

GEORGETOWN PLANNING BOARD MEETING
Wednesday, June 25, 2008
7:00 p.m.

Present: Mr. Hugh Carter; Mr. Tim Howard; Mr. Christopher Rich; Mr. Harry LaCortiglia; Mrs. Matilda Evangelista; Mr. Nick Cracknell, Georgetown Town Planner; Ms. Laura Replier, Recorder

Absent: none

Mr. LaCortiglia opens the session at 7:05 pm. Mr. Carter arrived at 7:10 pm.

BOARD BUSINESS

Mr. LaCortiglia motions to pay Laura Replier for minute recording services for the night. Seconded by Mrs. Evangelista . Vote is unanimous.

Minutes – May 14

Mr. Rich motions to accept the minutes of May 14, 2008 as corrected. Seconded by Mr. LaCortiglia. Vote is unanimous.

Vouchers

Mr. Cracknell, Georgetown Town Planner – I received the additional copies of the Master Plan from the printer. The office can get them distributed tomorrow.

Mrs. Evangelista - They were intended to be distributed at the Economic Development Meeting.

Mr. Cracknell, Georgetown Town Planner – There is an outstanding invoice from Simons Environmental from December 2007. I called Bill Simons for a copy of the original invoice. Simons was recommended to be used for that project at Railroad Ave, the invoice is to the Georgetown Planning Board. I don't have the final report yet, this payment should be deferred to the next meeting.

Mr. Howard – That would normally just come out of the applicant's account.

Mr. Cracknell, Georgetown Town Planner – I think this is different from the review engineer.

Mrs. Evangelista – It is odd that we hired the same LSP as the developer.

Mr. Cracknell, Georgetown Town Planner – Yes, it is almost certainly related to Railroad Ave. I don't have the final report yet so have asked for a replacement copy. The invoice can come in with a report on it.

Mr. Rich – Do we have a system to show what the instructions were to an inspector, to do a specific task? If we are doing continual inspections do we have a sheet where we write instructions and ask for an inspection to be made? So, we have a record of telling them to do something and we are liable.

Mr. Cracknell, Georgetown Town Planner – It may be different for Dave Varga vs. another engineer. For Mr. Varga, he goes out to the initial site visit and gives a punchlist of his steps to sign it off. After the site walk that's when he lines out what needs to be done. So we have a list of contacts for each job. The General Contractor is required to contact the Town Planner whenever benchmarks have been hit. We have to have a tight loop between the General Contractor and myself to make sure are clear about invoices at the end of the day. We need a good paper trail.

Mr. Howard – I don't recall asking Simons to do anything for us at Railroad Ave. We may have asked Bob Grasso to ask him to do it, but I don't know.

Mr. Cracknell, Georgetown Town Planner – If this is more like an engineering report that Bob Grasso should pay then we will go back and look at that.

Mr. Carter – With that invoice removed, the new subtotal for the vouchers is \$2060.12. The total invoices with it would be \$2240.12.

Mr. LaCortiglia motions to pay the invoices on the voucher list of June 25, 2008 totaling \$2060.12, noting the removal of the invoice for \$667.40 from Simons Environmental Services. Seconded by Mr. Howard. Vote is unanimous.

Correspondence

Mr. Cracknell, Georgetown Town Planner – This regards a Form M authorizing the Blarney Court sub-division to be started. It should've been signed at the last meeting. We can date it to the last meeting when it was voted.

OTHER BUSINESS

218 Andover Street - ANR

Reps: George & Laurie Rose, Owners

Mr. LaCortiglia – They certainly have enough frontage – over 300'.

Mr. Cracknell, Georgetown Town Planner – I looked at the definition of lot frontage just to make sure. It is a 3-pronged definition – there should be 200' along public right of way; the front yard

setback is 75% - this meets that; there should be at least 25% at minimum lot depth – it also meets that. So meets all those frontage requirements. It also has adequate access, even though they don't know where the house going on the lot. There is adequate upland outside the wetlands. I asked the Building Inspector about frontage requirements for a corner lot, he said there are no requirements for frontage on both streets. There is precedent in other towns to require frontage on both streets. That may be something to think about as a future provision.

Mr. LaCortiglia motions to endorse the plan of land at 218 Andover St, as drawn by Atlantic Engineering, dated June 4, 2008. Seconded by Mr. Howard. Vote is unanimous.

540 North Street - ANR

Rep: Ben Osgood, NE Engineering Services

Mr. Cracknell, Georgetown Town Planner – This appears to meet the minimal standard for the RB zone. It meets the lot area and access into the site.

Mr. LaCortiglia – What about the old site? Will you need a curb cut?

Mr. Osgood, NE Engineering – Yes, we will put a hole in the wall and a new driveway.

Mr. Cracknell, Georgetown Town Planner – Is this on a scenic road?

Mrs. Evangelista – No.

Mr. LaCortiglia motions to endorse the ANR sub-division plan for 540 North St as prepared by NE Engineering Services dated May 5, 2008. Seconded by Mr. Howard. Vote is unanimous.

Whispering Pines Sub-division Inspection

Mr. LaCortiglia motions to authorize the Sub-division Inspector to review the Whispering Pines file –

Mr. Howard – Is there enough money in the account?

Mr. Cracknell, Georgetown Town Planner – I don't know. The Newbury 5 Bank requested that the board return the amount left after the final inspection. We need Mr. Vargas' final report.

Mr. Howard – They also wrote that it goes beyond just the roadway, including any other responsibilities. Is there a relationship between the bond and the affordable housing issue?

Mr. Cracknell, Georgetown Town Planner – We do need to check that as well. The bank has requested that the GPB determine what is left after the final inspection is done. I will notify Attorney Murphy tomorrow and tell them when we will get back with a report after I talk to Mr. Vargas.

Mr. LaCortiglia motions to authorize the Sub-division Inspector, Mr. Dave Vargas, to review the Whispering Pines / Raymond Court file. Seconded by Mr. Howard. Vote is unanimous.

Harris Way Lot Release

Mr. Cracknell, Georgetown Town Planner – We discussed this with Attorney McCann at the last meeting. Which lots have been released? The developer thought all 9 had been released, but that is not the case. Five lots have been released, as presented at the last meeting. Lot 4 had been released without formal GPB lot release. I spoke with Attorney McCann about that. They offered to swap lot 4 for lot 6. They will still only have 5 lots – 3 have been built, another is starting. No new lots have been released, it was just a swap.

Mr. Howard – Why are they swapping?

Mr. Cracknell, Georgetown Town Planner – That is the lot where they are stockpiling materials, and they want to work on the lots from the front to the back of the area.

Mr. Howard – Has Natural Heritage released the sub-division?

Mr. Cracknell, Georgetown Town Planner – I don't know.

Mr. Howard – I am concerned that the lot they swapped has not been released by Natural Heritaget.

Mr. LaCortiglia – I thought there was a letter that said that that issue had been resolved.

Mr. Cracknell, Georgetown Town Planner – There is a letter from the developer saying Natural Heritage said it is a “no take”. You need to vote the form K to swap the lots out, identifying the five lots, that will be recorded and be a binding document. I've looked at it and it's OK.

Mr. Howard motions to release Lot 4 (formerly know as Lot 2) is released and substituted for previously released Lot 7, and Lot 6 (formerly known as Lot 3) is released and substituted for previously released Lot 9. Lot 7 and Lot 9 are again subject to the Planning Board Covenant until released by the Planning Board. Seconded by Mr. LaCortiglia -

Mr. Rich – Are we receiving anything other than this letter from the petitioner saying that it is his intent that those lots go back to unreleased status?

Mr. Cracknell, Georgetown Town Planner – No, this is what we have.

Mr. Rich – They have documentation that states that so many lots have been released. We're going to give them documentation saying more lots have been released.

Mr. Cracknell, Georgetown Town Planner – The release says 7 and 9 are being unreleased. The cover letter clearly explains what lots will and won't be released.

Mr. Carter – They have the right to get all lots released? So we can't force them to release one at a time?

Mr. Cracknell, Georgetown Town Planner – I'm not aware of anything the PB could do to force that. They are waiting before they cross the 6th lot because they want to talk about putting the affordable unit offsite. They can only negotiate for an offsite location if there are less than 6 lots.

Mr. Carter – The decision says they can build the affordable unit last. We must make sure no other decisions are written that way.

Mr. Howard motions to release Lot 4 (formerly know as Lot 2) is released and substituted for previously released Lot 7, and Lot 6 (formerly known as Lot 3) is released and substituted for previously released Lot 9. Lot 7 and Lot 9 are again subject to the Planning Board Covenant until released by the Planning Board. – Mr. LaCortiglia / Vote is unanimous.

Affordable Housing Discussion

Reps: Jonathan Eichmann, Town Counsel; Paul Nelson, Affordable Housing Task Force (AHTF); Barbara Hart, Affordable Housing Task Force (AHTF); Evan O'Reilly, Selectboard

Mr. Carter – This discussion relates to the Housing Balance bylaw and its application to past developments, how to improve the bylaw's effectiveness and provide long term for the town.

Mrs. Hart, AHTF – Reads AFHTF Mission statement. The Master Plan also gives a history of the task force. We have been somewhat successful and need better communication between town departments. We oversee three properties at 201 Central St, Middle St, and 8 independent senior housing condos at Parker River Landing. We hope to work with GPB. I approve of your statement of holding new development sites to their affordable housing commitments and to help secure that housing through timely development. We are missing a few units that were due. This is the 3rd time the AHTF has come to GPB for better communications. Mr. Nelson is making a plan that we could all follow across all boards to open communications with the AHTF.

Mr. Nelson, AHTF – The issue is that there is no deterministic way for GPB to operate across all boards. Each development operates separately. Off-site compromises have not been good. That need to be done better. We need more rigor in processing.

Mr. Carter – Two important things that occur to me are to make Georgetown affordable to people who grew up here and to keep out 40B projects. We need to make sure all new subdivisions add affordable housing. That can only be done through variances now. We have to get the bylaw changed. In the meantime we have 3 options – on site housing, offsite housing, or the developer cuts a check for comparable value. Cutting a check is the least attractive option and I

would never vote for it. Offsite could be OK if the AHTF supported it. Onsite is the most favorable. We need to hold developers' feet to the fire.

Mrs. Hart, AHTF – In the case of one offsite unit, we couldn't get an onsite unit as the whole sub-division was already built. I think that was Acorn Way. The GPB didn't want to add an additional lot. The builder was willing to add another as a duplex in same footprint, so it looked like the rest of the development.

Mr. LaCortiglia – That required a special permit from the ZBA.

Mrs. Hart, AHTF – Yes, so we need to work with both boards. We have an advantage because as a local task force we have the backing of that housing authority at the state level. I have spoken with their legal counsel who will work with us pro-bono.

Mr. Howard – Will they work with us on Harris Way etc?

Mrs. Hart, AHTF – I can check into that. The Georgetown Selectboard asks us to research before we go to legal counsel. Our legal expenditure goes through the Town Administrator, Steve Delaney.

Mr. LaCortiglia – What is required to go forward with new development?

Mrs. Hart, AHTF – On a special permit since 2004 the AHTF has studied other areas of state – some put it into a separate area of town. That is not as desirable here. We try to work with builders to do that on site.

Mr. LaCortiglia – What about future permits?

Mr. Nelson, AHTF – About a year ago we gave you a flowchart that shows the fixed place in the process where you should talk about affordable housing, rather than waiting till all lots have been released.

Mr. Cracknell, Georgetown Town Planner – The root problem in writing decisions is that there wasn't an established timeline and no performance guarantee. It makes sense that if a special permit application comes forward that the goal is to have it on site. The GPB should be trying to incorporate into their decisions a clearer framework so that is established up front, and not to be done at the tail end of the process. If we can't have a performance guarantee, either build it first or give us surety to build it later.

Mrs. Hart, AHTF – We were happy to wait to the 3rd unit, but were told that was too strict.

Mr. Cracknell, Georgetown Town Planner – Whenever it is in the project, that is a discussion as to when it happens in the process. There has to be a condition in the approval that says the unit should be build by the 1st, 2nd or third in process or post surety.

Mrs. Hart, AHTF – The surety has to be of a sufficient amount.

Mr. LaCortiglia – How do we calculate that amount?

Mr. Cracknell, Georgetown Town Planner – We need to establish a formula. Now it is \$0, that doesn't work. It is the same as for street and road construction, the engineers create that estimate. It has to be a defensible amount.

Mrs. Hart, AHTF – Affordable housing is determined by a state formula. It is advisable to post surety for that amount.

Mr. Cracknell, Georgetown Town Planner – That wouldn't work. The town has to be left the whole amount if the development were left with the unit un-built. It has to be comparable.

Mr. Carter – If that happens and we pull the bond can the town get the house built? Where do the funds go?

Mr. LaCortiglia – What would it take for us to be allowed to hold that? Could we make a regulatory change after a public hearing?

Mr. Cracknell, Georgetown Town Planner – Could we just do it on the Housing Balance Bylaw?

Mr. LaCortiglia – It would have to go to Annual Town Meeting.

Mr. Eichmann, Town Counsel – If it was spelled out in the bylaw it would be better than an implication.

Mr. LaCortiglia – We should look at the bylaw and make a modification to that. Can we come up with a change to enable the board to require a performance bond?

Mr. Carter – And also change the fact that sub-divisions currently are not required to add an affordable component?

Mr. Cracknell, Georgetown Town Planner – Does any development over 3 lots have to comply with the inclusionary bylaw? Is that only for special permit and variances? Most towns say it is for everything, any development over a certain amount requires compliance with the Housing Balance Bylaw, if you want uniformity.

Mr. Nelson, AHTF – How do other towns control execution of that? When in the process do they get either surety or build a house?

Mr. Cracknell, Georgetown Town Planner – We had the same problem in West Newbury. Many small towns have similar administrative shortcomings. Surety is an important component in the decision making process. There is no difference between a large development with affordable units and one that doesn't. OSRDs are penalized sometimes. They argue that segmentation applies to each lot, so they don't have to comply. We have to make sure things can't be approved in one way and segmented in another. Towns also require a mitigation fund for each

10%. Surety requires building of units. The mitigation fund is if they propose 5 houses they are responsible for building one unit, all the way up to 14 units they are responsible for only 1 unit. Each 1/10 of a unit counts to the mitigation fund with a fee schedule.

Mr. Nelson, AHTF – How is it used?

Mr. Cracknell, Georgetown Town Planner – It goes into the affordable housing trust fund.

Mr. LaCortiglia – We need 10% affordable housing but gradually, through ANRs, courts, lanes etc, that percentage is slowly eroded all the time. By 2010 the numbers may not look as good as they do now. We're now 13.9%, according to the state housing website. I am concerned that we wouldn't be there in the future.

Mrs. Hart, AHTF – The AHTF Report of 2003/04 said the apartments gave the town 40B protection until 2030.

Mr. LaCortiglia – We didn't have courts and lanes then. They add up, cumulative effect.

Mrs. Evangelista – If we are allowing developers to pay money for each 5 units, they won't actually provide units.

Mr. Cracknell, Georgetown Town Planner – We want to keep it whole, so everyone is treated equally. If they are doing 5+ units and we require them to comply with the bylaw, the money goes into the trust fund to create affordable housing. There is eventually enough money in there to create the housing. That's a challenge. The fee schedule has to create enough units offsite or we will always be behind. It has to be defensible. We have to treat every one equally – at present a 14 unit development pays the same as a 4 unit development.

Mrs. Hart, AHTF – I am worried that will encourage builders to only build 4 houses to get around it.

Mr. Nelson, AHTF – If we do it 1:1 it would be most fair.

Mr. Cracknell, Georgetown Town Planner – If it is legally defensible, it would be the best. Everyone would be treated the same that way.

Mr. Nelson, AHTF – If you look at the lot size, we could build a caveat for someone only building one house.

Mrs. Evangelista – The intent of the Housing Balance Bylaw and special permits is to protect open space but not make it so strict that they won't go that way. If we make it too tough they will go the old way – that's not in our favor.

Mr. Cracknell, Georgetown Town Planner – All developments would be treated the same. Conventional would be treated same as special permits. We have the ability to be more fair.

Mrs. Evangelista – We would get a lot of flack from that. Communities I know that have done that do not have the 10% threshold. They don't have a real incentive to do that.

Mrs. Hart, AHTF – We have our locality and the townspeople to protect. It is fair to ask anyone who builds here to help support the town. They can build somewhere else if they don't want to do that.

Mrs. Evangelista – I think you're pushing people out.

Mrs. Hart, AHTF – Developers maybe, but not people.

Mr. LaCortiglia – It could apply it to definitive sub-divisions over 3 lots. They could be steering towards OSRD development as they would have the density bonus. If we did pass this change and these monies go into a mitigation fund, what would we do with it and who does it? We can have lots of money but if we don't have the mechanism to utilize it we might as well not have it. The AHTF has \$400k in accounts now from many sources. I don't see us using it to develop affordable housing.

Mrs. Hart, AHTF – We have had letters from developers asking to present to the board but we haven't see them yet.

Mr. Rich – There are properties in town that have been foreclosed on, why not go there?

Mr. LaCortiglia – They can't touch those.

Mrs. Hart, AHTF – They may not have been set up correctly. When boards change the records are lost, proposals are forgotten. I have been working on it for months but it is difficult to go forward. Affordable units have to be sold through a lottery, we need to hire someone to do that.

Mr. Rich – Have you taken any steps to be proactive and go out and find affordable housing? To create it?

Mrs. Hart, AHTF – We work with banks. Also they can go to the veterans administrator for down payment.

Mr. Nelson, AHTF – How can we get to the point where we can do something with that money? Other towns are doing a lot with the state money and we aren't. We have to be able to act quickly in this market.

Mrs. Hart, AHTF – We have no funds.

Mr. Rich – I thought you had \$400k?

Mr. Nelson, AHTF – Yes, we need a vehicle that the selectboard can vote to use that money. We should be able to accept gifts, hold escrow, etc.

Mrs. Hart, AHTF – We prefer new housing as it is up to code. In 2007 there was a warrant by the GPB to set aside \$10k for the AHTF, taken out of the affordable housing reserve fund. I don't know what happened to that.

Mr. LaCortiglia – That was from Acct #532083, the Littles Hill account.

Mr. Rich – We're collecting money, then it goes into limbo and we don't know how to get at it.

Mr. LaCortiglia – It is in 3 separate accounts.

Mrs. Hart, AHTF – That's why I'm trying to fix it.

Mr. Rich – In this economy there are certain regulations for banks to prove that they are involved in the community. Find a piece of real estate that has been foreclosed on, ask them to donate it so they get their Community Reinvestment points. Take the donation.

Mrs. Hart, AHTF – There are legal restrictions.

Mr. Rich – There are legal restrictions on everything. We shouldn't be afraid to take possession or create an entity that would take legal possession and get the property we need.

Mr. Nelson, AHTF – That's what the affordable housing trust fund is for. It's just a matter of getting it written into the deed so it will be affordable in perpetuity.

Mr. Cracknell, Georgetown Town Planner – So an affordable housing trust fund doesn't currently exist?

Mr. Nelson, AHTF – No. There are other funds but not a trust fund.

Mr. Cracknell, Georgetown Town Planner – We need to do that to take advantage of the current market opportunities.

Mrs. Hart, AHTF – I believe the money is already there and intended for affordable housing.

Mr. Cracknell, Georgetown Town Planner – The challenge that these accounts present is that they don't allow the mechanism of getting a property, and getting a deed writer, etc. You need to work with banks and move that forward. One of your goals was to set up a trust fund.

Mrs. Hart, AHTF – That was from 2005.

Mr. LaCortiglia - We are talking about two separate things – funds and a trust.

Mrs. Hart, AHTF – I don't know how it was legally set up.

Mr. Cracknell, Georgetown Town Planner – The entity needs to be set up.

Mr. Rich – If it was a trust back then it probably had to be recorded.

Mrs. Hart, AHTF – They were just funds with a bank account number. It's not currently a trust.

Mr. Cracknell, Georgetown Town Planner – The money was for the task force, not a trust. To move forward there would have to be a trust created.

Mr. Rich - Just create the trust and then worry about where the funds are. If it says that money set aside for this purpose will go into this fund, a trust tells you how you can bring it in and distribute it. Once the trust is there then find the money and move it in there.

Mr. LaCortiglia – It would have to go to ATM, to take the accounts in existence and move them in there.

Mr. Eichmann, Town Counsel – A trust is just an entity that holds property. It's a statutory creature. There are parameters for how it works.

Mr. Nelson, AHTF – There is lots of room to define exactly how you want to manage it – either with lots of bylaws or none.

Mrs. Hart, AHTF – If you change money from accounts and go into a trust you have to wait for a year.

Mr. Rich – You don't know where \$400k is, and you have no use for it? You have to create the mechanism to use it.

Mr. Cracknell, Georgetown Town Planner – According to a document I have from the selectboard, the goal or methods of the task force go beyond special permits – includes tax title, CPA, etc. So it seems that you are interested in more than just projects that come through the housing project bylaw and the GPB. This means a trust would enable you to pursue all these other opportunities.

Mr. LaCortiglia – There is over \$300k waiting for you at the CPA to use for affordable housing purposes.

Mr. Cracknell, Georgetown Town Planner – There is no good solution until we sort out the mechanism for utilizing the money that has been accumulated.

Mr. Rich – Opportunities are passing us by while we wait for the vehicle to be created. We need to do something for now and stop worrying about the past.

Mr. Nelson, AHTF – We tried to put that onto the warrant this year but it didn't make it. There was also a citizens petition. We will be able to get it onto the warrant for FTM.

Mr. Cracknell, Georgetown Town Planner – Mr. Rich, Mr. Nelson, Mr. Eichmann and myself will set up a meeting with Steve Delaney to get the process started.

Mr. LaCortiglia – Two years ago the CPC received communication from Kopelman & Paige that the Department of Revenue allowed transfer from the CPA reserve accounts into trust funds – that is a valid use. There is also a boilerplate for the creation of the trust. I will send it out.

Mr. Nelson, AHTF – We need to get together to decide what the town does and does not want to do. It makes sense to tailor it to the town as it can be a very powerful tool.

Mrs. Evangelista – Is your problem really these three affordable units at 201 Central, Middle St and PRL? Do you have problems with those now?

Mrs. Hart, AHTF – Now they are not considered affordable housing units by the state as they were never registered/recorded.

Mr. Nelson, AHTF – DHCD doesn't accept the deed riders on 201 Central and 14 Middle St. The formula used to construct the pricing wasn't acceptable. We can't substitute a LIP formula for the one they used as it might mess with the value of the property as owned now.

Mrs. Hart, AHTF – I called DHCD, all the apartments count but none of the affordable units we oversee count now.

Mr. Cracknell, Georgetown Town Planner – They can potentially be rectified at the next conveyance.

Mr. Nelson, AHTF – That's right.

Mr. Rich – Whose responsibility is it to see that if a developer says that something will be affordable, that it will be? Who is responsible to make sure everything is done and properties are registered?

Mrs. Hart, AHTF – It varies.

Mr. Cracknell, Georgetown Town Planner – I think it is the developer. We need to do a post-mortem on these projects to make sure we know what happened in each one and make sure that when more are created that everything is done properly.

Mr. Carter – And once the mitigation fund gets going that it can be used.

Mr. Rich – The last information Pulte Homes wants to get out is that Georgetown is unhappy with them. Who oversees the steps that have to be carried out for this process to work? Can you do that work? When we know an affordable unit is coming into town, can you manage that process, like a building permit signoff? Can you manage that? Like a building permit signoff where you can't get an occupancy permit unless affordable status has been registered. Can you manage that?

Mrs. Hart, AHTF – Yes, we could. We managed parts of the price fixing and lottery in the past.

Mr. Cracknell, Georgetown Town Planner – Let’s meet in a few weeks with Mrs. Hart and Mr. Nelson to continue this discussion.

Mr. Nelson, AHTF – The questions is also should we be a proactive group and go out and make things happen or be simply an advisory board?

Mr. Howard – Is it worth buying back the difference on 201 Central St?

Mr. Nelson, AHTF – It would be about \$70k to buy it back down which would still be worth it because it’s a good unit.

EXECUTIVE SESSION

Mr. LaCortiglia motions to enter Executive Session to discuss potential litigation and return to public session to adjourn the night’s meeting. Seconded by Mrs. Evangelista.

Roll Call Vote:

Mr. LaCortiglia - Aye

Mr. Howard - Aye

Mr. Rich - Aye

Mrs. Evangelista - Aye

Mr. Carter - Aye

EXECUTIVE SESSION

Mr. LaCortiglia motions to enter Executive Session to discuss potential litigation and return to public session to adjourn the night's meeting. Seconded by Mrs. Evangelista.

Roll Call Vote:

Mr. LaCortiglia - Aye

Mr. Howard - Aye

Mr. Rich - Aye

Mrs. Evangelista - Aye

Mr. Carter - Aye

Whispering Pines

Mr. Eichmann, Town Counsel – There has been little change in this situation. This is an example of the fallout of no enforcement of the affordable housing as mandated by the bylaw. This was a special permit for senior housing, with 2 units of affordable housing, amended to allow offsite housing in the sub-division. It hasn't happened as yet. Is Whispering Pines complete? Is it built out?

Mr. Cracknell, Georgetown Town Planner – All the lots have been released but perhaps not built.

Mr. Eichmann, Town Counsel – If the developer has sold the lots then the opportunity has gone.

Mr. LaCortiglia – Lot 21 was one left, where he proposed to put the affordable unit.

Mr. Eichmann, Town Counsel – The developer had proposed putting a duplex on one of these lots but there were zoning permits needed for that.

Mr. LaCortiglia – And he never applied for it.

Mr. Howard – The ZBA would've allowed it but he said the neighbors all complained.

Mr. Eichmann, Town Counsel – We have a special permit has been fully utilized in the senior housing but conditions have not been met. This is in the sixth month. The deadline for responding has passed. I have written regarding the position, he knows he owes us 2 units. He has offered \$40k compensation. That's very very low. Sarah Buck worked out a figure of about \$700k. If we are going to enforce the special permit the GPB will have to go to the selectboard to seek permission to get legal counsel. There is a letter from June 2007, the best possible scenario is that the developer will come forward with an acceptable proposal. We could file suit to force him to make compensation. There is no time frame on the special permit. Once the sub-division and senior housing has been built out, or there is only 1 building lot, then that isn't an issue.

Mr. Cracknell, Georgetown Town Planner – If there's one lot then that could be used for a multiple unit, but if that was built on then there is nowhere for him to build.

Mr. Eichmann, Town Counsel – Except for the offsite option. The bylaw says they “may be located offsite with approval of the GPB”. It's an open ended question as to when they have breached the time frame. A good argument now is that they have breached the agreement. What would courts say is a proper means of redress? We can ask for specifics – they are much more comfortable with a dollar figure. These figures - \$40k and \$700k - are far apart. If we sue then they may come back with an offer.

Mr. LaCortiglia – Is that an option to force their hand?

Mr. Rich – You don't want to start a suit you don't want to follow to the end.

Mr. Eichmann, Town Counsel – We have a strong argument that he hasn't given us 2 affordable units. The problem is the time factor. How do you craft the relief? It would require a back and forth discussion. We could craft a complaint and ask for damages.

Mr. LaCortiglia – We already have a number.

Mr. Howard – Yes, it included the cost to the town of hiring a contractor.

Mr. Eichmann, Town Counsel – If we sue they will come up with every argument as to how they tried to meet it.

Mr. Howard – The Building Inspector and I went over to the house on Mohawk Cir and compiled a list of deficiencies.

Mr. Eichmann, Town Counsel – I called his attorneys today but didn't get a response – I haven't had any in 6 months.

Mr. Carter – We still have his roadway funds.

Mr. Eichmann, Town Counsel – That's out of the scope of this. You can't use the sub-division security to get what you want out of them. The sub-division is separate from the special permit. It is not meant to secure affordable housing but to secure the roads. It is a standard tripartite sub-division security agreement, not related to affordable housing.

Mr. Howard – He hasn't tried to sue us to get that money back.

Mr. Eichmann, Town Counsel – It could be a negotiating lever.

Mrs. Evangelista – By us holding the bond money for the road, I think it should go right through to court if we decide to do it. Let the judge say we can utilize that bond money in lieu of the affordable housing money.

Mr. Howard – It's only \$140k.

Mrs. Evangelista – It's a bargaining thing. We won't win a 100%.

Mr. Eichmann, Town Counsel – The judge will not have any authority to do that.

Mr. Cracknell, Georgetown Town Planner – I think he'll try to get the bond back and get out of the affordable housing. He's probably not in a bad position to move forward in that way.

Mr. Eichmann, Town Counsel – Our leverage is what's left to build in that sub-division. If he still owns those lots we can use them.

Mr. Cracknell, Georgetown Town Planner – The Building Inspector would know what has been released to be built.

Mrs. Evangelista – What about a letter to the bank he's involved with?

Mr. Eichmann, Town Counsel – If we send a letter re special permit requirements it's not related to their interest in the bond money. That is legally unsound. If we file an action for zoning enforcement it would go against the condo trust. That affects use of the land, which affects what the owners can do with their units. Does the pressure go to them or to him via the mortgagee?

Mrs. Evangelista – What if he goes bankrupt?

Mr. Eichmann, Town Counsel – How do we know where to go to chase the money?

Mr. Cracknell, Georgetown Town Planner – What if there's a vacant lot that he still owns?

Mr. Eichmann, Town Counsel – We want him to build a duplex on it. You can't put a lien on it.

Mr. Rich – Put an attachment on it.

Mr. Eichmann, Town Counsel – That's a possibility. That puts a clamp on it until the litigation is over. At this point it's probably cheaper for him to build a duplex on the lot than pay the equivalent amount of \$700k.

Mrs. Evangelista – What will K&P charge us to draft a complaint? How about a percentage of what we get?

Mr. Eichmann, Town Counsel – No! The selectboard knows what drafting a complaint would cost, if it goes beyond that I couldn't say. If you want to enforce this, your only alternative is to press suit.

Mr. Cracknell, Georgetown Town Planner – That's if there's no vacant lot though. If there is, we should try to attach that.

Mr. Rich – If we let this slide every one else will try to take advantage of this.

Mr. LaCortiglia – Yes but, we won't let things slip through the cracks like this again.

Mr. Cracknell, Georgetown Town Planner – If there is a buildable lot that he still owns that would be the best course. What if he's sold it on to someone else?

Mr. Rich – If it's a company he is still affiliated with that would be something else, but that's a long shot.

Mr. Howard – Can we initiate the lawsuit and still hang onto the bond?

Mr. Eichmann, Town Counsel – Yes, but don't try to tie them together. Envision it as being fairly simple, unless he brings in evidence as to how he has already proffered the board. That could complicate things and drag it out. We could probably file it in Land Court and it wouldn't take long to get it heard. Was the offer reasonable, was the board reasonable in refusing it – those things could take years. He's made two offers - a lot with the duplex.

Mr. LaCortiglia – The board approved that timeline and the proposal. A year later it wasn't done. The board turned down a house he offered on Beverly Dr.

Mr. Eichmann, Town Counsel – You need to decide how to handle this further.

Mr. Rich motions that the board seek permission from the Board of Selectmen to initiate litigation against Whispering Pines. Seconded by Mr. Howard.

Mr. LaCortiglia – Where are we going and how far are we going with that? Is there some way to institute the litigation, put an attachment on the property and then wait and seek if that stimulates a better offer?

Mr. Eichmann, Town Counsel – OK, if the court will allow you to have a delay after the attachment.

Mr. Cracknell, Georgetown Town Planner – Who will write the position paper to persuade the selectboard to approve the legal funds?

Mr. Eichmann, Town Counsel - This may spur the developer. He may come back with an offer, but it will probably be the least he thinks he can get away with.

Mr. Rich motions that the board seek permission from the Board of Selectmen to initiate litigation against Whispering Pines. Seconded by Mr. Howard. Vote is unanimous.

Mr. LaCortiglia motions to leave Executive Session discussing potential litigation and return to public session to adjourn the night's meeting. Seconded by Mrs. Evangelista.

Roll Call Vote:

Mr. LaCortiglia - Aye
Mr. Howard - Aye
Mr. Rich - Aye
Mrs. Evangelista - Aye
Mr. Carter - Aye

Mr. Rich motions to adjourn the night's meeting. Seconded by Mr. Howard. Vote is unanimous.