

STURBRIDGE PLANNING BOARD
MINUTES OF
TUESDAY, May 18, 2004

Present Sandra Gibson-Quigley, Chair
Deb Hill
Thomas Kenney
Milton Raphaelson
David Yaskulka

Also present: Lawrence Adams, Town Planner

S. Gibson-Quigley called the meeting to order at 7:00 PM and read the agenda. S. Gibson-Quigley noted there were presently five members on the Board as Michael Beaudry had submitted a letter of resignation. She acknowledged M. Beaudry's thoughtful and conscientious service to the Board and added that any action on subdivisions by the Board still required a majority vote of the total Board number (four out of seven votes) no matter the number of members in attendance. She again asked for any interested residents to apply to the Town Administrator. The minutes of April 6, 2004 were reviewed.

Motion: to accept the minutes of April 6, 2004, as presented, by T. Kenney
2nd: M. Raphaelson
Discussion: None
Vote: All in favor

ANR's

D. Ryder – 126 Clark Road – DTC Consultants – 1 lot – No action taken

This plan was a revision of an earlier submittal. Approximately six week earlier, the applicant had submitted a plan which depicted two lots, one was a nonconforming lot with insufficient frontage measuring 75 feet. L. Adams felt he could not recommend that the Board approve the plan because of this nonconforming lot and that that under state regulations the two lots had merged. He informed the applicant and also noted that metes and bounds were missing from some of the lot lines. The revised plan reflected the merging of the two lots to create one lot; however, the metes and bounds on the leg along Clark Road and the Massachusetts Turnpike were still missing. The applicant was not aware of the deficiencies on the revision, as L. Adams felt it was not his position to continually correct a submittal. He added that the Town was involved in litigation regarding this property and that the revised plan was presented at the end of the day on April 28th before the Annual Town Meeting to lock in the zoning allowing him no time to respond to the applicant. S. Gibson-Quigley asked L. Adams for clarification on the Board's policy regarding such a plan. He stated the Board could – 1) not sign the plan or choose to not endorse it on an individual basis or 2) take no action whereby the applicant could approach the Town Clerk for constructive approval. No member was willing to endorse the revised plan. S. Gibson-Quigley recognized –

- Ginger Peabody, 4 Wildwood Lane – wanted clarification on the above discussion. L. Adams explained that a Board's endorsement meant that approval was not required. The Board could agree and endorse the plan or not agree because it felt approval was required or, as with this plan, that there was a deficiency in the submittal and choose not endorse the plan. Failure for the Board to act within 21 days, would allow the applicant to seek constructive approval from the Town Clerk. L. Adams noted the approval would not be automatic.

Seriland Inc. – Wallace Road – Waterman Design Assoc. – 6 lots – Approved

6

The Board asked Wayne Belec, of Waterman Design Assoc., for clarification on the frontage measurement of Lot #3.

R. Bonaventura – McGilpin Road – Messier and Assoc. – Reconfiguration – Approved 0
L. Adams addressed the issue of the number of lots previously approved for this (Dumas) property by the Board of Selectmen upon waiving its right of first refusal. Sixteen lots had been approved for division and approval of this plan would create twelve lots to date.

W. Swiacki – Draper Woods Subdivision – Waterman Design Assoc. – Reconfiguration – Approved 0
L. Adams noted that the owner could reconfigure lots within an approved subdivision, but he could not create additional ones. W. Belec explained the reconfiguration due to size for lots 3 and 4 which would now be known as lots 3R1 and 4R. S. Gibson-Quigley recognized –

- Ed Goodwin – asked if this impacted the wetlands in any way. W. Belec stated it did not.

W. Swiacki – Whittemore Woods Subdivision – Waterman Design Assoc. – Reconfiguration – Approved 0
W. Belec referenced sideline changes for lots 3R, 2R and 1R on Turner Lane due to the changes in the wetlands regulations of the Conservation Commission.

R. Mogavero – South Road – Fancy Land Surveying – reconfiguration – Approved 0

OF PARCELS CREATED 6

PUBLIC HEARING – WHITTEMORE WOODS SUBDIVISION – REQUEST OF EXTENSION OF COMPLETION PERIOD

S. Gibson-Quigley opened the public hearing at 7:30 PM and T. Kenney read the legal notice. T. Kenney recused himself and stepped off the Board because he was an abutter to the property. S. Gibson-Quigley explained that William Swiacki was requesting a one or two year extension to his November 19, 2004 deadline for completion of infrastructure. Attorney Mark Donahue was present for Swiacki & Co. and provided the following review –

- The Board had approved the subdivision plan on November 19, 2002
- Turner Lane (a cul-de-sac) and Woods Road (through road) were the two approved roadways for the plan.
- The subdivision was then filed with the Conservation Commission (ConCom) and that process had taken approximately fourteen months.
- Woods Road was withdrawn by the applicant during the process with the ConCom.
- ConCom issued an Order of Conditions which allowed the work to be done on Turner Lane.
- All necessary permits and approvals to construct Turner Lane per the plan were in hand.
- Further work and design work would be done with regard to Woods Road

The applicant requested that the Board allow a one year extension to Conditions #2 and #17 of the November 19, 2002 approval which imposed a two year limitation on the time for construction of the ways and utilities.

Atty. Donahue's reasons for support of this request - 1) the owner needed to look at alternatives to the design of the Woods Road portion of the subdivision as a result of the ConCom concerns and 2) to allow the entire site, as per the plan, to stay in its current design and be included in a redesign examination.

Atty. Donahue stated that the option for W. Swiacki to proceed and complete the Turner Lane work prior to the November 19, 2004 deadline would take a great deal of effort on his part and a considerable amount of the Board's time. If the Board agreed to grant the extension, the applicant would not be back before the Board for any action on Turner Lane. Since Turner Lane's drainage and its construction was not tied into Woods Road, Atty. Donahue felt that this portion of the subdivision was independent of the Woods Road portion. S. Gibson-Quigley stated Turner Lane was not independent of the subdivision and asked why the applicant would not consider the option of withdrawing the present subdivision and resubmitting a new design. Atty. Donahue gave two reasons

for not withdrawing – 1) this was an approved subdivision, Turner Lane could be built allowing W. Swiacki opportunity to recoup some expenses and 2) as part of the permitting process the applicant decided to withdraw the request before ConCom with regard to work on Woods Road rather than pushing it to a point of disagreement.

D. Yaskulka asked what the Board's main goal was when setting the deadline. L. Adams noted that a subdivision should have a timely start and two years was a standard timeframe for the expiration of public improvements per most subdivision regulations. D. Hill saw no reason for the extension because Turner Lane could be built and the extension would allow the applicant time to redesign the subdivision which he must already do. S. Gibson-Quigley commented that this was not a phased project and therefore felt that Turner Lane should not be built. This situation was the result of the applicant's decision to withdraw plans (Woods Road) from ConCom and no Order of Conditions had been issued for this roadway. She added that the Board had cautioned the applicant about the potential for conservation issues with the plan as proposed. It was Atty. Donahue's opinion that the answer to S. Gibson-Quigley concerns was to grant the extension. When questioned, L. Adams stated it was his interpretation based on Town Counsel's review that Turner Lane could be built, but that if the infrastructure in the entire subdivision was not completed by November 19, 2004, it would lose its approval. He added that if there was independent functionality of Turner Lane, the applicant may ask for the lots to be released. The issue of Woods Road would not be addressed.

S. Gibson-Quigley asked if there was anyone from the public wishing to speak.

- Ed Goodwin – asked if the Board had received a letter from the ConCom on this issue, which it had; noted that the through roadway, Woods Road, was unanimously denied twice; speaking as a resident he asked that the Board not grant an extension because he felt the applicant needed to take a “fresh” look at the subdivision and that the site planned for over development.

S. Gibson-Quigley read ConCom's letter dated 5-18-04 RE: Whittemore Woods (see attached.)

- Don Hastings, Fox Run – asked how the wooded parcel of land for the stormwater management basin within the subdivision would be affected by a vote to either grant or not grant the extension. T. Kenney, Fairview Park Road, noted on the plans the location of the parcel of concern to D. Hastings. S. Gibson-Quigley answered that Atty. Donahue stated if an extension was granted nothing would happen within the calendar year, the subdivision would be reviewed and possibly changed. If the Board denied the extension, W. Swiacki would develop the Turner Lane cul-de-sac. She added that if the Board granted the extension, it was not clear what would come back as the reevaluation of the subdivision. Atty. Donahue clarified that if the extension was granted no work would occur on the site for the remainder of the calendar year. The entire site would be evaluated for its options.
- Irene Lloyd, 78 Fairview Park Road – asked if the existing problems regarding the drainage system on Fox Run to Fairview Park Road would be addressed during the interim if the extension was granted. L. Adams recognized there had been two occasions where the drainage had failed and felt that this issue should be tied into the storm water management for Turner Lane if an extension were granted. There were no provisions to address the problem if the extension was denied and approved subdivision proceeded.
- Tom Kenney, Fairview Park Road – had two issues – 1) the original plan for this subdivision did not indicate specific connections between the drainage that flowed into the existing drainage areas on Fox Run and Fairview Park Road and 2) there was significant impact that had occurred to the existing storm water management.
- Windsor Chow, 7 Fox Run – asked the reason for the extension; was in favor of the extension because it would provide for a better plan.
- Tom Kenney – felt that the residents would be hurt from a drainage issue if the extension was not granted; felt it was smarter to do the work the right way and not the quick way.
- Ed Goodwin – felt the extension should not be granted; that the applicant should come back with a realistic plan showing less houses and open space that was not already protected wetlands; he was concerned with the 23 homes proposed for the slope and its impact on the water flow.

- Tom Kenney – had further discussion regarding conditioning the extension and other related scenarios
- S. Gibson-Quigley asked if the Board needed additional information. The members did not.

Motion: to close the public hearing, by D. Hill
2nd: M. Raphaelson
Discussion: None
Vote: All in favor

S. Gibson-Quigley asked for comments from L. Adams who stated the following –

- The drainage was a real problem.
- The developer had an approved subdivision irrespective of ConCom.
- Saw no obligation or need to adjust Turner Lane in any way.
- Any changes to Woods Road should be present under a new filing with administrative fees.
- Did not want the Board to approve an extension with conditions at this meeting
- Not confident that there would be a resolution on Woods Road, though he supported an extension

He made two recommendations - 1) disapprove the extension and live with the approved subdivision or 2) continue the discussion to June 22nd and he would draft conditions acceptable to all parties with the help of Atty. Donahue; Greg Morse, DPW Director and others and the Board could review and accept the conditions or drop the request for extension.

Motion: to continue discussion on conditions for the requested one year extension to June 8th, by D. Hill
2nd: D. Yadkulka
Discussion: None
Vote: All in favor

T. Kenney stepped onto the Board.

REQUEST FOR WITHDRAWAL WITHOUT PREJUDICE (from May 8th meeting)

S. Gibson-Quigley read David Brunell's letter dated 5-03-04 requesting to withdraw without prejudice the Brunell Energy application for Site Plan Review and resubmit under the name Pioneer Oil.

Motion: to accept the request for withdrawal without prejudice by David Brunell for Brunell Energy Site Plan Review, by M. Raphaelson
2nd: D. Hill
Discussion: None
Vote: All in favor

PUBLIC HEARING – PIONEER OIL –SITE PLAN REVIEW

S. Gibson-Quigley opened the public hearing at 8:35 PM and T. Kenney read the legal notice. Attorney Philip Leader, representing the proponent, stated this was an amended application (Brunell Oil) with improvements to emergency measures and that it complied with the recommendations of L. Adams and G. Morse.

Bob Seppi, project engineer, stated the following –

- The plans met state fire and building codes, federal regulations and local requirements
- The building would be located at the front of the property with the bulk plant to the rear of the property
- Reviewed the functions and safety features of the storage facility – it was noted that the entire site drained to the containment system if an oil spill should occur
- There was directive signage for truck traffic in and out of the site

- The plans for the building elevations had been previously approved by the Design Review Committee
- Lighting – loading area lit by a photo cell; other lights for the area operated by switch; loading pad always lit

Leonard Jalbert, Jalbert Engineering presented the following -

- Landscape plan reviewed by Tree Warden, Tom Chamberland, and Design Review Committee
- Drainage and snow storage – G. Morse’s concerns addressed 1) capacity of drainage facility enlarged (from 87,000 gallons to over 120,000 gallons); 2) basin elevated an additional four feet; and 3) 12,000 gallon runoff containment area. L. Jalbert submitted revised plans to the Board.
- Safety issues pertaining to public water supply – detailed hydraulic study submitted with plans

L. Adams commented on the submittal reflecting the revisions requested by him and G. Morse – 1) the detention basin slope was diminished and extended into the front yard setback (previously allowed); 2) the detention separator pipe was straightened and shortened for safety purposes.

S. Gibson-Quigley asked for comments or questions from the public –

- Tom Root, president Optim, Inc., 64 Technology Road – discussed his concern for Optim, Inc’s public water supply as dictated by the Department of Environment Protection (DEP) and considered the proposed Brunell Energy as a risk to the health of Optim’s employees, its public water supply and the value of its property. He made the following requests – 1) Optim, Inc. should be named as an additional insured on Brunell Energy’s insurance policy and 2) Brunell Energy should submit an OSHA and EPA compliant and air and water quality monitoring plan or as an alternative, the Town should consider supplying town water to Technology Park Road.

L. Adams noted that all companies with 20 or more employees are required to provide a safe water supply under acts of the DEP.

- Charlie Blanchard, 26 Farquhar Road – noted the Town’s experience with well contamination was with underground buried single well tanks and leakage that was so small over a period of time that it had not been detected. He pointed out that the storage of fuel for this proposal was entirely different.
- Bob Seppi – offered explanations for the concerns of T. Root relative to air and water quality
- Tom Root –his concerns were based on DEP information that the site had a high vulnerability to contamination due to location and the absence of hydrological barriers; he had an additional concern with the kerosene that was to be on the site.

S. Gibson-Quigley asked if G. Morse felt there was an extra issue not being addressed by Brunell Energy with respect to DEP. L. Adams responded that the proposed redesign met with G. Morse’s approval for these issues and that Pioneer Oil would have to meet the same standards as Optim, Inc. if it provided a public water supply to 20 or more employees. S. Gibson-Quigley commented that a proposal must meet the safety standards of the Board and other town departments thus protecting the abutters. L. Adams stated that the plans had been approved by the Fire Department, DPW and Conservation Commission. There was further discussion regarding the uniqueness of the proposal for oil storage and insurance issues.

- Dr. Robert Krupa, chemist and engineering manager at Optim, Inc. – concerned Optim would be shut down if anything happened to its water supply; noted clarifications to the flow of the ground water and the well head protection area per DEP; because of the size of Brunell Energy (# of employees) its water supply would not have to be monitored, therefore contamination would not be evident until it reached Optim’s water supply; concerned with the change to the containment facility. B. Seppi stated that the grading of the site would address the direction of the ground water flow.

Motion: to close the public hearing, by t. Kenney
2nd: D. Hill

Discussion: D. Yaskulka asked the amount of liability insurance (\$4,000,000) and the possibility for naming a third party to an insurance policy.

Vote: In favor – T. Kenney, D. Hill, S. Gibson-Quigley and D. Yaskulka
Abstain – M. Raphaelson

S. Gibson-Quigley asked if the Board wanted further discussion on issues or conditions it would like to impose. Conditions suggested by L. Adams –

1. Site Plan Approval be contingent upon the Attorney General's approval of the town meeting action to amend the bylaw.
2. The plans be amended to show the submittal of May 18, 2004 for the oil water separator and the redesign of the detention retention basin.
3. An AsBuilt and a Designer's Certificate be submitted to the Building Inspector before a certificate of occupancy be issued.

L. Adams was sensitive to T. Root's concerns for co-insurance, but felt it was not the purview of the Board under Site Plan Review. T. Kenney and D. Yaskulka had concerns with this issue. S. Gibson-Quigley reiterated this was not an issue for the Board. Its responsibility was to ensure that the site was engineered properly and she felt this had been done.

Motion: to approve the construction of a fuel storage and distribution facility at 63 Technology Park Road, Sturbridge with the above three conditions, by D. Hill

2nd: S. Gibson-Quigley

Discussion: None

Vote: In favor – T. Kenney, D. Hill, S. Gibson-Quigley and M. Raphaelson
Abstain – D. Yaskulka

The Board agreed to allow L. Adams to draft a decision for the Chair's signature.

PUBLIC HEARING – THE SANCTUARY SUBDIVISION –REQUEST FOR ADDITIONAL LOT RELEASES

S. Gibson-Quigley opened the public hearing at 9:30 PM and T. Kenney read the legal notice. L. Adams stated that condition #17 for subdivision approval of The Sanctuary allowed for no more than eight occupancy permits to be issued until the intersection improvement for Arnold Road were completed. The widening had been delayed and the developer was requesting additional lots releases. Presently five lots had been issued occupancy permits.

Thomas Moss made the request for relief from Condition #17 due to the amount of time that it has taken for the process of widening of Arnold Road. T. Moss asked to take the cost of the road widening, include it in the overall cost of completing the subdivision and tie it in with the surety that the Planning Board held for the completion of the subdivision. His letter dated 05-17-04, approved by G. Morse, stated the Board would hold for surety lots 5 and 6 for a value of \$148,000 and release lots 3, 4 and 7 for construction. A total of \$120,783 was needed for surety – the remaining work to the subdivision valued at \$85,143 and Arnold Road widening at \$35,640.

Though G. Morse and L. Adams supported the request, L. Adams expressed the following concerns –

- Condition #14 required the water booster station to be on line before lots were released – this had not yet been done. T. Moss said he was waiting for a meter from Massachusetts Electric.
- The legal instruments for the taking of the roadway had not been done.
- The commitment to build Hunter Lane – T. Moss said it had been built.

C. Blanchard questioned the amount indicated for the road widening. T. Moss noted the value of the two lots which the Board would hold for surety exceeded that value of work to be done by \$28,000, thus providing for any discrepancy in the road widening cost. C. Blanchard also questioned why the process was taking so long and

offered to have the Town Administrator contact Massachusetts Electric to expedite the project. The Board appreciated that offer.

S. Gibson-Quigley asked for further questions from the Board or the public. There were none.

Motion: to close the public hearing, by D. Hill
2nd: T. Kenney
Discussion: None
Vote: All in favor

Motion: to release lots 3, 4 and 7 and continue holding lots 5 and 6 as surety on The Sanctuary, by T. Kenney
2nd: D. Yaskulka
Discussion: None
Vote: All in favor

The Planning Board respectfully requested that the Town Administrator contact Massachusetts Electric to inquire on the cause of their delay. The Board agreed to have L. Adams draft an amendment to the subdivision for the Chair's signature.

S. Gibson-Quigley noted the Board's next meeting would be June 8th
Public hearings – Estates at Sturbridge Farms – Definitive Subdivision Approval
Sturbridge Veterinary Hospital – Site Plan Review

Followed by - June 22nd meeting

Motion: to adjourn, by D. Hill
2nd: D. Yaskulka
Discussion: None
Vote: All in favor

Adjournment at 9:55 PM