

**Town of Auburn
Planning Board
PUBLIC HEARING
May 21, 2014**

Present: Ron Poltak, Chairman, Alan Côté, Vice-Chairman, Paula Marzloff and Karen Woods, Members and Steve Grillo, Alternate. Minutes recorded by Denise Royce.

Absent: Jim Tillery, Alternate. Russell Sullivan, Selectmen's Representative.

Mr. Poltak called the meeting to order at 7:00 p.m. Mr. Poltak informed everyone present that Mr. Sullivan was not with us tonight and elevated Mr. Grillo to full voting status for tonight's hearing. Mr. Poltak explained the procedure for tonight's meeting and noted the emergency exists.

MINUTES

Mrs. Marzloff moved to accept the minutes of April 16, 2014 as written, Ms. Woods seconded the motion. A vote was taken; all were in favor, the motion passed.

ANNOUNCEMENTS/CORRESPONDENCE

➤ None were reviewed at this time.

GENERAL BUSINESS

İllsley Hill Subdivision Copley Court, Tax Map 8, Lots 3, 4 & 5 Discuss Development of Lots 3 & 4 and Drainage Issues with Lot 5

Mr. Poltak explained that there has been a lot of communication's going on and that Ms. Lloyd-Davies has had discussions with the Board of Selectmen associated with some of her concerns and that Mrs. Rouleau- Côté, the Building Inspector has gone out to the site and noted what has taken place. At this time, Mr. Poltak asked Ms. Lloyd-Davies to present her concerns to the Board.

Mrs. Marzloff recused herself from the Board. Mr. Poltak noted for the record that Mrs. Marzloff has recused herself.

Ms. Lloyd-Davies began by saying that she was located on Lot #5 and that Lot #4 is now being developed. Ms. Lloyd-Davies stated that when she bought the house, she was told that the roof lines of the house on Lot #4 would be lower down the hill than hers and she is very concerned and did not want to get the drainage issues that she has had with her neighbors of Lot #6. There has been significant drainage issues and it was like the Colorado River running through and ended up spending about \$15,000 putting in drainage pipes around her house because water would flow into the basement through the bulkhead. Ms. Lloyd-Davies went on to say that now the developer has built a bank approximately three to four feet high. At this time, the Board reviewed photos taken by the Building Inspector. Ms. Lloyd-Davies informed

the Board members that she has ice buildup in her driveway and that it will be an issue when the Town goes to take over the road. Ms. Lloyd-Davies also stated that she has to go onto her abutter's property in order to turn into her garage as there is no turning circle at the top. There needs to be somewhere for the water to go and that the bank he has built and she has had to put stones alongside her driveway in order to give somewhere for the water to go. Ms. Lloyd-Davies also stated that she cannot plow her driveway because there is nowhere to turn around at the top of her driveway so that the driveway needs to be cleared with a snow blower and there is nowhere to put the snow. Ms. Lloyd-Davies hired contractor stated that unfortunately he cannot do it for free and that the developer should be taking care of this issue and that he has tried to contact the builder and that Mr. Martel has not returned his calls.

Mr. Poltak asked if there were any questions from the Board. Mr. Côté explained to Ms. Lloyd-Davies that when the Board approves a subdivision they do not require an individual site plan for each individual building lot but when they approve a site plan for an individual lot then the Board requires the developer to show grading and drainage but is not required when doing a home site. Unfortunately, unless they change their subdivision regulations to say, when they come in for a subdivision plan they would be required to give them a detailed site plan for every single house lot and tell them how they would develop each individual site. There is responsibility on the developer to build in an intelligent manner but that the Planning Board does not have the legal standing to say that they need to change the site grading on this site. The Planning Board does not have the authority and the Building Inspector does not have the authority either. Mr. Côté informed Ms. Lloyd-Davies that this was a civil matter between her and the builder and that she would need to take legal action against the builder. The Board does not have the legal right to tell him that he cannot allow water to drain in a certain direction. They can on a site plan because it's different because they are required to show us where the water will flow. They have to show that post development runoff does not exceed predevelopment runoff as they have to show us that in a drainage study. Mr. Côté further discussed the difference with Ms. Lloyd-Davies and that he did take a ride by the property today and noted that the pictures that the Board was provided by the Building Inspector showed the true grading and that the grading was steeper on the other side of Ms. Lloyd-Davies house than the grading on the side of the new lot.

Mr. Côté asked Mr. Tatem about the profile of the roadway and if it was at the crown of the road where the water is draining toward Dearborn Road and down towards the cul de sac and that was why there was no culvert under this driveway. Mr. Tatem said that was his recollection and that if there was water building up in one of those swales believes it's because the section to the left of Ms. Lloyd-Davies was not completed yet because they were still blasting. Ms. Lloyd-Davies also took photos today and passed them out to the Board members and the Board members reviewed the photos with Mr. Tatem. Mr. Côté informed Ms. Lloyd-Davies that it was a civil matter between her and the builder and ask him to fix the issue with regard to the grading of her driveway. Ms. Lloyd-Davies stated that she didn't know that her driveway was on her neighbor's property until they came by and put a big orange dash on her driveway. Mr. Côté stated that the builder has a responsibility to do things in a conscientious and intelligent manner and the government only has so much leverage and right to tell somebody what to do. There are no federal laws regarding local land development. Ms. Lloyd-Davies stated she was not the only one with issues on Copley Court and that the developer has shown himself to not have good moral and ethical character when it comes with this sort of stuff. Mr. Poltak informed Ms. Lloyd-Davies that he has been working in accordance with what our regulations contain. Mr. Poltak further informed Ms. Lloyd-Davies that she should pursue the issue with the builder, Mr.

Martel. Ms. Woods asked if there was a code of conduct. Both Mr. Poltak and Mr. Côté said that they do not have a code of conduct.

Mr. Poltak reiterated that Ms. Lloyd-Davies should try to pursue this issue with the developer and that there is an approved plan and that the developer will have to develop that site in accordance with the plan and to date, the developer has done so and with regard to the acceptance of the road, he will have an obligation to comply with the town rules and regulations. Mr. Poltak also pointed out the timing of the season and that nothing was vegetated out there before the winter. Ms. Lloyd-Davies stated that between her and her neighbor that they paid to have turf put down.

Ms. Lloyd-Davies' contractor informed the Board members that the drainage pipe on Ms. Lloyd-Davies property had been cut because he had put a camera in the pipe and it didn't go anywhere as it had been cut and so no water will ever come out of it. The contractor stated that this should be a happy time for her and it's not. Mr. Côté stated that he understood their frustration. The contractor stated that Ms. Lloyd-Davies had an electric bill of \$500 for one month when this was supposed to be an energy efficient home. So they ended up doing a blower door test and it came back that it was not an energy efficient home and fixed the areas that were noted and her bill went down to \$200. They informed the developer and got no response back.

Mr. Côté asked Ms. Lloyd-Davies how long she has been in the home. Ms. Lloyd-Davies said since July. Discussion ensued with regard to Ms. Lloyd-Davies taking legal action on the builder. Mr. Poltak stated that they would take a close look when it comes time to accepting the road and that he would make a point of speaking with the developer. Mr. Poltak thanked Ms. Lloyd-Davies for her time.

Severino Trucking Surety (Leppert Development)

Leppert Way, Tax Map 1, Lot 17

Request Release of Surety

Mr. Poltak asked the Board members if they had seen the photos taken by the Building Inspector after she went out to the site to inspect the site to make sure that the restoration was complete. The Board members said yes. Mr. Poltak went on to say that with that in mind, he would entertain a motion.

Mr. Côté made a motion to release the surety for Tax Map 1, Lot 17, Leppert Way. Mrs. Marzloff seconded the motion. All were in favor, the motion passed unanimously.

PUBLIC HEARING

Alfred Sanborn

Excavation Pit

Chester Turnpike, Tax Map 11, Lot 19

Discussion regarding Excavation Pit Restoration

Continued from April 16, 2014

Attorney Karen Forbes began by saying that it has been a few months and wanted to refresh the Board's mind and passed out a letter to the Board members for their review and comment.

Attorney Forbes explained the existing conditions plan and the stock piled loam which was part of the restoration plan which was adopted in 1998 which was to take the topsoil and put down crown vetch and then planting the white pine two year old seedlings at eight feet spacing in both directions. Mr. Rolfe of Rolfe Construction has started that plan and has 250 of the white pine seedlings at his home.

They have taken a lot at the buffer itself and it was suggested that they communicate with Mrs. Silva and there has been a lot of activity within the Town of Auburn. In reviewing one of the reports she contacted Mr. Morrissette with the goal of addressing all issues between the parties. Mr. Morrissette informed her that he was waiting for the police report and that no charges have been filed. They have tried unsuccessfully to reach Mr. Morrissette.

Attorney Forbes went on to talk about the Sanborn property and Silva property and indicated that their plan now is to still go with the white seedlings. Attorney Forbes went on google earth to show the property and location of Mrs. Silva's house and the Excavation Pit location which shows how wooded the property is. Attorney Forbes indicated that the grass was growing and that the white pine which is fast growing and grows 2 to 3 feet per year and would create a fast growing buffer for this area.

Attorney Forbes stated that Mr. Sanborn had talked about a field which is no longer their plan and the plan now is to plant the white pine seedlings and let it grow back to its natural state as quickly as possible. Mr. Côté asked if the grass area was on Mr. Sanborn's side.

The Board and Attorney Forbes discussed the 1998 and was happy to see that the property was stabilized. Mr. Poltak stated that the plan was to get in and get it done and what was the timing on getting this done. Attorney Forbes thought that they had spoken about a timeline of September 1st. Mr. Poltak asked the Board members if they were fine with the timing of getting the restoration done. Mr. Côté pointed out that they had talked about restoring with seedlings and that further work may be needed with Mrs. Silva. Mr. Tatem asked about the civil issue between the owner and the abutter and the buffer restoration and that the Board had the authority.

Attorney Forbes pointed out that Mr. Sanborn's counsel was present at tonight's hearing. Attorney Roy indicated that Mr. Sanborn fully intends to comply with all the state and local requirements as well as the restoration. Discussion ensued with regard to whether or not the seedlings would survive. Mr. Tatem also pointed out the boundary line wall was another issue. The Board agreed with Mr. Tatem with regard to the boundary plan and suggested getting something from the surveyor to make sure that the monuments were back in place. Mr. Poltak stated that he was frustrated but that they were replanting some trees and would suggest that they implement by agreement the restoration plan that was approved and begin the restoration and to begin as early as tomorrow and that the only suggestion that he would make is that they have a few inspections along the way to make sure things are happening and get it accomplished during this growth season.

Discussion ensued with regard to lifting the cease and desist. Mr. Poltak asked the Board members to construct a motion.

Mr. Côté made a motion to allow the excess material from the site to be removed in order to allow for restoration to commence forthwith for the planting of trees as soon as

possible and restoration being completed as was planned on the 1998 restoration and certification of the resetting of corners for Tax Map 11, Lot 19 and that tree planting to be completed within the next four (4) weeks and that restoration is completed by October 31, 2014. Ms. Woods seconded the motion. All were in favor, the motion passed unanimously.

Mr. Poltak asked Mr. Tatem if he needed to go in there and take a look. Mr. Tatem believed that Mrs. Rouleau-Côté could do that.

**Doug MacGuire on behalf of Elie Elchalfoun
New Sunset Realty, LLC
Re: Mega-X Mobil Gas Station on By Pass 28
903 Londonderry Turnpike, Tax Map 1, Lot 36-43
Minor Site Plan Review
Continued from April 16, 2014**

Mr. MacGuire began by saying that at the last hearing he indicated that he would check on the lighting and in doing so noted that the current lighting was insufficient and completed an updated lighting plan. Mr. MacGuire passed out the updated lighting plan and noted that they were in receipt of a letter from Stantec today. At this time, Mr. MacGuire explained the proposed lighting plan as well as the parking and overflow parking areas. Mr. Poltak also stated that he was in receipt of the letter from Stantec today and when Mr. MacGuire asked the Board what they would be willing to do; Mr. Poltak stated that he would be following Dan's recommendations. Mr. Poltak pointed out that the letter has a whole host of conditions and findings of which Mr. MacGuire has not had the opportunity to respond to them all. Mr. Poltak would really like to concentrate tonight with regard to who will be the client and how they would like to move forward with this project. Mr. MacGuire talked about the new comments and informed the Board that there have been some issues with acquiring an official tenant. The applicant has been trying to obtain Dunkin Donuts but to no avail and with that the applicant is hesitant on moving forward with amending the driveway permit based on this tenant without knowing. With this in mind, they would like to hold off on amending the driveway permit. So the goal would be to continue with this process, get approval of the plans but they would have to come back to the Board to obtain the driveway permit and at that time it would trigger the traffic study. Everything would be done but there would be no occupancy permit for any type of coffee user and there would be no use of the driveway until this amended permit was obtained. They have added notes to that effect on the plan. The goal would be to improve site circulation, improving the appearance of the site by putting in landscape islands and curbing. They are also putting in improved lighting. Mr. MacGuire wanted to discuss Mr. Tatem's concerns. Mr. MacGuire touched upon by eliminating the traffic study they are not showing any type of onsite/offsite improvements that may be necessary. Mr. MacGuire pointed out that there would be 17 cued spaces before it would impact any of the driveway or facility. Mr. MacGuire talked about the septic and when the coffee shop goes in they would be doing a proprietary pretreatment and they did look at that conceptually but the applicant did not want to spend a lot of money on it until they had a user in place but they did put a note on the grading plans.

Mr. Poltak commented by saying that he understood the catch 22 that Mr. MacGuire was under but that the Board had difficulty approving something that is not complete but would turn it over for the Board members to comment on. Ms. Woods asked Mr. MacGuire how close they were to getting Dunkin Donuts. Mr. MacGuire said that the applicant is trying to get things ready so that it would be appealing to a coffee shop user and explained that the same thing happened in

Hooksett. Mr. Grillo asked what part of the plan would not be done. Mr. MacGuire said that everything would be done and that the only thing that would change would be calling it a future coffee shop instead of a proposed coffee shop until a user is obtained. Mr. Grillo asked about the coffee shop and if it would trigger a site change. Mrs. Marzloff stated that, if they give conditional approval and they have "ABC Coffee Shop" how much difference in volume of traffic between that and Dunkin Donuts would be the trigger mechanism. Mr. MacGuire stated no matter what type of coffee shop would trigger them coming back to amend the driveway permit. A brief discussion ensued with regard to the difference in coffee shops. Mr. MacGuire stated that any change in use would require an amended driveway permit. Mr. Poltak believed they were talking more about the impact to the site offsite and if they are going to put all this investment into the site then any offsite improvements would need to be completed.

Mr. Côté pointed out to Mr. MacGuire that at last month's meeting he had asked for a continuance in order to complete the traffic study and then come back to the Board. Mr. Côté further informed Mr. MacGuire that he also asked him if he wanted to withdraw his application because they would not be continuing the hearing again as this was the fourth continuance. Mr. Côté suggested that Mr. MacGuire withdraw his application otherwise he would vote to accept jurisdiction to reject the site plan. Discussion ensued with regard to the Board approving the plan with conditions. Mr. MacGuire wanted to clarify that he had stated that he was working with Dunkin Donuts to try to get them to move forward and they decided not to do that so at this point the client is looking at this and saying "if Dunkin Donuts isn't moving forward then why is he spending money to amend the driveway permit." He still wants to do the site improvements. Ms. Woods stated that she had an issue with making a motion with conditions and the outstanding issues in Stantec's letter and was not comfortable with any discussion on the septic system. Mr. Poltak stated to Mr. MacGuire that he could not piece meal this and that he would need to give them a whole package. Mr. Poltak asked what he anticipated a traffic study to be. Mr. MacGuire indicated that it would be approximately \$7,500. The Board believed that if he did the traffic study that the applicant would be ready to go.

At this time, the Board suggested that Mr. MacGuire withdraw his application he they were ready to move forward and get the traffic study done so they would have a full package. The Board discussed whether or not to grant one more continuation. Ms. Woods believed that would be fair to give them one more continuance. Mr. Poltak believed that Mr. MacGuire would do everything he could to make that site attractive and suggested that they get the traffic study done and deal with the onsite improvements as well as the offsite improvements and get the complete package done. The Board also suggested that they look at the septic system and figure out the loading requirements and base it on the square footage of the coffee shop. Mr. MacGuire agreed and said it would be done and asked if they would require an updated design with regard to the septic. Mr. Côté said that if it was not substandard then he would be fine but if not then they would require a septic design. Ms. Woods asked if they would be asking for a continuance. Mr. MacGuire said yes. Discussion ensued whether it would be 30 or 60 days. Mr. MacGuire understood and thanked the Board members for their time.

Mr. Côté made a motion to Continue the Public Hearing for Mega-X Mobil Gas Station, Tax Map 1, Lot 36-43 until the next Public Hearing which will be held on July 16, 2014. Ms. Woods seconded the motion. All were in favor, the motion passed unanimously.

Mr. Poltak informed everyone present tonight that this would be the only notice as no further notices would be sent out. There were no abutters present.

Ralph Daniels
BAT Realty Holdings, LLC
45 Priscilla Lane, Tax Map 1, Lot 16-18
Major Site Plan Review

Mr. Daniels began by saying that the plan showing the proposed future addition was previously approved and that nothing has changed. The building would be a Morton Building. They would like to put the addition on because they want to purchase in full truckloads because right now he purchases in half truckloads. No additional employees or computers would be needed and there would be no additional cars. Mr. Daniels said that he would meet all codes and stated that he was here tonight to get approval from the Board.

Mr. Poltak stated that he was in receipt of a letter from Mr. Tatem of Stantec dated, May 19th and informed Mr. Daniels that they needed to be resolved in order for the Board to move forward. Mr. Barry Gier of Jones and Beach stated that he did receive Mr. Tatem's letter which were minor issues. Mr. Gier talked about the drainage issue and they're proposing to put a drip edge infiltration trench and with the high water table did not think this was the best solution to handle the drainage for this system so he did spend some time possibly putting in a detention system outside of the buffer that would handle all of the drainage onsite. Mr. Poltak asked if they had spoken with the Fire Chief with regard to access and the like. Mr. Daniels stated that he had asked the Fire Chief if he had any issues with the addition and he stated that it was not an issue. Mr. Gier asked if the Board submitted a set of plans to the Fire Chief for his review and comments. Mr. Poltak suggested that they submit a plan to the Fire Department for review and comments. Mr. Côté was surprised that they did not want some sort of access around the building. Ms. Woods believed they could wait to hear back from the Fire Department.

Discussion ensued with regard to whether or not there was a code issue with regard to pavement and walkways around commercial buildings. Mr. Tatem believed it should be looked into. Mr. Poltak asked Mr. Daniels about what his expectations of breaking ground and getting this done for a time limit. Mr. Poltak asked Ms. Peterson, who is an abutter if she had any comments. Ms. Peterson said not yet. Mr. Poltak stated that he anticipated giving Mr. Daniels and Mr. Gier an opportunity to work with Mr. Tatem and get back to the Board on this and saw no problem with getting this approved at the next meeting if all the issues were resolved. Mr. Côté pointed out that there was parking on grass. Mr. Daniels said it was gravel. Mrs. Marzloff commented that that was one of her questions as well and believed that it might be an issue. Mrs. Marzloff also pointed out that there weren't any snow storage areas indicated on the plan and also needed to show where the dumpster was located. Mr. Gier indicated that all they were doing was increasing warehouse space and not increasing employees. Mr. Poltak informed Mr. Daniels and Mr. Gier that, if in fact under our new regulations the expansion of the parking to extend 12 spaces triggers and warrants consideration of the site plan in total from a parking perspective, he wouldn't do it. Mr. Tatem pointed out that the 12 grass parking spaces are already in existence and he is not expanding the parking and believed that he was grandfathered. Mrs. Marzloff wanted to see the original site plan and if he has expanded off the original site plan then all bets are off. A brief discussion ensued with regard to parking. Mr. Poltak stated that he would hesitate to require paving if paving is unnecessary because it didn't make any sense. Mr. Poltak believed it should pertain to the number of employees. Mr. Côté asked Mr. Daniels how many employees he had. Mr. Daniels said seven (7).

Mr. Tatem added that the only thing that they would suggest the Board take a look at would pertain to safety items such as lighting. Mr. Côté suggested that Mr. Daniels show on the plan

the parking on the other lot which he also owns as well. Mr. Daniels stated that he has kept it two separate lots because he plans on selling it one day. Discussion ensued with regard to placing an easement on the other lot for parking but that Mr. Daniels cannot issue an easement to himself. Mr. Côté asked Mr. Gier if he has calculated the number of parking spaces needed. Mr. Gier said yes, 28 spaces would be required which is shown on the plan. Mr. Côté stated to Mr. Daniels that he would need to put something in place to ensure that with the addition and he decides to sell the other lot that he would still have the number of parking spaces. Mrs. Marzloff stated that he would have to put an easement on the other lot before he can sell it.

Mr. Côté asked if they wanted to continue the Public Hearing until next month. Mr. Daniels said yes. Mrs. Marzloff had one more question and asked if Mr. Daniels paves the parking would he exceed the impervious area permitted. It was noted that the paving would take place on the adjacent lot. Mrs. Marzloff believed he would need to bring in a plan showing the parking. Mrs. Marzloff suggested transferring the other lot to another business entity so that he can put it subject to the parking easement. Ms. Woods asked if the Board would be requiring the additional parking. Mr. Daniels stated that he was not adding any more employees. Mr. Côté informed Mr. Daniels that it goes by square footage and not the number of employees. Mr. Tatem explained to the Board an option that the Board could entertain which was that if the calculations require 28 spaces, put the easement over the land and the Board could issue a waiver considering the use. The plan shows 28 spaces but the Board can say we'll let you construct 14 spaces because of your use. Then if the property gets sold and they need the 28 spaces it is already shown on the plan. Mr. Poltak believed that this would be the reasonable approach to take. Mr. Daniels and the Board all agreed that it would be a waiver request.

Mr. Tatem asked Mr. Gier if the wetlands have been delineated. Mr. Gier said yes, it was noted to be a Tier 4 and checked with Mark West who prepared the wetland map for the Town of Auburn. Discussion ensued with regard to the wetland delineated. Mr. Tatem suggested that Mr. Gier put it on the plan to show that it was a Tier 2.

Mr. Gier asked the Board for a continuance. Mr. Poltak asked Ms. Peterson if she had anything she wanted to say at this point. Ms. Peterson said not at this point.

Mr. Côté made a motion to Continue the Public Hearing for Ralph Daniels, BAT Realty Holdings, LLC, 45 Priscilla Lane, Tax Map 1, Lot 16-18 until the next Public Hearing which will be held on June 18, 2014. Mrs. Marzloff seconded the motion. All were in favor, the motion passed unanimously.

Mr. Poltak and the Board members informed everyone present that they would not be re-notified of the next Public Hearing and that this would be their only notice.

ADJOURN

Mr. Côté moved to adjourn the Hearing. Ms. Woods seconded the motion. All were in favor, the motion passed unanimously and the meeting stood adjourned at 9:04 p.m.