



# BELLINGHAM PLANNING BOARD

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2 MECHANIC STREET  
BELLINGHAM, MASSACHUSETTS 02019  
(508) 657-2892 FAX (508) 966-2317  
[PlanningBoard@bellinghamma.org](mailto:PlanningBoard@bellinghamma.org)

## February 12, 2009 Meeting Minutes

- **Present at the meeting:**

Patricia Buckley (PMB), Chairman  
Glenn C. Wojcik (GCW), Vice Chairman  
Stephen Bartha (SB), Secretary  
David Brown (DB)  
Brian J. Sutherland (BJS)  
John Sexton (JS), Associate Member

**Other officials:**

Stacey J. Wetstein (SJW), Town Planner  
Amy Cook (AC), Commission on Disabilities  
Amy Sault (AS), Coordinator

PMB opens the meeting at 7:00pm.

### **New Business**

#### **Informal Discussion Brook Estate and Bellwood Condominiums Modifications**

Doug Aricko, attorney representing Brook Estates and Mike Dane from Guerriere & Halnon.

Mr. Aricko advised that they are here in front of the Board for an informal discussion and to make the Board aware as to what will be presented as a project at a later date. Mr. Aricko is representing the Bellwood Condominiums and Peter Pulouski is representing Brook Estates. The original design for Bellwood Condos was for 136 units and only 64 were ever built. Brook estates was approved for 49 units and were all built. Mr. Aricko advised that due to the shortage built they have a large vacant lot in the middle of the Bellwood property.

Mr. Aricko advised that the MA Condo Act states that undeveloped land can be sold as a separate parcel and this is why they are here before the Board. They want to take the property out and sell it to a developer who can develop it. He advised that due to environmental issues they are only looking to build 36 units not the originally discussed 44 new units.

Mr. Aricko wants to amend the old Special Permits and will then do an 81P to carve out the property. The final step will be for them to come forward with the developer for new Special Permits.

BJS questioned if there were legal impediments to the two properties and that he would prefer to have the information from our current Town Council. Mr. Taleran advised that the only question is whether or not they have an illegality or needed more relief than they are now seeking. Mr. Taleran advised that the former Town Council said that the Board cannot accept the application and he does not believe that any application can be turned away and the Board must hear any reasonable application and then decide whether to approve it or not.

BJS questioned if once a Special Permit is closed and completed, can it be reopened so an amendment can be made to take land away from a completed project. Mr. Taleran advised that at the very least you need an amended Special Permit which essentially takes on the affect of the new Special Permit for that property or it's not compliant with any new dimensional requirements for condominium projects in that area. Mr. Taleran said he does not know anything about Brook Estates except where it is or what it looks like on the plan but at the very least they need to amend the Special Permit to take land away. Mr. Aricko thinks that what they proposed is within the parameters of what the previous Town Council advised.

PMB questioned whether a portion of this is open space. Mr. Aricko advised that if there were a condition in the approved Special Permits that required certain open space than he would not be before the Board. He advised that whatever land comes out of Brook Estates is just for acreage; it is wet and is not a buildable which will be stated that no new development will occur in this area. GCW questioned why they need the acreage and if it makes sense. Mr. Dane advised you need 20 acres minimum.

Mr. Aricko advised that they will not be seeking any variances for this project and they will meet current Zoning bylaws. SJW advised that conventional Bylaws do not apply to Bellwood but may apply to Brook and there is nothing in the Special permit that requires open space so there was no requirement for the project at the time it was approved. SJW questioned that if everything was done by the requirements of the old Special Permit can they modify it. Mr. Taleran advised that there is nothing about the old Special Permit in open space which does not mean that the Board couldn't waive now but it doesn't mean that it is off limits. Mr. Taleran believes that the frontage to comply is doing 150 feet of frontage on Brook Street but there is no hope of getting vehicular access ever across that area because of the presents of wetlands. Mr. Taleran wants them to keep this in mind when they are doing the 81P part of this project.

PMB questioned if there was a lawsuit going on at the time. Mr. Aricko advised that there was a lawsuit going on between Brook Estates and Bellwood Condos regarding easement rights over Countryside Road and this is part of a global settlement of all the differences between the two condominiums. The lawsuit was dismissed but can be re-filed if not settled and this is a win win way for them to settle their issues. Mr. Pulouski advised that both parties are in agreement with this new plan and has concerns if the 81P cannot happen.

Mr. Aricko advised that because this area is a Marbled salamander habitat, the project has been scaled back more from last time. BJS questioned the boundary line and if it is far enough back from the residences. BJS questioned the detention basin for Brook Estate and if it would now be in this new condominium complex. Mr. Dane pointed out where the new detention pond would be where it will be cut out and also pointed out the easement.

BJS questioned the property behind the Bellwood parcel and the sale status and if it is taking away from the Special Permit and the other problems as well. Mr. Aricko advised that he is not sure on the status of that property.

PMB questioned when they will be ready to submit. Mr. Dane advised that they are waiting for the Con Com in regard to the wetland aspect of the project but they have to wait until the snow melts for them to be able to go out and inspect. DB and SB questioned how many special permits they will need. Mr. Aricko advised they would need three.

### **Discussion Weston Estates Bond Release**

SJW advised that there will not be anyone present for this discussion but that she has spoken with the project owner, Mr. Larusso, who has written the Board a letter requesting that the interest money earned on his bond be returned to him. The Board discussed the interest remaining and it amounts to about \$8,000. SJW advised that the estimated cost of construction from the DPW is about \$65,563 but including cost with construction management and contingencies it totals about \$88,263. GCW commented that Mr. Larusso is looking for his interest earned back which will leave the Town a shortage on completing the project.

SJW advised that Don DiMartino is 100% positive that Mr. Larusso will not complete the project and that he recommends that provided we get the titles for all the roads and everything we need for the Town to get the project done, we should take the bond so Mr. Larusso can get his interest. SJW advised that he has claimed that the Board has released interest to him in the past and that Mr. Larusso just wants the interest not the bond and that someone in Town told him that we do not have a right to keep the interest.

GCW asked what the consequences of him not releasing the road other than he has to keep paying taxed on it. Mr. Talerma said we could just take it and advised that it is not clear looking at the file if we have the right to take the interest.

PMB commented that the Town should hold onto the interest because of the lack of money available to finish the road. Mr. Talerma advised that he is looking for all the interest back and looking through the file it seems that some interest has already been given back to Mr. Larusso. BJS commented that the money given back to Mr. Larusso already was because he had finished that portion of the project but now the project is not completed so we should not give the interest back to him. SJW advised that Mr. Larusso is not planning on finishing the project. He is living in Florida.

JS questioned if there is more to this project than Penny lane and Buffy Rd. SJW advised it is just those two roads. When SJW spoke with Don DiMartino this afternoon he seemed to think that what we have is enough to get it done. Mr. Talerman is not worried about the money because we could just take it. Mr. Talerman advised that one possible response to Mr. Larusso is we received your letter and we respectfully disagree and if the road work comes to less than the money we are holding the he will receive the difference.

SB: Motion to release the bond for Weston Estates to the Town of Bellingham for the full amount in both accounts.

DB: Second.

Vote: 5-0 Approved. (PMB, GCW, BJS, SB and DB)

### **High Ridge**

Mr. Talerman advised we are in a bond situation with this project too. Through a letter Mr. Talerman quoted from the bank that Tim Jones needs to agree to let a substitute developer to complete the work because once the money goes to the Town we cannot then give it back to the bank to have them do it. Mr. Talerman said that that agreement fell apart and now Mr. Jones is now insistent that he wants to complete the work. Mr. Talerman does not know his reason for wanting to do it and he stated that through an email with the bank, they are expecting a plan from Tim and they are being more reasonable now.

Mr. Talerman said that Don DiMartino, DPW director and Denis Fraine, Town Administrator, point on this is that if we are going to take it and start the proceedings then let's do it so we can get some work done this year. Mr. Talerman said that we can give him until next week to come up with reasonable plans and actually start the work.

Mr. Talerman advised that there are two lots under the control of Tim Jones left which are lots: 27 is a 12 acre lot that he has been saving for himself and is currently assessed at \$330,000 and the other one is a vacant lot that he owns which can be used as some kind of security. Don DiMartino would rather have Mr. Jones do the work than the Town but he understands that he is unlikely to step up to complete it. SJW advised the Board to take the bond and not give him the chance to make up excuses not to do the work. Mr. Talerman does not think the bank has a lot of confidence in Mr. Jones either.

The Board agreed to take the money and let the DPW do the work. Mr. Talerman advised he will do the letter directly this time.

### **Old Business**

BJS: Motion to accept the Planning Board minutes of January 22, 2009.

SB: Second.

Vote: 5-0 Approved. (PMB, GCW, BJS, SB and DB)

BJS: Motion to sign the vouchers.

DB: Second.

Vote: 5-0 Approved. (PMB, GCW, BJS, SB and DB)

### Planners Report

#### **FY10 Budget**

SJW advised the Board that the Planning Board budget has been cut by \$10,000. Denis Fraine and Marilyn Mathieu advised that she could supplement the salary with the budget. SJW and AS came up with a 14% salary decrease supplemented by the Planning Budget which is equal to about 140 hours less per person by year or decreasing our office hours to 16 hours per week. GCW suggested raising fees to supplement the cut but SJW advised that that would not help as the fees we charge are deposited into a general fund not the Planning Budget.

The Board agreed with the 14% salary decrease.

#### **Executive Session**

PMB polled each Planning Board member to go into an executive session. Each member agreed to proceed to an Executive Session.

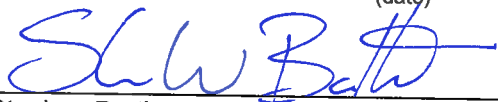
DB: Motion to adjourn into executive session.

SB: Second.

Vote: 5-0 Approved. (PMB, GCW, BJS, SB and DB)

Minutes Accepted on: 2/26/2009  
(date)

(prepared by: Amy Sault)



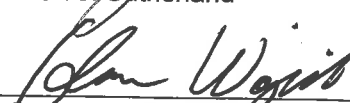
Stephen Bartha



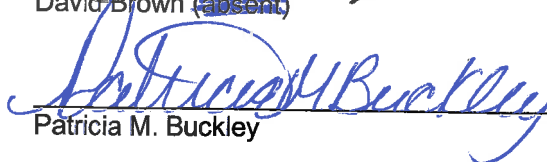
Brian J. Sutherland



David Brown (absent)



Glenn Wojcik



Patricia M. Buckley



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### Executive Session

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Stephen Bartha (SB), Secretary  
David Brown (DB)  
Brian J. Sutherland (BJS)  
John Sexton (JS), Associate Member

**Other officials:**

Stacey J. Wetstein (SJW), Town Planner  
Jay Taleran (JT), Town Council

### Brook Estates and Bellwood Condominiums Discussion


The Board further discussed Brook Estates and Bellwood Condominiums. They discussed permitting the three separate Special Permits. There are wetlands and frontage issues to take into consideration for this project. The Board discussed what a viable access to the site is and what the Con Com will review. The easement granted for Brook Estates to use the roadway says for the construction of the development and it was never intended for permanent use.

Bellwood Condominiums was charging Brooke Estates more money to maintain Countryside Road. When Bellwood took them to court the mediator said Brook Estates should have been paying their fair share along the way and they weren't acting in good faith. Then Bellwood decided not to grant them access. Brook Estates handed the money over immediately but then they said they wanted to develop that middle parcel and they wanted some of their land. Bellwood went and had the land surveyed because the people at Brook Estates own the driveways as well. There was supposedly just enough land to take some of the wetland area to fulfill the requirements of the acreage to make it a viable development.

JT questioned if the land is public. BJS advised the land was never cleared and made into a public road. The houses are connected by a subterranean wall which is why they are allowed to call them town houses.

**Shores of Silver Lake III Discussion**

BJS and GCW were the only members of the Board at the time this project was originally heard. SJW advised that Shores of Silver Lake III came in with a strip of 24 homes at the bottom of the property and the rest of the parcel was completely empty yet showing a little bit of road access into the now empty parcel.

JT advised that the Major Residential Bylaw has been kicked out as it applies to subdivisions because of a recent case called Wall Street which states you cannot put a requirement on special permits as well. They upheld the denial of the subdivision act. The judgment came down and they are seeking an appeal of the decision. JT advised that judges rarely change their mind after making a decision but it can be appealed. ASB  


SJW was wondering if it would impact the 40B of this property. How do we get cluster subdivision back it to the regulations? JT advised you let people to do the same number of lots if they reserve more open space. This got by the attorney general because it leaves the towns up to review and will only look at them if there is a lawsuit.

It was a unanimous decision to hold off on amending the site plan review change bylaws for the spring Town Meeting.


BJS asked JT when the argument will be heard by the courts for Crystal Spring, JT advised not until March 5<sup>th</sup>.

GCW: Motion to adjourn the Executive Session.

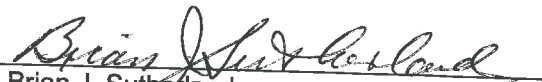
SB: Second.

Vote: 5-0 Approved. (PMB, GCW, BJS, SB and DB)

Minutes Accepted on: 2/26/2009  
(date)

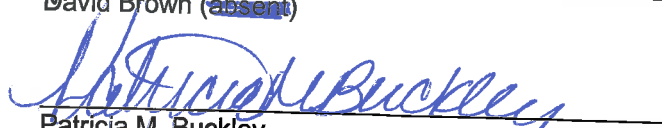
  
Stephen Bartha

(prepared by: Amy Sault)

  
Brian J. Sutherland

  
David Brown (absent)

  
Glenn Wojcik

  
Patricia M. Buckley