

Minutes – Georgetown Planning Board December 9, 2009

Present: Hugh Carter, Chairman; Christopher Rich, Harry LaCortiglia; Nick Cracknell, Town Planner; Laura Replier, Minutes Recorder

Mr. Carter calls the meeting to order at 7:25 pm.

General Business

MOTION to authorize payment to Laura Replier for minute preparation for this evening's meeting – Mr. LaCortiglia / Mr. Rich / Vote is unanimous.

Minutes – None

Vouchers – \$9,144.75 Total

Mr. Rich – I have a question regarding the Kopelman & Paige charges for the rail trail.

Mr. LaCortiglia – At the last Town Meeting we accepted easements, the drainage and rail trail easements. When they and the title searches were being done, the warrant article was being prepared. This is also rail trail billing because some was for the rail trail, some was for drainage easements, all in one warrant article. This is settling the remainder after the rail trail portion was paid. This is what the Planning Board was doing to get the drainage easement.

Mr. Rich – It is for \$1200.

Mr. LaCortiglia – The part of that for the drainage comes from the Railroad Ave M acct.

Mr. Rich – This says it is coming out of the Planning Board general account.

Mr. LaCortiglia – That's wrong. It should not be coming out of there. It should come from the Railroad Ave subdivision M Account.

Mr. Cracknell, Town Planner – That needs to change then. Why don't you vote on it and we can put it right. This was related to the Railroad Avenue lot release for Lot 1.

MOTION to pay the vouchers as listed, subject to corrections of the voucher for Railroad Avenue – Mr. Rich / Mr. LaCortiglia / Vote is unanimous.

Correspondence –

Meeting Date Discussion – Cancel Dec. 23rd meeting - to be decided.

ANR Decisions for Thurlow St and Carlton Drive are signed by the board.

Rock Pond Change Notification Letter – Planning Board Clerk to sign.

MOTION to authorize the chairman to sign the Rock Pond reassignment notification letter, in place of the Planning Board clerk – Mr. LaCortiglia / Mr. Rich / Vote is unanimous.

Conflict of Interest On-line Training – April Deadline.

Mr. Cracknell, Town Planner – The online conflict of interest training should be completed by April.
Mr. LaCortiglia submits proof of his completed training.

Other Business –

Railroad Avenue – Request to release Lot 1.

Mr. Cracknell, Town Planner - We have the final documents for the rail trail easement and drainage for Railroad Ave. Town meeting approved the article to accept those easements for the rail trail. The original documents for the easements and the Form K for the partial release of the covenants for Lot 1 are attached. They were reviewed by Town Counsel, and are ready to be recorded. I am suggesting that this should be a condition of approval for the Form K to transfer to another developer to build on the lot. I have suggested to the board and the buyer and seller, that prior to sign off on the building permits we will need to see the recorded documents. I have forwarded a document from Town Counsel saying everything is OK. This is the last lot.

MOTION to sign the partial release and approve the form K for Lot 1, Railroad Avenue subdivision – Mr. LaCortiglia / Mr. Rich /

Mr. LaCortiglia – Where is our surety?

Mr. Cracknell, Town Planner – This is still a tripartite agreement. They have done a lot of work since they posted that surety. We still have to ask Dave Varga to do a final inspection so they can prepare for a reduction in surety. I would like to encourage the board to condition it on receipt of the recorded documents prior to the release of the building permit.

MOTION (modification) Contingent on the Planning Board receiving proof positive that all appropriate documents have been recorded at the Registry of Deeds concerning the easements as spoken about in the memo from Town Counsel, and as approved by Town Meeting, prior to release of the building permit. – Mr. Rich / Mr. LaCortiglia / Vote is unanimous.

Little's Hill – Tripartite Agreement reduction request –
Representatives: Craig Spear, Applicant / Developer; Dave Varga

Mr. Cracknell, Town Planner – On Nov 17 the Planning Board received correspondence from Mr. Spear that Mr. Varga review his surety and work recently completed to complete the roadway and utilities. Preparation for Form J to vote on the tripartite agreement. It was forwarded to Mr. Varga. He completed his review & report on Dec 4. The report said that the original request was for reduction of \$70,277. Mr. Varga recommended after his Dec 4th review that \$52,000 was what he recommended, in case the town had to step in for the developer. In the next correspondence from Mr. Spear regarding a new tripartite agreement. He was under the impression that there is a new contract agreement whenever there is a reduction. I informed him that the tripartite contract doesn't need to be renegotiated. I received a Form J that I requested the applicant to prepare. The revised number is \$22,700. After discussion with Mr. Varga, cost reductions, some # missing for street trees, boundary markers, pavement maintenance, curb grouting. If Mr. Varga felt it should be included, then it should be put in. He recommended release of \$22,700. We sent that Form J to the applicant. The applicant is here to add clarity to his request, as is Mr. Varga. We are trying to review the project and release bond funds, while protecting the town in case the developer left. We are trying to find a solution that is workable.

Mr. Carter – What was the original tripartite?

Mr. Cracknell, Town Planner – It says in the last version from Oct 2005, \$220,000

Mr. Carter – Reading the memos of today, the original agreement with Mr. Spear was at 1.5. Wouldn't the 1.5 be grandfathered in from the beginning of the decision?

Mr. Cracknell, Town Planner – Yes, I think so, but not legally sure. I don't know why this project has half the protection we usually have. Many of our projects are 2.5. This is the first time I have seen this implied waiver on a project.

Mr. Carter – We don't want to change at this point. I don't like changing rules in mid-stream. We gave him 1.5 at the beginning, why would we want to change it to 2.5?

Mr. Cracknell, Town Planner – Nobody is advocating that we do that.

Mr. Carter – Going from 1.5 to 2.5 is the difference between releasing \$52k and releasing \$22k.

Mr. Cracknell, Town Planner – No, we're not moving from 2.5 to 1.5. This is about making sure the town is adequately protected. We need to know what a reasonable amount of money would be to withhold. Mr. Varga knows what that should be. It has changed as new items were added. It is still within existing 1.5, but a higher number than the applicant requests, as we need to protect town in case of default. The real discussion is between \$22k – 70k, or a different form of security.

Mr. LaCortiglia – According to the tripartite agreement, the bank is at \$220,168. What is the date of completion?

Mr. Cracknell, Town Planner – The developer's obligation was to complete by May 19, 2006. The board has extended this to June 2010. It was signed in 2005.

Mr. Rich – I took umbrage at Mr. Spear directly emailing board members regarding matters before the board. It is not proper. There is a way for this to be done, not by individual emails. He continued even after he was asked to stop. The conflict of interest laws are very specific. They won't allow us to be opened to questions.

Mr. Spear, Applicant – I never sent an email to one specific email – just a Reply All. I apologized. I only replied to Mrs. Evangelista regarding a question.

Mr. Rich – Your email reads that is from you, with CCs to Wysocki, Kottcamp, and the whole Planning Board. That is a direct contact with a board member.

Mr. Spear, Applicant – I apologize, I will not do it again

Mr. Rich – Does the sub-contractor need to sign the contract? How is payment done?

Mr. Spear, Applicant - Yes, the method of payment is an agreement between me & the bank. The bank will not release my funds until I get a reduction in the bond. I have informed the contractor, with the understanding that I would make good effort to get the road completed. It has been inspected.

Mr. Rich – Yes, it shouldn't come out of our bond. That is between you and your bank.

Mr. Carter – We have nothing to do with how you take care of your sub-contractors.

Mr. Spear, Applicant – I was upset when looking at the memo, I thought there was a math error – that's why I submitted that request for \$61k. Since then I have stated that \$52k would be fine, but in email this morning the response is that it's only \$22k now. I got upset and assumed that there was talk going on behind my back, reducing it as stated from \$52k to \$22k.

Mr. Carter – When was \$52k approved by Mr. Varga?

Mr. Varga – It was recommended on Dec 4th. My main contact with the board is Mr. Cracknell, so it is appropriate for me to be communicating with him regarding a project. That is not going behind anything.

Mr. Carter – What happened between \$52k – 22k that didn't come from Mr. Varga's memo?

Mr. Cracknell, Town Planner – Mr. Varga put together on Dec 4 his recommendation for \$52k. I received no communication from the applicant regarding math errors to take it to \$61k. I was not shown what the math error was. I did my own review, there were clearly things missing or unclear – including 3 stone bounds which were not yet installed. If they are missing then is our responsibility to make it right. There is also the issue of cracking grout. It is clearly defective and needs to be addressed. If it needs to be done before the road is accepted, it needs to be in the final number – hence \$52k – \$22k. My role was to look at the Dec 4 memo to make sure \$52k reflects truth.

Mr. Carter – Mr. Spear was aware that \$52k changed to \$22k because the original estimate was incomplete?

Mr. Cracknell, Town Planner – Yes.

Mr. Rich – The tripartite agreement is to act as surety – not as operating funds upon which the project is to be completed. It makes me wonder if there is enough money to complete the project.

Mr. LaCortiglia – Yes, it raises doubts that you will be able to complete the project. It makes me want to hold on to every bit of surety. According to the regulations we should be holding \$260 at least – we're only holding \$220. We're \$40k in the hole.

Mr. Spear, Applicant – This sounds much worse than it is. Things have changed. There used to be a tripartite on the line of credit. There is now cash sitting in the bank that I cannot touch. The bank has informed me that until I have a release from town I can't take it out of the account.

Mr. LaCortiglia – The bank thought you were going to finish 2 years ago.

Mr. Spear, Applicant – I have \$220 I can't touch. I don't have \$60k to pay these people. It's very frustrating. People are putting in a very large amount of paving, curbing ... because of this the contractor is upset with me and hours before the meeting the numbers are going from \$52k to \$22k.

Mr. Rich – What's the total value of the project?

Mr. Spear, Applicant – There are 4-5 units left, so it is \$800k.

Mr. Rich – The total project value?

Mr. Spear, Applicant – It's not a fair question & I don't know. We didn't build all the houses,

Mr. Cracknell, Town Planner – What's the adequate amount of surety the town needs to maintain as surety?
Mr. Varga said it should be \$191k.

Mr. LaCortiglia – I don't want to go through the spreadsheet line by line here, but one on one. I'd like a chance to review them more than I have had opportunity to so far.

MOTION to table. Mr. LaCortiglia / Mr. Rich / 2 aye, 1 nay (Mr. Carter)

Mr. Cracknell, Town Planner – Is there any value in finding where the discrepancy is?

Mr. Carter – I'm confident that Mr. Varga and Mr. Cracknell have worked it out well for the town.

Mr. LaCortiglia – Back in May he said he would install stone bounds, but they haven't been done. I have lost complete faith in your ability to do this. I have been in on this for 10 years. It was moving fine originally, but I have lost faith.

Mr. Spear, Applicant – Regarding the stone bounds – on Baldpate through Millennium, the bounds were supposed to be in pavement, we agreed to put railroad spikes into pavement.

Mr. LaCortiglia – When was that done? Was this a modification to the subdivision agreement?

Mr. Spear, Applicant – I was never told I needed a change to a plan. There are numerous minor changes as we go along.

Mr. LaCortiglia – Stone bounds cannot be waived by inspectors.

Mr. Spear, Applicant – A waiver would imply they are not there. In this case, an engineering and control point is there – as is required. Maybe the review agent can confirm that when we're talking about an actual road -

like when Baldpate Rd goes onto subdivision property. Rather than taking out the travel lane on an existing road, it was approved along with many other things / modifications.

Mr. LaCortiglia – Are stone bounds minor?

Mr. Carter – Who was this approved by?

Mr. Spear, Applicant – By Sara Buck (former Town Planner).

Mr. LaCortiglia – Was it all verbal?

Mr. Spear, Applicant – I can't recall.

Mr. LaCortiglia – I'm sure it never happened.

Mr. Rich – According to the Statute of Frauds anything that has to do with real estate has to be in writing.

Mr. Spear, Applicant – It does not cover anything as small as how to mark a control point – with a pipe? Stone wall?

Mr. LaCortiglia – What is shown on the plan is designated as a bound. If you could show me proof that Mrs. Buck or our former engineer arbitrarily changed this requirement, then I will stop.

Mr. Spear, Applicant – Can I ask Mr. Varga if stone bounds can be changed to another point?

Mr. Varga- Yes they can, generically.

Mr. Rich – Wouldn't there be a notation on the plan?

Mr. Varga – Yes, there would be on the as-built plan.

Mr. LaCortiglia – Would you do that in practice as an inspection engineer?

Mr. Varga – I would bring everything to the board.

Mr. LaCortiglia – I would hope that those things that were promised to be done in August this year, will be done soon.

Mr. Spear, Applicant – The signs have been paid for, the design has been submitted to the town but not approved yet. They are still waiting to be built. I haven't pushed it enough, but was waiting for the town. Little's Hill Lane has not been completed. The circle has not been completed according to the plan.

Mr. LaCortiglia – My hope is that the signs and the bounds that you promised in Aug will be in very soon. The motion has been tabled and we need to move on.

Mr. Spear, Applicant – Can I get on the agenda for the next meeting?

Mr. Cracknell, Town Planner – Yes.

Mr. Carter – You are on the agenda for the next meeting.

Stone Row – Conservation Restriction (Minor Modification)

Budget Discussion FY 2011 – Discussion of draft budget proposals for FY 2011.

MOTION to authorize Mr. Cracknell to submit the draft budget for FY 2011, dated 12-7-09, with changes as noted, to the Town Administrator – Mr. LaCortiglia / Mr. Rich / Vote is unanimous.

Cont. Public Hearing(s):

Pondview Estates -

Representative: Mr. Scott Green

MOTION to open the continuation of Pondview Estates and close the public hearing – Mr. LaCortiglia / Mr. Rich / Vote is unanimous.

Mr. Rich leaves the meeting.

Meeting is adjourned, due to lack of quorum, at 9:05.