



BELLINGHAM PLANNING BOARD

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Meeting Minutes April 11, 2013

MEETING LOCATION: ARCAND MEETING ROOM – MUNICIPAL CENTER

Present at the Meeting

Patricia M. Murphy (PMM), Chairman
Glenn C. Wojcik (GCW), Vice Chairman
Amber S. Griffiths (ASG)
Peter C. Pappas (PCP), Secretary
Andrew T. Greene (ATG), Associate

Other Officials:

Stacey J. Wetstein (SJW), Town Planner
Jean Keyes (JK), Planning Board Coordinator

PMM opened the meeting at 7:00 p.m.

81 P – Hixon Rd

Present: Robert Truax from GLM Engineering, Holliston, MA representing the applicant. Mr. Truax is requesting an ANR for the 3 lots on Hixon Rd. The three lots meet the zoning requirement for frontage.

GCW: Motion to sign the 81 P for Hixon Rd that was prepared by Robert Borrelli for Lots 1, 2, and 3 on Hixon Road across Barrett Lane.

ASG: Second

Vote: 3-0. (PMM, GCW, ASG)

Gibbs Oil Gas Station, 320 Pulaski Boulevard Development Plan Review, Continued Public Hearing; Decision Deadlines: 4/23/13

Present: Michael Peirce, attorney for the applicant.
Nicholas Goodier, attorney for the abutter.

Attorney Peirce provided a brief summary of the project and stated that the only modification since the last meeting is to adjust the location of the driveways to fully comply with the design standards in the Bellingham gas station bylaw. His client has also filed traffic data related to a 2% growth factor and it has been filed and discussed with BETA.

PMM was concerned about the issue of whether the lot is a legal lot. PMM explained that Town Counsel Jay Talerma is here as well to help advise the Board.

Attorney Peirce explained that in 1963 a piece of this large lot was leased for the existing gas station. The applicant's property was separately deeded out in 1965 and the deed is on file at the registry. This lot met the lot size requirements when the deed was recorded. Sometime between 1998 and 2002, the Town changed its size requirements. In his strong opinion, that it was a legally created lot. It met the definition in the Town's bylaw, was shown on a plan in 1965, conformed to lot area and frontage, and was properly described in the deed. Attorney Peirce strongly disagreed with Attorney Talerma's previous email that a lot can only be created by an ANR (Approval Not Required) plan or subdivision. The Town's own bylaw states that a lot can be created by either a plan or a deed. A critical point is in regards to the

ANR language is that a person wishing to record a plan that they believe does not require subdivision approval, must file a request for an ANR. It doesn't state that a person wishing to create a lot must file an ANR. It is his opinion that the lot was legally created, met the requirements when created and when they purchased it and that it has not changed.

PMM stated that they are now going to stop the presentation and the Board will now discuss if this is a legal lot. PMM invited Attorney Talerman and Attorney Goodier to sit at the table and discuss.

Jay Talerman stated that he has no firm conclusion as to which way the Board should decide. The Bylaw is not un-ambiguous and there is room for interpretation. The term is "legally-created lot." There are ways to create property to convey that might not be legally created. After the adoption of the Subdivision Control Laws, there are only two ways to create a recordable lot: through a subdivision or an ANR process. He stated that he was not suggesting that this is only way to interpret that provision. The issue here is what, in the Planning Board's view, was the intent at that time? Was the intent in the law at that time (Chapter 40A, Section 6), that the only way to create a lot was through subdivision approval or, that this lot has existed for a long time, has changed hands multiple times, and that is good enough for the Board? The applicant and abutter can argue about this if they want, but the Board has to make a decision to be able to move the project forward. Attorney Talerman continued that he could not state what was intended at that time. Bellingham has a history of trying to allow people to use pre-existing non-conforming lots and stated that he believes that either interpretation would be reasonable and that the decision would not be subject to a robust challenge given the deference the Board is entitled to by law.

SJW asked Attorney Talerman what precedence would be set by the Board. Attorney Talerman explained that boards are never bound by decisions of prior boards. He is not aware of any instance where this has come up before and is not too worried about precedent setting. The Planning Board should strive for consistency but Attorney Talerman doubts that the Board will see this situation often.

PMM invites abutter Attorney Goodier to speak about this issue. Attorney Goodier stated this is a very lenient bylaw that provides a very liberal ability for someone who claims to have a legal non-conforming lot to use that lot for allowed uses. There is black letter law created in 1953, Subdivision Control Act, that is very, very particular. The Act states "No person shall make a subdivision of any land in any city or town in which the subdivision control law is in effect unless the person has first submitted to the planning board either for an Approval Not Required or a subdivision. Attorney Peirce's correspondence clearly reflects that this lot was created solely by deed - no subdivision or ANR." This process was adopted by Bellingham in 1956. Attorney Goodier stated that this is a non-issue and this lot does not qualify for the bylaw. Attorney Goodier further stated that if the Board does consider it a legal lot then the Board could render the town liable.

Attorney Talerman stated that in his opinion, after Subdivision Control Law, the way lots are created is either by Subdivision or by ANR. He further stated that Section 81-O states that no person shall make a subdivision of land, and that an 81-P is for when it is not a defined subdivision and he stated that he does not believe it is even relevant. The Board must decide what the intent of the bylaw was. Attorney Talerman doubted that anyone forecast this controversy when the project started.

PMM stated that she is stopping all discussion with the public and the Board will discuss now amongst themselves.

GCW stated that someone has been paying taxes for 50 years on this lot and it has been an existing lot for a long time. They original owners didn't subdivide this land or try to be sneaky about the lot. He was at town meeting when the bylaw requirements for lot size were changed. People were concerned that a lot they owned that was smaller would not be buildable. The town reassured them that it would be grandfathered and, if it existed before the changes, it would be fine after. GCW's opinion is that it is a legal lot.

ASG agrees with GCW. The owner of the lot has been paying taxes for years, has been bought and sold multiple times, and has not been an issue until now. In her opinion it is a legal lot. PMM stated that she is worried about this. If the Board interprets the bylaw to say it is a legal lot, it will open it up to many other situations like this. If the Board does not interpret this situation narrowly, the Board will be opening

Pandora's box. PMM believes that it is not a legally created lot because they did not take the required steps to create it. She is more inclined to not agree.

PCP questioned how the Board knows that there was never a presentation to the town. Attorney Goodier said that to create a lot a landowner must have a formal plan that was legally recorded or the owner must have made a presentation to the Planning Board and there must have been Planning Board action. PCP stated that the Board has a plan but it was not recorded and does not know if the original owner came before the Planning Board at that time.

PCP stated that he would like to clarify the terminology "legally created lot." Originally, the two lots were conveyed to Pulbell Corporation in 1965 and were not part of a plan. The 1965 deed gives a running description of the physical lots. So there is a physical description of the property. PCP asked if the law was intended to apply to individuals who have one lot and want to split it into two or to individuals who want to split large land into multiple lots; thereby to control growth of the town. PMM stated that it was probably intended to control growth but the Town's bylaw states that the plan must be recorded. She stated that a narrow interpretation is not a bad thing and that either way the town is getting sued.

SJW asked if PCP has an opinion about whether it is or is not a legal lot. PCP asked if the current owner had obtained title insurance when the lot was purchased because the title company would not have insured a title if there was any question of the legality of the lot. PMM stated that the Board has to decide if the lot was legally created and complied with the bylaws at the time it was created. PMM opinion is that it was not legally created.

PCP stated he cannot give an opinion if he does not know if the original owner ever came before the board or if Lot 1 was a legally created lot. SJW stated that it is safe to assume that since this plan does not have a signature on it, then it did not come before the Planning Board for review. This cannot be stated for certain, but it plans were signed by the Planning Board even in 1965. SJW stated that PCP has to state an opinion and has to make some assumptions as we are not going to get concrete evidence.

Attorney Talerman stated that the zoning compliance of Lot 1 is irrelevant. This is not about the academic requirement of recording the plan but the Board has to determine the intent. In his opinion, he does not see this situation repeating often in the town and doubts that it will come up frequently. The Board should focus on the intent of the original lot creation as it complied when it was created and has traded hands multiple times.

Attorney Goodier stated that the only way to legally create a lot is through 81-P or subdivision action. He further stated that anyone else can come in with same situation. Attorney Goodier stated that he has a constitutional right to present their viewpoints, discuss the design, discuss the serious design flaws of the fueling stations, and has a lot of information to go over.

Fire Chief Gentile spoke regarding the letter that he received from Attorney Goodier. The fire prevention office runs plans by him only if there is a problem; however, despite the fact that these plans did not have problems, he has seen these plans. These plans have been reviewed by their fire consultant who has approved them. In addition, the plans have been approved by the fire marshal's office. Attorney Goodier's letter implies that his office does not know what is going on and Chief Gentile strongly disagrees with Attorney Goodier's statements.

PCP explained that this lot fits under Section 2530, Section 640 A. So, while plan is not on record, the deed does contain a description of the lot and he believes that Section 2530 is applicable. If the applicant is moving forward under Section 2530 then PCP has enough to go on to move forward. PMM summarizes that the Board is going forward under the Town's bylaw and the matter will be continued.

PMM stated that she can limit the presentation time for Attorney Goodier as an abutter. SJW stated that the Town's peer reviewer has reviewed this project in depth and has made a determination. An abutter can comment and submit information but a presentation is not necessary as the Board relies on the peer reviewer information to make their decision. SJW believes that the abutter's Attorney does not need a presentation but can submit comments. Attorney Goodier stated that the information he has will take 20-25 minutes. PMM asked Attorney Talerman if an abutter can present their review of the Town's peer

review information. Attorney Talerma stated that an abutter is allowed by law to present any information that is relevant; however, the Board can limit the time and, if comments are repetitive, move the meeting along. The abutter has to be given enough time to get salient points out. SJW stated that if the comments had been given in reasonable time, the Board could have reviewed and would have been able to respond at this meeting.

PMM will allow Attorney Goodier to present at the next meeting. GCW questioned who will pay to review the technical comments from Attorney Goodier. Attorney Talerma stated that the applicant cannot pay for the review and, consequently, the Town's peer reviewer cannot review the abutter's documentation. The Board and the Fire Department will have to review the documentation.

GCW: Motion to Continue the Gibbs Oil Gas Station, 320 Pulaski Boulevard Development Plan Review until April 25, 2013 at 7:00 p.m.

ASG: Second.

Vote: Carried 4-0. (PMM, GCW, PCP, ASG)

GCW: Motion to Extend the decision deadline for Gibbs Oil Gas Station, 320 Pulaski Boulevard Development Plan Review to June 1, 2013.

PCP: Second.

Vote: 4-0. (PMM, GCW, PCP, ASG)

Shores at Silver Lake II Definitive Subdivision Modification, 1st Public Hearing; Decision Deadline: 5/5/13, Request for a Continuance to May 9, 2013 at 7pm

GCW: Motion to waive the reading of the public hearing.

ASG: Second.

Vote: 4-0. (PMM, GCW, PCP, ASG)

GCW: Motion to Continue the Shores at Silver Lake II Definitive Subdivision Modification to May 9, 2013 at 7:00 p.m.

ASG: Second.

Vote: Carried 4-0. (PMM, GCW, PCP, ASG)

GCW Motion to Extend the decision deadline for the Shores at Silver Lake II Subdivision Modification to July 26, 2013.

ASG: Second

Vote: 4-0. (PMM, GCW, PCP, ASG)

Shores at Silver Lake III Definitive Subdivision, 1st Public Hearing; Decision Deadline: 5/5/13

Request for a Continuance to May 9, 2013

GCW: Motion to Continue the Shores at Silver Lake III Definitive Subdivision Modification to May 9, 2013 at 7:00 pm.

PCP: Second.

Vote: Carried 4-0. (PMM, GCW, PCP, ASG)

GCW: Motion to Extend the decision deadline for the Shores at Silver Lake III Definitive Subdivision to July 26, 2013.

ASG: Second.

Vote: 4-0. (PMM, GCW, PCP, ASG)

CVS, 370 and 400 Pulaski Boulevard, Development Plan Review, Drive Thru Special Permit and Stormwater management Permit, Continued Public Hearing; Decision Deadlines: 4/30/13

Present: Joe Antonellis, Attorney for the applicant.

Attorney Antonellis stated that they have made significant progress and are on track to move forward but doesn't think will get through everything tonight. The 5th leg has been removed with permission from CVS's corporate office.

PMM asked for a brief update of where the project is now.

Attorney Antonellis stated that the following items have been identified and are either complete or almost completed:

1. Parcel donation – The land behind the lot was donated to the town and CVS will maintain it as part of their open space.
2. Landscape plan – due to elimination of 5th leg, the plan is not finished and they understand the town's requirements
3. Fencing – has reviewed with abutters
4. Lighting – is just about finished and there will be no spillover
5. Pavement markers – will be noted on the plan to show traffic flow
6. Sign details being finalized
7. Handicap access being finalized
8. Environmental Controls – HVAC decibel levels will be provided by certified contractor
9. No historically sign property – so no issues to address
10. Number of employees and hours of property – this will be provided and there will be normal store hours
11. Screening of abutters by landscaping is ready
12. Traffic – all engineers are here and ready to respond

Attorney Antonellis stated that they now have a really good plan and are ready to move forward in two weeks.

Phil Paradis and Jen Centracchio from BETA explained that the light at the CVS exit on Pulaski will line up with Moody Street and will have one controller that will work with the main lights at Crooks Corner. Ms. Centracchio stated that BETA will look at final signal plan and signal timings will be reviewed with before construction. But, she reiterated that the plans should be adjusted to show proper location of signal heads and Phil Paradis stated that it must be clear and noted properly on the plan which light is for exit.

Jason Plourde of GPI, engineer for the applicant stated that the plan is conceptual only and not a full design plan. If plan is approved, they will prepare full plans with all full designs that will be reviewed by the town and it will be reviewed by the town before implementation.

Ms. Centracchio and Mr. Paradis reminded the applicant and the Board that there are couple of outstanding issues: possible financial contribution to Pickering Ave for traffic calming measures, a few minor landscaping details, and on site directions signs. Other than these items, Ms. Centracchio and Mr. Paradis stated that BETA is satisfied.

Attorney Antonellis stated that the applicant prefers to perform traffic calming done to town's specifications and then provide the financial donation if needed. PMM asked if BETA provide the specifications and then review CVS's measures. Ms. Centracchio and Mr. Paradis responded affirmatively and that they will have more discussion with CVS about the traffic calming measures.

Attorney Antonellis was concerned about an outside firm to performing inspections for the town. He reminded the Board that this is a controlled construction project and they are required to hire an architect who will review each step and who will sign off on compliance. In addition, the town's inspector also reviews each construction phase. SJW, PCP, PMM are all concerned about the work being done to the town's satisfaction.

Jason Plourde stated that concerning traffic calming measures, CVS prefers to wait until after development is built to determine if it is impacting Pickering Street rather than before. CVS is not a high generator for traffic and any concerns have been addressed – driveway locations, turn restrictions. Plans have been created to address all of these concerns so they hope to not see issues with Pickering Street.

PMM opened the meeting to questions from the public:

Barbara Murphy, Prospect Street resident, questioned whether the new traffic light at Moody Street will affect traffic.

Jason Plourde responded that they have spent a lot of time to find what the best system would work to allow people to get in and out of Moody Street and be processed along Pulaski. Both locations would have traffic signals that talk to each other. So, there are gaps in traffic to allow exiting from Westminster Street. This signaling system was extensively researched to ensure that it will not have a negative impact. They will not be just installing another signal but will be changing the timings of the signals so that shrinking wait times to allow people exiting Westminster and other streets to get out. The Moody Street light will also help residents to get out. They are also removing existing light at the vet.

Rob Oliver, resident, asked how the traffic for the Vet clinic getting out now. Jason Plourde explained current and future configuration.

PMM asked Attorney Antonellis if the location of the dumpster for the abutters was addressed. Attorney Antonellis stated that it was relocated. In addition, snow removal will be to the back of the lot. Architecture is the same with no changes.

GCW: Motion to continue the CVS, 370 and 400 Pulaski Boulevard, Development Plan Review and Drive Thru Special Permit and Stormwater management Permit to April 25 at 8:00 p.m.

PCP: Second.

Vote: Carried 4-0. (PMM, GCW, PCP, ASG)

General Business:

Old Business:

GCW: Motion to sign the March 28, 2013 Meeting Minutes.

ASG: Second.

Vote: Carried 4-0. (PMM, GCW, PCP, ASG)

PCP: Motion to sign the vouchers and payroll.

GCW: Second.

Discussion: SJW explained the vouchers and payroll.

Vote: Carried 4-0. (PMM, GCW, PCP, ASG)

SJW gave a brief update of the Hartford Ave Overlay process by the Master Plan Implementation Committee (MPIC). The MPIC met last Wednesday with the abutters to abutters and about 10 people attended. Their main concern is that they don't want character of the neighborhood to change. So the MPIC has to make sure to be very specific about what can and cannot happen when writing the bylaw. SJW informed the Board that they will begin to hash out the bylaw at the next meeting and she would like to spend several meetings to devote time to doing this bylaw. SJW also stated that Attorney Talerma has to review it too. The MPIC was very happy with the turn-out and that the attendees were very positive. Nikyta Resto, MPIC member, stated that the abutter's main concern was if a person can buy two houses and combine them or buy and tear down. It was stressed that they cannot. SJW had great examples of what can and cannot be done.

PMM reminded the Board to thoroughly review the Gibbs package. SJW will provide the Board with a project checklist for reviewing each project.

SJW also informed the Board that the Charter Review Committee member is ATG not PCP. ATG stated that at the first meeting nothing really happened. PCP will attend if ATG cannot go. SJW it is important that the Planning Board have a say.

New Business (81-P)

GCW: Motion to adjourn.

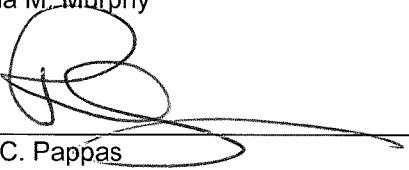
ASG: Second.

Vote: Carried 4-0. (PMM, GCW, PCP, ASG)

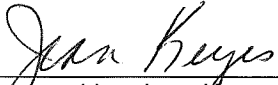
Meeting Adjourned at 9:15 p.m.

Minutes Accepted on: 4/25/13
(Date)

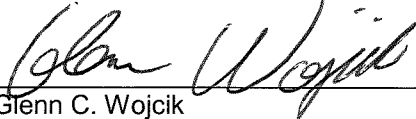
Patricia M. Murphy




Peter C. Pappas



(Prepared by: Jean Keyes)



Glenn C. Wojcik



Amber S. Griffiths