

December 17, 2004

PRESENT: Dan Hooper, Karyl Spiller-Walsh, Alan DeToma, Matt Hayes, Eric Alexander

ALSO PRESENT: SAC, Mark Louro

Meeting called to order at 5:36 pm

PUBLIC HEARING CONTINUATION – Hartney Acres Definitive Subdivision Plan

ALAN – for the record, I will recuse myself from these proceedings as I am an abutter.

Dan – I would like the applicant to present – I understand there is a revised plan, reply to VHB's 12-13-04 review letter and letter from Peter Brooks

John Claffey  
Paul Yorkis  
David Faist  
Chris Herron  
Steve Bazaryian  
Dan O'Driscoll

Paul – we tried as a team to respond to the comments received at the meeting 12-13- all have been responded to in terms of aspects of the plan – I hope that Mark has had sufficient opportunity to review them – with time constraints – we would be happy to answer any questions – we did receive a copy of the draft cert of action and we do have questions about that – we would like to raise questions and offer suggestions –

Dan – as the public hearing remains open, that is a fair request, when it closes – that moves us to another phase

Dan – We have a number of letters to read into the record Read a number of letters – items to read into the record - Matt read

Fire chief Wayne Vinton – 10-26-04 memo -  
Jeff Watson – 12-4-04  
Board of Water/Sewer Commissioners –  
Jepsky and Sack – attorneys representing Kate Newton – Bill Sack  
Fire chief – 12-9-04 memo  
Dave D'Amico – 12-13-04  
Medway Board of Health/Bill Fisher – 12-17-04  
Email memo from Alan DeToma – 12-15-04

Dan - Defer reading the letter from the applicant's attorney for now

Dan – Mark, I would like your thoughts

Mark – one of the first items had to do with street lighting – covered in COA;

The southerly wall was extended into the easement in the roadway layout – as long as the easement specifically allows for that – legal matter

#10 on page 3 – there was a typo on sheets 4 & 5 regarding installation of catch basin sediment control

page 5 general comment s- I went thru the plans and still have a c

there is no subdrain east of the culvert. Why not?

Dave – just an oversight; we can add it easily

Chris – we can add it coming in

Mark – fence was noted on the plans to be coordinated with town and applicant

Mark – the issue of driving sheeting to construct the wall – applicant said he would be responsible for all trees – how do we deal with trees that die a year later?

Mark – at east end fo walls again – you didn't put guardrail cause you turned it away – you still need to do something there – that corner is 3 ½ feet off of the pavement – rather than put a wing wall, put guardrail – the guardrail if it is hit, will give –

Dvid – is there a standard you can point us toward?

Mark – AASHTO covers that –

Mark – one thing we mentioned with the stucutral engineer – the bridge wall over the wetland – the wall is set at a constant height – but the roadway profile is slopng – the board may want to look at that again – maybe have top of wall follow the roadway profile –

Chris Herron – fine with me.

Dan – excellent

Dan – responses to that, if any?

Dan – anyone from the public with any comments? Identify yourself and speak

Charlie ross – 5 blueberry hill – I have heard some references to a draft certificate of action – does that outline where the board is at? May the public have comments on it?

Dan – we have it here and we will discuss and yes you may have an opportunity

Mark – wherever the grass strip tapers down to nothing – lop it off and make sidewalk

Matt – the public hearing will remain open as we go thru the draft certificate?

Dan – no, but I am offering them an opportunity to comment on it before we close the public hearing

Dan – I plan for us to take a brief break 5-10 minutes to review

Paul – question for clarification – I know each one of us may have questions – we would like to raise questions about that and offer suggestions for the board's consideration – will we have the opportunity

Dan – yes – I want to take a break now to give everybody has a chance to look at the draft certificate of action and then everybody will have a chance to comment on it.

5:55 pm – BREAK TIME FOR 10 MINUTE S

6:05 – reconvene – public hearing is still open – at some point in this back and forth I would ask Steve Bazayarina of Peter Brooks Letter

Steve – position set forth in that letter -0 the easement that is referenced in the subdivided plan – easement – is binding upon the abutters to that roadway by the fact that the deed references the plan – there is state law to that effect – my position is that a review of the plan and the deed that that is the intent of bozanowski – it is so evident on the plan – that intention can be found – we have also contacted mr. bozanowski and he said he intended to transfer the easement to Mr. Claffey – I think the abutters of the roadway are bound by the easement as set forth – the fallback argument is easement by estoppel – the abutters would be precluded from arguing that they didn't know the road might occur –

There is an express grant vis a vis the deeds but moreover there is an implied or equitable grant –

Dan – it is interesting the kinds of considerations we have gotten on this very issue – not on this plan – but up on broad acres farm – there is a concern about this very same issue – some of the answers we have gotten are contrary

Dan – what if abutter a and b were just asked to acknowledge the easement's existence

Steve – my understanding is that they were present at the meeting the other night and they didn't jump up or down – that would further bolster the estoppel argument – they are clearly aware

Mark – would it be possible to get something in writing from them to say that they are aware of the easement – that would help things if you could get – if they could do so it would help everybody –

Dan – aware that the easement exists – it still remains a question as to whether it is mandated that an easement be identified in the actual deed – so it is called out in the deed –

Steve – the problem with the law is that there is more than 1 way to skin a cat – my understanding is that it doesn't have to be set forth in the exact expressions – if it is not set forth what governs is the intentions of the party – Mr. Bozansowski says he meant to give it to John – plan is referenced in the deed and ipso facto – even if this express grant is not given, the easement is there because they knew it was there – if we can do it

Karyl – I don't know if I exactly agree with you – are these neighbors legally bound to this – I don't think so – I doubt it – it certainly would be a lot easier if we had letters – the easement that is referred to in the roadway – is that easement real in its own documentation –

Mark – the easements that we are talking about here are the two corner roundings on the abutters

Steve – Bozansowski retains the easements on the abutters property – he doesn't need to register that easement because he owns the property

Mark – it is referenced when those lots are sold – the easement doesn't matter until

Paul – page 4 – waiver list

Specific condition # 8 on the Easement issue

Steve – how do we do that

Mark – letters from the applicants?

Dan – what I know we are trying to do is to assure anyone who may have concerns or issues hereafter that the two lot owners subjected to these easements have been informed through this process – whatever that means – it is our responsibility to ensure that there is noted confirmation of the easement issue by those land owners – in what form, it may just be a letter from you saying that you had a conversation on such a date – maybe they will sign – at least we have done our due diligence with respect to the easements – with respect to the unclarity –

Steve – if that is your intent, then prior to endorsement

Dan – how about a certified letter –

Paul – I am not sure we can do number #8 the way it is presently written

Paul - #10 – I have taken the liberty of preparing a substitute for item #10 – it is a more precise description – reference a page number on the plan – take into consideration the utilities and drainage

OK

Read into the record – paul’s suggested change on item #10 –

Paul – item #12 – in the past, the CONCOM has been slow to indicate acceptance of parcels – what happens if they say they don’t want it – the intention is for them to accept e- ask that the board change the language so that we are in a position to have enough time to work with them to get that. I don’t know how long it will take to get their approval – I just don’t know

Eric – I think we ought to fix first sentence too –

Dan – I am OK – change it to prior to first lot release –

Susy – try to do it before hand

#14 – retaining wall

chris herron – two comments – the draing – question on the 4-6 inch cap

paul – our preference would be to have it without a cap and to have it look as natural as possible

karyl – from the top, it will look like just concrete – at the time, we felt it was a way of finishing it off – it was a preferred solution to what to do at the top –

chri – the marketing materials for this material – it looks great straight on

OK to remove 4-6 inch cap.

Item #15 – Fencing –

Paul – this is a very confusing issue – I have for you – mr. claffey met with Bob Speroni – we are talking about the left hand wall as you enter the property – bob speroni indicated and what the code confirms is that no fence is required – we are representing to you that that is a statement of fact – but there is also logic and safety from the top of the property that abuts this – we are proposing a fence even though one is not required under the building code. Bob’s review is that no fence would be required. –

Dan – what is maximum height on south side wall?

Chris – 7 feet high.

Paul – so the representation that is going way back where we indicated no fence was required – we were correct.

Dan- let me correct you – that is not what was stated – you said none are necessary – the inference was that none are going in there.

Paul – we believe it is necessary- the bulding code doesn not require – we believe it is in the best interst – we have a proposal for a fence – what may have happened in the past re: what the safetyofficer said is irrelevant this evening – we are trying to address a safety concern tht we and the PB see and most with common sense –

Paul – We have a sample of the fence that Chris was able to bring up – this is not aluminimum – it is steel – we think it is a better prodct

Chris – alum fence that you were speaking of last time – difficult material to work with –

Dan – is this the type of fence going in where the fence is to be applied – pointed spindles at top

Chris - it will be flat topped - the fence will be 2 feet 6” –

Dan – get it to be approved by the police department –

Paul – rail on top of the fill wall over the culverts

Chris – we had discussion s on how big a sphere can fit thru – 4” – we also raised the height to accommodate bike riders

Karyl – maintenance?

Chris – black powder coated is good

Dan – in terms of design it will be complementary to the fencing – black – I am OK with this

Paul - item 22 – we would indicate to you that we are concenreda bout – there have been a number of things we have treid to do this enveing to addrss your concerns that were expressed at the earlier hearing – I would indicate to the board that there is

Dan – we will take your concern under advisement

Paul - #23 – why the difference in Amount

Paul = #27 – I believe that all fees were paid at the end of the prior

Steve - # 8 – replacement language proposed by Steve bazarian –

Mark – suggested he had text re: sidewalk and guardrail –

Dan – back to page 1 – residual issues .

# of linear feet of stoen wall

page 3 – item #4 - - I refer to the letter of DPS re: his estimate that this work in fact may be more costly for the town now that the town – I will preface any discussion on this matter – that since Hartney I and Hartney II, there has been an agreement that they would pay the town \$20,000 and several of us have said – it was not based on anything specifically – it is a mitigation figure that we are now at – that was where we came to that day - do we want to

karyl – you might take into consideration what might happen on Nobscott –

eric – I feel it is unrelated – I also want to acknowledge – clearly we agreed on the 20,000 figure – perhaps it would be appropriate to appeal to the applicant that the figure we agree to tonight be slightly higher considering the recommendations of the DPS

karyl – I think you need to give it a figure –

eric – we take the 20,000 figure – but we have new information that the figure is not sufficient – I would propose that we go toward the \$5,000 range

karyl – yes

matt – yes

john claffey – I would like to increase the donation to 25,000 and eliminate # 22

dan – I want to take an informal vote

eric – yes

karyl - yes

matt - yes

dan - yes

Paul – I just checked with Mr. Baayzarina – he advises that Mr. Claffey is willing to amend the agreement

Steve – I can contact Deborah on that

Dan - # 9 – fix

Paul – item #15 -

Final comments form

Jeannette Morton – I want to be clear that we don't

I want to clarify that things were looked over carefully

Mark – the first plan we say was dated October 26 and then we had the following week – from a drainage perspective the plans were in very good shape – all in conformance to the regulations – we were there very quickly on this

Jeannete – repair of the catch basin – will there need to be large equipments to do so

Mark – no – it will be within 20 feet of that area

Jeannete - #9 page 5 – tree preservation – will there be electrical coming down parcel A –

Paul – no

Jeannete – site walk – could I be present for parcel A – how will I be notified

Paul - I will notify her

Jeannete – parcel A – public recipient

#20 and #21 – can anybody tell me if I am within 1000 feet of blast site – how do we know if the wells get damaged

dan – blasting is its own permitting endeavor –

paul – this presupposes there will be blasting and we don't feel there will be – we don't foresee –

dan – I think you would be notified thru a different process – talk to Bob Speroni – we would like to know the results of that

Charlie Ross – 5 blueberry – after this you will close and go into exec session

Dan – no, open

Charlie Ross – my wife and I think that this plan is a lot better than the one presented earlier – we are directly behind the end of the road – we would be supportive of granting the waiver for the 900 foot roadway

Chris Herron – any more concerns on alum vs. steel fence

Karyl - =

Motion to close the public hearing for – Eric and Sean by Karyl – unanimous –

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Deliberations

Any discussion on findings –



Matt read section on waiver – insert text here –

Votes taken – approved

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matt, susy and dan to work on the budget – alan and eric – motion =

funnel ideas, concerns, etc. – to Susy Affleck-Childs

motion adjourn – alan, kayrl -0 all yes

7:23 pm