

January 23, 2007 PB Meeting

PRESENT: Andy Rodenhiser; Chan Rogers; John Schroeder; Karyl Spiller-Walsh; Bob Tucker

ALSO PRESENT: Gino Carlucci, PGC Associates; Susan Affleck-Childs, Planning Board assistant

Call to order at 7:05 pm

Informal Discussion – Possible 2 lot subdivision Lovering Street

Wayne Carlson - take a minute to refresh your memory

2004 you folks signed an ANR dividing up a bunch of property left over from a family estate – some of the land has been deeded out to the heirs – Amy and William Fletcher – they would like to build on a new lot A – there was not enough frontage – back and forth to ZBA – last time, we drew in a small cul de sac idea – we went back to the drawing board –

I put in a small cul de sac – it does provide frontage for two lots – one new lot and the existing lot which is now nonconforming – we are requesting that the board take a quick look at it

The only new construction would be one house – to keep cost down, waive the road design and waive the construction of the road – there is already a driveway in there now – there is more than adequate room to bring in a fire truck – we want your input – that will

Karyl – what do you have approved to this point? What did we approve before?

Wayne e- just a discussion – with ideas –

Andy – there is one building in the roadway layout

Andy – whose building is it now?

Owned by Theodore Johnson

Wayne – whoever owns the private way would own the building

Karyl – what about turning it more to the left

Wayne- wouldn't meet the requirements for radii

Barn/garage is being leased out

Wayne – not enough room to put it in and have enough setback to the barn

John – I have a real problem agreeing with a paper road that can't be built – I don't want to set that precedent –

Andy – that has been the policy

Bob – how large is that barn?

Wayne – 50 b y 60 substantial –

Wayne – would board consider a road without the bulb at the end?

Andy – what about moving it over toward the wetlands

Andy – how does the board feel about waiving the design of the road?

Karyl – I would consider that once I knew it could be built

Andy – wouldn't it be similar to creating it and having a building in front of it

Karyl – how can it be a right of way with a building in it –

Susy – you can't approve

Wayne – make it a condition that the building would have to come down if the road is constructed

Gino – in the case of a larger subdivision with that provision, you wouldn't release the lots until the barn would be down

Andy – the barn is owned by the owner of the future lot b

Karyl – you could build an in-law apartment- forget the whole plan of a separate lot and house

Andy – they want to build s single family home

Wayne – there is 9 acres

Andy – if you can come up with an alternative design, avoid the barn somehow and swing it up

Wayne – 25 feet away from the wetlands

Andy – OK to do a 40 ft ROW

Andy – you have to prove that it can be built

Andy – how does the board feel about waiving the actual construction?

Karyl – it needs to be on paper that there is a permanent roadway layout with correct setbacks – we can't make it nonconforming –

Wayne - would board allow me to square off the ROW?

Bob – I don't see a big problem with doing that

ROW would be squared off but the curbing would have to be rounded

Chan – the new frontage would make lot B conforming but it would not be used for access

Susy – don't completely waive construction of the roadway

Karyl – there have been plenty of situations where people have moved buildings – I should think it would behoove you to try to do

Wayne e- if I can go to 40 feet for the ROW and cut down the radius -

Chan – reducing the geometry is a better approach than leaving the barn right in the middle of the ROW

Wayne –

CVS Pharmacy site plan modification

Continue to February 13, 2007 at 8:15 pm

ANR for 10 Coffee Street

Gino – I reviewed a preliminary on this earlier – noted one correction – which has been remedied – OK to sign

Wayne - estate of Bruno fontenella – existing farm house at 10 coffee street – just divided lot into two buildable lots – to sell off

Susy – BOB Speroni is OK with this. he reviewed it

Motion to approve the ANR plan for 10 Coffee Street – Karyl – Bob – all yes –

Board signed Mylar and paper copies of the plan

Applegate Endorsement –

Susy – not recommend endorsement yet – quite a checklist –

FY 08 budget

Andy – we have to level from the BOS – there are some contractual raises that have to be accommodated, reduce our consulting funds accordingly –

Susy – asked to now include an employee benefit

For fy08 - *18,243 the increase is \$2007

They are going to provide funds equal to this year's benefit amount, but incremental costs will have to be absorbed – as those costs increase, we may have to decrease salary expenses or consultative services

Bob – I would still like to see – see committed costs –

Andy – Gino, how are we doing on some of the activities you are working on? 43D application package

Gino – the other ones are coming along – PDF grant and smart growth grant – are we inline on our billings with you in terms – we aren't going to see any big increases –

John – I do think we are not making progress as a result of these cutbacks – I think progress would pay for itself in the long and short run – we should look at ways to change the structure and amount of funds that come into town – the way we do that

Andy – are we working to our capacity as a board?

John – yes, it is changing – we are getting more efficient at handling the applications which should free up time to plan and look forward – I have seen progress – expertise of our consultants has resulted in some quantum leaps and momentum - looking far ahead
The impact statement shows that that will be hindered

Chan – I thought the govt study committee agreed with us that the more we could move around to make progress in planning – we aren't doing as much as we could or would like to do – Susy having some clerical help so she can spend time on professional assignments – making those kinds of tradeoffs would save money – also helps us be more effective –

Andy – Susy, do you think we could take these comments and craft an impact statement that you could email out – and agree to . . . finalize that at next week's meeting

Bob – one of the things – we do handle a fair amount of money that goes out to consultants –

Susy - would you like to see some reporting on that?

Bob – yes – if they are watching us, they here us vote on paying invoices – where does that money come from? We understand that a majority of that is funded by the developer – we need to capture that – we are managing a larger funding program – we are making some improvements – I still see us as being very reactionary – we have to work ourselves out of that approach slowly as we get better on each project – each application will give us an opportunity to improve –

Andy –interesting the opportunity that each type of application comes in – we develop a better process –

Bob =- plan the work and work the plan. . reap the benefits s

Bob – I would love to see captured here somehow – some of the grants that we are able to bring in – Let’s blow our horn a little bit . . . there is some substantial grant money we have been able to attain

John – I don’t want the understanding created that we have a lot of grant money and that developer’s money/fees are going toward that work –

Bob – consulting services is broken out into two parts – grant work and as another subset of consulting services those activities that we are dealing with projects

Bob – we need to take some credit for that and pat ourselves on the back – blow our horns a bit more

Andy – how did we leverage those funds?

Chan – impact statement should be a remarks column – grants are won in competition

Karyl – the size of the project that we have been concurrently managing – a lot of board time spent on massive projects

Andy – motion on the actual numbers of the proposed FY 08 – bob motion to accept the budget proposal as presented – Karyl – all yes . . .

Andy – leverage

Andy – we will continue the discussion on the impact statement part – Susy – to rework the impact sheet to distribute ahead of time . . .

OTHER BUSINESS

Correspondence

1. 405/Metro West Corridor Partnership/UMass project

Andy – Town belongs to the 495 Partnership – regional planning council – there is a graduate student program through UMass – they are seeking towns – the BOS is interested in having us pursue this project – dealing with housing and density – free planning work – Susy had a conversation with the folks that are running the program – we need to submit a statement of interest and it was encouraged by the BOS

2 sites – Oak Grove postage stamp area and Cassidy Farm

Distributed a draft Statement of Interest.

Everybody OK

2. Handout on use of Town Counsel - memo from Jim Galligan – all contacts to be coordinated through the TA office

NOTE - Eric Alexander arrives 8:10 pm

Invoices

\$72.18 – WB Mason for PB share of first floor fax machine – john seconded by Bob – all yes – office equipment – general fund

General Fund - Consulting Services - \$600 for PGC Associates – from the general fund – for OSRD rules and regs and for contractual – motion Karyl, sec by Bob – all yes

Do the rest later

PH continuation on Betania II - Marian community ARCPUD

8:15 pm

Jay Tellerman from Blatman, Bobrowski and Mead

Andy – thank you for putting together the nice list –

Bill Proia – go through recap last time – this is the same as you saw, se have put it on CAD to scale – same elements – last time think it is fair to say that the board was supportive of going forward – we got to the point that the elements we proposed the board felt generally favorable to move forward – there were a couple of issues that the board wanted more detail on – we are back here to go over these items – checklist system – we haven't submitted

Two issues I want to address tonight – is the bridge – the board wanted to see more detail – architectural elements of the bridge and to get an idea of how the culvert system would work – we are looking north – stone piers on bridge – guardrail – again the important thing the culverts and how it would work – this is how we envision how it would look – architectural lanterns on the columns at the end match the lanterns at the entrance on summer street – as storm events occur, water will overflow the channel and flow thru the culverts and back underneath – never topping the road – this is the entrance in an out to the project – we wanted to show you what we were thinking we want to get some positive direction – give us some idea of what you think –

Chan – give us a scale – what is the span of the pedestrian bridge vs. the roadway bridge?

Bill Drexel – span of pedestrian bridge – about 25 feet or so across chicken brook – stairs to connect back to footpath - entire length is about 40 feet

Bill Drexel – the concrete bridge is about 30 feet long that goes over chicken brook – the rest of the structure is about 140 feet of culverts

Chan – the main span is

Karyl – the entire length from pediment to pediment

Bill – 175 feet

Andy – space between bottom of bridge and land

Bill Drexel – about 2.5 feet – openings will be all in a line – the weir is on the other side

Bill – we regulated the height of the weirs in front of each culvert to keep it from releasing more water under the bridge than what is going through there now – to maintain flood plain

Paul – I am not really sure what they are proposing I haven't seen any engineered drawings

Bill Proia – we just want to get some feedback – is this viable, we know we have to duplicate the characteristics and we have Paul's comments from before and we have taken all those to heart

Karyl – design does follow function – at this stage, I do appreciate the articulation and nice rendering and scale and materials – I think that helps to clear things up

Bill Proia – designed for the 100 year event

Paul – what is clearance over the weir on the upstream side?

Bill Drexel – about 1.5 feet – that will vary a few 10ths of a foot

Paul – a minimum of what?

Bill Drexel – we allowed for at least one foot on the upper end and it will increase a bit as you get closer to Chicken Brook

Andy – is there a bottom to that culvert?

Bill Drexel – yes. . . concerned about maintaining – it will have a structural bottom on that

Chan – you are proposing this as a private street, not a public way – and the association will be responsible for maintenance – that will be yours to deal with –

Andy – needs to be shown in your maintenance plan – we want to design it so as little obstruction gets in there

John – I was concerned about the small space in the culverts – you said it is 2.5 feet

Bill Drexel – 2.5 feet but between top of weir and top of culvert on the northerly side it will be less than that – the only thing we have discussed amongst ourselves as far as design is concerned, the water is very shallow there – as far as something floating in there, the problem would be more with something falling down in front of it rather than something floating thru

Bob – I would expect any of the cleaning is going to be build up

Bill Drexel – on the northerly side

Chan – I am all set –

Karyl – at this point, what were your thoughts?

Bill Proia – there is a fence

Bill Drexel – black vinyl clad chain link fence

Karyl – we would recommend against chain link fence – we have decided collectively that there are many other fences to be used – mostly wrought iron look to it – not what we want to see – why couldn't it just be a concrete wall with stone veneer?

Bill – just the expense of that?

Karyl – do you know really how much that difference would be?

Bill- I don't have the answer

Bill – we just took a look

Bill Drexel – originally we hadn't proposed a fence, it was recommended that we put a fence in there –

Bill Proia – we here the aversion to the chain link fence – we will come up with something –

Karyl – the DRC has voiced to you on many occasions that our first consideration be a concrete wall with stone facing – you have a baby step going on there –

Bill Proia – we will take a look at that

Chan – need a guardrail type –

Aterial of guardrail –

Bill Proia – stell

Paul – it has to be designed for traffic hitting it – concrete with rebar

Bill Drexel – we have to have a fence that is behind the guardrail –

Andy – needs a stone facing on it on both sides –

Eric – I would think it wouldn't be as big a concern on the north face

Bill Proia – we know we have to design for safety purposes –

Bob – you need to look at your options – you are going in the right direction

Bill Proia – I wanted to bring up the design review folks again – on the architectural unit design – we have a color board we want to shown – I think we are set with that with the design and color choices – does the board want us to go back to the DRC on the bridge aesthetics

Karyl – the last conversation about the bridge was jersey barriers

Andy – this is a big movement – it would behoove you to visit with the DRC on the design

Andy – were you able to get with the board of health

Bill – I will get to that

Bill – last time, we showed the open space plan – you were questioning how the open space would work in connection with other open space – overhead photo with colored in area of the developed area –

Andy – where are the ANR LOTS?

Andy – where is the other land that is not part of the ARCPUD – lot #3?

Bill Proia – pointed out those areas

Karyl – the open space that is being proposed is a fractured – it follows the brook, river anyway, - it is not like such an acquisition of open space or something that would really be – most of it would be left over anyway

Andy – it is in compliance

Bill- yes – the bylaw does say to the extent feasible for it to be contiguous – remind the board of the public access easement

Eric – I hear where Karyl is coming from – they are limited where they can build because of the topography – in certain circumstances compliance is all we can get – ii would prefer to see ore than compliance but I don't think this parcel is very amendable to that unfortunately – I do think this is very helpful presentation

Karyl – I think the arcpud project cold afford to be more generous with the open space e- great interest for more of a buffer zones and lands near the soccer fields – I think they could be more generous – a clearer, larger connection of open space lands to the town lands

Eric – we are dancing around the parcel 3 lands and we will be on the same page

Andy – we all know at some point that will be a future issue

Bill – the only part of lot 3 we would be looking at developing is a small portion – that land near the ball fields would be buffer area – it would be a very modest development – special permit

Bill – so the point here is – we want to proceed with this general layout to get to engineering for the next step

Andy – BOH was an important thing to us

Rich Coppa – we met with them on December 11, 2006 – they did have some requests to do a few more test holes in leeching fields – they had some questions on total draw and mounding

tests, recharge – in the end I asked them if there was anything that would hold up the project – they said NO – when we are thru with the engineering plans for VHB, we will submit to BOH

Andy – when septic plans

Rich Coppa – a couple of weeks,

Paul – submit the plans to the BOH but show the septic systems on the plans

Rich Coppa – we explained we are using the presby system – they said there were no show stoppers

Bill – The NOI is being prepared to file with Concom – we will have that in to them in a week or so

Andy – did you get with the tree warden?

Rich – preliminary mtg – we will mark those trees – that will happen before we come back

Andy – how about alighting plan

Bill – all the drawings that we listed in the checklist will be included in the next submittal –

Andy – is it even worth looking at Paul's comments

Bill – I also wanted to show you colors

Karyl – I want to revisit the open space issue again – before we let go of this one, I would like a discussion with the attorneys about going back into the land that is not part of the arcpud parcel as mitigation for this project – the access would be a big issue – catch 22 – their reason for excluding that is – is it off the table or in fact could this property be a real mitigating factor

Jay – this is the negotiating process that unfolds before you – the applicant may not be willing to part – they should be willing to discuss – it is all discretionary – and the next permit for the next site is discretionary as well – they don't want to shoot themselves in the foot now – I think it is always my preference is to be as candid as possible – say it directly

Karyl – my point is to the board – be very careful in agreeing to take it off the table – we can continue to negotiate for that – there is no reason

Jay – you can't demand it, but it is certainly a topic that will resonate throughout the hearing – I think they are suggesting there are other open space benefits to connect other

Bill – happy to talk about it

Andy – that being said, since it is not part of this application are we remiss in our responsibilities, if we do talk about, it is part of the negotiation and mitigation?

Jay – one scenario – is they could donate the parcel – you have a lot of discretion in your bylaw. These other items get you to yes

Andy – they have been candid that they intend to build houses there and access it through the arcpud d

Jay – not without the PB

Andy – Bill has said this additional open space that would be part of the future plan is all future and not part of the plan

Bill Proia – I want to remind you of what has happened – we had it as part of the open space but not part of the ARCPUD – we have always said we want to provide some housing for those folks – we can't give this away we have an obligation to offer people under 55 something – that hasn't changed for us – if some open space elsewhere would matter, we could consider it – we understand the board will have its discretion in the future – it is 7 units

Karyl – let's go back and color it a little bit more – a lot of that was in wetlands, then discussions about garden, pavilion –

Bill – that is negotiable

Andy – sounds like the attorney says we can negotiate that – that open space that is being promised for a future application – can we include it in the arcpud

Bill – no

Andy – but could you grant a conservation restriction on part of it

Eric – what would that do when they come in the future with an OSRD?

Andy – we would have to stipulate

Jay – if they have the requisite amount of land here, they have satisfied the threshold requirement – all else is discretionary – to that extent this open space has nothing to do with the count, it just tips the scales – the same would be true of the next application – looking at quality of open space

Karyl – some reference to the aforesaid open space for possible future

Jay – the only thing you have before you is this one is candid conversation – if you can lock it up and get you over the hump – stay above the minimize

Bob – do you have anything that shows this other piece of property that you would be willing to share with us?

Karyl – if a future osrd goes in it will be a huge impact on Kimberly/Diane - it would be a huge gain if we could acquire

Andy – how about that 8.5 x 11 drawing that you showed us once before?

Bill – can I suggest something – we would happily give you that information

Bill – whatever happens to lot 3 in terms of open space, we would never change the housing composition – the ARCDPUD is as we show

Eric – thanks Karyl for being so persistent on this point – if we can approach this in a constructive manner, it behooves us to do that . . .

Memo from the Safety Officer Jeff Watson re: attach and make apart of the record - memo re: signage – needs one more sign to be added

Bill- in our updated plan, we will address his comments

Karyl – any discussion on sidewalk funds? An

Andy – no, haven't talked about mitigation, senior citizen stuff

Bill – is the board going to continue to work thru a checklist

Andy – there is no reason to hold off

Bill –hit the checklist and

Andy – you can start doing maintenance plans and condo docs,

Bill – we want to make sure the footprint is in place

Andy – I think

Bill – I do have a draft conservation restriction. Maybe we should wait a bit

Karyl – I think we should flop a few things on the table

Andy – maybe the draft conservation restriction could be modified to reflect what we talked about tonight

Bill – color palette – New England – we have a key here with which units will be which – this is what we had presented to he DRC – we had our architect do this –

Andy – at our next meeting we will endeavor to review a revised CR based on tonight's conversation, the mitigation for senior center,

Bill- our hope was to look at a schedule of hearings to get on for Feb 27 – we can get stuff in for 3 week turnaround by VHB – revise based on Paul's comments from before

Continue to February 27 at 8:30 pm

*****8

NOYR - Reprogram back door to stay open on our meeting nights – until 10:30 pm

Continue public hearing for Drake Petroleum on the Medway Gardens extra Mart site

9:18 pm –plan

Andy – This is Barbara Saint Andre, our new town counsel

Conrad Decker, Drake Petroleum
John Vignonne, attorney for the Avellinos

Andy – I guess 0 we are here to continue the public hearing – we see some options – you had asked us to consider whether or not we would consider the zoning enforcement officer’s opinion as being the basis for going forward – we had asked our town counsel to give us an opinion – The applicant has asked us to present anything new

Conrad – I understand we have an issue here – we have a problem – I thought it would be beneficial to provide a brief history chronology – so we all understand where we are

Andy – I want to try to provide a fair hearing

Conrad Decker – drake petroleum m- Avellino family – and their attorney
We were here two weeks ago, it was opened and continued to tonight – the drake group and Avellino s prepared plans and paid fees – started the PH – at that time, it was suggested that the PB would lay out a schedule for topics – because there were issues raised by the town staff and attorneys were contrary to the zeo – we felt it was an issue of the use to be discussed more and to address the conflicts – the towns interpretation at this late stage is very problematic – certain representations were made by town staff that were relied upon by the applicant in their applications – we are close to \$80,000 in soft costs – legal, traffic – Avellinos have 25,000 invested as well based

Andy – who represented the Avellinos during that time?

Conrad – we have had several meetings with town staff and PNB and DRC going back to march of last year – certain representations were made that we based on decision to go ahead – you just don’t get this far and put the money in without having direction

Fall 2005 – this property was presented to Drake – a lease was put together e- part of the due diligence process – you do your zoning research – we did the research to make sure the proposed use we were looking at – verbal representations were made by the ZEO – we came to this board on 3-14-06 and discussed the scope of work we were prosing –

Andy – you have copies of those minutes

Conrad – discussed at length – size, scope of the property – Susy had asked the ZEO to provide a written interpretation – request by matt Hayes, the letter was dated 2/3/06 – he felt they were by right uses – retail sale of gasoline

Andy – didn’t some of the board question that

Conrad – yes, I asked the board if you were going to challenge it until the issue of the interpretation is resolved

Karyl – how can you make a formal challenge before there is an application?

Andy – I remember all of us being befuddled by the interpretation – it was clear to us that it was not an allowed use – it was bob ‘s interpretation – we had discussed amongst ourselves that we weren’t sure what to do

Conrad – there was discussion about this whole question – what are we going to do about this – if there is an issue of a challenge, we asked if it could be resolved - we are trying to assess how did we get this far on certain representations – in the march 14 meeting – we were here collectively,

Andy – if I remember, you said you felt is was very defensible

Conrad – the first day I met the ZEO, we had discussions – he gave us a verbal and then a written – he advised us to have an informal with the PB

Conrad – interpretation is made, we get on the agenda march 14th – highlight some of the comments from the meeting notes

Andy – you chose to not put in the application until November

Conrad – you asked us to meet with the DRC to develop a more refined plan so when you do make your formal application

Andy – knowing full well it would have been a concurrent use of time

Conrad - we were advised to continue to revise plans prior to coming in – that made sense

We go to the DRC on 3/27 – discussion on scope and size – Avellinos greenhouse – height, scale, architecture – canopy, gas pumps – we go back to the drawing board – we come back to the PB on 5/9 – are we going in the right direction -0 we have not committed to a lot of engineering g- do we have a plan that has some semblance of making it here – we want to make sure we have some form of understanding before we got too deep

John -0 you understood that there was a still a quoin

Karyl – and at DRC, the use question came up

Conrad – we want to make sure this works – if it isn’t going to work, we aren’t going to bother

Conrad – yes there are questions about challenges and scope – go to the DRC and see if you can come to some accommodations – we made a lot of changes as we go along – if you are going to challenge it, then let us know

Conrad – as the discussion goes on relative to architecture, plans and scope, were weren’t going to commit to anything until we were sure we were going down the right path

On may 9th – we come back to the PB to give you an idea – positive feedback – still concerns expressed about the size of the canopy – we went on to 5 different DRC meetings

Andy – I think it is important to note that the underlining question – we didn't have

Andy – you had made your own decision to accept the ZEO's interpretation

Conrad – we were told to continue on to work with the DRC

Barbara – let him do his presentation

Conrad – 5/9 – feedback on design

Conrad – go back to DRC 6/5, 7/ – we file the application in November –

December 5 minutes after the submittal of the application – reads sections . . . minutes -

Conrad – it was obvious that you were struggling on this

Dec 12 meeting –

Andy- are these approved minutes

Susy – no, these are my rough notes

Andy – we discussed these on December 5 in terms of the fee structure

Conrad – we were encouraged to go through a preliminary process – the problem is when the interpretations that were mad e- if you had just said this isn't going to work –

Andy – I think we were clear that we didn't know

Conrad – dec 12 minutes – if an applicant comes before the town and trying to invest in the town and trying to make a positive improvement in the town – here is a qualified applicant – we are going to invest 2.4 million plus \$900,000 by the Avellinos

Andy – the zoning is the problem –

Conrad – you should have told us that in March –

Conrad – it seems ironic, we went through the process – 2 meetings with the PB and 5 with the DRC – yes, we understood that you wanted a smaller scale and now that you haven't got what you wanted – those notes

Andy – that was what was explained to us as being what the process was – that was how it was presented –

John vignone – attorney for Avellino family – I have a letter – I have provided to Town counsel – the first part of the latter – summary of what I have heard – is there anything new to discuss

John V – we contend it is a retail use under the zoning bylaw – and then there is an auto service station – there is a conflict or an ambiguity – a auto service station has to do things – the retail store said the goods have to be stored inside – when there is an ambiguity, the benefit of the doubt goes to the applicant

Accessory use – is something that is customary for the use that is out there and also it is not primary use – going with customary, nowadays, every convenience store sells gas – the national association – convenience stores sell 80% of the gas in this country

John – is the company called Drake petroleum – I have difficulty calling this

John Vignonne – all convenience stores sell gas these days – each case on this goes go court – each judge looks at each case – everything is fact specific – OK you have a convenience store, is one pump accessory, how many are accessory? That could be the main question – what comprises the accessory use

Andy – couldn't it be argued that you have multiple primary uses?

John V – the primary use has to have an accessory use

Andy – what is the accessory use to the garden business?

Andy – is said isn't it possible to have multiple primary uses

John V – yes it is possible – you have to see what

Andy – who do you represent?

John V – Avellino

John – the final interpretation comes down to the Planning Board – whether that is correct is another question

You have your primary use, what is it?

Chan – is 5 pumps an accessory use?? I challenge that – it seems that 5 pumps would be a prime use and selling donuts would be a secondary use – it doesn't make sense to carry out the past discussion – I think this is site plan review – at that time

Conrad – is that a way to settle this matter?

Karyl – I find that offensive that you think we are pushing this issue on the zoning because the scale

Conrad – we have reduced this – kept changing and changing at the suggestion of the DRC – we tried a to get this thing to a scope that we could live with economically, scale that we thought the board could live with – there are 3 acres out there – you are allowed up to 30% building area – we tried to bring it to a scale – when we got to that point, we filed the application - you told us if we could get it down to scale, the PB would hold off on changing the zoning – as long as you could bring the scale down

Joe Avellino – two people at DRC told me if it was smaller, the zoning problem would go away. We didn't make it up.

Karyl – the real problem is that there was always a question about the allowed use.

Dan Hooper – I want a chance to respond

Conrad – I want to know if I went back to my management tomorrow and got this down to 4 pumps, smaller canopy and smaller store, would that work?

Andy – I would urge the board to be patient and wait until we hear from town counsel – Mr. Hooper please hold on

John Vignonne – do you make the determination as to what is accessory with pumps to convenience store?

Chan – if you put the thing to a vote, there may be a support for less number of pumps – that still

John – I disagree, not at this point,

John – unfortunately, since the application was put in, I am now under the understanding it is not an allowable use – even if I wanted it, it is not an allowable use – so we would need to go forward and amend the zoning bylaw and work together

Bob – as you just stated – we have only heard about half the story – I would like to hear

Karyl – we need to know historically what has happened for months – most of the board is stuck is on the issue – when we wrote the bylaw, there were discussions about whether we wanted gas station in Commercial V - but now today, with the pressures of the town, we are now willing to reconsider that this may not be a bad thing for the town and not for the Avellinos – we thought if they could modify the plan, we knew there was a hiccup with the bylaw on both – we are stuck in a quandary – our task is to decide how to move forward and to better the town and the Avellino family – what are our options - not to say to pull out the plug because the canopy isn't small enough – but the scale is wrong in my opinion and the DRC – but is the proposed use that isn't allowed something we would like to allow – is that a possibility? I think first we have to resolve the use

Andy – would you give us your pen

Barbara saint André – Petrini associates – you have heard from attorney Vignonne, opinion from mark Bobrowski and my opinion – let me tell you what you think – principal use issue – in your bylaw – it says if a use is not specifically allowed, it is not permitted – problem with Bob Speroni's interpretation – gasoline sales are not a resale use – in my opinion, I don't know if it is a retail use – if it is an automobile serviced station, it isn't allowed in this zone – for it to be an allowed principal use it has to be listed – the more fact oriented is whether this is an accessory use. You have a number of proposed uses – garden center on a separate lot, restaurant, convenience store and gasoline – what is the primary and accessory use - accessory use would probably be the retail use or restaurant use – perhaps the primary use is the gas pumps – that is a fact specific determination – is convenience store accessory to the gas station or is the gas station

accessory to the convenience store – depends on scale – this one probably falls in between – look at all the uses, is it a customary, incidental accessory use –

As attorney Vignonne stated, I couldn't find any particular case – court looks at how much area each use takes up, how much money would come in from each projected use

The only other issue is the drive thru – it was raised in your question to Bobrowski, the problem you have there – is the honey dew accessory to the retail – your bylaw allows for more than one primary use – frankly I don't know if the board feels it has enough info – is it a principal use, if not, is it allowed as an accessory use

If you do determine if it is not an allowed use, can you deny site plan approval – the only point of site plan approval is to regulate allowable uses – if it is a prohibited use, the PB can deny – you do have some language in your bylaw that allows you to disapprove – it doesn't make any sense to go through the process

Conrad – would you agree this should be resolved?

Barbara – you have asked to have that question resolved – if you want to go through the process, you can do it – I think it makes sense, let's look at this issue first, if that is what the board is going to rule on, there is not much point in talking about planters

Conrad – in this town, does the zoning enforcement officer make interpretations?

Barbara – I don't think I should answer that question – I am here to talk about this specific situation

John – accessory use has to be minor in significance – that is different than a secondary use

Andy- what we heard was that he had to have a certain amount of pumps due to traffic counts and marketing people said that was required – a significant investment

Chan – I challenge that, I haven't found anything that big –

Andy – you need to think about whether it is a primary or accessory use

Chan – if you have a site plan review and the PB approves it, that gives the applicant the right to proceed – now I am hearing that is not the case

I thought we could approve a plan and make it an accepted use – if we approve, it is still not accepted?

Barbara – approval of a site plan does not mean that it is a permitted use – the only thing that determines that is the zoning bylaw – there is a well established rule in Massachusetts that a town is never estopped from enforcing its zoning bylaw – references a case – even if you were to say you felt it was an allowed use

Andy – we heard it could be up to 6 years for enforcement,

Karyl – Mr. Bobrowski found the zoning enforcement officer’s opinion to be erroneous and that the PB’s decision on the zoning superseded

Andy – I think Bobrowski just found it to be different

Chan – I thought if we approved a site plan, I thought it was a fait d’accompli

Chan – I want to remind you that this board is different than when you first came before us – this board voted as individuals and have their own opinion and it is totally based on that – your reference that there was some collusion is offensive to me

Bob – I still have the same question – did I understand you to say when you were discussing primary an accessory – that if a

Barbara – your bylaw says that any use that is not specifically allowed is prohibited – however, customary accessory uses are allowed

Andy Avellino – are you

Barbara – what I am saying is if the board finds that this use is permitted - . . . the whole idea is that site plan review is about what is permitted?

Andy Avellino – you led us down this path – go out, put more money into the project, what recourse do we have as far as recouping our money if this thing gets shot down? We were led down the path – if you had just said to us in the first place, we had other tenants lined up – I had an Olive Garden - I easily could have done this – two years later – I am stuck between a rock and a hard place -

Dan Hooper, DRC, Naumkeag street – in terms of the sequence of events, let me go back a little bit more NOTE – Dan is a former PB member – Avellino family came in 3-4 years ago, had an exciting presentation for an expanded garden center – complete with drawings of the site and facility -0 very conceptual but very attractive to us as a town in the same vein as we are speaking of – let us encourage business – that is a very interesting corner and have done a nice job – focus was Keeping a country corner

Andy A – we have been here 30 years

Dan – I am in this business, I value what they bring to this town – the sequence of this thing was when it came in the second time, when they were ready , that is after we helped them rezone the district - we did that based on what was intended – we wrote that bylaw in such a way that we considered gas stations and drive thru but decided against them – we did the best we could in writing that with the assistance we had – knowing that we had covered the bases as far as what the uses should be – move forward to one year ago – presentation comes in informal as a gas station drive thru expanded garden center with the garden center not being primary – that was not at all what I had expected – plus the density in terms of pump counts and canopy was way out of scale. ZEOs interpretation differed from what I thought – the DRC saw them first last spring and then for perhaps 4-5 times. The 4th time, I was talking to Joe A., it could have been October, sequentially again, knowing that some very strong feelings still existed after multiple DRC meetings about the gas canopy – size and scale - none of us had a sense what the PB would do

I don't think it has been a waste time – at that time I said to Joe, after the meeting, after the meeting, I think if you dealt with the canopy and reduced it and maybe moved it to the back of site, I thought the zoning issue would go away – I said it cause I really believed it – I think that use could happen there if they did things to make it a lesser intensity – but I hadn't realized how the PB could jeopardize the town by approving a not allowed use.

Andy – could you bring up the subject of risk – what is the risk to the town if the use is in question?

Barbara – the risk is that if you approve the site plan, and it is not an allowed use, and it goes to the building inspector, then he issues a building p permit, then at that point, any person aggrieved could appeal that – the risk to the town is that there could be further appeals if the building permit is issued

Andy – is there a risk for precedent

Barbara – I think a town should be consistent in how it interest its zoning bylaw – you can't allow someone to have a cow on one lot and not on another – arbitrary and capricious

Andy – we will take a 2 minute break – 10:35 pm –

Paul Carter leaves at 10:37 pm

Joe Avellino – I had one question – this may be a solution – if you heard our site plan review and what ever we came up with, then changed the bylaw so that nobody could challenge it, could you do something like that?

Andy – changing the bylaw after you allow the use I don't know if that serves any purpose –

Barbara – if I am understanding assuming this is prohibited use, if the board were to go forward on the assumption that the bylaw would be changed, you would still be approving a site plan for a prohibited use,

Conrad – this horse is out of the barn, but fix the bylaw so there could be no more gas stations in the future without a special permit – if this continued on,

Andy – we can't bind the town meeting

Andy – I had talked to the Avellinos personally before the hearing started – and one of the concepts we discussed was to go through the public hearing process and then withdraw without prejudice and make the zoning change and then allow you to resubmit the application, waive the fees and start over – I think we would endeavor to help change to begin anew

Conrad – that does make sense, the only dilemma – if we were to withdraw without prejudice now, we would waive our rights to appeal

Andy – you have to evaluate risk all around –

Barbara – another way to approach this is to go through the hearing process and leave the hearing open until after the town meeting. . . and if the town meeting votes the zoning change, then you know where it stands

Conrad – I can't imagine that we would continue this meeting and withdraw so to speak and wait for town meeting to occur – that would waive our rights – it is almost like we are better off leaving the application

John – we can leave it open until after town meeting

Andy – they can ask us for a denial, put on hold until after town meeting, or what is accessory or principal –

Andy – do we need to close the public hearing in order to do that?

Barbara – if they are satisfied with the information with the issue of use. Then the board should make a decision so they can do what they need to do. Close the public hearing before we vote on it

Andy – do you want us to close the public hearing?

Conrad - if they put it to a vote that the gas is accessory to retail

Andy – once we close the public hearing,

Chan – can we try the process of what is accessory vs. primary use – what got me in favor of this was the size of the green house and the garden products on that site – what really messed this up was the number of pumps – I really believe if gasoline can be proved as an accessory use to the garden business, it would fly. If you reduced the scale of the gasoline sales, it could be accessory to the garden products

Conrad – if that scale was brought down – we both have a problem –

Chan – we have a legitimate honest difference of opinion –

Conrad – I have been doing this for decades – I don't want any of us to go to court – I don't want to waive our rights.

John – there was an option offered to continue the public hearing until after town meeting and you don't give up your rights

Barbara – if the applicant asks the board to take a vote – close the public hearing – if the board votes it is an allowed use, you can reopen the public hearing with the applicant's permission –

Dan Hooper – would you repeat that last option

Barbara – there is a process to reopen a public hearing after it is closed as long as the decision has not been filed with the town clerk

Dan – that doesn't have an end date or time line

Andy – closing the public hearing

Andy – we would have to renotify and publish to reopen the public hearing – and we could pick up in the same place as we left off

Joe Avellino – it seems to me if you would vote on this as an accessory use and would determine how many pumps would make it accessory, I don't think from what I heard, there would be anything wrong with doing that. I don't think anybody could hold you up with that

Conrad – if we withdrew or continued – now it becomes a special exception use, now it becomes a very discretionary option

Karyl – we always asked you, if we had to follow through – what is that magic number – you always said it was 6

Conrad – then 5 –

Karyl – somewhere I am sure for the people who are concerned about the country corner stuff – there is some kind of magic number of scale and presence – that would be appropriate for that corner

Andy – the discussion needs to be centered on site plan or special permit

Karyl – they are asking if we proceed are you going to just come back and bite us and make them to a tiny store and few pumps

Bob – is there a method for us to take a vote without closing the public hearing

Conrad – take a poll

Andy – to me, it is a primary use if the economic conditions determine the number of pumps – if you need 5 pumps to be the economic engine that drives the project, then that seems to me to be the primary use – I see the garden center as primary use – allowed – I would see the gasoline usage as not allowed – I am personally in favor of seeing the project go forward under the proper zoning – I would endeavor to put in effort to try to get town meeting to put in a zoning change to allow this as a special permit – I am not in favor of allowing something to go forward that is patently defective in its use – that sets a dangerous precedent – I have a lot of respect for the Avellinos – but we have a responsibility to the community and the town to do the right thing, regardless of particular instance where we could be accused of spot zoning – we cant approve something that is not allowed

Conrad – if we went down that path, to allow the special permit process, if I came back with a 4,000 square foot store and 6 islands, I would expect that would not be allowed

Barbara – I don't think you should poll the board based on a future possibility

Conrad – what scale could I anticipate?

Andy – I am comfortable with 4 pumps with a much smaller canopy – but that is not why I have a problem with this now – digest what I have said with the knowledge that is at your own risk

Andy – we were very careful with our thoughts and we took that at face value and we did our due diligence – we went through this feeling we had no other options – we now know differently – I am confident that we are being fair to your guys- in a public forum and fashion that provides you with everything you are entitled to

Andy – do Barbara’ point about estoppel, the town has a right to correct

Andy – you told us that you felt you would win on appeal

John Vignonne – when would the town meeting be- warrant articles due?

Susy – mid June – no date set for warrant articles

Karyl – you would need to take something to people to shown them at town meeting –

Andy – you can’t go to the town meeting with a specific project in mind

Dan Hooper – at the annual town meeting, a zoning change would be proposed to town meeting, that zoning change would be specific to what is conceptualized – the specifics of the conceptualizing would play a large part in how the zone was defined and developed – somewhere between now and then and a draft of the zone change would be needed in late February – would have to be a very clear direction about what the town would like to see for usages there including perhaps limitations on canopy –

Andy – it would be a PB recommendation to the town meeting

Barbara – the property owner could petition town meeting, it could come from them

Conrad – amend the bylaw

Conrad – can we have 3 minutes?

Barbara – I don’t think you should close the public hearing tonight

Barbara – you may want to ask for more input on their accessory use argument

Karyl – The issue of location of the gas pump on the site being the prime corner does aid to the premise that gas station is primary use

Chan – what do you look at – size of space or revenue generating capability of the use –

Conrad – We would like to ask for a two week continuance –

Susy – we next meet on February 13, that would be February 13

Public hearing – continue to February 13, 2007 at 7:15 pm
Motion by bob, seconded by Chan – all yes

Susy – we will also need a deadline extension, right now we are working with a February 18 deadline.

Extension of site plan approval deadline – to February 28th –
Motion by John, Chan – all yes

Bills

WB Mason – General fund - \$67.14 – Chan, Karyl – yes

Plan Review – PGC - \$131.25 – Karyl, bob – all yes

Plan Review - Bobrowski - Karyl, bob – all yes

Plan Review – VHB - \$5803.35 – Medway gardens, river end and Daniels – Karyl, bob, -

Construction Observation - VHB \$1251.50 – Chan, bob, - all yes - Karyl recluse

Motion to adjourn – all ye s-

11:20 pm

Respectfully submitted

Susan E. Affleck-Childs