

**SEEKONK PLANNING BOARD
REGULAR MEETING**

**MINUTES
October 26, 2010**

Present: Ch. Abelson, M. Bourque, S. Foulkes, L. Dunn, B. Rice

J. Hansen, Town Planner

Absent: T. Clancy (without cause), R. Bennett (with cause)

7:00 pm Ch. Abelson called the meeting to order.

Form A: 50 Pleasant Street

Applicant: Russell Hetu

J. Hansen This is a Form A that has two dwelling located on one lot and regulations state you can split a lot that has two dwellings on it if they existed prior to subdivision control law. The houses were developed prior to 1965 so I ask you to endorse this application.

B. Rice made a motion to endorse the Form A for 50 Pleasant St. seconded by L. Dunn and so voted by: B. Rice, M. Bourque, Ch. Abelson, L. Dunn, S. Foulkes

Vote (5-0) endorsed

Surety Establishment for Ricard Street

Applicant: Mike Costa

J. Hansen The applicant is proposing a covenant for two of the lots the construction cost estimate is for \$144,000. This estimate has been reviewed by Weston & Sampson they felt it was an appropriate estimate for post construction therefore it would seem appropriate to establish this surety as two lots. It would certainly cover more than enough they are looking to have this expire in 12 months so I recommend to establish surety.

Ch. Abelson I would like to entertain a motion to establish surety for Ricard Street extension for the two lots as specified.

L. Dunn Was any work done on the soil?

M. Costa Yes I submitted a copy of the report a month ago. It described that soil samples that had been collected.

- B. Rice I remember a discussion from the abutters about the drainage in that area.
- M. Costa Drainage is addressed with the detention pond.
- B. Rice To your knowledge do the abutters still have an issue with the drainage?
- M. Costa I am assuming so because of the street behind is at a higher elevation however on Ricard St. extension there will be two slow drains to the detention pond and then across Newman Ave.
- John Pyers 1370 Newman Ave. It recently came to my attention that Ricard St. was a Mass. DEP site. I was at the Mass. DEP in Plainville last Friday and spoke to someone who is handling this case they said it is was in the preliminary stages and further testing was going on. My worry is I don't know exactly where the water is going. Talking to people living in the area they say the water eventually goes over RT.152 and into a ditch along Sanctuary Lane and then into a marsh area and then into the town wells. How dangerous this is I don't know the DEP doesn't know either. My question is if the drainage might have dangerous material in it is it dangerous to me as an abutter? I looked at pictures and drawings of the property and the location of the storage and containment tankers is where the property will be excavated for a cul-de-sac and for a water pipe. What is being put up for surety?
- Ch. Abelson Two lots but he can't build on them yet.
- J. Pyers If those lots are contaminated how much are they worth and is it worth anything to use them as surety? Wondering if someone would look into this because as I said I talked to Mass DEP and they have not made a determination. If questions can't be answered I ask for this to be continued.
- M. Costa I can address most of those things in the report I have which was done by certified site professionals. The report identifies 3 monitoring wells one on each lot I specifically picked 2 lots that didn't have any levels prior so it would not be an issue. Soil samples were done on 8 locations of the property. It is an extensive 600- page report. As far as DEP goes I'm not sure that person Mr. Pyers spoke to gets handed a copy of the report. If it makes the Board feel more comfortable I would be willing to put up more of a bond for surety.
- S. Foulkes Does the Blackstone Consulting report go back to Mass DEP?
- M. Costa The follow up report goes back to Mass DEP and the town gets a copy of everything.
- S. Foulkes Mr. Pyers has brought up some real concerns. This is an independent consultant for the developer what does the town have other than this? Is there somebody from the DEP that can give us his or her findings?

- L. Dunn I feel accepting these lots for surety when we don't even know if they can be sold is foolhardy.
- J. Hansen One thing to keep in mind in regards to soil tests it's usually a bank that requires them when you apply for a mortgage on land such as this. If the Board wants an opinion from Mass DEP then you should ask.
I feel we have gone above due diligence by requesting the report. You are right it is a consultant the applicant has hired but they have come back to say the 2010 levels are under the threshold.
- M. Costa LSP is licensed by the State.
- M. Bourque He has an approved subdivision we are only approving surety here. If he came in with cash tomorrow we can't stop him.
- M. Costa Each lot is worth \$144,000 I am willing to give you 2 to 3 times that amount.
- M. Bourque Does DEP have any restrictions on what you can do on that land?
- M. Costa No restrictions.
- B. Rice What is your feeling about this Mr. Chairman?
- Ch. Abelson We have the report back from the engineer saying the levels are below the threshold.
- M. Bourque I wouldn't have a problem waiting till our next meeting and calling DEP to see if we could get further information.
- M. Costa I understand everyone's concerns but all I am trying to do is establish surety.
- J. Hansen I don't think I would be anymore successful making a phone call to DEP than an abutter would. That would have to come from the applicant.
- M. Costa LSP is a person who works for me you just can't go in and ask them it might take a couple weeks.
- J. Pyers I called DEP and they said you can come in and look at the records. It's not a long process.
- B. Rice I would feel uncomfortable going forward without the DEP report and I am concerned about our responsibility in a potential town water contamination possibility.
- S. Foulkes So the last report would be due by 2011. Do we get a copy of that?

M. Costa You could make that a condition.

B. Rice So Mr. Chairman how do you feel about your recommendation for a motion?

Ch. Abelson It was only a recommendation.

S. Foulkes I think it needs to say for the record that until we get more of a concrete opinion from DEP at least we have done what we can to protect the town.

S. Foulkes made a motion to have the Planning Board ask Mass. DEP for the report past the preliminary stage so the Board can make an informed decision as to whether there are contaminates that are going to affect the Town's water.

Ch. Abelson Do you want us to do that or Mr. Costa?

S. Foulkes I think the onus is on the Town to do it.

Ch. Abelson Why not ask the consultants to get the information from DEP for us? It is their report it seems to make more sense.

B. Rice Besides it is not in our purview to get the information from DEP.

M. Costa Again I don't know if DEP will issue a report you can go online but no one wants to be on record saying that, it has to do with liability.

M. Bourque Getting back to the point he is willing to put up 3 lots for surety.

L. Dunn I would feel better with cash.

J. Hansen You can't tell him what you want it is the applicant's choice. Cash or bond it doesn't matter.

Dave Moline 11 Wilson St. I am an abutter we have a high water table discounting the historical storm. At the last meeting 2 or 3 years ago it was brought up about the drainage. Years ago a pipe used to come down from the greenhouse and it went underneath Newman Ave. by Sanctuary Dr. and out to the street. My question is will that water stay on his side of Newman or the other side. Mike is saying one thing John another.

J. Hansen On the plans that were approved by this Board there is a detention basin at 1370 Newman Ave. and it outlets to the Newman Ave. drainage system.

S. Foulkes withdrew her motion

M. Bourque made Motion to accept surety in the amount of \$144,000 in cash or bond to expire in 12 months seconded by L. Dunn and so voted by: Ch. Abelson, M. Bourque, L. Dunn - Aye

B. Rice, S. Foulkes - Nay

VOTE: (3-2) Approved

Preliminary Subdivision: Orchard Estates

R. Davis Insite Engineering Fall River Ave. The preliminary subdivision was recently presented to the Planning Board and the outstanding issues were the Mass. Historical Societies concerns. Mr. Najas contracted J. Milner Associates an Archeological Consulting firm who submitted the permit application to Mass Historic Commission. The Commission is in receipt of all the material and they have submitted a letter dated Oct. 8, 2010 describing the acceptance and opening of the permit application and the investigation is going forward. At this time we believe we have resolved all issues brought forward by the Planning Board we respectfully request a preliminary approval.

B. Rice Has the Mass. Historical Commission made a report yet?

J. Hansen They have reviewed the application that application is to perform the investigation then they will review a report from Milner Associates based on the investigation.

B. Rice When will the consultant report will be completed?

J. Hansen They want it done by the end of this year.

B. Rice They won't start breaking ground until the definitive plan is approved.

Jim Badger 17 Applejack Lane. Want to go on the record about concerns about a cell tower being constructed in that area?

Ch. Abelson Could not put any structure in that area.

R. Davis That is a typo on the report. That should not be in there.

Ch. Abelson How long will the research take?

R. Davis About 60 days to do the research.

M. Bourque made motion to approve the Orchard Estates Preliminary Plan with the following recommendations from the Town Planner:

1. At least one catch basin within the cul-de-sac shall be added, as per section 8.4.8 of the Subdivision Rules and Regulations

- or use Low Impact Development techniques such as grassed swales and/or bioretention area within island.
2. Maximum groundwater elevations shall be shown with the lowest floor elevations (lfe). Under section 4.4.2, the lfe of the proposed buildings shall be at least two (2) feet above the maximum groundwater elevation.
 3. Deed restrictions shall be submitted indicating limits of disturbed areas on each lot.
 4. Sidewalk shall be moved to the west side of road, terminating at the easterly boundary of parcel 5, at which point the hydrant shall be placed.
 5. This approval shall be subject to final review by Mass. Historical Commission of the applicant's field study to be performed. No definitive plan shall be submitted until said review is complete.

seconded by B. Rice and so voted by: B. Rice, M. Bourque, Ch. Abelson, L. Dunn, S. Foulkes

Vote (5-0) Approved

Discussion Girard Estates:

J. Hansen Asked abutters to make their presentation

Summary: Mr. Gordon passed a package around and referred to a poster board of photographs showing Girard Estates with debris and clear-cut land. Mr. Gordon and the other abutters felt that the clear cutting of lot 3 was in direct violation of what the Planning Board and DEP required as well as in violation to agreements Mr. Girard's representatives made with neighbors and abutters.

Fred Gordon 39 Wild Flower Drive. Original boundary lines are hard to find and complete leveling of trees was not to be done because of the drainage and esthetic issues. The view from lot 3 is a clear-cut lot, which was not the intention of the planning board. We think the land trust property is on the other side of the property that is clear-cut but we can't be certain because we don't know where the boundary lines are.

Stephanie Burnett 51 Wild Flower Dr. I live in the last house in the cul-de-sac my house faces lot 3. I was home I heard a loud crack I looked outside and trees were coming down it was raining and they were still cutting trees and they seemed to be doing it quickly. I was concerned they were cutting trees on my property.

F. Gordon The folks on Wildflower Dr. are a close knit group most of us have been on that street for over 30 years. In 2007 we came to the board and discussed with them how this was going to be done and I recall representatives for Mr. Girard saying they wanted to create a park like environment we took them at their word

but asked them to delineate 100 ft from the bordering property of the Seekonk land trust onto to his lots and they said they would put up a rustic style fence. A lot has happen since that time the 100 ft with the fence morphed into a DEP requirement and it has nothing to do with a DEP requirement.

Second item- the minutes from Dec 11, 2007 Ch. Abelson talks about Girard Estates intention to maximize open space three or four years later at the February 9, 2010 Planning Board meeting Mr. Rice asked if any trees that exist in this space that are 4 inches or larger because the agreement those trees would be kept. Mr. Girard's Attorney Mr. Marcelino said most is old wood and the only trees to be cut would be those for the footprint of the house.

Last item is the plot plan this is on the realtors own web site and it shows all the lots. Lot 3 is the one we are speaking about if you look at the legend on the page the green area is defined by the realtor as undisturbed wooded area.

Matt Sluter 36 Wildflower Dr. I am in construction I just want to point out one of the conditions where there would be another 20' easement at the back of the lot because it was a natural drainage detention area there and that would be kept as un-cleared land to help deal with any drainage issues.

Cindy Arago 27 Wildflower Dr. I am not impressed with what has gone on especially with the tree cutting. I thought trees could be saved they could I have a problem with drainage and this clearing will affect my land.

Atty. David Marcelino representing Girard Estates gave a hand out to the Board

L. Dunn Can someone explain?

Atty. Marcelino Fuss and O'Neil was hired by Girard Estates to draft a drainage and subdivision plan. The plan showed a shared septic system that is why DEP was involved. Fuss & O'Neil presented a plan to DEP for the Septic system that required 50% open space on 8 lots in the subdivision, which essentially rendered lots 1-5 un-marketable. Mr. Girard discovered that in 2009 when lot 3 was under agreement and the potential buyers saw that there was a demarcation line for open space running through the middle of the lot they backed out of the deal. Mr. Girard asked me if there was any relief with the DEP and the demarcation line. I approached DEP only to find out that they had suggested to Fuss & O'Neil that he not go forward with a 50% open space requirement he could go forward with what was called a *Demonstration Plan* for Title 5 which was explained this way; if you could demonstrate that the lots were being hurt individually on a subdivision piece of property then you meet title 5 requirements and if you meet title 5 requirements then the open space issue can be removed. In this case through DEP and the Planning Boards approvals the demarcation line and the fence running along the demarcation line were removed.

L. Dunn Can you address the abutter concerns.

Atty. Marcelino If you look at the plan that I gave you I highlighted the property lines that abut Wildflower Dr. it is my understanding that a stone wall runs down the properties and that is the demarcation line for each of those 5 lots. It is also my understanding that monuments have been sunk into the ground or drilled into the stones by Fuss & O'Neil.

S. Burnett If that is the case then why would he cut down tree marked with pink ribbons marking my property?

Marcelino I don't know.

Ch. Abelson Reading the fine print it says new drill holes set at stone wall corner.

J. Hansen I think technically it is a condition because the condition of the approval was that the Girard Estates residential declaration of easements and restrictions be made part of this and if you read the declaration there is a clause in there in Section J that speaks to this and no clear cutting of the lots. If I am reading this right then the owner of lot 3 should have gone to the owner Mr. Girard to get permission to clear-cut.

Marcelino The declaration is for the type of tree you can cut down. Any tree less than 40 in diameter can be cut anything over 40 you need Mr. Girard's approval. If this man has clear-cut the lot then he has not had Mr. Girard's approval to do so.

Ch. Abelson At the time of the purchase of the land the man should have been made aware of this.

Marcelino He was made aware.

Ch. Abelson Then he is in violation of the covenant of the subdivision. What is the process for that? Is it a civil matter?

Marcelino That would be.

Ch. Abelson But it is a condition that was set and approved by our Board I'm not so sure.

J. Hansen I think the Town has a stake in it if the declaration is a condition of our approval there are sections in the subdivision control law that allow us to seek remedy for that.

Ch. Abelson In that case we can send Mr. Girard a letter saying that the owner of lot 3 is in violation of the covenant.

B. Rice made a motion that a letter from the Planning Board be sent to the owner of the development and the owner of the lot 3 stating that they are in violation of the conditions of the covenant.

Ch. Abelson I want to make sure this doesn't happen with the other lots

J. Hansen I just want to make it clear that the issue here is not with Mr. Girard but with the owner of lot 3.

Ch. Abelson Mr. Girard needs to be involved.

J. Hansen He can go about that in his own civil suit.

Marcelino We provided him with a copy of the association declaration the owner had an Attorney representing him at the closing. The owner's father from what I understand is a landscaper and they intend on making that property look really good to represent his business.

F. Gordon This individual was told by the several abutters not to touch the land before talking with Mr. Girard. Mr. Girard was with the landowner in his van at the lot when I confronted the landowner to discuss what he was doing and how I felt it was wrong and how he was not following protocol or the directive of the Planning Board. He kicked me off his property and I left. Mr. Girard was sitting in his vehicle while this was going on.

Motion was seconded by M. Bourque

B. Rice I remember the developer said that the fence was going to be there and that no tree over 40 in diameter would be cut down. It is in the minutes.

Marcelino I can have the declarations signed.

Ch. Abelson That would be good.

M. Slutter What ultimately is the buffer zone? Going forward to prevent this from happening to the other lots what can be enforced?

B. Rice To require landowner and developer to come before the Planning Board that is what this discussion should be about this motion not drainage. I moved the question and it was seconded by M. Bourque.

Voted by: Ch. Abelson, M. Bourque, B. Rice, S. Foulkes, L. Dunn

Vote (5-0) Approved

Roberta Gordon I would like to formally request a copy of that letter.

J. Hansen I will email it to Fred Gordon.

B. Rice Concerned about the trees being cut and eventually causing a drainage problem.

J. Hansen To bring the pieces together it seems the point of contention is how did this open space come to be. I was not here when this all came about so all I can do is look at the paper work available. I see starting back in 2006 the original plan that was submitted had a buffer along the rear of the property. In 2009 when the applicant had issues with the sale of lot 3 he asked DEP to remove the conditions of the open space buffer so it was conveyed to this board it was a DEP requirement the neighbors are saying this is not true this was something that the developer the neighbors and the Planning Board agreed upon back when this was approved in 2006. So that is the issue whether it is a DEP requirement or something else and if it is not a DEP requirement then our approval of a split rail fence can be called into question because we didn't have the correct information to make that decision.

L. Dunn I think this was a misunderstanding that was allowed to continue.

F. Gordon I want to mention Dec. 11, 2007 minutes again Mr. Girard went from trying to maximize open space and having a buffer area and having an honorable agreement to no trees. I think if you look at this it is impossible to believe that he did not know what the agreement was. He's been marketing the same plot plan for years.

B. Rice I think it was important that we had this discussion

M. Bourque Should we get permission to seek legal counsel's opinion from BOS.

J. Hansen It's a violation of the covenant trees greater than 4" were cut. There is still a point of contention of how the open space came to be. This Board understood that DEP removed the condition thus the Board removed the condition for the fence.

C. Girard I was there sitting in my car, the owner had a disagreement with Mr. Gordon they were at the far end of Lot 3 I was on Betty's Way I could not here the disagreement. I think this board needs to go out and look at lot 3 and see what trees were cut down because all the trees that were cut down were inside the perimeter of the stonewall they are not in land trust land or anyone else's land. Grant you he did cut trees down that were larger than 4" in diameter.

Ch. Abelson In the covenant it said anything over 4" in diameter should not be cut.

C. Girard Unless it is within the foot print of where the house is going to be built. If you look at the foot print you have a 100' x 100' space where the house could go and

trees went down and then they moved the location of the house after the trees were cut so I can't make an argument for the new owner. He should have had a different location for the house prior to cutting down the trees.

Ch. Abelson We will pursue this as suggested.

F. Gordon I want to clarify that Mr. Girard is right we never spoke I said he was sitting in his van. I was just bringing up the point why didn't he tell the landowner what he can or can not do and my point was that he was obviously in contact with the landowners because they were together so clearly he made no effort to tell the landowner not to do it so either he felt it was o.k. or he violated it was one or the other.

C. Girard At that point all the trees had been cut prior to our discussion that afternoon.

Ch. Abelson We have our motion.

L. Dunn Can we ask Mr. Girard if part of the decision was not to remove the trees and to protect as many trees as possible when he sells another lot. Do you consider yourself part of the landowner association? So as a partner in our decision will you protect the trees?

C. Girard I have given the new land owner a copy of all things that came from this Board he went in as soon as they purchased and starting cutting I had no idea what they were doing I was surprised to see what had taken place.

S. Foulkes Do we ask them to come before us or do we tell them they are in violation?

J. Hansen I want to contact Town counsel to see what the options are.

Peter Ward 1 Wildflower Dr. He has violated the covenant can we at least hold up the building permit.

Ch. Abelson I don't know if there is any way we could do that we would have to contact legal counsel.

J. Hansen Are we looking to protect 40 trees or greater or we looking to have this buffer put back in the plans. That is the question this board needs to answer.

F. Gordon In theory every tree could be cut down tonight I believe you are in a position to make sure that does not happen by ordering a directive tonight that no further trees are to be cut down on the other lots.

Ch. Abelson I don't think we can do that tonight. As of right now there are no other lots under purchase and sales agreement.

J. Hansen The question tonight is do you want to bring back the buffer and the spilt rail fence with an amendment?

Kosta Bitsis 165 Elm St. I would like to say the owner of lot 3 is not doing anything illegal here. He is trying to the best he can he, he cut some trees down he was unaware he was not suppose to. He is not walking away he is going to talk to the guy and going forward they should probably put something in writing. All I am saying this is the first lot going in there was an issue he wants to make sure it doesn't happen again so let's go and look and see what can and can't be cut and go out and see exactly what happened if the guy did something he wasn't suppose to do then he can come to a meeting and you can tell him. Try to and work together I am speaking on half of my father in-law I have nothing to do with the property.

Marcelino We don't know why Fuss & O'Neil went with the plan the DEP person said he was an idiot to do that. With the Demonstration Plan the demarcation line wouldn't have been a factor. I believe it was an ancillary offer Fuss & O'Neil made to the neighbors and made the land not marketable for Mr. Girard. If people don't read the deeds or covenants then we are all in trouble We invite your counsel to take a look.

Bill Rice Mr. Chairman we need to go forward.

S. Foulkes made a motion that the buffer and fence be reinstated.

J. Hansen Can't make that motion now it needs to be an agenda item.

S. Foulkes made a motion to put this on as an agenda item for the November 9, 2010 meeting to vote to reinstate the original buffer zone seconded by L. Dunn

M. Bourque If we make it an agenda item I would feel more comfortable making that a motion after we get an opinion from Town legal counsel if we can or can't put the line back.

Vote: S. Foulkes - Aye Ch. Abelson, L. Dunn, M. Bourque, B. Rice – Nay

VOTE: (4-1) Not approved

S. Foulkes made a motion to have a meeting after the Board gets advice from Town Counsel. Seconded by M. Bourque and so voted by: Ch. Abelson, M. Bourque, B. Rice, S. Foulkes, L. Dunn

Vote (5-0) Approved

Housing Production Plan

J. Hansen I would like a vote to adopt the housing plan identifying that affordable housing is needed.

M. Bourque made a motion to adopt the Housing Production Plan as presented by the Town Planner seconded by B. Rice and so voted by: Ch. Abelson, M. Bourque, B. Rice, S. Foulkes, L. Dunn

Vote (5-0) Approved

Approval of Minutes

9/14/9/21/9/28

M. Bourque made a motion to approve the minutes from 9/14/2010 seconded by B. Rice and so voted by: Ch. Abelson, M. Bourque, B. Rice, S. Foulkes, L. Dunn

Vote (5-0) Approved

M. Bourque made a motion to approve the minutes as amended from 9/21/2010 seconded by L. Dunn and so voted by: Ch. Abelson, M. Bourque, B. Rice, S. Foulkes, L. Dunn

Vote (5-0) Approved

M. Bourque made a motion to approve the minutes as amended from 9/28/2010 seconded by B. Rice and so voted by: Ch. Abelson, M. Bourque, B. Rice, S. Foulkes, L. Dunn

Vote (5-0) Approved

Adjournment

M. Bourque made a motion to adjourn, seconded by L. Dunn and so voted by: Ch. Abelson, M. Bourque, S. Foulkes, L. Dunn, W. Rice

Vote: (5-0) Approved

The meeting adjourned at 10:00 PM

Respectfully Submitted by:

Florice Craig, Secretary