



# City of Westbrook

## DEPARTMENT OF PLANNING

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**WESTBROOK PLANNING BOARD  
TUESDAY, JANUARY 4, 2011, 7:00 P.M.  
WESTBROOK HIGH SCHOOL, ROOM 114  
Minutes**

Present: Ed Reidman, (Chair) (Ward 5), Rene Daniel (Vice-Chair) (Ward 1), Dennis Isherwood (Ward 2), Scott Herrick (Ward 3), Cory Fleming (Ward 4), Rebecca Dillon (Alternate), Greg Blake (At Large), Michael Taylor (At Large)

Absent:

Staff: Molly Just, Richard Gouzie

**Chairman Reidman called the Westbrook Planning Board meeting to order at 7:00 p.m. in Room 114 of the Westbrook High School.**

*MINUTES MAY NOT BE TRANSCRIBED VERBATIM. SECTIONS MAY BE PARAPHRASED FOR CLARITY. A COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING ENGINEERING, PLANNING AND CODE ENFORCEMENT at 207-854-9105 ext. 220 and lgain@westbrook.me.us.*

**1. Call to Order**

**2. Chairman's Report - Calendar Year 2010**

**Ed Reidman** could I have a motion to refer the Chairman's Report to the Mayor, City Council and Mr. Bryant?

**Rene Daniel** so moved.

**2<sup>nd</sup> by Michael Taylor**

**The Vote was unanimous in favor 7-0**

**3. Election of Officers**

**Rene Daniel** it gives me great pleasure to nominate Ed Reidman for Chair.

**2<sup>nd</sup> by Michael Taylor**

**Ed Reidman** is there any other nomination to come before the Board?

**The Vote was unanimous in favor 7-0 (Chair abstaining)**

**Ed Reidman** can I have a motion to nominate Vice-chairman?

**Dennis Isherwood** I Nominate Rene Daniel for Vice-Chair

**2<sup>nd</sup> by Michael Taylor**

**Ed Reidman** are there any other nominations?

**The Vote was 7-0 (Vice Chair abstaining)**

**Continuing Business**

4. **Subdivision Amendment – Westbrook Estates/Miles Lane – SJR Engineering, Inc on behalf of Fortin Construction, Inc to amend lots 4 and 5, the approved landscaping and private drive. The developer respectfully requests a reconsideration of the motion to deny the subject amendment. Tax Map: 8, Lots: 604 and 605, Zone: Residential Growth Area 1.**

**Ed Reidman** at this point is there a motion to reconsider?

**Molly Just** Staff requests reconsideration and supports this – road constructed higher than private way – remain as built – no problem –

**Michael Taylor** I would like to make a motion to reconsider the Subdivision Amendment – Westbrook Estates/Miles Lane –Tax Map: 8, Lots: 604 and 605, Zone: Residential Growth Area 1.

**2<sup>nd</sup> by Greg Blake**

**Ed Reidman** what will happen if this passes, we will be back to the motion that was on the table at the previous meeting.

I will not be voting on this as I did not attend the previous meeting.

**The Vote was unanimous in favor 7-0 (Ed Reidman not voting)**

**Ed Reidman** since I was not at the meeting, someone made a motion to approve and it was defeated as a 3-4 vote; with the four being the majority that was opposed.

**Molly Just** Staff also respectfully requests that the Planning Board reconsider the motion. Staff supports this amendment.

The concerns were landscaping, lighting and the condition of the Private Way. They are not asking for any waivers, they are just asking that the Private Way remain as built not as approved. The original landscaping request was to reduce the amount of landscaping. That has since changed and they have planted most of the additional landscaping plants. The developer has also reinstalled different lights in keeping with a neighborhood scale. Staff supports this amendment and requests you approve this project.

**Ed Reidman** again I will be abstaining from voting as I did not attend the previous meeting.

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**Don Fortin** I am the owner of Fortin Construction if you will bear with me I will present the history and how we got here today. When we presented this last time we did a poor job with the presentation last time and we thought that with the Home Owners Association support, that would be enough to pass this Board. We did a poor job and I wish to thank the Board and the City Staff has been great to work with. They spent a lot of time with me to enable me to bring this back before this Board for reconsideration. I appreciate that.

I truly believe we have a unique circumstance this is not a subdivision unlike any that you have ever done, definitely none that I have ever been involved with. Although I did not appreciate the speech at the last meeting, I agree with what he said, it was not applicable for this situation. That is why I said when he was speaking, that we did not do a good job explaining what the situation was.

I do not want to put the Board in a situation where you are setting a new ruling where you could be forced by other developers in the future for changes to a plan that has been approved. I know your time is precious and I do not take that for granted, so do not want to come before you, then six months or three years come back and ask for this to be relieved.

I do not think that is the situation here and if you hear me out, I will explain why. Some measures that the City has taken I think will alleviate this problem from happening in the future. A letter of credit for all the improvements is a first step to avoid this.

I am actually a victim circumstance in this situation. I know that I am considered the developer as I have taken over this project, but I actually partnered with the original developer, Steve Miles, just so I could be the exclusive builder, that was my role in this situation. I was not the developer, I did not come before you, I did not ask for this plan to be approved this way. Steve Miles approached me and asked me to develop his lots for him and build the houses. That was strictly my responsibility. I am not the one who made the obligations, nor am I the one that came before you to ask that you forgive the obligations.

The original developer did not know what he was doing and had never done a sub division before. Maybe some of the Board members will recall this original plan. He had never developed a plan before and did not realize what he was getting involved with. I am in this situation now as I had started and almost completed two houses in this development because the improvements were being made; the City agreed to give us building permits but would not give a Certificate of Occupancy until the improvements were completed.

To jump start the project we went ahead and built two houses and I had over \$750,000 dollars invested of my money in his subdivision when he went bankrupt. I was stuck and if I had not taken the initiative there would not be any homes with people living in them at this point.

The changes I am requesting are minor compared to what it could be if you had seen it in the state that it was when I took it over.

I have asked Tim to give you his perspective on this as he was hired to be the exclusive marketing person for this subdivision. He can attest that Miles came to us and said the he had all the financing lines up, that he had the improvements taken care of and had everything done. I will not bore you with the schedule but we made him give us a schedule for the timing so we can make sure the improvements were done prior to us having our houses built. None the less that did not happen.

In all the subdivisions that I have had approved and I have done several, I have never gone back and asked for changes, I do not agree with doing that. I think once the Board takes the time to do the subdivision I agree with that. But unfortunately but the improvements on this one are unique, again there was no performance guarantee put in place and I did not know it at the time when I started doing these improvements. I was stuck finishing the improvements he did wrong

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and finish what was not completed in the first place. The reason he went bankrupt is the lots aren't worth the cost of what it is to do the improvements. I am currently \$250,000 dollars upside down just doing what I have done to honor the commitments I had for my customers.

I have done several subdivisions and have not gone back and I am not requesting changes of things that are in the Ordinance. The changes I am requesting are changes that are still not in the Ordinance. I am not sure why they were ever required at the time. Again, Miles just said yes to whatever he was asked and did not run the figures to see that it was not feasible to do the improvements that were being required and are still not required today. Paving is not in the Ordinance and curbing still is not today.

When I took over there was a base coat of paving and the City reminded us that there was a top coat required and that we had to plant trees. We did that the same year as when we met with the City Officials.

With the curbing not being in the Ordinance, we never considered it as it was not shown clearly on the plan. It is a five inch square on the last page and not clearly delineated and is not represented on the street plan; it looked as though it was an after thought. When we came before Staff to change the lot line between lots 4 and 5 is that when we were made aware of the curbing necessity.

As Molly explained if you were giving us a variance or some exclusion of an Ordinance I can understand and I can totally agree with what you are saying. When I was made aware of the curbing, I hired an Engineer to see what would be involved with doing the work. The first gentleman said that he would not recommend putting the curbing in, he said it would be detrimental to the way the storm water is functioning and Mr. Eric Dudley agrees with that opinion. It will be additional maintenance for the Home Owners Association and the paving would have to be patched and the paving would look like a mess.

The subdivision is almost entirely occupied, there are only two vacancies. The residents are all in agreement and Ms. Amanda Pike who is the president of the Association will be speaking to that later. She is going to ask that you forgive the curbing as the association can not incur the cost of maintenance.

The lights will be replaced with more esthetic neighborhood lighting. The Association supports this and Amanda will be speaking to this later during the meeting.

As far as the landscaping that is already installed, I made very minor exceptions and the exceptions we made are the trees that are located behind one of the individual homes and that homeowner did not want the trees and did not want to maintain the trees. The other few that were eliminated were over by the generator building and the only people that can see the difference are the people in the Association itself a passersby will not know the difference, there is no change what so ever.

The lot line change is simply to add more usable building space to this particular lot shown on the map. We have had many potential buyers for this lot, but with the set-backs the placement of the house is difficult on this lot. Miles was planning on living in the original home, so he kept a larger portion of the land. What we are planning is to connect the two dots to enlarge lot four as shown on the map. No change to the common areas, only a single lot line change and that will allow for more single side yard lot line envelope.

I was not aware of the problems referred to in the report. At the last meeting we asked what those conditions were we were not told what they were until after the meeting we had.

I met with Eric Dudley and Amanda Pike at the subdivision and we walked the road and Eric pointed out some things that he was concerned with like lowering the catch basins that were

installed to high my Mr. Miles. I have agreed and it is in your conditions of approval to lower those catch basins. I have a letter from the bank saying that I have requested a letter of guarantee and I will get it to you within a week. Unfortunately my banker was on vacation during the holidays.

I believe that the improvements we will be making will improve this subdivision.

The amendments we are proposing are practical for this situation and I do not want to set this up as a general practice.

I pray that you will reconsider the vote you took last time now that you have some history, what got us here and what my involvement was.

I have asked Tim Nolan to attest to the meetings he has observed. Then Ms Amanda Pike will be speaking. Then if you have any question, we would be happy to answer them. Thank you again for your time and your reconsideration.

**Tim Nolan** I am realtor in conjunction with Don Fortin to try to jump start this project. When we met with Steve Miles and his wife initially the subdivision had been approved and actually had been sitting for well over a year with no activity. Mr. Miles still lived in the house at the end of the subdivision.

His proposal to Don was pretty straight forward. Don was to market new houses to be built. Mr. Miles was going to pay for all of the infrastructure, all the required improvements, paving, lighting, the pump house at the beginning of the subdivision.

With that in mind Mr. Fortin started to build a spec house, not far down the road we put another house under contract that Mr. Fortin started construction on and was about 90% completed when Mr. Miles went bankrupt. That left Don in a pretty bad situation because he had significant amount of investment there with no way to pay for or complete the infrastructure that would allow folks to move into these homes.

What Don was forced to do was to take on the improvements that he was never charged with in the first place. I commend Don because some people would have walked away and said I am going to cut my losses. He knew at the time the amount of work that needed to be done to finish this out. The pump house by itself was a massive undertaking.

With that said, Don has upheld more than his share of this bargain here, in the position he was put in. I would also say with dealing with the residents of the subdivision, most of them are happy with the construction as it sits now.

With the other requests, should this be approved the subdivision will again be made whole.

**Amanda Pike** President of the Westbrook Estates Home Owners Association read a letter into the record that is in support of this amendment is on file.

**Ed Reidman** we have motion before the Board :

The Subdivision Amendment Plan application for Fortin Construction on Tax Map: 8, Lots: 604 and 605, is to be **approved with conditions** with the following findings of fact and conclusions.

## **FINDINGS OF FACT**

### **POLLUTION AND SEWERAGE DISPOSAL**

- The subdivision is connected to the municipal sewer system and as this amendment does not propose additional development it should not produce undue amounts of groundwater pollution.

B. WATER

- Not applicable.

C. SOIL EROSION

- Adequate.

D. TRAFFIC

- The changes proposed to the existing subdivision should not increase traffic nor alter the traffic patterns at the site's ingress/egress.

E. SEWERAGE

- The project is connected to the municipal sewer system.

F. SOLID WASTE

- Solid waste is the responsibility of the landowners.

G. AESTHETICS

- Wildlife Habitat - N/A
- Appearance Assessment:
  - (1) Project to Site - Adequate
  - (2) Project to Surrounding Property - Adequate
  - (3) Landscape Design - Adequate
  - (4) Lighting - Adequate
  - (5) Signs - Adequate

H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- Comprehensive Plan - The plan meets the recommendations of the Comprehensive Plan..
- Land Use Ordinances – The plan meets the performance standards of the zoning ordinance.
  - Recreation & Open Space – Not applicable as the lot count remains the same.
  - Community facilities impact analysis – Staff does not recommend that a study be required.
- Fire Code – See Conditions of Approval.

I. FINANCIAL AND TECHNICAL CAPACITY

- Adequate.

J. RIVER, STREAM OR BROOK IMPACTS

- Not applicable.

CONCLUSIONS

1. The proposed subdivision plan **will not** result in undue water or air pollution.

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2. The proposed subdivision plan **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed subdivision plan **will not** cause an unreasonable burden on an existing water supply.
4. The proposed subdivision plan **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed subdivision plan **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed subdivision **will** provide for adequate sewage waste disposal.
7. The proposed subdivision plan **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed subdivision plan **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed subdivision plan **conforms** with a duly adopted comprehensive plan. However, the proposed subdivision plan is in violation of its original approval.
10. The developer **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed subdivision plan **is** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed subdivision plan **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed site **is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands **have** been shown on the subdivision plan.
15. Any river, stream, or brook within or abutting the subdivision plan **has** been identified on any maps submitted as part of the application.
16. The proposed subdivision plan **will/** provide for adequate storm water management.
17. The proposed subdivision plan **will not** negatively impact the ability of the City to provide public safety services.

**THESE CONDITIONS OF APPROVAL ACT AS ADDITIONS TO THE PRIOR APPROVED CONDITIONS**

1. Approval is dependant upon, and limited to, the application dated September 14, 2010 and amended to September 28, 2010, the plans dated August 17, 2004 and amended to August 13, 2010, letter from the applicant to the Planning Board dated December 21, 2010 and other supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board.

2. Prior to the Planning Board signing the mylar, the applicant shall pay the cost of the notices to abutters.
3. Prior to Planning Board signature of the mylar and prior to issuance of the next Certificate of Occupancy for the subdivision, the applicant shall pay a performance guarantee to the City of Westbrook in the amount of \$5,000.00 to cover the cost of the following improvements:
  - a. The embankment on the south side of Miles Lane from Spring Street to the pump station shall be re-graded and loamed and seeded to repair the erosion that has taken place adjacent to the roadway.
  - b. The four catch basins in the cul-de-sac area of the roadway shall be adjusted to allow stormwater runoff to enter the grate without ponding. This may take a combination of lowering the frames and grates and re-grading of the pavement surface to achieve the desired result.
  - c. The area around the two Portland Water District valve boxes appears to have settled beyond acceptable limits leaving a depression in the pavement which holds stormwater runoff. This area shall be re-graded by either removing the pavement and repaving or utilizing a pavement shim to eliminate the sag.
  - d. In all areas where pavement is adjusted, the edges of the pavement shall be ground a foot wide and 1" deep with a tack coat applied to maintain pavement integrity.

Also presented to the Board which is not listed in the motion is that the representation has been made to us, as I referred to us in the first condition is in accordance with the Home Owners Association, the removal of the box light and the installation of ornament style street lights more appropriate to the neighborhood.

Those are the basic conditions that were not written in.

Questions?

**Cory Fleming** how many miles of Private ways currently exist in the City?

**Molly Just** I do not have a number, it is in smaller subdivisions.

**Cory Fleming** we have a fair amount of Private ways in the City.

**Molly Just** yes we do. Usually they are subdivisions that do not connect to... they are dead end subdivisions.

**Scott Herrick** comment on a private subdivision if there is a requirement that there is a road maintenance agreement recorded in the Registry new owners would have notice in there title search. They have to get notice through their title search.

**Cory Fleming** so the chances of a future homeowner purchasing a house here ten to fifteen years down the line and finding or not being aware that they are purchasing in a home owners association live on a private way is minimal.

**Molly Just** we can not force people to read all the documents that they receive.

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**Don Fortin** when we have amendments or association documents they have to be recorded with a deed of the property. So simple titles search, even if we fail to do our job there are all of these subdivision amendments and restrictions. Tim is the exclusive marketer and we are very up front with everyone. Title Search could not buy and not be aware of a private way. There is no way they can buy it and not be aware that this is a private way.

**Ed Reidman** Association strong and well run there will be no problems – are there any questions or comments?

**Rene Daniel** read the letter several times and I understand what you are saying. You need to agree that we look at it from different perspectives.

The two things that concern me is that this is the second development that comes before this Board within a relatively short time requesting changes, both of which are fairly built out. One is a Condo Association on Saco Street and then there is this one that is off of Spring Street.

What gets me concerned is when developers my interpretation of developers is: a developer purchases a development and it is sold and all the agreements travel with that development itself.

What concerns me is any condo association or Home Owners Association in the future or ones already built to save a couple of bucks, I do not want to do this and change the rules after the game is played. Not necessarily with this one this started with the other one. That is just a concern that I have. In the last three months there have been two developers that came before us both to change the development and both were unique to the site.

To follow up on another members questions Condo and Home Owners Associations may be sold today and then the third time it is sold as it is a good product, then they start questioning why am I paying such high taxes when I do not get curb side trash collection? Why can't we go before the City Council and get this changed. Then you have the City Council making minor changes, when they have other duties to contend with.

I am one of the ones that is changing his vote. It has nothing to do with the Home Owners. It is Mr. Fortin's commitment and willingness to come back before this Board and explain the instances in great detail and you are also working very closely with our Planning Department.

**Ed Reidman** any comments?

**Greg Blake** I would like to echo Mr. Daniels statements. I agree that developers legitimately get sold projects and we need to hold them accountable for what they signed up for. I also agree with Mr. Fortin as he is caught between a rock and a hard place. I commend Mr. Fortin for reaching out to City Staff and Home Owners Association and I again will be in support of the amended change.

**Ed Reidman** is there anyone else?

**Rebecca Dillon** I feel more comfortable with Mr. Dudley saying the curbing is not needed. We have an engineer on Staff for a reason and I respect his opinion. I will be changing my vote as well.

**Michael Taylor** the last time I voted in the negative because I felt the presentation was being steamed rolled. You did an excellent presentation this time and I wish more developers would come forward the first time with the right information. Then we would not have to go through a second or third time. Question to the Staff is there a time line put on this?

**Molly Just** there will be no building permit provided until the performance guarantee is provided and the performance guarantee will not be released until the improvements have been completed to the City's satisfaction.

**The vote was unanimous in favor 7-0 (Ed Reidman not voting)**

**5. Adjourn**

*Respectfully submitted by Linda Gain PECE Administrative Assistant*