



# City Of Attleboro, Massachusetts

## PLANNING BOARD

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## MINUTES

FEBRUARY 10, 2020

In accordance with the provisions of the Massachusetts General Laws Ch. 40A and Ch. 41, as amended, the Planning Board held public hearings on Monday, February 10, 2020 at 6:30 p.m. in the Council Chambers, City Hall, 77 Park Street, relative to the following :

Planning Board Members Present: Chairman Paul Danesi, Vice Chairman Jason Gittle, Scott Jones, Melinda Kwart, Jim Lewis, Sean McNamara, and Fred Uriot

Planning Board Members Absent: Secretary Sheryl Guglielmo and Bert Buckley

The Board heard the application of John J. & Mary F. Donovan to extend Rambler Road 2-5 feet, as shown on the street extension plan entitled "RAMBLER ROAD EXTENSION," engineered by Daniel R. Campbell, R.P.E. of Level Design Group, 249 South Street, Unit 1, Plainville, MA 02762, dated March 1, 2018, revised through October 28, 2019. The subject premises are located on Assessor's plat #123, Lot #8 in the Single Residence-D zoning district.

Speaking in favor of the application was attorney Edward Casey, who requested that the hearing be continued.

Jason Gittle arrived at 6:35 p.m.

There being no one else to speak, the public hearing was continued.

The Board heard the application of Pike Avenue Acquisitions, LLC for the proposed forty-nine (49) lot definitive subdivision plan entitled "PIKE ESTATES," located at 419 Pike Avenue, more specifically Assessor's plat #130, lot #81, located in the Single Residence-D zoning district, engineered by Daniel R. Campbell, R.P.E. of Level Design Group, 249 South Street, Unit 1, Plainville, MA 02762.

Speaking in favor of the application was attorney Edward Casey who requested a continuance to February 24, 2020 to allow the Board to deliberate the suggestion of a gate across Rambler Road. He stated that his client is supportive of that alternative, as it satisfies the neighbors, provided that there is a means of access to the utilities in Rambler Road and access for emergency personnel via some manner of gate.

Speaking in opposition was Robert Pasquale of 4 Rambler Road who asked whether the water line on Rambler Road is proposed to feed the new subdivision.

Chairman Danesi replied in the affirmative.

Mr. Pasquale replied that he purchased his home three years prior and that the water main on their street has broken at least half a dozen times. He stated that there are serious infrastructure issues in the area.

Chairman Danesi stated that the Water Department had opined that the addition of the subdivision has the potential to improve conditions in the area.

Jim Lewis asked whether there is frequently particulate in the water.

Mr. Pasquale replied no. He questioned what the impacts of construction are likely to be time-wise.

Senior Land Use Planner Stephanie Davies noted that most subdivisions install their utilities first.

Speaking in opposition was Susan Foster of 1 Rambler Road who asked for clarification on the purpose of the gate.

Chairman Danesi stated that it will restrict access to the subdivision from Rambler Road to emergency vehicles only, prohibiting cars.

Ms. Foster asked whether the road would be widened and sidewalks added if the gate were erected.

Chairman Danesi replied that it has not been decided and further discussion is required.

There being no one else to speak, the public hearing was continued.

**The Board heard the application of SOWA, LLC for an amendment to the approved Major Project Site Plan Review decision dated July 17, 2018 for “Shops on Washington” to reconfigure the proposed bank, restaurant, and retail buildings; and create new curb-cuts providing right-in only access to the site from Newport Avenue and Route 1A, the subject premises being located at 1 Highland Avenue and 5 Route 1A, more specifically Assessor’s plat #64, lots #1A and #1B, located in the General Business zoning district.**

The Board reviewed the Form P1 - Request to continue a public hearing to March 16, 2020, submitted by attorney Jack Jacobi of Coogan Smith, LLP on behalf of SOWA, LLC, relative to the Major Site Plan Review application for 1 Highland Avenue and 5 Route 1A.

Jim Lewis stated that the Board has been very patient. He asked whether there is any other detriment to the City other than the aesthetics on-site if the application is denied. He noted that the applicant already has a previously approved site plan.

Scott Jones asked whether there is a timeline for the previously approved project.

Ms. Davies replied that it was acted upon when the initial building permits were pulled, so there is no further time limitation in terms of construction.

Jason Gittle cited concerns with losing the integrity of the public hearing with the extended continuances and lack of progress.

Ms. Davies agreed that if revised plans were to be submitted, the application would need to be re-advertised and abutters notified.

Jim Lewis noted that the Board’s second meeting is on March 23<sup>rd</sup>, rather than the 16<sup>th</sup>. He made a motion to grant a continuance to March 23, 2020, with the Board’s intent to close the hearing and render a decision if no further progress has been made. Jason Gittle seconded the motion and all voted in favor.

There being no one else to speak, the public hearing was continued.

**The Board held a business meeting.**

**The Board heard the Form A application submitted by the Attleboro Land Trust, Inc. for 0 Pike Avenue .**

Speaking in favor was Attleboro Land Trust President Roy Belcher who explained their intent to swap this land for more environmentally valuable land that is privately owned adjacent to the Richardson Preserve. He stated that the owner had originally intended to develop five lots along the street, but is willing to develop the two proposed lots, instead.

Jim Lewis noted that both lots meet the frontage requirement. He asked whether the lots conform to zoning.

Ms. Davies replied that a variance was granted by the Zoning Board for Lot 2R relative to lot width.

Jim Lewis made a motion to approve the Form A for 0 Pike Avenue. Melinda Kwart seconded the motion and all voted in favor.

**The Board hear the appointment to speak of Mark & Paulette Rioux regarding Water Resource Protection District special permits.**

Ms. Rioux showed the Board a map and emphasized that the Bungay River is across the street and practically a mile from her project. She stated that she is seeking the Board's help to improve the WRPD special permit process. She stated that drainage, sewer, and retention ponds have been installed on the site to contain any stormwater runoff and that the binder coat has been installed on the road and that they are hoping to have the final coat in by the late spring or summer. She stated that a master special permit was approved for the overall subdivision, but that each individual house lot still needs to appear before the Board for WRPD approval. She stated that each filing is a 2.5 to 3 month process by the time the engineer puts together a plan, it is advertised, heard, and the appeal period concluded. She stated that her subdivision is a 28-lot project and that she is just now marketing house lots. She stated that her preference would be to apply for all of the lots at once, but that they cannot develop them all within the required time limit, being a small business that constructs, at maximum, about 10 houses per year. She stated that currently, the Order of Conditions granted by the Conservation Commission gives applicants three years to complete projects and that a similar timeline would be incredibly helpful with the WRPD special permit. She asserted that she is not trying to avoid filing fees, but would like to see the process streamlined to speed up approval and allow a longer timeline for construction. She explained that the delays result in her losing customers, which is becoming a hardship. She stated that based on the location of the subdivision, the process seems more like a formality, than anything else, as the likelihood of these lots affecting the Bungay River is extremely unlikely.

Chairman Danesi acknowledged that the Board has had this on the agenda for the Ordinance Committee for quite some time, but that they haven't had the chance to address things yet. He sought to confirm that she was seeking a 3 year permit expiration date.

Ms. Rioux replied in the affirmative.

Jim Lewis noted that such a change would require a proposal for approval by the Municipal Council to amend the Ordinance, a process which requires the Planning staff to get behind the changes. He asserted that he didn't see a purpose in regulating the Bungay River WRPD as the DEP doesn't even consider it a resource to be protected. He stated that all of the City's drinking water comes from surface water on the other side of Route 95, not from the Bungay River. He suggested an amendment similar to that of the Zoning Board's Chicken Ordinance, which allows for residents to have up to six chickens with a standard set of conditions. He suggested that it could be part of the Zoning regulations so that applicants do not have to go through the special permit process. He stated that the WRPD Ordinance was drafted back in 1980 and, to his knowledge, hasn't been amended since then. He argued that back then, we didn't have the advanced stormwater management systems we employ now. He stated that unfortunately, if the Ordinance stipulates a one year time limit, the changes will have to go to the Council and need the support of the Planning staff.

Ms. Rioux countered that she couldn't find a reference to the one year deadline anywhere in the Ordinance. She stated that it is only reflected in each decision and not defined in the Ordinance itself.

Speaking was Mark Rioux who agreed that the four month waiting period is costing them customers.

Chairman Danesi suggested that if the time limit could be adjusted, it would give them some flexibility.

Mr. Rioux replied that he would like to see just one single permit issued for the entire subdivision.

Ms. Davies stated that she needs to perform some more research on the timing, as she doesn't see a reference in the section on WRPD, but only under the special permit description. She stated her suspicion that state law limits the timeline for special permits to one year, with the option to extend one additional year, for a maximum of two years.

Jason Gittle asked how often the Board grants and approval and a subsequent extension.

Ms. Davies replied quite frequently.

Jim Lewis stated a desire to know the Water Department's stance on the WRPD Ordinance.

Scott Jones agreed that the Bungay River provides a non-potable drinking water source and he felt it would be appropriate to review and potentially amend the Ordinance.

Jim Lewis suggested that the Ordinance was passed at a time when many residents relied on wells for their water and that the wells have long-since been abandoned.

Jason Gittle agreed that the process is somewhat cumbersome, given those facts.

Ms. Davies argued that a process taking time is not a justification to not entirely eliminate that process.

Jason Gittle countered that if the area should no longer be classified as drinking water, the Ordinance should be reviewed as soon as possible.

Mr. Rioux asked whether he could take the matter to the Municipal Council.

Jim Lewis answered that with the signatures of 10 taxpayers, anyone can petition the Municipal Council.

Jason Gittle stated that he has discussed this issue with Director of Planning and Development Gary Ayrassian in the past and that his concerns revolved around losing the public process. He stated that if the protections are still needed, the process appears to be flawed.

Ms. Davies suggested that an amendment could involve either modifying the City map or referencing the DEP map relative to drinking water protection. She explained that the DEP has some more specific, protected areas that limit the footprints of houses within them, but that she thinks the only places in the City where those occur are on land owned by the Water Department.

Chairman Danesi suggested that an extension of time could be approved at the same time the permit is granted, providing a two-year deadline.

Ms. Rioux noted that realistically, she will be constructing this project for at least the next five years.

Chairman Danesi replied that his suggestion is the most expedient option available at the moment and that the Board will have to review things further.

**The Board discussed the letter from Robert J. Sweeney, dated January 9, 2020, to Planning Board Chairman Paul Danesi, requesting the case law provided by the City Solicitor to support the opinion that only one abutter signature is required on the Rambler Road Street Extension application.**

Ms. Davies reminded the Board that in a Subdivision Committee meeting, Cindy had given a verbal opinion supporting the need for only one abutter to sign the application and that no written legal opinion was provided.

Jim Lewis stated his understanding that the situation is very complicated and involves a lot of common and some statutory law. He asserted that this letter deserves a response, but that if the resident has law that disputes the Solicitor's opinion, the burden should be on him to submit that information to the Board.

The Board agreed to have staff send a response letter.

**The Board had a discussion on the viability of a gate at end of Rambler Road relative to the proposed "PIKE ESTATES" subdivision.**

The Board held a straw poll to see who would tentatively be in favor of limiting traffic at the end of Rambler Road to emergency vehicles only using a gate or other mechanism and allowing a waiver for 49 houses on a dead-end street.

Out of seven members present only one raised their hand.

Ms. Davies noted that with this approach the pavement will still be continuous and just defined with a gate. She emphasized that residents will still be able to see down a new road and that she is concerned that their issue is more so with change than anything else. She suggested that there is the possibility that it will reduce their home values having the gate there, as it will differentiate the old neighborhood from the new one.

Jim Lewis asked whether we anticipate their home values will go up if the road is kept open.

Scott Jones replied yes, potentially. He stated that it will bring improved aesthetics, better drainage, and utilities to the area. He stated his opinion that there is a good argument that in the long term, the development will be better for their property values. He explained that the higher value of a dead-end street is being taken out of context. He insisted that despite dead-end homes being desirable, they don't necessarily increase value, but the combination of infrastructure improvements and new home construction in the neighborhood should outweigh the lack of a dead end street for the homes on Rambler.

Fred Uriot stated his opinion that he doesn't think people will be speeding through Rambler Road as a short cut as it will bring them significantly out of their way.

Melinda Kwart noted that a lot of the people in opposition have only lived in the neighborhood a few years.

Sean McNamara pointed out that outside of the resident getting paid by the developer to sign the Street Extension application, everyone in the neighborhood is in opposition.

Ms. Davies countered that she had a Rambler Road resident in the office several days ago to consult about a commercial kennel and she specifically opined that she didn't care one way or another about the development. She emphasized that there are likely people who feel indifferent about it and don't feel strongly enough to show up at the public hearings. She noted, however, that the Board has heard from a lot of residents and that they have been consistent in attending every meeting.

Scott Jones stated that he would like to explore the repercussions of the gate further.

Chairman Danesi noted that the applicant sees the functional dead-end with the gate as a marketing gain. He noted that their original designs didn't even include a connection to Rambler Road.

Jim Lewis argued that they need public access from which to bring in the water and sewer utilities. He stated that they need the access from Rambler Road to build the subdivision.

Ms. Davies sought to confirm Mr. Lewis' opinion that the applicant cannot extend the utilities from Rambler Road without the City accepting the 2-foot stretch associated with the street extension.

Jim Lewis confirmed.

Chairman Danesi noted that Mr. Ayrassian disagrees with that analysis.

Jim Lewis stated that he would submit a letter to the Board over the next week laying out the case for why the subdivision cannot proceed without the Rambler Road extension being accepted by the City up to the property line.

Chairman Danesi argued that pipes and utilities are frequently constructed within subdivisions long before the streets are ever accepted.

Jim Lewis countered that it is done so at the applicant's own risk and that the ways are considered private until accepted by the City.

Chairman Danesi opined that the matter is likely to end up in the courts. He speculated what would happen that if the Board were to approve the street extension and subdivision, but for some reason the Municipal Council opts to not accept the extension once constructed.

Jim Lewis stated that when a lawyer represents a developer, the first step for a subdivision is to perform a title search on the property and determine where the access ways are to the property in question. He stated that the applicant in this case appears to have missed this step. He stated that the matter goes back to who has the right to pass over ways that haven't been accepted and the answer is only those within the associated subdivision.

Ms. Davies questioned how the subdivision could even be approved without the street extension being approved and accepted by the Municipal Council.

Jim Lewis stated his opinion that it cannot. He suggested that the Board not vote on "Pike Estates" until the Rambler Road street extension is accepted. He stated that he personally will vote against the subdivision if a vote is held before the extension is accepted.

Ms. Davies suggested that guidance be provided to the applicant regarding these issues at the next meeting.

**The Board tabled the letter from Planning Board Clerk Lauren Stamatis, dated February 5, 2020, to Public Works Superintendent Michael Tyler, soliciting a recommendation on the request for a PARTIAL release of funds relative to the infrastructure work completed at the "EDWARD SR. ESTATES" subdivision, pending a recommendation.**

**The Board reviewed all other correspondence.**

**The Board tabled the draft minutes of January 27, 2020.**

The Board scheduled a Subdivision Committee meeting for 5:45 p.m. on February 24, 2020.

The meeting adjourned at 8:00 p.m.