



BELLINGHAM PLANNING BOARD

5 COMMON STREET
BELLINGHAM, MASSACHUSETTS 02019
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January 25, 2007 Meeting Minutes

- **Present at the meeting:**

Brian J. Sutherland (BJS) Chair
Glenn C. Wojcik (GCW), Vice Chair
David Brown (DB) Secretary
Thomas J. Guerin (TJG),
Roland R. Laprade (RRL),
Stephen Bartha (SB)

Other officials: Stacey J. Wetstein, (SJW) Town Planner
Amy Cook, (AC), Commission on Disabilities
Mary Chaves, (MC) Coordinator

TJG: Motion to accept minutes of January 11, 2007.
RRL: Second.
Vote: 5-0, Approved.

RRL: Motion to sign vouchers.
DB: Second.
Vote: 5-0, Approved.

D&N Estates Decision Signing

SJW advised the Board that the issues for storm water management had been resolved between the applicant, DPW and Conservation Commission. The applicant will perform routine maintenance for two years and keep accounting records of the maintenance. They will then meet with the DPW again to arrange an appropriate fund. Their agreement is attached to the Conservation Commission's Order of Conditions.

TJG: Motion to sign decision for D & N Estates Definitive Subdivision Plan to include the Conservation Commission's Order of Conditions.
RRL: Second.
Vote: 5-0, Approved.

TJG: Motion to sign Special Permit for Major Residential Development decision for D & N Estates to include the Conservation Commission's Order of Conditions.
RRL: Second.
Vote: 5-0, Approved.

66 Mendon Street, Runways Salon, Development Plan Modification Discussion

Wayne Goranson, the applicant and Bill Halsing appeared before the Board. The Conservation Commission had closed their hearing and issued an Order of Conditions. SJW prepared a decision for the Board's review in case they wanted to move forward on this project.

BJS asked about the closing off of the driveway. The applicant had said he would block it with some granite. BJS stated that he would not sign the decision until the driveway was blocked off on Brook Street. The applicant thought that the Board "was Kidding" about blocking off the driveway. With stone until it can be removed.

RRL: Motion to draft favorable decision for Development Plan Modification for 66 Mendon Street.

DB: Second.

Vote: 5-0, Approved.

RRL: Motion to close the public hearing.

TJG: Second.

Vote: 5-0, Approved.

Cumberland Farms Decision Signing

RRL: Motion to sign decision for Cumberland Farms Development Plan Review decision.

DB: Second.

Vote: 4-1, Approved (GCW voted nay).

EMC Definitive Subdivision and Special Permit for Scenic Road

BJS informed the Board that EMC had requested a continuance until March 22, 2007.

RRL: Motion to continue public hearing for EMC Definitive Subdivision and Special Permit for Scenic Road until March 22, 2007 at 7:15 PM.

DB: Second.

Vote: 5-0, Approved.

RRL: Motion to extend decision deadline for EMC Definitive Subdivision and Special Permit for Scenic Road until March 23, 2007.

DB: Second.

Vote: 5-0 Approved.

Planner's Report

SJW advised the Board that she would like to hold the Dunkin Donuts mitigation monies public hearings on February 22, 2007. She proposed scheduling each party a 5-10 minute increments to address the Board. SJW spoke with Dunkin Donuts and they will require a spread sheet with the people's information including social security numbers for tax purposes and that payouts would take approximately one week. For work that will be completed, the Board could determine a deadline for completion. Marilyn Mathieu will send Dunlin Donuts the monies right away. She asked that further continuances of Public Hearings be scheduled for March 8, 2007 or after if possible.

Crystal Springs Special Permit Modification

DB recused himself from the voting body as he is an abutter and has an interest in the project and sat in the audience.

Steven Greenwald, attorney for the applicant, addressed the Board on his contention that in a similar case the Court ruled that the Special Permit remained in effect in perpetuity since some work had already been done on the site and that the issue that held up construction was the availability of sewer.

RRL stated that sewer had been available and that some of the units were on sewer, so that should not have been a reason for not continuing the project in a timely manner.

The Board had requested an opinion from Attorney Lee Ambler, and had received a letter outlining specific sections of the bylaw but no yes or no response to their inquiry. This left the Board at a loss to determine whether to move forward with an amendment to the special permit or to ask the applicants to resubmit a new development plan. Also, there a question of should the Special Permit have lapsed, does the applicant have to go to Town Meeting as the project will have over 50 units and the current bylaw calls for approval at Town Meeting. Attorney Greenwald stated that since the existing units were sold, that they could not be counted in the 50 unit total.

RRL asked that if the condo owners all had a stake in the parcel, that is was still one parcel and all units should be considered in his opinion. He further stated that he was not an Attorney and that he would require clarification on this point as well as to the validity of the Special Permit.

TJG stated that he was not comfortable with the response and felt that if Attorney Ambler could not provide the Board with a specific answer, that perhaps the Board should retain outside counsel. SJW stated that we would have to find the funds in the budget, but that she would see what she could come up with.

RRL: Motion to consider the Special Permit valid.

TJG: Second.

Discussion:

Martin Roche, on the condo board at Crystal Springs stated that in 1990 the septic system failed and when sewerage became available the first phase was put in public sewer. At that time the Board did not have means to continue development and did not know that should have requested the sewer capacity for the entire development. He further stated that In 1988 a decision was made that the Special Permit had not lapsed and that they had spoken with someone in at the Planning Office. He also expressed his frustration that the Board did not have a clear answer from Attorney Ambler on why or why not this Special Permit was valid.

David Brown of S Main Street countered that the person who held the development rights, his father, approached the condo association in 1994 to continue the development and the condo association refused the developer stating that the Special Permit was no longer valid. Mr. Brown further stated that it was the same Attorney, Greenwald, that handled the case in 1994 and that he should have been aware of this. Attorney Greenwald replied that he did remember representing Mr. Brown's father, but that he believed it was a peripheral matter, but could not recall.

Gail Maloney, 22 Flag Drive felt that this should go to another attorney as the Town Counsel did not deliver an opinion.

Jim Dunlea stated that without an opinion from Town Counsel they should get another opinion, to avoid further delay.

Vote: 3-2, Motion on Special Permit not carried as super majority not reached.

TJG: Motion to get definite decision if special permit is still valid from alternate legal counsel if need be.

Pam Jordano, Flag Drive was upset that the Board did not have the information they needed to move forward and asked that the Board compel Attorney Ambler for a definitive response.

TJG withdrew motion.

RRL: Second.

The Board raised the question "If the Special Permit is valid, is a Town Meeting required?"

Ron Pat of Flag Drive stated he felt that Attorney Ambler did not see anything and deferred to Planning Board for a decision and that they would walk away tonight without a decision.

GCW stated that he would like to see Attorney Ambler contradict the applicant's interpretation of the case law and how it corresponds to the case in point, Crystal Springs Special Permit.

BJS stated that he didn't feel the Planning Board would get what they ask for from Attorney Ambler.

SJW concurred that this questions had been asked before and that the letter they had in hand was what they got.

BJS stated that no matter what the Board decided tonight that someone would litigate the decision and expressed his frustration with the response from Town Counsel.

GCW stated that we only need know how Attorney Ambler could defend their decision

TJG: Motion to ask Attorney Ambler to advise in a "yes or no" fashion if the Crystal springs Special Permit is valid and if not, to further determine if a vote at Town Meeting is required under Section 3400.

RRL Second.

Vote: 4-1 Approved (BJS voted nay).

Peter Morelli of Temi Rd suggested a special meeting for the sake of expediency.

TJG: Motion to continue to Feb 22, 2007 at 7:30 PM.

RRL: Second.

Vote: 5-0, Approved.

TJG: Motion to accept request for extension of decision deadline to March 23, 2007.

RRL: Second.

Vote: 5-0, Approved.

DB returned to the platform.

RRL: Motion to adjourn.

DB: Second.

Vote: Approved.

Minutes Accepted on: _____
(date)

(prepared by: Mary Chaves)

Roland R. Laprade

Brian J. Sutherland

David Brown

Glenn Wojcik

Thomas J. Guerin