

**GROTON PLANNING BOARD
DECEMBER 5, 2005
MINUTES**

Chairman Clements called the meeting to order at 6:00 PM in the Town Hall

Members present: Clements, Barringer, Degen, Eliot, and Perkins

Members absent: Lewis and Wilson

MEETING WITH BOARD OF SELECTMEN – MILL RUN PLAZA

The Planning Board met with the Board of Selectmen to discuss compliance issues at the Mill Run Plaza site. Town Counsel Judith Cutler, the Board's consulting engineer Lisa Brothers of Judith Nitsch Engineering, Inc. (JNEI), Building Commissioner Michael Tusino, Highway Surveyor Tom Delaney, and ZBA Chairman Stuart Schulman were present.

Chairman Clements summarized the Planning Board's concerns about the drainage system that serves the Mill Run Plaza and Groton Residential Gardens sites. The third detention basin overflowed in October 2005, flooding abutting properties on Anthony Drive. The Planning Board voted to require that the applicant submit a modification of the site plan to address the drainage issues, but the applicant refused to do so as stated in the letter dated October 27, 2005 from Ryan Development and the letter dated November 28, 2005 from Attorney Douglas Deschenes, representing Ryan Development.

Chairman Clements continued that the Planning Board has concerns about the ZBA's decision to modify the comprehensive permit because it was based upon a verbal agreement between engineers. The applicant did not submit any revised plans or drainage calculations to support the proposed modification. The Planning Board believes that the site plan for Mill Run Plaza should be modified as well because the detention basin that overflowed is part of the Mill Run drainage system.

Fran Dillon, Chairman of the Board of Selectmen, stated that the applicant's engineer was not present at the ZBA's public hearing. Chairman Clements said he understood the resolution between the engineers took place at a day-time meeting a week before the ZBA's public hearing.

Member Eliot said the ZBA's engineer, John Schmid of JNEI, stated that the drainage system and calculations were based upon "liberal" rather than "conservative" criteria. The ZBA's decision does not reflect what was said at the public hearing. The applicant did not submit any revised plans or drainage calculations. The water overflowed from the detention basin; therefore, the system failed. The drainage calculations must be reconsidered because the system did not work on the ground.

Engineer Lisa Brothers agreed that the design engineer used very liberal assumptions and infiltration rates when designing the system. John Schmid of JNEI met with design engineer Mark Sleger of LandTech, but no plans or calculations have been submitted to date.

Member Eliot said the drainage system is still under the Planning Board's jurisdiction, and the Planning Board would like revised site plans submitted for modification.

Ms. Brothers said the applicant must prepare the calculations for submission to MassHighway for the overflow pipe. She said the engineers discussed raising the berm to elevation 219 ft or connecting to the MassHighway storm drain system. She said the preferred alternative is to connect to the MassHighway system.

Member Degen said what was said at the ZBA's public hearing and what ZBA put in its decision are not the same. The applicant did not agree to submit new engineered plans. Basin #3 is a detention basin with no overflow in an area with high groundwater. He stated that the Planning Board has jurisdiction over Mill Run Plaza so a revised site plan should be submitted to the Planning Board for modification. He said the Town should consider taking the performance bond.

Highway Surveyor Tom Delaney said the Treasurer investigated the status of the bond and it expired in September. Administrative Officer Jean Kitchen said the bonding company is in receivership.

Town Counsel Judith Cutler said there are many problems and a variety of solutions. She asked if Mill Run and Groton Residential Gardens are two separate developments and if there are any easements. Member Degen said they are separate developments, but there are drainage easements granted the Town near Mill Street, but no easements were granted to the other developments.

Attorney Cutler said one of the conditions of site plan approval states that there should be "no net increase in runoff from the site." If there is a zoning violation, the Building Inspector can take enforcement action and require resolution. Building or occupancy permits can be withheld. She stated that the modification of the Groton Residential Gardens comprehensive permit does not solve the problems with the Mill Run Plaza site plan.

Selectman Dillon asked if it is clear that there is an increase in runoff from Mill Run Plaza. Member Eliot said the increased runoff goes from Mill Run to the third basin on the Groton Residential Gardens site.

Member Barringer noted that there appears to be an increase in runoff from pre-construction to post-construction conditions.

Chairman Clements asked if withholding building or occupancy permits would be enough to assure compliance.

Member Degen said the occupancy permit is the last step in the process. He said he would prefer to see action taken sooner rather than later.

ZBA Chairman Stuart Schulman said a bank would not approve a mortgage for a unit in Groton Residential Gardens unless the Building Inspector has granted an occupancy permit.

Building Inspector Michael Tusino said the contractor said he would be looking for occupancy permits some time around the end of December.

Member Degen said the proposed tie into the MassHighway storm drain system allows runoff from the site. He said the increased runoff should be stored on site.

Member Eliot said she agreed with Member Degen. She said the Planning Board struggled with its recommendation on granting occupancy permits to new owners in Mill Run Plaza.

Highway Surveyor Tom Delaney said the drainage system design is supposed to work, but it does not. Attorney Cutler said it is the responsibility of the design engineer and the applicant to make sure the system works. She asked if the Planning Board could quantify the increase in runoff, if necessary. Member Eliot said the Planning Board has a record with documentation in its files on problems with the drainage system.

Member Degen said the Mill Run Plaza site plan was approved first and the Groton Residential Gardens plan approved over a year later. If the ground freezes, it will be more difficult to solve the drainage problems. He encouraged the Building Inspector and Selectmen to issue a cease and desist now.

Attorney Cutler noted that the new owners have inherited the problems and violations.

Ms. Brothers said it is in the Town's best interest to have the design engineer resubmit the drainage calculations to suppose the proposed resolution to the drainage problems.

Member Eliot asked the Building Inspector to issue a cease and desist because it is the only recourse to protect the neighbors.

Attorney Cutler stated that Groton Residential Gardens was approved under Chapter 40B, not zoning. She said construction should proceed in compliance with the conditions of the Comprehensive Permit and the modification. The Building Inspector should let the owner know that no occupancy permits will be granted until the conditions are met.

Member Degen said it is not fair to put the burden on the Mill Run Plaza unit owners.

Mr. Tusino said the ZBA required submission of soil logs to verify that the detention basin would be two feet above the water table. Ms. Brothers agreed that JNEI had been asking for the soil logs for a long time and they had not received the requested information yet.

Selectman Dillon asked what the Town is asking the developer to do. Member Eliot said the Planning Board would like review the drainage calculations and design of detention basin #3 that serves Mill Run Plaza and Groton Residential Gardens.

Attorney Cutler said the Building Inspector could issue an enforcement order to require the following:

- A time limit on submitting a plan to resolve the drainage problems;
- Renewal of the performance bond as required in the Site Plan Review modification dated October 18, 2004;
- Review of the site plan one year after the issuance of the first occupancy permit (March 17, 2005) as required in the Site Plan Review conditions.

In addition, Attorney Cutler said the Building Inspector should not issue any occupancy for Groton Residential Gardens unless the project is in compliance. She recommended that the Building Inspector send a letter to the developer regarding all the outstanding issues from the Comprehensive Permit that must be addressed before occupancy permits can be issued.

The motion was made by Degen to ask the Building Inspector to revoke all open building permits at the Mill Run Plaza site until the performance bond is renewed as required in Condition #6 of the Mill Run Plaza site plan modification dated October 18, 2004. *The motion was seconded and passed unanimously.*

Building Commissioner Michael Tusino said he denied a building permit for tenant fit up at Mill Run Plaza because there are not enough parking spaces available.

Member Eliot said an engineering plan and drainage calculations are required for the shared detention basin. She asked who will oversee the plan and construction of the basin. Attorney Cutler said the Planning Board can evaluate the detention basin, but it cannot require additional changes to Groton Residential Gardens which was approved by the ZBA. The condominium association, as property owners, and their engineer must come up with a solution that is acceptable to the Town. She said connecting to the MassHighway storm drain system may be the only solution to the problem. She said the Board cannot order a modification of Detention Basin #3, but it can require the applicant to go back to the ZBA to accommodate runoff. She said the Town must deal with zoning issues first and then with the Chapter 40B issues. If the Building Inspector issues an enforcement order, a short time frame should be given for the owners to respond and submit a plan to the Planning Board.

Selectman Dillon emphasized the importance of the applicant providing the required soil logs.

The motion was made by Perkins to request that the Building Inspector take enforcement action as a result of zoning violations at Mill Run Plaza. The site is not in compliance with the site plan approval or site plan modification.

1. Drainage

The site is not in compliance with Condition #9 of the Mill Run Plaza site plan approval dated February 20, 2003 which states:

“There shall be no net increase in the rate or volume of storm water runoff from the site as required in Section 218-25G(1)(c).”

2. Performance Bond

In addition, Condition #9 of the Mill Run Plaza site plan modification dated October 18, 2004 states:

“The developer shall post a performance bond with the Planning Board to cover the cost of installing the detention/retention basins 1, 2 and 3 and related infrastructure. The bond shall be posted in the amount estimated by Judith Nitsch Engineering, prior to construction of the Mill Street relocation.”

On November 29, 2005, the Board of Selectmen accepted a bond for the relocation of Mill Street and the drainage system improvements associated with Mill Street and Mill Run Plaza in the amount of \$126,479.79. The Town has learned that the bond expired on September 24, 2005. The applicant must renew the bond to remain in compliance with the above condition.

3. One Year Review

Condition #17 of the site plan approval states:

“The Planning Board shall review the project one year after the granting for the first occupancy permit to determine if any modifications are warranted.”

The first occupancy permit was granted on March 21, 2005 so the annual review should occur in March, 2006.

The motion was seconded and passed unanimously.

Meeting adjourned at 7:45 PM

Respectfully submitted,

Michelle Collette
Planning Administrator

