

STURBRIDGE ZONING BOARD OF APPEALS
MINUTES OF
Wednesday, June 29, 2005

Present: Mary Blanchard
Theophile Beaudry
Marge Cooney
Robert Cornoni
Pat Jeffries
Ginger Peabody, Chairman
Bruce Sutter

Also in Attendance Lawrence Adams, Town Planner
Nancy Campbell, Clerk
Scott Young, P.E., CME Associates, Inc.

G. Peabody opened the meeting at 7:00 PM and read the agenda. The minutes of June 22, 2005 were reviewed.

Motion: to approve the minutes of June 22, 2005, as presented, by M. Cooney
2nd: P. Jeffries

Discussion: M. Blanchard asked to be included on the vote for pages 3 (Misiaszek Determination forward) and 4 for these minutes. The Board agreed to include M. Blanchard's vote as requested.

Vote: Pages 1 to 3, as noted: In favor – B. Sutter, M. Cooney, G. Peabody, P. Jeffries, R. Cornoni and T. Beaudry

Abstain – M. Blanchard

Vote: Pages 3 and 4, as noted: All in favor

CORRESPONDENCE

James Malloy – dated 06-23-05 – RE: Email - Crescent Gate sewer fee

Attorney Robert E. George – dated 06-29-05 – RE: The Spaho Corporation request for reconsideration – N. Campbell noted that the meeting date referenced was July 27 and not July 29 as stated in the facsimile. The Board agreed to the July 27, 2005 date

Attorney Robert E. George – dated 06-29-05 – RE: The Spaho Corporation request for reconsideration outline
Mountain, Dearborn & Whiting LLP – dated 06-29-05 – RE: The Spaho Corporation vs. Zoning Board of Appeals appeal filing

Ginger Peabody – dated 06-23-05 – RE: Email - Phone Call

Kopelman & Paige – dated 06-29-05 – RE: Stoneleigh Woods Legal Frontage Opinion, by Jonathan D. Eichman

G. Peabody opened discussion on this correspondence and recognized Attorney Mark Donahue who made the following comments in response to J. Eichman's document –

- Sturbridge Planning Board had approved The Estates North Subdivision Plan;
- Before endorsement the developer needed to provide adequate security that the roadway would be constructed;
- The developer anticipated going back to the Planning Board for changes to the plan before requesting endorsement;
- The roadway must be constructed to constitute frontage;

- He suggested the Zoning Board condition its approval so that no building permit be issued until the plan was endorsed by the Planning Board;
- The present plan had not been recorded with the Worcester District Registry of Deeds – G. Peabody felt the Board could not condition an approval based on a plan that would be submitted to the Planning Board for changes. She was not comfortable proceeding with a plan that had not been recorded and asked for input from L. Adams.

L. Adams commented that the subdivision had been approved, but had not been endorsed or registered. He agreed that the plan did not have legal standing. He agreed with Attorney Donahue that there were four ways to post surety for the plan. However, surety must be for an approved plan and not a future plan. It was his opinion that the subdivision needed to go back to the Planning Board for an amendment through a public hearing process and as G. Peabody noted, this had not been done. He added that J. Eichman’s brief stated the frontage for the project, as defined, did not constitute legal frontage. He felt it was the intent of the plan to show legal frontage, but at this moment legal frontage did not exist and that there were other remedies.

M. Cooney commented that the Board had questioned the legal frontage for the project from the beginning of the process. She did not see the legal frontage at this point. She agreed with G. Peabody that the Board could not make an approval based on what the Planning Board may do with the plan. She asked what remedies were available.

Attorney Donahue said a remedy would be to take the existing subdivision plan to the Planning Board for endorsement, provide an acceptable form of surety and then come back to the Board for amendments. He felt the Board should be looking to see if the plan was the appropriate use of the land. B. Sutter felt it would be a backwards process to grant a special permit since the Planning Board had not endorsed the plan and the frontage was not legal.

Attorney Donahue offered explanation to the changes the developer would seek from the Planning Board if the special permit were granted –

1. A technical issue – the grade of the cul-de-sac would change;
2. Not to pave around the entire area of the cul-de-sac, but create a driveway; and
3. Change the property line at the intersection.

The Board discussed its concerns for maintaining the legal frontage for the project should the developer not pave the cul-de-sac since it was the cul-de-sac that originally created the legal frontage. Attorney Donahue stated that from a legal view point eliminating the cul-de-sac did not take away the project’s legal frontage because the cul-de-sac line was a matter of law and frontage still existed without pavement. He added that the developer was prepared to construct the cul-de-sac shown on the plan, but felt it was a better design to allow a through road. If the Board chose, under its Multiple Dwelling Project Bylaw, it could require a bond for surety for the construction of the roadway as a condition of approval, independent of the Planning Board. M. Blanchard asked L. Adams if this was the only remedy available to the Board. L. Adams suggested possible remedies were: 1) the commercial lot could be purchased and made part of the project to provide frontage on Hall Road; 2) a variance was a remote possibility or 3) the Planning Board could waive some regulations under the Subdivision Control Law. His concern was that the design of the plan might change after the surety was provided. He stated the Board needed to know what it was approving for construction. G. Peabody asked for comments from any Planning Board members in attendance.

- Jennifer Morrison, 10 Williams Road – Planning Board member – offered that the Planning Board was uncomfortable with the evolution of the project; that the current design was good; that there was a

significant issue with the frontage and the cul-de-sac and whether it existed legally and in a constructive form; was unclear how the line of demarcation on the cul-de-sac created frontage as cited by Attorney Donahue when Attorney Eichman cited that the frontage did not exist until the cul-de-sac was built or surety for the built condition existed. If surety of the built conditions did not include the paving of the cul-de-sac, she did not understand how the line of demarcation around the cul-de-sac could be used as frontage.

Attorney Donahue agreed to pave the cul-de-sac exactly as designed if the Board was concerned with changes. He felt there would be a delay if the Board required the plan to be registered and would prefer that the Board make it a condition of approval that work not be done on the project until the Board was satisfied with the recording process. M. Cooney agreed that in theory the plan was good, but felt it was overpowering and more land should be purchased. She also took issue that the plan was not registered. M. Blanchard understood that Town Counsel had issues relative to the legal frontage and the surety for the roadway, but noted that it had not mentioned the fact that the plan was not recorded. She felt this was a good project and did not want to see it “shut down”. G. Peabody responded that her concern with the plan being recorded developed from Attorney Donahue’s opening comments. R. Cornoni felt there were procedural issues that the Board needed to address; questioned the deadline date and stated that the alignment with the opposite road was a main issue for him.

- Carol Goodwin – had spoken with an attorney who interpreted the project as “piggy backing on another plan” which was not allowed because- 1) the subdivision was not going to be built and 2) the project’s frontage was from a subdivision which had not been registered; felt this could be a precedent for future multiple dwelling projects; and that there were other options to remedy the problems. P. Jeffries noted that there were no precedents with a Zoning Board of Appeals. M. Blanchard noted legal comments for the Board’s consideration needed to be in writing from Town Counsel or counsel from the applicant.

P. Jeffries did not have issues with the frontage if the cul-de-sac was constructed or a bond was in place.

Waterman Design Associates, Inc. – dated 06-27-05 – RE: Response to CME Associates, Inc. comments of June 6, 2005 – Scott Young reviewed this correspondence and highlighted issues of importance for the Board.

Item # 1 – Sewer – *could be remedied with appropriate condition:*

Item # 2 – Water pressure – *Could be remedied with appropriate bonding or; no building permitted past gas lines unless adequate flow and pressure could be proven to G. Morse:*

M. Cooney asked if the water pressure would be “maxed” out with this project. S. Young stated the Board would have to use the applicant’s data from the test report to make that determination. G. Peabody noted that the DPW Director had concerns as to the accuracy of this report and noted that the Board could add a condition that a pump be provided if the pressure was not adequate.

Item # 3 – Easement deed – *Addressed;*

Item # 4 – Roadway alignment – *Addressed and a change would be taken up by Planning Board.* R. Cornoni flagged this as a major safety issue and asked if the applicant approached the abutters requesting to purchase additional land. Attorney Donahue submitted a letter from the Fantoroni’s (Comfort Inn), which stated they would not be interested in selling land to the applicant. G. Peabody felt the roadway alignment was not a major safety issue, but an issue of personal responsibility. M. Blanchard concurred.

Item # 5 – Phasing schedule – *Presented*

Item # 6 – OFS Fitel drainage – *Notes should be provided on final plan to ensure the flow of water continued along the stonewall as indicated by the applicant’s engineers; possibly get an easement from OFS Fitel; Additional comments - OFS Fitel requested that the stonewalls not be removed and that there be no trails on their property.*

Item # 7 – Engineering detail – *Complied*
Item # 8 – Engineering detail – *Complied*
Item # 9 – Engineering detail – *Complied*
Item #10 – Engineering detail – *Complied*
Item #11 – Engineering detail – *Complied*
Item #12 – Engineering detail – *Assure that pipes be sized properly*
Item #13 – Engineering detail – *Complied*
Item #14 – Engineering detail – *Complied*
Item #15 – Engineering detail – *Complied*
Item #16 – Engineering detail – *Presently on the plans*
Item #17 – Survey update – *Plans shall be updated*
Item #18 – Engineering detail – *Complied*
Item #19 – Wetlands flags – *Plans shall be updated*
Item #20 – Units 68 thru 71 drainage – *Information purpose*
Item #21 – Engineering detail – *Some details had changed; OFS Fitel was aware of this and did not have a concern;*
Item #22 – Building height – *Complied*
Item #23 – G. Morse memo – *Discussed*
Item #24 – A. Curboy letter – *Discussed*
Item #25 – Engineering detail – *Complied*
Item #26 – Lighting plan – *To be accurately revised on the plans*
Item #27 – Exxon Mobil easement – *Letter dated 10-19-04 provided*
Item #28 – Exxon Mobil crossings – *Details to be revised on the plans*
Item #29 – “Elderly” definition – *Revised in Town Bylaws*
Item #30 – Age limit restriction – *Will comply*
Item #31 thru 40 – Bylaw issues – *Complied*

G. Peabody asked for questions from the Board –

- Address age restriction for residents 55 years of age or older – Board would prepare the appropriate language within its decision;
- Readdress the roadway issue – conclusions had been drawn from the police report. R. Cornoni was still concerned with this issue and quoted Sgt. Alan Curboy’s letter, “I am, in my professional opinion as a law enforcement officer with 21 years experiences in conducting crash investigations, opposed to this layout.” M. Cooney agreed with R. Cornoni. G. Peabody noted that at a work session it was suggested that the intersection might be improved if the entrance was properly lighted. T. Beaudry commented that most traffic entered and exited via Route 20 as opposed to Hall Road and therefore he did not see the intersection as a major issue. P. Jeffries had visited the site and felt that the Wendy’s entrance/exit drew more traffic than the intersection at the Comfort Inn. G. Peabody questioned if Sgt. Curboy’s concern was more with local traffic using this intersection as a cut through.

G. Peabody summarized the project issues as follows:

- Legal frontage;
- Drainage easement for OFS Fitel - Attorney Donahue felt the easement was not necessary and this would take considerable time to obtain. G. Peabody asked that the applicant get a letter from Bob Roach or Bud Mastalerz, of OFS Fitel, agreeing that they were satisfied with the arrangements relative to drainage provided by the applicant for the OFS Fitel side of the project;
- Survey update – had been provided to the Board;
- Gas line sleeved – had been agreed to by the applicant; and

- Sewer capacity – G. Peabody asked if OFS Fitel’s request for 42,000 gallons of sewer had been approved. Arnold Wilson, Board of Selectmen, Chair, stated there had been no vote by the Board of Selectmen. M. Blanchard noted that the sewer permit had been contingent on a pump upgrade should problems arise. G. Peabody felt this issue had been satisfied.

G. Peabody outlined suggestions for conditions should a special permit be granted –

- 1) The project would be restricted so no other roadway would be constructed off the access driveway. This would be a stand alone project with no roadways off the cul-de-sacs.
- 2) Bonding should be secured for the design and construction of a pump station at Hall Road in the event that necessary flows and/or pressures were not obtained after the completion of the project’s first two phases or that the third phase should not be constructed if these flows and/or pressures were inadequate.
- 3) An easement from Exxon Mobil granting permission for the proposed walking trails to cross the gas line should be provided;
- 4) There be a restriction limiting the age of the residents; and
- 5) Open space would be permanently protected with the Zoning Board of Appeals setting the restrictions and not the condominium association.

M. Cooney agreed and added that the plans and all issues needed to be reviewed thoroughly. She referenced Attorney Donahue’s letter of 06-23-05 –

- Item #29 regarding the age restriction of 55 years of age versus 60 years of age. She wanted clarification that the wording of “...so as to restrict occupation...” should read “...so as to restrict occupancy...”
- Item #30 regarding deeds – attachments did not come through to the Board.
- Jennifer Morrison – asked if a project was allowed to cross the lots lines of a subdivision. L. Adams stated that if there was an approved, endorsed and registered subdivision any changes in the subdivision could be done through an Approvals Not Required (ANR) process. It was his interpretation that the lot lines needed to be registered before the project could precede. Attorney Donahue agreed.

The Board continued to discuss the issue of legal frontage for the project. Members saw no issues if the cul-de-sac was paved, though it saw no benefit to do so. Robert Havasy, of Blue and Gold Development, offered that he was prepared to construct the cul-de-sac, but agreed with the Board that “asphalt isn’t pretty” and noted that the present plan evolved from an aesthetic perspective. M. Cooney reiterated that all roads and access should remain within the project and should not extend beyond the project in perpetuity. The Board agreed that it needed more time to review all the information since it had just received the Waterman Design response to CME comments. L. Adams suggested that the Board did not need to address the issue of legal frontage, but could defer it to the Planning Board. G. Peabody did not feel comfortable basing a special permit on having the Planning Board determine if there was legal frontage for the project. She felt it was the Zoning Board of Appeals’ issue. Attorney Donahue stated the applicant would pave the cul-de-sac if the Board agreed this would constitute legal frontage for the project.

The Board felt the public hearing should remain open. L. Adams reminded the Board it had requested a calendar timeframe for the project. R. Cornoni was concerned about the condominium fees being high for early homebuyers if the buildout of the project took too long. L. Adams said the project timeframe could be capped and noted that “pulling” a permit constituted commencement.

G. Peabody asked for comments or questions from the public.

- Elizabeth Sheldon, Fiske Hill Road – concerned with the parking area proposed for the Fiske Hill location and the strangers that it would bring into the neighborhood; that the site would become a teenage drinking area and asked if the Board had obtained any impact statement from the police relative

to their concerns for policing the area. G. Peabody stated that the Board had not obtained such a report; that boulders could be placed at the beginning of the walking trail to prevent cars from entering and Board members recalled not supporting the idea of a parking area at that location.

There were no other comments. G. Peabody recessed the public hearing at 8:56 PM to allow Attorney Donahue a moment with the applicant.

REQUEST FOR DETERMINATION (Cont.) – 06-22-05-1D – MISIASZEK, JOSEPH & WILLIAM, 4 CORMACK ROAD

Joseph Misiaszek presented the updated request for determination for property located at 4 Cormack Road. This request was to permit the construction of a five foot by eight foot laundry room under an existing roof. The lot was nonconforming in that it lacked sufficient area and frontage and the structure was nonconforming in that it encroached into the street setback. M. Blanchard noted that there was a slight increase in the lot coverage. M. Cooney was satisfied with the request commenting that she was now aware of the overhang on the existing dwelling. G. Peabody added that the Building Inspector clarified that an overhang determined the footprint of the dwelling. Therefore, for the purpose of this application there was not an increase in the footprint and no new nonconformities were being created. M. Cooney concurred.

Motion: to grant a determination to Joseph and William Misiaszek since the request did not intensify or create any new nonconformities and that the owner may apply for a building permit for 4 Cormack Road as per the application, drawing #05031A, rev. #2, dated 06-23-05, by P. Jeffries

2nd: M. Blanchard

Discussion: None

Vote: All in favor

The Board reconvened the Blue and Gold Development public hearing at 9:01 PM.

On behalf of Blue and Gold Development, Attorney Donahue requested that the Board grant an extension of the statutory deadline through and including July 29, 2005 and asked that a work session be allowed to bring together as much resolution as possible for the meeting of July 27th. Attorney Donahue submitted the request to the Board in writing. S. Young asked if the Board would be receiving revised plans for the technical issue discussed. L. Adams recommended that the plans be amended rather than condition the approval. M. Cooney preferred to see the changes made on the revised plans. Attorney Donahue stated there would be a good faith effort to submit revised plans to the Board prior to the July 27th meeting. He added that all changes would be reflected on the plan prior to application for Site Plan Review. L. Adams added that the Zoning Board of Appeals should have the right to review the plans and comment on them to the Planning Board. Attorney Donahue agreed to this statement.

Motion: to continue the public hearing for Blue and Gold Development Stoneleigh Woods special permit to July 27, 2005 at 7:05 PM and accept the applicant's request to extend the deadline through and including July 29, 2005, by M. Blanchard

2nd: P. Jeffries

Discussion: None

Vote: All in favor

OLD BUSINESS

SPL Development Group, Crescent Gate of Sturbridge – Water and Sewer Fees – G. Peabody referenced J. Malloy’s 06-23-05 email which stated that under the Town’s fee structure SPL Development was responsible for an additional \$1,200 per unit (including condominiums) fee or approximately \$80,000. G. Peabody recalled that when conditioning it approval, M. Blanchard had been running calculations for water and sewer fees when it was suggested that instead of setting the fee per unit, the full price of the water and sewer fee would be a determined cost. M. Blanchard stated that J. Malloy was referring to the sewer tie in fee and the Board had addressed only sewer privilege fees. G. Peabody noted that when she and M. Blanchard went before the Board of Selectmen (BOS) for endorsement of the sewer fee there had been no mention of the tie in fee. P. Jeffries stated she had not been aware there were two different fees. She was confused because it had not been explained to the Board that there were these different fees. It was her opinion that the Board should honor the fee that had been approved. M. Cooney stated the proponent had acted in good faith, the *pro forma* had indicated his margin of profit which under 40B was limited and felt the Board should not pursue additional money. G. Peabody noted that the Board did not have to have BOS approval to waive this additional fee, but as a courtesy she would inform the BOS of the Board’s decision. If the Board voted to waive the \$80,000 +/- fee it could address the issue with a Certificate of Action.

L. Adams offered that a 40B project hinged on its economic viability and all the costs within the project were demonstrated in its *pro forma*. He felt the developer should not be penalized because he had not been informed of a cost that should have been reflected on his *pro forma*. He added that J. Malloy had addressed the Board at length about the costs for the project and that this fee had not been mentioned. Since the project had been approved with a very small profit margin, he felt a Certificate of Action could clarify the issue and cautioned the Board that adding additional costs could be grounds for appeal at the state level. He felt \$85,000 was an approximate significant sum given the profit margin. M. Cooney recalled that the margin of profit for the project came in at 11% where 15% (this figure should read 20%) was allowed. M. Blanchard pointed out that the villa building should have one tie in fee and therefore questioned the \$85,000 fee.

Motion: to waive the additional sewer fee for SPL Development’s Crescent Gate at Sturbridge and file a Certificate of Action, by P. Jeffries
2nd: M. Cooney
Discussion: None
Vote: All in favor

The Board agreed to inform the BOS in writing of its decision and if necessary, P. Jeffries suggested appearing in person at a BOS meeting. The amendment should note that the Board endorsed the original amount and that it was all inclusive.

OLD BUSINESS

None

Motion: to adjourn, by M. Blanchard
2nd: P. Jeffries
Discussion: None
Vote: All in favor

Adjournment at 9:19 PM