

SEEKONK PLANNING BOARD
Public Hearing & Regular Meeting Minutes
March 12, 2013

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

Absent:

6:40 pm Ch. Abelson called the meeting to order.

Ch. Abelson read the Chairman's Declaration:

As Planning Board Chairman, I hereby declare, under G.L. c.30A, 21(b)(3) and (4), that: the purpose of the scheduled executive session will be to discuss litigation strategy relating to litigation known as Najas Realty, LLC v. Abelson, et al., Land Court 2013 MISC 47603-KFS, which concerns the Pine Hill Estates Subdivision and 10 acres of land located at 524 Newman Avenue; A discussion of litigation strategy in open session could compromise the purpose for executive session; and the Planning Board shall return to open session at the conclusion of executive session.

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

VOTED by roll call vote: Ch. Abelson, M. Bourque, L. Dunn, R. Bennett, R. Horsman, J. Ostendorf & S. Foulkes: that the Planning Board go into executive session, under G.L. c.30A, 21(b)(3), to discuss litigation strategy relating to litigation known as Najas Realty, LLC v. Abelson, et al., Land Court 2013 MISC 47603-KFS, which concerns the Pine Hill Estates Subdivision and 10 acres of land located at 524 Newman Avenue, as the Planning Board's Chairman has declared under that discussion of the litigation strategy in open session could compromise the purpose for executive session and with the Planning Board to return to open session at the conclusion of the executive session.

RETURNED TO OPEN SESSION AT 7:20PM

Public Hearing - 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.

Introduction of Town Planner and Board Members

Attorney Eric Brainsky representing the applicant introduced himself. He went on to summarize that this was a remand from land court and the plan had been amended. He said the plan adhered to and satisfied all requirements of the bylaws.

P. Carlson of InSite Engineering representing the applicant introduced himself. He went on to summarize that the subdivision plan had been modified. He went onto say that it went from 10 to 9 house lots and the length of road was reduced by 80 feet. He said the limit of disturbance area still maintained 25% per the bylaw and the design of the drainage would be the same. He said the plan satisfied all facets of the subdivision control bylaw and that he, Mr. Brainsky and Mr. Najas were seeking an approval.

J. Ostendorf commented that the plan before him satisfied his concerns. He went onto ask if parcel 3 was going to be re-graded to drain towards Jacob Way.

P. Carlson noted that the fronts of all the lots would drain toward Jacob Way.

Ch. Abelson commented that that all septic systems in the development would be in the front yards.

L. Dunn asked if nitrogen loading changed with one less house lot.

P. Carlson answered that the design calculations did not change as they were conservative to begin with.

L. Dunn asked how the amount of fertilizers used in the subdivision would be controlled.

Atty. Brainsky answered it was up to the Homeowners Association to enforce that.

L. Dunn commented that the northwest side of the plan seemed to be on the edge of a flood zone.

P. Carlson commented that the flood zone is off of the lots and there is a 200 foot river buffer zone. He said they did submit the requested waivers to make that part of the record.

C. Abelson asked if there were any proponents or opponents to speak.

R. McLintock of 40 Oak Hill Ave. Seekonk commented that this had been aired over and over and in his opinion it comes back to, can the water supply be contaminated by the subdivision. He said he thought there was no question about the gravel being removed from the recharge area and there is an issue of the safety for the town water and he encouraged the Planning Board not to change their vote.

R. Bernardo of the Water District commented that he wanted to remind the Planning Board that the decision they would be making would affect the entire water supply of Seekonk. He went on

to say that the Water District's position on this has been clear and the reduction from 10 to 9 lots would not change anything. The concerns are still public health, public safety and financial. He said the key question had not been answered in that there are four wells pumping at approximately 3,000 gallons per minute and no one knows where the water will flow. He said to approve this without knowing the answer to that is like playing Russian roulette with the water supply.

J. Ostendorf commented that he understood R. Bernardo's concerns but under the current bylaws the Planning Board could not do anything about it.

R. Bernardo said he did not understand that because the Planning Board denied the initial application.

Ch. Abelson said that it was denied based on not being in compliance with a zoning bylaw. He further explained it was denied because they were disturbing more area than was allowed in a conservation subdivision. He said that was the main reason the Planning Board had legal standing to deny it but once that was removed they were now in compliance and the board no longer had any legal right to deny it.

L. Dunn asked why the Planning Board had not asked for a flow test.

Ch. Abelson said it was not part of the Planning Board's review process.

J. Ostendorf commented that if the Board of Health approved the subdivision and said they are not concerned with the nitrate levels why would we not believe them.

Ch. Abelson said they had voted in favor of it.

Atty. Brainsky said they did do a nitrate loading analysis for the Board of Health and they approved the plan 4-1.

J. Ostendorf noted he had not seen in any documentation that the nitrates levels were high.

R. Bernardo said in past meetings he presented a graph that showed the relationship between the Middle School septic system and nitrates levels nearest to the GP4 well. He said the levels are variable and it was not a good project for the community.

J. Ostendorf commented that he just did not know if the Planning Board had the power to deny after the applicant had come back with a plan that satisfied the bylaws and is within the 25% disturbed area. That was his original concern and wanted it to be on the record.

R. Bernardo read from an October 4, 2012 letter he wrote to the Planning Board and in closing urged them to deny it for the good of the water supply.

Larry Havrylick 56 Eleanor Dr. Seekonk commented that if Water Superintendent said it was not good for the town he thinks that is an important statement for the Planning Board to consider. He

said someone has to protect the water and thought there should be some hydraulic study done to make sure that the septic discharge cannot go into the wells. He went on to say that if there was a possibility of that then the present Planning Board would go down in history as the Board that ruined the Seekonk water supply. He said there is nothing in it for him and he is not against development he just wants clean water.

R. McLintock asked J. Ostendorf where in the Board of Health bylaws he thought they had the ability to stop the project.

J. Ostendorf replied his understanding after the last public hearing was that if a subdivision met all requirements and had been approved by the Board of Health then he was not aware that the Planning Board had the power to deny it, even if they thought it was not in the best interest of the town.

R. McLintock said that the Planning Board is responsible to all the people who elected them as he is to the people who elected him, as the Water District is to see that the water in town is safe.

J. Ostendorf said he echoed a lot of those concerns at the last public hearing but after speaking with Town Counsel he realized it wasn't part of the boards grant to just be able to deny.

R. McLintock said that Town Counsel is just that, it is counsel, they aren't always right, they aren't always wrong, they have an opinion and this has to do with the well being of the people and businesses in town because without water there is no town. He asked ask the Planning Board to consider that when voting.

Atty. Quirk commented that under chapter 41 section 81M there is a specific provision that states that in the event of the subdivision application, if the Planning Board finds it satisfies all the subdivision rules and regulations and gets a positive recommendation from the Board of Health, then there is a right to the applicant for an approval of the subdivision.

S. Foulkes asked what board can ask for a hydro analysis to find out if there are potential issues.

L. Dunn asked if the statement in the zoning bylaws which says that the aquifer protection zone supersedes all other zones does not apply.

Ch. Abelson noted that it does not say supersedes it says it is an overlay district and there are special requirements within that district.

Ch. Abelson asked for a short break.

Atty. Quirk said that it did not prohibit the type of development they had before them. She said in section 5.6.2.2.4 of the Subdivision Regulations it says there is an ability to ask for an impact study. She said she spoke to J. Hansen and he said the nitrogen loading analysis had been provided to and approved by the Board of Health so that had been satisfied.

Ch. Abelson asked if any other opponents or proponents wanted to speak. (None).

L. Dunn commented that because of the edges of this area being in the flood zone we could be facing a sea level rise. She said this was not in the realm of zoning bylaws so she did not know but the board should keep that in the back of their minds.

J. Ostendorf summarized that he was sympathetic to what the Water District and townspeople had to say but it seemed clear from Town Counsel that the Planning Board lacked the power to deny something simply because they did not think it is in the best interest of the town and he said he did not know where that power rests.

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

VOTED: to close the Public Hearing

J. Ostendorf commented that he was standing by what he had said before, that in his opinion this was not in the best interest of the town and the Planning Board was not allowed to deny something just because they were not in favor of any development on this site. He went on to say that the new plan addressed all the things that concerned him and said it complied with the current bylaws.

R. Bennett commented that the Planning Board had to put its faith in the Conservation Commission and the Board of Health that they did their due diligence in their review of this plan.

Atty. Quirk then approached and suggested the following motion which was moved by R. Bennett and seconded by R. Horsman: to approve the subdivision with the conditions of the 3/4/13 staff memo and have the Town Planner and Town Counsel reduce it to writing and have the Board approve the written decision at the next meeting.

AYE: R. Bennett, M. Bourque, S. Foulkes, J. Ostendorf, R. Horsman

Nay: L. Dunn, Ch. Abelson

Motion Passes: 5-Aye, 2-Nay

A motion made by Ch. Abelson and seconded by J. Ostendorf and it was unanimously

VOTED: that once the Town Planner and Town Counsel have written the decision, it is to be circulated to all Board members and for the members to review it and for any member with an issue with the decision to contact the Chair and ask that it be further discussed at the next meeting.

ANR Plan: 49 & 59 Perrin Ave. Applicant Chevrette/Kane

J. Hansen summarized the existing conditions are that a single family dwelling is located on each property and are zoned R-1 with a paper street (Wood St.) bisecting the properties. The proposed lot amendments would be to abandon the paper street and give half to each property owner increasing frontage of each lot by 25'.

J. Hansen recommended the approval of the application.

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

VOTED: To endorse the ANR for 49 & 59 Perrin Ave. Chevrette/Kane

By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes, J. Ostendorf, R. Horsman

Subdivision Rules and Regulations Amendments

Ch. Abelson read the order of business.

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

VOTED: To waive the reading of the legal notice.

Introduction of Town Planner and Board Members

J. Hansen summarized that the board had already seen the amendments twice and what they had before them was the official adoption that is required via a public hearing. He suggested the proper motion would be to approve the amendments to the Subdivision Rules & Regulations as prepared.

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

VOTED: to close the public Hearing

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

VOTED: to approve the Subdivision Rules and Regulations Amendments

Discussion Item

The Planning Board discussed the possibility of making a hydro-geologic study part of the bylaws or regulations. J. Hansen will research such studies and how other towns incorporate them into their bylaws or regulations and will report back at the next meeting.

Correspondence

J. Hansen told the board Town Meeting is March 27, 2013

J. Hansen summarized that he has a request from an applicant to have a pre-application meeting for a site plan review in front of the Planning Board. He said in the bylaws that it falls under the purview of department heads. He said this is something he has never offered to an applicant before and wanted to get the boards take on it as it is not in the regulations.

J. Ostendorf made a motion to continue the present practice to not allow a preliminary review of a site plan review

Further discussion

R. Bennett made a motion to allow a preliminary review of a site plan review.

Further discussion

L. Dunn seconded J. Ostendorf's motion and it was

VOTED: to continue the present practice to not allow a pre-application review of a site plan review

Aye: Ch. Abelson, L. Dunn, M. Bourque, S. Foulkes, R. Horsman, J. Ostendorf

Nay: R. Bennett

Motion Passes (6-1)

Approval of Minutes: 2/12/13

A motion was made by S. Foulkes seconded by L. Dunn and it was

VOTED: to approve the 2/12/13 Planning Board minutes

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

Abstain R. Horsman and J. Ostendorf (reason: absent with cause)

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Adjourn

A motion was made by R. Horsman and seconded J. Ostendorf and it was unanimously

VOTED: to adjourn at 9:15 PM

By: Ch. Abelson, R. Bennett, L. Dunn, M. Bourque, S. Foulkes, J. Ostendorf, R. Horsman

Respectfully Submitted by,

Florice Craig