

**AMHERST PLANNING BOARD**  
**March 7, 2007 – 7:00 PM**  
**Town Room, Town Hall**  
**MINUTES**

**PRESENT:** Aaron Hayden, Chair; Kathleen Anderson, Richard Howland, Susan Pynchon, Roderick Francis, Carl Mailler, Mary Scipioni, Eduardo Suarez

**ABSENT:** No One

**STAFF:** Jonathan Tucker, Planning Director; Niels la Cour, Senior Planner; Sue Krzanowski Management Assistant

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Mr. Hayden opened the meeting at 7:08 PM and went directly to the continued public hearing for Haskins View.

**II. PUBLIC HEARINGS - DEFINITIVE SUBDIVISION APPLICATIONS**

**SUB 2006-00009 – Haskins View, East Leverett Road – Barry Roberts**

Request approval for a 27 lot, single-family subdivision on East Leverett Road. (Map 3B/ Parcels 20 & 80 and Map 3A/Parcel 78; R-O zone) [continued from 7/12, 08/02, 09/06, 10/04, 12/06, 01/17]

Mr. Peter MacConnell, representing Haskins View LLC, summarized the review process to date. The Definitive Subdivision Application which was submitted was designed based on the Preliminary application which was approved. The applicant has requested a waiver of Subdivision Regulation Section V.I.1.b. – Use of private wells and septic disposal systems. Mr. MacConnell noted that the Definitive Application had been filed with, and approved by, the Board of Health. The applicant has met with relevant Town departments. The applicant hired a hydro-geologist (Geosphere Environmental Management, Inc.) who submitted a report concluding that the subdivision would not cause an adverse impact to the quality and quantity of groundwater in the area. Mr. MacConnell told the Board that the subdivision process was not the proper place to debate the sewer/septic issue and that is why they are asking for a waiver.

Mr. MacConnell said that the questions raised by abutters and others opposing the project have been answered and that the proposal protects the public interest. Only two roads will be constructed instead of 8, 10 or 12 driveways which can be built by-right under an ANR plan. Between 10 and 15 acres of land will be donated to the Town if the subdivision is approved. The proposal is a sensitive and good use of the land and will have to adhere to Board of Health regulations which utilize Title V and DEP regulations, he told the Board.

If the waiver is not granted, the subdivision can't be built, and the applicant will go ahead with the ANR plan already in effect. That plan is less safe from a traffic standpoint, and no land will be donated to the Town. Subdivision approval is for the building of the road, he said, and the issues associated with individual on-site septic and well systems are not relevant.

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Noting a response from the Board of Health on the Planning Board's request for advice related to water/sewer issues, Mr. MacConnell said that there are no regulations in place to require information which the Board of Health said it would need. The Board of Health and/or Planning Board have never asked for such information before as part of a subdivision approval and it was inappropriate to require it now. The studies would be expensive, he said, and the applicant is not willing or able to commit additional funds, and will just go with the ANR.

Mr. MacConnell said that the question is the relevance to the building of the road. Most concerns raised about the proposed development have been about the adequacy of Title V septic regulations. Other assertions are not reasonable or responsible and the consultant's (Talkington) report addresses them sufficiently.

If there are legitimate concerns, they should be addressed through local health regulations which should apply equitably everywhere in Town. This application shouldn't be singled out. The well/septic issue will be decided by the Board of Health on a case-by-case basis. Mr. MacConnell urged the Board to approve the subdivision development because it is, on balance, in the best interest of the Town.

Mr. MacConnell and Board members continued the discussion including issues about protecting potential buyers and future residents, options available to the developer, contaminants that are not protected by Title V, and potential liability for the Town.

Noting that it was now past the time scheduled for the next public hearing, Mr. Hayden suggested taking a short break from this proceeding, in order to complete the next one.

Mr. Howland MOVED: to take a 15 minute recess from the Haskins View public hearing in order to conduct business for the next scheduled hearing. Mr. Francis seconded, and the Motion passed 8-0.

**SUB 2007-00002, Meadow Street, Amherst Enterprise Park – Andrews & LaVerdiere**

Mr. Hayden read the preamble and opened the hearing for this request for Definitive Subdivision Approval for a 6-lot subdivision located on Meadow Street. (Map 4D/Parcel 8; LI & FPC zoning districts)

The Board received a request from the applicant for a 90-day extension to the review process.

Mr. la Cour commented that the applicant wants time to have on-site test pits dug before coming back to the Board. He recommend continuing the hearing to the second meeting in April.

Mr. Francis MOVED: to continue the public hearing to April 18. Ms. Anderson seconded, and the Motion passed 8-0.

Mr. Francis MOVED: to grant the applicant's request for a 90-day extension of the review process. Mr. Mailler seconded, and the Motion passed 8-0.

**SUB 2006-00009 – Haskins View, East Leverett Road – Barry Roberts (continued)**

Mr. Hayden announced that he would continue discussion with the Planning Board and applicant before turning to public comment.

Mr. Howland commented that the Planning Board has responsibility for more than just the road. The waiver addresses serious public health concerns, he said, and in order to grant it the Board needs to be convinced that it's in the Town's best interests to do so and be able to evaluate whether the concerns that have been voiced are valid.

Ms. Scipioni said that there are way too many variables and it will be difficult to resolve the issues.

Ms. Anderson expressed concern about future requests and expenses to the Town to extend water and sewer utilities.

The meeting was then turned to the public for comment.

Speaking in opposition to the proposal were: Mr. David Powicki, Leverett, who expressed concerns about traffic; Mr. Don Wise, Blue Hills Road, geologist, who expressed concerns about drilling into the bedrock for multiple wells and depleting the associated aquifer, with long-term consequences.

Also speaking in opposition was Ms. Carol Gray, 815 South East Street, who said that the burden should be on the applicant to provide evidence addressing the waiver issues. Ms. Gray said that the Board of Health memo (3/2/2007) provides grounds for possible future lawsuits. She urged the Board to deny the application or to require adequate testing of the site to ensure the health of the residents.

Ms. Georgana Foster, Leverett, said that Leverett's regulations required permitting boards all work cooperatively in approving proposals and asked about the process in Amherst. She said that she was surprised that the Board of Health had not made a recommendation. She was informed that the Board of Health had responded to the development in a number of ways.

Ms. Sheila Seaman, Leverett, said that she disagreed with several points in DEP's letter (letter addressed to Board of Selectmen, Town of Leverett, dated Jan. 30, 2007).

At this point during the public comment portion, overall discussion of the issues resumed by members of the Board, members of the public, Mr. MacConnell and staff. Discussion included: kinds of groundwater tests which could be done; how best to determine public interest; wetlands; potential heavy metals in deep wells; residential density; whether or not sufficient evidence has been provided to justify waiving the requirement; the relative advantages and disadvantages of the ANR vs. Subdivision plans in terms of responsible land use; whether or not there were options for the provision of water/sewer; the costs of testing and public water extension; and interpretations of the Subdivision Regulations in the context of the Subdivision Control Law.

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Mr. Mike Williams, structural geologist, Leverett, told the Board that standard tests are done routinely. There are standard tests that would evaluate the degree that the bedrock recharges groundwater removed by wells, he said. The tests are expensive, he added.

Ms. Gray said that she agrees with a comment made by Ms. Scipioni that the Board shouldn't consider the ANR plan and should just consider this subdivision plan. It's too speculative to consider other options, she said. Mr. Francis disagreed, saying that such a comparison was a valid exercise of the Board's subdivision authority. Mr. Tucker cited language from the state statute (MGL Ch. 41, Sec. 81M) provided to the Board in a handout, indicating that Mr. Francis was correct.

There was no additional public comment.

Mr. Francis MOVED: to close the public hearing. Ms. Pynchon seconded, and the Motion passed 8-0.

Mr. Howland MOVED: that based on the evidence presented, the Board reject the applicant's request for the waiver. Ms. Pynchon seconded.

Mr. Mailler said that the Board should ask if the developer is willing to have the testing done if the cost would be reasonable. Ms. Scipioni said that testing wouldn't provide enough certainty. Mr. Hayden listed the following five points: 1) Traffic, 2) Habitat, 3) Water, 4) Septic, and 5) Public Interest.

After further discussion about additional groundwater testing and permitting procedure, Mr. Howland WITHDREW the Motion to deny the waiver.

Mr. Howland MOVED: to reopen the hearing. Mr. Mailler seconded.

Mr. Howland amended the Motion and MOVED: to reopen the public hearing for the limited purpose of allowing the developer to answer questions about testing.

The Motion passed 6-2-0 (Suarez & Pynchon opposed).

Mr. MacConnell said that groundwater tests needed to definitively address the Board of Health's concerns are very expensive and the developer cannot afford to put additional money into the project at this point. If the Planning Board were to provide a scope for that testing that would be both relatively inexpensive and assure that the public health concerns were addressed to the Town's satisfaction, the applicant might be willing to do that, he said.

Ms. Pynchon MOVED: to close the hearing. Mr. Suarez seconded, and the Motion passed 7-0-1 (Mailler abstained).

Mr. Howland MOVED: to deny the request for the waiver of Section V.I.1.b. Mr. Suarez seconded, and the Motion passed 6-2-0 (Hayden & Francis opposed).

Mr. Tucker said that having denied the waiver, the Board had no choice but to deny the subdivision application, since it did not meet the requirements of the subdivision regulations, including the section that was not waived.

Mr. Francis said that the Board effectively denied approval of the subdivision and under state law is required to clarify in detail what the applicant must do to achieve compliance with the subdivision regulations.

Mr. Howland said that he was not convinced that the applicant had provided sufficient evidence to warrant granting the waiver. Ms. Pynchon said that with the waiver denied, the only way the applicant could comply with the regulations would be to provide public water or sewer to the site. Mr. Mailler commented that the Board needed to complete the process carefully and that it was getting too late to complete it properly tonight. Other members agreed.

Ms. Pynchon MOVED: to deny the subdivision (SUB2006-00009) proposal.

Mr. Tucker explained the Planning Board's role in the subdivision approval process. Mr. Howland said that he believes it's sufficient to deny the waiver and it wasn't the Board's role to be involved in designing the subdivision for the applicant.

Ms. Anderson MOVED: to close the discussion and move onto the rest of the agenda because it was getting too late. Mr. Mailler seconded.

Mr. Hayden recommended that the Board continue the discussion at their next meeting (March 21). Mr. Suarez said that he wants to consult Town Counsel on this.

The Motion passed 6-2-0 (Francis & Pynchon opposed).

#### **IV. NEW BUSINESS**

##### **B. Seeking Advice From Town Counsel – Guidelines for the Board**

Mr. Howland said that it costs money every time Town Counsel is consulted. Ms. Scipioni agreed but said that the Planning Board's work has become increasingly complex. Ms. Pynchon said that the current process (PB→Staff→T. Manager→T. Counsel) is appropriate and works. She asked for clarification on how responses from Town Counsel come back to the Board and said she would prefer to have them on paper. Mr. Suarez said that the Board needs to be able to ask for help when needed and it's important that the information that comes back be valid and accurate.

Mr. Shaffer, Town Manager, addressed the Board and thanked them for volunteering and expressed appreciation for their time and commitment to the Town.

He noted that Town Counsel is the legal authority for the Town on all legal matters. The budget is his concern, he said, and seeking a legal opinion may save money in the end. Mr. Shaffer told the Board that he has made it very clear to staff that legal interpretations come solely from Town Counsel. The process is as had been described. Mr. Shaffer said that he prefers to see legal opinions come back to the Board in writing, so there is no question about their content. Mr. Hayden said the Board needs to be told if their questions need to be clarified.

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Mr. Suarez said that he had been displeased with an earlier legal interpretation that Mr. Tucker had provided to the Board on the need for a waiver of Section V.I.1.b) and that he had felt compelled to refer the matter to Mr. Shaffer. He referred to a memo provided to the Board in which Mr. Tucker had apologized for that interpretation, and asked for an explanation and a public apology from Mr. Tucker, which Mr. Tucker provided.

Mr. Howland MOVED: to adjourn this meeting. Ms. Anderson seconded.

**I. MINUTES – Meeting of February 7, 2007**

Ms. Pynchon MOVED: to approve the Minutes of February 7, 2007 as submitted. Mr. Howland seconded, and the Motion passed 8-0.

**IV. NEW BUSINESS (continued)**

**A. Special Municipal Employee Status – Letter**

Mr. Hayden noted that the Select Board has put the information about the SME application process on the web site and asked staff to send an email to the Board with the link. He said that he is working on a draft letter to the Select Board which will be included in the next packet. Mr. Suarez asked to have it emailed.

**III. OLD BUSINESS**

**B. Signing of Decisions**

Mr. la Cour recommended that the Board re-vote its decisions for the Bank of Western Massachusetts. Ms. Scipioni had voted on them but was not eligible because she had missed the first meeting when the hearing(s) were opened. He also recommended that the Board allow the Special Permit application to be withdrawn without prejudice.

Mr. Francis MOVED: that the Board approve the withdrawal without prejudice of SPP2007-00001, The Bank of Western Massachusetts. Mr. Mailler seconded, and the Motion passed 7-0-1 (Scipioni abstained).

Mr. Francis MOVED: that the Board approve SPR2007-00005, The Bank of Western Massachusetts subject to the same conditions and waivers as previously voted. Ms. Pynchon seconded, and the Motion passed 7-0-1 (Scipioni abstained).

The Board then signed the following decisions: South Middle Street Amended Definitive Subdivision, Special Permit and Site Plan Review for the Bank of Western Massachusetts, and Site Plan Review for Hastings and the Shed at 30-36 Main Street.

**VII. UPCOMING SPP/SPR/SUB APPLICATIONS**

Mr. la Cour noted that a Preliminary Subdivision application has been submitted for an 8-lot subdivision on West Street and a Site Plan Review application has been filed for expansion of the Yiddish Book Center, also on West Street. The public hearings are scheduled for March

21, 2007. The Board scheduled site visits for the two proposals on Tuesday, March 20, 2007 beginning at 8:00 AM. Staff will send a reminder.

**VI. UPCOMING ZBA APPLICATIONS**

The Board decided not to review the following:

ZBA2007-00020 – 25 North Pleasant Street, Robert Lowry  
ZBA2007-00021 – 150 Fearing Street, William V. Gillen  
ZBA2007-00022 – 560 South East Street, Jean C. Allison  
ZBA2007-00023 – 472 North Pleasant Street, Gary L. Glenn  
ZBA2007-00024 – 497 East Pleasant Street, Adam Quenneville Roofing  
ZBA2007-00025, 17A Montague Road , Wild Iris, LLC

**XI. ADJOURNMENT**

The Meeting adjourned at 10:27 PM.

Respectfully submitted:

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Sue Krzanowski, Management Assistant

Approved:

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Aaron A. Hayden, Chair

DATE: \_\_\_\_\_