

JOINT MEETING  
North Attleboro Board of Health & North Attleboro Planning Board  
Meeting Minutes of  
February 28, 2008 6:30 pm

In Attendance: Board of Health Chairman Don Bates, Member John Donohue Jr. and Robert Davis Agent plus Planning Board Chairman Don Cerrone and Planning Board Members Chris Sweet, Richard Houle and Joan Marchitto, plus Town Planner, Mary Burgess.

Visitors: Dan Ottenheimer, Mill River Consulting; Cheryl Sbarra, MAHB Attorney; Ray Payson, Larry Tilton, Developer and Attorney Stephen Clapp

Chairmen Cerrone & Bates opened the joint meeting at 6:35 PM for a general discussion regarding subdivision reviews.

Mr. Bates noted that when two Members of the Board of Health (BOH) attended a Planning Board meeting in January, it appeared that both the Planning Board and the developer present were unfamiliar with the way the BOH works and/or the authority of the BOH with respect to subdivision review responsibilities.

**CUSHMAN VILLAGE:**

The BOH Members came prepared to discuss the Cushman Village subdivision but Planning Board Chairman, Don Cerrone, forbid any discussion of that project outside of an official public hearing on it, to which the BOH would be as welcome to attend as any other interested party. There will be an upcoming public hearing scheduled to discuss Cushman Village.

**MILL RIVER CONSULTING:**

Mr. Bates introduced Dan Ottenheimer, President of Mill River Consulting, the company that has performed as the BOH's consulting engineer for several projects already, and invited Mr. Ottenheimer to tell the Planning Board about himself, his credentials and his company. Mr. Bates explained that because the Planning Board had recently questioned Mill River's credentials again, he had asked Mr. Ottenheimer to appear in person this evening to answer any questions about them that any Planning Board Member might have. No Planning Board Member questioned Mr. Ottenheimer about his credentials however, or those of his company.

**STATE ATTORNEY FOR MASS. ASSOCIATION OF HEALTH BOARDS:**

Mr. Bates next recognized Attorney Cheryl Sbarra who introduced herself to those present as the Senior State Attorney for the MA Association of Health Boards (MAHB). Ms. Sbarra explained that she was present to speak about the authority of BOHs with respect to subdivision reviews, but not to give either board legal advice per se, as that would be the Town Counsel's responsibility.

**BOARD OF HEALTH SUBDIVISION REVIEW RESPONSIBILITY:**

Atty. Sbarra explained that pursuant to M.G.L. c.41 §81U, BOHs have the authority to modify, approve or disapprove a subdivision plan in writing, and need not confine themselves only to Title V issues. She explained that the law was very broad, but very clear, and §81U does not limit BOH comments to Title V issues. Further, Ms. Sbarra noted that the law says that when BOHs write to their Planning Boards to disapprove subdivision plans, the Planning Boards must address the concerns raised by their BOHs and cannot approve, disapprove or modify them without responding to those BOHs in writing.

In the general discussion that followed, Planning Board Chairman Cerrone told the group that his Board has always waited for approval from all Town departments before they approved subdivision plans and, that the Planning Board has always informed developers of any issues that other Town departments may have with their projects. He stated however, that the BOH had to be specific about what issues a Developer needed to address whenever it disapproved a subdivision plan, and further that the Planning Board could approve a subdivision plan whenever it deemed that the modifications requested by the BOH had been successfully completed. When the Board chairmen began to disagree on what was meant by the specifics required (e.g. the Planning Board felt the BOH needed to state issues on a lot-by-lot basis), Ms. Sbarra cited the law which stated BOHs... “shall make specific findings as to which, if any, areas shown on such plans cannot be used . . . **without injury to public health**, and include such specific findings and the reasons therefore in such report”

Town Planner Mary Burgess argued that if a subdivision plan was not in compliance with local rules or the recommendations of the BOH, the Planning Board could still modify and approve it subject to such conditions as the Planning Board might deem necessary to bring it into compliance. Ms. Burgess stated that process would also require the BOH to come up with specific issues and solutions which the Planning Board could then give to the developer to resolve. Reiterating that she was not acting as Town Counsel for either Board, Atty. Sbarra told the group but that the law was clear, a Planning Board *cannot* follow the process Ms. Burgess was describing under the law, rather it cannot approve a subdivision plan disapproved by the BOH without submitting the corrected plan to the BOH once again to get its disapproval reversed and the BOH’s approval of the plan as modified in writing. Discussion, local preferences and past practices notwithstanding, Ms. Sbarra repeatedly called everyone’s attention to what the law actually said and required. Eventually, through the discussion that ensued, both the Planning Board Members and Ms. Burgess did concede that the law was indeed as Ms. Sbarra described, however preferable it may be to continue following the Planning Board’s previously long-standing procedures.

For the record, Mr. Bates reviewed the process by which the BOH has, and would continue to review any subdivision plans submitted to it. Chairman Cerrone acknowledged the BOH process and asked the BOH Chairman to give it to the Planning Board in writing, but Mr. Bates respectfully advised that the BOH had already done so, and as recently as the 2/4/08 memo sent to the Members of both Boards.

The subdivision review discussion became more generalized, and Mr. Donohue noted that while developers may be understandably upset to pay for several engineering fees to review the same subdivision, the Town’s exploration of a Town Planning Engineer may address that problem. Such a person could be hired to serve all the interested Town departments’ consulting needs. In addition, he suggested that other duplication could be reduced if the BOH and Planning Board could meet upon receipt of developer’s definitive plans to agree upon what each department will review. Still another suggestion was that all the Town Boards involved in subdivision review could meet to agree upon a single subdivision review “check list” that would detail for developers what each one’s requirements were. All present agreed there was room for improvement and cause for even more discussion on subdivision review. Both Board Chairmen pledged to pursue more meetings between them on the subject.

**ADJOURN:**

Mr. Bates declared the Board of Health meeting adjourned at 7:35 PM.