

BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

**EDWARD T. MOORE, CHAIRMAN
ANNE M. MORSE, VICE CHAIRMAN
ROLAND R. LAPRADE
PAUL CHUPA
WILLIAM M. WOZNIAK**

MINUTES OF REGULAR MEETING

TUESDAY, SEPTEMBER 26, 1995

Meeting commenced at 7:00 p.m. All members were present. Associate Member Richard Dill and Planning Board Consultant Philip B. Herr were also present.

MINUTES ACCEPTANCE

RL moves to accept the August 24, 1995 and September 14, 1995 minutes as written. PC seconds. Unanimous vote of 5.

Clerk reads memo from Donald DiMartino, DPW Director to WS Development relative to the Crossroads sewer plans dated September 14, 1995. He suggests a number of plan changes. The memo was forwarded to the Board for their information.

EM asks if the Board should expect to see these changes to the plan before they endorse the plan.

PC suggests that maybe D. DiMartino should see the changes and approve them before the Board signs.

EM asks P. Herr if the changes should be on the plan first.

P. Herr responds that it would be nice if they were. They would like them to construct from the plans that are signed.

Clerk to forward a letter to D. DiMartino asking him to review and approve the plans prior to the Board's endorsement.

Discussion follows relative to a video taping request from abutters of Edward Estates. P. Herr indicates that the Board should obtain and review a copy of the tape.

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HIXON FARM ESTATES SPECIAL PERMIT DECISION

P. Herr distributes copies of the decision to members of the Board. It has been reviewed by everyone. The decision date is tonight rather than the last meeting because the decision has to be filed within two weeks. At the last meeting, the Board gave him the directive to draft the decision.

Clerk explains that Fred Lapham of Shea Engineering indicated that he would do the survey when the definitive subdivision is prepared in order to keep the engineering costs down.

P. Herr states that the language in the decision works with that. They still have to go through the usual definitive subdivision process. He refers to Item C2 on page 2 which relates to the survey which shall be included in the definitive subdivision. The format of this special permit is a little different than previous special permits. The revised approved plan must be submitted to the Town Clerk along with the decision. Also all parties in interest (abutters) must be notified of the decision.

EM understands that the reason for the additional plan submittal is because what is approved is not necessarily what was submitted originally because of revisions.

RL moves to approve and sign the Hixon Farms Special Permit decision. AM seconds. Unanimous vote of 5 (EM, AM, RL, PC and WW).

DISCUSSION RE: CARYVILLE CROSSING

P. Herr received a letter from the Board requesting that he review a letter submitted by Secretary Padula of the Executive Office of Communities and development relative to Caryville Crossing. The key difference is between what the applicant may be exempted from. It doesn't get exempted unless the ZBA exempts it from zoning. They have to look at the Comprehensive Permit from the ZBA.

AM asks if the Board has the right to request that.

P. Herr responds in the affirmative. They should also ask P. Herr to review it. They will have to come before the Planning Board if the ZBA did not specifically waive those things.

Clerk to obtain a copy of the Comprehensive Permit decision from the Town Clerk and forward to P. Herr for review.

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RL believes that the Board should hold a joint meeting with the ZBA to discuss this further.

P. Herr believes it would be a good idea to meet with the ZBA, Selectmen and Housing Partnership.

MAPLEBROOK COMMON DISCUSSION

EM is an abutter but will sit in since this is only a discussion.

B. Lord is representing Mr. Brad Kushing. He explains that the last plan for Maplebrook was approved in January 1990. He presents a plan which shows units in black which can still be built but are not built yet. Each building has 6 units for 130+. The white delineates the buildings which are there. There were 4 subdivisions of Maplebrook. The 5th subdivision was done by the Walden Group for which the Board approved an amendment to the special permit. The amendment resulted in the January 1990 plans.

P. Herr brings out plans which he believes are different from the plans which B. Lord is showing. After review of the plans, the Board determines that they are very similar.

B. Lord explains that Mr. Kushing has an agreement to work under the license belonging to Walden to complete the project. There is one major problem because the condo development is responsible for the roadway and all the land area. The condo association is small and cannot handle the burden for the road. There is no way the previous owner, Walden, will be able to do anything. Mr. Kushing is not here asking for charity. He is here to make money. The units in here have a severe problem because they control a huge area and can't be expected to deal with all of it. They propose to change the nature of the development. They don't have the sewer capacity. They talked with D. DiMartino who said they are not entitled to sewerage. They propose downgrading to a different configuration. They want to isolate the condo development and add 20 additional units. They also want to convert the area below to single family homes. They haven't done the computations for the wetlands. They have shown the gross area if they did do a cluster. They propose to amend the special permit to remove the area for the condo association and allow them to deed it. There will be 3 areas of development and 3 phases over a period of time.

AM thought they couldn't transfer a special permit.

B. Lord explains that they are not changing the ownership. They are just licensing under the special permit. Legally it is correct.

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AM believes that it sounds like they are circumventing the laws.

B. Lord indicates that this works for the developer and the units.

EM asks if they are expecting it to become a town road.

B. Lord explains that it will meet all the requirements for a town road. They are here looking for input. It will require an amendment to the special permit to take out the cluster plan. They are proposing 20 additional condos with 36 single family for a total of 56 as opposed to 130 with that number probably being reduced further by the wetlands.

EM asks if they are all on septic since they are in a Water Resource District.

B. Lord responds that they do have septic but they are not in a WRD.

Don Nielson, Guerriere & Halnon, explains that part of the lots will be 40,000 square foot per Title 5 requirements. The others will be 20,000 square feet conventional lots. They will have to go to the ZBA for approvals.

EM indicates that the special permit deals with land area.

P. Herr states that they would like to divide the land in at least two pieces or 3 relevant pieces, each of which must meet the zoning. The remaining Maplebrook and number of units must satisfy the law. They can't make it work without taking land from the condo. The piece at the north end satisfies the law.

EM asks what happens to the people who bought the newest condos expecting more condos to be put in there.

B. Lord is aware that they have to get their approval in order to do this. They have to deed portions of it back. They have been in contact with them.

EM asks if they are referring to Birchwood. It was Maplebrook and then the name was changed.

B. Lord explains that the plan is still Maplebrook but the condo association is called Birchwood. They claim that their units are better buildings than the others.

P. Herr thinks that they would like to have a connection to the town sewer. The Board should be in touch with D. DiMartino.

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B. Lord indicates that the old association (4 units) on the other side turned sewer down when they were approached.

EM asks how they could have done that when the state and Planning Board said that they had to hook up.

B. Lord doesn't disagree but they did turn it down.

EM asks about the plan.

Mr. Brad Kushing explains that the building is there but the plan is gone. A manhole was run into the property when he talked with D. DiMartino. His company qualified as a licenced installer. It went with one manhole to the sewerage treatment plan. 23 units there are sewered. The sewerage plant itself never operated. They are pumping the tanks on a regular basis. Walden was pumping and was not operating the sewerage treatment plant. After he finished 11 units which were unfinished, he went to the Building Inspector who told him to talk with D. DiMartino but he said that he couldn't give them sewer. Franklin used the volume and the plant was over capacity. The bottom line is there is no sewer.

EM asks how long ago that conversation took place.

B. Kushing responds that it was awhile ago.

EM believes they are in violation of the special permit because it said that the existing units had to be conncted. When it was granted, it was understand that they would all be connected when the sewer came through.

B. Lord indicates that it can't be done.

EM states that the special permit says it has to be done.

PC thinks that the first 49 are exempt.

B. Lord points out that since they can't get sewer they are looking at the alternative plan to build out with private septic.

P. Herr asks if the plan would stay the same if they had sewerage. Would it stay single family housing?

B. Kushing indicates that they are here tonight to find out what the Planning Board's feelings are relative to this development. They came up with this because it allows

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them to do something. They are stopped unless they do something with sewer.

P. Herr notes that the units on the east are sitting in a WRD unsewered.

EM does not believe it is fair to say that they don't have to hook up to sewer but they can do something new.

B. Lord points out that the association went to the town and the town agreed that they didn't have to tie in.

P. Herr suggests that the Board see if D. DiMartino can come to a meeting one month from now to discuss the sewerage aspect. This scheme clearly does not have sewerage. It is not the right thing to do if they could get sewerage.

EM thinks they could run the sewer down Blackstone Street.

B. Kushing notes that 23 units there do have sewer.

B. Lord does not think there is a problem connecting. It is a capacity issue.

B. Kushing indicates that they need a lift station. They don't have a problem with this plan if the Planning Board thinks it is doable. He would love to see it sewered but he is here because they couldn't get sewer.

B. Lord talked with D. DiMartino within the last two months and he said they are out of capacity.

P. Herr understands that they are only out of capacity if everyone who can hooks up. It is within the applicant's right to hook up. It would be better to do the cluster than conventional lots. They will have many fewer when they do the arithmetic. There may be a definite answer relative to the sewerage.

RL indicates that in the worse case scenario, the association will go bankrupt.

Ted Clove lives in the association and is the only member of the 3 member trustees who owns a unit. Birchwood Grove has 23 units. He moved in 3 years ago. They took the association from the previous developer and raised the fees 35% with 2 special assessments. They manage the whole road which was designed for 153 units.

B. Kushing became involved a few years ago and told them that he will work to build single family homes. They had covenants to protect themselves to work out an agreement. They are in favor of it.

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EM asks if they are in favor of it because they are expecting the town to take over the road or will the road remain private.

T. Clove responds that is not what they are proposing but as a unit owner he would like it to become a town road. Speeders come through. He talked with Sgt. Haughey who said there was nothing he could do because it is not a public road.

EM notes that it was not built to subdivision standards.

B. Kushing has intentions to bring the road up to standards by reducing the density. He is paying to maintain the road now because the association can't afford it. School buses go by to pick up children but also go through to use the street as a shortcut. It is a private road being used by the Town.

Clerk to ask D. DiMartino to attend the October 26, 1995 meeting at 7:30 p.m.

SUBMITTAL

B. Lord submits a plan for Hilltop Farms, Pulaski Blvd.

P. Herr will review the submittal and decide if it is a site plan or developmental plan review.

B. Lord agrees to treat it as a developmental plan review. He submits the \$50.00 fee because there will be no additional parking.

Review meeting scheduled for October 12, 1995 at 7:30 p.m.

EDWARDS ESTATES DEFINITIVE SUBDIVISION **CONTINUED PUBLIC HEARING**

EM reopens the public hearing and asks for a motion to adjourn to the Upper Town Hall because there are a number of abutters here for the hearing.

AM abstains from the public hearing and removes herself from the discussion.

WW moves to adjourn to the Upper Town Hall. PC seconds. Vote of 4 (EM, RL, PC and WW).

EM reopens the continued public hearing from the August 24, 1995 meeting. At the August 24 meeting, Mr. Horan asked if any town officials had an interest in this development. Mr. DaPrato is a member of the ZBA, an appointed position but that

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has no bearing on the Planning Board.

B. Lord introduces himself as attorney for the applicant and Frank Gallagher, engineer. He asks if EM received a copy of the Amory report.

EM responds in the affirmative.

B. Lord explains that the report was received by the engineer but what they are dealing with tonight is not reflective of the report because all the changes were not made. There are several changes tonight. Lot 13 was undersized because a duplex requires a double lot so it was increased to 40,000 square feet. Lot 1 does not have enough lot area because of the sizing of the wetlands. The lot lines have to be redrawn. One point which they didn't take care of is the roadway coming in. They have a 40' easement with possible widening to a 50' easement. The 40' satisfies for the 12 lot development. The wider easement is better for the town. They can narrow to 40' and pull the cul-de-sacs back so it doesn't access the other side. There is not a gain one way or the other. They will do whatever the Board determines. Looping the subdivision is not possible at this stage in the game. There would be too much damage to Varney's property. They can't go through to Chestnut Street and there is a lot of ledge through Hilltop.

EM asks if the question as to whether or not the plan was at the Town Clerk's office has been cleared up.

B. Lord went to the Town Clerk's office the next day. She had the plans but did not realize that they were there. She time stamps all the plans and they were stamped at the same time.

Mrs. Rita Horan notes that Mr. Halnon was unable to attend the meeting tonight.

EM states that the confusion has been cleared up and the plan is available for anyone who wants to take a look at it.

F. Gallagher had a botanist revisit the site after the first meeting. The wetlands extend behind the property. The flagged wetland didn't extend. They were not able to determine if lot 1 is in compliance. They located the wetland line shown. The date on the revised plan is September 25, 1995. The cul-de-sacs and road provide for a 50' right of way. The 50' frontage is proposed for a way to get to the two abutting properties. The road touches at the very limits of the property and doesn't provide for the 50' right of way which would eliminate future expansion of the roadways. Other changes done address the comments made by the DPW in his letter.

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EM asks about the 8' retaining wall.

F. Gallagher responds that there will be one 8' at the highest point and one 2 - 3' feet with a guardrail on top of the retaining wall. Instead of a cape cod berm, they will have a molden bituminous concrete berm with a 6 - 7" high burb included in the areas requested. They changed the location of the hydrant and added one per DPW request. Amory reviewed the drainage and put together a letter for which he has not yet made the changes recommended.

EM reads letter from Amory Engineers, Thomas C. Sexton, dated Setpember 14, 1995 wherein he offers the following comments relative to the drainage system: 1. The drainage area south of Laurel Lane Extension, i.e. Lots 1 and 2, should not be included in the drainage area routed through the Lot 6 basin. Impact of the increased runoff from development of Lots 1 and 2 on wetlands should be addressed. 2. The basins should be sized to handle tributary drainage from off-site areas. Calculations should be revised accordingly. 3. A determination should be made as to whether there are any flood-prone areas in Elm Street (Blackstone) downgradient of the subdivision. 4. Computer input for detention basin outlets should be provided. Computer output showing basin stage-storage-time relationship and basin outflow hydrographs should be provided. 5. Test pits to determine soil and groundwater conditions at each of the basins should be provided. 6. Locations for silt-trap swales and splashpads should be indicated on the Site Plan. 7. Detention basins should be enclosed by drainage easements. The easement for the detention area on Lot 6 should also include a 1' freeboard above the 100-yr. flood elevations. 8. The detention basin on Lots 11 and 12 should provide a minimim 1/2 ft. freeboard between the 100-yr. flood elevation and the invert of the emergency overflow spillway. 9. The emergency overflow spillway should be sized to handle the peak rate of inflow into the basin. A 1' freeboard should be provided above the 100-yr. flow level through the spillway. 10. A fence should be provided around the detention basin on Lots 11 and 12. 11. Catchbasin laterals for Catchbasins 5 and 6 have 2' of cover Class V reinforced-concrete pipe should be provided for the laterals. For all other pipe, a minimum of Class III should be provided. A drainage trench detail should be provided accordingly. 12. There should be a 1' minimum separation between the outside of drain pipes (i.e., Drain Manhole 3). 13. The catchbasin detail should not include a weephole and should show a 3' minimum sump. 14. A basin/dike construction detail should be provided. Miscellaneous: 1. Performance of the roadway and drainage system in Laurel Lane Extension is dependent upon proper retaining wall design. Weepholes with filter fabric should be provided for the retaining wall. Structural design should be provided by a professional engineer for Town review prior to construction. 2. Roadways should be labeled on the Profile Sheets.

EM notes that copies of this letter are available for anyone who wants one. Minutes

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from the last meeting are also available. Minutes from tonight's meeting will not be available until they are approved by the Board at the next meeting. He asks if Mr. Gallagher addressed the issues identified by Amory Engineers.

F. Gallagher did not really address them yet. One asked about the drainage easement for the detention for lot 6. It is now on lot 13. Lot 13 has the detention basin and they made the whole area a drainage easement.

EM asks if it will be a buildable lot.

B. Lord responds in the negative but there is an existing building on it.

F. Gallagher indicates that it includes the existing house. The house is identified as #48/50 and there is no easement on that part.

EM states that there will be more revisions on the plan the next time the Board sees it.

F. Gallagher has a lot of additional computations to provide to the Amory Engineer. Maybe half of the items will cause plan revisions. He has to provide an expanded drainage report to him.

B. Lord indicates that the changes requested by Amory are not major. There is a time factor because their engineer hasn't been able to do the changes yet.

RL asks how can they increase the water pressure to the homes on the lots, if the looping of the water line is not feasible.

B. Lord responds that if the residents are correct, then each house will require a pump to get the water into the house.

PC states it is a pressure pump.

B. Lord explains that there is not a lack of water, but a lack of pressure. This wouldn't affect the supply of water. Each house purchased could put in their own pump.

PC points out that the pressure pump kicks in when they turn the faucet on.

EM asks what would happen if the water were looped.

B. Lord responds that there is no way to access it. 15 acres is privately owned by Varney. They would have to cross two privately owned parcels and can't get out to

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Chestnut Street. They would have to go through the middle of the Varney property which they can't expect them to agree to.

EM asks if it would help to loop at the end of Littletree.

B. Lord responds that it is all part of the other subdivision which are all privately owned lots. He doesn't believe that looping would change the pressure situation.

PC explains that looping provides fresher water, not an increase in pressure. The problem is there is a dead end main so the water sits. If they loop it, the quality of the water is better. The quality of the water is not as good with a dead end main.

EM believes that the benefit of looping to the neighborhood is gone.

B. Lord would be glad to do it if someone would allow looping on their lot.

F. Gallagher doesn't feel that this would affect the quality of the water.

EM refers to the waiver request to fill and cut 6'.

F. Gallagher explains that they are requesting a waiver to allow them to exceed the Planning Board requirement for cut and fill.

EM asks about notes which he had from the last meeting referring to a 20% or 10% with a question mark.

F. Gallagher is showing the maximum grade at 8% fitted within the vertical curve. It is attainable provided they get the waiver on the cut and fill exceeding the Planning Board requirement by less than 2'.

EM asks members or P. Herr if they have questions.

EM calls for questions from the audience.

Wallace Neely, 24 Overlook Drive refers to the pressure pumps. There is no water at the top of the hill. This will increase the problem. With more demand, there will be less water at the top. Are they going to give them pressure pumps for their individual houses?

EM responds that they say that will not be the case.

F. Gallagher indicates that the pressure is a function of the difference in elevation.

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They are ahead of this project so will get water first.

PC states that the pipe stays full all the time.

P. Herr believes that Mr. Gallagher's response is correct. He suggests that the Board ask D. DiMartino the question and have his response at the next meeting.

W. Neely asks where all the water is going to go.

F. Gallagher responds that it is high in the area. The land drops in elevation in the back. They have a closed drainage system in Littletree which will be captured and routed through the easement and discharged to the same wetland.

W. Neely asks about the impact.

F. Gallagher explains that the impact was designed with measures to buffer the impact in flow.

W. Neely thinks they will have more mosquitos.

F. Gallagher explains that Laurel Lane is low. Littletree goes down and continues around a curve. The existing catch basin is at the intersection of Littletree. The easement discharges into the wetland. That is how the drainage is handled for the existing streets because the project was built during the 1960's. Since then because of the Water Protection Act, they have to design measures to buffer the impact to the proposed wetland. At the low point, they will have a closed drainage system which will discharge to the low area and detain it there. They will restructure the outlet controls for the amount of discharge. The controls for the amount of discharge doesn't exceed the runoff existing on the site before it is built. There is another wetland at the far end of the property. Everything will be discharged to the detention and then discharged.

Kevin Cloutier asks if the DEP was notified.

F. Gallagher responds that they filed a Notice of Intent with the Conservation Commission and the DEP but have not had their hearing yet. They did send out notices to abutters.

B. Lord explains that they send out a notice which says that there will be a hearing but they don't know when it is.

Mr. Horan believes it is tomorrow night but hasn't been told what time.

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EM does not think it is fair not to tell anyone the date and time of the meeting.

Mrs. Horan explains that the notice said to call Cliff Matthews. It said it would be on September 27, 1995 but didn't say the time.

B. Lord notes that they meet at the north community building across from Stallbrook School. It may be a meeting to decide when to have the real meeting.

K. Cloutier asks if they filed permits with the DEP.

F. Gallagher responds that there is a public hearing process. They haven't received approval on anything yet.

K. Cloutier asks if they have received approval on the drainage yet.

F. Gallagher responds in the negative. Drainage is more the preview of the Conservation Commission.

K. Cloutier asks how they will find out when the DEP hearing will be.

B. Lord explains that it is the local Conservation Commission hearing.

Janice Bandini, from the audience, indicates that it is in the newspaper for tomorrow night at 7:30 p.m. at the Senior Center.

Paul Ivis, 10 Littletree Lane, asked at the first meeting if he would lose pressure. He was told no because he's higher up, but he told the engineer that water runs down hill. The drainage is running to rest in the pond or swamp. He asks where it is going from there.

EM explains that there is a Bylaw which says that they can't increase runoff to someone else's property.

B. Lord indicates that there are two wetlands existing. The purpose of the detention pond is to hold it and put it in the wetlands in an organized fashion. It holds it and put it in the wetland over a short period of time. They are taking care of the water which is already on the site - not increasing it. The drainage pattern runs to Littletree Lane. The old conditions left it draining to the wetlands on the site. The present conditions couldn't do that. They have to retain all the water on the site.

P. Ivis has lived there for 23 years. There is a drought now but it is a swamp under normal conditions. People are going to float. It is not a good place to put houses.

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He asks if the Board is required to give the waivers.

EM responds that some waivers are granted but some aren't. They are all different.

P. Ivis explains that there are a lot of taxpayers here who thought that was town property or conservation land. They claim it was never owned by anybody but the town owned it for several years. This came up for auction when the town was trying to raise money. The town screwed up when they auctioned it off for the amount that they did. It was never advertised. If it was, the town would have gotten more money for the parcel. We, the taxpayers, resident of the town, request that the Board deny the waivers.

B. Lord refers to the ownership of the land. The property was taken for taxes 5 years ago. There was an unknown owner. The town doesn't spend a large amount to do the title searches before a property is auctioned off by the town. FREDAP Realty Trust bought the property but there was an unknown owner for 20 years. It is registered land as opposed to nonregistered land because they couldn't find the boundaries. The cut and fill waiver has to do with the high point and the low point. It meets the town requirements in almost every interest.

P. Herr asks B. Lord to clarify the waivers and whether it meets the town specifications without the waiver.

B. Lord responds that there are two waivers requested. One is for the high point and the low point and the other is for the 40' right of way which could be widened to 50' with a cul-de-sac at the end of the property line. They are willing to reduce to a 40' easement and pull the cul-de-sac back. It would still meet the requirements and they wouldn't need the waiver.

F. Gallagher explains that there are 12 lots for which they can design a lane which is a 40' right of way with 22' wide pavement. They propose the 40' right of way to access the project. They originally submitted for a minor street which is a 50' right of way with 26' wide pavement. The reason was to provide the ability to extend the roadway. They anticipated the Planning Board expanding the road in the future. They could provide a steeper roadway profile which would meet the requirements for a lane.

P. Herr notes that people are expecting the Board to hold up the subdivision because of the waivers but the fact is that they could design it to meet the regulations without the waivers.

F. Gallagher further explains that they have a 40' right of way with 12 lots. They are asking for the waiver to widen as opposed to narrowing the road. The reason to

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widen is to provide access to widen to Blackstone and the land up above.

Jim Locker, Littletree Lane, asks how big the circle is.

F. Gallagher responds it is a 60' radius.

J. Locker asks if it is big enough for a ladder truck to turn around and the size of the entrance.

F. Gallagher responds in the affirmative and it is 40'.

J. Locker asks if they will still have the 40' without the waivers.

B. Lord responds in the affirmative. Doing it would be to the town's benefit. They can comply without having to cut and fill as much at the low point and high point. The closer it is to level, the better for everyone.

J. Locker asks the effect on the wetlands if they don't grade the way they should.

P. Herr responds that they are asking for the waiver to limit how far away they are from the existing grade.

J. Locker asks if the waiver will effect the drainage.

F. Gallagher responds that it will not really, it is still a low point.

J. Locker asks if they will hook up the drainage at the end of Littletree Lane.

F. Gallagher responds in the negative.

J. Locker indicates that the drainage will still go some place.

F. Gallagher agrees.

P. Herr states that they do add water because of the impervious surface. Amory needs to see more details. Barring a double error, the developer shouldn't make peak demands on the wetlands any more severe than they are now.

J. Locker thinks they will still add more water.

B. Lord indicates that it is controlled. All testing for deep holes and percs were done in March.

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Audience voices concerns that there was no snow this year and no rain, so it has been exceptionally dry.

Ed Benson, Laurel Lane, notes that this has been a dry winter/dry summer. Normally, the property is under water and that is something the Planning Board should look at.

EM points out that is something which the Board of Health considers. It is not something which the Planning Board addresses.

F. Gallagher states that there are two wetlands. One as you enter the project and according to the botanist there is a wetlands by the town border with Blackstone. Wetland areas are reviewed by the Conservation Commission. Wetlands are defined by the state based on vegetation and soil not whether or not there's water or standing water on the site.

SHORES AT SILVER LAKE REQUEST FOR CONTINUANCE

EM interrupts to continue the Shores at Silver Lake Public Hearing.

Janice Hannert, Fafard representative, submits a request for continuance to the October 26, 1995 meeting, dated September 26, 1995. They have not yet finalized their response relative to the traffic questions raised at the last hearing.

WW moves to continue to October 26, 1995 at 8:00 p.m. PC seconds. Vote of 4 (EM, RL, PC and WW).

CONTINUE WITH EDWARDS ESTATES HEARING

Ed Benson trusts his own eyes to see what it is like. He has lived there for 7 years. There are much larger areas under water most of the time.

P. Herr agrees that people have serious concerns. The Board can pass along their concerns to the Board of Health. They should be aware that the water table is possibly threateningly high. They should take into account all issues of seasonality.

EM notes that the Board of Health is a consultant engineer who works on behalf of the town.

? asks the members of the Board of Health.

EM identifies the members are Mr. Arcand, Mr. Cibley. There are 3 members and the

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consultant who works with them. The consultant witnesses the percs.

RL thinks maybe it should be perced again.

Tom Bernard, 18 Laurel Lane, doesn't care about the waivers because they will figure out how to grant it without the waivers.

EM notes that there is an appeal period.

T. Bernard is concerned about it becoming a thruway. They are squeezing the road and turning a quiet neighborhood into a thruway. Doesn't the Planning Board have discretion because this doesn't make sense? It may fit the Rules and Regulations but doesn't make sense for the neighborhood.

EM responds in the negative. The Board doesn't have discretion. Mass. State Law says that if the Planning Board fails to act it is automatically approved. The law says they have to advertise the public hearing and act in so many days. The applicant has to prove that it meets the requirements and the Board has to act whether they like it or not.

B. Lord explains that they have one situation without the waivers to design the cul-de-sac to the edge of the border. By not giving the waiver they will go with a 40' and pull the cul-de-sac back. They can't control what happens in the future but no expansion will be done by this developer.

T. Bernard believes it is common sense that it will go through.

EM notes that the Bylaw says they should provide access to the additional land.

Mark Horan, 44 Littletree Lane, refers to the topography map where the detention basin is and water runs downhill. The land they are proposing to develop is higher than the land south of the proposed road. Why don't they have a basin on the south instead of the north.

F. Gallagher explains that they will capture the runoff and hold it in the basin. It does discharge to the wetland.

M. Horan believes it will end up in his backyard.

F. Gallagher points out that his backyard is 8 - 10' higher.

M. Horan disagrees, not on all points. He distributes a copy of the protective

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covenant which was recorded with the existing subdivision. He refers to the preamble C1, 1st page which references land use "no lot will be used instead for residential purposes". The language imposes a restriction which is greater than residential zoning. They are putting a road on a residential lot. He refers to C7, 2nd page which refers to nuisances, no noxious offensive activity which may or may not become a nuisance. Putting in a road constitutes an annoyance and a nuisance.

EM asks about the old subdivision plan which was submitted at the last meeting.

M. Horan believes that B. Lord misled the Board. The first plan submitted by B. Lord has no legal effect whatsoever.

EM asks if the plan was recorded.

M. Horan responds that the subdivision was revised and rerecorded at the Registry. Originally the road was there then there was another plan with no road. The protective covenant prevents this from happening. Mr. Farino built the houses.

EM thinks they should run this protective covenant by Town Counsel.

M. Horan requests that the Board ask Town Counsel if he ever represented anyone who has an interest in this subdivision.

EM asks if it would be any different if Town Counsel did closings on any of their houses.

M. Horan indicates that Mr. Halnon, the resident who is an engineer is not here tonight but asked him to serve as his proxy. He refers to the natural ground grades of 20% and refers the Board to Sections 4252, 4258 without the waivers and 4259 without building the 8' retaining wall of the Bellingham Rules and Regulations. He raises questions about the grade of the houses off the steep road. If the new street is created, Mr. Horan's property will become a corner lot. Littletree Lane would be his frontage and he would not be in compliance with the definition of a corner lot. He also refers to the creation of the large drainage basin. The soils have a high water table and are very poor. There are canton and montok soils which have severe limitation for septic systems and fields.

RL asks if his septic system is working fine.

M. Horan responds in the affirmative as far as he knows. His backyard goes straight down. He suggests the Board get out and take a walk on the property.

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EM explains that the Planning Board deals with the site on paper.

M. Horan submits an opinion from his legal counsel and a petition signed by residents of Littletree Lane, Laurel Lane and Overlook Drive insisting on strict compliance with the Planning Board Rules and Regulations and that it not waive strict compliance with said rules. It is in the public interest and not inconsistent with the intent of the Subdivision Control Law.

EM asks if Mr. Horan agrees that the Planning Board's hands are being tied with the Subdivision Rules and Regulations.

M. Horan does not agree. He is not a real estate lawyer. There are safety and traffic issues. The Board has discretion on items. They are asking the Board not to grant the waivers because it is not in the public interest.

P. Herr asks why they are opposed to the waivers. Denying the waivers is not denying the project.

M. Horan thinks that denying will force them to come back with a different plan. He is not an engineer and cites the Regulations identified by Mr. Halnon again. He refers to the opinion letter from his Legal Counsel and the setback requirements of 20'. His is an existing dwelling and lanes require 40' right of way. He asks about a Land Surveyor.

F. Gallagher is not a Land Surveyor but it was surveyed.

B. Lord explains that the property was surveyed two times. An 81-P plan prepared by Land Planning was signed by the Planning Board.

F. Gallagher had his surveyor survey the land.

M. Horan asks about the stakes delineating the boundaries.

F. Gallagher responds that there were 3 stakes placed on Mr. Horan's property at his request at the 3 corners he was concerned about. Two more show the limits of the property.

M. Horan asks about the two at the front.

F. Gallagher states those are at the property lines.

Rita Horan asked Mr. Gallagher to show them the boundaries of the property.

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Neighbors stood where he put the back stake and it is not straight. She suggests it be surveyed by an independent surveyor.

F. Gallagher explains that it is very tight. He put 3 stakes in place but if they don't feel it is correct, they can hire a Land Surveyor.

M. Horan is asking the Board to request an independent Land Surveyor.

F. Gallagher indicates that what is not registered land is bounded by stonewalls and monumented.

M. Horan asks if Mr. Gallagher found the monument behind his house.

F. Gallagher did not.

M. Horan took two points. At 90 degree angle, he measured 45.7 feet to where the marker is supposed to be but it is not there.

B. Lord states that M. Horan has the right to hire his own surveyor to survey the land. He refers to the accusation relative to the covenants in the first paragraphs. The plan referred to does have the roadway on it.

WW points out that the covenant refers to lots 1 through 116 but he can't even find 116 on the plan.

B. Lord believes that the covenant is a private contract between the buyer and the builder. It is not in the province of the Planning Board.

Audience voices outrage at B. Lord's comments.

EM suggests they continue.

RL moves to continue the public hearing.

P. Herr wants to make sure it doesn't get approved by default.

B. Lord will provide an extension..

RL moves to continue to October 26, 1995 at 8:30 p.m.

EM suggests an extension to December 1, 1995.

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B. Lord agrees to provide an extension to December 1, 1995.

P. Herr identifies two questions about legalities. 1. Is Mr. Horna's lot nonconforming? If the road goes through there is not a large enough amount of frontage because it would become a corner lot and the frontage existing on the road makes the lot nonconforming thereby creating a subdivision which constitutes a zoning conflict. 2. There is a question relative to the private restrictive covenants which prohibit them from building the road on covenanted land and whether the Planning Board's actions are bounded by that.

Mary Willitts, Overlook Drive, is concerned about the safety factor. Traffic will go on Overlook Drive and not on Littletree or Laurel Lanes because of the hills. Overlook is becoming like a highway with the trucks going through when they were just building one house below. There are lots of kids.

EM suggests they request a radar stop.

PC refers her to the Safety Officer.

M. Willitts counted 20 trucks zooming through 2 days ago to build the one house. What will happen with 12 houses? Will they go down Overlook to take dirt out back and forth? A lot of people called the police but they didn't see one cruiser.

Clerk to send a letter to Town Counsel advising him of the residents objections to anyone who has an interest or done work for this developer and ask him to review the protective covenant and submit an opinion relative to the status of Mr. Horan's lot. Town Counsel will make a determination as to whether or not he can review the information or if it should be referred to Special Counsel.

BURLWOOD CONSTRUCTION DEVELOPMENTAL PLAN REVIEW

AM returns for this review meeting.

WW abstains from the discussion because he does work with the applicant. He removes himself from the meeting.

P. Herr ran the plan through the checklist. There were a number of problems which were conveyed and revised. It now meets the requirements.

Clerk reads Notice of Review Meeting.

John Brockert, owner introduces himself and Jim Stannard, architect. The property is

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located across from OPUS. He points out Cable Vision, ABP Sign and Petroleum. They updated the drawing. Originally, it was basically the same but they added items including planting and septic. It shows the footprint of the building. It will be a combination of metal and split block for the office area and glass doors and windows. The other 3 sides will be completely metal.

AM asks what they are fabricating.

J. Brockert responds they are store fixtures. He is asking for a waiver for paving. He wants to have bluestone in the back. He doesn't like to put more impervious surface than he has to. He only has 4 employees. The loading dock will be used once a month.

EM reads September 19, 1995 letter from the Fire Chief wherein he states that there is a note on the plan that states there are no hazardous wastes but he does not believe this to be so. The company does do spraying and uses some flammable materials. He requests that all areas be paved because there is limited access to go around the building. The water pressure and volume on William Way is marginal. He is not sure allowing further building on the street is beneficial, particularly a use that may require a sprinkler system, even on a limited basis, within the building.

J. Brockert addresses the hazardous materials concern. By the time he gets to this location, he will be using water based solvents also. He is under the 7,000 square foot limit for sprinklers.

EM states that is up to him and the Fire Chief. He doesn't see a problem with the bluestone out back and paving in the front.

J. Stannard states there are 12 parking spaces. They don't need the additional 13 but they are just showing they are capable of having them.

J. Brockert has a 7' high ceiling where he is now. He needs a higher ceiling to store stuff.

RL understands that there is less ground area but the ceilings are higher at the new location.

RL moves to accept the Burlwood Developmental Plan Review with a waiver for the pavement with bluestone out back. AM seconds. Vote of 4 (EM, AM, RL and PC). WW abstains and not present.

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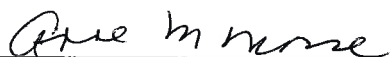
GENERAL BUSINESS

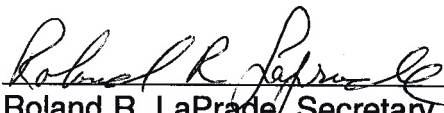
Hilltop Developmental Plan Review scheduled for October 12, 1995 at 7:30 p.m.

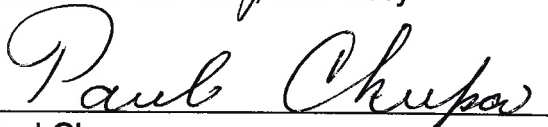
P. Herr met with Mr. Kelly, Cumberland Farms where there are lots of problems.

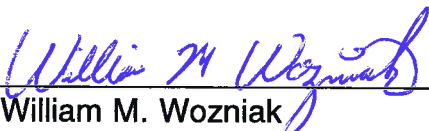
AM moves to adjourn at 10:30 p.m. RL seconds. Vote of 4 (EM, AM, RL and PC).
WW not present.


Edward T. Moore, Chairman


Anne M. Morse, Vice Chairman


Roland R. LaPrade, Secretary


Paul Chupa


William M. Wozniak