

## Planning Board Minutes November 11, 2003

BOSTON PLANNING BOARD      NOVEMBER 11, 2003

PRESENT:      Patricia Hacker, Chairman

David Stringfellow, Vice Chairman

Kevin Maxwell, Secretary

Margaret Andrzejewski

J. David Early

Jeff Mendola

Michael Pohl

EXCUSED:      Paul Jusko

ALSO    Dennis Kramer    Code Enforcement Officer

PRESENT:      Kelly A. Vacco    Town Attorney

Dennis Mead    Councilman, Town Board Liaison

Karl Simmeth    Councilman

Richard Hawkins      Councilman

Gary Eckis      Boston Hills LLC

Chairman Hacker called the meeting to order at 7:30 P.M.

## MINUTES

Chairman Hacker asked if there were any additions or corrections to the minutes of October 28, 2003. Being none Mr. Stringfellow made a motion to approve the minutes, second by Mrs. Andrzejewski. All in favor.

## CORRESPONDENCE

Secretary Maxwell reported the following correspondence:

- Received minutes of Special Town Board meeting of October 16, 2003
- Received minutes of Regular Town Board meeting of October 15, 2003
- Received Code Enforcement Officer October End of Month Report
- Received Deputy Code Enforcement Officer October End of Month Report
- Correspondence from Town Attorney Vacco dated October 14, 2003, and from Richard Brox dated September 10, 2003 both regarding the rezoning request at 5786 Herman Hill Road, to complete member's files
- Other correspondence to be read at point in agenda

## LIAISON ? COUNCILMAN MEAD

Councilman Mead reported the following from the Town Board meeting of November 5, 2003:

- Public Hearings set for December 3, 2003 for two proposed local laws:
  1. Amendment to Chapter 104 ? Subdivision of land
  2. Amendment to Section A-127 ? Street and Highway Specifications

· Referred to Planning Board Site Plan Review for Brown Hill and Trevett Roads. Mr. Mead further stated that the Town Board was not sure why this came to their attention, and so forwarded it to the Planning Board.

Mr. Kramer explained that he cannot issue a building permit for anything other than single family dwellings; any multiples, duplexes, commercial have to be approved by the Town Board.

Mr. Maxwell asked if the Amendments were going to be referred to the Planning Board for review, as in the past. Mr. Mead and Mrs. Vacco both agreed that they would be.

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Councilman Mead, con?t.

Mrs. Vacco explained that the amendments are the ?tweaking? of inconsistent sections, especially in the subdivision of land section. Mrs. Vacco had copies of each that she gave to the secretary for distribution to the Planning Board members.

· Mr. Mead added that work is also being done on sign legislation

Mrs. Hacker asked Councilman Simmeth what he had for this Board.

Councilman Simmeth said that some of the residents of Hickory Meadows are ?wondering where their street lights are.? Mr. Simmeth said that he had contacted New York State Electric and Gas, who reviewed the subdivision and reported that there could be 11 or 12 lights in the subdivision, Phase I and Phase II. Mr. Simmeth read from Town Code ? Section 104 ? 37. Mr. Simmeth asked if anyone present tonight was on the Planning Board at the time of approval of Hickory Meadows and why that subdivision was allowed without street lighting? Mr. Maxwell told Mr. Simmeth if he goes to the minutes he would find that the Planning Board made a recommendation that street lighting should not be included in the subdivision. Mr. Simmeth asked, ?why?? Mr. Maxwell said that the minutes would have to be checked for the recommendation. Mr. Simmeth said now that people are living in the subdivision they want streetlights. As a Town Board we are required to give them streetlights, because they are in the district. But if the developer was supposed to pay for them, let the developer instead of the taxpayers of the Town of Boston. Discussion followed as to the placement of streetlights in other subdivisions.

GARY ECKIS

Mr. Maxwell read the letter of October 31, 2003 requesting Mr. Eckis' presence this evening.

Mrs. Hacker said that Mr. Brox had recommended that discussion be tabled until a letter of recommendation is received from Town Attorney Vacco.

Mrs. Vacco said that she had talked to Mr. Finster at Erie County Health and he indicated that they had worked out an arrangement with Mr. Eckis under New York Code Rules and Regulations under the extreme and undue hardship clause that the landowner basically falls under that category and as a result they weren't going to deny them anything, i.e. building permits based on this extreme hardship.

Mr. Eckis said that the State Health Department defines a subdivision as "dividing a tract of land into more than 12 parcels under 5 acres in a three-year period thou shall have a subdivision which needs county approval, later they went into defining the difference between a lot and a parcel, and that's where they came up with the 5 acres: under 5 acres is a lot, over 5 acres is a parcel. Then there was a discussion about road right of way, years ago it was decided not to include road right of way as part of the lot. So that's what made the parcels of just over 5 acres to become just short of 5 acres. So that's what prompted the health department, it's not a health issue, but there is a procedure that has to be followed to fix it, otherwise it is a hardship, because they're all sold parcels.

Mrs. Hacker and Mr. Eckis determined the lots that have been built on.

Councilman Hawkins said that there are three new houses being built at this time.

Mr. Maxwell explained that if there are parcels that are being built on that Erie County Health has given septic approval for a building permit to be issued. Discussion continued regarding the Tuttle property.

Mr. Maxwell asked about the letter from Mr. Finster addressing a subdivision that is going to be modified.

Mrs. Vacco said she has nothing in writing from him. He's not changed his position he is still regarding it as an illegal subdivision because?.

Mr. Maxwell: it becomes a realty subdivision, which then comes in to play with our Town Code and the filing of a plat map, etc., which when we approved it we were understanding that was going to happen.

Gary Eckis, con?t

We were then told because of the parcels, we could not file the plat. But as I read Mr. Finster?s letter, there seems to be some confusion as to what was submitted to the County and what actually is there according to Erie County Real Property records. Mr. Maxwell said he had a question in regards to the plat map that is required on Planning Board approval: a.) being filed which is required by Town Code; and if that wasn?t filed, our Code specifically deals with that 1.) as to the start over and 2.) as to the fine. Mr. Maxwell went on about the plat map being filed and the fact that Boston Hills is a subdivision, Mrs. Vacco concurred that it is a subdivision.

Lengthy discussion followed about compliance with Town Code and the filing of a plat map.

Mr. Eckis said you can?t record a plat map in Erie County, but I submitted it to the Town Attorney, I think he created an affidavit so that it would record them both. He added that the Clerk will not accept a map cover that is not stamped by the Health Department, and the Health Department won?t stamp it if it?s not a subdivision.

Mrs. Vacco said that now they will deem it a subdivision and they will stamp it and then it can be filed, but prior to that it couldn?t be filed in the Clerk?s office because they did not recognize it as a subdivision.

Mr. Maxwell referred to the letter of Mr. Finster, which states the current events, the information that was supplied to him, the information that he has today. That?s up to our Town Attorney to determine, whether or not the correct information was filed. This should have gone to the Erie County Department of Health with the information that we have here. Our tax assessor did not have any record of these properties, I?m told, that?s why it?s filed with the County and the map is given to the assessor.

Mr. Hawkins commented that part of the problem was that when it was originally done there was a number of parcels under the 5 acres that caused a problem with whether you had to file or not. I agree with Mr. Maxwell that there are numerous Town Code violations, and from day one they had it as a subdivision, it was recorded as a subdivision and there are certain laws and regulations under this Town that have to be met by that being a subdivision, and haven?t been.

Mr. Maxwell asked Town Attorney Vacco to review the letter from the County Health Department and review Town Code and tell us that everything has been filed correctly.

Mrs. Vacco: it hasn't, it hasn't been filed.

Mr. Maxwell: then we need to know what this Planning Board has to do to get it within Town Code.

Mrs. Vacco: you need to approve?.

Mr. Maxwell: is he starting over?

Mrs. Vacco: basically he is.

Mr. Eckis asked are you saying that the approval that the Town granted seven years ago?.

Mrs. Vacco: the Town Code requires the filing within 30 days of the plat, and if not done in that time, you basically start over.

Mr. Eckis stated ??can't file it, but I did submit it to the Town.?

Discussion followed at length regarding the proper filing procedure, proper representation, and completion of this project.

Mrs. Hacker stated that all of this was done at the advice of then Town Attorney Perley. We went through this with the affidavit and the fact that it couldn't be stamped by the County so it then had to be taken care of through the Town and we were told as a Board by the Town Attorney that this had been done. Now that changes have been made by the County Health Department we need a legal opinion from the Town Attorney as to what our obligation is as of now.

Mrs. Vacco agreed to do this.

Discussion followed as to what, if anything was filed with Erie County.

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Gary Eckis, con't.

Mr. Eckis said that Boston, like a lot of towns have a definition of a subdivision that is different from the county's, when it's not a realty subdivision, the Town Code should distinguish how those maps are just kept on file with the Town because they are not recordable with the Clerk's office.

Mrs. Vacco said that in the new proposed subdivision law that is addressed and there is direction as to what to do with the kind of subdivision that doesn't meet the Erie County Health Department's requirements.

Mrs. Vacco asked that it be on record that if any Planning Board member believes that she has any conflict of interest because she lives in the subdivision, she would be happy to send this to the Deputy Town Attorney.

Mr. Maxwell said that would be Mrs. Vacco's determination, we don't make the accusation.

Those members present had no concern with Mrs. Vacco proceeding with this matter.

Mr. Maxwell asked about lot 23, the information submitted shows a proposed merge of about 6.44 acres with a 20 acre parcel.

Mr. Eckis said the last parcel in the subdivision is a 5. something acre piece. About two years ago I asked the Planning Board to revise that parcel.

Mrs. Hacker asked if that is the parcel with the pond on it? Mr. Eckis said yes.

Mr. Eckis said I asked the Planning Board to revise it so this property had enough frontage to stand alone as a lot and they didn't want to do it. When they asked to have the cul-de-sac put in I withdrew it. So now I'm just adding 20 acres.

Discussion followed about changing the lot lines.

Mrs. Hacker stated that the pond was put there for extra fire protection.

Mr. Hawkins, speaking on behalf of the Patchin Fire Company strongly objected to anything being done with the pond and the elimination of fire protection for residents on that hill.

Mrs. Hacker asked if just that portion of the parcel with the pond could remain un-owned?

Mr. Eckis said that Fire Company should arrange for the fire department to go into it, it was put there for that reason.

Mrs. Vacco reminded the Board that there was never an agreement as part of the original subdivision that it was the developer's responsibility, and the Planning Board at the time the subdivision was approved didn't require protection.

Mrs. Hacker asked Mr. Hawkins if the pond is sufficient.

Mr. Hawkins said yes.

Mr. Stringfellow asked about a deed restriction.

Mrs. Vacco said there could be a deed restriction placed on the property at the time of its sale, that a condition of the sale of land was to be??(Mrs. Vacco's comments were drowned out by several conversations around the table).

Several discussions continued around the room.

Mrs. Hacker stated that after this Board receives the legal opinion from Mrs. Vacco, this Board will look further into placing a deed restriction on this lot. We will not make any decision on changing the size of the lot at this time.

Mr. Maxwell said, "what concerns me is that there is a sale pending, which means he is selling parcel 28, with the additional 20 acres, and this potential owner may believe that lot can be built on and that is not an approved subdivision lot.

Mrs. Vacco said that she had been in contact with Thelma (Hornberger) and the Code Enforcement Officer is aware that there are issues with that lot.

Mr. Eckis said that the Health Department is working on a resolve to make it more permanent for the dry hydrant.

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Gary Eckis, con?t.

Mr. Maxwell: what I'm alerting you to Mr. Eckis, is, should that 20 additional acres be merged as the map shows, I would say that our subdivision law requires that you modify the subdivision plat for that.

Mr. Eckis: it's just adding additional acreage.

Mrs. Hacker: to change a lot line, that has to be done here.

Mr. Maxwell: no question. The last thing I have is an old issue. We sent a letter to Mr. Kreitzbender which requested his response to the finishing of the T-turnaround; along with that when we modified lot 25 our recommendation was subject to the T-turnaround being completed within 6 months. The lot request change was dated January 23, 2001 and in that I don't have a response to our May 28, 2003 letter, I will ask you what the status of the T-turnaround is for completion.

Mr. Eckis: that was a couple of years ago.

Mr. Maxwell: as of May 28, 2003 we have not received a written response from Mr. Kreitzbender. I believe we received a verbal that it was not complete.

Mrs. Hacker said that it was brought to our attention that it was never completed. This Board was under the impression that it had been completed. Mr. Eckis: so was I.

Mr. Mead said that it was his recollection that Superintendent Kreitzbender was asked about the turnaround and the issue that originally came up was when Gary (Eckis) came to change the lot size in order to come off that T-turnaround to have access to other property to sell off another lot, at that point the Planning Board said "no, there will be no access off that T" which would have to be to Town Code which would be a cul-de-sac. The Highway Superintendent felt the access off of that T for the one driveway.

Mr. Eckis said that it was on the map as a T and the then Highway Superintendent was satisfied with it.

Mr. Mead said that it is also his understanding that the Highway Superintendent is satisfied with it, but still does meet Town specs.

Mr. Maxwell said the question is, has it been paved and finished as per our request? As to the size, if there was a size variation per Superintendent Kreitzbender, we should know about it but that's at his discretion.

Mr. Eckis said no I don't think that's been done.

Discussion followed on the same issue with Mr. Maxwell, Mr. Eckis and Mr. Mead participating.

Mrs. Hacker summarized: we will table discussion until all information is received:

- we need to address the filing of the plat
- we need to have a letter from Mr. Kreitzbender from our letter of May 28, 2003

· we need to have a letter from the fire department confirming that pond the is sufficient for use for fire protection

Discussion returned to the existence of the pond.

Mr. Kramer stated that the pond came into existence following a variance hearing at the Zoning Board of Appeals. The owner was requested to install a pond when he received a variance to build on a non-dedicated highway. The owner realized after, that he could not afford to install a pond, and Mr. Eckis agreed to install the pond on this piece of property.

#### SIGN REVIEW FOR 7115 BOSTON STATE ROAD

Mr. Maxwell read the sign review request letter from Deputy Code Enforcement Officer Frank Lisowski.

Mrs. Hacker asked if there was going to be any new construction for the sign?

Mr. Maxwell asked if the sign is going to be enlarged?

Mr. Kramer said that he wasn't sure, that Mr. Lisowski takes care of signs.

Mrs. Hacker read from the original application, "Existing signs will stay the same size. I am only changing the name and the lettering."

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Sign Review ? 7115 Boston State Road

Mr. Maxwell asked if the signs all meet code.

Mr. Kramer once again said, Mr. Lisowski takes care of sign permits. I have only overheard them talking in the office and have to assume that they do meet code.

Mr. Maxwell made a motion to send a favorable recommendation for the sign at 7115 Boston State Road, as drawn, seconded by Mr. Pohl. All in favor.

#### SITE PLAN REVIEW ? 6986 BROWN HILL ROAD

Mr. Brox, via Mrs. Hacker, stated that if it had already gone through the Public Hearing process and there was no public opposition, he had no problem with it.

Mr. Maxwell read from the signed Notice of Decision that the application was approved by the Zoning Board of Appeals with the stipulation of septic system approval.

Mrs. Hacker stated that she did not see the need for this type of housing, and the lot size does not meet the 5-acre requirement, she added that the Master Plan is not favorable to this type of housing, and feels that this piece of property is much more suited to a single family home.

Mr. Maxwell asked the previous zoning.

Mr. Kramer said it was R-A, but under the old zoning duplexes were allowed in R-A, however the required lot size was smaller. In the new zoning in 1990 we went to 5 acres.

Mrs. Hacker asked what was the old lot size?

Mr. Kramer said about 15,000 square feet, was about all that was needed.

Discussion followed with the consensus being that the lot is not suitable for a duplex.

Mr. Kramer said that the ZBA has already approved it as a build able lot, and now has to go the Town Board for approval to issue a building permit.

Mrs. Hacker asked for a motion.

Mr. Pohl made a motion to forward to the Town Board that it was this Board's consensus that the application be denied as the lot size is substantially smaller than the required 5-acres for the construction of a duplex regardless of septic system approval, seconded by Mrs. Andrzejewski. All in favor

#### CODE ENFORCEMENT KRAMER

Mr. Kramer reported that there are a couple of new projects coming in. He introduced Bryce Bixby, an architect with Stievater and Associates. Mr. Bixby explained that his project is to convert an old hardware store at 5699 Herman Hill Road into a restaurant for Ann Gallagher who plans to open it as Amy's Place.

Mr. Early asked if this would entail the whole building. Mr. Bixby said yes it would.

Mrs. Hacker said the following would need to be addressed:

- change of use
- parking
- signage

She asked that the packages be distributed and the members should take time to review until we get the official referral.

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Code Enforcement Officer Kramer, con't

Mrs. Hacker asked that Mr. Bixby be on the agenda for November 25, 2003, providing we get the referral from the Town Board meeting of November 19, 2003.

Mr. Kramer reported that CVS would be making some submittals sometime soon. They indicated to Mr. Kramer that they have purchased the property in North Boston, and are at the point where they feel comfortable in moving forward.

Mr. Kramer said that he has not received anything from Dana Darling for his subdivision. Secretary Faulring reported that she had spoke with Garrett Hacker, the Engineer and he would have the site plans to her for distribution at the next Planning Board meeting.

Mr. Kramer continued, Forbes Homes is coming in with a proposal for a subdivision on Old Chestnut Ridge Road, 29 or 30 lots.

Also a cul-de-sac subdivision off of Tanglewood, which is off of Zimmerman. He did not know the number of lots.

Mrs. Vacco commented that the new subdivision code is more concise, more specific and has significantly less gray area. She added that it should make it easier for all agencies/boards to work together in a joint effort. She added that it gives the Highway Superintendent a little more discretion. The Public Hearing is December 3, 2003.

Mr. Mead added, ?there are no timelines. No rezoning will be done until the subdivision law is enacted.?

Mr. Kramer agreed that this new code has to be in place before we start with new subdivisions.

Mrs. Vacco said that she has written to ?The Three Girls Café? about the no parking space in front. She has nothing back from them in writing, but has talked with one of the owners, and expects to have something from them soon.

Mrs. Vacco has not heard from Nick Charlap. She has written him and asked that he address the changes that he has made from the approved site plan.

Mr. Mendola asked if Mr. Charlap had ever been cited.

Mr. Maxwell said that the direction for Mr. Kramer to cite Mr. Charlap should come from the Town Board level as they actually give the approval, the Planning Board only makes a recommendation. I think we should give him one more chance to submit the plan.

Mr. Kramer will contact Mr. Charlap

Chairman Hacker asked if there were any further business to bring to this Board, being none Mr. Stringfellow made a motion to adjourn at 8:52 P.M., second by Mr. Maxwell. All were in favor.

Respectfully submitted,

Kevin G. Maxwell

Recording Secretary

KGM:tjf