

**BOARD OF SELECTMEN
NOVEMBER 1, 2004
REGULAR SESSION MINUTES
“APPROVED”**

Present: George F. Dillon, Jr., Chair; Peter S. Cunningham, Vice Chair; John L. Saball, Clerk; Virginia C. Wood, Member; Robert W. Nordblom, Member; Administrative Officer Jean Kitchen and Kathleen Newell, Office Assistant.

The meeting opened at 7:02 p.m.

Fuel Storage Public Hearing – P.G.I. Realty LLC, 318 Main Street

Attorney Robert Collins, Mr. Paul Palmer, owner P.G.I. Realty, Mr. Kevin Lebarone of Highland Development and Mr. David Caruso were present for this portion of the meeting.

[X] 1. *Hearing Opened at 7:04 P.M.*

Mr. Cunningham moved to open the hearing. Seconded by Mr. Saball. Unanimous vote.

[X] 2. *Read Legal Notice
Published October 22, 2004*

[X] 3. *Verify Notification of Certified Abutters Mail List

20 Certified Abutter Notification mailed on October 20, 2004
1 Return Receipts are outstanding*

[X] 4. *Query audience for support either written or in person.*

[X] 5. *Query audience for objection either written or in person.*

Mr. Caruso of 3 Champney Street asked if testing had been conducted on the site and asked for something on record that the site is a clean property. Attorney Collins stated a 2081 had been conducted. Attorney Collins further stated that a problem had been reported with the DEP and the DEP had filed a report with the Planning Board stating the problem had been abated. Mr. Caruso asked if the house at 3 Champney Street had been affected. Attorney Collins stated the problem had not extended that far. Attorney Collins stated the plans have been reviewed by the Planning Board, Board of Health, Fire Chief and Chief of Police and the new tanks are state of the art. Mr. Caruso questioned whether the applicant had demonstrated a financial responsibility in the event of an emergency, citing Code of Federal Regulations 40, Section 280. Attorney Collins stated he was unaware if the state had incorporated the Federal guide-lines; however the applicant was a member of a 21J Program which can be utilized in the event of an environmental accident.

Mr. Saball questioned the completeness of the application. Mr. Lebarone stated the form is an FP 290 which is a part of a packet which will be completed by the State when the tanks are installed. Mr. Dillon stated some questions could not be answered because the packet is a certificate of compliance. Attorney Collins stated that by the time the packet is submitted to the State everything will be signed and completed. Mr. Saball asked Mr. Caruso if his concerns had been addressed. Mr. Caruso replied they had.

Mr. Cunningham moved to close the hearing. Seconded by Mr. Saball. Unanimous vote.

[X] 6. *Hearing Closed at 7:16 P.M.*

Pursuant to MGL 148, Section 13, Mr. Cunningham moved to approve a Fuel Storage License for 29,000 gallons (23,000 – gasoline; 6,000 – diesel) for P.G.I. Realty LLC located at 318 Main Street, contingent upon receipt of the \$25.00 Fuel License fee. Seconded by Mr. Saball. Unanimous vote.

Chapter 40B Policies & Procedures

Mr. Dillon read a statement to the audience stating that volunteer boards make up the backbone of the community and under the advice of Town Counsel no open Chapter 40B projects would be discussed or debated. Mr. Dillon stated the Townline Neighborhood Association had compiled an impressive report (enclosed herein).

Mr. Cunningham stated he was also impressed with the information in the report. Mr. Cunningham further stated the 40B is something which has been around for a while and underlying Chapter 40B is that as a community there is a need to provide some form of affordable housing.

Mr. Saball stated he appreciated the work done by the Association and it is good the neighborhoods have a voice which allows their concerns to be heard.

Mr. Dennis McEvoy of the Townline Neighborhood Association thanked the Board for allowing them to be on the agenda and asked their letter be read into the record.

Dr. Susan Horowitz stated the Board of Health had a meeting which she needed to attend, however she stated the Board of Health had sent a letter to the Board of Selectmen and all other departments regarding the list of waivers from the developers and has asked that all developers proposing projects not on town sewer come before the Board of Health.

Mr. Cunningham stated the letter (from Dennis and Kristen McEvoy, dated 10/27/04) contained issues and grievances which cross the line in discussing a particular Chapter 40B project. Ms. McEvoy stated the Town can do better with Chapter 40B projects and wants them applied to Oak Ridge. Ms. McEvoy asked that Town Counsel review the letter and attachments. Mr. Cunningham asked Ms. McEvoy what the Association had discovered. Ms. McEvoy stated there are tools available to the ZBA and feels the ZBA have not utilized those tools. Ms. McEvoy stated other towns are asking developers what the maximum density is that makes the project economical, also when reviewing the list of requested waivers the developer is supposed to prove to the Town that if a waiver is not granted the project will be rendered uneconomical. Ms. Leslie Lathrop stated the Town is letting the developers be the drivers when they should be passengers on the Town's proverbial bus. Ms. Lathrop stated the developer is asking for a waiver to put 44 units on a shared drive which won't meet subdivision standards. Mr. Dillon reminded the audience the hearing for the Oakridge project is still open and will not be discussed. Mr. David Goldstein asked what the Board of Selectmen's position was on the Oakridge project. Mr. Cunningham reiterated the Board would not discuss and open project and the Board does not take an official position on Chapter 40B projects. Mr. Cunningham explained that initially the project comes before the Board of Selectmen and the Board sends its comments to Mass Housing. Mr. Goldstein asked when the Board would decide or not decide to have Town Counsel review the letter. Ms. Wood redirected back to the bulleted items in the letter, asking ZBA Chair Stuart Shulman if the ZBA discussed each waiver. Mr. Shulman stated he agreed with Mr. Dillon's decision not to discuss the Oakridge project. Mr. Dillon stated it was not only his opinion, but advice from Town Counsel to not discuss and open project. Mr. Shulman reviewed the process for Chapter 40B projects which by State mandate requires a hearing within 30 days of the submission of the application with the Town Clerk. The next process it is to check the application for completeness, waivers, set up funds for consulting, then a series of reviews, a formal analysis and the application is sent to other boards for comments. Mr. Shulman stated when nearing the end of the process a pro forma review is conducted asking what profit the developer is looking for and initial figures may be challenged. Mr. Shulman stated the list of waivers is submitted to other boards for comments. Mr. Shulman stated all meetings are posted and the decision is sent to all boards for review and comments.

Mr. Shulman stated every Chapter 40B is a hostile process, with abutters and a developer with the State of Massachusetts behind them as they try to circumvent the local zoning and regulations.

Ms. Wood stated it appeared the ZBA was already doing what had been requested in the letter. Ms. Wood asked if it was the general policy of the Zoning Board of Appeals to review all waivers. Mr. Shulman stated that was the ZBA's policy.

Mr. Cunningham suggested a group or committee review of the current list of policies and to offer suggestions and the Board could chose to adopt if appropriate.

Ms. Lathrop asked for clarification if an abutters list is out of date could the hearing be delayed. Ms. Margot Hammer stated once an application is accepted by the Town Clerk it needs to be processed whether it is complete or not, according to State mandate.

Mr. Josh Degen stated he thought the neighborhood's request to have the Town Counsel review the application was a good point as the Town Counsel is the legal entity which protects the Town. Mr. Degen stated while Chapter 40B has noble intentions the Town is currently inundated with proposed projects.

Ms. Wood again referenced the letter stating she was hearing from the ZBA that the concerns were already being addressed, but not hearing from the Neighborhood Association reasons for Town Counsel review. Ms. McEvoy stated there were legal questions and asked who would answer legal questions. Ms. Kitchen stated the ZBA has the authority over Chapter 40B projects. Mr. Cunningham stated the ZBA has access to Town Counsel. Ms. Wood stated she did not feel Town Counsel needed to be consulted. Ms. Wood further stated the questions that can be asked and the controls placed on Chapter 40B projects are limited by the State.

Ms. Wood asked if the Town could hire someone to do another pro forma. Mr. Shulman stated that would not be appropriate.

Mr. Bruce Clements stated it was unfortunate the neighborhood had expended considerable cost and it would be worthwhile for the Town to have a peer review at the cost of the developer. Ms. Wood responded to Mr. Clements stating he was familiar with how difficult it was to extract funds from developers.

Ms. McEvoy stated she was concerned the Boards were conducting negotiations in meetings, which though legally posted don't encourage the public to participate.

Ms. Megan Wickman asked if there were a process for documenting policies and procedures.

Ms. Lathrop stated that no one has problem with the affordable housing, but with the development part of the projects.

- **Dr. William Eger, Great Pond Advisory Committee RE: Privatizing of Benthic Barriers**

Dr. William Eger, Mr. Bruce Clements and Mr. Evan Owen were present for this portion of the meeting.

Dr. Eger presented an estimated cost handout (enclosed herein), which would allow residents to deal with cabomba and milfoil. Dr. Eger stated the cost for the Town to do this would be astronomical; he would like to provide the residents the opportunity to take care of weed infestation at their own beachfronts. Mr. Cunningham asked what the benthic barrier did. Dr. Eger stated the material was like felt which prevents photosynthesis, but unlike plastic permits gases to escape, the barriers will be removed. Mr. Dillon asked if there was an issue of endangered species. Dr. Eger stated that there was no burweed near any of the proposed sites. Mr. Saball asked if the process would only be done by the Conservation Commission. Dr. Eger stated the Conservation Commission had authorized Mr. John Diezemann, Ms. Cindy Kollarics and himself as official viewers. Mr. Cunningham noted there were two members of the Conservation Commission present. Mr. Bruce Clements stated he would not presume to speak for the Conservation Commission, but he thinks the proposal is an interesting one. Mr. Clements stated that rare plants certainly need to be identified but he felt it was worth pursuing and hoped that the beach front owners would be interested.

Ms. Wood asked whether the boat ramp which is choked with weeds is the responsibility of the Town to clear. Dr. Eger stated now that cabomba has been found in all areas of the lake the weed harvester can be used to cut the weeds below the surface.

Mr. Cunningham moved to request from the Conservation Commission a Determination of Applicability regarding a proposal for "the Privatization of Benthic Barriers in the Great Ponds of Groton" establishing a procedure for the placement of Benthic Barriers to reduce invasive weed infestations by individual property owners at their waterfront. Seconded by Mr. Saball. Unanimous vote.

- **Shaw's Site – Boston Road/Sandy Pond Road – Days of Operation**

Mr. Evan Owen was present for this portion of the meeting.

Ms. Kitchen stated the Board had jurisdiction over earth removal and this request was not under the Board's jurisdiction per se but the Earth Removal Committee had reviewed the request. Mr. Owen submitted a letter from the Earth Removal Advisory Committee, which stated the ERAC did not have jurisdiction. Mr. Dillon read a letter from the Chief of Police stating no objection to the Saturday operation.

Mr. Cunningham moved to allow Saturday day of operation for Marois Brothers on behalf of Landowner Robert Lacombe for the Shaw's construction site located at Boston Road/Sandy Pond Road (Four Corners) shown on Assessors' Maps 120/3, 133/55, to for the purpose of bringing in fill, consistent with comments of the Chief of Police in a memo dated November 1, 2004. Seconded by Mr. Saball. Unanimous vote.

- **Crossroads Plaza Comments – Boston Road and Sandy Pond Road**

Ms. Kitchen stated there was currently a lot of development in the area of the four corners (Rte. 119 and Sandy Pond Road). Ms. Wood asked if it were possible to have the applicant come before the Board before commenting. Ms. Kitchen replied comments were requested by the Planning Board and on most projects there were no comments, however in this instance there are street lights being installed and the developers need to be aware of their location and coordinating construction. Mr. Cunningham stated that is an area of the town which is appropriate. Mr. Dillon suggested giving any further comments to Ms. Kitchen.

- **Vote RE: Merger of Fire/EMS Departments**

Mr. Dillon stated at a previous work session there had been unanimous agreement to effect the merger for December 1, 2004.

Mr. Cunningham moved that the Fire Department and Emergency Medical Services Department will be merged into one department, effective December 1, 2004, (under the direction of the Fire Chief). Seconded by Mr. Saball. Unanimous vote

- **Minutes**

Mr. Cunningham moved to approve the Regular Session Minutes of September 13, 2004.

Seconded by Mr. Saball. 4 in favor, 1 abstention (Nordblom).

Mr. Cunningham moved to approve the Regular Session Minutes of October 12, 2004. Seconded by Mr. Saball. Unanimous vote.

Mr. Cunningham moved to approve the Regular Session Minutes of October 18, 2004. Seconded by Mr. Saball. Unanimous vote.

Mr. Cunningham moved to approve and not release the Executive Session Minutes of October 12, 2004. Seconded by Mr. Saball. Unanimous vote.

- **Ambulance Bid**

Mr. Cunningham moved to accept the bid from Yankee Fire and Rescue for the purchase of a 2005 PL Custom Gold Crusader type 1 ambulance per bid specifications in the amount of \$137,941.00 (including trade for 1994 Road Rescue International Ambulance).

Seconded by Mr. Saball. Unanimous vote.

ADMINISTRATIVE OFFICER REPORT

Ms. Kitchen stated on bid had been received for an ambulance which was opened on Friday. Mr. Saball stated he had spoken with Mr. Walsh who felt the trade was more than expected and was a good deal. Mr. Dillon read a memo from Mr. Walsh (dated 11/1/04).

Ms. Kitchen presented a design for streetlights for the Route 119 intersection at Four Corners which had been approved by the Historic Districts Commission.

Ms. Kitchen stated there had been concerns regarding the cutting of trees along the Four Corners intersection the previous week and she had contacted Mass Highway and had asked Building Inspector Mike Tusino to look at the area.

Ms. Kitchen stated the Cell Tower would be going before the ZBA asking for a variance because of the proximity to the highway garage.

SELECTMEN LIAISON REPORT

Mr. Dillon stated he had received an email from the Chairman of the Finance Committee requesting information regarding the budget process. Mr. Dillon suggested if the Board were to meet with the Finance Committee it should be done next week at the Finance Committee on Tuesday, November 9, 2004.

Ms. Wood asked what the State's response to the Affordable Housing Report. Ms. Kitchen responded there was a deed restriction and the number of units had been recalculated. Ms. Connie Sartini, reporter with the Groton Herald asked if the report had been approved. Ms. Kitchen stated it had not been approved yet. Mr. Cunningham stated there were two minor changes.

Mr. Cunningham moved to enter into Executive Session in accordance with MGL Chapter 39, Section 23B for the purpose of discussing strategy with respect to litigation and will reconvene back into Open Session. Seconded by Mr. Saball. Unanimous vote.

Approved: _____
John L. Saball, Clerk

Respectfully submitted,
Kathleen Newell
Office Assistant

Attachments (2): Packet from Townline Neighborhood Association; Benthic Barrier Estimated Cost Analysis

Date Approved: November 15, 2004