

PLANNING BOARD

DATE: January 28, 2021

TIME: 6:00 P.M.

PLACE: Zoom Virtual Meeting

FOR: Regular Meeting/Continued Public Hearing

PRESENT: Brandee Nelson, Chair; Malcolm Fick; Jonathan Hankin; Jeremy Higa;

Pedro Pachano

Garfield Reed, Associate Member

Chris Rembold, Assistant Town Manager/Director of Planning & Development

Ms. Nelson called the meeting to order at 6:00 P.M. Mr. Higa had not yet joined the meeting.

Ms. Nelson read the opening statement from the agenda. She announced that the meeting was being recorded.

Roll call attendance; Mr. Fick, present; Mr. Hankin, present; Mr. Higa, present; Mr. Pachano, present; Mr. Reed, present; Ms. Nelson, present

FORM A'S:

There were no Form A's presented.

MINUTES: JANUARY 7, 2021 & JANUARY 14, 2021

Mr. Hankin made a motion to approve the minutes of January 7, 2021 as amended, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Ms. Nelson, aye

Mr. Hankin made a motion to approve the minutes of January 14, 2021 as amended, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Ms. Nelson, aye

BARRINGTON BROOK: REQUEST TO RELEASE COVENANTS

Mr. Higa arrived at 6:06 P.M.

The applicant has requested release of five of the ten lots held in covenant. The Board discussed remaining work, costs and the mechanism for ensuring completion.

Mr. Rembold gave a brief review of the subdivision. He said there are 28 units (The Cottages) on Burning Tree Road. The pool house is on Londonderry Road. There are additional lots including the 10 lots held in covenant on Thrushwood Lane. Mr. Rembold turned the discussion over to the applicant Dr. David Margulies.

Dr. Margulies said Mr. Rembold's summary was accurate. He said he is not a professional real estate developer. He said this is a hobby gone amuck. He said he provided funds to the David Ward, the previous developer, as a passive investor. The project did not go as planned so he stepped in as the developer to get back what he is owed.

Mr. Margulies said he took ownership in 2019. He said Michael Levesque is the builder. Mr. Ward is still part of the team as a consultant. He said there is also an architect who is part of the team. Most of the members of the team are from the eastern part of the state. Dr. Margulies said the project is outside of his expertise but he has previously managed projects to completion.

Dr. Margulies said he has attempted to unravel disputes. There are many unhappy people because of the long delays in completing the project. He said in 2019 he worked out arrangements to get the project back on track. He said he has worked to settle disputes to get to the completion of the project. He said he was able to get some paving done before the asphalt plants closed in the fall.

Mr. Ward said he has had conversations with Mr. Rembold explaining that there are a number of people ready to sign contracts on land. He said we can't move forward without releasing five of the ten building lots that are held in covenant. He said the value of the land is \$1.8 million. He said no certificates of occupancy will be issued until the paving has been completed. The certificates of occupancy will be the assurance of getting the project completed.

Mr. Ward said there is some landscaping that needs to be completed as well as some lighting, specifically at the intersections. There will be a final landscaping plan and cleanup of the lots. Mr. Ward said the lots along Thrushwood have been cleaned up to the cul-de-sac. Other lots need to be cleaned up and the cul-de-sac needs to be paved. He said the sales are important to get. We need to get the sales locked in to get the building started. People could be in their homes between September and November.

Ms. Nelson asked if there are pending contracts on lots. Have the lots been identified that people want?

Mr. Ward said yes they have been identified. People are ready to put deposits down.

Ms. Nelson said we haven't seen the identified lots.

Mr. Ward said we haven't identified the lots for you.

Mr. Hankin said there is a problem because two of the lots have been sold and built on.

Mr. Ward said no.

Mr. Hankin said lot #2 sold for \$736,000 and lot #13 sold for \$749,000. He asked how this could happen.

Mr. Ward said those lots are mis-numbered. He said lot #2 is 3 Thrushwood Lane.

Mr. Hankin said that is not the information I have.

Mr. Ward said the lots held in covenant include 1, 5,6,7,8,9,10,11,14 and 15. He said 5 homes have been built, sold and closed. He said he thinks there is a misunderstanding of the information.

Mr. Hankin said he would need to go back to the Registry of Deeds to look at the deeds.

Mr. Rembold shared his screen showing the Definitive Subdivision plan from 2013 with the lot layout of Phase 2, lots 1-16. He said he thinks Mr. Ward is accurate. Lots 3, 4, 12 & 13 were sold.

Ms. Nelson said she would like clarification of what lots are still held in covenant and what lots are being requested to be released.

Mr. Ward said lots 7, 8, 9 (he said is actually lot 13) and 10 are requested to be released. He said people are also looking at lots 1 and 16. He said there is one lot, #6, that is still available.

Mr. Rembold said the covenant was not specific to what lots were held. He said the Board can be specific now if the lot value is a question otherwise it doesn't matter.

Ms. Nelson said she had done a site visit. She said some lots have been cleared and others haven't. She said there are some site constraints that could make building difficult.

Mr. Hankin said the application has been submitted wrong. It should be re-submitted before we make a decision.

Mr. Levesque said the only lots that have not been cleared are lots 1 and 2.

Ms. Nelson said she doesn't think lot 15 has been cleared.

Mr. Levesque said lots 14 and 15 share a driveway making 15 an open lot.

Ms. Nelson said we have been told what lots are being requested to be released. A written request needs to be submitted with listing the specific lots. She asked that information also be submitted showing what lots will be left to be built on.

Mr. Ward said he would get that information to Mr. Rembold tomorrow.

Mr. Hankin said there is a lot of engineering that need to be completed. He asked if the Highway Superintendent, Sean VanDeusen, has looked at the project what needs to be done.

Mr. Rembold said he and Mr. VanDeusen did a site visit. He said the notes he submitted to the Board were based on observations from the site visit. He said there are letters from residents that were included in the materials. He said some residents are willing to forgo some features such as the sidewalks and walking trail.

Mr. Rembold said lighting needs to be installed at the Burning Tree entrance and the intersection of Burning Tree and Londonderry. He said there were a lot of trees proposed along Burning Tree Road. Does the Board want the trees planted? Mr. Rembold went through the notes sent to the Planning Board on January 26, 2021 giving estimates for the work to be completed.

Mr. Rembold recommended that the Board engage the services of an engineer to provide information about what has been done, what needs to be done and cost estimates.

Ms. Nelson said she agreed that would be beneficial to us to be able to determine what needs to be done to finish the project.

Mr. Rembold said it would be helpful to have a value on the work to be completed to compare to the value of the lots that will be held in covenant. He said holding the certificates of occupancy is a pretty good guarantee for getting the work done. He said he thought the developer's offer to hold the certificates of occupancy should be considered.

Mr. Hankin said there should be a cost estimate based on prevailing wage because if the developer doesn't finish the project the Town would have to finish and pay prevailing wage which is higher than what an outside contractor would charge.

Mr. Rembold said the costs that have been provided do not factor in prevailing wage. Asphalt costs for the Town are high. He said if the Town had to finish the project it would do the work then put liens on the lots.

Ms. Nelson said the Town would have to come up with the money up front.

Mr. Fick said the best thing would be for the developer to complete the project then the estimates would be accurate. It would be to our benefit for them to finish the project. He said he would like to see this moved along. He said it seems like a reasonable request.

Ms. Nelson asked Mr. Fick what is the reasonable request?

Mr. Fick said their request to release five lots and hold five lots. If request works, the certificates of occupancy will be held on the five lots that were released and sold.

Mr. Pachano asked what the current paving condition is of Londonderry and the cul-de-sac at Thrushwood.

Mr. Rembold said half of Londonderry is complete the rest is incomplete. A portion of Thrushwood has binder.

Mr. Pachano asked about the turnaround at the end of Thrushwood.

Mr. Levesque the binder coat stops at the circle. He said it is not good to pave over what will be dug up. He said the south side of Londonderry is unpaved because of the amount of equipment going over that portion of the road.

Mr. Pachano said funds were raised from the current homeowners to finish the paving. He said \$9300 was raised from the homeowners.

Mr. Ward said that is not correct. He said there was an assessment done by the Cottages association for homeowners to put in \$4700. Some homeowners put in \$3100. He said Dr. Margulies put in \$60,000. The homeowners agreed to put money in.

Mr. Pachano said he had heard that some people in the Cottages moved in prior to getting the certificate of occupancy.

Mr. Higa said he heard that too.

Mr. Ward said no one moved in before getting the certificate of occupancy. Some people moved in before the homes were closed on.

Mr. Pachano thanked Mr. Ward for the clarification.

Mr. Hankin said he is not opposed to the request. He said he wants everything crystal clear. Our job is to protect the Town.

Ms. Nelson said there are several hands raised. She said she would allow attendees the opportunity to comment as their input will be helpful for the decision making.

Charles Ferris said it is important to look at the history of the subdivision. He said the project has almost failed twice. In 2007-2008 there were 16 lots for sale but only 3 lots sold. Mr. Ward entered the picture under a lot of opposition. In 2013-2014 the Board approved revisions to the plan with conditions. The condominiums sold quickly and easily resulting in the sale of 28 units. The house sales were slow, only 3 lots sold and there was no assurance that the other lots would sell. Now there is new interest because of the pandemic. Mr. Ferris said the request should be granted while there is new interest. There is a new backer who is extremely important to the project. There are risks for the developer but the risk to the Town is minimal. He said the release of the lots is a partial release to build the units not to sell them until the work has been completed. The contracts for the lots, with houses, start at \$850,000. The developer can't get the last 10% until the unit is sold. There is a lot of money on the table for the developer he can't just walk away.

Mr. Ferris said several letters have been sent. He said letters had been submitted on behalf of people who want to buy the land and people who want the infrastructure done. He said let's get started. If we delay until the infrastructure is completed the building won't begin until July or August. He asked the Board to move this forward and set a date for the developer to come back. He said the Board will have ample opportunity to get what they need. There is time for you to get the information you requested.

Mr. Ferris talked about the numbering of the lots. He said Lot 8 doesn't need to be released. He said he is representing people interested in lots 7 & 9. The people are ready to go. He asked that building permits be allowed to be issued. Determine what needs to be finished. The new developer is financially solid.

Stanley Brown thanked the Board for looking at the project thoroughly. He said he is one of the four homeowners from the Estates that wrote a letter of support for the request made by the developer. He said it is in everyone's interest to have the project completed. He said he supports

having the lots released. He said the project is in full compliance with the definitive plan. The definitive plan is specific about what needs to be done. He said the project will be in compliance unless the homeowners think something doesn't need to be done. A landscaping plan needs to be submitted. He said he would like to see that plan as soon as possible.

Mr. Brown said there was a lawsuit settled by the Cottages with the agreement that each owner in the Cottages would pay \$4700. The residents of the Estates agreed to contribute \$3100. He said this was not voluntary. It is something that should have been done by the previous developer. He said it wasn't an assessment. He said he doesn't expect to get the money back but maybe some of it will be recouped. He asked the Board to please approve the request so the project will get done and get it done right. He said we are relying on the Planning Board to help get it done right.

Susan Ferlauto said she is an owner of one of the condos. She said she appreciates what the Board is doing. She said she supports the release of the five lots for building purposes.

Ms. Ferlauto followed up on the money contributed by the homeowners. She said the associations are supposed to get back prorated amount. She said the first \$4700 went to lights at the intersection at Christian Hill Road. She said we would like you to understand the commitment we have made.

Mr. Pachano asked if the money contributed was over and above the agreement when the properties were purchased.

Ms. Ferlauto said yes, absolutely. She said we had to do it to get some of the work done especially where there were safety issues.

Diana Gittelman said she appreciates the initial comments. She said it has been a struggle for us to get the community into good shape. She said it is in good shape and she is happy to be here. She said she is eager to get the project finished. It will be a benefit to all for it to be finished. She said there needs to be some signs put in to replace some of the older signs which identify the units served by the various common driveways. She said the signs should be in keeping with the aesthetics of the community. She said if possible, the cost for the signs should be part of the completion estimate.

Ms. Nelson said we can't add it but we can see what was part of the original plan.

Mr. Hankin asked Ms. Gittelman if she is talking about house number.

Ms. Gittelman said yes. She said signs would be located at the street end of each cul-de-sac for what house numbers are located in that cul-de-sac. She said the signs aren't expensive but they are necessary.

Ms. Nelson asked if there are numbers on each of the houses.

Ms. Gittelman said yes but they can be done more professionally to make the address more clear for deliveries. She thanked the Board for their attention to the request.

Steve White said most of what he had to say has been said. He said he supports the comments made by Mr. Ferris. He said we need to strike while the iron is hot to sell the lots. He said it is in our best interest. He said he has a great deal of faith in Dr. Margulies getting the project done right. He said things have started to move since he has taken over.

There were no other public comments. Ms. Nelson said if anyone has any other comments to raise their hands.

Mr. Reed asked if it will behoove us to release the covenant and are we going to take our time to make a decision?

Ms. Nelson said this is the crux of the issue. To move forward we need additional information. The real estate opportunities can be leverage to get the deficiencies corrected. She said she thinks it will be in the Town's best interest to allow construction to continue.

Mr. Fick said if the developer walks away the Town will have to rely on selling the remaining lot to cover the costs to finish the project.

Mr. Rembold said the value of the land would cover the cost to finish the project.

Mr. Hankin said the assessed value is not the true value. He said it is not a slam dunk. A lot assessed for \$175,000 doesn't mean the Town could recoup \$175,000.

Mr. Fick said waiting for the certificates of occupancy is good leverage for the Town. He said the homeowners are willing to do without the sidewalks and walking path. He asked if the Board has the power to modify the definitive plan.

Mr. Rembold said he thinks the Board can modify. He said the homeowners need to provide a list of what they can forgo and what needs to be finished. He said he would be willing to meet with them. He said it is murky to waive items at this point. He said if the Board has the

assurance that modifications are agreed upon by the homeowners it is unlikely a modification would come back on the Board in a negative way. He said it is murky but the risk is low.

Mr. Fick said he would like to see the definitive plan for a list of what has to be done.

Mr. Rembold added a list of what they don't want done also needs to be looked at.

Mr. Hankin said the parking lot discussed earlier that still requires paving is at the pool house.

Mr. Rembold said yes.

Mr. Higa asked if all the infrastructure would be completed after the build out. He wondered if there would be an issue of the roads being torn up when the last five lots are done. He agreed the project should be completed as soon as possible.

Mr. Rembold said we will need a time line for the paving. We will want to know if it will be finished before the certificates of occupancy will be issued.

Mr. Higa said if the five lots being released are finished an escrow account could be set up with enough money to complete the roads, then the rest of the lots can be completed. He asked if they will have to come back to us to release the five remaining lots held in covenant.

Ms. Nelson said practically speaking all that should be left to do is the top course of asphalt and some landscaping. She said she hears what Mr. Higa is saying but she said there is not much risk.

Ms. Nelson we will ask for a summary of what has to be done and what remains. We will ask for the amount it will cost to finish the work at prevailing wage to determine if the sale of the remaining lots would cover the cost.

Mr. Hankin said this is the fourth developer Ms. Shaw and I have seen over the last 20+ years. He said the Board needs to be cautious. He said he is sure Dr. Margulies is well intentioned but he is still a developer. He said he wants assurance so the Town is not put at risk.

Ms. Nelson said the people in the community are the Town too. She said we need to strike a balance.

Mr. Pachano said the Town is at risk now to a certain extent.

Mr. Reed said he agreed with Mr. Hankin.

Ms. Nelson said we will get clarification on what entities exist to manage the property and what element may or may not be installed.

Dr. Margulies said he is the sole entity of the Limited Liability Companies that have taken over the development. He said the over-arching Barrington Brook Homeowners Association, of which he is the head of, has sub-trusts of the Cottages, the Estates and the Burning Tree homeowner associations.

Mr. Rembold said there are individual owners who are trustees of the Estates.

Mr. Brown said Dr. Margulies is the sole trustee of the Estates. There have not been enough lots sold in the Estates to turn the association over to the homeowners.

Mr. Rembold said there needs to be agreement among the owners of the Cottages and the Burning Tree association and any other entities on what can be left out of the project. We need everyone in agreement whether the associations are up and running or not.

Mr. Fick agreed. He said there needs to be a consensus of the homeowners.

Ms. Nelson also agreed that a consensus of the residents needs to be in place before waiving any elements of the plan. She said she has the following list of what needs to be done:

Clarification of the lots to include identification of the lots to be released and the lots to remain in covenant

Engineering certification

Items to be installed and the cost to install figured at prevailing wage

What conditions of the Definitive Plan have not been met

Consensus from the community of what would not be needed

Schedule for completion

Schedule function of what has been done and certified and what is outstanding

Mr. Hankin requested clarification of whether all the work will be done when the five certificates of occupancy are released or if work will still need to be done when the last five lots are released.

Ms. Nelson agreed.

Laurie Linder, a trustee of the Cottages, said in our letter we delineated what we have relinquished. We are not asking for large poles lamps or sidewalks along Burning Tree Road.

We can provide more if needed. She said the walking trail is not in. No one knew where it would be. We did not have any leverage to hold the developer accountable to finish the project. She said she wanted to make that point. She thanked the Board for their work.

Mr. Pachano asked if when we vote we can put conditions on the release. He said he is concerned about additional expense to the homeowners to complete the project.

Ms. Nelson said she didn't know if it would be permissible.

Mr. Higa said it could get murky because it has taken so long to get the project finished. He said ultimately the associations will be responsible for everything.

Mr. Pachano said he didn't know if the money will go back to the homeowners. He said they deserve a clear explanation. He said he feels for the homeowners.

Mr. Rembold said we need everyone in agreement.

Dr. Margulies said the developer needs to be in agreement too. He said the project has failed three or four times. For us to continue it has to be fundamentally feasible. He said the costs are going up. He said he wants the project completed but if it is not cost effective it won't be done. He said we are all in a situation of dealing with prior failures. We are dealing with the world as we find it. We want it completed and completed properly. He said there are four associations and a developer.

Ms. Nelson said she appreciates Dr. Margulies comments. She said the more deficiencies the more complicated. She said she wants to move quickly but we want a solid base to move the decision forward. Dr. Margulies agreed that the list is reasonable. We will work on it quickly. We cannot make commitments to the new buyers without having everything in place. She said it has been a rough ride for the initial buyers we hope it will be better now.

Mr. Rembold said the next meeting is February 11. He said this can be discussed at that meeting if all the paperwork has been submitted.

Mr. Hankin asked that the paperwork be received in time for the Board members to review it before the meeting.

Mr. Higa asked that it be clear about when the work will be completed.

Ms. Nelson said we are asking them to provide a schedule. We can't put a schedule together. We will get it in the next round of information.

Mr. Higa asked if we are asking them to complete everything before the last five lots are completed.

Ms. Nelson said it is up to them to figure out what they need to do.

Mr. Hankin said it is the Planning Board's decision to waive anything in the approved Definitive plan. He said the residents are important but the Planning Board needs all of the information requested to make a decision.

Ms. Nelson said that is a good point.

TOWN PLANNER'S REPORT:

Mr. Rembold said there will be recommendations to the ZBA and the Selectboard on a special permit at the next meeting. He said he will send the special permit out. He said the Board members can advise him if a site visit is required.

Mr. Rembold said he anticipates that Barrington Brook will be on the next agenda but the nursing home project will be continued.

Mr. Hankin asked if the continuation is at the request of the applicant.

Mr. Rembold said yes.

Charles Ferris had his hand raised so Ms. Nelson allowed him to make an additional comment.

Mr. Ferris said the Board will need to determine what needs to be waived. He said there is an agreement between all of the homeowners associations and Burning Tree. He asked that the Board get as much input as it can. He said the Board should decide what should or shouldn't be built. He said he is worried about the Board demanding a decision from an association that doesn't exist.

Ms. Nelson said there are people that have commented over the years. We want everyone to have an opportunity to participate.

BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:

Mr. Pachano said he is disappointed that zoning discussion wasn't on the agenda.

Ms. Nelson said she anticipated that the meeting would go long.

Mr. Higa said the CPC voted to send all of the Step 2 applications to the Annual Town Meeting. He said he echoes Mr. Pachano's comment. He said there could be an agenda item as a place holder.

Ms. Nelson said we are always able to talk about it through this agenda item.

Mr. Higa asked if it could be an agenda item all the time.

Ms. Nelson said she is trying to work through getting test cases together. She said she is trying to work through all of it.

Mr. Higa said having a zoning place holder on every agenda would benefit all of us.

CITIZEN'S SPEAK:

No one spoke.

Having concluded its business, Ms. Nelson adjourned without objection at 8:01 P.M.

Respectfully submitted,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary