

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**

**MINUTES OF MEETING DECEMBER 15, 2010**

At the beginning of the meeting, Messrs Musmanno, Cole and Gluckler were present. The Chair called the meeting to order at 8.05 p.m. There being no objection to two invoices, the invoices were signed by the three Board members present. On a motion made by Mr. Musmanno and seconded by Mr. Gluckler, the Minutes of the December 1, 2010 Board meeting were approved by a vote of 2-0, with Mr. Gluckler abstaining since he was not present at the earlier meeting.

Mr. Biocchi and Ms. Gould then joined the meeting.

On a motion made by Mr. Cole, seconded by Mr. Gluckler, and passed by a vote of 3-0 (with Ms. Gould and Mr. Biocchi abstaining) the application of Bryn Smith was accepted for advertising and a hearing set for January 19, 2011.

By unanimous consent, the Board proceed to take up the application of Fox Run Farms. Mr. Paul Cusson of Delphic Associates, consultant to the applicant, again appeared on behalf of the applicant.

Mr. Cusson noted that Exhibit ZZ, a copy of which was provided to the applicant at the previous hearing, indicated that a meeting was expected with neighbors to the site at which field conditions relating to plantings on the site could be discussed. Such a meeting between the applicant and the neighbors has now been held, and a plan of plantings (which was shown to the Board) has been agreed; this plan would apply to either the existing approved plan or the plan as proposed to be amended.

The applicant testified that soils on the site have been found not suitable for support of foundations so an additional four feet of excavation and extra fill is required to construct the basements, as is additional concrete. This will involve a total additional expenditure of about \$112,000, which will bring the return on the proposed amended plan down to 8.4%. Estimates already received from sub-contractors indicate that construction costs will be closer to \$90 per square foot rather than the \$82 per square foot assumed in the proforma provided with the present application for amendment.

Marketability and site conditions on eight of the proposed twelve lots favor walk-out basements.

The applicant testified that the road is being constructed to code, so that it could be offered to Town Meeting as a public way at a future date. Since it is unlikely that the Town would accept the road without inspections during its construction, the applicant has requested that the Planning Board, as the Board most qualified, and a fee of approximately \$11,000 has been paid to the Town for such inspections. The Planning Board then requested bonding. The applicant's position is that the original permit provided an alternative form of security for the Town by specifying that three lots will not be released until the Town Inspector states that everything is correct, and that therefore bonding should not be required. The applicant met with the Planning Board the previous evening (December 14).

The applicant testified that snow removal locations are now provided and indicated on the plan as on the island in the middle of the turning circle and at the south side of the turning circle.

The applicant testified that since CHAPA is no longer acting as a monitoring agent on Section 40B affordable housing, an alternative agent must be used and the applicant has selected Needham Housing Opportunities, Inc. 760 CMR 56 no longer permits local preference in the allocation of affordable units, but the applicant will do local outreach, for example via Town employee pay packets.

Questions were then invited from the public, and a question was raised regarding trash removal after the change from a condominium to a single family form of ownership. The applicant noted that the plan does not provide for dumpsters and that the homeowners would have to put their trash out on Holliston Street for Town pickup or hire a private contractor. A further question was raised regarding the applicant's statement that the applicant would seek adoption of the road by the Town. It was pointed out to the questioner that the previous Amendment of the Permit did not change the conditions of the original permit in this regard, but that anyone is free to petition the Town at any time for adoption of a road. Mr. Spinoza, Selectman, noted that the Town has a formal process for adoption of streets.

Mr. Biocchi noted that putting snow on a island in a turning circle can create hazards by blocking views and enquired if there was a better location available. The applicant noted that snow could be put on the drainage area, and that if snow storage damages grass etc., the homeowners' association can be made liable for cleanup of snow storage areas.

Mr. Musmanno noted that the applicant is basing this application for amendment largely on conditions such as financing which are alleged to justify a change, and asked for more evidence regarding such conditions. Mr. Musmanno asked why a change in market conditions should compel the Board to change the project. The applicant stated that the Board is not compelled to change the project but it is not in the Town's interest to have a failed project. The change in market conditions is common knowledge in the real estate industry. From a developer's point of view, Fannie Mae requirements regarding phasing etc. for condominiums make financing difficult for even a well-heeled developer. There is a similar problem for the buyer. There are three or four possible sources of financing for condominiums but all have problems. One possibility is a conventional bank which does not sell its loans to a secondary financier. Very few banks operate in this manner, and they want Fannie Mae approval of the loan. A second source is FHA financing, but the FHA will not accept the terms of an affordable deed rider (which survives foreclosure on condominium developments. A third option is a lender who will sell the loan on the secondary market, i.e., to Fannie Mae, who have presale requirements on condominium developments. A fourth possibility is USDA financing, but USDA do not accept condominiums. Selling single family dwellings is much easier since the FHA does not have any corresponding requirements on single family dwellings.

The applicant further stated that the original project probably cannot be built as permitted with 15 units. "Uneconomic" within the meaning of Chapter 40B includes "unfinancable". The applicant acknowledged that it had not to date been formally rejected for any loans.

At this point, the Zoning Enforcement Officer pointed out that the header of the plan should reflect that this is now a homeowners' association development, not a condominium development.

When asked for evidence regarding the need for the change in the number of bedroom (i.e., from all three bedroom units to some four bedroom units), the applicant offered no evidence regarding marketability but stated that this really a marketing option.

Comments were then invited from the public. None of the public present made any comments but a letter, dated December 6, was read into the record from Mr. William Dacier, of 1 Higgins Road; Mr. Dacier opposed any modifications of the existing permit.

The applicant then stated that it would agree to a maximum of two four bedroom units, and submitted plans for an additional single family model.

Mr. Musmanno again raised the question of open space. The applicant offered to consider moving buildings to create more open space, but noted that it is not really practical to create segregated open space with the proposed twelve building layout.

A motion to close the hearing was then made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously.

By unanimous consent, the Board moved to immediate consideration of the application of Fox Run Farms. Mr. Musmanno remarked that there were several items which were, at least conceptually, separable. The change to all single family dwellings had been well addressed by evidence of its effect on financiability of the project. Essentially no evidence had been offered regarding the increase in the number of bedrooms in some units.

After rather inconclusive additional discussion, the Board members agreed that they were not yet in a position to draft a decision on the application for amendment of the permit. Accordingly, on a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, it was agreed to table further deliberations to a meeting on December 22, 2010 at 7:30 pm in the Town Hall.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board adjourned at 11:05 pm.