

Planning Board – Town of Spencer

Minutes

Regular Planning Board Meeting
Tuesday, August 16, 2011 at 7:00 PM
McCourt Social Hall
Memorial Town Hall



The meeting was called to order at 7:10 p.m.

Planning Board Members Present: Chair Shirley Shiver, Vice Chair Paul Sauvageau, Robert Ceppi, Mary Stolarczyk, and Ralph DiChiara.

Planning Board Member Absent: None

Staff present: Michelle Buck, Town Planner, and Bea Meechan, Senior Clerk, ODIS.

New Business:

A. Public Hearing – Amendment to an Approved Definitive Subdivision Plan, Deer Run Phase II. The application was submitted by Funari Site Plan Development Inc. Ms. Shiver opened the hearing at 7:19 p.m.

Note: Representatives from Funari Site Development are here tonight; Steven O’Connell, Andrews Engineering, and Steven and Lori Funari.

Ms. Shiver asked the applicant for the presentation on the application.

Steven O. said the modification plan is consistent with the plan presented at the informal discussion on 6/22/2011. He described the scope of the approved definitive plan Phase II. Phase II extended from Briarwood Lane through the subdivision road and the cul-de-sac, and onto the subdivision in North Brookfield. Steven O. said the modification plan (**dated 7/12/2011**) follows the same path and alignment **except** that at the end of Briarwood Lane the plan proposes an installation of the cul-de-sac, and a 20 foot wide access gravel easement for the emergency access road. As result there are *a few lots* that needed modification as well.

Steven O. gave a brief overview of the current existing lots in Phase II as follows:

- Lot 1 was released and sold to a private land owner.
- Lot 2 was released, not sold.
- Lot 3 was released and sold, and currently occupied.
- Lots 4, 5, and 6 were released, not sold.
- Lot 7 was released and sold, and currently occupied.
- Lot 11 was released.

Steven O. said the changes are lots 8R (which identifies as Lot 8R on the modification plan), a revision of the frontage area in order to accommodate the revision done to Lots 9, 10, and 15 (9R, 10R and 15R). As for Lots 11, 12, 13 and 14, the configurations are identical to the approved definitive plan Phase II. He went over the comments from the Conservation Commission (ConCom), Utilities and Facilities (U&F), and Quinn Engineering, Spencer Peer Engineer.

ConCom:

Steven O. said a memo from Ms. Margaret Washburn, Wetland and Soil Specialist, on an outstanding enforcement order related to ConCom, and most comments were questions that could be easily addressed.

Quinn Engineering:

Steven O. said comments are pertinent to the construction plan, and there are no objections from Funari. It is the applicant's intention to submit the modification plan. It is financially critical to know that the Board either approves the plan, or approves with certain conditions. Funari would like to receive some notification from the Board that the modification plan will be accepted. When that has happened, Funari will provide all necessary street plans and profiles (e.g. grading, pavement, sidewalk, and confirmation on the current drainage system). It is a lot of work and expense involved in acquiring all these plans, and for the Board to deny the modification plan Funari does not wish that to happen. Steven O. said it would be easier to explain to the Board things that already existed on the approved Phase II plan that will remain where they are located (paved to the binder level, manhole, and catch basin) up to the cul-de-sac. [He pointed out the location on the modification plan].

Steven O. explained there will be a slight modification to the catch basin at the intersection – it will be moved somewhere else outside the cul-de-sac and will be re-piped to the manhole that already exists, and on to the catch basin in Spencer. The detention basin system is already built and established. It is over-designed to handle the runoff from the pavement impervious surfaces. Steven O. said the modification plan demonstrated is very simple.

Ms. Shiver inquired as to the affected changes to Lots 8R, 9R and 10R.

Steven O. said Lot 8's boundary line got moved to accommodate the logical buildability of Lot 9. With the proposed cul-de-sac, Lot 9's boundary line got moved all the way back, and Lot 10 gains more frontage area (land along the outside of the *old* cul-de-sac), he pointed out the area on the plan. As a result of the cul-de-sac being proposed at the end of the Briarwood Lane the area from the previous approved road got added to Lot 15. [All revised lots are now called Lots 8R, 9R, 10R, and 15R as shown on the modification plan].

Ms. Shiver said if this is a new definitive plan, then all street plans and profiles are required with the submission of plan. Based on the above discussion, Funari can provide this profile to the Board at a later time. Ms. Shiver asked what the applicant is seeking tonight – a waiver, or a confirmation that the Board would approve the modification plan. According to Steven O, ConCom's comment can be easily addressed, Ms. Shiver asked him to elaborate on that.

Steven O. said Ms. Washburn's new written comment is easily addressed such as questions why Lot 4 does not show on the plan and the function of the cistern – they are not part of the modification plan. The outstanding enforcement orders for Phase II that were previously issued in 2009 will need more effort. Basically there are 2 wetland application areas that have not been built yet, and they will be built. These are very clear and precise items that must be addressed with the ConCom.

Ms. Shiver asked whether the wetland replication areas would affect the lot's size, and do you have to make a lot line adjustment in order to accommodate that?

Steven O. replied the wetland replication areas will not have any affect on the lot's size.

Mr. Sauvageau asked for a clarification on the term "Park Area Parcel B", what that referenced to?

Steven O. said Parcel B is the actual remaining land and largely are wetlands, and the intention at this point is to have Parcel B be an open space. Lori F. said she needs to do further research if there is any agreement made between the original land owner and the previous owner of the subdivision plan Phase II. She said Funari does not have any intention of touching it; a good part of the Parcel B is wetlands anyway.

Ms. Shiver asked for the response from Funari to comments made by Quinn's Engineering and Mr. Tyler at this time.

Steven O. said comments from Quinn Engineering were very brief due to the lack of the street plan and profile provided. Funari is completely aware of the need of such a plan. As discussed above if the modification plan gets an approval (or any verification that the plan will be approved by the Board) tonight, Funari will forward with the plan to the Board.

Steven O. said that Mr. Tyler's comment is the most comprehensive comment among the rest of the Town Officials. Some of the comments were tied to Phase I, and some were tied with a portion of Phase II. Lori F. said that she has no intention to purchase Phase I from the Bank, and thus no bearing on any responsibility of that - Phase I.

After reviewing comments (dated 8/15/2011) from Mr. Tyler, current Superintendent U&F, Ms. Shiver said the Board was not aware of the issues with the entire project prior to these comments. [The former Superintendent U&F left the Town at the end of May, and the Board does not have anyone in that position with an engineering background and is familiar with the project to review the current status of the project].

The Board thought the applicant and the Town could negotiate Phase I. The Town still has some funds left for Phase I. Based on the previous discussion, Funari could perform the work with less cost. Mr. Ceppi suggested when the applicant works on Phase II they could also fix some certain things on Phase I, and the Town may use the remaining funds from Phase I toward that cause - Funari and the Town could work together. He also asked about the progress on the public bidding for Phase II.

Ms. Buck said the Town used most of the remaining funds on Phase I. Mr. Adam Gaudette, Town Administrator, wanted to wait to put out the bid until this process is worked out. He is hoping that the applicant would participate in the bidding, and agree to do some work on Phase I with the funds we have left in exchange for the waivers.

Mr. Ceppi asked whether the applicant has had a chance to review the items listed on Phase I and figure out the cost associated with the work. He said knowing how much the cost might be versus how much the Board would conceit in waivers this could weigh each other out – a compromise.

Steve F. responded he looked at the items list from the Bank about a year ago, and it would cost about \$120,000 for Phase I's completion.

The remaining work on Phase I has appeared to be an issue for the applicant. Ms. Shiver asked if there is anything else in Mr. Tyler's comment which is really an obstacle to the applicant.

Mr. Ceppi commented that some of the items (e.g. installing the water pipe line, silt fencing) remaining on Phase I could be done by Town employees – the Highway Department, and the expenses could be paid out from the Operation Budget. The applicant could choose to fix other items.

Steven O. had a question on Mr. Tyler's review and comments - whether the comments were *up-to-date conditions* for Phase I, or based on the comments from the punch list prepared by the previous Superintendant 2 years ago.

The Board asked Ms. Buck if Mr. Tyler made the punch list, or he got it from either Mr. Gaudette, or Mr. McNeil (former Superintendant). Has Mr. Tyler ever done a site walk on the project, Mr. Sauvageau asked?

Ms. Buck said the punch list was an old list from either Mr. Gaudette, or Mr. McNeil. She does not know for certain if Mr. Tyler did a site visit, or site walk at the property. She will follow up and report to the Board.

Mr. Ceppi inquired as to the waivers, what are the waivers for this modification application?

Ms. Shiver said the waivers are: 1) Waiver for the cul-de-sac, the dead end street required a maximum length of 2, 000 feet, and 2) Waiver for 2 sides, double sidewalk concrete. [Mr. Tyler has no problem with the request for sidewalk on one side only. He does require that there be a grass strip between the sidewalk and the edge of the road for substantial snow storage matching or greater than Phase I].

Steve F. said the previously approved plan Phase II, the measuring point for the dead end street cul-de-sac started at 0+00 station. He then asked if the Board is still using this station as a starting point for this proposed modification plan.

The Board addressed that at the time the access road in both phases connected through North Brookfield, there was no dead end on the approved plan as opposed to the proposed modification plan, thus the applicant is still required a waiver for a maximum length of the dead end street (2,000 feet).

There are no comments from the Fire Chief, either from North Brookfield or Spencer, in regards to the emergency access road. The Board thought it is important to know what their concerns and feelings are.

Mr. Sauvageau recalled, from the previous meeting that Funari would discuss this matter with the Spencer Fire Chief. Mr. Sauvageau said according to the comments from Mr. Tyler he requested the emergency access road to be paved.

Steven O. said that Spencer Fire Chief did not request the pavement of the emergency access road. When he met with the Fire Chief previously at the technical review meeting, the Chief said the *gravel access road is fine* for the emergency access road as long as it is graded for 80,000 pounds vehicles such as a fire truck, or a ladder truck.

Mr. Sauvageau said the emergency access road also needs an approval and satisfaction from Mr. Tyler. Both Mr. Tyler and Quinn Engineering also made a comment on this subject matter. Note: Mr. Tyler stated in his comment that *the emergency access road pavement* construction and substructure and surface structure type shall be submitted to the U&F Superintendent for approval.

Steve F. said he is under the impression that Mr. Gaudette might let the property go into tax title. In addition, it has appeared that the Board wanted Funari to do certain things for the 2 waivers. [There are 5 buildable lots and if the modification plan gets an approval from the Board, Steve F. plans on filing for the building permits from the Building Department]. Steve F. then said that if he decides not to go forward (which he probably would not do in this case), and the property goes into tax title, the Town then has to finish the work on both Phases. Steve F. said what he is trying to do is construct affordable housing, and the only way to accomplish that is to go after a subdivision that is in distress.

Ms. Shiver said the Board has to be careful in terms of the legality on what the Board can request for the road to be paved in exchange of the waivers to the applicant – the Board can only go so far.

Steve F. said he understood and that is fine, the Board could come up with conditions in the decision. He said if Funari walks away from the project and the Town finishes the work themselves or sells it to someone else, it is only fair that the Board would request all these things (as discussed above) be done the same as the Board expected from Funari. Steve F. commented that Mr. Gaudette keeps pressuring Funari and insisting that he is going to do that (let the property go into tax title).

Ms. Buck explained that Mr. Gaudette is trying to evaluate and to see what the true benefit is by allowing additional houses to be constructed versus the Town dealing with it and building what

we can with the funds we have. Ms. Buck said the 5 buildable lots, as mentioned above, are not buildable until the road is done, and the previous owner was in default on the project. In addition, the surety on Phase II in which the Town has is an insufficient amount; therefore there will not be any building permits issued by the Building Department.

Steve F. said according to the document "Partial Release of Lots" it indicated otherwise. The document, dated in 2008, specified that the Spencer Planning Board and in the opinion of the Board, certified that there is sufficient surety in releasing the lots. Steve F. asked - how could the Board argue that? He provided the document to the Board members at this time.

Lori F. added that Funari is trying to show the Board that they really want to finish the project, which is best for everyone involved (residents who are currently residing there, the Bank, and the Town). She said that if the Board keeps adding more responsibility (finishing the work on Phase I) onto Funari, then substantial financial losses could occur. There is no substantial benefit here for Funari. In addition, there will be no building permits unless Funari does what the Town has wanted.

The Board members said they are the approving authority of the plan. The Board is obligated to listen to all comments from other town officials. Ms. Buck said the condition in the previous approved plan Phase II stated that Phase I's road work shall be finished prior to the Phase II's construction.

The Board members expressed that they would like to see the process move forward. They do not wish the burden being entirely on Funari, nor on the Board.

Ms. Shiver asked for the type of the proposed housing, a 2-family or a single-family housing.

Steven O. replied the proposed housing will be a small single-family which can be extended by the future homeowner.

At this time the discussion was back and forth on the negotiations. Mr. Sauvageau said that it must be common ground for both the Town and Funari. Funari wants to have a successful project, and what the Town is looking for is to meet its standard code and other minimum requirements. Therefore a lot of that negotiation has to happen outside the Planning Board because the Board does not have the authority to override certain codes and regulations, but the Board can grant certain waivers. Mr. Sauvageau said that Mr. Tyler's comments are the starting point and they are good comments.

Ms. Shiver said she does not see any problem with a waiver for the access road as long as the plan is satisfactory for both Fire Chiefs; North Brookfield and Spencer.

Lori F. said she was told that Funari would be responsible to maintain the emergency access road. If Funari puts that responsibility on the Homeowner Association, this responsibility would be on *9 homes instead of 12 homes*, and would not put responsibility on the entire Deer Run Phases I and II. [Note: Initially, Funari wanted to construct 12 homes, but if they are going to complete the items in Phase I as requested by the Board, and also construct the access road these

will have an impact to Funari's financial ability, and therefore Funari may cut back to 9 lots and ask the Board for a waiver – *the 3rd waiver (see more explanation on page 8)*].

Mr. DiChiara is a new member on Board. He asked if the completion of Phase I is doable, and could Phase I be completed, to everyone's satisfaction without beginning Phase II.

Steven F. said Phase I's Road construction must meet the Town's standard road acceptance, and there are only a few months left before the Town Meeting; we will not be able to do all that. All homes in Phase I were built, and the Town has been collecting taxes on these homes in Phase I for years, and still the roadway has not yet been completed. Steven O. said he understood the Town is in the process of getting Phase I's road done and ready for the road's acceptance at the Fall Town Meeting.

Ms. Buck Said due to the Sibley Farm issue, the Town may have a town meeting earlier than what has been anticipated. Therefore Phase I road's construction may not be completed in time for the Fall Town Meeting.

Mr. Ceppi said he likes the proposed modification plan, and it provides the second emergency access road (that can go in to Phase II by using the access road in North Brookfield). He asked of what Funari could do to help the Town with Phase I, if anything.

Steven F. said he needs to see the itemized list and will then make a determination what we can and cannot do. Lori F. said the biggest problem with the emergency access gravel road is that, who will be responsible for maintaining it? The towns (both North Brookfield and Spencer) want us to do that.

Note: There was a discussion in regards to the road's maintenance on the subdivision project, and Ms. Shiver said normally the Homeowner Association does handle the road maintenance.

Lori F. said it would make sense if the Board required the prior owner to establish the Homeowner Association (to manage the road maintenance) since the beginning – prior to the construction of the homes in Phase I.

Ms. Shiver said yes, there should have been a Homeowner Association established for the first portion of Deer Run Subdivision because there were comments on the maintenance issues discussed in the beginning of the project.

Mr. Ceppi commented what Funari offers is a good plan. The Board has to make sure that it builds to meet the Town's standards, and the ground does not deteriorate too quickly. Mr. Ceppi said the Town shall maintain it. Funari shall look at the itemized list for Phase I, and tell us what they can contribute, or bargain with the Town [use Town Highway employees to perform the work while using Funari's equipment].

Lori F. said Funari knows that Phase II's surety is insufficient, and we will help you with that. Initially we want to finish Phase II. Phase I has never been in our plan, and if we are going to contribute to finishing Phase I, Funari is going above and beyond their mandate.

At this time Ms. Shiver made a clarification on the course of the road way in Phase I as to where it begins and to where it ends: Phase I's roadway started at the beginning of the project, goes into Bell Flower Lane (cul-de-sac), and ended at the 10+00 station. It contains approximately 1,300 in linear feet. This is the other area in which Funari will consider in helping out the Town, Ms. Shiver said.

Mr. DiChiara said the list (of things required to be resolved) from ConCom is a long and extensive list, and also a list of comments from U&F. Mr. Dichiara asked how Funari could accomplish these. [Mr. DiChiara was present in the audience at the first initial informal discussion on 6.21.11]. It has been 2 months since the last meeting and with tonight's discussion it seems as though there has not been much progress, Mr. DiChiara asked if the Board could assist Funari further along in the process.

Ms. Shiver said Funari has to go back to ConCom and resolve the issues with them, then come back to the Board with the results.

Mr. DiChiara commented there are several obstacles in this process, and he understands that there are rules, regulations, and appropriate actions involved; however, there have been people residing there for the past 2 years – with that being said, every party involved shall work together and make compromises in order to achieve the goal in completion the entire project.

Steve F. said there are 5 lots that were already released by the Town, and regardless of the surety amount being insufficient, the document (as mentioned earlier) which was certified by the Board said otherwise. His attorney said there is no reason for the Town to withhold the building permits' issuance. Steve F. asked if Ms. Buck could contact Spencer Town's Counsel on the subject matter.

Ms. Buck said she would find out and get back to him.

The Board asked for a verification of the 5 lots that were released from Funari.

Steven O. said they are lots 2, 4, 5, 6 and 11; the lots' numbers were specified on the Partial Released of Lots' document.

Mr. Sauvageau said it is a good idea as suggested by Mr. Ceppi, for Funari to come back and tell the Board of what they can possibly do and also respond back to Mr. Tyler's comments. Mr. Sauvageau asked for more information on *the third waiver, which Steven F. brought up during tonight's discussion.*

Steve O. said the third waiver at this point is essentially a technical document of street plans and profiles. It is pending the result of the negotiation between the Board and Funari, meaning that Funari may not consider requesting the third waiver. We just simply do not want to get a denial due to lacking a required document that is part of the application submission process.

Ms. Shiver gave a summary list of what the Board thought was important in the decision making process on the proposed modification application, the list contains the following:

1. To obtain a written approval for the emergency access road from Fire Chiefs; from North Brookfield and Spencer.
2. A response letter to Mr. Tyler's comments, identifying what Funari can and cannot do.
3. To resolve the issues with ConCom.
4. To finish the revision on the proposed modification plan, and provide the technical document along with the finished plan.

Ms. Buck said part of the issues now is that we do not have any detail of what you are proposing for that emergency access road (e.g. type of the gravel material, the width of the road, etc) to the Board.

Steven O. acknowledged the above comment from Ms. Buck in regards to the detail plan for the emergency access road.

Ms. Shiver opened the hearing for any comments and questions from the public at this time:

Mr. Michael Kubasiak of 1 Bell Flower Lane said the Town does not own the property; however the roadway got plowed by the Town last year. He then asked what would happen for this coming winter, who will do the plowing?

Ms. Buck said the Town plowed it last year, and billed to it to the Bank. Ms. Shiver said the Board could not answer that, this question is for Mr. Tyler, Superintendent U&F. Ms. Shiver thought due to the safety concerns, it is essential to gain access into the project, and the Town shall handle the plowing again for this winter.

Mr. Ceppi made a motion to continue the hearing to September 20, 2011. Mr. Sauvageau seconded the motion and the vote was 5-0 in favor.

B. Delegate to the Capital Planning Committee:

Mr. DiChiara volunteered to be the delegate representing the Planning Board. Mr. Sauvageau made a motion to recommend Mr. DiChiara for a delegate to the Capital Planning Committee. Mr. Ceppi seconded the motion and the vote was 5-0 in favor.

Old Business: None

Town Planner Report: Project Updates

A. Sibley/Warner Update: There will be two public forums; the first one is scheduled for August 24, 2011 at 7:00 p.m., and it is being hosted by ConCom. Ms. Buck will be providing an overview of the project. This is not a public hearing, it is an informational meeting. Eventually, the subject matter has to go to Town Meeting to seek a significant Town investment in the project, which is about \$700,000. The ownership of the various larger parcels is still yet to be

determined in terms of who is going to own and manage which parcels. Ms. Buck said currently there are two preferred alternatives. The reason behind a public meeting is to get input from the public as to what option they would prefer, and to find out what option has the most support before sending the subject matter to Town Meeting. Another meeting will be on September 17th, for a site visit.

Ms. Buck said there are some glitches that came up. One of the budget sources is the Agriculture Preservation Restrictions (APR) Program which has recently changed the guidelines where the APR will no longer provide funding where a municipality or land trust will be the landowner; the APR wanted to be private farmers whose primary interest is in agriculture.

B. Open Space Plan: Ms. Buck said she has not invested much time to this subject in the past two weeks; however she found out that there is still a lot more time to finish the draft regulation than what she original thought. She will continue work on it.

C. Correspondence (e-mail from Mr. Toomey): Open Space Plan & Forest Futures Visioning Process (FFVP). Ms. Buck forwarded the article on the FFVP to the Board as requested by Mr. Toomey. Ms. Shiver thinks that FFVP is irrelevant to the Spencer Open Space Plan. She said the woodlands are already under the protection of the Department of Conservation and Recreation.

With no further discussion, Mr. Sauvageau made a motion to adjourn the meeting at 9:00 p.m. Ms. Stolarczyk seconded the motion and the vote was 5-0 in favor.

Prepared By:

Approved By:

Bea Meechan, Senior Clerk ODIS

Shirley Shiver, Planning Board Chair

List of Documents used on August 16, 2011

- Application for the amendment to an approved definitive subdivision plan, Deer Run Phase II, submitted by Funari Site Development, received by ODIS on 7.25.11.
- A memo on Deer Run prepared by Ms. Buck, dated 8.1.11.
- A list of comments prepared by Mr. Tyler, dated 8.15.11.
- A comment's letter from Ms. Washburn, dated 8.15.11.
- A document on partial release of lots provided by Funari Site Development, received on 8.16.11.
- Information on Forest Visioning Process for April 2009 – April 2010.