

**MINUTES**  
**MARLBOROUGH PLANNING BOARD**  
**MARLBOROUGH, MA 01752**

1A

**Call to Order**

**January 24, 2022**

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3rd Floor City Hall, 140 Main Street, Marlborough, MA. Members present: Barbara Fenby, Sean Fay, Phil Hodge, George LaVenture, Chris Russ, Matthew Elder and William Fowler. Meeting support provided by City Engineer, Thomas DiPersio.

**1. Draft Meeting Minutes**

**A. January 10, 2022**

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the January 10, 2022, meeting minutes. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

**2. Chair's Business (None)**

**3. Approval Not Required (None)**

**4. Public Hearings (None)**

**5. Subdivision Progress Reports**

**A. Commonwealth Heights Subdivision (No discussion here – continued)**

**6. Preliminary/Open Space/Limited Development Subdivision (None)**

**7. Definitive Subdivision Submissions**

**A. 342 Sudbury Street, Marlborough, MA 01752 – Definitive Subdivision Plan – ongoing discussion**

Owner of Land: The 342 Sudbury Street Trust

Name of Engineer: Robert Parente, P.E., P.L.S. (328 Desimone Drive, Marlborough, MA 01752)

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Mr. LaVenture read the January 20, 2022, correspondence from City Solicitor Jason Grossfield into the record. On a motion by Mr. Elder, seconded by Mr. LaVenture the board voted to accept and file the correspondence. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

The Board reviewed language within the covenant and the certificate of vote and addressed concerns on missing language delegating the enforcement authority to the Conservation Commission.

City Solicitor Jason Grossfield explained there is a whole line of cases which says one board cannot delegate enforcement authority to another municipal board, particularly in subdivision contracts and that there is not a way to lawfully delegate the authority to the Conservation Commission. The Board can consult with the Conservation Commission but in the context of a subdivision approval the authority needs to stay with the Planning Board who has the statutory authority to be the enforcer. Additionally, when the builder goes to get the building permit, the Building Department will review the conditions and they may look to the Planning Board to determine if the proponent is in compliance with the conditions. The Conservation Commission doesn't have authority to fine pursuant to the subdivision approval. The Board's primary option for any subdivision violation would be to file litigation to get injunctive relief to restore the property.

Mr. Fay and Mr. Grossfield briefly discussed the option of amending the Planning Board Rules and Regulations to give the Board the ability to issue fines and what that would require.

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The board reviewed the natural buffer zone language on the plan and decided to update the language within the covenant and certificate of vote to now read as "No storage or play structures (temporary or permanent)".

The Board discussed having a meeting with the Conservation Commission.

Neal Vigeant explained he is OK with all the changes that have been discussed.

Mr. LaVenture asked, is there any potential for conflict because the language is different from the Plan to the covenant?

Mr. Grossfield said yes and explained the best scenario is the final plans that are to be signed by the Board have a reference statement that includes a reference to the covenant.

The Planning Board Administrator displayed the note on the plan which reads "This plan is subject to a covenant with the City of Marlborough Planning Board Dated \_\_\_\_\_ to be recorded herewith."

**5. Subdivision Progress Reports (Continued)**

**A. Commonwealth Heights Subdivision**

Mr. Fay explained the Board is looking for standards on what constitutes grounds for rescission of a subdivision approval.

Mr. Grossfield explained grounds for a rescission is where there is a clear-cut violation on an explicit condition in the covenant, the certificate of vote, or the endorsement of the plan. Mr. Grossfield suggested that with the Commonwealth Heights Subdivision there may not be an explicit condition that has been violated because of different opinions on the definition of commencement of work and submitting of progress reports. The Board members disagreed and stated that their intentions were clear during the subdivision approval process. Mr. Grossfield's opinion is that this is a gray area since it was not as clear in the covenant. The Board has automatic rescission language in that section of the covenant and Mr. Grossfield advised the Board to let the 2-year approval period run out which expires July 20, 2022.

The Board discussed their options for if the applicant filed an extension request and determined the Board needs to review language within the covenant. Mr. Grossfield advised the Board to be cautious in granting any extensions as it would unravel the automatic rescission language within the covenant.

**8. Signs (None)**

**9. Correspondence (None)**

**10. Unfinished Business (None)**

**11. Calendar Updates**

**A. Vote on 342 Sudbury Street Definitive Subdivision Application – February 27, 2022**

**12. Public Notices of other Cities & Towns (None)**

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On a motion by Mr. Fowler, seconded by Mr. Elder, the Board voted to adjourn the meeting. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

Respectfully submitted,



George LaVenture/Clerk

/kmm