

Meeting Called to Order: J. Dube called the meeting to order at 6:15pm

Present: Tom Hoopes, Jeanne Crouse, Bruce Holmes, Jeremy Dube, Cris Blackstone, Cindy Balcius, Bonnie Dunbar, Jim Bureau, and Pam McLeod

Others Present: Kathy Menici – Town Planner and Jim Sessler – Town Attorney

K. Menici – The case that the board is discussing tonight is P04-09 Sav-On Insulation a 5-Lot subdivision on Route 28, the approval for that was granted at the 5-10-04 meeting.

J. Sessler – The notice of approval, the decision from the board that the applicant was ultimately install a fire-fighting cistern to service the lots. There was a requirement that a bond be posted to ensure that the cistern be constructed and in operation for two years and that was a condition of approval and a condition before the plan got signed. It was also a condition that if the cistern was not constructed that the building department was not to issue C.O.'s on the project until the cistern was built or the bond was in place. Somehow the plan got signed and recorded without the bond or any provision from ensuring that the cistern was constructed. Two lots have been sold out of the five with three remaining lots. Apparently there had been conversations with the original developer who still owns the three lots about posting the bond and basically his attitude was a laughter and too late now I have my approved plan. The question is what to do about it. We have a condition that hasn't been met and that should have been met and a plan that shouldn't have been signed but got signed and there was no indication that any bond was ever posted. What the statute provides is a revocation of the approval. There are three lots to go and if the board acts to revoke those three lots than they will have to come back before the board and either bring the plan correct or it will be subject to the revocation and those three lots can't be sold.

T. Hoopes – The two lots that have been sold, do they have building permits?

J. Sessler – They have building permits and they are waiting for the C.O.'s. As far as I can see they are bonified purchases, they didn't know about this and they built their houses in good faith and they are not really responsible for building the cistern or putting the bond up. The present attitude of the administration of the town is not to penalize those people because they are not the ones at fault. The best solution for this is to go after the developer who still owns the three lots.

T. Hoopes – If we do reclaim it, in essence what we have is a three lot subdivision, could he sell that third lot?

J. Sessler – He probably could under that circumstance, but it is better than selling three more lots.

J. Dube – He would have to meet our current zoning, right?

J. Sessler – Yes

K. Menici – If it is only a 3-lot subdivision than the cistern requirement goes away. The cistern requirement only kicks in at five lots or more.

T. Hoopes – If they were to come back in to re-subdivide that 3rd lot.

K. Menici – It's 5-lots off of the same parent parcel.

T. Hoopes – He's not going to get around it by re-subdividing the lot for 3-lots.

J. Sessler – No, what you are looking for is once the revocation takes place and he gets notice of it, they come back in and make it right. They either put the bond up or they put the cistern in and have him do what he should have done to begin with. Only by pure luck or by accident he got away with not putting it in and not bonding it.

J. Dube – If we revoke it and they come back in we can still make them have a cistern even though it will be a 3-lot subdivision?

J. Sessler – No, if you revoke it he has the right to ask within 30 days for a hearing and the I would expect the hearing to be don't revoke it, I want to make amends and make it right.

J. Dube – Can you do a compliance hearing?

J. Sessler – You can do a compliance hearing but that doesn't give him notice enough to that if he doesn't come in or doesn't sell the lots in the interim, it doesn't give you that hammer. This way if you give him notice that it is being revoked, if he has a broker involved he is duty bound to tell the new owners that this is happening and the brokers have to put a letter to the registry that we are going to revoke and give a notice to the abutters, the public, his realtors if we know who it is so that they all have to give notice to the bonified purchasers. If you do it the other way with just a compliance hearing, it could drag on for 3-4 months before you get anything and you still have to go through the revocation if he ultimately tells you no.

K. Menici – If they did a compliance hearing wouldn't that be kind of putting him on notice and giving him an opportunity to transfer the other lots very quickly.

J. Sessler – Yes, That is why if you revoke it tonight, you have 30 days to ask for a hearing and if you don't ask for a hearing in 30 days, the revocation will be recorded at the registry and it is final. If he asks for a hearing than it still is out there and he can have the hearing and what is the hearing, did you meet the condition, if not, why not? If not, are you going to? If you are not going to it is revoked. He can go to court all he wants but he needs to come around that condition.

K. Menici – If you issue the notice that it is going to be revoked, than he has 30 days to ask for a hearing and within that 30-day period, it's not on record, could he still sell.

J. Sessler – He could but he will be subject to serious questions of fraud from the purchaser(s), because as of the notice of revocation no one will get a building permit, even a new buyer. At that point and time if he sells it and nobody makes inquiry to the town before we get to record this at the registry of deeds, they may still be a bonifide purchaser but they will have a claim against him now for serious money damages. Brian is not going to give building permits without this condition being met and knowing within 30 days we are going to do this. He will be subject to a lot of personal and professional liability if he tries to sell this once he gets the notice. That's why we asked for an emergency meeting. We didn't want to wait too long to get this done and get a vote. If we get a vote right now we will put the notices together and have them out for service on him by tomorrow afternoon probably and the 30 days runs at that point. We can't record anything in the registry sooner than 30 days from the date of he notice, because he has the right to ask for a hearing.

J. Dube – How does everyone feel about that?

Motion made by T. Hoopes to revoke the approval of case P04-09 Sav-On Insulation for the remaining lots that have not been sold. The purpose is that there is non-compliance of fulfilling of the building

and bonding of the cistern, seconded by C. Blackstone. Motion passed with unanimous voice vote with all in favor.

J. Sessler – Kathy, I'll get the draft notice to you and then all we have to do is find out where he is so we can get him served. It says to serve either in hand or by certified mail, so get all set to notify the abutters and any other members of the public.

K. Menici – so we go back to the abutters list and put a notice in the newspaper.

J. Sessler – I will get all the information if you get all the information for service for me.

J. Crouse – If an applicant comes before the board and has met all of the terms and conditions of the Zoning and whatever regulations are in effect in the town, but the project doesn't make sense. There is a point in time where you can't cover very conceivable thing like we don't having anything that covers steep slopes so it is pretty much horizontal. Can the Planning Board say no, or do we always have to say yes?

J. Sessler – Your ability to say no has to flow from the state statute than the zoning ordinance than the town regulations. You have to look at the three documents for something that supports your denial of the plan. A lot of the time, state law is just general so that doesn't help a lot, the ordinance doesn't help because they don't have anything about steep slopes on them, so you have to look at your regulations. If there is something in the regulations that gives you the authority to do that than you can do it. You could also turn it down because the roads aren't adequate or it is hard to get services to the property or the number of lots they are proposing. If you write the regulations right, it gives you the ability to plan. It is the Planning Board, so the better the regulations are written the better you have the ability to plan well. The way the to implement the Master Plan is to adopt your Zoning Ordinance and then the regulations. The regulations and the ordinance are the enforcement of the concept of the Master Plan. If the ordinance and the regulations don't support what is in the Master Plan, you can't turn and say that you are going to enforce the Master Plan.

J. Dube – If there is something in the Master Plan but not in the ordinance.

J. Sessler – Than someone didn't do their job and you can't enforce it. The regulations are where the real power comes from, and if written right, they can give you a lot of power to plan.

Motion made by T. Hoopes to adjourn from the meeting with Jim Sessler, seconded by P. McLeod. Motion made with all in favor by unanimous voice vote.

Adjournment

Jeremy Dube, Chairman