

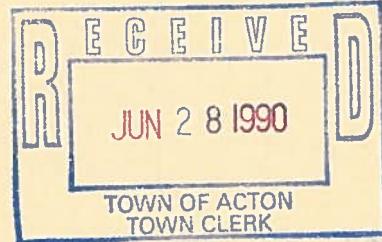
## PLANNING BOARD • Town of Acton

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ACTON PLANNING BOARD

Minutes of Meeting

May 7, 1990



Planning Board members in attendance: Chairman Mary Giorgio, Greg Niemyski, Quint Brathwaite, David Hill, Jim Lee and Doug Carnahan

Planning staff in attendance: Town Planner Roland Bartl and Assistant Town Planner Timothy Smith.

### I. General Business

The Board reviewed the agenda and noted the upcoming Planning Council meeting on May 16th where the recommended road improvements plan will be present by VHB (Master Plan traffic consultant).

### II. Public Hearing: Revise Fee Schedules of Rules & Regs. for Subdivision and Special permit Applications

Mary opened the hearing at 7:45 PM by reading the legal notice as it appeared in the Beacon. It was noted that there were no members of the public in the audience.

Greg Niemyski asked Roland Bartl to explain the proposed changes in the fee schedules. Roland Bartl summarized the proposed changes by explaining that they incorporate the provisions of Chapter 593 of the M.G.L. which was signed into effect in early December 1989. It establishes revolving accounts opened by additional fee deposits paid by the applicant when it is determined that an outside consultant will be needed to review the proposed development both at the outset of the process and during the review process. Greg Niemyski asked if there would be a change in the application fees other than for review of the applications by consultants as provided in Ch. 593. Roland answered that there is no change proposed to the flat fee schedule as printed. Roland also explained that Town Counsel has suggested that the Town develop a list of consultants to choose from to hopefully avoid the developer's appeal of the selection of a consultation.

The hearing was opened to comments from the audience. Evan Testa of 13 Evergreen Rd. asked if it was planned that the East Acton Mall area would be expanded. Mary Giorgio replied that the question was not pertinent to the hearing, but the Board would be glad to respond to his question. Evan was advised that the area has been rezoned into a village district which should allow for more development in the

future. Chris Hill of 10 Brucewood Rd. said he would like more stores in Acton so he didn't have to go as far to get to the stores. He also stated that the Town could use some more parks and recreation areas with baseball and soccer fields.

Greg Niemyski moved to close the hearing, seconded by David Hill and carried unanimously.

Greg Niemyski moved to adopt the new fee schedules as printed and amended for numbering corrections, seconded by Quint Brathwaite and carried unanimously.

### III. Decision - Farm Hill Preliminary Subdivision Plan (DiDuca)

Mary Giorgio asked if Atty. Levine would allow the Board to go forward with the decision on Farm Hill Preliminary even though it was scheduled for 8:45 PM. Atty. Levine replied that his client is in attendance and the Board could move forward.

Mary Giorgio asked if the Board had any comments on the Draft Decision. Greg Niemyski asked to have sidewalk construction included along the frontage of Route 2A and Esterbrook Rd. as part of condition 1.3. It was suggested that this be added to the Findings and Conclusions section as part of an existing finding and conclusion or as a new item. Mary suggested that it be referenced to the requirements in the Subdivision Rules & Regs. Doug Carnahan referred to the second comment on page 2 and asked if it should be listed as a condition. Quint questioned the hazardous waste and refuse located on the site and asked if removal of it could be included a condition. Roland Bartl said he would have to check the Subdivision Control Law to see if it would be allowed in the Preliminary Plan. It was decided that it could be included as a finding. Site inspection conducted by Quint Brathwaite and Doug Carnahan indicated that everything appeared to be normal until he reached the northeast corner of the site. In this area they found 10-12 vehicle batteries, empty car gas tanks, 30 gallon gas tank, several heating oil tanks, ten abandoned and rusting cars and trucks, 10-15 five gallon pails labeled "Industrial Detergent". This area is located up gradient from ponds and the ponds drain into Esterbrook. It was also suggested that the finding be repeated in the conditions requiring the removal of the refuse from the site.

Mary Giorgio moved that the Board issue the decision approving the Preliminary Plan of Farm Hill Subdivision as drafted with the amendments made tonight. Motion was seconded and carried unanimously.

Roland Bartl asked if someone from the Planning Board wanted to review the revised decision prior to signing. It was agreed that Quint Brathwaite and Doug Carnahan would review the changes for the Board and that Town Planner Roland Bartl would sign the decision for the Board.

#### IV. Decision - Harris Street Place Preliminary Subdivision Plan

The Board then began discussion of the draft decision prepared by Assistant Town Planner Tim Smith approving the Preliminary Plan. Greg Niemyski stated the Findings and Conclusion item #10 doesn't appear to be correct because the Acton Housing Authority is shown on the plan. Tim reported that they should also be shown as a northerly abutter.

Quint Brathwaite suggested that Condition #1.5 be eliminated as well.

Greg Niemyski stated that overall he is not quite sure that he would like to approve this plan because of the problem with the 200 ft. dead end street and the sidewalk. Also he questioned the location of the detention basin which is proposed to be adjacent to the video rental store and parking lot which is frequented by a lot of children.

Roland responded that topographically it is about the only place that the detention basin can be located. Greg stated that we have a rule about how close the pond can be to the road. Quint indicated that the Indian Trail going to the Housing land is not shown on the plan. Greg stated that putting a dead end street off of Harris Street isn't good planning because Harris Street has so many problems to begin with.

Roland said they could probably avoid subdivision by redefining the lots and filing for a Site Plan Special Permit. Greg suggested that the applicant should investigate the possibility of getting an easement to connect with the adjacent parking lot which would reduce a lot of the difficulties with the present plan. Greg suggested that the plan was quickly put together and submitted just to obtain zoning protection. Roland pointed out that it is a very preliminary plan.

Mary Giorgio pointed out that the decision on the preliminary plan does not bind the Board when it considers a subsequent definitive plan. It appears that the Board has four concerns about the proposed plan: the location of the detention basin, the lack of sidewalks, the configuration and safety aspects of the dead end road, and the Indian trail. David Hill asked if Mary was recommending the denial of the preliminary plan. Mary replied that the four reasons would justify the denial of the preliminary plan. Doug Carnahan stated that it really doesn't matter what the decision is as long as the Board tells the applicant what they would like to see on the plan.

Greg Niemyski suggested the Board may wish to amend the Rules and Regulations to disallow dead end streets unless the Planning Board determines it is necessitated by topography or other local conditions.

Greg Niemyski moved to amend the decision as presented tonight to deny the plan with the amendments made this evening by the Board. Motion was seconded by David Hill and carried unanimously. Greg Niemyski agreed to review the revised decision prior to issuance. It was agreed that Roland Bartl would sign the decision for the Board.

V. Decision - Pluckacre Preliminary Subdivision Plan (Airco)

The Board began discussion of the draft decision by asking if either Jim Lee or David Hill had any questions or comments about the decision

Jim reported that he reviewed the plan with Tim and conducted a site visit with Tim on last Tuesday. Jim reported that the lime pits are numerous and they make Lot 4 a non-compliant lot. Greg questioned whether the lime pits could be considered open space. Jim read from the Groundwater Protection Bylaw which states that open space must be undisturbed land. Jim said he estimated the lime piles to be approximately 20 cu. yards on material located over a four acre area of the site. Jim also expressed his concerns about the thirty-six foot wide pavement proposed. If constructed as planned the trees would be removed and the adjacent houses would be exposed to the access road and its traffic. Jim stated that the 250,000 sq. ft. floor area limitation on a single access road would greatly impact the developer because the site has the potential for a much higher amount of floor area. Jim said they investigated the possibility of an additional means of access and said that there appear to be alternative access points for emergency access. Greg Niemyski said that he believes emergency access is not sufficient because the real need is to get some of the traffic off of Lawsbrook Road.

Mary Giorgio questioned whether trucks are permitted to access Concord by Lawsbrook Road because there is a restriction against trucks. Jim said there are no signs posted indicating any truck traffic restriction. Roland Bartl stated that he checked with the Concord Police and they are not aware of any truck restriction for Lawsbrook Rd. Quint said that the Concord side has a sign which limits the size of trucks allowed on the road. Roland said that he would re-check with the Concord Police.

Jim reported that he asked Mr. Firth if he planned to tear down any of the older buildings not in active use at this time. Mr. Firth informed him that Airco had no plans for demolishing any of the buildings. Jim also reported that he reviewed the study of Lisa Lane's hazardous materials.

The Board voted unanimously to issue the Pluckacre Preliminary Plan decision denying the subdivision with the amendments added by the Board tonight. Jim Lee will review the revised decision prior to issuance. Roland Bartl may sign the decision for the Board.

## VI. Endorsement of Highridge Subdivision Plan

The next item of business was the endorsement of the Highridge Subdivision plan. The Board reviewed the Restrictive Covenant offered by the applicant. Tim explained that it is a long legal document which addresses the issues that hung them up the last time.

Tim Smith reminded the Board that the applicant did not have Digital's signature the last time they came in for endorsement. Roland advised that the Restrictive Covenant is the same thing except for the assent section at the bottom of page 3 after the signatures.

David Hill asked which parcels are F & I? Roland replied that those parcels are not shown on the subdivision plan that we've approved and they need to be there. In order to make it all work they're going to have to come in with an ANR to exchange them amending those portions. Charlie Kadison has been working on the ANR plan for months and we expected it to be filed together with the subdivision plan. Roland asked Charlie to explain it tonight because Roland feels not quite capable of explaining it. Atty. Kadison will probably get here at nine thirty which is unfortunate because we've finished all of the other business on the agenda ahead of schedule.

Greg Niemyski said that he doesn't think the Board wants to affix signatures on this until we have the ANR in hand to reference the proper parcels. Quint Brathwaite agreed. Roland said that these parcels, Parcel C, Parcel H, Parcel B, etc. are not shown, nor is Parcel F and Parcel I on the subdivision plan itself and that's going to become the sticky point. The first parcels are being conveyed to Iron Bucket. In exchange, Digital receives land of equal area, Parcel F & Parcel I, to make up for it. Once this land swap has been taken care of Digital wants to be released. They've assented to this provided that once Parcel F & Parcel I have been created those parcels will be released from this covenant and only the area that were previously defined by Parcel H, B, C plus the entire subdivision which is back behind it will still be affected by the restrictive covenant. Quint reiterated Greg's statement that these parcels have not as yet been created. They're going to be created by an ANR. Roland agreed and said they could have been created within the context of the subdivision as well but were not due to bickering back and forth between DEC and Iron Bucket. Quint questioned if in point of fact the Restrictive Covenant is null and void because the ANR has not created those parcels. Roland responded that you couldn't say that, at least not very clearly.

Quint questioned if the Board has to stay here until 9:30 when Charlie Kadison arrives. Roland replied that the Board can decide what action it will take based on the information currently before it. Roland said that he also asked Charlie Kadison to put the negotiated protection limitation of 1/1/89 into a covenant so that it automatically runs with the land rather than having somebody in the Planning Office in eight years having to think about it. Roland said that Charlie Kadison agreed to do that and he's going to bring it tonight."

David Hill asked how long an extension the Board granted. Tim Smith replied that the extension expires tonight. Mary said that she didn't know how the rest of the Board felt, but she'd be glad to just say no. Mary said she understands there are all sorts of difficulties but this has been going on and on and on and she thinks the Board should just say no. Greg Niemyski stated that this isn't some little developer, but rather a big corporation.

Roland replied that he understands the Board's frustration and is thinking about what the Board will have to do if they say no. Roland questioned if the Board will have to rescind the plan by holding a public hearing. Roland went on to state that saying no to the covenant at this point and to say no to the endorsement isn't necessarily going to get the Board any place.

Mary questioned what would happen if the Board took no action tonight. Roland replied that he believes that just withholding the endorsement after the approval could affect the ANR and that perhaps some day a court order is going to come telling the Board they have to sign it. Mary replied that the Board should let them get the court order. Roland said that another thing that could possibly be done, after checking with Town Counsel, is hold a hearing and rescind the plan. Greg Niemyski said that Roland should see if the Board can do it. Mary Giorgio proposed that the Board not endorse the plan. Greg Niemyski said that Roland has suggested we have a public hearing to rescind our approval. Then he can start over again under the new zoning. Roland replied that he'd like to check the implications of that and the possibility and feasibility of that.

Mary Giorgio stated that the Board needs to make a motion tonight to either endorse or not endorse because the Board voted on March 12th that the deadline for endorsement was tonight. Mary questioned if the Board does nothing isn't it true that it's endorsed. Roland replied that there is no time line by which you endorse the plan because any deadline you have set can be waived. Mary stated that she is suggesting that the Board will no longer waive it.

Quint replied that with the deadline established, the Board has to make a decision so let's decide not to endorse the plan. Mary Giorgio asked if anybody would like to make a motion. Quint moved that the Board not extend further based on lack of information. Greg seconded the motion. David asked for verification of the motion and to amend by adding "and deny further extensions." Quint accepted the amendment.

Jim asked whether we as a Board approved this plan subject to certain things being accomplished and whether this rescinds that previous approval? Quint replied that the Board cannot rescind approval but only withhold endorsement.

Quint stated that this is the kind of thing that unfortunately we need counsel for. Roland replied that the Board can get counsel once the questions and issues are raised.

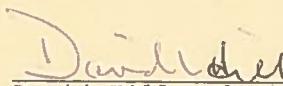
Mary asked if there is any further discussion about the motion to deny the endorsement tonight on the Highridge subdivision plan including denying further extensions. Motion carried by unanimous vote.

Quint stated that it should be noted that the Board was told we would get the ANR so that we could make these decisions in the event they need information as to why we made this decision tonight. Greg asked to have Town Counsel advise what the implications of the Board's decision are and have him address the possibility of holding a public hearing to rescind the decision of the Board.

Greg asked if there is any possibility of providing the Board with information from the Planning Council on the affordable housing overlay and traffic improvement recommendations. Greg stated that the Council is talking about a significant impact on land use and it would be good for the Board to have some review and input on this.

Jim Lee asked what has been done about Quik Lube. Roland replied that the report has bee filed and the Planning Board should look it over before the decision is due on the 22nd of July.

Greg moved to adjourn the meeting at 8:55 PM. Seconded by Quint, Meeting adjourned.

  
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David Hill, Clerk

DH/dmj  
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