

November 25, 2008 Medway Planning Board Meeting

PRESENT: Andy Rodenhiser, Chan Rogers, Bob Tucker, Tom Gay, John Williams

ABSENT: Karyl Spiller-Walsh

ALSO PRESENT: Susy Affleck-Childs, Planning Board Assistant
Gino Carlucci, PGC Associates

7:02 pm – Meeting called to order

CITIZEN COMMENTS – None

ANR Plan for Cedar Farms Road - Map 4 parcels 52A and 53-A

Mike Curatola, applicant
Paul DeSimone

Numerous neighbors

SAC NOTE – There was a computer glitch at the beginning of the meeting. The notes regarding the Mike Curatola's ANR plan for Cedar Farms Road were lost. The following is a general recollection.

Paul DeSimone – introduced

Andy Rodenhiser – do you know if any of the folks out here had a chance to see these

Paul DeSimone – No.

Andy Rodenhiser – Let's give them a copy of the plan

Paul DeSimone - We have a 35 acre parcel plus piece of land owned by Ozella for a total of 45 acres – we are cutting it up into two new lots – we show you the dashed lines so you see where the old lot lines are

Andy Rodenhiser – access?

Neighbor – are we going to get an explanation?

Andy Rodenhiser – he is doing that right now -

Paul DeSimone – either from cedar farms (road) or Fisher Street - We don't know yet – we are just cutting into two lots – we were at conservation last week

Chan Rogers – they have to have access

Bob Tucker – on cedar farms road 200 feet

Paul DeSimone – We have 180 feet of frontage on this lot and 200+ feet of frontage on the other

Andy Rodenhiser – we have received a revised plan to reflect the comments that Gino made - could you review?

Gino Carlucci – my comments were re technical deficiencies of some of the requirements on the plan that weren't included - table of setback requirements, abutters across the street, the statement that endorsement does not constitute compliance with zoning – I asked it to be corrected to the exact way our rules and regs say

Andy Rodenhiser – lot shape factor is ok?

Gino Carlucci – yes, it allows for an imaginary line to be drawn to calculate

John Williams – it is very helpful to have this info on here – even if this info is not required, I would like to see the plans come in with that – I think it is helpful, saves some legwork for news guys on the board - thank you

Andy Rodenhiser – those are the rules, so if you could just put them on there, it would be helpful

Andy Rodenhiser – an ANR plan (approval not required) means that it meets minimum frontage requirements and the lot is of sufficient size and provides access along a public street – they own the land and they have frontage along a public right of way – they still have to meet the requirements of a conservation commission

John Williams – flood zone?

Andy Rodenhiser – all of those things

Neighbor – where are you going in? last week when were here (at the concom meeting) you talked about fisher street – where are you coming in?

Andy Rodenhiser – excuse me – the way we conduct this is that we take minutes – when you make a comment – just say what your name and address is – so we know who is saying what

Cheryl Smith, 45 Cedar Farms Road – we are little unclear, those of use here who live in the area, where he is coming in?

Andy Rodenhiser – as you come in the street down cedar farms road, there is a guardrail with a break – it appears that the frontage comes from some bounds that are there in the ground that make up the lines you see on that drawing – Paul can go out and locate these bounds and that is how he has shown that on the drawing – and the frontage that is required for lot 1 is between these two lines the area along the street – minimum is 180

Cheryl Smith – where would that road come in?

Andy Rodenhiser – it would not be a road, it would be access to the lot – this is not a subdivision

Cheryl Smith – it is not a subdivision yet, that is one of our concerns – it is going to mushroom into something else down the line

Andy Rodenhiser – it may - tonight's meeting is about an approval not required plan

Cheryl Smith – so it is a driveway – where?

Bob Tucker – it is not a driveway – it is a division of land into lots – that is all this plan is – just making one piece of property into two lots - it is actually two pieces (into two lots)

Cheryl Smith – what is next step?

Andy Rodenhiser – all they are presenting is an approval not required – it is an endorsement that we agree (subdivision) approval is not required – under the circumstances, he can put one house on it (each lot) - if he thinks he can use the property for more by putting in a road, he can come in with a subdivision plan (later) – that is a completely different process and as I asked Paul – how do you intend to access the lots – he said we could come in off of this way or this way (cedar farms road or fisher street) - we have no idea

Susy Affleck-Childs – we do have to verify that access is do-able

Bob Tucker – they have access on cedar farms road

Susy Affleck-Childs– they have frontage on Cedar Farms Road

Andy – is any of this area (adjacent to Cedar Farms Road) wet?

Paul DeSimone - a lot of it is wet – we have uplands and wetlands all over the place – we have identified this little piece up here for further wetlands evaluation work up

Andy Rodenhiser – so how are you going to have access along a public way?

Paul DeSimone – we may cross the wetlands – we will deal with conservation and do what we need to do

Gino Carlucci - I would like to say that I probably was a little bit negligent – sometimes I do a site visit when I review these and sometimes I don't – I thought this was straight forward – however, this 25 foot wall maintenance easement – if that way is such that you can't drive into the wall because of it, it would be the same being a guardrail and that may be no access –

Andy Rodenhiser – it would require substantial fill there

Bob Tucker – it is lower than the road

Gino Carlucci – there is a guard rail across the front? But it is not shown on here (the plan)

Andy Rodenhiser – is the area that needs to be filled is greater than 5000 sq ft?

Gino Carlucci – even before we get to that. . if there is a guard rail then there may no access from cedar farms road – I withdraw my recommendation to endorse this – a guardrail is grounds to deny an ANR plan

Paul DeSimone – there is an opening in the guardrail

Andy Rodenhiser – that opening is to get in for maintenance of drainage easement

Paul DeSimone – we have access down further to the left – there is a right of way across a property – we don't know yet

Susy Affleck-Childs – can you show me where you mean?

Bob Tucker – so there is a 30' wide access easement to rear land and drain easement

Paul DeSimone – that shows on the existing subdivision plan

Susy Affleck-Childs– I would want to see more about that

Paul DeSimone – you guys have the plan

Andy Rodenhiser – it is up to a lot of interpretation

Paul DeSimone – I am just telling you it is there, it is existing - we do have right of way out to fisher street also

Susy Affleck-Childs - what do you mean access off to Fisher Street?

Paul DeSimone – there is right of way up here (pointing up near Giovanelli property)

Andy Rodenhiser – is that shown on this ANR plan?

Bob Tucker – no it is not

Susy Affleck-Childs – so it is a private driveway?

Paul DeSimone – our access is on cedar farms road

Susy Affleck-Childs – your frontage is on cedar farms road - how do you inherently claim the right to use the right of way from Fisher Street?

Gino Carlucci – even if there is an opening in the guardrail with access to lot #2 that doesn't allow a division that would create a second lot with the guard rail

Andy Rodenhiser – so you are going to stand by, you know, what you had said?

Gino Carlucci – unfortunately, I wish I had driven out there

Bob Tucker – sounds like we to see what the extent of that guardrail is and to what extent it does have any openings in it –

Andy Rodenhiser – do you have any other info you want to provide?

Paul DeSimone – I don't have the subdivision plan with me – but I can give it to you

John Williams – do we possibly have a plan on file of cedar farms road?

Andy Rodenhiser – it is not that old

Susy Affleck-Childs – we do

John Williams – perhaps we can take a look at that

Andy Rodenhiser – when is our next meeting? We have only 21 days to respond (to an ANR application)

Susy Affleck-Childs – it is dec 9th

Andy Rodenhiser – do you want to withdraw this?

Mike Curatola – can I make a comment?

Andy Rodenhiser - sure

Mike Curatola – we do have a right of way

Gino Carlucci - but it is not shown on this plan and that is the plan the board has to endorse

Mike Curatola – we have the right frontage, we have the right square footage

Gino Carlucci – but the ANR plan does not show the guardrail across the frontage

Paul DeSimone – so you are saying the town is denying him access to his land?

Gino Carlucci – if you can get the guardrail removed

Mike Curatola – but we are not accessing it that way

Paul DeSimone– if the guardrail has to be removed .it would be under a building permit application that we would do for the building inspector

Gino Carlucci – an ANR plan has to show access at the time it is submitted – that is not shown here so it is not subject to endorsement

Andy Rodenhiser - would you withdraw it and resubmit it with additional information?

Paul DeSimone – yes

Susy Affleck-Childs - I am curious about. . you are saying that you have access from Fisher Street

Andy Rodenhiser – if so, that should be reflected on the plan

Mike Curatola – I talked to the building inspector – he told me in the town of Medway, as long as you have frontage and area it doesn't matter where your access is

Gino Carlucci – that is true – but it doesn't count as frontage if it is blocked

Chan Rogers – frontage implies access

Paul DeSimone - I totally disagree with the guardrail

Susy Affleck-Childs – I am still curious about your access point – you may have them but how do we know that you have the right to use them? I think you have to provide info to show it is legitimate

Andy Rodenhiser – or the property owner does

Paul DeSimone - the guardrail is in the road – I think the town owns it – you are saying that the town would not be allowing him to use his land

Bob Tucker – I don't know enough about it right now

Chan Rogers - it is topography that is not allowing you to use (the frontage) as the access

Gino Carlucci – if you have other access, you need to show it and demonstrate it – if it is other than cedar farms road – you need to show it on this plan –

Paul DeSimone – it won't fit on that plan

Bob Tucker – not at that scale anyways

John Williams – what is procedure for wetlands?

Paul DeSimone– you need 50% of the required minimum lot size as uplands (22,000) – we have that –

Andy Rodenhiser –you are familiar with what you need to demonstrate?

Paul DeSimone – I am now, I don't agree with it, but . . . do you want to know if the guardrail is on the public way or private property?

Gino Carlucci – yes – if it is on private property, then you would have the right to remove it on your own, whereas if it is on public property, you would to deal with the town

Paul DeSimone - it is one thing to take down a section of a guardrail for a driveway, but it is up there because the land drops off

Gino Carlucci – removing the guardrail implies that there is no longer a steep drop off - for safety purposes, you can't just remove it and leave a big drop

Paul DeSimone – if he was to put in a driveway from cedar farms road, he would get a curb cut and deal with conservation

Gino Carlucci - a form a plan has to have actual access at the time the plan is submitted to the town – that is state law

Andy Rodenhiser – so do you want to withdraw this and resubmit it

Paul DeSimone – yeah, we can bring back – it will be another plan

Cheryl Smith – I can tell you a little bit about the guardrail –

Andy Rodenhiser – go ahead

Cheryl Smith – I know the guard rail is on town property - none of us own that – that guardrail was not put in initially by the builder when he did the subdivision – and then the town came back and told him to put the guard rail in –

Paul DeSimone – it makes sense because the wall is lower than the road

Cheryl Smith – there is a large retention basin there – there is a large drop off -

Andy Rodenhiser – we can look at the subdivision plan that was approved under which they constructed all of that and that will probably show the guard rail on there – the underlying property there belongs to who owns it – there is just an underlying easement that grants the town the right to maintain the drainage – so whoever owns the property now has granted the town an easement across –

Paul DeSimone - those easements were already there – we didn't create them

Andy Rodenhiser – so you will withdraw the plan

Paul DeSimone – yep

Andy Rodenhiser – and make the corrections that will give you access to these parcels and resubmit

Tom Gay – the other thing I would ask is on the frontage – the numbers don't add up – there is a 3 foot error – I don't know where the mistake is but it needs to be fixed

Paul DeSimone – oh, glad you saw that – OK,

Susy Affleck Childs – I am a little concerned about showing frontage of just 180.1' – I know it meets the minimum but there have been some instances where things haven't been accurate and it has to be redone later

Andy Rodenhiser – at pine meadow we had to redo 3 lots because the footage was off –

Susy Affleck-Childs – if you found enough room on the other side

Tom Gay – just revisit that

Andy Rodenhiser – so that when this does get surveyed it isn't short

Paul DeSimone– the frontage is from the existing subdivision plan

John Williams – would we want to consider to be above and beyond for them to supply any flood plain info on the lots – if there is a flood plain, there maybe a special permit from the ZBA required and we would like when we consider these to know how it effects the flood plain so we can have a consistent message - in the interest of transparency, I would suggest we label the flood plain

Andy Rodenhiser - is that possible for you to do?

Paul DeSimone – yeah, it is not in the flood plain

Susy Affleck-Childs – so just say a note that it is not

Chan Rogers – there is also a judgmental decision as to why the guardrail is there and whether that implies reasonable access – difference in elevation is about 20 feet

Paul DeSimone – a good 10-15 feet

Chan Rogers - one of us should be out there to look at this

Andy Rodenhiser – OK - so you are going to withdraw it then? Susy, what do we need to do?

Susy Affleck-Childs – acknowledge that applicant has agreed to withdraw and resubmit without prejudice – our normal policy is to not charge a subsequent ANR application fee

A motion was made by Bob Tucker, seconded by Chan Rogers, to allow the applicant to withdraw the ANR application and to refile it with more info including information on plans to access the two lots. The motion was approved.

Chan Rogers - I just want to make a point that a PB member should be if there is a problem with the differential –

Paul DeSimone - if we were to go in that way, we would need to fill in a ramp and build a driveway -

Andy Rodenhiser – I think they can only fill 5000 square feet (per concom)

Paul DeSimone – if it is more than 5000 sq ft you have to file for a 401, water quality permit

Andy Rodenhiser – there would be a lot of work coming in that way (from cedar farms road) – that is a lot of work for 1 -2 houses. do you guys (neighbors) have any questions?

NO

Susy Affleck-Childs – it will be dec 9th – we have a public hearing at 7:15 so let's say 8:15 pm

Andy Rodenhiser – we will keep Jan Fish in the loop as she gets our agenda

Paul DeSimone – thanks

Discussion - Birch Hill Bond Reduction

Ellen Rosenfeld - owner/developer

I have a package for everybody. It is all highlighted for you.

OK – Hunter Lane. We have been in Hunter Lane for more than 30 years. We are doing the best we can. We are at the end of this journey. We have completed 100% all of the work that needs to be done for Hunter Lane. The drill holes done. The as-built plans are being worked on.

First piece of paper in the packet is the bond estimate from 2005 - \$37,236.

Back in August, when I knew I was going to be finishing the road, I said to Susy Affleck-Childs, what do I need to get my bond reduced? She sent me an email – see the street acceptance list. The next day your chairman put together a memo, very nice, - synopsis what sections needed to be completed. We had hoped it could be done for fall town meeting. So, there are 3 pages of that from Mr. Rodenhiser. On September 24 I got a note from Susy Affleck-Childs saying that she had updated my construction account and she was looking for some money. She told me there is \$1,200 sitting in my account. She estimated \$3,805 for review fees (engineering) plus \$5000 in legal fees. She was looking for \$7,560. I said, look at this – he is charging \$60 – he figures 12 hours to inspect and another 3 hours to prepare reports – then we get to the \$5,000 for attorney fees – well . . .

On November 12, I contact Susy Affleck-Childs to ask for a bond reduction. She tells me the Planning Board policy to not reduce any subdivision bond related till all work is done, etc. So I contact Mark Louro, he goes out and inspects. He says there are 3 things left to be done – loam and seed, drill bounds, etc. We have done all these things. I get to the Planning Board checklist. Have you guys ever seen this checklist? Have you ever seen this piece of paper? None of these boards listed here have ever seen this piece of paper. None had a clue what was going on.

Andy Rodenhiser – We can't control them.

Ellen Rosenfeld – When you put together a checklist – you would think they would know what they were inspecting – they said they were just going to contact Susy Affleck-Childs I called every one of them. I left messages or spoke personally with everyone. The only one I have heard back from is the police department. There will be a real problem with the Disability Commission.

Susy Affleck-Childs – I spoke to her today; you are all set.

Ellen Rosenfeld - I see at the very end (of the checklist) there is a sign off from Town Counsel. I called her and we spoke for 15 minutes on November 20. We decided that since I have not reserved the fee in the road, that we have to figure out how to do this deal. So I say we have to take this by eminent domain. We have 9 people and they have 6 mortgages each. She wanted me to get them to at least sign off that they won't oppose eminent domain. I sent her a nice little plan.

I sent an email to Mark Louro – he responds – He can go out tomorrow to inspect. He says “are you looking for a bond reduction on Tuesday?” I say, yes. He says, I don't think the Planning Board will reduce the bond below \$35,000.

That afternoon – I write to Susy Affleck-Childs and forwarded Mark Louro's email to her.

I get an email the next morning from Susy Affleck-Childs saying perhaps she had not fully explained how the bond holdback works – all paperwork and street acceptance has to occur – I sent an email back to Susy Affleck-Childs – I am not happy

If you look at the \$35,000 holdback, it cost me \$40,000 in paving alone. Why in the world would I have done this on November 14 knowing I had to wait until May to get the money back? I called Andy Rodenhiser and called Barbara Saint Andre and asked under what authority the \$35,000 minimum was imposed.

Then Susy Affleck-Childs said Mark Louro would not do an inspection, and Barbara Saint Andre wouldn't call me back because I hadn't paid the whole \$7,800 invoiced. She said you only gave us half. So you have \$5,000 in an account. Why isn't anybody helping me here? I will say, yesterday morning, I got an email back from your Town Counsel. She said she will look into this matter after the hearing tonight. She had been busy with another matter. I have also provided you with a copy of Mass Subdivision Control Law. I have also given you Mass General Laws that explain street acceptance.

I tell you this hold back is not legal in any way shape or form. There is no authority. I don't care if you held a public hearing or enacted a regulation. I have spoken to every Town Counsel I know. People have gotten away with it, but you cannot tie bond reduction to street acceptance. I have no requirement to get this road accepted. I really don't even own it now (the 9 owners do)

So we here we are – You have \$37,000 of my money. I need to pay my paver. Jim Smith did extend the date to December 1. There is \$4,400 sitting in the bond account for as built.

I am willing to leave \$10,000 in this bond account. I want the rest of the money released. I am not going to let this go. I will tie it to pending paperwork necessary for street acceptance, obviously pending Mark Louro going out and making sure I am 100%.

Andy Rodenhiser – Wasn't that a condition for granting subdivision approval? Was one of those conditions street acceptance?

Ellen Rosenfeld – No such thing. Some towns don't even want the streets anymore.

Andy Rodenhiser – I expect the people on Hunter Lane would be surprised if the street wasn't accepted.

Ellen Rosenfeld – My brother lives on Hunter Lane. The people there are great. I don't see a problem with them.

Andy Rodenhiser – It is the business of the Planning Board to make sure that the street is part of a subdivision plan, and if it is intended to be a public way that it be completed. The purpose of the bond is to ensure that the developer does everything, and there is an expectation that town meeting will approve the streets if recommended by the Planning Board.

Ellen Rosenfeld – Be that as it may, you are right; it is an expectation.

Andy Rodenhiser – Let me finish my questions. When you called me, I called Susy Affleck-Childs and told her to be ready to have police at this meeting – all kidding aside – She looked into the (subdivision) rules that were applicable when your approval was granted (plan modification in 2002) – a \$25,000 minimum retained bond was included in the regs at that time.

Ellen Rosenfeld – That doesn't matter.

Andy Rodenhiser – That is where this problem is right now.

Ellen Rosenfeld – I thought this policy just went into effect a few years ago.

Andy Rodenhiser – We have raised the amount over the past few years.

Ellen Rosenfeld – I knew I could have walked away.

Andy Rodenhiser – And your brother lives there and you have a reputation. We have a situation where we have modified our rules and regs over time.

Andy Rodenhiser – Does this board have any questions about this circumstance that you would like to pose to Ellen Rosenfeld?

Chan Rogers – The concept of holding a bond until street is accepted is valid. The question may be how much and how long.

Ellen Rosenfeld – My position is that it is not valid. There are two different statutes – subdivision control and street acceptance. I am under no obligation to get the street accepted.

Andy Rodenhiser – I would think that under the subdivision approval it was granted because it was expected to be a public street.

Gino Carlucci – Whether it is a public or private street, a bond is there to ensure that it gets built.

Chan Rogers – Right now we have no other means to make you finish the street.

Ellen Rosenfeld – You have no right to make me wait until street acceptance.

Chan Rogers – Then we have no reason to release the bond.

Andy Rodenhiser – She could choose not to pursue getting this accepted. It is this Board's position that a minimum amount needs to be withheld (retained) prior to street acceptance. She is saying if I have met all the other standards I should get my money back, and you cannot bind me to a town meeting vote.

John Williams – Interesting concept. I am worried about precedent and fairness. There has been a section of our bylaw that has been challenged. I think we need to ask (town) counsel to verify that. I feel your pain and frustration, and I appreciate your effort in completing the road. Because this is a compelling case, I don't feel we should reduce the bond at this time. We have to be consistent and fair. The reasons we hold the bond are legitimate.

Andy Rodenhiser – The fact that the fee has not been reserved might be a reason to have some additional monies. If there is eminent domain, there will be costs.

Ellen Rosenfeld – You are still tying the bond to street acceptance.

Chan Rogers – It should be tied to the completeness of the work, not the acceptance.

Bob Tucker – There have still been outstanding issues on the street, in addition to a plethora of legal issues.

Ellen Rosenfeld – I am not asking you to waive any street issues.

Bob Tucker – We are looking at a number of different subdivisions.

John Williams – The costs are real. We have to be consistent to what we have done in the past.

Ellen Rosenfeld – Because I am challenging the street acceptance tie in, he (Mark Louro) will just find more stuff that is wrong.

Andy Rodenhiser – RE: the minimum requirement in the construction account, the town administrator made a requirement to have the funds in hand to cover the expenses.

Ellen Rosenfeld – Except the Town's attorneys fees are for her to get the street accepted. – But that is not my problem. I don't feel I am responsible for that cost.

Andy Rodenhiser – Who is?

Ellen Rosenfeld – The homeowners or the Town.

Andy Rodenhiser – I am thinking about all the homeowners who had an expectation of having their road accepted.

Ellen Rosenfeld – I am not going to go there. I will do the right thing to get the street accepted. But I am not going to tie my bond money to street acceptance.

Susy Affleck-Childs – I spoke with Town Counsel this afternoon. – She feels we are within our authority as this minimum amount is specified in the (subdivision) rules and regs.

Ellen Rosenfeld – If you stick with this, I am running into court for a summary judgment. – there is no trial - I will call other developers that are hung up here. I am not happy.

Bob Tucker – I think the first thing we need to do is to give Town Counsel the questions we want answers to.

Chan Rogers – She has raised a question, and we need to get an answer to that question. This is the ammunition that the board has to make the developer get the street accepted.

Ellen Rosenfeld – I was advised it doesn't matter. You can't change the statute.

Susy Affleck-Childs – I would suggest that you consider reducing the bond now to \$25,000.

Susy Affleck-Childs – Since when does a bond becomes construction financing?

Chan Rogers – We have a responsibility to get the road accepted.

Ellen Rosenfeld – You do not have that obligation – why?

Andy Rodenhiser – I understand what she is saying. If they feel aggrieved, they can sue her directly.

Chan Rogers – We need to get Town Counsel involved.

Andy Rodenhiser – What is the question you want to ask of her? What info?

Chan Rogers – It appears it is about the basic philosophy of holding bond money until street acceptance.

Andy Rodenhiser – Is there case law to support our position of holding bond minimum until street acceptance by town meeting?

Ellen Rosenfeld – That is a question

Bob Tucker – I have no problem with reducing to \$25,000. Those were the rules at that time. Every other bond we are holding has been since 2002.

Chan Rogers – We are willing to do that.

Ellen Rosenfeld – That is a nice goodwill gesture. That would make me happy.

A motion was made by Bob Tucker, seconded by Chan Rogers to reduce the subdivision bond on the Birch Hill development to \$25,000 and to refund that available balance. The motion was approved.

Andy Rodenhiser - How do you want to proceed, and how shall we handle the info we receive from Barbara Saint Andre until we meet again?

Chan Rogers – It would be nice to have an opinion from Town Counsel.

Susy Affleck-Childs – Barbara Saint Andre says the attorney client privilege is the client's to use.

Ellen Rosenfeld – So, now, what about the rest?

Andy Rodenhiser – Do you want to retain attorney client privilege?

Tom Gay – I would like to wait and have some time to process it (town counsel's opinion) before I decide.

Bob Tucker – We should see it before we hear about it.

Andy Rodenhiser – When this info becomes available, you can read it (on your own) but you can't discuss it (before the meeting)

Bob Tucker – I would even suggest at that point, when that comes in, and we have a chance to read it, we could even have a special meeting.

Ellen Rosenfeld – Are you going to put a time frame on this? Should I come to your next meeting?

Susy Affleck-Childs – December 9th.

Andy Rodenhiser – I would like to provide Barbara Saint Andre with all the info that Ellen Rosenfeld has provided tonight.

Chan Rogers – Planning Boards have been doing this –

Susy Affleck-Childs – This may not be an issue of case law, but common practice.

Ellen Rosenfeld – There is no such thing as common practice that trumps state law.

Ellen Rosenfeld – You as the Planning Board have been great. Have you gone up there? – It's pretty nice - It really came out well.

Tom Gay – I went up today. It looks like it is done.

Ellen Rosenfeld – Will I get a letter about the bond reduction? What is the process?

Susy Affleck-Childs – It will be at least two weeks. We have to process through the standard bill paying system.

We will discuss again at 8:45 pm on Tuesday, December 9th.

Continued ANR discussion

Bob Tucker – I do not want to see any mistakes on the ANR plan.

Gino Carlucci – The other issue is going to be the other access from Fisher Street across the 4 lots. You would have to determine that it is adequate access to serve another house.

Andy Rodenhiser – The guardrail is an interesting issue.

Gino Carlucci – The opening in the guardrail has to be . . .

Andy Rodenhiser – Let's ask them to show the guard rail on the plan and the opening of the guard rail – the size and location -

Gino Carlucci – I am sorry I didn't go by there. It seemed like it was a straight forward plan.

Andy Rodenhiser – What do you guys think of asking for an easement that follows the utility easement to have a trail to get out to Mallard Drive – that would connect the two neighborhoods – that would allow kids to walk to the high school very easily. –

Bob Tucker – Who owns the land where the easement is located?

Andy Rodenhiser – Boston Edison – NSTAR

Bob Tucker – I would think I would want to have reasonable assurance before I negotiated that.

NOTE - We want to see some deeds/easements to document the right of access.

Discussion – Planning Board Goals and Priorities

It was agreed to hold off this discussion until the next meeting when Karyl Spiller-Walsh will attend – defer to December 9th –

Invoices

Tetra Tech Rizzo (9/24/08) – Franklin Creek CO - \$842. Motion by Tom Gay, seconded by Chan Rogers to approve. APPROVED. Bob Tucker was out of the room at the time of the vote.

Tyler Technologies, Inc. – \$11,732.50 – 43D grant funds – Motion by Tom Gay, seconded by Chan Rogers to approve. APPROVED. Bob Tucker was out of the room at the time.

OTHER BUSINESS

Open Space Committee Newsletter – inaugural edition – NICE job

Smart Growth/Smart Energy Conference - \$60 -
Andy Rodenhiser – I will look at my calendar and see if I can attend.

Susy Affleck-Childs – The Design Review Committee is very interested in energy issues.

Commonwealth Capital Application

Gino Carlucci - I had gotten a couple of items from Dave D'Amico regarding energy conservation so we can get a couple of more points – I have an email out to Mark Flaherty re: water conservation study.

Andy Rodenhiser – Is that defined?

Gino Carlucci – I sent that along to Mark Flaherty. There is also 4 points for having a water ban in the summer. Is it a bylaw? But there may be a water/sewer board regulation.

Andy Rodenhiser – If they were to put in a conservation effort and spend money it would be a substitute for a water ban. So it doesn't cost them anything to do the water ban.

Bellingham/Medway Study – Route 126 Area

Gino Carlucci – We are pretty set to submit a proposal to MAPC for their technical assistance program - regional applications are what they are looking for – has higher priority -

PICTometry

Susy Affleck-Childs - Alan Bishop of MAPC made presentation at the recent SWAP meeting re: an April 2008 flyer. All towns will get the data and a hard drive – views from 5 angles - they offer a \$1,100 tech support contract – I would like to share that expense among a number of us

Last flyover was in 2003, distributed to towns in 2005.

Gino Carlucci – I remember giving it to Britt Hall. (Assessors)

Swenson Granite Site Plan Completion

Note – The site was inspected by Tom Gay

Tom Gay – I met with a real nice guy, John Proulx. He was very forthcoming in answering my questions. They have definitely done the work around the building. They have done additional landscaping near the sign and changed some of that. It is very interesting. There are a couple of things that were outlined in the decision - good landscaping per condition #5 – done nicely – changed a bit to accommodate the sign itself. – Ok

Item #7 – The original plan of 1996 had a requirement for a 10 foot landscape area on the perimeter - That work has not been done. The stone in the grass area is still there. It has not been addressed. They haven't moved that stuff. John Proulx said when he took over that store, the instructions were to go to the edge of the stone and stack it down –

Tom Gay – It hasn't been done per this site plan decision – condition #7

Andy Rodenhiser – So it doesn't do what this section says they should do. That is the actual fact. I don't see that there is anything different going on there.

Tom Gay – Is Bob unwilling to enforce it? Why should we worry about it?

Bob Tucker – What I hear you saying, is that what they have out there does not meet the site plan decision.

Bob Tucker – I would move that where the work has not been done in accordance with the decision, and they haven't asked us to remove that portion of the decision, that we should not approve

Bob Tucker – I remember when they came in and we talked about it. Buffers have been very important to this board.

A motion was made by Bob Tucker, seconded by Chan Rogers, to not accept this project as completed. They have not completed work in accordance with the decision. We consider it to be incomplete. The building department should not issue the occupancy permit. APPROVED.

Tom Gay – there is an option for a performance guarantee if an occupancy permit is sought before site work is completed – the as-builts shows the building work and the plantings -

Do they post a bond and get the occupancy permit, or do they do the work? They have that option

Susy Affleck-Childs – How could we get an estimate on what it would cost?

Bob Tucker – I don't have a problem with grass.

Gino Carlucci – They said they complied because they had planted grass. –

Bob Tucker – We didn't have an issue with the grass.

Tom Gay – Move it off the grass to the stone area. Pallets are on the grass.

Andy Rodenhiser – What do you do to keep them from going back to doing it? It isn't lush grass.

They did not comply with condition #7 they have an option to provide a performance guarantee or they can move it.

Meeting Minutes

Sept 9, 2008 – Motion by Chan Rogers, seconded by Bob Tucker to accept. APPROVED. Andy Rodenhiser recused himself as he did not attend the 9/9/08 meeting.

August 26, 2008 – Motion by Chan Rogers, seconded by Bob Tucker to accept. APPROVED.

It was agreed to hold off on the Nov 18th minutes . . .

Other Discussion

Bob Tucker - We do have a few names of people interested in the economic development commission. Let's think about this some more – we should review the names and start taking some action to get them going again – Those meeting minutes of the August 26th meeting would be very helpful to the new folks. – I think we ought to bring them in and talk to them and help them get started.

Chan Rogers - Route 109 Informal Committee voted to select a consulting firm to do the finish work on the TIP – we have recommended Design Consultants to the Board of Selectmen.

A motion was made by Bob Tucker, seconded by Chan Rogers to adjourn the meeting. APPROVED.

The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Susan E. Affleck-Childs
Planning Board Assistant