



City Of Attleboro, Massachusetts

PLANNING BOARD

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MINUTES

FEBRUARY 11, 2019

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 11, 2019 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, Sheryl Guglielmo, Scott Jones, Jim Lewis, and Melinda Kwart

Planning Board Members Absent: Vice Chairman Jason Gittle and Secretary Bert Buckley

The Board heard the continued public hearing for the application of W.B. Construction & Development, Inc. for the proposed amended forty-three (43) lot definitive subdivision entitled Brigham Hill Estates, as shown on the plan entitled "Phase II - 'Brigham Hill Estates' Definitive Residential Subdivision Modifications" filed pursuant to MGL Ch. 41 §81W, said premises being located off Smith Street and 29 Brigham Hill Road, more specifically Assessor's plat #218, lots #7 and 7B, surveyed by Byron J. Andrews, R.L.S. and engineered by Richard M. Mainville, R.P.E. of Andrews Survey & Engineering, Inc., 500 East Washington Street, North Attleboro, MA 02760, dated May 2, 2014 and revised through October 15, 2018. The subject premises are located in the Single Residence -D zoning district.

The Board heard the continued public hearing for the application of W.B. Construction & Development, Inc. for the proposed amended twenty (20) lot definitive subdivision entitled Brigham Hill Estates, Phase II, as shown on the plan entitled "Phase II - 'Brigham Hill Estates' Definitive Residential Subdivision Modifications" filed pursuant to MGL Ch. 41 §81W, said premises being located off Ingall Lane, more specifically Assessor's plat #218, lot #7A, surveyed by Byron J. Andrews, R.L.S. and engineered by Richard M. Mainville, R.P.E. of Andrews Survey & Engineering, Inc., 500 East Washington Street, North Attleboro, MA 02760, dated May 2, 2014 and revised through October 15, 2018. The subject premises are located in the Single Residence -D zoning district.

Senior Land Use Planner Stephanie Davies stated her understanding that the applicant wished to continue the public hearings, as the project is still undergoing the stormwater peer review process.

There being no one else to speak, the public hearings were continued.

The Board heard the continued public hearing for the application of UHS of Fuller, Inc. for a Major Project Site Plan Review pursuant to the provisions of §17-15.0 SITE PLAN REVIEW of the ZONING ORDINANCE, for realignment and expansion of two existing parking lots, adding a total of 75 new off-street parking stalls; including associated landscaping, lighting, grading and stormwater management systems; the subject premises being located at 200 May Street, more specifically Assessor's plat #14, lot #75, located in the Single Residence-B zoning district.

The Board reviewed the Form P1 - Request for a Continuance to February 25, 2019, submitted by Daniel DeCesaris of Joe Casali Engineering, Inc. on behalf of UHS of Fuller, Inc. relative to the Major Site Plan

Review filing for 200 May Street. Scott Jones made a motion to grant a continuance to February 11, 2019. Melinda Kwart seconded the motion and all voted in favor.

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

The Board heard the continued public hearing for the application of the City of Attleboro for a Major Project Site Plan Review pursuant to the provisions of §17-15.0 SITE PLAN REVIEW of the ZONING ORDINANCE, for the demolition of the existing high school building and construction of a new high school building consisting of 476,425 square feet and associated sports fields and courts; 687 off-street parking stalls; and associated landscaping, utilities, grading and stormwater management systems; the subject premises being located at 100 Rathbun Willard Drive, more specifically Assessor's plat #44, lot #42, located in the Single Residence-B and Single Residence-D zoning districts.

Director of Planning and Development Gary Ayrassian noted that the Board is awaiting the submission of a plan sheet detailing the snow removal areas. He stated that the sight distance from Green Street, due to no action of the high school, has extremely poor visibility. He stated his opinion that the Board should seek to compel the City to remove the foliage to improve sight lines as required by the Zoning Ordinance. He noted that he was unsure whether there would be continued issues with the slight bend in the road as you approach Dennis Street. He noted the Board's previous concerns regarding the potential for queuing out to Rathbun Willard Drive by drivers utilizing the drop-off loop, as well as questions about the time it will take to make a left turn out of the loop's exit to Rathbun Willard. He suggested that a sign prohibiting left hand turns at the heavily trafficked times of pick up and drop off be considered.

The Board reviewed the Form P1 - Request to Continue a Public Hearing to February 25, 2019, received from Jack Jacobi on behalf of the City of Attleboro, filed February 7, 2019, relative to the Major Site Plan Review application for 100 Rathbun Willard Drive. Jim Lewis made a motion to continue the public hearing to February 25, 2019. Sheryl Guglielmo 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 appointment to speak of Sean McNamara relative to the "STONE FIELD ESTATES" subdivision.

Mr. McNamara asserted that whenever he has brought issues to the Board regarding the subdivision construction, he has been assured that the developer is within his timeline for construction. He argued that that is no longer the case and asked why a vote hasn't been held to pull Mr. Catanacci's bond.

Chairman Danesi replied that the Board's deadlines serve to hold the developer accountable. He noted that even if the Board were to take the bond over right now, no construction could occur until the spring and summer, anyways.

Mr. McNamara argued that the City could be making arrangements now to complete construction if they were to pull the bond. He emphasized that Mr. Catanacci has been continuously belligerent, unprofessional, and dishonest in all of his dealings.

Sheryl Guglielmo questioned the anticipated length of the legal process associated with taking over a bond.

Mr. Ayrassian estimated it would take up to several months.

Chairman Danesi noted that things could be dragged out longer if the developer is uncooperative and fights the process.

Sheryl Guglielmo recalled that when the action had been considered in association with the "Avalon Estates" subdivision, it had been deemed a significant undertaking.

Mr. Ayrassian agreed and explained that on top of pulling the bond, the City would have to put the project out to bid, obtain a contractor, and have the work completed, all of which will take protracted periods of time.

Sheryl Guglielmo questioned who would administer the process.

Mr. Ayrassian replied that the Planning staff would coordinate with Public Works to develop an RFP and put it out to bid. He noted that the work would have to also be inspected and everything would be paid for by the money seized from the developer.

Ms. Davies noted that the hope would be that there is sufficient funds in the bond to cover the remaining costs, but that may not be the case.

Jim Lewis stated that in his opinion, pulling the bond would be more costly to the City, in terms of the resources involved and the amount of additional time it would like to take to get things done. He questioned what work remains that would present a safety issue. He stated his understanding that the only outstanding work involves a portion of the bounds, a section of pavement being delayed until gas services are installed, and the composition of one of the stormwater basins. He stated that overall, the majority of the work has been completed and there are just a few punch list items remaining. He stated that at this point, with the stormwater system incomplete, it cannot be determined whether it is functioning appropriately, so that cannot be the impetus to pull the bond.

Mr. McNamara argued that two years prior Mr. Catenacci had insisted that the ponds were 80% completed and later admitted that to be wrong. He stated that the ponds are not draining within 72 hours as is required and that in fact, they are still holding water 17 days after the most recently rain storm. He stated that he was guaranteed that his yard would not flood, but that it has happened over a dozen times to date. He stated that staff from the Public Works Department and informed him that it was water from the roadway that is pooling in his backyard.

Mr. Ayrassian replied that the issue is not with the stormwater system, but with the road's berm. He stated that Mr. Catenacci had been instructed when meeting on site with Public Works to address the berm, but that to his knowledge no work has been completed to that end.

Jim Lewis explained that the Board has to weigh a number of things and that he admits that Mr. Catenacci is pushing the envelope. He insisted that from what he's observed on site and reviewed, the majority of the project is done. He stated that the small amount of work remaining needs to be weighed against the costs the City will have to incur if they pull the bond. He stated that both parties are likely to invoke legal

counsel, which could result in things dragging on for years. He stated that he understands that Mr. McNamara feels aggrieved by the development, but that it is the Board's job to weigh the overall costs and benefits to the City when making decisions.

Mr. McNamara questioned what will happen when Mr. Catenacci misses another deadline, as he has the past six. He asserted that the City has continued to protect him and other developers. He stated that subdivision issues like this are happening all over the City.

Mr. Ayrassian disputed Mr. McNamara's claim and stated that statistically, out of hundreds of subdivisions being developed, there are inevitably going to be a few that have issues.

Chairman Danesi explained that the two year deadline for subdivision infrastructure completion is an arbitrary timeline mandated by the Planning Board. He stated that it is not realistic that subdivisions of all varied sizes and complexities will be able to be completed in that timeframe. He stated that instead, the deadline serves as a reference point to allow the Board can keep tabs on the progress of subdivisions. He explained that deadlines are meant to force a developer to appear before the Board and provide updates on the progress, at which point the Board reserves the right to grant extensions as requested. He stated that the vast majority of developers require more like four to six years to complete a subdivision, but that the Planning Board institutes a strict timeline in an attempt to keep things progressing.

Mr. McNamara stated that Mr. Catenacci submitted in writing that he would be done by May 1, 2017 and that his list of items to complete remains the same.

Chairman Danesi disagreed, stating that he has since paved roadways and installed sidewalks. He stated that the stormwater system still needs additional work to ensure sufficient infiltration rates, but that with the current weather conditions, excavating ponds is not an option.

Mr. McNamara countered that even when the weather was suitable, Mr. Catenacci eschewed performing the work on the stormwater system in lieu of furthering housing construction. He stated his opinion that Mr. Catenacci has no intention of finishing the subdivision.

Chairman Danesi disagreed, stating that Mr. Catenacci has to finish or he will not get his money back.

Mr. Ayrassian noted that he believed that this is Mr. Catenacci's first subdivision project in Attleboro and that in the past, he has engaged only in housing construction.

Sheryl Guglielmo stated her sense that it seems like Mr. Catenacci is ready to perform the work once the conditions are appropriate. She asked whether we have reason to believe that he will not follow through, given all of the work he's completed in the last several months at the Board's urging.

Chairman Danesi stated that the stormwater really should all be installed within the first year of construction, but that the Board has repeatedly found that developers prefer to wait until they are reaching the end of their housing construction, instead. He explained his understanding that otherwise, the stormwater system becomes plugged with sediment from the construction activities and needs extensive cleaning out and maintenance.

Jim Lewis suggested that that incongruity could be addressed when the Board discusses amending the Rules and Regulations. He explained that once a subdivision is approved, it is not easy to modify or

rescind. He agreed that it is totally unrealistic for a 50-lot subdivision to be completed within a two year period.

Mr. Ayrassian explained that during the development of the Rules and Regulations, he had advised the Board a 36 month timeline to complete subdivision infrastructure. He stated that the Board instead decided that they wanted to force the developers to appear more frequently to request extensions so that they could more closely keep track of the work being completed.

Chairman Danesi explained that if developers make compelling arguments for an extension of time, the Board will grant it. He stated that given the extensions granted for this particular project, it has only truly been delinquent since November.

Melinda Kwart questioned whether anything can be done about the flooding in Mr. McNamara's yard.

Chairman Danesi imagined that the developer will need access to asphalt to install any permanent fix, which isn't an option this time of year.

Sheryl Guglielmo suggested that a temporary fix, like a silt sock, could improve things.

Mr. Ayrassian explained that such a fix could be pursued and that the Board could have staff issue a letter requesting its installation. He stressed, however, that the pooling of water is going to happen again despite the fix. He explained that the problem is water hitting the top of the berm, trickling off the back side, and running into Mr. McNamara's yard. He stated his understanding that the problem is not water directly from the roadway itself.

Jim Lewis questioned how such an issue could be corrected.

Mr. Ayrassian stated that he imagined the only way would be to install a dry well on Mr. McNamara's property.

Ms. Davies questioned how long the water pools.

Mr. McNamara replied approximately 48 hours.

Mr. Ayrassian noted that a French drain may also solve the problem, but that whatever fix is employed, it will have to occur on Mr. McNamara's property, which is outside of the subdivision.

Sheryl Guglielmo asked if this was the issue of which Mr. McNamara is most aggrieved.

Mr. McNamara replied no, that he is more disgruntled by the fact that the developer has lied to him repeatedly. He suggested that the residents of the subdivision don't complain to the Board because Mr. Catenacci will punish them by delaying construction further.

Melinda Kwart questioned whether the Board can request Mr. Catenacci remedy the flooding in Mr. McNamara's backyard.

Mr. Ayrassian answered in the affirmative, but stated that as the work is not part of the approved plan for the subdivision and on property outside of the project's boundaries, the work cannot be compelled by the Board.

Ms. Davies sought to explain that it's likely that the stormwater in Mr. McNamara's yard previously flowed across his property, but that formerly, it continued onward to Mr. Catenacci's undeveloped land. She stated that now that the land has been developed, there is nowhere for it to go and it is instead pooling on his property.

Mr. Ayrassian stated that W.B. Construction is a good example of a developer who steps up to resolve off site development issues. He stated that it would be appropriate for Mr. Catenacci to step in and resolve this issue similarly. He stated that his expectation, however, is that Mr. Catenacci is likely to pay lip service to addressing the issue, simply to mollify the Board, but is unlikely to actually resolve things. He stated that he feels the Board should go on record, however, requesting that he resolve the issue. He noted that he does foresee issues with Mr. Catenacci being able to complete a solution as he will need permission from Mr. McNamara. He stated that there is a resolution, but there will have to be some negotiating to reach it. He stated that he understands that that is not the answer that Mr. McNamara wants to hear, but the Board is keeping Mr. Catenacci under the microscope and anticipate an update from him in two weeks. He explained that there is a mechanism for remediation, but that with government and legal processes, it will take time. He stated that at this point, the Board has opined that the approach they are taking is the one that will be most efficient to get the subdivision completed.

Jim Lewis questioned whether the Board could obligate Mr. Catenacci to dewater the stormwater basins to perform the work sooner than later.

Sheryl Guglielmo replied that right now, it's not an option as everything is frozen.

Ms. Davies suggested that that approach could be discussed when Mr. Catenacci appears at the next meeting.

Jim Lewis stated that he felt dewatering could present an alternate route for if there is a lot of rain slowing down work in the spring.

Mr. McNamara argued that Mr. Catenacci seems to have plenty of time to complete construction of the houses though.

Mr. Ayrassian agreed that Mr. Catenacci's business model revolves around finishing the houses before completing the subdivision infrastructure, an approach that has brought him into conflict with the Board numerous times.

Ms. Davies stated that she understands Mr. McNamara's concerns regarding the stormwater system, but argued that Mr. Catenacci has completed a significant amount of work in the last several months, including paving of the road, installing berms and sidewalks, as well as the stormwater system's emergency overflow.

Mr. McNamara replied that such work was only completed under the threat of the Board taking over his bond.

Scott Jones replied that that threat is still on the table.

Chairman Danesi stated that he understands that Mr. McNamara has a personal conflict with Mr. Catenacci and that he feels that has hardened his position on everything.

Mr. McNamara agreed and stated that Mr. Catenacci made things personal by calling the police on his housekeeper and calling the Building Inspector on his cousin.

Chairman Danesi stated that once those battle lines have been drawn, it puts the Board in a difficult position, because the Board represents the City and cannot look at things from a personal perspective. He stated that in some instances, it makes more sense for the aggrieved homeowner to hire their own legal representation and fight the developer in court directly to resolve their concerns.

Mr. McNamara argued that voting to take over Mr. Catenacci's bond is within the Board's control.

Jim Lewis stated that the Board has already issued a decision in that they voted to not pull the bond at this time.

Mr. McNamara questioned the grounds for that decision.

Mr. Ayrassian replied that the Board deemed the work completed by the developer in the two month period when they were considering taking over the bond to be a sufficient effort to convince the Board that the developer plans to complete things. He noted that a number of the subdivision's residents also attended the meeting and requested that the Board allow Mr. Catenacci continue development, rather than pulling the bond.

Chairman Danesi agreed and stated that the City can still pull the bond, but then the City becomes responsible for cleaning up all of the loose ends, which complicates things and may not be advantageous from a timeliness or financial perspective.

Mr. McNamara questioned what will stop the developer from continuing to drag things out like this. He asserted that Mr. Catenacci has broken every single rule that a developer can.

Mr. Ayrassian questioned to what rules Mr. McNamara is referring.

Mr. McNamara replied that he has missed every deadline for construction completion.

Mr. Ayrassian argued that that is not true, as he had requested extensions which the Board subsequently granted.

Mr. McNamara stated that it took the developer 18 months to put up a storm fence when asked to do so by the Board.

Mr. Ayrassian replied that the Board requested that action, but could not compel it, as it was not included in the subdivision's Certificate of Vote. He stated that there is no force of law behind requests made by the Board after the decision has been issued. He stated that the Board does not have infinite power. He stated that Mr. McNamara always has the option of hiring a lawyer to pursue things from his end directly with the developer.

Mr. McNamara stated that it sounds like the Board has no intention of pulling the bond.

Chairman Danesi countered that it is still an option, but that all other reasonable avenues need to be exhausted first.

Mr. McNamara stated his sense that the Board is continuing to protect the developer.

Chairman Danesi argued that the Board is protecting the City and the residents to whom Mr. Catenacci sold property. He explained that members of the Planning Board can help draft conditions that go into a final vote of approval, but that it is very difficult to change things halfway into the construction of a subdivision.

Mr. Ayrassian added that there must be consensus amongst the Board in support of each condition of approval. He stated that the Board functions as a democracy and that they administer the law and City's Regulations as logistically and consistently as possible. He stated that although Mr. McNamara may not recognize it, those laws also benefit him.

Chairman Danesi assured Mr. McNamara that his message had been received and that the Board recognizes that steps need to be taken to better protect residents that abut, but are outside of the confines of subdivisions.

Speaking was Councilor Laura Dolan regarding Windwood Estates

Councilor Dolan questioned how situations like the one at Windwood Estates come to pass where the subdivision is nine years past its deadline with significant work remaining.

Ms. Davies explained that during the economic downturn, the state mandated an automatic extension period that granted a four year extension to all projects within a certain tolling period. She stated that Windwood Estates was one of the projects that benefitted from these automatic extensions.

Mr. Ayrassian added that staff have been focused on clearing up the projects even older than Windwood Estates. He stated that there are plans to do a mass redress of outstanding subdivisions come the spring. He respectfully requested her patience as the staff works to address things.

The Board tabled the letter from President Joe J. Caponigro of Joe Caponigro, Inc., received January 22, 2019, to Chairman Paul Danesi of the Planning Board, regarding the Orr's Pond Water Resource Protection District special permit decision for 0 South Avenue, Plat 80, Lot 8 pending the submission of an updated plan.

The Board tabled the letter from Mark Rioux of Marette & Sons, Inc., dated February 1, 2019, to the Planning Board, requesting an extension of time for the Water Resource Protection District special permits granted to: 3 Colonial Way (Builder's Lot #29), 162 Kennedy Drive (Builder's Lot #48), 6 Colonial Way (Builder's Lot #92), 13 Colonial Way (Builder's Lot #104), and 7 Colonial Way (Builder's Lot#105) to review the deadlines for each permit.

Mr. Ayrassian pointed out that the state has amended the law to allow for extensions of time up to three years, rather than the previous maximum of two. He suggested that the Board may want to discuss with the Zoning Board adjusting the City's regulations to match.

The Board tabled the email from Public Works Superintendent Michael Tyler, received January 28, 2019, to Planning Board Chairman Paul Danesi, addressing questions from the Board relative to bond releases in lieu of his presence at the meeting.

The Board agreed to discuss the matter in an upcoming Committee meeting.

The Board tabled the notices from Planning Board Clerk Lauren Stamatis, dated October 26, 2018, to Bill Ward of W.B. Construction & Development, regarding the lapsed deadline on September 30, 2018 for the "BRIGHAM HILL ESTATES" subdivision, and the impending deadline on November 30, 2018 for the "BRIGHAM HILL ESTATES, PHASE II" subdivision, pending the submission of 81-W plans.

The Board tabled the notice of default from Kevin Freytag of Murphy Hesse Toomey & Lehane, LLC, dated August 6, 2018, to Fred Bottomley, relative to the "CAMERON WOODS" definitive subdivision and the letters from Kevin S. Freytag of Murphy, Hesse, Toomey, & Lehane, LLP, dated February 8, 2019, to the respective subdivision owners providing notices of default and demand to complete work for "Highland Estates," "Burgess Estates," "River's Edge," "Windwood Estates," "Milosh Acres," "Beech Tree Estates," and "My Lady's Landing."

The Board reviewed all remaining correspondence.

The Board approved the minutes of January 28, 2019.

The Board discussed Mr. Ayrassian's meeting with SRPEDD and City Officials regarding Route 1 improvements in Attleboro and North Attleboro. The Board requested copies of the report to review.

The meeting was adjourned at 8:35 p.m.