

SCITUATE PLANNING BOARD MINUTES February 9, 2023

Members Present: Patricia Lambert, Chair; Benjamin Bornstein, Vice Chair; Ann Burbine, Clerk; and Stephen Pritchard

Others Present: Karen Joseph, Town Planner; Shari Young, Administrative Assistant

Members absent: Rebecca Lewis, Bob MacLean, Alternate

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

Location of meeting: Select Board Hearing Room, Town Hall, 600 C J Cushing Highway, Scituate.

Chair Lambert called the meeting to order at 6:30 P.M. The meeting was being recorded for airing on local cable television and streaming live on Facebook with in-person and remote access available.

Documents

- 2/9/23 Planning Board Agenda

ACCEPTANCE OF AGENDA: Chair Lambert indicated there was a posted agenda. Ms. Burbine seconded the motion for the posted agenda and the vote was unanimously in favor.

Discussion/Vote – Surety Reduction – Curtis Estates

Documents

- PDF 17-117 Bond Reduction Review, 01-31-23
- PDF 90 Ann Vinal.Curtis Estates Bond Signed
- PDF 3739 corr to PB 1-9-23
- Email dated 1.24.23 from Merrill Corp

Attendees: Paul Mirabito, Engineer for owner

Mr. Mirabito indicated he received the information from Mr. Palmieri, the Town's Consulting Engineer, regarding the list of items to still be completed for the project with regards to the request for surety reduction. He said there are two items they disagree with, \$7,000.00 for trees and concrete bounds for \$6,975.00. He said all of the trees have been installed, there are a total of 27 trees and 15 pine trees that have been installed. He said the concrete bounds have been installed as well as the monuments at the rear property lines of each lot. He is asking that the Board reduce the bond amount from the report, \$69,161 to \$53,000. He said the other items will be completed in the next 3-6 months, weather dependent. The as-built plans have been completed which will be submitted to the Town when the rest of the items are finished; the applicant will then petition for street acceptance. He said tonight they are asking the bond be reduced to \$53,000.00.

Ms. Joseph indicated that the Town's Consultant went out to the site and she stands by his review and his estimate. She said there are steps before street acceptance that need to be done and the as-built is part of that. She indicated that DPW has said the work outstanding could not be done for this price at prevailing wage; DPW estimated it would be at least \$75,000 if the Town had to complete

the work. There is currently a \$250K bond that needs to be renewed on 2/23/23 which is why the applicant is asking for a surety reduction.

Ms. Lambert said she is not inclined to give any reduction in surety because it is the only mechanism the Board has to ensure the work is done. She said the Board has been out to Curtis Estates numerous times; there are multiple issues out there. The Homeowner's come to the Board because they listen and try to get some kind of resolution.

Mr. Pritchard said he is not anywhere near reducing the surety to \$53,000; it still has to have six digits to it; he is on the fence about whether to reduce it at all.

Mr. Bornstein asked about the trees and the discrepancy between the reports; but the Board said they need to go with the information from their Consultant. Mr. Pritchard added that the Board/Town has zero interest in finishing the project for the developer; it is the developers' responsibility and would air on the high side all the time.

Ms. Burbine opined she is not impressed with the subdivision at all and would not go any lower than \$100,000.

Ms. Lambert took public comment.

Public comment:

Mr. Smith resident at 5 Carriage House Way said the residents would like to get the project finished. He said last spring they were told it would be finished in the fall and that has come and gone; a road has been done, some sidewalks and now it is supposed be done in the spring. He said there are a number of things aside from landscaping that could be done now; he asked about the status of the light poles. Mr. Mirabito said his understanding is the poles have been purchased and the bases are in, but he does not believe the applicant has the lights yet. He said that is an item that is on the list that remains to be done. Mr. Smith said his point is that it is something that could be done now.

Mr. Mirabito said he spoke with the owner today he wants to clean the list up so the road can go up for street acceptance; he said the reason for the list is so the Planning Board can have their own engineer review the project and come up with a list of work items that still remains to be done, the street lights are one of those items on the list and is included in the money to complete the project.

Ms. Joseph said the as-builts have not been reviewed and these numbers are based on going out to the site without review of the as-built. Ms. Joseph said she does not want the as-built if it is not done; if all the stuff that is supposed to be on the as-built is not there she does not want it.

Ms. Burbine said the Board has been after the Developer time and time again, she agreed with Mr. Smith that it was supposed to done in summer, then the fall, and now it is winter and they are talking about spring. She said she does not trust them at all and it has been an ongoing issue for the last three years.

Mr. Smith also asked about the sign at the entrance; Mr. Mirabito did not have any information on that. Ms. Joseph said she did approve it, but does not know if it is being made.

Ms. Lambert took a straw vote to keep the surety at \$250,000. Mr. Bornstein, Ms. Lambert and Ms. Burbine all said it should not be reduced.

Mr. Mirabito asked what the purpose of the exercise was in having the Town's Consultant go out and come up with a list of \$69,000.

Mr. Joseph indicated the applicant requested a surety reduction so it goes out to the Peer Review Engineer to get an estimate, but it does not mean the Board has to grant the surety reduction and the Board is voting they don't want a surety reduction because they want a good faith effort the work will be done.

Mr. Mirabito argued the good faith effort would be the \$69,161.00.

Mr. Pritchard said there was meeting on August 11th where the street lights were discussed among other things; at that time, it was said the street light bases were in and there was trouble locating the conduit and the game plan was to put in the light poles and it is now 6 months later and nothing has happened. Mr. Pritchard said the Board is going to wait until the applicant shows them they are going to finish the job.

Mr. Mirabito continued to argue that the cost to finish the project is not \$250K and at a minimum should be reduced to what the engineer came up with.

Ms. Lambert said this is the only thing the Board has to make sure the project is done, if it seems harsh that is on the applicant. The Board has decided they are not going to reduce surety.

Motion:

Ms. Burbine moved that the Board retain surety for Curtis Estates development at \$250,000.00 until all of the items in question are completed to the Planning Boards satisfaction.

There was discussion about simplifying the motion.

Mr. Pritchard moved that the Board deny the request for surety reduction; Ms. Burbine seconded the motion as amended; the vote was unanimously in favor.

Discussion/Vote - Swimming Pool – 7 Cold Brook

Documents

- PDF 22-768 PB Review Report, 7 Cold Brook Circle, 02-01-23
- PDF Asbuilt Lot 13
- PDF 7 Cold Brook Cir Plan 1.18.23
- PDF Peer Review Repose Letter 1.20.23
- PDF Stormwater Report 7 Cold Brook 1.18.23

Attendees: Jed Hannon, Atlantic Coast Engineering

Ms. Burbine recused herself from the meeting and left room.

Ms. Joseph indicated the Board had previously opined the same procedure should be followed for the request for a swimming pool at 7 Cold Brook as was done for 5 Cold Brook. She had the applicant submit plans and have engineering peer review to know if the stormwater standards could be met.

Mr. Hannon explained the project to the Board. Mr. Hannon shared his screen for the discussion. He said the HOA Covenants for this subdivision say no pools are allowed unless stormwater mitigation took place because of the maximum lot coverage percentage threshold.

- Homeowner wants to put in a swimming pool
- 3 test pits done and shown on the plans
- Project peer reviewed
- Propose 3 Cultecs – front right of the lot, back left and right side
- Soil test pit data shown
- Propose pool at back right corner of the lot
 - Complies with setbacks
 - Out of the 100' Wetlands Buffer
- System design
 - Roof runoff will be discharged into Cultecs below grade to recharge into the ground water table
 - Currently the runoff is overland flow and discharges on to the driveway
- Lot coverage
 - Existing impervious based on survey data, 3,707 sq. ft.
 - Added pool and patio is 4,709 sq. ft.
 - Increase of 802 sq. ft. of impermeable surface
 - Proposing to mitigate the entire amount of roof runoff, 3,294 sq. ft.

Mr. Hannon said there is a significant improvement in terms of stormwater mitigation; it is over designed and all comments from peer review have been addressed.

Ms. Lambert commented that letters had been sent out to everyone in this development for extraneous stuff, i.e. patios, hot tubs, etc. related to their allowed impervious allotment and no one has responded and the Board would like to hear from the HOA about what is going on with that issue.

Ms. Lambert said for tonight the Board needs to decide if they will allow the applicant to build a pool.

Ms. Joseph said in addition to the pool there has also been a hot tub, patio and second deck, the deck is pervious, without the Planning Board approval so the lot is already exceeding their impervious allotment. She said now with the proposed pool they are further exceeding the impervious area, but the mitigation will handle all the increase in the impervious area. The Board has to decide if they are going to let the applicant have a pool and issue a stormwater permit administratively or do they need a public hearing. She indicated a certain amount of impervious area was added without permission and now they are coming back and they want more in the form of a pool and walkway around the pool.

Ms. Lambert said if they did not want to do the pool the applicant would have exceeded their allotment and the Board would not have known; Ms. Joseph said that is correct. Ms. Lambert said that is a huge issue for the Board, when this was built as a Flexible Open Space there were a lot of limitations on the development with impervious and pervious areas that none of the homeowners seem to understand. She said she is concerned that homeowner's have put things in that exceed what was allowed and she does not know how that is going to be solved.

Mr. Pritchard asked about what the existing impervious area referred to on the plan data; Ms. Joseph indicated the original impervious area that was allowed was 3,251 sq. ft. the applicant is already over that by 500 sq. ft. The total amount is really 1,300 sq. ft. over to original area allotment for impervious surface.

Mr. Pritchard asked about the locations of the culvert chambers saying they are very close to the property line and asked what is on the other side of the property line, what are the implications. He asked if it is always infiltrating and what happens to the neighbors. Mr. Hannon said the system is compliant with DEP regulations, they are significantly mitigating the stormwater on the property and it meets the requirements of the Scituate Stormwater Bylaw. He said the only time there could be an issue is if there is a significant rain and then a freezing event, there would then be overland flow which would discharge out to the cul-de-sac and catch basins; he said that is really what happens now. He said it meets all the requirements to discharge the runoff into the groundwater table. He said it would happen in the case of a 100 year storm.

Mr. Pritchard said the recharge to ground water is a much-preferred situation and was the case for the last pool as well. He opined there appears to be a significant benefit here with regards to recharging to ground water.

Mr. Bornstein agreed with Mr. Pritchard and opined the Board is being consistent with how the Board handled this situation previously and is inclined to allow it and does not see that a full public hearing is a necessity. He said he is very disappointed at how things are progressing with all the little projects that are going on under the radar.

Mr. Pritchard and Ms. Lambert agreed that it is not necessary to go through the public hearing process. The Board asked Ms. Joseph to write a stormwater permit.

Ms. Joseph said the permit will be nearly identical to the one written for 5 Cold Brook which is identical to all stormwater permits that are issued; inspections are included in the permit and are required for the bottom of chambers, etc.. She said the maintenance plan is also attached to the permit.

Motion:

Ms. Lambert moved that Ms. Joseph write a stormwater permit.

Mr. Pritchard seconded the motion; a vote was taken and was unanimously in favor.

Ms. Burbine rejoined the meeting.

Discussion/Vote – Reports to Town Meeting

Documents

- DOC PB Report Section 720 Common Driveways
- DOC PB Report Section 760 Parking Requirements

Ms. Joseph indicated that drafts were provided for the reports and if the Board is okay with them they can do a motion to accept the reports.

Motion:

Ms. Burbine moved to sign the reports to Town meeting.

Mr. Pritchard seconded the motion; the vote was unanimously in favor.

Discussion – MBTA Communities - 3A Compliance

Documents

- PDF Draft Memo Scituate 3A Compliance
- Email dated 1.31.23 from MAPC

Ms. Joseph indicated that the action plan was submitted on January 31st. She said she was able to speak with DHCD and expressed some of her concerns/opinions with 3A compliance. Scituate is on DHCD's radar because of the constraints the Town has with salt marsh, tidelands, flood plains, etc. and the zoning was recently redone. She also said that the NDTV district is not going to comply because it has is a pedestrian frontage zone.

She indicated that MAPC ran the compliance model and found that in order to comply the Town will need to change some zoning districts. The numbers are indicating that if the zoning is changed in the GVC, GWB and NRN Districts to increase the density to 17 units/acre by right the Town will hit the 1,239 units required. She said there has to be an increase in the density because it subtracts the land area that can't be used. She said 15 units/acre by right comes out under; but the model shows that at 17 units/acre by right the exact number of units 1,239 can be achieved. She said the Board needs to think about these numbers and start preparing to change zoning for a fall town meeting. She also noted that some district boundaries need to be changed because there are a couple districts that are split on a property and that is not allowed.

She also indicated that the GWB district allows multi-family by special permit not as by-right, so that would also need to be changed.

To be able to comply the density needs to change; some areas need to change from 12 units/acre to 17 units/acre and others need to change from 15 units/acre to 17 units/acre, everything needs to be by-right. In Greenbush all the districts that need to change would be from 12 units/acre by right to 17 units/acre by right and the GWB subdistrict would need to change to allow multi-family by right instead of by special permit.

Ms. Joseph referenced the memo provided by MAPC and the different scenarios that were tested. There was discussion about where we are currently.

There was discussion about what is currently in the stages of being permitted and if the size and densities would have to change; Ms. Joseph said unless it is permitted it would have to comply if the Board put through a zoning change. Just because someone has filed an application does not mean they are grandfathered.

Ms. Joseph said most of the applications the Board is seeing are not by-right, but have been special permits requiring density bonuses. She would recommend that the maximum density be kept the same, 17 units by-right or 24 by special permit.

There was discussion about if projected units to be built at 7, 33 and 61 New Driftway would count. Ms. Joseph explained they really wouldn't; what is being figured is the capacity per acre. It is a theoretical number it is not actual units; the area needs to be zoned to be able to be built. Mixed-use is not able to be included in the unit capacity numbers.

The Board discussed going to the Town's State Representatives to discuss the law and express the implications for Scituate and the inconsistencies in the legislation. Scituate was being proactive with some of the most recent zoning changes and it has been recognized by people in DHCD and MAPC.

Ms. Joseph said that some of the questions that were sent into DHCD are policy questions and that is why it has taken so long for them to get back to us; they needed to talk about the policy.

Housing is needed in the Commonwealth and it has been decreed that if you have a train station or are an adjacent community to public transit then the Town is an MBTA Community and there has to be multi-family housing and percentages have been determined based on if the town is a rapid-transit community, commuter rail community, etc.

Ms. Joseph said the next steps are talking to the Town Administrator and the Town has to decide how to approach this. She said the Town definitely wants to be able to apply for these grants and currently the Town is working on becoming a Housing Choice Community which will also help with acquiring grants. She said the Board has to be thinking about this.

Mr. Pritchard asked if the Town were able to count the things they should count, where we the town be in meeting the criteria. Ms. Joseph opined we would probably meet the numbers.

Mr. Pritchard opined Scituate should be in no hurry to be the first to do this. He thinks the Town should be proactive in getting the inconsistencies in the policy decisions addressed and by getting the Local Representatives to address them at the State House.

Ms. Joseph will set a meeting with Mr. Boudreau and see how he wants to proceed with getting State Representatives involved. Ms. Joseph indicated the Select Board received the action plan, but there has not been any conversation. Mr. Pritchard opined if the Board is the one that has to take it Town meeting he can't say he is in support of these changes without some explanation as to how this all makes sense; there are inconsistencies and if they looked at what Scituate has actually done and compared it to the what the objective is and the Town would then meet that objective this is punitive more than anything else. He opined he does not know if he would support it going to Town meeting, regardless of how any other Boards feel.

Mr. Pritchard said he is support of providing housing; the Town has done a lot of work towards creating zoning bylaws that encourage that and if some technicality is saying the Town can't look at that it doesn't make any sense. The other Board members agreed.

Minutes

Documents

- Meeting Minutes 1.26.23

Ms. Burbine moved to approve the meeting minutes for January 26, 2023.

Mr. Bornstein seconded the motion; a vote was taken, and was unanimously in favor.

Accounting

Documents

PO #2316927 (\$1,400.00), PO #2316878 (\$975.00), PO #2316810 (\$1,055.00), PO #2316930 (\$2,800.00)

Ms. Burbine moved to approve the requisition of \$1,055.00 to Chessia Consulting for peer review services for 61 New Driftway, for \$975.00 to Merrill Corp for peer review services for 6 MacDonald Terrace, for \$1,400.00 to Merrill Corp for peer review services for Curtis Estates, for \$2,800.00 to Merrill Corp for peer review services for 7 Cold Brook Circle.

Mr. Bornstein seconded the motion; a vote was taken, and was unanimously in favor.

Liaison Reports:

Pier 44 – reported by Ms. Lambert:

- Survey is out and encouraged the Board to complete

CPC – reported by Ms. Burbine:

- Voted \$400k for playground a Jenkins School
- Voted for funds for the parking lot and road at Mordechai Lincoln

Select Board – reported by Ms. Lambert:

- Encouraged everyone to listen to the last meeting, School Budget was discussed
 - First time in many years the school budget include maintenance and not being included in the Capital Plan
 - Includes items like painting classrooms
 - Mr. Burkhead and Mr. Dutch proud that they are able to keep this off the Capital Budget for the Town

Planning and Development – reported by Ms. Joseph:

- 7 New Driftway before ZBA next week

- Writing letter in support of ZBA granting a Section 6 Finding for impervious limitations in a Zone A
 - Development results in a decrease of impervious surface on the site and drainage system will have some recharge
 - Board previously determined it is acceptable
 - Ms. Joseph will send a letter from the Board
 - Memo will say that the Planning Board made no determinations for the Salt Marsh and Tidelands District as it is beyond the Board's jurisdiction
 - Memo will also say the impervious limits do make sense because there is a reduction in pavement on the site
 - It is a redevelopment and a better situation in the end

Documents

- Email to the Board from Shari Young dated 2.3.23 with agenda for 2.9.23
- Email to the Board from Karen Joseph dated 2.3.23 with meeting materials for 7 Cold Brook Circle, Curtis Estates, MBTA Communities and Planning Board Reports.
- Email to the Board from Shari Young dated 2.6.23 with DRAFT minutes from 1.26.23

These items were distributed to the Board electronically.

Ms. Burbine moved to adjourn the meeting at 7:41 p.m. Mr. Pritchard seconded the motion; a vote was taken, and unanimously in favor.

Respectfully submitted,

Shari Young
Planning Board Administrative Assistant

Ann Burbine, Clerk
Date Approved: February 23, 2023