

## Planning Board Minutes September 9, 2003

BOSTON PLANNING BOARD      SEPTEMBER 9, 2003

PRESENT:      David Stringfellow, Vice Chairman

Kevin Maxwell, Secretary

Margaret Andrzejewski

J. David Early

Paul Jusko

Jeff Mendola

Michael Pohl

EXCUSED:      Patricia Hacker

ALSO    Councilman Dennis Mead      Town Board Liaison

PRESENT:      Kelly A. Vacco    Town Attorney

Richard Brox    Planning Consultant

Marcia Bauemler      Applicant for rezoning at 5785 Herman Hill Road

Rick Bethge      Owner of business at 5785 Herman Hill Road

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

## MINUTES

Vice Chairman Stringfellow asked if there were any additions or corrections to the minutes of August 19, 2003. Being none Mr. Jusko made a motion to approve the minutes, second by Mr. Early. All in favor.

## CORRESPONDENCE

Secretary Maxwell reported the following correspondence:

- Letter dated August 21, 2003 to Town Board recommending approval for co-location request of ATT at 6405 Ward Road
- Received pamphlet from New York State Department of State advising of Planning Board Overview and Community Design Tools seminar at Clarence Town Hall, September 29, 2003.
- Other correspondence to be read at point in agenda

## LIAISON ? COUNCILMAN MEAD

Councilman Mead reported from the Town Board meeting of September 3, 2003:

- Based on the recommendation of Town Attorney Vacco a motion had to be made to approve the site plan for the Southtowns Rural Preservation Inc. as a result of an Article 78 proceeding
- Scheduled Public Hearing for ATT co-location application for October 1, 2003. I have asked the Town Clerk to make certain that Planning Board receive the correspondence requested. Deputy Town Clerk Ellis said that she had previously sent this information. Mr. Maxwell said there was no question on

the paperwork, we're just making sure that everything is documented and permitted, she did send this to us once, but she needs to do this every time.

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MARCIA BAEUMLER ? REZONING REQUEST AT 5785 HERMAN HILL ROAD

Mr. Maxwell read the letter sent to Ms. Baeumler advising her of the Town Attorney's legal opinion on this rezoning request.

Mr. Early commented that in the past spot zoning was not something that this Board recommended.

Mrs. Vacco stated that in her letter that she recommended that the Board not approve it, but realizes that this Board only makes a recommendation and not the actual approval.

Mr. Brox said that he had previously suggested that a recommendation be made to the Town Board for rezoning and revert back if the ownership changed, he added that he thought he had sent it in letter form. Mr. Brox continued, the Master Plan for that area recommends mixed use and so that was the reason for my recommendation that the rezoning only be for this ownership. It's not an uncommon occurrence, in my opinion it's not really spot zoning because you are in an R-C district, which is highly commercial, and would still be in a commercial category. It is something that could run only with this ownership and revert back to R-C should this owner sell the property. The Town Attorney is correct and this would need to be monitored, they just can't sell the land to someone else and have it remain as C-2. The Town should file an amendment to the deed at County Hall to protect their decision.

Discussion followed regarding the zoning of surrounding property.

Mr. Bethge spoke as the owner of the business. He said that basically all he does is park trucks there, we cover the overnight for the AAA from 18-Mile Creek to the 290. During the night there are nine trucks on the road, during the day there are only four trucks on the road, and the rest are parked there. I talked to my neighbors in the body shop, and the new neighbor who looks at it as security, because every couple

hours someone is switching the trucks. I have talked to the neighbors across the street. I've heard there is a complaint, but no written complaint. An alternative is to put up a fence out in back. We don't store any cars, my legal lot for car storage is in the Town of Hamburg at Route 5 and 3231 Lake Street. Yes you could say that we are conducting a business, but we are not. The guys park their cars and jump in a truck.

Mr. Early asked how far back is the area for proposed for truck parking.

Mr. Maxwell: 267.27 feet on the one side and 144 on the other.

Mr. Jusko asked where is the location in relation to the garage?

Mr. Bethge said pointed out location on the survey. Mr. Maxwell said so you're go through the access road and technically park them behind what is the old Town access road into the diamond, so they're down back there. Mr. Bethge said yes.

Mr. Maxwell asked Mr. Bethge if he had considered a variance. Mr. Bethge I talked to Denny (Kramer) about it and he said that it would be highly unlikely that we would get because of the circumstances. But there is a lot that has gone on and I'm just trying to start over. By parking these trucks here saves \$1800.00 a month. It saves me from not having to rent another place. I even talked to the collision place about parking them there, and if he allowed me too, he would have to get a variance, because it's two types of businesses.

Mr. Brox asked how long the business had been at this location?

Mr. Bethge said a little over a year. We started out with two trucks and AAA made me an offer I couldn't refuse, which increased the area by 100%, it's hard to say no to that kind of offer from AAA.

Mr. Jusko asked Mr. Brox "if you were to write a formal recommendation, what would that recommendation say?"

Mr. Brox: "I would still like to stay with my original statement that is in the minutes."

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Discussion followed regarding the differences between C-1, C-2 and R-C, the location and does rezoning benefit the Town of Boston or the owner.

Mrs. Andrzejewski asked Mr. Bethge if he would be expanding the business? He said no.

Mr. Mendola asked if it were rezoned could they still live there. Mr. Brox said that the Town would be creating a legal non-conforming use; if she sold the house it could not be reused as a house, until the rezoning reverted back to R-C. She can live in the house as long as she doesn't sell it or move.

Mr. Jusko and Mrs. Andrzejewski both expressed their opposition to the rezoning. Mr. Jusko added that in fairness to the landowner it should go to the Town Board.

Mr. Jusko made a motion that the application be considered complete and return it and all documents to the Town Board so that they can act on it based on the written recommendations of Town Attorney Vacco and Town Planner Brox. Seconded by Mr. Pohl.

Mr. Stringfellow asked if there were any discussion on the motion.

Mr. Mead asked if the Town Planner is going to send a written recommendation?

Mr. Brox said that he would fax a letter tomorrow to the Planning Board.

Mr. Stringfellow asked for a vote. All were in favor.

#### MAURICE EMERLING ? RIGHT OF WAY OWNERSHIP REQUEST

Mr. Maxwell reported the following correspondence:

- Letter dated August 21, 2003 from the Planning Board to Foit-Albert asking for a written review of findings/opinions
- Letter dated August 21, 2003 from the Planning Board to Richard Brox asking for a written review of findings/opinions
- Letter dated August 22, 2003 response from Richard Brox
- Letter dated September 8, 2003 response from Scott Kinsman of Foit-Albert

Mr. Jusko asked what the concern was with the R-O-W. Mr. Pohl referred to the Phase II highways.

Mrs. Vacco further explained there is a temporary dedication that Mr. Emerling accepted, but we haven't accepted the roads, the curbs until certain drainage issues were addressed to our satisfaction and that hasn't occurred yet. So there is a limited dedication.

Mr. Brox stated that there is no such thing as a limited dedication, either they are accepted or they aren't.

Mr. Maxwell explained that there is an agreement between the Highway Superintendent and the developers, bonds are in place, and it pertains to the ditches, the establishment of the lawn area. I won't dispute your claims that the roads weren't accepted, but the bonds are in place so henceforth the roads have been accepted, and building permits are being issued based on that.

Mr. Brox asked about the bond money being used for the work.

Mr. Maxwell replied that there is a check being held for security above and beyond the bond, to my knowledge there is no claim against the bond.

Mr. Brox asked if the developer is waiting to get all the lots sold to complete side drainage?

Mr. Maxwell explained that seeding and rip-rap has been put in and hope that it all gets established.

Mr. Mead added that it became an issue in the winter, because the developers did want to start developing some of the land so people could start building. Yes, it was an agreement with the Highway Superintendent that the road would maintain its infrastructure, to his satisfaction and if it didn't or it started to erode to a point to where he was not satisfied, there were bonds against that to help correct those problems.

Mr. Pohl added that there are no means of retention.

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Maurice Emerling, con't.

Mr. Mead said the engineers are looking at that and where the water flows too, and that has to do with the bonds and the money being held.

Mr. Jusko stated that the original sub-division plans had swales and runoffs and retention areas, and it is my understanding is there's no retention areas.

Mr. Maxwell said there is huge infrastructure under the ground.

Mr. Jusko asked, it's not working?

Mr. Mead replied ?I don't recall if it's working to the satisfaction of the Highway Superintendent.

Mr. Jusko gave some history of the requests of landowners for culverts, the committee that was formed to work with the landowners and the developer, so that uniformity would be throughout the sub-division. And then it was decided that the Town would pursue establishing a drainage district, and at that point nothing further happened.

Mr. Mead said that to create a drainage district at that time, it would have to be (I think) approved, by 75% of ownership, and at that time 75% was the developer, and would be a substantial burden. So the legislation was so one person can't put in a pipe and down the road there is none and their land washes away.

Mr. Brox asked for a good explanation for going from a 30 foot easement to a 75 foot access way.

Mr. Stringfellow said the only explanation offered was to have enough room to plow snow, and for access to access the land above the power line.

Mr. Brox said then at some point that may be a roadway.

Mr. Brox commented ?if this is the intention, please say so.?

Discussion followed about the possibility of a future sub-division going in above the power line; the ownership of the property above the power line and the ownership of Hickory Meadows.

Mr. Maxwell said that somebody said that they were intending to change the plat map and he advised them that any changes had to be discussed and approved by the Planning Board.

Discussion followed about snow plowing issues.

Mr. Stringfellow asked for a motion.

Mrs. Vacco said that she has been asked by the Town Board, by the direction of the Town Engineer, to write the Emerlings requesting them to address the issues about the drainage, to bring them in accordance with the Town Engineers.

Mr. Jusko made a motion that discussion on the application be tabled pending resolution to the issues stated in the letter from the Town, seconded by Mr. Early. Mr. Maxwell abstained from voting, all others were in favor of the motion.

#### NON-AGENDA ITEMS

##### Deer Run Turn Around

Mr. Maxwell asked if there had been any reply from Mr. Kreitzbender regarding the completion of the ?T? turn around on Deer Run.

Mrs. Vacco said that nothing new has been done.

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Non-Agenda Items, con?t.

##### Three Girl?s Caf 

Mr. Maxwell said that the site plan that was approved for Three Girl?s Caf , specifically the blocking of the parking and the lining of spaces, has not been done. If we enforce site plan compliance at one

location then we need to enforce at all times and places. He suggested that a letter be sent to Code Enforcement Officer Kramer asking for follow through at the 3 Girls? location.

Mrs. Vacco said that she has sent a letter to Nick Charlap asking him to bring in the changes that he made, that were not on the approved site plan, for discussion and review.

Vice Chairman Stringfellow asked if there were any further business to be brought before this Board.

Mr. Brox asked if his letter for contract renewal had been acted upon. Mr. Maxwell said that Mrs. Hacker had read his letter into the minutes and that it would be acted upon at a later meeting.

Vice Chairman Stringfellow asked if there were any further business to be brought before this Board.

Being none, Mr. Jusko made a motion to adjourn at, second by Mr. Early. All in favor.

Respectfully Submitted,

Kevin G. Maxwell

Secretary

KGM:tjf