

# Planning Board – Town of Spencer

## *Minutes*



Regular Planning Board Meeting  
Tuesday, February 15, 2011 at 7:00 PM  
McCourt Social Hall  
Memorial Town Hall

---

---

The meeting was called to order at 7:05 p.m.

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

Planning Board Member Absent: None

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

**New Business: None**

**Old Business:**

**A. Sunset/Holmes Surety** – Update. Ms. Buck gave a brief summary from the January 25<sup>th</sup> meeting: The Letter of Credit contains the amount of \$90,000 representing the bond's amount of the remaining work on the project, which was thought to cover the entire project (Phases I & II). The new bond's amount is based on the same itemized list set for \$114,000 (excluding the preparation of as-built and acceptance plans). Mr. James Laney, the current owner, requested the Board to accept the original bond amount (\$90,000) with a restriction on any lot releases for Sunset Lane. The Board and Ms. Buck went over the list of items and discovered a discrepancy. The list didn't show the construction cost for Sunset Lane Extension. The Board directed Ms. Buck to check with the original bond estimation and review project files and report back to the Board at the next meeting - which is tonight.

Ms. Buck said, after she did review the files, she found the original estimate was for Phase I only. The revised bond is \$114,000 plus \$4000 for the as-built and acceptance plans; \$118,000 in total.

The Board asked whether the developer could do construction, building houses on the lots in Phase I since they were released from the covenant already. In addition, the Board inquired about the surety for Phase II.

Ms. Buck said she gave a list containing the names of projects and addresses where building permits shouldn't be issued (due to the defaults or insufficient amounts on the surety) to the Building Inspector previously. Sunset/Holmes is one of the projects on the list. Ms. Buck

explained before Phase II can move forward, the developer is required to provide the surety for the construction's cost (installation of all infrastructures and road completion) to the Board.

Ms. Buck notified Mr. Laney that the Board will discuss the issue and vote on the surety amount at the February 15<sup>th</sup> meeting, and he was welcome to attend. She also requested any documentation specifying that the Letter of Credit was transferred to him, Mr. Laney. [According to Mr. Laney, the Webster First Federal Credit Union has transferred the Letter of Credit to him as part of the sale/purchase agreement]. As of today, Ms. Buck hasn't heard anything back from Mr. Laney.

Ms. Shiver made a motion to accept the surety amount of \$114,000 recommended by Graz Engineering and the addition of \$4,000 (for as-built and acceptance plans); the total is \$118,000. Mr. Ceppi seconded the motion and the vote was 4-0 in favor.

Ms. Buck said she will contact Mr. Laney and notify him on the outcome.

**B. Proposed Zoning Amendment.** The Board and Ms. Buck have been working on the proposed amendments for the past few months. Ms. Buck submitted the three (3) draft amendments to the Board for review and the public hearings are tentatively scheduled for March 15, 2011. Any comments or modification can be made prior to February 18<sup>th</sup>. [The publication of the public hearing for these amendments will be in the New Leader in the February 25<sup>th</sup> edition]. The Board reviewed the draft amendments and made recommendations as follows:

*Section: 4.8.3. A - Use of Residence for Business Purposes.*

3a) Large Home Based Contractor – A business which is conducted by a resident of the premises accessory to a residential use, but not entirely enclosed within structures. Examples include but are not limited to building, plumbing, electrical, cabinetry, landscaping, and other similar contractors who perform their work off- site but use the residence as a base of operations including an office and small scale storage of materials. This category is meant to serve the needs of small business with limited space needs, with the expectation that once the business has grown to a larger size it will be moved to a more appropriate location in a commercial or industrial district.

Mr. Carrera commented that “small business” and “small storage of material” does require further specification in terms of what constitutes being a small scale business, and whether the storage is temporary or permanent. In addition, at what point does the business become commercial or industrial and have to move/locate to the designated district, and which Town Official shall regulate/reinforce the bylaw?

Ms. Buck explained the content of section 3a has already existed in the current bylaw, she didn't make any changes. The following sections; 4.8.3.B.3b; 4.8.3.B; 4.8.3.C; 4.8.3.D; and 4.8.3.E gave further explanation on the above comments. Any resident wishing to establish a home business shall submit a request (as a form of Business Certificate) to ODIS, for review by the Building Inspector/Zoning Enforcement Officer

(BI). The BI checks the bylaw whether the proposed business meets all criteria, or requires a special permit from the Zoning Board of Appeals.

The Board still has concerns on the Small Home Based Contractor's qualification and requirements.

Ms. Buck pointed out the Small Home Based Contractor category, which was added as number two (2) on page 3, contains six criteria reflecting the Board's concerns that were discussed in the previous meetings. This category of business (small home based contractor) doesn't require a special permit providing the applicant meets all necessary criteria. Ms. Buck also made the modifications to the following: Paragraph 1(f), page 3 change "in paragraph 2 above" to "in paragraph c above", and Paragraph 2(d) change "in paragraph 2 above" to "in paragraph c above."

*Section: 3.4.2 (Floodplain District, subsections C through F).*

Mr. Carrera asked if it is possible to use other terms for referencing instead of specific dates.

Ms. Buck said the draft sent from the MA Division of Conservation & Recreation (DCR) requested updating the addresses. When Ms. Buck asked to list only the agency names without addresses; the staff from DCR answered yes. She will contact the DCR on the date referencing, and any modification could be done at the public hearing.

The Board also directed Ms. Buck to contact the DCR for a clarification on Other Use Regulations, paragraph 2(a) on page 2. [The Board would like to receive an example of what is classified or qualified as "encroachment" that is prohibited in the regulatory floodway].

Ms. Buck responded she will check with the DCR on the two subjects.

Ms. Shiver made a motion to sponsor the above two Articles Amendments for the Annual Town Meeting (ATM), May 10, 2011. Mr. Ceppi seconded the motion and the vote was 4-0 in favor.

*Section 4.8.8: Inclusionary Housing Bylaw. [Amend the Zoning Bylaw by inserting a new Section 4.8.8].*

Ms. Buck said this amendment could be included with the above Article for the ATM if the Board wishes.

The Board commented the draft amendment prepared by Ms. Buck is heading toward the right direction. After a lengthy review and discussion, the Board members expressed that additional time is necessary and decided to postpone action on the Inclusionary Housing Bylaw. This new Section comprises of 11 elements and there still are several questions and options needed to be explored and researched. The following general topics and proposed changes to the draft were discussed at the meeting:

- Reduce threshold project size from 10 units to 9.

- With land donations – sell lots to build units or fix up existing housing.
- Create a disincentive to contribute funds/encourage actual construction of units.
- Establish an Affordable Housing Trust Fund at the same time as adoption of bylaw.
- Provide specific example of fee calculation of Fee in Lieu of Units section of Bylaw.
- Add language to require that contiguous developable land count as part of the same development (to prevent small developments that avoid the “trigger” for providing affordable units).
- Strengthen language to give the Planning Board greater discretion regarding the choice of units, land, or cash (to the extent allowed by law).
- Ideas to avoid only having subdivisions under 9 units:
  - All projects under 9 units to provide cash equivalent of 12% affordable.
  - All decimals to be provided as cash (i.e. no rounding).
- Further research/Legal Issues:
  - Process to establish an Affordable Housing Trust Fund.
  - Administration of bylaw (bylaw allows a variety of options, but best to clarify prior to adoption).
  - Calculation of Fee in Lieu of Units. Find easy-to-understand model. Provide specific examples with numbers and include in bylaw
  - Length of deed restriction (99 Years?).
  - Review additional bylaws for greater comparison. Problems/concerns, how fees are calculated and used. Do other communities allow for ANR development?

The Board and Ms. Buck will continue work on the Inclusionary Housing Bylaw (IH), and also the Housing Production Plan to be prepared with the assistance of WPI students. The Board plans to have the IH bylaw completed and ready for the Fall Town Meeting.

### **Other Discussion:**

**A. Offer to Purchase – 61A Property.** The Board received the notification letters from Attorneys Berthiaume & Berthiaume pertinent to the estate of Esther H. Gale, which is classified as 61A an Agricultural/Horticultural land. The estate (consists of Lots 4, 5, and 8 on Lyford Road) is for sale and the Town has the right to exercise its first refusal option. The Board could either: 1) remain silent; or 2) respond back if it recommends Town purchase.

The Board was interested to know if the land is considered valuable to the Town, has connection to the state forest, cultural land, or rail-trail. The Board directed Ms. Buck to contact Ms. Ginny Scarlet, Conservation’s Agent, for an opinion on the estate.

**B. Volunteer.** Ms. Buck informed the Board she received a volunteer application from a resident expressing interest in serving as a member of the Board. Ms. Buck will contact the individual.

### **Approval of Minutes: Minutes for January 25, 2011.**

Ms. Shiver made a motion to accept the minutes for January 25, 2011. Mr. Sauvageau seconded the motion and the vote was 4-0 in favor.

With no further discussion Mr. Ceppi made a motion to adjourn the meeting at 8:00 p.m. Ms. Shiver seconded the motion and the vote was 4-0 in favor.

Submitted By:

Approved By:

---

Bea Meechan, Senior Clerk

---

Fabio Carrera, Planning Board Chairman

### **List of Documents used on February 15, 2010**

- Bond Estimation for Sunset/Holmes Project dated 10.18.2010.
- Draft of Zoning Amendments.
- Letter from Attorneys Berthiaume & Berthiaume , 61A property.