

**September 18, 2012
Medway Planning and Economic Development Board
155 Village Street
Medway, MA 02053**

BOARD MEMBERS PRESENT: Bob Tucker, Karyl Spiller-Walsh, and Chan Rogers.
Member Tom Gay participated under remote participation (speakerphone).

PEDB member Andy Rodenhiser was in attendance as the applicant for the Bay Oaks subdivision.

ABSENT WITHOUT NOTICE:

ALSO PRESENT: Susy Affleck-Childs, Planning and Economic Town Coordinator
Amy Sutherland, Meeting Recording Secretary
Barbara Saint Andre, Petrini & Associates – Town Counsel

Vice Chairman Tucker opened the meeting at 5:30 pm.

There were no Citizen Comments.

See Attached approved *Remote Participation Request* from Tom Gay, approved by Robert Tucker dated 9/14/2012.

Vice Chairman Tucker informed the Board that the application for the Bay Oaks Subdivision plan was filed on June 5, 2012. The *Medway Subdivision Rules and Regulations* require that the Board file a decision within 90 days or request a deadline extension which needs to be filed with the Town Clerk.

The current situation is such that the Planning and Economic Board did not file the decision for Bay Oaks Subdivision before the September 3, 2012 deadline and an extension was not sought. So, the Bay Oaks plan is legally considered to be “constructively approved.”

The Board has two options. One option is to do nothing and have the May 18, 2012 Bay Oaks plan stand as originally submitted. The other option is to initiate a process to amend that plan by holding another hearing to consider the various refinements that had been made to the plan during the public hearing process. That would require a public hearing which could occur on October 9, 2012 with notification to all abutters along with having the hearing advertised in the Milford Daily News.

Member Rogers made a motion for the Board to consider modification to the Bay Oaks subdivision plan under Mass General Laws, Chapter 41, 81W.

The Board entered into a period of discussion.

Member Spiller-Walsh wanted to know what “constructive approval” means.

Town Counsel responded that this is approval by default.

Mr. Rodenhiser responded that he respects the Board. The dates were never anything that was paid attention to and it was not his intent to have this happen. He did not know about the deadline issue until last week. He thinks highly of the Board but he does not have the ability to have his lawyer present with him tonight. He further communicated that he is really in the dark about what to do and what his rights are and what rights the Board has. He is frustrated and does not want to do anything to impugn the credibility of the Board or himself. This problem will cost him thousands of dollars. He expressed that he is very upset and he has no choice and is not sure what to do. He hopes to be treated fairly.

Vice Chairman Tucker communicated that the intent is to not point fingers. The purpose is to decide the best action looking at the Board's reputation and to make the best decision regarding the people we represent which include the abutters and applicant.

Town Counsel does not recommend rescinding the constructive approval.

Member Gay communicated that it is his perspective to go for a modification of the original plan and submit all of the material which was going into the original draft decision. By doing this we obey the law and include the interests of the town and the abutters. We go forward with the previous work that was done. This is a motion he is willing to support.

Mr. Rodenhiser wanted to inquire about the fact that the public hearing is closed and the Board was ready to wrap up the decision. Can that process continue?

Vice Chairman Tucker responded that Susy has prepared a "best case" schedule on how to address this. NOTE – Susy will send this schedule to Mr. Rodenhiser.

Mr. Rodenhiser then asked what if I record what has been done so far.

Member Rogers responds that you could do it, but it means adopting the original plan with no modifications. The Board is trying to be fair to the applicant and anyone who has spoken and appeared at the hearings.

Susy responded that we will go through the same motions and same points will be noted, but this will be legally done relative to the deadlines.

Mr. Rodenhiser wanted to know how is that fair to him.

Member Rogers responds that it may not be fair to you but if we hold another hearing it tells the abutters that we listened to what they suggested.

Member Gay communicated that with another hearing it would be fair to the applicant since we will put everything discussed previously in the record of testimony which led to draft decision and then ask if there is anything new before finalizing the decision. This is only a short delay. It does not hurt the cause.

Mr. Rodenhiser stated that the only issue is time; there are contractual obligations he is dealing with. Vice Chairman Tucker responds that we are looking at extending this process for about one month with the intent being that the public hearing would open and close with a decision ready barring any new information being presented. The decision could be filed the next day with the appeal period concluding 20 days.

Member Gay stated that had an extension been requested and signed off on and the decision finalized and signed, we are talking about a three week extension following all the rules. This is a month.

Mr. Rodenhiser responded that this is essentially approved now.

Vice Chairman Tucker communicated that you have a constructive approval now and the appeal period is until September 23, 2012.

Town Counsel communicated that by the time the public hearing notice goes out, the appeal process will be done. The board can go over the draft decision and come back with modifications, but the conditions and findings cannot be officially voted on until the new public hearing.

Vice Chairman Tucker responds that we will have review comments from Town Counsel on the draft decision but he does not see that this would be a big deliberation.

Mr. Rodenhiser wanted to know if the appeal process will continue on the first hearing.

Town Counsel indicated yes.

Susy indicated that the appeals process (on the constructive approval) started September 3, 2012 and will expire September 23, 2012.

Mr. Rodenhiser wanted to know if he can still do business in relation to this.

Vice Chairman communicated that he needs to discuss his next steps with his counsel and we do not want to give you any advice.

Town Counsel informed the applicant that he will get a signed certificate from the Town Clerk.

Susy asks about what would happen if Mr. Rodenhiser closes on his financing and we then have the decision on the modified plan. Where does that put us with the ability to modify if there is a mortgage on the property?

Town Counsel responds that this concern would come up if the plan was rescinded which is not the case here. This is not an issue as your intent is to not to rescind.

Susy then asked if the board modifies the constructively approved plan, would it take precedence.

Town Counsel responded that yes the new approval would take precedence.

Vice Chairman Tucker responded that the financing has nothing to do with us.

Mr. Rodenhiser asked that if this is a constructive approval and there will now be a modification, how this will affect my financing which needs to be done at the end of October.

Vice Chairman Tucker stated that if you are not going for financing until the end of October, a decision will be filed before then.

Mr. Rodenhiser wanted to know if there will be an appeal period for that decision.

Susy responded that there would be an appeal period. The soonest the Board could hold a special meeting to endorse the modified plan would be on November 1, 2012.

Vice Chairman Tucker asked for a second to the original motion.

Member Spiller-Walsh seconded Chan Roger's motion which was to proceed to modify the constructively approved subdivision plan for Bay Oaks.

Roll Call Vote:

Karyl Spiller-Walsh	aye
Bob Tucker	aye
Chan Rogers	aye
Ton Gay	aye

Susy expressed her apologies to the Board and the applicant. She regrets this at many levels and it is her intent to do better.

Vice Chairman Tucker responded that Susy has a stellar record and he appreciates her sincerity and hard work.

Mr. Rodenhiser responds that he cares immensely for Susy and he does not take this lightly and he knows that this was not done personally and does not hold grudges and he wants to move forward from here.

Applegate:

Susy informed that Board that she and Bob Tucker had a meeting yesterday with DPS Director Tom Holder about the Applegate subdivision drainage issues. The purpose of the meeting was to get the drainage issue moving forward and addressed. Susy will send a joint letter with the DPS to developer Ralph Costello. Tom will do the first draft and Susy will insert the information relative to the Planning Board issues. This letter will be ready for the Board to view at the meeting on Tuesday September 25, 2012.

The Board of Selectmen will be having a discussion on October 1, 2012 about the results of the title research for the Oak Grove parcel.

There will be an all Board meeting on October 11, 2012. One of the topics will be Open Meeting Laws.

Susy informed the Board that the Board of Selectmen approved the contract for Medway Economic Specialist. The target date for this person to begin is October 1, 2012.

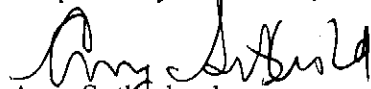
Future Meetings:

The next Planning and Economic Development meeting will be September 25, 2012 at 7:00 pm

Adjourn:

On a motion made by Karyl Spiller-Walsh and seconded by Chan Rogers, the Board voted unanimously to adjourn the meeting at 6:30 pm.

Respectfully Submitted,



Amy Sutherland
Meeting Recording Secretary

Edited by,



Susan E. Affleck-Childs
Planning and Economic Development Coordinator



Town of Medway

Remote Participation Request

RECEIVED
SEP 19 2012

TOWN OF MEDWAY
PLANNING BOARD

I, THOMAS A. GAY (print name), hereby request to participate remotely at the meeting of the P&EDB (Board/Committee/Commission) to be held on SEPT. 18, 2012 (date). I certify to the Chair that my absence is the result of one or more of the following factors which make my physical presence unreasonably difficult:

- (1) Personal Illness or Disability
- (2) A Family or Other Emergency
- (3) Military Service
- (4) Geographic Distance (Employment / Board Business)

Explanation: IN WASHINGTON DC FOR WORK

During the meeting, I will be at the following location:
NATIONAL INSTITUTE OF BUILDING SCIENCES, WASHINGTON DC
Address

508.341.5174
Phone Number

[Signature]
Signature of Member

9.12.2012
Date

Please sign and return to Chair

Request received by Robert K. Tucker
Via - Chair (please print)

9-14-12
Date

Method of Participation Speakerphone (e.g. speakerphone)

Request Approved Request Denied*

[Signature]
Signature of Chair

9/14/12
Date

Signed form to be appended to the meeting minutes.
*All Denied Requests are Final and Not Appealable.