

**MINUTES OF PUBLIC HEARING
HELD BY THE PLANNING AND ZONING COMMISSION
APRIL 20, 2009**

ROLL CALL:

Members Present: Eugene Sierakowski, Chairman
Joseph Diminico, Vice Chairman
Kevin Dougan, Secretary
Salvatore Mancini
Andy Kidd

Alternates: Eric Prause (sitting for T-486)

Absent: Matthew Galligan

Also Present: Mark Pellegrini, Director of Neighborhood
Services and Economic Development
Renata Bertotti, Senior Planner
Ginger MacHattie, Recording Secretary

The Chairman opened the Public Hearing at 7:05 p.m. The Secretary read the legal notice for the application when the call was made.

BIRCH MOUNTAIN ESTATES VIII – 190V Coop Sawmill Road – Subdivision – Request for Extension (S-165)

Chairman Sierakowski explained that a petition was received at the last Planning and Zoning Commission meeting requesting a public hearing on this item.

Attorney Peter Alter, representing the owner of 770, LLC, explained that on February 20, 2009, his client sent a letter to the PZC requesting an extension because the subdivision work would not be completed by the May 15 deadline. He said the Commission has the authority to extend the time for completion of public improvements within statutory allowances. Between February 20 and April 6, discussions were held with Town staff regarding the subdivision. His client requested an extension for all work, with the exception of the final coat of pavement, be granted to December 1, 2009. The staff said all work, including the final cost of pavement, be completed by October 1, 2009.

Attorney Alter distributed a letter from the excavating contractor estimating approximately six

months of activity was needed for the removal of excess material from the site. He said there is a substantial number of lots that need to be graded to finished grades. Attorney Alter explained the developer has already blasted for basement foundations and lateral utilities. He said this has been a very difficult site to develop, with over 200,000 cubic yards of rock removed. The excavator has agreed to limit the hours of operation to the hours between 8:30 a.m. and 3:30 p.m. with no pneumatic hammering on Saturdays but other work may take place on Saturday. No activity will take place on Sunday. Attorney Alter stated that the majority of public improvement work can be completed by October 2009, but requested a margin of 30 days for completion. He requested the final course of bituminous be delayed until the spring of 2010.

Based on comments made at the last meeting regarding the developer's financial ability to finish the project, Attorney Alter explained that the owner acquired the property for cash on January 25, 2005. All work to date has been done without financing; the property is mortgage free and unencumbered, he said.

Attorney Alter distributed a memorandum dated April 13, 2009 from Mark Carlino to Mark Pellegrini regarding concerns with the paving schedule and the Town's recommended schedule of work. He said from the Town's estimate it appears that the October 1 completion date is achievable, but his client respectfully requests the Commission extend the date to October 31, 2009 with the exception of the final course of bituminous paving. Attorney Alter explained the final course of paving, if installed while work is still ongoing, often requires repaving. His client would prefer waiting with the final course to avoid damage and the need for repaving. He stated that his client has no objection to limiting the hours of excavation.

In response to a question from Mr. Diminico, Attorney Alter said there were mechanic's liens on the property but he believed they were discharged. The last title search was completed in February of 2009.

In response to questions from Mr. Prause, Attorney Alter said he is not an engineer but does have 35 years of experience working with developers. It is his experience that a final course of bituminous typically gets scarred or broken up because it doesn't have enough of a chance to cure before heavy equipment uses it. Attorney Alter added that all blasting for public improvements has been done, the only blasting that remains is for individual home construction.

Mr. Kidd said he would like assurances that there would not be work stoppage. He understands there will be no issues with funding if an extension is granted. The attorney for the applicant has stated that the property is clear of bonds or liens.

Attorney Alter stated there is no bank or private financing of this project. If the developer runs out of his own funds, he has the subdivision free and clear, which represents a substantial amount of equity.

Mr. Kidd said he did take a ride through the property and noticed a dilapidated trailer with a huge tire crashed into the roof behind a residence. He wondered if the trailer has a useful purpose and how long it has been sitting there. He noted correspondence that registered a complaint against the trailer. Mr. Kidd believes, looking at the Town staff's timeline, the public improvements can be completed within the recommended timeframe. He commented that the biggest problem seems to be the stone removal and asked if the applicant has any thoughts on accelerating its removal. Attorney Alter said it does not appear feasible to put another crusher on site. The excavating contractor thought he could be finished within six months.

Mr. Kidd commented there seemed to be a number of issues that the Zoning Enforcement Officer needed to address with the developer, including noise and erosion control. He asked if the extension were to be granted, would any work need to be done requiring erosion control. Mr. Pellegrini said there are still some erosion problems; material is ending up on the street and going into the catch basins. The silt bags inside the basins need to be cleaned out and maintained.

Mr. Diminico asked if there is still an erosion control bond in effect. Mr. Pellegrini responded that there is. Mr. Diminico said he specifically remembers asking for a work schedule at the last meeting. Attorney Alter said everything but the bituminous will be completed by October 31, 2009. Mr. Diminico said that since no work schedule was presented, he will assume the developer agrees with the Town's schedule. Attorney Alter said that he doesn't doubt that each of the items can be completed within the timeframe that the Town estimated, but because of sequencing they are requesting the proposed timeframes be granted.

Mr. Pellegrini noted a memorandum received by the Planning and Zoning Commission dated

April 2, 2009 describing the developer's recommendations vs. the Town's recommendations. The memorandum lists the major work that needs to be completed as well as the problems on site.

Mr. Sierakowski indicated that he would like to get the question of the paving cleared up. Richard Staye, Town Utility Engineer, explained that a meeting was held with Town staff, the contractor, and the excavator. At that time the contractor was asked for a conservative timeframe for completion. The contractor said he needed six months from the date of the staff meeting, which would bring the date of completion to the end of September. Town staff feels the October 1 timeframe is appropriate. The pavement mix used on roads is different than the type used for driveways and can be driven on the next day.

In response to a question from Mr. Diminico regarding blasting for water and sewer lines, Mr. Staye said he is of the opinion that doing as much blasting as possible now was probably a good approach. Mr. Diminico asked when the last time the catch basins were cleaned and Mr. Staye estimated last fall. The zoning enforcement officer required an engineer to be hired to monitor erosion and sedimentation control, which would include monitoring of those catch basins, however, reports have not been received recently and it is unknown whether that engineer is still on the developer's staff.

The Chairman asked for public comment at this time.

Ms. Bertotti noted for the record that several e-mails have been received in opposition from the following: Eric Kornbrust, Gerry Guay (two e-mails), Mr. and Mrs. Borjestedt, and Mr. and Mrs. Allinson.

Ms. Patricia Borjestedt, 70 High Ledge Circle, explained that her home directly abuts the development and said she is concerned that people on the Commission do not know the entire history of the project. She described what she considers five years of incompetence and said she sees no indication of the problems ending. Rather than a subdivision, the property has become a quarry. Subdivision and zoning regulations have been continually violated and no efforts have been made to minimize nuisances. Subcontractors routinely arrive and begin work before 7:00 a.m., and diesel fuel odors and dust are routine. Ms. Borjestedt said that the site was completely

dormant in 2007 and the developer failed to secure the site. There were multiple large parties and bonfires on the property, putting her property at risk. Other issues included erosion and sedimentation control (mud), construction machinery leaking oil or gas into the storm drain, negligence, blasting, hours of drilling, improper drainage, and truck access. The people who live in the development have been made to feel as if they have no rights. The developer has mis-managed the project and has no consideration for his neighbors. Ms. Borjestedt believes the developer is engaged in operating a commercial rock quarry and should not be granted an extension. She asked that the public hearing be left open until May 2 because many of her neighbors are away during school vacation week and would like to address the Commission themselves.

Mr. Bill Bartlett, 62 High Ledge Circle, mentioned that others in their neighborhood are away on vacation and regret not being able to speak at this hearing. Mr. Bartlett said it has been horrible living in this subdivision with the drilling and blasting. He is aware of contractors submitting bills for payment and being fired rather than paid. He questioned why the developer would clear cut all of the trees and suggested it was to make money. Now there is a mining operation going on, he said. Mr. Bartlett encouraged Commission members to deny this application and make the developer come back and start from “square one.”

Mr. Gerry Guay, 20 Jenny Cliff, gave Commission members some pictures of the development taken on Saturday. He lives one-half to three-quarters of a mile down the street from this development. Over the last five years, he said his family and neighbors have had to listen to blasting, pneumatic hammers, rock crushing, large trucks and 18 wheelers. He can't imagine what it must be like for the neighbors that live even closer. Any type of change to this property requires blasting and hammering; the original permit should never have been approved. Mr. Guay said only two or three foundations have been blasted and asked if that means there are another 21 to do. He requested that if the project is extended, rock crushing be done at a different location. He referred to the pictures given to Commission members of areas of erosion without control measures. There are approximately 140 families in this neighborhood that would benefit from a passive neighborhood park here instead of this nuisance to the neighbors.

Mr. Louis Lomasky, 27 Outlook Avenue, West Hartford, said when he read what was going on

with this neighborhood his heart went out the families living there. He began to relate some experiences other contractors and families had with the developer. Attorney Alter objected to Mr. Lomasky's public comment because it has nothing to do with the subdivision in Manchester. Mr. Sierakowski agreed with Attorney Alter's assessment and asked the speaker to limit his comments to the agenda item.

Mr. Pellegrini mentioned Ms. Borjestedt's comments about the erosion control plan and explained that it was the original erosion and sedimentation control that was included in the purchase of the development. It was obviously not followed or did not work given the conditions of the site, which is why the order was given to hire an engineer. The Town was aware of work beginning before 7:00 a.m. and this was stopped through police enforcement. Mr. Pellegrini commented on the preservation of natural features and explained that most developers take a lot-by-lot assessment; however, clear cutting is not prohibited. Mr. Pellegrini noted the comments by neighbors that this has turned into a commercial pit. Unfortunately, this extent of the work appeared to be necessary to bring the site to the approved grades.

Mr. Pellegrini explained that subdivision regulations are administrative. This was first approved in 2001 and work started in 2005. The time period was extended to ensure completion of public improvements. If the Commission does not grant the extension, it can take action to declare the subdivision null and void and the Town would have an unfinished street and utilities. There would be no individual lots. The Town is not holding a public improvement bond so there are no funds to complete the work. No lots can be sold and no permits issued unless the public improvements are completed or a bond is posted for completion. A new applicant will automatically have five years to complete these improvements. Town staff is of the opinion that it is in everyone's best interest to get the public improvements done as expeditiously as possible.

Mr. Pellegrini said many of the concerns mentioned are legitimate and he understands the difficulty. Town staff has not always been able to take action when it would have liked. It is urgent that these public improvements be completed as soon as possible and Mr. Pellegrini believes October 1, 2009 is a reasonable expectation.

Mr. Sierakowski said, looking at the photos provided by Mr. Guay, there does not seem to be any erosion control measures in place. He asked if there will be more aggressive monitoring of

developments with previous “red flags.” Mr. Pellegrini explained this is an active construction site and conditions change. The site will be monitored until the project is complete.

Mr. Diminico commented that if this request for extension is denied and no developer reapplies, the Town ends up with a road with no lots. The Commission should learn from this experience and make some changes so as not to be put in this position again.

Mr. Prause commented that he sees two paths, either grant or deny. If the extension is granted and at the end of six months the public improvements are not complete, the Commission will be right back to the same point and be left with the same choice. If the Commission denies the extension request an application will most likely be resubmitted. He wondered if there is anything that is part of the approved plan that doesn't fall in line with the current regulations.

Mr. Pellegrini explained that when the extension was granted, a number of conditions were placed around the blasting. The jurisdiction for the granting of blasting permits rests with the Fire Marshal. Some conditions the PZC imposed are beyond what the Fire Marshal feels he can enforce.

Mr. Diminico clarified that the Commission asked for additional conditions and the Fire Marshal only did what was required by the State. Mr. Pellegrini said that the Fire Marshal only did what the Fire Marshal is authorized to do; he is not an officer of the Planning and Zoning Commission. Mr. Diminico would like to discuss this further with the Fire Marshal.

Mr. Sierakowski commented that Mr. Guay's photos show that this seems to be a sand and gravel operation in a residential neighborhood. He wondered if this is a weakness in the regulations.

Mr. Pellegrini said that this brings up a point that has come to light as a result of this operation. The zoning regulations do not regulate earth excavation associated with an approved subdivision plan.

Mr. Kidd wondered why the crushing operation could not be moved off site and asked the applicant why this could not be done in the spirit of making this as painless as possible for all parties involved.

Attorney Alter said that part of the problems is the expense. The contractor would be moving materials two or three times to accomplish the crushing. Regulations require that a subdivision be brought to grade. This particular subdivision sits on all rock, which is expensive to break loose. The sewer line was directed by the Town to go in a certain place. Although the cut of that line is extraordinary, the PZC approved its exact location. Once approved, the applicant has no choice; he must bring the subdivision to grade. The easiest way to dispose of the rock is to crush it first which allows for less trips. Hauling the materials out before crushing would mean a substantial increase in truck traffic and would be no less disruptive to the neighborhood. He stated that what is going on at this location is exactly what was approved and was expected when the plan was approved.

The Planning and Zoning Commission took a brief recess at 9:10 p.m. and returned at 9:20 p.m.

Mr. Sierakowski noted that some points were raised tonight that need to be addressed separately from this application. He asked Commission members whether they thought there was a benefit to keeping the hearing open.

Mr. Diminico said he would like to continue the hearing and would like to find out from the Town Attorney whether or not the Commission can require some type of a bond. He would also like to have a dialogue with the Fire Marshal regarding blasting.

Mr. Kidd said he agrees with keeping the hearing open. He would like to understand the latitude of the Fire Marshal's office and be able to get more public input. He would also like to give the applicant an opportunity to think about what he has heard and possibly come up with some ideas on how to gracefully finish this project.

Mr. Dougan supports keeping the hearing open. He visited the site and said he has never seen a subdivision under construction that looked like that. He would like to hear more testimony from the Fire Marshal, Town staff, the Town Attorney, and from the public.

Ms. Bertotti explained the public hearing can remain open until May 26. After that, the Commission has 65 days to make its decision. The subdivision expires on May 15, provided the PZC takes action to record the expiration on the land records.

Mr. Prause and Mr. Mancini were both in favor of holding the public hearing open.

Attorney Alter reviewed the information desired by Commission members.

Mr. Bartlett suggested that as a sign of good will, the applicant move the trailer sitting behind some homes as it serves no purpose and is unsightly.

MOTION: Mr. Diminico moved to keep the public hearing open until the May 4, 2009 meeting. Mr. Dougan seconded the motion and all members voted in favor.

The chairman closed the Public Hearing portion of the meeting at 9:37 p.m.

NOTICE: THE CASSETTE TAPE RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.

OFFICIAL TAPE NO. 1032, 1033