

UNAPPROVED MINUTES
Town of Auburn
Planning Board
PUBLIC HEARING
November 3, 2021

Present: Ron Poltak, Chairman. Jill Dross & Michael O'Callaghan, Members. Paula Marzloff & Jess Edwards, Alternate Members. Michael Rolfe, Selectmen's Representative. Minutes prepared by Denise Royce.

Also Present: Attorney John Cronin and John Marino.

Absent: Jeff Porter, Vice Chairman.

Mr. Poltak called the meeting to order at 7:04pm. Mr. Poltak moved on to ask all the Board members to introduce themselves to everyone present tonight. Mr. Poltak pointed out that, Mr. Porter was not present tonight and therefore elevated Mrs. Marzloff to a full voting member in his absence.

Mr. Poltak began by asking the Board for an approval of the last meeting minutes for October 20, 2021 and stated that a motion to approve would be in order.

MINUTES

Mr. Rolfe moved to approve the minutes for October 20th, 2021, as written. Ms. Dross seconded the motion. A vote was taken, and all were in favor and the motion passed.

ANNOUNCEMENTS & CORRESPONDENCE

GENERAL BUSINESS

**Informal – Attorney John Cronin
On Behalf of Louis Pichette
Wentworth Financial, LLC
Boxwood Drive, Tax Map 2, Lots 42 & 42-1
Discuss Completion of Subdivision**

Attorney John Cronin introduced himself to the Board members and stated that John Marino who is a colleague of Mr. Louis Pichette was also present tonight. Attorney Cronin began by saying that he was not involved with this from the beginning and has been out to the site. Attorney Cronin did not know who did the work out there and was quite horrified with some of the work and did not know how that contract was done. Attorney Cronin stated that, prior to the bond being called that all the gravels were set, and the structures were set and was ready for pavement and all of that has since been destroyed and there was no need for it. It looks like someone took a bulldozer and took the piles of dirt which he believes was a concern which is why the bond was called. Attorney Cronin reiterated that, there was significant damage that was out there but that was not the point for this evening. Attorney Cronin stated that, the point is, is that they have been talking to Mr. Pichette and explained that this is one of the best markets ever and that he has over a half a million dollars invested in that site with the work that he did do that he should get going with it. Attorney Cronin informed the Board that, Mr. Pichette is not really in a position to do the work now and therefore Mr. Marino has agreed to help him do that as they have done other construction projects with Mr. Pichette.

Attorney Cronin indicated that, he has done some title work and found that this subdivision plan is recorded and unlike a site plan when it's recorded you have lots that are legally created. There was active and substantial development which usually is the trigger for a site plan. Some rules of thought are that with the subdivision plan all you need to do to satisfy your active and substantial completion is to get it recorded. Other people have taken the position that you have to satisfy the conditions of approval to vest it. There are two (2) different provisions, the timing and there is common law vesting. Looking at the two (2) lots based on the amount that has been spent here that we don't even think there is a debate with respect to vesting and if there were it would have been incumbent upon the Board to revoke the subdivision under the statute. His understanding is that no effort has been made to revoke the subdivision whatsoever which would have required noticing abutters and a hearing on a basis to do it. Attorney Cronin pointed out a case called Powers vs. Massabesic which is a case that he was involved with which is near Billy's Sports Bar in Manchester. Those were approved in 2005 and no work was done and then the market dropped out and the builder said that he couldn't build these now because there was no market for them. There were efforts to extend it and extend it and finally the Manchester Planning Board around 2014 said they were not going to extend this anymore. They brought suit in the court and the court decided that the real factors and the real reason for those timing mechanisms was to make sure that they don't have a substantial change to the neighborhood. So for instance in that case if it were 2005 and

they got an approval for 24 townhouses and between 2005 and 2019 when they start to do the construction if that neighborhood substantially changed where maybe shopping malls came up and it was no longer suitable for a residential area, that would be a reason why you wouldn't want that project to go forward. The court in that case said that the neighborhood had not changed at all. All the buildings around it and everything that is there is the same as it was when it was approved in 2005 and they ordered the city to allow this project to go forward. Attorney Cronin informed the Planning Board that they would like to go forward and recognize that there would be an obligation to have Stantec or whoever the Board uses to take a look at it and determine what infrastructure improvements are there that need to get done and what type of bond would be required and what amount. They recognize that this would be an obligation to do where the prior bond was exhausted whether executed properly or not. Basically, whatever happened happened at this point and to move forward because they need to get a building permit and they need to do what they need to do.

Attorney Cronin commented that, they were looking for guidance from the Board as he did not think they had to come before the Board and his first thought was that they would simply go and get a building permit and have a pre-construction meeting and determine what the bond is in order to move forward but they were directed to come here. At this time, Attorney Cronin indicated that he would be happy to answer any questions that the Board may have.

Mr. Poltak commented that, they ended up in a situation where the applicant, with due respect was non-responsive with the intent of the original permit and as such the Planning Board took under State Statute, the liberty to pursue the securing of the escrow and reclaim the lots with regard to health and safety and the like. Mr. Poltak's understanding is that there are two (2) lots left to be developed of which are the two (2) lots that they would like to develop. Attorney Cronin said yes. Mr. Poltak agreed with what Attorney Cronin said associated with substantial improvement being made to the property under the State Statute. With all of that said, Mr. Poltak commented that, how it is beneficial to discuss tonight is how they can move forward with their request. The subdivision, rightfully so, by State Statute is a valid subdivision associated with the ability to go in and improve those lots. Mr. Poltak asked Attorney Cronin if there were any changes associated with road layout or any of the infrastructure or any of the other associated approvals that went with the approvals. Attorney Cronin indicated that, their intent is to build it according to that plan. Attorney Cronin believed that the road work would have to be looked at again as that has all been disturbed. Mr. Poltak informed Attorney Cronin that the Town of Auburn's Road standards have changed which is the part that they would have to give some thought to what was approved with respect to a plan remains in place. The applicability of completing the plan within the context of two (2) lots remains in place associated with the application of our new regulations. Mr. Poltak stated that we have new town road standards that would apply and asked Attorney Cronin to comment. Attorney Cronin commented that, if the gravel has changed or the width has changed may not be a big deal and typically, he would say that it was vested or it's not. It's either vested statutory or common law and your grandfathered under the old regulations. If it's not vested, then you have to comply with new regulations and any

changes to the regulations they would have to take a look at what those are. Attorney Cronin pointed out that, the extent of this road services two (2) lots and it's not a thoroughfare and it's not a collector road and it's not a Class III, Class V, it's a very limited road. Attorney Cronin was unaware of the Board's purview on waivers but if it's more gravels. Mr. Rolfe added that, it was gravels, sands and crowns and it may even be thickness of asphalt. A brief discussion ensued with regard to road improvements and the new road standards. Attorney Cronin believed that he would have to contact an engineer to find out what the new costs would be.

At this time, Mr. Poltak read a letter dated February 25, 2020 from Stantec regarding "Project Restart" where Stantec recommended surety in the amount of \$115,830.00 along with an estimated construction monitoring escrow in the amount of \$9,150.40 and did not recall what prompted this letter. Attorney Cronin indicated that, this was the first time he's looking at this letter, but it could've been an inquiry from him at the end of 2019. Mr. Poltak commented that, what he will be doing would be getting in touch with Stantec to find out what triggered this and also within the context with regard to compliance with our current rules and regulations versus what was in place in 2010. A brief discussion ensued with new roads in place within the Town of Auburn since these new regulations have been put in place. Attorney Cronin would be contacting some engineers that have worked on some of the new developments in town to get an estimate.

In conclusion, Mr. Poltak asked Attorney Cronin how he would like to proceed. Attorney Cronin believed that the only relief he would need would be under the new regulations and did not believe it would be warranted because of the minimal traffic on the road and might be something that they work with Ms. Royce to get a waiver before the Board. It was believed that there was approximately 500 feet of road that may be needed. Mr. Poltak asked about the type of homes that would be placed on these lots. Mr. Marino commented that they would be similar to the homes already on the road or bigger. Attorney Cronin indicated that he was looking to build some good-sized houses on those two (2) lots.

Mr. Rolfe asked about the big pile of ledge and what would happen with that. Mr. Marino commented that, initially they were planning on crushing it and also for the wetlands crossing for the two (2) driveways.

Mr. Poltak reiterated that, this approval remains in place, and not only will he be speaking with Stantec, but he will be speaking with town counsel associated with the advice that he has shared with Attorney Cronin and then they would go from there. Attorney Cronin asked if the Board would be making a formal vote as he believed this was an informal discussion. Mr. Poltak agreed that no vote would be taken as this was an informal discussion. Attorney Cronin stated that, from his end that he would try to find out if one of the engineering firms that he works with all the time has done a road in town recently. A few names were mentioned.

With that said, Attorney Cronin thanked the Board for their time and stated that they would be back in touch soon and the discussion ended.

Mr. Edwards asked Mr. Rolfe why they would want to waiver something that is required. Mr. Rolfe informed Mr. Edwards that the only thing that has changed was that they added 12 inches of sand under the foot of gravel and more asphalt with 2½ binder and 1½ top and 3% crown instead of 2% crown.

OTHER BUSINESS

Mr. Poltak informed the Board that he has spoken with Mrs. Rouleau-Cote and that she would have some zoning changes that would be coming before the Board and that he has also spoken with Mr. LaBranche as well. Mr. Poltak thanked everyone for their participation tonight and indicated that a motion to adjourn would be in order.

ADJOURN

Mr. Rolfe made a motion to adjourn. Mr. O'Callaghan seconded the motion. A vote was taken, all were in favor and the meeting stood adjourned at 7:39pm.
--

The next Planning Board meeting is scheduled for Wednesday, November 17th, 2021 at 7:00 pm. This meeting will be held at a site to be determined. This date is subject to change.