

MINUTES OF PLANNING BOARD MEETING

March 23, 2000

BELLINGHAM PLANNING BOARD

P.O. BOX 43

BELLINGHAM, MASSACHUSETTS 02019

RICHARD V. DILL, CHAIRMAN

PAUL CHUPA

VALERIE J. DeANGELIS

ANNE M. MORSE

WILLIAM M. WOZNIAK

STEVEN CHOINIERE (Alt.)

MINUTES OF REGULAR MEETING

March 23, 2000

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

GENERAL BUSINESS

The Board had a discussion with regard to Internet talk between Board members and the law regarding it.

WW says that there is a case law with regards to internet chat on discussions that should be at a public meeting needs to be looked into. It needs to be public record. There are cases already in court regarding it.

JK says that everything that is emailed to me, I print out and include it in the members meeting packages.

AM feels that if three people converse and come to a decision over the internet, then that might be a problem.

RD asks JK to send a letter to Town Counsel and get legal opinion with regards to internet talk between board members.

P. Herr also suggested getting some input from the Mass. Municipal Association with regards to internet talk.

The Board members sign miscellaneous invoices.

WAL-MART – SITE PLAN REVIEW

Diane Brooks, manager for Wal-Mart presents to the Board the intentions of the seasonal garden area.

RD mentions that we have gone through this area over and over and it has been determined that they have more than enough parking than is needed at this location?

P. Herr says, based on the Bylaw, yes.

D. Brooks explains that the plan that she used to show what her plans are is the plan that was withdrawn recently. It was the only one that showed the parking.

VD asked if Deputy Guerin had any comments?

T. Guerin says he is okay with that as long as there is enough room to get around it with a fire truck.

WW asked if she would come back in front of the Board every year to make sure everything is complying.

D. Brooks says that she will come back every year if that is what the Board wants.

The Board agreed that corralling the area would be a good idea but should be at the discretion of the Building Inspector.

PC motions to grant permission to the seasonal garden area in the Wal-Mart parking lot to be renewed on an annual basis for the time period of March 15th to August 31st. Corraling of the area should be at the discretion of the Building Inspector. AM seconds. Vote of 5 (RD, VD, PC, AM and WW).

TIM JONES – INFORMAL DISCUSSION REGARDING GATE AT PINE GROVE

VD abstains and leaves the room.

Tim Jones informs the Board that he is concerned with the gate issue. He is going to be coming in for his bond reduction on Deer Run after it is accepted at the Town Meeting. The gate has always been an issue and I want to straighten it out prior to that. Was wondering what the Planning Board's take on the gate is and get a final decision prior to the Town Meeting so there are no delays.

AM asked about the traffic study?

T. Jones says that he did speak to a traffic person and asked him to speak to Don DiMartino to schedule a study one month after the road was accepted at the October Town Meeting, I would

have a study done one month after that then go from there. It was passed over at that Town Meeting so the study was not done.

P. Herr says that he spoke to that person a number of times and the study he was talking about doing was just a traffic count and I believe that the Board was looking to get more than just a traffic count.

T. Jones was under the impression that we needed to determine how many trips go through the development per a day.

P. Herr says that his recollection was a little more than that. The Board was looking for a small report.

T. Jones says okay, this is exactly why I am here to get this resolved so there are no more delays. I thought that if the trips per a day that was estimated by Phil, then the gate was not necessary.

AM asks what should happen?

P. Herr says there could be a three-way conversation with Don DiMartino, Tim and myself to determine what needs to be done.

T. Jones says that last year it was mentioned holding \$2,000.00 in a bond for the gate and the study should it be necessary.

AM says that we just can't hold your money once the road is accepted.

T. Jones says he will get in touch with Don and Phil together.

RE-ZONING ALONG ROUTE 495 & HARTFORD AVE. – CONSERVATION COMMISSION – PUBLIC HEARING – Continued

VD returns to the meeting.

Cliff Matthews, chairman for the Conservation Commission updates the Board on the rezoning issue from Industrial to Agricultural. The Board had questioned the commission to see if they would at all change the line of rezoning to avoid rezoning the parcels directly along Hartford Ave. and the commission wanted to leave it the way it was proposed.

P. Herr asked about the small little parcel of land owned by Whitiker that isn't included for some reason and he feels that it should be. There are questions as to the way they drew the line for change and it doesn't seem fair.

VD asked Cliff to point out the location of the Town Wells. Mentions that Town counsel says that per state laws the wells need to have 400' protection around them and do they have that?

C. Matthews say yes, they do have that plus.

RD says that he applauds what the Conservation is trying to do, but it just seems that they are over-killing in one area and minimal in another.

C. Matthews says that he will converse with the Commission to see their feels about drawing a line through the Wal-Mart, Marketbasket property to make it an even dimension all around.

Atty. Christine Burk (representing N.E. Mobile on Hartford Ave.) asked if the Conservation has any evidence that any one abutter is a bigger threat than another to the water supply?

C. Matthews says no, we don't.

Atty. Christine Burk asked why the Conservation Commission would treat similarly situated industrial people differently, if there are no threats?

C. Matthews says that he would like to possibly amend the proposal to amend the line along the Wal-Mart/Marketbasket property to make it fair all around.

P. Herr says that can't be done because the people weren't notified initially that their land was going to be rezoned.

VD reads the letter from Town Counsel dated March 17, 2000. I'm in receipt of your correspondence and inquire relative to Municipal liability as a result of the rezoning of land on the part of a Municipal Department and/or on a part of people who are not the property owners themselves. There are two major issues involved in the determination. Firstly, whether or not the rezoning may be deemed to be a constitutional act on the part of the Municipality, that is, is the zoning regulation a legal and constitutional act. Generally speaking, a Zoning By-law could be constitutionally valid unless it is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare. Any possible permissible goal which may rationally be furthered by the regulation will support a zoning regulations constitutionality. Therefore the issues to be determined in order to render an opinion as per your request depends upon the circumstances of each case, including the nature and significance of the public interest purportedly protected by the regulation. I have several months ago, made a specific inquire of the Conservation Commission who are the proponents of one of the rezoning articles to provide me with the specific reasons for their actions and recommendations and to date have not received a response and therefore am not in a position to even render an opinion with regards to the possibilities of propriety or impropriety. Secondly, once we get past the issue of whether it's a Constitutional Taking there becomes the question of whether or not damages will ensue as a result of said taking. The application of a general Zoning Law to a particular property effects a taking if the ordinance does not substantially advance legislative state interest or denies an owner economically viable use of this land. The determination that governmental action constitutes a taking, is in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of State Power in the public interest. Under the provisions of the Fifth Amendment of the United States Constitution, where the government has "taken" property by a

land use regulation, the landowner may recover damages. One again, kindly note that there is a need to determine by way of that regulation the purpose for the rezoning on the part of a municipal petitioner or an abutter petitioner and the overall impact that may be had upon the property owner. It is as a result of the necessity to determine these facts that I have advised the Board to give notice to the property owners on Articles to rezone their land. Without their presence it would be impossible for you to have the information and documentation you may need to understand the impact upon their property. In addition, it is essential that you be provided with all of the specific reasons why the Petitioner seeking the re-zoning can indicate to you have the public interest is protected relative to health, morals or safety and what the strong public desire may be to improve the public condition which constitutes the basis for the by-law. Therefore, in brief, you are obliged to acquire the facts relative to the Town's purpose and/or the abutters purpose, you are obliged to determine the facts as to the property owners concerns and the impact upon their land as a result of the passage of that by-law and once these facts are known, then opinion can be gathered as to the legality of the regulation and in addition the possible necessity of land damages as a result of a "taking". Obviously, if the Town Agency is the moving party for the rezoning and the Town is the benefitor of the reasons for the taking then the Town would be the party responsible to pay the damages to the property owner who has individually been assessed the cost associated with same. Very truly yours, Lee G. Ambler.

WW says that he gets the impression that Town would have to pay the Town's people a lot of money.

C. Matthews says that he doesn't read it that way. But he feels it can be demonstrated what the Commission is proposing is in the public's interest and I think there is case law to support this action. I think the Commission is in the position to pass over this article at town meeting so that we can go back and draw the delineation line better to serve everyone involved.

WW mentions that when you get into a Special Permit in a Water Resource District, can you tighten up the law there to restrict more?

P. Herr says that there are a lot of restrictions in a Water Resource District now and I don't know if there are anymore to add.

VD suggests making the direct area around the well, make that area larger.

P. Herr says that is ownership. The law says that you can't have a well unless you control all the land that is around that within 200'.

VD says that the conversation that I had with Town Counsel, he suggested the town making the Water Resource District requirements more stringent. But, he didn't identify.

P. Herr says that Water Resource District requirements now in place are very stringent.

VD says that the major problem is that you excluded the next door abutter who is closer to the wells then the property owners on Hartford Ave. It just doesn't seem right.

Ken Daynard (owner of land effected by this along Route 495) voices concern that he purchased the land because it was industrial. If it is changed to Agricultural, then that would not work for what we purchased the land for.

RD informs the people that this is not where the decision will take place whether or not the land will be rezoned. That will happen at the Town Meeting. They are just looking for a recommendation from the Planning Board to go to Town Meeting.

AM motions to not recommend the rezoning of land along Hartford Ave. and Route 495 from Industrial to Agricultural as proposed by the Conservation Commission. VD seconds. Vote of 5 (RD, VD, PC, AM and WW).

WW motions to close the public hearing for the re-zoning of land along Hartford Ave. and Route 495 from Industrial to Agricultural as proposed by the Conservation Commission. VD seconds. Vote of 5 (RD, VD, PC, AM and WW).

HIGHRIDGE ESTATES – PRELIMINARY SUBDIVISION

RD and VD abstains and leaves the room.

The Board explains that there are only three members present to vote on this application. RD and VD abstain and our alternate cannot act because it is not a Special Permit.

AM also brings up that there is only two more meetings until the election, and PC is not re-running and AM has two opponents running against her one seat. May 2nd is the election.

WW explains that he feels that he has a conflict and he needs to check with Town Counsel as well as the Ethics Commission.

P. Herr says that we are looking at a Preliminary plan which requires a majority vote. The question is the Special Permit and I really feel you need more than two people for this project. The Special Permit deals with the Cluster layout which should be decided and acted on prior to the Preliminary Plan.

The Board asks JK to forward a letter to Lee regarding the quorum question as well as conflicts with regards to this project.

Tim Jones, Gracewood Development is before the Board with his attorney Erik Anderberg and due to the circumstances we wish to withdraw without prejudice and reapply after the election.

P. Herr says we should ask the question, what happens if on a particular case it is impossible for the Planning Board to have four members to act? The Board would also like to see a Conventional Plan for this project.

**MAPLEBROOK COMMONS – SPECIAL PERMIT & DEVELOPMENT PLAN
REVIEW – continued**

RD and VD return to the meeting.

Andre of Fafard is in front of the Board to bring them up to date and go over the outstanding issues. He asks JK if the Board has received anything from the State regarding the questions the Board had sent in their letter.

JK says that she has been trading phone calls with the State and I'm close to getting something, but haven't received anything for tonight's meeting. I'm waiting to hear from Richard Foster. AM asked if that is all we are waiting for?

RD says yes. He wanted to get on this agenda hoping that we had something and if not we would continue to the next.

A. Fafard says that even without this letter the Board has the power to approve with conditions.

WW motions to continue the Maplebrook Commons Special Permit & Development Plan Review to April 13, 2000 @ 9:30 pm. AM seconds. Vote of 4 (RD, PC, AM, SC and WW). VD abstains.

HARTFORD VILLAGE – DEVELOPMENT PLAN REVIEW - continued

Paul Hutnick, engineer for Hartford Village Realty Corp. and what has happened since the last meeting is that I have put out another set of plans to resolve schematic issues with the site. We did have some problems with some parking spots and all of the parking spots are at least 19' long. There shouldn't be any problems parking in them. We also widened the main stretch from Village Lane to 30'. I have designated spots where parking would be done on the side of the road. It will always be parking on one side to not have problems with traffic flow. I also did move the water lines recommended by the DPW. I do have some pending issues with Amory Engineering, which we are in agreement with. I just need to make the changes on the plans. We are also bringing in a gentleman, Kevin Clark to analyze the nitrogen issue.

P. Herr mentioned that there are new architectural drawings.

P. Hutnick shows the Board the new architectural drawings. On the units what have walk-out basements, we will put in the Condominium Documents that you can't put a bedroom in the basement.

VD asked how many walkouts?

Brad Wright says he believes that there are 24. Depending on the grade, it is possible there might be more.

P. Herr says that there is concern about the bedroom on the bottom floor.

B. Wright explains that in the special permit it is stipulated that no more than 2 people living in a unit, 2 bedrooms, 2 baths. With this being an adult community, no children allowed.

P. Herr says that we really need to make sure it is in the condo documents. The people that enforce the special permit is the town. The people that enforce the condo documents are the people that buy into this development. There is information that the Board doesn't have tonight and I don't see how they can act on it.

VD asked about the access out onto the Hixon Street.

P. Hutnick explains that it will have an emergency break-away gate and it will be gravel, not paved.

Donna Moran (abutter) asked if the units were going to be rented or sold?

B. Wright explains that he can do either, but at this point his intention is to sell the units.

C. Moran asked if all the conditions put in the special permit were also in the condo documents?

B. Wright says that they are.

P. Herr says that they are.

D. Moran expresses her concerns about the nitrates. She also explains that she went to visit a similar project in Westboro and they spent a lot of time and effort with a natural bordering around the complex so it would have less impact on the neighbors as well as the people living there. There is also some white privacy fences around the area mixed in with the natural bordering. This project was also a lot more spread out.

P. Hutnick explains that there will be a walkway around the perimeter of the units. There will be an alternating pattern of white pines. They will be staggered.

VD asked what size trees were going to be put in?

P. Hutnick says they will be approximately 2 1/2" caliper.

P. Herr says that a white pine loses its branches on the bottom.

VD asked if they could use a different type of tree that doesn't lose its branches on the bottom?

P. Hutnick suggests spruce.

B. Wright says that they will explore other options. The idea with the white pine is that they grow tall.

P. Herr feels that one of the items that is required with submittal is the location of wells within 300' of the area. They are not shown on my plans.

P. Hutnick gives Phil an updated set of plans that shows the wells.

P. Herr questions the sign. The law reads, no sign shall be located within 10' of the street line unless allowing essentially clear vision of at least 6' above grade.

P. Hutnick says that the sign meets the law.

WW motions to continue the Hartford Village Development Plan Review to April 13, 2000 @ 10:00 pm. VD seconds. Vote of 5 (RD, PC, VD, AM and WW).
AM leaves the meeting.

MARTINELLI – SPECIAL PERMIT – BACK LOT – continued

E.K. Kahlsa of Land Planning is before the Board representing Richard Martinelli gives an update on this application. What the record shows is that the covenant released all the lots by name except for 2, 3 and 4 which is the land in question. We found no evidence that this land was ever released from the covenant. At the last meeting, we had a discussion with the Board, during which the Board indicated some willingness to release this land from the covenant so that we can create a Form A plan. Provided some improvements, as yet to be determined, be made to the road. What I suggested is to either pave the street in front of and along his property. It was discussed and questioned if you had to have a public hearing in order to modify the covenant. I think the letter that you prepared to Lee asked that question. I read Lee's letter several times and the only thing that I keep coming upon is that "people have a right to acquire contiguous lots and then have the right to seek an 81-P plan approval which have otherwise been combined so long as they reflected of lots on an approved way." I believe that is the case here.

WW says no, you are forgetting the ,or.

E.K. continued, or on a way in which the Planning Board has signed an approved plan. One of those two apply here. Atty. Ambler is saying, you can either build it as it was originally designed to meet the covenant, you can bond so that if you don't build it, the Town has the money to do it them selves. Or, you can grant waivers relative to that which is not done. That is where we ended up at the last meeting.

WW says that Lee Ambler didn't answer the question we had. Do we have to hold a public hearing to amend the approved subdivision plan?

P. Herr says that Atty. Ambler gives you some options, but it is the same as Brookside and the Town notified abutters because they were amending the approved plan.

WW motions to disapprove the Back-lot Special Permit for Martinelli on Beechwood Road based on the fact that is a circumvention of the Subdivision Control Law, Section 2587. VD seconds. Vote of 5 (RD, PC, VD, WW and SC). AM abstained and left the meeting.

WW motions to close the public hearing for the Special Permit for the Back lot on Beechwood Road for Martinelli. SC seconds. Vote of 5 (RD, PC, VD, WW and SC). AM abstained and left the meeting.

E.K. asked the Board if they would be willing to grant waivers should Mr. Martinelli come back in with a Subdivision Amendment?

WW asked who was going to get up at Town Meeting from this Board and recommend or not recommend it when it is not built to standards? We have the power to waive regulations, but we have to explain all this at Town Meeting why we did this.

E.K. explains what Mr. Martinelli proposes to do is better than what is there. I don't want to recommend that my client goes further unless the Board has some sense you are willing to consider those kind of waivers. Don DiMartino expressed that he is reluctant to give up the Town's requirements. He doesn't want to waive any of them anywhere, ever.

VD asked if they come back, amend the subdivision and the Board approves the waivers. How many more lots do we get?

R. Martinelli says one.

81-P SUBMISSION – ESSEX STREET

Rick of Wilson Associate's presents to the Board two (2) 81-P plans on Essex Street. The frontage on both lots don't change.

P. Herr says that it isn't a subdivision.

VD motions to sign the 81-P plan for Constance LeClaire on Essex Street. WW seconds. Vote of 4 (RD, PC, VD and WW) AM left the meeting.

PC motions to sign the 81-P plan for Mr. & Mrs. Graver on Essex Street. WW seconds. Vote of 4 (RD, PC, VD and WW) AM left the meeting.

BELLINGHAM SHOPPING CENTER – SPECIAL PERMIT & DEVELOPMENT PLAN REVIEW – continued

P. Herr brings the Board up to date. When last we met on this, there were a series of issues remained unresolved. Memorandum went back and forth. Friday of last week, I met with three people from Horsley & Whitten and Mr. Babcock to talk about the storm water issues which

appeared to be unreconcilable. By the end of that meeting, we all had an understanding with regards to the principles on which revisions to the drawings would be made. Everyone agreed.

Bruce Babcock of Wilson Engineers agreed that it was a very good meeting. The drawings are in the process of being updated.

P. Herr says that the second area of concern is traffic. Doug Prentiss of Bruce Campbell and Associates is here tonight to discuss this and answer any questions. One of the suggestions that was made at the meeting on Friday is that I prepare a Draft Decision for the Special Permit part of the Bellingham Shopping Center.

B. Babcock explains that all issues in Tom Sexton's letter dated 3/23/00 will be addressed and Wilson Assoc. and Lorusso Corp. don't have a problem with any of them.

RD explains that before we meet again on this project, I think we would all like an okay letter from Sexton.

J. Lorusso agreed. He asked B. Babcock how long to get this all changed?

B. Babcock says that if an engineer spent time on this and only this, one to two weeks maximum.

J. Lorusso explains that the special permit needs a decision tonight because of the Board change due to the upcoming election.

VD explains that the Board could conceivably approve this but, not sign it until all the issues are resolved and Town Counsel has reviewed it.

SC asked about the waivers.

B. Babcock explains the waivers they are seeking. One has to do with the existing detention pond and the ground water level.

WW asked why we can't make the detention pond bigger?

B. Babcock says that the pond now holds a 25-year storm. In order to make it bigger we would have to move closer to the wetlands and disturb an existing pond with vegetation existing that acts as water quality control.

SC questions the traffic for the project?

Doug Prentiss of Bruce Campbell & Assoc. explains that they have received at their office was a traffic study with a couple of design plans. We still have some review to do on the project and I believe we still need some other plans to go with this project. What we have reviewed has been the standard things at this point. There are a number of intersections that are impacted by this project. Mr. Diaz and I have spoke on the phone and I made a few suggestions. I also spoke

with Mr. DiMartino. I think we all came to the conclusion that we feel that something that would offer public benefit along the corridor.

John Diaz of HTSD addresses the traffic and the mitigation. As requested by the DPW and agreed to by the applicant there needs to be some striping and erecting signs at four intersections. Also an illuminated sign going south bound to warn people of signal ahead.

Atty. Sax explains the expenses added to the center due to the off site mitigation. Mr. DiMartino seems to mention sidewalks to almost every letter. It is difficult for us to say what we are going to do, because we want to do what the town wants. The figure will either be for a signal or sidewalks.

G. Lorusso says that he understands that the Town has a bylaw for mitigation but explains that he has a problem giving the mitigation before I even get a building permit. The way things usually go is that prior to occupancy I take care of the mitigation. If I don't have any tenants, it just isn't fair to do it that way.

VD says that she feels the Board is being put in a very difficult position. They are being asked to make a decision on something that we don't normally make at this time

G. Lorusso says that he is up against the wall with the Town due to the town threatening to take the project for taxes. The outstanding items are minor changes and I feel that they can be worked out subject to approval. I don't feel comfortable with Denis Fraine on this project because he is constantly telling me that they are taking the property for taxes. It just feels like he is against the project. He also informs the Board that he would pay for sidewalks from Scott Hill Blvd., but the Town would have to be the one to do the temporary slope easements and easements.

VD asked if we could just take the money and keep it in escrow somewhere, so when the Town is ready to continue with the sidewalks they can then put that money towards it.

WW says that we need to air mark that money.

Atty. Sax says that they are prepared to make a mitigation proposal of \$80,000.00 towards the construction of a signal on Elm Street.

VD asked Phil if the Board could approve this tonight, but approve it contingent on having all the other things worked out to our satisfaction. If they aren't worked out to our satisfaction, then it will never happen. Even down to the \$80,000.00.

RD says that it seems like there are too many unanswered questions aren't getting answered outside of this room.

SC asked if it isn't the Board's decision where the money should go?

RD says yes.

G. Lorusso says that in Don's last letter he says to forget about the sidewalks and put it towards the traffic.

RD reads the last letter from Don dated 3/14/00. It says in the last sentence "I hope this letter clarifies that I do not want the sidewalks at all costs".

G. Lorusso says that he agrees to complete the intersection at his project. He also agrees to give the town \$80,000.00 as well as the additional stripping and signage as requested and proposed by HTSD.

PC motions to approve the Amended Special Permit Decision for Bellingham Shopping Center as applied for subject to the determinations and conditions essentially as outlined in the Draft Decision and the Draft Decision finally approved following inspection of all outstanding materials by Phil Herr. SC seconds. Vote of 5 (RD, PC, VD, WW and SC). AM left the meeting.

VD motions to continue the Special Permit for Bellingham Shopping Center to April 27, 2000 @ 8:30 pm. WW seconds. Vote of 5 (RD, PC, VD, WW and SC). AM left the meeting.

VD motions to continue the Development Plan Review for the Bellingham Shopping Center to April 27, 2000 at 8:30 pm. PC seconds. Vote of 4 (RD, PC, VD and WW). AM left the meeting.

WW moves to adjourn at 1:50 pm. VD seconds. Vote of 4 (RD, PC, VD and WW) AM left the meeting.



Richard V. Dill, Chairman

Paul Chupa



Valerie J. DeAngelis

Anne M. Morse



William M. Wozniak