

**BOLTON PLANNING BOARD**  
**Minutes of Meeting**  
**November 29, 2006 at 7:30 P.M.**  
**Bolton Town Hall**

Present: Larry Delaney (Chair), John Karlon, Frank Lazgin, Douglas Storey (Vice-Chair), Nat Tipton (Town Planner)

**DISCUSSION**

**1. Northwoods – Lot Release Request**

Present: Chuck Black, Kendall Homes

Black requested that the Board release Lot 24. The Board would continue to hold Lot 25 and the value of the tri-party agreement (\$82,500). Tipton stated he was concerned that the applicant could transfer Lot 25 and a buyer would not know the Board would not approve a building permit on it. Black indicated his attorney advised him that in most cases an individual could not receive financing from a bank if the lot had not been released by the Board. Black argued that the aggregate value of Lot 25 and the escrow account exceeds the amount of remaining work. At the previous meeting, the Board received an estimate from its engineer that the value of the remaining work is \$166,700. Typically, the Board requests 150% of the estimate from its engineer (\$250,050).

On motion by Doug Storey, seconded by Karlon, the Board voted to release Lot 24 contingent on receiving a letter from Black stating that Lot 25 would not be released by the Board until the road is built to the board's satisfaction.

Tipton also mentioned he received an inquiry from Larry Ducharme about a proposed guardrail on Ledge Wood Circle. The guardrail is shown on the final plans. Ducharme asked if the Board would require the guardrail if the applicant could show that it is not needed per Mass Highway guidelines. Black mentioned he would rather not install the guardrail if it is not needed because of aesthetic concerns. Storey stated he would take a look at where the guardrail is proposed.

**2. The Oaks Subdivision**

Present: Brian Lynch, IGC

Lynch explained he is requesting the Board reduce the escrow account that it is holding. He stated he believes the Board is holding approximately \$170,000. Storey asked to what amount. Lynch responded to \$15,000 or \$20,000. A meeting had been held on November 20, 2006 to discuss the remaining work to be done and review a memo issued by Oliva outlining the remaining items. It was agreed that an invoice would be submitted to verify the thickness of the pavement. Lynch stated he felt the remaining items would take one to two weeks to complete. In addition, Lynch believed that there were some items in Oliva's memo involving culvert design that had been exaggerated, and that changes were not needed. Storey stated he thought a letter from Lynch was needed to place an estimate on the remaining work. The Board would seek another estimate from its engineer to verify. It was agreed that Lynch would provide an estimate to the Board.

**3. Century Mill Estates – Rate of Development/Status of Testing**

Present: Andy Bendetson (Merchant Financial); Meredith West (Freeman Law Group); Gavin Cockfield (Davis, Malm, & D'Agostine); Andrew Gilbert, Andrea Gilbert (abutters)

Bendetson gave an overview on the progress of testing. He characterized the perc testing as being 98% to 99% complete. The deep hole tests are taking longer, as each lot needs four holes and the lots cannot be left open overnight. He believes that he is done with approximately 50% of the deep hole tests. Ultimately, he expects 70 to 75 lots will be served by the road.

Delaney gave an overview of the recent Selectmen meeting that attempted to reach an agreement on the Rate of Development issue. A proposal was extended by the applicant where a condition would be added in a definitive subdivision approval that would cap the amount of building permits issued during 2007 and 2008 to 40. The applicant would agree not to appeal the building cap. The applicant and town would jointly file an action in Land Court that seeks to determine whether the original Rate of Development bylaw could be enforced in this instance. No agreement was reached at the meeting. Delaney believes the proposed agreement does not help the town, as the construction for the project would not likely begin until 2008. Delaney suggested that a cap beyond 2008 for the life of the project would be more beneficial to the town's interests, particularly towards not overburdening schools. Cockfield questioned whether the constitutionality of extending the cap beyond 2008. Bendetson stated he might be willing to extend the cap beyond 2008. Cockfield stated a concern that the building inspector could still choose to enforce the old bylaw if the process does not include an agreement that the old bylaw is unconstitutional. Bendetson reiterated that he needed clarity and closure on this issue. He has been advised by his counsel that the old bylaw, if it can be applied to him, would not allow him to build more than six units per year. Cockfield asked what the downside is to the town to the proposed agreement. Storey responded that the process has to be transparent to town residents, the residents have to feel that the process was fair, and there is clear benefit to the town. He questioned if the town went ahead and accepted the deal whether residents would agree that the process was fair. Cockfield stated that the town is sure to lose if the issue is litigated in courts.

Storey stated he feels there are three options. The town can refuse an agreement and fight it in court; the town can agree to the limitation and agreement; or the town can put the issue to the voters and let residents decide whether to accept the deal. Cockfield questioned the legality of the third option. Storey stated the question would be whether the town wanted to appropriate money to litigation, not a zoning decision. Cockfield stated he would send the briefs from the Templeton case to the Board. Andrea Gilbert stated she felt the proposed deal should not be made before a plan is presented. Andrew Gilbert stated that he felt the average Bolton citizen would feel shammed if a deal is agreed to.

Bendetson stated he needed a couple of weeks to consider whether he could agree to extend the proposed cap to beyond 2008. The board would hold a discussion on the topic again on December 13 at 9pm.

#### **4. Master Plan Hearing**

Tipton reminded the Board that it needs to hold a hearing to vote on whether to accept the Master Plan. The board decided to hold a hearing on January 10, 2007 at 7:45pm. The hearing would not be advertised in the paper but would be announced in the Town Crier and in a Letter to the Editor in the Bolton Common.

Meeting adjourned at 9:50pm.