

Planning Board Minutes October 9, 2007

BOSTON PLANNING BOARD OCTOBER 9, 2007

PRESENT: Patricia Hacker, Chairman

David Stringfellow, Vice Chairman

David Bernas

Robert Chelus

Bill McGirr

EXCUSED: Jonathan King

Jeff Mendola

ABSENT: Santo Tricarico

ALSO Brian Downey Town Attorney

PRESENT: Brien Hopkins Councilman ? Town Board Liaison

Theresa Betz 7346 Boston State Road ? Kids Country Child Care

Chairman Hacker called the meeting to order at 7:30 PM

MINUTES

Mr. Bernas made a motion to accept the minutes of September 25, 2007, seconded by Mr. Stringfellow and carried.

CORRESPONDENCE

Secretary Faulring reported the following:

- Copy of E & M Engineers letter, dated September 26, 2007, to Supervisor Eagan regarding the Erie County Water Authority approval and Erie County Division of Sewerage approval at the Boston Valley Complex
- TVGA Consultants announcement of Planning and Zoning Board Training sessions
- Village of Springville announcement of Planning and Zoning Board Training session
- Town Board letter dated October 4, 2007 to Tim Kirst thanking him for his service on the Planning Board
- CEO Ferguson's September End of Month Report
- DCEO Juda's September End of Month report

KIDS COUNTRY CHILD CARE ? 7346 BOSTON STATE ROAD

Chairman Hacker read the correspondence:

- Planning Board letter dated October 3, 2007 to Scott Kinsman requesting his review of the retention pond at this location
- Fax from Scott Kinsman dated October 4, 2007 with inclusion of Foit-Albert letter dated August 11, 2004 with the request of the design of the pond. Copies of these two letters were sent to Ms. Betz.

Mrs. Hacker: I understand that trees are in place.

Ms. Betz: Trees are planted.

Mrs. Hacker: Foit-Albert responded that they needed information on the plan for the retention pond and they did not receive it.

Mr. Bernas: Foit-Albert wanted the details prior to the construction, now that it's done how do we proceed?

Mrs. Hacker: Now they are going to need the dimensions, does our site plan clearly note that with enough detail? They've been forwarded the as-built site plan.

Mr. Stringfellow: The as-built site plan has nothing more than words that say retention pond, there's no drawing of it at all. Mr. Downey: That was the question at the last meeting. When the retention pond was built, did they give you some plans for that?

Ms. Betz: I would imagine. They were on the original plans when the contractor brought them in.

Mr. Downey: Yes, but it was moved.

Ms. Betz: No it didn't. It didn't get moved, it never got moved. The only request possibly to move it was so I could put a play yard in, because it wasn't fitting, so then the play yard went over on the side and that was all that was moved.

Mr. McGirr: Do we need to go back to the original site plan?

Mrs. Hacker: We don't have to, my feeling is if it's not on the as-built, with the dimensions, they need to answer the questions, the engineers are going to need to have that.

Mr. Stringfellow: The site plan that we approved showed a play yard in back with the retention behind it; is that the way it was Ms. Betz?

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Mr. Hopkins: Yes it was.

Mrs. Hacker: Is it in the same location as where it is on our as-built site plan?

Mr. Stringfellow: The as-built site plan doesn't show where it is.

Mr. Downey: It shows the words retention basin.

Mr. Stringfellow: On the approved plan it shows the contour lines indicating that this is the low point and there is a pipe that goes out of the low point that limits the flow into the creek. Now this (as-built) simply shows two existing trees in the area that the detention is supposed to be. As I've said my office is next to this building and I know that there is a retention pond there, whether it got moved closer to the building or what happened.

Mrs. Hacker: Do you think it would be out of line to ask our engineer if they could do an on-site inspection of it so that we don't have to have new drawings made of it.

Mr. Downey: I think it's supposed to be on the drawing.

Mr. McGirr to Ms. Betz: Is there any reason it's not on the second drawing?

Ms. Betz: I didn't draw it, I have no idea.

Mr. McGirr: Who ever is drawing this should have known that the pond should have been on there.

Mr. Downey: That's something, especially these days, they have all new regulations; that particular issue is?

Ms. Betz: Maybe you should write a letter to Mr. Rumsey, I can't answer questions on a drawing that I didn't draw; he's the gentleman that drew the as-built?

Mr. Hopkins: He would have to call the Town or you would have to relay the issue to him.

Ms. Betz: But why, when I delivered the as-built as I've been requested to do according to?

Mrs. Hacker: But it doesn't have everything on it.

Ms. Betz: Me, being involved in the middle of this is just wasting?

Mrs. Hacker: You're the person who has to pay to have these done, we don't. We could call him and ask something and he doesn't have to do it for us, because we didn't pay him to do it.

Ms. Betz: I don't know what you want anymore; I don't know how many times I need a list from you that you're going to keep changing?

Mrs. Hacker: Let's not go down that path anymore, we're not asking for anything different. I tried my best to find a way around it, but the actual pond is not on the paper, it has to be on here for them to approve it, their letter clearly states "we have not received this information," and they need it to complete their review.

Mrs. Hacker: Give those letters from Foit-Albert to Mr. Rumsey and he can call Foit-Albert to clarify it for himself. He has to amend the drawing and he's got to sign it.

Mr. Downey: It has to show the exact location, and then it's got to show the dimension information on the design.

Mr. Bernas: After approval of the site plan and it is built according to the plan, during the construction process who goes out to check that the swales are done and everything is done according to the plan?

Mrs. Hacker: The Building Inspector, they didn't complete the inspection.

Mr. Bernas: If Theresa is saying that the pond was not moved even though that's one of the things that we have been talking about through the history of this thing, moving the pond and the play area, if that has not actually been moved can't they go out and do an on-site inspection?

Mrs. Hacker: It still has to be on here (as-built).

Mr. Downey: If he's done it, it won't take Mr. Rumsey anything to move it (to the as-built site plan). It's surprising that he just didn't put it on there, especially these days; they're really looking at those things. They have all kinds of regulations, with storm water and all.

Mr. Bernas: So suppose its not been changed and they can take a computer image of this and they?

Mrs. Hacker: It goes to Foit-Albert and we get their letter and we're done.

Mr. Bernas: Okay, they say it looks good on paper, now the Code Enforcement goes out and looks at it and measures it somehow and?

Mrs. Hacker: I think once the engineer gives them the okay it's a done deal, correct?

Mr. Bernas: It's okay on paper but if she hasn't changed anything, it's done, the project's over, who checks it to make sure it's done according to what's on paper?

Mr. Stringfellow: The Building Inspector.

Mr. Hopkins: Right, they did all that. The reason it came back was because the play area had been moved and that's where everything came to a halt four or five years ago.

Mr. McGirr: But if he inspected this back then and it hasn't moved then it's?

Mr. Hopkins: Right, he okayed that. The only thing they questioned was the play area.

Mr. McGirr: Then all she needs to do is get this (the retention pond from the approved plan) on that (as-built site plan)?

Mrs. Hacker: And get the engineer's to approve it because we've already put this in their court.

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Mr. Downey: The way this usually works is that you get a final site plan, and the final site plan will have all of this on there, then they can do a final check if they feel it's necessary if there is something on there they haven't already checked because some of it they may have checked already but just isn't showing. What happened here is because things were moved you can't use that, basically they will take that plan and just update it. For some reason he didn't carry it over.

Ms. Betz: But this is at my expense every time.

Mrs. Hacker: This was his error not yours, this should have been included.

Mr. Downey: I would argue that he should have included that; it was on that one and he didn't include.

Ms. Betz: If I get one copy and submit to the Building Inspector, is that enough.

Mr. Stringfellow: The requirement is the same as final site plan; I can't see why it would be any different.

Mr. Downey: I would ask him to print the copies, it isn't on there. You should tell him that this didn't go from here to there. Every now and then they make a mistake. The retention pond, I need to have that put on there, and if he mentions any charge tell him that he should have made that change to begin with. What if he didn't put the building on, should he say I'm going to charge you for it?

Ms. Betz: Is that the only change that he needs to do?

Mr. Downey: I'm not aware of anything else.

Mrs. Hacker: We have to give it to the engineer, it shouldn't be a problem. They can't give us an answer, once we put it in the engineer's field they're not going to give us an answer until they get the paperwork they need.

Ms. Betz: So am I giving them an as-built?

Mrs. Hacker: Your as-built has to show the retention pond, because you have one.

Mr. Hopkins: Give them that letter from Foit-Albert and the fax.

Ms. Betz: But my question is, if I have them put on the detention pond where it is, because it wasn't moved, is that all I that I need for the site plan, so that I can turn that one copy over to the engineers first??

Mr. Downey: I don't know of anything else, does anyone else?

Mr. Hopkins: The trees are in place, the sign is on there.

Ms. Betz: So once they sign off on that then I can get the copies to the Planning Board?

Mrs. Hacker: I would get the copies right now, be done. Get the one to the engineers, and get the rest to the secretary and be done. This is something he should be able to do for you in an hour tomorrow afternoon, then by the time we meet again?

Mr. Downey: The detention pond that's on there, as long as it's built the way it shows on the site plan that was approved and it carries over and shows it there. Because Foit-Albert thought you moved it and when things get moved things get changed. If you haven't moved it then they are going to see that it is the same that is on there. Now I'm not going to tell you that they are absolutely going to say yes, but I don't really see right now, why they wouldn't.

Mrs. Hacker: Foit-Albert has the original as-built.

Mr. Stringfellow: We're going from us to Ms. Betz, to the engineer and I'm worried that things are going to get lost or over-simplified. I have a question ? the Foit-Albert letter that was read tonight from 2004 you requested to move the retention pond.

Ms. Betz: It was a thought; it wasn't something that I went through with doing. And then Mr. Kramer said ?let's put the play yard on the side? that's what we ended up doing and that's what he approved. So the detention never had to be moved, it's built right where it originally was from the plans that the gentleman built from. When they put the detention in and you look at my back yard there was no place to put fencing up that you could pen in children without having possible standing water behind them and then an issue with mosquitoes. So the original design wasn't working as to where to put the play yard, so as a result the play yard got moved over to the side of the building, as long as it fit in that area, which it did, by fencing it in, it was approved by the Building Inspector, but nothing had to be moved for the detention pond, that was there first.

Mr. Hopkins: There was just a short talk about moving the pond, the cost was pretty much outrageous to move it so she could fit the play yard in there, and that's when the Building Inspector came up with the idea to move it out to the side, and that's how this led to come back here, that it had to be redrawn to the way that it was built.

Ms. Betz: Couldn't that page just be attached to the as-built?

Mr. Downey: Actually it's simple, he just takes this drawing and adds it on (the as-built site plan).

Mr. Stringfellow: As long as the detention pond is actually where it was built, and as it was intended to be built, then Foit-Albert approved it as it originally was so all we need is the site plan to show it, that it actually is where it originally was.

Mrs. Hacker: And sizes and dimensions should be shown.

Ms. Betz: With the sizes and dimensions that are laid out on that sheet, correct?

Mr. Hopkins: yes.

Mr. Stringfellow: If this is what was built, yes.

Mr. Hopkins: Give this letter to the architect, they're telling exactly what he needs to throw on there and it's on this sheet and you have everything right there, just give him that letter.

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Mr. Downey: The only reason is, in a sense, you're giving us this is because the idea was that we thought it was going to be moved and she can tell him that eventually it wasn't but he can pull it from that plan, and he should have that plan.

Mr. Stringfellow: Yes, he should. But I'm just concerned that it gets to him clear enough that we get this resolved and out of here.

Mr. Downey: She can tell him that it wasn't moved, but it needs the dimensions and if he has any questions he can contact Foit-Albert directly. It should be very easy for him to do.

Mrs. Hacker: It should be completed tomorrow so that she can forward it to Foit-Albert.

Mr. Stringfellow: If it was built as they originally approved they don't have to do anything either. Is that all clear?

Ms. Betz: I'll give this to Mr. Rumsey and he can call Foit-Albert direct.

At this point Chairman Hacker changed the order of the agenda, first by adding Liaison ? Councilman Hopkins.

LIAISON ? COUNCILMAN HOPKINS

Mr. Hopkins reported from the Town Board meeting of October 3, 2007:

- We asked Mr. Darling and his attorney Shaun Hopkins to be in attendance
- I think that they were having a meeting with the DEC on Friday

Councilman Hopkins asked Mr. Downey to proceed with further explanation.

Mr. Downey:

- We're still waiting for the meeting

- After the Board meeting we had a discussion with S. Hopkins and Dana Darling
- It basically came down too: that I had spoken to the DEC and they had said that you need to deal with the project as a whole, all three phases. It was my understanding that they would need to apply for the variance or a zoning request, before the Board can finish its process and make some declaration under SEQR
- Mr. S. Hopkins said "you're right, you can't segment it, but we did give you everything and we're just asking approval on phase 1."
- So there was a difference on what, in a sense, doing the whole project as a whole meant.
- I said to Mr. Hopkins, that "I'm explaining exactly to you the way I explained to the DEC and this is what they told me. I'm willing to meet with you and with them to figure out what's going on. We are not trying to delay you, I have to be downtown and am willing to meet with you at the DEC."
- o He appreciated that and was going to contact them; the gentleman we needed to speak with is out of town. I am waiting to hear from Shaun Hopkins about this meeting
- It's more of figuring out what the interpretation is
- I spent a long time talking with the DEC and went through a number of issues, I'm getting a different opinion from them, and if the DEC tells me to do something, this is the way we're going to do it, I'm not going to take the word of counsel of someone who is putting a project up
- So the Town Board tabled it and they said that they would even have a special meeting if they got an answer back that was acceptable to me, from a legal perspective, that they would then make a decision
- They advised Mr. Darling that they are not trying to hold him up but we need to make sure before we make a mistake, for both of our sides protection, if they make a bad ruling and someone sues on it, who doesn't like the project it can be opened up, and if they make a bad ruling that the project sponsor doesn't like it can be opened up

Mrs. Hacker: If it is segmented, I thought we did need a variance for the third phase?

Mr. Downey: We do. Shaun Hopkins argument is that you don't need to deal with that right now in the SEQR process. My understanding from talking to the DEC was "yes you do."

Mr. Stringfellow: Suppose the DEC approves it as all three phases, and then the variance is denied and he can't build phase 3, then where are you?

Mr. Downey: Because the DEC says that you have to look at all three phases together, actually anytime you have a project, as a whole, unless one of the phases is not going to be done, say for 10 years, and he's going to do it within a year; there's only a few minor exceptions when you can break it up, segmentation. The question is "what is doing it as a whole mean?"

Mr. Bernas: As an option could he build the infrastructure in phases and then doesn't get a variance, he still has the infrastructure?

Mr. Downey: The problem is not there, when you look at a project as a whole, it does change if he doesn't get his variance, so to me it would change what he is able to do; so it seems to make sense that yes you need to deal with that and make his application so we know he's got it approved before we can continue on. His attorney is saying, "no that's not the case." To be honest I've not seen this before in that fashion so I can not tell you from experience.

Mr. Bernas: So did we as a Planning Board err by approving phase 1?

Mr. Downey: From talking to DEC that is my understanding, but to be honest it's on hold until we sit down and have a definitive answer on that.

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Councilman Hopkins: The Board is not going to move on anything until we have this answer. Mr. Darling has not made any attempts to get that variance going.

Mr. Downey: Mr. Darling has a year once he gets the approval from the Zoning Board, and he doesn't want to start that timeframe yet. He's taking a chance by waiting, because if he has to do it he is going to be put off.

Mr. Downey: Also if you miss a meeting can you make a motion to make or second the motion on a matter that you weren't present for? The answer is yes. I checked with the Association of Towns Counsel and he said he did not know of any reason why you couldn't.

Mr. Downey: Another question was "what do we do about appointing alternate members?" The general rule in Town Law is that you can appoint an alternate if one of the regular members has a conflict of interest. That is the only thing under the law; however, you are allowed to deviate from it through your own Town Code. The State Code and the Town Code differ. You can do one of two things, continue what we've been doing, or we can say no alternate members unless you don't have a quorum. But I think we should get this wording tightened up, to make it clear one way or the other, as long as we are working on Code changes. What do you think is more appropriate? Only if it's not a quorum or for everything else? By that I mean if we are missing a regular member but still have a quorum, do we appoint an alternate member?

Consensus of the Planning Board members present was that an alternate member should be appointed anytime a regular member is not present, even though there is a quorum of regular members.

Mr. Downey will re-write this code section for presentation at the next Code revisions meeting.

CODE BOOK REVISIONS DISCUSSION

Mrs. Hacker: After our last meeting with Mrs. Pluta, I did check and double check that I am not in possession of the notebooks for code book revisions, and I do not have them. I am certain that I have given them to Mrs. Pluta. I thought that we could discuss the eight items that were discussed last meeting. It has come to my attention that no one on the Board has received any paperwork from Sherrie (Pluta). She advised us that she would be putting everything on a CD and distribute copies or send via e-mail. This Board is unable to be prepared for this evening. We do not want it to be thought that we didn't take it seriously that we weren't going to work on this evening; but if we don't have the paperwork, we can't do our homework ahead to be prepared for discussion. So we are currently waiting for the paperwork from Sherri Pluta with the updated changes to be reviewed.

Mr. Stringfellow: I would suggest that we not put code book discussion on the agenda until we have had these notes for a reasonable length of time to review them.

Mrs. Hacker: Supervisor Eagan advised Secretary Faulring and me, that there was not to be any cancelled meetings due to the lack of agenda items, until this code book issue is resolved.

Mr. Stringfellow: I understand that, but I don't think we should have to spend our evenings coming down here, only to have nothing to review and go home again.

Mrs. Hacker: Correct, duly noted.

Chairman Hacker: Is there any other business for this Board? Being none, I will make a motion to adjourn. Seconded by Mr. Stringfellow and carried. The meeting was adjourned at 8:18 PM.

Respectfully submitted,

Patricia J. Hacker

Chairman

PJH:tjf