

PLANNING BOARD MEETING OF FEBRUARY 26, 2008

PLACE: TOWN HALL BANQUET ROOM

Meeting called to order at 6:30 P.M. by Chairman Fleurent

I. ADMINISTRATIVE BUSINESS

A. Quorum/Attendance

Members Not Present – Dennis Vello

Planning Director William Roth was also in attendance.

B. Acceptance of Minutes – January 22, 2008

Timothy Cox motioned to accept the minutes of the January 22, 2008 meeting as amended. Gary Staffon seconded. The vote was unanimous. The motion passed.

C. Planning Board Bills –

1) The Executive Dog – Ads – Southcoast Media - \$144.00

Timothy Cox motioned to pay this bill. Wayne Hayward seconded. The vote was unanimous. The motion passed.

2.) Refunds –

- * Mariner Estates – 2 - \$178.94
- * Des Roches – \$33.89
- * Oliveira/Schwelm/Connor - \$52.45
- * Omnipoint Communications - \$465.89
- * Lighthouse Bed & Breakfast - \$150.00
- * Standard Times - \$48.00
- * Ketchum/Mello/McCann - \$48.00

Timothy Cox motioned to refund this money. Gary Staffon seconded. The vote was unanimous. The motion passed.

D. Receipt of Plans

1.) Special Permit – Monster Mini Golf – 10 Sarah's Way – CVS Plaza (PH 3/25/08)

Albert Borges motioned to set the public hearing for March 25, 2008. Gary Staffon seconded. The vote was unanimous in favor. The motion passed.

E. Approval of Plans – None.

F. Consultation -

1.) Tibbetts Engineering – Pasta House

William Roth – They have submitted some plans regarding a development that they want to do. I told them they could have about 10 minutes. They're looking for some direction as to how to proceed.

Bob Rogers – The owner would like to improve the restaurant and bring it into ADA compliance. The focus is on the building. We will need some variances from the ZBA. But we will need a Special Permit from your Board. We're trying to push the entrance as far away from the intersection as far as we can and provide a narrow strip of landscaping and get a parking variance and impervious coverage variance. Right now, everything is in flux. We wanted to present it and just get a sense of the board.

Wayne Hayward – Why does he have to go to the ZBA?

William Roth – This proposal adds impervious area and parking within the setback. They are proposing to pave it and the parking is non-conforming. Also, from a drainage standpoint and access management, this would be an improvement.

Bob Rogers – I would leave it the Chairman to get a sense of the board at a later date.

William Roth – Some of the parking in the employee parking area is an issue. They double stack, which from my perspective isn't a problem; however, the code does not address it. But it's an issue that would come up during the Special Permit process.

Bob Rogers – We're also working toward some storm water mitigation.

Marc Scanlon – How will the exiting work?

Bob Rogers – We are proposing unrestricted.

Marc Scanlon – There might be a concern with traffic.

Timothy Cox – To me, this is an improvement.

II. PUBLIC HEARINGS

1.) Unaccepted Street Discontinuance – Ruth Street Realty – Nelson Avenue/Ruth Street – Bates (Marinus Vander Pol - abstained)

William Roth – I received a phone call from Ken Ferreira. He will be delayed and requested that if he is not here that the application be tabled until he arrives.

Timothy Cox – Motioned to table the hearing. Seconded by Gary Staffon. The vote was unanimous.

2.) Rezone – Xifaras-Manillo – Alden Road/Tootle Lane

William Roth – I have submitted my Staff report. I will be brief. Also included in your package is a survey of the wetlands. However, before I get started, I will read a letter sent by the applicant, to the Board of Selectmen. Letter was read. They are asking for a postponement until March 11. I notified the applicant that he or a representative will need to be here tonight to make the request in person.

Richard Manillo (co-applicant) – I am a prospective buyer. One of the issues has to do with the property being primarily wetlands. He is finding out that more of it is uplands and not wetlands.

Chairman Fleurent – Before we take any action whatsoever, it is up to the owner to flag the land for wetlands. The people here are here for a purpose. The Planner's job is to recommend to this Board. This is nothing new to the Board.

Marc Scanlon – As a former resident to that area, it hasn't changed in 40 years. This gentleman should have brought with him the necessary documentation to show where the Town Planner was wrong.

William Roth – What's before you is whether or not you should accept the continuance request.

Richard Manillo – Mr. Xifaras only received notice of the denial yesterday. He has hired a number of attorneys and he feels he needs more time to respond.

William Roth – I mailed the notice because they had no fax number or e-mail address. He received it on February 21. They've known about this. Nowhere in the continuance request does it say anything about hiring any consultants. He says I have made allegations and haven't supported them. I would like to know which ones. I would also like to know what supporting documentation he feels that I did not supply. My report is an evaluation of the information that was provided.

Chairman Fleurent – Your denial was only a recommendation.

Marinus Vander Pol – The last few rezones of this area, that this Board recommended, came with approved wetlands lines showing exactly where they were. There was also a pretty good outline of what was to be build there. Here, there is none of that.

Richard Manillo – He is now preparing that.

Marinus Vander Pol – If that's the case, let's continue the public hearing for two months, because that's how long it's going to take to prepare that type of information.

Wayne Hayward – We should act on his plan, the one that is before us. Let's not get too far ahead of ourselves. I have many questions for him. The questions are whether or not you want to see this rezone, and he's not here to make the case for it.

William Roth – Logistically, there's no way he can get on for March 11.

Marinus Vander Pol – I'm not inclined to dismiss this out of hand without the applicant being here. The last few rezones were done with detailed presentations to achieve success. If he was of that mind, I would give him the opportunity.

Wayne Hayward – I don't know what he's protesting.

William Roth – He's protesting my recommendation.

Marinus Vander Pol motioned to continue the public hearing to April 22. Gary Staffon seconded.

Chairman Fleurent – His request is for March 11.

Timothy Cox – He should have come. These people came here tonight. He should have come as well.

Gary Staffon – This has to go to Town Meeting regardless of our recommendation.

Marinus Vander Pol withdraws the motion and Gary Staffon withdraws the second.

Chairman Fleurent – We should open the public hearing and come up with a recommendation tonight.

Timothy Cox motioned to deny the continuance. Marc Scanlon seconded. The vote was 6-0 in favor (no vote from Marinus Vander Pol).

William Roth – To be clear with one issue that has been brought up by the applicant, I am not recommending a 40B. I merely responded that if a 40B were proposed than a rezone would be moot because 40B allows an applicant to bypass local zoning. I also can't determine the jurisdiction of Tootle Lane because the location of the town line is unclear.

Atty. Chip Mulford – Wetlands is an issue. But this property is a nightmare if you're talking about multi-family housing. We are requesting a non-favorable recommendation.

Marinus Vander Pol – I do not have enough information to vote either way.

Timothy Cox motioned to close the public hearing. Wayne Hayward seconded. The vote was unanimous in favor. The motion passed.

Wayne Hayward motioned to not recommend this to Town Meeting. Marc Scanlon seconded. The vote was 6-0 (Marinus Vander Pol abstains) in favor. The motion passes.

1) Continued: Unaccepted Street Discontinuance – Ruth Street Realty – Nelson Avenue/Ruth Street – Bates

Timothy Cox – Motioned to un-table the application. Second by Gary Staffon. The vote was unanimous.

William Roth - There are a number of letters from abutters against this proposal. I have also received several phone calls in opposition. One of the owners is looking for a postponement to the summer so the out of town property owners could act accordingly. The Building Commission has commented on site access. I am recommending a denial due to the numerous responses of the historic access in and around the area.

Ken Ferreira – I haven't had a chance to read the letters that came in. The plan clearly identifies the property boundaries and the outline of the house. These lots were created from the Wilbur Point Development plan of 1939. There was no subdivision. None of the lots are owned by the Town. It's all privately owned. All we're asking is that the Town relinquishes its rights to this section of Nelson Avenue. I'm not even sure the Town has any rights here. The public access will not be diminished.

Wayne Hayward – There was some confusion. Is it 300 square feet or 3,000?

Kenneth Ferreira – 3,000.

Wayne Hayward – The objection is to Nelson Avenue itself.

Tom Rossi, an abutter, reads a letter from Dr. Wolkowicz.

Tom Rossi – This is what started it all.

Chairman Fleurent – Our procedure is that all of the abutters are notified and no one opposes it, it gives us some direction. But here, the majority are opposed to it.

Mary Ann Kryzinski – I feel the engineer over simplified this. This is a very important part of Wilbur's Point. This whole thing doesn't make sense to me. This is not their land.

Chairman Fleurent – Does the fence go across the way?

Kenneth Ferreira – The GIS maps say no, but I believe they're incorrect.

Chairman Fleurent – According to this, it's halfway in the street.

Wayne Hayward – What do we accomplish by allowing the discontinuance?

Kenneth Ferreira – The Town has a process for this. It gets rid of the Town of Fairhaven interest in Nelson Avenue.

Albert Borges – I will vote against this.

Wayne Hayward – This could easily get tied up in court if we approve it. There is some public interest.

Timothy Cox motioned to close the public hearing. Gary Staffon seconded. The vote was unanimous in favor. The motion passed.

Albert Borges motioned that the board disapprove this application. Timothy Cox seconded. The vote was 5-0 in favor (Marc Scanlon and Marinus Vander Pol abstained). The motion passed.

3.) Zoning Bylaw – 198.14-Districts

William Roth – This is the zoning bylaw amendment to update the reference section of the map. I have handed out a corrected version. I am recommending this version. I don't want to delete the last sentence.

Timothy Cox motioned to approve the change. Marc Scanlon seconded. The vote was unanimous in favor. The motion passed.

4.) Rezone – I-195/Route 240

William Roth – I advertised the hearing and looked at the 2001 file using the same language in reverse. This will rezone all of that property back to RA. This will make it more consistent with the other neighborhoods. This will bring more conformity.

Timothy Cox motioned to recommend approval of this rezone. Gary Staffon seconded. The vote was unanimous in favor. The motion passed.

III. OTHER

1.) Selectmen's Engineering Fund – Stoney Cove Terrace

William Roth – The BPW and the Board of Selectmen were looking for advice on this. But they voted last night to do this. So, this is moot. But, I need to prepare for this for Town Meeting.

2.) Street Acceptance – McKensie Lane

Discussion ensued regarding the McKensie Lane Street Acceptance request and petition regarding same.

William Roth – They have one remaining item, the filter units, which were specified are no longer available; however, a new company has started to make them. I have given the name of a new company to their engineer. They need to be in place in April. I will advise.

3.) Discuss ANR Proposal – 167 New Boston Road

William Roth – The ZBA granted a variance. This is almost a repeat of what happened a few weeks ago. I believe the correct way to process this is through a subdivision and the applicant can request an 81R to the frontage requirement. This is the legal way to do this.

Wayne Hayward – I would support it.

Albert Borges motioned to adjourn. Marinus Vander Pol seconded. The vote was unanimous in favor. The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

James Pelland, Secretary
To the Planning Board