

**BOARD OF SELECTMEN
DECEMBER 5, 2005
REGULAR SESSION MINUTES
“APPROVED”**

Present: George F. Dillon, Jr., Chair; John L. Saball, Vice Chair; Robert W. Nordblom, Clerk; Mihran Keoseian, Member; Administrative Officer Jean E. Kitchen; and Kathleen Newell, Office Assistant

Absent: Peter S. Cunningham, Member

The meeting opened at 6:00 P.M.

Joint Meeting with Planning Board; Zoning Board of Appeals; Attorney Judith Cutler, Kopelman & Paige, P.C.; Lisa Brothers, Judith Nitsch Engineering, Inc.

Mr. Bruce Clements, Mr. Josh Degen, Mr. George Barringer, Ms. Anna Eliot, Ms. Carolyn Perkins, Ms. Michelle Collette, (Planning Board); Mr. Stuart Schulman (ZBA); Highway Surveyor Tom Delaney; Building Inspector/Zoning Commissioner Mike Tusino; and Ms. Mary Durham (resident of Mill Street) was present for this portion of the meeting.

Mr. Clements stated the reason for the meeting was about a site plan for Mill Run Plaza. Mr. Clements reviewed the history of the project and drainage issues resulting from heavy rains and a problem with detention pond #3, which had overflowed and flooded a couple of abutting yards and the Planning Board felt it was appropriate for the applicant to come back with a site plan to correct drainage issues. The applicant was unwilling to do that and in a letter from his attorney stated that the drainage issues were not a part of Mill Run Plaza but Groton Residential Gardens, which was not under Planning Board jurisdiction but was under the Zoning Board of Appeals. Mr. Clements stated that the Planning Board had felt there was a gentleman's agreement, but no plans had been revised to show the agreement.

Mr. Clements stated that he had read the conditions and felt that they were quite reasonable, but felt that a site plan should have been reviewed, but the informal opinion of Town Counsel was that the Planning Board had no authority.

Mr. Dillon commented that he did not believe that the applicant's engineering firm was present at the ZBA meeting for the proposed resolution. Mr. Clements stated that the engineering had gotten together beforehand and come together on the calculations.

Ms. Eliot stated that she was at the meeting before the ZBA and it does not reflect what was at these meetings and one major problem from the Planning Board is there have been no revisions. Ms. Eliot further stated that from the meeting with the ZBA, the engineer's calculations were very liberal and the calculations do not reflect the amount of water that is there. Ms. Eliot stated that the calculations on paper are not adequate to fully address the conditions on the land.

Ms. Brothers stated that the calculations were very liberal and John from JNEI had met with the Mill Run Plaza engineer and was under the assumption that the revised calculations should have been addressed.

Ms. Eliot stated that because the drainage does involve the realignment of Mill Street the Planning Board does have authority and pond #3 would be the receiving end of Groton Residential Gardens.

Mr. Dillon stated that this all appeared to be verbal and doesn't seem to be anything in the ZBA decision.

Ms. Brothers stated that they were going to submit to Mass Highway, but they can't do it without calculations.

Mr. Degen stated that he had walked in at the end of the ZBA and the decision did not reflect that, the applicant did not say he would be in with plans, and that it is a retention pond not a detention pond, and he doesn't want to see the berm any higher. Mr. Degen stated that the Planning Board had authority over Mill Run Plaza and ZBA over Groton Residential Gardens, different entities owning both. Mr. Degen suggested having the Building Inspector hold building permits.

Mr. Delaney noted there was an issue with the bond; stating we did some looking to see if it was still there and it had expired in September and Ms. Collins was looking to see if it had been renewed. Mr. Delaney commented that if Mr. Walker walks away, we need to have the bond in place to finish the job.

Ms. Kitchen stated that the bond company was in receivership as were many others due to Hurricane Katrina.

Mr. Dillon asked if the bond company would have notified of the impending expiration date. Attorney Cutler stated it would depend upon how the bond had been written. Attorney Cutler stated that there were several problems and several solutions; and there was a need to it clear that Groton Residential Gardens and Mill Run Plaza are two separate projects and in the Planning Board decision everyone knew that the drainage system #3 was on a separate land and asked if there were an easement. Mr. Degen confirmed that there was.

Attorney Cutler stated that when the Planning Board endorsed the plans and a specific condition which carries over is “there shall be no net increase or net rate of volume of storm water from Mill Run Plaza” and this is clearly a zoning violation of the conditions of the site plan approval and calls for a cease and desist. The Building Inspector can order the owner of the property to demonstrate it is either not happening or showing a plan for rectifying the situation. The next step would be an injunction. A solution could be to withhold occupancy permits. It can't be brought back before the Planning Board but these issues can be addressed.

Mr. Dillon asked if there was indeed increased runoff from Mill Run Plaza. Mr. Barringer stated that there was both pre and post construction runoff. Mr. Clements stated that the overflow conditions occurred on the Groton Residential Gardens site, but part of the runoff is from Mill Run Plaza. Mr. Degen stated that the condo association owns Mill Run Plaza. Ms. Eliot stated the runoff goes into catch basin #3. Mr. Dillon asked if there really was increased runoff, as there appears to be several reasons for excess water in basin #3 i.e. runoff from Rte. 119 and silt from construction. Ms. Collette stated that she had witnessed much of this in the field and they are responsible for managing the storm water runoff before, during and after construction.

Mr. Clements referenced Condition #6 of the ZBA decision no building permit or occupancy permits will be issued until compliance. Mr. Degen stated that it was “too late in the game for occupancy permits, we played this out with Mill Run Plaza”. Mr. Schulman noted that mortgage companies would not issue a mortgage without an occupancy permit.

Attorney Cutler asked if construction had actually started under all the building permits. Mr. Tusino stated that all building permits had been issued and construction had commenced on every unit. Attorney Cutler stated she would argue that the building permits should be revoked until the matter is resolved. Mr. Tusino added that the site manager had stated he would need occupancy permits Christmas week as they have people moving in. It was noted by numerous members of the meeting that there was no sewer hook up to the property. Ms. Eliot stated that she was concerned about new owners buying into this problem. Mr. Clements stated that it was the same with Mill Run Plaza. Ms. Eliot stated that she did not see much difference. Mr. Clements stated that it was different.

Mr. Delaney directed a question to Ms. Brothers that on paper this design is supposed to work but it did not and asked why. Attorney Cutler stated that if there was an increase in peak runoff it doesn't work. Attorney Cutler stated that it was not the Planning Board's job to show that the calculations work.

Mr. Dillon stated the developer had said that there was water coming in off Route 119. That would not continue once the sidewalk is installed and the silt on the bottom of the detention pond was a result of construction and it would be removed.

Mr. Keoseian stated that it seems to boil down to system's numbers are adequate, but they aren't and it is obviously a violation. Attorney Cutler asked if there was some way to measure the water flowing off the site to prove in court. Ms. Eliot stated that the Planning Board had been trying to create a record with pictures from abutters. Attorney Cutler stated that she had yet to see where the water was flowing from and where it was flowing to. Ms. Eliot stated there is documentation.

Attorney Cutler stated that as long as you have that it is clearly a zoning violation it is the condo owners' responsibility. Ms. Eliot stated that they were trying to contact the builder because they feel it is his responsibility. Mr. Degen stated that it was a clear chicken and egg debate, Mill Run Plaza came first so the calculations were for that, therefore the only recourse is a full cease and desist, and if Mr. Tusino is not willing to take it on, the Board of Selectmen should instruct him to do so. Mr. Saball stated that if the runoff came from the construction site, it is a zoning violation, and if there was nothing on record, the system was not flawed. Attorney Cutler stated that the condo owners inherited the problem.

Ms. Brothers stated that it was in the Town's best interest to have the engineer redo the calculations and be the engineer of record, and we would want to see revised calculations to protect the Town's interest.

Ms. Eliot stated that the Planning Board would ask that the Board of Selectmen have the Building Inspector issue a cease and desist order. Attorney Cutler suggested that the Building Inspector correspond with the owners of Groton Residential Gardens that there is this condition. Mr. Tusino stated that he had done so three weeks ago. Ms. Perkins asked for clarification as to what the Town was asking the condo owners to do. Attorney Cutler stated that the condo owners needed to get an engineer to see what can be done to stop the situation and if they can't they will need to come back before the Planning Board.

Mr. Dillon asked Mr. Tusino what he had said to the developer of Groton Residential Gardens. Mr. Tusino stated that he had been on site three weeks ago and informed the owner of the ZBA conditions, he also requested soil testing and that Brothers review them. Ms. Brothers stated that they had asked for information also. Mr. Barringer stated that Mayer had recommended infiltration regulations and the engineer for the applicant said that could not be done because it would breach the ground water. Mr. Barringer asked if it was possible to get accurate ground logs after the site has been underwater for two years. Mr. Degen stated that they had logs from four years ago and asked John to compare logs with basin #3 logs. Ms. Collette stated that there had not been vetting because the previous use had been exempt for educational use.

Ms. Perkins asked how to proceed. Mr. Dillon asked if the occupancy permits were held back, what would the builder be expected to do. Ms. Eliot stated to submit calculations from Mill Street and Groton Residential Gardens. Attorney Cutler stated the Building Inspector issuing a cease and desist order and giving them seven days to come in and discuss. Attorney Cutler further stated that failing to maintain the bond was a violation and they are responsible for that and the Planning Board could review the calculations under site plan review.

Attorney Cutler asked when the last occupancy permit was granted for Mill Run Plaza. Ms. Collette stated April 2005. Attorney Cutler stated that you have one year. Mr. Clements stated that was unfair to the condo owners. Ms. Perkins stated she thought the cease and desist was on Groton Residential Gardens. Attorney Cutler stated Mill Run if the Planning Board wanted to review. Ms. Perkins asked what action would be taken on Groton Residential Gardens. Attorney Cutler asked Mr. Tusino how he had informed the developer. Mr. Tusino stated he had used an official form saying they have to comply with the decision. Attorney Cutler stated that it might be helpful to put all things in one letter i.e. no occupancy permit until the following issues have been addressed.

Mr. Dillon asked what Mr. Tusino needed to do. Attorney Cutler stated to draft a letter to the developer, which will prevent any occupancy permits until there is compliance.

Mr. Barringer asked if the Comprehensive Permit required management of storm water on its own site. Mr. Schulman stated it was required to meet all by-laws. Mr. Dillon stated that one of the conditions was to get a permit from Mass Highway which doesn't come in a week. Attorney asked if the conditions were in appeal. Mr. Schulman stated there had been no appeal.

Mr. Degen stated he had thought we had an ace in the hole with the bond, if we needed to get in there due to a flooding, we don't have any money or recourse, it would be appropriate to have at least until the bond is in place. Mr. Degen moved that the Planning Board ask the Building Inspector to issue a cease and desist until the bond is restored.

Mr. Tusino stated that he had denied a building permit for Mill Run Plaza because of parking and there will be no building permits issued until the parking issue is settled.

Mr. Delaney asked if there had been a condition in the ZBA decision that the bond be in place. Attorney Cutler stated that there needed to be two letters, one for Mill Run Plaza and one for Groton Residential Gardens. Mr. Dillon stated he was concerned about Groton Residential Gardens and what would impact the builder. Attorney Cutler stated that the bond doesn't relate to Groton Residential Gardens.

Mr. Barringer stated that the water had run over the boundary. Attorney Cutler stated that was a violation.

Ms. Eliot asked if the next step would be a cease and desist order if they are in violation at this moment. Attorney Cutler stated that she had not seen the comprehensive permit, but if they didn't get waivers from certain aspects i.e. drainage, they are in violation and can be told to cease and desist, but if you do that it gets much more complicated and she was uncomfortable discussing it in open session. Attorney Cutler stated no occupancy permits until the drainage problem is fixed or resolved.

Mr. Dillon asked if that could be tied into the bond issue. Ms. Kitchen stated it was a separate agreement.

Ms. Eliot questioned the ZBA decision stating that neither of those things could be done without an engineered plan and asked who would oversee the modifications. Attorney Cutler stated that the ZBA would oversee modifications.

Attorney Cutler stated there needed to be a meeting with the condo owners and Groton Residential Gardens. Mr. Clements stated that Groton Residential Gardens is dependent upon proper function of the basin.

Attorney Cutler stated that Mill Run Plaza would have a problem and as a practical matter to tie into Mass Highway's storm system may be the best solution.

Attorney Cutler recommended issuing the cease and desist order and done in two steps, the enforcement order to give a short time for the owners to come in and address how they will rectify the problem, and need to see what the response is to the enforcement. Attorney Cutler stated that due process requires the owners be notified. Mr. Tusino stated he could not see issuing a cease and desist unless the ZBA modified the modifications to the decision. Mr. Dillon asked if the soil evaluations should be spelled out clearer. Attorney Cutler stated it could if it had been a requirement of the ZBA.

Mr. Clements asked Mr. Tusino if he needed direction. Mr. Dillon stated that with the help of Town counsel the Board could send out a letter clarifying the discussed issues.

Ms. Eliot asked Ms. Brothers what the status of the drainage basin calculations request. Ms. Brothers stated she had asked John and they had not received anything yet. Mr. Dillon suggested sending a letter to that effect. Attorney Cutler stated that JNEI could submit a letter and attach it to the Building Inspectors letter. Mr. Dillon stated that the Board of Selectmen needed to send its own letter regarding the agreement.

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John Estabrook, Building Maintenance Supervisor RE: Energy Audit

Mr. Estabrook reviewed an Energy Conservation handout (enclosed herein).

Mr. Keoseian stated the report was very comprehensive. Mr. Dillon stated that there were a lot of good ideas in the report and asked who would conduct the monitoring. Mr. Estabrook stated he would like a memo from the Board to the departments asking them to conduct their own audits on consumption. Ms. Kitchen stated that topic would be discussed at the Department head meeting. Mr. Dillon stated it would be nice to hear any suggestions.

Maria Casey, Administrative Assistant RE: Licensing Common Victualler, Class II and Weekly Entertainment

Ms. Casey reviewed the license renewals, and stated all documentation was in order and the only change was the Wrangling Brook Farm was no longer in business.

Mr. Saball moved to approve Common Victualler License renewals for the following businesses, all licenses to expire December 31, 2006:

R.C. Kimball, Inc. d/b/a Oliver's Grille & Pub

Donelan's Supermarkets, Inc.

F.J. Catalano Enterprises, Ins. d/b/a Dunkin Donuts @ 133 Main Street

Courtneys Donuts LLC d/b/a Dunkin Donuts @ 318 Main Street

Courtneys Donuts LLC d/b/a Dunkin Donuts @ 3 Forge Village Road

Groton Country Club & Recreation Authority

Groton Convenience, Inc. d/b/a Groton General Store

Groton House of Pizza

Sunset Farm Bed & Breakfast

The Herb Lyceum

The Main Street Café

The Natural Market, Inc.

Pastore's Restaurant

Filho's Cucina

Rivercourt Residences

Groton Stage Coach Inn & Tavern, Inc.

Santi's Restaurant, d/b/a Johnson's Restaurant & Dairy Bar, a/k/a Johnson's Drive-In

Trustees of Lawrence Academy

Peltonen's Dining Services, Inc. (@ NEBS)

Sherwin Brothers d/b/a Clover Farm Market

*Gibbet Hill Grill LLC d/b/a Gibbet Hill Grill Restaurant
Gibbet Hill Grill LLC d/b/a Gibbet Hill Grill Function Hall
Shaw's Supermarkets, Inc.
Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).*

Mr. Saball moved to approve Amusement Licenses for the following establishments, all licenses to expire December 31, 2006:

Groton Country Club & Recreation Authority for live entertainment and disc jockey

Groton House of Pizza for 1 pinball machine, 2 video games and 1 juke box

*Groton Stage Coach Inn & Tavern, Inc. for live entertainment (dinner music), small bands, and occasionally disc jockey;
Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).*

Mr. Saball moved to approve the renewal of the following Class II Licenses, licenses to expire January 1, 2007:

Frederick A. Miller d/b/a Miller's Classic Cars

Robert H. Olson d/b/a Groton Towing Inc.

Vincent Lemire d/b/a Town Line Auto Sales

Ernest W. Piper d/b/a Piper Foreign & Domestic Motors

Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Kan Hung So, Main House RE: Common Victualler License

Ms. Casey stated that the proof of Workers Compensation Liability had been received.

Mr. Saball moved to approve a Common Victualler License for Main House LLC, license to expire December 31, 2006.

Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Valerie Jenkins, Town Accountant and Christine Collins, Treasurer/Tax Collector RE: Quarterly Financial Report

Ms. Collins reviewed the report (enclosed herein). Mr. Dillon noted that the certification of the tax rate had been held off because of the Casella property. Ms. Collins stated she should hear something this week.

Ms. Jenkins reviewed the report (enclosed herein). Ms. Jenkins noted insurance payments are due first quarter and energy cost may factor in later in the year. Mr. Dillon asked if \$25,000 had been appropriated to the stabilization fund.

Ms. Jenkins stated that by the time the Department heads get the reports, they should be looking forward. Mr. Keoseian stated that Ms. Jenkins could do no more than she is already doing but the Board could send a memo to Department heads to request that they read the reports and keep an eye on their budgets.

OTHER BUSINESS

Appointment GIS Committee – Steven Webber

Mr. Saball moved to appoint Michelle Collette to the Housing Partnership for the vacant one-year term, term to expire June 30, 2006. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Request to Fill Communications Officer Vacancy

Mr. Saball moved to allow the Chief of Police to fill the vacant position of Communications Officer. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Appointment – Housing Partnership – Michelle Collette

Mr. Saball moved to appoint Michelle Collette to the Housing Partnership for the vacant one-year term, term to expire June 30, 2006. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Request to Enter MacGregor Property for Wetlands Delineation

Mr. Saball moved to grant permission for access to 19 Station Avenue, Assessor's Map/Parcels 113/53/0; 113/54/0 (a.k.a. MacGregor Property) for the purpose of performing wetlands delineation. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Appointment – Insurance Advisory Committee, Health Insurance Portability & Accountability Act Privacy Officer, Computer Committee – Valerie D. Jenkins

Mr. Saball moved to reappoint Valerie Jenkins to the Computer Committee for the vacated one-year term, term to expire June 30, 2006, effective November 18, 2005. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Mr. Saball moved to reappoint Valerie Jenkins to the Insurance Advisory Committee for the vacated one-year term, term to expire June 30, 2006, effective November 18, 2005. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Mr. Saball moved to reappoint Valerie Jenkins as the Health Insurance Portability & Accountability Act Privacy Officer (HIPAA), effective November 18, 2005. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

40B Legislation Vote of Support

Mr. Dillon stated that Town Counsel Tallerman had worked with Senator Moore (Worcester) on the petition and both Representative Hargraves and Senator Panagiotakos were signing the petition and had asked the Boards of Selectmen to join in supporting their efforts. The Board concurred to support the petition.

MINUTES

Mr. Saball moved to approve the Regular Session Minutes of October 17, 2005. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

ADMINISTRATIVE OFFICER REPORT

Ms. Kitchen reviewed the following:

- The Town Hall negotiations had started last week and another meeting would be held the following week.
- She had been working with Mr. Keoseian on the personnel manager position and there will be a second meeting in January to present the proposal.
- Mr. William Miller had resigned from the Water Commission and there will be an appointment in January.
- She and Mr. Delaney had gone to Mass Highway regarding grant programs for the redevelopment of Station Avenue and also had gone to MRPC.

SELECTMEN LIAISON UPDATE

Mr. Saball stated that he had had a discussion with Highway Surveyor Tom Delaney regarding a letter to the editor about sunken manhole covers on Route 119. Mr. Saball stated that Mr. Delaney was aware of the problem however that area of roadway is not the responsibility of the Town but rather Mass Highway. Mr. Saball asked if the Board could possibly send a letter to Mass Highway.

Mr. Dillon stated that he had attended discussion with Hicks and Attorney Doug Deschenes regarding Pine Ridge and it had been a good exchange.

Mr. Dillon stated that the date for the request in change of land use (Article 97) for the Town Forest Well location by West Groton Water District had been moved to December 31, 2005. Mr. Dillon stated that they had met with Representative Hargraves and Senator Panagiotakos and hopefully they can get it through.

Mr. Dillon stated that the Groton Public Library would be hosting the One Book, One Groton program again, featuring The Giver spearheaded by Ms. Tucker Smith.

Mr. Saball moved adjourn at 8:58 p.m. Seconded by Mr. Nordblom. 4 in favor, 1 absent (Cunningham).

Approved: _____
Robert W. Nordblom, Clerk

respectfully submitted,
Kathleen Newell
Office Assistant

Attachments (3): Energy Conservation Handout; Accountants Quarterly Report; Treasurer/Collectors Quarterly Report

Date Approved: January 3, 2006