

BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

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ROLAND R. LAPRADE, VICE CHAIRMAN
PAUL CHUPA
EDWARD T. MOORE
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MINUTES OF REGULAR MEETING

JULY 17, 1997

Meeting commenced at 7:01 p.m. All members were present. Planning Board Consultant Philip B. Herr was also present.

ELM ESTATES

Joe Kauker, resident, hasn't seen anyone since the last meeting.

Roger Gagnon, developer, is waiting for Phil to go and do the work. He hasn't had a chance to do it. He did go back 1 - 2 weeks ago and did the seed work which was the first part.

J. Kauker notes the first part has nothing to do with what they were talking about two meetings ago. No work has been done since two meetings ago.

WW asks if there is only one guy who can do this job.

R. Gagnon explains Phil was digging a cellar hole for him today. He will tell him to go do it.

J. Kauker asks how the developer can go forward with other projects without finishing this one.

EM responds that one has nothing to do with the other.

WW points out that at the same time the Board is hearing the same thing over and over again.

EM will not sign Pinecrest but doesn't know if the Board has leverage or not.

R. Gagnon will come back at the next meeting and will get Phil up there to do the work. He will

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return at the next meeting on August 21, 1997 at 7:30 p.m.

BRIEF DISCUSSION RE: CHARLES RIVER CENTER REVISIONS

P. Herr called Robert Frazier who apologized for not having the final plan. He is not here tonight because he doesn't have a corrected plan yet. They had a plan which was cut and pasted.

Board members explain the outcome of the special July 2, 1997 meeting when the revision was presented. The Board voted to approve the changes contingent on the four conditions which were in P. Herr's memo which was faxed to the Board that morning. Letter of approval with the 4 contingencies was forwarded to the Building Inspector.

Clerk to forward P. Herr a copy of the Building Inspector approval letter.

MAPLEBROOK COMMONS CONDOMINIUM SPECIAL PERMIT REVISION, CLUSTER SPECIAL PERMIT AND DEFINITIVE SUBDIVISION CONTINUED PUBLIC HEARINGS

EM abstains from the public hearing and removes himself from the hearing room.

Bruce Lord, Esquire, representing applicant Brad Cushing (Longview Realty Trust), explains they have a problem because there are only 4 members sitting since Associate Member Richard Dill who is sitting in during EM's absence is not present tonight. It is out of their control.

AM asks about the issue regarding abutters notices and wonders if we are restarting. Was there a new submittal?

B. Lord responds the abutters were re-noticed. They have given everyone notice and have re-advertized.

AM asks how they can have a new application without withdrawal of the original. The applicant hasn't withdrawn formally.

B. Lord explains that notification of the condominium is the real question. They agreed it was in the best interest of his client to notify all abutters. He is willing to give an extension.

P. Herr believes that by giving notice, they are effectively starting over. If B. Lord resubmits, would he use the same material?

B. Lord will use the same application but there is a variation because more abutters would be notified.

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AM suggests B. Lord check with Town Counsel for their own protection.

WW explains to the audience that since the Board's regular member is abstaining, the Board has an Associate Member who sits in. A special permit takes the vote of 4 out of 5 for approval. The Associate Member was here when the hearing started but the Board doesn't know where he is now so we will continue to the next meeting. The process will start all over again.

? Maplebrook resident advises that B. Lord said their condo association was notified before but they were not notified.

B. Lord has no control over the abutters. The Assessor's office provides the list of abutters and the Planning Board sends out the notices of public hearing.

PC indicates that the Board didn't know that people were not notified.

B. Lord points out we are starting over again since the condo association was not notified. In other towns, the applicant prepares the abutters list and the Assessor's Office verifies it but in this town the Assessors' prepare it and provides it to the applicant.

? Birchwood Grove resident states they did not receive notice this time either.

B. Lord did request all the residents of the 4 condo associations from the Assessor's

P. Herr suggests they should do it again with a new application.

B. Lord agrees as long as the Board agrees to use the same submittals.

Clerk reviews original abutters list which AM notes did not list one resident or condo abutters for notification.

RL asks why they don't have the applicant do the list and the Assessor's Office verify.

B. Lord thinks the applicant should be responsible for the list.

P. Herr refers to letter with enclosures from Town Counsel which responded to the letter from the Planning Board and B. Lord's letters which show substantial disagreements about the application of the law. He is wondering if those issues have been reconciled.

B. Lord had response proposal to present tonight but they are not necessarily in agreement.

P. Herr is concerned about people coming to the hearings and listening to us go round and round about the technical legal questions. Maybe the Board should see those issues resolved before they

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schedule a hearing.

WW thought the issues would be resolved by this meeting but they are still not rectified.

P. Herr indicates the legal questions regarding the lot area are matters of law. The hearing should be about the real issues when those legal questions are resolved. That is what Town Counsel is for, not the Planning Board. He encourages resolution between Town Counsel and the applicant's attorney prior to the hearing.

AM thinks that Town Counsel's legal opinion is very clear. There are statement which say that the density issues do not allow them to go forward.

RL understands that B. Lord will have answers to those questions. He is presenting to the Board, not Lee Ambler.

B. Lord met with Lee Ambler and addressed his statement regarding density double usage. Relative to sewerage, he doesn't have a rebuttal but meets what Lee Ambler says. "We are now in compliance." Lee Ambler said they can do with 100%, not 70% which is not a legal issue. He agrees with him. It is a complicated situation.

P. Herr refers to the end of Town Counsel's letter where he says it would appear to their mutual advantage to sit down and talk about this.

B. Lord submitted documentation to Lee Ambler and they did discuss all the issues.

? Birchwood abutter notes if that is the case then Lee Ambler should write a letter saying that they spoke and all the issues have been resolved.

WW reads from Lee Ambler's July 3, 1997 letter and points out there is nothing that shows the issues have been put to rest.

B. Lord would have shown in his presentation tonight that they are in compliance. This is not a legal process. Town Counsel defined what the law is. He did already meet with Lee Ambler. Lee Ambler is giving a legal opinion on what they have to do to comply. They don't have to resolve it with him.

WW advises that the Board needs to hear from Town Counsel if it meets the requirements.

P. Herr received a density page last time which he tried to figure out but couldn't. There are questions about the area on the Guerriere & Halnon plans and the numbers on the plans. He is wondering if the engineer of the applicant reconciled his understanding of how they can get here from where this was. Some out of hearing meetings may answer these questions.

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B. Lord responds that all of the items submitted were taken directly off the plans. There is no number on there which doesn't come from the plan or the previous special permit.

P. Herr notes the issue Lee Ambler raised had to do with the earlier special permit. According to the statute, the plan is not in effect until it is recorded which raises another array of issues because the plan was not recorded. That issue is between attorneys and should not be decided in a public hearing.

Ted Cloisin, Birchwood Trustee, asks if the letters from Town Counsel are public documents and if they are available.

AM responds affirmatively.

B. Lord explains there are a lot of problems which go back to 1984. They have had problems finding documentation which led to questions they are facing now. They are questions which had to do with developers in the last 10 - 13 years, not this developer.

AM notes that Town Counsel is saying they did not separate all the condos. It is still one parcel according to him. This issue was raised after the preliminary.

B. Lord indicates that on a legal basis he doesn't agree with Lee Ambler but in the interest of his client, he has accepted his position.

P. Herr suggests they schedule a 3 cornered meeting with B. Lord, Town Counsel and someone from the Planning Board.

B. Lord hasn't said they have reconciled. It doesn't require reconciliation. Town Counsel said to do this so he will do it. He did meet with him for 2 hours. He can't direct Town Counsel and ask him to write a letter to the Board.

WW instructs Clerk to schedule a meeting with Lee Ambler, himself and B. Lord.

RL believes the real issue is what happens if it becomes a public way with the other road remaining a private way. If it is a deadend cul de sac, there are too many houses with only one egress. He doesn't see the answer to those questions.

B. Lord agrees the developer is required to provide 2 means of egress to the condo development per special permit. It will never be a deadend cul de sac.

Kathy Hegarty, Chairman, Maplebrook Trustees, notes it was closed while they were constructing Birchwood.

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RL understands that Lee Ambler sees this as one condo association and 2 are illegal.

WW agrees the legal issues should be worked out first. He instructs Clerk to send a letter to the Board of Assessors requesting that in the future they provide abutters lists for all residents of condominium associations, in this case notification should be provided to all residents of Maplebrook Road. A clarification should be made through the Assessor's Office for future notification of condo developments. Clerk to schedule meeting with Town Counsel, WW and B. Lord before the Board schedules a continuance of the public hearing on this.

B. Lord points out that Birchwood Condominium is part of the applicant and that is why those residents were not notified.

Brad Cushing, developer, Longview Realty Trust, explains there were Phases 1 - 4 Maplebrook. Birchwood is the applicant which is Phase 5. They changed their name and he understands there are questions on whether it was done legally. Town Counsel is saying that Phases 1 - 5 are all one. He has the development rights. He wanted to see if the Board would allow him to extract 20 house lots but if the Board would rather see 130 condos, so be it. The original developer and previous developer went bankrupt. He has spent a small fortune to get here and is now back to ground zero.

AM thinks that Mr. Cushing is threatening these people that he can put in additional condos without sewer because he can't do it without the sewer.

B. Cushing doesn't know what AM says he is threatening. He could get a sewerage treatment permit and resurrect the treatment plant. He can build without town sewer. If the general consensus is the town doesn't want 20 single family homes, he is not making a threat but in the spirit of making everyone happy, he will build the condos which he has the development rights to.

WW doesn't think the people are against him building 20 single family homes but there are legal problems with the hearing and legalities regarding the street.

B. Lord thinks they are hearing from the Board that they should build the 130 condos.

RL responds they are not hearing that from the Board but from one Board member.

WW wants to rectify the legal issues first.

B. Lord believes that AM is prejudiced and asks her to step down. They will proceed with a 4 member Board.

WW instructs Clerk to send a letter to Town Counsel asking him if B. Lord can ask AM to step down from these proceedings. Town Counsel to provide a legal opinion.

Nia Benjamin, abutter, explains they are looking for the requirements for the permits to be fulfilled but they are not against the 20 houses.

B. Lord explains that he met with the Trustees of the other 4 condos on one occasion. They haven't threatened anybody. They are trying to tell them what the alternatives are. There are a lot of issues there regarding the condos which are not the fault of this individual applicant or the associations. It is the fault of the developer and the bank at the time. They are trying to bring closure to this development. One member out of the 4 present tonight will never vote for this. One member is prejudiced no matter what they do. "We as the applicant have the right to ask for a full Board."

AM is not opposed but has questions with the legalities. Lee Ambler agrees with her regarding the issues. It is the Board's job to see it is done properly. She has a right to her opinion.

Ted Cloisin, Birchwood Trustee, has sat through most of the meetings. There is not one piece of law which another attorney can't find fault in. AM was the Chairman at the time. She has other motives to turn it down. In 3, 4, or 5 years, the developer will walk away and they will be stuck with the road. They will see it done one way or the other. The developer is trying to do one or the other. He is in agreement with B. Lord.

AM asks if they are implying that she is directing Town Counsel and if he would write this letter because he is influenced by one member of the Board.

K. Hegarty appreciates the Board digging further. She has lived here for 12 years. She understands that things were not recorded properly. Maybe it is a good thing to ask questions. It needs to be cleaned up and be done right this time.

WW agrees they should dig for every issue and not just certain issues.

K. Hegarty doesn't think a person is bad because they are trying to fix the problem and are trying to do right by us.

Dan Hegarich, 3404 Maplebrook Rd., is trying to understand what they own and where they stand. He thought he bought in Birchwood Grove and now finds out it is all Maplebrook.

AM explains from the Board's prospective, it is all one.

B. Lord agrees to withdraw if the Board will accept the same application.

P. Herr asks if the accompanying documentation will be resubmitted with different numbers regarding the history and density calculations. He further explains the paper work he received tonight is different from the second submittal. To make it cleaner, the application materials should be resubmitted.

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P. Herr asks if the accompanying documentation will be resubmitted with different numbers regarding the history and density calculations. He further explains the paper work he received tonight is different from the second submittal. To make it cleaner, the application materials should be resubmitted.

B. Lord agrees to an extension to August 29, 1997 to try to resolve these issues. He will come to the next meeting on August 21, 1997. He did not send out certified notices to abutters because they are not required to be certified per Chapter 40A.

P. Herr indicates the August 21, 1997 meeting won't be a public hearing.

RL moves to approve extension to August 29, 1997. AM seconds. Vote of 4 (WW, RL, PC and AM). EM abstains.

WW notifies audience a continued discussion will be held on August 21, 1997 at 7:45 p.m. but they may receive certified notices prior to then if the applicant decides to resubmit.

HERITAGE PINES DEFINITIVE SUBDIVISION DISCUSSION RE: DECISION

P. Herr received a new set of drawings a few days ago. He doesn't have the draft decision prepared because he thought they were pursuing the gaps and omissions on the plans. He was left with 3 items which may have been met. What about the stumps?

PC asks if they met with the Conservation Commission yet.

B. Lord responds they are meeting with them next week.

Mike Simmons, Guerriere & Halnon, notes they will grind up the stumps. Nothing will be buried on site.

P. Herr questions the design year of the storm sewers.

M. Simons responds the streets are designed for the 25 year storm.

P. Herr asks for certification that all owners of the land agree to this.

B. Lord agrees to provide the certification.

P. Herr refers to two questions involved. One is that the attorney is willing to certify the owners of the property agree to this. Two is there are substantial changes in the drawing since the last time they were here. All the rest on his list has been taken care of. He suggests the Board could vote to approve the subdivision contingent on getting written certification from B. Lord as to the

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assent of all owners of the subdivision. They are requesting one waiver for offset of the street centerline.

B. Lord will put it in writing but already did it verbally.

WW asks what they are doing with the entranceway.

B. Lord notes there is a steep slope grading down into the driveway and the lots next to them. They are also putting sewer into those two houses. The owners of those houses really don't know if they want this or if they want it spread out. There is a grading easement across their land. They will do it this way and grade their backyard to the owners specifications.

P. Herr asks how the detention will be maintained in the long run.

B. Lord will find out when they go to the Conservation Commission. This falls under the new state stormwater regulations so he will have to talk with them.

P. Herr refers to the Deer Run development which put up an endowment which gives the town income sufficient to maintain it in perpetuity. Maintenance is critical to function because of the retention instead of the detention like this where the maintenance is less costly. In the past, the Planning Board imposed that as part of a condition of approval of the plan. It should be covered in the text of the decision. He will include a provision parallel to the last two subdivision decisions. The Deer Run developer agreed to take care of the first two years. The calculation will be done on what it will cost for those years. There may be a different system to assuring long term maintenance with the new stormwater management with the Conservation Commission.

B. Lord agrees they don't want two sets of requirements.

RL moves to direct P. Herr to write a positive decision for the Heritage Pines Definitive Subdivision. PC seconds. Vote of 4 (WW, RL, AM and PC). EM abstains and is absent from the hearing room.

P. Herr will send a copy of the decision to Lee Ambler and Clerk for distribution to Board members. He refers to outstanding botanical features which the developer should think about for a good design and which would not cause needless destruction of trees. They did comply with the Regulations but he doesn't think they need something to distinguish like they did on New England Country Club. The question is whether the Board wants to make a point of it. He would like to see it made a consideration. They may have to juggle the house sites.

B. Lord notes that no one wants pine trees in their back yard. Anything they do would deal with the buyer of the lots.

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AM thinks the developer could do covenants for that.

RL believes that unless they go further and put in covenants, the landowners will remove the trees if they don't like them.

B. Lord agrees that if it is not put on the plan, there will be no regard at all.

RL thinks that maybe it should be put in the Regulations.

M. Simmons has to send a survey crew out to find the trees.

PC moves to grant an extension to August 29, 1997. RL seconds. Vote of 4 (WW, RL, AM and PC). EM abstains and is absent from the hearing room.

CENTRE RUN ESTATES DEFINITIVE SUBDIVISION **8 LOTS CENTRE/PULASKI BY DIPLACIDO DEVELOPMENT CORP.**

EM rejoins the meeting.

Clerk received a phone call from Denis Fraine who spoke with Mr. Amory, Amory Engineers, the independent consultant. Mr. Amory only received the plans this week and will not have comments ready for this meeting. He suggested the Planning Board continue so he can have time to review the plans and forward his comments.

M. Simmons spoke with Mr. Amory and knew he wouldn't have anything for tonight's meeting. He will run through the plans. He points out the changes.

P. Herr notes the plans have substantially changed since the last meeting since the road profile changed.

M. Simmons points out they raised the road to elevation 325 at the peak compared to the road which was on the original submittal. They eliminated some of the excessive cuts. The first 600' of the road hasn't changed. They have been through the Conservation Commission with this project. The detention basin will stay in place in the same location. They will pull the drainage back. At the deepest point it will be about 12'. The siltation basin will discharge into the isolated land subject to flooding. They haven't changed the location of the road. The houses are the same. The grading in the back is the same. They eliminated the retaining wall.

WW asks where the gravel removal is now.

M. Simmons responds it is 42,800 which is not a dramatic drop. There are little peaks all over the site.

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EM thinks this makes a better development.

M. Simmons indicates they are still asking for a waiver from the deviation from the road centerline. The average cut through is 8 1/2'. It is 7 1/2' - 8' - 9' which is quite different than the 20' shown at one point. They will use the same detention pond which is a little oversized but it is okay. They are scheduled to walk the site with Mr. Amory next Tuesday.

P. Herr comments the applicant's engineer was sent a checklist which they responded to. There is the issue of attorney certification that all the owners of all the land have assented to the subdivision.

M. Simmons responds that Attorney Roche will provide that.

P. Herr could only find one wheelchair ramp. He refers to Sheet #8 for sewer details.

M. Simmons states the standard detail will be taken off.

P. Herr refers to Sheet #2 where it says Franklin Planning Board for approval signature block.

M. Simmons will correct that.

P. Herr explains that the Regulations enable the Board to require an Environmental Analysis for a development of 20 or more houses which is not the case with this development although the developer did provide one but he didn't include everything which is required including water protection area, analysis of open versus closed drainage system. The Board may want to alert Amory to those questions including recharge water or concern about the quality of water. The Regulations gives the Board authority to ask someone to give an analysis. Here will be a fair amount of long term detention. These people caught the new stormwater regulations from the state and designed the detention as such so it is taken care of.

M. Simmons has already been to the Conservation Commission. They are taking the roof drainage and filtration into the ground. They will recharge back into the ground which is part of the new regulations.

EM refers to the detention pond which is 4' deep.

M. Simmons notes it is all the same but they added a sedimentation basin. They will use best management practice for clean water.

WW asks about Mr. Simmons' comment that the detention basin is oversized.

M. Simmons explains it was raised 1/2' from the bottom. Maybe he can cut 1' more. It helps

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sedimentation.

EM asks about the road centerline issue.

P. Herr believes it is still major but heard from the Board at the last meeting about a compromise.

Thomas DiPlacido, developer, asks who should take care of the drainage. He meets with the Conservation Commission next Wednesday.

P. Herr discusses the same detention maintenance requirement as with the Heritage Pines decision. He will send a copy of the Deer Run decision and covenant to Mr. DiPlacido.

EM moves to continue Centre Run Estates to August 21, 1997 at 8:30 p.m.

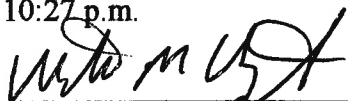
M. Simmons refers to the ZBA special permit for earth removal and requests a recommendation from the Planning Board. They met with them last week and they have seen the plan.

EM suggests they tell the ZBA that this is still in the process but the Board is just asking about drainage issues.

RL seconds EM's motion to continue. Unanimous vote of 5.

Clerk to send a letter to the ZBA that the Planning Board is waiting for drainage issues to be resolved but we have no problem with the earth removal plan dated July 9, 1997. This is a better concept because the gravel removal is reduced from 55,000 to 42,000.

PC moves to grant an extension requested by Mr. DiPlacido to September 25, 1997. AM seconds. Unanimous vote of 5. Meeting adjourned at 10:27 p.m.



William M. Wozniak, Chairman

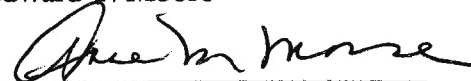


Roland R. LaPrade, Vice Chairman



Paul Chupa

Edward T. Moore



Anne M. Morse