

SCITUATE PLANNING BOARD MINUTES November 12, 2015

Members Present: Stephen Pritchard, Chairman; Richard Taylor, Clerk; Robert Vogel, Robert Greene and Ann Burbine, Alternate member.

Members Absent: William Limbacher, Vice Chairman.

Others Present: Ms. Laura Harbottle, Town Planner.

See Sign-in List for names of others present at this meeting.

Location of meeting: Selectmen's Hearing Room, Town Hall, 600 C J Cushing Highway.

Chairman Pritchard called the meeting to order at 7:30 P.M. The meeting was being recorded for airing on local cable television.

Documents

- 11/12/15 Planning Board Agenda

ACCEPTANCE OF AGENDA: Mr. Pritchard moved to accept the agenda. Mr. Taylor seconded the motion and the vote was unanimous in favor.

Public Hearing – Mixed Use Special Permit in the Village Business Overlay District – 20 Country Way Assessor's Map/Block/Lot 53-5-34 Applicant/Owner: Country Way Real Estate Trust, James W. Trenz, Trustee

Documents

- Email from Jim Trenz with request withdraw application to Laura Harbottle

Ms. Harbottle indicated that Mr. Trenz filed an application for a Mixed Use Special Permit for a house with three dwelling units. She indicated it would be required that the building would need to contain a sprinkler system; and thus, Mr. Trenz decided to withdraw the application.

Mr. Taylor moved to accept the applicant's request to withdraw the application for a Mixed Use Special Permit in the Village Business Overlay District at 20 Country Way and to return the unexpended portion of the application fee. Ms. Burbine seconded the motion. Motion was unanimously approved.

Discussion – Kimberly Estates – construction issues with walking path

Documents

- Email from Laura Harbottle to the Board dated 11/6/15 with pictures of the walk and letter from Kevin Kenny dated 10/20/15

Kevin Kenny of 13 Kimberly Road asked that the Board help with repair to a walkway that runs from Kimberly Road to Pyramid Lane. He said the surface is damaged and provided the Board pictures of some of the damage including rocks protruding from the asphalt and major cracks. He said the road and walk has never had a top coat put on and remains an unaccepted road with no

Homeowner's Association. He said the walkway crosses his land and his deed only refers to a utility easement. He said children use the path to walk to the Wampatuck School as there is no walk on Tilden Road. Mr. Kenny said he is worried that if someone fell and is injured he would be liable. He said he understands there is still money in the escrow account as the subdivision was never completed. He indicated he would like to be reimbursed if he does the work.

Mr. Taylor asked if it was a private way. Mr. Kenny said most people don't know it is not public. He said the Town makes one pass with a plow. Chairman Pritchard said it was a 42' roadway easement and asked if the Town has an obligation to maintain the infrastructure. Ms. Harbottle indicated that the Town would maintain the water and sewer and suggested asking Town Counsel how to approach the situation as there is almost \$70,000 in surety remaining in an account controlled by the Town that the developer may have forgotten about. Mr. Kenny suggested that since the development was never complete it seems fair to go after the money. He said there were supposed to have been a few more houses built in the 80's. Ms. Burbine said that market fell out in the 80's and the developer just walked. She said the homeowner's could be assessed a betterment to finish the subdivision. Ms. Harbottle said the developer still technically owns the road and it would not be feasible to have the road brought up to today's standards. She also said that Mr. Kenny cannot be reimbursed; the Town would have to bid the work out. She said the subdivision is nice with some newer homes and it would be good to have the walkway for the children. Mr. Kenny said that Pyramid Lane is a public way.

Chairman Pritchard said it seems like walk repair would fall into a maintenance category. Ms. Harbottle said that Town Counsel may recommend that the developer do the work and if it is not complete in a specified time, then the next steps would be pursued to claiming the surety. She said the subdivision was approved on remand from a lawsuit. Mr. Kenny said that the base course is 1 ½" and the top course was supposed to be the same. Chairman Pritchard said an argument could be made that the walkway was not completed. The consensus of the Board was that Ms. Harbottle should discuss the situation with Town Counsel. Chairman Pritchard said if he advises the Town to ask the developer then the Board should. He said he thinks it may cost more than the surety to complete the road and walkway.

Discussion – Removal of trees on Lot 10 - # 22 Evangeline Drive

Documents

- Emails from Laura Harbottle to the Board dated 11/6/15 with photos of stumps of trees cut, email from Michael Scott on tree cutting dated 10/20/15 and Lot 10 Landscape Plan and note about trees

Ms. Harbottle indicated that back in 2010 – 2011 when the subdivision was approved, trees to be saved were discussed with the abutters. The Scotts of 51 Elm Street wanted a larger buffer than some other sites. She said the developer, herself and the Scotts marked some trees to remain. She indicated that there are several ways to preserve trees and this project had notes on the plans to contact the Town Planner before cutting trees, but not a deed restriction. She said that the Dillons bought the lot and removed trees as they were unaware of the notes on the plans. Ms. Harbottle said 10 to 12 trees were removed including some that were on the side of the property that were supposed to remain. She said the question is what to do now and in the future so this does not happen again. She indicated she will ask Town Counsel for his recommendations for the future.

Mike and Maria Scott of 51 Elm Street said they got involved in the project in 2008 when the project was a preliminary plan. Mr. Scott said they have 521 linear feet abutting the development and they attended the public hearings and voiced their concern about a buffer. He said they supported the development as they thought they would be protected by the special permit. He indicated that somewhere there was a break in communications as the trees, shrubs and weeds were removed when the Landscape Plan showed they were to remain. He said that there is a dramatic impact. He said the developer and builder both didn't go into the area to be preserved and he would like to see plans followed in the future. He said that initially he pushed for a clear no cut zone, but the developer did not want to agree to that. Mr. Scott said 18 to 20" caliper trees cannot be replaced. He said he is aware the homeowner will so remediation, but questioned the point of abutters attending hearings if they don't get what they thought was agreed to.

Shawn Dillon of 22 Evangeline was also present. He said he agrees with Mr. Scott and said that nowhere in the covenants did it say about landscaping. He said he did not come to the Town Planner and was horrified at the clear cut job that was done. He indicated he would like to plant grass, trees and shrubs and had no document that said he couldn't cut the trees. He said he feels terrible and will replant so that Mr. Scott and his own family have privacy. Mr. Dillon said he did not know the trees were on a plan until a week ago when Ms. Harbottle provided a plan. Ms. Harbottle said the plans are recorded at the registry and there is reference on the deed to a plan. Chairman Pritchard said it would take an extraordinary homeowner to take the time to go to the registry and cross reference all the plans. Mr. Dillon said he was "terribly unimpressed with the Town" and will plant more trees.

Ms. Burbine empathized with both parties and commended Mr. Dillon for wanting to make amends. She indicated this should never to happen again and want to work out a future solution. Mr. Taylor said he would like to see the extra step of a deed restriction in the future so it will help homeowners' understand the conditions. Mr. Dillon said he will replenish the tree area and is working with two landscape consultants to do a wall and plantings. Ms. Harbottle indicated she would ask Town Counsel to see what it means to put a note on the plans and does the Board need a deed restriction to have a practical result. Chairman Pritchard said that legally the entire document is referenced, but practically all the drawings are not viewed. Ms. Harbottle indicated that realtors have an obligation to relay conditions on a plan. Mr. Vogel said that all people in a subdivision should be copied on the conditions. Ms. Harbottle indicated that is why there is a registry. Chairman Pritchard said real estate agents may not be familiar with all the conditions and asked if there was a way to red flag it for a homeowner. Mr. Vogel said after the trees were cut, the owner went looking. Ms. Burbine said the builder should have communicated this to the real estate agent. Mr. Taylor said that nothing in the text says that the trees must be maintained. Chairman Pritchard thought that a deed restriction is the best option as developers see this as a construction document.

Mr. Vogel asked why the Homeowner's Association wouldn't be responsible. Mr. Taylor said Mr. Dillon said he reviewed those documents and there was nothing in them. Ms. Burbine said that Mr. Dillon said he was appalled and really sorry that the tree clearing went too far. Mr. Vogel asked if a subdivision lot can be conditioned beyond any lot in town. Ms. Harbottle said there was also a special permit here. Ms. Harbottle said she would consult Town Counsel.

Standard Conditions for Accessory Dwelling Units and Common Driveways

Ms. Harbottle said that if the Board likes the standard conditions, we can advertise for a public hearing and then the Board can say subject to the standard conditions and save time by not reading them. Ms. Burbine asked if parking on the road is permitted for any other lot besides an accessory

dwelling. Mr. Vogel said there is no way to enforce it. Ms. Burbine asked if the Board was going to try to change the size of accessory dwellings at the annual Town Meeting. Mr. Vogel said he would support the change. There was no response from the rest of the Board. The Board offered a few minor comments on the standard conditions. Ms. Harbottle said that most of the conditions for the common driveway are taken directly from the zoning bylaw. She said she would do the changes and plan for a public hearing in December.

Re-appointment of John Roman to the Design Review Committee

Ms. Burbine moved to re-appoint John Roman to a three year term on the Design Review Committee for a term running from November 13, 2015 to November 13, 2018. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Accounting

Documents

- PO # 1603214 (\$862.50), PO # 1603228 (\$1,040.00), PO # 1603383 (\$309.54)

Mr. Taylor moved to approve the requisition of \$862.50 to Chessia Consulting Services, LLC for engineering peer review for 265 Beaver Dam Road Stormwater Permit, \$1,040.00 to Merrill Corporation for engineering peer review for 179 Edward Foster Road Stormwater Permit and \$309.54 to Gatehouse Media MA for legal advertising for 11 Elm Park Accessory Dwelling Special Permit and zoning for the 2015 Special Town Meeting. Ms. Burbine seconded the motion. Motion was unanimously approved.

Minutes

Ms. Burbine moved to approve the meeting minutes of 10/22/15 and 11/2/15. Mr. Vogel seconded the motion. Motion was unanimously approved.

Liaison Reports

Ms. Burbine indicated that the EDC hopes to meet with the Selectmen in early December to talk about signage. She said the harbor has been named a cultural district. She said the Chamber will not be sponsoring the St. Patrick's Day Parade as they would like to pursue other avenues. She said there will still be Heritage Days. She also indicated that CPC requests are being filed with the Historical Society making several requests for funding.

Town Planner Report

Ms. Harbottle indicated that she had the first meeting with the Stormwater Working Group. She said they agreed that the 100 year storm calculations will be taken away, but a narrative will be required. Chairman Pritchard said he mentioned the group to John Clarkeson of the Water Resource Committee and indicated that Ms. Harbottle would be in touch with him and the North and South River Watershed Association. She said there will be something to review in December.

Ms. Harbottle indicated that the new FEMA maps just came out and the Town has a 30 day response time. She said many of the lines did not change, but the elevations did. She indicated Cedar Point is

now a velocity zone and in Humarock there are elevation changes. She said the maps are going to the Woods Hole Group for analysis.

She indicated there is a meeting on Climate Change at the GAR Hall on November 17 from 7 to 8:30 pm put on by MAPC.

Old Business and New Business

Documents

- Emails to Board dated 11/6/15 from Laura Harbottle with meeting materials.

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 9:20 p.m. Mr. Greene seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk
12-10-15
Date Approved