

**TOWN OF WEBSTER
PLANNING BOARD
MEETING MINUTES OCTOBER 20, 2011**

Present: Members - Secretary, Tom Mullins, Jere Buckley, Sue Rauth, Richard Doucette via an **i Phone** and George Hashem, selectman member; alternates - Sue Roman and Mason Donovan.

The meeting convened at 7:06 p.m. After several attempts with office telephones, Member Doucette was connected to the meeting via an **i Phone** in order for him to attend the meeting off site.

The first order of business was to elect a new Chairman for the Board due to the September 16th resignation of Cliff Broker. Member Buckley asked for nominations. Member Rauth nominated Jere Buckley which was seconded by Member Doucette. Member Buckley polled the Board for their votes; Members Doucette, Rauth and Buckley voted yes with Members Mullins and Hashem abstaining. The count was three to two in favor of Jere Buckley becoming the new Chairman to complete the balance of Cliff Broker's term. At this time, Chairman Buckley officially convened the meeting and also expressed his appreciation to Clifford Broker for his almost twenty years of service to the Town. The Board acknowledged Chairman Buckley's praise for Mr. Broker with a round of applause.

The next item on the agenda was the review of the minutes of the September 15, 2011 meeting. Member Doucette made a motion to accept the minutes as presented, which was seconded by Secretary Mullins and the Board voted unanimously to accept.

The next item of business was Case No. 11-04 Lot Line Adjustment/Annexation Application for parcels of land owned by Isabel V. Brintnall and Royal Victor, III on Call Road Map 5 Lots 14 and 50 respectively. Mrs. Brintnall and Mr. Victor were represented by their agent Peter D. Mellen, Licensed Land Surveyor. Mr. Mellen distributed paper copies of the plan to the Board. Chairman Buckley had one minor question regarding the notation of a drill hole on line and why there wasn't a granite monument. Mr. Mellen stated there was a boulder at that particular site on the boundary. Another question that was raised previously was why the plan was not to the 1" = 100' scale required in the Site Plan Requirements. Mr. Mellen requested the Board to accept the plans at 1" = 150' in order to fit the plan on one sheet rather than two. Chairman Buckley did not have any problem with that. Mr. Mellen pointed out that there was a previous lot line adjustment approved with the plan drawn at 1" = 200'. Secretary Mullins moved to accept the applicant's request to use a scale of 1" = 150' and seconded by Member Rauth. Motion carried four in favor and one opposed (Member Doucette). Secretary Mullins moved to accept the application subject to the Board's usual provisions of submission of the final Mylars and walking the bounds. Motion was seconded by Member Hashem. The motion

was carried by a vote of four in favor and one opposed (Member Doucette). The application was accepted with the stated provisions. Mr. Mellen did have the final Mylars which he handed to Mrs. Larson, the PB/ZBA Town Secretary.

The next item on the agenda was continued from the September 15, 2011 Planning Board meeting; the consideration for approval of the Phyllis Roby Revocable Trust Subdivision Application for property on Dustin Road, Map 7 Lot 60. Chairman Buckley stated the problem was the question of a sprinkler system versus a fire pond or a cistern. The Board's interpretation of the law was that the Board cannot require sprinkler systems and in fact, must require either a cistern or a fire pond. The applicant had suggested he would have preferred to substitute that requirement with sprinkler systems to be mandated in the deeds of each of the six lots that were proposed. Chairman Buckley stated that some of the Board members had serious reservations regarding the enforceability of such a provision. Chairman Buckley pointed out that everyone involved, including Adam Pouliot, Life Safety Code Officer, and the State Fire Marshall, believed that sprinkler systems would technically be the better solution. At this time Alternate Roman referred to the minutes from the previous meeting in which Mr. Pouliot had stated that sprinkler systems were unenforceable under the Life Safety Codes. Chairman Buckley stated that, at the last meeting, it appeared that the Board was close to denying the application because of their concerns about the enforceability and that it seemed the Board would be overriding the legislation requiring fire ponds or cisterns. Chairman Buckley stated that the applicant had prepared new wording to be added to the plat, which was shared with Mr. Pouliot and our Town Counsel Barton L. Mayer. (See Addendum). Member Doucette stated that if the Fire Marshall would like the sprinklers because they might be better, and that was only based on his opinion, then per Member Doucette, an opinion will not stand up in a court of law. Currently the Town ordinances require the property owners or sellers to construct a cistern or a fire pond. Member Doucette's understanding of all this is if the Board chooses to go around the current requirements and chooses to accept the sprinklers and the statement on the plat, the new homeowners could choose not to accept sprinklers. Member Doucette surmised that if indeed that would be true, then the Town could be in legal trouble if there was a fire and the house was lost.

At this time Chairman Buckley called on Secretary Mullins as he had voiced similar sentiments. Secretary Mullins read from an article, "Legislature Douses Local Fire Sprinkler Requirements", by Cordell A. Johnston. This article was printed in the LGC's September 2011 issue of **New Hampshire Town and City**. Member Mullins proceeded to read the following:

Can the board negotiate a sprinkler condition? What if, in the future, an applicant offers to install sprinklers as a means of obtaining a subdivision approval that otherwise would be denied? If the planning board accepts this offer, is it any good?

Don't count on it. A planning board might try this on the theory that it is not

“requiring” the sprinklers – it is merely accepting the applicant’s offer to install them. Unfortunately, this probably puts the board in the position of relying entirely on the applicant’s good faith. What will the board do if, as soon as the ink is dry on the approval, the applicant changes his mind? If the board tries to enforce the condition, the applicant will say, “You shall not require the installation of a fire suppression sprinkler as a condition of approval.”

In a situation like this, if the board concludes that sprinklers really are the only solution, the prudent action may be to deny the application, since the only alternative that works is one that the board cannot require. Thus the legislature, in an effort to ease restrictions on developers, may well have done the opposite, at least in some cases: where an application previously would have been approved with a condition that the developer disliked but could reluctantly accept, now the application will simply be denied.

...

Absent a pre-existing regulation, a planning board cannot require sprinklers as a condition of approval, and negotiating a “voluntary” sprinkler condition is risky. However, if sprinklers were required as a condition of an approval that was granted before July 1, it should be enforceable.

Secretary Mullins stated that the above sentence did not apply to this planning board because there is no pre-existing regulation. He was of the opinion that the Board should approve the application conditionally by requiring the cisterns. Therefore, if the cisterns weren’t acceptable to the applicant, then the applicant would need to follow the well established appeals process beginning with the Fire Marshall, then the Building Review Board and ultimately to the State Supreme Court. Secretary Mullins stated that he felt the Board should approach this situation the way they have always done in the past, i.e., to adhere to the Fire Code and have the applicant follow the appeals process with the State.

At this time Chairman Buckley called on Mr. Siciliano for his comments on behalf of his client, Joshua Hufnegel. First, Mr. Siciliano thanked the Board for giving the applicant another month to work on the proposal. Second, Mr. Siciliano said that Paul Morin, who also represented the applicant at the September 15th meeting had met with Cordell Johnston and Ben Frost, attorneys and lobbyists, to talk about the sprinkler system enforcement. Mr. Morin told Mr. Siciliano that after his discussions with Mr. Frost they felt that it would be 90% – 95% enforceable, but there would still be that chance that it may not be. As a result, Mr. Siciliano stated there will be new legislation being proposed. Alternate Roman then asked if the applicant was still asking for approval to which Mr. Siciliano replied, “no”. He proceeded by stating that his client cannot afford the cistern and they think that the sprinklers would be the best option. At this time, Mr. Siciliano presented the board with a written request from his client to withdraw the application (copy attached) and wait until next year. Member Hashem made a motion to

accept the withdrawal. Motion was seconded by Secretary Mullins and was accepted unanimously.

At this time, Chairman Buckley addressed the Board and the public regarding his new position as Chairman. It was his opinion that over the past few years the Board has spent too much time doing things that weren't terribly constructive and haven't spent nearly enough time doing things that the Board should be doing with regards to working on improving the Zoning Ordinances, the Subdivision Regulations, meeting procedures and Driveway Regulations among other things that need to be focused on. At this time, Chairman Buckley recognized Barbara Corliss, a member of the public. She informed the Board that she had just attended an LGC workshop. The lawyers were talking about how things have been so slow with Land Use Changes that it would be a good time to review the ordinances. For an example, she pointed out that the Town of Webster does not have any ordinances prohibiting the constructions of heliports or airplane runways.

In conclusion Chairman Buckley asked the Board members to come to the next meeting prepared to have a discussion and to set priorities and focus on what needs to be worked on the most.

At 7:36 p.m. Secretary Mullins moved to adjourn the meeting. The motion was seconded by Member Doucette and passed unanimously.

ADDENDUM

TO PLANNING BOARD MINUTES OF OCTOBER 20, 2011

To: Barton L. Mayer

Subject: sprinkler systems for new sub-division

Good Afternoon,

We have a six lot sub-division pending approval in Webster. The only sticking point right now is in regards to the fire/ life safety code requirements. The recently passed legislation strictly forbids us from requiring sprinkler systems for these newly created building lots. I have requested that they either install a cistern or build a fire pond in accordance with the current state fire code. The land surveyor that represents the family states that the family cannot afford to meet these requirements and would like us to "accept" sprinkler system installations in any new homes to be built on these lots. The family is not the builder/ developer, they are just dividing the property into smaller lots and selling them off. The land surveyor has hired The Abacus Group to find a way to allow myself and the planning board to accept sprinkler systems. The first recommendation was to place a note on the final plat stating that the owner agrees that sprinklers will be installed in any home built on the parcels as well as a covenant recorded with the deed stating the same thing. I spoke to the legal department at LGC about this and the attorney stated that it was a creative approach but it doesn't legally work. He stated anything written on the plat is technically a requirement and that covenants on deeds are not enforced by towns and can be changed at any time. I gave this information to the Abacus Group and they have come up with another approach which they presented to the planning board at the last meeting. The planning board wanted you to review it and get back to us with an answer. I have attached a copy of the proposal as well as a link to the LGC article from the Town and City magazine dealing with the sprinkler issue.

Adam Pouliot

Deputy Fire Chief

Fire/ Life Safety Code Officer, Town of Webster 603-848-0314

ADDENDUM cont'd

Adam—

We have been following closely the legislature's actions with respect to sprinklers. The applicant's proposal is a voluntary act that is not prohibited by the statutes. The language to be placed on the plat, recorded in the registry and incorporated in every deed is adequate for its intended purpose. I very much doubt that a court would have much of a problem enforcing the covenant under the circumstances. The covenants well written and clearly communicates the intention of the developer.

Bart

BELOW IS THE REVISED PROPOSED NOTE ON THE PLAT WHICH WAS SENT VIA E-MAIL TO ADAM POULIOT FROM MR. SICILIANO ON OCTOBER 12, 2011.

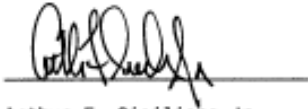
5) As a condition of approval, the Town of Webster planning board and Fire Life/Safety Code Officer require the installation of an approved fire pond or cistern. The applicant has elected to voluntarily and irrevocably substitute the installation of a fire pond or cistern with the installation of a fire suppression sprinkler system in each home to be built. The applicant's offer of sprinkler systems is made in the consideration for the life/safety requirements of NFPA 1 and subdivision approval and such requirements shall remain enforceable by the Town of Webster or its agents in perpetuity.

Each home to be built on any lot created by this subdivision shall have a fire suppression sprinkler system installed in accordance with NFPA 13D. A declaration of covenants and restrictions listing this requirement of construction on the property is to be filed herewith at the Merrimack County Registry of Deeds. The individual deeds to the lots herein platted shall refer to this requirement and the declaration of covenants and restrictions. No building permit shall be issued for a new home until a design for the fire suppression sprinkler system has been approved and no certificates of occupancy shall be issued until the systems have been inspected and approved by the Town of Webster fire inspector or their designee.

ADDENDUM, cont'd

October 20, 2011

On behalf of the Phyllis L. Roby Revocable Trust, I am withdrawing
the application for the six lot subdivision on the north side
of Dustin Road.

A handwritten signature in black ink, appearing to read 'Arthur F. Siciliano Jr.', is written over a horizontal line.

Arthur F. Siciliano Jr.
Land Surveyor
Sewage Disposal System Designer