

PLANNING BOARD MEETING
AUGUST 6, 2014

PRESENT: Ed Dekker, Chairman (7:40 p.m.), Liz Freeman, Bert Hamill, Woody Meiszner, Tim Jones, Paul Termin, Ned Nichols, Joanne Meshna, Attorney Kinyon

The meeting was called to order at 7:35 p.m. by Liz Freeman, Vice Chairman.

Amendment to the Master Plan: Liz explained that an update to the Vision Chapter of the Planning Master had been discussed for some time and whether or not it was necessary to update the chapter. Tim worked on the issue and after discussions with Paul Sanderson at the NH Municipal Association, input from legal counsel, review of census data, and Planning Board members' input, came to the conclusion it was not necessary to update the chapter at this time. The Planning Board had identified the issues of wind farms, senior housing and attracting new business to Town, but agreed that the existing provisions of the Vision Chapter address these issues satisfactorily. Tim submitted a letter to the Board in which he recommended that a re-write of the Vision Chapter is not required at this time and that the subject should be revisited in five years.

Bert made a motion to accept Tim's recommendation and not amend the Vision Chapter at this time other than to add Tim's letter to the Master Plan. Paul seconded the motion and it passed unanimously. Tim was thanked for all his hard work.

7:40 p.m. San-Ken Homes, Inc. - Oakwood Commons: Ed explained that the original owner of the subdivision on Old Beaver Road, known as Oakwood Commons, had lost the subdivision and the Town had lost the security for completion of the road. It was the position of the Planning Board that before building permits can be issued, the bond needs to be put back in place.

Attorney Greg Michael, representing San-Ken Homes, Inc., stated that San-Ken had bought nine of the lots in the subdivision on June 19, 2014 in foreclosure. There are seven homes already built in the subdivision. The road is a private road and is not in bad condition. The prior developer did not set up a homeowners' association and the cost should be shared by all. He felt it was an unfair position as they would be paying for everyone else in a private road situation. Ed asked if was not true under NH law that a subsequent developer is responsible for all the terms of approval given to the original developer. Attorney Michael responded that it was an assumption that San-Ken was a developer and that the lots could have been sold individually. Ned asked what were the conditions of the sale and the response was as buildable lots in an approved subdivision. TD Bank held the auction. There was a declaration of covenants filed in 2005 to keep the values up and the area in good repair. There was no homeowners' association formed and San-Ken volunteered to set it up. The road has been intended to be kept private as evidenced by the private road agreements signed by the homeowners.

Attorney Michael continued that a letter of credit was posted for the construction of the road. The bond was reduced and the final reduction was in 2012 to \$17,418 expiring in December 2012. In June of 2009 Brown Engineering re-evaluated the bond amount for completion of the road and found it to be insufficient and recommended it be increased to \$40,069. Three more building permits were issued after that time.

Attorney Michael stated they wanted to do their best to work with the Town reasonably, but it was not reasonable to have San-Ken post the entire amount and build the road. The road is a private road, is in good shape, passable and plowed by the homeowners. Not only would it be a hardship San-Ken, but also to the existing homeowners as they will have to pay the entire cost of the road themselves.

Chad Brannon from Fieldstone Consultants stated that phase 1 was to consist of the first 1200 feet of road and phase 2 was to consist of the remainder with 10 lots. The road has been constructed and paved so there is no real different between phase 1 and 2 status at this time. There have been homes built in phase 2. The road has been built to subgrade and paved in its entirety. The road is safe and exceeds DOT minimum standards in width and paving for a development this size with this much traffic. The road requires an asphalt treatment like a chip stone gravel. Mr. Brannon did not disagree with Kent's report, but this is a private road and nothing needs to be done from a safety standpoint.

Attorney Michael further stated that San-Ken is proposing to setup a homeowners' association in order to come up with a plan to maintain and take care of the road. They are also willing to contribute \$5,000 to the capital improvement plan of the association to take care of potholes and other issues that may be a concern now. They would also be prepared to sign off on the release letters when they pull a building permit. There are 7 lots in current use and suggestion was made to use the current use fees for funding to assist with the road work.

Liz asked what the difference in life expectancy is between a road with a half inch of base coat versus a road with an inch and a half of base road and an inch of top coat, and what are the consequences for the homeowners. Mr. Brannon responded that the consequences for the 16 landowners are all the same.

Abutters were invited to speak:

John Sterett, 49 Old Beaver Road - Agreed that it was a private road. He had been told that it would cost \$48,000-\$50,000 to finish the road. The road to lots 6, 8 and 9 is a driveway and there are cracks in that driveway. He agreed that a homeowners' association is needed. Snowplowing over the years had been done by Mr. Watt who contracted it out and each homeowner paid 1/16 of the cost.

Patricia Lackwitz, 25 Old Beaver Road - Previously the plowing was covered by Charlie Watt. A few years ago he asked homeowners for money to reimburse him. This past year the seven homeowners pooled

their money and hired someone to plow. They were told when they moved in that once all the lots were sold a homeowners' association would be formed and the road finished.

Ray Christian, 22 Old Beaver Road - Bought in 2007 and when they bought they were told an association would be formed and the road would be completed at the completion of the last house.

Dee Satterfield, 63 Old Beaver Road - She went to the foreclosure of the last 9 lots as a buyer and was not given an opportunity to buy a lot as the preference was to sell all the lots together. The homeowners have talked about forming the association before.

Kenny Lehtonen from San-Ken Homes said at the auction the bank takes the amount they would receive for selling all the lots together versus selling one lot and picks whichever brings the most revenue.

One abutter did not feel it was the homeowners' association responsibility to pay for the completion of the road. Ed responded that the question is if the Lehtonens a continuing developer and responsible for completion of the road or are they lot owners and responsible for 9/16 of finishing the road.

John Sterett - He proposed that once an association is formed each homeowner would put in money each money to cover potholes, maintenance, snow plowing and build a capital reserve for finishing the road. Ed responded that the finishing of the road has to be done within the next couple of years; there is no time to build a capital reserve. Mr. Sterett asked where the two years came from. Ed responded the engineer report says the base coat is 1/4 to 1/2 inch thick that is not going to hold up for much longer.

Kenny Lehtonen asked about the current use fees and if they could be used for the road. Joanne responded a few years back a warrant article had been passed which gave the first \$50,000 of the fees collected to the Conservation Commission.

Woody asked what happens if the conditions of the approval of subdivision are not met. Attorney Kinyon responded that the reason they are here tonight is that San-Ken is the owner of 9 lots and wants to get building permits. They applied for one and because of the Planning Board's concern that the road is not sufficient and there is no bond in place the Planning Board recommended to the Selectmen not to grant the permit and it was denied. There are some drastic remedies that either side can look at. The Planning Board could say the conditions of approval have not been met and could seek to revoke the approval for the remaining 9 lots. Another remedy is to look at the reality of the road now and what the future condition needs to be. What is clear is that it is a private road. To get the subdivision in line with the reality of what it is, the 2004 approval and conditions not being met would need to be modified. A request could be made by San-Ken to modify the old 2004 conditions of approval to reflect the intentions of not only San-Ken but the other owners as the association. The Board could then act on the proposal. Part of the modification would be the setting up a homeowners' association.

Bert stated that 15 out of 16 people are supporting a homeowners' association. It appears it is necessary for an association and establish a fund for the road for patching and repair and top coating. One homeowner will put extra money into the pot. The Board could make a motion to modify the approval. Ed added that conditions for building permits would be the homeowners' association is in place and operating, there is a plan for repairs of the base coat and completion of the top coat on a date certain agreeable to the Planning Board.

An abutter questioned why the road is the town's issue if it's private. Ed responded that it is the responsibility of the Planning Board to make sure it is built to standards in the original development plan or the original development plan has to be modified.

Liz stated her concern about the homeowners' association. San-Ken is going to be the majority vote in the homeowners' association. As nine additional lots get built out a road with only a base road will deteriorate and she was concerned about fairness to the current owners. Attorney Kinyon responded that the homeowner's association is a significant part of resolving the issue. The homeowners' association is formed by agreement of the homeowners and will be based on rules they agree on. The Planning Board's overview of it would be for the purpose of knowing there is a structure in place to collect money and maintain the private road.

Ed suggest that the Lehtonens come back after working with the homeowners with a plan for modifying the subdivision plan for road standards that can be met in time certain, and the Board will consider the modification.

A hearing for modification of the subdivision approval was scheduled for September 3 at 7:30 p.m. Ned noted when he had looked at the fire pond on the property it was empty of water. The Board agreed to have the Fire Chief comment on its adequacy.

The hearing ended at 9:15 p.m.

At 9:20 p.m. Ed made a motion to enter into a non public session with legal counsel. Liz seconded the motion and it passed unanimously.

The meeting adjourned at 10:20 p.m.

Respectfully submitted,

Joanne Meshna, Land Use Manager

