

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

**Call to Order**

**May 08, 2017**

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3<sup>rd</sup> Floor City Hall, 140 Main Street, Marlborough, MA. Members present included: Barbara Fenby, Colleen Hughes, Sean Fay, Shawn McCarthy & Brian DuPont. Also in attendance were City Engineer, Thomas DiPersio, City Solicitor, Don Rider, prospective Board member, George LaVenture and Planning Board Administrator, Krista Holmi.

**1. Meeting Minutes:**

**A. April 24, 2017**

On a motion made by Ms. Hughes, seconded by Mr. DuPont, the Board voted to approve the minutes from the April 24, 2017, regular Planning Board meeting noting the clarification of item 5a detailed in an attached correspondence by Assistant City Engineer Collins. Motion carried.

**2. Chair's Business:**

Chairperson Fenby introduced Krista Holmi and welcomed her to her new position as Board Administrator. Ms. Holmi thanked the Board, DPW Engineering, City Clerk's and City Council Offices as well as Melissa Peltier for their support in the transition.

**A. City Comptroller responding to Board request (Bonds)**

At the request of Chairperson Fenby, City Comptroller, Brian Doheny, was present to review the information outlined in the MUNIS bond report previously submitted for the April 24 meeting. Mr. Doheny explained the process of bond authorization and the release of funds. Ms. Hughes pointed out the confusion of the report provided, since the report was intermingled with accounts unrelated to the Planning Board. Additionally, the accounts that were associated with Planning Board mentioned only the developer name. She noted that one developer may have numerous projects running concurrently, making it difficult to associate funds with a certain project.

Mr. Fay commented that a better tracking system is required to prove that bonds are in place prior to extensions and reductions.

It was requested that the topic of bonds be placed on the next agenda as an informal discussion item and that City Auditor, Diane Smith, be invited to a future meeting to explore more comprehensive report functionality. Chairperson Fenby tabled the topic and recommended that item 2A be addressed again during item **10: Informal Discussion**. Motion made by Sean Fay, seconded by Ms. Hughes. Motion carried.

**B. Recommendation to City Council Regarding Proposed Zoning Amendment, Expansion and Modification of HRMUOD.**

The Board discussed the proposed amendment noting they did not see a tremendous benefit to the City in supporting this zoning amendment. The Board feels the developer failed to make a compelling argument for this zoning change. Board member DuPont presented a written statement of his opposition to the proposed zoning amendment, which was read into the record. On a motion by Ms. Hughes and seconded by Mr. Fay, it was voted to accept the statement and

place on file. Motion carried. Mr. DuPont echoed the recommendation of the City's 2011 Economic Development Plan, which indicated the City's urgent need to update its city-wide Master Plan, which would result in the City adopting "a more comprehensive approach, and examine land use, economic development, natural resources, recreation, transportation *and* housing together."

On a motion by Ms. Hughes, seconded by Mr. Fay, the Board voted to make "No Recommendation" regarding the proposed zoning amendment, and to attach Mr. DuPont's statement. Motion Carried.

### **C. Mayors Appointment of New Planning Board Member**

Chairperson Fenby reintroduced George LaVenture and informed the Board of the May 9, 2017, scheduled meeting of the Marlborough City Council's Personnel Committee. Once the committee reports out its recommendation, the full Council will vote on his appointment.

Chairperson Fenby requested a motion to move item **10A** up in the agenda to accommodate the applicant's 8:00 presentation to the Marlborough City Council. Motion by Ms. Hughes, seconded by Mr. Fay. Motion carried.

## **10. Informal Discussion**

### **A. Discussion of Potential Conventional Subdivision 72 Hager Street**

Presentation by Hager Street proponent, Peter Bemis of EDC, Inc. Mr. Bemis explained the three plans created for the six-acre parcel: 1) conventional, five lot 2) an open space, four lot (on hold due to the City's imposed 6-month moratorium for filing housing special permits) 3) a three lot conventional plan which would preserve an "open space" area for cow grazing. The third conceptual plan presented would require Planning Board waivers for items including roadway width, right-of-way width, etc.

On a motion by Mr. Fay and seconded by Ms. Hughes, a vote was made to refer the matter to Engineering. Motion carried. The board also noted that the Conservation Officer's comments on the proposed open space be sought.

## **3. Approval Not Required:**

### **A: 32 Eager Court**

Applicant, Robert Cabral, began by making an historical presentation on several different land use proposals at this location. Mr. Cabral believes he now has the requirements for the Board to vote favorably on his application for an ANR.

On a motion by Mr. Fay and seconded by Ms. Hughes, the Board voted to refer the matter to Engineering. Motion carried. (Determination due by May 29; therefore, vote due at closest meeting of the Board prior to deadline - May 22.)

## **5. Pending Subdivision Plans: Updates and Discussion:**

### **A. Engineer's Report**

City Engineer DiPersio reported out to the Board the following:

**The Walker Brook Estates:**

The developer recently paved the roadway and is still on track to complete work by 5/15, the expiration date of the subdivision approval. The board was reminded that they will not meet again until 5/22, so they may want to grant an extension of the approval to 5/22 or later, so that the developer can formally request to be put into the 1-year maintenance period. The board voted to extend the approval to June 6<sup>th</sup>. The developer will be asked to make a formal request to be put into the 1-year maintenance period, in accordance with Planning Board Regulations.

Motion by Ms. Hughes, seconded by Mr. Fay to extend the approval of the subdivision until June 6<sup>th</sup>. Motion carried.

**Mauro Farm:** Developer is putting together deeds in preparation for street acceptance.

City Engineer DiPersio deferred the remaining updates from the Engineer's report, which will be addressed in the next agenda items.

**B. Request for Extension Cider Mill Subdivision (Fafard)**

Ms. Hughes read into the record the emailed correspondence from Attorney Beattie of FRE Builders requesting a completion schedule of July 1, 2018. The attorney also provided the Board an updated construction schedule, which had been a condition of approval.

Ms. Hughes read a communication from Assistant City Engineer Collins into the record confirming that the proposed completion schedule was consistent with construction scheduling approved by the Engineering office. Given the initial Planning Board approval of December 16, 2002, with a two-year timeframe to complete the subdivision construction, it was further recommended that the developer be advised that the July 1, 2018, extension represents the Board's final extension. On a motion by Mr. DuPont, seconded by Mr. McCarthy, it was voted to accept the correspondence and place on file. Motion carried.

Mr. Fay requested a Continuation Certificate (verifying bond status) be provided as a condition for approval.

On a motion made by Mr. DuPont, seconded by Mr. McCarthy, it was voted to conditionally approve the completion extension of July 1, 2018. Motion carried.

**C. Request for Extension Commonwealth Heights (May 9, 2017)**

Ms. Hughes read the correspondence by Scott Weiss of the Gutierrez Company requesting an extension until May 22, 2017, to provide further information to the Board. Mr. Weiss was not able to attend the May 8 meeting, and indicated his availability at the next meeting to further discuss the new construction schedule and other requested documentation.

Ms. Hughes read into the record a letter to the Board from Assistant City Engineer Collins. Mr. Fay motioned to accept and place on file. Motion seconded by Mr. DuPont. Motion carried.

While Mr. Collins noted the receipt of an updated construction completion schedule as well as confirmation that tax payments were up to date, considerable blight issues exist on this property.

On a motion by Mr. Fay, seconded by Ms. Hughes, it was voted to grant an extension for the Commonwealth Heights Subdivision until July 25, 2017, subject to the following conditions:

By June 19, 2017, the developer is required to address the blight issues on the property and deliver a letter from the Code Enforcement Officer indicating that the property is free from blight. Should the developer fail to provide this proof prior to the meeting of the Board on July 24, 2017, no further extensions will be granted. Motion carried.

**6. Preliminary/Open Space Submissions/Limited Development Subdivisions: None**

**7. Definitive Subdivision Submission: None**

**8. Signs: None**

**9. Unfinished Business: None**

**10. Informal Discussion:**

**B. Discussion with City Solicitor Rider – Joe May, 297 Concord Rd. Feasibility of ANR plan**  
Solicitor Rider has invested considerable time researching whether the proposed division of land located at 297 Concord Road is subject to the subdivision control law. Rider shared the following standard:

Said property shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it was made, every lot within the tract so divided has frontage on

- a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or
- b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law or
- c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, ...

Despite Solicitor Rider's significant research, the factual proof that the property qualifies for an ANR status remains indeterminant. Mr. Fay reminded Mr. May that the burden of proof for an ANR plan lies with the landowner, not the City Solicitor. He recommended that Mr. May hire his own attorney to pick up where Solicitor Rider left off.

Solicitor Rider explained that the basis for his considerable research extends beyond the request by Mr. May. The research provides valuable legal evidence on issues related to current Public Works projects within the City.

**C: Bond Discussion Continued from item 2 A.**

Recommendations for formalized process of bond verification emerged during the discussion. The following points were recommended:

- Include specific language in the covenant identifying the type of performance guarantee in place – a proper bond, a deposit of money or a negotiable security.
- Developer must provide verification of bond status (Continuation Certificate) for extension requests and requests for bond reductions.
- Developer must annually provide evidence of bond status.
- Require proof of bond reduction following affirmative votes to reduce.

It was further suggested that the Planning Board tracking calendar include the date of bond expiration.

**11. Correspondence: None**

**12. Public Notices of other Cities and Towns:**

**A. Town of Framingham Planning Board, 2 Notices, Town of Framingham Zoning Board of Appeals, 3 Notices**

On a motion made by Ms. Hughes, seconded by Mr. McCarthy, it was voted to accept and place on file. Motion carried.

**Calendar Tracking Updates:**

Action on Cider Mill Request to Extend (July 1, 2018)

Request to Extend Commonwealth Heights to (July 25, 2017)

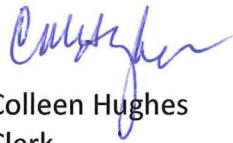
Public Hearing Decision to Council 21 Days (May 15, 2017) No meeting that date, decision to Council after May 8 meeting.

Extension for Walker Brook Estates (June 6, 2017)

ANR Decision Due 32 Eager Court (May 22 meeting – Actual 5-29)

**Adjournment:** On a motion made by Mr. McCarthy, seconded by Mr. Fay, it was voted to adjourn at 8:45 pm. Motion carried.

Respectfully submitted,



Colleen Hughes  
Clerk

/kih