

**NORTH ATTLEBOROUGH PLANNING BOARD
REGULAR MONTHLY MEETING
THURSDAY, FEBRUARY 28, 2008**

The North Attleboro Planning Board held its Regular Monthly Meeting on Thursday, February 28, 2008 at 6:30 P.M. in the Planning Board Office located at 43 South Washington Street, North Attleborough, Massachusetts. Board members Richard Houle, Christopher Sweet, Joan Marchitto, Donald Cerrone-chairman and Mary Burgess-town planner.

Joint Meeting between Board of Health and Planning Board.

Board of Health members present Bob Davis, John Donahue, and Donald Bates-chairman. Dan Ottenhimer from Mill River and Cheryl Sbarra-Mass Health Board Senior Staff Attorney.

Audience in attendance were Larry Tilton, Glenn Ofcarcik, Dale MacKinnon, Stephen Clapp and Raymond Payson.

Donald Bates, It became evident from last meeting that you folks as well as developer are unfamiliar with way Board of Health works and the authority of the board. We are here to discuss Cushman.

Mr. Cerrone, Cushman we can not discuss we have a public hearing if you want to discuss Cushman you have to come to our public hearing.

Mr. Bates, Process is most important thing.

Mrs. Marchitto, During our public hearing on subdivision control we can hear testimony during the scheduled hearing of particular subdivision. We're not supposed to discuss it outside of public hearing because it is actually testimony. If we discuss it now we don't have residents or people are going to attend the next one they don't have opportunity to hear it.

Mr. Bates, Is it proper for the engineer to speak about report he gave you without any comments?

Mr. Cerrone, We have lawyer from the applicant and he's listening to us and we're going to be discussing this without them knowing about it I don't think so.

Planning Board has questions about credentials. I think one the reasons why he is here today.

Mr. Cerrone, That is fine.

Cheryl Sbarra-Senior Staff Attorney for Mass Association of Health Boards, It is non-profit membership association. Members are Board of Health members, Health Directors. I provide technical assistance and education I don't give legal advice that comes from town council.

Mr. Bates, Developer's attorney and Planning Board are unfamiliar with Board of Health in terms of our responsibility under state law. It is change from way the board used to do business in past. Now we review each developer with very close eye and we'll make comments as necessary done through the engineer. I would like Cheryl to speak about authority.

Ms. Sbarra, Board has called me on different occasions and health director has as well. They asked me to look at Chapter 41 Section 81U look at what Board of Health involvement is in that review. My understanding is that the Board of Health has to either modify, approve or disapprove plan. Case law is pretty crystal clear that the position of Board of Health as long as it is given to the Planning Board in writing needs to be addressed by Planning Board. It is state requirement regardless of what local law maybe local law can't conflict with state law it can be stricter but the state law is standard. Board of Health not only has right but obligation to review subdivision proposal and weigh in on that proposal. Their comments as long as they are within the scope of the law need to be addressed before anything can go forward. That is what I sent memo to that effect to Board of Health. It is not specific to any specific development it is just memorandum of law relative to Board of Health authority and obligation to view a plan.

Mr. Bates, Comment at last meeting that Board of Health is restricted to items containing Title V.

Ms. Sbarra, Law does not speak that Section 81 U. I think if you speak with town council would concur that Section 81 U does not limit Board of Health comments to Title V issues. They may have been something that had been policy or procedure but it is not mandated Title V is not even mentioned in Section 81U. If you look at language of Section 81U it is much broader than Title V. Board is supposed to be making specific findings relative to whether development will produce injury to public health. There is no limited language to Title V issues. I would ask that you check with town council at that issue. I'm not in position to put boundaries around it but there are some towns Walpole for instance that actually looks at sidewalks and lighting they just don't look at water and sewer. Lot of cases are about water and sewer but if you look at the enabling language in subdivision control law it is not limited it is very broad. North Hampton looks at issues in very broad way look at stormwater, drainage and other issues. The law is written in very broad manner and it encompasses Board of Health charge as to look at the development make sure that it is not injurious to public health. I'm just reading the law that is what law says.

Ms. Burgess, Also the law does make specific things that you have to do. The two opinions that Bob has brought to me it did say specific findings dot dot dot and then those specific findings are laid out in the law.

Ms. Sbarra, If you look at the case laws that surrounds 81U it is clear that Board of Health has the obligation and authority to weigh in and if Board of Health disapproves I can sight numerous cases. One of the cases is that verses Planning Board of Barnstable the Planning Board needs to acknowledge and address the concerns of the Board of Health and put in writing. If board disapproves plan for some reason the plan either has to be modified so that Board of Health can approve it. It has to be addressed it can't just be approved with written disapproval from Board of Health that is what law states.

Mr. Cerrone, We've done that in the past since 2002 whenever we get letter of Board of Health recommendation we always take that incorporate it for subdivision or project. Whatever comments they have we say to the client you have to take care of issues from Board of Health. That has always been done in the past by this board since I've been on it.

Mr. Bates, With the exception when we last met I heard from the developers as well as yourself that we were restricted to Title V, which is why I wanted to make sure that everybody is familiar with that we are not. I think the sticking point in some of it is the specific issues we are of the opinion that is what we did was to submit specific issues however you guys are not. That is where we need to focus on and resolve.

Mr. Cerrone, We had public hearing for about two years to revise some rules and regulations. We sent all memos to all departments for their input in Town of NA Planning Board Rules and Regulations Governing Subdivision Law we follow the book. If you want to add some stuff you give it to us and we'll put it in the book. It says right in our book we have to have letters from all departments. Usually developer sends application here try to get all plans out so can get letters from all departments for comments what is the issues on those projects usually we get it back. When we have public hearing we read it and give copy to all of the developers with all the issues Board of Health, Conservation, and Public Works. Usually developer has to go back meet with all other departments to get stuff resolved. That is way we've working in past I don't know where the miscommunication is.

Mr. Bates, Based upon the last meeting I think what you had said Mr. Chairman this has never happened before.

Mr. Cerrone, No it has never happened I have some old letters I have in file I told out town planner to go back 2001.

Ms. Burgess, We have 2006 Cobblestone, 2005.

Mr. Cerrone, Your department always sent letter to us with recommendations that is way it is supposed to be. 1994, 1993 as long as we get input from your board we don't have any problems working and communicating.

Mr. Bates, The way things were is not way we're going in future we have to we can't do what we've done in the past. Information we sent you along with disapproval at that time with specifics that you're talking about. If those weren't clear fine we can make them clear.

Mr. Cerrone, When you sent letter of disapproval you have to tell us what it is.

Mr. Bates, We did, that is my point.

Mr. Cerrone, You have to tell us what issues you have.

Ms. Sbarra, Just by summary in one of leading cases Independent verses Board of Health of Barnstable, which says the Planning Board is precluded from approving subdivision plan which...(inaudible) recommendations of Board of Health. You're telling me that is what you do anyway. I think I was asked to come to underscore that the authority clearly and statue.

Mr. Cerrone, I know boards change and I agree with Mr. Bates but in past we have always done that. We always make sure we have letter on file because once we approve that project we have file make sure all letters from all departments are there.

Mr. Bates, You had that letter it was letter of disapproval but you had it.

Mr. Cerrone, You have to state why.

Mr. Bates, We did.

Ms. Burgess, I think when it came it back or when a review comes back as disapproval the law is pretty clear about, which building sites can not be used and if you can make recommendations on how to make it buildable site. It says reasons why it can't be buildable site and make recommendations that they can do. On your last letter for Cobblestone I believe Mill River did the review it is very clearly stated it was an approval with exception of lots 34, 43, 44, 45 approval with following conditions. I think this is what the board takes with them into their approval process of the subdivision. Another report we received was little vague and wasn't specific enough. I'm not a registered sanitarian or soil scientist or engineer by any means and that is why we have an engineer to do that aspect of it. I guess where I'm going with this is Cobblestone was very clearly defined you had problems they were addressed clearly. With another report being very vague it is difficult how basically the Planning Board can condition a subdivision to do things that aren't very specific. Like it says maybe few lots or few pits like here it says the exact lots with exception of certain lots. This is what we need to have and I know with the law you can look at stormwater because I know it is very broad. We can approve a subdivision that you have disapproved if we find that all of your things have been modified onto our plans.

Ms. Sbarra, Only with Board of Health approval you can't ignore.

Ms. Burgess, We're not.

Mrs. Marchitto, But if we have specific findings from Board of Health.

Ms. Sbarra, Then board modifies Board of Health modifies it approves it. You can't make independent judgment I don't believe by yourself as Planning Board that all of these things have been fixed that board mentioned. I don't think you have independent authority to do that.

Ms. Burgess, I'm pretty sure that we can because it does say if modification.

Ms. Sbarra, Town council should be the one.

Ms. Burgess, I know if the board deems that modifications have been successful then they can rule because we don't want Planning Board and Board of Health to be in lawsuit. If we find that

the developer has addressed these problems adequately. Planning Board has consultant engineer that deals with stormwater and things like that and if he feels that these things as professional engineer have been met then that is something the board looks at. Anything on sanitary side that is all on your Mill River guy or whoever. Lot 34 didn't perk you can't put septic there that is what we need to know on sanitation side. We're definitely ignoring what you give us on stormwater side however we can make the decision that issue has been adequately addressed.

Mr. Bates, We disagree with you that is fine best course is to get Roger involved that is not a problem.

Mrs. Marchitto, I have handbook of Mass. Land Use and Planning Law it's by an attorney Mark Bobrowski he teaches land use and is an attorney. The cases that you're listing are in here and it does say the powers of Board of Health. Planning Board understands you have the authority in 40 days you have to react and you have to either approve or disapprove. We also understand as Planning Board that we can't approve a subdivision that you disapprove. I go back and read what Planning Board powers are and we do have the power to approve, disapprove or modify a plan. It says and I think we agree with this and this is where maybe Board of Health and we kind of disagree that is why we're asking for specific findings. Like Mary said in Cobblestone it came back there was a map that we could go back to the developer and say you need to address these issues before Planning Board approves this. The intent of 81M is clear it says if the plan conforms with Board of Health rules and regulations with all recommendations from Board of Health the Planning Board has no choice but to approve subdivision. That is true by law our hands are tied but if it all complies we have to approve. On other hand this book says if plan is not in compliance with local rules or recommendations of Board of Health the Planning Board may modify the plan and approve it subject to conditions as may be necessary to bring the plan into compliance and that is why we're asking for specific findings. The Board is free to deny a plan that does not comply with either local rules or recommendations of Board of Health. We need to have it modified we can approve it with modification but we also need them to recommend it. I think what we're running into is specific findings from your engineer so that we can have it addressed so we can give it to the developer and say you need to do this. It has to be stated what it is. If we as Planning Board deny subdivision we have to testify our findings. We have to state legally why we said no.

Mr. Bates, Some of the findings are going to apply to the whole development there is no lot by lot identification necessarily there doesn't need to be. If there is something that we can apply to that then fine if there isn't we won't but there is not lot by lot.

Mr. Cerrone, You want to do Planning Board work?

Mr. Bates, Not at all.

Mr. Cerrone, That is what you're saying have you read our book.

Mr. Bates, Our authority is definitely limited.

Mr. Cerrone, You're saying you want to get into all other designs traffic?

Mr. Bates, No it is limited think water.

Mr. Cerrone, What do you mean waste water or drinking water?

Ms. Sbarra, Anything that is injurious to public health.

Mr. Cerrone, Water we put pipes in and public works does the testing and you guys check out testing.

Mr. Bates, You're stating difference between what we do today. We're trying to explain yes we have way you have way of doing things today that is find and we can meet together to resolve that. It is important at same time that the board understands the extent to which Board of Health needs to go our responsibility. It is not Title V it is beyond lot to lot if needed.

Mr. Cerrone, Go back to water contractor comes in puts water line in, water line is tested. Public's water will want to chlorinate the water line, need samples from the lab before anyone can tie into that water line. I can understand you wanting those results I have no problem with that safety of the people. We don't check water line for testing we want to make sure they use right size pipes, right fire hydrant, etc. that is our concern with standards of town of NA. Septic has to be designed to your rules Title V waste water.

Mr. Sweet, Referring to General Laws of Mass. Chapter 41 Section 81 U highlighted passage in event of disapproval. This section is saying we need specific findings.

Mr. Donahue, We agree the thing once again is when you take words specific it can mean it in narrow way of looking at it.

Mr. Sweet, You have to provide suggestions or recommendations.

Mr. Donahue, You're saying you want specifics lot by lot so that whatever the problem is if it is fixable how we need to repair it that is what you're looking for. We all know crux of the problem is this certain report. If we haven't had problem before with others like Mary brought up Cobblestone. If it was matter of specifics in sense of what Mill River wrote down if we need to get back to more specific. I don't know if some of the issues and I think what Don is saying it is lot by lot thing.

Mr. Sweet, Even if it isn't lot by lot issue you have to give us some way to fix it.

Mr. Bates, We're going little bit in circle we're saying yes we did that is fine. Those are issues I'm not worried about we can resolve that.

Mr. Houle, Don did you offer any type of recommendation as to how that is going to be fixed?

Mr. Bates, Off top of my head I don't know. In general sense I think we did have Mill River discuss the specific lot by lot verses more general comment talking about no specific report at all.

Dan Ottenhimer-Mill River, Cobblestone is project that is behind us. In that situation we looked at their initial application and Board of Health had two, three, four page suggestion or list of concerns and items wanted dealt with. Applicant said sounds good lets work in them they issued Board of Health and Planning Board time extensions to deal with issues got issues resolved and output of that was that letter, which was Board of Health's approval of that project. Minus I think two or three lots where they hadn't done any soil or perk testing so we didn't know whether they would ever be buildable.

Mr. Cerrone, That's how it should be.

Mr. Ottenhimer, Board of Health generated a very similar report for Cobblestone as it has for recent projects that have come before us. I think the difference is the applicants doesn't appear that they have said figure out what we can do to address this and give some time extension to work with it they've said you have your time period and that's it.

Mr. Bates, Cobblestone was pretty much lot by lot thing where as some comments may not be they may be much wider in scope. Addressing the whole development is that what we're talking about?

Mr. Ottenhimer, My recollection of Cobblestone we looked at some wetland issues that impacted the whole project looked at stormwater impacted the whole project. We looked at the entirety of it as well as that one happened to be on septic systems. We looked at some of the lots on how they relate to septic systems we looked at big picture as well as lot by lot.

Ms. Burgess, It was easy to follow the chart that came with it basically went with what the lot said reason for Board of Health concerns, suggested approach.

Mr. Bates, Overall just to restate we get development first thing is we obtain an engineer. The way that is done is when developer comes to office to submit that definitive plan he's handed a piece of paper saying this is what Board of Health does. That piece of paper says Board of

Health will retain an engineer to review this and may charge the developer for the cost for engineer that is not new. When that is done and we get report back then we did letter as we did in this most recent case and go on from there. The process is not out of the norm it maybe different but it is what it is. I'm suggesting that Board of Health certainly doesn't want to get into anything that you guys do I have no interest in doing that. Hopefully we are all in agreement that we're trying to get to reason we're trying to get to point in the system where we don't have duplication.

Mr. Donahue, Some of developers brought up good point with the different engineers they're paying for different engineers. Board of Health for their engineer, Planning Board has their engineer and then they have Conservation or DPW. I would love to see town engineer so this way it would eliminate of lot of this duplication.

Mr. Bates, Single firm that has all of the disciplines that you need I don't know whether one engineer could address all of them but single firm would address that.

Mr. Cerrone, I don't think you should get single firm to do it all you need couple firms. Our rules and regulations say we can collect fees for engineering. Maybe might have to work something out when they come in they pay fee for all engineers all at one shot I don't know.

Mr. Bates, If we have one guy coordinating that one voice instead of right now there is three or four voices that go on to make up the development. I would think it would be much easier and less expensive to have one guy that is coordinating the various engineers.

Mr. Sweet, It is no expense to us right not.

Mrs. Marchitto, The taxpayer is not paying for that and taxpayer is not making any profit of having building occur in subdivision. We talked about town engineer being hired by the town that point taxpayer starts paying for salary. It appears to me through the articles that we're going through a difficult financial time right now.

Mr. Donahue, I agree Joan right now I understand that.

Mrs. Marchitto, I have difficult time being on board I'm resident and paying taxes. Developer comes in town buys piece of land and would like to make profit, develop it, permit it. They know how to do it they are the professionals of doing that they are making the profit if they want to work in the town they know they are expected to have some expenses. For taxpayer to pick up that cost so that they can make more of profit. I think it should be clear that Planning Board's engineer's service come out of revolving account that is paid by developer taxpayer is not paying that. If it is town engineer the taxpayer will be paying with all benefits going forward. I don't think it is always clear to resident that they think they are paying for engineering service that Planning Board is using as consultant they are not.

Mr. Cerrone, Developer pays all the bills.

Mr. Bates, Point is if we can centralize that we're going to say as long as we're living within the law and as long as we're providing that service to taxpayers that we need too we also I feel have responsibility to businesses to try if possible to control their cost. If we could do that in such way that developer doesn't have to pay the cost of duplicate engineers why don't we? That to be makes good business sense and good sense from town's point of view. We wanted you to understand is what we do how we do it and the extent to which Board of Health's authority goes.

Mr. Houle, There are also other things that go with that responsibility too meaning that we need more specific things so that we can go back to builder and say these are the things you have to fix.

Mr. Bates, That is point we're going to have to work on.

Stephen Clapp-attorney, Don Bates mentioned when developers deliver definitive plan the Board of Health gives a form says that Board of Health will hire engineer to review project.

Form that has been used says review of Title V requirements it is sort of surprise when the developer then finds out that they have to pay for engineer who is reviewing for something way beyond that and the bill gets to be quite high. I want to point that out.

Mr. Bates, That is easily corrected.

Mr. Clapp, We pay for our engineers to work with town engineers and when you have three engineers that are all duplicating the same review our engineer has to do it three times so it becomes like six times the expense. What we would like to see is the Board of Health reviewing things relate to public health, Planning Board reviewing the project with their concerns. We don't want to see Board of Health doing the same thing in review Planning Board is doing.

Mr. Bates, It is unavoidable that sometimes that is going to happen and with present system that we have to offer we don't have choice. We have system we have to follow obviously we have no interest in doing that.

Mr. Cerrone, If you list what you want on your letter we can give it back when engineer comes in front of and tell them to answer issues for Board of Health. We shouldn't have two firms doing the same thing and I think that is what applicant is saying. They submit plans to you they go through whole process reviewing the whole plan doing drainage, detention ponds, all that I think that is where they're coming from.

Mr. Bates, That makes sense unfortunately that is not way the law is written it is not way process is.

Mr. Cerrone, Can you tell me when the law changed?

Ms. Burgess, I think now that more Board of Health are taken advantage of fact that the law is very broad and not doing the exact consist of the three things that it does indicate. Instead taking the law into more broader aspect before it might have just been septic and perks.

Mr. Bates, This is not new it maybe new to the developer but not new to Board of Health.

Glenn Ofcarcik-Tilton & Associates, I think the issue is as it relates to Board of Health you're talking about chlorinating the water but Board of Health can say water chlorinating procedures are injurious to public health because of this we recommend you don't use this. How is it potential injurious to public health, what can be done about it?

Raymond Payson, What I'm hearing tonight is that we have very aggressive consultant for Board of Health and it's all about money and where it goes. I think what I heard Mr. Bates say several times it is going to be much broader than Title V. I don't know what that entails. There is four people right now doing drainage Public Works, Planning Board, Board of Health and Conservation and developer's engineer. I heard you're getting into wetlands by Mill River. How many agencies are we going to deal with wetlands? I think we have so many consultants in this community right now I don't know where we're going to go but it is out of control as far as I'm concerned. There has to be understanding with jurisdiction of Board of Health is going too, Conservation went through that they are on track.

Mr. Bates, I can't speak for any other board.

Mr. Payson, We'll watch it unfold.

Mr. Bates, I think one of the things we could do to try to reduce if not eliminate duplication immediately have getting definitive plans we could get together as two boards.

Mr. Cerrone, That is why I said to read book our rules and regulations.

Ms. Burgess, I think it might be helpful to go vice verse these are our rules and regulations. What are your rules and regulations? We have the book that says what we do. Instead of getting together and splitting it up these are our regulations this is what we look at.

Mr. Bates, Problem is that there is no point by point description of what Board of Health can and will look at. Anything we would give and we can do it would be an opinion because state law is what it is and as you say it is very broad.

Ms. Burgess, You don't follow specifics like review the perks?

Mr. Bates, Sure that goes without saying.

Ms. Burgess, Are those written down anywhere?

Mr. Bates, We could put that together.

Mr. Cerrone, You should look at our book and if you see anything you want to add when we have public hearing we can put it in book.

Mr. Bates, We can develop a list.

Mr. Houle, We talked lot about your jurisdiction and ours is clear maybe if you would put something like this especially for newer people on different boards. Boards change maybe it would be good for you to have something in writing so as board changes it is easier for newer members to understand what it is entail. We've talked a lot about engineering we don't want to overburden the developer on these things how about using Planning Board's engineer. Is there problem with that? Has anybody thought of that?

Mr. Ottenhimer, Under previous chair the Board of Health Diane Battistello she suggested just that our office coordinate with your engineer's office. I would say on Board of Health that they did attempt it.

Ms. Burgess, Our engineer doesn't return anything it has to go through us. Unless he is instructed to call them back he doesn't. We have people always burdening him with things that maybe he should or shouldn't be doing. If it comes through me I know what he is doing it has nothing to do with control it is more management.

Mr. Bates, That one thing would get rid of duplication.

Mr. Houle, Everything goes through Mary and it works well.

Mr. Cerrone, We can try it and see how it is going.

Ms. Burgess, If you request written document he sends it through because technically through the contract he works for Planning Board it goes through me and I just forward it to whomever.

Mr. Cerrone, Same thing with your engineer send it to her.

Larry Tilton-Tilton & Associates, When they crossover and start receiving comments first thing from client where am I obstructing public health. Lot of times subdivision will come along may or may not be planning on putting on site septic system. There maybe enough soils done to verify the ground is adequate for soils and the response back to Board of Health is this area is not known to be threat to public health. When we start venturing into other areas first comment back to my client is going to be is where am I threat to public health.

Mr. Payson, I think this all started with Hickory Woods.

Mr. Cerrone, I don't want to discuss Hickory Woods.

Mr. Payson, Board of Health engaged a consultant that consultant made comments of the roads, drainage was poor it dealt way beyond the issue of septic systems.

Mr. Bates, It was supposed to that was by design.

Mr. Payson, There was some very damaging statements by that consultant getting into everyone else's jurisdiction.

Mr. Tilton, Areas of expertise of people that are writing the reports are always inside their area they don't cross over outside the areas of their license. It is against the law to preach engineering if you're not an engineer. If we file reports it usually filed and signed by person who prepared it.

Ms. Burgess, We weren't doubting his qualifications there wasn't signature on that report and his title. We can't take it on full value if we don't know who did it.

Mr. Bates, I think you also have to respect the fact that Board of Health aren't idiots. We're not going to hire someone that is unqualified I think that should be accepted. If you need signature that is fine.

Mrs. Marchitto, It is for our record it is testimony going into our file. We know but 5/10 years or 30 years. Don always says when I sign my name it is there for 30 or 40 years.

Mr. Cerrone, Lifetime of the project.

Mr. Bates, We're not disagreeing but there is difference saying I understand this report but it needs a signature. There is great difference between that and throwing the whole thing away because it doesn't have signature that is what happen and it happen twice and it can't happen anymore.

Mr. Houle, It is not what happen on this board I think if someone is going to present anything any type of finding I don't care what we're talking about the least thing they can do is state who they are and what their credentials are. It is also matter of record and I think that is very important that we keep our records up to date in the correct manner.

Mr. Cerrone, We won't accept anything from engineers that is not stamped by PE or whatever.

Mr. Bates, Board of Health adjourned at 7:35 P.M.

Mrs. Marchitto, Make motion to adjourn at 7:35 P.M., seconded by Dick Houle.

All in favor 4 to 0.

Vouchers;

Board signed American Blueprint Co. and Earthworks Engineering.

Respectfully Submitted,

Richard R. Houle
Secretary