

SEEKONK PLANNING BOARD

Public Hearing - Regular Meeting

December 10, 2013

Present: Ch. Abelson, R. Bennett, M. Bourque, S. Foulkes, D. Viera
J. Hansen, Town Planner
Absent: R. Horsman (with cause), L. Dunn (with cause)

6:48PM R. Bennett opened the meeting

R. Bennett Vice Chairman read the Chairman's Declaration:

As Planning Vice Chairman, I hereby declare, under G. L. c30A, 21(b) (3) and (4), that: the purpose of the scheduled executive session will be to discuss litigation strategy relating to litigation known as Palmer River Development Co., LLC v. Neal H. Abelson, et al., Land Court 2013 MISC 480210-RBF, which concerns Jacob Hill Estates Subdivision and 16.9 acres of land located at 0 Taunton Ave: A discussion of litigation strategy in open session could compromise the purpose for executive session; and the Planning Board shall return to open session at the conclusion of executive session.

A motion was made by D. Viera and seconded by M. Bourque and unanimously

VOTED by roll call vote: Ch. Abelson, M. Bourque, L. Dunn, R. Bennett, S. Foulkes & D. Viera: that the Planning Board go into executive session, under G. L. c30A, 21(b) (3) and (4), that: the purpose of the scheduled executive session will be to discuss litigation strategy relating to litigation known as Palmer River Development Co., LLC v. Neal H. Abelson, et al., Land Court 2013 MISC 480210-RBF, which concerns Jacob Hill Estates Subdivision and 16.9 acres of land located at 0 Taunton Ave: A discussion of litigation strategy in open session could compromise the purpose for executive session; and the Planning Board shall return to open session at the conclusion of executive session.

The Planning Board returned to open session at 7:05PM

Public Hearing – Definitive Subdivision: Jacob Hill Estates – Applicant
Palmer River Development

Ch. Abelson opened the public hearing and read the order of business

A motion was made by D. Viera seconded by R. Bennett to waive the reading of the legal notice

Introduction of the Board members, Town Planner and Town Counsel Atty. Ilana Quirk

J. Hansen read into the record a summary of the memos from the Fire Chief, Police Chief and the DPW Superintendent concerning the Jacob Hill Estates revised plans.

The Fire Chief said the roadway width of 22' was not what would be most desirable but they would be able to function appropriately. He also liked that sidewalks were incorporated into the revised plans and said that Jacob Street access would be preferred over Taunton Ave. access.

The Police Chief said he appreciated the plan to clear brush to facilitate the line of sight for motorists exiting onto Jacob St. He also said he did not believe exiting on to Taunton Ave. would be a safe choice compared to an intersection with Jacob St. He noted that on Jacob St. the allowable speed limit was much less than on Taunton Ave. He also said sidewalks would be a benefit to pedestrians and the rigid curbs would define the roadway for motorists.

The DPW Superintendent said the increased road width of 2' and the addition of a 4' sidewalk would significantly improve the safety for both vehicles and pedestrians. He noted the added road width would resolve issues with snow plowing. He also said he opposed an entrance on to Taunton Ave. saying it would be extremely dangerous due to the average speed of vehicles on Rt. 44. (Taunton Ave.) and limited sight distance.

Christian Farland from Thompson Farland requested to delay their hearing as applicant M. Antonio was held up in traffic.

A motion was made by M. Bourque and seconded by R. Bennett and unanimously VOTED: to adjourn the Public Hearing until 7:30PM

Partial Covenant Release: Three Ledges

J. Hansen summarized that the applicant for Three Ledges requested a partial covenant release. The remaining work, a top-course of asphalt, street trees and final site prep work, was valued at ±\$118K.

The method of surety proposed by the developer was to leave a covenant on lot 14 and release the covenant from lots 1-8 & 13. Based on the average purchase price of other lots this year within this subdivision (\$175K), a covenant for 1 lot appears to be adequate to cover the remaining construction costs. He recommended releasing the covenant on lots 1-8 & 13 for Three Ledges.

A motion was made by R. Bennett and seconded by M. Bourque (Discussion)

Atty. Quirk explained to the PB that she was not there for this agenda item but summarized that the subdivision control law provides in Chapter 41 sec 81U paragraph 7 that there are only 4 methods of surety that the PB can accept. One: covenants which are the lots that are to be built upon until all the inspections are done. Two: cash. Three: a surety bond Four: a tri- party agreement in which a bank takes a first mortgage against the property.

She noted that the PB in releasing lots from covenant not to build was technically not correct because when you have the covenant on a lot that just means it won't be built upon but if you have already released other lots that are going to be built on you need separate money based surety to make sure that infrastructure is done.

D. Viera noted that the PB had been told repeatedly that it is the developer's choice.

Atty. Quirk explained that it is the developer's choice to pick one of the four methods or a combination of methods however, if the only method of surety is a covenant not to build on one or more of the lots that does not provide any surety for the infrastructure for the other lots that have been released. She summarized that the PB needs proper surety and it is up to the developer to use one or a combination of the 4 methods, but if the only surety you have is a covenant on one lot and it is not going to be built, the only surety you have is that it is not built upon. You won't have the money based surety in the event of a default.

D. Viera asked how do we stop that from happening.

Atty. Quirk said in her opinion the PB needed to put that in their regulations and said she could work with the Town Planner to do that.

J. Hansen said that there was \$118K worth of work that needed to be done and no money on the subdivision.

Ch. Abelson said because of past practices and he did not want to single this developer out without changing the regulations.

Atty. Quirk said that some PBs take the view that if there is a highly valuable lot or several highly valuable lots that would be enough surety in their minds.

A motion was made by D. Viera seconded by R. Bennett and unanimously

VOTED: to have the developer put up \$118,000 in one of the 4 methods of surety as outlined in the subdivision control bylaws Chapter 41 Section 81U with a memo from the PB to explain this new practice.

A motion was made by M. Bourque seconded by R. Bennett and unanimously

VOTED: to reopen the Public Hearing for Jacob Hill Estates.

Public Hearing – Definitive Subdivision: Jacob Hill Estates – Applicant
Palmer River Development

Matthew Antonio introduced himself as owner and a partner of Palmer River Development Company. He also introduced his partner Phil Ippolitto and principle engineer Christian Farland

of Thompson Farland. He summarized the revised plans saying it was an 11 lot conservation subdivision and the affordable housing program. He said in response to the PB concerns at the previous meeting they made major changes to the safety features in the layout of the subdivision and the roadway.

He went over the concerns over the protection of the Linden trees and the court case with Mr. J. Wright. He said the court determined that a plan could be developed and a buffer zone needed to be in place to protect the trees and should be there during the construction of the roadway. He said they offered to the court their least invasive plan which was a 12' buffer from the property line where no construction would take place but, they also told the court they would make an effort with the town to first obtain a 13.5' buffer zone which would require asking for waivers that they may or may not get. The court agreed on that plan of action. At the November PB meeting the plan was not approved with the 13.5' tree protecting buffer zone. M. Antonio said that was why they were back in front of them with major changes to the roadway. He said he had copies for the PB of the court order documentation for the 12' foot buffer zone.

He went on to say the new road width was 22' and they added a sidewalk the entire length of the roadway. He said the engineering firm took special attention to the storm water calculations and they are in accordance with all the state and town's requirements. He noted that the development requires zero additional run-off from the property which means the amount of run-off cannot increase post development. He said he was confident that it will improve the storm water runoff. He said the town hired a peer review engineer to look at Thompson Farland plan and they concluded it complied with all the guidelines required by the PB.

Christian Farland of Thompson Farland Professional Engineer introduced himself. He said the biggest change was the 22' width roadway with 4' sidewalks. He went on to say the storm water calculations were revised and the peer review engineers agreed that they meet town and state regulations. They did receive approval from the Conservation Commission. He asked if anyone had specific questions on the engineering.

D. Viera asked about the easements and basin locations.

C. Farland said the basins are located on several lots and easements are provided and the maintenance of them would be part of the home owner's association plan.

D. Viera asked what would be the recourse if the basins were not taken care of.

C. Farland said the town might have to take care of them.

D. Viera noted that was not fair to the town.

C. Farland said the maintenance requires the lawn to be mowed once a year and said these are in people's backyards and it is in their best interest to maintain them.

M. Antonio said it is not just one homeowner's responsibility it is all the homeowners within the association to take care of them.

Atty. Quirk said the homeowners would have an easement interest to trust that the town would have the right, in an emergency, to go in and do the work and have the ability to lien the homeowners association if need be. She said it would depend on how the agreement was written.

D. Viera said we should have this spelled out in the deed in the event that these basins are not taken care so the town would have the right, not the obligation, to put a lien on the homeowners in order to do the work.

M. Antonio noted that part of the subdivision approval if granted would be to let the PB have a final review of the homeowner's association paperwork. He also talked about the objection by S. Foulkes about the waiver request for the storm water management systems to be on people's land rather than on open space. He explained that it was designed for optimal storm water management and if they put it in the open space it would not be optimal for the subdivision and it would not affectively manage the storm water.

S. Foulkes said a lien is a long term consequence so if a person is not taking care of the basins what would be the recourse for the town

Ch. Abelson said it would be the entire homeowner's association's obligation.

D. Viera asked about security around the detention ponds.

C. Farland said there is a split rail fence around the entire storm water facility.

D. Viera wondered if a spilt rail fence was enough security.

M. Antonio said if the spilt rail fence was a problem for the PB they would entertain looking at a different type of fence, like a black chain link fence.

M. Bourque asked if the fencing would just go around the detention ponds and not around the entire property.

M. Antonio said that chain link fencing could go around the detention ponds and a split rail fence could go around the open space.

Ch. Abelson asked if there were any opponents or questions.

L. Walsh 150 Hope St. said she did not live on Jacob St. but was familiar with the water flow and the icing that goes across Jacob St. She was particularly concerned about the lot with the lower most drainage system. She also said she did not understand why they were not using the curb cut on to Taunton Ave. She disagreed with any of the previous reports about the curb cut on to Rt. 44. She said she has been on the property and thought all they would have to do is trim the grass by the telephone pole. She said there is better vision there than on Lincoln St.

M. Antonio said the property was used as a restaurant over 30 years ago and there is a significant amount of impervious material on the property. He said when they did the perc holes they had to scrape away loam and there was a parking lot and old portions of a building there. He noted that when the restaurant and pavement were built it was done during a time when storm water management was not part of the permitting process creating an enormous amount of impervious material. He said right now when the water hits it has no place to go but run down the slope of the land. He went on to say that they calculated the storm water as if it were pervious material so it will be a substantial improvement given that they are going to remove a parking lot. He also noted that because of the steep slope the water just runs but once they create a road the water will hit the road and run into the collection areas and the water will be managed properly through the infiltration areas that are designed to capture the water and prevent it from going out onto Jacob St.

C. Farland noted the Town's peer engineer reviewed what they proposed and agreed with it.

J. Wright 91 Jacob Street said, at one point before they started clearing the land there used to be a lot of trees and brush and these absorbed a lot of water. He also said that along the roadway the roots of the Linden trees measured out to 28' and said they absorbed a lot of water. He said they will have to trim the trees which will make them look lopsided. He said the retention ponds in the backs of the houses, the home owners would probably mow them and take care of them. He said what happens is people decide to put things in these area and he thinks this need to be prevented from happening.

D. Viera said the PB will do everything they can to prevent that.

R. McLintock Oakhill Ave. said he was concerned about the homeowners association taking over once the building is completed. He said everything needs to be in those documents otherwise the homeowners association can't do anything. He also added that the Jacobs Hill area in Seekonk is very unique and he had problems envisioning the development there.

M. Antonio responded to Mr. Wright's and Mr. McLintock's concerns and said the lawns will soak up a lot of water and he had the Linden Trees looked at by an arborist and it was determined that the trees were not getting a lot of water because the earth was so hard there. He went on to say that he agreed to having the PB approve the homeowner's association documents before going forward and in those documents they could restrict people from doing certain things in their backyards.

Dora Trulong 361 Jacob Street asked if there would be any blasting because she believed there was a lot of ledge there.

C. Farland said they have not encountered any ledge after 60 test holes and said he could guarantee that there is no ledge there.

George Shaw 71 Jacob Street said he gets some water in his basement now and asked if he gets more water in his basement as a result of the subdivision who would he go to get it fixed and who would to pay for it.

Atty. Ilana Quirk said the PB was not able to provide him with legal advice but he did have the ability to give an engineering base line of his property and where it is now. She said some people put in test wells to show current conditions then they have the ability to show there is an increase of water after the fact.

Joan Webb 130 Jacob Street said she was concerned about the safety of the people on the street especially runners, walkers and bikers. She said she was not convinced even after what the Fire, Police and DPW had to say about going out on to Jacob Street. She asked Ch. Abelson to respond.

Ch. Abelson said the PB takes seriously the comments from town officials about the safety of the entrance into the subdivision.

L. Walsh said there was an existing curb cut.

Ch. Abelson said not for a subdivision

J. Hansen said that any time someone changes the use of a curb cut they need to go to DOT for an application to do that.

L. Walsh asked if J. Hansen had a document from the DOT that states that the curb cut can't be used.

J. Hansen said no, he was just explaining the rules that a change of use requires.

Ch. Abelson said they would have to go back to DOT to get the curb cut.

L. Walsh said she was concerned about broad blanket references and making comparisons about houses on both sides of RT 44. She said the PB should be careful not to make parallels when explaining when they don't have clear cut evidence.

Atty. D. MacManus Arcade Ave said no one has asked for a curb cut so no one knows if they could or could not get one. He also said if a developer meets the regulations you have to approve. When they don't then you go from no discretion to complete discretion. He said any of the regulations and waivers they are asking for tonight are grounds for a legitimate defensible denial of the application and the PB has the discretion to do what they think is right. He said there is a petition with 66 signatures asking the PB to turn the application down. He said the people are not saying don't build on the hill they are saying just don't access it on Jacob St.

Atty. Quirk said in the event that there are waiver's sought and there is not full compliance to every rule and regulation there is a requirement that the PB grant those waivers and in the event they exercise their right not to then the proposal can be denied. She said there is one caveat and that is, in the event that the PB has in the past a pattern or practice of granting waivers of a particular kind routinely, then the PB has to consider it is as de-facto through its prior history, essentially amending its regulations.

M. Antonio said he had a high respect for the people in the neighborhood. He said when he read the bylaws he saw that the chief concern of the PB was public safety. He said he could not fathom why people would think that access off of RT44 (Taunton Ave.) would be more appropriate in the name of public safety than access off Jacob St. He said they had traffic numbers from DPW that traffic on Jacob St. is around 1,300 vehicles per day and traffic on Taunton Ave. is 13,000 vehicles per day.

Bill Harley 401 Jacob Street said it was a question of where was their forum. He said he had respect for the PB and the developer in trying to do the right thing. He said if it comes down to public safety knowing that the neighborhood does not want this does not count and he said they had no forum for that. He said he found out that there was an uncertified vernal pool on this land and it was filled in. He brought that up because he wants the subdivision to be done responsibly because he cares about where he lives.

Mark Blaise Lincoln St. said the entrance on to RT 44 hadn't been explored very well. It was implied that it couldn't be done.

C. Farland said he wondered if it was the PB's concern if it was safer to have a curb cut onto RT 44 versus Jacob St.

S. Foulkes said for her, yes.

M. Bourque said it was less dangerous to go out on to Jacob St.

S. Foulkes said she did not see how it is less safe to go out on to RT 44 now than when it was a restaurant.

J. Hansen made a point that one needs to think about the amount of traffic on RT 44 50 years ago versus the amount today.

S. Foulkes said she understood but she was thinking about the trees.

M. Bourque said you have three department heads and they all said in their professional opinion it should go out on to Jacob St., that is the safer option.

E. Reszek 120 Jacob St. said she was concerned about safety and she suggested having two curb cuts splitting the traffic up. She also asked about how deep the basins would be and where the water would go. She also asked about what type of septic systems would be going in. She commented that the catch basins might be a breeding ground for mosquitoes.

M. Antonio said in reference to the vernal pool, they hired a wetland biologist from Eco-Solutions to flag all the wetland areas, also the conservation agent went out and looked and marked the wetland areas. He said there was nothing about a vernal pool in any of their reports. He also said concerning doing an evaluation and feasibility study for the curb cut on to Rt. 44 he

said they have spent time and money on the plan in front of the PB and were not interested in doing a feasibility study at this point.

C. Farland said that storm water regulations require the water to drain within 48 hours so that helps with the breeding of the mosquitoes. He also said there would be no mounding with the septic systems.

Ch. Abelson asked the PB for their comments or if they wanted to continue the meeting.

D. Viera summarized the issue of road width for the fire trucks.

M. Antonio said in the memo from the Fire Chief he was okay with the 22' width road.

Ch. Abelson said he would rather see the 22' road with a sidewalk but said if the PB doesn't want that then go with a 24' width road.

S. Foulkes asked why they could not have both.

J. Hansen said because of the 12' buffer for the trees. He went on to say that all the waivers being asked for fall into two categories, 1) necessary if you want to keep the 12' buffer. 2) they were granted in the past.

R. Bennett said he would rather have a sidewalk.

C. Farland said the fire trucks would most likely not stop where the trees are so in that area they could technically increase the roadway from 22' to 24' and have the sidewalks where the lots are.

M. Antonio said that from lot 6 forward they could increase the roadway width to 24' and that would give the fire dept. the maximum amount of room. He said they would accept that as a stipulation pending final review.

S. Foulkes said she would like to know from DOT if they could have a curb cut out to RT44.

Atty. Quirk said the PB can only act on the plan in front of them tonight.

D. Viera said we will have stipulations to the homeowners association and widening the road in front of the houses.

Atty. Quirk said the PB can close the meeting tonight and make a decision at a later date or not close the public hearing and have a draft of the decision prepared.

M. Antonio said their preference would be to close the public hearing and work with Town Counsel with the language of the home owner association document.

Atty. Quirk said that they were here tonight on a remand and one of the requirements of the court is that the PB considers the evidence from the first public hearing and PB members state that for the record.

All PB members present acknowledged aye for the record.

A motion was made by D. Viera and seconded by S. Foulkes and it was

VOTED: to continue the Public Hearing until Jan 14, 2014 at 7:00 PM

Aye: D. Viera, S. Foulkes

Nay: Ch. Abelson, M. Bourque, R. Bennett

Motion does not pass

A motion was made by R. Bennett second by M. Bourque to close the public hearing and at the 1/14/14 meeting deliberate the draft decision.

VOTE:

Aye: Ch. Abelson, M. Bourque, R. Bennett

Nay: D. Viera, S. Foulkes

Motion passes

Public Hearing –

Definitive Subdivision: Summer Meadows – Trebor Properties, LLC

Ch. Abelson opened the public hearing continued from 11/12/13 at 9:45PM and read the order of business

A motion was made by M. Bourque seconded by R. Bennett to waive the reading of the legal notice

Introduction of the Board members and Town Planner

J. Hansen read the memo from the Fire Chief into the record regarding the water storage tanks saying the Fire Department was not in favor of subsurface water storage tanks because of the potential liability and favored individual residential sprinkler systems.

P. Carlson from Insite Engineering representing the applicant Trebor Properties summarized the conditions of the proposed subdivision. It is a five-lot subdivision located in an R3 zone on 5.3 acres that includes a 24' foot wide, 325-foot proposed roadway and an open storm management system, including a sediment forebay, a grass swale and infiltration basin. He said the subdivision meets all subdivision rules and regulations and there will be 47% of open space 2.56 acres. He went onto say they went through an extensive peer review by Horsley Witten Group and they approved the design along with all the drainage improvements. He said it meets the town and state's storm water regulations and will be managed under the home owners association. He said each of the lots will have individual septic systems.

S. Foulkes asked about the limited area of disturbance.

P. Carlson said that the 25% for limited disturbance would put the limited area of disturbance right behind the houses. He said the open space will be used and maintained by Four Town Farm.

D. Viera stated that the applicant was asking for water storage tanks yet the Fire Chief would like to see individual residential sprinkler systems put in.

Ch. Abelson asked if there was any one to speak for or against. None

A motion was made by M. Bourque seconded by D. Viera and unanimously Voted: to close the public hearing

A motion was made by M. Bourque and seconded by D. Viera and unanimously VOTED: To approve the Definitive Subdivision Plan – ‘ Summer Meadows’, latest revision date of 11/5/13 and the Stormwater Management Narrative, latest revision date of 11/8/13, as all Subdivision Rules and Regulations are met, with the following conditions:

1. Appropriate documentation shall be submitted for the establishment of a homeowner’s association, drainage easements, and an open space restriction on the open space land, which shall be delineated by a split rail fence. These documents shall be submitted prior to endorsement and recorded along with the subdivision.
2. Prior to issuance of a building permit for each lot, the lot owner/developer shall submit a lot site plan and supporting information documenting the following:
 - a. The grading of the lot is consistent with the impervious surface coverage and the drainage patterns depicted on the approved Subdivision Plans.
 - b. The development of the individual lots will implement and maintain erosion and sediment control measures during construction as stipulated on the approved Subdivision Plans. The lot plan should illustrate the placement and details of these measures.
3. As per the Fire Chief’s recommendation, under section 8.3 of the Subdivision Rules and Regulations, individual sprinkler systems shall be installed within individual residences to provide adequate fire protection.

And so voted Aye by: R. Bennett, M. Bourque, D. Viera, S. Foulkes, and Ch. Abelson. Motion passes (5-0).

Approval of Minutes: 11/12/13

A motion was made by D. Viera and seconded by R. Bennett and it was unanimously

VOTED: to approve 11/12/13 Planning Board minutes

Adjournment

A motion was made by D. Viera seconded M. Bourque and it was unanimously

VOTED: to adjourn at 10:30 PM.

Respectfully Submitted by,

Florice Craig