LUNENBURG PLANNING BOARD
TOWN OF LUNENBURG

Emerick R. Bakaysa, Chair
Joanna L. Bilotta, Vice-Chair
Thomas W. Bodkin, Jr., Clk.
Robert J. Saiia, Mbr.
Nathan J. Lockwood, Mbr.
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JLB.
RJS.
TB
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Minutes
Executive Session
January 11, 2010

Time: 6:30 PM
Vote to open Executive Session, Motion, Ms. Bilotta, Second, Mr. Bodkin Jr., Roll call vote, Mr. Bodkin Jr., aye; Ms. Bilotta, aye; Mr. Saiia, aye; Mr. Lockwood, aye; Mr. Bakaysa aye; Motion passed.

Discussion: Litigation- O'Brien Homes: Attorney Joel Bard, Kopelman and Paige, P.C., Attorneys at Law, Boston, MA, briefed the Board on the status of the litigation. The Discovery portion regarding the Town Side was finished. Attorney for Plaintiff Motion for Partial Summary Judgment was presented to Land Court. Statement of issues are as follows: open space requirement in Section 5.6. is unconstitutional, violates the uniformity requirement in Chapter 40A, mandatory cluster/open space requirement where no water or sewer is available violates Chapter 40A, mandatory cluster/open space requirement is unconstitutional because it constitutes a regulatory taking of property, mandatory cluster/open space requirement is illegal without just compensation to the owners. Attorney Brian Winner, Kopelman & Paige, P. C., will respond with Brief to Land Court.

Discussion: Settlement- Attorneys Bard and Winner presented a correspondence from Diane Tillotson, Attorney for the Plaintiff, as a framework for a settlement. (See separate documents [2] attached. Document 1 with four provisions and Document 2 as correction to Document 1.) The Board members debated each topic. Document 1, #1- Discussion noted concerning the development of less than 25 acres, which would not come under Section 5.6. It was noted that the Applicant already had that right. It was further stated that each of the less than 25 acre parcels must be stand-alone subdivisions; not phased to one large subdivision. Document 1, #2- The Applicant could offer a mitigation measure access to back forest land. The Attorney for the Applicant clarified that the verbiage concerning well was not offering to supply a well and pump for town use. Document 1, #3- The applicant is, by the Bylaw, required to set aside a limited number for affordable housing. Document 1, #4- Question arose as to the status of the zoning freeze (Broken Stone) if the Applicant splits the land into smaller subdivisions. Main question was if the Plan is changed to include separate parcels, does the Plan become a different Plan and lose the zoning freeze.

After much debate, the Board consensus, clarified by Attorney Bard, as a response is the Applicant has, as a matter of right, to submit a new plan showing new divisions of land of less than 25 acres. The Applicant is to produce a conceptual master plan showing the proposed divisions. The Board request the Applicant drop the lawsuit. The Applicant will pay the Town's attorney fees.

Kopelman and Paige will correspond with the Applicant through his Attorney Diane Tillotson, and relate the discussion to the Board.

Chair requested a Motion to adjourn the Executive Session and return to General Session. Motion, Ms. Bilotta, Second, Mr. Bodkin Jr., Roll Call Vote, Mr. Bakaysa, aye, Ms. Bilotta, aye, Mr. Saiia, aye, Mr. Bodkin Jr., aye, Mr. Lockwood, aye.

-----Original Message-----
From: Tillotson, Diane C. [mailto:dtillotson@hembar.com]
Sent: Monday, January 11, 2010 3:02 PM
To: Brian J. Winner
Subject: RE: O'Brien v. Lunenburg/settlement

Hi Brian,

I spoke with Kevin and while we would hope to at some point have a more detailed discussion with the Town, he would offer the following as the framework for a settlement.

1. We would agree to a dismissal of the current case with the understanding that Kevin would develop the property on a phased basis, with each phase being less than 25 acres. We would develop a phased schedule permitting development "not sooner than" a targeted date, which would allow the Town to plan appropriately.

2. My client would provide access to the general public over an improved roadway to the Town's back land and pond and would provide a parking area for use by the town and the public. My client would also agree to provide a well and pump.

3. My client is willing to develop a limited number of rental units or duplexes and to set aside some units for low and moderate income residents through the Town's housing authority.

4. Assuming we agree that the Broken Stone holding provides a zoning freeze for the land shown on the plan rather than the configuration of lots on a specific plan, my client is willing to consider the idea that the phases be developed in accordance with a "village center" concept.

We are also open to discussing other settlement possibilities. Thanks and let me know how your meeting goes tonight.

Regards,

Diane

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-----Original Message-----
From: Tillotson, Diane C. [mailto:dtillotson@hembar.com]
Sent: Monday, January 11, 2010 4:11 PM
To: Brian J. Winner
Subject: FW: O'Brien v. Lunenburg/settlement/clarification

Brian,

Re item #2 below. My client has advised me that what the Town wants/needs is a water supply source for the Town and that there had been at least some conversation about locating a town well on the property. I misunderstood when I wrote #2 below, thinking that what was contemplated was a well for use of hikers/recreational users of the town land. My client wanted me to clarify that he was not offering to supply a well and pump for the town, although he would be willing to discuss the use of a portion of land for this purpose. Thanks and sorry for (my) confusion.

Diane

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