

June 10, 2008

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

NOT PRESENT:

ALSO PRESENT: Susy Affleck-Childs, Barbara Saint Andre, Gino Carlucci

The meeting was called to order at 6:35 p.m.

Motion by bob tucker, karyl -= to go into exec session for the purpose of discussion pending litigation –

Roll call – all yes

Intent to go back into open session

Barbara Saint Andre – Barberry Homes – they have a new lawyer – basically they hired him because the other person they had was not really a litigator – I called him to see if there was a way to settle this . . . that is the only condition they appealed- \$ to senior center – prior counsel had not been encouraging – he got back to me – if the town wants to waive the fee for the senior center, they would be happy to settle – client does not want to pay anything – not interested in any remand to the board – I did mention these things are not done in isolation – give and take – told him they had agreed to it and then changed his mind – maybe what we need to do then – maybe they board could waive the fee but also retract some of the waivers . . . don't think we are going to get that far with them –

Karyl – no where

Andy – what will it cost us

Barbara – spoke with SK on cost – this would be a one day trial – one issue case – you are talking 15,000 to 20,000 dollars. The problem is . . . we don't have a great case – we say everything is great and then we get to mitigation and

Andy – did we not explain very well why the mitigation . . .

Barbraa – I did some research – mass has not caught up with the rest of the country – not allowed to just charge people \$ to raise \$ - directly related to town – to say we have a senior center and franklin case on impact fees was thrown out – can't single out certain property owners . . . there is nothing in your arcpud bylaw that discusses mitigation – best we would get is for the court to strike condition and then direct a remand to the board

Andy – could we get punitive at that point?

Barbara – you can do anything in good faith

Karyl – let's retrace – in that development, they came in initially, they had plans for a community center or a retail center . . . then they decided they were going to retract those uses and then they came in with 4 additional units along the front instead of retail or community center – and we allowed then some density and closeness there and they proceeded to give us a bunch of bull about the design . . .

Andy – bottom line, there was a considerable amount of give and take – because we were looking for a payment to the senior center – we felt there would be an increased number of people that would impact our senior center – they pointed out to us distinctly, OK if you want me to do this, we are going to need waivers to be able to do the project – we went down thru the list and we were very accomodating –

Karyl – the fact that it came in after the RiverBend which had a community center

Andy – and we used the same formula (for calculating the \$ amount of the senior center) and didn't count the affordables

Andy – at one point, I looked at him, and asked him – you agree to this – and he agreed to it and then at the last meeting, he said I have a problem with some of the language. his boss wasn't happy with the text and wanted us to bend on the language and I want to say that we did bend a little bit on that.

Gino – the original language of the decision was that they had agreed to the payment and they asked for that to be changed –

Barbara – they told you they didn't want to make that payment in their response to the written drafts of the decision

Barbara – bottom line is where do we go from here – our defense will be that there – I will try to argue that it was a valid decision – there is nothing in the bylaw that talks about mitigation payments . . I think probably the results would be a remand

Andy – under that, we would continue with the process, maybe throw out the waivers

Karyl – can we go back into the development plan – can we look at it again

Barbara – depends on what the judge says . . they may have specific instructions on – our response is that if they want to remove that condition, everything is back on the table . .

Andy – I think they really don't want to build the project –

Karyl - the open space committee is really eager to look at that property

Barbara – do not interfere

Gino – I met with jim williamson and he told me that he wanted to have a decision by june 30 because that was when the P and S expired but if it was appealed, they would have their rights to the property – the market was bad, this gave them time -

Barbara – the rest of the decision is very favorable – that is the only thing

Karyl – we were very flexible

Andy – we had just come off of the other project (river bend) – and we had worked quite a bit with Mark Bobrowski terms of what we could do – I think we felt we were justified in what we were doing – that we had met the requirement for linkage . . .

Barbara – there is a good deal of negotiation in these discretionary permits – idea is to be flexible – mold project to the site – you really need to be able to hang your hat on something in your bylaw – it is iffy in Mass

Bob – I don't think he made his objection really known until after we had voted . . . we had already voted on the waivers at that point . . .

Susy – your vote on the waivers may have

Barbara – if something like that happens again, move to reconsider your vote . . . up until you file it with the town clerk – you have a right to change your mind . . .

Andy – do you recommend anything we should do differently –

Barbara – I am not sure there is a bylaw that you can pass that would allow a straight mitigation – it has to be linked – comes down to negotiation and what the applicant will agree to - I have seen things worked out quite well . . .

Andy – when we consider whether there is a change in the waiver – we evaluate the benefits to the town

Barbara – every time you granted a waiver, you said it would be OK - - one thing you can do, right at the beginning – all of your findings/waivers are tied to conditions – you want to say that the project with the conditions meets all the standards – it is a real stretch under Mass law . . . that is the way it is right now . . .

Andy – the minutes should reflect what the intent was – and

Barbara – back and forth – that will be our argument

Andy – if we are going to spend the town's money we should

Andy – is it worth it to the town to pull the \$100,000 and let the project go in? I would rather see nothing built there at all . . .

Karyl – it speaks to the integrity of the process we went thru – very thorough, very fair – give and take – it wasn't capricious and arbitrary – it was related to the senior center people over 55 –

andy – do you need a motion from us

barbar – no, unless you want to authorize me to pull the \$100,000 senior center payment off the table

bob – we would agree if they wanted to pay \$200,000 !

barbara – one option is a motion for summary judgment – to ask court to decide the case without going to trail – I am hesitant to do that because we want to explain the facts – I think our best case is to go to trail – some of you will have to be involved

karyl – what court is this

Barbara – superior court in Dedham . .

Agreed . . . –

Motion to come out of exec session and go to open session – bob, karyl –

Roll call vote – all yes

BACK IN REGULAR SESSION

Karyl – I have a question in the renaming of the PB – there was some discussion at the DRC last night

Barbara- the charter has renamed you to P and Eco Dev

7:10 pm open regular session – we were discussing pending litigation

First order of business – election of officer

Karyl - andy as chairman, seconded by bob – all yes . . .

Karyl – bob tucker as vice-chair if he is willing to continue – second by tom gary

Karyl – motion to nominate chan rogers as board clerk – if he is willing - tom gary – all yes

Citizen comments - none

***** Anr plan for water tank site

Barbara – the town has been engaged in finding a new well site – water and sewer commission voted last Monday to “take this land by eminent domain – we have to file a plan to show the registry what land is being taken – to have a well site, you have to control a 400 foot radius around the tank – I just have the signed order of taking – we are asking the board to endorse the ANR

Tom – why doesn’t the circle go all the way around

Bara – it belongs to the army corp of engineers

Andy – we had talked about rezoning the area around this for industrial –

Mark – whatever area is in zone 2 - . . .

Andy – as far as the access that goes into here – proposed 20 feet 0 is there anything that would preclude a 50 feet

Barbara = water sewer did not take the fee in the easement – we took a non exclusive easement – we don’t want to interfere with – we are not interested in building a road for the well

Andy – our board is interested in how we can promote the development of that area

Barbara – a future road would not interfere with

Gino – the changes asked for

Motin by karyl, seconded by bob tucker – all yes

Country view – mary lou Whelan –

I have received copies of the deeds from Ted Cannon

Barbara – there are still a few issues . . the problem is – I spoke with my title examiner – pushing him as hard as I can – in many cases, mr. Whelan did not keep the requisite interest in the land that he wants to convey to the town – some on the roads and on the drainage and sewer easements – I don't have a problem with the form of the deeds – but – it is matter of title – whether he has title to give to the town - it appears you own portions of it – I have a title examiner looking at all this who is looking at this – he will give me a list of every single piece – in some cases –

Marylu – why the changes

Barbara – the problem is when the people bought their houses, they bought to the center line of the road because the deed didn't specify

Marylu – I went up and spoke to people today, they are willing to sign – it is just a matter of who

Barbara –

Marylu – the grant of the drainage easements – is that the same?

Barbara – two parcels have been deeded out . . it appears that greg did not keep the sewer easements – it may have to be changed – I want to make sure that when we do this, we do this once –

Barbara – we have 120 days for the town to acquire the easements, etc. – if it goes past 120 days, then the street acceptance is null void . .

Marylu – is it possible to take it by eminent domain –

Barbara – yes . . . it would have to go to town meeting to do that - it could be done

Bob – why is it in our interest to go after it by eminent domain – it is in the developers interest to get it

Barbara – we will continue to work on

Marylu – just today the grant of sewer and utility easement has changed 3 times . . from Ted Cannon

Barbara – I have only seen one today . . .

Barbara – I asked Ted, he has been sending me info on titles, etc. –

Marylou – shouldn't these be grandfathered because it was so long ago . . .

Susy – we are in a transition from old ways of doing things . . . to a more precise method – very common way it was done in medway for many years . . .

Marylou – is there any way you would consider reducing the bond –

Andy – is there a risk we may have to do eminent domain takings

Barbara – yes?

Bob – I don't think we are in a position to reduce the bond until we have more solid info about how many

John – sounds logistical

Tom – I would agree

Karyl – perhaps we could reduce it by some . . . do we need that much – that is a lot of money

Andy – bond is an insurance – payment of subs should not be coming from the bond – that is

Marylou – it is just the work that has been done to get the road accepted –

Andy – you are not hearing a motion to reduce the bond . . . we have made it clear thru this process that we were reluctant to

Marylou – so you will be in touch with Ted –

Barbara – 120 days will fly by

Andy – as soon as we feel we can

Marylou – is it actually town owned yet?

Barbara – until we get the title in hand and it is recorded

Barbara – what about money to pay us and our title examiner – we need to –

Susy – would you entertain reducing the bond

Karyl –

motion to reduce the countryview account by \$5,000 – karyl - second by bob – all yes

motion to direct the \$ 5, 000 bond refund to the cv estates CO account with the applicants consent – all yes . . .

Barbara leaves at 7:40 pm

Evergreen Meadows bond reduction –

Andy – the fence is propped up to screen – I think it should be a plan modification if it is going to be there permanently

Karyl – is maybe it is a temporary thing
Let's have Mhark talk to him about this

Motion to reduce the bond for evergreen meadow – tom gay – as recommended – seconded by bob – down to - all yes . . .

Bob – is it possible in the future, that they specify the give the date of the MHD weighted average bid prices

Anr plan – for pine meadow II

Recent Revisions are OK per Gino

Tom –

Gary – they resurveyed the 2 lots - the partnership ell apart – the attorneys and parties – split up the lots into two sides and Pine Meadow will stay as the entity to own the road – I have given them an estimate for the road – they are buying their 3 lots plus figuring – no bond has been funded yet

OK to move

Motion to endorse the plan – bob, seconded – karyl – all yes - signed . . .

Andy – this overall plan has already been approved – this is just a lot alignment –

Gino – this is a plan that corrects the previously approved plan which had an error in it for a lot size . . .

Nate Dishington – for 32 Lincoln Street

Revised the plans . .

Gino – there were some technical issues that the rules and regs require certain info – they have revised it and it is all on there now –

Andy – any questions

Nate – the people who live behind have no way to access their property without going on my property – they have always wanted to make use of the strip – I am selling the property – I figured it would basically – makes both lots look a little better

Tom – I had some questions – there is this plan by salvetti – the numbers don't seem to match – 2100 sq. ft –

Nate – that is what I used when I built a driveway and deck and used it to the zoning board to illustrate what I wanted to do

Tom – the new one is completely updated –

Motion to endorse the ANR plan as revised . . . karyl – seconded by bob tucker – all yes . . .
Board signed the plan

Marian Community – Jim Tusino – we have the plans for endorsement – we were waiting for written approval by Sergeant Watson – we put in ADA pass thrus for the sidewalk –

Board signed plans . . .

Jim – we are now ready to file our NOI with CONCOM – on Monday . . . the building needs state approval because it is modular – it has to go to the state – they look at modular components – working on an agreement with the claybrook to tie into their sewer pumping station

Summer vacations

Bob – week of august 11 –

Tom – good on all the dates as planned – 6:30 pm is not great for me

ANR Plan – 25 Summer Street –

Photos of private way

Note from Gino Carlucci

As-built plan of the roadway

Paul DeSimone – 3 lot ANR at 25 Summer Street – there is no name for the street - 11 feet of pavement within a 45 foot layout – the little turnaround is a hammerhead – Margaret Jason owns the road –

Gino – I question the fact that the private way provides legal frontage – I don't know if there are any rights to use the private way – we don't know how the subdivision was approved – whether – there is no certificate of action that accompanied the plan – there is no covenant to accompany the plan – we don't know if the approval was limited to just those lots – it may all be OK – but the evidence is not presented –

Plan was recorded – no decision can be found; no covenant has been recorded –

Paul – we couldn't find anything . . .

No covenant at the registry - . . .

Paul – Paul Kenney says Matt has rights in the road –

Gino – a right to use the private way doesn't mean it provides legal frontage –

We don't know if the road was built according to the approved plan -

Paul Desone – there is no plan that stated what was to be built – we don't know what was intended - . . .

Susy – perhaps there can be some legwork done with GLM to see if they have anything –

Motion to decline to endorsing the ANR plan per PGC letter dated 6/10/08 – seconded by tom gay. – all yes . . .

Bob – I feel like I don't have half the information I need –

Kayrl = that is a reason to decline

Tom – keep it moving by saying no and give you guys a chance to have more time to put together other documentation

Karyl – I think it is a legal land use question as well . . .

Paul Kenney couldn't make it tonight . . .

VERIZON –

Ryan Silveria, DACON

Mark Beaudry, Meridian Associates - we had to modify the two islands to accommodate the AZZ/CGIT trucks which have to go thru here to get to their property – when it came to our attention during construction – we just made that modification to the islands – we lost 3 parking spaces – we had a surplus of 92 spaces –

Bob – which two?

Ryan – the ones closest to the building –

Mark – we had to put in a larger turning radius to accommodate the AZZ trucks – to avoid them hitting our fence and ruining our landscaping

Mark – there was an initial certification that I did a few weeks ago – there was some plant material that had not been installed yet – it was not complete – DACON went back to get the landscape contractor back involved – our new certification notes the substitutions of trees (OK) and the island adjustment –

Motion to accept the as-built drawings and release the bond – bob, karyl – all yes . . .

Site plan for John’s Auto Body –

Approved by PB – see document from meeting with motions . . .

Bills

VHB – construction observation – eergeen and sponri 1212.27 – karyl, bob – all yes

TTR – Daniels Wood II – plan review and CO – 1749.45 – karyl, bob – all yes

Contracted services – milford daily news – 303.60 – karyl, seconded by bob, - all lyes
For public hearing #2 –

DRC appointments

4 people – matt, gwen, dan and Rachel – motion by Karyl to appoint these people again thru 6-30-08 – seconded by bob tucker – all yes

IDC – looking for people who might want to serve on the IDC . . .

PB Goals – work session . . .

Andy – susy to send it out to everybody . . .

Andy – I want to put together a working committed to focus on the bottle cap lots and that project up there – I wanted to share with this board - ad hoc – someone from DRC, group of people who have their feet in various perspectives . .

Karyl – one thing that has been kind of successful – Susy now has an agenda slot on our DRC agenda to share info – what is going on - one thing the DRC talked about last night – we are looking to do a bus tour of the town – look at different things that might be relevant to – good things, weaknesses – comment collection –

Susy – looking at doing a goal session/discussion on 6-23-08 –

LID workshop on 6-23 – andy, and gary Jacob . . . OK to spend \$\$

Susy – prel plans for 4 main street

Motion to adjourn – bob, tom – all yes

9:10 pm