

Planning Board – Town of Spencer

Minutes



Regular Planning Board Meeting
Tuesday, October 6, 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: Chair Fabio Carrera, Vice Chair Paul Tee, Shirley Shiver, Paul Sauvageau, and Robert Ceppi.

Planning Board Members Absent: None.

Staff present: Adam Gaudette, Town Planner.

New Business:

A. Amendment to Certificate of Definitive Plan Approval – Laureldale Woods Phase II, located off Paxton Road, Spencer. The application was submitted by Mr. Donald O’Neil for Laureldale Woods, LLC. The applicant is requesting an extension for the definitive subdivision plan to allow additional time to complete the project. This is a 27 lot subdivision for single-family homes and approved by the Planning Board on December 5, 2006, and amended on October 7, 2008.

Mr. Carrera opened the public hearing at 7:03 p.m. Mr. Gaudette gave a brief summary status as follow:

The original approval gave the applicant an 18-month period of time to commence construction and 3 years to complete the project. The applicant already requested one extension which the Board granted on October 7, 2008. The time to commence the construction was extended to 30 months and the time line to complete the project was extended to 4 years.

Phase I’s project is about 75% complete. The decision for Phase II stated that Phase I must be completed before Phase II can start. Mr. Gaudette and Mr. O’Neil have been working on the punch list for the past several months. Mr. O’Neil realized that there is not enough time to finish the roadway on Phase I in order to be accepted as a public road by the Town at the Fall Town Meeting (FTM) on October, 2009.

Mr. Gaudette said Mr. O'Neil is thus requesting a second extension to the approved subdivision plan on Phase II. He has been in contact with Mr. Gaudette regularly, maintaining the site, plowing snow for the road in the winter time, and there have not been any complaints. In addition, the project is also affected by the current economy just like the rest of the subdivision projects in Town. The developer is having a tough time selling the last 5 or so lots. Mr. Gaudette said he is recommending the approval for an additional year.

Mr. Sauvageau asked if there is any surety for Phase II.

Mr. Gaudette said the only surety in place is the covenant. Once the minimal infrastructure of Phase II is finished and the applicant wishes to apply for building permits, a transaction to monetary surety will be required at that time.

Mr. O'Neil said that the primary reason for the request is the economy and the market conditions. He has been plowing snow for the road for the past 4 years and he will do that again this year.

Mr. Ceppi made a comment that the extension is necessary; it gives the applicant an incentive to finish Phase I.

All members agreed that Mr. O'Neil has good cause to justify an extension.

Mr. Gaudette then presented a draft decision to the Board at this time. The decision indicated that all conditions of the original December 5, 2006 approval and the amendment of October 7, 2008 shall remain in effect with a modification to Condition #7 that changes the time to begin the construction from 30 months to 42 months and the time line to complete the construction from 4 years to 5 years.

At this time Mr. Carrera opened the hearing to the public for any comments and questions. *There were no abutters present tonight for this hearing.*

Mr. Ceppi then made a motion to close the public hearing at 7:15 p.m. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Mr. Ceppi made a motion to grant Laureldale Woods, LLC, a one year extension on the definitive subdivision plan for Phase II which was previously approved by the Planning Board on December 5, 2006, and amended on October 7, 2008. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

B. Public Hearing Deer Run Phase I - Developer: Mike Harrington, MHD Development. The hearing is to determine if developer is in default of performance obligations and rescind the Definitive Plan Approval. Mr. Carrera opened the public hearing at 7:18 p.m.

At this time Mr. Gaudette gave a brief summary of the current status of this project:

December 16, 2008: The Board granted an extension with the condition that the guardrails will be installed by March 15, 2009; also 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 the developer in default.

April 19, 2009: Mr. Gaudette did a site visit and found that the guardrails had not been installed. He had made several phone calls to Mr. Harrington, but there was no response. Mr. Gaudette informed the Board which voted to start a formal procedural to rescind the approved subdivision plan for Deer Run Phase I. The public hearing was scheduled for May 19, 2009 to initiate the default process.

Mr. Gaudette then notified Framingham Co-operative Bank, the developer's lender. The Bank, at the time, represented an intention to take over the ownership and complete the project. They then submitted a request to extend the approved definitive plan for Deer Run Phase I.

June 2, 2009: The Board granted the Bank an extension to the approved plan for Deer Run Phase I to August 15, 2009 to allow for time to complete the remaining work.

August 18, 2009: The Bank failed to perform any work. The Bank's representatives met with Mr. Gaudette just prior to August 18, 2009. The Bank stated that after they had calculated the cost of completing the subdivision, and based on the current economy; they concluded the potential revenues realized from a sale would not be enough to cover all expenses.

Mr. Gaudette then sought advice from Mr. Stanley Weinberg, Town Counsel. He advised that a public hearing held by the Planning Board to find the developer in default for the road completion on Phase I is required. The hearing was scheduled for tonight, October 6, 2009. Notification letters for the date of the public hearing were sent out to all abutters, abutter towns, Mr. Harrington, and the Bank. Mr. Gaudette also sent letters of explanation of the current status to all residents who are currently residing within the subdivision.

Mr. Gaudette explained that if the Board votes to find the developer in default and rescind the approved definitive plan tonight, then, the following process is required:

- Send a notification letter to the developer that he has a 30-day "cure period" to complete the project as required by MGL Ch 41, 81U and the agreement.
- After the 30-day cure period has ended (and the project is not completed), then a certified letter will be sent to notify the Bank (as advised by Mr. Weinberg).
- The Board of Selectmen votes to allow the Planning Board to spend the security money in order to complete Phase I.

At a previous meeting questions were raised about the possibility the Town could use the security money of Phase II to complete Phase I, if needed, also if the Town were to perform necessary additional work on any lot, could the cost be put as a tax lien on that lot? Mr. Gaudette said Mr. Weinberg is still looking into the legal requirements on these inquiries, and working on the process of getting the funds.

Mr. Sauvageau asked about the current status of Phase II.

Mr. Gaudette explained that there are 3 homes out of 27 built and occupied. The binder pavement is done and the town holds security on this phase as well.

Mr. Carrera inquired about the remaining bond on Phase I, and the amount to finish the work.

Mr. Gaudette said the remaining amount is approximately \$31,000 on Phase I, Quinn Engineering had prepared an estimated cost to complete which is approximately \$115,000.00.

Mr. Gaudette believes the residents are most concerned with who will be plowing the roadway within the project this upcoming winter. He has been in discussion with Mr. Rob McNeil (U&F Superintendent) and the Town Administrator. The goal is to have the Town plow the roadway this winter time while pursuing the process of getting funds from the security. Through the Planning Board, Mr. Gaudette had submitted a letter, requesting the BoS to authorize U&F to maintain the roadway during this winter.

Ms. Shiver commented if the BoS does not authorize U&F to plow then there will be a safety issue. The Board asked if the BoS has responded back yet.

Mr. Gaudette said the BoS will have a meeting on October 14, 2009. He will report the outcome to the Board at the next meeting.

At this time Mr. Carrera opened the hearing to the public for any comments or questions.

Mr. Donnie Berthiaume of 140 Charlton Road, is a Chairman of Spencer BoS, stated that there will be a discussion in regards to the subject on October 14, 2009. The BoS will either vote that night or on October 19, 2009.

Mr. Mike Kubasiak of 1 Bellflower Lane asked who owns the property and the project currently. Is the developer, Mike Harrington, filing for bankruptcy?

Mr. Gaudette said the developer, Mr. Harrington, is still the owner. The Bank has not yet foreclosed on the property. He does not know whether Mr. Harrington has filed or is filing for a bankruptcy.

The security on Phase II is \$191,000. Mr. Tee asked if this amount could be used for the cost of plowing the roadway.

Mr. Gaudette said it cannot be used for other expenses. According to Mr. Weinberg, the security of Phase II is basically a contract with specific uses for Phase II.

Mr. Donald Ogert of 3 Deer Run asked what would become of Phase II if Mr. Harrington could not finish the project and leave things as they are now.

Mr. Gaudette said the plan is for the Town to get a possession of Phase II's security. Next, is to use that money to finish the roadway right up to Lot 7 in order for the three homes to have an access out. As for people who will take ownership of the project and plan to develop it; he/she must submit a new security to the Planning Board.

At this time the Board commented that if Mr. Harrington does not pay his real estate tax bills, then, eventually the Town can take over the property.

Mr. Gaudette said there is a possibility, provided that the developer does not pay taxes, however it is a long process.

Phase I's roads have been top-coated/finish paved. Mr. Berthiaume asked if the remaining security of \$31,000 would be enough to cover the cost of remaining punch list items.

Mr. Gaudette explained the first 150-feet of Briarwood Lane (part of Phase I) had completed the top-coating. The last portion of the road (another 150 feet) still needs to have the top-coat done. If the remaining money is not enough, they need an opinion from Town Counsel to see if they can use money from Phase II.

Phase II's roadway pavement has only the base-coating. Mr. Berthiaume then asked if there is enough security amount (Phase II) to cover the cost of doing the top-coating pavement.

Mr. Gaudette said there is enough money to do that. As same as Phase I which was mentioned earlier, if the Board votes to find the developer in default, then the developer has a 30-day cure period. If the developer fails to complete the project after the cure period is over, the Town will get the Letter of Credit from the Bank, and deposit it into the escrow account. BoS must authorize the Planning Board to use that money to do work. The plan is to finish the roadway (with the top-coating pavement) up to Lot 7 and then stop at that.

The safety issues concerning the guardrails and plowing snow in the winter time must be addressed. Mr. Sauvageau then asked if there is other serious safety issues involved with the wetlands in the project.

Mr. Gaudette there are 3 wetland crossings in the project, the Planning Board waived the installation of the fencing around the detention ponds in exchange for guardrails at the crossings instead.

Mr. Ogert commented there is a water holding tank (for Fire System) in Phase II, and the system was broken.

Mr. Gaudette replied he did notify the developer and the Bank. They are liable if anything is to happen there.

Ms. Kubasiak said that her house is in Phase II, and at a present time the fire system is not functioning. If her house got burned down due to a fire, she would lose everything.

Mr. Ceppi said that there is a water tank located in Phase I, and is a short distance from her house, it has a capacity of holding 20,000 gallons of water. There should be enough water there in case of a fire. The water contained in this particular tank is more than other tanks in rural areas in Town.

At this time there were no further comments and questions from the Board and the public. Mr. Ceppi then made a motion to close the public hearing at 7:45 p.m. Mr. Sauvageau seconded the motion and the vote was 5-0 in favor.

Mr. Ceppi made a motion to find Mr. Harrington, the developer, in default of performance obligations on Deer Run Phase I. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

B. Public Hearing Deer Run Phase II – Developer: Mike Harrington, MHD Development. The hearing is to determine if the developer is in default of performance obligations and rescind the Definitive Plan Approval. Mr. Carrera opened the public hearing at 7:47 p.m. He then opened the hearing to the public for any comments or questions.

Mr. Steven Luce of 8 Briarwood Lane asked about the temporary cul-de-sac whether the deed of the ownership (of the cul-de-sac) has transferred to him yet.

Mr. Gaudette said that at a previous meeting several months ago, Mr. Luce and his neighbor Mr. Chris Tutlis asked a question on the ownership of the temporary cul-de-sac. *The cul-de-sac has become their driveways* and it will be removed as part of the transition from Phase I to Phase II. Mr. Gaudette said that the Town could only own the roadway if it has been voted and accepted as a public road at the Annual Town Meeting. A transferring of title to the Town could be obtained by; the developer or his representative signs the title over to the Town; eminent domain; or the Town processes it as a Tax-Title property. Once the Town owns the roadway then at that point the situation with Mr. Luce and Mr. Tutlis' properties can be addressed.

With no further comments and questions from the Board and the public, Mr. Ceppi made a motion to close the public hearing at 7:50 p.m. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Mr. Ceppi made a motion to find Mr. Harrington, the developer, in default of performance obligations on Deer Run Phase II. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Mr. Gaudette said he will send letters to all residents of Deer Run for any new information and status updates. People can also contact him via phone or email.

Approval of Minutes: Minutes for September 15, 2009.

Mr. Sauvageau made a motion to approve the minutes for September 15, 2009. Ms. Shiver seconded the motion and the vote was 3-0 with Mr. Tee and Mr. Ceppi abstaining.

Old Business:

A. Pine Cliff Condominiums – Authorize Town Planner to Endorse Definitive Plan.

Mr. Gaudette explained that this is a private development and also a subdivision at the same time. The project was approved under the Subdivision Control Law, thus, it is subject to Subdivision Regulations in that the covenant is required. Mr. Gaudette also prepared the covenant and asked the Board to review it for any comments or objections.

Mr. Tee made a motion to approve the covenant as presented tonight and authorized Mr. Gaudette to endorse the mylar plan for the recording. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Other Business:

A. Alternate Delegate for CMRPC. Ms. Shiver continues to serve as a delegate for CMRPC. An alternate delegate from the Town is still needed.

Mr. Sauvageau made a motion to nominate Mr. Ceppi for an alternate delegate. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

B. Brownfield Program. EPA had selected the CMRPC for two brownfields assessment grants. Ms. Shiver said the CMRPC is looking for volunteers to participate in the program. It is an interesting program and the Town should have someone involved in the program. Mr. Gaudette said he will contact the CMRPC.

C. Downtown Workshops. Mr. Gaudette said the workshops have produced different development designs for Downtown area. The attendees have suggested the following:

- Finding spaces/location to accommodate the parking on south side of Main Street.
- Possibility of a walking trail on the north side of Main Street.
- Realignment of Pleasant Street to line up with Wall Street.

Mr. Gaudette presented the proposed realignment plan to the Board; the Board commented that it is a good design and idea.

D. CDBG Program. The Town had selected Pioneer Valley Planning Commission (PVPC) as a grant consultant, and PVPC will submit a new application for the grant in February of 2010. Eighty percent of the awarded grant for housing-rehab which the Town received in 2008 must be utilized before a submittal of the new grant application (in February of 2010). Mr. Gaudette said that the Town is working to reach that goal.

E. Housing Rehabilitation & Emergency Funds. The housing rehabilitation program is still in place. The Town also has emergency funds in place. The qualification of income eligibility is still a requirement. Examples for emergency funding are septic system replacement, a major water leak and damage to the property, etc.

Ms. Shiver asked if anyone has contacted the town in regards to this particular fund. Perhaps people in town are not aware of the funding available to them. Regarding the septic system replacement, people might hesitate if they asked the Town for emergency funding. The septic system is required to be tested for Title V inspection. Ms. Shiver inquired as to if the system fails Title V and Town Official knows that, is the Town obligated to mandate people installing the new system?

Mr. Gaudette said that he has discussed the emergency funds with Mr. Lee Jarvis, Spencer Health Agent, the Town has advertised the funding in the local newspaper, and recently a resident has inquired about the emergency fund.

Other Public Hearing:

A. Public Hearing - Zoning Bylaw Amendments for FTM 2009. Mr. Carrera opened the public hearing at 8:15 p.m. Mr. Gaudette stated that he had prepared the proposed amendments and presented them to the Planning Board, Zoning Board, and BoS, for comments. The date for the public hearing on zoning bylaw was advertised in the local newspaper. ODIS also filed the notice with the Town Clerk, and the proposed amendments were available at the Library, Clerk Office, ODIS, and at the Town's website. Also, a required notification went to abutting towns, CMRPC, and DHCD.

Note: There was no one present for this public hearing.

Mr. Gaudette said that all prior comments from the Boards have already been incorporated into this final proposed document and it consist of 9 articles in all, which are presented to the Board tonight. The only revision needs to be made is on page 3 of the document, under Site Plan Review, Traffic Impact Assessment (number 1), modify "The assessment data shall be no more than 12 months as of the date of the application" to "The assessment data shall be no more than 12 months **old** as of the date of the application."

With no additional comments from the Board at this time, Ms. Shiver then made a motion to close the public hearing at 8:20 p.m. Mr. Sauvageau seconded the motion and the vote was 5-0 in favor.

The Board then made the following motions:

Ms. Shiver made a motion to recommend to the Spencer Town Meeting the adoption of Article 1, Mr. Tee seconded the motion and the vote was 5-0 in favor.

Mr. Tee made a motion to recommend to the Spencer Town Meeting the adoption of Article 2 Mr. Sauvageau seconded the motion and the vote was 5-0 in favor.

Ms. Shiver made a motion to recommend to the Spencer Town Meeting the adoption of Article 3. Mr. Tee seconded the motion and the vote was 5-0 in favor.

Mr. Sauvageau made a motion to recommend to the Spencer Town Meeting the adoption of Article 4. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Mr. Ceppi made a motion to recommend to the Spencer Town Meeting the adoption of Article 5. Mr. Tee seconded the motion and the vote was 5-0 in favor.

Mr. Tee made a motion to recommend to the Spencer Town Meeting the adoption of Article 6 with a modification of number 1, Traffic Impact Assessment, to insert the word "old" in between the words months and as. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Ms. Shiver made a motion to recommend to the Spencer Town Meeting the adoption of Article 7. Mr. Tee seconded the motion and the vote was 5-0 in favor.

Mr. Sauvageau made a motion to recommend to the Spencer Town Meeting the adoption of Article 8. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Mr. Tee made a motion to recommend to the Spencer Town Meeting the adoption of Article 9. Ms. Shiver seconded the motion and the vote was 5-0 in favor.

Ms. Shiver made a motion to adjourn the meeting at 8:40 p.m. Mr. Tee 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