

**SEEKONK PLANNING BOARD**  
**Public Hearing and Regular Meeting**  
**MINUTES**  
**December 11, 2012**

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Present: Ch. Abelson, R. Bennett, S. Foulkes, M. Bourque, L. Dunn  
J. Hansen, Town Planner

Absent: J. Ostendorf (without cause), R Horsman (without cause)

7:05 pm Ch. Abelson called the meeting to order.

Ch. Abelson opened up the Public Hearing for:

**Definitive Subdivision: Pine Hill Estates**

Ch. Abelson read the order of business.

A motion was made by R. Bennett seconded by L. Dunn and it was unanimously

**VOTED: To waive the reading of the legal notice.**

**By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes**

Introduction of Town Planner and Board Members

Attorney Eric Brainsky representing the applicant introduced himself. He went on to summarize that the proposed definitive plan for the Conservation Subdivision is 10.93 acres in an R-2 zone. The subdivision consists of 10 house lots and has 57.8 % open space which is greater than the 40% minimum required. He noted the four waivers requested: Sidewalks on one side, 20' drainage easement, easement of 20' in width at dead end streets and a minimum center line radius of 240'. He also noted that the project as designed will require a variance from the ZBA. The variance is for the amount of disturbed area, pursuant to section 25.4 3. The plan would need relief, a variance of a 6.5%, which would be an increase from 25% to 31.5% to let people have 30' to 34' backyards. He also went on to explain that they ran across an issue after the PB packets had been sent and it was the question of, what if in developing these lots you had some type of site condition that required the house to be pushed back? Then a "contingency" variance would be granted which would give an additional 3.5% for limit of disturbance. He explained the "contingency" variance would only be used if the lot being developed showed a need through plans and septic approval. He noted a memo was given to the Planning Board outlining everything and asked for the memo to be incorporated into the record. He went on to say that this project and the nitrate loading analysis both received approval from the Board of Health on November 14, 2012.

L. Dunn asked that the limit of disturbance be explained.

Atty. Brainsky explained if you add them all up the total is 35%. The plan you have in front of you shows limited disturbance of 31.5% so that is a 6.5% deviation.

Paul Carlson from InSite Engineering representing applicant summarized that the property is 524 Newman Ave. and located within an R-2 zone. It is south of Water Lane and west of Read Street. Plan shows 10 house lots on 600' cul-de-sac road. It is a conservation subdivision which gives more than 50% as open space. He went on to say there will be 15,000' to 15,200 sq feet lots, individual septic systems and access to water, gas, and electric. They worked with Conservation Commission to have bordering vegetative wetland approval and performed perc tests with exception of lot 7 to submit for individual house lot. P. Carlson noted they had been before town's engineer and met guidelines and will utilize low impact development and minimize amount of area disturbed. The use of bio-retention area will be utilized. He also noted there is an infiltration pond in southeast of parcel. This will minimize the impact to surrounding area. Entire 100 year storm event captured with catch basins with hoods, forebay, infiltration pond and overflows that will be directed to the north and discharged. They also considered the areas that surround parcel and low spots for neighboring properties. The design utilizes the conventional cul-de-sac. DPW noted they do not have issues with the design. He went on to note they did perc tests on 9 out of the 10 lots. There is sand and gravel throughout entire parcel. He said they are limited on any of these lots with 10' side yards and both front and rear yard setbacks have to be met.

S. Foulkes asked if a lot has a house that has to be pushed back further would it encroach into the area where the trees are not supposed to be cut down.

Atty. Brainsky answered yes it would due to lot conditions (like on Lot 7). You might have to have an enlarged septic and push the house back and the 3.5% would afford the homeowner a larger back yard.

P. Carlson commented in every one of these lots, the mature trees even within the area of limit of disturbance and house will be maintained when possible.

R. Bennett commented that he thought the size of the septic would determine if you need additional area in the back. A four bedroom house will need a larger septic. If you are asking for an extra 3% it gives you free reign to maximize as much as you can.

Atty. Brainsky replied that was not the intent. He said what he calls the "by-right" variance, if granted by the ZBA, would allow for limit of disturbance and the intent would be to design a home to fit on plan as shown, not to design a huge home with a huge septic that would require the home to be pushed towards the back. The second 3.5% "contingency" variance is intended for scenarios where there is a site condition.

R. Bennett replied that it creates a grey area.

Atty. Brainsky replied that in the handout he just distributed tonight there was language that he suggested to be added into the decision. A "contingency" variance would have to be granted

from the ZBA and if granted that would allow the Town Planner to have the ability to modify the limited disturbance if the home or applicant proves it is necessary.

N. Abelson asked if any proponents would like to speak. None.

N. Abelson asked if any opponents would like to speak.

Valerie Carroll 484 Newman Ave. had concerns on the future of the maintenance of infiltration pond. She said when it rains the area gets wet and there could be a potentially bad mosquito problem in her back yard and wondered if there would be a homeowners association to take care of the infiltration pond

P. Carlson noted that as part of any new subdivision all drainage structures are obligated to fall under a homeowners association.

V. Carroll asked what sort of measures are in place to prevent encroachment on the open space.

P. Carlson said as part of this plan a split rail fence to line the limit of disturbance would be included in the decision.

Donald Chevrette 100 Cherry Hill Dr. said that he recently purchased property on Newman Ave. (lot 424). It was a distressed, two bedroom home with a cesspool. He went to the BOH to update the septic for a 3 bedroom home and was told he couldn't because it was in the aquifer protection area and was limited to a 2 bedroom home. He said he went on to make it a 2 bedroom home but he did not understand how the subdivision could be approved for 10 houses with over 2 bedrooms because his property is only 150' from where the subdivision is proposed and in the aquifer protection area.

Atty. Brainsky said he could not address that but his client satisfied all of title five and the loading analysis and the BOH approved 4-1 saying they met the regulations.

P. Carlson said as part of nitrogen loading analysis they were allowed seven 4 bedroom homes and three 3 bedroom homes within the entire subdivision.

R. McLintock Oak Hill Ave. noted that he was attending the PB meeting not as member of the Board of Health or the Board or Selectman but as a concerned citizen. He said he was concerned because the subdivision is close to the wells that service the town and if the definitive plan is approved there will be a lot of uneasy people and could cause a serious nitrate loading problem. He asked the Planning Board to listen to the Water District and what they had to say. He also said in his opinion the fast system at the middle school has not worked properly since the day it was installed. He said he wants development in Seekonk as much as anyone but in his opinion he does not want this development or any other development to infringe on the town's water supply. He said the Planning Board should listen and get information from a professional, Rob Bernardo from the Water District. He said the Planning Board is the only board that has the authority to do something about this development and if someone on the Planning Board felt unsure he asked them to not approve the subdivision.

Rob Bernardo Superintendent of the Water District said that there were three major areas of concern the Water District has with the project; public health, public safety and financial.

He first commented on the public health concerns of nitrates. He said that the ingestion of water with elevated levels of nitrates have shown to cause various levels of methemoglobinemia or blue baby syndrome and sometimes death in infants less than 6 mos. He read a letter from consultant Ryan Trahan of Professional Engineers/Environmental Partners Group concerning a water study focusing on the impact septic systems have on ground water quality.

He went on to say that the graphs he handed out showed the relationship on how effective or not the middle school fast system is on removing nitrates from the waste water from the middle school. He went on to comment about public safety and said if we lose a single well we would be dependent on purchasing water to meet daily demands and fire protection, if we lose two wells we would be dependent on purchasing water from Pawtucket.

R. Bernardo went on to discuss the financial concerns in which he said nitrates are one of the most expensive to remove from ground water. He noted that the applicant has not provided any empirical data showing which direction the ground water will flow from the site. He said with the Newman well fields pumping all four wells at approximately 2000 gallons per minutes you have an idea where and what direction the septic leaching will flow from this site.

He also said that nitrates are one of the most expensive to remediate and Seekonk does not have a process to remove nitrates and you can't boil nitrates out. He said that reverse osmosis and ionic exchange is the only process that removes nitrates from drinking water and the cost estimates to do that would be \$650,000.00 to a million dollars so he urged the board to take great caution when approving the project.

Bill Rice Oak Hill Ave. Commented that state and local law require open space to qualify as a conservation subdivision. He also said he did not feel it was right that it would be asked of the Town Planner to change town bylaws for a house to accommodate a sewage system that is too close to the wetlands. He also went on to say it seemed as if it were being asked of the Planning Board to change the state and local wetland laws that prevent wetland disturbance. He said if there was not enough room in the subdivision for a back yard then maybe there were too many houses. In his opinion this is the wrong place for subdivision to go in.

Mr. Chevrette wanted to make it clear for the record that he was not at the meeting because of sour grapes over being denied a 3 bedroom system. He was fine with that because he drinks the water in Seekonk, and he said he was concerned about what the Planning Board might be approving.

Steve Damico 81 Briarwood Drive spoke to the Planning Board and asked them to be cautious and not approve the subdivision. He referred to a study done by The Silent Springs Institute saying early exposure to common chemicals during pregnancy can cause breast cancer later in life. He also said according to the state registry that breast cancer is higher than average in Seekonk.

He said house hold chemicals are finding their way in wells and that we are playing Russian roulette with our drinking water and asked again that the board not approve.

Atty. Brainsky replied that since the onset of the project inflammatory comments like blue baby syndrome, breast cancer, toxins and chemicals have been thrown around. He reminded the board that it is a 10 lot subdivision. The town conservation subdivision ordinance requires 40% open space the applicant is providing 57.8%. He also reminded the Board that as part of the conservation requirements the applicant must show a conventional yield plan. The conventional plan shows 10 lots can be fit with extensive roadway, sidewalks, impervious surface, by right without any dedication of open space and without any nitrate loading analysis. He said the applicant if he wanted could get permits for a 10 lot subdivision and clear cut the property. He said his applicant was making a choice to move toward a development standard that the town of Seekonk has been moving toward which is, smaller lots with open space.

He went onto say that Mr. Trahan advised that he had little or no experience with septic systems while in a joint meeting with the BOH, BOS and Water Dept. He said Mr. Trahan in his letter of Oct. 16, 2012 alleges concerns about nitrate loading and notes that if the subdivision were approved and nitrates levels increased above level of 5 milligrams per liter the district would be subject to Mass DEP regulations. He went to say that after receiving Mr. Trahan's letter his client responded with a letter to the BOH that issues were addressed. The response noted there was no empirical evidence submitted by Trahan to the Water Dept. saying that there was a nitrate loading problem and there was no empirical evidence that the project would cause a nitrate loading problem in the area, hence the 4-1 approval from the BOH.

He went on to say that Mr. Bernardo handed out a graph showing high nitrates coming out of the middle school. Atty. Brainsky said what he gave to the BOH and relied on significantly for information was the 66<sup>th</sup> Annual Report of the Seekonk Water District. The report was year ending December, 2011 and signed by the water commissioners on 4/12/12. He noted that on page 6 there was a section on nitrates and it said that the nitrate levels are well below the limits set by the EPA and DEP. It also said that as precaution, every other month the District continued to collect water samples from the monitoring well located in the rear of the middle school and the production well (GP4) closest to the Middle School to verify that the waste water treatment system at the school was working properly. Atty. Brainsky then said that sometime between April 12, 2012 and the project being submitted there was some sort of change apparently in the Water Depts. findings. He did not think it was appropriate to speculate that the project could cause blue baby syndrome or cancer or any other type of terrible sickness particularly in light of the fact that the water report signed 8 months earlier stated there was no issue.

Atty. Brainsky also said he had a map that showed existing cesspools that belong to the Town of Seekonk and the water district in close proximity to the well GP4 and said if there was a nitrate loading issue he would suggest, respectfully, that the town and the water district look to its own infrastructure instead of looking at his client's subdivision. He said that other than the variance on the limit of disturbance, the subdivision satisfied the requirements of the subdivision control law and requirements of the nitrate loading analyses and the overall BOH proceedings.

P. Carlson furthered commented saying that by right they could develop 10 lots with 1 acre lots and clear cut the entire parcel. He went on to say the requirements of zone 2, which the

subdivision falls under, states they must go by the nitrate loading analysis which falls under the 440 rule. It means that one 4 bedroom home is allowed 440 gallons per day per 1 acre lot. The nitrate loading analysis was submitted to the BOH and per the 440 rule the development could have seven 4 bedroom homes and three 3 bedroom homes. That information was submitted to the BOH and is available to anyone who wants to see it. He went on to say that the subdivision in relation to the GP4 well is 726' and the closest lot is 1050' and 1130' to closest septic system. All septic systems are designed in accordance with BOH and DEP. He noted within the area of almost 1500' there are nine cesspools, which is just a hole in the ground that leaches right into the ground. He went on to point out that the concession stand at the ball fields behind the middle school is a cesspool that is 550' away. He also said the Water Distribution building which has its own septic system is 440' away and the Water District's own office, which has a cesspool, is 705' away and the middle school is 1158' away. He noted that the subdivision would meet every guideline required under BOH and DEP and there have been no supporting documents with empirical data to show the subdivision will be detrimental.

R. Bernardo responded that at the November 14, 2012 BOH meeting P. Carlson was reprimanded by the BOH Chairman for forgetting to include data reports. He also commented that P. Carlson would have people believe that the 3 people who work at the Water District office and the concession stand's septic system that hardly gets any use and the water treatment plant septic system, which one person on a shift at a time, are significant contributors to the nitrate loading in this area. He asked the Planning Board what level of nitrate contamination in the drinking water supply they would be comfortable with. He said right now well GP4 is at level 3.5 which makes him uncomfortable. He said that everyone has heard what nitrates can do and it is not inflammatory, it is facts from EPA and DEP.

Atty. Brainsky said he resented the implication Mr. Carlson failed to supply information to the BOH. A day after the BOH meeting an email was sent regarding the missing information that said Mr. Carlson did not omit anything as it was an omission from someone else. He asked why would they reference information in the report and then not supply it.

L. Dunn said we have no bylaws or guidelines to go by in the subdivision rules. The bylaws begin with a paragraph about protecting the safety and welfare of our town. That is all she could find as back up on this issue. Traditionally the Conservation Commission is the keeper of our wetlands but this is something different. She said it was uncharted territory and said she could not vote for something that could possibly affect the health of most of our citizen's children and grandchildren.

A motion was made by M. Bourque seconded by R. Bennett and unanimously

**VOTED: to adjourn the Public Hearing**

**By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes**

M. Bourque commented he was torn as he understands the public safety issue and the financial problems for developer; he was not prepared to make a decision tonight and needed more time to study the information that was provided that night.

L. Dunn spoke that she has not seen any projections on the flow through on each lot.

R. Bennett said the Planning Board is ultimately responsible and he needed to look at the information further. He was not comfortable to vote on it tonight.

Atty. Brainsky said his client would agree to a January 30 continued deadline provided the public hearing stayed closed. He supposed the purpose of the extension would be to enable the Board to review more information.

A motion was made by M. Bourque and seconded by L. Dunn it was unanimously

**VOTED: To continue until January 22, 2012**

**By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes**

PB requested BOH packet information to be sent to them.

**Form A Palmer River Development Co., LLC -Plat 17, Lot 79 - Jacob Street and Taunton Avenue**

Christian Farland of Thompson Farland Professional Engineers/Land Surveyors summarized that Plat 17, Lot 79 contained 16.9 acres and on the northerly side of Taunton Avenue in a R-2/mixed use zone. They were proposing to divide off 4 lots on Taunton Ave. Three lots have adequate frontage, 120' required. Parcel D does not have adequate frontage and is unbuildable and will be used for an easement.

R. Bennett made a motion seconded by M. Bourque and it unanimously

**VOTED: To endorse Form A Palmer River Development Co., LLC -Plat 17, Lot 79 - Jacob Street and Taunton Avenue**

**By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes**

**Preliminary Plan Jacob Hill Estates – Plat 17, Lots(s) 79 – Off of Taunton Ave & Jacob St.**

Christian Farland president of Thompson Farland representing client Palmer River Development summarized that Jacob Hill Estates is an 11 lot preliminary conservation subdivision. He said the yield plan indicates 9 developable lots possible. The new incentive zoning provision will be utilized. He said that they had done some informal soil testing and they had their own consultant flag the wetlands and it was approved at the most recent Conservation Commission meeting. He went on to describe the property containing 16.9 acres; the land slopes through the back of the residential properties along Jacob Street and slopes towards Taunton Ave. and bordering vegetative wetlands. The roadway will be 859' and will be a cul-de-sac. The plan is designed to

minimize impact and all house lots will be outside of 100' buffer. He went on to say that during the definitive process they will get more details for drainage runoff but it will be an improvement to the storm water that goes onto Jacob Street now.

L. Dunn asked about the road width and sidewalks.

C. Farland said the road is 22' of pavement and 1' Capecod berm and sidewalks on one side.

A motion was made by R. Bennett seconded by M. Bourque and unanimously

**VOTED: to approve the preliminary plan Jacob Hill Estates with the following condition: Under section 4.4.2 of the Subdivision regulations, the lfe of the proposed buildings shall be at least two (2) feet above the maximum groundwater elevation. This shall be shown on the Definitive Plan along with the appropriate groundwater and soils data as per section 4.3 & 4.4.**

**By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes**

### **Discussion Zoning Bylaw update**

Katie Resnick from Horsley Whitten summarized the Draft Zoning By-law Audit.

She reviewed the memo sent to J. Hansen on December 4, 2012 and went over the background of why the audit was being done. She then went on to describe the four types of zoning; Euclidean Zoning, Form-based Zoning, Performance Zoning and Hybrid Zoning.

There was a lengthy discussion on the subject. (please refer to memo of 12/4/12 for detailed information)

A motion was made by M. Bourque and seconded L. Dunn and unanimously

**Voted: to approve the Draft -1 Zoning By-Law –Audit**

**By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes**

### **Discussion Accessory Apartment Zoning By-Law**

J. Hansen discussed model by-law for accessory apartment by-law. He said the reason he was putting this before the Board was because it was decided when the housing section in the Master Plan was approved that if incentive zoning was approved at town meeting, which it was, then this would be the next step in looking at ways to provide alternate housing. He said he researched this model by-law from the State. He concluded by telling the Board to look it over and write down any questions concerns or ideas and it would be discussed at a future meeting.



**Approval of Minutes: 10/9/12**

A motion was made by R. Bennett and seconded by M. Bourque and unanimously

**VOTED: to approve the 10/9/12 Planning Board minutes**

**By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes**

A motion was made by R. Bennett and seconded by M. Bourque and unanimously

**VOTED: to adjourn 10:00PM**

**By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes**

Respectfully Submitted by,

Florice Craig