

Planning Board
Minutes of August 5, 2008
Approved September 2, 2008

Members Present: Barbara Freeman, Vice-Chair; Travis Dezotell; Dean Geddes; Jim Powell, Ex-Officio; Bill Weiler; Ron Williams; Ken McWilliams

Mrs. Freeman called the meeting to order at 7:00 p.m. The Board reviewed the minutes of July 1, 2008 and made corrections.

Mr. Weiler made a motion to accept the minutes of July 1, 2008 as corrected. Mr. Dezotell seconded the motion. All in favor.

CASE: 2004-006: Angel Hawk Subdivision – Letter of Credit

Mrs. Freeman updated the Board on the status of her communications regarding Angel Hawk Subdivision. She informed the Board that Deb Sias of Ledyard Bank stated to her that Ledyard Bank does not represent the developer; it is only the developer's bank and therefore, Ms. Sias could not make any comments.

Mrs. Freeman informed the Board that she called Mr. Buker and asked him to come to the Planning Board meeting to let the Board know what was happening with the letter of credit. Mr. Buker had asked for Mrs. Freeman's contact information so that he could have his lawyer respond. The following is the response from Attorney Uchida at Orr & Reno Professional Association:

"I am writing on behalf of Angel Hawk, LLC, the developer of the Angel Hawk subdivision in Newbury. I understand that Harold W. Buker, III, has been asked to appear at the Newbury Planning Board meeting on August 5, 2008 to discuss the restoration of the letter credit or other form of security for the public improvements associated with the Angel Hawk subdivision. I also understand that the Board is considering whether it should revoke the approval for the subdivision.

At t his point, we are unable to provide you with any further information than that which you are already aware. As you know, the letter of credit issued by Ledyard National Bank expired earlier this year. That letter of credit has not been replaced. Moreover, Angel Hawk, LLC, lacks the capacity to replace that letter of credit, or provide a substitute letter of credit or other form of security to ensure that the subdivision improvements are constructed. Neither the LLC nor Mr. Buker can provide the Board with any assurances that this situation will change. Finally, this subdivision has been aggressively marketed by the New London Agency to locate a substitute developer. However, as of this writing, no such prospective buyer has been located.

While Mr. Buker and the LLC have been working with the Bank to assess the continued vitality of the subdivision, it is fair to say that as matters stand, there is no prospect that any form of security will be forthcoming from the Bank or the LLC. As a result, Mr. Buker's attendance at the planning board hearing will, at best, be unhelpful.

The LLC and Mr. Buker regret the position in which the Board finds itself. Although I am unable to be at the Board meeting due to another previously-scheduled meeting, I am happy to answer any questions you might have. To that end, please feel free to call or e-mail me. My e-mail is....”

Mrs. Freeman commented that in her opinion, the situation of the expired letter of credit and the possibility of revocation of the subdivision needs to be evaluated by the Board of Selectmen because there are repercussions on the town.

Mr. Powell suggested that the Board not move too quickly. On behalf of the Board of Selectmen, he commented that the Selectmen would like to see this subdivision completed, but also do not want to see it lay if it is not going to be completed. He acknowledged that the Planning Board has the authority to revoke the subdivision plan, but stated that the Selectmen feel it is best to take the necessary steps but slowly in order to give the developer a chance to work it out. There are several factors why the subdivision may be in a lull, primarily a slowing economy. But, Newbury is in an area that has not been impacted too badly by the economy, so there are still significant expectations that the developer will be able to pull out of this slump. The Selectmen think the Planning Board should give the developer some latitude. The Town always has the authority to revoke the subdivision and can do that at any time. He commented that for the sake of the people that have already purchased property in the Angel Hawk subdivision, the Board should not do anything too quickly.

Mr. Weiler commented that the Board could reinstate the subdivision just as easily. Left undone, the developer could continue to leave the land disturbed and open and sell the lots without completing the subdivision.

Mrs. Freeman commented that the subdivision is basically complete except for the off-site improvements.

Mr. Powell clarified that the off-site improvements that have not been completed are the power and road improvements. He informed the Board that the Selectmen have rejected building permits in the past due to the lack of power and could continue to do so.

Mr. Weiler commented that there is also a lot within the subdivision that is in violation of the regulations because the developer has created a steep slope near the curb cut at the end of the cul-de-sac.

Mrs. Freeman asked the Board for input regarding obtaining legal counsel on this issue. She suggested that Bart Mayer, Town Counsel, be contacted in an effort to evaluate what other options the Town has other than revoking the subdivision, to use a leverage to get the off-site improvements done. She commented that if there is a bankruptcy, the Town needs to be in a position to stake its claim.

Mr. McWilliams commented that there should not be additional lot sales if the letter of credit is not resolved and the improvements are not completed. Specifically, the off-site

improvements are to widen and pave the access off Sutton Road onto Nelson Hill Road, and Nelson Hill Road also needs to be upgraded and paved.

Mr. Geddes asked if there is a hazardous situation existing without the improvements.

Mr. Weiler explained that Nelson Hill Road and the access to it are both gravel and narrow. The situation itself is not hazardous, but as more lots are sold and more buildings are built, more people are exposed to the risk of a narrow, unpaved access which then creates a hazard by volume of traffic.

The Board agreed that Mrs. Freeman and Mr. Powell should have a telephone conference with Bart Mayer. The Board will make no response to Mr. Uchida's letter until Mr. Mayer is consulted.

Mrs. Freeman commented that she is sure that the developer is working very hard to sell the property in order to rectify the situation; but that will be very hard if the subdivision is revoked.

Mr. Powell asked why the Board would decide to revoke the subdivision.

Mrs. Freeman explained that the Town's liability increases because the roads that go up into the Angel Hawk subdivision lots are under-built which creates a hazardous situation.

Mr. Williams asked if the cost of the off-site improvements have been determined.

Mrs. Freeman explained that Lou Caron, Engineer, has examined the subdivision site and has determined a cost for improvements.

Mr. Williams asked if it is possible for the Town to place a claim on a certain percentage of the proceeds from the sale of lots in order to make up the funds required for the letter of credit.

Mr. Powell commented that the selling of the properties is a separate issue from the motive of the revocation of the subdivision. Therefore, placing a claim on funds cannot be done.

Mr. Weiler stated that the Town might have lost its legal standing since the letter of credit has expired. He commented that it would be a positive thing if the Town could work with the developer to resolve the issue, but it should not be dragged out.

Ted Jones, homeowner at Angel Hawk, informed the Board that he and his wife purchased the lot next to their home in order to provide cash flow to the developer so that electricity could be run to their house. He commented that Nelson Hill Road is not a great road, but it has been there a long time. He stated that his concern and question is that if the developer goes to bankruptcy, does Ledyard Bank have to uphold the covenants.

Mrs. Freeman stated that Ledyard Bank has no involvement in the development other than issuing the letter of credit.

Mr. Jones commented that he has heard information which led him to believe that Ledyard Bank is more involved than just issuing the letter of credit. He stated that he had heard that Ledyard Bank has been made offers on some of the property but keeps turning down the offers because the offers are short of covering Ledyard's interests.

Mrs. Freeman commented that she does not have any solid information about Ledyard's interests; they are all close-lipped about it.

Mr. Jones thanked the Board for being willing to allow him to participate in tonight's meeting. He commented that he is trying to keep abreast of what is going on with the status of the subdivisions. For the record, he informed the Board that he and his wife would like for the developer to go forward, finish the subdivision and have a nice road and more neighbors.

CASE: Code-042: Zoning Regulations – Conservation Subdivision Design

The Board reviewed a draft of the proposed Article XII Conservation Subdivision Design. Mr. McWilliams explained that he basically took the cluster development article and revised it.

Mr. McWilliams explained that the proposed Article XII purpose is the same as what is already written for the purpose of Cluster Development. Article 12.1 adds a density bonus of 10% if a minimum of 10% of the land is dedicated for public use.

Mrs. Freeman suggested that this article be called 'Conservation Subdivision' not Conservation Subdivision Design. The word 'design' should remain in the text of 12.1. Also, she asked if 10% is enough of an incentive for a developer to provide affordable housing.

Mr. Geddes commented that 10% is not very generous as an incentive.

The Board briefly discussed what percentage should be offered as a density bonus and decided on 25%.

Mr. Powell asked for clarification of the purpose of this article. He stated that it seems to be an exclusionary practice, which would further raise the cost of building a home. He commented that it seems to him that the Town has never done anything positive to encourage affordable housing and make the process easier. Anything that is written in the regulations makes it more difficult and more expensive for people to build new houses.

Mrs. Freeman explained that this Article would be updating the Cluster Development article. It takes the existing ordinance one step further by using local land conditions to determine how land is subdivided. She explained that the intent is to protect delicate and sensitive land in Newbury and to make sure a development does not adversely affect existing residents. This article would give a bonus to a developer; if the developer agrees to provide affordable housing, they will be allowed more units. This ordinance would encourage the placement of houses in such a way that the effects of development will be less detrimental to the environment and give bonuses to the developers that provide affordable houses and public trails.

Mr. Dezotell commented that he understands Mr. Powell's concerns and what he would like to see is for the Board to give a developer the ability to allow people to move their houses closer together and preserve and protect the wild life corridors and natural resources. If that purpose is not clear, then the regulations should be written so that concept is easily understood.

Mrs. Freeman asked Mr. McWilliams to review the regulations and find the appropriate place and method to incorporate affordable housing into the regulations.

Mr. Williams commented that in section 12.2.5.1 Minimum Open Space; 50% seems to be a very aggressive amount to require for open space.

Mr. McWilliams explained that it is not as much as it seems because the purpose behind the conservation design is to concentrate the developed area over a minimal area and leave the remainder open.

Mrs. Freeman explained that this article does not cut down on the number of allowed dwellings. It only concentrates the number of allowed dwellings in a tighter proximity to each other. It would also cut down on sprawl and protect the environment.

Mr. McWilliams stated that the developer does not have to use this method of development. It is only offered as an option, which may provide more dwellings than a conventional subdivision.

Mr. Weiler pointed out that larger conventional subdivisions often have problems with infrastructure. For example, the Pickman Development chose to subdivide in a primarily conventional manner, which resulted in 40,000 sq. ft. of wetlands impact. Because of this impact, the Wetlands Board now requires a wetlands mitigation plan, which has put the progress of that subdivision at a standstill.

Mrs. Freeman commented that the Angel Hawk Road has led the developer to potential bankruptcy.

Mr. Dezotell suggested that the Board should talk to some of local developers to find out from them what it would take to get them to develop affordable housing. An affordable

house is in the \$150,000 range, not the \$300,000+ range, which is what typically results from these new subdivisions.

Mr. Weiler commented that multi-family housing is the only way affordable housing would be able to be developed and remain profitable for the developer.

Mrs. Freeman commented that the Board should try to investigate the possibility of developing a multifamily house and where in Town it makes sense to develop such a use. It would seem logical that such development should be near the center of Town.

Mr. Powell asked if it is feasible for a developer who creates a self-contained sewer system to develop lots of less than two acres.

Mr. Dezotell commented that in the visioning session for public input for drafting the Master Plan, people made indications as to where they would like to see more dense housing.

Mrs. Freeman asked Mr. McWilliams if an overlay map could be created and utilized to facilitate in identifying what areas in town are more conducive to denser development.

Mr. McWilliams stated that he would look into the map availability.

Mr. Geddes stated that the Conservation Plan would be a good reference. There are excellent maps in the Conservation Plan.

Mrs. Freeman stated that the proposed Article 12.2 needs to be edited because it is contradictory as written.

Mr. Powell informed the Board that the Board of Selectmen referred a property owner on Edgemont Road to the Planning Board. This property owner wants to change the access of Edgemont Road of Route 103. Edgemont Road is a private road, and the change will impact only his lot. The Board of Selectmen felt the Planning Board should be involved in order to address the erosion issues since it is in such close proximity to Lake Sunapee.

Mr. Dezotell made a motion to adjourn. Mr. Williams seconded the motion. All in favor. Meeting adjourned at 8:30 p.m.

Respectfully submitted,

Linda Plunkett