

City of Marlborough
Commonwealth of Massachusetts



PLANNING BOARD MINUTES
March 8, 2010
7:00 PM

PLANNING BOARD

Barbara L. Fenby, Chair
Steve Kerrigan, Clerk
Philip J. Hodge
Edward F. Coveney
Clyde L. Johnson
Sean N. Fay

Carrie Lizotte, Board Secretary
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The Planning Board for the City of Marlborough met on Monday, March 8, 2010 in Memorial Hall, 3rd floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Steven Kerrigan, Phil Hodge, Edward Coveney, Clyde Johnson and Sean Fay. Also present: Assistant City Engineer Richard Baldelli.

MINUTES

Meeting Minutes February 22, 2010

On a motion by Mr. Kerrigan, seconded by Mr. Coveney it was duly voted:

To table the minutes of February 22, 2010.

Mr. Kerrigan withdrew his first motion.

On a motion by Mr. Fay, seconded by Mr. Mr. Hodge it was duly voted:

To accept and file the meeting minutes of February 22, 2010 as amended.

CHAIRS BUSINESS

City Council Correspondence

The City Council sent correspondence stating that the Sudbury Companies of Militia & Minute is asking to place a temporary sign at the corner of Route 20 (Boston Post Road East) and Hagar Road. The Council approved the request to place the sign on City property with the condition that they must apply for a sign variance with the Planning Board.

On a motion by Mr. Kerrigan, seconded by Mr. Coveney it was duly voted:

To accept and file correspondence.

Mr. Hodge asked to notify Code Enforcement that if a sign is placed without the proper variances, that the code enforcement officer stress to the Sudbury Companies of Militia & Minute that a variance is needed by the Planning Board prior to placing any sign.

On a motion by Mr. Hodge, seconded by Mr. Kerrigan, it was duly voted:

To send correspondence to Code Enforcement.

APPROVAL NOT REQUIRED PLAN

Crowley Drive

Correspondence from City Engineer

Mr. Tim Collins of the Engineering Department has reviewed the ANR plan for Crowley Drive and can give a favorable recommendation to the Planning Board to endorse this plan.

On a motion by Mr. Kerrigan, seconded by Mr. Johnson, it was duly voted:

To accept and endorse a plan of land believed to be Approval Not Required of First Colony/Chestnut Ridge, LLC, 929 Boston Post Road East, Marlborough, MA 01752 & Toll Brothers, 135 Flanders Road, Westborough, MA 01581. Name of Engineer: GCG Associates, Inc. 84 Wilmington, MA 01887. Deed of property recorded in South Middlesex Registry of Deeds Book 48877, Page 33 with portion of the land was voluntarily withdrawn land court system; see Case No. 06-SBQ-29279-12-001, recorded in Book 48809 Page 269. Location and description of property: 3 Lots located on Crowley Drive, Assessors Map 16 Parcel 1A, and Map 29 Parcel 1.

PUBLIC HEARING

SUBDIVISION PROGRESS REPORTS

Update from City Engineer

Mr. Baldelli stated that there was nothing new at this time.

Blackhorse Farms, Cider Mill Estates and West Ridge Estates (Fafard Development)

Mr. Baldelli stated that they have had conversations regarding the subdivision with Mr. Seaberg of Fafard Development. Ms. Fenby asked if there were any further updates from the City Solicitor or from Mr. Roelofs, the attorney for the developer. Mrs. Lizotte stated that when she spoke to the City Solicitor on Thursday there was no further communication or acknowledgement from the developer's attorney.

Mr. Fay found this to be unacceptable. Mr. Fay reiterated the points that he made at the prior meeting, and stated that there is a significant difference between a developer agreeing voluntarily to ask for an extension and review the adequacy of the bond vs. acknowledging an affirmative obligation to do so. Mr. Fay questioned the adequacy of the security if in future years, the developer was not inclined to volunteer to request an extension and bond review. He stated that the Planning Board and the attorneys should continue to pursue an amicable solution and stated that he would like to invite Mr. Roelofs to the next meeting.

Mr. Kerrigan stated that if the Planning Board invites the attorney to attend the next meeting, he wanted to be clear why he was being asked to attend, and what information he would be expected to provide. Mr. Kerrigan reminded Mr. Fay that at the last meeting they had asked the two attorneys, as well as the City Engineer, to continue discussions and then report back to the Planning Board. This did not happen.

The members then discussed whether the adequacy of the security is in question without a recognition on the part of the developer that there is an affirmative obligation to request an

extension, and whether the Board has an affirmative obligation to protect the public's interest and discuss taking action on the bond.

Mr. Fay stated that the Planning Board should notify the Building Commissioner that action on the bonds for the subdivisions in question is a possibility, and ask that the Building Commissioner take this under consideration if an application for a building permit is filed by the developer. Dr. Fenby said she will make an appointment with Mr. Reid to discuss the issue with him.

When asked by Mr. Fay on how they have dealt with these issues in the past, Dr. Fenby stated that they pulled the bonds. Mr. Baldelli stated at this time the Planning Board should let the communication continue between the Engineering Department and their engineer and the members agreed that continued communication was desirable.

On a motion by Mr. Kerrigan, seconded by Mr. Coveney it was duly voted:

To send correspondence to Mr. Roelofs and Mr. Rider to ask for a written update on their progress in advance of the next meeting.

Davis Estates (Bouvin Drive)
Bond Reduction

Attorney Cipriano, on behalf of his client, is asking for a reduction of their bond and to appear before the Planning Board to discuss roadside trees and the fence around the detention basin.

On a motion by Mr. Kerrigan, seconded by Mr. Johnson it was duly voted:

To accept and file correspondence, to refer the request to the City Engineer for his review; and to ask Mr. Cipriano and Mr. Valchuis to appear at the next meeting on March 22, 2010.

Mauro Farms (Cook Lane)
Quorum Concerns

The secretary omitted the request of an extension on the agenda. The members are concerned that with quorum constraints they would not have enough members to make the quorum in deciding extension request.

On a motion by Mr. Kerrigan, seconded by Mr. Fay it was duly voted:

To extend the request for extension until April 26, 2010.

PENDING SUBDIVISION PLANS: Updates and Discussion

PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS

DEFINITIVE SUBDIVISION SUBMISSIONS

SCENIC ROADS

SIGNS

INFORMAL DISCUSSION

Subdivision Rules & Regulations
Correspondence from Mr. Fay

In recent weeks, the Planning Board had concerns with their Subdivision Rules and Regulations and protecting the board from having mishaps with approvals and covenants. Mr. Fay has proposed the following language to amend the Subdivision Rules and Regulations:

7. Performance Guarantee

Before endorsement of the Board's approval of a Definitive Plan of subdivision, the subdivider shall agree to complete the required improvements specified in Section V for any lots in a subdivision, such construction and installation to be secured by one, or in part by one and in part by the other, of the following methods which may from time to time be varied by the applicant with the written consent of the Planning Board.

(a) Approval with Bonds or Surety

The subdivider shall either file a proper bond or a deposit of money or negotiable securities in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the improvements specified in Section V not covered by a covenant under sub-section (b) hereof. The amount of the security provided hereunder shall be determined by the Planning Board in consultation with the City Engineer, taking into consideration the City Engineer's standard contingency and inflation factors.

Such bond or security, if filed or deposited shall be approved as to form and manner of execution by the City Solicitor and as to sureties by the City Treasurer. The legal sufficiency of the bond shall be contingent upon the completion by the subdivider of the required improvements specified in Section 5 within two (2) years of the date of the bond.

If the improvements specified in Section V not covered by a covenant under sub-section (b) hereof are not completed within two (2) years of the date of the bond, such completion to be certified in writing by the City Engineer, the Planning Board shall proceed with enforcement thereof as provided in §81Y of the Subdivision Control Law unless the Planning Board takes one of the following actions:

- i. The Planning Board, on its own, grants an extension of the two (2) year completion date for a period of not more than sixty (60) days to allow a subdivider to submit the documentation required for a complete extension request; or,
- ii. The Planning Board, upon request of the subdivider, grants a request not to exceed two (2) years from the date such extension is approved. Any such extension shall be contingent upon the following:
 - a. Written certification from the City Engineer that the bond or other security currently in place, or in place at the date such approval is granted by the Planning Board, is in an amount sufficient to cover the cost of all or any part of the improvements specified in Section V not covered by a covenant under sub-section (b) hereof, taking into consideration the City Engineer's standard contingency and inflation factors;
 - b. Written certification from the City Tax Collector that all real estate taxes for the sub-division are paid to date; and,
 - c. Written certification from the Code Enforcement Officer or Building Commissioner stating that the sub-division is free from any violations of the City's Anti-Blight Ordinance.

This section shall be applicable to all subdivisions within the City of Marlborough, regardless of the date of approval thereof. Should, as of the effective date of this section, a subdivider have a bond or other security in place, and the improvements specified in Section V not covered by a covenant under sub-section (b) hereof in said subdivision have not been completed within the applicable two (2) year time period without an extension, said completion date shall be

automatically extended for one (1) year from the effective date hereof. The Planning Board shall provide such subdivider with written notice of the extension and the affirmative obligation on the part of the subdivider to request an extension pursuant to the provisions hereof.

(b)Approval with Covenant

The subdivider shall file a covenant, executed and duly recorded in the Registry of Deeds by the owner of record, running with the land, whereby such ways and services as specified in Section V, not covered by bond or deposit under (a) hereof, shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed.

The developer shall also note on his Definitive Plan that any and all lots within the subdivision are subject to the restrictions of the covenant.

On a motion by Mr. Kerrigan, seconded by Mr. Fay it was duly voted:

To send the proposed amendment to the City Planner, City Engineer, and the City Solicitor for their review; to have them report back to the Planning Board with their comments at the next meeting on March 22, 2010.

COMMUNICATIONS/CORRESPONDENCE

On a motion by Mr. Kerrigan, seconded by Mr. Coveney, it was duly voted:

To accept all of the items listed under communications and/or correspondence.

On a motion by Mr. Coveney, seconded by Mr. Kerrigan, it was duly voted:

To adjourn at 8:15 p.m.

A TRUE COPY

ATTEST:


Steven Kerrigan, Clerk