



BELLINGHAM PLANNING BOARD

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July 9, 2009 Meeting Minutes

- **Present at the Meeting**

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

Other Officials: Stacey J. Wetstein (SJW), Town Planner
Amy Sault (AS), Coordinator

PMB opens the meeting at 7:00pm.

New Business

Bellwood Condominium and Brook Estates Condominium 81P off of Brook Street

BJS recused himself as he may have a potential conflict of interest with this agenda item.

Douglas Errico, attorney representing Bellwood Condominium, Mike Dane and Paul Atwood from Guerriere and Halnon representing the applicants.

PMB advised that at the last meeting the Board had requested copies of the easement and copies of the settlement agreement which they she thanked them for. She opened the discussion to the applicant before the Board takes it to discussion.

Mr. Errico reiterated that they are trying to solve an access problem not create one, he has also given a letter to Town Council saying that he would take custody of the plan and not record it until everything else was settled. SB questioned if they brought the break down of the voting results as requested by the Board at the last meeting. Mr. Paulousky advised that he knows that they received 75% and they do have the certificates to that effect, Mr. Paulousky advised that he does know that the vote was 6 out of 49 voted against it and was taken in January of 2008.

PMB has issues after reviewing that they do not have the right as the land is not legally accessible because it is over the wetlands, she understands they have their easement but she does not think the Board should sign the 81P. PMB wants them to file the easement then the Board will sign the 81P and advised that it does not fall within the confines of an 81P, it is a driveway.

SB thought that there would be some mechanism to prevent the filing of the 81P more than just a letter and with the whole access issue he thought that Town Council told the Board that frontage and the access is not on the 81P. GCW advised that it does show the access on the 81P. SB clarified that they will not be able to access the property with the frontage that they are declaring on the 81P.

PMB has a problem with the access and the 81P and there is no guarantee that this is the easement that they are going to ultimately record, they could change their mind, and she does not believe they are ready for the 81P yet. PMB also advised that if the filed the easement and showed to the Board that they could actually have legal accessibility vs. over the wetlands then she would agree. PMB is not convinced that it is the right thing for the Board to do at this time.

Mr. Errico does not want anyone to lose sight of what is there right now. He explained that no one has access over their legal property right now, they are coming off of Countryside Road which is a private road and the easement agreement that they have entered into is very extensive, he asked the Board not to lose sight that their plan is to make this better for everyone. Mr. Errico wishes that they could go back 25 years ago when the whole project was laid out so they could have done it this way up front.

Mr. Errico advised that they have worked out a mechanism now and asked that the Board gives him credit on what he will record; his name is on his letter head and he is before the Board saying he will not put the 81P plan on until the easement is granted. He mentioned that there has been an ongoing dispute over the easement rights to begin with and this agreement would clear up the "clouds" on access if the market comes back it will put money in the associations pocket so that they can do some needed improvements to the condos. Mr. Errico advised that's what this is all meant to do and reiterated that until that easement is on record they will not put the 81P on.

PMB wants to see the easement recorded first. Mr. Errico advised that he will not go and record anything; it is part of an overall settlement of a real estate dispute and he would not be much of a lawyer if he gave up the easement that is invalid, put it on record, then came back before the Board again and lied. He believes that it truly protects all the interests and is going to make things better not worse; this documentation will put things in place that should have been taken care of 20+ years ago.

GCW explained that this is not how an 81P works, he explained that Mr. Errico built a plan that conditioned upon him coming to the Board without having what he need and asking for them to approve something so they can get theirs approved. GCW further advised that an 81P is pretty cut and dry, if you have the frontage and the lot shape

factor, you have the access, it's a done deal. GCW thinks that if they do it for them, they will need to do it for everyone else.

Mr. Errico asked Town Council if the Board could vote on it tonight so that it is done except for the signing and the release of the plans and the then if they come back in two weeks with the recording information for the easement then it is all set. SB said that at the last meeting the Board did not say get proof of the easement and come back. PMB thinks that it will set a negative precedence although this is a unique situation; her problem is that if they vote to approve the 81P, can they can they "take it back" even if the Board does not sign it. Mr. Talerman advised that it could be conditioned; he agreed that this 81P is "out of the box", it does not have the frontage, if this did not involve the potential cutting off of rights of Brook Estates, then the Board would not entertain the notion of doing something that you (Board) does not have to do.

Mr. Talerman does not have a problem based upon if the PB is satisfied that they would endorse provided that Mr. Errico would promise that he would hold one while the other is getting recorded, if that is the way that the PB would want it. GCW advised that the only issue he sees is that the easement is different after this 81P has been filed he does not have a problem motioning this 81P with the condition. GCW also believes that this should have been done correctly when it was first approved 20+ years ago. DB would also like to see some proof too as well as JS. JS has a problem with the fact that this puts money in the condo association fund because historically the Board has been concerned with putting money in the Town's account not individual accounts; he thinks that it also shows good faith.

Brian Sutherland, 57 Yvonne Rd, explained that years ago when this project was first looked at, an easement was granted for construction purposes and looked at by Town Council, at the time. It was supposed to be turned into a permanent easement however there was a clerical error which is why this situation exists today. There was legal access at one point it was never recorded from a construction easement to a permanent easement.

GCW: Motion to endorse the Bellwood Condominium and Brook Estates Condominium 81P off of Brook Street conditional upon that the easement dated June 15, 2009 is recorded with proof of recording provided to the Planning Board.

Mr. Sutherland asked about the property that Brook Estates was giving up and if not developed in 7 years would be back before the Board with an 81P to get their land back and what happens to the easement. Mr. Talerman does not think that we can bind a future Board. Mr. Errico advised that they would not need another 81P; Mr. Talerman asked how they would divide the land back up. Mr. Talerman said that it is a future plan and he is not too concerned with it right now.

SJW reminded the Board that there was a motion but no second. SB questioned Mr. Talerman to see if he was comfortable with doing this. Mr. Talerman advised that the motion helps protect the Board's interest.

Motion repeated: GCW: Motion to endorse the Bellwood Condominium and Brook Estates Condominium 81P off of Brook Street conditional upon that the easement dated June 15, 2009 is recorded with proof of recording provided to the Planning Board.

SB: Second.

Vote: 3-1 Approved. (GCW, SB and DB), 1 Nay (PMB)

Mr. Errico thinks that he can get it done within the next two weeks for the next meeting.

Discussion Condition #2 – Irving Gas Station Drive Thru Special Permit, approved May 28, 2009

John Christopher, 15 Irene Court, Bellingham resident, also the Developer for the project.

SJW advised that the intent of the Planning Board as per the condition in the decision was to have the applicant be in direct dealings with the Parks Dept to figure out what they would need from them as far as buying and planting the trees. Mr. Christopher advised that the applicant was under the impression that he would give money to the Town and they would deal with the trees and installation.

SJW advised that the applicant gave a check to her for \$5,000; she advised that the money is being held until by the Town accounting department until the cost is determined. She called the landscaping company directly that the applicant recommended and their quote does not include a guarantee beyond 90 days and is for now not in October, he also could not guarantee that maples trees would be available for that cost in the fall. SJW worked with the landscaper and got them to agree for a longer guarantee and the Town would have to follow the landscaper's maintenance agreement.

SJW questioned the Board to see their interpretation/clarification of the condition and with Town Council. GCW advised that the Board said to the applicant that it is in the best interest to have the applicant handle the plantings because they can get a better price than the Town would. PMB thinks that they should go with the landscaper that the Parks Dept. uses and have them planted in the fall.

Mr. Christopher agrees with the Board in that they should not plant them until October, and with the 1 year guarantee. Mr. Christopher will advise the landscaper to work with the Town as per all the agreements of the condition. SJW advised she will deposit the \$5,000 check, pending proof the Town could pay the invoice submitted for the trees, and set up an account and will need to get in contact with Mr. Christopher in getting a guarantee. BJS advised that the Board is grateful for them agreeing to do this work for the Baseball fields.

High Ridge Estates Security Release Discussion

Gerry Blair, representing High Ridge LLC, and Tim Jones, PMB advised that we need the As Builts. Mr. Jones questioned which As Builts are needed, the road As Builts or the Detention Pond Basin. Mr. Jones advised that 3 are done, he needs one more and the third one the Con Com has not gotten, yet it is done at the engineering office that he still has to pick up; the fourth one is not completed yet. Mr. Jones advised he does know that they are fine, he has already done the field work so they are large enough, everything totally conforms, the only thing that is not done is the work inside the office. PMB noticed that there was discussion with regard to a substantial leak in the water pipe, she questioned if it has gotten fixed yet. Mr. Jones explained that the spring is a wet time and they have done catch basin hoods in the rain, trying to clean them out, etc. Mr. Jones advised that everything is to conformity. Mr. Jones advised that it took 5-6 hours of pumping out the retention ponds to get them to work because they are large.

Mr. Jones advised that the water line is in but they cannot go out and fix it yet because he can't get a machine in, it needs to dry out because he needs to turn the water on to see where the leak is because if it dries out good enough when they turn the water on, it should create a pocket.

Mr. Jones has gone through gas and he cannot cross that gas line with a piece of machinery unless the gas company is there. This spring the gas company was redoing a lot of lines in a lot of areas so they did not have the inspectors readily available. When they did become available they got out there and got it done. Mr. Jones has a feeling that the main leak is at the gas line.

Mr. Jones advised if it is in a different area then he will not be on a time constraint but he cannot get in there with machines because of the rain. He has torn up 2 lawns on each side; that are a mess which is why they are trying to let it dry out before they tackle this problem.

Mr. Jones advised that he is behind due to the weather because some of the retention ponds are near people's yards. Now he has all the materials for the fencing but he cannot dig in their yards with the heavy machinery.

Mr. Jones advised that he cannot plant the trees because they are on everyone's front yard. They are located on private property, he needs machinery to get them in due to their large size and they are sinking because of the wet soil. Mr. Jones believes that they have worked extremely hard despite the rain and mud and he has been in contact with everyone and they seem to be happy including the Doyan's, their yard has been fixed up.

PMB advised that the Board received the withdrawal letter and there is no valid permit because the Subdivision Permit expired almost over 1 year ago. Mr. Blair questioned on what basis the permit is expired, after he read through all the materials he does not see in the Special Permit where it is expired.

Mr. Blair did not anticipate that the Board had in mind a "reapplication" and all the fees that go with it; it totals well over \$1,000. Mr. Blair questioned the Board what they base "expired" on. SJW advised that the Subdivision had phases and the Board kept extending the phases and the last extension given for that permit was back in Sept. of 2008. Mr. Talerma advised that both the Subdivision approval and the Special Permit work hand in hand, he also advised that they are here today to discussing is Subdivision Security under that approval. Mr. Talerma also explained that both the subdivision approval and the special permit crossed referenced each other and incorporated each others conditions so the Special Permit handles the Lobisser decision situation by taking on the deadlines and time limits within the Subdivision approval. Mr. Talerma believes that the Subdivision is expired and advised that they are working on a gentleman's agreement which Mr. Jones has worked all summer to own up to and Mr. DiMartino is pleased with the progress to date.

Mr. Talerma advised that the Con Com still needs more info, as well as the DPW, the Bank is sending a check and without further inspections we are not there. Mr. Talerma believes are close to resolving this deadline of September to wrap this all up and failing that then whatever money is due in owing to the Town minus the money that Mr. Jones would be entitled to for the work that he has done and the breach here would go to the Town to finish it. The deadline has been pushed by a month or so due to the weather until Sept. to wrap this all up. Then whatever money is due and owing to the Town minus the money that Mr. Jones would be entitled to for the work he has done in the breach. Mr. Talerma advised that the hope is that the work will be completed or whether a "mild" extension is needed (due to weather issues) provided there is still progress, this can be worked into the agreement as the "Act of God" clause.

Mr. Talerma advised that as a legal matter there is no Subdivision because it is expired and there is an interesting legal argument as to whether or not that triggered the expiration of the Special Permit.

PMB questioned what happened to #6 on the agreement with regard to the changes that may have happened. Mr. Talerma advised that #6 has to do with Mr. DiMartino and a living document that would allow him to make changes as conditions applied and subjected to Mr. Blair and Mr. Jones.

PMB asked when we should expect to have a signed agreement from the Bank. Mr. Jones advised that the bonding has been an issue and is a separate issue, when the bond is restricted there is no money and the bank asked him to get a bond reduction. He does not want to get caught in the catch 22, GCW advised his concerns too.

BJS is concerned because this is the first project he saw as a member of the Board 8 years ago, promises are made and things do not get done. BJS wants Mr. Jones to take ownership and he is tired of hearing the excuses, the Board wants this project done. Mr. Jones advised that he has never been given money before the work gets done only after the work has been done. He has always worked with what he has been given and he has done millions of dollars in improvements for the Town.

Mr. Blair advised that they are hear tonight requesting \$69,460 for work that has been done, it seems reasonable to him to release the work that has already been completed.

PMB advised that the Board is frustrated that there have been countless times were he (Mr. Jones) had not fulfilled his end of showing up to meetings and letting the Board know where he is at with the work. She asked Mr. Talerman if there is enough money if the Board gives him what he is requesting. Mr. Talerman advised that the bank has refused and revoked Mr. Jones' ability to draw money. Mr. Jones addressed the inspection fees from Mr. Drake, DPW Inspector, and wanted the Board to know that the money was in there and was not overdrawn for that long.

Mr. Blair asked if an agreement was signed between now and then and can the Board release the money to Mr. Jones.

Mr. Jones advised that the As Builts from the road are separate from the As Builts from the retention pond As Builts. BJS asked if a temporary fence was up around the retention pond. Mr. Jones advised that it was with the exception of the first lot and BJS would like it to make sure it will be safe. Mr. Jones he will go out there to put the fence up.

The Board agreed for Mr. Jones to be back before the Board on July 23, 2009 at 7:00pm to request the bond reduction.

Old Business

DB: Motion to approve the June 25, 2009 meeting minutes.

SB: Second.

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

BJS: Motion to sign the vouchers.

SB: Second.

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

Planners Report

MDM traffic study for Hartford Avenue / Depot Street / Grove Street

SJW advised that over the years we have collected money from different projects including \$40,000 from Dunkin Donuts and \$65,000 from the Best Buy / Depot Street project to do a study at the Hartford Ave / Depot St and Grove St intersection. The proposal given to the Board from MDM is for Phase I, Don DiMartino and she have looked at it and are ok with it. SJW explained that MDM will bring it to 25% design for the price of \$65,435, which will leave a remaining balance at a little less than \$40,000 to continue down to phase II or wait until more money is added to that.

SJW advised that the during Phase I, MDM will establish goals and objectives, review documentation, wetlands delineations, topographic survey, look at existing conditions,

traffic signal warrant analysis, etc. SJW advised that she thinks we should get started on this and would need a motion of approval from the Board.

BJS: Motion to endorse the proposal from MDM for Hartford Avenue / Depot Street / Grove Street for July 1st, 2009.

SB: Second.

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

SJW advised that the Planning Board Office will be closed on July 24th due to SJW and AS vacation's overlapping. A notice will be posted.

SB: Motion to adjourn.

DB: Second.

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

Minutes Accepted on: _____

(Date)

(Prepared by: Amy Sault)

Patricia M. Buckley

Glenn Wojcik

Brian J. Sutherland

Dave Brown

Stephen Bartha