



The Planning Commission

Town of New Fairfield
New Fairfield, Connecticut 06812

Regular Meeting
Monday, August 25, 2008
Library Community Room

MINUTES

Commissioners Present: Susan Chapman, Chair, Mike Daood, Vice Chair, Roger Wise, Paul Bruno. Bob Murtha joined the meeting at 7:35pm

Commissioners Absent:

Alternates Present: Gregory Porpora

Alternates Absent: None

Town Officials: Tom Corbett, Selectman

Call to Order: 7:31pm

Elevation of Alternates:

Mike Daood made a motion to elevate Greg Porpora to full voting status, 2nd by Paul Bruno, vote 4-0

Approval of Minutes

Bob Murtha made a motion to approve the Minutes to the June 30, 2008 Special meeting, 2nd by Paul Bruno, Vote 3-0-3. Mike Daood, Roger Wise, and Greg Porpora abstained. Mike Daood made a motion to approve the Minutes to the July 28, 2008 Regular meeting, 2nd by Roger Wise, vote 5-0-1, Bob Murtha abstained.

Correspondence/Announcements

Public Comment—as follows:

Cheryl Reedy, 1 Heron View Court: Spoke in favor of the Town purchasing the property at 32 Beaver Bog Road noting it is important to preserve the aquifer and supports protecting Open Space.

Tom Corbett, Selectman: Spoke in favor of the 8-24 Referral on the Agenda to purchase the property at 32 Beaver Bog Road and how important it is for the Town to preserve Open Space and purchasing this property falls into the plan the Commission has had in place for the last couple of years to link together as many areas of open space as possible.

Susan Chapman asked for any further public comment—none heard.

OLD BUSINESS

High Winds Road Resubdivision, aka Dunham Ponds, Nathan Kahn, applicant:

Susan Chapman read correspondence dated August 13, 2008 from Attorney Robin Kahn giving an update on the progress that has been done at the High Winds Road Resubdivision.

Susan Chapman read correspondence dated August 24, 2008 from Tony Iadarola giving an update on the progress that has been done at High Winds Road Resubdivision. This report indicated the fire tanks were still not in place and the fire access road was still not paved.

Nathan Kahn and Bob Clark approached the Commission handing out various contracts they have for work to start. They explained the reason they were not able to complete the work was because they hit ledge. The Commission discussed their concerns about the fire safety issues that have been ongoing, noting that the tanks have been an issue for over two months and as of today they are no better off than they were two months ago. The Commission also discussed their concerns with the Fire Access Road not being paved as of yet and High Winds Road still has not been completed.

Nathan Kahn stated two weeks ago the bank released \$93,000.00 (ninety three thousand dollars) for the 30,000 (thirty thousand) gallon fire tank and that money is with his attorneys Cohen and Wolf but did not have any supporting documentation. The Commission stated they need documentation from the bank. The applicants have not addressed the 10,000 (ten thousand) gallon fire tank at all. There is a tanker truck with 13,000 (thirteen thousand) gallons of water on site.

The Commission discussed the contracts that were handed out and noted there weren't any dates as to when the work would start or be completed, but rather looked like estimates or bids to have the work done. Bob Clark noted the fire access road is 85-90% completed but a binder coat still needs to be put on. The Commission stated if a binder coat or topcoat is still needed then the road is not 90% completed.

Bob Clark handed out a document entitled "Work Completed Since July 28th Planning Meeting" and discussed as outlined. The Commission inquired about the "Sequence of Construction" document that was handed out and discussed last month. Mr. Clark stated Tony Iadarola rejected it. The Commission inquired as to the exact date all of the work would be completed. The applicants were not able to give a specific date or time frame.

The Commission discussed the letters of credit that are going to expire on September 30, 2008. These letters of credit have not been renewed and a substitute security has not been offered in its place. Nathan Kahn agreed he must speak to the bank about renewing them but did not want to commit to saying they would definitely be renewed.

The Commission discussed High Winds Road has been on the Agenda every month since January 2008 and that time and time again the applicants stated the work would be done and did not pull through. On the Agenda tonight is a discussion about authorizing the First Selectman to start drawing on the letters of credit to assure completion of all bonded improvements relating to the Planning Commission's Approval. At this point it would be a good idea for the Commission to have a discussion if we want to authorize the First Selectman to start drawing on the letters of credit. Susan Chapman discussed conversations she had with attorney Jim Strub about which direction we wanted to take. The Commission does not have the authority to draw on the letters of credit; they have the authority to make the recommendation to the First Selectman to do so, noting the First Selectman does not have to follow their recommendation. If the Commission makes the recommendation to the BOS and the BOS follows their recommendation a site assessor will go up to High Winds Road and make a recommendation as to what needs to be done and the cost involved. The Commission discussed the short time frame. The letters of credit expire September 30, 2008 and the next regularly scheduled Planning Commission meeting is September 22, 2008. If the Commission were in favor of authorizing the First Selectman to start drawing on the letters of credit, this time frame may not be sufficient. The Commission discussed they have not seen evidence of when the work will be completed and with the colder weather approaching work will start to slow down. The Commission discussed the process involved after a recommendation was made, and if we make the recommendation, then we will still receive progress updates on the project.

Motion Susan Chapman entertained the following motion that was made by Paul Bruno and 2nd by Bob Murtha:

The Planning Commission moves to empower the Board of Selectmen and the First Selectman as follows:

For the reasons listed below the Planning Commission feels that it is the Planning Commission's responsibility and in the best interest of the Town to empower the Selectmen, acting through First Selectman John Hodge, to draw, to the extent necessary, on Letters of Credit #10375 and #10376 provided by Union Savings Bank (the "Bank").

1. The responsible parties, The Woods at Dunham Pond, LLC and Dunham Pond Construction, LLC (the "Applicant") are in violation of the Improvement Agreement Between The Woods at Dunham Pond, LLC, Dunham Pond Construction, LLC, and The Town of New Fairfield Regarding High Winds Road Subdivision, and the Dunham Pond Condominium and The Woods at Dunham Pond Projects dated December 17, 2003, and the Subdivision Improvement Agreement and Guarantee Between The Woods at Dunham Pond, LLC and The Town of New Fairfield Regarding High Winds Road Subdivision dated August 2003 (together, the "Agreements"); as the

Agreements relate to the completion of the improvements required by the High Winds Road Re-Subdivision approval.

2. Letters of Credit #10375 and #10376 pursuant to the operative term provided by Union Savings Bank are set to expire on September 30, 2008. The Planning Commission has put the Applicant on notice of the impending expiration and has not received a letter of renewal from the Bank or substitute security from the Applicant.
3. After considerable conversation and exchange of correspondence between the Applicant, its agents, and its attorneys; and the Planning Commission, its consulting engineer, and its attorneys, there has been no appreciable improvement to the fire safety concerns repeatedly brought to the attention of the Applicant. The Planning Commission is in agreement that the only way to ensure completion of these improvements is to empower the Board of Selectmen to access the funds necessary to directly oversee the completion of these improvements.

This decision is made with the understanding that the Planning Commission is not waiving or prejudicing any rights or obligations it has regarding the completion of the bonded improvements associated with the project. Moreover, this decision is made independent of any powers or actions that are within the jurisdiction of either the Board of Selectmen, the First Selectman, or the Zoning Commission, all of which may exercise their independent jurisdiction without the input of the Planning Commission.

Given the concerns outlined above, the Planning Commission is referring this matter along with comprehensive packet of the Planning Commission's records pertaining to this matter to the Zoning Commission.

Upon motion being duly made for the reasons set forth above, it is hereby

Resolved, that the Planning Commission of the Town of New Fairfield empower the Board of Selectmen and/or the First Selectman of the Town of New Fairfield to draw down on Union Savings Bank Letters of Credit #10375 and #10376 for the purpose of satisfactorily completing the improvements required by the High Winds Road Re-Subdivision approval; such draw shall be to the extent necessary to assure such satisfactory completion.

After the motion was made and seconded an appropriate discussion took place. The above motion passed as read vote 5-0-1 Roger Wise abstained from the vote.

Austin Woods Resubdivision, Mike Ford and Joe Romanello, applicants:

Susan Chapman read a letter from Mike Ford requesting a 2nd and final 90-day extension on their approval time. Susan Chapman read a letter from attorney Jim Strub dated 8/19/2008 regarding a letter of credit # 11477. Mike Daood made a motion to grant a 2nd and final 90-day extension, 2nd by Bob Murtha, vote 6-0.

NEW BUSINESS

8-24 Referral; for the purpose of purchasing 15 acres of Open Space at 32 Beaver Bog Road, Zoning District: R-88; Map: 13; Lot: 6 Block: 1.4

Bill McCann of the New Fairfield Land Trust approached the Commission and outlined on a map where the property is located. This 15-acre parcel wraps around the aquifer preservation area already owned by the Land Trust. The cost of the property is approximately \$50,000 (fifty thousand dollars). Once purchased the property will become the property of the New Fairfield Land Trust and it will help to connect the Town's greenways, which fits into the Plan of Conservation and Development (C&D Plan). The Inland Wetlands Commission has already turned the property down for development.

Roger Wise made a motion to give a positive 8-24 Referral to the Board of Selectman (BOS), 2nd by Bob Murtha, vote 6-0.

Adjourn

Roger Wise made a motion to adjourn at 8:40pm, 2nd by Bob Murtha vote 6-0.