

Minutes Meeting of July 5, 2006 – Walker Appeal (Executive Session HAC)

Members Present: Stuart Schulman, Jay Prager, Chase Duffy, Cindy Maxwell, Mark Mulligan

The Chairman convened the meeting and the Board moved and voted to go into Executive Session to discuss litigation.

Those voting in favor of convening executive session were Stuart Schulman, Jay Prager, Chase Duffy, Cindy Maxwell, Mark Mulligan.

David Donesky was present instead of Judith Cutler.

Those voting in favor of ending executive session were Stuart Schulman, Jay Prager, Chase Duffy, Cindy Maxwell, Mark Mulligan.

The Chairman explained to the audience that the Board is going to go over a draft submitted by Atty. Fenton overturning the BI and then a draft prepared by the Zoning Administrator (and reviewed by TC) upholding the BI.

The Board began with Atty. Fenton's draft.

Mr. Prager said the Developer said that the system would comply with all DEP Stormwater Management guidelines.

Mr. Mulligan said that this was valid not because of the nature of the guidelines themselves, but that the Developer said that he would comply.

Mr. Prager went over a reference document submitted by the Petitioner.

The Chairman said that he rejects the argument that because the system is not within 100 feet the stormwater guidelines are met because none apply.

The Board made the same comments for finding #3 of Atty. Fenton's draft.

The Board found that #4 is true.

The Board found that #5 is true.

#6 doesn't follow from other and not applicable because Basin #3 is tied in to #1 and #2, which are Mill Run basins.

The Board then went over the draft prepared by the Zoning Administrator in order, commenting on

the validity of each finding. The abutter who had made some rainfall measurements was asked for clarification by the Board about the dates of actual measurement, which resulted in the findings being amended to state that measurements were taken for the same time period of January to June in both 2005 and 2006.

The Chairman said that the summarization is that Mill Run Plaza is not a 40B project and he doesn't find a decision treating it as such makes sense.

Mrs. Duffy said that although Mill Run is commercial, it is tied to GRG by the drainage system and specifically Basin #3. She also noted that water was there for a good solid week.

The Chairman noted that there is more water in the front yard of Building #1 than in Basin #3.

Mr. Prager said that given that the PB has oversight with respect to Mill Run Plaza and Basin #3 is shared between GRG and Mill Run, the ZBA can't have sole jurisdiction.

The Chairman noted that if the Board had a secured, documented plan to fix the system, jurisdiction would be less important.

The Board moved to uphold the decision of the Building Inspector to deny Building/Occupancy Permits.

The motion was seconded.

The Chairman asked whether a motion to remedy should be added.

Mr. Prager noted that the project needs to be completed but it can't be until the drainage fixed. He noted that Mr. Walker said he would apply to hook up to MassHighway, and to his knowledge it hasn't been done.

The Chairman noted that Mr. Walker had represented at another meeting that he had applied to MassHighway and had been accepted.

Atty. Fenton said that he was supposed to receive the confirmation today. He said that he thought we would be here today if the tie-in was designed just for the overflow, noting that the plan being worked on today is better.

Mr. Prager noted that the drainage system needs to be fixed and there needs to be an agreed upon plan, with other contingencies as well.

Atty. Donesky noted that Atty. Fenton wanted clarification regarding #7, how to define that the system functions properly.

The Board said that Basin #3 needs to drain in 72 hours, the State stormwater guidelines need to be met, including a two foot separation in Basin #3 between high ground water and the basin floor, no additional flooding/runoff on abutting properties, which currently exceed what is acceptable and including any findings that may be listed in supporting documents.

Discussion ensued regarding what to list/add for findings.

The Chairman said that he goes out to the site often and it doesn't look good at all. He stressed that it is sad that such a situation exists in his town.

The motion was passed unanimously to uphold the Building Inspector's decision to withhold Building/Occupancy Permits for Mill Run Plaza because there is a Zoning Violation due to a non-complying and non-function drainage system that is shared with Groton Residential Gardens.

Atty. Fenton suggested that the Town change their by-laws such that State stormwater guidelines always apply.

The meeting adjourned at 8:30 pm.