Board of Assessors Meeting  
Wednesday May 12, 2010 @ 10:00am  
Meier Room, Abington Town Hall

Present:  
Paul Zakrzewski, Chairman  
Tracey Derbes, member  
Michael Cunningham, member  
Jack Pistorino, Deputy Assessor  
Jodie Hurst, Recorder

Paul Zakrzewski called the meeting to order at 10:00am.

The following representatives of the VFW attended the meeting: VFW Commander, Bill Jones; Quartermaster, Rich Mays; Quartermaster, Brian Carroll; Member, Joe Colantoni

The representatives of the VFW discussed the 8 of 58 filed by the Deputy Assessor, as well as the disposition of the bills generated and addressed to "Owner Unknown." The Board indicated that if it were deemed necessary to re-commit the bills, it would not be done until after June.

VOTED: Motion of Tracey Derbes, seconded by Mike Cunningham to re-open the discussion of the 201 & 205 Jean Carol Road abatements. 2-0 vote. Paul Zakrzewski abstained.

Paul Zakrzewski temporarily steps down as chairman in order to participate in the discussion.

Paul Zakrzewski brought documents from the Registry of Deeds, as well as the Planning Board Minutes from October 2008, and other Planning Board documents for the Board to look at.

In 2008, Mr. Thompson signed a covenant conveying the property to the town & Mr. Zakrzewski signed a covenant in 2004. Paul Zakrzewski’s position is that you have no choice but to sign the covenant if you want to start working on a development. He maintains that the lot is un-buildable and worthless due to the circumstances and that the lot is, in effect, being held hostage. Mr. Thompson & Mr. Zakrzewski could pay off the bond and release all of the lots, but if the developer fails to finish the project the Planning Board would use Mr. Thompson & Mr. Zakrzewski’s money to finish the project.

Mike Cunningham requests that a copy of the documents Paul Zakrzewski brought in be attached to these minutes.

VOTED: Motion of Mike Cunningham, seconded by Tracey Derbes to rescind the abatements granted to 201 & 205 Jean Carol Road in order to continue discussing these issues at a later meeting. 2-0 vote. Paul Zakrzewski abstained.

VOTED: Motion of Tracey Derbes, seconded by Mike Cunningham to approve the Minutes of April 14, 2010. 2-0 vote. Paul Zakrzewski abstained.

385 Centre Ave (Map 33, Lot 16):
VOTED: Motion of Mike Cunningham, seconded by Tracey Derbes to deny abatement. Unanimous vote.

The overlay and overlay estimate were given to the Board

The Deputy Assessor informed the Board that the 9-year cyclical inspections are still being performed.

The Assessors Office is still looking into two 3-ABC files.

The next scheduled Assessors meeting will be on June 3, 2010, in the Meier Room at the Town Hall.

VOTED: Motion by Mike Cunningham, seconded by Tracey Derbes to adjourn the meeting. Unanimous vote.

The meeting ended at 11:50am.

5-12-10 Minutes BOA Page 1 of 1, attachments to follow
May 14, 2009

Mr. Paul Zakrzewski  
L&J Corporation  
533 Washington St.  
Abington, MA 02351

RE: Request to release lots 33 & 34 Jean Carol Rd.

Dear Paul;

We are in receipt of Attorney Robert Barrett's letter dated May 7, 2009. This letter requests the release of lots 33 & 34 on Jean Carol Rd.

In order for the Planning Board to release any lots that were covenanted to secure the performance and completion of the roadway, surety must be posted.

If you wish to post surety to have those lots released, the Board will need review funds to have their reviewing engineers PMP Associates perform a site visit to determine the amount of surety to be held. Monies on deposit at this time for review fees were deposited by Mr. Cullen and we would need his authorization to use those funds for your request.

The lots you are referencing were covenanted and signed by both Mr. Cullen, the developer and Guy Thompson.

Please try to resolve this issue with the developer, Mr. Richard Cullen.

Sincerely,

Wayne P. Smith,  
Chairman

cc Mr. Richard Cullen
Date: May 7, 2009

Town of Abington
Planning Board
Town Hall
500 Gliniewicz Way
Abington, Ma. 02351

Re: Request to Release
Lots 33 & 34 Jean Carol Road, Abington, Ma.

Dear Sir / Madam,

It appears that by instrument recorded Plymouth County Registry of Deeds Book 36445 Page 294-296 ( copy enclosed ) certain lots ( ie. 15, 16, 17 and 18 ) at Jean Carol Road, Abington, Ma. are covenanted to secure performance and complete construction of the roadways on the subdivision plan, pursuant to the reduced bond amount. Therefor the other Lots in the subdivision should be released from the original covenants Book 28712-1-3 and Book 36119, Page 173-174. ( copies enclosed ) without payment. In addition, Lots 33 & 34 are not owed by Brick & Mortar Inc., so it could not place them as security for its obligation to complete the road.

Thank you for your anticipated cooperation in this matter.

Sincerely,

Robert J. Barrett
Know all men by these presents that whereas the undersigned has submitted an application to the Abington Planning Board for approval of a certain subdivision plan entitled "Plan of Land in Abington, Mass., Owned by P&G Realty Trust", prepared by The Russell A. Wheatley Co., Inc., dated May 28, 2008, and has requested the Board to approve such plan without requiring a performance bond.

NOW THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of Abington Planning Board approving said plan without requiring a performance bond, the undersigned covenants and agrees with the Town of Abington as follows:

1. The undersigned will not sell any lot in the subdivision or erect or place any permanent building on any such lot until the work on the ground necessary to serve adequately such lot has been completed in the manner specified in the aforesaid application, and in accordance with the covenants, conditions, agreements, terms and provisions thereof.

2. This agreement shall be binding upon the executors, administrators, devises, heirs, successors and assigns of the undersigned.

It is the intention of the undersigned and it is hereby understood and agreed that this contract shall constitute a covenant running with the land included in the aforesaid subdivision and operate as restrictions upon said land.

It is understood and agreed that lots within the subdivision shall, respectively, be released from the foregoing conditions upon the recording of a Certificate of Performance executed by a majority of said Planning Board or by the posting of surety in accordance with MGL Chapter 41 Section 81U and the Rules and Regulations Governing the Subdivision of Land in Abington, sufficient in the opinion of the Planning Board to secure the performance of the construction of ways and the installation of services required for lots in the subdivision.

3. The undersigned represents and covenants that the undersigned is the Owner (if there is more than one owner, all must sign) in fee simple of all the land included in the aforesaid subdivision and that there are no mortgages of record or otherwise on any of said land, except such as are described below and subordinated to this contract, and the present holders of said mortgages have assented to this contract prior to its execution by the undersigned.
IN WITNESS WHEREOF the undersigned, applicant as aforesaid, hereunto sets his hand and seal this date of June 19, 2008.

OWNER(S) if not applicant:

Guy R. Thompson, Trustee
P & G Realty Trust

APPLICANT:

Name: Richard Cullen,
President and Treasurer of
Brick & Mortar Development, Inc.

Address: 57 Rockwood Road, Suite 4
Marshfield, MA 02050

COMMONWEALTH OF MASSACHUSETTS

Plymouth, SS. Date: June 19, 2008

On this date, before me, the undersigned notary public, personally appeared Richard Cullen, President and Treasurer as aforesaid, proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily on behalf of the corporation for its stated purpose.

Notary Public: Shawn P. Reilly
My Commission Expires: 10/22/10
COVENANT
(Form F)

Property Owner: Brick & Mortar Development Inc.

Property: Lots 15-18 inclusive, Jean Carol Road, Abington, Plymouth County, MA ("Birchwood Knoll II" subdivision)

Know all men by these presents that whereas the Abington Planning Board has previously voted to approve a certain subdivision plan entitled "Birchwood Knoll II, Definitive Subdivision Plan of Land in Abington, Mass., Prepared for Guy Thompson", prepared by The Russell A. Wheatley Co., Inc., dated August 26, 2002, revised through February 26, 2004, said plan being recorded with the Plymouth County Registry of Deeds in Plan Book 48, Pages 416-419. The Property Owner elected to post a performance bond pursuant to MGL Ch. 41 §81U, has completed construction of some of the required roadway and utility improvements, and has requested a reduction in the amount of the bond. Further, upon establishment of the reduced bond amount, the Property Owner has notified the Planning Board of the Property Owner's election to replace said reduced bond with this Covenant to secure the performance of the remaining roadway construction.

NOW THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the Abington Planning Board’s prior approval of the subdivision plan, its agreement to reduce the amount of the performance bond, and its agreement to accept this Covenant in lieu of continuing to hold a performance bond, the undersigned covenants and agrees with the Town of Abington as follows:

1. The undersigned will not sell Lot 15, 16, 17 or 18 or erect or place any permanent building on any of such lots until the work on the ground necessary to serve adequately all of the subdivision lots has been completed in the manner specified in the aforesaid application, and in accordance with the covenants, conditions, agreements, terms and provisions thereof.

2. This agreement shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the undersigned.

It is the intention of the undersigned and it is hereby understood and agreed that this contract shall constitute a covenant running with the land included in the aforesaid subdivision and operate as restrictions upon said Lots 15, 16, 17 and 18.

It is understood and agreed that any or all of Lots 15, 16, 17 or 18 shall, respectively, be released from the foregoing conditions upon the recording of a Certificate of Performance executed by a majority of said Planning Board or by the posting of surety in accordance with MGL Chapter 41 Section 81U and the Rules and Regulations Governing the Subdivision of
Land in Abington, sufficient in the opinion of the Planning Board to secure the performance of the construction of ways and the installation of services required for lots in the subdivision.

3. The undersigned represents and covenants that the undersigned is the Owner (if there is more than one owner, all must sign) in fee simple of Lots 15, 16, 17 and 18 and that there are no mortgages of record or otherwise on any of said land, except such as are described below and subordinated to this contract, and the present holders of said mortgages have assented to this contract prior to its execution by the undersigned.

IN WITNESS WHEREOF the undersigned, applicant as aforesaid, hereunto sets his hand and seal this date of October 6, 2008.

OWNER(S) if not applicant: APPLICANT:

__________________________

Name: Richard Cullen,
President and Treasurer of
Brick & Mortar Development Inc.

Address: 57 Rockwood Road, Suite 4
Marshfield, MA 02050

Description of Mortgages: The Community Bank

Assents of Mortgagees:

Name: V.P.
Title: V.P.
COMMONWEALTH OF MASSACHUSETTS

Plymouth, SS. 

Date: October 6, 2008

On this date, before me, the undersigned notary public, personally appeared Richard Cullen, President and Treasurer as aforesaid, proved to me through satisfactory evidence of identification, which was a driver’s license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily on behalf of the corporation for its stated purpose.

GAIL F. KENERSON
Notary Public
Commonwealth of Massachusetts

5-12-10 Minutes BOA
Attachment C Page 3 of 3
FORM F
COVENANT

Know all men by these presents that whereas the undersigned has submitted an application to the Abington Planning Board for approval of a Definitive Plan of a certain subdivision entitled: BIRCHWOOD KNOLL II, dated August 26, 2002 (revised through February 26, 2004) and has requested the Board to approve such plan without requiring a performance bond.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the Abington Planning Board approving said plan without requiring a performance bond, the undersigned covenants and agrees with the Town of Abington as follows:

1. The undersigned will not sell any lot in the subdivision or erect or place any permanent building on any such lot until the construction of ways and municipal services necessary to serve adequately such lot has been completed in the manner specified in the aforesaid application, and in accordance with the covenants, conditions, agreements, terms and provisions thereof.

2. This agreement shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the undersigned.

It is the intention of the undersigned and it is hereby understood and agreed that this contract shall constitute a covenant running with the land included in the aforesaid subdivision and shall operate as restrictions upon said land.

It is understood and agreed that lots within the subdivision shall, respectively, be released from the foregoing conditions upon either the recording of a Certificate of Performance executed by a majority of said Planning Board or by the posting of surety in accordance with MGL chapter 41 Section 81- U and the Rules and Regulations Governing the Subdivision of Land in Abington, sufficient in the opinion of the Planning Board to secure performance of the construction of ways and the installation of services required for lots in the subdivision.

3. The undersigned represents and covenants that the undersigned is the Owner (if there is more than one Owner, all must sign.) in fee simple of all the land included in the aforesaid subdivision and that there are no mortgages of record or otherwise on any of said land, except such as are described below and subordinated to this contract, and the present holders of said mortgages has assented to this contract prior to its execution by the undersigned.

[Signature]
Robert H. Barrett
407 Plain St.
Marshfield, MA.
IN WITNESS WHEREOF the undersigned, Applicant as aforesaid, does hereunto set his hand and seal this 1st day of March, 2004.

OWNER(S) IF NOT APPLICANT

Paul Zakrzewski, Trustee of P&G Realty Trust

Paul Zakrzewski, Pres & Treas of Arlington Rubbish, Inc.

Paul Zakrzewski, Pres & Treas of L&J Corp.

Description of Mortgages:

________________________________________

(Give complete names and Registry of Deeds reference)

Assents of Mortgages:

________________________________________

________________________________________

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss March 1, 2004

On this 1st day of March, 2004, before me, the undersigned notary public, personally appeared Paul Zakrzewski, as Trustee of P&G Realty Trust, proved to me through satisfactory evidence of identification, which was driver's license to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public Shawn P. Reilly
My commission Expires 10/22/2010
Plymouth, ss  
March 1, 2004

On this 1st day of March, 2004, before me, the undersigned notary public, personally appeared Paul Zakrzewski, as President and Treasurer of Abington Rubbish, Inc., proved to me through satisfactory evidence of identification, which was driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public  Shawn P. Reilly
My commission Expires  10/22/2010

Plymouth, ss  
March 1, 2004

On this 1st day of March, 2004, before me, the undersigned notary public, personally appeared Paul Zakrzewski, as President and Treasurer of L&J Corp., proved to me through satisfactory evidence of identification, which was driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public  Shawn P. Reilly
My commission Expires  10/22/2010
COVENANT

Know all men by these presents that whereas the undersigned has submitted an application to the Abington Planning Board for approval of a Definitive Plan of a certain subdivision entitled: BIRCHWOOD KNOLL II, dated August 26, 2002 (revised through February 26, 2004) and has requested the Board to approve such plan without requiring a performance bond.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the Abington Planning Board approving said plan without requiring a performance bond, the undersigned covenants and agrees with the Town of Abington as follows:

1. The undersigned will not sell any lot in the subdivision or erect or place any permanent building on any such lot until the construction of ways and municipal services necessary to serve adequately such lot has been completed in the manner specified in the aforesaid application, and in accordance with the covenants, conditions, agreements, terms and provisions thereof.

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3. The undersigned represents and covenants that the undersigned is the Owner (if there is more than one Owner, all must sign) in fee simple of all the land included in the aforesaid subdivision and that there are no mortgages of record or otherwise on any of said land, except such as are described below and subordinated to this contract, and the present holders of said mortgages has assented to this contract prior to its execution by the undersigned.
"BIRCHWOOD KNOLL II
Definitive Subdivision
Plan of Land
ABINGTON, MASS
prepared for
GUY THOMPSON
Scale: 1 Ins. : 400 ft.
August 26, 2002
THE RUSSELL A. MEATLEY CO., INC.
LAND SURVEYORS & ENGINEERS
700 BEDFORD STREET
ABINGTON, MASS.
Put the lawyer on the agenda and inform Atty S Reilly. Thankyou Liz, Wayne

In a message dated 5/21/2009 6:18:43 A.M. Pacific Daylight Time, Ishea@abingtonmass.com writes:

Wayne,

Paul Zakrewski called re: the letter he received from the Board regarding the lot release up at BW Knoll II you basically told them to work it out... his lawyer wants to meet with the Board in June... just a reminder we do not have funds for legal counsel to review this... please advise

Thanks

Liz Shea

Recession-proof vacation ideas. Find free things to do in the U.S.
Hi Liz,

Since the lots are securing the project the developer must give us additional security before we release the lots. If the developer falsely gave us the lots then it is between the two parties. Let them work it out. In the meantime ask for more funds from developer (Cullen). Shawn can probably work this out. Not today as he is not available because of the funeral. Suggest Paul talk with Shawn.

On a separate note... Bill Creighton called a few minutes ago. Wanted to know why you could not give him 2 copies today. I said you might be there but you are not always working in the Planning Dept. but also the Selectmen's office. I don't know all the work you have to get out and can not help him further. She will have it Monday like she promised.

Have a good one, Wayne

In a message dated 5/8/2009 10:36:59 A.M. Eastern Daylight Time, Ishea@abingtonmass.com writes:

Wayne,

Paul Zakrewski dropped off a request to have certain lots released from the Birchwood Knoll II covenant... The request was made by his Attorney. The situation is complicated... two covenants were previously signed for the entire project... he and Guy Thompson then sold the project to Dick Cullen. Dick Cullen, as you recall, represented by Shawn Reilly offered 3 covenants covering about 11 lots for surety to get release on some of the other lots.

It turns out that one of the covenants (signed by Guy Thompson) is for land not owned by Dick Cullen... but it was accepted and recorded for surety.

Now for the fun part... we are out of funds in the legal budget to have this situation reviewed. I will put it on the June agenda but do not know how the Board wants to proceed. You could ask Paul Z to pay the legal expenses to have the situation reviewed. In addition, the biggest question will be how much work has been done since the release of those first lots... I cannot send PMP out to do a review because the money on deposit is from Dick Cullen and he is not the one asking for the release....

Please advise!

Thanks

Liz Shea

5/8/2009
The Abington Planning Board held a meeting on Monday, October 6, 2008 at the Abington Town Hall at 6:00 P.M. The members present were Chairman, Wayne Smith (WS), Bruce Hughes, (BH), Tim Barry, (TB) and Jeff Rangel (JR). Patrick Carerra (PC), PMP Associates was also present.

CALL TO ORDER: The meeting was called to order at 6:00 P.M.

FORM A APPLICATIONS:

A Form A application for 392 Randolph St. was left for the Board to act on. A review by PC brought up some issues. The Board would like to see the setbacks on the plan as well as a note on the plan if the existing garage was to be taken down as well as the zoning dimensions. They will review the plan at the next meeting.

Motion to have the surveyor resubmit the plan with the requested information by JR second BH voted.

APPROVAL OF MINUTES:

WS asked that the minutes from September 8, 2008 be amended to reflect that the Board decided to hold the occupancy of the bays at 1035 Bedford St. addition, not the retail space on the street level.

Motion to approve as amended by BH second JR voted.

CORRESPONDENCE:

WS read a letter from J. Holmgren the engineer for Century Estates who is asking the Board to approve a "minor" modification to the approved subdivision plan.

PC advised that the reviewing engineer does not know the impact to the approved plan without revised drainage calculations.
The Board requests that a letter be sent to Mr. Holmgren asking for revised drainage calculations.

SITE PLAN REVIEW CON’T 7 GREEN ST.;

WS read a letter from Russell Wheatley & Co. asking for a continuance for this site plan review. Motion to grant continuance to the November meeting by TB second BH voted.

BIRCHWOOD KNOLL II DISCUSSION ON BOND:

The Board has received another bond reduction request as well as a request to use lots as surety for Birchwood Knoll II.

Attorney Shawn Reilly representing Mr. Cullen of Brick & Mortar development explained to the Board that Mr. Cullen has the option of choosing his form of surety under Mass General Law, Chapter 41 Section 81U. Currently there are 3 covenants on the parcels that make up the development. He is asking the Board to hold a covenant on 4 lots. In addition, the Board has separate covenants on the lots for the Clemmons lot and lots 32,33,34 and lots 3,4,5, and lots 30A,30B,30C and lot 30D.

Mr. Cullen added that he everything is done except for the top coat which he doesn’t want to do until the houses are built.

JR is concerned the Board is setting a precedent. Even though Mr. Cullen has done the majority of the subdivision work up front, other developers don’t and the Town could be stuck with the road not done.

WS expressed his concerns about this form of surety as well. He advised the other Board members that that the Board used to accept lots as surety but found that when developers did not finish a project the Town had no cash to complete it, just lots.

There was general discussion on the various ways of providing surety, in this climate many banks are in danger of being unable to provide the credit needed.

Attorney Reilly assured the Board that the Mortgage holder has assented to the Town of Abington’s right to the first mortgage on these lots. He also said that the statute of the state is what it is and that they (he & the developer) are offering 10 lots in total for surety.

TB asked if the lots being provided for surety were buildable lots. Attorney Reilly replied that they were full size buildable lots, 1 lot has a drainage swale in the back.

Attorney Reilly also stated to the Board that if one of those lots held by the covenant is sought after by a buyer then the developer would have to come back to the Board for release. WS stated at that time the Board could ask for cash surety.
Motion to accept the amount of surety required for the completion of the Birchwood Knoll II subdivision as $214,245.00 a reduction from $294,228.00 by TB second JR voted.

Again the question of cash surety arose and the response was that the Board could require cash surety when the developer requested that the lots held by the covenant to be released.

Motion to accept the covenant as surety, in lieu of cash, in the amount of $214,245.00 by TB second JR voted.

The Board discussed meeting prior to Town Meeting on October 27, 2008. Motion to meet at either 6:00 p.m. or 6:30 p.m. TBD prior to the Special Town Meeting by JR second BH voted.

Motion to adjourn at 7:20 P.M. by BH second TB voted.

Respectfully Submitted,

[Signature]

Elizabeth Shea
Recording Secretary