

The meeting was called to order at 5:02 p.m. by Mr. Robert Cantoreggi, Chair.

Members present: Robert Cantoreggi, Chair  
George Yered, Clerk  
James McKay  
Richard Nichols  
Nicole Riley

Ilana Quirk, KP Law

Members Absent: Carlo Molinari, Associate

Also present: Scott Fuzy, 15 Stony Brook Dr.  
Scott Miccile, Toll Brothers, 134 Flanders Rd., Westboro  
Atty. Edward Cannon, Doherty, Ciechanowski, Dugan & Cannon  
Shawn Nuckolls, Toll Bros.

**SPECIAL PERMIT MODIFICATION, SENIOR RESIDENTIAL COMMUNITY DEVELOPMENT (SRCD)**

**GLEN ELLEN COUNTRY CLUB - 84 ORCHARD STREET**

**TOLL BROTHERS**

**DELIBERATION (CONTINUED)**

Atty. Quirk, Town Counsel, was in attendance. She stated that there were three issues to discuss:

1. "Housekeeping matter;" include the chart of changes in the Decision, if approved
2. Whether two Special Permits can be in place at the same time
3. Phased developments/phasing time frame

There was discussion regarding the existence of two Special Permits (original Special Permit & Modified Special Permit) being in place at the same time with an election of one making the other null and void. Atty. Quirk stated the Board should consider whether there should only be one Special Permit where the Modified Special Permit replaces the original one. She stated it would be a "policy decision" to modify the existing permit and if the Board wants to allow the potential for both, she recommended putting careful wording in the modified decision.

Phasing was discussed. Atty. Quirk stated that if the Board does not address phasing timeframes in the Decision, the applicant has a two year period to exercise the permit. The Board should consider whether they want timed phases as things change over long periods of time. Phasing can be dealt with during the Definitive Plan phase of the project, she said, as the Special Permit addresses the "use aspect." Mr. Cantoreggi stated

that he wanted language regarding phasing in the Modified Special Permit stating that phasing/timetables will be in the Definitive Plan approval decision. Each phase will also be subject to peer review to stand on its own. Atty. Quirk will prepare wording for this issue.

Ms. Riley stated that she was not in favor of two Special Permits and would prefer the Modified Special Permit (if approved) going forward. Atty. Quirk stated that the Board could vote to allow two Special Permits to go forward and any cost of a challenge would be borne by the permit holder to defend. She said that the Board could allow the original Special Permit with the golf course. She did not find any case law to allow the Special Permit with a new modified one. She stated it was a “policy decision” to modify the existing one; or if the Board wants to allow the potential for both, “put careful wording in the modified decision.”

Atty. Quirk referenced the cover letter from Atty. Cannon, dated September 20, 2016, wherein it states, “both current owners reserve all rights under the Special Permit as originally granted.” She said they want a new modified Special Permit separate from the first one issued; and one can be exercised. One Special Permit is already recorded, she said, and cannot be appealed. The modified Special Permit can be appealed, she said. She suggested that the Board could indicate in the Decision that as soon as one is exercised, the other is “null and void.” She stated that if a modified Special Permit is approved, it is valid for two years – a Town Meeting vote would be required to change that to three years.

Mr. McKay stated that the golf course approved on the first Special Permit was a private golf course as an amenity to the residences of the development. The applicant now wants to modify that by removing the golf course, along with other improvements/modifications, he said, and that is what we should be voting on – just a modified Special Permit to replace the original. Ms. Riley stated that she agreed with Mr. McKay and only one Special Permit should be in place. A straw poll was conducted: Mr. Cantoreggi proposed - if a modified Special Permit is approved, **both** Decisions would stand and expire on the same day; once one was exercised, the other would be null and void. The majority were opposed: Ms. Riley, Mr. McKay and Mr. Yered voted no; with Mr. Cantoreggi and Mr. Nichols voted yes. Atty. Quirk will draft language for modified Special Permit decision.

**ADJOURN**

There being no further discussion and on a motion made by Mr. Cantoreggi, seconded by Mr. Nichols and voted unanimously, the meeting was adjourned at 6:15 p.m.

Scheduled Planning Board Meetings: January 10, 2017

*Respectfully submitted,*

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*Camille Standley*  
*Administrative Assistant*