

**BELLINGHAM PLANNING BOARD**

**P.O. BOX 43**

**BELLINGHAM, MASSACHUSETTS 02019**

**WILLIAM M. WOZNIAK, CHAIRMAN  
RICHARD V. DILL  
PAUL CHUPA  
EDWARD T. MOORE  
ANNE M. MORSE**

**MINUTES OF REGULAR MEETING**

**SEPTEMBER 24, 1998**

Meeting commenced at 7:00 p.m. All members were present. Planning Board Consultant Philip Herr was present. Minutes recorded by Planning Coordinator Jill Karakeian.

**GENERAL BUSINESS/CORRESPONDENCE**

WW tells the Board that he received a Certified Letter from Mr. Fuhrman on Blackstone Street requesting that the group he refers to in his letter be given notice of all meetings and copies of all plans and proposals for the development of Remmy Estates on Blackstone Street.

The Board signed the Board's Quarterly payroll for period ending September and a Pay Voucher for office supplies and postage.

Ted Bailey brought up Brookside Estates to inform the Board that the water loop is not open yet. The DPW has not received their certification yet from the testing lab because they will not release their written certification until the fees have been paid.

EM asked if everyone is living up there?

Ted Bailey said that everyone is in because they are all set except the water loop over the hill to South Main Street is not complete.

EM if everyone is in we won't here anything for about 3 years until things start to fall apart.

AM asked if we had a bond for that project?

Ted Bailey said yes and the two years will be up September 1999.

AM said that when there is a request for the bond, that is when this issue should be brought up.

T. Bailey said that people up in that Development is requesting pressure condensers in from the DPW because there is only 48 lbs. in that area and they keep asking if the water loop coming from South Main Street would make the pressure better? Mr. DiMartino said that he didn't think it would be any better.

Tom Guerin asked if the Board had been notified that the Charles River Center parking lot has been fixed?

AM said no.

T. Bailey said that he did watch the installation of the new system at the Charles River Center and D.W. White put the system in and you almost wouldn't even be able to tell that there was any work done there.

Tim Jones from Gracewood Development is in front of the Board to discuss the problem that came in front of the Board of Selectmen on Monday night's meeting (9/21/98) regarding Pine Grove residence. A letter was issued to me from Denis Fraine on the reaction to the Selectmen pertaining to Pine Grove Ave.

RD reads letter dated September 23, 1998 to Mr. Timothy Jones. On Monday evening, Mr. Bradley of Pine Grove Avenue appeared before the Board of Selectmen to advise the Board that Pine Grove Avenue remains in a state of disrepair. The Board is angered by the length of time this project has impacted on a public way and would like an explanation. It appears the new subdivision roadway has taken priority over repairs to Pine Grove Avenue which was expected to have been completed months ago. Time has been scheduled for discussion of this matter at the Board's October 5 meeting and your presence is requested. Contact Ms. Richard for a time. In the event you will not be attending, please advise. Sincerely, Denis C. Fraine.

T. Jones says that what has transpired since then is Ted Bailey had contacted me the beginning of August. The poles on Pine Grove Ave. had finally come out. Ted and myself had been in contact with each other for months with regard to the poles. He kept saying that he was trying to get the poles removed. Denis Fraine had taken over the conversation and finally got the poles removed late July. We got a call from Ted at the beginning of August and Tony Marinella (the road builder) had other engagements to finish up. He was on Pine Grove Ave. within two to three weeks raising manholes and doing everything on Pine Grove Ave. to prep for paving. We had gone to the DPW a couple of times because Pine Grove Ave. is a different situation from Deer Run. On Deer Run I have a sidewalk and a grass strip. Pine Grove Ave. has the sidewalk right up against the curbing. We had talked to Don DiMartino and he had wanted the top coat on the roadway done first, then the berm, then the sidewalk. That had stopped us because we had work to do on Pine Grove Ave. There was a couple of catch basin issues that had to be fixed. DPW had come to me and asked if I would absorb the cost to fix and I agreed. There was one catch basin near Bill Yazicks house that we were not supposed to touch. This past month we had come to the conclusion that the DPW in accordance with Marinella Construction would all do that catch

basin together to take care of it. That had finally gotten done today. As of yesterday, Don DiMartino had okayed the way we wanted to the road in the first place. Which is, put the curbing down, get the sidewalk fixed and then overlay the road. We had to do things in a timely manner, so it wasn't something that we just said, we aren't doing. We went down there as soon as we got contacted, we started taking care of it. A question came up that I had promised to do those sidewalks by the time school started. That promise was made when Tim Buskirk, when we were here at a meeting and I had had a separate meeting with Tim Buskirk on site. That was months and months ago when the poles weren't even an issue. The Town partitioned for the poles and that just delayed everything. I couldn't do anything. Myself and the DPW had talked about waiting for the poles to come out, because they wanted a nice job instead of going around the poles, pulling them out and then having to resurface. The poles took all the time and there was no way from the beginning August that I was called that I could get those sidewalks in by September. What had happened was, things fell behind. Not due to me, but due to the telephone poles and other setbacks.

AM so what is the game plan at this point?

T. Jones said that we have started. We got the okay from Don DiMartino yesterday to do the road the way we wanted to do it from the beginning. He had recommended a different type of curbing. At the Selectmen's meeting I was accused of renegeing on my word, why I'm working in my subdivision and not on Pine Grove. That is because I can start my sidewalks, I don't need a curbing in. We weren't doing anything on Pine Grove yet because nothing could be done at the time. We started today raising catch basins, the three I was supposed to do for the Town.

EM asked if paving is scheduled?

T. Jones said not yet. We just got the okay from Don yesterday. It will be done. Ted will back everything up.

Ted Bailey said that the reason for such a delay was due to the sequence of events on how it was needed to be done.

EM said that it is a year later.

T. Bailey said that it took me the month of June calling Bell Atlantic, and Cable Co. myself and calling everyone to the point when Roger Oakley went on Larry Cibley's program. He called Denis and said get involved. I called Bell Atlantic and got the phone number for Providence.

EM asked how long ago was it that the subdivision got approved?

T. Bailey said that the seven poles that were removed got removed right away from Bell Atlantic. Mass Electric said that they are the first to move on the pole and they told me when they approved Tim's project, they only approved the poles in his project and extending their lines in his project. When Bell Atlantic came in and got all the poles moved, it was decided by Mass. Electric to use new wire all the way down Wrentham Road. They never put the money in the

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procurement for the wire. The waited for the next procurement period, six months later. That is the most of the delay.

EM says okay, but nobody ever gets to know that. All we here is, we are the residents and we are being punished for two years because we fought this thing.

T. Jones says that's not the case.

EM says he knows.

T. Jones says that Gracewood Development and the Planning Board did not start the partitioning of the poles. The Town, DPW said since we are doing the road, let's do the poles.

EM says that, that should have come out at the Selectmen's meeting.

T. Jones was not there to defend himself.

EM says that if the town is the one that partitioned then somebody sitting on the Board of Selectmen should have known that.

T. Jones said that he had nothing to do with telephone poles on Pine Grove Ave. I have been taking a beating and it isn't fair. I want nothing more than to get the road done.

RD says that it seems that a letter sent out to the people or someone going down there and telling them that we are working on it, it is delayed. Probably would have saved you from alot of aggravation.

T. Jones says yes, but that is not my problem. I told Ted to call me when the poles are out and we will be right in there.

RD asked if you can come up with a completion date?

T. Jones says that he will talk to Tony Marinella. This all just happened a couple of days ago.

**CLAIRE'S COVE – Definitive Subdivision – Plan Endorsement**

RD abstains.

Sara Pultz from Salvetti Engineering is here to present the plan to be endorsed for Claire's Cove Definitive Subdivision.

AM asked if she got the letter from the DPW regarding Claire's Cove?

S. Pultz said yes.

EM said that this letter says that he doesn't know that it is an approved subdivision. Someone needed to go and tell him that it is an approved subdivision.

EM reads letter from Don DiMartino dated September 23, 1998. Dear Mr. Wozniak: I have briefly reviewed the plan for this proposed subdivision. The Town Assessor's maps show identical property lines for the parcels and common driveway area as shown on the plans we received. The Town Assessor's map indicates that Claire's Cove is a paper street. I could not determine whether the existing Claire's Way is Town property. I do not believe it is Town owned and the Town does not maintain it. The plan is obviously incomplete as a subdivision plan. No roadway, drainage, water main, profiles, details, etc. appear on the plans that have been submitted. It appears that this plan is being submitted to allow for construction on Lot 1 that does not have suitable frontage required under the Zoning Regulations. If this is the case, I suggest that a waiver be requested from the Zoning Board of Appeals, to allow for construction on Lot 1. The area of the common driveway shown on Claire's Way should be reestablished as an easement upon which both property owners have rights for utilities and access. The establishment of an easement will clear the Town of any responsibility for maintenance of the driveway. (I think it may be cleaner if Claire's Way is made part of one property and the other property is given the easement rights.) If you have any questions, give me a call.

S. Pultz says that first of all, this was a previously approved subdivision. To go with Mr. DiMartino's letter it says on the plan that Claire's Way is a privately owned street, to always be privately owned by Lots 1 and 2 and will never be a Town Way. The Town has no responsibilities as far as the driveway is concerned.

EM asked when the plan was approved and says that the question is. Has there been any zoning changes that affect it?

P. Herr says that he had reviewed the plan and there are no zoning changes

EM says that this is just an endorsement.

S. Pultz just wanted to say one thing. There has been one change to this plan since the approval. We checked this plan over since it had been four years since the approval we noticed that the first time around the shape factor was not added to the plan. When we calculated for the shape factor, it did not work. So, we had to change the interior line, in order to make the shape factor work. That is the only difference. The road is the same, perimeter is the same, same number of lots.

EM asked if there is a notation or an amendment to reflect that?

S. Pultz said no, there is not.

EM said that plan should say approved in 1994 and revised in 1998.

S. Pultz said that the reason of the miss marking of plan is because we were under the assumption that we had to start all over.

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P. Herr says that it presumes that the Definitive Plan got approved.

S. Pultz said yes, as far as I know but nothing got signed.

EM I think I remember that there was one condition and that was that a street sign got put up before a house got built.

PC said yes, the street sign is there.

P. Herr says that Claire's Way is unchanged. The lot line separating Lots 1 and 2 slightly changed. If the plan was signed in 1994 this change could have been done with an "Approval Note Required" plan. The Subdivision has not changed, it is the same. I think it would help to put the approved date August 25, 1994 and the endorsed date September 24, 1998 on the bottom of the plan.

EM motions to sign the Definitive Subdivision for Claire's Cove approved August 25, 1994 and endorsed on September 24, 1998. PC seconds. Unanimous vote of 4 (WW, EM, PC and AM).

### **STOR/GUARD – Special Permit & Development Plan Review Public Hearing**

Denis Donovan representing Stor/Guard is in front of the Board tonight to ask for a continuation of this Public Hearing to October 29, 1998 @ 8:00 pm.

EM motions to continue Public Hearing for Stor/Guard to October 29, 1998 @ 8:00 pm. AM seconds. Unanimous vote of 4 (WW, EM, PC and AM).

### **BAINBRIDGE WOODS – Definitive Subdivision – Plan Endorsement**

Bill Halsing of Land Planning and Ed Gately, owner of Bainbridge Woods in front of the Board for the endorsement of the Definitive Subdivision plans and to submit the Covenant for the Subdivision.

P. Herr asked what the Board does before it endorses a plan?

EM says that it gets certification from the Town Clerk that the 20 days for the appeal period is up.

P. Herr asked if the Board had received that?

J. Karakeian lets the Board know that Town Counsel has not yet responded to the request for comments on the Decision of this Subdivision. So, it has not been filed with the Town Clerk.

P. Herr says that suppose you did have the letter from the Town Clerk saying that the Appeal period was over. What else does the Board need before endorsement?

EM says a covenant.

P. Herr says that you need some security. That is very important. They have prepared a covenant and sent a copy to me to review. I didn't see anything missing in the covenant. They had used the Board's standard form. We also want to make sure that we have a way of assuring that the covenant gets recorded. The plan should somewhere say on it "subject to covenant recorded herewith".

J. Karakeian said she will call Town Counsel in the morning to find out the status of the Decision. She will call Land Planning to let them know the status.

Ted Bailey asked how far can the Developer go as far as clearing of the land without approved plans?

P. Herr said that to clear the road is something that shouldn't have been done until the plans were stamped and that has already been done. So, he has done more than he should have. You have a law saying you can't start the construction of a road until you have an approved subdivision. My recollection from when we were trying to get the trees shown on the plans was that the trees that had been removed from where the road was going to go.

**SUSAN LANE – 2-lot waiver request**

E.K. Kahlsa from Land Planning in front of the Board requesting a waiver on two lots that are located on Susan Lane that has an "Approval Not Required" plan signed. I have prepared two plans for the Board's review that show, as we discussed, the construction of two homes. The access is provided by an easement from Susan Lane. It is a 30' way with a 10' right to disturb for grading purposes. I have prepared a letter with request for waiver from Section 4231 of the Rules and Regulations. It will be subject to Board of Health Regulations with regards to construction of on site septic systems.

P. Herr asked about the discussions that lead up to the request for this waiver. What was the action that resulted?

E.K. said that Town Counsel had recommended to the Board that a note be attached to the Form A plan which references Section 4231.

P. Herr asked if a plan with that reference get endorsed?

E.K. said, yes at the last meeting.

P. Herr asked to see the plan.

E.K. brought the mylar in to show Phil.

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P. Herr says that Lee's point was is that it was not entirely clear that the construction of additional dwellings on newly created lots. We are talking about two houses, right?

E.K. said yes.

P. Herr asked nevermore?

E.K. says yes, that is correct?

P. Herr asked how he can look at the plan and be sure nevermore? Because, he can see two more houses, maybe three. I had a phone call from someone who thought that there might be eight (8).

E.K. said no. We mentioned to the Board that there is the possibility of a third lot if we could obtain a variance from the ZBA for frontage using the back lot division. I would like to suggest to the Board that if they approve two lots and two homes to be constructed we will live with that. If for some reason we are able to obtain a variance from the ZBA we would be happy to appear before the Board again to make sure that it is acceptable. What is being proposed right now is the construction of two homes. We have obtained an easement through what was formally John Graylen's property for the construction of the driveway. The plan is to build two homes. Our sense is that with the amount of wetland that is there, that is pretty close to the limit. We have worked pretty hard to create these two lots.

P. Herr said that there is a public service concern. That is the fire department and I don't know what the Board wants to do with that.

PC asked if that driveway will always be a private way?

E.K. said yes. The easement already exists and once the driveway is constructed then the people own the rights to pass over that land will be responsible of maintaining the driveway and the utilities.

EM said that if you could atleast put a hydrant at the top of the driveway at the T where the two houses branch off. It would be a big help.

WW asked if there was a reason for granting this waiver? What is the Board's benefit and the Town's benefit.

E.K. said that it was part of the recommendation, I thought, from Town Counsel.

P. Herr said that Town Counsel didn't recommend that the Planning Board approve the waiver.

E.K. said that it true. He suggested that this is one way to address the issue.



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WW said that he felt no problem endorsing that plan with the note on their if at a later date they wanted to come back in front of the Board and try to obtain a waiver from that Section noted on the plan. I'm asking, what is the reason for the Board granting this waiver?

E.K. says that this was suggested as a route. I don't know what benefit the town receives from signing this waiver.

P. Herr says, let's try to narrow it down a little. There is a subdivision regulation that limits 12, a number of dwelling units allowed on a dead end street. That is what this is.

E.K. says that he would like to know from Phil if he feels that the one lot is buildable.

P. Herr the question is how can the Board reconcile a waiver from a standard that is in the regulation? Go down through the considerations that underlie that regulation and see why it is that it's not unreasonable in this case to grant the waiver.

EM says that the only time he remembers waiving that bylaw is for safety reason.

P. Herr asked if Lee had outlined a procedure for which the Board should consider? Is it your sense that the Board can just do this tonight? Do we need to have a public hearing?

AM said that she would think that it would need a public hearing.

WW says that he feels that we need more input from Town Counsel.

E.K. says that he has the letter from August 25<sup>th</sup> if you would like me to read it into the minutes. At least the section that refers to the note on the plan and the waiver. "I do feel that the Planning Board is acting properly when it concerns itself with innocent people who purchase and reliance upon an Approval Not Required plan. I suggest that some form of endorsement on the plan relating to the regulation of no more than 12 residence's and it would seem that a simple request for a waiver should thereafter remedy the problem. My recommendation for the Board would there be to endorse the plans as Planning Board Approval Not Required but to add thereto the following: See Article 4 Section 4230 Subdivision Rules and Regulations." That is what I was going by. If you approve the waiver and two homes are built that subdivision upgraded of density would be prevented from being built. Quite honestly, I think that the wetlands prevent any further development.

P. Herr says that his suggestion is that this is going to kick up dust. I think that this should be a well-documented procedure. This request should be in writing. In this written request, there could be information about what it is being asked, what assurance. I don't think that it is an amendment to the approved Subdivision and it doesn't need a public hearing, but I think the Board would catch very bad responses if this was an unannounced process. How does it directly affect the abutting homes?

E.K. is the Board concerned that there will be additional lots requested?

PC says one of them.

E.K. is the two lots an acceptable presentation based on your expectations? You can ask Town Counsel but my impression was that he thought this may have been a unique case.

EM says that we are concerned about the land at the end of the cul-de-sac and if you're driveways were coming in from over there then it wouldn't be so much a question. It just looks sneaky. If you can come in with a letter from Conservation saying that no, we cannot access the lots from here due to the wetlands, then it wouldn't look so sneaky and we would have a reason to grant this waiver.

E.K. are you suggesting then, that you would approve the waiver.....

EM says I'm not suggesting we approve the waiver. How can we approve it with nothing to go by.

E.K. we are engineers and we analyzed it very closely. It doesn't make sense to access it all through the wetlands. Not if we can obtain access from where we are. We have gone through some considerable trouble in order to obtain that access.

B. Halsing asked if the Board would feel more comfortable if we obtain a letter from Conservation?

AM said yes, I think it would help.

WW asked about the additional lots that Phil had mentioned earlier.

P. Herr said that you can make those doubts and fears go away by limiting to not more than two dwelling units unless it comes back in front of this Board for further developing. Backup from Conservation simply deals with building the houses where they want to put them rather than closer to the cul-de-sac. It doesn't speak to the issue of two additional houses. It will help explain why the location they are proposing is better than over near the frontage on the cul-de-sac.

E.K. if that seems reasonable to the members of the Board we can delineate the neatness of the property, provide some explanation as to why we are putting the homes where they are.

EM I agree with Phil and I think there should be notice in the paper letting everyone know what is going on. It may take a little longer but at least the people that have concerns will know.

E.K. okay, I understand. We certainly want their support.

P. Herr without going out and doing alot of expensive surveying, is it possible to delineate where the existing houses are so that the Board could get some sense of where the existing homes are with respect to the homes you are proposing?

E.K. sure. We would be happy to do that.

**COUNTRY CLUB ESTATES II – Definitive Subdivision – Public Hearing Continued**

Roger M. Gagnon came before the Board and requested a continuation due to more issues that need to be taken care of on the plans.

AM motions to continue the public hearing for Country Club Estates II to October 29, 1998 @ 8:30pm. RD seconds. Unanimous vote of 5 (WW, RD, EM, PC and AM)

**GENERAL BUSINESS**

Jim McCandless comes before the Board to get a definition of the Noise Bylaw for the Town of Bellingham. He thanks the Board for listening to him and he is asking for the Board's and Mr. Herr's wisdom to explain the Town Noise Bylaw. I have already been before the Zoning Board of Appeals. He passed out a compilation of information for the Board. The first letter is a letter from Lee Ambler giving his interpretation of the Town Noise Bylaw. I just want to review the Chapter 40A State Law. Purposes and Objectives of Town Bylaws and Zoning. Noise is obviously considered a form of pollution. Back in 1988, correct me if I'm wrong, you Mr. Herr proposed this Noise Bylaw to the Town? It is a reasonable bylaw, kind of brief, but basically it can be summed up. Mr. Herr, in my conversations with him, he indicated that this model for this bylaw might have been taken from the Town of Belmont. I asked Belmont for a copy of their noise bylaw and all the wording in our bylaw of 1988 can be found in the Belmont bylaw. Belmont's bylaw today is much more expansive and specific. You can only produce 45 decibels in noise zone C. For a long period of time at night time in residential. In industrial and business district there can be a noise level up to 65 decibels in the day time. My first question is, why was this reasonable bylaw passed over at two town meetings in 1988.

AM says that is 10 years ago, and my memory isn't that good.

EM we went through all the steps.

J. McCandless says that it was on the warrant two times but it got passed over.

EM said that we did put a noise bylaw in.

J. McCandless says that you had a bylaw before 1989 before it was changed but it was a very subjective bylaw.

EM we were the first town in the area to put in a noise bylaw.

J. McCandless says that it was very restrictive and probably not enforceable because there was no numbers associated with it. Obviously it did need to be changed.

EM well that is your opinion. But, apparently if it was passed over at the time, there were people that thought it didn't need to be changed. I don't know what came of the public hearing process.

P. Herr says that we appreciate you compiling this information but this is not the whole of article that was passed over. I think the article that was passed over contained a great deal of provisions.

J. McCandless for what ever reason, but I though maybe, since atleast two of you were on the Board then would remember something that had to do with this. The next page in the package I passed out shows the noise bylaw that is in place now. That passed at the town meeting of May 1989. There are several critical changes made to the noise bylaw. What those changes do, is reverse the original intent of the original bylaw. Atleast according to Lee Ambler and his interpretation. I still feel that it's atleast misleading if not vague the way it is worded. I don't quite understand why the Town would pass a bylaw like this. Is there anyone here that can explain why these changes were made and do you agree with Mr. Ambler's interpretation of this bylaw?

AM says that the Board makes the changes and asks for Town Counsel's input and review.

EM says that all changes need public hearings before they get to Town Meeting.

RD asked what the question is. Why were these changes made?

J. McCandless yes, they don't make sense inlight of what bylaws are supposed to do. That is to protect the public interest. This bylaw, if it is interpreted correctly, it protects industry at the expense of residential areas. Even though it says allowable exterior noise level..... He is saying that because of these changes that were made the noise that will be based in the noise zone in which they are generated. That a generator in noise zone A can produce 65 decibels anywhere they want and people in noise zone C can only produce 45 decibels at night anywhere else. It is just turned upside down.

P. Herr says that, suppose everyone on the Board agrees that it doesn't make sense. Then what happens next? What is an appropriate way of balancing. What does the current law mean. I don't think it is my business to prescribe what is the right way of balancing. I agree with Mr. Ambler's interpretation and I don't frankly understanding how anyone can interpret it otherwise. Should it be different? Should the law be changed? If that is what your here for. I'm trying to understand why you are here. Are you seeking to change the bylaw?

J. McCandless well, of course I'm looking for alittle more history.

P. Herr says that I don't understand why.

J. McCandless says justice.

P. Herr says then what?

J. McCandless says that this bylaw the way I interpret it, I'm not a lawyer, I would say it is misleading.

P. Herr so, what action are you here seeking?

J. McCandless I'm suggesting to the Board that they should consider taking another look at this bylaw. It doesn't do what it was obviously intended by the original bylaw.

P. Herr says that is fair. That is a reasonable suggestion, that the town should reconsider it's noise bylaw in light of ten years of experience. This law is relative to most laws, less restricted of business generating noise. That is not by accident, but because of the circumstance of this town.

J. McCandless okay, what you are saying is that you had to change the bylaw from the old bylaw in order to protect the Power Plant that was coming into town.

WW asked when the power plant was put in town.

EM said that the power plant was put in before the bylaw.

J. McCandless says that the Power Plant was approved by the State around the end of 1988. It didn't go on line until the end of 1991. This change of the bylaw is right in the middle of the power plant process. NEA claimed that they would not produce noise levels any higher than 47 decibels. The Sighting Board permit says that NEA shall periodically measure the noise levels of residents nearest to the plant for two years after initial operation of plant and maintain records and report to the siting board. The nearest resident is 17 Rose Ave. On Box Pond Road which is a quarter of mile away from the plant, we've consistently measured levels of 52 decibels, night time, long duration noise. That may not seem very high, but it is higher than what is allowed by their permit from the Siting Board. Even at 50 decibels, the noise that comes from the plant is especially objectionable. The noise level that is allowed by the town is very close to what a lawn mower sounds like about 40 feet away. That is the kind of protection your giving a resident with this bylaw. It doesn't make any sense to me.

PC says that the Town has a meter to check the noise level. The power plant bought the meter for the Town.

J. McCandless requests copy of the tape that is being recorded for this part of the meeting.

EM asks what the point of all this? Where are we going with this conversation?

J. McCandless says that the point is that I think the Board may need to take another look at the Noise Bylaw.

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RD asked what the law says. Does it say that the decibel level is 65, can only be 65 within that zone? I'd like to hear from Phil, because he was the one that pretty much wrote the bylaw.

P. Herr he says that an activity located in an industrial zone can generate no more than 65 decibels of noise regardless of where it's heard. What determines the level of noise your allowed to generate is where you generate it, not where it is heard. Based on the point of generation rather than on the point of reception.

RD asked when the noise bylaw was created?

P. Herr asked if he was asking about the current one?

RD said the first one.

P. Herr we had a bylaw that said if you can hear it more than 400 feet from the premises, it is too loud.

EM says that the noise bylaw in 1988 was drafted and worked up by this Board because we knew there was something coming. We needed something to work with, because we had nothing. We were proponents of it, we didn't pass over something that somebody else had worked up. Through the hearing process it came out that it wasn't the right thing, or the numbers were wrong or something. But, whatever we did do was better than nothing. You just said that the Sighting Counsel said that you will do this and you will monitor it and you will answer any complaints or you are in violation. Shouldn't the Sighting Counsel be following up on this?

J. McCandless says that the first line of defense is always local.

EM says that he thought they were the one with the power.

J. McCandless says that the Sighting Counsel is there to site power plants. That is their purpose.

EM asks that didn't they put those restrictions in their approval?

J. McCandless says yes, they did. It was not enforced.

RD asked if they have copies of any of the complaints?

J. McCandless says that the Sighting Counsel had requested a record of complaints from IDC because they used to own the first plant on Depot Street. #1 – we cannot answer that because we don't own it anymore. #2 – we don't have any record of complaints. #3 – they asked the power company for record complaints and the power company chose not to produce any. Except one complaint that was filed to DEP in Worcester.

EM asked when that was filed?

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J. McCandless says 1992.

EM said that wouldn't it be fair to check with the Town for complaints?

AM says that I believe that the Building Department was keeping records of complaints.

EM says that if I was going to complain I would call the Town, not the Power Plant. They aren't going to listen to me.

J. McCandless said that he has John Emidy's report. The current Building Inspector, Stuart LeClair has a copy of the report that I have passed out to each member tonight. Lee Ambler has advised him not to recognize it. Not to answer. It is a very thorough record of all the noise complaints and issues, logs and articles, meeting, minutes and so on, 180 pages over the past six years.

AM asked what Lee is asking Stuart not do?

J. McCandless says first of all, Lee will not say that he has seen this package. Stuart LeClair says that he will not respond to my letter unless Lee Ambler gives him permission to do so. The letter is a request for enforcement of all of the regulations. The State Regulations, the Permit limits, the Sighting Board restrictions, all of those.

AM says okay, you've gone to the Town level and the Town said sorry we are not responding. Isn't this the point that you go to the Sighting level?

J. McCandless says that the next level is the public hearing of the Zoning Board of Appeals. The reason I'm coming here is the history and trying to get a better feel for what happened and where we went wrong and why we introduced this bylaw.

RD asked if this isn't like anything else we want to amend and needs to go to Town Meeting?

P. Herr says yes.

RD says why are people looking at us saying we were wrong when it is something that the people voted in. This has been in effect for 8 or 9 years and now all of a sudden we're saying that it is no good.

J. McCandless says that even though I'm an engineer and I know what decibels are and so on. I've never interpreted this bylaw this way. I've always assumed the interpretation was similar to the 1988 version. It wasn't until a couple of months ago.

RD okay, so what brought you to look at this bylaw and reinterpret. Is it the fact that the power plant is making noise that is bothering you or is it the fact that other plants are coming in? I'm just trying to fast forward this to find out what we are getting at. Do you want to make an amendment to the bylaw? I'm missing the point of all these beautiful charts.

## MINUTES OF PLANNING BOARD MEETING

September 24, 1998

J. McCandless says that he is suggesting that the Board take another look at the Noise Bylaw. We have possibly two much bigger power plants coming into Town and we don't have any protection against the residents in Town.

RD asks for clarification. You said that 68 decibels is like running a lawn mower about 40 feet away.

J. McCandless says yes.

WW says that the first article, when you refer to Belmont's Noise Bylaw. All the numbers are the same except for one. Would that have made it better? Is there other parts of the bylaw different?

J. McCandless says that all I did at first was look at the numbers.

P. Herr says that what changes is how it affects a residential district. Because of the way of testing compliance's is different between the versions. The first version, is allowable level depended upon where the sound was being heard.

J. McCandless says that somebody must of proposed these changes.

PC says that it was done at a Town Meeting.

J. McCandless says that he objects to that. I would not blame the Town people for this bylaw. That passed by unanimous vote, 220 to 0 along with alot of other bylaw changes and so on. It was passed as a package. I doubt anybody who voted for this, or very few people that voted for this really understood the implications of what they were voting for.

EM says that you know why this was adopted overwhelmingly? It's because we were doing something as apposed to nothing. We have no bylaw, we are putting in a bylaw. We did the same thing with water. We were the first Town in the area to put in a Water Resource bylaw. You can stand there and say that it is not good enough now, but ten years ago it was wonderful. It was something from nothing. Maybe your not satisfied with it and maybe it needs to be changed. We are not disagreeing with you, but to ask us why we didn't make it more restrictive. There had to be a good reason for it to be changed.

AM I think I remember that it gave us a way to enforce it.

WW says that if our bylaw was way up at 68 decibels. When that plant first went online, and it was so loud, it apparently didn't break that line. But, they put in more buffers to even make it quieter.

EM asked how the Town is supposed to enforce State regulations?

J. McCandless says that the Town is allowed to. The Building Permit has the authority under the State Law to enforce the State regulations.



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P. Herr says that we are dealing with three topics. One topic is the history of the plan. Another topic is the history of the regulations adopted. The third topic is what should we do now. I think what you are hearing from the Board is that they will consider an amendment to the Noise Bylaw. I think that if you would put what you would like to see amended in writing and send it to the Board that they would consider it. I'm hearing a couple of things. One is that you would like to see the law clearly stating that the allowable level would be based on the receptive location of the noise rather than the generated location. The second is the make the limits less than what they are now.

J. McCandless says that it is difficult to get DEP to enforce noise pollution. They have water pollution issues, and air pollution issues that are much more priority and I agree. You have to have a lot of complaints and a lot of documentation pushing before you can get them to do something. It is important for the Town to have somebody trained that will have the meter and be able to monitor these things. The current plant is in violation and the State is investigating as we speak. They have agreed to hire three independent employees to begin monitoring the plant. The Building Inspector will not read the meter. There was another court case a couple of years ago at a restaurant down south and the residents were complaining and took them to court. They presented readings done by the Building Inspector. The judge asked if the Inspector was certified to read the meter and the Building Inspector said no. The readings were thrown out of court.

EM isn't the meter certified? Aren't they tested and checked? Why do you have to be a genius to work it, if the meter itself reads the noise.

RD if we look at the bylaw and look at amending it. What are you proposing the levels be? I am looking at your information here in this book and I find it kind of amazing about the common indoor sounds and common outdoor sounds. 65 decibels is like sitting inside a car doing 60 miles an hour. That is unacceptable?

J. McCandless asked if you would like a radio on full blast while you are trying to sleep?

RD asked what the happy meeting ground?

PC asked what the State level is?

J. McCandless says that many other Towns including the State is at 45 decibels. Night time, long duration external residential areas.

P. Herr I just can't sit here and listen to that. Can you get Federally approved mortgages only at 45 decibels? Yes you can and all the way up to 55 decibels. That is why I suggest again that you put your suggestions in writing the Board would consider them.

AM asked if we are doing this to create a situation that will make the power plants will be in violation and we will create a history for them?

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P. Herr says that the existing NEA plant is grandfathered. The proposed ANP plant is proposing that they would comply with the earlier Bellingham version of the bylaw. That is they would not exceed the district A levels as measured in any residential district. It is a quieter plant actually and they have more industrial land surrounding them. I have no idea about the proposed plant on Depot Street. 65 decibels is a fairly high level in residential areas.

RD asked that if we brought the bylaw down to 45 decibels, would that be acceptable?

J. McCandless says that he can't answer that that easily. The 1988 bylaw probably would be acceptable. The Belmont noise bylaw is a better model because it explains things in more detail.

RD asked to make a suggestion that was brought up by Phil earlier. You get us something in writing to modify the bylaw.

EM asked how long that Mr. McCandless has been keeping track of this?

J. McCandless said, since the plant went on line we have records.

EM says that he is offended by it because I thought we were adopting the state level and there is a big difference between our level and the state level.

P. Herr says that he didn't know what the state level was at the time the Bellingham Noise Bylaw was adopted.

J. McCandless said that if the Board has any questions, they can call me. He doesn't want to take up the whole night but I felt that it was important to come in and discuss it. Thank you for your time.

P. Herr presents to the Board the Development Plan Review Decision for the ANP plant on Maple Street for their endorsement. My understanding is that every documented approval that has been granted to that plant is currently under review. You can expect that this approval will also be reviewed. Did the Board ever get Storm Water material from ANP?

J. Karakeian said yes.

P. Herr says that I'm not sure that it is true that some of their drainage facilities are separated from the water table by less than 2 feet. I think they may be. A waiver is included in the decision in the event that they are. The other requirement is that they not be deeper than 5' and at least one of them is deeper than 5' and there is a waiver for that in the decision as well.

EM motions to endorse the Development Plan Review Approval for the ANP plant on Maple Street. PC seconds. Unanimous vote of 4 (WW, RD, EM and PC) AM abstains.

P. Herr suggested to the Jill to contact Robert Charlebois and ask him to get a full set of reproducible plus four copies referenced in the decision to be stamped and distributed.

## MINUTES OF PLANNING BOARD MEETING

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P. Herr said that the last time he was at the meeting is circulated and then later sent a revised version of a think called Plan Review Procedures. The issues around procedure here seem to get underscored again and again. Pizzeria Uno wants to build a deck. There is this gentlemen that has made many trips to my office with information on how he plans on building this deck. I told him that everything looks good, but you have to document it. One of the difficulties it seems to me is that again, again and again is that the Building Inspector apparently doesn't believe things need to come before this Board. My suggestion is a simple little checklist that anybody can go down through to determine whether they need to come see this Board. That needs to be looked at to see if they agree. Second is the issue that people come in without adequate information again and again. There are confusions of where people submit it, when do they need to get it in. Is it okay for people to walk to here at our meetings and expect the Board to act on it. It is appropriate to be stricter to make sure people really do what they are required to do. Making sure that everything you ask for you really need.

WW mentions that the Specialty Ski & Bike Shop is being converted into a Bank.

EM says that there was a Site Plan Review done for that building.

WW says that it was done for a restaurant, not a bank with a drive through.

AM asked what has to happen, does it have to come back before the Board?

P. Herr says yes, definitely.

WW asked if the procedure issues were all taken care of.

P. Herr said that he didn't have any conclusions.

AM said that she thinks a good idea to make the form part of the Building Permit package.

P. Herr asked if there is an issue about understanding when it is something is considered submitted? How do people submit?

J. Karakeian says that they are dropped off at the Selectmen's office.

WW asked if that is considered submitted?

P. Herr asked if that is what the Board considers the submittal date. When it is brought to the Selectmen's office? I think it should be the meeting date for the submittal date. The clock doesn't start until the meeting date. A number of the regulations say that.

WW says that when it is received it should be stamped received, but the submittal date is the date it appears at the meeting.

**MINUTES OF PLANNING BOARD MEETING**

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P. Herr says that the only exception to that is if somebody sends a Definitive Subdivision Plan by certified mail to the Town Clerk. If somebody brings a plan to Jill on Wednesday before a Thursday meeting, the submittal is that Thursday meeting, but that doesn't necessarily mean the Board is going to consider it at that meeting. If it is a complicated plan, nobody has had a chance to actually look at it. For that reason, you have some language in some of the regulations that says that if you want something to be considered at a meeting of the Board, it has to be received some number of days in advance. Does that make sense?

J. Karakeian asked 7 to 10 days?

P. Herr said that the Board needs to determine.

AM motions to sign April 23, 1998 minutes. PC seconds. Unanimous vote of 4 (WW, RD, PC and AM). EM was absent.

AM motions to sign May 28, 1998 minutes. PC seconds. Unanimous vote of 4 (WW, EM, PC and AM). RD absent.

AM motions to sign May 14, 1998 and June 11, 1998 minutes. RD seconds. Unanimous vote of 5 (WW, RD, EM, PC and AM).

AM motions to sign June 25, 1998 minutes. Unanimous vote of 5 (WW, RD, EM, PC and AM).

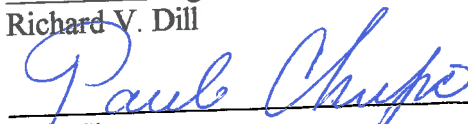
AM motions to sign July 23, 1998 minutes. EM seconds. Unanimous vote of 4 (WW, EM, PC and AM). RD was absent.

RD moves to adjourn at 11:05 pm. EM seconds. Unanimous vote of 5 (WW, RD, EM, PC and AM).

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William M. Wozniak, Chairman



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Richard V. Dill



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Paul Chupa



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Edward T. Moore



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Anne M. Morse