

November 2, 2011

**Planning Board
Newburyport City Hall**

The meeting was called to order at 7:30 P.M.

1. Roll Call

In attendance: Dan Bowie, Anne Gardner, Sue Grolnic, Jim McCarthy and Bonnie Sontag

Absent: Julia Godtfredsen, Henry Coe, Paul Dahn and Don Walters

Andrew Port, Director of Planning and Development was also present.

2. General Business

a) Approval of the minutes

Minutes of October 5, 2011 Meeting

Bonnie Sontag made a motion to approve the minutes as written.

Sue Grolnic seconded the motion.

Minutes approved as written.

Votes Cast:

Dan Bowie: approve

Ann Gardner: approve

Sue Grolnic: approve

Jim McCarthy: approve

Bonnie Sontag: approve

b) Springwell Investments, LLC

Oleo Woods OSRD Subdivision/Russell Terrace Extension

i. Request for minor modification – conservation restriction

Bill Sheehan, an attorney from Peabody, MA, for Springwell Investments, was present. Attorney Sheehan sought permission to delete the condition that no building permits can be issued until the conservation restriction is granted. A draft conservation restriction was submitted in July to Essex County Greenbelt Association and Springwell did not receive a response, which was actually an entirely new draft, until late September. This revised draft, with Springwell's edits, was sent back to ECGA on October 12. According to Mr. Sheehan, after ECGA and Springwell agree upon language, an application and supporting

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materials must be submitted to the state Executive Office of Energy and Environmental Affairs, Division of Conservation Services. At this stage they wish to get the building underway without further delay. One board member saw no problem granting this request, given that the situation was created by a bureaucratic delay. Chairman Bowie commented that they are much further along in the process and also does not see a problem with the request. Andrew Port, Director of Planning and Development suggested modifying Special Permit condition number four to read "Prior to issuing an occupancy permit...."

Anne Gardner made a motion to approve the request to modify the Special Permit. Bonnie Sontag seconded the motion.

Motion approved.

Votes Cast:

Dan Bowie: approve

Ann Gardner: approve

Sue Grolnic: approve

Jim McCarthy: approve

Bonnie Sontag: approve

ii. Request for minor modification – stone wall

Brian Murray of Millennium Engineering summarized the situation as follows. A stone wall was to be located along the border of this property marking the border with the city of Newburyport property. They are looking to eliminate 350 feet of the planned retaining wall because the swale is no longer needed. If the swale is not needed, the stone retaining wall can be reduced. The wall measures up to 2 ft high in some areas. The engineers say that some grading can be done to maintain required drainage patterns in that area. In addition, they believe that eliminating part of the stone wall will help with existing vegetation by not using machines in that area.

One member asked what changed. If the review engineers asked for the drainage swale, now they don't want it, what has changed? The response was that swale was eliminated per discussion in an earlier meeting on October 15 and they forgot to ask about the wall at that time. Andrew Port said he has a copy of the engineer's comments from the October 15 meeting. It reads in part, "...that the water can be directed better just by grading the earth." The member agreed that it had essentially already been okay'd in the October 15 discussion.

One member asked if there was a drawing that shows what they are trying to do. Andrew Port said he will request one.

Bonnie Sontag made a motion to approve eliminating a portion of the stone wall.

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Jim McCarthy seconded the motion.

Motion Approved.

Votes Cast:

Dan Bowie: approve

Ann Gardner: approve

Sue Grolnic: approve

Jim McCarthy: approve

Bonnie Sontag: approve

iii. Tripartite Agreement

A request was made for a portion of \$375, 578.15 to be released for work completed to date.

The Tripartite Agreement was summarized by Chairman Bowie. Funds of \$1.5 million are to be held as a substitute for the covenant. The bank will make sure that it is satisfied in the release of funds and the board will make sure that the project is far enough along so that funds can be released. A certificate is needed for the release of lots. A vote is needed to sign the certificate. We would withhold until Friday, until we received a copy of the Tripartite Agreement signed by the bank.

One member asked Chairman Bowie if he had reviewed the whole thing. He commented that this is not a letter of credit and that we have used this on other projects. He added that Phil Christiansen, the City's consulting engineer, and the Newburyport Department of Public Services have reviewed it for the numbers. The applicant is entitled to switch one form of security for another.

Anne Gardener made a motion to approve the Tripartite Agreement.

Jim McCarthy seconded the motion.

Motion Approved.

Votes Cast:

Dan Bowie: approve

Ann Gardner: approve

Sue Grolnic: approve

Jim McCarthy: approve

Bonnie Sontag: approve

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning

department as part of this application and all of which are available in the planning department, were considered.

c) Waste Water Treatment Facility

Request for minor modification – submission of plans prior to issuance of a building Permit

Peter Hartford, Newburyport Waste Water Treatment Facility, summarized his request as follows. There are two conditions, one related to landscaping that includes replacement of the perimeter fence and the other related to improvements on the 115 Water Street parcel. He said due to funding limitations, the Sewer Commission has elected to defer the work until the construction of Contract 2 is completed. The work will then be funded through the annual operating budget of the Sewer Department as a separate capital improvement project. The Sewer Commission is seeking Planning Board approval to delete the requirement for submitting plans for this work prior to the issuance of a building permit so that construction on Contract 2 may proceed accordingly.

One member commented that, despite significant budget problems, these two conditions are important to be able to finish the project properly. The member asks what the alternative proposal to not hiring a landscape architect and not having a planting plan would be? Mr. Hartford responded that he's not saying they're not going to landscape, but that they'll do it a year or two down the road. He does not want it to be subject to the contract for construction and he can't award the contract for construction until approval for additional funding is secured because these two items are not budgeted for. Construction wouldn't be able to start until next spring.

Chairman Bowie expressed concern about this with the following comments. He stated that the two conditions in question were significant items of discussion during the public process. He recalled that this issue has come up with other applications when there were financial pressures and that the Planning Board has always said, "you have to do it." This is the type of request Chairman Bowie wouldn't say yes to without the abutters being notified. These two items are significant to the Planning Board. The problem with tying the conditions to an occupancy permit is that this is a major city project, highly visible and the conditions have to be fulfilled, so let's deal with it now.

Andrew Port of the Planning Office commented that Mr. Hartford had said it could be funded later, as a separate item in the operating budget. He asked why it can't be funded in the operating budget now?

One member said the conditions are much too important, that the city has spent a fortune making this a LEED certified building and that these conditions represent the finish work. Another member asked whether the city could vote the money for this work and put it in escrow for use? A member responded that this is their funding issue, not ours.

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Andrew Port commented that the area being used for staging might still be impacted by the construction so that some of the fencing and landscaping work might not be appropriate to do now. Chairman Bowie commented that if that is a consideration, he would want more information than he has at present.

Anne Gardener made a motion to deny the request for modification regarding the submission of plans prior to issuance of a building permit

Bonnie Sontag seconded the motion.

Motion approved to deny the request.

Votes Cast:

Dan Bowie: approved

Ann Gardner: approved

Sue Grolnic: approved

Jim McCarthy: approved

Bonnie Sontag: approved

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

3. Old Business

a) Brad Kutcher

251 Merrimac Street

Section VI.C Special Permit

Continued from 10/5/11

Chairman Bowie commented that this is a special permit and requires the vote of 6 people and we only have 5 people here. It does not appear we can go forward.

Andrew Port of the Planning Office asked should we continue it to the next meeting or hold a special meeting.

One member asked if this preservation restriction was discussed last time and is it still up for discussion? Chairman Bowie responded that no, it's executed and has been approved. He added that at the end of the last meeting the board needed to hear the resolution with the Tree Committee and hear the decision from the Historical Commission. The member asked if the applicant had an immediate need and if an additional week - if a special meeting could be called for November 8 - would help the situation.

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Mr. Kutcher said he was hoping to start this winter.

Three members could do an early morning meeting. Andrew Port would contact other members in an effort to schedule a meeting on Tuesday of next week if enough members could be reached. Otherwise a vote will be taken November 16th, the next regular meeting.

4. New Business

5. Planning Office/Subcommittees/Discussion

Andrew Port said the Mayor has asked for a budget request for Emily Wentworth, the Planning and Zoning administrator to return to full time. He added that it's better to have Emily full time because it allows the Planning Office to work on more projects. The Zoning Amendments Public Hearing is coming up on the November 14th with the City Council subcommittee on Planning and Development.

A member said if all goes well, does it go back to the full council for a full vote? Andrew Port responded that if the planning board is going to make a recommendation, he would have it available for the member's review.

Adjournment

Motion made to adjourn.

Motion seconded.

Motion approved unanimously.

Meeting adjourned at 8:35 P.M.

Respectfully submitted, Linda Guthrie – Note Taker.