

# ***TOWN OF LUNENBURG***

## ***Office of the Planning Board***

Matthew Allison, Chair  
David Prokowiew, Vice Chair  
Kenneth Chenis, Clerk  
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Adam R. Burney  
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Minutes  
Executive Session  
January 14, 2019

Meeting Posted: Yes  
Place: Ritter Memorial Building, 960 Massachusetts Avenue, Lunenburg, MA  
Time: 9:17 PM

Present: Matthew Allison, David Prokowiew, Kenneth Chenis, Tanner Cole, Paula Bertram, Adam R. Burney  
Also Present: Town Counsel Adam Costa

**Board Chair M. Allison requested a Motion pursuant to M.G.L. c. 30A, §21, #3, to discuss strategy with respect to litigation, where an open meeting may have a detrimental effect on the government's litigating position, and the Chair so declares, namely O'Brien Homes Inc. et al v. Town of Lunenburg et al., Land Court Docket Nos. 13-MISC-477878 to 13-MISC-477887 and O'Brien Homes, Inc. v. Town of Lunenburg Planning Board, et al., Appeals Court Docket No. 2018-P-1520, not to enter back into Regular Session. So moved by D. Prokowiew, Seconded by K. Chenis, Roll Call Vote- P. Bertram, aye; T. Cole, aye; D. Prokowiew, aye; K. Chenis, aye; M. Allison, aye.**

A. Costa highlighted points of the Settlement Agreement. All three lawsuits would be dismissed; O'Brien's bad faith claim, the Town's appeal of the Judge's decision, and the enforcement action brought by the Town in 2017 for testing done on-site. Paragraphs 1 – 6 covered the terms the Board previously discussed in its joint session with the Board of Selectmen.

The Settlement Agreement specifies that the public hearing shall take place no later than thirty (30) days and final action taken on the "Plans" no later than ninety (90) days following application submittal. K. Chenis voiced concern with the timeline being used up by O'Brien submitting the application in pieces, and not a complete application at the onset. P. Bertram voiced concern with stormwater as regulations have changed over the past ten (10) years. Would a new stormwater analysis be required? A. Costa responded that as the Court has approved the subdivision, the Board would not get a new stormwater analysis such as would be issued with a new subdivision application. A. Burney noted that the Town adopted the NPDES (National Pollutant Discharge Elimination System) bylaws in 2006. Those have not been applied to this project, and they should be, based on the amount of disturbance. A. Costa noted the Settlement Agreement states that the Planning Board "...may include in its subdivision approvals such other conditions as are reasonably necessary to bring the Subdivision Plans into compliance with...its Subdivision Regulations..." The question was posed if once the Board has approved the Plan, and then the Conservation Commission requires changes, does the Plan then come back before the Planning Board, and is the Board required to approve the new Plan. A. Costa said "legally, no", but if the Board denies, then O'Brien may cry bad faith again. If the Conservation Commission tells O'Brien he cannot build specific subdivisions, he can still proceed with building the remaining ones.

Subdivisions #9 and #10 will be withdrawn and the land conveyed to the Town. Subdivision #8 will be revised from 12 lots to 6 lots with the remaining land being conveyed to the Town. The total number of lots will be reduced from 135 to 122. A minimum of 20% of the houses shall be restricted to one person of the household being 55+ and construction of those houses shall commence within the first 50% of houses being constructed and be completed within 75% of same. A road shall be extended to the boundary with Town Forest land to provide public access to the Town Forest. O'Brien will commit to a phasing

plan to avoid overburdening the Town's public facilities/services. A surety shall be provided. If O'Brien proposes modifications after the Planning Board's approval has become final, the parties will proceed in good faith.

**K. Chenis made Motion to approve the Settlement Agreement with proposed modification noting the application be complete upon submittal, D. Prokowiew Seconded, Discussion: M. Allison noted that the Board does not have a checklist for completeness of subdivision applications. Roll Call Vote- P. Bertram, aye; T. Cole, aye; K. Chenis, aye; D. Prokowiew, aye; M. Allison, aye.**

**D. Prokowiew made Motion to adjourn Executive Session, K. Chenis, Seconded, all aye.**

Adjourned 10:25 PM

Documents used at Executive Session:  
Proposed Settlement Agreement