

Minutes of the Planning Board Public Hearing held on June 5, 2001 at the Abigail Adams Auditorium, 89 Middle Street

Present: Paul Dillon, Chairman; Paul Hurley; Jody Lehrer; Scott Curry and Karen DeTellis

Staff: James Clarke, Planning Director and Rod Fuqua, Principal Planner

Meeting called to order at 7:30 P.M.

**1. HAVILAND DRIVE OFF KING AVENUE - KENNETH RYDER  
DEVELOPMENT - SHEET 20, BLOCK 282, LOTS 16 & 25**

Decision on definitive subdivision plan for ten (10) lot single family subdivision.

Hearings were held on April 23rd and May 7th on this subdivision. Mr. Fuqua reviewed the conditions (#1-#6).

Discussion ensued with regard to the hours of operation for the construction.

Motion by Mr. Curry seconded by Ms. Lehrer to approve conditions one through six (1-6) and to add condition number seven (#7) hours of work and time.

All in favor. Voting in the affirmative, Scott Curry, Karen DeTellis, Jody Lehrer and Paul Dillon. Opposed, Paul Hurley. (VOTE 4-1)

**2. EDAN STREET, KENNETH MURPHY, SR.  
SHEETS 13 & 14, BLOCK 158, LOT 8**

Request to set road conditions. Mr. Fuqua stated that Mr. Murphy asked that the Board table the discussion.

Motion by Mrs. DeTellis, seconded by Mr. Curry for no action.

All in favor. So voted unanimously.

**SUBDIVISION BONDS - FORM A**

The three (3) lots on North and Sea Streets were endorsed by the Board in 1999 and in 2000. All the lots meet frontage requirements.

Motion by Mr. Hurley, seconded by Ms. Lehrer to endorse the Form A.

All in favor. So voted unanimously.

Mr. Clarke updated the Board on the Master Plan.

Dates were set as follows: June 25th for discussion and deliberation of Alexan and June 27th for the Master Plan.

PUBLIC HEARING FOR ALEXAN - 7:45 P.M. (CONT.)  
GALE ASSOCIATES FOR BRISTOL BROTHERS DEVELOPMENT  
SHEETS 38 & 42, BLOCK 467, LOTS 2 & 3; AND BLOCK 469, LOTS 2, 21, 22, & 23.

Definitive subdivision plan for six (6) lot subdivision for 259 unit multi-family development.

Motion by Mr. Curry, seconded by Mrs. DeTellis to reopen the public hearing. SO VOTED.

Mr. Kargadon, Councilor at Large stated he had a problem with flooding of the wetlands, the density to the area and the traffic. He would appreciate it if the Board would take a second look and stop the project.

Councilor, Pamela Jonah stated that she is against the project as currently proposed. The number of units have been decreased, but not enough to be considered substantial. After reading the Master Plan, there is nothing in this project that encourages or is in keeping with the neighborhood.

Mr. Bill Seymour, Project Manager, Gale Associates stated that there were a number of review comments submitted to the Board by the Town's third party review agency BRC. Gale Associates responded and a majority of the revisions were submitted on May 25th. The issue we will be hearing about this evening is whether the detention basin will be lined or not.

With regard to the sewage, the Dept. of Public Works testified that the proposed tie-ins to the Alexan project through the municipal sewer system do not contribute to the Pine St. pumping station or the manhole in question.

Last meeting there was discussion about sewer demand. This project generates 51,000 gallons of sewage a day. The savings to the system - 357,000 gallons per day as a result of the project (consent order from DEP).

There are some constraints in the Pine St. pumping station and the manhole adjacent to it. The proponent proposes to replace an 18" sewer connector with a 42" connector. It will increase the overall capacity of the entire system to receive flows from the Pine Street pumping station and other areas of the town. We are in agreement with the town to improve three significant sections of the Essex St. connector.

With regard to the traffic issue, Joseph Torg, Trammell Crow Residential stated that the project will have a minimal impact on traffic in this area. We have proposed paying for the cost of three (3) sets of improvements. (1) the turn lane North & South bound down Pleasant Street at Pine and Tall Oaks, and (2) offered to install a traffic light at the intersection or pay for one and (3) propose to install the Opticon Safety System at the intersection of Park and Pleasant Streets.

With regard to the drainage, He would like to submit documents to the Board which clarifies the issue of whether or not storm water from this property requires permission from the abutting property owner Mr. Marques.

The documents as follows:

Transfer Certificate of Title dated September 8, 1960.  
Copy of the deed of the previous owner dated 1950.

The deed shows that since 1950, there has been a drainage ditch across the Marques property and the Bristol's have a right to drain off their property to the North.

We have succeeded in reducing the flows onto the Marques property.

Mr. Torg continued with drainage easement. This easement runs across one of the lots on Burkhall to Tall Oaks. Not knowing what the easement is for and given the language in the Certificate of Title, there is no evidence one way or the other.

Mr. Torg spoke about the benefits of the project.

1. 12 1/2 acres of land adjacent to the bird sanctuary has been set aside as open space.
2. Capital improvements to the sanitary sewer system with the consent decree from DEP.
3. The traffic signal or use the monies for a future traffic study after project is completed.
4. After completion, this project will generate over 1/2 million dollars annual revenue in terms of taxes.
5. Burkhall Street will be emergency access only.
6. The drainage system will treat the water which will be beneficial to the existing wetlands.
7. Density of the project - 259 units over 30 acres is

appropriate for the site. Zoning would allow much more. Some discussion with regard to the 18" sewer connector.

Mr. Curry asked why the Marques problem could not be fixed?

Mr. Seymour stated that the flows have been mitigated 25% below what they were when Mr. Marques bought the property. We have offered to define the ditch, fill over the top, to put in a retaining wall and to landscape. Mr. Marques has expressed no interest.

John Vandell of BSC Group stated that Gale Associates had addressed each comment that was raised and they are satisfied with the nature of the revisions. With regard to the issue of the pond liner, the recommendation is they do the blasting between the two ponds and do a perk test to see whether or not the ponds retained water. The pond should retain two feet of water at all times. If not, a liner is recommended to maintain two feet of water.

There is guidance in the State's storm water policy with regard to the viability of the wet pond itself. A minimum of ten acres to be provided for a wet pond. One basin has more than 10 acres, the other does not.

Mr. Clarke stated he had forwarded the photos of the sewer overflows to Brad Hayes at the DPW. Mr. Clarke read the memo dated June 1, 2001 from Mr. Hayes.

Mr. Clarke also read an updated letter dated May 31, 2001 with regard to coliform issues from Mr. Marino, Director of Public Health.

Mr. Clarke stated that Mr. Hayes will have a corrected version of his memo. The connection should be downstream from the pumping station not upstream.

Mr. Shawn Cotter, representing Mr. Marques said he had photos dated April 30th and it was not snow around the manhole but lime. The Town is dumping lime into that area. The flow is incredible and he thinks it has to do with this particular project. He would like Mr. Hayes's letter clarified for the record. He also said that it does not do much good to run a 42" pipe for 300 feet and have it back into an 18" pipe again.

With regard to the test done on the outfall pipe by G & L Labs, he said that bacteria lives for quite a while and if stored there for a time, it is going to build up and puddle. Where does everybody think that goes when the next rainfall comes. It does not disappear, it comes down to the Marques property.

Mr. Cotter referenced the Certificate of Title maps dated 1955 and 1959 with regard to the pond. In 1959, the pond has all but disappeared. The point he is trying to make to the Board is since the inception of this hearing, you do not see a plan in front of you tonight, you have never seen a plan in front of you and you never will see a plan in front of you that does not include water flow going over the Marques property onto this natural flow. It is in the deed but it still does not allow somebody who owns land on the other side to violate one of your Bylaws and Rules and Regulations for subdivisions.

This document does not allow them to put water over the Marques property. This document is not permission of the Marques to put water over their property in order to reach this stream. They are trying to take advantage and are trying to do it without asking or obtaining the Marques permission.

Ms. Lehrer said they are using the flow over the Marques property as a conduit.

Mr. Cotter said they tried to tell you tonight that they had a legal right to use the spring. That is not right, as they can not get to it without going over the Marques property. He also thinks that the four story building next to a school, violates the Zoning Bylaws.

John Monahan went over the plan and calculations. He had the following concerns: Detention basin ledge - swale, detention basin property is 16 ft. below the existing grade and one area is 20 ft. below the existing grade. The detention basin may have to be blasted. The water quality swales are 2 ft. below the existing grade.

With regard to flows, it appears in a 10 year storm, there would be a 57% increase in the volume of water crossing that property line. In a 100 year storm there would be approximately 109% crossing the Marques property. The numbers do not include the numbers from the Wisteria project.

Discussion ensued relative to the above.

Atty. John Geary, representing the Soncrants stated that if you go back into the record and look at the photos, they are photos of sewage coming across Soncrants property and down to the Marques property. That is real now, without the development. There has been no rational explanation for this. This is not natural water flow, this is sewage (referred to the 385 coliform count).

None of the plans have never come into conformance with our State Regulations or with DEP. At the last meeting we were

promised we would have a revised plan within two days. That did not happen. Since the beginning, the plans have been suspect. They have not answered the questions and they come in every time and request more time. If we allow this plan to go through, the Marques, the Soncrants and all the neighbors will be burdened with an excessive amount of drainage and traffic problems and other issues the Town will have to deal with later.

He asked the Board to look very closely at the issues that have been raised.

A gentlemen in the audience asked if it was the State's authority to put up a traffic light and if so, should we go to the State for approval?

Mr. Clarke said it is the Town's call.

Discussion ensued between Mr. Clarke and the gentlemen with regard to the traffic signal.

Mr. Hurley said if the applicant proposes the light, it is up to the applicant to go to the State and get permission.

Questions and Comments from the audience.

Christine Lazzaro, 83 Pine Street said you can not get a clear picture of what is going to be what with this project. She also had concerns about the traffic issue and the drainage. To this day she does not know the size of basin #2. On every single plan, the configuration looks different. The volume of water that would be held in the basin is going to affect everyone in the lower neighborhood as they are channeling all the pools into this basin. (1 Million 875,000 lbs. of water into that basin) We are not going away until all our questions are sufficiently answered.

Ms. Lazzaro is submitting her letter to the Board. She is requesting that before the Board approves the project, they take a look at the validity of the data, the accuracy of the plans and at the total impact to the neighborhood.

Question was asked if the Department of Public Works agrees with the project?

Mr. Clarke said they do not sign off and say the project should or should not be approved. Early on, the application was sent around to the different departments and they sent in review comments. Those comments were read earlier.

Question asked as to what effect would blasting have on the area?

Mr. Dillon stated that the blasting would be supervised by the Fire Department.

Discussion ensued relative to who would fix any problems that arose from the blasting. Mr. Torg explained.

Theresa Fleming of 160 Burkhal Street would like to know how the traffic study was done. She does not understand how they can say it would have minimal impact. She would like to see a copy of the study.

Question asked with regard to the added sewage usage per day.

Mr. Clarke stated that the Town is still under a consent decree on water and sewer. There are no watering restrictions right now. The applicant also has to provide funds for water mitigation as well.

Mary Sue Ryan, Pleasant Street spoke about the traffic issue with regard to the 18 wheeler trucks. she has yet to see anything as to how all this impacts our quality of life.

Ralph Younie, 20 Linnway Street said he used to roam around this area which was muddy, with wild grass and all kinds of wild natural things. They slowly disappeared after Wisteria Point was developed. The natural resources are closing down smaller and smaller. They have taken that area and have made it 1/3 or less of what it was in the 50's. Route 3 was built in the 50's and was a massive landfill. Now they have problems with the interchange valve - it can not handle things. Route 3 was a major change for the Marques property.

How can you make a judgement that they have to accept the natural flow when the State comes along with a massive highway between the houses. Pleasant Street will be a mess just like Route 18.

Comments were made from several members of the audience with regard to the traffic issue, blasting, density of population, and the volume of water out of the sewer.

Mr. Cotter submitted pictures and water calculations to the Board.

Mr. Dillon stated that this has been a long project and a lot of information has been presented. A lot of input from both the public and the developer has been taken. This is a crucial decision for the Board to make.

Before closing the public hearing Mr. David Kelly was

allowed to comment. He stated that the applicant and the abutters have submitted expert testimony and the Town has hired their own expert.

With respect to the Land Court's Certificate of Title, the Land Court Judge has registered that title. It is different then registering a deed. It had not been modified or altered. By virtue of it being 50 years old is irrelevant.

He read sections of the following General Laws that apply - 81M Chapter 41, and 81U.

Mr. Cotter said he thinks Mr. Kelly was misleading. He commented - you are not allowed to use somebody else's registered land without permission.

Mr. Geary agreed with Mr. Cotter and stated that they are in total disagreement as to the way the applicants have interpreted the Boards duties pursuant to the Statute. The lack of the plan speaks for itself.

If any revisions are to be submitted by any applicants, Mr. Geary would ask that the public hearing be re-opened.

Motion by Mr. Curry, seconded by Mrs. DeTellis to close the public hearing.

All in favor. So Voted.

Mr. Dillon thanked everyone for their comments and input.

Motion by Mrs. DeTellis, seconded by Mr. Curry to take this under advisement.

All in favor. So voted.


The Board will meet on June 25, 2001 to discuss this issue and will be prepared at that time to render a decision.

Motion to adjourn. Meeting adjourned at 9:40 P.M.

Respectfully submitted,

Annette M. Cignarella  
Recording Secretary

APPROVED 11-27-01



Paul Hurley, Vice-Chair