

TOWN OF WATERBORO
PLANNING BOARD

WATERBORO, MAINE



MINUTES
SPECIAL MEETING
March 31, 1976

This meeting was opened at 7:45 p.m. by Chmn. Douglas Foglio, to continue the discussion of the application on Brookside Subdivision proposed by Nolette & Payeur Assoc. Other members present were Raymond Kellett, Ronald Dyer, Sheryl Smith, Frank Goodwin, Stephen Kasprzak and Philip Gardner. At the request of the Chmn. all present identified themselves. Other than the Board, those present were Mr. John Fallon of Land Management Inc., Mr. Peter Harriman grantor of the parcel to be subdivided Mr. Payeur, Mr. Plumb, Atty., for the applicant, Mr. Flynt, surveyor for the applicant and Roger Elliott, Town Counsel. (Abutters Plummer and Smith, although notified of the meeting by phone by the Secretary, were not present). The meeting, was taped, the Board using 3 recorders. Mr. Fallon had his own.

The Board, just prior to the meeting, had met in executive session with Town Council, Mr. Elliott to discuss the Board's legal position relative to various aspects of the matter. The issue was the contest of Mr. Fallon to the original approval of the original Preliminary Plan which he insisted be rescinded claiming it was granted on insufficient and erroneous information.

Mr. Fallon opened the discussion by registering his objection to being excluded from the executive session. The Chmn. explained that the Board is allowed by law to hold such a session to discuss its legal position and responsibilities as long as no action is taken. Mr. Fallon said he disagreed. The Chmn. attempted to allow Nolette & Payeur present their material but, Mr. Fallon interrupted stating that he believed that the precedential matter was his request that the Board's approval of the Preliminary Plan on Jan. 7, 1976 be rescinded. Mr. Elliott, with permission to speak, suggested that the meeting proceed by the applicant presenting his arguments, any objections stating their arguments with a reasonable

time for rebuttal except that if the objector, Mr. Fallon, had some preliminary statement to make, he be allowed to do so after which the above procedure would be followed. Mr. Fallon contended that Nolette and Payeur, Assoc. came before the Planning Board in violation of the rules and regulations and got preliminary approval, given in January (actually Jan.7,). He said that he, then, (actually by a Feb.28th. letter) protested that the plan was improper on a very variety of grounds and asked the Board to reconsider and recind their approval given in January. He said that this is the first order of business as he understood it. He maintained that neither he nor other abutators had been duly notified in accordance with the Subdivision Regulations and, therefore, had had no knowledge of or opportunity to register their reaction to the proposed subdivision. He said that he had made his objections on a number of valid reasons; now the question was: was the applicants plan proper, was the approval given proper and what action was the Board going to take upon his objections. He said that had advanced very substantial grounds for it.

Mr. Elliott suggested that Mr. Fallon restate his objections and let the Board deal with them one at a time.

Mr. Fallon proceeded stating as number one the fact that the applicant submitted a plan proposing to develop a parcel to which they had not evidenced right, title or interest. Mr. Elliott stated that he had a copy of an adequate purchase and sale agreement. Mr. Fallon pointed out that that was filed with the Board the previous week- not prior to approval. Mr. Elliott informed Mr. Fallon that if he finds some error in the failure to physually file(with the Board) such an agreement than his objection would be noted. Mr. Elliott said that he belived he was given to understand that the applicant did, prior to approval, say that such an agreement did exist. He pointed out that a copy had now been filed with the Board. Mr. Fallon said that this did not satisfy the law. The Chmn. pointed to a paragraph in the Subdivision Regulations of the Town of Waterboro which stated that the Board "may" require such evidence which, in this case, the Board did not. Mr. Fallon stated that his understanding of the "State" law is that it is "required". He asked Town Council if, in his opinion, this was a valid objection. Mr. Elliott said it was not.

Mr. Fallon's second objection was that the applicant did not own or have right, title or interest in the land shown on the plan that the Board approved.

Mr. Elliott asked what section he referred to. Mr. Fallon pointed to property then of Grace Smith, Theodore Plummer and land recently acquired by Land Management, Inc., formerly of Moulton. He said that the fact the applicant has amended their plan is proof of his allegations.

Mr. Elliott said that he, in executive session, had advised the Board that it has no jurisdiction to arbitrate boundary disputes. He told Mr. Fallon that he understands that the applicants have asserted that they own the land depicted within the plan and that if he (Mr. Fallon) had any evidence to offer to establish otherwise, preferably by someone with expertise in such matters, the Board will weigh that evidence and make a determination. Mr. Elliott said the Board is basing its attitude upon the assertions of the applicant and the inferences of the land surveyor. Mr. Elliott then addressed himself to the Smith property which he said he understood had been recently acquired, looking to Mr. Plumb for verification who corrected him saying that all land was yet under contract. Mr. Elliott stated that the purpose of the meeting was to receive an amended plan to which Mr. Fallon disagreed stating that we were there on his view that the approval given on Jan. 25th. (actually Jan. 7) was based upon erroneous information. Mr. Elliott called Mr. Fallon's attention to the fact that we were there not merely to provide a place for him (Mr. Fallon) to speak, but also to conduct the business of the Planning Board. He further stated that he understood that the applicant had an amended Preliminary Plan which he wished to present and that the applicant has submitted evidence (at the March 24th. meeting) that he has right, title and interest to the Smith land with which he, Mr. Elliott, is satisfied that the applicant had met his statutory obligations at that juncture.

Mr. Fallon stated that back in January they had filed a plan, that that was the plan which was approved, and that was what we were discussing, and did they own that land in January. He pointed to the fact that, by their own evidence, there was no registered land surveyor's seal on the plan. He contended

that the plan was just a layout done by Land Use Consultants, Inc. and that now, as a result of information brought in by the results of his complaint, they now admit that they didn't own the land claimed by Land Management, Inc. and the land owned by Smith. He, Therefore, claims that the approval was based upon faulty information.

Mr. Elliott asked Mr. Fallon if it would be satisfactory to him if the applicant withdrew their previous application and submitted the amended plan as a new submitted,. Mr. Fallon emphasized his contention that the Board should, instead, rescind its January approval, then, if they want to bring in a new application it would be "a whole new ball game". He said that his only interest was that the applicant stay on his property and to subdivide only what he owns and that it does not include any Land Management , Inc. property. Then he stated that if they are talking about withdrawing their original plan and submitting a new one that would be alright with him just so long as it is clearly understood whether they withdraw it or the Board rescinds it, that the approval of the (original) Preliminary Plan was null and void precisely as he came to the Board and told it 3 weeks ago, since it was based on erroneous information

Chamn. Foglio pointed out to Mr. Fallon that a;; of his objections raised so far have been removed on the amended plan.

Mr. Fallon again stated that he was rederring to the original plan that was either out or it's either false and we are starting all over again. He would not accept the fact that they can come in and amend it without a hearing and without notice.

Mr. Elliott told Mr. Fallon that this objection was noted, and to proceed with his third objection. Mr. Fallon asked if he should go through 'with all his objections; Mr. Elliott said he should do it the quickest way possible.

Mr. Kasprzak said having read all of Mr. Fallon's objections and listened to his arguments he had the impression that if the original application was withdrawn by the applicant or rescinded by the Board that Mr. Fallon might agree to forget the original plan and go on with the amended plan. Mr. Fallon said "no" not on to the "amended"--- now they can submit another plan or a new plan, they are perfectly at liberty to submit a new plan. Mr. Fallon said "lets play it by the

book; let them submit a New Plan and we'll run that through the mill".

Mr. Fallon's next objection was that the applicant did not conform to the Subdivision Regulations in that he did not notify the abutters by registered mail.

Mr. Elliott informed Mr. Fallon that that objection was noted and that , if Grace Smith and Therodore Plummer have lost some legal rights , they have recourse in the courts in the event this plan (the amended plan) is approved.

Mr. Fallon's next objection was that the plan did not conform to regulations as to scale. Mr. Plumb noted that a variance, on record, was granted for this non-conformity.

The Plan does not conform because it does not show all property lines nor are the abutters shown. Mr. Fallon's contention was that, since the applicant is planning to by and develop a portion of the grantor's (Mr. Peter Harriman) property it is the grantor's property that is being subdivided not just the developed area, hence the abutters consist of all those abutting the grantor's original parcel. He further pointed out that the property boundaries of Mr. Harriman's property are not shown; no perimeter survey had been shown; existing swampy areas are not shown; there was no map or survey of tract boundary certified by a registered land surveyor, tied to established reference points.

Mr. Elliott asked if Mr. Fallon was contending that the entire Harriman tract be shown. Mr. Fallon said, "absolutely". Mr. Elliott said "I disagree". Mr. Fallon's objection was noted.

Mr. Fallon called attention to the fact that drainage from the development would flow over land of Land Management, Inc. and that no agreements to that effect had been made. Mr. Elliott told Mr. Fallon that the flowage of surface water over an abutters land is of genuine concern to both the abutters and the Planning Board who should thoroughly explore any such situation and see that nobody's rights are encroached upon.

Mr. Fallon said that this concluded his objections.

Chmn. Foglio told Mr. Fallon that all his objections had been noted both when his letter was received and at this meeting and that the Board does intend to act upon whatever issues need to be acted upon.

Mr. Fallon stated that he had asked for a rescision of the January approval. Mr. Elliott asked if the Board would like to vote upon that, at least upon Mr. Fallons objections.

Mr. Kasprzak directed a question to Mr. Elliott regarding the prerogations of the Board and of the applicant to which Mr. Elliott replied that it was up to the applicant to decide upon withdrawal and up to the Board to decide upon rescision.

Mr. Goodwin asked for an opinion from Mr. Fallon as to what he would gain by a rescision that he would not gain by an amended application, and from the applicant what inconvenience he would suffer by a rescision.

Mr. Fallon did not address the question but presented, again, his case in brief. Mr. Plumb said little but that rescision and resubmittal would cause delay. For the record though Mr. Plumb stated his opinion thus: it seemed to him that when all of the abutter's to the proposed development were present at a Planning Board Meeting (of March 24th.) and expressed their approval of the amended plan, the protests of an intervenor whom the applicant certified to the Planning Board is not an abutter could serve no other purpose than to needlessly delay the project.

Mr. Fallon rebutted Mr. Plumb's statement repeating his oft stated contention that the only issue to be considered was the original plan with its attendant errors and the alleged omissions by the applicant. He asserted that all the problems that have arisen are a result of incompetency and lack of professionalism. His emphases at this time was more on the irregularities of the application. He refused to recognize the amended plan until it should be submitted with a new application, all abutter;s notified and a hearing held. He referred to the amended plan saying that it also encroaches upon Land Management, Inc. property and that if he has to he

would hire a surveyor and prove his contention to be true.

Mr. Kasperzak asked Mr. Fallon, if all the errors and omissions were corrected and all abutters notified, would it then be acceptable to him. Mr. Fallon replied that "we start over again"; that the Planning Board accepted the application and plan in good faith evidently without asking if the abutters had been notified or other pertinent questions " and now, evidently, Land Use Consultants has some contractual relationship with the Planning Board or the Town so there is some sort of a --- I am not trying to embarrass anybody, I'm simply saying that if they withdrew the plan or the Board rescinded it that we dispose of something that is on the record". He said that the Board has given approval to the plan and it's wrong and it should be corrected.

Mr. Goodwin inquired, of Mr. Fallon, in effect, if a new application were to be made would he find such things as the soil scientist's report, the Soil Conservation Service report, the street layout and profile, etc. acceptable excepting, possibly, the boundary. Mr. Fallon said that there might be other things that he might object to, but finally stated that if they will just subdivide their own land, stay off from and don't dump water onto Land Management, Inc. property, he would not even come to the meeting but would leave it up to the Planning Board to rule on it. He said his intent was not to block the applicant from developing a subdivision but to protect the property rights of Land Management, Inc., that he had seen the Beaver Ridge development, by the applicant, and considered it a credit to the Town.

Mr. Plumb pointed out, for the record, that as a part of the D.E.P. file, Mrs. Grace Smith received a certified letter for which they have a return receipt; in addition, Mr. Smith, her son, had been here last week to deliver personally to him (Mr. Plumb) the signed contract from Mrs. Smith; Mrs. Olive Moulton who at the time she received the notice of these proceedings was the record owner of the property, which now belongs to Land Management, Inc., also returned a certified receipt of the notice of the action. Mr. Harriman also returned a certified notice. One abuttor who was admittedly not given notice was here last week and stated, on the record, that he approved and had no objection to the subdivision as shown on the amended preliminary plan.

Mr. Fallon contended that these notices were all given for the D.E.P. hearing and not in conformance with the Subdivision Regulations; further, that it was Mr. Harriman's abuttors who should have received notice. Chmn. Foglio stated that this comment was noted.

Mr. Kasprzak commented that the group had heard arguments from both sides and that possibly we were at a point where the Board should seek legal advice from Town Counsel in executive session as to what the Board's next move should be.

The Chmn. asked if anyone had any more questions or any motions to make.

Mr. Goodwin wished to inquire from Town Counsel whether or not it would be advisable to bring the matter to a vote.

Mr. Elliott said he agreed. If no action at all is taken then the Board is continuing on. A motion was not required at that time unless the Board so chose. He said that the Board had several alternatives: it could choose to make the motion and act on it, it could choose to make no motion at all, it could choose to make a motion with a number of variables in it, for instance, to table consideration of the plan, as amended, for a certain period of time requiring the applicant to renotify "abuttors".

Mr. Dyer questioned if it would be in order to have a short break in order to seek advice of Counsel in executive session. The Chmn. said it would be in order and asked if anyone had question. Three said they did have.

Mr. Fallon said he saw no reasons why such questions could not be asked in open session; he didn't understand an executive session could be legally used for this purpose. Town Counsel said he was not sure that the Planning Board must receive its legal advice in a public forum; further, that as long as the proceedings in an executive session do not result in or lead to a decision or a decision is made then there is nothing illegal about one and, frankly, he would not advocate that he give his legal advice in public because his legal advice is confidential to the Board. The Chmn. asked the applicant and the intervenor if they had any objections. The applicant did not; Mr. Fallon said he did but that if it was the Board's wish to bar him from it so be it, but he just wanted the record to show that he objects.

Mr. Goodwin suggested that subsection 5 under section 404 of Title 1 "certain legal consultations" be read, by the Chmn., aloud.

The Chmn. read the same from an information pamphlet from the Maine State Planning Office, titled "Revised Planning and Zoning Statutes in Maine, 1975" containing excerpts from Titles 1, 12, 17, 22, 30, 33 and 38 of M.R.S.A. He then said that general public knowledge of counsel could, in this instance, place the Board at a disadvantage. He asked Town Counsel if he agreed to which Counsel replied that he did not disagree. Mr. Fallon said that he read that as referring to only when one is being sued.

The Chmn. inferred that the matter could well end up in court.

Mr. Elliott remarked to Mr. Fallon that his objection was noted.

Mr. Kellett moved, Mr. Dyer seconded and the vote was unanimous that the special meeting be recessed and an executive session convened for the purpose of discussing legal aspects of alternate actions. The room as cleared of all but members and associate members of the Board and Town Counsel.

The Executive Session having been concluded the Chmn. caused the visitors to be recalled and announced that the Board was ready to resume the special meeting. He said that he thought that the Board should consider Mr. Fallon's request for rescission of the Preliminary Plan. Mr. Goodwin moved and Mr. Kellett seconded that the approval, given by the Board on Jan. 7, 1976, of a Preliminary Plan for Brookside Subdivision be rescinded. By a vote of three (3) opposed and one (1) abstaining (the Chmn. not voting) the motion was defeated. The Chmn. then told Mr. Plumb to proceed with his presentation of his amended plan.

Mr. Fallon asked the Chmn. if the Board was then holding a hearing on the amended plan. The Chmn. replied that this was a meeting now opened to Mr. Plumb to describe all the differences between the amended preliminary plan and the original approved on Jan. 7, 1976. Mr. Fallon made the point that there has been no adequate or legal notice given to the abuttor's to have the plan discussed. Town Counsel told Mr. Fallon that if the proponents could be heard first then he would be given an opportunity to object. Mr. Fallon replied that he was objecting to have the amended plan even discussed since it didn't conform the rules of due notice and due process.

Mr. Plumb referred to a plan, the description of which was dated Mar. 29, 1976 and stated that a similar plan the description of which was dated Mar. 24, 1976 lacked one change which is shown on the Mar. 29th. plan and agreed that the Mar. 24th. plan is not to be further used. He referred to a letter from Mr. Goodwin, as Secretary, to Mr. Payeur received on the previous day asking for a summary of the specific differences between the amended plan and the original plan and pointed to a letter which the Board had just received, in reply, furnishing the requested information which he verbally summarized for the record. The details are all contained in the letter, which is on file, a copy of which is apart of these minutes obviating the necessity of transcribing Mr. Plumb's verbal explanation.

Mr. Dyer asked Mr. Plumb if the conservation area would be deeded to the lot owners and, hence, not public land and open to the inhabitants of the Town. Mr. Plumb stated that would be true inasmuch as it would be private property. He also stated that it would be possible to make the conservation easement so that it would be open to public use. Mr. Dyer said his though on the matter was that if it was a "resource protection" area that the Townspeople should have equal access. Mr. Elliott pointed out that in that event there would be no point in conveying the 1/18th. interest out to the lot owners because those in the subdivision are likewise Townspeople. Mr. Plumb remarked that in such a case the land would then be deeded to the Town and he doubted that the Town would approve of having tax-free land. Mr. Goodwin wanted it clarified that what was being talked about was a conservation easement similar to that in the Beaver Ridge development but minus any community association. Mr. Plumb concurred. Chmn. asked if the applicant would be willing to make it public. Mr. Plumb conferred with Mr. Payeur, then said yes, they would.

Chmn. Foglio asked if there were other submissions to be made. Mr. Plumb submitted the description which included the conservation area dated March 29, 1976 and also six (6) copies of the final revision of the Preliminary Plan. This concluded the applicant's presentation.

The Chmn. asked if there were any more questions from the Board member's. There being none he asked Mr. Fallon if he had any. He did; therefore, the Chmn. told him to proceed.

Mr. Fallon stated that he would like to have copies of all the material presented. The latest plan was indicated to Mr. Fallon. Mr. Fallon requested the surveyor to point to the boundary lines between Land Management, Inc. and Mr. Harriman's property. The Chmn. informed Mr. Fallon again that boundaries between Mr. Harriman and his abutters would not be discussed. He stated that there was what was requested: a perimeter survey of the proposed development area. Mr. Fallon asked if the Board was taking the stand that if an owner sells a section of his parcel and retains the land all around it, that the grantor's abutters do not have to be notified. Mr. Elliott suggested that the surveyor show Mr. Fallon

where the boundary line is. Mr. Fallon said that the statement was made that the surveyor attested the boundary line and he, Mr. Fallon, asked where it was. Mr. Plumb stated that the plan was a signed and sealed surveyors survey of the perimeter of the parcel to be subdivided. Mr. Fallon asked if the surveyor is certifying that this is all the property of Mr. Harriman. Mr. Plumb remarked that this was not possible because there was something over 3.8 acres belonging to Mr. Smith. Mr. Fallon asked if the surveyor is saying that all other land, exclusive of that owned by Mrs. Smith, is owned by Mr. Harriman. He asked the surveyor if he knew where Harriman's land runs (in the area of land formerly owned by Moulton and now owned by Land Management, Inc.). The surveyor said "yes". Mr. Fallon asked if he had it on the map. Mr. Flynt, the surveyor, stated that it was indicated by the title of "now or formerly of Harriman". Mr. Fallon asked where the boundary was between Harriman and Moulton. Mr. Elliott reminded Mr. Fallon that the "survey of tract" stated in the Regulations does not refer to the entire tract of the grantor but to the tract to be developed. Mr. Fallon asked Mr. Elliott if he was saying that the subdivision is only the lots out of Harriman's tract that have to be shown, that Mr. Harriman's boundaries don't have to be shown. Mr. Elliott precisely explained that it was his opinion which he had expressed to the Board that the perimeter of the platted, lotted portion of Mr. Harriman's land must be shown; that includes lots 1 through 18 as shown on the amended plan. Mr. Elliott stated that it was his further opinion that the perimeter of the remaining land of Mr. Harriman, excluding the platted 18 lots, need not be shown. Mr. Fallon still objected to the fact that the plan does not define the Harriman - L.M., Inc. boundary. Mr. Elliott stated, in essence, the Board is interested in only the land proposed for development and not in land not being developed, except for the impact of the development, be it near to or distant and that the Board has adopted his position that the outside perimeter of the remaining tract, undeveloped, need not be shown. Mr. Fallon said he understood but vigorously disagreed; that it is in violation of the Board's Subdivision Regulations- it was selective enforcement of the Board's own Regulations. Mr. Fallon then claimed that L.M., Inc.'s land was still included in the amended plan. He further contended that the plan presented was a completely "New" plan not "amended" as titled and represented by the applicant. Mr. Elliott asked if the changes violate Subdivision Regulations and got no answer to that specific question. Mr. Fallon insisted that a part of each lot No.1 and lot No.2 encroached upon L.M. Inc., land. He further claimed in effect, that the plan does not show how additional run-off is to be diverted from L.M. Inc., land. He still insisted that the boundary between Harriman's and L.M. Inc., land should have been established by the applicant and shown on the plan. He said that if he had to get the boundary surveyed and he would and "we're all going to be in court". Mr. Fallon disagreed with the statement relative to remaining undeveloped land and with the contour lines/

Quoting Mr. Fallon: "There's been some surveying up in there where they evidently tried to locate Mr. Harriman's boundary and then they haven't done so, evidently. I presume because they chopped some traverse lines across our property running some more lines up in that area. Now I've made the points that there has been no notice, I say that they have no survey -- they have no survey of the boundary, they haven't conformed

with your own regulations in anyway, shape or form; that the abutments haven't been notified, preliminary plan-- its-- I disagree its 60 ft---- its not --- it doesn't conform in that, the location of property lines etc., not done; names of all subdivisions immediately --- names of record of other adjacent parcels not subdivided including etc., not included; location and size of proposed or existing sewers, water mains, culverts and so on so forth brooks etc.---I don't see these things properly"---Mr. Plumb broke in and said that he would be happy, to point out to the Board the specific items as Mr. Fallon read them down in that check list they all were on the plan. Mr. Fallon: "Well, alright where are all the abutments of Mr. Harriman's land, Where are all the --- including across abutting streets, streams and rights of way, where are the names over here"? (pointing to land across Old Buxton Road).

Mr. Plumb claimed that that applied only to subdivisions. Mr. Fallon corrected him, reading from the 4th. paragraph under 6.1.2 on Page 7.

Mr. Elliott said the objection was noted. Mr. Fallon once again contended that there was no survey of the tract.

Mr. Fallon then referred to drainage saying that, by certification by an expert in that field, the run-off would be increased by 150 percent, and it is going to flow down into the streams. He questioned how they could make that statement when they don't indicate who owns the stream. He said that he thought that they are absolutely bound to show that they own to the streams. He stated that the map is still erroneous. Mr. Fallon said, "that these easements you are simply giving by just placing little rights-of-ways--- not only 18 lots but you're subdividing into 20 or 25 lots because your bringing rights-of-way into people who can then do whatever they see fit with their land, you have no commitment as to what is going to happen to this particular property down here, evidently its going to be a land-locked piece belonging to Mr. Harriman if they give this to the resource conservation- and that's Plummer (pointing to adjacent land) and Harriman ends up with a strip of land down here along the river with a right-of-way to it, then he can subdivide that just--- it's a piece of land that will be left all by itself for him to do whatever he wants with it not responsible to any restrictions. That is why you have that little rule in there that indicates what the remaining land and the tract is going to--- proposed use is, so that you don't give rights to people and then, as Mr.--- I haven't seen any commitment by Mr. Harriman that this going to remain a wood lot forever and ever or that wherever he owns up here is going to remain a wood lot, of from Grace Smith or from Ted Plummer. You've given rights-of-way to Ted Plummer who owns quite a substantial tract of land. And may well want to subdivide it sometime. Now, he has the right as near as I --- I haven't seen the right-of-way that they have deeded out to him --- to come in there. Same thing with Grace Smith; she has 10 acres she's selling them three and a fraction so she has 6 acres which is subject to future subdivision. We have another right-of-way which evidently you've moved over between lot 5 and 6 to land - I presume it's Mr. Harriman's up in that area"- The Chmn asked Mr. Fallon if it was his contention that the subdivider is required to

procure from all abutters a letter of intent with respect to their abutting property. Mr. Fallon said that he was pointing out that rights-of-way were being given to the abutters who are then free to do any subdivision or development they want to. Mr. Elliott commented that it would have to be subject to Planning Board approval. Fallon replied that it would not necessarily be subject to Planning Board approval; they could sell a couple of lots off without any subdivision approval. Mr. Elliott pointed out that, in his opinion, because that parcel of land, as a unit, was now being divided into 18 or 19 lots that approval for further subdivision must be obtained by Mr. Harriman to, hypothetically, develop one lot. Mr. Fallon asked if he included Grace Smith; Mr. Elliott replied, he did but then corrected himself stating that he wasn't sure just how many lots her land was being divided into. He then told Mr. Fallon that his objection was understood. Mr. Fallon asked what objection Mr. Elliott started to refer to Mr. Fallon's foregoing lengthy discourse getting only to "rights-of-ways" when Mr. Fallon broke in as follows: "They have made commitments about what they are going to do to the Brook and they don't own it in the areas where they're planning to dump water".

Mr. Fallon said he had made his case. He said that he was very disappointed that the Board had adopted the posture that it had, that he took exception to the closed meeting. He thought the plan should come to public hearing and "that there should be a minimum of 30 days". He said the Board was asking him to come in with a surveyor which is to push him to expense which he didn't think was indicated under the circumstances to get a surveyor simply because the applicant is including L.M. Inc.'s land in to; to protect their interests they have to hire a surveyor when the applicant has the burden of proof, that, it is solely upon the subdivider to show that he owns what he claims to own and that ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ that is the intention of the Regulations, and it is the intention that everybody be notified so that if anyone has objections they can be made known early. He again said that he had made his point, that he couldn't believe that his objections were noted only to be ignored. He cautioned that "his Irish is up" and assured that, in essence, the matter will be taken to court.

The Chmn. asked if anyone had anything further to add.

Mr. Goodwin moved as follows: that the Planning Board approve the amended Preliminary Plan subject to the applicant notifying all abutters of the amended plan and that a public hearing be held on consideration of the Final Plan within 45 days subsequent to D.E.P. approval of the Preliminary Plan and that the applicant provide engineering data showing that proper drainage facilities will provide for surface water-run-off. Mr. Plumb pointed out that all of the abutters have had notice and therefore, wanted to understand what action this motion, if passed, would demand of him.

The Chmn. said that he should send notice to the abutters by mail in the same manner as was done for the D.E.P. application advising them that there has been an amended Preliminary Plan filed, and include in the notice whatever action the Board takes by the motion and advise them that there will be a public hearing on the Final Plan prior to its approval.

Mr. Plumb said that the D.E.P. would hold a public hearing and asked if this meant that there would be two public hearings. Mr. Fallon pointed out that the D.E.P. hearing would normally be in Augusta. He didn't feel that Waterboro people should be inconvenienced by a trip to Augusta and favored on in Town.

Mr. Kasprzak emphasized the three important points in the motion (1) that all legitimate abutters be notified of the amended plan. (2) that there would be a hearing on the Final Plan before approval and (3) that the Board wanted unquestionable assurance in the form of detailed drawings with relative elevations, if necessary, that the additional surface water would be disposed of effectively and without any encroachment upon property of others.

Returning to the matter of the hearing Mr. Fallon voiced the opinion felt that, regardless of whether or not the D.E.P. held a hearing in Waterboro, the Planning Board should hold its own, mainly to achieve better rapport with the local people and understanding of local issues.

Mr. Plumb stated for the record that they will send to Land Management, Inc., a notice as contemplated by the vote but, in so doing, only because Mr. Fallon claims to be an abutter. However, in so doing the applicant would be, in no way, conceding that Land Management Inc., is not an abutter to the land proposed to be purchased by Nolette & Payeur Assoc.

Mr. Fallon says "not only an abutter, but, a party to the proceeding because Land Management Inc., land is a part of the parcel subtended by the amended plan.

The motion was seconded by Mr. Kellett.

The vote was carried by 3 affirmative and one abstaining.

Mr. Fallon said that if the plan is to be signed it should have the conditions on it.

Mr. Kasprzak asked Mr. Plumb if he would like to have a letter stating that the amended plan was approved and stating the conditions of approval. Mr. Plumb said he would. He further said that he thought that they would be able to convince the Board that the proposed drainage would be satisfactory. He said that he supposed he could quickly send out the notices and send to the Chmn. a list of those to whom the notices were sent. He said the thing he was interested in was to be able to tell the D.E.P. that the amended plan had been approved.

Mr. Elliott suggested that the motion be incorporated in a letter to Mr. Plumb. He said he thought that it would be sufficiently clear that every contingency need not be complied with until the Final Approval hearing.

Mr. Plumb said that the way he understood the motion was that they show evidence of having complied with the conditions at the time of the hearing along with other submissions, but for the moment they had preliminary approval.

Mr. Elliott suggested that Mr. Plumb send out the notices forthwith; Mr. Plumb concurred.

Mr. Plumb said his understanding was that, at the hearing, having complied with the conditions of the approval, the Final Plan would then be considered.

Mr. Kasprzak pointed out that the amended plan will be reviewed at the time of the hearing to see that all conditions have been met; further should the Final Plan be brought in at that time it would not necessarily be approved at that time. Mr. Plumb said he understood that.

Mr. Fallon (speaking about the present) contended that any signing of plans would have to include all the information on the conditions on which the preliminary approval was given. Mr. Elliott suggested that the record reflect, so that there is no question about this in Mr. Plumb's mind, that the motion be put in letter form, that it be stapled to the plan, and the letter will be signed as well as the copy of the preliminary plan. A note below the signatures will refer to the letter as being a part of the plan. Two plans will be signed one for the file and one for the applicant. The plan for the applicant was to be prepared and forwarded by mail. Mr. Dyer brought up the request of Mr. Fallon for copies of all discourse and plans submitted or received relative to this matter and asked Town Counsel's opinion as to whether or not the availability of this material to him or any qualified person at the Town Office would not be sufficient. Mr. Elliott said he didn't know of any duty the Planning Board has provide Mr. Fallon these copies they are, as a matter of law, public records, that he could come up and use them as he saw fit make his own duplicates, and Mr. Elliott that is all the Planning Board need do. Mr. Fallon said he was in the position as an adverse party and he would point to the fact the Board had invited the other people and failed to copy him, that these other people were invited to the meeting without even telling him the matter was coming up. He claims that as an adverse party in a quasi-judicial matter he should get copies of all discourse without having to ~~xxxxxxx~~ come to the Town Office frequently to see what has transpired - that the Planning Board office was not always open.

Mr. Plumb requested permission of the Board to review his proposed notice to the abutters with Mr. Elliott before he sent it out, There were no objections.

The Chmn. asked the Secretary to indent the plans to be signed with an appropriate statement referring to the appended letter as a part of the plan - it was done and two prints signed by all but one member. Mr. Kasprzak suggested that Mr. Fallon be given a print of the amended plan. There being no objections he was given one. Mr. Fallon remarked that he had not relinquished any of his rights as an adverse party and that could very well require further information and would expect to get it.

Meeting was adjourned at 10:35 p.m.

Respectfully submitted

Frank R. Goodwin
Frank R. Goodwin, Secy.

Approved by:

Raymond Taylor
Harold Dejeu
Shirley M. Taylor