

**June 24, 2008**

**Medway Planning & Economic Development Board Meeting**

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

ABSENT:

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

Chairman Rodenhiser called the meeting to order at 7:05 pm

**Citizen Comments** – None

**Fisher Woods Subdivision /Shady Lane** - Discussion on Request for Bond Release

Mike Curatola –

Andy Rodenhiser – covenant? Usually there is

Mike Curatola – It was a private way; always meant to be. I don't recall if there was a covenant; it's been a long time.

Ken Bach, 2 Shady Lane – been there since the house was built in 1987 –

Andy Rodenhiser – any questions

Chan Rogers – What was in your mind when you did a private way development?

Mike Curatola – I think the town wouldn't allow it to be a public way because of the steep grade. I think that was the reason why. It was actually the town that wanted that.

Chan Rogers – I can't understand why anybody would want a private way.

Ken Bach – We do want it to be a public way, and we would be delighted if the town were to accept it.

Bob Tucker – Susy,

Mike Curatola – There was a larger amount. They gave us most of the balance back. They kept back some money – catch basin on the left hand side – It is my recollection that we had it repaired, and town came by and said it was fine. There might have been one other issue, I don't recall. I think Jim Brodeur was on the PB then. He came out and said it was fine. I completely forgot about the money until I saw a print out from my bank.

Andy Rodenhiser – Have you driven up there at all? It is not in pristine shape. 20 years

Bob Tucker – What were they holding the bond for?

Karyl – Was there any written communication?

Mike Curatola – I threw all that stuff away about a year and a half ago.

Tom Gay – What is the status of the road shown as abandoned?

Andy Rodenhiser – Who owns the road? Did

Ken Bach – right of way is split 50-50 with abutters

Motion Bob Tucker – to release the bond – seconded by Chan Rogers- all yes –

Susy – agree to cut two checks – one to Mike Curatola and one to Joe Griffiths . . .

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**Pay bills**

Norfolk County Registry of Deeds - \$100 – Bob Tucker, Chan Rogers – all yes

PGC Associates – 43D expedited permitting – \$1040 – funded by grant money – Chan Rogers, Bob Tucker – all yes

PGC Associates - \$37.50 – construction inspection account – motion by Chan Rogers, Bob Tucker – all yes

Gary Jacob – LID conference registration - \$85 – Karyl Spiller-Walsh, Chan Rogers – all yes

WB Mason – office supplies – \$128.02 – Bob Tucker, Chan Rogers – all yes

TetraTech Rizzo – Murphy Insurance \$2515.78 – clients – Karyl Spiller-Walsh, Chan Rogers – all yes

PGC Associates – consulting services – \$937.50 – Bob Tucker, Chan Rogers – all yes

PGC Associates – plan review – John’s Auto Body, Murphy Insurance, Marian - \$768.75 – Chan Rogers, Bob Tucker – all yes

**7:18 pm – Continuation of the public hearing for Murphy Insurance Agency Site Plan**

Dan Wolfe, David E. Ross Associates  
Dennis and Julie Murphy

Dan Wolfe – When we last met, we discussed the letters from two consultants and some intricate matters. I have gone through both of the letters and made revisions to the plans that were submitted to you. I have also spoken to both Gino Carlucci and Dave D’Amico, and appear to have come to satisfactory conclusions on all issues raised. Also, since we last met we also had our final meeting with the DRC, and we also closed our hearing with ConCom. the commission did ask us to make one revisions to the plan having to do with the location of the hay bale dyke, a little area offsite that needs to be restored. I have brought another full size plan and reductions for you. – VERY MINOR – With the packet of info I submitted to you a week or so ago, it included a letter with our waiver request, and I kept them to a minimum. – letter dated June 17<sup>th</sup> –

Andy Rodenhiser – Has everybody had a chance to read? Any problems with anything? Just a comment to TetraTech Rizzo - it was nice to see how you responded – CLOSED – was very helpful – This is the first major thing you have done for us. that was very helpful – shall we review the waivers? Any issues

Bob Tucker – does TetraTech Rizzo have any open items?

TetraTech Rizzo – None,

Andy Rodenhiser – hay bale issue

Hale bales on the property to the west – Remove the bark mulch and help it go back to its natural state. Move the hay bale dyke closer to the wetlands. ConCom, on sheet #6, they wanted us to eliminate any reference to hay bales. We had put silt fence or hay bales. They don’t like hay bales anymore. They prefer silt fences or mulch tubes.

Andy Rodenhiser - Gino, any issues?

Gino – No.

Bob Tucker – I read with some interest their position on the sidewalk.

Andy Rodenhiser - They would like to construct the sidewalks on their site; Dave D’Amico would like them to not do so.

Karyl Spiller-Walsh – Did you guys come up with a color plan for the building?

Dan Wolfe – It was discussed. The Design Review Committee said at the end it loved the red. We discussed – felt it might be too bold with the building closer to the street in Medway to be red.

Karyl Spiller-Walsh – Please provide a paint chip.

Dan Wolfe – Are you saying you have seen the letter about this?

Chan Rogers – I can see why the sidewalk would benefit them, but I can't see there being a sidewalk westerly to Milford because it is all wetlands. But it could go considerably east. Either way I don't have a problem.

Andy Rodenhiser – 176 feet is their frontage here. With respect to your wetland filing, did it include constructing a sidewalk?

Dan Wolfe – We could probably ask for an amendment. We hadn't broached the sidewalk subject with ConCom.

Bob Tucker – We wouldn't be going down into the wetlands.

Dan Wolfe – It might be that the last 30 feet of the sidewalk would be within 100 feet of wetlands

Chan Rogers – No sense to extend past

Andy Rodenhiser – So make a contribution, and pay into the fund for 75 feet worth.

Dan Wolfe – That is even more of a twist. – TetraTech Rizzo had put together two standards, one with granite curbing and one with concrete. What do you want?

Mr. Murphy – We are hoping the area we are going into is going to fully develop based on our conversations and info we have gained from the town. We are going to have to address the sidewalk one way or another. We really would prefer it to be done in front. It is \$81/foot for granite curbing. What does he want?

Mr. Murphy – We could put the money into escrow.

Andy Rodenhiser – We can work this out and include something in the decision.

Mr. Murphy – One thing I am fearful of, we pay into the fund now but later we would be assessed in the future for a comprehensive sidewalk plan.

Andy Rodenhiser – It could be several years before anything is done. These things take time.

Mr. Murphy – We hope we can act as a catalyst for the area.

Andy Rodenhiser – Are you OK with us working this out with Dave D'Amico, and then we will resolve it. Is the board OK with us to meet with Dave D'Amico?

Mr. Murphy – We are talking about \$16,000.

Acknowledge the memo from the DRC dated June 16 – Karyl Spiller-Walsh highlighted

Acknowledge memo from Dave D’Amico – June 19<sup>th</sup> memo –

Dan Wolfe – The particular LID method Dave D’Amico noted has not been approved by the state. I tried to find a close or similar layout within the new Mass policies, and it does have something similar, but it does not give you credit for infiltration.

Susy – Any more info?

Dan Wolfe - We had talked about the holly being planted, but that was to be in the back. But in the front

Walter Swift – 133 Milford Street – as a landscape designer – Holly will not tolerate that area. There are too many deer down there. It will just be wiped out.

Karyl Spiller-Walsh – Do you have a suggestion?

Dan Wolfe – something to give a little screening –

Walter Swift – Some type of juniper - ADD to decision . . .

Susy – I would like to hear from the board. Granite or concrete?

Karyl Spiller-Walsh – Granite. That is what it will be.

Chan Rogers – Will the state approve granite? But precedent was set in Millis

Karyl Spiller-Walsh - That is what it is in Millis

Karyl Spiller-Walsh – and Summer Street

Chan Rogers –no brainer to prefer granite –

Bob Tucker – Money is the only issue.

Motion to close the public hearing - Chan Rogers, Bob Tucker – all yes . . .

Dennis Murphy – question – Can I just post the higher amount?

Andy Rodenhiser – We will get to it.

Mr. Murphy – I want to get started. Generally, the first of August

Mr. Swift – Does the decision have to be filed with town clerk?

Susy – Yes.

Chan Rogers motion to approve the waivers as specified in the June 17<sup>th</sup> letter from David E. Ross Associates - seconded by Tom Gay –

#### DISCUSSION

All OK – on all waivers . . . approved.

Andy Rodenhiser – Maybe we can make a mental note to discuss . . .  
PB Liaisons appointments –

#### **Medway Commons completion –**

Andy Rodenhiser – The treasurer has said it is OK in her book to move on and go ahead and sign off on the

Karen Johnson – subcontractor to general contractor – The question is whether Foxboro Transport – there still has not been a good accounting – The good news is that the town has a judgment against Foxboro Transport. We asked for a certificate of completion. You asked me to hold off –

Susy – I would recommend that we move on this.

Motion to authorize a certificate of completion – Chan Rogers, Karyl Spiller-Walsh -

John – The benefit to the applicant is what? What is at stake?

Andy Rodenhiser –

Karen Johnson – internal processes – complete the close out procedures – good due diligence – good internal practice

Bob Tucker – Kind of like getting an occupancy permit on the whole project.

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#### **Revisit ANR Plan for 25 Summer Street –**

Andy Rodenhiser –

Paul Kenney's letter of June 18<sup>th</sup> --  
Gino's review letter of June 23<sup>rd</sup> –

Paul Kenney  
Paul Desimone

Paul Kenney – In terms of the rights in the private way – statute does not address – the one deed conveying out lot #3 – there was an acknowledgement in that deed – they cannot deny – court an abutter has an easement of the way which means they have access – that being the case, the abutter does have rights in the way

With respect to the fact that the PB imposed no conditions on the way in 1984, no cert of action, no covenant – It was essentially a 2 lot conditions – The PB imposed no conditions – We have submitted evidence that the way does exist, and a letter from the fire chief that the way is adequate for emergency vehicles. Why the PB in 1984 did not impose any conditions is anyone's guess. It was properly endorsed by the full board and duly recorded. The applciin – the strict guidelines of the statute – The ANR plan meets the requirement. I think going back 25 years is impossible.

Gino – There were rules and regs in place at that time, and no waivers from those were granted. I don't expect the regs allowed for

Paul –

Gino – In the absence of waivers, the rules and regs apply.

Paul – The board at that time, the board waived the regs by endorsing the plan.

Karyl Spiller-Walsh – They didn't waive all standards because there was a clear right of way width. That was a standard form.

Paul – The board didn't create anything in writing that we can locate.

Karyl Spiller-Walsh – They did provide a standard road layout and cul de sac, and allowed a private driveway which exists; and it also noted that this is a private way.

Karyl Spiller-Walsh – If this is a private way owned by Margaret Jason, what rights do the abutters on the opposite side really have?

Paul – Tatten vs. Corwin – Unless there is a specific reservation of the fee in the road, the owners cannot deny the existence of the road. The opposite abutter has an easement of way. When Mrs. Jason conveyed lot 3 out, it conveyed the right to use it.

Bob Tucker – Wouldn't there also need to be a conveyance to allow others to use it?

Paul – By creating the way, the abutting property has an easement in the way.

Karyl Spiller-Walsh – I think we need legal counsel –

Andy Rodenhiser – He is essentially challenging our authority to say we will not endorse it. That the absence of specifics on how it would be built,

Tom Gay –

Karyl Spiller-Walsh -

Paul – The board made no specifications as to the construction of the way.

Andy Rodenhiser –

Paul Desimone – I called Rob at GLM who did the plan – there was definitely no road construction plans – it was one sheet subdivision – just the legal sheet – theyll didn't do any proposed profiles – the board probably approved it with the assumption that they would put a driveway in

Paul Kenney – we specifically called and asked the secretary at the time – we called and asked the secretary at the time whether there was a covenant – she said the PB did not require a covenant or conditions

Karyl Spiller-Walsh – they did subdivide it with a standard road layout –

Karyl Spiller-Walsh – I still don't feel that they have the rights to use that road

Andy Rodenhiser – what if we ask Paul to respond to Gino's memo

Chan Rogers – what regulations – I was on a PB 40 years ago, there were detailed rules and regs – they didn't build it in accordance with the regs at the time – there is no evidence

Andy Rodenhiser – there is no waivers

Paul Desimone – we

Chan Rogers – the way was constructed as a driveway as an expedient for the guy in the back to get to his property – I don't see it is incumbent upon us now - for those two new lots to be legal, you need to build it to fit the rules and regs

Tom Gay – I think it is two question s- is it a real street? And do the different statutes and case law say that these two lots have a right to use that way – forward packet to town – should it come back to us, do we need to construct a street – I don't see how we can possibly have 5 lots using that to construct a street –



Chan Rogers – I would challenge the Chief’s statement that the road is adequate for emergency use

Tom Gay – there is only 11 feet of pavement up there – his statement is an advisement

Paul – there is case law, this is a constructed way – fire chief has indicated it is adequate

Karyl Spiller-Walsh – in my personal opinion, it functions as a driveway

Tom Gay – it appears

Tom Gay – let’s get some agreement whether they have any rights to use that private way – 11 feet troubles me a lot

Chan Rogers – emergency vehicles – I don’t feel it is adequate for emergency purpose

Tom Gay – if we were going to vote on an approval, I would vote no –

Susy – get an estimate from Barbara for review

Paul – I will advise him that

Tattan vs. Kurlan – issue about rights in ways, etc. not in an ANR context – it involved unconstructed ways –

Susy – has your client spoken with the Jasons

Paul – yes, he has . . . he has spoken with them – possible –

Chan Rogers - who do you represent?

Paul – Fasolino improvements

Chan Rogers – have they thought about improving the driveway? Then there is no question?

Paul – I don’t believe my client was intending to construct a way there

Chan Rogers – the question of constructing the street is paramount for my approval of the process – it still has to be done from my point of view . . .

Thanks. . . .

Susy – issue of legal fees for project specific – guidance from TA -

Karyl Spiller-Walsh – at the time of the application, that was a legal question . . we should have some kind of legal response in hand –

John – we have to get a better handle on the small projects –

Tom Gay – burden of proof is on them – they should go to the person and get something specific –

Andy Rodenhiser – if there is one lesson to learn from tonight – early 80’s decisions –

Karyl Spiller-Walsh – we should get this money up front –

John – If rural character is important, then I would strongly consider against expanding anything for sewers . . .

Chan Rogers – it seems with the reorganization with the town – there has to be a channel for the boards to have interface with the TA in discussing her desire to keep costs down – there should be some give and take – in our need for legal services – we can’t throw everything on the developer – I can see complications with that . . .

Susy – perhaps we need to adjust our ANR fees

Andy Rodenhiser – additional deposit for legal work –

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Appointments to IDC – hold off . . .  
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#### Adult Entertainment

Andy Rodenhiser – under the current language, where are the actual areas where it can be allowed – where are we vulnerable?

Reference to letter from Town Counsel dated 6-18-08 –

Andy Rodenhiser – we need to sit down and do some mapping . . .

Chan Rogers – I cannot imagine any place we have that would be conducive – so I am not worried about it happening in Medway . . .

Andy Rodenhiser – emergency preparedness maps show schools, etc – use those to

Gino – I don’t think you could do it in commercial III and IV – too close

Andy Rodenhiser – we could pull it out and just put it in industrial as an option . . .

Gino could look at this for us . . . . .

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Endorse sit plan modification

Bob Tucker – they did give us a detailed cross section - I think it does give us enough detail –

Board endorses plans . . .

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Committee Reports

DRC – having lots of good discussions – we had a sign application for Dr. Cached – we have been discussing GREEN stuff in design –  
Bob Tucker – no reports

Chan Rogers – I want to report one interesting thing – SWAP has suggested that we have a session on Design Review Committees – who are they going to get as a speaker? It will be in Millis Town Hall -

Dover, Sherborn, Hopkinton, Medway, Millis, Bellingham, Franklin, Milford,

Other reports??

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Bob Tucker has to depart – 9:30 p.m. –

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Presentation on proposed 43D regs

Gino – this is not just PB regs – this would apply to all the boards that are covered by the expedited permitting state law (and perhaps some additional ones that would make sense to bring in) – all of the boards need to adopt these rules to be in effect . . .

The basis for this its he existing site plan rules and regs and then I made some changes to accommodate 43D and added in info to accommodate CONCOM info and BOH –

Andy Rodenhiser – when a priority dev site application is triggered – where we talk about

Andy Rodenhiser – should we generally adopt this and then go around and meet with all the boards, and then revise . . .

Tom Gay – what constitutes a priority dev site?

Gino – designated by town meeting and approved by the state – we have CYBEX now - then we recently added two areas of 3 lots each (Rosenfeld) – those need to be submitted to the state for approval –

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Streifer property – they have asked us whether the town would take own

Ask OSC if there is any value to it . . .

Could they even split off and have a conforming lot??

Is there an interest?

Chan Rogers – I would want some legal opinion – what liability do we have?

Tom Gay – I don't see the value to the town to do that so . . .

Gino – one thing to remember is that no easement was ever created for that detention basin . . .

Andy Rodenhiser – I don't want to spend any more time on this – there is no benefit to the town

General consensus to not proceed . . .

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Motion to authorize the release of all units at Pine Ridge – Karyl Spiller-Walsh, Chan Rogers – all yes . . .

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Chan Rogers – MAPC asked why having the discussion – they are illegal, and why can't the PB do it

Extra meeting on July 15<sup>th</sup> – 7 pm – sandwiches - . . .

Motion to adjourn – Karyl Spiller-Walsh, Tom Gay – all yes 10:50 p.m.

Respectfully submitted,

Susan E. Affleck-Childs  
Planning Board Assistant