

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  
April 20, 2013

Meeting Posted: Yes  
Place: Town Hall, 17 Main Street, Lunenburg, MA 01462  
Time: 9:00 AM

Present: Emerick R. Bakaysa, Joanna L. Bilotta-Simeone, Thomas W. Bodkin Jr., Nathan J. Lockwood, Marion M. Benson  
Also present: Town Counsel Attorney Joel Bard

Chair Bakaysa opened the hearing continuation for Aro Estates. The initial hearing was held on January 30, 2013, continuations held on February 13<sup>th</sup>, February 27<sup>th</sup>; March 4<sup>th</sup>, March 16<sup>th</sup>, March 23<sup>rd</sup>, April 3<sup>rd</sup>, April 10<sup>th</sup>, April 13<sup>th</sup>, and continued to this date.

Attorney Mark Johnson, representing the Applicant, provided the following documents:

- Whitman & Bingham Associates memorandum dated April 20, 2013, regarding drainage easements (on file in Planning Office).
- Johnson & Borenstein, LLC, letter dated April 19, 2013, regarding same.

Discussed at the last continuation was the process freeze regarding 40,000 versus 80,000 square feet. Attorney Johnson again opined that the 40,000 should apply. He referred to a January 24, 2013 In House Tech Meeting in which he thought the Building/Zoning Official gave his opinion regarding the zoning freeze. He made reference to Highfield Village, which has been receiving Extension Approvals from the Planning Board for a number of years. Mr. Lockwood commented that the Highfield Village Extensions are not the same as the zoning freeze in question. Attorney Bard noted the zoning freeze question is a Planning Board decision. It is up to the Board whether or not to request input from the Building/Zoning Official.

Wesley Flis, Whitman & Bingham Associates, representing the Applicant noted Jesse Johnson's review letter dated April 18, 2013 (on file in Planning Office). In Mr. Flis's opinion, the submittal is now complete as a result of addressing J. Johnson's review comments. J. Johnson concurred. Applicant to provide a full size copy of Construction Details at the April 22<sup>nd</sup> continuation. J. Johnson stated that the submittal meets all Massachusetts stormwater guidelines and recommendations. Jamie Rheault, Whitman & Bingham Associates, representing the Applicant, requested clarification of J. Johnson's comment that submittal is complete. Mr. Rheault noted that it is common for reviewing and project engineers to converse back and forth to prepare plans for a final sign-off once all information is submitted. Mr. Bakaysa concurred; he was verifying with J. Johnson that all information had been submitted. Mr. Rheault noted that early on he had come before the Board to request the attorneys get together to understand the process in getting application submitted.

Town Counsel Attorney Bard supplied a current DRAFT Decision. The DRAFT Decision references attachments which will be made available for the continuation on April 22<sup>nd</sup>. Attorney Bard noted signing the Decisions can be done outside of a regular Board meeting.

The Board will hold discussion on Zoning Bylaw Section 5.6. and the zoning freeze at its April 22, 2013 meeting.

The April 13<sup>th</sup> Continuation was recessed during discussion of Aro Estates 1. Continued discussion follows beginning with Pg 5., III.6. Parks. Mr. Lockwood proposes 40% set aside for parks. Attorney Bard noted the Subdivision Control Law states that a Board's Rules and Regulations Governing the Subdivision of Land may require the land be set aside, but not built on for three years. It also states that an applicant cannot be required to give the land to a community as a condition of approval. Attorney Bard brought up the issue of easements over house lots for playgrounds versus specific property being set aside for parks/playgrounds. J. Johnson noted the Applicant has a mix. Attorney Bard requested correspondence from the Applicant noting locations of parks for incorporation into the ten Decisions. Attorney Johnson stated they will submit a letter to the Board on April 22, 2013 stating that the park areas will remain with the subdivisions after the three years.

Attorney Johnson noted Pg. 2, I.2. that the transmittal letter was from the Applicant's Engineer, not the Attorney. Possibly dated September 10, 2012, not September 20, 2012. Same in paragraph 3.

Revised Plans and drainage calculations submitted by the Applicant for review by J. Johnson.

Ms. Benson questioned if lots would come out of square footage compliance if Town bought park/playground area. Attorney Bard noted this would not change the compliance; Town would be purchasing the easement. Mr. O'Brien noted the reason he is creating a homeowners' association is for maintenance of the playground area and the detention ponds. He also stated that he has submitted ten separate subdivisions and that each one stands on its own.

Attorney Robert Bowen, representing the Applicant, stated that Section 4.5.1. of the Rules and Regulations Governing the Subdivision of Land is optional. The Applicant is voluntarily deciding to set aside park space. Attorney Bard opined that the "optional" is for the park location. Attorney Johnson states that 4.5.1. does not give a standard to design to.

Motion, Mr. Bodkin Jr., to accept the designated park area (Lot D), for Aro Estates 1, even though it does not meet Section 4.5.1., Second, Ms. Bilotta-Simeone for discussion. Mr. Bakaysa is in agreement with Mr. Bodkin Jr. Neither Mr. Lockwood nor Ms. Bilotta-Simeone would accept it as presented. Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr., aye; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, aye. Motion failed to pass.

### III. 7. Environmental Impacts - Conservation Commission jurisdiction.

Mr. Flis noted to the Board that the Applicant is not comfortable with the wording of 7, specifically, "...the Planning Board finds that the Applicant's refusal to address environmental impacts raises further questions which are left unanswered. No work is proposed within the 30 foot No Touch zone. The Applicant feels they met any conservation issues. J. Johnson inquired if any work was proposed within the 100 foot buffer. Mr. Flis responded they will file with the Conservation Commission. Attorney Johnson inquired of the Board if at any time they had refused to address environmental impacts. J. Johnson responded that it may be that the Applicant did not submit to the Conservation Commission at the same time they submitted to the Planning Board. Town Counsel will revise "...the Planning Board finds that the Applicant's refusal to address environmental impacts raises further questions which are left unanswered." to read, " the Planning Board finds that further questions on environmental impact are left unanswered because the referenced information is not available to the Planning Board now."

II.2. Section 3.4.3.12 – notes this was previously waived by the Planning Board

### III. 8. General – no Board comments.

- A. Building Department: Mr. O'Brien opined that the Building/Zoning Official stated at the January 24, 2013 Tech Meeting that the Applicant was under a zoning freeze. Attorney Johnson requested that the Tech Meeting minutes be made part of the record before the Hearing is closed. Attorney Bard noted 8.E. which states Tech Memos will be attached to the Decision. Applicant had to file with DEP regarding asbestos removal.
- E. Attorney Bard suggested that the last two sentences be deleted as the Planning Board does not rely on the Tech Meeting notes. Board concurred. The Board relies on documents it receives and/or live testimony.

Mr. O'Brien took issue with the fact that the Board did not vote to accept the designated park area for Aro Estates 1 as he requested at the last continuation that the Board inform him of anything that was still missing from the submittal. He reiterated that this application is not under Section 5.6. of the Zoning Bylaw.

- B. Mr. Flis noted that the Board of Health was satisfied with the amount of testing done. If the Board of Health had requested more testing, the Applicant would have done so.
- D. Mr. Flis requested that a sentence be added to state that at the April 20, 2013 continuation the Reviewing Engineer stated he is satisfied with all information presented to take care of all issues brought up in letters.

Attorney Bard noted that default position on Parks is 10% as the vote did not pass.

The Applicant inquired if a waiver request from Section 4.5.1. of the Rules and Regulations Governing the Subdivision of Land was brought forth, would the Board reconsider its vote. Motion made, Mr. Lockwood, to set the open space at 40%, Second for discussion, Mr. Bodkin Jr. Mr. Bodkin Jr. not in favor of 40%, possibly 20%. Ms. Bilotta-Simeone favors staying with the 10%. After discussion, Mr. Lockwood withdrew his Motion.

For Aro Estates 2 through 10, the Board will only note and/or discuss the differences from Aro Estates 1.

#### Aro Estates 2-

I.6. – 24.3 acres

I.8. – 19 lots

I.10. – has access to a public way, Howard Street, by proposed easement over and upon land also currently controlled by the Applicant through and over other proposed "subdivisions" within Aro Estates.

III.3. Traffic and Safety. Notes that access is proposed by way of proposed easement and that it is obvious to the Board that this access is meant to be part of the larger comprehensive development of the entire 189 parcel. It goes on to state that the Board would not likely approve such a roadway layout as the proposed way is not a sensible means to access this subdivision if it were viewed as an independent subdivision.

III.6. Parks. Contained within Aro Estates 2, but shared with Aro Estates 5 by placing easements over privately-owned lots. Motion, Mr. Lockwood, to approve park area as shown in regards to Section 4.5.1. for Aro 2, Second, Mr. Bilotta-Simeone for discussion. Mr. Bodkin Jr. pointed out that this one has easements as opposed to Aro 1 which was free-standing. Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr., nay; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, nay. Park area not approved for Aro Estates 2.

III.8. Same as noted above for Aro Estates 1.

With Board consensus, Ms. Paula Bertram, 312 Townsend Harbor Road, came forth to make comments. In previous continuations, it was stated that subdivision stormwater maintenance comes under DPW maintenance. She noted the Applicant submitted an intensive stormwater program which would require significant Town maintenance. If the project were to be scaled down, the impact to the environment would lessen, and it would also leave more open space.

#### Aro Estates 3-

I.6. – 17.7 acres

I.8. – 17 lots

I.10. – Same as noted above for Aro 2.

III.3. Traffic and Safety. Same as noted above for Aro 2.

III.6. Parks. Provided by placing by placing easements over privately-owned lots. Motion, Mr. Lockwood, to approve park area as shown in regards to Section 4.5.1. for Aro 3, Second, Mr. Bilotta-Simeone. Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr. nay; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, nay. Park area not approved for Aro Estates 3.

III.8. Same as noted above for Aro Estates 1.

#### Aro Estates 4-

I.6. – 23.9 acres

I.8. – 21 lots

I.10. – Same as noted above for Aro 2.

III.3. Traffic and Safety. Same as noted above for Aro 2. In addition, that dead-end far exceeds maximum dead-end street established by the Rules and Regulations Governing the Subdivision of Land, although the Board waived that requirement.

III.5. Stormwater Management and Drainage. Modify para. 2 to note that the drainage system for Aro Estates 4 has sufficient capacity for the drainage needs of Aro Estates 4.

III.6. Parks. Aro Estates 4 shares the playground area designated in Aro Estates 2 and has two access easements. Motion, Mr. Lockwood, to approve park area as shown in regards to Section 4.5.1. for Aro 4, Second, Ms. Bilotta-Simeone. Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr. nay; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, nay. Park area not approved for Aro Estates 4.

III.8. Same as noted above for Aro Estates 1.

#### Aro Estates 5

I.6. – 19.8 acres

I.8. – 20 lots – Mr. Lockwood questioned how there could be 20 lots proposed on 19.8 acres. Discussion ensued between Mr. Flis and Mr. Lockwood. Ms. Benson requested Mr. Flis summarize discussion in memorandum to attach to these minutes.

I.10. – Modify to add a note at the end that one lot in Aro Estates 5 is shown as part of Aro Estates 1. However, a portion of that lot is needed for construction of the temporary roadway in Aro Estates 1. Accordingly, the lot does not become buildable until Aro Estates 5 is built and the temporary access easement for Aro Estates 1 is removed.

III.3. Traffic and Safety. Same as noted above for Aro 2.

III.6. Parks. Physically located in Aro 4, but shared with Aro 5 by way of easement. There is also a Town Forest easement. Attorney Bard suggested the motions be fine-tuned as follows: “to approve, pursuant to Section 4.5.1. of the Planning Board Subdivision Rules and Regulations, the park and/or playground area as shown on the Plans for Aro 5 because said park/playground area does not contain 10% of the gross area of the subdivision”. Motion, Mr. Lockwood, to approve, pursuant to Section 4.5.1. of the Planning Board Subdivision Rules and Regulations, the park and/or playground area as shown on the plans for Aro 5 because said park/playground area does not contain 10% of the gross area of the subdivision, Second, Mr. Bodkin Jr., open for discussion. Mr. Bakaysa noted that if denied, it will also deny access to the Town Forest. Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr., aye; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, nay. Park area not approved for Aro Estates 5.

III.8. Same as noted above for Aro Estates 1.

#### Aro Estates 6

I.6. – 20.5 acres

I.8. – 16 lots

I.10. – Same as noted above for Aro 2.

III.3. Traffic and Safety. Same as noted above for Aro 2.

III.6. Parks. No physical park – there is a “nature trail”. Motion, Mr. Lockwood, to approve, pursuant to Section 4.5.1. of the Planning Board Subdivision Rules and Regulations, the park and/or playground area as shown on the plans for Aro 6 because said park/playground area does not contain 10% of the gross area of the subdivision, Second, Ms. Bilotta-Simeone, Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr., nay; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, nay. Park area not approved for Aro Estates 6.

III.8. Same as noted above for Aro Estates 1.

#### Aro Estates 7

I.6. – 8.0 acres

I.8. – 5 lots

I.10. – Same as noted above for Aro 2.

III.5. Stormwater Management and Drainage. Modify para. 2 to note that the drainage system for Aro Estates 7 has sufficient capacity for the drainage needs of Aro Estates 7.

III.6. Parks. Easement provides access to park identified in Aro 1. Motion, Mr. Lockwood, to approve, pursuant to Section 4.5.1. of the Planning Board Subdivision Rules and Regulations, the park and/or playground area as shown on the plans for Aro 7 because said park/playground area does not contain 10% of the gross area of the subdivision, Second, Mr. Bodkin Jr., Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr., nay; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, nay. Park area not approved for Aro Estates 7.

III.8. Same as noted above for Aro Estates 1.

#### Aro Estates 8

I.6. – 23.4 acres

I.8. – 12 lots

I.10. – Same as noted above for Aro 2.

III.5. Stormwater Management and Drainage. Modify para. 2 to note that the drainage system for Aro Estates 8 has sufficient capacity for the drainage needs of Aro Estates 8.

III.6. Parks. Easement provides access to park identified same as in Aro 6. Motion, Mr. Lockwood, to approve, pursuant to Section 4.5.1. of the Planning Board Subdivision Rules and Regulations, the park and/or playground area as shown on the plans for Aro 8 because said park/playground area does not contain 10% of the gross area of the subdivision, Second, Mr. Bodkin Jr., for discussion. Mr. Bakaysa inclined to approve as it provide parking and access to the Town Forest. Roll Call Vote- Mr. Lockwood, nay; Mr. Biodkin Jr. aye; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, aye. Motion failed to pass.

III.8. Same as noted above for Aro Estates 1.

#### Aro Estates 9

I.6. – 9.6 acres

I.8. – 5 lots

I.10. – Same as noted above for Aro 2.

III.5. Stormwater Management and Drainage. Modify para. 2 to note that the drainage system for Aro Estates 9 has sufficient capacity for the drainage needs of Aro Estates 9.

III.6. Parks. None. Motion, Mr. Lockwood, to approve, pursuant to Section 4.5.1. of the Planning Board Subdivision Rules and Regulations, the park and/or playground area as shown on the plans for Aro 9 because said park/playground area does not contain 10% of the gross area of the subdivision , Second, Ms. Bilotta-Simeone, Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr., nay; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, nay. Park area not approved for Aro Estates 9.

III.8. Same as noted above for Aro Estates 1.

#### Aro Estates 10

I.6. – 22.7 acres

I.8. – 2 lots

I.10. – Same as noted above for Aro 2.

III.6. Parks. As it contains only 2 lots, Mr. Bakaysa views this as an ANR Plan and not a subdivision. Attorney Bard noted that the Applicant has applied for subdivision approval and it must be viewed as such. Motion, Mr. Lockwood, to approve, pursuant to Section 4.5.1. of the Planning Board Subdivision Rules and Regulations, the park and/or playground area as shown on the plans for Aro 10 because said park/playground area does not contain 10% of the gross area of the subdivision, Second, Ms. Bilotta-Simeone, Roll Call Vote- Mr. Lockwood, nay; Mr. Bodkin Jr., nay; Ms. Bilotta-Simeone, nay; Mr. Bakaysa, nay. Park area not approved for Aro Estates 10.

III.8. Same as noted above for Aro Estates 1.

Attorney Johnson requested copies of In House Tech Meetings minutes.

Motion, Mr. Lockwood, to continue Hearing to Monday, April 22, 2013, 6:30 PM, Second, Mr. Bodkin Jr., all aye.

Hearing recessed at 1:40 PM.