

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

February 13, 2023

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: Sean Fay, Phil Hodge, George LaVenture, and Chris Russ. Meeting support provided by City Engineer, Thomas DiPersio, City Solicitor, Jason Grossfield, and Assistant City Solicitor, Jeremy McManus. Members Absent: Barbara Fenby and William Fowler.

1. Draft Meeting Minutes

A. January 23, 2023

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the January 23, 2023, meeting minutes with minor typo edits. Yea: Fay, Hodge, and Russ. Nay: 0. Motion carried. 3-0. Abstain: LaVenture.

2. Chair's Business

A. Unaccepted Streets – *No Updates*

On a motion by Mr. Russ, seconded by Mr. LaVenture the Board voted to move up item 2.C. 215 Simarano Drive. Yea: Fay, Hodge, LaVenture, and Russ. Nay: 0. Motion carried. 4-0.

C. 215 Simarano Drive

i. Correspondence from Assistant City Solicitor, Jeremy McManus

Mr. LaVenture read a portion of the February 8, 2023, correspondence into the record.

On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence. Yea: Fay, Hodge, LaVenture, and Russ. Nay: 0. Motion carried. 4-0.

ii. Statutory Covenant

City Solicitor, Jason Grossfield, and Assistant City Solicitor, Jeremy McManus discussed 215 Simarano Drive with the Board and Mr. McManus went over the statutory covenant. He explained the definitive plan that was approved in 2018 but was never endorsed. The legal department was approached by the developer about the idea of security, which is a requirement under general law Chapter 41, section 81U that requires security to be in place for the construction of ways and the installation of services. The unique part about this subdivision is that there was never any intention of constructing it, it was sought only for the zoning freeze that is provided for under Chapter 48 Section 6.

Mr. McManus explained the covenant before the Board meets all the requirements under Chapter 40 Section 81U, it provides for the fact that, if there ever was going to be a construction of the subdivision that none of the lots would be conveyed until the infrastructure shown on the plan was constructed. It satisfies the legal requirements for a covenant. It differs from the normal covenant that the board encounters because there is no intention of constructing the subdivision, there for paragraphs about construction meetings and items pertaining to construction have been removed.

Mr. McManus explained the statute states that when the plan is endorsed, that's when the eight-year zoning freeze starts. With this subdivision, we have an approval but not an endorsement. There is an argument that if the Board endorses the covenant now, then the freeze starts now. Mr. McManus explained the legal department worked with the developer to back date the zoning freeze to September 10, 2018.

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Mr. LaVenture asked about holding the developers to the standards of the current rules and regulations. Specifically, the requirement for two guarantees: one, the completion guarantee and two, the street acceptance guarantee. Mr. McManus explained these guarantees were changes to the rules and regulations that were made after this plan was filed. The plan is being held in compliance with the previous rules and regulations.

The Board decided to vote to endorse the covenant and the plan at the February 27, 2023, meeting.

- B. Marlborough Hazardous Mitigation Plan 2022 Update Presentation
- Fred Flynn and Martin Pillsbury of Metropolitan Area Planning Council (MAPC) spoke on behalf of the Marlborough Hazardous Mitigation Plan (MHMP) Updates and Mr. Flynn explained MAPC was awarded the grant to rewrite the MHMP. Mr. Pillsbury went over the presentation within the February 13, 2023, Planning Board agenda packet.

The presentation went over the following items.

Techniques for Hazard Mitigation:

1. Prevention
2. Property Protection
3. Public Education
4. Natural Resources Protection
5. Structural Projects
6. Emergency Services Protection

Plan Development Steps:

1. Update Hazard Identification and Mapping
2. Update and Map Critical Facilities
3. Update Risks and Vulnerabilities
4. Review Existing Mitigation
5. 1st Public Meeting (February 13, 2023 Planning Board Meeting)
6. Update Mitigation Strategies
7. Prepare Draft Plan
8. 2nd Public Meeting
9. MEMA/FEMA Review and Approval, City Adoption

Mr. Russ asked, what is Marlborough's biggest risk? Mr. Pillsbury said its probably flooding. He explained the flooding in Marlborough is likely to be localized flooding but that there are over a dozen sites that have been identified. Followed by wind and fallen trees resulting in power outages.

Mr. Russ asked about what other communities are doing to strengthen their power grids. Mr. Pillsbury explained the most effective thing that can be done is enhanced/targeted tree trimming, specifically by identifying areas within the power grid with the highest risk and hiring an arborist to review the trees in those areas. He also mentioned underground utilities but explained how this change would not only be expensive but went over the potential difficulties underground utilities can face, like groundwater and freezing.

City Council President, Michael Ossing asked, how does the MHMP work with the Municipal Vulnerability Preparedness MVP? Mr. Pillsbury explained they do overlap, but the MHMP is created to meet Federal Emergency Management Agency (FEMA) requirements and would result in a set of specific action recommendations.

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3. Approval Not Required (None)

4. Public Hearings (None)

5. Subdivision Progress Reports

- C. 342 Sudbury Street Progress Report – Correspondence from Kevin O’Malley
Mr. LaVenture read the February 9, 2023, correspondence into the record.
On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence.
Yea: Fay, Hodge, LaVenture, and Russ. Nay: 0. Motion carried. 4-0.

6. Preliminary/Open Space/Limited Development Subdivision

- C. Stow Road, Open Space Development Special Permit Application
Map 20, Parcel 4A, Stow Road, Marlborough, MA 01752
Name of Applicant: Kendall Homes, Inc. (P.O. Box 766, Southborough, MA 01772)
Name of Owner: McCabe Family Irrevocable Trust and Judith McCabe (6 Erie Drive, Hudson, MA 01749)
Name of Engineer: Connorstone Engineering, Inc. (10 Southwest Cutoff, Northborough, MA 01532)
Deed Reference: Book: 66136 Page: 582, Book: 78814 Page: 590
i. Correspondence from City Engineer, Thomas DiPersio, Jr.
Mr. LaVenture read the February 9, 2023, correspondence into the record.
On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence.
Yea: Fay, Hodge, LaVenture, and Russ. Nay: 0. Motion carried. 4-0.

Mr. DiPersio and Mr. Fay discussed procedure protocol for when developers/engineers submit revised plans after the public hearing is closed and Mr. Fay concluded he would correspond with the Legal Department.

7. Definitive Subdivision

- C. 689 Pleasant Street, Marlborough, MA 01752
Open Space Development Definitive Subdivision Plan
Owner of Land: Joyce Beauchemin Realty Trust, Timothy L. Beauchemin, Trustee
(P.O. Box 1067, Townsend, MA 01469)
Name of Engineer: Daniel Korvos, P.E., (59 Granite Lane, Chester, NH 03036)
Name of Surveyor: Hugo Findeisen, (P.O. Box 612 Sandown, NH 03873)
Deed Reference: Book: 45210 Page: 560
i. Form C-1, Form D and Form L
ii. Certified Abutters List
iii. Arborist Letter – Tree Tech, Inc.
iv. Waiver Correspondences
v. Plan Set

Dated: February 6, 2023

The Board set the public hearing date for March 27, 2023.

On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to refer 689 Pleasant Street Definitive Subdivision Plan dated February 6, 2023, to Engineering for review. Yea: Fay, Hodge, LaVenture, and Russ. Nay: 0. Motion carried. 4-0.

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8. Signs (None)

9. Correspondence (None)

10. Unfinished Business

C. Working Group

i. Draft Flow Charts

(1) Open Space – Step One

(2) Definitive Plans

The Board discussed the procedure protocol for when letters are submitted after a public hearing is closed and concluded it's the Board's discretion to consider those letters as part of the public hearing or not. Mr. Fay went over examples for when it's in the Board's best interest to keep the public hearing open, such as bad weather, covid concerns or at the request of the developer.

The Board and Mr. DiPersio discussed procedure protocol for when to close a public hearing.

Mr. Fay went over information he gathered from a recent webinar. The webinar suggested limiting comments to a particular period of time, not addressing every comment and explained the most appropriate response is, "thank you for your comment".

Mr. Fay argued if a developer must make substantial changes to a plan that would result in keeping the public hearing open or require an additional public hearing, it means they did not do enough research with the rules and regulations, the Board and or the abutters.

The administrator read an email correspondence dated August 18, 2022, from Mr. Grossfield, which was previously read into the record at the August 22, 2022, meeting. "Dear Honorable Planning Board Members: You requested an opinion as to whether the revisions (primarily reducing the number of lots) to the above-referenced definitive plan application require a further public hearing. In my opinion, they do not.

It is my understanding the number of lots on the plan was reduced from six to five in order to comply with the City's zoning ordinance relative to lot shape. Prior to the close of the public hearing, the City Engineer's letter dated May 3, 2022, raised lot shape/configuration as an issue to be addressed by the applicant. As a public hearing to consider a definitive subdivision plan is quasi-judicial in nature (McElderry v. Planning Bd. of Nantucket, 431 Mass. 722, 726 (2000)), if requested, the Board may wish to consider affording any parties opposing the application an opportunity for rebuttal with respect to the changes made to the plan after the close of the hearing."

The Board concluded the question on when to close a public hearing would be determined on a case-by-case situation.

11. Calendar Updates

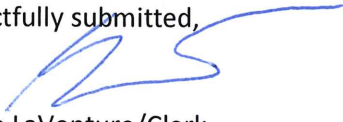
- C. Stow Road, Open Space Development Special Permit Application – 90 days expires Sunday April 23, 2023 – Vote on or before April 10, 2023, meeting.

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

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On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to adjourn the meeting. Yea: Fay, Hodge, LaVenture, and Russ. Nay: 0. Motion carried. 4-0.

Respectfully submitted,



George LaVenture/Clerk

/kmm