

**Minutes Meeting of March 16, 2004** – Washington Green

Members Present: Stuart Schulman, Mark Mulligan, Chase Duffy, Robert Cadle

Atty. Bobrowski was present as consultant to the ZBA.

Of note: The Groton Gardens water and sewer meeting is scheduled for 4/1/04 at 9:00 am.

The Chairman reconvened the meeting.

Atty. Bobrowski said that the Board needs to decide whether a decision for a denial or an approval with conditions will be made. He said that if an approval with conditions will be made he will write a draft and submit it to engineers, etc., for review.

Mr. Mulligan noted concern if the Board is entertaining a denial that it would not be upholdable in HAC re: the reasons needed as cited below.

Atty. Bobrowski went over the criteria needed for denial that include endangering the environment, needed open space, a plan totally inconsistent with the Master Plan, an endangerment to public health and safety, or a deficient regarding design.

Atty. Bobrowski said that the Board needs to decide whether they want the permit to be issued from Boston so that it does not rest on their shoulders.

The Chairman asked what happens if the permit is granted by HAC.

Atty. Bobrowski said that the Board needs to decide if they like the Boston decision and if not, an appeal can be made to the superior court. He said that the 1<sup>st</sup> round usually takes about one year and noted that it becomes a battle of experts. He said that it should cost the town about \$3000.00 per hearing. He noted that HAC has never lost in superior court.

The Chairman asked about any conditions that might or might not be imposed with a denial.

Atty. Bobrowski said that the applicant has the right to go to HAV with the original plan. He said that the Board cannot deny and then attach conditions. He said that the HAC tends to be reasonable and that the applicant has to show that certain criteria has been met. He said that there is a lot of play here and reminded the Board that Town Meeting is looking at an article regarding the development of the Brownloaf site as a 40B and which could also involve a swap.

Atty. Lyons said that the Board could condition an approval whereby there could be that no ground permits issue before a town meeting vote that gives his clients time to consider other options.

Mrs. Duffy said that she thinks this is an ill conceived plan with very real possible safety and health issues. She noted that the design flaws are drastic in the plan.

Mr. Cadle said that he would not build his house there. He noted that GELD made it clear that if kids get into the substation, there is a potential death situation. He said that the plan is otherwise okay except for the tightness of the site.

Mrs. Duffy noted fears that this site won't attract permanent residents. She said that the site will be far more concentrated than anything in Groton and noted that the site would be essentially clearcut.

Mr. Mulligan expressed concerns about a denial. He said that by the very nature of 40bs, locations are substandard. He said that he does not know where a denial fits except for potential safety. He suggested that the Board should not deny on the basis of potential lawsuits.

Atty. Bobrowski said that there will be costs for the town if a denial is issued of about \$20,000. He said that either way, there will be considerable discussion with the applicant regarding how to proceed about a land-swap, etc.

Atty. Lyons said that from his client's standpoint it is better to have an approval than a denial or too many onerous conditions.

The Chairman said that is favoring a denial because the public safety issue is so huge, as well as GELD's repeated and urgent pleas that they cannot live with the project. He said that he does not want to grant this on his watch and noted that if it costs \$15-20,000 to defend GELD, it is worth it. He also said that the attractive nuisance is a big and real and inescapable issue. He said that he could not find any way in his own mind to grant this permit.

Atty. Lyons said that if there is an appeal, GELD feelings would come out. He said that his clients feel have met all standards and that it is up to GELD to remediate any problems. He said that they would do a full appeal. He said that he is unsure about the land-swap stuff but would need some environmental guarantees. He noted that if the town puts forth a decent proposal his clients would consider it.

Discussion ensued regarding some tactical ways to handle the town meeting vote.

Mrs. Duffy said that it does not make sense to create a problem where one does not exist.

The Board moved to instruct counsel to draft a strong denial of the proposed 40B plan due to serious public safety issues and major design flaws.

The motion was seconded and passed three to one abstention.

The hearing was continued to 3/25/04 at 9:00 am.

The meeting adjourned at 10:20 am.