

**TOWN OF BROOKLYN
PLANNING AND ZONING COMMISSION
Special Meeting
Thursday, June 12, 2018
Clifford B. Green Meeting Center
69 South Main Street
6:30 p.m.**

MINUTES

- I. Call to Order** – Michelle Sisfridson, Chair, called the meeting to order at 6:42 p.m.
- II. Roll Call** – Michelle Sigfridson, Carleen Kelleher, Aaron Kerouac, Jules D’Agostino, Earl Starks.

Jeryl Mohn and Austin Tanner were absent with notice.

Staff Present – Jana Roberson, Director of Community Development.

- III. Adoption of Minutes:** Regular Meeting Minutes June 6, 2018.

Motion was made by C. Kelleher to accept the Minutes of the Regular Meeting of June 6, 2018. Second by A. Kerouac.

Change suggested by J. D’Agostino:

- Page 7, paragraph at the bottom of the page, delete “since he discerns that it sacrifices anything allowed in the RA Zone.”

Motion carried with the suggested change (4-0-0).

Motion was made by J. D’Agostino to seat Alternate Member, Earl Starks, as a Voting Member for this meeting. Second by A. Kerouac. Motion carried (4-0-0).

- IV. Public Commentary** - None.

- V. Unfinished Business:**

- a. **Reading of Legal Notice:** None.
- b. **Continued Public Hearings:** None.
- c. **New Public Hearings:** None.
- d. **Other Unfinished Business:**

1. **SD 18-001 – Request for Extension and Re-Phasing** for the Village in the Woods Subdivision (73 lots located at the terminus of Old Tatnic Hill Road), Meehan Builders, LLC.

J. Roberson reviewed the history of the previous application/approval of the 73-lot re-subdivision:

- No action to initiate the subdivision ever took place.
- The housing market was not good at the time.
- The expiration date had been indicated on the plans. Statutes had changed making it expire after nine years (May 7, 2017) rather than after five years.
- A request was received in February 2018 to consider an additional extension which has been reviewed with the Town Attorney. The Town Attorney’s opinion is that, although it is atypical to request a subdivision extension after the expiration date has passed, there is nothing in the Statutes that states that an extension cannot be granted. If granted, the maximum allowable extension would be for four additional years (May 7, 2022 - fourteen years from the original approval date).

- Technical issues related to the expiration which had been previously discussed do not matter.
- The power of the PZC to grant an extension is completely discretionary. The action (approval or denial) must be reasoned and reasonable.
- Included in packets to PZC Members: Letter from Town Attorney, Peter Alter, dated May 1, 2018; Letter from Town Engineer, Syl Pauley, dated May 8, 2018; Original approval letter (listing conditions of approval) dated June 16, 2008; E-mail from J. Roberson dated April 18, 2018, with relevant dates; J. Roberson's Staff Guidance dated July 11, 2018; Cover Page of the Original Plan Set from 2005; Copy of the initial approved Phasing Plan (Phases 1 thru 7); Copy of the new, proposed Phasing Plan (Phases 1 thru 4).
- As part of the request for extension, they are also requesting changes to the order of construction of the lots, including an emergency access road. Ms. Roberson explained that the main difference is the number and location of the Phases.

Attorney Harry Heller represented Meehan Builders, LLC, and explained that he largely agrees with Attorney Alter's opinion. He stated that they have never claimed that PZC does not have the ability to expire a subdivision. He explained that the Subdivision Statutes are different than Zoning Statutes. He stated that the PZC has to take specific action in order to expire a subdivision: filing a notice on the land records; and endorsing the final plan saying that the subdivision is expired. Attorney Heller disagrees with Attorney Alter on the notice requirements, but he said that it is academic at this point because everyone agrees that it wasn't expired properly. He said that, at this point in time, it is still in effect until the PZC takes action. He asked that the PZC consider granting an extension to the maximum Statutory time period (four years) which would be the final extension that the Applicant could seek under the Statutes.

Attorney Heller spoke of case law: if an action of a Commission was found to be in compliance with the Regulations, then, unless there has been some change in circumstances, intervening between the time that the original approval was granted and the extension is requested, denial of that request would be unreasonable. The Regulations have changed since the time that this subdivision was approved (minimum lot area requirement in the zone went from 40,000 s.f. to 90,000 s.f.). The case law that Attorney Heller has found involve changes in how development has occurred (traffic patterns, infrastructure). He stated that he did not find any case that specifically addressed a change in Regulations (not that it wouldn't be considered by the Court to be a significant change).

Attorney Heller gave reasons why the the PZC should approve the extension:

- No one could have envisioned what happened to the Market in 2008 and what has continued since 2008. He explained that when his client bought the property, it was an investment-based decision based upon the Zoning that was in effect at that time and he had reasonable expectations, based on that Zoning, as to what he could do with the property. He explained that over \$400,000 had been spent in developing the plans and going through the approval process. Since the approval in 2008, the property has been taxed as 73 building lots. They were hoping that the Market would come back to an extent where it would be feasible to build the Project. A significant amount of infrastructure is required to accommodate the 73 lots. A municipal road costs \$300 - \$350 per foot to construct and that, in itself, is a significant undertaking. In his opinion, this is a justification for the PZC to seriously consider the extension, recognizing the investment-based decision that the Applicant made, based on the Regulations that were in effect at that time.
- In conjunction with the re-phasing request, it makes more economic sense to develop this Project without as significant an infrastructure cost up front. Attorney Heller asked that the PZC consider approving the re-phasing and that the condition of approval be satisfied by building the bridge (which is a condition of IWWC approval) with a gravel road that would be structurally sufficient for the Fire Marshal

to get emergency equipment in and out to the building lots, until Phase 3 is built which would require that the road be built to Town Road standards.

There was discussion regarding if the last phase of the Project were never completed. Attorney Heller stated that there would still be a gravel road with a bridge, so emergency equipment could still get in. He recommends that the emergency access road be constructed to a width of 16 feet to match the previously approved width of the bridge until such time that the road is converted to a Town Road. Attorney Heller guessed that the cost of the 116-foot bridge would be more than \$100,000.

Discussion continued and J. D'Agostino expressed that there have been a lot of changes in the community since 2008 and he suggested that the Applicant come back with a whole new plan. Attorney Heller agreed that there have been significant changes, but he stated that the density is fairly consistent (overall still fairly low density).

C. Kelleher reviewed the history noting that the initial application was December 2, 2005 and was denied due to a typographical error. The text amendmend increasing the lot size effective date was December 19, 2005. The appeal was decided in the Applicant's favor in 2008. Attorney Heller stated that: 1) The typo cost his client three years of a very good Market and the Project could have been a great success; 2) The dates are academic because to develop plans of this magnitude to get a project like this approved takes 12-15 months in testing and engineering. They did accelerate it to get it in under the old Regulations, but it had been planned for a long time before. Ms. Kelleher stated that she had been on the Commission then and that she had voted to approve it.

Discussion continued. It was clarified that the date, if full extension were granted, would be May 7, 2022, and that no further extensions would be allowable (under the Statutes). Attorney Heller explained that the PZC always has the right to expire a subdivision because before a Certificate of Occupancy can be issued, a bond must be in place for the public improvements in that phase (prior to the start of construction), and if that work was not done, and the time period elapsed, the PZC would expire the subdivision and call the bond (bond by phase). There was further discussion regarding bonding and expiration. Ms. Roberson read from the 2008 approval letter regarding bonding in phases.

M. Sigfridson polled the Commission Members as to whether or not they are in favor of granting the extension only:

- A. Kerouac – In favor.
- E. Starks – In favor.
- J. D'Agostino – Not in favor.
- C. Kelleher – Not in favor.
- M. Sigfridson – Not in favor.

A. Kerouac stated that he has huge issues with the way Phases 1 and 2 (amount of lots and amount of road and the bridge) of the subdivision were designed originally and also with the emergency access. He asked if the Applicant is open to modifying the re-phasing request and suggested discussing alternatives with the Town that would not disturb habitats. Attorney Heller stated that they would be willing to discuss it. There was discussion regarding conservation subdivision.

Motion was made by C. Kelleher to deny Application SD18-001 – Request for Extension for the Village in the Woods Subdivision (73 lots) located at the terminus of Old Tatnic Hill Road, Meehan Builders, LLC with the following findings:

- 1) That a review of the language of CGS 8-26c shows that the Planning Commission's authority to extend a subdivision's expiration date is discretionary;
- 2) That, since the original date of receipt of the subdivision application on December 2, 2005, a substantive change to the Zoning Regulations has taken place. This substantive change was an increase of the

minimum lot size in the RA Zone from 40,000 s.f. to 90,000 s.f., a change which became effective on December 19, 2005;

- 3) That, since the original date of receipt of the subdivision application on December 2, 2005, another substantive change to the Zoning Regulations has taken place. This additional substantive change was the adoption of Conservation Subdivision Regulations for subdivisions in the RA Zone creating five or more lots, a change that requires the designation of forty percent open space and that became effective on June 23, 2010;
- 4) That an extension of the subdivision beyond its current expiration date would have the effect of further authorizing a large residential development that does not conform to zoning dimensional standards now in effect for thirteen years;
- 5) Therefore, the Planning Commission does not find that the applicant has presented a compelling reason to extend the expiration period of the Village in the Woods Subdivision, that no construction of public improvements has been started since the date of the approval, no lots have been developed or sold since the date of approval and further finds that the change in the RA Zone lot size and the adoption of Conservation Subdivision Regulations are significant differences in Zoning Regulations from that which existed at the time of the Village in the Woods Subdivision was submitted for approval.

Second by J. D'Agostino.

Discussion:

A. Kerouac explained that he does not have a problem with #'s 1 and 5, but he does have a problem with #'s 2, 3 and 4. It cannot be compared easily to a site plan. He does not feel those should be cited as reasons for denial.

C. Kelleher offered that the Statutes provide for expiration. There was discussion regarding taxes being paid on the building lots. M. Sigfridson explained that they would no longer be taxed as separate building lots once an expiration date is recorded.

Motion carried (4-1-0).

A. Kerouac was opposed to the denial for the following reason:

- He disagrees with reason #'s 2, 3 and 4 (listed in the motion) being cited as reasons for denial because those were changes made by the PZC after the approval.

2. **Zoning Regulation Rewrite** - Public Review draft, Earth Materials Processing, etc.

The public information session with Glenn Chalder is scheduled for August 15th at the Brooklyn Middle School at 6:30 p.m. Notice will be on the website and in the Newsletter. Notices will be sent to the Chairs of the various Town Boards and Commissions as well as the Brooklyn Business Association, the Chamber of Commerce and developers, surveyors, and engineers who do a lot of business in Town.

J. D'Agostino suggested that 10-20 copies of the Draft be available for the public for those who may want to take it home. He also suggested that the meeting be held in the School cafeteria with a copy of the Draft at each table, with refreshments. He said it is important to also have a copy of the current Regulations at the meeting also. There were no objections to Mr. D'Agostino's suggestions. J. Roberson will inquire about reserving the cafeteria.

Sandy Blanchard, who owns property near Village in the Woods, suggested that Face Book be used to advertise the information session. M. Sigfridson offered to create a Face Book event.

Discussion continued regarding Glenn Chalder's role at the information session. He will do the presentation. J. Roberson will act as a scribe and will write down the suggestions of the public so they can see that their thoughts are being recorded. It was suggested that there be a blank form for comments at the end of the meeting to be discussed at the next meeting.

Copies of the synopsis will be available for the public also (Access Management, which decreased congestion, has been added and the Zoning Map cleaned up). J. Roberson will add language regarding Roosters and also Section references.

There was discussion regarding farm stands.

Discussion continued regarding the information session. It was clarified that PZC Members do not have to speak in support of something that they personally disagree with, they can refer a question to another Member to answer.

A.Kerouac suggested that every Board and Commission should have a Face Book page to interact with the public.

J. D'Agostino suggested that the PZC meet only once per month.

Sandy Blanchard brought up discussion regarding houses built by Jeff Weaver in the Tripp Hollow area where there is one way in and one way out where there could be emergency access problems. J. Roberson stated that the Emergency Management Director is aware of it and will be conducting drills in that area.

C. Kelleher mentioned that with the first Application for the Village in the Woods there was a lot of concern at the public hearing for the one way in and one way out situation. She stated that afterwards, there had been discussion about adding language to the Regulations regarding requiring more than one way in and out for large subdivisions. Discussion continued and also regarding emergency access.

It was decided to have a Special Meeting on July 17th at 6:30 p.m.

There was discussion about a sitewalk regarding Lehto (gravel). The official opening of the public hearing will be August 1st and a date for a sitewalk (as a Commission) will be determined then. J. Roberson suggested looking at the aerial photo. J. Roberson will inquire about using the Suburban from the Recreation Department.

VI. New Business:

- a. Applications:** None.
- b. Other:** None.

VII. Reports of Officers and Committees: None.

VIII. Public Commentary – None.

A.Kerouac asked that Martha Fraenkel to check out some of the new signs in Town. J. Roberson will ask if Ms. Fraenkel will be able to attend the meeting on August 1st.

There was discussion regarding a chain-link fence that has been installed at Courtesy Ford.

IX. Adjourn

Motion was made by J. D'Agostino to adjourn at 8:34 p.m. Second by C. Kelleher. Motion carried unanimously (5-0-0).

Respectfully submitted,

J.S. Perreault
Recording Secretary