

Planning Board
May 5, 2009
Approved June 2, 2009

Members Present: Tom Vannatta, Chair; Barbara Freeman, Vice-Chair; Travis Dezotell; Deane Geddes; Bruce Healey; Jim Powell, Ex-Officio; Bill Weiler; Ron Williams, Alternate; Ken McWilliams, Advisor

Mr. Vannatta called the meeting to order at 7:07 p.m.

MINUTES

The Board reviewed the minutes of April 7, 2009 and made corrections.

Mr. Weiler made a motion to approve the minutes of April 7, 2009 as corrected. Ms. Freeman seconded the motion. All in favor.

CASE: 2004-006: Angel Hawk Subdivision – Jaimie Gould aka Advanced Conception Property Development, LLC – Development Agreement

Mr. Vannatta reminded the Board that at the last hearing in April, the Board authorized him to send a letter to Mr. Gould advising Mr. Gould of the status of the Angel Hawk Subdivision. The Board members were given copies of the letter as follows:

‘Dear Mr. Gould:

This letter is to put you on notice of the following issues:

The three year time frame for the completion of the original Angel Hawk subdivision has lapsed and an extension is required. You need to appear before the Board to request an extension in order to complete the work within the established regulations.

Second, the committee set up to review the required road work will be reporting its progress and cost determinations to the Board on May 5, 2009.

Therefore, the Board anticipates your attendance at the May 5, 2009 meeting to discuss the above stated issues. The meeting will begin at 7:00 p.m. at the Newbury Town Offices.

If you have any questions concerning the above, please contact me...’

Mr. Vannatta advised the Board that in the interim, a committee was formed to look at the offsite work to see if that could be reconfigured resulting in a lesser expense to Mr. Gould without compromising the safety of travelers.

Mr. Williams, Planning Board representative on the Angel Hawk Improvements Review Committee, reported to the Board that Lou Caron, Engineering Consultant, reviewed the progress of the work and the original estimates; noting that the roadwork in the subdivision is nearly done except for the topcoat paving and the offsite blasting at the intersection of the Angel Hawk subdivision and Nelson Hill Road at the top has been completed, but the stone wall has not been replaced at this time. The original overall estimate including the paving of a topcoat and offsite improvements was \$404,000. Currently, given the work that has already been done, the estimate would be \$350,000. Without the cost of final paving, it could be \$300,000 to complete the work on Nelson Hill Road in Sutton and in Newbury not including the work within the subdivision. The Newbury portion of Nelson Hill Road is estimated to be \$171,000. These estimates had been reduced somewhat because of the reduction in the price of asphalt since last fall.

Mr. Williams explained that the purpose of this meeting was to see if Mr. Gould could post a bond in order to provide financial protection to the Town of Newbury for the work to be done on Nelson Hill Road. The sense of the AHIR Committee was that the regulations at the time of the subdivision approval should stand. There was no basis for diminishing the road standards. There was discussion of the possibility of phasing the work on Nelson Hill Road in order to facilitate provision of a bond and accomplishment of the work. Again noted, the work in Newbury was estimated at \$171,000. The AHIR Committee suggested to Mr. Gould that he review his capabilities and his schedule and if he had any proposals, he should make them to the Board.

Mr. Vannatta invited Mr. Gould to discuss his concerns and proposals with the Board.

Jaimie Gould informed the Board that he met with the AHIR Committee at the Town Office Building on Thursday. He explained that at that time, he received Lou Caron's estimate sheet which he had not seen before. He stated that he is trying to incorporate a request for an extension of the time for the work to be done with a request for a revised, acceptable bond amount and estimates. He commented that it was his understanding from the AHIR Committee that they would like to see those requests incorporated into one package and is currently working on a proposal for a schedule for work to start, work to be completed, and money to be put up for a bond. It is pretty complex. He asked for a timeline from the Board as to when the Board would like to see this proposal so that he has time to accurately prepare a phasing and funding proposal.

Mr. Vannatta asked Mr. Gould when he thought the proposal would be ready for review by the Board.

Mr. Gould stated that he would not be in the area for the next two weeks and suggested the first part of June to return to the Board. He proposed June 16th to come back to the Board with:

- 1.) A proposal to phase the Newbury and Sutton sections of Nelson Hill Road.
- 2.) A proposal to be able to place a bond in portions.
- 3.) A time line and schedule of obtaining funds and putting the bonds in place.
- 4.) A time line for work to start and be completed.

5.) A proposal to ask the Board for a time extension to complete the subdivision and offsite improvements.

Mr. Vannatta asked Mr. Gould if he could bring documentation as assurance to the Board that there is financial backing.

Mr. Gould stated that it is a possibility. Mr. Gould asked for clarification regarding his options. He asked if he was clear in understanding that he either 1. Works with conditions of the Development Agreement and sells no lots until the work is complete or 2. Places a bond to cover the cost of the work to be completed and would then be able to sell lots.

Mr. Weiler explained to Mr. Gould that the Board required him to sign the agreement restricting lot sales to assure the offsite improvements would get done and that Mr. Caron stated that the Town needs some kind of financial bond during the time of construction to cover the Town in case the developer abandons the road improvements and the Town is left to complete it.

Mr. Gould speculated that the Covenant of Lot Sales restriction goes away if the bond is place.

Mr. Weiler explained that the Covenant of Lot Sales restriction would only go away if a bond was in place to cover all of the improvements, onsite and offsite.

Mr. Gould stated that he will have a proposal for the Board on the 16th and hopefully it will be acceptable. He commented that he thought the covenant was signed in lieu of a bond. Therefore, if he posts a bond, then the Covenant should not be effective.

Mr. Weiler reiterated that if Mr. Gould can post a bond that will be in force long enough and for enough money to cover all of the work through completion, then the Board would consider withdrawing the covenant.

Mr. Powell asked for a point of clarification. It is his understanding that there are three ways for a developer to provide security to the Town for a subdivision: 1. A Bond; 2. A Letter of Credit; or 3. A signed Covenant Restricting Lot Sales. He commented that he believes that the agreement among all parties was to move forward with option #3 and sign a covenant restricting lot sales due to the circumstances at that time. It appears that the Board is now requiring #1. A Bond *and* #3. A Covenant Restricting Lot Sales. He asked why the Board now is requiring two of three options instead of one of three options.

Mr. Weiler explained that Mr. Caron pointed out that the Covenant Restricting Lot Sales does not cover the Town if the road construction stops. The Town has no recourse to finish the road.

Mr. Vannatta reviewed the Covenant Restricting Lots Sales and pointed out that Item 1 and Item 2 of the agreement states that

'1. No lot may be sold unless and until security in the form of a performance bond, letter of credit or cash is posted with the Town of Newbury in an amount and form satisfactory to the Town to ensure the completion of all improvements shown on the Plan or the improvements are completed, and the Planning Board

and Board of Selectmen confirm, in writing, the satisfactory completion of said improvements. Advanced shall not undertake any work until it meets with, and secures the approval of the Board of Selectmen to proceed.

2. Advanced shall deposit the amount of \$3500.00 in an escrow account to be held by the Town, which funds shall be used to defray the expenses of testing and inspections of the work (as per 14.2, 14.3 and 14.4 of the Newbury Land Subdivision Control Regulations) performed by Advanced in completing the subdivision improvements. To the extent that this amount does not cover the entire expense of testing and inspections, then Advanced agrees to make such additional payments at a time and in an amount required by the Town'

Mr. Vannatta pointed out that the Board has already temporarily forgiven Item 2.

Mr. McWilliams commented that it is his understanding that Mr. Caron is concerned with having security in place for stabilizing the site, not necessarily to complete the improvements.

Mr. Weiler commented that the Board needs some kind of security in place for stabilization, which could be much less than the whole cost of road construction.

Mr. Williams stated that basically that information is provided. In speculation, if the road improvements had begun and were to the point that everything is exposed and subject to erosion, what would be required to stabilize the site. Mr. Williams pointed out that the information is there in the quote. He suggested that the Board should leave it up to Mr. Gould to address that, get the proposal started and perform the work in phases. That would be \$X and then after which time that the exposed section is stabilized, he would have to provide another bond for the next phase. Anything that was exposed would be covered by bonds in phases.

Ms. Freeman commented that it is clear that Mr. Gould has a choice to either not sell any of the lots until the work is complete or place a bond to cover the whole project. Bonding and completing work in phases does not cover all of the offsite improvements per the agreement.

Mr. Williams advised Mr. Gould that if he wants to be able to sell a lot in order to be able to post the next bond, then that needs to be put in his proposal and discussed with the Board.

Mr. Gould pointed out that there is no incentive for him to post any bond if he still will not be able to sell lots.

Ms. Freeman commented that it would be good to move along with the process. She asked the Board if Mr. Caron should be consulted regarding the phasing of improvements and bonding in order to facilitate Mr. Gould's efforts and allow him to be able to sell lots to fund the bonding.

Mr. Williams commented that in his opinion, it would be better for Mr. Gould to prepare a proposal based on what he has time for and what he can afford.

Mr. Weiler pointed out that another aspect at the AHIR Committee meeting was to determine if anything could be done to cut back on the standards. Mr. Caron had stated absolutely not, that the standards were already down to bare bones.

Mr. Vannatta commented that the signed agreement does not permit phasing.

Mr. Powell asked for clarification regarding phasing. He asked if phasing meant the developer would incorporate the whole project and Step 1 would be Phase I and Step 2 would be Phase II, etc., or would the developer complete the improvements in segments. E.g. Nelson Hill Road in Newbury would be Phase I and Nelson Hill Road in Sutton would be Phase II, etc.

Ms. Freeman clarified that the first option of Mr. Powell's example is considered phasing. The whole road would have to be addressed in each Phase.

Mr. Williams stated that the AHIR Committee had considered Nelson Hill Road within Newbury, being the upper 2/3 of Nelson Hill Road, as one segment because that was part of the bond requirements by the Planning Board. Nelson Hill Road in Sutton was considered a second segment, and confirming Mr. Weiler's question, the rebuilding of the stone walls could be a third phase. Mr. Williams clarified the required improvements of Nelson Hill Road to Mr. Healey.

Mr. Vannatta explained that the road improvements were part of the original subdivision approval and therefore cannot be taken out.

Mr. Healey asked if the road improvements could be lessened.

Mr. Williams explained that the AHIR Committee did not put a cap on what Mr. Gould's options are, so if Mr. Gould wants to suggest lessening the required improvements, that is up to him to ask in his proposal.

Mr. Vannatta asked what provisions are in place to protect the Town of Sutton.

Mr. Williams advised that there are no future provisions to protect the Town of Sutton since there are no provisions to protect them now. Mr. Caron had quoted \$50,000 to complete everything in the subdivision (topcoat and shoulders).

Mr. McWilliams advised that there is no public hearing required for the Board to consider a request from Mr. Gould for an extension of time for having the improvements complete, but the request for the extension should be in writing.

Mr. Powell asked Mr. Gould how sincere he is about coming back to the Board with a proposal and has he had any thoughts of abandoning the subdivision.

Mr. Gould stated that he does not want to abandon the project, but it is foolish to struggle to develop the site if there is no hope of profit. He stated that he is not going to propose something to the Board for consideration that he cannot fulfill.

Mr. Vannatta recognized members of the public for comments.

Ted Jones advised the Board that Harold Buker, previous owner of Angel Hawk Subdivision, is still selling lots further down the road, beyond Angel Hawk. He stated that he does not think it is fair for Mr. Gould to have to put all of this time and expense into finishing a road for which Mr. Buker is going to reap the benefit and to be responsible to the Town of Sutton as well.

Mr. Weiler explained that the Board did not take the Angel Hawk properties into consideration when this subdivision was approved.

Calvin Prussman, Newbury Highway Administrator, commented that when this subdivision was approved, Angel Hawk did not own the second and third sections. Those sections were purchased after the subdivision approval. He stated that it is his opinion the reason the intersection is incorporated as part of the offsite improvements is because of the poor line of sight and safety issues. He suggested that perhaps Mr. Gould should contact Mr. Caron for figures for what it would cost to complete the Newbury section separate from the Sutton section. The Newbury section could be posted and completed first, then Sutton. He cautioned that if the whole job does not get done, 'I cannot helicopter my trucks over the Sutton portion to get to the Newbury section for maintenance.' Mr. Prussman commented that Mr. Gould must have known what he was getting into and suggested that Mr. Gould should do the work and get it done or post enough of a bond for the Town to contract the work out and get it done.

Mr. Gould reminded the Board that he met with the Board right before purchasing the subdivision because he knew he would not be able to come up with a \$400,000 bond, therefore he came in with a proposal of lot sales. He stated that the bond requirement has not been a part of his plan from the beginning because he cannot afford both.

Mr. Vannatta stated that originally the Board put off the revocation of the subdivision because Mr. Gould said there would be a sale of a lot which would help get the subdivision going. On the heels of that, the covenant restricting lots sales was signed. Therefore, that is what the Board has to work with. Mr. Vannatta advised Mr. Gould that when he returns to the board in June, he should be ready to make a presentation that will be agreeable to the Board that should also have some financial backing, phased or whole.

Mr. Powell restated the conditions/expectations of Mr. Gould for the June 16th meeting:

1. The Board is not going to relax the conditions for the offsite improvements
2. The Board wants a proposal which it can look at, read, and make a decision on
3. The proposal must be realistic and financially feasible with a good chance of success
4. Mr. Gould should submit a written request for an extension of time for completion

Mr. Healey suggested that the Board should consider the request for extension prior to receiving Mr. Gould's proposal since it would be a great waste of everyone's time to prepare and review a proposal if the extension is denied.

Mr. Vannatta advised Mr. Gould that copies of the request for extension and the proposal should be submitted to the Town prior to the meeting. The date of reference for the extension should begin March 15, 2008 and extend to a reasonable date necessary for completion.

Mr. Dezotell asked why the Board did not know about the bond expiration prior to it lapsing.

Ms. Freeman explained that the tickler system that was in place did not work.

Mr. Gould stated that he would appreciate an answer on the extension prior to preparing a proposal. He asked if the Board would consider the extension at the June 2nd meeting even if he could not be present, so that he would then have time to prepare his proposal for the June 16th meeting.

The Board agreed and advised Mr. Gould that the Board will review his request for extension at the June 2nd meeting. If the Board does not have a problem with granting the extension, the extension could be granted without Mr. Gould being present. If the Board has a question or a problem with the terms of the extension, the discussion could be continued until the June 16th meeting when Mr. Gould could be present for input.

CASE: Affordable Housing

Mr. Dezotell updated the Board on the Affordable Housing Committee. He explained that there are currently five members on the committee, and they will be getting together in about a month to begin assessing if there is an affordable housing issue and if so, what to do about it. A report could be ready by September.

Mr. McWilliams advised that if there is going to be an amendment to the zoning regulations to address affordable housing, it needs to be written, reviewed and presentable to the public in order to be noticed in December for a first public hearing in January.

CASE: Sign Ordinance

Mr. McWilliams presented the Board with several versions of sign ordinances. Some versions were model ordinances for State organizations and others were actual ordinances used in other communities. He agreed to email the Board members the links to the ordinances that are available online and leave hard copies of the others with the Land Use Coordinator to be looked at by the Board members.

Mr. Geddes suggested that a sub-committee be assigned to review in depth and propose a sign ordinance to the Board for review.

Volunteers for the Sign Ordinance Sub-committee were Jim Powell, Deane Geddes and Bruce Healey. Business people will also be asked to participate.

CASE: Subdivision Regulations - Enforcement

Ms. Freeman commented that she feels strongly that something is needed in the subdivision regulations to hold certain parties responsible for the renewing of bonds so that the Angle Hawk situation does not happen again. Also, a mechanism in the Town Office should be created so that there is no lapse in coverage. There was a tickler system put in place so that the Land Use Coordinator could keep track of expiring securities, but that system fell short. She expressed concern that the Town does not have any means of authorizing or triggering the Board to call a letter of credit even if it wanted to. There should be something in the regulations that allows the Town to call the letter before the expiration date if there is not a new one in place by that time. Additionally, the bond or letter of credit should be required to cover the full period of construction or if it is going to be renewed on a yearly basis, then it needs to be renewed 30 days prior to expiration.

Ms. Freeman suggested that as a precaution and doublecheck, the Land Use Coordinator should review the Planning Board files and identify the dates of expiring bonds that are currently active to make sure there is nothing outstanding.

The Board discussed various methods of alert for expiring securities.

Mr. Powell commented that the Town is not lacking the technology for a tickler system, but the discipline. The person responsible is the Land Use Coordinator.

Mr. Healey suggested that the Town Administrator be made aware that the Land Use Coordinator will be keeping track of these deadlines because there is no server based service in Newbury, and we should not rely on technology alone.

Mr. Weiler suggested that the Board use a contract at the approval of a subdivision which outlines what the Board expects of the developer, when it should be done by, requirements for assuring a letter of credit is kept up to date, and a date for which the improvements should be completed. The contract should also advise the developer of the potential expense involved and require proof of financial viability. Additionally, any new owner of a subdivision should be required to meet with the Board for discussion of any potential issues with the existing subdivision.

Ms. Freeman stated that a contract would also benefit the Board because then all of the requirements would be in one place on one document instead of scattered throughout the meeting minutes.

Mr. Weiler offered to volunteer to work with another Board member to research what can be done to protect the Town regarding surety, letters of credit, bonding, etc.

Ms. Freeman volunteered to work with Mr. Weiler and Mr. McWilliams and report back to the Board on June 2.

CASE: Voluntary Merger of Lots of Record

Mr. Vannatta advised the Board that he personally is applying for a Voluntary Merger of Lots of Record, but cannot sign the approval himself due to a conflict of interest.

Mr. Weiler made a motion that the Board gives the Vice-chair the authorization to sign the Voluntary Merger of Lots of Record in Mr. Vannatta's particular case. Mr. Williams seconded the motion. All in favor.

No further business.

Mr. Dezotell made a motion to adjourn. Mr. Powell seconded the motion. Meeting adjourned at 9:15 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary