



# *Planning Board*

February 12, 2014 – 6:05 PM - **Minutes**

Brooklawn Park Senior Center Warming House, 1997 Acushnet Avenue

## **MEMBERS PRESENT:**

**Chairman Colleen Dawicki**

**Arthur Glassman**

**Janine DaSilva**

**Kathryn Duff**

**Peter Cruz**

## **ALSO IN ATTENDANCE:**

**Jill Maclean, City Planner**

**Patrick Day, Staff Planner**

Chairman Dawicki called the meeting to order at 6:05 p.m. and called the role.

## **Public Hearings:**

### **CASE #1-14/2-14 – Preliminary Subdivision, Definitive Subdivision, and Site Plan Review**

Ms. Maclean informed the board that the applicant had withdrawn his application. Ms. Maclean read the applicant's withdrawal letter into the record.

A motion was made (KD) and seconded (JD) to receive the correspondence and accept the withdrawal.

Motion passed unopposed

### **CASE #11-13 - Preliminary Subdivision, Definitive Subdivision, and Site Plan Review**

Ms. Maclean noted that Ms. Duff was absent from the last planning board meeting, but has reviewed the DVD and the signed certificate, so she will be able to vote on this matter.

Rich Rheume of Prime Engineering addressed the board. There is a 15' wide paper street coming at an angle. After input from the planning staff and DPI, we modified the expanding the 15' with concrete 40' width turning at a 90 angle, turning and coming back to approximately the same spot. He stated the cul-de-sac was slightly smaller and pulled back to give more room for dwellings with a decent front and back yard. The utilities are essentially the same. The water is being passed through a storm water treatment system and then discharged to the south towards Rte. 140.

Ms. Maclean stated the Engineering stands by their previous comments. She noted tonight's hearing will be continued due to open issues with the Conservation Commission peer review. Likewise, engineering will review an alterations introduced this evening.

Mr. Rheume invited board questions.

Ms. Dawicki inquired if there was any visual plan showing where the houses would be built, to which applicant stated there was not.

Mr. Cruz noted the drainage design had completely changed from the original, with tree wells removed, leeching pits added. He asked if there was a revised drainage report that could be forwarded to the board. Mr. Rheume indicated there was. The removal of the tree well was based on lack of drainage efficiency, so it was changed to a storm leeching pits to handle the full volume of a storm.

Mr. Cruz noted the original design captured the water and shot it back towards Sassaquin Pond after treatment. Applicant indicated that was not the case; that there is a trench drain across the road that intercepts all the water, treats it, and heads it south. Mr. Cruz inquired if DPI was satisfied with a trench drain in a public way. Ms. Maclean indicated they would comment if they were not, but in this design water does not shed towards the pond. Mr. Cruz noted in the original design the applicant was capturing the water, treating it and sending it through a system that made its way back to the pond. Applicant noted a very small component had gone that way, but now none goes that way due to resident objections. Mr. Cruz clarified that his understanding of resident concerns was that valuable groundwater was not making it back, but that the applicant had addressed that at the previous meeting. Mr. Cruz stated at the last meeting he understood there was still groundwater back to the pond. Applicant stated the surface flow and groundwater flows are southerly.

Ms. Duff commented that the initial plan had the arc coming in and seven lots, Lot 6 not being included in that. Applicant stated the lots were mislabeled and they are now providing 75' of frontage for the two homes. Ms. Duff noted the creation of a landlocked parcel was the previous objection from the board, and the applicant stated that is now remedied.

Ms. Duff inquired if the drainage coming off of Ava's Way is still making its way to the depression that straddles Lots 3 and 4. Applicant affirmed and added that the high point is the intersection. He stated everything from one point flows from the two catch basins, gets treated, and goes into the infiltration basin. From the high point, it goes to the infiltration chambers. The small section left gets captured by the trench drain, treated and basically goes into a vegetated swale.

Mr. Cruz inquired if any proposal to fence off the location of the leeching pits. Applicant stated there was not, but for installed manhole covers, which are not specified to be locked but are heavy enough to be childproof. On the definitive plan it's defined as a drainage easement.

In response to a question from Mr. Cruz, Mr. Rheume stated they did not think there would be much need to clean the leeching basins. He indicated the storm ceptor would be vacuumed out once a year, inspected twice a year. Mr. Cruz indicated he had issue with the trench drain with regard to maintenance over time. Mr. Cruz suggested a drop inlet across the roadway on either side. Applicant stated it was too shallow, but they could put catch basins on the corners and just have the trench from one basin to the other. Mr. Cruz again noted it could be done with drop inlet and a cast iron pipe at 6 inches.

Ms. Maclean stated she would note the issue for review by engineering.

In response to an inquiry by Ms. Duff, Mr. Rheume stated the proponent would do the inspection and cleaning up until the street becomes a public way, at which point the city would take over maintenance.

Ms. Maclean reiterated that at the last board meeting though it was intended to close the matter at this meeting, but she suggested the board keep the hearing open to allow ConCom to have the peer review on the drainage and approve it, rather than closing the public hearing this evening. She suggested the board discuss what they are looking for and she will compile a list, providing a draft decision at the next meeting for review and approval. Since the plan has changed, the board will need to discuss the amount of the surety, as there is no

longer covenants on the lots as waivers are needed. Ms. Maclean raised the issue of the street name, as all neighboring streets are named after birds.

Ms. Maclean noted that after consultation with solicitors, Cardinal Street as presented is legal and the applicant has the right to improve the street, as they are now providing frontage for the two lots. She also stated that because the applicant has now turned the street in at a right angle it does not harm anyone to the east of further development.

Ms. Glassman noted the applicant appears to have done everything asked for at the last meeting, with the exception of the outstanding drainage issues.

Ms. Maclean confirmed to Mr. Cruz that the city has received the groundwater contour plans. She added that it would be reasonable to condition that an applicant has three years from date of decision to complete the public infrastructure, giving an applicant three construction seasons. Failure to do so would allow the city to seize the bond. This is as a result of people living in unfinished subdivisions who then do not have public services. This will assure the public infrastructure is completed, the road is accepted, and public services can be provided to any homes built and bought by that time.

A motion was made (JD) and seconded (KD) to open for public comments.

There was no response to Ms. Dawicki's invitation to be heard in favor of the project.

There was no response to Ms. Dawicki's invitation to be recorded in favor.

In response to Ms. Dawicki's invitation to be heard in opposition, Bob Manville of 1240 Sassaquin Avenue addressed the board. He expressed opposition to the project due to studies done of the area and the effects of additional building on the Sassaquin Pond. He stated the prior study recommended a moratorium on building. He stated it hampers the ability of the pond to sustain itself.

In response to Ms. Dawicki's invitation to be heard in opposition, Jaqueline Andrews of 12 Blue Jay Street expressed opposition to any expanded growth of this type as they are trying to recapture the pond and are at their closest point to accomplishing that. She feels a project of this type is too much to add to the area. It's a low part of the pond and will not benefit it at all.

Ms. Maclean noted to the audience that current zoning in the area, Residential A, allows for 8,000 s.f. lots and 75' of frontage and is therefore completely legal. The board has been strict in the past with regard to this project, and the applicant complied by cutting down to six lots, which meet the minimum zoning. While perhaps unfortunate for some, the reality is the project meets the zoning code and would be difficult if not impossible for the board to deny this as proposed this evening.

Ms. Andrews stated that while it may be able to be approved she did not feel it was ethical.

Ms. Maclean noted that a denial is taking people's property rights and such a decision would be overturned by a court, as it is by right zoning that meets the requirements.

Ann Costa of 1333 Sassaquin Avenue questioned whether "as built" can be added to the lot deeds to prevent altering of the abutting wetlands.

Ms. Maclean noted that "as built" are submitted to the Building Department with any home that is built when the permits are pulled. She stated the Conservation will require each lot has a post and rail fence along the buffer so that homeowners know they cannot pass the post and rail fence.

Ms. Costa asked if it was written so that the owners are aware.

Applicant explained to Ms. Costa they would have to file a notice of intent for each lot, showing that house and dimension. There is a public hearing and abutters are notified and the Conservation Commission makes us leave 25 feet of uplands undisturbed, not wetlands, and put a post and rail fence all along with placards saying “notice, this is a conservation area that cannot be disturbed” and each on each lot with each person’s deed.

Ms. Duff elaborated by saying the department of Inspectional Services requires “as built” plans especially on lot where there is a notice of intent application.

In response to Ms. Dawicki’s invitation to be heard in opposition, James Oliveira, 39 Briarwood Drive, Councilor Ward 1, addressed the board. He stated in principle he is against the development, though practically understanding the zoning regulations, which he is also against. He feels it is an irresponsible plan. While developers may look to maximize their financial benefit, it is not socially responsible to a community that has dealt with very hard issues around the pond, or the environment. He is encouraged that there will be covenants on infrastructure in light of problems with developers not finishing projects, citing a nine year project that still has no acceptable street. He feels it is unfair to residents and taxpayers. He wants to see the boards and commissions hold developers’ feet to the fire. He encouraged developers to think about what they are doing to the northend of New Bedford.

In response to Ms. Dawicki’s invitation to be heard in opposition, Jeff Miller of 15 Tobey Lane addressed the board. He thanked Councilor Oliveira for his support. He stated they have been fighting since 1987 to get Sassaquin Pond clean and keep it clean. He feels this type of project feels like a slap in the face to residents of the area. Ms. Miller noted that once realizing the amount of opposition to the project, the developer made tweaks until it was legal. He stated he did not understand how 8,000 s.f. with wetlands as part of the property still makes the grade. He stated he objects to the diversion of any water that would naturally fall into the pond. Mr. Miller sought clarification on how the frontages work, as at one point they were all touching each other and sharing.

Ms. Duff replied that they weren’t sharing frontage, but there were easements granted for the ability to put a fence going straight to the cul-de-sac. Each lot proposed on a subdivision must meet the frontage requirement in order to be a legal lot. The frontage along the cul-de-sac and on Ava’s Drive does meet the minimum 75 feet, some of them exceeding that.

Ms. Duff further clarified that she appreciates the community coming out each time the board had to work through another iteration of the project in that it brings to light the conservation and sensitive environmental issue of the area. She felt it was an opportunity for a developer to set environmental standards, such as LEED.

Ms. Maclean pointed out that on this revision of the plan almost all the lots have uplands of 8,000 feet or greater, not including the wetland area.

In response to Ms. Dawicki’s further invitation to be heard in opposition, Marie Pepin of Sassaquin Avenue thanked everyone who spoke this evening. She expressed concerns about the lot with the dilapidated house and wanted to know if that would be cleared up. She was also concerned about the diversion of groundwater, Sassaquin Pond being made up of 1/3 groundwater. She agreed with the comments from Mr. Miller and about developments built north of Braley Road such as Colby Village and Bismark Meadows, in which residents pay full taxes but do not get full benefits. She wanted Conservation to sign off on the detention pond and all drainage issues raised before any house lots are built on. She also wanted the roads put in ahead of time so the city doesn’t again get left holding the bag.

There was no response to Ms. Dawicki’s further invitation to be heard in opposition.

There was no response to Ms. Dawicki's invitation to be recorded as opposed.

A motion was made (KD) and seconded (JD) to continue the public hearing to March 12th.

Ms. Maclean listed next steps as the Conservation Commission peer review, and Engineering will look at the drainage plans and meet on that. There will be an internal cost estimate to complete the public infrastructure, and draft decisions.

Ms. Dawicki asked the applicant to clarify Sassaquin Pond impacts.

Mr. Rheume stated the study done showed the project area was not part of the Sassaquin Pond watershed and stated they are not diverting any storm water. He stated groundwater currently flows southerly and will continue to do so.

Mr. Cruz acknowledge that Mr. Rheume's clarification and noted the board had been supplied with the groundwater contours as requested by abutters, clearly noting groundwater from this site is not going towards the pond or taking away that valuable source from the pond.

Ms. Maclean state that in addition to the Prime Engineering study, the Conservation Commission also contracted with Nich Engineering who did a watershed study, which showed the water shedding into the pond flows north of this subdivision.

Ms. Dawicki thanked everyone for coming out and then invited Old Business, of which there was none.

#### NEW BUSINESS

Ms. Maclean stated they had received a letter from Bismark Meadows Subdivision in the northend. She stated the city still has \$23,000.00 in the accounts and have released all the covenants. The cost estimate to complete the work included a line item for \$11,200.00 to be given to the City of New Bedford in order to take over the detention pond. They are still trying to ascertain whether the deeds for each lot contain a homeowners association that would take over that maintenance. Though the applicant has asked the street be accepted, but they still need to do a title search and make sure the homeowners association contains the language to take of the detention pond. In addition, the Conservation Commission in their final review has been discovered the detention pond was not built to plan, but built undersized. Three Conservation Commission requests to developers have gone unanswered, therefore the commission engineer will review the pond and determine whether it is adequate to meet the subdivision needs. At this point, the advice of our solicitors is not to act upon this but hold it, as applicant will have to come before the board again with new plans in regard to the detention pond.

Mr. Glassman inquired if there was any idea on the cost of an upgrade, if necessary. Ms. Maclean stated they did not know until the engineer review was completed.

Ms. Maclean clarified to Ms. Duff that if in the deed, homeowners pay into a fund for the upkeep. Ms. Maclean stated in the 1990's there was a 15 lot subdivision denied by the planning board which went to land court. The court allowed them nine lots, leaving absent any official planning board decision. The language is gray on whether the homeowners' association or the city takes it over, and it is being reviewed by our solicitors. As there are unknown costs, it is not suggested that we release any of the money.

Mr. Glassman agreed. He noted that the board needed to be sure in future subdivisions that substantial money is held to make it worth the developer's while to finish the project.

Both Ms. Duff and Mr. Glassman were in favor of adding time restrictions.

Mr. Cruz was in agreement with the public comment regarding the initial installation of all infrastructure.

Ms. Dawicki invited a motion.

A motion was made (KD) and seconded (JD) to take no action.

Motion passed unopposed.

Ms. Maclean stated that Mr. Day, along with a solicitor, was developing a model for a new sign ordinance, to address the arbitrariness of the city's current ordinance. It addressed lighting as well. She expected a meeting with the building commissioner, solicitor, and planning staff to revise the language to fit the New Bedford Code.

Ms. Maclean then addressed the board regarding training opportunities. She noted a recent working session with the Zoning Board. Mr. Glassman noted the Citizens Participation Trainings were in Worcester. In response, Ms. Maclean stated the plan was to hold training for a few hours on three Saturdays for the boards. The Citizens Collaborative Training will assign someone for the local training. She stated the first to be "How to hold a public hearing" and "The role of a Board Member." The second would be an intro to the zoning act. And the third will be, for planning board, "Subdivision lot and site plan review"; for the zoning board it will be "Variance and Special Permit." If agreed, she would like to schedule one for the end of March, one in April and one if late April or May.

Ms. Dawicki suggested submitting question to tailor the training.

Ms. Maclean spoke regarding 270 Phillips Ave who will be applying for site plan review and a special permit for a reduction in parking. It is an existing structure changing uses, triggering the site plan review. Ms. Maclean stated they are asking for waivers per the letter she sent to the board members. She was seeking guidance on what the board may or may not be willing to waive so she could give some guidance to the proposed applicant.

Ms. Duff stated she had forwarded comments.

In response to a question from Mr. Glassman, Ms. Maclean indicated it was a proposed church.

Ms. Duff commented that she found several things very troubling about the proposal. They are listing it as assembly space, making modification for two handicap bathrooms, but they are unisex in an assembly space. With regard to the assembly, they are asking for a reduction in the occupant load, because they only want to use it for 49 people. Assembly would put the occupancy for the building at a very high number. You can't control or enforce an owner only 49 people and calling it an assembly space. It asks the city to assume the risk if someone were injured or if there weren't adequate utilities or parking for a building that is being classified as an assembly. Due to the request for a reduction in the occupant load, conveniently they only need that many parking spaces. Ms. Duff felt the applicant would need to come before the board for site plan review and ask for the proper reduction in parking. Mr. Cruz noted they also need a waiver for diagonal parking.

Mr. Cruz was concerned about the one way in, one way out. Ms. Duff agreed and noted the danger in backing up from an angled spot into a busy street.

Mr. Cruz noted that there was no clear path of pedestrian travel to access the building for anyone parking along the street.

Mr. Glassman inquired as to the previous use, Mr. Day stating it was machinery rental.

Ms. Maclean noted Engineering also had concerns with the diagonal parking. She noted one of the spaces appeared to be in the way of the handicap spot. Mr. Cruz noted the way the applicant had drawn it, an accessible person would have to back in to use the aisle.

Ms. Duff felt it did not schematically work.

Ms. Maclean stated she did not believe the applicant had a problem coming before the board, but was interested in any available waivers.

Mr. Cruz believes he forwarded a list. He felt the drainage was not an issue, but other things were.

Ms. Maclean suggested a fence along property lines, and perhaps donating a tree as the parking is so tight.

The board members reiterated their concerns.

With regard to the architectural plans, the board felt Inspectional Services would take a handle it.

With regard to the utility plan, Mr. Cruz did not think it was necessary as it's an existing condition building.

With regard to a lighting plan, the board wanted to see streetlights and exterior lighting.

With regard to ADA certification, the board declined any offer of waiver.

Patrick Day addressed the board on improvement/development of new applications for streamlining; namely, site plan review application, site plan review application checklist, and special permit application. These documents are planned to be fillable PDF documents. It is expected this will also help reduce continuances due to lack of information, as well as any decision appeals.

There being no further business, Ms. Dawicki invited a motion.

A motion was made (JD) and seconded (PC) to adjourn.

Motion passed unopposed.

The next meeting is March 12, 2014

Meeting adjourned at 7:27 p.m.