

**CITY OF WALTHAM**

**BOARD OF SURVEY AND PLANNING**

The following are minutes of the November 2, 2011 public hearing held in the Auditorium of the Arthur Clark Government Center located at 119 School Street, Waltham, MA. In attendance were Chairman Creonte and members Barrett, Callahan, DeVito, Duffy and Moroney.

The Chairman opened the hearing at 7:04 p.m.

The Clerk read the first item on the agenda which was for a Special Permit, Utility Plan and Profile for a water and sewer extension and road construction at Lot 12 and 546-550 Braemore Road, Waltham, MA. The Board must act on this petition by November 15, 2011.

Attorney Philip B. McCourt, Jr. of 15 Church Street came forward to address the Board on this matter.

He explained to the Board that they are still in the process of modifying the plans and have submitted a letter to the Board today asking to continue this petition at the Board's next meeting of December 7, 2011 and to also extend the Time to Act on this petition until January 15, 2012.

The Board asked the members if they had any comments.

Ms. Callahan suggested that they have another site visit at a later date.

The Chairman said that they will consider it at the December meeting and then asked if there was a motion.

On the motion of Mr. Barrett, seconded by Ms. Callahan, the Board

**VOTED: to continue the petition for a Special Permit, Utility Plan and Profile for a water and sewer extension and road construction at Lot 12 and 546-550 Braemore Road, Waltham, MA. At their next meeting of December 7, 2011.**

The Chairman then asked if there was a motion to extend the Time to Act.

On the motion of Mr. Barrett, seconded by Ms. Callahan, the Board

**VOTED: to extend the Time to Act on this petition until January 15, 2012.**

The Clerk read the next item on the agenda which was for a Definitive Subdivision at 110 Bear Hill Road. The Board must act on this petition by November 15, 2011.

Ms. Deveney handed out comments from the Law Department that was submitted late afternoon on November 2, 2011. The Board took a few moments to read the comments.

Mr. Duffy wanted to know who the Attorney of record for this petition was.

Attorney Jack Mula of 7 Lexington Street, Waltham, Ma came forward to address the Board as the Attorney representing the petitioner.

Mr. Duffy asked Mr. Mula if the petitioner would like to withdraw this petition without prejudice or to continue.

Mr. Mula responded that they would like to continue.

Mr. Duffy then commented that the Board had been lied to, and manipulated throughout this entire process and that the Board is expected to act on a matter which they don't know what will be going at this site and doesn't know what will happen up there. "The Board approved a curb cut in 2009 at 110 Bear Hill Road for that work only and there was a snag with that work and had to change the design of that curb cut in the Interim Agreement. The developer has been clearing the hill of trees which was claimed necessary in order to the move the tower. However you still don't have approval from the City Council to move the tower and here we are two years later with no approval for that." He asked when they will be appearing before the City Council for that approval.

Mr. Mula reviewed the reason for the interim agreement plan and all the other approvals they have from the city and state agencies to do the work currently being done to comply with water runoff and drainage. He said that they will be appearing before the City Council on November 28, 2011 seeking permission to move the towers. They are still seeking approval with conditions which are shown in the draft Decision and are also in agreement to contribute to the city improvements to the water main on Bear Hill Road and the Spencer Street pump station.

He said that they have submitted everything necessary for a subdivision for a zone freeze and that they have lawfully met all engineering and Board of Survey and Planning requirements.

They are in compliance with the interim agreement and the excavation work was to clear out a staging area for the large volume of debris.

Mr. Duffy asked if the neighbor's complaints have been addressed at this time.

Mr. Barrett asked if they had submitted the sewer study.

Mr. Mula replied, "Yes".

Ms. Callahan also commented on all the excavating that had been done on this site and still no approval from the City Council.

Mr. Mula commented that they did receive a site permit from the Building Department for this work which the city claimed they violated and a ceased and desist was issued by the Building Commissioner.

They then entered and Interim Agreement with the City which took eight (8) months to negotiate and are currently working under those agreements.

Ms. Callahan commented on Mr. Putnam's email dated October 20<sup>th</sup> that there have been six (6) different submittals during this process and that the Board has had so much information presented to them that it is becoming extremely confusing and out of hand.

Mr. DeVito commented that he agrees with his colleague and also feels overwhelmed with all the information that has been submitted to them. He mentioned that the Board members rely on the comments and recommendations submitted by the Engineering, Building and Law Departments to assist with their decisions. The Board just received comments from the Law Department that evening which they have not had time to read.

Mr. Mula said that they were not aware of any information submitted today and asked if they could obtain a copy to review with his clients.

Mr. DeVito asked the Chairman if they could pass along this information to the petitioner.

The Chairman said that would be fine and he went into a recess at 7:44 p.m. in order to allow the petitioners time to read this handout. He closed that part of the meeting and opened the regular meeting.

The Clerk read the first item on the agenda which was for the acceptance of the minutes to the previous meeting of October 5, 2011.

The Chairman asked if there was a motion.

On the motion of Ms. Callahan, seconded by Mr. Barrett, the Board

**VOTED: to accept the minutes to the  
October 5, 2011 meeting as submitted.**

The Clerk read the next item on the agenda which was for the Board to endorse the plans for the Special Permit for 71 South Street.

The Members signed the plans.

At 7:55 p.m. the Chairman reopened the public hearing.

Mr. Mula came forward and said that since they are just receiving the information they would ask to continue this petition at the December 7, 2011 meeting to allow them time to resolve items 11, 27 and 29 of the 31 original comments from the Engineering Department. When they do come back and the Board is not satisfied with those responses then they will most likely withdraw this petition without prejudice.

The Chairman asked that they return the letter from the Law Department back until the Board checks with the Law Department to make sure it is a public record.

Mr. Moroney read item #1 of Michelle Learned's letter.

1. The Board is empowered by statute to review and approve developer's proposal for securing adequate provision for sewerage at this time – not later (see M.G.L. c. 41, sec. 81M). The applicant must provide sewer calculations for the as-of-right build that is the basis for the pending definitive subdivision plan before the Board and the results of a study analyzing whether the proposed sewer use for the as-of-right build will not negatively affect/overburden the Spencer Street Pumping Station and, if so, advise what mitigation measures developer proposes to ensure that adequate sewerage services are able to be secured for the proposed subdivision (note: traffic data has already been provided based on such as-of-right build – the same must be done for water, sewer, drainage, etc...). This is the issue raised by Wade's item 11.

Mr. Moroney asked Mr. Williams if he agreed with that comment.

Mr. Williams said he agreed.

There were discussions on the October 25, 2011 letter submitted by Allen and Majors regarding the analysis of water and sewer usage for a by-right development. They reviewed the PSI's and hydrant flows.

Mr. Moroney asked which water modeling software was used to come up with these figures.

Mr. Williams said it was analyzed with 1500 gallons per minutes under the hydrant flow testing which is the same that the City of Waltham uses. There were further discussions on the analysis.

Mr. Moroney then commented on the letter received by Attorney Robert Schlein dated October 18, 2011 which states that there is adequate drainage. He doesn't agree and it is his opinion that this does not meet the requirements of Section 17-9, and that it is his opinion that the drainage does not stay on site.

Mr. Moroney then asked Mr. Williams if Hill Top Road is a road or a driveway since he has heard it referred to bothways.

Mr. Williams replied that it is a driveway.

Mr. Moroney then commented that if it is a driveway then it does not meet the requirements of a Definitive Subdivision.

Mr. Moroney commented that 50-percent of all cars leaving that site have only one place to go and that would be the Totten Pond Road interchange that is already over burdened with traffic. He said under Section 81K – 81GG the Board must make sure there is adequate access to all lots of a subdivision by ways that are safe and convenient for travel, minimizing congestion in proposed new ways.

Mr. Moroney then asked if the representative from VHB was present.

Vinod Kalikiri of VHB, 101 Walnut Street, Watertown, MA came forward. Mr. Kalikiri represented the independent Engineering firm the Board hired to do a traffic study for 110 Bear Hill Road. He asked Mr. Kalikiri what his opinion was on that matter.

Mr. Kalikiri commented that he was hired to evaluate the site access at 110 Bear Hill Road and on Main Street for this proposed subdivision.

His traffic study did not include the effects of traffic a mile away form the site. This study shows that this proposed subdivision access meets the Waltham Traffic Commission's requirements. He commented that without knowing what buildings would be constructed, there could not be any specific data.

Mr. Duffy asked where the hydrant would be located.

Mr. Williams reviewed that and also commented that the Fire Department will also have them place other hydrants through out the site at the permitting stage.

There being no further comments, Mr. Mula respectfully asked for the Board to continue this matter at their December meeting which will allow time for the petitioner to respond to items 11, 27 and 29 of Wade Putnam's comments as previously discussed in the hearing.

He also asked if the Board would extend the Time to Act on this petition until January 15, 2012.

The Chairman asked if there was a motion to continue.

On the motion of Mr. Duffy, seconded by Mr. Barrett, the Board

**VOTED: to continue the Definitive Subdivision for 110 Bear Hill Road at there next meeting of December 7, 2011.**

The Chairman then asked if there was a motion to extend the Time to Act.

On the motion of Mr. Barrett, seconded by Ms. Callahan, the Board

**VOTED: to extend the Time to Act on the Definitive Subdivision at 110 Bear Hill Road until January 15, 2012.**

There being no further business on the agenda the Chairman asked if there was a motion to adjourn.

On the motion of Mr. Barrett, seconded by Ms. Callahan, the Board

**VOTED: to adjourn at 8:25p.m.**

Respectfully submitted,



Michael L. J. Chiasson, Clerk  
Board of Survey and Planning