

Planning Board Minutes June 14, 2011

BOSTON PLANNING BOARD JUNE 14, 2011

PRESENT: David Stringfellow. Chairman

Patricia Hacker, Vice Chairman

Mike Cartechine

Robert Chelus

Keith Clauss

Joe Litwin

Jennifer Lucachik

Richard Skinner

ALSO Michael Kobiolka Town Attorney

PRESENT: Jeff Genzel Councilman ? Town Board Liaison

Thelma Faulring Secretary to the Boards and Committees

Richard Brox Planning Consultant

Paul Ziarnowski Prospective member

Tim O'Brien Bohler Engineering, Albany

Marty Schwanz 9015 Pearl Street ? Boston Fire Company member

Patrick Penrod (did not sign sheet) Boston Fire Company member

Ron Yormick 6405 Deanna Drive

The Planning Board conducted an interview with Paul Ziarnowski at 7:15 PM.

Chairman Stringfellow called the meeting to order at 7:30 PM.

MINUTES

Mr. Stringfellow asked if there were any corrections or additions to the minutes of May 24, 2011.

Mr. Stringfellow made one correction on page 2.

With that correction Mrs. Hacker made a motion to accept the minutes of May 24, 2011, seconded by Mr. Clauss and carried.

CORRESPONDENCE

Secretary Faulring reported the following:

? Code Enforcement Officer Ferguson's May end of month report

Other correspondence at point.

DOLLAR GENERAL ? SITE PLAN REVIEW

Mr. Stringfellow recapped:

? The first submission of the Final Site Plan at the previous meeting

o There were some comments/requests made at that time

o Nothing major as I recall

? The Final Site Plan has been submitted responding to those comments

Mr. Stringfellow polled the Board members for any further comments on the updated site plan. There were none at this time.

Mr. Stringfellow read Planning Consultant Brox's review dated June 8, 2011.

Mr. Stringfellow: The Town Engineer was to also review the SEQR and go through the drainage calculations before the final approval of this. He has not completed that work as of right now. As far as I can tell that is the only outstanding item, so I would recommend that we recommend the Town Board approve it contingent on the Town Engineer's approval of the drainage and the SEQR material.

Mr. Cartechine: I'll second that motion.

Mr. Stringfellow: Motion and seconded is there any discussion? I'm sorry were there questions from the other Board members?

Tim O'Brien: Bohler Engineering representing Dollar General:

I just want to be sure the SEQR form goes before the Town Board also because they have to approve that prior to the final site plan approval. So the first motion should be to forward the SEQR form to them so they can declare themselves Lead Agency, which I think they've already done; and then they'd have to complete the SEQR form and then at the same time

because it's a non-coordinated review, they can also pass a resolution approving the project conditional on us working through the drainage details with the Town Engineer.

Mr. Stringfellow: Didn't the SEQR form already go to the Town Board?

Mr. Kobiolka: I think two meetings ago we sent this back to the Town Board to act as Lead Agency for this project and that's when the Town Engineer requested the long SEQR form, the long EAF. So the Town Engineer does have it.

Mr. O'Brien: the Town Engineer does have it, I spoke with him today, he has minor comments, which I believe in his letter states?

Secretary Faulring: There is a review from him. It was e-mailed to me at about 5:00 PM this afternoon. There are his May, 2011 comments and on the back his review of the new information.

The Planning Consultant's review and Town Engineer's review are both contained in the file and Mr. O'Brien was given a copy of each.

Mr. Stringfellow: We have a motion on the floor to recommend approval subject to this and one other condition, let's deal with that motion and then we'll make a motion on the SEQR item.

Mrs. Hacker: After reading this: additional information is requested of them; a complete review and acceptance of the SEQR should be conditional of any site approvals afforded the applicant; and the third item I have issue with ? since the final discharge of stormwater from the site is received into the enclosed drainage system of NYS 391, the applicant must also consult with and get approval from the NYSDOT.

Mr. Brox: That's standard stuff, that's no big deal.

Mrs. Hacker: But it should be part of the conditions that we would send a recommendation with these conditions included.

Mr. Stringfellow: A lot of this stuff has already been done. So we already have a condition. The motion was to recommend approval on the condition that the drainage calculations meet the Town Engineer's approval and that the environmental SEQR meets the engineer's approval. I guess we need to add the other three conditions that were in the Town Engineer's letter dated June 14, 2011.

Mr. Stringfellow: So now we have a motion to approve with five conditions; is there any comment or suggestions from the Board members; any questions for the applicant?

Mr. Stringfellow called for the vote.

The vote was as follows: Mr. Cartechine, Mr. Chelus, Mrs. Hacker, Mr. Litwin, Mr. Skinner and Mr. Stringfellow were all in favor of the motion.

Mr. Clauss cast a negative vote.

Mr. Stringfellow: The motion is carried. Do we need a motion to refer the SEQR to the Town Board. I will make that motion that the SEQR form also be referred to the Town Boars so that they can take Lead Agency and do what is necessary to approve.

Mr. O'Brien: Right and you also have to ask the Town Engineer to assist on completing it if needed.

Mr. Stringfellow: Is there a second for that motion?

Mr. Chelus: I'll second it.

Mr. Stringfellow: Any discussion? All in favor please say aye. All were in favor of the motion.

Mr. Kobiolka: Mr. Stringfellow, did the Board follow the recommendation of the Town Engineer, in the first motion, three separate requirements, was part of that that the Planning Board should refer the action to the Town Board for page 1 and part 2 of the EAF? That's what you were talking about in regard to SEQR?

Mr. Stringfellow: Yes, that was the intention.

DISCUSSION ? 8032 BOSTON STATE ROAD

Mr. Stringfellow: The next item is for discussion only for the proposal of Bison Cycle Sales and Service to set up business at 8032 Boston State Road. This is the other of the two buildings that Mr. Barrett has owned for years. This is adjacent to what is now ?Buffalo Buck?s.?

Mr. Stringfellow: We have received a very preliminary site plan that does not meet a lot of the requirements of the Code. The applicant has stated that they were not going to be present tonight.

Secretary Faulring: Yes. They thought Planning Board meetings were every other Tuesday; I advised them that Planning Board meetings are the second and fourth Tuesdays, gave them the dates of the meetings in July and August; they had out of town plans for this week. I gave them a copy of Mr. Brox's review and at the suggestion of Councilman Genzel I mailed them a copy of Mr. Hannon's review.

Mr. Stringfellow read Mr. Brox's and Mr. Hannon's reviews.

Mr. Stringfellow: Many of the comments are the same. Basically it is clear that we need a lot more and more accurate information before we can go further with this. Would someone make a motion that we table it at this time?

Mr. Cartechine: I'll make a motion that we table it at this time.

Mr. Chelus: I'll second it.

Mr. Stringfellow: We have a motion and a second; Is there any discussion at this time?

All were in favor of the motion.

LIAISON ? COUNCILMAN GENZEL

Mr. Genzel reported from the Town Board meeting of June 1, 2011:

- ? Approved contract to BW Concrete \$8,280.00
- o New concrete paths at the Town Hall and at the parks
- o Picnic benches that won't need any maintenance
- o pads
- ? Received and filed correspondence from the Town of Orchard Park
- o Review and revisions made to their Town Code
- ? Received and filed a letter from Joanne Santonocito
- o Regarding the lack of inspection of Erie County sewer line replacement

- o Referred to Erie County
- ? Received correspondence from the Town of Hamburg for a Public Hearing regarding a two lot subdivision
- o Adjoins the Town of Boston
- ? Received requests for the use of facilities
- o Boston Youth Soccer League
- o Gaunches Unite
- o Boston Lions Club
- o Boston Conservation Advisory Council
- ? Accepted Planning Board? summer schedule
- ? Made two summer recreation appointments
- ? Made two Parks Department appointments
- o Adam Reichert
- o Amanda Jensen
- ? Received bid results for the mini-van for Dog Warden
- o Only bid was from Basil Ford
- ? Received reports from miscellaneous officers
- ? Drainage
- o Will be starting the 18-Mile Creek project
- o Between Zimmerman Road and 219 Expressway
- o Eastwood Industries has been contracted for the work
- o Chopping down trees leaning over creek
- o Two trees fell over at the Mill Street bridge

Mrs. Hacker: How is he getting in down there? The entry route?

Mr. Genzel: It is their obligation to find their own way in and gain permission

- o They will be on foot mostly

- o At the log jam, they're going to cable in and unlock the log jam, get that out of there and chopped up
- o They will be up on the bank because we can't have any vehicles in the stream bed
- ? We're looking at other miscellaneous drainage projects in backyards
- o What it comes down to is neighbors aren't maintaining any ditches or drainage facilities in their properties
- o We're looking into Code violations concerning that
- o Possibly issue summons
- ? Talked with Town Engineer tonight about the Dollar General
- o In touch quite a bit with him

Mr. Genzel: Are there any questions for me?

Mr. Clauss: The brush pick-up is scheduled for April and May. The last few days I've seen the chipper crew still driving around. Why are they out there? Are they trimming their own stuff, picking up stuff from the roadways; or are they picking up brush still?

Mr. Genzel: I think brush has ended, so if they're driving around they should be on Town roads. I know that Bob (Telaak) had been cutting some trees back on the right-of-ways.

Mr. Clauss: But the Town pick-up hasn't been extended?

Mr. Genzel: No. but I will verify that for you.

Mr. Clauss: They're doing their eight mile an hour drive around. I've seen them all over. This morning they were on the hill.

Mr. Genzel: I will check with Bob and find out for you.

TOWN ATTORNEY ? MR. KOBOLKA

Mr. Kobolka: Mr. Chairman I don't have anything to report; but I would ask our secretary if she's had any success in terms of locating Board sessions for training?

Secretary Faulring: To be very truthful the training is my least priority. I have to get minutes done for three Boards, the agendas out. I do have e-mails out but I can't make them respond. I

did mail out information on The Association of Towns training in Amherst. I was told that the cost for anyone who wants to attend would be approved. That is my update on training.

EXECUTIVE SESSION

Mr. Stringfellow made a motion to go into Executive Session, seconded by Mr. Clauss and carried.

Mr. Stringfellow asked all present who were not members of the Planning to leave the room.

Mr. Stringfellow made a motion to return to Regular Session, seconded by Mrs. Hacker and carried.

NON - AGENDA ITEM

Boston Fire Company

Mr. Stringfellow: The secretary just informed me that these two gentlemen are from the fire company; they are not on the agenda, and I had not heard that they were coming; but we will certainly listen to what you have to say or ask of us.

Marty Schwanz ? Boston Fire Company: I'm sure you remember that our site was approved conditioned on a variance for a porch along the street side. After further consideration we would like not to build that porch and rescind our variance application. So our question for the Board is: do we need a new approval for our building?

Mr. Stringfellow: The porch as I recall was in the front and with the porch you were no longer meeting the fifty foot setback.

Mr. Schwanz: That's right. With the porch it was short seven feet of the fifty foot setback.

Mr. Stringfellow: Other than that you're not proposing any other change?

Mr. Schwanz: No. just eliminate this setback and that puts the building fifty foot back from the road.

Mr. Kobiolka: Can we ask you why you want to change the design?

Mr. Schwanz: In parts of discussion over the variance and it would just make matters simpler as this time not to build that porch on there.

Mrs. Hacker: Your plans are exactly the same without the porch, nothing has moved?

Mr. Schwanz: Nothing has moved, no.

Mr. Stringfellow: I believe when we considered that site plan it was stated that if you did not receive the variance for the porch, you would simply not build the porch.

Mr. Schwanz: That's correct. At this time we haven't received the variance so we would like to eliminate that porch.

Mr. Stringfellow: Mr. Kobiolka, do you know where we?

Mr. Kobiolka: If that's the way the Board approved the motion that in order to build that porch, the plans were approved, but in order to build that porch the Fire Company would have to get a variance, if they're withdrawing that variance, the Board has already approved the plans. Mr. Brox, do you have any?

Mr. Brox: I agree with you

Mr. Stringfellow: So the consensus seems to be that you are already approved if you don't build the porch.

Mr. Schwanz: We appreciate that.

Mr. Stringfellow: Do any Board members have a problem with that?

Mr. Chelus: No, but do they, at least, need to bring in a set of plans with the porch removed, a revised set of plans showing that the porch is removed?

Mr. Stringfellow: I think that is a reasonable request. Get the plans revised to remove the porch, so that we have something on file that shows what was approved and what was going to be built.

Mr. Kobiolka: Could possibly advise the Board in terms of the status of the easement? The private owner, Mrs. Will I believe claims ownership of the easement.

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Mr. Schwanz: Mrs. Will contends that she has, when she purchased property from Schreiber, that she in that purchase acquired certain rights on fire company property. It's our opinion of the fire company and that of our attorney, Brian Attea, that those property rights extinguished when Albert Wurtz sold, donated the property to the fire company; and that is specifically stated in the deed from Wurtz to Schreiber and Winkelman, back in the great '40's it was. It's very clearly written so we don't see that there is any ambiguity in that.

Mr. Kobiolka: When you went for the approval of the variance to the ZBA, was part of their condition that they would approve it once you got a clearance or that easement was cleared up either in a Court of Law or by written agreement by the parties?

Mr. Schwanz: The variance was approved conditional on the fact that or the stipulation that either the easement was deemed invalid, which in our opinion is deemed invalid based on the opinion of Brian Attea, or that an agreement was reached.

Mr. Kobiolka: So your withdrawal of the addition in front, in your opinion, does that clear you to build?

Mr. Schwanz: In our opinion it takes the easement or the variance issue off the table, obviously.

Mr. Kobiolka: But what about the easement issue?

Mr. Schwanz: In our opinion the easement doesn't exist.

Mrs. Hacker: What rights does Miss Will believes the easement allows her to do?

Mr. Schwanz: Miss Will believes that there is a ten to fourteen foot wide easement that allows her ingress and egress across fire company property.

Mrs. Hacker: And that would interfere with what? The parking lot? Building of the building? With the parking lot layout that I remember, there would still be room for her to ingress/egress isn't there or no?

Mr. Schwanz: Like any other person Miss Will is free to walk through fire company property; people walk through fire company all the time and providing they're not interfering with our operation or causing sort of damage; nobody says anything, we do not have a problem with that.

Mrs. Hacker: Is there a building on the back of her property that she needs to pull trailers up to and get stuff out? Does anybody have a visual of this that I don't have?

Mr. Skinner: I'm wondering what's back there that she needs to?? Whereabouts does she want to get through?

Mr. Schwanz: From conversation she has told us that she just wants to be able to walk across the property; to get to the property that she recently purchased.

Mr. Skinner: Is hers along the creek in the back there, her property?

Mr. Schwanz: Her property and fire company property now adjoin in the creek, basically. So she wants to be able to traverse across fire company property to get to her recently purchased property. Which we don't have a problem doing, we just don't feel there is a legal written easement to do that.

Mr. Penrod: Technically she couldn't reach her property other than on foot anyway, because she would have to cross the creek. And you can't take a vehicle through the water.

Mrs. Lucachik: So if she hurts herself in this easement where does that leave you or her?

Mr. Schwanz: It's a risk, but we cannot patrol the property 24 hours a day and we don't feel it would be prudent to try to fence it off or anything like that. Like I said we don't necessarily try to stop people from coming on the property.

Mr. Cartechine: Does she have any other access to her property, from another area?

Mr. Schwanz: Her previously existing property adjoins the property that she recently purchased from Schreiber and Winkelman.

Mr. Cartechine: So she does have access?

Mr. Schwanz: From her own property, yes.

Mr. Kobiolka: So if you withdraw your variance then the next step would be to apply to the Town Board for site plan approval.

Mr. Schwanz: We would ask the Town Board to approve our site plan and issue a Building Permit, yes.

Mr. Stringfellow: I believe that already did refer this to the Town Board.

Mr. Kobiolka: And the fire company when to the ZBA for the variance.

Mr. Stringfellow: Do we need to do anything at this time?

Mr. Kobiolka: I don't believe so, no.

Mr. Schwanz: So can the Town Board now consider our application for the amended site plan? The amended site plan without the porch.

Mrs. Hacker: It's my understanding that we were requesting a revised site plan for us to approve.

Mr. Stringfellow: Then it has to come back to the Planning Board.

Mr. Brox: No, we've already approved it based on what Mr. Kobiolka said; we just want a file copy.

Mr. Kobiolka: Right, David just asked for a file copy so that our file is complete.

Mr. Stringfellow: I will make a motion that we recommend that the Town Board approve, subject to the condition of them submitting a site plan not showing the front porch.

Mr. Clauss: Second.

The vote was as follows: Mr. Cartechine, Mr. Chelus, Mr. Clauss, Mr. Litwin, Mr. Skinner and Mr. Stringfellow were all in favor of the motion.

Mrs. Hacker cast a negative vote.

Mr. Schwanz: Thank you for hearing us on such short notice.

Mr. Stringfellow: Is there any further business for this evening or is there a motion to adjourn?

Mr. Cartechine: I'll make a motion to adjourn.

Mr. Clauss: Second.

All were in favor.

Secretary Faulring: Mr. Chairman, excuse me, but there was no motion on record regarding the appointment of the member.

Mr. Stringfellow: Thank you. Would someone like to make a motion for the appointment?

Mr. Clauss: I'll make a motion to return to reopen the meeting.

Mr. Chelus: Second.

All were in favor of the motion.

Mr. Chelus: I'll make the motion to recommend appointment of Paul Ziarnowski as the second Alternate member of the Planning Board.

Mr. Cartechine: I'll second that motion.

All were in favor of the motion.

Mr. Stringfellow: Is there any further business for this evening?

Being none Mr. Chelus made a motion to adjourn (8:15 P.M.); seconded by Mr. Clauss and carried.

Mr. Stringfellow: We have on our agenda a work session on long range planning which will be strictly a work session; there will be no minutes recorded, and no formal actions will be taken.

Respectfully submitted,

Michael Cartechine

Secretary