

Zoning Board of Appeals – Town of Spencer

Minutes



Regular Zoning Board Meeting
Tuesday, March 23, 2010 at 7:15 PM
McCourt Social Hall
Memorial Town Hall

The meeting was called to order at 7:15 p.m.

Zoning Board Members Present: Chairman Allen Collette, Clerk Pamela Crawford, Albert Drexler and Delores Kresco, alternates.

Zoning Board Member Absent: Joanne Backus.

Staff present: William Scanlan, AICP Planning Consultant and Bea Meechan, Senior Clerk ODIS.

New Business:

A. Special Permit – Mr. Edward Pesce for Old Sibley Farm Realty Partners, LLC, Route 9 and Greenville Street, Spencer (Assessor’s Maps R34/8 and R26/1). Mr. Collette opened the hearing at 7:15 p.m. The Clerk read the brief. The applicant is requesting a special permit in accordance with Section 8.1 of the 1985 Spencer Zoning Bylaw to extend the previously approved Special Permit which was granted on November 14, 2005 and April 8, 2008. The request is to construct 304 multi-family dwelling units on 62 lots in the Old Sibley Farm. The property is located in the Rural Residential Zoning District.

Mr. Collette received a letter from Spencer Treasurer/Collector Department which read “Old Sibley Farm Properties still owes taxes for fiscal 2009, which is in Tax Title, and fiscal 2010, 1st, 2nd, and 3rd quarters. This is as of 4:30 p.m., March 23, 2010.” Mr. Collette asked the applicant for a comment on the matter.

Mr. Pesce said that he and other business partners are trying to resolve the situation with the Town and with the financing institution. Mr. Pesce stated that Old Sibley’s mortgage company has scheduled a mortgagee foreclosure sale on April 20, 2010. At the present time there are several attorneys involved in working out the solutions, an agreement plan with the Tax Collector, and with the mortgage company.

Mr. Pesce stated that for the past years Old Sibley has been acting as “good neighbor” (authorized a drainage easement on Greenville Street to the abutting property). In addition, Old Sibley also worked cooperatively with Town Officials to allow the Department of the Utilities & Facilities and the Conservation Commission to drain the wetland on its property in order to get

access to an old water main. Mr. Pesce stated that Old Sibley intends to move forward with the plan and that he needs time to find a solution to the current circumstances.

Tonight Mr. Pesce requested a continuation of the hearing to work out a payment plan for taxes, and he asked to continue the hearing for 90-120 days. The current special permit is due to expire on May 13, 2010. He is confident the tax issue would be resolved before that date and if that is the case, he asked if he would need to come back to the Board again.

Mr. Collette discussed the matter with other members of the Board. They concluded that the hearing should be continued. To approve the special permit tonight with a condition on the delinquent taxes is not an option. The applicant needs to come back and present information, a payment agreement with the Treasurer/Collector and the outcome from the foreclosure sale to the Board and the public. There are abutters in attendance at this hearing tonight. They have the right to know of any new information and to voice their opinion. The Board directed the applicant to be specific on the continuation date.

The mortgagee's foreclosure sale is scheduled in the near future. Ms. Crawford asked whether the decision from the Board on the special permit would have any impact on the foreclosure process. Mr. Drexler asked if there was any modification to the original plan (2005).

Mr. Pesce responded he will report the Board's decision to the Financing Agency. That is why he asked for the approval of a special permit subject to taxes at this hearing tonight. Old Sibley would like to maintain a positive outlook with the Financing Agency. There is no change to the original plan since it was approved in 2005. Mr. Pesce requested to continue the hearing to May 25, 2010.

At this time Mr. Collette opened the hearing for any questions or comments from the public.

Mr. David Mainville of 20 Polar Spring Road commented that in a normal situation if the resident does not pay taxes, the Town will go forward with tax taking procedure and eventually will take over the property. In this case it appears that the Town is allowing "special treatment," by granting an extension of a special permit to Old Sibley with the knowledge that they still owe taxes.

Mr. Collette stated that the Board has not granted an extension just yet to Old Sibley. The applicants came to the Board to ask for the extension on the approved special permit and to provide an explanation on the agreement plan with the Town Collector/Treasurer. Any individual or entity that applies for a special permit and still owes taxes to the town, the Board has the authority to not issue such permit in accordance with a Spencer General Bylaw. It is up to the Board to make that determination.

Mr. Mainville thanked the Board for a clarification.

Mr. Collette asked whether the applicant needed to sign an extension form to extend the hearing date.

Mr. Scanlan said that as long as the hearing remains open, the applicant does not have to sign the extension form. After the hearing is closed, the Board has 90-days to issue a decision.

With no further questions and comments from the Board and the public, Ms. Crawford made a motion to continue the hearing to May 25, 2010 at 7:15 p.m. Mr. Drexler seconded the motion and the vote was 4-0 in favor.

Mr. Pesce thanked the Board for being cooperative with Old Sibley. He also thanked staff at ODIS, Bea Meechan, for being very helpful in the special permit application process.

Approval of Minutes:

Mr. Drexler made a motion to approve the minutes for October 27, 2009. Ms. Kresco seconded the motion and the vote was 2-0 in favor with Mr. Collette and Ms. Crawford abstaining.

Mr. Collette made a motion to approve the minutes for December 22, 2009. Mr. Drexler seconded the motion and the vote was 2-0 in favor with Ms. Crawford and Ms. Kresco abstaining.

Ms. Kresco made a motion to approve the minutes for March 9, 2010. Ms. Crawford seconded the motion and the vote was 3-0 in favor with Mr. Drexler abstaining.

Old Business: None

Other Business: None

With no further discussion, Ms. Crawford then made a motion to adjourn the meeting at 7:50 p.m. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

Submitted By:

Bea Meechan, Senior Clerk, ODIS