

TOWN OF LUNENBURG

Office of the Planning Board

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Adam R. Burney
Land Use Director

Minutes
Executive Session
August 30, 2017

Meeting Posted: Yes

Place: Ritter Memorial Building, 960 Massachusetts Avenue, Lunenburg, MA

Time: 6:30 PM

Present: Gregory Bittner, Matthew Allison, Kenneth Chenis, David Prokowiec, Michael-Ray Jeffreys

Absent: Adam R. Burney

Also Present: Attorney Joel Bard, KP Law, PC; Select Board Members Jamie Toale, Robert Ebersole, Paula Bertram, Phyllis Luck, Damon McQuaid, and Town Manager Heather Lemieux

The meeting commenced at 6:34 PM.

J. Toale read aloud the reason for entering Executive Session.

Executive Session M.G.L. c.30A, §21; To discuss strategy with respect to collective bargaining or litigation, if an open meeting may have a detrimental effect on the government's bargaining or litigating positions, and the Chair declares so. (O'Brien Homes, Inc. et al. v. Planning Board for the Town of Lunenburg, Land Court Docket Nos. 13 MISC 477878 through 13 MISC 477887)

Attorney Bard corrected to the "Town of Lunenburg v. O'Brien Homes, Inc."

Motion, R. Ebersole, Second, P. Bertram

To enter Executive Session to discuss strategy with respect to litigation if an open meeting would have a detrimental effect of the government's litigating position and the Chair declares so

Roll Call Vote: P. Luck- aye, D. McQuaid- aye, P. Bertram- aye, R. Ebersole- aye, J. Toale – aye.

Planning Board Chair Gregory Bittner announced the reason for entering Executive Session.

Motion, D. Prokowiec, Second, K. Chenis

To enter Executive Session to discuss strategy with respect to litigation if an open meeting would have a detrimental effect of the government's litigating position and the Chair declares so and to not return to open meeting

Roll Call Vote: M. Allison- aye, M. Jeffreys- aye, D. Prokowiec- aye, G. Bittner- aye, K. Chenis- aye

R. Ebersole amended his Motion to state they would adjourn from Executive Session and not return to the open meeting. Seconded by P. Bertram

Roll Call Vote: P. Luck- aye, D. McQuaid- aye, P. Bertram- aye, R. Ebersole- aye, J. Toale – aye

Attorney Bard reported the Planning Board has denied ten different subdivision plans from O'Brien Homes in an attempt to try to have them comply with Protective Bylaw of the Town of Lunenburg, § 5.6. Cluster Development, which says you cannot subdivide greater than 25 acres without certain conditions. This was appealed by O'Brien Homes and there was a trial in January/ February 2016; the Town is still awaiting the judge's decision. Six months later we were shown photographs that

O'Brien had largely built out the subdivision and brought it down to Howard Street. There was some discussion on what could be done. There is a Planning Board subdivision rule and regulation that says you can't build a subdivision or do any work in preparation unless you have an approved subdivision. The Town of Lunenburg went to court and asked for a court ordered injunction. The land court judge denied the request for an injunction on his theory that clearing 100+ feet of right of way, grading etc. was not preparation for the subdivision. K P Law recommended an appeal on the grounds that the judge was incorrect as a matter of law. The Appeals Court agreed with the Town, but said there was a contested issue of fact, namely did O'Brien Homes do this with the intention of simply creating these 100 foot wide roads so he could go in and do his testing?

Attorney Bard stated what is scheduled for next week is a two-day trial to determine whether O'Brien is being misleading or if he graded 100 feet of roadway just to get bulldozers in to do perc tests. Last week the Town heard from O'Brien's lawyer with a proposal to skip the trial and they would agree to give the Town 30 days' notice before doing any work, basically what the Town has been asking for all along. O'Brien is willing to do this if the Town dismisses the request for an injunction. We believe that is a good deal. O'Brien would give notice describing the location and nature of the work. The Town would, within the next thirty days, either approve or say that is excessive and then go to court to request an injunction. The cost to file for an injunction is \$250.00 versus the cost of a trial (several thousand dollars). Attorney Bard recommended going with O'Brien's lawyer's draft agreement proposal.

Discussion ensued on the draft agreement and possible outcomes. It was noted the 30-day notice period to the Town might not be long enough for the Planning Board. Attorney Bard had asked for a 45-day period, but O'Brien's lawyer opposed it. Other wording changes were suggested for the draft agreement regarding any on-site work. Suggestion was made to have a minimum of two Town representatives visit the site before and after work is done. Several changes to the draft agreement were discussed, specifically notice and timing of site inspections and reasons for approving and denying work.

Discussion ensued again on other possible outcomes if the trial is canceled and both parties come to agreement as well as possible decisions by the court if going to trial. A straw poll was taken on which direction to go.

Motion: R. Ebersole, Second, P. Bertram

To not approve the settlement agreement and proceed with the lawsuit

R. Ebersole- aye, P. Bertram – aye, D. McQuaid- aye, P. Luck- nay, J. Toale- aye

Motion: M. Jeffrey, Second, D. Prokowiec

To not approve the settlement agreement and proceed with the lawsuit

M. Allison- aye, M. Jeffrey –aye, D. Prokowiec- aye, K. Chenis- nay, G. Bittner- aye

Motion: R. Ebersole, Second, P. Bertram

To adjourn the meeting

Vote: P. Luck- aye, D. McQuaid- aye, P. Bertram- aye, R. Ebersole- aye, J. Toale – aye

Motion: K. Chenis, Second, M. Allison

To adjourn the meeting

Roll Call Vote: M. Allison- aye, M. Jeffrey- aye, D. Prokowiec- aye, G. Bittner- aye, K. Chenis- aye

Meeting adjourned 8:06 PM