

**STERLING PLANNING BOARD
MEETING MINUTES**

September 10, 2008 – Rm. 202 Butterick Bldg.

Present: Robert Protano – Chairman
Ron Pichierri – ANR Agent
Michael Radzicki – Vice Chairman
Kenneth Williams – Clerk
Charles Hajdu
Melissa M. French – Administrative Assistant

Chairman Protano calls the Planning Board Meeting to order at 7:03 PM.

ANR(s)

There are no ANR's.

MINUTES APPROVED

No Minutes were approved.

DELCON SITE PLAN REVIEW

Continued from August 27, 2008

It now being 7:30 PM Chairman Protano opens the continuation of the Site Plan Review for M. Delcon Realty Trust, LLC, 27 Legate Hill Road.

Present for the review are Larry Sabean, Hannigan Engineering, Mark Delvecchio and Scott Miller, Haley & Ward, Inc.

Sabean addresses the Board, explaining that he is covering for Mr. Hannigan and Todd Lobo. Sabean introduces a letter written by Lobo, dated September 9, 2008, in which he addresses the issues that were of concern to the Board at the last meeting on August 27, 2008. Sabean states that this letter has been emailed to Miller and that a response letter followed, dated September 10, 2008, which the Board is in receipt of.

Sabean paraphrases the letter as follows:

With respect to how much space the applicant will use of the proposed building, Sabean states that it will be approximately 12,000 SF. The remainder of the building will be leased to various tenants with the understanding that the Board will need to be made aware of each rental and its proposed use of the site. Each new rental will be evaluated to determine if a site plan review is needed.

With respect to the Board's concern for truck traffic at the intersection of Leominster Road and Pratts Junction Road, Sabean states that the applicant is proposing additional signage along Leominster Road, in both directions, alerting traffic that there are trucks turning. Sabean states that they will be working in conjunction with Mass Highway to

obtain the necessary approval(s) and permit(s); the applicant will pay for the signs and the installation.

With respect to the fire flow capacity, Sabeau states that it is their understanding that this will be part of the Building Permit Application and will be a condition of the Board's approval.

Chairman Protano questions the statement, in Hannigan's letter, that "The contracting business will be located at the easterly end of the site and have normal operation hours of 6:30 AM to 7:00 PM. The early morning and late afternoon hours will be mostly for loading and unloading of equipment for transport. This aspect of the working hours would not be anticipated to be an everyday occurrence. Typical office hours would be from 8:00 AM to 4:00 PM". Chairman Protano asks if these hours are allowed within Sterling's bylaws. It is clarified that there are no time restraints to operational hours, that this location does not impact residential areas and that these hours are typical and necessary for the operation of the business.

Williams questions a possible concern with the maintenance of the trucks and equipment, citing that the location is in Zone II. Delvechio responds that all significant maintenance is done off site by his mechanic. Williams suggests that a condition be made in the Order of Conditions that any maintenance to be done on site is limited to that of a light nature; routine checking of fluids, cleaning of truck interiors, changing of tires, etc.

Chairman Protano reviews the items contained in the letter from Miller, dated September 10, 2008, in which there are no outstanding issues.

Pichierri moves that the Board approve the Site Plan Review for 27 Legate Hill Road in Sterling Massachusetts, Hannigan Engineering, Plan # C-8-16, dated 8-25-08, subject to the Planning Board's Order of Conditions, Radzicki seconds it. No further discussion, all in favor, approved by the Board.

MOUNTAIN VIEW ESTATES DEFINITIVE SUBDIVISION Public Hearing continued from August 27, 2008

Discussion prior to re-convening of Mountain View Estates Definitive Subdivision Public Hearing:

As a follow up to the discussion on August 27, 2008 regarding the concern of the close proximity to the proposed subdivision, Mountain View Estates, to the Leominster Sportsman's Club, Chairman Protano spoke with Attorney Weinberg and Attorney Brobowski about the legality of the Planning Board including a condition that the property deeds state that a gun club is located across the street from the subdivision. Attorney Weinberg stated that the Board could put the condition in but if the developer does not like it they could fight it and likely win. Both attorneys stated that they have never looked into this matter to see if there is case law regarding the issue. Chairman Protano asks the Board's opinion as to whether they want to pursue making this a condition. It is noted that the Leominster Planning Board did not make this a condition in

their approval of the Leominster portion of the subdivision. Radzicki and Pichierri feel strongly that the deed should contain this information. Williams does not believe the deed should contain such a condition and if voted in favor of, will not write the condition, as he feels incapable to do so.

At 8:00 PM Chairman Protano opens the continuation of the Public Hearing for the Mountain View Estates Definitive Subdivision.

Present for the Hearing are Daniel McCarty, McCarty Assoc., Inc., Patrick McCarty, McCarty Engineering, Settima Pellechia, Scenic Drive, Leominster MA, Scott Miller, Haley & Ward, Inc. and Eric Zaharee, 19 Hastings Road, Sterling, MA.

Chairman Protano introduces a review letter from Haley & Ward, dated September 10, 2008, stating that there are thirteen items of comment of which only two still needed to be addressed. This letter originated on July 28, 2008 and is contained in the minutes of July 30, 2008. Chairman Protano reviews, with the Board, the two outstanding items.

With respect to item #9; *“The drainage design relies upon the infiltration of roof run off into rain gardens located on the individual lots. Your approval should include a requirement that deed restrictions be placed on these lots requiring the installation and maintenance of these structures”*. This requirement will be made a condition of approval to be contained in the Order of Conditions.

With respect to item #13; *“The applicant is proposing to construct the homes with residential sprinkler systems. Your Board should require the installation of fire sprinklers as deed restriction as part of your conditions of approval. The NFPA sprinkler design standard proposed to be used should be coordinated with the Fire Department”*. This requirement will be made a condition of approval to be contained in the Order of Conditions.

Chairman Protano comments on the above noted discussion regarding the close proximity to the Sportsman’s Club and asks the applicant what their objection is to putting notice of this in the deed(s), to make buyers aware of the club.

McCarty responds that their objection is that they have been told that it is not a legal action they can take. He states that the Leominster Planning Board also was advised by legal counsel not to take this action and they did not make it a condition of approval. Chairman Protano feels that although the Board(s) may not be able to legally enforce such a requirement, the applicant should be amenable to placing notice in the deeds as a gesture of good will. McCarty responds that they strongly oppose putting such a statement in the deeds as it creates a “cloud” over the property, which would negatively affect the marketability and value.

Pichierri and Radzicki feel that the deed should alert the potential buyer to the proximity of an active gun club, stating that it protects the buyer by offering full disclosure and protects the Sportsman’s Association by adding another layer of assurance that they would not be faced with a law suit. McCarty points out that the Sportsman’s Association is clearly marked with signs and that both realtors and sellers would be required to disclose such an issue to a potential buyer. Radzicki argues that disclosure in the deed would be redundant information and should not be perceived as a negative.

After extensive discussion between the Board and the applicants, the applicants strongly oppose enforcing a condition that the deed contains this information and the Board is divided on the issue. Pichierri and Radzicki would like the time to gather more definitive information on the legal aspect and Radzicki states that he will not vote in favor of dismissing the condition nor will he vote for approval of the project without full information.

Williams makes a motion that the deed is to contain a reference to the location of the Leominster Sportsman's Association on Elm St. in Leominster MA, Chairman Protano seconds the motion. Discussion follows; the Board does not have the perfect legal conclusion that they were looking for and if the Board votes not to approve the subdivision because of it, the subdivision could go down in defeat. If the vote is to table this motion and the subdivision is not approved tonight the developer would have to request a time extension so that the subdivision is not constructively approved. The choices then become to vote to defeat the motion made by Williams, to vote to approve the subdivision or to vote to defeat the subdivision on the grounds of inconclusive information. Radzicki states that he will not vote to defeat the motion or to approve the subdivision without complete information. No further discussion, Radzicki and Pichierri voted Aye, Protano, Williams and Hajdu voted Nay, motion not approved.

Chairman Protano reads into the minutes the letter from the City of Leominster Planning Board in which the Planning Director addresses Chairman Protano stating that she has reviewed the Town of Sterling Subdivision Regulations, Section 4130 which states "A way providing access to any residential subdivision must be within the Town limits. Any other access to a subdivision through another town requires certification by that town that the way in question is in accordance with the subdivision rules and regulations of that town, that any bond posted for construction in that town is adequate, and that the way provides adequate access for police, fire, and emergency vehicles as well as the expected traffic generated by the subdivision" and that the Board's approval of the subdivision demonstrates their belief that the proposed subdivision roadway meets this criteria.

Williams reviews, with the Board, Miller and the applicants the first draft of the Order of Conditions and asks for any comments or questions. Williams states that the plan does not get endorsed until a Covenant is in place.

McCarty raises the question of the road acceptance and the release of the final \$15,000.00 of the performance guarantee. McCarty understands that if the road is not accepted by the town, then the final \$15,000.00 would be released. The Board clarifies that if the road is never accepted, the money could be retained by the town forever. Chairman Protano adds that there has never been a case of a road not being accepted by the town, if the Planning Board has recommended that it be.

The name of the street is Fini Lane, as agreed upon by both Sterling and Leominster.

A copy of the final Letter of Approval and Order of Conditions is attached to the minutes on file in the Planning Board Office.

**Pichierri moves that the Planning Board approve the Definitive Subdivision dated February 27, 2008, revised September 8, 2008, called Mountain View Estates, Elm Street Leominster and Sterling, MA, subject to the Order of Conditions, seconded by Williams. Radzicki states that although he feels it is a nice project and appreciates the low impact aspect of it, he cannot vote for it due to his outstanding questions which he feels have not been answered. In referring to the outstanding question regarding the Condition that the deed contains a statement about the Sportsman's Association, Radzicki feels that it is good government to sometimes stand up for an issue and risk it becoming court involved. Williams requests a Roll Call vote. No further discussion, the Board voted by recorded Roll Call as follows:
Mr. Protano – Aye
Mr. Pichierri – Aye
Mr. Hajdu – Aye
Mr. Williams – Aye
Mr. Radzicki - Nay
The Mountain View Estates Subdivision is approved by the Board.**

DISCUSSIONS AND REPORTS:

NOTES FROM CHAIRMAN PROTANO:

Forest Glen, off Sherwood Drive:

With respect to the project off of Sherwood Drive, proposed by Countryside Builders, in which the Board has approved a six lot Preliminary Subdivision Plan entitled Forest Glen; the applicant has expressed interest in proposing a nine lot development and the Board has responded with ideas for an alternative eight lot plan (See minutes of 8-13-08). A letter was sent to Countryside Builders to which they have not responded. Chairman Protano has spoken with Attorney Weinberg who states that there is nothing wrong with the Board's practice of negotiating with the applicant.

Chairman Protano also states that it appears that some work has been ongoing in the area of the proposed subdivision, but that it is difficult to tell what is being done. It looks like someone may be trying to create an avenue for water drainage. Chairman Protano could not find anything in the By-laws that would put this in the jurisdiction of the Planning Board and he has brought it to the attention of the Conservation Commission. Matt Marro responded that he would inspect the area. At this time Chairman Protano has not heard back from the Conservation Commission. Chairman Protano wants the Board to be aware of possible wetland issues, should this subdivision come back before the Board. Williams reminds the Board that, while this project is not actively before the Board, its members cannot enter and inspect this site without permission from the owner.

Sandy Ridge Road:

The Board (Radzicki and Pichierri) was to meet with Curt Plante on Sunday August 31, 2008 and Plante did not show up. Chairman Protano spoke with Plante, who apologized for forgetting the appointment. It is noted that Plante has planted new trees which have not been in place for the obligatory one year period. The Board decides to schedule

another meeting with Plante on Sunday, September 14, 2008 at 10:30 AM. Chairman Protano will call Plante.

(Note added after the meeting; Plante could not meet at this time and it will have to be rescheduled.)

Meeting with the Building Inspector:

Terri Ackerman has spoken with Chairman Protano and has requested that there be a meeting with Ackerman, Protano and the Building Inspector. It is assumed that this is a follow-up to the Board's recent request that all building permits be accessible for review. Williams has asked to also be present for this meeting. This meeting is to take place on Thursday, September 11, 2008 at 10:00 AM.

TREBOR LANE

The Board reviews a letter from Tim McGuire in which he updates the Board on the progress at Trebor Lane, letter attached. As of this date Trebor Lane is not in compliance with the Board's Order of Conditions. It appears an attempt was made at completing some of the items but the Board feels they were done in an incomplete and haphazard way. The Board decides to tour Trebor Lane on Sunday September 14 after their site visit to Sandy Ridge Road.

(Note added after the meeting; Trebor Lane was visited by the Board, Hajdu is compiling and typing the results and the Board will review at the next scheduled meeting.)

GROUNDWATER SUPPLY VS. BARLETTA

Several calls have come into the Planning Board office from Diane Erickson at Groundwater Supply expressing her concern for the work Barletta is doing with his driveway. Erickson stated that Groundwater Supply has never signed any agreement to be a part of this driveway. It appears that this driveway is requiring a significant amount of drainage and Erickson's complaint is that Barletta is disturbing Groundwater Supply's drainage and site. Both Chairman Protano and Williams have advised Erickson to seek guidance from a lawyer.

SPECIAL TOWN MEETING

The Board of Selectmen have called a Special Town Meeting for Monday November 17, 2008 at 7:00 PM. Articles for this meeting must be submitted by September 26. The Board agrees to prepare for submittal of Trebor Lane, Fitch Farm Road, Runaway Brook Road and Fern Lane for approval as town roads.

WIND RIVER

Chairman Protano reads a letter from David Favreau, Board of Health to Wind River regarding a complaint of odor at the Wind River site at 11 Chocksett Road. Favreau has indicated that he has performed a site inspection and witnessed the transfer of grease

from truck to tanker and its subsequent odor. Wind River is to immediately implement the odor mitigation steps that were described at the April 10, 2008 Board of Health meeting.

ALL BOARDS MEETING

Chairman Protano reads the memo from T. Ackerman regarding follow-up to the All Board's Meeting that took place in the Spring of 2008. The memo states that the next All Board's Meeting will be held after the November 17 Special Town Meeting, probably in December 2008.

HEALTHY LANDSCAPING WORKSHOP

Chairman Protano, Pichierri and Radzicki are registered to attend the Healthy Landscaping Workshop on Thursday September 11, 2008 at the Doyle Conservation Center in Leominster, MA.

DEPARTMENT HEAD MEETING

The next Department Head Meeting is scheduled for Tuesday September 16, 2008 at 12:00 PM at the Fire Station. Chairman Protano, Williams and French to attend.

MAIL:

Several flyers and announcements are reviewed by the Board.

NOTICES FROM OTHER TOWNS:

Several Public Hearing notices from adjacent towns were reviewed.

MOTION TO ADJOURN:

Williams makes a motion to adjourn the Planning Board Meeting at 10:15 PM. Seconded by Pichierri, no further discussion, all in favor, approved by the Board.

The next regularly scheduled meeting will be on Wednesday, September 24, 2008 at 7:00 PM.

APPROVED BY:
