

INITIALS \_\_\_\_\_

# **LUNENBURG PLANNING BOARD**

## **TOWN OF LUNENBURG**

Emerick R. Bakaysa, Chair  
Joanna L. Bilotta-Simeone, Vice-Chair  
Thomas W. Bodkin, Jr., Clk.  
Nathan J. Lockwood, Mbr.  
Marion M. Benson, Planning Director



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Minutes  
Public Hearing (Continuation)  
Aro Estates, Howard Street  
February 13, 2013

Meeting Posted: Yes

Time: 6:30 PM

Place: Town Hall, 17 Main Street, Lunenburg, MA 01462

Present: Joanna L. Bilotta, Vice Chair, Thomas W. Bodkin, Jr., Nathan J. Lockwood, Marion M. Benson, Planning Director

Absent: Emerick R. Bakaysa, Chair

Also Present: Town Counsel, Joel Bard

Vice-Chair opened the Hearing Continuation. The initial hearing was held on January 30, 2013 and continued to this date. The Hearing continuation is to hear and discuss applications for ten subdivisions totaling 135 lots.

Ms. Bilotta-Simeone requested of Mr. Bard if an actual submittal date had been agreed upon between the Town's attorney and the Applicant's attorney. Attorney Bard noted at this time an actual submittal date has not been agreed upon. As for a decision date, Attorney Bard still feels end-April is reasonable. Correspondence will continue between Attorney Bard and Attorneys Johnson and Borenstein to reach an agreement.

The applicant/developer Kevin O'Brien, O'Brien Homes Inc., was present and also represented by Mr. Cleaves, Whitman & Bingham Associates and Attorney Borenstein, Johnson and Borenstein. Mr. Cleaves presented three documents to the Board; 1) Whitman & Bingham Associates correspondence dated February 13, 2013, noting individual waiver requests for each subdivision, 2) traffic impact update from Abend Associates dated February 11, 2013. Summary noted "...the original study is transferable to the current proposal" and "...the conclusions of the original study are still valid.", and 3) Whitman & Bingham Associates memo dated February 13, 2013, stating sequencing of the proposed subdivisions. (Noted documents are on file in the Planning Office.)

Waivers included grading detail on the lots, waiting Board feedback before applying to the Conservation Commission, field staking of roadways, cross sections of cut and fill, roadway cut and fill, and length of dead-end street.

Mr. O'Brien discussed park/playground space. Five parks are proposed throughout the ten subdivisions. Ms. Benson inquired as to how this will affect the square footage of a lot if an easement is created for a playground. Attorney Bard will have to analyze. Also proposed are four access easements to the Town-owned conservation land at the rear of the subdivisions. Attorney Bard noted that would go to Town Meeting and it would be up to the Town to vote on whether or not to accept the easement.

Mr. O'Brien noted drainage being recalculated.

Mr. O'Brien addressed issue brought up at January 30th hearing of abutter on left-hand side as access road comes in off Howard Street has their driveway and yard going up to a stone wall. Stone wall follows along left/west side of road. There could possibly be an adverse possession issue. Mr. O'Brien felt that has nothing to do with the review as the stone wall is his property.

Public Comments-

Paula Bertram, 312 Townsend Harbor Road- Concerned with watershed in area, particularly Mulpus Brook. If ledge needs to be blasted, concerned with impact of blasting on water table.

Mr. O'Brien noted they will be requesting to waive grading detail; it will be part of the final plan. Recharge was part of their retesting of the detention ponds. He hopes no blasting will have to take place, but he is aware you cannot have ledge under a septic system.

Board consensus was to continue Hearing to February 27, 2013, 6:30 PM, Town Hall.

Mr. Bodkin Jr. noted in preparation for that meeting he would like to hear from both Counsels regarding the legal issues surrounding the project. Also, having multiple plans submitted where there is not access to public way - how it relates to bylaw. Under the bylaw he believes you have to have frontage on a public way. Also the issue of zoning in regards to square footage.

Attorney Bard noted Johnson and Borenstein are inquiring as to the zoning freeze date and Attorney Borenstein states it should be the date of the original plan filing, April 3, 2008. Attorney Bard went on to note that the filing is a factual question, but the zoning issue is a legal question. A zoning freeze lasts eight years from when a plan is approved, not when a plan is submitted. A freeze has two phases; one, the plan review phase, and then once there is a date of approval, a freeze for eight years. He noted the 2008 plan was denied by the Planning Board, and subsequently Land Court. The Applicant had the right to come back and address plans for denial. The issue is how much time they have to come back.

Mr. Lockwood requested Attorney Bard look at the Waivers in conjunction with the language of the referenced bylaw section. Attorney Bard responded that the law is ambiguous and leaves discretion as to the Planning Board's interpretation of its own bylaw. The statute notes a Planning Board may grant waivers from its own subdivision rules and regulations when it deems it in the public interest. Ms. Benson noted that the Reviewing Engineer will also make his recommendations as to the Waivers to the Board.

Mr. O'Brien noted some of the Waivers are at the request of the Conservation Commission.

Attorney Borenstein suggested he and Attorney Bard exchange their positions on the issues prior to the next continuation so they come prepared for discussion.

Attorney Bard noted that if the Board denies the application as a proposal attempting to circumvent Zoning Bylaw Section 5.6., it will end up again in litigation. Attorney Bard suggests "conceptual responses" to Attorney Borenstein's above suggestion.

Mr. O'Brien wanted it made clear to the Board that he is not following 5.6.

Ms. Benson noted still waiting additional drainage information from Whitman & Bingham Associates and concerned about adequate review time for the reviewing engineer.

Applicant and Board agreed that the Board's deadline for final action on Aro Estates 1 – 10 will be April 23, 2013. Mr. O'Brien put same in writing and this will be filed with the Town Clerk.

Mr. Bodkin Jr., Motion to adjourn, Second, Mr. Lockwood, adjourned 8:00 PM.