

MEETING
GEORGETOWN PLANNING BOARD
Memorial Town Hall
Third Floor Meeting Room
July 26, 2006
7:00P.M.

Present: Mr. Hugh Carter, Acting Chairman; Mr. Rob Hoover; Mr. John Moultrie; Mr. Tim Howard; Mr. LaCortiglia; Ms. Sarah Buck, Town Planner; Ms. Laura Repplier, Recorder

Absent: none.

Board Business 7:00

Mr. Carter calls the meeting to order at 7:05.

Approvals: Minutes – June 14, 2006; July 12, 2006

Board members invited to submit their changes to the minutes.

June 14, 2006:

Mr. Carter had no comments.

Mr. LaCortiglia – Change the list of members present to show that Mr. Moultrie was not chairman. Page 3 – 5th line – Mr Moultrie states that tests need to come back to the Planning Board. Asks for clarification of that statement.

Mr. Moultrie – That referred to the lot yield on a piece of land, perc test results need to come back to us.

Mr. Hoover – Page 1 under “Areas of Expertise” – to submit changes to Mrs. Buck. The list is confusing in that sentence. Delete the sentence regarding the list including the rail trail, etc.

Mrs. Buck – That is only an agenda heading, it can be deleted.

Mr. Moultrie – Changes to the minutes which are clarifications are fine as long as we aren’t re-writing.

Mr. Hoover – Page 2, Para 2 – For clarification, “Mr Hoover adds that having a clear list of project completions to invest will ...” 2nd to last paragraph – Mr. Hoover requests Mrs. Buck to start a paper trail ... “who from the Planning Board will start to adopt them” Page 3 – There were a number of items talking about the yield plan but other information in between is not

relevant. “The Planning Board needs to define the yield plan” – bring that down prior to the 5th paragraph (before Mr Howard). Page 4, Para 2nd from bottom - indentation change. Page 9, 5th paragraph from the bottom – Clarify “There will have to be some convincing that can put houses on the lot” - change that to “house locations”. Page 10 - \$ sign added.

Mrs. Buck – Page 9 – Change to Mr Green instead of Mr Applicant.

MOTION to accept the minutes of June 14, 2006 with amendments – Mr. Moultrie / Mr. Howard seconds/ 5-0 in favor.

July 12 Minutes:

Mr. Carter – Change the date from June 28 to July 12. Page 2 – “Mr Moultrie makes motion” – Change that date to July 12.

Mr. Moultrie – Page 3, 4th paragraph from bottom – Re. Caribou Court – Change to “Superior Court”.

Mr. Hoover – Page 1 – All the draft meeting minutes use the term “changes”. The 3rd paragraph should say “clarifies.”

Mr. Moultrie – Was that because so much was changed?

Mr. Hoover – Yes. I have asked to have the tape of the meeting included with the minutes for clarification.

Mr. Moultrie – It is a problem if we are changing too much of the minutes after the fact. If they are significant changes and the minutes don’t represent what was said, the tape should be held to clarify & provide a full representation of what transpired.

Mr. Hoover – I agree completely.

Mrs. Buck – This was a clarification that included added words.

Mr. Hoover – The written record is all we have in the end. The minutes are the most important documents we have as a board. I have tried to make sure these are clarifications. We don’t make changes lightly, unless something big is missing.

Mr. LaCortiglia – If modifications are changing the intent of fact they shouldn’t be made. If it makes it easier to understand and provides a better history, that is OK. Make sure it doesn’t distort the facts.

Mrs. Buck – We should change 4 paragraphs to say “clarify” & leave the section that had to be added as “changes”.

Mr. Hoover – We did not have minutes recorded in the past.

Mr. Carter – Anything said in the meeting should be recorded.

Mr. LaCortiglia – It actually is not a legal requirement to have anything other than the motions & votes recorded in the minutes but the other information adds background.

Mr. Moultrie – The chances of litigation are high if the party is aggrieved. The Judge may have to interpret the minutes as they work from the written record. We have to be more detailed in the minutes than other committees.

Mr. LaCortiglia – The more detail we can give of the intent & why we came to the conclusion we did, the better.

Mr. Moultrie – We have prevailed in most cases in the past because of the precision of our minutes.

Mr. Hoover – Transparency is the way to go.

Mrs. Buck – July 12 date should be 2006, not 2005 – change all 2005 to 2006.

Mr. LaCortiglia – Zoning “Process” should have quotation marks to show intent. Page 7, 3rd line down “Motion to postpone Parish Rd” - add “OSRD” to clarify which subdivision bylaw we were referring to.

MOTION to accept the minutes of July 12, 2006 as amended - Mr. Moultrie / Mr. Hoover seconds/ 5-0 in favor.

Correspondence - Presented to the Planning Board

Rock Pond Estates

Representatives: Joseph Pelich, Applicant; Steve Sakakeeny, SAK Environmental, LSP.

Mr. Moultrie – Mr. Simmons, the original LSP, is not here. We will have to take this under advisement without benefit of his information.

Mrs. Buck – That’s right. Mr Pelich wanted to come before the board to give us information on their progress. This is a currently a permitted 5 lot sub-division with one existing house.

Mr. LaCortiglia – We’re not in a Hearing?

Mrs. Buck – No. The applicant asked to speak with the Planning Board in Spring 2006 as he felt there were 21E environmental concerns with the soil on the site. The site has been idle since then. There has been some talk of selling the property but we are just receiving information from

the applicant at this point. The Board recently received a letter from Simmons Environmental, who did the original 21E analysis, defending the original analysis and plan.

Mr. Moultrie – Who holds the application and who are the owners?

Joseph Pelich – I am the applicant & owner.

Mr. Moultrie – What is Jim Bussing's involvement?

Mrs. Buck – He holds the mortgage on the property from Mr. Pelich.

Mr. Moultrie – Didn't we get a letter of complaint from Mr. Bussing before?

Mrs. Buck - Yes, there has been a dispute between Mr. Bussing and Mr. Pelich over who's responsible for what. We did ask Mr. Simmons for a re-examination of the concerns. He did not have any further concerns but Mr. Pelich would like to speak to the board.

Mr. Moultrie – We are just taking information this evening, there is no decision making. This is an informal session for information gathering.

Joseph Pelich, Owner – You asked about the status of the sub-division. It was approved in January 2005. Mr. Moultrie, you brought up a number of environmental concerns & I assured you I would go to the Nth degree to implement everything. The Con Comm also approved. The Soils Management Report – in June/July 2005 the report was forthcoming but it was (I thought, not being a professional) slightly ambiguous. It didn't have a lot of areas of measure and there wasn't to be an LSP on site to do the excavation & oversee the soil stockpiling. I had an agreement with Mr. Bussing, but I was concerned how we would handle problems & who would have the right oversight. Mr. Bussing said that would be done. We cut the trees & stumps as requested. My position was clear – Mr. Howard, Mr Hoover, and Mr. Moultrie – I assured you that the issues on the site were a BOH issue, that we would comply & take care of the issues. Mr. Simmons would help oversee that. My attorney couldn't be here but I had to go forward. I have two mortgages on the property for infrastructure & acquisition, so it's very important that I get it built and go to market. Now the question is whether I had to do the soils management as the risk analysis said there was no risk. I have no intention of building that sub-division unless the site can comply entirely. The homeowners who live there need to be able to test the soil and find it completely OK. In February Mr. Simmons & Mr. Bussing wanted to manage the soils in certain way – that didn't make sense to me. I think you need to test more if you have a square of contamination – test the side wall of the excavation for example. I was told there was no need for it and it would not be done. I explored lots of different things in Oct – Dec 2005 as I wanted to get the road in before winter came. I had hired Mr. Sean Savage to do the soils management plan but Jim Bussing pulled the plug. I used Cardillo & Sons as a secondary site advisor. Mr. Cardillo said they said need an LSP, Hygienist, and that I need a soils management plan and to take a closer look at it. There is no financial issue here, I just want to clean it up. I've been working hard to get that done but Mr. Bussing is sitting on the fence. To be fair, there was no such thing as 21E when he started in this business many years ago. I found I could never move things along & at some point I retained an environmental attorney to look at the documents.

That process took a long time & I wanted to move it along. They referred me to Mr. Sakakeeny who said we should review their data. Though there is nothing wrong with the data, it depends what we do with it – there are lots of different ways to interpret it. LSPs are given broad leeway to interpret – Mr. Simmons didn't do it wrong but he wasn't looking at it the same way we did as the buyer, as you did as the board & the same way the buyers would. Mr. Sakakeeny looked at the data and has a significantly different view. I want to dig it all up & take it off site.

Mr. Sakakeeny, LSP – (Distributes copies of plans) This site was a trolley car barn in the 1800s, then a truck repair facility, then there was painting done. There are reportable levels of petroleum at the property. Mr. Bussing and Simmons did follow through under the 21E contingency plan to figure it out. We need to assess the risk to health & work out what to do. In 2004 it was decided no remediation was required – there were levels of petroleum and arsenic there but they did not pose a significant risk to human health - based on 1 house being put on the property and everything else remaining undeveloped. This is significantly different as it was suitable in 2004, but then it was subdivided into 4 or 5 lots – under the MCP they need to re-evaluate the risk. Different homeowners do different things – they may be digging into contaminated soil. Mr. Bussing said he would do a soil management plan to remove the soil and to landfill it under the street. In 2004 we submitted the outcome to DEP – if there is a response action outcome, you still have to follow MCP. Landfilling is not allowed. If the petroleum levels are below thresholds it would be allowed, but that is not the case. If you remove polluted soil you have to take it off site.

Mr. Moultrie – How much soil removal are we talking about?

Mr. Sakakeeny - About 50 yards of soil.

Mr. Pelich – 50+.

Mr. Sakakeeny – We came up with rough costs and thought this was manageable. I can't see that we're far apart from Mr. Bussing on this matter.

Mr. Moultrie – It costs \$30 – 40 per yd for removal plus trucking. That doesn't seem to be a large amount.

Mr. Sakakeeny– If we don't do the risk characterization for each lot to prove each homeowner is safe, we'll just take it out. That is our proof that all is OK. But we're meeting with resistance. Jim Bussing doesn't want to take it out, or he wants to put it under the road. You can't landfill, that's not under the MCP. Once it comes out it has to go offsite.

Mr. Pelich – It appears that the dialogue between Mr. Bussing & myself has broken down. We both have retained attorneys now. Mr. Bussing has agreed to have an LSP on site and test the wall to make sure the contamination isn't more extensive than we thought. I own the land so I am responsible. It is my corporation – Cyrus Construction Co.

Mrs. Buck – Mr Simmons has responded that he was well aware that there would be 5 lots. He was always reviewing for a 5 lot sub-division. Mr. Bussing says he is willing to remove the soil.

I am encouraged that that this will move forward. They are here because the board needed to know what's going on. There are many different threads running through this project. The board isn't in a position to take action right now.

Mr. Moultrie – My concern is that the site has been stripped of vegetation for some time, right next to the pond. I don't know what is being used for erosion control. It is unsightly and not a benefit to anyone. Regardless of the private issues it needs to move forward. We're not ready to make a decision tonight until we hear from Mr Simmons. We should be able to move forward in a short time frame.

Mr. Pelich – The Con Comm has implemented environmental control – there is a silt sock of substantial size at the 75' buffer. There is no erosion near the pond at all. We brought loam in the fall and it forms a buffer around the area. My concern is the lot on the right – I could start the sub-division now but didn't want to start \$25-50k remediation & watch it grow to \$300k. It has taken a year to get Mr. Bussing to the table.

Mr. Howard – How many estimated yards of contaminated material are you talking about?

Mr. Sakakeeny - Around 50 – 75 yards.

Mr. Moultrie - We're talking about hydrocarbons, not heavy metals. The arsenic could easily be in the coal ash. I am concerned about potential heavy metals from burning cars. A lot of that stuff could have melted down into the ground.

Mr. Howard – The areas highlighted on the plan are the contaminated areas?

Mr. Sakakeeny – Yes, the square & triangle areas are the areas Mr. Simmons is designating as the disposal areas under 21E. Within those areas we are finding concentrations exceeding state reportable thresholds.

Mr. Howard – This area looks more like 10,000 s.f. How can it only be 50 yards? It is showing more like 500 yards of material.

Mr. Pelich – If you are doing a 21E assessment you would need to survey the lot lines. They just measured off what they thought were the lot lines. That was a concern of mine.

Mr. Sakakeeny – The soil management relates to the soil only, not monitoring wells. We did test the groundwater, it isn't the problem. The problem is the level of petroleum in some of the soil.

Mr. LaCortiglia – They only represent a 6" deep sample, if we're talking about yards of material.

Mrs. Buck – There could be spots within the area.

Mr. Howard – Is the topsoil stripped off the site?

Mr. Pelich – No. In a lot of areas there was no topsoil, just old gravel.

Mr. LaCortiglia – What limitations are there to removing soil are in the Planning Board permit?

Mrs. Buck – There are none in the permit. (Reads from letter from Simmons Environmental, June 2006) I am not an LSP, but from my review of the record it looked like the Planning Board was very careful when they permitted this project. From the extensive reports from Simmons Environmental, they also wrote & said they were aware that it was a 5 lot sub-division. The soil management plan was voluntary. I am aware of the seriousness of the environmental contamination issue and ask what is the risk? It seems to be that both the state & review engineer are saying there is not a risk. It's wonderful that Mr. Pelich is being so careful. Mr. Pelich & Mr. Bussing are working it out. If the Planning Board wants to open the issue again it will take a long time – it does takes a long time to re-examine these things.

Mr. Hoover – The Planning Board isn't considering opening it again, this is just a meeting.

Mr. Sakakeeny – Defining the risk posed by contamination can be done easily under standard industry practices. Mr. Simmons may claim there is no significant risk based on what was done in 2004. We have reviewed the risk characterizations. It is not demonstrated that it is related to the 5 individual lots. When that's the case, the exposure point calculations are done differently. They would be done one for a single multi-acre property, not one for each lot. It may be being presented as a voluntary soils management plan but the state has final policy on construction of structures in contaminated areas which require specific risk characterization for those areas or removal of the contaminated material. The DEP is well aware that these activities occur, & there are standard industry practices for this situation. It's not just professional vs. private opinion, there are clear, prescribed ways to deal with it.

Mr. Carter – Has the DEP signed off on the voluntary plan? Can he rest on that?

Mr. Pelich – We have hoped that during the subdivision approval process that I could get signoff from DEP. Mr. Simmons described that it is the LSP's responsibility to make that determination – there is no DEP signoff. The DEP gave a letter to the Planning Board saying to vote because they weren't going to look at it.

Mrs. Buck – The LSPs carry the liability for the project.

Mr. Howard – The State's comments were that this was small. They only choose to go after a small percentage & this didn't fall into that category.

Mr. LaCortiglia – Mr. Simmons was Mr. Bussing's LSP. Who was the Planning Board's LSP?

Mr. Moultrie – Mr. Simmons represented the original applicant. It would technically come under the BOH. But if we felt if it didn't meet the state thresholds for contamination we could deny a sub-division permit, but it would obviously have to be pretty strong evidence that the land was more contaminated beyond that level. We didn't hire an outside consultant as Mr. Simmons is a well respected LSP in the area. The Planning Board felt he would do a good job reporting to us, that he would do due diligence.

Mr. Hoover – We pushed him pretty hard.

Mr. LaCortiglia – But he wasn't working for us. I think it's always prudent to get a second professional opinion.

Mr. Howard – There were 3 different reports – Mr. Simmons reviewed the first two reports. His wasn't the only work on the site.

Mr. Hoover – It would be a lose-lose decision to stop now. As a Planning Board member & parent I commend you, Mr. Pelich, for being conservative in your actions. This is a confusing situation. It sounds like you are moving in the direction of satisfaction and will move on. If you are moving towards resolution & you are comfortable with that & the LSP's recommendations are intact ... I don't want to go back into the history of the whole project.

Mr. LaCortiglia – If you do truck it off site do you need a special permit for earth removal?

Mr. Moultrie – Yes, for certain yardage.

Mr. LaCortiglia – You don't need permits from this board for that?

Mr. Moultrie – No.

Joseph Pelich – I do wish I had hired my own LSP. We stopped the project & I have an obligation to come to the Planning Board & explain why. It wasn't clear in the minutes as to what was represented to the board about the disagreement between buyer & seller & who would do the soils management plan. I decided to stop & get an attorney & LSP before moving on. I couldn't go forward without a soils management plan from Simmons. Then I re-started the project.

Mr. Hoover – Are there any erosion control issues? Can these soils / contamination be getting into Rock Pond?

Mr. Pelich – No.

Mr. Howard – What about groundwater, rainwater? I looked at it a couple of months ago – there was nothing going over the siltation control. There is nothing going over the surface. I don't know about groundwater.

Mr. Pelich – My settlement plan is to take it off site. If it's not there anymore then it isn't an issue.

Mr. Moultrie – Why not just do the work & deal with the financial issue later? Why not just truck it off & follow your own LSP's advice & move ahead?

Mr. Pelich – My attorney’s advice is to stop & don’t clean it or touch it until the LSP says we can move forward.

Mr. Moultrie – Mr. Bussing only holds the mortgage ... you control the site? If you got advice from the LSP with which you are content, you could go ahead.

Mr. Pelich – Yes, but my attorney said stop.

Mr. Moultrie – I would like to talk to Simmons for more information. Can we expect forward movement with this?

Mr. Pelich – Yes, I hope to have it settled within 7-14 days. I understand that Mr. Bussing has agreed to pick up the costs to remove the material from the site. I am not going to convey the property or permit.

Mr. Hoover – So this doesn’t end up as an open-ended situation – in 30 days send us a letter wrapping it up & telling us what the situation is. If there is no letter we may take it up again.

Mr. Howard – Will we get letter from your LSP saying he is satisfied?

Mr. Pelich – Yes. We have a letter saying he agrees we can’t just bury the material.

Mr. Sakakeeny– In his latest letter in June he said some can go under the road & what won’t fit there can be hauled off site.

Vouchers

Mrs. Buck – We only need to sign the front page of vouchers. If payment is coming out of the same account it can be on same voucher. At the last Planning Board meeting, you voted to release the \$5k bond on Raymonds Creek, so I include a voucher for that release tonight.

Mr. LaCortiglia – Didn’t we vote to get plans back to us for the affordable unit?

Mr. Howard – Yes, let’s wait until the next meeting to release the bond until we get that information.

Mrs. Buck – The other voucher not on the weekly list is for a release of funds for CAI. I have been working with CAI to refund site plan review funds for a project completed several years ago. The as-built drawing has been approved & is in the drawer.

Mr. Moultrie – Regarding our letter to the sub-division inspector, I don’t see that they have rescinded the invoices that were already sent for idle sub-divisions.

Mrs. Buck – I’ve had no response on that part yet. On five of these sub-divisions, they had been idle for six months. Most people are sitting & waiting to see if the houses will sell. Halting repeated inspections of idle sites has been an issue for some time, getting clearer now.

Mr. LaCortiglia – Have you checked with all town boards that everything is complete on this CAI release?

Mrs. Buck – Yes, it's complete.

Mr. Moultrie - If on-going issues at subdivisions aren't fixed there won't be street acceptance.

Mrs. Buck – There is always a punch list at the end. It's not fair to have a moving punch list at the end where they can't actually get to the end – we're trying not to have a moving target. We'll revisit final subdivision status before street acceptance. We do want to be careful & responsible, but within reason.

Mr. Hoover – The punch list is important for final acceptance. There has to be a final list they work to.

Mr. Moultrie – Chaplin Hills sounds serious.

Mrs. Buck – The drainage issues have been brought up here for four months. When someone comes in for bond reduction if anything is outstanding we have to make sure we don't overlook it. We wouldn't rescind the subdivision in mid-stream unless the residents were being harmed by the developers. Developers also need our sign-off for lot releases. This is when we can get outstanding issues resolved. Chaplin Hills has lots to sell & he is working to do that.

Camelot Realty Trust Correspondence

Mrs. Buck – This correspondence only recently came in, so I put this on the agenda for our next meeting.

Mr. Moultrie – We have serious communication problems there, we can't let it go. The proposed signage wasn't part of the original plan, he is asking for an amendment of the original plan that wasn't on there.

Mr. Hoover – Should we have counsel render an opinion?

Mr. Moultrie – No, we're a separate board. This has been ongoing since 1998 & has gone through many boards. We have worked with him over many years & it's unfortunate that this has come back in this way.

Outstanding Construction Review Accounts

Mrs. Buck – If I got the full history before I released these monies & could discover from other boards if all issues have been resolved I could go forward with releasing these monies. Some are very old.

Mr. Moultrie – Cedar Lane is in litigation.

Mrs. Buck – Actually, the Planning Board prevailed in that case & parcel B has been turned over to the town by the court. I have put this on the agenda for discussion at our next meeting.

Mr. Moultrie – I will go through this list of accounts and make notes on the issues / current standing of each one.

Mrs. Buck's Annual Report

Mrs. Buck – Today is the one year anniversary of my position as Town Planner. I have prepared a report of the achievements we have seen in that time. I'm very proud of the Planning Board for their accomplishments in the past year. We have had a heavy load of cases with a lot of information to keep track of. In addition to these items I have also established open, clear communications with the other boards in town – the Building Inspector, Con Comm and the Board of Health.

(Submits report. See attached.)

Planning Board Assistant Appointment

MOTION to hire Robin MacRae as Planning Board Administrative Assistant at \$14.12 for 15 hrs/wk – Mr. Moultrie / Mr. Howard seconds/ 5-0 in favor.

Clarification of Bylaw

Mrs. Buck – The developers of the North Street & Wells Avenue site have asked for clarification of the OSRD bylaw. I spoke to Larry Graham. We have consensus on the first question but need the Planning Board to decide on the second.

Mr. Moultrie – If Mrs. Buck & Mr. Graham agree, that's OK.

Mrs. Buck – On the first, if the applicant is getting bonus units under OSRD they aren't subject to the affordability clause. The bonus units wouldn't change the affordability units.

Mr. Carter – It doesn't make sense to put affordability on bonus units.

Mrs. Buck – If they have more than 15 affordability units it is subject, if they don't, it isn't. The second questions pertains to how additional open space is calculated for bonus units. The bylaw states that for each additional 10% of open space the applicant gets a 5% bonus in units. But if the 10% is calculated on the entire lot area as the bylaw seems to imply, the maximum bonus units could never mathematically be attained.

Mr. LaCortiglia – If they go from the required 55% to 65% open space then they are awarded the bonus. We can allow more bonus units if they add affordable housing. The open space is calculated on the entire lot.

Mr. Howard – It also says a density bonus “may” be awarded – we don’t have to do that. It’s not by right. That will be big issue with Parish Road, we have to keep that in mind.

Mr. LaCortiglia – OSRD is a new bylaw. We do need to look at it & make some changes to the bylaw.

Mr. Moultrie – This is most appropriate for Annual Town Meeting when the main town business is done.

Mr. Hoover – If we thought there was one zoning amendment that was critical, we could bring it to Fall Town Meeting – otherwise we’ll take the top 5 or 10 to the annual town meeting.

August 9 Meeting

Mr. Hoover – I may not be able to attend the meeting on August 9th.

Carleton Drive Proposal

Mrs. Buck – I have received an inquiry regarding a proposed 90-100k sf manufacturing building for the end of Carleton Drive. In many communities, there is a technical review meeting for this sort of thing with the PB, ZBA, Selectman, Com Comm – so the various boards are informed. Then the applicant can come forward with their application later. This prevents hearsay. The area is zoned commercial requiring a ZBA special permit for manufacturing. Is it appropriate to set up a technical review meeting now?

Mr. Howard – Does it go to the ZBA first?

Mrs. Buck – It could. But in many communities, for a big project like this, the town would proactively facilitate an initial conversation between the boards.

Mr. Moultrie – Doesn’t the Building Inspector handle that? He makes the initial call on which direction it’s going.

Mrs. Buck – I have talked with John Caldwell about that before. It should go to the ZBA first if special permits are required – according to my conversations with the ZBA & Building Inspector. It would be good to have heads up of the proposal.

Mr. Hoover – Legally they should get interpretation from the Building Inspector first.

Mr. Moultrie – He is the code enforcement officer. It's always handled that way.

Mr. Hoover – We are trying to get all departments to hear new projects.

Mrs. Buck – For a project of that magnitude everyone should know what's proposed & what the impacts might be. It would be good to have the applicant come & present the project to representatives of all relevant boards.

Mr. Hoover – We have had examples of information we shared with the ZBA, information that only we could provide, that helped them make a determination. That's a point that's worth considering. It should be pursued, the mechanism of how to do it just needs working out.

Communications with Mr. Kennedy

Mr. Hoover – Regarding Kennedy & National Avenue. I want to make it clear that any requests for special meetings must come through the board at a public hearing. There is a lot of pressure behind the scenes. I am drawing a line so it is out in the open.

July 26, 2006 Planning Board meeting adjourned at 9:40 pm