

**MINUTES OF BUSINESS MEETING
HELD BY THE PLANNING AND ZONING COMMISSION
MAY 18, 2009**

ROLL CALL:

Members Present: Eugene Sierakowski, Chairman
Kevin Dougan, Secretary
Salvatore Mancini
Andy Kidd

Alternates: Eric Prause (sitting)

Absent: Joseph Diminico, Vice Chairman
Matthew Galligan

Also Present: Mark Pellegrini, Director of Neighborhood
Services and Economic Development
Renata Bertotti, Senior Planner
Geoffrey Naab, Town Attorney
Ginger MacHattie, Recording Secretary

Time Convened: 9:25 P.M.

NEW BUSINESS:

BIRCH MOUNTAIN ESTATES VIII – 190V Coop Sawmill Road – Inland Wetlands Permit – Request for extension (S-201); Subdivision – Request for extension (S-165); Erosion Control Plan – Request for extension (S-166)

Mr. Sierakowski said this request for an extension presents some challenging issues. He asked Town staff to address the Inland Wetlands Permit first.

Mr. Pellegrini said there were some inland wetland systems on the plan but most work around those is complete. It is his understanding that no additional wetlands work is to be done. He said that Town staff recommends the permit should only run until October 1, 2009.

Inland Wetlands Permit (S-201) – Request for extension

MOTION: Mr. Dougan moved to approve the extension for the inland wetlands permit to October 1, 2009. Mr. Kidd seconded the motion and all members voted in favor. The motion passed five to zero.

Mr. Sierakowski verified that the State Statutes grant the authority to require a bond but the Town regulations are more restrictive and we have, in effect, precluded ourselves the ability to require a bond. Town Attorney Naab said that summary is accurate. Mr. Sierakowski said the

subdivision appears to be like a quarrying operation. Regulations allow the developer to crush rock on site to bring the subdivision to grade. A suggestion was made at the last meeting to bring the large chunks off site for crushing. Mr. Sierakowski asked if there is any legal opinion on whether the PZC can mitigate some of the problems by mandating that crushing take place off site.

Attorney Naab said there is not clear law on the subject. There is no authority within the State Zoning Statutes to direct a developer to do crushing off site. He has to remove the rock to bring the land to the approved grades and has to get the rock off of the property. How he does this is up to him so long as he does not violate any laws.

Mr. Mancini expressed concern over public safety issues, especially the radon issue. He asked if there is anyone authorized to look into this matter. Mr. Pellegrini said he had a conversation with the Town Health Department staff. Radon is a naturally occurring carcinogenic substance. There are advisory actions recommended but not enforceable. If levels of radon have increased as a result of blasting, that is an issue between the property owner and the blaster.

Mr. Mancini mentioned there have been many cease and desist orders, violations on the property and the general lack of stewardship over the property. He is sympathetic to the homeowners. He hopes the developer takes into consideration the comments he heard tonight and that the stewardship of the property improves.

Mr. Dougan said he has the same concerns as Mr. Mancini and thinks the radon poses a threat or danger to the health or public safety.

Mr. Prause said a request for extension by this applicant was approved in 2006. He had the chance then to evaluate and declare a timetable and at this point Mr. Prause does not see the need for the PZC to offer an extension. The three-year extension was not taken advantage of and he does not feel obligated to provide an additional extension.

Mr. Sierakowski asked what the PZC's authority would be under the existing regulations. Mr. Pellegrini said the PZC has to consider that the subdivision is being built to the approved plan and a great deal has been completed. If the PZC does not approve the extension, the applicant would have the right to reapply. If he meets the regulations, he should be approved. If he were not approved, the PZC would have to state the reasons. A new application would be carried out under the regulations in effect when the new application was received. Staff's opinion is that a

limited extension should be given to allow the applicant to complete the public improvements. It also recommends increasing the erosion control bond to stabilize the site and remove stockpiles.

Mr. Kidd said that as much as he would like to agree with Mr. Prause, he will go with Town staff's recommendations, which would provide more control over the situation. He would like to see this approved tonight with a finite time limit of October 1, 2009. Between now and then, the PZC should take a look at the zoning and subdivision regulations. If the applicant defaults, the Commission can deny any further extension requests and will have more control over the situation through regulations by October.

Mr. Mancini asked what happens if the Commission does grant the extension request and the public improvements are finished by October 1. Mr. Pellegrini explained that once the public improvements are accepted, the subdivision is complete and the deeds are transferred. That leaves 21 building lots. People can pull permits and build houses. There is no time restriction.

Mr. Sierakowski asked what the Town would be left with if it denies a new application. Mr. Pellegrini said that it would be left with what is there now. The Town would stabilize the site, loam and seed, and barricade the street. Town staff wants to complete the subdivision as quickly as possible and correct weaknesses in the regulations.

Mr. Dougan said he agrees with Mr. Pellegrini. The public made it clear that they want this project to end as soon as possible. He said that October 1 is much better than five years. This is the lesser of two evils.

Mr. Prause said what the Commission is doing is postponing this until October 1. He wondered if this plan is even appropriate now. Even if we used the same guidelines, he asked if it was worth going through the exercise to see if it even makes sense and is practical. He thinks the Commission didn't know enough in 2001. This project is 90% complete, but there are no houses. He thinks it would be wise to reassess this project and figure out once and for all if this is a plan worth having.

Mr. Dougan asked if anything in the subdivision regulations as written today could preclude the Commission from approving a new application for that site. He said he is trying to assess the risk; if there is no chance of denying it he doesn't see the value in prolonging the project another five years.

Mr. Pellegrini said the subdivision regulations are broken down into general language and specific regulations. Grounds to deny would likely be found in the more general language but pointed out that if a new application came in today, it would be difficult to address many things and gave the example of “preservation of natural features.”

Mr. Sierakowski asked Attorney Naab, given his knowledge of the regulations, if there is anything he can think of within the jurisdiction of the Commission beyond what has been recommended.

Attorney Naab said that a number of issues have been discussed and he believes the staff recommendation is the practical way to address this issue. The Commission can impose reasonable conditions but needs to be aware that the more restrictive and expensive the conditions posed, the more likely the decision will be challenged legally. What Town staff has proposed is legally permissible and practical.

Mr. Sierakowski said he agrees with the comments made; getting these improvements done by October 1 is the lesser of two evils.

Mr. Prause said the subdivision regulations give authority to take safety precautions to protect against hazards. He thinks there is a legal leg to stand on as far as further construction.

Mr. Sierakowski said this is a situation where we are 90% there and have to deal with the situation as it is now. A new application would need to be looked at within the context of the current regulations.

Mr. Mancini said he concurs. If the Commission denies the application the applicant can come back with a new application that would be approved for five years. If we grant an extension, there is a deadline. The Commission is here to uphold regulations, not change the law as we want it. This extension request brought up some tremendous questions that the Commission will look at and address so this does not happen again. He implored the applicant to expedite this project and make some amends.

Subdivision (S-165) – Request for extension

MOTION: Mr. Mancini moved to approve the subdivision extension with the conditions that:
1) The existing erosion and sediment control bond amount be increased to a total of \$52,668.00; 2) the excavator shall limit the hours of full operation to weekdays from 8:30 AM to 3:30 PM, with no hammer activity on Saturdays. Other work may be

conducted from 8:30 AM to 3:30 PM on Saturdays but without the noise or concussion of the pneumatic hammer used to break up the ledge. No excavation activities will occur on Sundays; and 3) all site work is to be completed by October 1, 2009. Mr. Dougan seconded the motion and Members Sierakowski, Mancini, Dougan and Kidd voted in favor; Member Prause voted against. The motion carried four to one.

Erosion Control Plan (S-166) – Request for extension

MOTION: Mr. Dougan moved to approve the erosion control plan extension with the condition that the existing erosion and sediment control bond amount be increased to a total of \$52,668.00. Mr. Mancini seconded the motion and all members voted in favor. The motion passed five to zero.

ADMINISTRATIVE REPORTS:

Appointment of Inland Wetlands Duly Authorized Agent to issue minor impact inland wetlands permits

Mr. Pellegrini explained that the Commission received a memorandum from Environmental Planner Matthew Bordeaux in their agenda packet with language that allows the Environmental Planner to approve certain kinds of applications in the upland review area. This can be discussed at a future meeting.

Mr. Sierakowski asked that Mr. Bordeaux be at the next meeting to be available for questions on this matter.

RECEIPT OF NEW APPLICATIONS:

ST. PAUL'S COLLEGIATE CHURCH – 416 Middle Turnpike East (aka 309 Broad Street) – Special Exception (S-215) – request for a special exception under Article II Section 24.02.01(g) of the zoning regulations to hold religious services in the existing theater.

RAYMOND WELNICKI – 43 Pondview Drive – Inland Wetlands Permit (W-139) – installation of curtain drain for septic system to improve drainage.

CMRE, LLC – 278 Hackmatack Street – PRD Zone Change and Preliminary Plan of Development (C-223) – request for zone change from RR to PRD for the construction of a 13-lot single-family planned residence development with associated driveways and utilities.

The chairman closed the business meeting at 10:40 p.m.

I certify these minutes were adopted on the following date:

Date

Eugene Sierakowski, Chairman

NOTICE: THE CASSETTE TAPE RECORDING OF THE BUSINESS MEETING CAN
BE HEARD IN THE PLANNING DEPARTMENT.

OFFICIAL TAPE NO. 1038, 1039

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