

LUNENBURG PLANNING BOARD TOWN OF LUNENBURG

Damon McQuaid, Chair
Matthew Allison, Vice Chair
Kenneth Chenis, Clerk
Gregory Bittner
David Prokowiec



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Adam R. Burney
Land Use Director

Minutes Executive Session September 15, 2015

Meeting Posted: Yes

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

Time: 6:00 PM

Present: Damon McQuaid, Matthew Allison, Kenneth Chenis, Gregory Bittner, David Prokowiec, Adam R. Burney
Also Present: Board of Selectmen- Jamie Toale, Chair; Robert Ebersole, Vice Chair; Tom Alonzo, Clerk; Paula Bertram, Member and Phyllis Luck, Member. Kerry Lafleur, Town Manager; Elaine Peterson, Executive Assistant to Town Manager; Town Counsel Attorneys- Joel Bard and Brian Winner

Motion: T. Alonzo, Second, R. Ebersole, to enter into Executive Session in accordance with M.G.L. Chapter 30A, § 21A (3), to discuss strategy with respect to litigation of O'Brien Homes vs Town of Lunenburg if an open meeting may have a detrimental effect on the litigating position of the public body and the Chair so declares. Roll Call Vote- T. Alonzo- aye, R. Ebersole- aye, P. Bertram- aye, J. Toale- aye. (P. Luck entered the meeting at 6:04 pm.)

Motion: G. Bittner, Second, K. Chenis, to enter into Executive Session in accordance with M.G.L. Chapter 30A, § 21A (3), to discuss strategy with respect to litigation of O'Brien Homes vs Town of Lunenburg if an open meeting may have a detrimental effect on the litigating position of the public body and the Chair so declares. Roll Call Vote- D. McQuaid-aye, G. Bittner- aye, K. Chenis- aye, D. Prokowiec- aye, M. Allison- aye.

Attorney J. Bard referred to the Kopelman & Paige, P.C., letter dated August 27, 2015, which detailed the Court's decision in the Town of Lunenburg v. O'Brien Homes, Inc., et al. and gave a brief overview of it, specifically the Planning Board's Subdivision Rules and Regulations, Section 2.2.1. as they were interpreted by the Judge. J. Bard asked what does the Planning Board regulation mean and if the Board chooses not to appeal the Decision, how do you stipulate future rulings? Further discussion ensued regarding the Town's stormwater bylaws, subdivision rules and regulations, and the timeline of the violation events. Attorney J. Bard explained the appeal process steps and an estimated cost.

Motion, R. Ebersole, Second, P. Bertram, to file an appeal not to exceed \$10,000 in legal costs, Roll Call Vote- T. Alonzo- aye, R. Ebersole- aye, P. Bertram- aye, J. Toale- aye, P. Luck- aye.

Motion, K. Chenis, Second, M. Allison, to file an appeal not to exceed \$10,000 in legal costs, Roll Call Vote- D. McQuaid-aye, G. Bittner- aye, K. Chenis- aye, D. Prokowiec- aye, M. Allison- aye.

Attorney B. Winner presented a brief history of O'Brien Homes v. Emerick R. Bakaysa, et al and Town of Lunenburg v. O'Brien Homes, Inc. et al. On August 10, 2015 Kopelman & Paige represented the Town at a Hearing on O'Brien Homes, Inc.'s Motion for Summary Judgement before the Land Court concerning the second case listed above. O'Brien Homes also filed a Motion to Continue with respect to the pre-trial conference and trial date in the first case listed above which are ten (10) pending subdivision appeals. The Court granted the Motion to Continue and scheduled a pre-trial conference date of January 7, 2016 and trial dates of January 20, 21, and 22, 2016. The Court also scheduled a status conference on October 15, 2015 to review any outstanding discovery matters, specifically the status of the Town's production of electronic mail. K. Lafleur and Attorney B. Winner are working on complying with that order. O'Brien's attorney filed a Motion to Compel for Friday, September 18, 2015, but the Judge did not give a deadline. More news will come after Friday's Hearing.

Motion, K. Chenis, Second, M. Allison, to adjourn Executive Session and not to return to Open Session, Roll Call Vote- D. McQuaid-aye, G. Bittner- aye, K. Chenis- aye, D. Prokowiew- aye, M. Allison- aye.

Adjourned 7:00 PM