

Medway Planning Board
Tuesday, February 6, 2007

PRESENT: Bob Tucker; Chan Rogers, Karyl Spiller-Walsh, Eric Alexander; Andy Rodenhiser

ALSO PRESENT: Susy Affleck-Childs, Paul Carter, Mark Bobrowski

Susy announced that Chairman Andy Rodenhiser was running late and expected to be here by 7:15 p.m.

Various items were distributed to board members to review while waiting for the chairman to arrive.

Call to order at 7:30 p.m.

Andy arrived at 7:30 p.m.

Citizen Comments - None

River Bend Village – Public Hearing Continuation - ARCPUD & Definitive Subdivision Plan

Rich Cornetta, attorney

David Einis, property owner

Lee Bloom, Abbott Real Estate

Rich Cornetta – I believe we have another iteration of the special permit

Couple of ideas

#14 – getting away from a cash bond and moving to a surety bond – after speaking with the client, they would like to do a letter of credit – the applicant would like to upon endorsement of the plan – we know we would have to do a restrictive covenant that would let us do the site work and the club house – I think we can allay our concerns if we can include one model triplex building - - asap – and then complete about 70% of the infrastructure

Lee – hands out the phasing plan

Andy – how does the board feel about the types of bonds?

Mark – statute gives them the election under subdivision control, but under the special permit, you can say no – most towns prefer a letter of credit or a tri-party agreement vs. a surety bond – a tri-party agreement is with you, applicant and a bank – pretty fool proof – need specific language – most secure way is to get cash in escrow – so that is the top best,

Mark – you are going to go out and do 70% of the work

Lee – I would want to be able to get a building permit while we are doing the infrastructure

Mark – statute says you can't issue a bldg permit unless it is installed – milestone performance standards –

Rich – we have a problem with condition #23d

Mark – covenant says no build, no sell – you want to get rid of the covenant, then you have to show us how it will all be covered

Mark – what is going to be done before you actually convert the covenant to a bond? what will be out there to handle the new impervious surfaces that you are creating – that is an important question – if you are going to disrupt a site and there is no system out there to handle it - what will you do if it rains like last year?

John – phase I is all the drainage work – temporary construction drainage basins – you have to maintain no dirty water . .

Mark – on one hand I don't care if he gets

Andy – it is not our intent to prevent you – we want it to be clear what the rules are so you can go forward

Mark – as he pulls permits and renders the land impermeable, that some sort of guarantee is given that the site doesn't leak to all hell – it will be a total mess – somebody has to say that it is being done on your end

Susy – The subdivision rules and regs have standards for what level of construction has to be completed before building permits are issued – I ask that you provide all due respect to these standards in the subdivision rules and regs – they were established after much thought and based on experience

Chan – this is different, the street is going to be owned by the development – they should have a right to go ahead with these –

Karyl – all these subdivisions that had difficulties were privately owned roads,

Mark – you also have a river resource out there that you have to be mindful of –

Paul – part of the problem is that you have a one way road – it is a fully integrated system and all interconnected – that is the nature of the design – vernal pool in the middle

John – you come in and do the infrastructure and start to build the houses along the way – the concerns I hear are about people being worried about the street after the house is in – you are trying to create a whole roadway and build a house and doing the roadway doesn't make it any better

Bob – the easy response is do it by the rules . . . one of the things we need to do is be consistent with you or any applicant that comes before us.

Rich – I don't believe that d) is in your ARCPUD regs – it is from your subdivision regs

Mark – So you want to do the clubhouse and one building with several model units and how much detention?

John- the road itself as you come up out of the ground, the detention would be built with the utilities – the drainage is going to have to be done all the way through piping wise before you can put in the roads and houses because it is so complex – the whole drainage system has to be a unit –

Mark – when he is building the unit, where will the water go?

John – construction drainage pond

Paul – you have to do it all – I don't know if you want construction vehicles on gravel roads, I don't think you want to have a gravel road in with construction going on – you don't want sediment getting into the system

John – it will be silted up all the time

Karyl – where is the construction phase detention pond going to be?

John – in the side where the houses are going to be – to store runoff – you just can't let it out – put bunkers around it

Karyl – what will hold it in?

John – earthen berms

Paul – when you are going to go from the covenant to the bond tied to the building permit

Mark – you can't put enough money in the bank to fix something that results from 12 inches of rain – so you need to have some performance standards – a milestone – in place before the covenant is converted to the bond

High standard – give us a base course and finished detention system

Andy – what are the mechanisms?

Mark – in a small subdivision, 8 units – base course and working drainage system (80%)
In a phased subdivision with 600 units – you get to the first 20

Andy – my concern, the conversation I have had with Bob Speroni he is not going to release any building permit until we give our releases – that is what our regs say –

Bob – I don't know why we should take exception to them - the building inspector is going to look to this board to know when it is acceptable to issue the permit

Mark – look at the list in condition #23 d – there are some minor ones in here – can you do gravel subbase and binder course?

Lee – of phase I

Mark – what about the drainage system? Can you do that?

Lee – I have to defer to John – I agree we need the mechanism and that we need the protection – the question is that this does not need to be complete – for me this is a matter of time -

John – the starting of the homes is really immaterial about anything of the drainage system except for the roof drains – if you do the drainage system itself, you are going to have a place there on a pad and putting in footings and a slab doesn't change much of anything – it has no impact on any of the downsides or upsides of what you are going to do

Eric – I am not sure I understand that – then you are telling me that you are ultimately doing stuff you don't need to do?

John – to get the drainage system up and running – you do the whole system up and running

Andy – this is not a conventional drainage system –

Bob – I think enough people aren't reading what the regs say – there are set guidelines for this. I am not hearing or seeing that you have done your homework -

Lee – I guess I will have to come back with a very specific plan

John – the point of juncture here – pulling the permit or occupancy permit – the building of the house is not what you are trying to protect - you are trying to protect the occupancy permit

Eric – I don't want the houses built if the drainage system is not in place – I don't want the abutters and the critical resources to be affected by anything going on on the site

Mark – it has to do with the timing of the stripping of the land tied to the installation of the drainage system – schedule for doing the work

Mark – have the two engineers consult

Park – the problem is that this hasn't been designed to be constructed in a phased approach – if you were doing a subdivision in phases, it would be designed that way – this hasn't been designed to be constructed in phases

John – I am trying to say . . . the drainage gets built – that takes care of it – once it is built – whether there is a house built at the same time

Eric - item 23 d 3 – drainage system –

John – as soon as you take off the trees, you have to solve the problem –

Paul – you do need to stabilize the roads if you are going to use them – the only way is to have the binder down – and you have to have the subbase in before the binder – the as-built plans for the detentions is to make sure it works – this is really a minimal -

Mark – throw out a possibility – how about a temporary drainage system that the board could consider?

John – any subdivision plan you have now done – they start the land clearing – the second day in, he is taking – that process that normally happens is going to happen here – go through the

process – build the detention areas and build the roads, just like you normally would, the only question is when does building come in? – the way you have it structured in these regulations is that you don't do a building until everything is done – infrastructure and drainage – you are saying he can't start building the houses until all of that is done – the question in my mind anyway, why is that important to you to get all that done before the houses - – why not use the occupancy permit as the triggering mechanism?

Karyl – that is what I think

Andy – I want to follow the regs due to the precedence – but it needs to be clear about when the building permit can be issued

Eric – I am not trying to kick the can down the road – I wonder if we are in a sense trying to get too detailed in terms of the drainage – if we are hearing that there is a temporary construction drainage system that is in place and out of the gate we say that it has to be inspected by the board or agent -

Mark – not really -

Bob – silt fences to prevent runoff

Eric – in terms of drainage, can we put something fairly generic in here – a drainage system adequate to deal with . . .

Paul – their final drainage system is what is acceptable –

John – you have to get from the beginning to the end - we are being pushy to try to get to the occupancy permit – timing issue

Lee – I want the ability to start construction of homes while the road is going in

Chan – I would like to have a couple of minutes here – this is not a standard subdivision when the developer builds the roads and you can't sell the road – you can't go by the regular guidelines – you guys control the whole thing – you want to do all this stuff and protect your money and get some things sold – I am surprised you haven't come in here with a whole scenario that is not identical to the subdivision process – you want some semblance of order – you want things to be saleable – this is something new – we are sitting here back and forth here – you want to do everything favorable to your process cause you want to sell the units – we don't even have a road the town will own

Andy – don't we have a responsibility to the people that will live there?

Andy – let's just say that they go out of business and the people that are living there – future residents will say what was the PB's plan – don't we have an obligation here? I agree with some of what you said

Chan – I feel the whole system is self protecting – if you fail, somebody has to come in and take it over – not the town –

Andy – at what point does that letter of credit come into play –

Lee – when I want to pull a building permit –

Mark – trigger mechanism – if they walk away. you are going to have a mechanism that all the infrastructure has to be done in X years . . if they walk away, we can't act on it until that deadline is past

Andy – across the street from the VFW, they cleared and stopped work

Mark – what you are trying to do is to come up with something that does work – maybe not what we have listed here - But technically, the rules for performance guarantees for subdivisions apply

Mark – if you want to reach a middle ground, that may include a waiver

Andy – I am hearing that

Chan – Come up with a plan for how you want to do this – the trigger is really the occupancy permit –

Bob – what I am reading in the subdivision rules and regs – it throws it back to us to be satisfied with what they have done – come to us with the plan

Karyl - why can't we just make a call? We have talked about what we need to have in place – talked about the problems of an incomplete drainage system – it becomes vulnerable as soon as we start to invade the property – the goal has to be to get to the drainage system as designed – the one that is designed to work is the one that works as a totality – can you make a proposal to make the detention system and build it and allow the club house and the front entry roads and proceed as in the subdivision rules and regs up to the binder course in phase I and build it – and then the first buildings would start

Andy – because of the way this thing is designed, the detention areas and swales need to be done – so you will protect the drainage areas

Bob – one of the things . . it is typical, in phasing construction – they are going to excavate, holes will be open, line it with fabric, grass seed – whatever process – it doesn't happen overnight - it does take time . . I don't think we want to force onto them a time frame for getting all the swales done – you will also be grading out the roadways as you go along cause you need the access – so you will end up with a subbase – you need water and sewer – you have to bite the bullet and put it in before the subbase goes down – your sewer and water and drainage may be at opposite ends

John – I think we agree we are not going to do anything different in the construction of the subdivision and what we are saying is that we are looking for relief on that process, instead of having to wait for 6 months to construct the houses until all the infrastructure is done

Eric – you have to have enough of the subsystem in for us to feel comfortable

John – let me say this one more way – the house itself doesn't improve or be derogatory to the drainage or road whether it is built, before, after or during

Karyl – the inherent problem is a time issue – that is a concern for us – from the beginning thru to the detention phase, the site is left relatively unprotected. anything could happen –

John – whether it is the building permit stage or the occupancy permit stage doesn't matter

Andy – there is still an order of conditions that has to protect the wetlands

Paul – the order of conditions is for the project as designed

Mark – you are trying to guarantee the finished performance in the performance guarantee – we want enough money to get to the finish line and now we are saying one of nightmare scenarios – road, clubhouse, a few houses and then another 9-11 happens . . and then what?? So why not set up a system that addresses all of this – take the nightmare scenario out of formula

Paul – I don't know what your proposal is!

Bob – I would go back to where we started last week, come to us with a proposal and how you intend to build it that we can put our hands around-

Chan – this is exactly how I feel – this is a complex, interrelated project – your money is at stake – your ability to sell – the town is never going to go into the site to fix it up – we want to get people in that development – I think you need to go out and come back with a program

Bob – I would also offer a suggestion that perhaps all the drainage not be completed before the first permits – take some time and some hard looks at the infrastructure – what do you really need to build –

Paul – is this issue here – you want to get thru phase I before you do the bond

Lee- this has nothing to do with the bond – it is about timing – we want to clear, pull a permit to build the club house and a model unit and start doing that work – the infrastructure work is underway and is being inspected . . .there will come a time before I am complete with the infrastructure that I want to pull a building permit – before I would allowed to do that, I would have to provide the temporary drainage system acceptable to your engineer

Eric – whatever trigger we put in here will still have to be inspected by our agent, so I think we can be somewhat open in what we can do

Mark – you needed to talk to get to the point that you just described – he is now in his phase I and building out the infrastructure – what is enough??

Eric – Paul said that this is really not designed to be a phased project

Rich – we do have a couple of other points we want to bring before you

Condition #14 –

John – there is an agreement that they were going to patch sidewalks on village street

Rich – maybe we need to word it a little more precisely – this seems very broad

Susy – this is right out of the notes from Dave D'Amico

Mark and Rich to tweak it . . .

Rich – Fire protection system - we are not contesting the line item – it is just an amount – in fall of 06 that was \$5,000 – the amount has almost doubled to \$9,000 now with the Chief’s 2-6-07 letter.

Andy – I think the cost has gone up – if you have already got a letter – I think just recently he has addressed the actual cost of the system

Karyl – I think it should reflect what was originally proposed –

Motion by Eric, seconded by Karyl to accept the fire chief’s first letter dated November 6, 2006 for \$5,000 payment in lieu of installing a fire alarm system within the development. all yes – Bob does not vote.

Susy – when should that payment be received?

Rich – we will come back with a proposal on that

Rich – the last item we had – we lost a waiver in the process – there is a waiver we wanted to include

John – we need to add a waiver for section 6.9.1 –

Motion by Eric, seconded by Karyl to approve a waiver from section 6.9.1 of the subdivision rules and regs – motion approved – all yes. Bob does not vote. This waiver applies to both the subdivision and the arcpud

Mark – in condition #21 – there is space for a phasing plan

Paul – I think they need to think about how they are going to phase

Lee – what you have in front of you is a CO phasing plan – I have to do my full construction schedule

Bob – not necessarily your full schedule

Mark – it is really important to have this discussion now – example in Groton and there were real problems with water leaking across the highway – caused a huge uproar – it was all over the planning board - it was a mess and just needs to be thought thru

Paul – look at the drainage and see if you can do it – john is saying you need to build the whole system –

Chan – it is up to them to say why

Andy – how much time do you need?

Motion by Eric, seconded by Chan to continue the public hearing to Tuesday, February 27, 2007 – 7:15 pm. all yes - Bob does not vote.

Handouts

Letter from Barbara St Andre – 2/2/07

Letter from Jim Vallee re: his sponsorship of the community planning act

Memo on FY08 budget hearing with BOS and TA scheduled for 2/12/07 at 9 pm

Signatures on Pine Meadow Revision Plan – mylar - . . .

Andy – Dan Hooper and myself had coffee with Joe Avellino and John Avellino last week up at Coffee Sensations – context of conversation was a parallel track for them – they don't know what Drake is going to do – they wanted to know what they can do on their own behalf to seek some type of approval to market the site even if Drake decides to pull out . . . basically so they could hedge their bets – their real estate agent told them that the only type of business that could afford to do the land work is a gas station

NOTE - Karyl leaves at 9:08 pm

Andy – They, as a property owner, want to seek a zoning change for that purpose – one of the things that Dan was talking about was attached canopy or unattached canopy – that could be included in the text of the zoning bylaw – by special permit – with limitations on size and offsetting measurements and scale that would all be defined – that would involve DRC helping craft some of the scale issues and the number of pumps would also be default under the size of the canopy – that was the meat of the conversation – they have some type of lease arrangement with Drake - they are in the period of time when they were supposed to have gotten their permit and they are getting extensions- extensions are being done based on how they perceive the permitting is going – Conrad stated he thought they had good legal standing

Bob – I think it was our obligation to call his bluff

Andy – I had Bob telling me we didn't have the authority –

Susy – we have a few words in our bylaw that gives us a leg to stand on here – that is not standard in most site plan bylaws

Andy – it enables us to make determination of use . . . the Avelinos commented that we were fair and just in how we conducted ourselves as a board in spite of what had gone on – timing is a real concern for the seasonal aspect of their business – may have to delay a growing season – disappointment hitting home – they became emotional

Eric – the first thing they should have done was have their attorney do a zoning opinion

Susy – I believe they may ask for a refund of fees. Their attorney contacted Barbara St. Andre.

Andy – I would be willing to consider that we would waive future application fees

Bob – fees are paid, no guarantees

Eric – yet we need to be cognizant of impact on the town

Chan – was anything said about the scale?

Andy – we only talked about what might happen in the future – size, and scale and canopy for a future development

Bob – is there not a regulation on impervious surface maximums

Susy – yes, in zoning bylaw

Andy – if they ask for the money

Bob – if you are going to enter into something and then decide not to go through with it

Andy – we would spend some money on drafting bylaw changes – we lost some money in our FY08 budget – I don't think we are fiscally in a position to be getting into a lawsuit

Bob – you got to look at the long term and precedent

Bob – do our regs provide for refunding?

Susy – I don't believe so –

Andy – have we done it?

Susy – we have allowed people to withdraw and then waive reapplication fees . . . we also refunded a site plan filing fee when the applicant appealed to the building inspector that it was an agricultural use and therefore exempt

INVOICES

Plan Review – \$918.75 – PGC Associates – motion by chan, sec by bob – all yes

Consulting Services – PGC – \$487.50 – motion by bob, chan – all yes –

Motion to adjourn- bob, chan – all yes.

The meeting was adjourned at 9:35 p.m .

Respectfully submitted,

Susan E. Affleck-Childs
Planning Board Assistant