

**Minutes Meeting of October 18, 2004** – Oak Ridge, Groton Gardens

Members Present: Mark Mulligan, Shaun Sullivan, Chase Duffy, Stuart Schulman

The Chairman reconvened Oak Ridge, noting several submissions.

- 1) Water Department Memo
- 2) List of Waivers
- 3) Letter from Town Line Neighborhood Association
- 4) Pro forma review requested and paid for by McEvoy's
- 5) Memo from Con. Comm. dated 9/14/04

The Chairman asked for clarification regarding the Con. Comm. memo.

Mr. Clemens, Con. Comm., noted that they issues an order of conditions for the applicant on a State level and now are asking for further review under the town by-laws, which are stricter. He said that it doesn't comply with local by-laws.

Peter Morrison noted that the Town's findings have been appealed by an abutter and wanted to know how the appeal affects the ZBA decision.

The Chairman felt that a decision could be made conditioning the finding of the court.

Atty. Deschenes said that they are asking for a waiver from Con.Comm. by-laws.

The Con. Comm. said that the Board is asking for enforcement of the town by-laws.

Discussion ensued regarding whether the ZBA could deny the permit based on town wetland by-laws.

Mrs. Duffy noted that the site has the biggest vernal pool in the State.

Mr. Clemens said that he resents projects like this that attempt to overturn what the Town has worked so hard for.

Mrs. McEvoy said that as she understands it, the developer doesn't have the right for waivers unless it can be proved that a denial makes the project uneconomic.

Mr. Clemens suggested reading the Con. Comm. memo very carefully.

Mrs. Duffy suggested that JNEI had looked very carefully at drainage issues and is not letting any standing water remain for too long.

Mr. Sullivan said that a single access driveway can create other drainage issues.

The Chairman said that he is unsure how to proceed with this.

Atty. Deschenes said that he needs more time to digest the Con. Comm. memo. He said that in regard to the appeal, the state requires the applicant to obtain State wetland permits from the Con. Comm. and Title 5 permits. He said that the ZBA does not have to wait to make a decision because someone appealed. He said that they are here under the local Con. Comm. by-law and said that it is up to the ZBA to determine what sections to waive. He said that the ZBA wanted an analysis of the local wetlands by-law and earth removal by-laws and he is asking for waivers. He said that he has done that and doesn't want the Board to delay closing the public hearing.

Discussion ensued regarding the scope of explanation required for granting specific waivers.

Atty. Deschenes said that they may not need to seek specific waivers and wouldn't mind hearing from Town Counsel about this. He said that only a small part of the sidewalk and a small part of the detention basin are into the 100 ft. buffer and thus is in violation of the local Con. Comm. regs.

The Chairman asked whether this could be remedied.

Atty. Deschenes said only if the roadway into the project was not built. He explained how removal of the detention basins would so change the on site drainage that the project couldn't be built. He then went through the Con. Comm. wetland by-laws specifically.

The Con. Comm. said they should be allowed reasonable access to the site to determine that the Con. Comm. order of conditions is being met. He said that it is in all order of conditions. Pete Morrision said that the Con. Comm. has always had the ability to access a site. He said that they could sell all the units with no order of conditions because the units are outside of Con. Comm. purview. He said that the Commission needs to be able to access the site to determine that the detention basin, etc. is okay.

Mr. Clemens read the Con. Comm. by-law into the record, noting that they want the project density reduced or a tightening of the roadway loop.

Atty. Deschenes said that that is not economic.

Mrs. Mcevoy suggested moving some of the units to the three acres in Littleton.

Atty. Deschenes said that they are not going to do that because it is in another town and would have to go back to State and start over.

The Chairman felt that that could be interesting if the requirements could be met and the project

moved.

Mr. Sullivan noted that that land was used in the State letter.

Atty. Descheness said that there is a massive hill and he knows abutters won't let all that fill be moved.

The Chairman said that that is a better argument, that the hill is difficult to build on.

Craig Almon said that he thought the Board can't close the public hearing if info is still coming. He said that the Commission asked for a wildlife study and the applicant declined. He said that National Heritage has been asked to rule on the habitat and this should be submitted into the record.

The Chairman felt that the Board could close the hearing and condition acceptance of specific information.

Discussion ensued regarding how to handle the acceptance of certain additional information if the public hearing is closed.

The Chairman read the water department memo conditions, regarding the need for additional input, into the record.

Atty. Deschenes said that they have to have the ability to submit certain info into the record after the hearing is closed.

Mr. Degen said that this is different because DEP could make the project have to go back to drawing board.

The Chairman suggested that the Board could close the hearing and reopen it if needed.

The Board refused to close the public hearing without their consultant's presence.

Marion Stoddart said that all projects should be heard under the local wetland by-laws and this project is more complicated than most because of the extent of the vernal pool.

Connie Sartini, Groton herald asked for clarification regarding Atty. Bobrowski's role.

The Board stressed that he is our consultant, giving legal advice for 40B's not in litigation. He is our Counsel, as approved by the BOS, for the one 40B currently in litigation.

Chris Corwin, Con. Comm., asked how the applicant shows the economics, etc. of the project.

The Chairman said that there has been a pro forma review.

Mrs. Lathrop asked a procedural question as to when the conditions get determined.

The Chairman said that that happens after the hearing is closed.

Mrs. Mcevoy asked whether there is a blanket 100 ft no disturb policy.

The Con. Comm. said that there is.

The Chairman asked how posting a bond could be a financial problem when the money is returned with interest.

Atty. Deschenes said that they are not disturbing any wetlands and don't know what to bond. He said that he doesn't understand why this project needs any more looking out for than what is given by the BI, etc. He said that they will give certain permission if have advance notice, etc.

Discussion ensued re: what is reasonable for Con. Comm. access.

The Con. Comm. said that their purview is limited.

Mr. Clemens said that he wants to be sure that resources within the jurisdiction are protected.

Peter Morrison said that the access would be during reasonable hours but no notice should be required to determine if the detention basin is functioning.

Mrs. McEvoy said that she wants the list of waivers submitted to all boards to determine economic feasibility.

The Chairman said that he won't do that because this has been under review for 20 months.

Mrs. McEvoy said that the Board then does not have sufficient information.

The Chairman said that this is duly noted.

Mrs. Lathrop asked about the school bus issue: how will kids be picked up with a driveway in Littleton.

Mr. McEvoy submitted a letter from their pro forma consultant stating that the project is economic for 24, or even 20 units.

Discussion ensued how the decision making process is handled under 40bs.

Mr. Clemens said that the Con. Comm. wants to have the applicant go back before them.

Atty. Deschenes said that that will not happen.

Mrs. McEvoy said that in Hopkinton the HAC mandated that all 40bs have to go before the Con. Comm. so they can give recommendations to the ZBA.

The Chairman said that he thinks the Con. Comm. letter gives the board the info that the Commission wants.

Discussion ensued regarding what the State will allow towns to do.

The Chairman said that the Board has to deal with what it's given.

Mr. Degen said that appeals have been upheld due to wetlands and access issues. He said that he thinks the Board has a big ace in the hole regarding the 3 acres in Littleton and thus have some negotiating tools. He said that the Board needs to be empowered with all tools.

Mrs. McEvoy said that she thinks this could be a good project but some real safety and environmental issues need to be addressed.

Mr. Clemens said that there is no proof that certain special species won't be found on site and thus there is a need to do a wildlife study.

Atty. Deschenes says that his client won't pay for the review of the McEvoy's pro forma.

Mrs. McEvoy said the Board has been here 20 months because it took a year to acknowledge that the parcel has a huge vernal pool.

The hearing was continued to 11/3/04 at 7:00 pm.

Discussion ensued regarding the Groton Garden decision. Each condition was reviewed.

The Board moved and voted unanimously to grant a 40b to Robert Walker, Groton Residential Gardens LLC, with conditions attached and as corrected.

The meeting adjourned at 11:15 pm.