



# City Of Attleboro, Massachusetts

## PLANNING BOARD

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## MINUTES

FEBRUARY 25, 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 25, 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, Vice Chairman Jason Gittle, Sheryl Guglielmo, Scott Jones, Jim Lewis, and Melinda Kwart

Planning Board Members Absent: 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 reported that the applicant had submitted an email requesting a continuance to March 4, 2019 too late to be included on the addendum. She noted that the stormwater peer reviewer was issued the notice to proceed back on February 8<sup>th</sup>, so the report is anticipated any time now.

Scott Jones made a motion to grant a continuance to March 4, 2019. Sheryl Guglielmo seconded the motion and all voted in favor with the exception of Jim Lewis, who abstained.

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 March 18, 2019, submitted by Daniel DeCesaris of Joe Casali Engineering, Inc. on behalf of UHS of Fuller, Inc., received February 21, 2019, relative to the Major Site Plan Review filing for 200 May Street. Melinda Kwart made a motion to continue the public hearing to March 18, 2019. Scott Jones 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.**

Senior Land Use Planner Stephanie Davies noted that the peer review report had just been received, so she imagines the applicant is drafting their responses.

Chairman Danesi noted that the proposed trucking route had been altered to utilize Exit 5 off the highway, instead of Exit 3.

Scott Jones stated his opinion that the revised route is much preferable.

Chairman Danesi noted that once the utilities are installed, it would be possible for the trucks to be routed out to 123 and the traffic light, if there was a desire to alleviate some of the pressure on Rome Boulevard.

The Board reviewed the Form P1 - Request to Continue a Public Hearing to March 4, 2019, submitted by Jack Jacobi on behalf of the City of Attleboro, filed February 21, 2019, relative to the Major Site Plan Review application for 100 Rathbun Willard Drive. Melinda Kwart made a motion to continue the public hearing to March 4, 2019. Scott Jones 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 Colleen McNamara relative to the "STONE FIELD ESTATES" subdivision and reviewed the letter from Sean P. McNamara of 83 Richie Road, received February 19, 2019, regarding concerns relative to the "Stone Field Estates" subdivision.**

Mrs. McNamara explained that her husband is traveling so she is appearing on his behalf to address the conversation had with the developer regarding their property, as well as an email received from Director of Planning and Development Gary Ayrassian.

Jim Lewis stated that with all due respect, he does not believe that the Planning Board should be brokering deals between the developer and abutters. He stated that as the proposed work is outside of the scope of the subdivision, he feels the Board has no place getting involved.

Mrs. McNamara stated their desire to have Horsley Witten Group come out and do an inspection to ensure the soundness of the stormwater management system for the subdivision prior to any alterations are performed.

Chairman Danesi countered that amendments are not being proposed to the stormwater system, but rather a efforts to the resolve the ponding issue occurring on her property are being pursued. He stated that although the Planning Department has been attempting to facilitate a resolution, the Board does not have the force of law to compel the developer to construct anything outside of the approved subdivision.

Mr. Ayrassian stated that he has made that clear in his conversations with both Mr. Catenacci and the McNamaras. He noted that a similar situation is currently occurring on Slater Street with the Brigham Hills subdivision, so this is not the first time the Board has interceded in such a way. He stated that even though the Board doesn't have jurisdiction over the McNamara property, the puddling was an unforeseen effect of the subdivision's development that needs to be addressed. He stated that Mr. Catenacci has already expressed a willingness to take responsibility for the situation.

Chairman Danesi noted that the intent was for Mr. Catenacci to be present this evening, so that he could work things out directly with Mrs. McNamara, but as he is ill, he could not attend.

Mr. Ayrassian stated that the initial grades for both properties were flat, but that the subdivision has been built up above that of the McNamara property. He reiterated that the Board clearly doesn't have jurisdiction, but that in certain instances with issues that relate to the subdivision, it is his opinion that intervention is appropriate. He stated that he is the one who fields the calls for these issues and he doesn't feel that it's right to just refer them to an attorney. He stated that in 95% of cases, a mutually agreeable arrangement can be made with the developer. He made a note that he had recently spoken to a Mr. Murphy who resides on Nicholas Drive within the subdivision who expressed his satisfaction that such a tremendous amount of work has been completed recently and hoped that things continued in that direction. He stated that he told Mr. Catennaci that a timetable will need to be submitted relative to the work to remedy the water issue on the McNamara property. He expressed sympathy that from the outside looking in, it likely feels like progress is slow, but that the City has processes that need to be followed.

Mrs. McNamara again questioned whether Horsley Witten Group could perform an inspection, as she understand that the City has the consultant on retainer.

Mr. Ayrassian replied that the retainer is to perform stormwater peer reviews and that the Public Works Department performs inspections on behalf of the City.

Mrs. McNamara countered with her understanding that the retainer also contains an option for inspections that to date, the City has not utilized. She stated that Public Works only performs inspections when a bond release is requested. She questioned what inspection could be performed to ensure that the soon-to-be proposed solution will be adequate.

Chairman Danesi stated that the drywell will not be part of the subdivision's stormwater system, so he didn't see how Horsley Witten Group could be involved.

Mrs. McNamara stated that she was seeking to have the stormwater management system inspected for its efficacy.

Mr. Ayrassian replied that it would be up to the Board if they felt there was a need to exercise that portion of the contract.

Chairman Danesi questioned Mrs. McNamara's concern. He asked whether she is concerned that it will not function once completed. He noted that in the case of the Brigham Hill subdivision, the consultant is involved because an amendment has been filed and the cases have, in essence, been "reopened." He stated that in contrast, Stone Field Estates is laboring under the original plan set.

Mrs. McNamara read a quote from the meeting minutes of March 20, 2019 relative to the Board's ability to mandate inspections under the consultant's contract.

Mr. Ayrassian replied that they are not disputing the ability of the Board to request inspections, just that they are not inclined to employ it as the Public Works Department performs inspections on their behalf.

Mrs. McNamara stated that from those same meeting minutes, it was discussed that the Public Works Department has limited support and resources, so inspections are only performed when bond release requests are made.

Mr. Ayrassian agreed that that is how things work.

Mrs. McNamara sought to confirm that there will be no inspection performed relative to the proposed drywell on her property.

Chairman Danesi replied in the negative, as the jurisdiction for the consultant is the limited by the boundary of the subdivision. He emphasized that abutting private property is not covered by the City's contract.

Mr. Ayrassian agreed that there is not anyone who will inspect the McNamara property on behalf of the City because it is not part of the subdivision. He stated that despite this fact, he interceded as he felt the pooling water was a result of the subdivision. He stated that Mr. Catenacci has agreed to address things.

Mrs. McNamara sought to confirm that the Board cannot force him to repair the issue.

Mr. Ayrassian answered no.

Scott Jones suggested that it might make sense for the McNamaras to meet with Mr. Catenacci with their respective legal representation to encourage him to have an engineered plan designed and to get assurances that it will resolve their issue.

Mrs. McNamara stated that Mr. Catenacci has made all sorts of promises in the past that he has failed to live up to.

Mr. Ayrassian stated that work will continue to be done to resolve their issue.

Melinda Kwart noted that the McNamaras are not without remedy in that they could contact a lawyer since it appears the developer may have violated their rights. She stated that they could sue him to seek a resolution.

Jim Lewis reiterated that the Board is spending copious amounts of time hearing out these abutting residents that are not even part of the subdivision. He stated that he didn't feel they had standing before the Board.

Mr. Ayrassian disagreed stating that the McNamaras are direct abutters and were included on the certified list of abutters.

Jim Lewis countered that the road is presently a private way, so he doesn't see how it being incomplete is directly affecting them. He stated that he was unsure why the Board continues to entertain them meeting after meeting. He agreed that there is a grievance relative to the ponding issue with Mr. Catenacci, but that that is outside of the Board's purview.

Jason Gittle noted that he is the one member of the Board who has not voted for a subdivision construction extension at any point in time. He stated that this situation is a complicated one. He explained that the only recourse the Board has is to act on the bond and that his understanding is that doing so will elongate the construction process, which is counter to the goal of finishing the subdivision. He stated that if you act on the bond, a whole new time clock will commence and it is likely that things will move more slowly with construction due to constraints on the City. He stated that if Mr. Catenacci continues to appear before the Board having made continued progress, he feels that is the quickest way to get the subdivision completed. He confessed that the Board does not really have multiple options with which to remedy the situation.

Mr. Ayrassian stated that he felt the only grievance the McNamaras have to bring to the Board is the pooling of water in the yard.

Jason Gittle asked whether the stormwater management system's forebay is complete.

Mr. Ayrassian replied structurally, yes. He explained that it is not functioning efficiently yet though, as it needs to be cleaned out.

Jason Gittle questioned whether we are sure whether that an issue with the stormwater system is not the cause for the puddling on the McNamara property.

Mr. Ayrassian stated that there are no observable signs of break-out or bleeding, so it does not appear that the water is directly from the ponds. He explained that the location where the water puddles is a low point that the subdivision construction is now preventing from flowing over land.

Jason Gittle questioned whether the bond money for the subdivision could be used to resolve the McNamaras issue.

Mr. Ayrassian responded with an emphatic no.

Jason Gittle addressed Mrs. McNamara and stated that the Board has limited options for approaching this and that Mr. Ayrassian is acting in good faith to try to deliver you a solution to the problem.

Mr. Ayrassian stated that Mrs. McNamara could take legal action against Mr. Catenacci directly, but that he is attempting to save her from that effort.

Jason Gittle stated that he can understand their frustration. He stated that the Board is keeping tabs on Mr. Catenacci and that he will become concerned only if the Board stops receiving updates regarding construction progress. He stated that he feels that to be the most efficient and timely approach to the situation.

Speaking was Councilor Laura Dolan who stated that she appreciates what the Board is saying. She stated that she has read through their Rules and Regulations and suggested that it may be appropriate to amend them to provide relief for abutters suffering subdivision construction ramifications on their own properties. She stated that the McNamaras are going through this issue through no fault of their own and that although Mr. Ayrassian is facilitating with the developer, Mr. Catenacci cannot be compelled to resolve the situation. She stated that there should be some means of recourse for if the developer were not to cooperate.

Mr. Ayrassian stated that in his 33 years as the Director of Planning and Development, he's never had a developer just walk away from an off-site issue and that they have always made an effort to resolve things.

Councilor Dolan suggested it would make sense to have something in writing to protect abutters to these developments.

Jim Lewis noted that the Board is discussing two separate issues - the McNamaras discontent with the unfinished state of the subdivision and the pooling of water in their yard. He stated that he feels the only concern the Board should be hearing is relative to the water issues and that subdivision completion concerns are not relevant as they don't live in the subdivision.

Councilor Dolan stated her understanding, her desire to discuss the issue more with the Board, and her willingness to help draft amendments to the Rules and Regulations.

Chairman Danesi stated that the recent cases of off-site repercussions of subdivision development have definitely been a learning process for the Board and have prompted discussions of revising the City's subdivision control regulations. He noted that there are thoughts to fully enforce the LID concept of forcing stormwater management systems to be installed further from the property lines, and look more closely at on-site and surrounding topography.

Councilor Dolan reiterated her desire to help the Board address these issues and revise the regulations.

Sheryl Guglielmo arrived at 7:00 p.m.

**The Board reviewed the letter from Joe J. Caponigro of Joe Caponigro, Inc., dated January 21, 2019, regarding the Orr's Pond Water Resource Protection District special permit decision for 0 South Avenue (Plat #80, Lot #8) and the revised plan submitted by Joe Caponigro of Joe Caponigro, Inc., received February 22, 2019, relative to the request to amend the Orr's Pond Water Resource Protection District special permit decision for 0 South Avenue (Plat #80, Lot #8).**

Ms. Davies explained that Mr. Caponigro had submitted revised plans showing the flipped orientation of the garage and house, as well as the elimination of the drywell, as requested by the Board. She noted that

typically, the Conservation Commission requires drywells, but that they did not in this case. She stated that it was likely just an oversight that the feature wasn't included on both plans.

Chairman Danesi noted that there are close to twenty homes up against the Four Mile Brook, all without drywells. He suspected that one small home with a drywell is not likely to impact the area's stormwater.

Speaking was Joe Caponigro who stated that the Conservation Commission does not technically require the drywells on single family house lots. He apologized to the Board for his reticence in getting the new plan to them.

Jim Lewis made a motion to approve the requested changes as presented, and replace the plan of record with the revised site plan entitled "PROPOSED SINGLE FAMILY DWELLING 0 SOUTH AVENUE ATTLEBORO, MA 02703" engineered by Richard M. Mainville, R.P.E. of Andrews Survey & Engineering, Inc., 500 East Washington Street, North Attleboro, MA 02760, dated January 20, 2019. Scott Jones seconded the motion and all voted in favor.

**The Board reviewed the letter from Mark Rioux of Marette and Sons, Inc., dated February 1, 2019, requesting an extension of time for Water Resource Protection District special permits for: 3 Colonial Way (Lot 29), 162 Kennedy Drive (Lot 48), 6 Colonial Way (Lot 92), 13 Colonial Way (Lot 104), and 7 Colonial Way (Lot 105).**

Mr. Ayrassian stated that CH. 40A allows a maximum of two years be granted for special permits. He stated that two of the properties in question have already been granted extensions of time and the Board cannot grant him longer than two years. He noted, however, that in the past the Zoning Board of Appeals has recognized action outside of complete construction as being sufficient to "exercise" the permit. He stated his understanding that Mr. Rioux has filed the paperwork to put in foundation permits. He suggested that once those permits are issued, he will no longer require an extension of time, if the Board agrees, in order to avoid having to go through the permitting process again. He stated that he recommends approval of extensions for the remaining three lots.

Speaking was Mark Rioux of Marette & Sons, Inc. who stated that he had spoken with the Building Commissioner who had agreed to issue him foundation permits for the two lots once plans are submitted.

Mr. Ayrassian questioned the timeline to issuance.

Mr. Rioux replied that he spoke with his engineer today and is having the plans prepared. He estimated submission within the next week.

Jim Lewis sought to confirm that if the permits are pulled before the expiration date of the permits, Mr. Rioux will not need to return to the Board.

Ms. Davies agreed.

Sheryl Guglielmo noted that these properties are more than a mile away from Bungay River.

The Board tabled the matter to allow Mr. Rioux time to procure foundation permits.

The Board tabled the letter from attorney Timothy McGahan, dated February 20, 2019, to attorney Kevin S. Freytag of Murphy, Hesse, Toomey, & Lehane, LLP (City Solicitor's Office) regarding the City's notice of default and demand to complete work issued to John G. Walsh, III of Walsh Contracting Corp. relative to the "MY LADY'S LANDING" subdivision.

Ms. Davies noted that the Planning Department had received Street Acceptance plans for Landers Road today and that all of the work is completed.

The Board tabled the letter received from President Kevin J. Murphy of KJM Construction, Inc., dated February 19, 2019 (received February 25, 2019), to the Planning Board, responding to the demand letter regarding completion of the "RIVERS' EDGE" subdivision.

Ms. Davies noted that the developer has requested 30 days to put together his response.

Chairman Danesi noted that if the developer is out of business, the City will likely need to take over the bond and perform the work.

Ms. Davies stated the need to check on the status of the stormwater management system.

The Board tabled the email received from Shawn Jorde of Dezotell Excavating, received February 16, 2019, to Senior Land Use Planner Stephanie Davies, responding to the demand letter regarding completion of the "WINDWOOD ESTATES" subdivision.

Ms. Davies stated that his response was rather vague, but does indicate his intent to complete the project. She stated that he claims that the top coat has been completed and that DPW Superintendent Tyler had approved the work as satisfactory. She noted her understanding that he does not presently have a timetable for completion as there are issues with land ownership in regards to providing a 30-foot radii for where the subdivision road meets Oak Hill Avenue. She stated her opinion that he needs to provide a clearer timeline.

Scott Jones noted that the Board also needs confirmation from Superintendent Tyler that the road work is, in fact, done and satisfactory.

Jim Lewis questioned how the Board could have approved a subdivision plan if the developer didn't own all of the land involved.

Ms. Davies replied that it would be possible if the owner signed off on the application.

Mr. Ayrassian noted that a taking could be performed by the City to rectify things.

Ms. Davies stated that staff will review the plans and request clarification from the developer.

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 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."

Ms. Davies noted that the demand letters allowed the developers 14 days to respond and that we are at that deadline. She stated that she will contact the City Solicitor to begin pursuing the next steps for those who have not responded. She noted that those who have not responded are all very old subdivisions and suspected it may be hard to track the developers down.

The Board reviewed all remaining correspondence.

The Board approved the minutes of February 11, 2019.

The meeting was adjourned at 7:45 p.m.