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

Tel: (978) 582-4147, ext 5
Fax: (978) 582-4353
960 Massachusetts Avenue
Lunenburg, MA 01462

Minutes
Public Hearing (Continuation)
Aro Estates, Howard Street
February 27, 2013

Meeting Posted: Yes
Time: 6:30 PM
Place: Town Hall, 17 Main Street, Lunenburg, MA 01462
Present: Emerick R. Bakaysa, Chair Joanna L. Bilotta, Vice Chair, Thomas W. Bodkin, Jr., Nathan J. Lockwood, Marion M. Benson, Planning Director
Also Present: Town Counsel, Joel Bard

Chair opened the Hearing Continuation. The initial hearing was held on January 30, 2013, first continuation to February 13th, second continuation to this date. The Hearing continuation is to hear and discuss applications for ten subdivisions off Howard Street totaling 135 lots.

Representing the Applicant, Kevin O'Brien, O'Brien Homes was Attorney Mark Johnson, Johnson and Borenstein. He reviewed documents since the last continuation, review the two zoning issues, and discuss waivers. He referenced the following documents:

- Johnson & Borenstein, LLC letter dated February 27, 2013, subject: Aro Estates – 1-10 Subdivision Plans (attached) containing the Land Court Decision, partial copy of the transcript of the oral arguments, and the Motion for Summary Judgment.
- David Ross Associates Review letter dated February 25, 2013 (attached)
- Whitman & Bingham Associates letter dated February 13, 2013, subject: Waiver Requests

The zoning issues were addressed by Attorney Donald Borenstein. Johnson and Borenstein's letter dated February 27, 2013 states that "the Zoning Bylaw in effect at the time of the Applicant's filings of its original plan remains applicable and 'frozen' under the Subdivision Plan process freeze found at G.L. c.40A, §.6. par. 5". Kopelman and Paige P.C. response letter dated February 27, 2013 (attached) states that "…the question of whether the zoning freeze currently exists and continues with respect to the current subdivision filings is a factual and legal question that would ultimately have to be decided by the courts." Johnson and Borenstein's letter also states that "…the Land Court stated that O'Brien '**can develop the 189 acres in separate subdivisions, each of less than twenty-five acres (avoiding s.5.6 entirely).'**" "**It can still be subdivided and developed by meeting the requirements of s. 5.6 (resulting in either smaller or fewer homes), or by re-planning its development into separate subdivisions of less than twenty-five acres.**" Attorney Borenstein also referred to the three options available noted on page 5 of the letter. In reference to accessing the public way, their letter states that "the Applicant intends to physically construct and/or post security to ensure the construction of the new roadway necessary to access the public way from each of the separate subdivisions."

In response to Attorney Borenstein's noting of the three options available, Attorney Bard noted that in the transcript, when asked what's the difference if you have seven or eight 24 ½ or 25-acre subdivisions versus one large subdivision, Attorney Bard

responded that "there is a difference because each one becomes a community of its own and it's all, of course, how it's planned and developed. But you don't get this one mass of 189-acres developed into a 135 house lots. You have a variety of smaller communities…it's up to the developer as to how they want to do it." "…each 25-acre subdivision would have to be a stand-alone." "Each cluster of 15 to 25 would have its own communal system." "…the picture I'm drawing here…is a more complex picture than what the plaintiff is sketching out to support their arguments."

Attorney Bard noted the Board will have to decide if this is one of the options under the Bylaw; that the Applicant could take the old plan, cut it into 10 phases, and call it 10 subdivisions. The judge stated this was one of the options available under the bylaw, but did not say this was how it had to be done. This was the legal question before the Board at the outset and presented to Attorney Bard by Attorney Johnson. Initially, Attorney Johnson wanted these two legal issues to be brought to court for resolution, but then decided the Applicant wanted to go through the plan process instead. Attorney Bard notes that the Board has to decide whether the new subdivisions are the old subdivision broken into 10 phases.

Attorney Johnson interprets Section 5.6. as allowing breaking up into parcels of 25 acres.

Regarding the zoning freeze, the Applicant's attorney states that the Applicant has continuously moved forward with his project. Attorney Bard notes there is no timeframe guidance from the courts.

Mr. Bakaysa noted that when Section 5.6. was enacted, it was with the intention of managing growth. It was the intent that they would be independent subdivisions that could stand on their own and not subdivisions that would be phased to create one large subdivision. Mr. Bakaysa feels there has been no cooperation from the developer on working with the Board.

Mr. Bodkin Jr. noted that as these are considered 10 separate subdivisions, each has to have access to a public way. The developer's attorney is of the opinion that under G.L. ch. 41, §81O, the ways do not have to be physically constructed prior to the Board's approval of the plans. Attorney Bard noted there would have to be a bond in place for the roads and recommended it be in place before any building permits are issued. Attorney Johnson referred to G.L. ch. 41, §81U regarding Performance Guarantees.

Ms. Bilotta-Simeone feels that the 135 houses cannot be justified as this is the same that was submitted in 2008, and denied. If the developer is saying this is a new submittal, the 80,000 square foot change to the Outlying District should be followed.

Mr. Lockwood voiced same concerns as Board members above.

Ms. Benson noted the "Purpose" of 5.6. Cluster Development. *"…to encourage the preservation of useable open space, …and assist in preserving the Rural Residential Character of the Town."* Mr. Bakaysa noted that 135 lots on Howard Street will have an impact on the infrastructure as it exists today.

Attorney Bard noted the Applicant has a plan before the Board and the Board needs to get to the end of that process and write a Decision.

Attorney Johnson moved on to waiver requests. Noted that J. Johnson's review supported the waiver requests with the following exceptions: Section 3.4.3.12. requiring the applicant to simultaneously apply for a Determination of Applicability or Notice of Intent. Section 4.2.5.1. stating dead-end streets shall be no longer than 650 feet. If the Fire Department has no issue with a longer cul-de-sac, J. Johnson has no issues. Section 3.4.3.3.b. requiring grading details for building sites. J. Johnson supports based on the Applicant estimating proposed impervious coverage. Attorney Johnson inquired if the Board has received a response from the Fire Department re cul-de-sac length.

J. Johnson summarized his review letter of February 25, 2013 noting that he had no issues with the waivers as they are requested. He defers to the Conservation Commission on the issue of simultaneously filing of Determination of Applicability or Notice of Intent. He feels the cul-de-sac length is a public safety issue and has no issue from an engineering standpoint. He

defers to Police and/or Fire Department. He noted the closing of his letter which mentions there are a number of items listed in Whitman and Bingham's response letter dated 12-7-12 that have not yet been provided. Whitman and Bingham should update the Board regarding the promised materials. The Applicant has not yet provided the information requested in the Rules and Regulations Governing the Subdivision of Land, Section 3.4.3.1.q) for Aro 1 and Aro 4, *"…layout plans shall show…all buildings, walks, drives and the existing fixtures, within one hundred feet of the sidelines of such street."* J. Johnson stated this is critical as it will show adjacent driveways to each of the proposed entrances into the project. The Applicant has not yet provided a completed set of deep test holes and percolation holes for every proposed individual lot, but they have supplied enough to characterize the underlying soils. If they don't provide all of them, they will have to request a waiver.

There is still a difference of opinion between the Board and the Applicant in the interpretation of the bylaw regarding the longer leveling area strip with a lesser slope.

J. Johnson also brought attention to 4) Leveling Area Grade, 8) Proposed Site and Grading Plans and 13) Deep Drainage Infrastructure of his February 25th review letter. Mr. Bakaysa noted February 27, 2013 electronic mail from Mr. Rodriquenz, DPW Director; *"In the document, Drainage Analysis, Stormwater Maintenance Program, Sections 2.0 – 2.5 simply stated, the maintenance program as proposed, would require resources in the form of personnel, equipment, and funds not currently available within the department. To place this kind of economic burden upon the DPW at this time would certainly place us in a position to fail. …request you and the Commission look unfavorably upon this component of the project."*

Major items still needed noted as 8), 13), 14), and 15) in J. Johnson's review letter. Also noted Aro 4, four to five feet off property line, to install wall and do grading, will be very close to abutter's property. Whitman and Bingham noted they will stake property line at time wall is being built.

Mr. Bakaysa noted that before building, the Applicant would have to show water supplies or septic systems for each lot.

Mr. Flis, Whitman & Bingham Associates, on behalf of the Applicant, supplied the Board with a Memorandum dated February 27, 2013, listing the square footage wetland area for all ten individual subdivisions (on file in the Planning Office). Also supplied the Board with Abend Associates Memorandum dated February 13, 2013, subject: Roadway Grading Regulation - Opinion (on file in Planning Office). Abend Opinion is that *"a 75-foot distance is sufficient to accommodate a line of three passenger vehicles while a 200-foot distance is sufficient to accommodate about three tractor-trailer trucks." "Unless there are large trucks coming and going regularly, the more conservative (longer) dimension is not necessary to provide for safe operations at an intersection."*

Mr. Flis noted that one of the important waivers is the 650 feet for dead-end streets/cul-de-sacs. It impacts Aro 6, 8, and 9. If not waived, the plans will have to be significantly revised. Will request waiver on soil testing of 135 lots. They will go through the Board of Health process. They have done some more testing on the detention basins. Information will be in final drainage report. Will be submitting plans with revised basins. Requesting a meeting with Ms. Benson and J Johnson at the time revised plans are submitted. Working on tabular summary noted in J Johnson's review letter of October 22, 2012 – waiting until final plans are done. Will be requesting a waiver on basin pipe cover.

Mr. O'Brien noted that in meeting with the Fire Department, Chief Sullivan stated he did not have a problem with the 650 foot dead-end length. Mr. O'Brien requested a response from the Board so Whitman & Bingham could complete the drainage calculations on those waivers. He also stated that two of the waivers were at the request of the Conservation Commission as they have wetlands. Ms. Benson will request written confirmation from the Fire Chief.

One of the agenda items for March 4, 2013 will be a hearing continuation to review the 650 foot waiver.

Mr. Lockwood asked for clarification on Decision end-date. Attorney Bard informed him Board hopes to have a Decision by April 8th.

Attorney Bowen, 1686 Massachusetts Avenue- Noted on-going discussions with Water Department about bringing water to the site. J Johnson noted it's always more beneficial to be on a public water system.

No proponents.

Opponents:

Walter Paquette, 10 Iris Court- speaking as President of Hickory Hills Land Owners Incorporated and expressing the opinion of the eleven (11) Board members. Concerned with the construction of 135 houses at the Mulpus Brook headwaters and how this will affect Hickory Hills Lake.

Paula Bertram, 312 Townsend Harbor Road- concerned with the Hickory Hills Lake eco-system. Voiced the same concerns as Mr. Paquette. Sedimentation and debris have become a significant concern in the Hickory Hills community. Aro Estates will result in changes to infiltration and ground water runoff. She urges the Board to deny the waiver request from Rules and Regulations Governing the Subdivision of Land, Section 3.4.3.12 Wetlands. She urges that the Board require the Applicant and/or future property owners maintain ownership of all stormwater components associated with the development due to maintenance costs if DPW responsibility.

Dave McDonald, Island Road- Echoed Ms. Bertram's concerns.

Rennie Shattuck, 396 Howard Street- Access road into development too close to his home. Equipment cut down trees, bulldozed a stone wall and left some stones within twenty (20') feet of his home. Applicant also filled in a drainage trench along his wall. (Submitted photographs to the Board – on file in Planning Office.)

Mr. Bodkin Jr. inquired of J. Johnson as to any future fertilizer runoff into Mulpus Brook. J. Johnson responded buffer zones will be Conservation Commission jurisdiction. Also noted he has requested Applicant provide stormwater management form which stipulates how they have met all ten (10) requirements listed in the Massachusetts stormwater guidelines. Soil testing is required within each detention basin which shows what the ground water level is and the soil type. There have not shown they have done that. Things may change once the Applicant goes through Notice of Intent process with the Conservation Commission. Attorney Bard noted the wetlands delineation is approximately four years old; he thought it was only good for three years. J. Johnson noted the Applicant fell under the Permit Extension Act to get it for another two years.

Ms. Bilotta-Simeone continued to have issues with the wall. Attorney Bard noted that the "wall issue" is a civil matter and Mr. Shattuck may have gained "adverse possession" over the wall as he had maintained the land up to the wall for a number of years, but; he cannot gain legal right to that land until he goes to court and gets a court judgment to that effect. The Board has to assume ownership is where the Applicant's documents states. It is also unclear as to if the stone wall demarked a property line.

Ms. Benson inquired of timeline to Conservation Commission. J. Johnson stated current plans show disturbance within the buffer zone resource areas. Notice of Intent must be filed. Regulations suggest they run concurrently with the Planning Board and Conservation Commission; Applicant requested a waiver to do that – J. Johnson has no issue. It puts the responsibility on the Applicant as the Planning Board may approve something, but if there is an issue with Conservation, the Applicant will have to return to the Planning Board to get the Planning Board approvals modified. The Conservation Commission can deny any infringement within the buffer zone.

Ms. Benson noted to Whitman and Bingham that Town offices are closed on Fridays for any paperwork they wish to submit.

Mr. O'Brien noted he will file with the Conservation Commission once drainage issues are resolved.

The Board will review its meeting schedule at the March 4th meeting. Attorney Bard noted he will be available on March 13 and 14, but not on the 12th.

Motion, Ms. Bilotta-Simeone to adjourn the Hearing to March 4th, Second, Mr. Bodkin Jr., Roll Call Vote, Mr. Lockwood, aye; Mr. Bodkin Jr., aye; Ms. Bilotta-Simeone, aye; Mr. Bakaysa, aye. Adjourned 9:30 PM.