

NEEDHAM PLANNING BOARD MINUTES

August 7, 2012

A special meeting of the Planning Board held in the Charles River Room of the Public Services Administration Building was called to order by Bruce Eisenhut, Chairman, on Tuesday, August 7, 2012 at 7:30 a.m. with Messrs. Warner and Ruth and Ms. McKnight as well as Planning Director, Ms. Newman,

Correspondence

Ms. Newman noted she had emailed the Board members a Council of Economic Advisors meeting notice and all are invited.

Vote to go into Executive Session to Discuss pending Litigation.

Upon a motion made by Ms. McKnight, and seconded by Mr. Warner, it was by a roll call vote of the members unanimously:

VOTED: to go into executive session for the purpose of discussing pending litigation with the intent of the Board to vote to go back to public session.

Mr. Warner voted in favor

Ms. McKnight voted in favor

Mr. Ruth voted in favor

Mr. Eisenhut voted in favor

Town Counsel David Tobin stated this is the Belle Lane subdivision the Board approved. One of the abutters on Whitman Road has appealed and the matter is pending in Norfolk District Court. On June 23 the plaintiff served the Board with a motion for summary judgment in which they asked the court to find the Planning Board exceeded their authority in approving a subdivision on 2 bases: requiring the developer to secure from a third party an easement over a dead end private way to gain emergency access and to provide utilities for a proposed subdivision. The decision is not final because it requires future review and approval of modifications to a subdivision plan including, amongst other issues of substance, emergency access easement. They were served with a motion for summary judgment.

Mr. Tobin stated the defendants are not only the Town of Needham but also the developer who is represented by Diane Tillotson of Hemmingway and Barnes. They have a big reputation for land planning litigation. He stated he was starting to work on an opposition to the motion for summary judgment but Ms. Newman spoke to him and indicated the Planning Board is uncertain whether to expend town resources and time opposing the motion for summary judgment. He does not know the Board's feelings on this but sometimes developers carry the ball on this but the Planning Board is his client. He feels he must use his best effort to oppose it unless they state otherwise.

Ms. McKnight stated after seeing the pleadings she has further questions. She asked Mr. Tobin if he thinks the defendant's interests are precisely the same as the Planning Board's interests here. Mr. Tobin stated he does not know from the pleadings. He commented he drives by the site and sees a for sale sign. He would think the developer would still want the subdivision to be approved as he assumes it makes the land more valuable. He does not know where their interests are as he/she has it on the market.

Ms. McKnight stated she is concerned particularly with the complaint that the Planning Board has exceeded its authority in requiring this easement. Suppose the court decided, or the developer agreed with the plaintiffs, the Planning Board exceeded its authority in seeking the easement and the developer does not aggressively defend that part of the decision. If the court said they exceeded their authority would the result be the subdivision would still go forward without the easement? Mr. Eisenhut noted the risk is there but the broader concern he has is the

notion in general they can impose reasonable conditions that are basically administrative in nature and can be easily confirmed by the Planning Board. That could also come under attack.

Mr. Warner stated if this happens and they let the easement disappear the subdivision would now be a cul-de-sac. Ms. Newman stated it would be a long dead end street with no access. Mr. Warner noted one reason for the easement was for the sewer and utility so it put the developer at much more cost to run the utilities from Charles River Street. Ms. Newman stated she thinks they created a looped system through the easement for the water. Ms. McKnight noted that system is very much to be desired.

Mr. Warner clarified if the easement did not exist all the utilities would have to go through Charles River Street so the developer does have an interest in the easement. Mr. Tobin stated he does not disagree with what he said. He asked if the MDC sewer easement goes across the back of the property and if they would be able to get a direct connect. Ms. Newman stated she does not know the answer to that. Mr. Ruth noted he vaguely remembers to get back there they need to go through conservation restrictions. Mr. Tobin clarified they would not be able to do that.

Mr. Ruth stated Mr. Tobin said at the outset he thought he was about to do the summary judgment and wondered if they should do that. Ms. Newman clarified Mr. Tobin wanted to know what their position was. She thought it would be helpful to get everyone in the same room so they were all on the same page. Everyone would know what the legal case was all about and to make sure she was communicating it accurately. Mr. Tobin stated he was concerned about defending the town's ability to issue these types of conditions. There should be a focus on a defense on that issue.

Ms. McKnight stated the requirement for the utility easement is not being challenged. It is the access easement that is being challenged in the motion for summary judgment so the utilities easement could stick and the access easement could be denied. Mr. Tobin disagreed. The memo in support of the plaintiffs request for summary judgment, second paragraph, first sentence, says "easement over dead end private way to gain emergency access and to provide utilities to the site." Ms. McKnight stated in their argument they do not focus on utilities at all.

Mr. Eisenhut stated it is a private matter that they need access to construct the utilities. Ms. McKnight noted the concern the abutters have is passage and that is what they focus on in their argument. Mr. Warner stated Mr. Eisenhut is concerned with setting legal precedent but this is not a good subdivision. Mr. Eisenhut noted it would be a worse subdivision if they could do it without the access.

Ms. McKnight asked if Mr. Tobin had spoken with Attorney Tillotson yet. Mr. Tobin stated he will try today. He did have one conversation with her. He told her he would need some sort of affidavit from the developer to say he owns the house and bought the house on Whitman Road because they did not put that in there. It says there is the same trustee. Mr. Warner clarified the developer bought the house and lot next to the embattled easement. This is correct.

Mr. Warner asked if he would be able to take off a piece of his property to use that. Ms. Newman stated he would have to take the house down. Mr. Ruth stated that was a live issue. They could have moved the passage way over but during the hearing they were taking the view that would be a self imposed violation. Mr. Eisenhut asked if they had a consensus and they all agreed.

A motion was made to instruct Town Counsel to continue with the defense of the Planning Board in this case. Mr. Eisenhut added with the focus on conditions of the easement. Ms. McKnight stated if the town prevails in the motion for summary judgment you wonder if the abutters would then give up because the court would have been saying the likelihood of prevailing on the merits is with the town. She stated it seems like they should revisit it.

Upon a motion made by Ms. McKnight, and seconded by Mr. Ruth, it was by the four members present unanimously:

VOTED: to instruct Town Counsel to continue with the defense of the Planning Board in this case with a focus on conditions of the easement.

Ms. McKnight noted there was other pending litigation she understands now with the theater block. Ms. Newman noted she has just received an email from the Town Clerk stating she was notified she would get served on that and the Planning Board members will subsequently get served. Mr. Eisenhut asked if an abutter appealed the decision. Ms. Newman believes it was Stuart Rothman, owner of the corner lot.

Upon a motion made by Ms. McKnight, and seconded by Mr. Warner, it was by a roll call vote of the members unanimously: to go back to public session.

Mr. Warner voted in favor

Ms. McKnight voted in favor

Mr. Ruth voted in favor

Mr. Eisenhut voted in favor

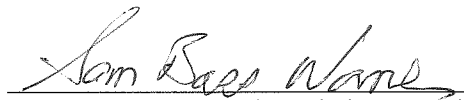
Ms. Newman informed the Board she thinks Normandy will be filing plans for the park. Trip Advisors and Clarke are 2 companies they are courting and are in the RFP process along with one other.

Upon a motion made by Ms. McKnight, and seconded by Mr. Ruth, it was by the four members present unanimously:

VOTED: to adjourn the meeting at 7:55 a.m.

Respectfully submitted,

Donna J. Kalinowski, Notetaker

A handwritten signature in cursive script, reading "Sam Bass Warner", written over a horizontal line.

Sam Bass Warner, Vice-Chairman and Clerk