does not think that is necessarily true if they move back 10'. He thinks they should be eliminated permanently.

P. Herr thinks that if D. Fraine wants to put something into the Town Bylaw relative to this matter, they might consider that instead of the Zoning Bylaw.

J. Emidy would like to see a real re-examination of signs in town. He suggests they put together a task force. Items 6 deals with in-law apartments which he believes should be limited to two people not four people with a special permit for only 2 years which can be renewed by the Building Inspector to make sure they are in conformance. The special permit would end at the transfer of the property with kitchen removal. A lot of people go the the ZBA and get shot down for in-law apartments. He presents a model from Ashland.

P. Herr thinks that accessory apartments are a good idea but is not sure that this is a good model. He thinks that the housing partnership may be interested in this topic. He will call Tom Berkholder if the Board is in support of that.

EM agrees that there is some need and that they should look into it further.

GENERAL

B. Lord presents the plan for FREDAP Estates for re-signature. The plan for the subdivision was originally signed in May 1994 and has to be resigned because 6 months have expired.

P. Herr notes that if the Board signs it as is, it will move the approval date. They need to show a signature date on the plan. Nothing has changed since the original endorsement.

WATER RESOURCE DISTRICT

P. Herr presents a new plan depicting the districts in town. He discusses getting into compliance with the latest determination with the DEP. Cumberland Farms cannot do what they want because they are in a Water Resource District. The dark blue depicts what the DEP thinks is protected. The light green does not have to be protected.

AM does not think that this is as bad as the original plan.

RL explains that they want to protect the water wells and not

necessary the wetlands. It is a matter of revising.

P. Herr will proceed to put together an article to do this.

104 RUTH ELLEN ROAD LOT RELEASE REQUEST

EN moves to sign the lot release request in the Wethersfield II subdivision. RL seconds. Unanimous vote of 5.

MINUTES ACCEPTANCE


RL moves to accept the minutes of September 22, 1994. PC seconds. Unanimous vote of 5.


RL moves to accept the minutes of October 27, 1994. PC seconds. Unanimous vote of 5.

EN moves to accept the minutes of November 17, 1994 with a revision to page 6 to state that Ronca should pay for a review of the plans. RL seconds. Vote of 4 (EN, AM, RL and PC). EM absent.

AM moves to adjourn at 11:00 p.m. PC seconds. Unanimous vote of 5.


Edward T. Moore, Chairman


Emile W. Niedzwiedz, V. Chair


Anne M. Morse


Roland R. LaPrade


Paul Chupa