

**December 22, 2008  
Medway Planning & Economic Development Board Meeting  
SPECIAL MEETING**

LOCATION: Sanford Hall, 155 Village Street, Medway, MA

PRESENT: Bob Tucker, Andy Rodenhiser, Tom Gay, Chan Rogers, John Williams, Karyl Spiller-Walsh

ALSO PRESENT: Susy Affleck-Childs, Planning Board Assistant  
Gino Carlucci, PGC Associates  
Barbara Saint Andre, Petrini and Associates (Town Counsel)  
Aaron Wasserman, Milford Daily News

The meeting was called to order at 7:03 p.m. by Chairman Rodenhiser.

**CITIZEN COMMENTS** - None

**Review of Meeting Minutes**

A motion was made by Bob Tucker, seconded by Chan Rogers to approve the minutes of the July 22, 2008 meeting. The motion was approved.

A motion was made by Bob Tucker, seconded by Chan Rogers to approve the minutes of the August 5, 2008 meeting. The motion was approved. Karyl Spiller-Walsh abstained from voting as she did not attend that meeting.

A motion was made by Bob Tucker, seconded by Karyl Spiller-Walsh to approve the minutes of the December 9, 2008 meeting. The motion was approved. Tom Gay abstained from voting as he did not attend that meeting.

**Committee Reports**

Tom Gay – I had a conversation with the engineer (Rick Merrikin) for Swenson Granite re: site plan completion. His claim at the moment is that the car dealer out front has moved onto part of Swenson’s green space. I said there are two solutions: give me a survey that shows me where their pavement has crossed the line, or move the pallets 4 feet off the grass. His stance is that in the design the pallets are not exceeding where they were. I told him it doesn’t look that way.

Bob Tucker – When we had discussion with him. I made it painfully clear that we expected it to be taken off the grass and onto the gravel.

Tom Gay – I told him that was the most simple way to handle it. From an observer’s point of view – from pavement of car dealer to where the pallets are does not satisfy the idea of what it is supposed to be. If they have a dispute with an adjacent owner, that is up to them to pursue

Karyl Spiller-Walsh – The amount of pallets has probably quintupled.

Tom Gay – You can easily see the edge of the gravel, and can easily see there is storage on the grass.

Karyl Spiller-Walsh – We asked them if they would buffer that. There was a lot of discussion about buffering.

Tom Gay – It looks like it is closer because it is, but it still does not satisfy the distance requirement. Rick Merrikin said he would discuss this with Swenson Granite.

Andy Rodenhiser – We can't grant relief to the ZBA's decision.

### **Birch Hill Subdivision – Discussion re: subdivision bond**

Barbara Saint Andre – Town Counsel

Ellen Rosenfeld - Owner

Mark Rosenfeld - Developer

Andy Rodenhiser – We first sought an opinion on the legitimacy of the bond. There seems to be a continuing issue about whether or not the town can, in fact, after the acceptance of the work, hold bond money after that until street acceptance for legal work that needs to be done and if it is in an acceptable manner to accept at town. Those are perceptions as to why we feel we hold the bond money, so it can be accepted at town meeting, so it is a surety to make sure the developer makes it repairs at the end of winter.

She (Ellen Rosenfeld) raises a point, what if town meeting doesn't accept the streets? At what point do we give back the money if town meeting refuses to accept it?

Barbara Saint Andre – First, General Laws 81Q specifies what you can put in your regulations and it includes maintenance. It is not at all unusual for towns to include maintenance in the bonds. The issue is whether you can hold a bond till town meeting and subject the refund of a bond to a condition beyond the control of the applicant (town meeting approval). They can control repair, maintenance, etc. but not whether town meeting will approve. One way to approach it is to hold it until a certain amount of time, until there are no hidden issues and that is provided for in 81Q. That is what your regs do. But you may want to look at your regs and be a bit more precise, and tie it to the condition of roads and not to actual street acceptance. You don't want the road to be built and have nobody taking care of it. Otherwise this great road is not going to look great. What you really need to zero in on is a way to make sure that the roads are maintained.

Andy Rodenhiser – Let's say this is August and we are approaching a fall town meeting, and she has everything completed and it is on the warrant for a November town meeting. The town might accept it in the condition it is in at the time.

Barbara Saint Andre – You also have to acquire the land within 120 days or the street acceptance vote is no good.

Andy Rodenhiser – So assuming we did all this in that time frame, and a week later we did accept it, then we could refund their money.

Barbara Saint Andre – Once it is accepted, and you have the deed, then the it is the Town's job to maintain.

Andy Rodenhiser - In this instance we are several months before town meeting, even if Mark Rosenfeld said it was perfect.

Ellen Rosenfeld – I don't agree there is a maintenance provision in 81U. The work is done. Right now, today, the work is done. I don't care if you accept it. I will worry about acceptance later. I will call you in March.

Andy Rodenhiser – We believe it is in our right to not give you back the bond money until the road is accepted. Barbara is suggesting we should change our rules and regs.

Barbara Saint Andre – Keep in mind, there is another issue. Under 81Q there is no grandfathering of subdivision rules and regs. When you submit a plan you are subject to the rules and regs in effect when the plan was submitted. There was a modification when the rules and regs were different, and there was no waiver sought. You can't come back eight years later and say we don't like the rules and regs.

Ellen Rosenfeld – It is an illegal regulation. I can come back and challenge. The judge will throw out your regulation. He will never even get to the point of considering the regulation. Now she (town counsel) is talking about changing your regs. That is what I am hearing. Let me ask your counsel.

Barbara Saint Andre – I am not going to be cross examined.

Ellen Rosenfeld – Can you tell me where in 81Q?

Andy Rodenhiser – Are we on firm ground here?

Barbara Saint Andre – If you want me to give you an opinion on threatened litigation, we need to go into executive session.

Chan Rogers – I think we feel we can require a bond until street acceptance. If it was to be delayed, then I think we could consider releasing it. I think there are enough votes on the board to require the bond. The amount of the bond may be subject to change, but the action to require a bond, is that what the issue is right now?

Andy Rodenhiser – Right now there has been a statement made by Barbara Saint Andre thinking that there is more information we need to discuss and to go into executive session. I would respectfully request we pursue that. What does the board feel? Do you want to go into executive session?

Chan Rogers – I move we require a bond on Birch Hill to be in place until it is accepted. I am not going to say the amount until the discussion. The bond can't be very high. The question of whether we can do a bond is settled.

Andy Rodenhiser – I would like to hear what counsel says.

Ellen Rosenfeld – I have not wanted to make a big deal about this. All I have wanted is an explanation as to under what authority Medway can hold a \$25,000 minimum bond amount until street acceptance. If you can convince me that you have that authority, I will . . . .

Mark Rosenfeld – Barbara Saint Andre says it is clearly in there.

Ellen Rosenfeld – I am not convinced.

Chan Rogers – I don't think we have to convince you.

Andy Rodenhiser – Barbara Saint Andre is here to protect the Town's interest. I would like somebody to make a motion to either second Chan Rogers's motion or do a motion for executive session.

Bob Tucker – Those rules were already set forth in how we operate, so I would withhold seconding Chan Rogers's motion. I think we do need to hear what Barbra has to inform us on. I think it would be very useful. It is a question on how much is needed in terms of an attempt at town meeting. There are a number of actions we need to look at closely. We can discuss those during the second part of our meeting on goals.

NOTE – There was no second to Chan Roger's motion. It fails.

A motion was made by Bob Tucker motions to go into executive session for purpose of discussing strategy with respect to litigation.

Karyl Spiller-Walsh – I don't know if Tom Gay who wasn't here last time (at the last meeting) was apprised of the length of time that the project has gone on, and the difficulties of it. What I am suggesting is that he be apprised of what her offer was and some of the details of the communications that we were talking about at that point. Let him take this all in. Tom Gay may not be aware of the negotiation.

Andy Rodenhiser – She was telling us what she was going to do.

Karyl Spiller-Walsh – I heard it as a suggestion.

Ellen Rosenfeld – I was making a lot of offers. I am confident that I will go in and have this regulation get wiped off the books. I don't want you (the Town) to spend money either.

Andy Rodenhiser – I don't feel we have sufficient legal knowledge. Chan Rogers feels we are OK without legal counsel.

Karyl Spiller-Walsh – I am with Chan Rogers.

Andy Rodenhiser – Tom, do you feel sufficiently up to speed with what she had said.

Tom Gay – No, I don't understand the context.

Andy Rodenhiser – She said I want x dollars back because she has to pay her paving guy and we could keep \$10,000, and she wanted the balance back (\$15,000).

Tom Gay – And the time before that, when this had all started, we had agreed to reduce the bond to \$25,000 (down from \$35,000).

Andy Rodenhiser – Yes. We thought that amount was fair, and there was a subsequent discussion the week you weren't here that was promulgated in terms of her offer. We got an opinion back, and I feel it might be wise to go into executive session. Is there a motion so support that? And it would be our intent to come back to public session.

A motion was made by Bob Tucker, seconded by Tom Gay to go into executive session for the purpose of discussion pending litigation, and to return to public session.

**Roll Call Vote**

- Tom Gay- yes
- Chan Rogers – no
- Andy Rodenhiser – yes
- Bob Tucker – yes
- Karyl Spiller-Walsh – no

The motion carries. The Board goes into executive session.

Ellen Rosenfeld, Mark Rosenfeld and Aaron Wassermann leave the room at 7:34 pm.

Turned off video tape.

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**8:15 p.m. Return to PUBLIC SESSION**

Tape goes back into the machine.

Andy Rodenhiser - On the Medway Planning Board and Fees schedule, Susy is meeting with the MUNIS folks and it would be helpful if we could update our fees before going live.

Tom Gay – I would still like to spend some time on this. Let's discuss in goals.

Susy Affleck-Childs – I would just like to make a few quick changes, short term.

Note – Circulate fee info to FinCom, BOS, Revenue Enhancement Committee

**PB Goals Discussion**

3 handouts

1. December 2006 Goals and Objectives
2. List of Possible PB activities
3. List of Possible Zoning Bylaw articles

Andy Rodenhiser – We need to have public hearings to change rules and regs. How about if we ask Susy to prepare a hit list of changes that need to be made and identify who else needs to be invited to participate – for instance developers/residents/businesses -

### **Rules and Regs**

Susy Affleck-Childs – Focus on 43D rules and regs. We need some outreach to those various boards to get comments back.

Gino Carlucci – ConCom did give some feedback; they said they would like to look at it again. I consider it closed with them.

Andy Rodenhiser – Could you make a call to them to make sure? Then email Joe Musmanno and ask for any last comments from the ZBA. What about Water and Sewer? Work through Suzanne- they have a consultant working with them on stuff.

Gino Carlucci – I will check with them.

Karyl Spiller-Walsh – I have some suggestions along the way – I thought I would prepare a little page of bullets – like low impact development stuff – I have a lot of trouble with rip rap . . . some things I think we can tweak quickly.

### **ZONING stuff**

Bob Tucker – I want to move on changes to adult entertainment zoning.

Andy Rodenhiser – Route 126 zoning, possibly from Milford Street south to the Bellingham line.

Bob Tucker – Is that something we can achieve between now and town meeting time? There is a lot of work to do.

Andy Rodenhiser – A lot of outreach.

Bob Tucker – There are a lot of items on this list, but not for the 2009 town meeting

Andy Rodenhiser – What about a simple expansion of Commercial V? Maybe we should talk about that in the context of the whole Bellingham/Medway area study project with MAPC.

Gino Carlucci – I know there are a lot of wetlands along Summer Street, but there is good dry land near the power plant.

Andy - List of contaminated properties. Let's provide that to PB members. Our summer intern did some research this summer. Let's review. Who are the property owners? There might be some brownfield monies we could possibly look at.

Neighborhood conservation districts – what is this?

John Williams – I would like to revisit the OSRD formula. I could draft something that reports on what other towns do. I am willing to put in the work.

Karyl Spiller-Walsh – What were you thinking?

John Williams – What do other towns have for regs? Come up with some recommendations for an improved formula.

Karyl Spiller-Walsh – How? What deficiency do you feel we have?

John Williams – My personal feeling – I think we need a minimum size requirement so we don't fall into the same thing with the West Street property. There are towns where the PB decides whether to pursue it as an OSRD vs. a conventional. Here we leave it up to the discretion. There are other things out there that I would like to explore more fully.

Gino Carlucci – One thought . . . I think it might be published by now. UMass Amherst did a study of all the OSRDS in the state and I have a copy of the spreadsheet that they did. It is pretty involved, and there are a lot of acronyms. That might be very helpful. It lists the ones where the towns require double submittals.

Karyl Spiller-Walsh – Could you make some copies for the Open Space Committee?

Andy Rodenhiser – Send it to Susy Affleck-Childs, then she can send it along.

Note – Susy to send John Williams the MAPC handbook on OSRD.

NOTE - 8:50 p.m. Barbara Saint Andre returns to the room.

Barbara Saint Andre – I think we need to discuss this matter some more.

A motion was made by Karyl Spiller-Walsh, seconded by Bob Tucker to go into executive session to discuss pending litigation and to return to the regular meeting.

### **Roll Call Vote**

Karyl Spiller-Walsh – yes  
Bob Tucker - yes  
Andy Rodenhiser – yes  
Tom Gay – yes  
Chan Rogers – yes

The motion is approved.

8:52 pm Move to Executive Session

9:15 pm - Reconvene in regular session. Put tape back into the recorder –

### **Back to Zoning Discussion**

Karyl Spiller-Walsh – Could we also get some zoning ideas, on the infill housing? Could that be something that could be looked at?

Susy Affleck-Childs – The Affordable Housing Committee is very interested in this idea and wants to work on it.

John Williams – Some of the towns specifically address the duplexes.

Andy Rodenhiser – Infill is not the same as an OSRD. Do we have an inventory of undersized lots?

Karyl Spiller-Walsh – There could be a tradeoff for additional open spaces. Could there be an open spaced tradeoff?

Gino Carlucci – In Lincoln they allow accessory apartments, and they will also allow a second accessory apartment, but only if there are two acres of open space.

Karyl Spiller-Walsh – It needs to go the other way too.

John Williams – I can see that provision making the rich richer and the poor, poorer.

Karyl Spiller-Walsh – I am saying additional housing for infill in tradeoff for open space.

John Williams – Isn't infill just open property that isn't being used? What would be gained?

Andy Rodenhiser – Infill is for vacant pieces of land with nothing on it.

Karyl Spiller-Walsh – Allow a two family for 2 acres of conservation in another part of town.

John Williams – No.

Bob Tucker – Can you tell me this would apply in more than one area?

Andy Rodenhiser – Let's table this discussion for now.

### **NOTE - Ellen & Mark Rosenfeld and Barbara Saint Andre return to the meeting.**

Barbara Saint Andre – The applicant is before the Board asking for release of subdivision bond. I believe the applicant has some plans to submit at this point.

Ellen Rosenfeld – I have the street acceptance plans for you, the as-builts will be ready at the end of the week.



Barbara Saint Andre – There is still some amount of bond that needs to be retained by the Board. We have discussed the idea of entering into a new bond agreement that would clearly set forth all the roles and responsibilities with respect to the remaining bond amount. The issue now is what the amount would be, and I know there have been a number of estimates that have been discussed. I believe she is willing to reach some sort of compromise. And the other issue is the consultant fee. Susy sent a letter asking for consultant fees to be increased to \$7,605.00. She may be willing to do that as well. As a result of that, she may be willing to not pursue litigation.

Bob Tucker – In this agreement it would also spell out when the bond money would be returned, whether it is keyed to street acceptance.

Barbara Saint Andre – We would cover all that in the bond agreement so it is clear from this point forward.

Andy Rodenhiser – At some point tonight we may take some action pending a mutually agreeable agreement.

Ellen Rosenfeld – I propose \$10,000 in surety account and that I increase the operating account (consultant services) to \$8,805 and we go until the end of May. I will do due diligence to do everything relating to street acceptance, but the bond return is no dependent on street acceptance.

Andy Rodenhiser – Under a circumstance where one person holds out, the town would have everything else done, and we would have to pursue that for eminent domain, all of those fees we wouldn't have to touch because you would be doing all that work. Expense would be for town counsel to review your work. If we have to do a taking, it would have to come out of the money.

Ellen Rosenfeld – If there is one holdout and this holdout won't budge, would it come out of the legal fee?

Andy Rodenhiser – Yes.

Andy Rodenhiser – That is what I am confirming. We intend to be fair. I think the relief is fair.

Ellen Rosenfeld – I agree.

Andy Rodenhiser – Is the board okay?

Karyl Spiller-Walsh – Yes.

Chan Rogers – Yes.

Andy Rodenhiser – It (an agreement) would still have to come back to us to be ratified.

Barbara Saint Andre – It has to be signed by the Board.

NOTE - January 13th is the next PB meeting.

Andy Rodenhiser - Does this need to be voted on or can we just sign it?

Barbara Saint Andre – Today we are discussing request for release of the bond money. If you are and assuming amount to put in the consultant account, it will be my job to come up with a subdivision bond agreement. I can do that within a couple of days.

Andy Rodenhiser – Can we vote that now to empower you to draft and then we can just come in and sign it?

Barbara Saint Andre – As long as you agree tonight and vote tonight. It would be a vote to reduce the bond and enter into a new chapter 81U bond agreement which will set forth what was enunciated by Ellen Rosenfeld.

Motion by Chan Rogers – to reduce the bond to \$10,000 – and increase consultant fee to \$8805 –  
Seconded by Bob Tucker  
All yes

Ellen Rosenfeld – I will bring you a check this week.

Andy Rodenhiser – I would like us to begin the process that upon signature of the agreement to move the money that we authorize Susy Affleck-Childs to proceed with the bond reduction paperwork.

Andy Rodenhiser – This is an unusual circumstance with the age of the project and the change in the regulations.

Barbara Saint Andre – You have a list of the items of that are still outstanding?

Ellen Rosenfeld – Yes.

Susy Affleck-Childs – We understand that the applicant has agreed to not pursue litigation.

Barbara Saint Andre – This is an old subdivision that predates the rules and regs.

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Andy Rodenhiser – How late do you want to go?

AGREED - Let's call it a night.

A motion was made by Bob Tucker, seconded by Karyl Spiller-Walsh to adjourn. APPROVED.

The meeting was adjourned at 9:42 pm.

Respectfully submitted,

Susan E. Affleck-Childs  
Planning Board Assistant