

CARLISLE PLANNING BOARD

Feb. 27, 1968

Executive Session

Present were: H. Hosmer F. Smith T. Herndon
 J. Macone P. Swanson

The meeting was called in an attempt to reach a final decision on the definitive plan of Maynide, Inc. Mr. Hosmer reviewed for the Board the results of a meeting which he and T. Herndon had with Mr. Fallon and Mr. Raitenan, of the Planning Division of the State Department of Commerce. Mr. Hosmer explained that he and Mr. Herndon had outlined the case as objectively as possible for Messers Fallon and Raitenan, and it had been their opinion that the Board had done a very thorough job and that indeed, since the Board's Rules and Regulations provide for proposed master plan roads, there was little doubt in their minds that if the Board deemed the northerly access to be the best approach, it was certainly within its powers to require this route of the developer. Mr. Hosmer referred to other points in his memo of Feb. 16, to the Board, and concluded that for best long range planning and with regard to the best interests of the town, he was convinced that the northerly access, going from the Baldwin Road - Stearns Street intersection across land of Mass. Land Corp., and into the DeBonis development was the correct and preferable course of action. He further commented that he had obtained on behalf of the Board, a written agreement from Messers Bickford and Simonds, signed by Bickford which agreed to swap the necessary land to effect this northerly approach, (See attached copy), at no cost to the developer.

Mr. Smith desired that the Board should be certain of the legality of its position, in order that if suit were brought against the Town by the developer, the Town would be able to satisfactorily defend its position. Mr. Hosmer felt that there was little doubt of the legality of the Board and Town's rights here, and that in his opinion, the Board could more adequately defend its position with regard to the northerly access than it could if it were to require widening, by a private individual, of Baldwin. Mr. Macone had been doubtful that the northerly access offered any advantage to Town or developer, but noted that after studying the proposal of having the road come in from the north end and then going through the development and back out on to Baldwin Road, at the south end he was convinced that this was certainly an excellent solution from the point of view of public safety. He noted, that as Town Safety Officer, it had been his experience that there were an unnecessary number of accidents at turnarounds, particularly when snow plows were trying to negotiate these areas, and that the elimination of such cul-de-sac conditions was in the best interests of the Town. Mr. Swanson felt that, since he did not foresee the construction of the Benjamin-proposed connector for many years, if at all, there was no necessity of requiring the northerly access of the developer. He regarded the widening of Baldwin Road, with appropriate easements within the development for possible future access, to be a satisfactory arrangement. Mr. Herndon reviewed the Board's minutes relating to the subject, and noted various State recommendations to planning boards, which he felt gave the Board clear powers to make such a requirement of the developer, under existing conditions. He felt that it was important for the Board to establish a precedent in this matter, and in addition that the northerly access was a better solution from the point of view of traffic flow and public safety. He felt that the Board's minutes clearly indicated that the developer had been fully apprised of the Board's favoring the northerly access and also of its agreeing to consider the developer's Baldwin Road widening alternative. Mr. Smith commented that he desired to see the northerly access used,

and that he felt this would constitute a more satisfactory arrangement from the point of view of long range planning and safety, as well as a much clearer arrangement from a contractual and engineering point of view. He noted that he foresaw a great deal of negotiation and legal difficulty if the Baldwin Road widening were approved.

Mr. Hosmer then suggested that the Board's proper course of action was to disapprove the plan as presented, and suggest the alternate to the developer. The Board concurred, with Mr. Swanson dissenting. Mr. DeBonis and Mr. Hennessey, his real estate agent, arrived and Mr. Hosmer announced the Board's decision to disapprove the plan. He went on to note that the Board had arranged for a land swap at no cost to the developer, which would permit a northerly access, which the Board would be disposed to act favorably on, if submitted. Mr. DeBonis indicated his keen disappointment in view of the reasons which he had given, and his efforts to cooperate with the Board. He noted that he felt the Board really should not ask him to use the northerly access. Mr. Hosmer noted the Board's rules and regulations about future street systems, and commented that the Town and Board have strong views on long range planning.

Mr. Smith commented on the fact that the Board's engineering consultant felt that costs between the Baldwin Road widening and northerly access options would be approximately equivalent. Mr. Hosmer added that the Board also held that the Baldwin Road widening proposal would be fraught with litigation over rights of way, land ownership, Town and private developer's rights to enter into an agreement for widening a Town Way, and the like, and such legal matters could easily require three to four years to straighten out.

Mr. DeBonis said that he felt unusual and excessive pressure had been exerted on himself and the Board by residents of the Town, particularly those abutting his proposed development. Mr. Hosmer responded that the Board had one major responsibility which was to represent the best interest of the Town with regard to safety, traffic and planning, and that the personal views of any particular group concerned the Board not at all, except insofar as the Board's basic responsibility was concerned. Mr. DeBonis said that he understood, but thought that in his case a pattern of harassment by certain individual citizens might exist, which he did not appreciate. Mr. Hosmer noted that Mr. DeBonis had the right to infer whatever he wished, but that the Board had not and would not be deviated from its responsibilities by non-relevant pressures of any sort from any quarter. Mr. DeBonis stated that he did not think that the Board had acted in response to pressure, and that it had acted in good faith in regard to his development. He went on to ask the Board if he did comply with its northerly access alternative, could he reasonably expect that the Board would approve that plan. Mr. Hosmer asked the members if that was their intent, and the Board agreed that it was. Mr. DeBonis remarked that if it was the objective of certain individuals to block his development, he was fearful that such parties might successfully argue against his use of the northerly access. He went on to say that he was convinced that the Board was sincere, but what if objections were raised to his use of the northerly access. Mr. Hosmer reiterated that the Board had town planning as its object and duty, and that it would not be swayed by arguments based on the blocking of a development.

Mr. Smith suggested that Mr. DeBonis seriously consider going in via the northerly access, and then come back out on to Baldwin Road at the southerly end of the development approximately where his rejected plan showed entrance to the subdivision. Mr. Smith felt that this would substantially increase the value of the entire development, and would not require Mr. DeBonis to significantly redraw his lot lines.

Mr. Macone, speaking as Safety Officer, stated that from the point of view of public safety, the continuous road rather than a turnaround would be very much preferable, and he felt that Mr. DeBonis should include this feature if at all possible. He asked Mr. DeBonis if he thought that the northerly access would cost more than the proposed roadwork on the rejected plan. Mr. DeBonis said that he thought it would, although he could not possibly be specific as to how much.

Mr. Smith noted that he did not feel this would necessarily be the case, since he seriously doubted if Mr. DeBonis would accept the widening of Baldwin Rd. as the Board might require, because such widening could be quite expensive, if carried out properly from an engineering standpoint. Mr. DeBonis replied that he had planned to widen Baldwin Road and slope the embankments properly. He then asked the Board whether he had an option on his internal road. To wit, could he either have a turnaround inside of the subdivision, or bring the subdivision road in at the northerly access and back out on to Baldwin Road to the south. The Board discussed this briefly, and decided that in order to give the developer the greatest flexibility, it would accept either a turnaround or a southerly connection to Baldwin Road, but that Mr. DeBonis should seriously consider the southerly connection from a safety standpoint. Mr. DeBonis asked the Board its opinion as to whether the abutters would complain about the southerly connection, and the Board felt that such complaints would have no effect on its actions in this regard.

Mr. Smith then observed that it might be good, if Mr. DeBonis chose the turnaround option, to ask for an easement from the turnaround out on to Baldwin Road toward its southerly end. Mr. DeBonis said that he certainly would not resist any suggestion if it was reasonable. The Board felt that the easement would be good, if the turnaround were decided on.

Mr. DeBonis then inquired if the proposed modifications to the Town By-Laws relating to reducing paving width from 24' to 20' would be voted on at the upcoming Town Meeting. Mr. Hosmer explained that they would not, since the Board and Selectmen still had work to do in the matter, and that such modifications would possibly come at a later date during a special Town Meeting. Mr. DeBonis asked whether, if road width requirements were reduced before he had surfaced the road, the Board would consider amending the 24' requirement on his development. Mr. Hosmer said that the Board certainly could consider such a modification, if the By-Law were changed. Mr. DeBonis asked if the slope on the northerly access exceeded the Board's regulations, would he have to fill to comply. Mr. Hosmer replied that the Board would not waive its requirements on grade. Mr. DeBonis noted that if fill were required, it might cause some drainage problems on adjacent land. Mr. Hosmer said that discussion of particulars was premature, since no accurate information was available on such matters. Mr. DeBonis was given a copy of Mr. Perley's suggestions on the interior development road, and notified that the Board would require that its engineering consultant's findings be followed. Mr. Herndon asked if the Board planned to require 50' interval contour lines for the entire subdivision, as it could under its regulations, to assist in the checking of drainage adequacy. The Board felt that this was an unnecessary requirement in this case.

Mr. DeBonis then asked if the radius of the curve between Baldwin Road and the northerly connector could possibly be reduced, and the Board indicated that it thought so. Mr. Herndon remarked that Mr. Perley had said that perhaps the radius on the south side of the connector could be reduced to 22' and brought out around the corner of the stone wall, so that the road could be built close to the boundary between the Mass. Land Corp and Mr. Worth's properties. The Board also commented on the possibility of angling the connector slightly towards Stearns St. at the point where it comes out on to Baldwin Road, in order to smooth out the offset between the two streets. It felt that this would be a worth while feature. Mr. DeBonis asked if, were he to comply with the northerly

Mr. DeBonis then asked if the radius of the curve between Baldwin Road and the northerly connector could possibly be reduced, and the Board indicated that it thought so. Mr. Herndon remarked that Mr. Perley had said that perhaps the radius on the southerly side of the connector could be reduced to 22', and brought out around the corner of the stone wall, so that the road could be brought closely along the boundary between Mass Land Corp and Mr. Worth's properties. The Board also commented on the possibility of angling the connector slightly towards Stearns St. at the point where it comes out onto Baldwin Road, in order to smooth out the offset between the two streets. It felt that this would be a desirable feature. Mr. DeBonis asked if, were he to comply with the northerly access suggestion and give a sketch plan to the Board he could get a written document from the Board, in which it would state its intent to approve a definitive plan based on the northerly access, pending the working out of particulars. Also, he asked if the Board would have a second hearing on the revised plan. Mr. Hosmer replied that he saw no problem in the Board's deaving up an appropriate statement concerning its intent to approve a plan based on the northerly access, once a general layout plan was available. He also saw no reason for having an adjourned hearing, other than as a point of information for interested parties, and that it was unlikely that such a hearing would be required.

Mr. DeBonis asked what would happen if he stuck by his original plan. Mr. Hosmer said that the Board had officially rejected that plan, and that Mr. DeBonis would have great difficulty in persuading it to do otherwise. Mr. DeBonis then asked Mr. Hosmer whether, in Mr. Hosmer's opinion, the Town would defend its position in court if sued. Mr. Hosmer replied that he was certain that the Town would defend its position, and that its position was one of strength. Mr. Hosmer outlined the groundwork which the Board had laid in arriving at its decision, and remarked that it had informed itself on all the relevant possibilities that it could think of in the matter. Mr. Hosmer added, that as a lawyer, he felt there were only two grounds on which Mr. DeBonis could bring suit. The first would be the abstract question of being required to enter his development over land which he didn't own. Mr. Hosmer commented that the State Planning Department of the Department of Commerce felt that the Board is completely within its rights in this regard. The second cause would be that Mr. DeBonis owns land on a Town way and it is his right to bring his road out on the Town way at that point. Mr. Hosmer felt that the Board's and State's rules and regulations are clear on this point, particularly where public safety and long range planning were concerned, and that such regulations favored the Town.

Mr. DeBonis asked if the Benjamin-proposed connector touched any of his land. Mr. Hosmer said that the Board was convinced that it did. He went on to say to Mr. DeBonis that the Board had reviewed its minutes, and felt that no prior agreements of any sort had been made by the Board, and the minutes clearly showed that the Board had looked favorably on the northerly access as well as the Baldwin Road plan but had, once the Baldwin Road plan was presented, decided to reject that alternative.

Mr. DeBonis then asked if the internal stub easement in the vicinity of lot 10, as suggested by Mr. Perley, could be moved any. The Board felt that it could be moved enough to be brought on or near a lot line. The Board was also asked by the developer whether or not he had to give all compass locations for his lot lines, and the Board felt that such requirements might be waived.

Mr. DeBonis finally requested that the Board delay writing its official letter of rejection to him, in which it would cite all of its reasons for such rejection, and suggest its modifications until he could have a chance to go over the northerly access proposition, and perhaps bring in a sketch plan, so that both he and the Board could see what the proposed modifications might be, in detail. Then he suggested the Board could write the letter of rejection, with the modifications clearly outlined. The Board agreed to this, but the Clerk notified Mr. DeBonis that the

Board would not wait beyond its 60 day time limit, and that the letter of rejection would be written before that limit lapsed. Mr. DeBonis also asked if he could assume that he would be able to receive a letter of intent from the Board to approve the northerly access plan once it was satisfied as to plan. Mr. Hosmer saw no objection to the Board's doing this.

Following the Baldwin Road discussion, J. Macone reviewed his progress in getting the by-pass plans reduced into a more manageable size. He also asked about whether or not the connection between the end of East Riding Drive and Brook Street had ever been approved by the Board, and if the bond had been released, since that road was in the Town Meeting Warrant for approval. The Clerk did not know of any bond concerning the road, and the Board generally thought that it had not approved the road, although final resolution as to whether or not the road met Town requirements was up to the Highway Surveyor. Mr. Macone noted that the connecting road was poorly brought in to Brook Street and felt that the shoulders should be improved for maximum safety. The meeting was then adjourned.

Respectfully submitted,

Terry O. Herndon, Clerk