

Minutes
Georgetown Planning Board Meeting
Wednesday, April 8, 2009
7:00 p. m.

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

Absent: Christopher Rich

Minutes - March 11, 2009

Mr. Howard: I make a Motion to postpone the March 11th minutes to next meeting.

Ms. Evangelista: Second

All in favor? 3-0; Unam

Vouchers:

Mr. Howard: I make a Motion to pay the vouchers in the amount of \$2341.21.

Ms. Evangelista: Second

All in favor? 3-0; Unam

Correspondence:

Townsend Oil: response to memo -

Mr. Cracknell: We had requested further information. They were surprised we received the letter. They are just trying to meet their reporting requirements with the DEP. The fire department is doing whatever they need to do with it. It is out of our jurisdiction.

Pillsbury Village release of Bond – sign Form J

Mr. Cracknell: This is the release of the remaining funds under the bond for Pillsbury Lane. It was voted on last fall and we are now releasing the surety.

Mr. LaCortiglia: We have to hold the surety for a year, a small amount according to the bylaw.

Mr. Cracknell: I would suggest that we kick it off to the next meeting, April 22nd. I will look it up.

Deer Run Subdivision Permit – Chairman to sign Form M/Form J approval

Mr. LaCortiglia: Wasn't that form signed at the last meeting?

Mr. Cracknell: We signed the 30-day extension at the last meeting. The subdivision permit was going to expire the first of March. Hugh will sign the Form M when he gets here. Dave Varga has officially signed off on the Form J as of today. The fire department has said the height of the hydrant is fine. Everything is complete. The applicant's attorney couldn't be here tonight and requested that we postpone to April 22nd. By that time, I will have the signed Form J complete and here in my hand.

Ms. Evangelista: Aren't there questions about the Form J?

Mr. Cracknell: The question was would it need town council approval. A condition was included prior to the release of the surety (part of Form J), that the Covenant (that the developer placed on the project at the beginning of the project) was supposed to be accepted by town meeting which made no sense to me and no sense to the attorney representing the latest developer. I don't think that anyone, including Chris, had any sense of what the Planning Board had been thinking at the time that was drafted. Now that all the technical stuff has been done today, I can go over it in the next two weeks and see what the Board had intended putting that condition on there. Earlier, Town Counsel was supposed to review that Covenant and I don't know if it happened. Of the three conditions to close out the project, one of them is very confusing, as to why town meeting would have any involvement. My assumption is that we do not need to go to town meeting and neither does the applicant. It is something we need to look at over the next few weeks. The attorney's are well aware of the issue. I sent them the COV a few weeks ago.

Mr. LaCortiglia: I emailed Peter Sarno who was on the Board at the time and nothing stood out in his mind about it.

Mr. Carter arrives at 7:26 pm and signs the Form M.

Board approval for 3 hour inspection site – Chaplin Hills

Mr. Cracknell: I had requested last week, from an email exchange with Dave Varga and the engineer hired by the Bondholder Safeco responsible for finishing the roadway at Chaplin Hills, that we get together for a formal inspection. I had requested that the Board authorize a 3-hour inspection for Dave Varga to meeting with the engineer, Peter Durkee and myself and that the engineer does his audit and report to Safeco our seriousness in closing this project out under the approvals of this Board under the COV. In fairness to Dave we need to compensate him and have him out there for this initial meeting. There is no M-Account on this. We have no developer and no real data telling us what it left to be done. There is no guarantee that we will be reimbursed for the road work. We need to let this guy know that we are following this project.

Ms. Evangelista: We will be reimbursed, won't we? Won't it come out of the bond money?

Mr. Cracknell: There is no guarantee. We are asking for it. There is no guarantee that these folks will even do the project. A lot of it is up in the air right now. They have at least hired an engineer. We have demanded payment. We have already send a letter out last fall demanding payment on the Bond so that we can take over the project and finish it, knowing our preference is that they finish the project, not us. They are exercising their rights, under the Bond, to hire their own engineer, do an inspection and

determine what they will do and when, or if, they will do anything. They have an option of providing us a check and disputing the cost to finish the project. It is in the taxpayer's interest to have Dave there , at this initial meeting, inspecting the project on our behalf.

Mr. Howard: Has Dave already reviewed it?

Mr. Cracknell: No, it hasn't been produced yet. The site visit is the first step. There is no inspection report, no audit, like we have done at Whispering Pines for \$4000 out of the M-Account. Right now, we have a \$100 balance in the M-Account, no developer and no M-Account for this. We have no real data telling us what is left to be done. We may wait 4 months to get \$500 from this company and this road will not get finish before the winter. We need to have someone do a good audit of this project on our behalf. My recommendation is that we take the money out of our expense account, do the audit, knowing that we may never get it back. It is money well spent.

Mr. LaCortiglia: I would like to make a motion to authorize the subdivision inspector, Dave Varga, to inspect Chaplin Hill subdivision with the Safeco engineer, authorization not to exceed \$500.

Mr. Howard: Second
All in favor? 4-0; Unam

Mr. Howard: How much of the \$500 had already been spent?

Mr. Cracknell: Dave has put his own 2.5 hours into this and will not bill us for that. We need him out there for 1 hour, not three hours at \$128/hr. Dave will then go back and write a report on the site.

Ms. Evangelista: Why don't we select a local bond company? I think Kopelman & Paige warned us on that.

Mr. LaCortiglia: The applicant had the right to select their own bond company.

Mr. Cracknell: We will look into this.

Stone Row revised Covenant

Mr. Cracknell: I have not had enough time to look at this. I was hoping that Chris had the time to look at this given his amendments/suggestions to the Board. we wanted to make sure the final Covenant reflected the final vote of the board and was in a recordable form.

Ms. Evangelista: The front page section paragraph regarding voting membership. It is 3 lots, isn't it. It sounds like the 2 developers each have a vote.

Mr. Cracknell: It is the 2 developers having one vote. I am going to defer this to Chris and let him as an attorney.

Mr. LaCortiglia: There are 3 lots and the developers are the owners.

Ms. Evangelista: Is this a definitive subdivision or an OSRD?

Mr. Cracknell: They did a special permit for a common drive and a definitive subdivision.

Ms. Evangelista: Does this go to K&P?

Mr. Cracknell: All we were instructed to do was to make sure it was in a recordable form. Prior to the next meeting we should have Christopher Rich review this.

Ms. Evangelista: There should be more discussion on this. Completion of work is another question. If I am finding problems and have questions we may have to reopen this.

Mr. Cracknell: We should have a meeting in the office with Chris. We can't bring this back to the board. This has already been voted on with conditions.

Mr. LaCortiglia: I only hope the the conservation restrictions are looked at closely as we have looked at this.

Mr. Cracknell: There was an existing Covenant that we accepted conditionally and the Board voted on it. There should be no inconsistencies. Tillie, we decided as a Board six months ago, that the Covenant that this Board wanted to see for those 3 lots needed to be consistent with the Covenant that everybody else has on Stone Row with the exception of the changes we made because there are only 3 lots left here. I have every reason to believe that this Covenant is the consistent with the Covenants on the other 12 lots.

Ms. Evangelista: Didn't one of the owners say that the Covenant on the existing homes was null and void?

Mr. LaCortiglia: There is no Homeowners Association (HOA). They are Covenants. They are not worth the paper they are written on.

Mr. Cracknell: The difference between these 3 lots and the other homes is that they will share a common driveway and will also share the snow plowing and will maintain the drainage. A HOA will be needed to maintain the common driveway. Everything else is the same as the original Covenant on the other 12 homes.

Mr. LaCortiglia: I don't want to slow this down any longer. I am happy with Chris signing off on this.

Mr. Cracknell: Why don't we have Chris do what he was supposed to do at the next meeting. The Board will not see this again until after it has been recorded.

Other Business:

Rock Pond Estates – Determine M-Account Balance

Mr. Cracknell: There was some confusion this week. Mr. Chongris is no longer the developer. Mr. Bussing has taken over. He came into the office last week seeking a lot release for a building permit,

wanting a signature from me to release 1 of the 2 remaining lots. I told him that I would need to look over the file and see what conditions are needed for the lot release. I assumed that the M-Account, with \$500-600 left in it would need to be brought up. There is still work to be done. Mr. Chongris had said that he would upgrade the curbing to slope granite curbing and this was voted upon by the Board last summer. The Board voted to accept this minor modification to the subdivision to accept the street and make this a public way. He didn't put in the curbing correctly. The issue was resolved informally between Mr. Varga and Mr. Chongris. Some of the catch basins were acceptable with the slope granite behind them, and 3 of them needed to be replaced. Nothing was in writing. I told Mr. Bussing that the M-Account was an issue with only \$600. I emailed Dave regarding what the estimated cost would be to finish the project. His estimate was \$4500, leaving Bussing \$3900 short in the M-Account. I also asked Dave to codify what his recommendation is on the throat stones so we have it in writing. The third piece was to see if we are using Covenants or a Bond. It is confusing because there is a Form K in the file. It was signed by 4 out of 5 Planning Board members releasing the 5 lots, it wasn't dated, it wasn't notarized and it wasn't recorded. We found a Bond posted in January 08, just shy of \$73,250.00 to complete the roadway. Someone had done an inspection in January, maybe Dave. I called Dean and he thought it happened under Sarah's watch in the fall. We found the minutes, Nov 14, 2007, the Board voted unanimously to release the 5 lots, signed it, predicated on the Bond being posted for the remaining roadway work. I need to release these 2 lots with Mr. Bussing once the M-Account is up. I would suggest the Board revote it, sign a new one, date it, notarize it. It is all the same people that are here today.

Mr. LaCortiglia: What happens now that the developer of the subdivision put a bond on it and Mr. Chongris took the subdivision?

Mr. Cracknell: Mr. Chongris got the bond and put the bond up. It is a trust and it was a partnership. They were involved in this project together and now Mr. Bussing is running it.

Mr. LaCortiglia: My concern is that the bond that is being held is for this project and for that developer?

Mr. Cracknell: Nick reads the bond... Dean Chongris is the project manager.

Mr. LaCortiglia: That's valid? My concern is that one person is asking for the release of the lot and the other person is the contact for the bond.

Ms. Evangelista: If Dean is the project manager then it sounds like Bussing let him go.

Mr. LaCortiglia: Who owns the lot. I just want to make sure that the bond is good.

Mr. Cracknell: Bussing owns the lot. It is in a LLC. One thing you can do is revote on this tonight and instead of releasing 5 lots, as was done in November, just release 4 until we can get assurance that the bond is still valid since Dean is no longer acting as manager for the project. Maybe the Board can request the Bond company reissue the policy with the new manager as the signatory. We will release the 5th lot at that time. There are 2 vacant lots. He is asking for 1 of the 2 to be released. All 5 were already released. If this thing had not been ¼ finished, if it had been notarized and recorded.....

Mr. LaCortiglia: Maybe there was a reason it wasn't? Was the vote contingent upon the bond being

received?

Mr. Cracknell: I don't know. It is odd that the Board sign something undated.

Mr. Carter: When did Sarah leave?

Mr. Cracknell: December 2008

Mr. Carter: Then it was lost in the shuffle when she left.

Mr. Cracknell: What do we do to remedy the defect? Do we date and notarize something that was done in November or do we do it again? I don't know the answer.

Mr. Carter: The minutes show that it is in there and that we all voted and that it is public record. Why can't we just use the same form and just finish it.

Mr. Cracknell: I don't think you can just notarize with that much time gone by. I don't even have the original, just a copy. Why don't we vote to do it again?

Mr. Carter: Then my second question: How can we justify only releasing the 4 when we we have already released 5 lots?

Mr. Cracknell: Because the change in project manager and the uncertainty at this time and not knowing if the bond is valid because the person who executed it is no longer involved in the project.

Mr. Carter: Could there be a challenge there?

Mr. Cracknell: In the spirit of cooperation, we would release 4 lots so that the person could get their building permit for 1 lot. We believe we still have a \$73,000 bond but we have a question regarding the signatory on the bond.

Ms. Evangelista: I don't think we should vote until we see that everything is correct with the bond.

Mr. Howard: I think that we could let 1 of the 2 lots go. No matter how bad the market is, a lot is worth more than \$73,000. We hold one and we release one.

Mr. Cracknell: You are not owning the 2 that are there also. There isn't \$73,000 worth of work left. One lot is plenty of assurance.

Ms. Evangelista: I want to be sure about the Bond.

Mr. LaCortiglia: Too many questions. Verify the bond. Good thing we have a meeting next week.

Mr. Cracknell: I prefer that we do all Planning Board business at our regular meeting on the 22nd.

Mr. LaCortiglia: There are too many inconsistencies here.

Update of Zoning Amendments – Public Hearing: April 15, 2009

40R Application

Mr. Cracknell: I had a good meeting with Don Schmidt. I would sum it up by saying he wanted very minor changes regarding the zoning of the present structures. We need to clarify the wastewater conditions and the availability of adequate water supply. I need to sit down with Deb Rogers, the Health Agent, get a letter from her convincing them that some of the units can be built. They want more specificity on water and wastewater systems.

Mr. Howard: They want private systems?

Mr. Cracknell: They want to make sure that all of your bylaws are consistent and somebody can do it “as of right.” They want to make sure that something doesn't happen like Amesbury in the 1990's, a septic system with a moratorium on it. They want more assurance from the Health Dept and the BOH that there are some properties down there that can pass Title V or maximum feasible compliance standards under Title V.

Ms. Evangelista: Has Don put this in a letter that he wants this information? At the state of the town, other town departments weren't on hand to address these issues.

Mr. LaCortiglia: Tillie is right.

Mr. Cracknell: The water is the easy one of the two issues.

Ms. Evangelista: Why are you concerned about mentioning the Parker River survey?

Mr. Cracknell: Because the BOH and the Water Dept have different perspectives on this issue. I am not looking to raise more uncertainty. In the future, we as a town need to spend more time on this water flow issue. The bigger effort is with the BOH. These are the two remaining issues.

What I did do is go over the Affordable Housing piece before going down there. What is unique about our 40R is that it is not unlikely that we will have small projects crop up over the next 10 years within our 40R. People would take an existing building and do 1 or 2 units. It is hard to have 20% affordable housing when you have 2 units, that would be 50% and then do we pay them money or do they pay us. This statute was written for bigger developments. Ten units or greater was what the legislature had in mind when they drafted this.

When you get down below 3 units there is ambiguity there. At the end of the day, 20% of our units in the district need to be affordable. Our district as a whole has to have 20% Affordable Housing.

The mechanism here is payment “in lieu” for small projects under 4 units. For the smaller projects under 5 units, they would pay us 20% and we would put it in the bank. The question for Don is how long can we hold the money before we need the unit and he didn't know. We need to put this in the state model bylaw for small projects. The state has no remedy for our situation.

The money doesn't need to go into the Housing Balance Bylaw. A new entity can be set up and managed. The framework has been set up to create that entity. I increased it from 8 to 4. If that one unit is worth 200,000 it is going to be 8%, \$16,000 dollars. I presented that to Don and they are mulling that over.

There were some inconsistencies in the Housing Balance Bylaw and the 40R. Don is going through the whole bylaw. They are not going to accept what I tried to put in, the 1 and 2 bedroom requirements. You cannot regulate the size of the unit under 40R. They will not do it. They want housing choice. If we had a sewer system that would be different and we don't and we won't.

Mr. Carter: How are we going to assume the we are going to get 20 units with no wastewater system?

Mr. Cracknell: We have properties out there that the BOH thinks has good soil conditions. There are a variety of techniques that will get us there across the magic number of 20. You will see some changes to the bedrooms and the in leu payment by next Wednesday.

Also, we will need to go back to town meeting in the fall to set up a fund that this \$75,000 can go into. We need to keep this money separate from the General Fund.

Back to Don Schmidt and DHCD: they liked the idea of a stabilization fund. And, that something is going to happen without an expensive shared system.

If we can get to the 15th and vote on it, as modified and get those letters and the zoning issues and send them off to Don. That is where that is and I will keep you posted. They are excited because we have taken a proactive approach to 40R, not project based.

Mr. LaCortiglia: And then we get copies made for the town meeting?

Mr. Cracknell: Something that we need to think about is how do we present the amended document at the town meeting?

I have had no other feedback or comments on the other zoning amendments.

43D Application

Mr. Cracknell: I sent out today to the four owners, a draft application for the 43D for them to sign with all the maps and attachments. In terms of the 43D, I have 2 applications going in. One is the 43D, which is the district itself, and the Second is the technical assistance grant application that I am still working on. The four owners need to sign: Enos, Kennedy, Rizzo and Mirra and get it back to me so I can get it to the Selectmen for their review on Monday. I met with them all over the last few weeks and have no reason to believe that they will not sign the application. I need to get cranking on the technical assistance application grant next week. If we are successful, we would be receiving the funds around July 1st.

Mr. LaCortiglia: What happens if they don't grant the funds?

Mr. Cracknell: My recommendation is that we don't adopt the district without the funds being accepted.

We have to set a floor. We can get up to \$60,000. I will give you an update next week on how other towns have dealt with this situation.

Ms. Evangelista: I think that many communities in the Merrimack Valley have already submitted their applications.

Mr. Cracknell: Haverhill has got one. Amesbury voted it without it being conditional. They didn't get what they asked for. They got \$120,000 instead of \$150,000. I wish we got in there before they dropped it to \$60,000. I am thinking that all these towns got money but may not have gotten what then asked for.

Mr. LaCortiglia: Can we pull it back at fall town meeting?

Mr. Cracknell: I don't think so. Let me find out. Once you approved you are good for three years. How do we condition the acceptance of the district on the acceptance of the grant?

Mr. LaCortiglia: Why wouldn't we say that?

Mr. Cracknell: Every community has asked for money with their 43D and haven't gotten all the money they wanted.

Mr. Carter: What is the problem with accepting \$58,000 instead of \$60,000?

Mr. Cracknell: Nothing to me. But what did we go to Town Meeting and say in order to pass the 43D? We need to be careful to not to commit to only getting the full amount.

Mr. LaCortiglia: Why couldn't we make a contingent if we don't get the full amount?

Mr. Cracknell: I want to see what other cities and towns have done when they didn't get the full amount they asked for and then we can look at the spectrum of solutions.

Ms. Evangelista: If we don't do the technical assistance we are not going to do a 43D?

Mr. Cracknell: The 40R is not ambiguous, it is \$75,000. The 43D can be from \$0 to \$60,000 because it is a grant. Amesbury asked for \$60,000 and they got half of it, \$30,000. The grant application, 43D, doesn't go to the town meeting.

Mr. Carter: What if somebody at the town meeting puts the number in, say taking only \$60,000 for the 43D grant at the town meeting?

Mr. Cracknell: I already have a spreadsheet showing the scope of work over two years.

Ms. Evangelista: We need to see that information so that we know what is going on.

Mr. Cracknell: The spreadsheet is important to establishing a floor.

Mr. LaCortiglia: We need to have the right to option out. Don't put a floor.

Mr. Cracknell: Let me see what other towns have done.

Mr. Carter: Harry is saying that you don't need to tell the state that.

Mr. Cracknell: You can't do that. If you vote it in, it is live for three years. You can't vote it in and out.

Mr. Carter: So, you are conditioning the article now so that it is null and void if we don't get the full amount.

Ms. Evangelista: I don't want to see this thing stopped because we only got \$30,000. That is ridiculous.

Mr. Cracknell: You are asking good questions Tillie. But we have a laundry list of all the things we want to get done in the Planning Office and they don't all involve applicants. I think the number will probably be bet 30,000 and 60,000. What are we going to do if that happens? I will get you the spreadsheet. Let see what other cities and towns have done.

Mr. Carter: I don't want to get into a situation where the value of the work exceeds the value of the grant. That will put us in a worse position than we are in now.

Mr. Cracknell: If we get \$30,000, that is kind of around the breakeven point. That is the minimum amount we need to keep the ball moving forward on the 43D. Half of this is running the program, half is planning for the future. That second half, \$30,000-60,000, will make a big difference, it is gravy. We need a remedy for town meeting in case we end up with the base model.

Ms. Evangelista: What is different about what you plan to do and what Kennedy and Rizzo have done? Haven't they already done this?

Mr. Cracknell: They really haven't done much. They have only looked at their own land-use desires for big box retailers. We don't have a strategic plan and don't know what this community wants out there. We don't know what the 95 acres can support. Let's bring 40-50 year old zoning to today's land uses.

There are a lot of moving parts.

Whispering Pines

Mr. Cracknell: I met with the new developer and Dave Varga and he is satisfied they are doing a through job. They started construction on the roadway this week. They are cleaning all of the catch basins. Rich Williams is the engineer and partner on the job and he is helping out the developer. What is our process for street trees and species? The subdivision regulations should tell you what you need.

Mr. LaCortiglia: Harry hands out a sheet with tree species. Two to two and a half inch caliper.

Mr. Cracknell: Everybody okay with that?

Continued Public Hearing: Subdivision Regulations

Mr. LaCortiglia: I make a motion to open the continuation of the Subdivision Regulations Public Hearing.

Ms. Evangelista: Second
All in favor? 4-0; Unam

Mr. LaCortiglia: Wasn't there one drawing that we didn't have before Nick?

Mr. Cracknell: Did you get my comments? The 7 exhibits: the vertical granite, the slope granite,... You can put them in the text as well as the drawings. Larry put these together.

Mr. LaCortiglia: Do we know where to put these in? Maybe we should wait?

Mr. Cracknell: You can put them all in as sketches Harry. In a subsequent meeting we can amend them as needed. We still have to do the fees after tonight and Michele is working on the forms which are a mess.

Mr. LaCortiglia: I make a Motion to add the sketches, submitted by Larry Graham, into the appropriate section of the Subdivision Regulations.

Mr. Howard: Second
All in favor? 4-0; Unam

Mr. LaCortiglia: I make a Motion to continue the Subdivision Regulations Public Hearing to 7 pm on May 13, 2009.

Mr. Howard: Second
All in favor? 4-0; Unam

Mr. Howard: I make a Motion to adjourn the meeting at 9:40 pm.

Ms. Evangelista: Second
All in favor? 4-0; Unam