

Minutes
Georgetown Planning Board
Wednesday, July 22, 2009
7:00 p.m.

Present: Mr. Harry LaCortiglia; Mr. Tim Howard; Mr. Hugh Carter; Mr. Christopher Rich; Ms. Matilda Evangelista; Mr. Nicholas Cracknell; Town Planner; Ms. Carol Fitzpatrick, Minutes Recorder

Minutes -

Mr. Rich: I make a motion to accept the June 24, 2009 minutes with corrections noted.
Mr. Howard: Second
All in favor? 4-0; Unam

Vouchers -

Ms. Evangelista: I make a motion to approve the vouchers in the amount of \$800.00.
Mr. Howard: Second
All in favor? 4-0; Unam

Correspondence –

Ms. Evangelista: The MVPC dinner was supposed to be 2 free dinners.

Meeting schedule change – Available November dates: Monday 11/16 or Tuesday 11/17.

Mr. Cracknell: There is a conflict with the date that we chose, tentatively Monday, 11/16 then.

Stone Row – Execute Form G Covenant-

George Agganis & TJ Conte, Applicants

Mr. Cracknell: The Form G was originally submitted by the applicant when they applied or shortly after. It is supposed to be a protect against conveyances . The board would not sign it in March when we endorsed the definitive plan because we had collected each of the 9 requirements in oder to endorse the plan. The reason why we did not sign the plan in March is because we had made some amendments that night to the protective Covenant on those 3 lots. We have been waiting for some time to get the final version back, consistent with our vote. We received that late last week, Michele and I looked at it and it appears to be consistent with the vote in March. If that's the case, then the Form G Covenant should be signed by the board and that the applicant should then record it with the definitive subdivision plans and all other associated documents with the approval. They cannot commence construction until they meet those half dozen or so requirements, including the M-Account and the

Form M, construction permit, etc.. I emailed that out to you today. I had a few quick conversations with the financing attorney for the bank prior to going on vacation. It is pretty pro forma. The applicants are here as are a few neighbors from Stone Row.

Mr. LaCortiglia: Could you draw the distinction from the protective Covenants and the Form G?

Mr. Cracknell: The form G Covenant (has nothing to do with the protective covenant) is a requirement of all subdivision that insures that no lots will be conveyed to a third party prior to construction of the way. This protective covenant is unique to the Stone Row subdivision. This document wasn't signed by the board because the board wanted the developers to come back with the Covenant in a recordable form that reflected the amendments that you agreed to at the meeting in March. I think the Form G Covenant is eligible for endorsement.

Mr. Rich looks at the Form G Covenant.

Ms. Evangelista: What about the abutting land on the back of the lot?

Mr. Cracknell: The open space? That is a requirement of the next step.

Mr. LaCortiglia: Just so I am straight on this Nick. This protective covenant is unique to this subdivision only. The Form G is for all subdivisions.

Ms. Carol Mahlstedt, 9 Stone Row Lane: Nick, You sent an email to us with 2 attachments? Which is the final, submitted document?

Mr. Cracknell: The one without the handwritten notes.

Ms. Mahlstedt: The one that was faxed to you on 7/14? Do you think that all notes from the other document are contained on the document from 7/14?

Mr. Cracknell: Yes. Are you finding missing pieces? Michele has gone through this at least 3 times and has come back to these folks.

Ms. Mahlstedt: I haven't had time to read it all.

Mr. Cracknell: I have no impression that those are not included.

Mr. Tim Ruh, Stone Row Lane: It seems that those that have the faxed date of 7/14/2009, across the top of it and look and compare it to the handwritten notes under miscellaneous restrictions, 3B and 4B, they go all the way from to a letter P, yet they stop at a letter M on the faxed copy.

Mr. Cracknell: I don't have that here. May I borrow a copy of your handwritten notes (Ms.Mahlstedt)? The last 3 letters are not on here. One of them is for a 2800 SF house. Why is that?

Mr. Agganis: The covenants were already here. I don't know what you are looking at right now.

Mr. Cracknell: You gave us a document back in March. This is what your attorney sent my secretary

last Friday. She went through this and obviously didn't see that. But there are things missing in that from your last version.

Mr. Rich: Reads the missing section.

Mr. Cracknell, In this copy of the Covenant N, O and P are not there.

Mr. Agganis: I don't know.

Mr. LaCortiglia: I make a motion to postpone this to the next meeting at which time you can get your act together.

Mr. Howard: Second

All in favor; 4-0; Unam

Mr. TJ Conte: We already submitted the one with those letters in it.

Mr. Cracknell: Your attorney has a version control problem. Your attorney probably pulled the wrong one off the fax.

Mr. Conte: We don't get a Form G until we do this (the protective Covenant)?

Mr. LaCortiglia: You don't get a Form G until you do that (protective covenant). You are lucky we are just trusting you. Under other circumstances, I'd say that we wouldn't sign the Form G until that is recorded and I-we get notes back from the Registry. But, we are letting you do it all in one trip to save the money.

Mr. Cracknell: Your attorney needs to go back and look at the version he prepared in March. You have a version control problem.

Mr. Agganis: He probably pulled the wrong one off the fax.

Mr. Rich: The Form G specifically cites the protective covenant dated 5/14/09.

Mr. Agganis: That Form G is over and above this paper. Has the Form F already been drafted?

Mr. Cracknell: You submitted it a year ago and it's sitting in the file.

Mr. LaCortiglia: It now has to be changed because we need to change the reference.

Mr. Rich: It- is the same but there are articles missing, 5/14/09.

Mr. Agganis: Whatever it is, it is an honest mistake.

Mr. LaCortiglia: Just fix it. Good catch Mr. Ruh. We will put them on the agenda for 12th.

Mr. Cracknell: Apologies, I didn't see that.

Re-sign letter for Newburyport Five Cents Savings Bank

Mr. Tom O'Connell, Applicant

Mr. Cracknell: You signed a letter for the Form J at the last meeting in Hugh's absence with your signature as Vice Chairman and the Bank would not accept it.

Mr. Rich: The Bank is not going to tell us who can sign when we appoint someone as acting chair. The Newburyport Five is not going to tell this Board how we are going to run. I invite them to appear here or send us a letter as to why we should ever allow them to be part of a tripartite in this town. They are not going to tell us who can and can't sign. He is acting chair. What if this guy (the Chairman) was in the hospital? Is he going to have to wait for his money? That is not fair. They get to keep the interest, they get to keep the float. We voted. Are they challenging our vote? He is entitled to his money.

Mr. O'Connell, Applicant – I would like someone to make a phone call to Mark McBirney tomorrow morning on my behalf so that I can pick up a check tomorrow afternoon.

Mr. Rich: If you want to conference me in I will chat with him.

Mr. O'Connell: The same thing happened once before.

Mr. LaCortiglia: The tripartite says that only the Chair can sign?

Mr. Cracknell: I put Vice Chair and you signed it. Do we want to re-sign that as Acting Chair and send it in?

Mr. LaCortiglia: Absolutely.

Mr. Rich: When we make a tripartite we should state that they have so many days to deliver the money to the proper party.

Ms. Evangelista: We have been very accommodating to Newburyport Five in trying to move this along.

Other Board Business:

Whispering Pines – discussion of guard rail

Mr. Tom O'Connell, Applicant
Rich Williams, Engineer

Mr. Cracknell: There 2 issues: 1) the retaining wall, its location and height and how it got there and, 2) the driveway aprons in the paving of those two driveways, Lot 3 and the unnamed lot. After talking to Dave Varga today, the prior developer Longo installed the pipe incorrectly and wasn't graded properly. Then the current developer after purchasing the property and the tripartite agreement using the punch list from Dave Varga saw the deficiency on the lot and elected to erect a retaining wall. There seems to

be confusion between the inspection engineer and the developer. But the wall was constructed anyway and doesn't seem to be inappropriately constructed. Dave is satisfied with its structural integrity. The question was will a guard rail or barrier be necessary since there is a 7-foot drop from the top of the wall.

Mr. LaCortiglia: At what point did we go from the design plan with a nice gentle slope? Who made the decision to make a 7 foot wall with a deadly drop?

Mr. Williams: We ~~we~~ did the walk through with Dave V., that slope from the back edge of the sidewalk to the top of the headwall was extremely steep and there was a piece of drain manhole?? that was too low. He wanted it raised and the slope flattened. There never was a gentle slope.

Mr. LaCortiglia: This was something you got from Dave Varga? Changing the plan was on the list?

Mr. O'Connell: It was an item on the punch list to address the OSI?? structure.

Mr. LaCortiglia: I am not talking about that. I am talking about a slope as opposed to a wall. It should be about 10 feet long.

Mr. O'Connell: The slope should be about 10 feet long but it wasn't installed that way by the prior developer. It wasn't pointed out on the punch list. It was detailed description on what to do at that headwall which was in the process of being done to raise the cover two feet and to grade the loom off.

Mr. LaCortiglia: I am not understanding how we arbitrarily changed this.

Mr. Rich: I don't think there was an arbitrary change. I went out this morning and did the walk and I made a couple of suggestions to him. I then went back and reviewed my notes when we were attempting to facilitate the ~~the~~ Newburyport Five in the sale of this. The specific question was asked: It is subject to the punch list. And it was unanimous, including input from our inspecting engineer that what is on the list has to be fixed. We I went back to the construction codes and looked at the plan, the ~~ineap-endcap~~ for the pipe was installed to short. That concrete structure that the pipe sits in should have been out further to accommodate the slope. The only slope that you could possibly have with the street staying where it is what's there.

Mr. LaCortiglia: With the headwall staying where it is, and making that slope down but if the pipe were to be extended as the plan shows. You put another section of pipe at the 160.5 elevation.

Mr. Rich: The slope was not on the punch list.

Mr. LaCortiglia: I don't recall that.

Mr. Rich: It wasn't on the punch list now so it wasn't on it then.

Mr. LaCortiglia: The developer was coming in to finish the tripartite and complete the subdivision as per the plan.

Mr. O'Connell: The only thing I purchased was those 63 items. I have gone above and beyond, with the

town in mind, and saw the situation and try to do the right thing and put this wall up so that there wasn't a steep slope or a safety issue. I brought it to the Board's attention last week. The only thing that I had to do was put up a guardrail, a fence or some type of planting. By doing this, your public safety issue goes away and you are beautifying the area.

Mr. Williams: We talked to Dave, one of the issues was to raise the manhole cover. I said that if we raise it we have to do something about the slope between the manhole and the headwall because it was too steep. We said that we would figure something out but were not specific about it. We did not talk about a wall in general but we did as we discussed and walked the whole street and went through the whole punch list so that we could be clear on what we were doing. We are definitely not trying to deceive the planning board by shortening the pipe. If Dave had told us to extend the pipe by 10 feet then it would have been a different story.

If you look at the plan, there are things that are always going to be a little different. The grades aren't exact. You might have a catch basin at 160.5 and it is 160.55. That doesn't make it wrong. I think that the intent is to have the drainage get into the pipe and not have a public safety issue. I think that has been accomplished.

Mr. LaCortiglia: I think that was how it was designed. You cannot read a plan? Now ~~a child~~ children will be riding their bikes there. That should have a gradual slope and instead of a gentle grassy slope into a swale they will drop 7 feet, ~~- instead of a gentle grassy slope into a swale~~. The pipe is short by 15 feet. Put the slope in and build it as it was designed.

Mr. Williams: There is only one spot where it is 7 feet, where the pipe is. The rest of it is about 4'. If you put something on top of it it isn't an issue. The top of that wall is 8 feet from the sidewalk.

Mr. Carter arrives at 7:40 pm.

Mr. Rich: Could there be a hedge that would be thick enough to stop a kid from flying through it?

Ms. Evangelista: It wasn't on the punch list. When you do something as costly as putting up a retaining wall, you should have called Dave before you did it.

Mr. LaCortiglia: The driveway is ~~one~~ the wrong side. That was not shown that way on the plans.

Mr. O'Connell: Just about every driveway in that development is not where it should be. We have gone beyond the punch list. We are not trying to pull the wool over your eyes.

Mr. Rich: Esthetically it doesn't look bad but safety wise there are a couple of things that need to be done. Something like a green wall or a thick hedge would work and keep someone from falling through that wall.

Mr. O'Connell: I am here to rectify the problem. We all want this subdivision finished, we want to get it paved. I think I have bent over backwards to do a good job. I will do whatever the town wants, guardrail or plantings.

Mr. LaCortiglia: I want it done as it was originally designed. That is it. I am not saying another thing on

this.

Mr. Rich: A punch list is what you need to be done to be in compliance.

Mr. Howard: It looks like Dave Varga missed this.

Mr. Rich: We missed this. We are sharing this problem

Mr. Carter: If our subdivision inspector missed this, it is not our problem. If it not according to plan, it is a mistake. That doesn't mean that you get away from the plan.

Mr. Rich: When it is sold to a third party it is. He (O'Connell) sat in front of us and said that everything that I need to do is on this list. We all said yes because our engineer said that's it. Shame on us.

Mr. O'Connell: There is a dollar value on everything on that list.

Ms. Evangelista: You are going to have a problem with the abutting house driveway. You would have to raise that driveway up. If you went along with Harry is suggesting.

Mr. Williams: It is not within 2 feet of a walkway. You would not have to change the driveway. It is far enough away from the driveway.

Mr. Rich: It is not that close to the driveway.

Mr. O'Connell: If it is any consolation, the people at 2 Raymond Row are thrilled with how things look.

Mr. LaCortiglia: So if someone falls off that property, then 2 Raymond Row is liable?

Mr. O'Connell: It is a drainage easement to the town and we are trying to square that away. As Dave said, that wall does not violate any building code.

Ms. Evangelista: I think you will have to put in a guardrail and put in bushes.

Mr. Cracknell: I think that the recommendation of the BSC Group is that the wall remain and that the wall have some kind of hedge row or thorny bushes.

Mr. LaCortiglia: It is a crazy idea, but maybe we should go back to the original design?

Mr. Williams: It will not be any safer. There is still a headwall off the sidewalk and still a drop at the end of the hill.

Mr. Carter: What do you want to do....

Ms. Evangelista: I say the guardrail and the bushes.

Mr. Rich: I make a motion that the remedy for this would be to install a split rail fence with a hedge type vegetation behind it (street side, between fence and sidewalk) that will grow high and thick

enough to act as a green wall that would stop someone from walking and falling through. The Town Planner would have the authorization to approve it. You would be exact in what you would put in and it would be vegetation native to the area.

Mr. Howard: Second

All in favor? 4-1; (Mr. LaCortiglia abstained)

Mr. O'Connell: If you want double protection, guardrail and hedges, I will do that.

Mr. Williams: A split rail fence with vegetation would work. It will be 8 feet back from the sidewalk.

Mr. Howard: In ten years, the split rail fence will fall down and the vegetation would be grown in.

Mr. O'Connell: I will work with my landscape architect and give it to Nick. We will take care of the 2 aprons also, that are not on the plan. It was not on the punch list either but I will still do it.

Recreational Fields discussion

Ms. Carol Mahlstedt, Stone Row Lane Resident

Mr. Cracknell: We had a Planning Board and a ZBA meeting today at 3:30. We are trying to address some of the ambiguities that exist in the zoning bylaw in the uses not listed in the intensity of use schedule in the back in the table of uses. Outdoor active recreational facilities are not listed. The bylaw, 165.9, dealing with the conforming with the use schedule does give the ZBA the opportunity to approve "uses not listed," but doesn't specify if they need to be similar or not with other uses. It also doesn't determine whether it is a finding, a special permit or whether it is a variance. What would the permitting requirement be if such a facility would be built on the end of Stone Row. The general agreement from our discussion is what would the ZBA do if someone came in and wanted to do this. There is a request from the GAA to create a new use. We have come to the conclusion that 165.9 needs to be adjusted. Whether it would be municipally owned, private or non-profit. There is an extensive public process that involves allowing this use "as of right" in every zoning district as the GAA is exploring.

Other towns use "ad hoc" committees, some use special permits. The general agreement of this board is that changes to 165.9 are needed. All of the options are open. There are about 16 different ways to do this.

Mr. Carter: We need to clarify that bylaw and then it needs to go to the town meeting. I know that I will never agree to "as of right" in the town of Georgetown. This would as written not need to go through any special review. We buy it, we donate it, this is how we want it. It has to be special permit. Period. We do not have enough land in Georgetown to do this. Boxford, yes, they have a lot of available land.

Ms. Mahlstedt: That is what I find pretty scary.

Mr. Carter: In this town it has to be special permit. Harry and Chris always agree.

Mr. LaCortiglia: At today's meeting, we came pretty close, even with all of the different views, that we need to make changes to 165.9. We came close to some good draft language we might need to tweak it

a little bit more. We had a question whether we should send it to the zoning board.

Ms. Evangelista: I would like Town Counsel to look at this. What we are asking of the ZBA, a judicial board, is to write the bylaw and then make a decision for an advocate. It is like asking the judge to write the law. I think that it could be appealed.

Mr. Rich: It is like us writing everything at the town meeting that we have jurisdiction over.

Mr. LaCortiglia: Maybe we should ask the Selectman about this?

Mr. Rich: Didn't we do that with the 43D, didn't we write the article, sponsor and co-discuss it?

Mr. Cracknell: That would have been Accessory Structures where we received dozens of edits from them. We are trying to get informal feedback from the ZBA. Do they feel that 165.9 doesn't work? They should be able to give us that answer without a legal opinion. I'd like to know that.

Mr. Rich: You don't need to be a rocket scientist, a lawyer or a judge to know that it doesn't work in this situation. This situation is ambiguous.

Ms. Evangelista: I don't agree with that Chris. I have a lot of experience on the zoning board and also involved with master planning. When I read that, I have no question that that means it needs a special permit from the ZBA. If you can't find a use listed, you have to find one to put in the box that is in harmony with it. To me, outdoor amusement and ballfields fit closely together. When you look on the district that it allows a special permit and tells you where it is prohibited. Prohibited is zero, and that would be a variance. To me that is very plain, others don't think so.

Mr. Cracknell: I think we should ask [the ZBA](#).

Ms. Evangelista: Going to the ZBA does not mean that it will stop. The Selectman have a lot to consider as well as we do, to not write anything that will end up in court, costing us a lot of money.

I am under the opinion that Danvers has it right. They allow ballfields without a special permit. They have an "ad hoc" committee, directed by the Park & Rec, that works with the neighbors from the start. They have 50 to 80 meetings to decide on the plan, the land, etc. The selectman have a hearing once they have all information and at that point all the neighbors are aware of everything on board. It then goes to town meeting.

Ms. Mahlstedt: The Georgetown model is different thought with members from the ZBA and other town departments.

Mr. LaCortiglia: The Danvers plan is "by right" with no review. They have a totally different form of management.

Ms. Mahlstedt: Where are the Georgetown meetings going? You have met twice now and in your letter to Mr. Trapani, you plan to open it up to other boards and residents.

Mr. Cracknell: We discussed that today. The Danvers' model is foreign to all of us. The Selectman are

the gatekeepers in that model. It just doesn't sound feasible having 50 to 80 meetings. We need to have Park & Rec involved in this. I do not have an answer for you tonight. We had a two hour meeting today with the ZBA and Planning Board members where we just kicked this around. This would go to the town meeting in the fall. There may be a citizen petition at the town meeting.

Ms. Mahlstedt: I am aware that GAA members are also on the ZBA. I just wanted an update.

Mr. Rich: If it went to a special permit it is not an automatic "no". It is subject to scrutiny. We are just asking the ZBA for their opinion.

Ms. Evangelista: We want to avoid an appeal. We want to find answer to all of the questions. We do not want the ZBA to perjure themselves, by making a decision before a hearing.

Mr. Cracknell: We are going to get more informal input on 165.9, especially from Park & Rec and get them up to speed. We are going to have another committee discussion and whether we want to have another Board meeting and invite Jon Pingree and other members of the ZBA. We just need to know what the ZBA's opinion is on 165.9. How they would interpret uses under 165.9.

Mr. LaCortiglia: Park and Rec. will be a critical player.

Frank Alberta , 6 Stone Row Lane Resident: As Planning Board members, I would not expect anything but a special permit. I hope you wouldn't endorse the Danvers model. It is up to the Planning Board to look out for the town's interest.

Mr. Rich: We are not behind the Danvers model. Tillie presented it as just one of many options. Parts of the Danver's model may be useful. Why recreate things when you don't have to.

| Mr. LaCortiglia: For clarification, where is this now going? Can it go to the ~~GAA~~ZBA?

Mr. Rich: How many sit on the ZBA?

Ms. Evangelista: Eight including the alternate.

Mr. Rich: To go before the ZBA, you may need to find a quorum not connected to the GAA.

Mr. Carter: We are asking them for input, not to write the law.

Ms. Evangelista: This should not go to the ZBA until we go to Town Counsel. It can go to the GAA.

Mr. Cracknell: Without spending anything on legal costs, we need to ask their opinion on 165.9. How would they permit a use not listed. We can then proceed to the secondary question of them reviewing the draft amendment that I will send out to all of you when I get back to the office. It is a two-step process. I will contact Jim DiMento of the Park & Rec. and brief him.

Continued Public Hearing(s):

Pondview Estates:

Scott Green, TBR LLC developer
Rich Salvo, Engineering, Alliance Engineering

Mr. Green: Mr. Salvo will be working with Kevin Torcelli and they will be working together as a team. The land has been topoed. He has about 4 more hours to do. Rich has come with some ideas to deal with Larry's way of making the outflow pipe work. I would like to talk about the sidewalks going down Pond Street. There is over 500 feet of sidewalk and it is huge expense for me. There are no sidewalks on that road. We talked about the waivers last time. I am humbly requesting that you not have us put in the sidewalks.

| Mr. LaCortiglia: Why don't you draw up a non-waiver plan and we will take a look at it?

Mr. Green: We talked about the waivers last time. I ask what the problems were.

Mr. Cracknell: There was a discussion about bringing the sidewalk from where it dumped out at the intersection, whether it should go there to the end where the signpost would be going into the conservation area which was something we added at the last meeting connecting into the Fish & Wildlife and have a sign post, a trail and bring the sidewalk right around the end of the cul-de-sac to the sign. We haven't seen this but you said you were preparing it. As a byproduct of the conversation about the waivers for the road width and only having a sidewalk on one side and going to slope granite curbing from vertical, the discussion was to bring the sidewalk down to Lake Ave. And, there were questions raised as to what was at the other end to connect to it. Peter Durkee went out at the request of the Board and asked him to do an inventory from Market Square to the site. His recommendation, which I emailed to the Board, was that the sidewalk going down Lake Ave was a good idea because you can get to the flume on the sidewalk to the dam. He was willing to commit Chapter 90 funds to bring the side walk from Lake Ave to the flume so people could walk from there into town without crossing the street three times. I conveyed to both Scott and Larry.

Mr. Green: There is not a lot of lots in this subdivision. Construction costs have not come down.

Ms. Evangelista: What is the cost?

Mr. Green: It is something like \$20-25,000.

Mr. LaCortiglia: Distributed among the seven houses?

Mr. Green: There is already an existing house there that I'm tearing down. It is basically 6 lots. I bought the land at a high point.

Mr. LaCortiglia: At \$5000 per lot. You're not making a case.

Mr. Green: That's a guesstimate. That does not include moving utilities, poles, etc. That is not on my back, is it?

| Mr. LaCortiglia: So you don't know what it's costs but you are still asking for a waiver?

Mr. Green: I haven't done testing, or had it designed out. I am going with just the concrete portion of it. I don't know how many days for details. I know you don't care about how much it is costing me Harry. This project is costing me a ton of money.

Mr. LaCortiglia: I am already voting no for your project anyway because of the drainage issues.

Mr. Green: I know, because of the drainage. I am doing the best I can. Work the drainage the best I can, letting the neighbors know what is going on.

Mr. Rich: I would like to see, on paper, the specifics in writing and the reasons why, the square footage, site prep, installation of the curb etc. that you are requesting.

Mr. Cracknell: This would not be a waiver request. It is not a requirement that we ask him to build sidewalks. This was a sidebar issue. The Board was going to wait for input from the highway surveyor and the design engineer, Larry, who doesn't have an opinion on the issue.

Mr. Carter: This was a perceived town benefit in exchange for the waivers that we were granting.

Mr. Howard: It would only be connecting 100 Pond Street, ~~ferom~~ from the Italian type house. That is the only connectivity that you are going to have there.

Mr. Cracknell: Peter is going to connect from there to the flume, the dam.

Mr. LaCortiglia: If we limit ourselves to putting sidewalks only to areas that have other sidewalks you'll never have any sidewalks at all because you are the first person.

Mr. Rich: We need to see everything in writing.

Mr. Cracknell: The waiver requests have been looked at by the Board and have taken a vote to support those.

Ms. Evangelista: I wouldn't have agreed to that without the sidewalks. It was implied. We would look for the town benefit. We need to look at that vote before we decide on anything here.

Mr. Salvo: Would the board ever consider fully waiving the sidewalks within the subdivision given the small size of the subdivision in exchange for it to be in the public good to build the sidewalk the 500 feet down. In my experience, small cul-de-sac roads like this are more suburban versus sidewalks are more of an urban thing. There is more foot traffic and would benefit more people having a sidewalk that went down to the flume towards the center of town versus the people in the subdivision that probably wouldn't use the sidewalks. The roadway would still be graded and the sidewalk would still be prepped into a grass surface that would be walkable. That would be a good concession.

Mr. LaCortiglia: Our regs say that their should be a sidewalk down both sides of it, 700 feet each side. We said that you would only have to do one side, putting 500 feet in. You are still 200 feet up in the deal.

Mr. Salvo: That would be 500 linear feet of curbing.

Mr. Howard: Harris Way has sidewalks on only one side. Most subdivisions have sidewalks on only one side. If they want to trade 700 feet on their to put 500 feet down to the pond, and put no sidewalks in there subdivision, that is reasonable. It does little public good.

Mr. LaCortiglia: Can I be clear? We are saying that there ~~is~~ are going to be no sidewalks in the subdivision in exchange for a 525 foot sidewalk down to the flume. If we did not waive it then you would be building 1400 feet of sidewalk.

Mr. Green: I am also putting in an easement area, pathway to go into the conservation land.

Mr. Howard: There will be a sidewalk all the way down to the flume/dam, down the side of Pond Street to Lake Ave. That is public good.

Mr. LaCortiglia: If you went all the way to the dam, I would consider waiving it.

Mr. Green: There is no room on that side for a sidewalk.

Mr. Cracknell: Could you do it with stone dust or something that resembles a footpath. I have a meeting with Larry, Peter and Scott tomorrow. We will go over this then.

Mr. Green: We could do something like that. The benefit with no sidewalks is that the water perks into the ground.

Ms. Evangelisa: You said there is no asphalt by the dam. How much would it cost to do it from the flume up. The original plan on that dam there was supposed to be a sidewalk. I worked on that.

Mr. LaCortiglia: It was a last minute change. I was on ConCom at the time.

Mr. Cracknell: I have a meeting at 3:30 tomorrow with Larry, Peter, Rick and Scott. I would like to know where the boards stands on this.

Mr. Howard: You know where I stand. I am in favor of the swap.

Mr. Carter: I am also in favor of it. Chris Rich says he is also in favor if everything is in writing.

Mr. Carter: Before we move on to Chaplin Hills. (in reference to Whispering pines) A- punch list is not an official document. It is just a document from an engineer that tells you what you need to do. You still need to follow the plans.

Mr. Rich: Maybe we should start to exercise our options under the errors and omissions of our engineer's policies.

Ms. Evangelista: How did you know he was going to present this as a punch list issue?

Mr. Rich: I did a site review this morning. He said the apron wasn't on the punch list.

Mr. LaCortiglia: The tripartite has been signed and the development should be built to plan.

Mr. Rich: Motion to continue Pondview Estates Public Hearing to August 26, 2009.

Mr. LaCortiglia: Second

All in favor? 5-0; Unam

Mr. Rich: A punch list is a legal document. It is a contract if both parties agree to it.

Chaplin Hills update

Mr. Cracknell: I got an email from Jeremy Sentman that we are good to go. He is going to send us a check for \$11,000. It looks like he is in acceptance. We can set up the M-account. Larry produced the punch for the 90,000 and Dave has reviewed it. We can get the bidding done and start the construction. Larry produced the punch list and Dave is doing the inspection.

Affordable Housing Declaration of Trust review

Mr. LaCortiglia: After bringing the Declaration of Trust to the Selectman last Monday I brought it to the ~~the~~ CPC. One of the members of the CPC asked- the Chair of the Board of the Affordable Housing Task Force he could see their version of the changes that they wanted to see made. She mailed that out and I forwarded it to the Board. I talked to Dave Surface and he is in receipt of the Affordable Housing Task Force's version and our version and he is going to dovetail them.

Mr. Carter: How are they going to get out of the expenditures being approved at the Town Meeting? Is it lawful?

Mr. LaCortiglia: The dovetailed version will be sent to Town Counsel.

Ms. Evangelista: I am not in agreement with what Harry submitted. Everything is with the approval of the Board of Selectman. The trustees have the full power with the approval of the Board of Selectmen. ~~Then the Selectman should be the trustees.~~

Mr. Carter: The monies being expended are town monies and that is the reason. It is an advisory board (Selectman). ~~It~~ doesn't have the authority to spend the money.

Mr. LaCortiglia: The Affordable Housing Task Force is an advisory board. The Trustees of ~~the debt of the~~ Trust have full authority to spend the money. One selectman will sit on the Board of Trustees. It is part of the check and balances.

Mr. Rich: The Selectman can only say no or yes. The Trustees also have to agree and make the recommendation to the Board of Selectman.

Mr. LaCortiglia: The way it was passed by town meeting a Selectman must sit on the Board as a

Trustee.

Ms. Evangelista: You have one on there and that should be sufficient. According to that law, the Trustees have the full power and I don't like that. In Chapter 44 of the state law gives authority to the Trust.

Mr. LaCortiglia: It is to inform. That way members are not left in the dark. I'd like to think that there is more oversight than the ability of 3 people to expend hundreds of thousands of dollars with one vote. I think the Board of Selectman should have a little oversight on that. They are spending town monies. When we make the declaration of the Trustees its seems prudent to have the Selectmean overseeing things.

Mr. Rich: A trust is a living document. It is a quasi-town body.

Ms. Evangelista: For instance, An independent audit should be done every year. They must follow Open Meeting law. My point is that there are so many new folks, it would be nice if everything was written down.

Mr. LaCortiglia: I didn't mean to mislead anyone. It is not perfect in any way. Tillie, you are finding things that I did not include that may need to be included. Let's let Town Counsel add in what I forgot to add in and cut out what they need to. I still feel the Board of Selectman should still have oversight. There will be \$200-300,000 in the Trust account by the time this is set up.

Mr. Rich: (In reference to the Affordable Housing Task Force's model) Why would you want to delete the majority of the number of- appointed Trustees? If you have 3 appointed Trustees and there are supposed to be 5 there, 2 become a majority? That is all you have. You can defunct the Trust.

Ms. Evangelista: I don't understand that. And, why would you eliminate that the Town Administrator not be eligible?

Mr. LaCortiglia: Because he has wears enough hats with his job.

Ms. Evangelista: Are you going to transfer this money over from CPC?

Mr. LaCortiglia: Any movement of CPC Affordable Housing funds to the Affordable Housing Trust will need to be approved at the Town Meeting.

Mr. LaCortiglia: I make a motion to fund the legal review of the original or modified (yet to be) Declaration of Trust for the Select Board if they should so choose to do so (the Affordable Housing Article 36, voted on May 7, 07) to use such funds that are available and necessary and if they should so desire.

Mr. Rich: Second
All in favor? 5-0; Unam

Ms. Evangelista: Let's send both copies to Town Counsel to see what they come up with.

Mr. Carter: I don't want our name on it. Let's delete all the bullets. If the Selectmen are going to put the

2 versions {Planning Board, (Harry's version) and Affordable Housing Task Force recommendations} together. If we are going to own it, I want to see the final version before it goes to Town Counsel.

Ms. Evangelista: That is not really fair because we asked for their input. You can ask Mr. Surface what he is doing.

Mr. Rich: I find some of the Affordable Housing Task Force's version illegal. There needs to be a caveat about some of the provisions being suggested by the Task Force.

Mr. LaCortiglia: I am comfortable with letting the Board of Selectman send whatever they want to send. It is their document. We should have some input, but we are really out of it. We also need to release the funding for legal review.

Mr. Rich: It sounds to me that they expect us to draft the trust. I would like to see it before it goes to Town Counsel for an opinion, to have the opportunity to comment if there is something that may have gotten by somebody.

Mr. LaCortiglia: We don't have to send anything. They have both versions.

Ms. Evangelista: I think that this needs more work. Chris and I will go over this week in the office.

Mr. Cracknell: We did ask the Affordable Housing Task Force for their input. We also need to ask the Board of Selectman for some input. There needs to be a caveat that some parts of it need to be changed or reviewed. They need to go through this line by line to accept or reject.

Mr. Rich: [\(In reference to the Affordable Housing Task Force's model\)](#) You can't put the Town Treasurer on the Trust and as the keeper of the dough. That is a huge conflict of interest.

Harris Way Affordable Housing proposal – Town Counsel review of documents

Mr. Cracknell: I sent an email to the Affordable Housing Task Force, two to three weeks ago, at the request from the Planning Board that we get their opinions on the proposals from the developers and their attorneys related to the Affordable Housing requirements for Harris Way. I have not heard back from Barbara Hart. I had tentatively set a date for them to get back to us, the Affordable Housing Task Force, of today, of this meeting because the Board did vote, two meetings ago to authorize use of funds of that same account that we just reviewed the Declaration of Trust. To review the documents: the sample mortgage, subordination agreement. I think there were 3 documents that were forwarded to us after Atty. McCann and the developer were here a month ago. So I requested Phil Trapani of the Board of Selectman authorize use of that account not knowing that the Planning Board could authorize its own use because the Town Administrator had vacated the post and there was no one there. I went to Phil and he authorized using that account to have Town Counsel review the 3 documents and give a cost estimate. It will cost \$500 to \$1000. That is where we are. I have held them off pending comments from the Affordable Housing Task Force. At some point we need to make a decision ~~to~~ on when we will initiate the legal review.

Mr. Carter: What is the appropriate amount time to wait?

Mr. Rich: How long have they had it?

Mr. Cracknell: Two in a half to three weeks. Their meeting was canceled tonight. So they may have had a meeting a few weeks ago. I don't think it is a problem waiting two more weeks. Let's give them three weeks, August 12th. I will send out another email tomorrow morning.

43D Application – Update on funding options & removal of funding from Mass Development

Mr. Cracknell: We got some disappointing news. While I was away we were notified that the state has withdrawn all funding for all 43D applications. The money is not there now although it might come back in the next quarter or the next fiscal year. We have 3 options: 1) To continue with the application, 2) To withdraw the application, and 3) Continue with the application and find other funding. We still have the 40R and other funding options through that. I asked that they keep us in the hopper as a 43D district.

Mr. LaCortiglia: Can they in the future say we have been granted ~~as~~ a 43D district, but if Mass Development isn't going to give us any money, can we still get out of it if we want to?

Mr. Cracknell: We have 30 days to accept or refuse.

Mr. Carter: What is the upside of us doing the 43D without technical assistance funding?

Mr. Cracknell: We are supposed to be giving priority to facilitate development processes if they are available.

~~Mr. Rich: Motion to continue Pondview Estates Public Hearing to August 26, 2009.~~

~~Mr. LaCortiglia: Second~~

~~All in favor? 5-0; Unam~~

Mr. Rich: I move to adjourn meeting at 10:27 pm.

Mr. LaCortiglia: Second

All in favor? 5-0; Unam