



PLANNING BOARD • Town of Acton

MINUTES
PLANNING BOARD MEETING
JUNE 29, 1981

CALL TO ORDER: 8:10 p.m.

THOSE PRESENT: Mrs. Bayne (Chairwoman), members, Mr. Weare and Ms. McCarthy; Town Planner, Mr. Dufresne; citizen, Mr. John E. Norton of 95 Hammond St., Acton.

MINUTES: The following minutes were signed by Ms. McCarthy, clerk: May 18, 1981 and June 2, 1981.

The following minutes were approved as amended by the Board: June 15, 1981.

MOVED by Mr. Weare, second by Ms. McCarthy, all in favor.

VOUCHERS: The following vouchers were approved for payment by the Board:

Nancy Carroll	\$5.40
Quill & Press	\$420.55
Wang Laboratories	\$238.65
Rachel Courtney	\$3.71
College Bindery	\$68.00

MOVED by Mr. Weare, second by Ms. McCarthy, all in favor.

The following voucher was approved for payment by the Board:

Kevin Hurley, Planning Consultant	\$1,500.00
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MOVED by Mrs. Bayne, second by Mr. Weare, all in favor.

RESIDENTIAL COMPOUND PLAN:

The Board reviewed the previously drafted Optional Residential Compound Plan. The Board would like to add this rule to the Subdivision Rules & Regulations in order to permit small-scale residential subdivisions which minimize Town maintenance responsibility and cost and to preserve the rural character of the Town.

Mr. Norton of 95 Hammond St. attended the meeting and presented the Board with his plan for dividing his land up into this type of compound.

This gave the Board an opportunity to look over the type of subdivision which this rule would permit. It was the consensus of the board that this rule would be a beneficial addition to the Town's Subdivision Rules and Regulations.

The Board set a date for an Optional Residential Compound Plan Public Hearing for July 20th, 1981 at 8:00 p.m. at the Planning Board office.

ANR: The Board voted to authorize Mr. Dufresne to sign ANR # 2786, Wyndeclyff Drive, Mabel Jenks McNiff.

MOVED by Mr. Weare, second by Ms. McCarthy, all in favor.

B.O.A.: Petition #'s 81-21, 81-22, and 81-23
The Board reviewed the above petitions and authorized Mr. Dufresne to submit the Board's comments, as amended, to the Board of Appeals.

MOVED by Mrs. Bayne, second by Mr. Weare, all in favor.

SITE PLAN: #5/26/81 - 208 Emlinger-Stout
Mr. Dufresne reviewed this plan in the form of an impact analysis. This is a departure from our usual analysis, which includes a zoning compliance review. Mr. Dufresne discussed the Board's concern for one of the town's significant wetlands which is located near this proposed site. It is suggested by the Board that the applicant be required to submit an "erosion control plan" and a more definitive landscaping plan (for the rear of the site) in order to insure protection of this wetland. To insure proper drainage the Board recommends the requirement of a positive outflow device to protect against clogging of the system. This system should also be designed to prevent the need for de-icing chemicals, which could have negative effects on the nearby wetland.

Other recommendations of the Board are that: the applicant be required to reveal the construction materials of the fuel storage tank; the dumpster be fenced in for protection from animals and/or vermin; the applicant reveal how the large boulders will be suitably disposed of; the applicant post a reasonable bond with the Town to insure that any damage done to Ledge Rock Way during construction be repaired by the applicant; and that the applicant be aware that the storage of chemicals (hazardous or otherwise) is prohibited.

LOT RELEASE: Lot 11 Kingman Rd.
The Board voted to release lot 11 Kingman Rd.

MOVED by Ms. McCarthy, second by Mr. Weare, all in favor.

TOWN PLANNERS ISSUES: Nagog Square Bond
Mr. Dufresne explained the present situation concerning the Nagog Square subdivision bonds. According to him, Nagog Development Company, developers of Nagog Square, were required to post a bond, satisfactory to the Town Treasurer, in the amount of \$340,200.00 to ensure completion of the subdivision. After the \$340,200.00 bond was posted, the Town Treasurer was personally presented a check for endorsement for approximately \$1,000.00 by Mr. Kirk Ware. This check, made out to the Town of Acton, represented interest accrued on a previously posted \$60,000.00 performance bond. The Treasurer's instructions to the bank at the time the \$60,000.00 was posted included an instruction that any interest accrued on the bond would remain in the same account as the bond until the bond was ordered

released by the Planning Board. The Treasurer when presented with the interest check became alarmed by the bank's action of releasing a check in the name of the Town to a representative of a developer without direct authorization from the Treasurer to release the check. As a result, the Town Treasurer began to research the practices of the bank (U.S. Trust) and of the developer (Nagog Development Company) in a more critical fashion. This research revealed that: 1. Mr. Tavilla, a principal of Nagog Development Co., was also a director of the bank; 2. neither the \$60,000.00 bond nor the subsequent \$340,200.00 bond was being handled by the Municipal Service department of the bank as instructed by the Treasurer, but rather these funds were being handled by the Commercial Loan department of the bank. The Treasurer then began to fear for the safety of the bond because the bank had not handled the funds according to instructions. Mr. Dufresne explained that the Treasurer has stated that he delivered his instructions concerning the handling of the bond to the bank and to Mr. Ware via telephone as has been his practice

As a result of his findings, the Treasurer felt it to be a prudent act on his part to withdraw the funds from U.S. Trust and place them in the Massachusetts Municipal Depository Trust (MMDT) where he felt they would be secure. Also, the Treasurer informed Mr. Dufresne that depositing the monies into MMDT would, at that time, yield approximately 3 1/2 to 4 1/2 more interest per annum to the account. Both Mr. Dufresne and Mr. O'Connell (Town Treasurer) felt that this transfer of the funds would not place a hardship or burden on the developer (Nagog Development Co.), and that it would assure the security of the funds until the Road (Nagog Park) was completed to the satisfaction of the town.

When the Treasurer requested that the funds be transferred, Nagog Development Co. (Nagog) sought a court order to prevent the Town from transferring the monies. As a result, Town Counsel (Mr. Callaghan) intervened to attempt to avoid litigation of the bond transfer issue. Nagog's legal representatives (Goldstein & Mannello of Boston) insisted that the Treasurer forfeited his right to transfer the monies out of U.S. Trust when the Treasurer accepted a receipt for the \$340,200.00 bond. Nagog argues that the receipt (dated May 8, 1981) is really an agreement by the Treasurer to keep the monies in the U.S. Trust. When Town Counsel was asked for his opinion as to whether or not the argument had any legal merit, he advised Mr. O'Connell, Mr. Dufresne, and Mr. Sumner (Town Manager) that since the receipt (so called agreement) was not reviewed by Legal Counsel prior to signature it could contain language which could be construed as not being in the best interest of the Town's legal position relative to this issue. Town Counsel did not, even though he was pointedly asked by Mr. Dufresne and Mr. O'Connell, clearly say whether the Town did or did not have a sound legal basis for achieving a court decision in favor of

the Town. However, Town Counsel did enter, on behalf of the Town, into a stipulated agreement with Nagog designed to avert litigation for several days so that an agreement could be reached out-of-court. Mr. Dufresne stated that neither he nor Mr. O'Connell interpreted the May 8, 1981 receipt as an agreement, and therefore could not justify entering into an agreement with Nagog concerning issues which are not negotiable; specifically, the right of the Treasurer to transfer funds to protect the interest of the Town. Since no agreement was reached, Nagog pursued court action. Mr. Dufresne stated that even though Town Counsel made a brilliant presentation to the court, the court issued an order enjoining the Town, Nagog, and U.S. Trust from transferring the \$340,200.00 performance bond. Mr. O'Connell, Mr. Sumner and Mr. Callaghan agreed that the court order did not even address the existing \$60,000.00 performance bond, according to Mr. Dufresne.. In fact, neither Mr. Dufresne nor Mr. O'Connell nor Mr. Sumner remember any mention at all during the court hearing about the \$60,000.00 bond. Town Counsel's letter to Mr. Sumner dated June 11, 1981 stated in part, "The order says nothing about the \$60,000.00 bond,..." Mr. O'Connell therefore deposited the \$60,000.00 plus accrued interest check into MMDT for safekeeping. Shortly thereafter Mr. Dufresne said that the Treasurer was informed by MMDT, not by U.S. Trust, that the bank had issued a "stop-payment" on the check previously issued to and in the name of the Town of Acton in the name of the Town of Acton. This act further confirmed Mr. O'Connell's judgement that the U.S. Trust was not handling the account according to instruction nor in the best interest of its depositer (the Town of Acton). Mr. Callaghan said that he was "not surprised", but offered no further comment upon the legality of the action, nor on the Town's legal recourse to this action.

Mr. Dufresne then stated that the Town Treasurer, distressed by a lack of aggressive legal recourse, called the U.S. Trust Co. to demand to know on what basis the bank justified its action of stopping payment on the \$60,000.00 bond. Mr. O'Connell then told Mr. Dufresne that the bank resisted his inquiry to the utmost, but because Mr. O'Connell was in persistent pursuit the bank finally told Mr. O'Connell that Nagog's legal counsel had informed the bank that the previously imposed court order required that the bank retain control of the funds in the \$60,000.00 bond account. Mr. O'Connell then asked where the funds were at that time. He was told by U.S. Trust that the funds were in the form of a new repurchase agreement in the name of the Town. Mr. O'Connell then asked the bank for documentation to verify the existence of the bond. After several days and several telephone conversations with bank personnel, Mr. O'Connell was told that the \$60,000.00 bond had been released to the developer. The bank refused to discuss the issue with Mr. O'Connell when asked on whose authority they had released the bond. The Treasurer, Mr. O'Connell, maintains that the Town, either through him or the Planning Board, did not authorize the release of the bond. He also maintains that the release of the bond by the bank without

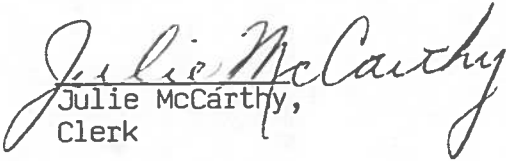
expressed authorization from the town, constituted, at the least, questionable banking practices.

Mr. Dufresne then said that because of these actions taken by the bank, he and Mr. O'Connell were very concerned about the security of the \$340,200.00 bond still in the possession of the bank. Mr. Dufresne also said that he still feels that any negotiations between the bank, the developer and the Town were not in the best interest of the Town, since it is his belief that the handling of a bond by the bank or treasurer is not a negotiable issue.

Several Board members expressed their concern about this problem and asked that the Town Planner, Mr. Dufresne, keep them informed of any actions by any party concerning the Nagog Park Bond.

MEETING ADJOURNED: 11:15 p.m.

Respectfully submitted,


Julie McCarthy,
Clerk

RC
AJD/rc