

Medway Planning & Economic Development Board Meeting
Tuesday, August 4, 2009
Medway Town Hall, 155 Village Street

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

ALSO PRESENT: Susy Affleck-Childs, Planning & Economic Development Coordinator
Barbara Saint Andre, Town Counsel
Dave D'Amico, DPW

The meeting was called to order at 7:02 pm by Chairman Andy Rodenhiser.

A motion was made to go into executive session for discuss strategy on litigation and to return to regular public session afterwards.

Roll call Vote – 7:02 pm

Andy Rodenhiser - Yes
Bob Tucker -Yes
Tom Gay - Yes
Karyl Spiller-Walsh - Yes

7:29 pm – The Board reconvened from Executive Session.

7:30 pm – Tape goes in for regular meeting.

The meeting was called to order at 7:32 p.m. Call to order

Country View Estates

Andy Rodenhiser – good evening and welcome, I understand you have

John Bechard, VHB Engineering – I do not have a presentation, but comments. During the time over the last 9 plus years that VHB has been working in Medway, I have been the project manager or principal in charge. After receipt of the letter I spoke with Mark Louro. He couldn't be here due to short notice. I wanted to make sure VHB was here to understand some of the concerns that have been raised, and to offer some thoughts and commentary to the allegations. We take this very seriously. I think it has been well documented with this particular developer and development. This project has been saddled with a few issues since 1999, documented in meeting notes and VHB reports. I am taken aback by the letter you sent us. I did go through some things with Mark Louro in preparation for coming here tonight.

This subdivision was approved in October of 1999, before VHB came on board. This developer constructed 1800 feet of drainage before the plan was approved and it is this area that VHB refused to accept.

It is documented in April 2000 that we didn't inspect it, and we would not take responsibility for it. We told the Planning Board at the time that the only way we would feel comfortable is if the drainage work was to be excavated. The developer refused and thought the Planning Board was being unreasonable – they offered to do spot checks – the DPS director at the time (Lee Henry) and the Planning Board agreed that test pits could be done and spot checks.

This is an on call contract we have with you. We are not on site full time, we are in Medway as needed – given 24- 48 advance notice – this work was done prior to us being under contract. We did do test pits. There are reports covering this. That raises the concern that I have with the project started prior to us being on board. – We advised the board not to accept it, and the board went ahead, and was OK with doing test pits.

Andy Rodenhiser – I don't know about all that. We are talking about a pipe that crosses Summer Street, not the drainage in Broad Acres Farm Road.

John Bechard – the culvert was condition #1 – that was supposed to have been installed prior to VHB coming on board.

Andy Rodenhiser – It is just plain not done.

John Bechard – We never said we would accept the work that we hadn't seen installed. The developer came to the board and said this work was done (1800 feet) – we said we hadn't observed it, and that is why we wouldn't accept it.

John Bechard - I don't understand how the developer's lack of follow through is VHB's responsibility – we are called by the developer or the board or by the DPS director who tells us to be there, and we would dispatch an inspector or director to be there. We weren't brought in to look. We are told where the work is proceeding.

Andy Rodenhiser – You guys were hired by the town to do the road layout and work for the Summer Street reconstruction. That set of drawings indicates a 36" pipe.

John Bechard – That was on record with the town. The AutoCAD base plan was provided to us.

John Bechard – The design of Route 126 did not necessitate the larger size.

Andy Rodenhiser – What record is that?

John Bechard – That the Planning Board had accepted the work

Andy Rodenhiser – But that pipe is not within the subdivision itself.

John Bechard – it is condition #1 of the decision, right

Andy Rodenhiser – yes

John Bechard – Why do you feel it was VHB’s responsibility to verify that the pipe was in the ground?

Andy Rodenhiser – You said you relied on something.

John Bechard – I am relying on the meeting minutes of the board from August 22, 2000

Barbara Saint Andre – When you were drawing up the plans for Summer Street years ago, what were you referring to.

John Bechard – The Country View plans

Andy Rodenhiser – When were the plans submitted for the highway?

Dave D’Amico – 2004

Andy Rodenhiser – The pipe is not in the subdivision. You weren’t concerned – you were relying

John Bechard – there is a plan on record that says the work is to be done

Barbara Saint Andre – The subdivision shows what is going to be done.

John Bechard – We are brought on, and it is discussed by the developer that the work is completed.

Andy Rodenhiser – And we look to you guys for your inspections. The pipe is open on either end; it is visible to anybody from the sidewalk. That part was never in need of excavation or test pits. You would say it is either done or not done.

John Bechard – I am relying on a set of documents that says the work was done on that plan.

Andy Rodenhiser – Can you provide us with something?

John Bechard – You have a record – the meeting minutes.

John Bechard – Our contract with the town states that we can rely info from the town

Andy Rodenhiser – Can I have a copy of the definitive plan?

The Board looked at the plan.

John Bechard – It shows that the pipe was proposed. The minutes explain that the work has been completed. We relied on the town to say that the work was done.

Bob Tucker – You made a comment about Norfolk County.

John Bechard - Norfolk County did the actual field survey.

Bob Tucker – Would they have done any kind of as built?

John Bechard – They identified a plan that showed an existing 21 inch pipe. When we prepared our design for Summer Street, the plans for associated subdivisions were reviewed. We had understood the work was to have been done. It was for the offsite drainage. – The pipe wasn't needed for the Summer Street reconstruction.

Chan Rogers – If you are doing any of Summer Street you would have to be concerned about the existing drainage structures and if they were adequate. Whether there is a subdivision plan on record or not, it would be your responsibility to determine what size pipe it should be.

John Bechard – The 36" pipe was not needed for Summer Street reconstruction work, but for the adjacent subdivision.

Chan Rogers – It doesn't matter why it had to be increased. The 21 inch pipe that was in place is in pretty poor condition, the invert has been more or less rotted out. The pipe should have been replaced one way or another, and this would have been your responsibility as consultants on Route 126 to evaluate that situation.

John Bechard – Documentation provided to us is that the pipe had been installed – info came from the Town

Andy Rodenhiser – Can you provide us copies of that?

John Bechard – I guess I misinterpreted the letter.

John Williams – At no time for the Route126 project was the Planning Board involved?

Andy Rodenhiser – We relied on VHB

Chan Rogers – It is part of the design procedure to determine if the drainage is adequate, and in the process you would have reviewed the culvert for this particular situation/location as to whether it was adequate –

John Bechard – We relied on the pipe being a 36 inch pipe installed.

Chan Rogers – You relied on a proposed plan, not an as-built plan. How did you determine it was adequate?

John Bechard – As an engineer yourself, have you ever relied on info that has been provided to you by a client? Our contract says we can count on info provided by the town.

Andy Rodenhiser – In our research, we learned you also were involved in the Route 126.

Tom Gay – I have never accepted info that I haven't verified on site. I wouldn't do that. Aren't there, in the design work, aren't there manholes that go into this? So though it was designed for the subdivision, it is used for roadway overflow from Summer Street, too.

John Bechard – I said the roadway drainage for Summer Street did not require that size of pipe to go under Summer Street – it didn't need it to be 36 inches. That upgrade was a result of offsite development (Country View Estates). The condition may have warranted that the pipe be replaced. The in-place size (22") was sufficient for our purposes (126 road reconstruction).

John Bechard – Could I ask a question of the Department of Public Services director?

Barbara Saint Andre – I think we are going around in circles.

John Bechard – The design for Route 126 did have 2 manholes built into this culvert. I was never contacted by Mass Highway or the contractor to notify us that the undersized pipe had not been upgraded. If we had known that . . . I wasn't ever contacted.

Andy Rodenhiser – anything else?

Karyl Spiller-Walsh - no

Bob Tucker – You have had an opportunity to read notes that we have not seen. I thank you for your insight.

Andy Rodenhiser – Thank you, we appreciate your time.

Andy Rodenhiser – Does the board want to consider a vote whether or not to vote on whether the developer has defaulted on this subdivision?

Karyl Spiller-Walsh – no correspondence from Greg?

Chan Rogers – He didn't respond to the letter.

Susy Affleck-Childs – We do not have any written response from Greg Whelan.

Andy Rodenhiser – We have a subdivision that is on the verge of default, one way or another. Dave D'Amico has to move ahead and deal with the culvert upgrade before route 126 gets its final top coat of paving.

John Williams – What is the consequence of putting the subdivision into default?

Andy Rodenhiser – We have access to \$8,000 that we can take and use to install the 36 inch culvert

Dave D'Amico – What I need from you is to say whether you think the developer is going to do the work, or whether I should go ahead and do the work. The money stuff has to be worked out somehow.

Karyl Spiller-Walsh – What is the time frame?

Dave D'Amico – They want to pave in September.

Dave D’Amico – I have to do this now. I have been told heads will roll if it gets paved and then we have to dig it up to do this culvert.

Dave D’Amico- There was another drainage issue on Route 126, and they have drainage going into an easement for dispersal. When we went out and looked at it, the location they had selected was pitched wrong. They didn’t go into the field and look at anything. They didn’t verify what they were doing on paper.

Bob Tucker – We have several issues here - What needs to be done now?

Barbara Saint Andre – The issue before the board is the Country View Subdivision, and whether you want to find that the developer is in default. There are two issues here:

One – insufficient security – you have given him notice and he has not provided the supplemental funds you specified

Two – the culvert has not been completed, even though the as-built plans show it as 36 inches

You gave him an opportunity to come in last week, and again this week. The board has the authority to make that finding if you so choose.

John Williams – Is there legal consequence about lying about an as-built plan?

Tom Gay – The 36 inch pipe is not there; and the financial security has not been forwarded, it has been 3 weeks.

A motion was made by Tom Gay, seconded by Chan Rogers to find the developer (Greg Whelan) to be in default based on those two conditions that Town Counsel stated. The motion was approved unanimously.

Chan Rogers - I also believe VHB is also involved

A motion was made to close the public meeting to go back to executive session to discuss strategy with respect to litigation, and to come back to regular session.

Roll call vote

Chan Rogers – yes

Andy Rodenhiser – yes

Karyl Spiller-Walsh – yes

Tom Gay – yes

Bob Tucker – yes

The board moved to executive session.

The board reconvened to public session from executive session at 8:35 pm

Murphy Insurance Site Plan Certificate of Completion

Susy Affleck-Childs – Everything is all set; we have sign offs and all necessary paperwork. I recommend you sign the Certificate of Site Plan Completion.

A motion was made by Bob Tucker, seconded by Karyl Spiller-Walsh to approve and sign a Certificate of Site Plan Completion for the Murphy Insurance Agency project at 133 Milford Street. The motion assed unanimously.

All signed the certificate of site plan completion.

REPORTS - Update on Cumberland Farms property

Susy Affleck-Childs – I was visited by some of the folks who own the Cumberland Farms property on Main Street. They are interested in doing something there – a gas station/ convenience store. Is this something you to allow by right in CI, or change the zoning bylaw in some fashion? Or change the special permit to be with the Planning Board?

Andy Rodenhiser – One option is to eliminate auto service station from the list of special permit uses. So do you want to make this a priority for us? Disallow it as a use in that district?

Chan Rogers – We already have enough gas stations in town.

Andy Rodenhiser – Does someone want to make a motion to eliminate this as a special permit use in the Commercial I district?

A motion was made by Chan Rogers, seconded by Karyl Spiller-Walsh to propose a zoning bylaw amendment that would eliminate a gas station as a use in the Commercial I zone. The motion was approved unanimously.

Andy Rodenhiser - We need to be fair and consistent in giving any notice to the property owners. Do the public hearing closer to fall town meeting.

OTHER BUSINESS

A decision was made to cancel the August 11, 2009 meeting due to vacation conflicts.

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

The meeting was adjourned at 8:50 pm.

Respectfully submitted,

Susan E. Affleck-Childs
Planning and Economic Development Coordinator