

Minutes Meeting of May 10, 2006 – Moulton, Magee, Squannacook Hills, Parker-Roach

Members Present: Stuart Schulman, Chase Duffy, Jay Prager, Bob Cadle, Cindy Maxwell, Megan Mahony, Alison Manugian

The Chairman convened the Moulton hearing by reading the Legal Notice.

Atty. Collins presented the Rocky Hill site being developed by David Moulton, located by Shaws. He said that all approvals have been received from the PB, Con. Comm., etc. and the project is currently under construction. He noted that by the Drubin's old house, where a road has been cut in, Mr. Moulton would like to place a construction trailer. He said that it is close enough to the street for security concerns and far away to not be visually offensive. He said that the first nine lots will happen in the next year or two and then he will return to ask to move the trailer back. He said that he wants the permit for two years.

Mrs. Maxwell asked whether the trailer will be located behind the Drubin's house.

Atty. Collins said that it would be 60 feet behind the Drubin's garage.

Of note: the Drubin's house is rented at this time.

Mrs. Maxwell asked whether the trailer is actually on the Drubin property or behind it.

Atty. Collins said that it could be on the property located behind the house, where the construction is actually happening.

Conditions: a pass book bond for \$1500.00, license to remove and the permit is valid for one year.

The Board moved to grant a permit for one year with the above conditions, as stated in section 33c.

The motion was seconded and passed unanimously.

The Acting Chairman reconvened the Magee hearing, reviewing the site walk.

Discussion ensued regarding whether the applicant wanted to continue the hearing to have a five member board or whether to go ahead with a four member board, which required a unanimous vote.

Mrs. Manugian suggested getting a certified plot plan and continuing the hearing.

The hearing was continued to June 7, 2006 at 7:45 pm. The applicant will submit a certified plot plan prior to that date.

The Chairman convened the Squannacook Hills modification hearing by reading the Legal Notice.

Melissa Roberts, from Atty. Deschenes' firm, submitted a letter from Jane Gamble, noting that she wants to use some of town counsel's ideas and not others. She said that she has made every change that Mass Housing has allowed them to make. She said that they can't make any more and K & P wants more changes.

Mr. Prager said that except for one change, the others were passed onto the State.

Atty. Roberts said that they were. She noted that K & P has allowed a similar document to be signed in Stoughton, stressing that the tone of the memo from DHCD is strong, requiring no changes. She said that she is asking for this modification, that the documents are in compliance with Comprehensive Permits in general. She stressed that she wants reasonableness, noting the need to start construction within two years of the granting of the permit. She said that the appeal period was over in November 2005 and it is now May and no regulatory documents have been signed.

Laura Pawle, K&P, said that it is true that the applicant is in a bind through no fault of his own. She said that she reviewed the documents carefully and said that the area of limited dividend is where Mass Housing is not budging. She said that there is a strong disagreement between Mass Housing and municipalities and recommended to the Board that because the documents don't represent the town's interest they shouldn't be signed. She stressed that that she understands that this has nothing to do with the merits of the project, noting that very project and town is different and what is okay with Stoughton is not okay with Groton. She also noted that the BOS need to sign the regulatory agreement, not the ZBA.

Mrs. Duffy said that she wants an explanation of why these documents don't reflect the Town's interest.

Atty. Pawle said that it the limited dividend/limited profit part of the document that is problematic.

The Chairman asked who counts the limited dividend/profit.

Atty. Pawle said that it is how you count costs vs. profit, noting that Mass Housing standards are broader than what town counsel thinks are true costs. She said that they are inconsistent with the statutory regime and the consequence is that there are excess profits that should go to the town that don't because of different accounting processes. She stressed the need to be clear about the total cost of the project.

Mr. Cadle asked what standards are used at K and P.

Atty. Pawle said that there are two general areas, one being the related entities, ie. if the developer

does site work himself or pays a related entity (ie him), or subcontracts out the work and pays an outside party to do it. She said that the only part that goes to materials, supplies or labor of unrelated entity workers should be counted, noting that Mass Housing has a much broader standard, that allows the developer to pay himself to do site work. The second area to look at are acquisition costs, to look at the last arms length transaction. She said that Mass Housing goes back three years, while K & P would go back forever. She stressed that she was not saying that for this project the differences are hugely significant and said that she could go into the cost analysis that Mike Jacobs did if the Board wants.

Mr. Prager asked why Mass Housing cares so much about this aspect of the accounting process.

Melissa Robbins said that they are responsible for each of the three documents needing to be signed by the town.

Mr. Prager said that he doesn't understand why Mass Housing wouldn't let the town monitor the project.

Mr. Page said that what Town Counsel is saying is that he can't pay himself to do something but he could pay someone else to do the work. He stressed that he owns a construction company and should be able to do this job. He noted that he would be making money if he was doing another job.

Atty. Robbins said that it is regular policy to use related entities.

Atty. Pawle said that this comes up with most 40Bs that Mass Housing involved in. She said that neither the statute nor the regulations spell the issue out and there is no case law because there hasn't been any litigation.

Mr. Prager said that he is not sympathetic if the developer pays himself only, that he get all profits.

Mr. Page said that if he worked for someone else he would make a profit, noting that it is not a non-profit company. He said that the Board gave him a permit and now saying it is not okay.

Mr. Prager said that if he is doing the whole project and extracting profits from all aspect, it is not fair to the town.

Atty. Robbins said that the Board should either use Mass Housing and accept the policy or deny the changes.

The Chairman asked who signs the documents.

Atty. Robbins said that Mass Housing has changed it so that the Chairman of the ZBA signs the

documents. She said that the Selectmen don't have to sign anything.

Atty. Pawle said that the ZBA doesn't have the authority to enter into a binding contract.

The Chairman said that he will sign only after the BOS does and not before.

Atty. Pawle suggested that the issues tonight could be resolved by deleting the condition that the Town is responsible to enter into a regulatory agreement. She said that the developer can execute a regulatory agreement with himself and Mass Housing and the Town could revise it so that excess profits beyond 20% be paid to the Town and the Town has a right to receive copies of all reports submitted to the State.

The Chairman asked how is this different from the permit as issued.

Atty. Pawle said that we are delaying agreement and the Town will get all information, noting that it is as simple as possible this way. She stressed that this will protect the town's right to pursue this if there is excess profit.

Atty. Robbins said that Mass Housing won't accept the ZBA not signing. She said that the Board will have to deny and they will have to appeal.

Mr. Prager asked whether Mass Housing wants the ZBA to agree to all terms.

Atty. Robbins said yes.

Mr. Prager said that the Board can't do that.

Atty. Robbins noted that their hands are tied and that it is black and white.

Mr. Prager said that he doesn't understand why Mass Housing cares what plan the Board signs.

Atty. Pawle said that the second idea also takes the town out of the agreement, citing the Ardmore decision whereby Mass Housing can't tell the ZBA what conditions to contain in the permit.

Discussion ensued regarding what it would mean to have the ZBA sign the form without the BOS.

Mr. Prager asked what would happen if the board said it didn't care what Mass Housing thinks.

Atty. Robbins said that Mass Housing won't sign off unless the Town agrees. She said that she is asking to remove the condition that Town Counsel approves of.

Atty. Pawle said that towns weren't supposed originally to be part of the Regulatory Agreement.

She said that the Town has two hooks of enforcement with both the Regulatory Agreement and zoning enforcement violations, noting that there is no legal requirement for the Town to sign the Regulatory Agreement.

Mr. Prager asked whether Mass Housing has any regulations or requirements regarding related party profits.

Atty. Pawle said that they do not.

Dennis Page, developer, asked if it is okay if reasonable profits for related entities are made. He also asked whether the Board gets to question Chapa's findings.

Atty. Pawle said that the Board can't question Chapa's findings and noted that if the applicant appeals, he would have to show that the project is unfundable and she doesn't think that can be proven.

The Chairman asked what would happen if the Board accepts #1 and the developer appeals. He also asked what is accomplished if the HAC rules in favor of the town.

Atty. Pawle said that she should be able to work something out without it going to litigation.

Atty. Robbins said that the project would be unfundable because they can't get approval from Mass Housing. She stressed that they can't get any monitoring agent to do anything because the Town hasn't signed off on the agreement.

Atty. Pawle said that they would appeal to the Housing Appeals Committee (Werner Loewe) and it would cost the town money. She stressed that she has worked out situations where towns haven't signed the Regulatory Agreement.

The Chairman suggested continuing the hearing so that Town Counsel and Mr. Page can work out an agreement.

Discussion ensued regarding what will make Mass Housing satisfied.

Mr. Cadle asked whether Mass Housing would be okay if the town didn't sign on as a Regulatory Agreement co-signer.

Atty. Pawle said that the Town would not be a party to the Regulatory Agreement. She said that in the second scenario, the town would accept the Mass Housing agreement but the Town would get a set sum of money for each market rate unit. She said that the Town would be getting the money "up front". She said that there are different ways to draft it, i.e. Mass Housing shall determine compliance with the limited dividend and the developer will pay a certain sum of money with the

sale of each market rate unit. She stressed that the Town is giving up a lot to let the broader standard be in effect.

The Chairman suggested that from Mass Housing's perspective the Town isn't giving up anything.

Atty. Robbins said that they could remove the Town's requirement that the Town has to sign and remove Town Counsel's approval and asked whether the Town would then agree to Mass Housing "to form".

Atty. Pawle said that they can use the same language that Mass Housing uses and put it into the permit. She stressed that Mass Housing doesn't want conflict in languages between their contract and the Comprehensive Permit.

Atty. Robbins said that they applied to the Town for a permit, understanding what the Mass Housing policy is. She stressed that she wants the Board to be reasonable so that the Mass Housing requirement can be put into place. She said that heads are being butted at the State level and is this is tying the applicant's hands. She said that she just wants to get the Regulatory document signed and to continue with the process. She said that the terms have not changed since the permit was granted.

Mr. Prager said that he doesn't want to see the Town leaving money on the table that it doesn't have to.

Atty. Robbins stressed that they are trying to work within Mass Housing rules.

Mr. Prager said that the Gumble memo is self serving.

Atty. Robbins said that they just want to get to the finish line.

Mr. Page said that he feels like he is being extorted and that another road block is being thrown up.

Discussion ensued regarding what is fair to the Town, the developer, the abutters, etc. The Board urged Town Counsel and the developer to go off line and work out an agreement.

Atty. Robbins said that she wants the Board to act now and then they can appeal.

The Chairman said that he wants an attempt at an agreement.

Mr. Prager said that he wants an agreement.

Atty. Pawle said that the town had a financial analysis done showing a 16.6% profit with 24 units. She said that K and P looked at it for 18 units and came up with a figure of 22% profit.

Discussion ensued regarding how Jay Talerman came up with his figures.

Atty. Pawle said that he used Mike Jacobs' figures and added \$10,000 to the market rate units. She said that she doesn't know exactly how the numbers are going to work out.

The Chairman asked how Atty. Talerman dealt with related entities.

Atty. Pawle said that he used the same assumptions that Mr. Jacobs used, that there are no related entities. She noted that Mr. Jacobss assumptions tend to be more in keeping with Mass Housing assumptions.

Mr. Prager said that the read the analysis and thinks it could be through in the trash. He said that he feels the applicant knows basically what the profits are going to be.

Mr. Page said that he doesn't know what the market will do.

Mr. Prager said that this doesn't have anything to do with the pro forma review. He said that Mass Housing and DHCD aren't neutral parties and noted that he is taking town counsel's word that this can be worked out. He stressed that he wants to see a reasonable agreement.

The Board was in agreement that something should be worked out.

Mrs. Duffy felt that some message needed to reach Mass Housing.

Mr. Prager said that he thinks it could have to do with how the developer presents it to Mass Housing.

Atty. Robbins agreed to a continuation on 6/7/06 at 8:00 pm. It was moved, seconded and passed unanimously.

Atty. Pawle posed a question for the Board: does the board want to continue to have Chapa as the Monitoring Agent.

Discussion ensued regarding whether the Housing Authority should be the Monitoring Agent.

Of note: limited dividend is the big issue.

The Chairman convened the Parker-Roach hearing by reading the legal notice.

Joni Parker-Roach noted that she started NOA four years ago to allow local artists to show work, etc. She said that she has volunteered for the past 12 years at GD and has been approached about

giving art classes. She said that up until now she has been too busy, but now wants to start teaching. She stressed that they don't have a ton of room but have some space for children's art classes given by her and some of the artists showing at NOA. She noted that part of the operation is moving down the street and this will give the kids a chance to experience more of the fine arts in town. She said that this would be a fine art gallery and a gallery school.

Discussion ensued regarding how the business is changing. Of note: it will only be a gallery and no gifts or jewelry will be sold. The applicant want to replace that part of the operation with art classes.

Mr. Prager asked how big the classes would be.

Mrs. Parker-Roach said that there would be 10 to 12 children, noting that she wants to be intimate.

Mr. Prager asked about parking.

Mrs. Parker-Roach said that they have ten spaces out back and along the street. She said that she thinks it is more of a drop off situation than a parking for class situation.

Mr. Cadle noted that the application talks about classes for seniors.

Mrs. Parker-Roach said that there may be writer's talks, etc.

Mr. Prager asked how parking could be controled.

Mrs. Parker-Roach noted that it is a small space and that they have at least ten spaces of parking out back and along the street.

Mr. Parker-Roach said that next year more spaces will open up when the head of Broadmeadow is repaired.

Mrs. Parker-Roach noted that the retail operation is moving June 4th.

Discussion ensued regarding how to limit the number of students at any one time.

The Board felt that limiting the permit for one year is enough of a control for now.

The applicant agreed to make substantial donations to the Town when she makes her first million dollars.

The Board moved to grant an amendment to the special permit to allow art classes to be held at NOA gallery for a period of one year, effective June 15, 2006, conditioned that no classes begin

until the jewelry operation has moved.

The motion was seconded and passed unanimously.

The meeting adjourned at 9:30 pm.