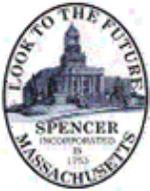


Planning Board – Town of Spencer

Minutes



Regular Planning Board Meeting
Tuesday, May 19, 2009 at 7:00 PM
McCourt Social Hall
Memorial Town Hall

The meeting was called to order at 7:00 p.m.

Planning Board Members Present: Chairman Fabio Carrera, Vice Chair Paul Tee, Shirley Shiver, Paul Sauvageau and Robert Ceppi.

Planning Board Member Absent: None

Staff present: Adam Gaudette, Town Planner and Bea Meechan, Senior Clerk, ODIS

While awaiting for the arrival of Chairman Fabio Carrera, Vice Chair Paul Tee opened the meeting to conduct businesses that aren't public hearings, first.

Old Business:

A. Continued - Minor Site Plan Review, William Farmer, 19 Maple Street. Mr. Gaudette stated at the previous meeting (May 5, 2009), the Board was prepared to cast their vote, but couldn't as they didn't have three members who could conduct the voting. Therefore, the Board continued the meeting to tonight.

Mr. Gaudette indicated that the required surety for the landscaping has been removed from the decision since Mr. Farmer had already completed the landscaping. Also Condition 6 was modified to indicate that the screening for the dumpster area would be wooded fence.

The Board reviewed the decision. Mr. Sauvageau made a motion to approve the decision with above amendments. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and also to all abutters. There is a 20-day appeal period.

New Business:

A. ANR – Donna Zalauskas and Town of Spencer. Mr. Gaudette gave a brief report to the Board. Donna Zalauskas came to the Board in December of 2008 for ANR approval (on Northwest Road, aka Alta Crest Cross Road), separating Lot 1 from the entire land. Ms.

Zalauska has an offer to purchase Lot 1. The situation was realized that, a very small portion of land (266 sq.ft) situates in the public right-of-way.

Stan Weinberg, Town Counsel, had advised the Town to submit an Article for Town Meeting for the conveyance and discontinuance of that portion of East Road (aka Alta Crest Cross Road).

The Article (9) was accepted at Town Meeting. The Selectmen have also signed a Purchase of Sale Agreement. The transfer of ownership of the Deed will be followed. Ms. Zalauska has submitted an ANR plan, for the purpose of conveyance, to ODIS. Mr. Gaudette reviewed the plan and it met all requirements of the Spencer Subdivision Regulations. Mr. Gaudette indicated that he will hold the mylar until he has received the escrow money.

Ms. Shiver made a motion to approve the ANR plan and have Mr. Gaudette endorse the mylar. Mr. Sauvageau seconded the motion and the vote was 5-0 in favor.

B. Public Hearing to Rescind Definitive Plan Approval – Deer Run Phase I. Mr. Tee opened the public hearing at 7:10 p.m. Chairman Fabio Carrera arrived at this time.

Mr. Gaudette gave a brief history of the subdivision as follows:

Mr. Mike Harrington requested an extension for Deer Run Phase I on December 18, 2008. The Board granted the request with the condition that the guardrails be installed by March 15, 2009 and the bounds and other items be completed by May 31, 2009. If either of these deadlines were not met, the Board would hold a public hearing to find Mr. Harrington in default.

Mr. Gaudette did a site visit and found that the guardrails hadn't yet been installed. At the meeting of April 21, 2009 the Board voted to start the formal procedure to rescind the original approval for Deer Run Phase I based on the developer's failure to perform items in the decision approvals, time requirement and performance guarantee. The Board directed Mr. Gaudette to schedule a public hearing for Phase I. Mr. Gaudette was also to check on the status of Phase II.

The public hearing was scheduled for May 19, 2009 to initiate the default process on Phase I. Mr. Gaudette contacted Framingham Co-operative Bank, and spoke with Frank Chamberlain and Attorney Joseph Antonellis, the bank's attorney, to find a solution. The bank has proposed to foreclose on Harrington and take ownership of the subdivision, and to complete the necessary work.

Mr. Gaudette announced that tonight is a public hearing to rescind the approved decision for Deer Run Phase I. He then introduced Steven Cummings, a member of the Planning Board and Zoning Board of Appeals from North Brookfield, who is in the attendance tonight to represent the Town of North Brookfield. Mr. Cummings will answer any concerns of the Board regarding the North Brookfield Approvals. At this time Mr. Gaudette asked the representative from the bank to make a presentation to the Board.

Attorney Antonellis had a conflict this evening. In the absence of Attorney Antonellis, Attorney Damien Berthiaume is representing the bank tonight.

Attorney Berthiaume informed the Board of the following:

- The Bank has hired Hannigan Engineering to do the remaining survey work of Phase I.
- He will be attending the North Brookfield Planning Board Meeting tomorrow (5-20-09), to discuss the subdivision plan in North Brookfield.
- The Bank has submitted an extension application on Phase I; a public hearing is scheduled for June 2, 2009.
- A representative from the bank and bank's engineer is planning to meet with Mr. Gaudette and Ms. Scarlet (ConCom) at the site to finalize any outstanding issues; wetlands and remaining work of Phase I.
- The Bank will work with Mr. Gaudette on establishing a new performance guarantee for both Phases.

Attorney Berthiaume requested to continue the public hearing to June 2, 2009 and delay action on the rescission and until the extension hearing is opened.

At this time the Mr. Carrera opened the Board for any questions or comments.

The Board asked of what would be accomplished between now and June 2, 2009, and whether a contractor firm has been retained yet. The Board expressed a concern on the safety issue and would like to have the guardrails be installed.

Attorney Berthiaume responded that the survey and the installation of the bounds along the road is now in a progress, and it would take longer than two weeks to put up guardrails. He said that the bank is more likely to wait until the public hearing is over, in order to know what is specifically needed to be done before retaining a contractor firm. Attorney Berthiaume thought the bank will be able to establish the timeline (for completion of Phase I and timeline on Phase II) on that date – June 2, 2009.

Mr. Carrera opened the public for any questions or comments.

Mr. Cummings stated that Town of North Brookfield has many concerns about the portion of Phase II which extends into North Brookfield. He would like Phase II subdivision to be completed as soon as possible. North Brookfield also would like to work with Town of Spencer to ensure that the interfacing of Phase II subdivision into North Brookfield is successful. He expressed that Town of North Brookfield is willing to discuss and review issues together with Town of Spencer.

At this time Mr. Gaudette said that the bank needs to resolve some issues with Town of North Brookfield. Mr. Cummings has been in contact with Mr. Gaudette of the progress in Spencer. Mr. Gaudette said that he will inform the Board of any up-dated information from Mr. Cummings.

Brian Martin of 10 Deer Run Road commented that it is good to know that the bank will take full responsibility, and complete the subdivision. He asked about the survey work on Phase I, whether it would affect the boundary line between properties.

Mr. Gaudette said the survey basically is the as-built plan of the road, to show and identify where things are located such as manholes, catch basins, the edge of right of way, etc. The survey is required to be submitted to Utilities and Facilities prior to road acceptance at the Fall Town Meeting. There will not be lot any line/boundary changes to properties.

Lorie Dick of 16 Kittredge Road stated her house was severely damaged by blastings done on the construction of Phase I subdivision. The blasting had created a 38 x 28 foot crack on the basement wall of her house. She didn't receive any notification of the blasting. She has been experiencing water problems ever since. Ms. Dick indicated that she couldn't seek help from anyone; no one claims to be responsible for the damage. If the Phase II subdivision has a plan to do blasting, Ms. Dick will oppose the granting of the approval.

Mr. Gaudette addressed that the Planning Board has no authority on this matter; it is handled by the Fire Department and the permit is issued by the Fire Chief. The guidelines are to notify abutters who reside within 250 feet of the blasting and an inspection must be performed before and after blasting.

Ms. Dick responded that since her house is 272 feet from the blasting, which beyond the 250-foot radius, therefore the notification and inspection was not required. She had notified the Fire Chief. The Fire Chief stopped the permit. The developer, Mr. Harrington, at the time said that he would take care of the problem, but he didn't.

The Board directed Mr. Gaudette to contact the Fire Chief and report back to the Board.

Gina Beford of 11 Deer Run Road said that there is a big crack on the road and haybails are left in the area. She then asked if the bank were to take the ownership, will the bank be responsible for all this.

Mr. Gaudette said that the bank will file for a Certificate of Compliance from DEP. The Conservation Commission will do inspections as well. Removing the silt fence and spreading the haybails will be required. Mr. Gaudette, Mr. McNeil (Utilities and Facilities), the bank's representative and the bank's engineer will do a site visit and evaluate the condition of the road, also make a determination on what things are needed to be done. The total cost of the remaining work (including cost to repair any damages) will be included on the updated performance guarantee.

Chris Tutlis of 6 Briarwood Lane said that his house is located near the end of Phase I. When the pavement was done on Phase I, it was stopped right before his property line. Thus the pavement on his property hasn't been done yet. In addition, the cul-de-sac has become his driveway and he did the base-coating, but hasn't done the top-coating yet. As he recalled, the cul-de-sac will be removed as part of the transition from Phase I to Phase II. Mr. Tutlis asked what will happen to his property when the road on Phase I has been accepted by the Town. He doesn't want to be forgotten.

Sharon Luke of 5 Briarwood Lane made a comment that she is in the same situation with Mr. Tutlis and has the same concerns.

In response, Mr. Gaudette said that he needs to look at that location. Mr. Gaudette is planning a site visit as mentioned earlier, and he has invited Mr. Tutlis and Ms. Luke to be present so that everything will be included in the site inspection, and nothing will be left-out. Mr. Gaudette said that when the site visit is scheduled he will let them know.

John Luzzo of 3 Briarwood Lane explained his situation which he purchased the property in December of 2008. The developer, Mr. Harrington was supposed to deliver some items as part of final completion; it hasn't happened yet. He made several phone calls to Mr. Harrington, but no response back. He asked would the bank be responsible to complete the agreement and deliver the missing items.

Mr. Gaudette said that the bank has no obligation to honor that agreement. The agreement was made between Mr. Luzzo and the developer to deliver items within certain period of time after the closing. The bank's ownership ends at the time of the closing, Mr. Luzzo is then the owner of the property. It is a civil matter at this time. Mr. Gaudette advised Mr. Luzzo to discuss with his attorney.

With no further comments or questions from the Board and the public, Mr. Tee made a motion to continue the public hearing to June 2, 2009. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

For Deer Run Phase II, Mr. Gaudette made an announcement that the bank had already submitted an extension application of the approval on Phase II; a public hearing is scheduled on June 2, 2009. Notifications to abutters and all interested parties were sent out also.

Old Business:

A. Continued Public Hearing on Major Site Plan Review - Country Spirits, 10 West Main Street. Mr. Carrera opened the public hearing at 7:50 p.m. Mr. Gaudette said that since the last public hearing (May 5, 2009), the applicant had submitted a revised plan to ODIS and addressed the comments from Mr. Gaudette, Ginny Scarlet, Utilities and Facilities, and Cullinan, Peer Review Engineer.

There were no abutters present tonight for this hearing.

Jason Dubois, the applicant's engineer, indicated that the landscaping for the detention pond on long Route 9 has been added as suggested by Mr. Gaudette. He said that the most recent comments (dated 5/13/2009) from Cullinan Engineer have been addressed.

Mr. Gaudette stated that he has prepared a draft decision (dated 5/19/2009) for the Board prior to receiving comments back from Cullinan, thus, some of conditions need to be modified. Mr. Gaudette said that since the applicant and his engineer are present tonight, the Board could do a review of the draft decision, make any changes or any additions to be made on the final decision.

At this time Mr. Gaudette proceeded to read each item on the decision. The following conditions were discussed and were agreed upon by all parties in term of their modification:

- #1. The site plan that was submitted and subsequently revised to *change the date from May 18, 2009 to the date which the final revised plan is submitted to ODIS, to Mr. Gaudette.*
- #5. Landscaping prepared by Bertin Engineering (Sheet L-1 and D-1) *change the date from May 18, 2009 to the dated which the final revised plan is submitted to ODIS, to Mr. Gaudette.*
- #16. *From: "weather resistant sign on the premises which states the hours of operation..." Change To: "weather resistant sign on the premises during construction, which state the hours of operation..."*
- #17. *From: "Thus, the Old Spencer Road egress shall be utilized for construction access." Change To: "Thus, in the interest of safety, the Old Spencer Road egress shall be the preferred construction access."*
- #23. *From: "Delivery trucks are required to enter and exit at the Old Spencer Road egress." Change To: "In the interest of safety, delivery trucks shall use the Old Spencer Road egress as the preferred access."*

Mr. Lentendre, the applicant, said that he was proposing a 4-foot chain link fence around the detention basins. The Board and Mr. Gaudette were concerned of the level of depth (4 feet deep). If not deep and for the aesthetic view, the Board and Mr. Gaudette suggested to do a split-rail and added some landscaping bushes around the detention basin. *Mr. Gaudette advised to have this suggestion be reflected on the revised plan and submitted to ODIS.*

The review on the decision was completed at this time. With no further comments or questions from everyone present in the hearing, Mr. Tee made a motion to close the public hearing at 8:20 p.m. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Ms. Shiver made a motion to approve a waiver to the applicant from providing a Community Impact Analysis. Mr. Tee seconded the motion and the vote was 5-0 in favor.

Mr. Tee made a motion to approve the Certificate of Decision on Site Plan as amended tonight. Mr. Sauvageau seconded the motion and the vote was 5-0 in favor.

Mr. Gaudette stated that, Certificate of Decision will not get filed with the Town Clerk until he receives the revised plan from Mr. Dubois.

B. Continued Public Hearing – Pine Cliff Condominiums OSRD, off Greenville Street.
Mr. Carrera opened the public hearing at 8:25 p.m. *There were no abutters present tonight for this hearing.*

Attorney Damien Berthiaume representing the applicant, James Sielis, informed the Board of the following:

Conservation Commission (ConCom), at its meeting last week, had approved the Order of Conditions. The possibility of ConCom to take ownership of the open space land that was discussed. ConCom didn't make a decision on the subject. However, the Commission members had conducted an informal vote on the subject, and as a result, they would certainly consider accepting the ownership on behalf of the Town, and if necessary, convey to a Land Trust later.

The Homeowner Association Document and the Master Deed have been slightly amended in regards to the utility easements in the private way. The easement itself would be reserved or granted to the Town in the future deed. The amended document has been submitted to Mr. Gaudette tonight along with the revised plan.

The revised plan submitted tonight demonstrated the erosion control plan, the landscaping plan and the concept plan for the remaining land.

Mr. Carrera asked for a clarification on the deed easement of the snowmobile track/passage.

Mr. Gaudette said there will be a new deed for the open space land with the reserved right of easement for the snowmobile track improvements.

The determination as to which entity is appropriated to convey ownership of the open space land was discussed at this time. The Board asked whether it could be conveyed directly to the Town as opposed to ConCom, and could ConCom later re-convey to other interested entities.

Mr. Gaudette said that if requires it be conveyed to ConCom; ConCom at its meeting will have to vote to accept the conveyance. If conveyed directly to the Town, then it would need to be placed on an Article for the Town Meeting; this is more time consuming and will slow down the process. Mr. Berthiaume said that he isn't certain that the Town Zoning Bylaw would allow the re-conveyance of open space land.

In reference to the revised plan, Mr. Carrera asked if the gravel sidewalk which served with the existing trail could be extended farther along with the trail (toward the pond area).

Mr. Berthiaume explained that the purpose of the design based on the landscaping is to minimize the changes to the overall environment. In addition there is a wetland located in that area and extending the gravel walkway would require further approval by ConCom.

Mr. Gaudette commented on the proposed building Unit#15, it isn't conforming to the regulations, until the ANR plan has been recorded.

Mr. Berthiaume said that the ANR plan had been recorded for the boundary adjustment (the Planning Board approved on 5/5/09), he will provide Book/Page number to Mr. Gaudette. However, the conveyance land to Mr. Sielis and via versa to Ms. Rosseel has not been completed.

Mr. Gaudette stated there are several items still needed to be submitted to ODIS and to the Planning Board. Mr. Gaudette recommended continuing the public hearing and he will prepare a draft decision to the Board for a review at the next hearing. Mr. Gaudette commented that the "no-disturb" buffer should be shown on the recordable plan sheets.

Ms. Shiver also requested that the cross section of the landscaped walkway be illustrated on the revised plan.

Ms. Shiver made a motion to continue the public hearing to June 2, 2009. Mr. Tee seconded the motion and the vote was 5-0 in favor.

Ms. Shiver made a motion to adjourn the meeting at 9:10 p.m. Mr. Sauvageau seconded the motion and the vote was 5-0 in favor.

Submitted By:

Approved By:

Bea Meechan
Senior Clerk, ODIS

Fabio Carrera
Planning Board Chairman