

Town of Westwood Planning Board
Meeting Minutes
June 9, 2009
7:30 PM

Board Members Present: Steve Rafsky, Robert Malster, Bruce Montgomery, and Henry Gale. Ch. Olanoff was absent.

Staff Members Present: Nora Loughnane, Town Planner; John Bertorelli, Town Engineer; and Thomas McCusker, Town Counsel. Minutes were recorded by Janice Barba, Land Use Assistant.

Continuation of Public Hearing to Consider 81W Modification of Definitive Subdivision Approval for Presidential Estates – High Street

Vice Ch. Rafsky re-opened the public hearing, and then said that no testimony will be taken tonight, at the request of the Applicants, who need additional time to complete work with the Conservation Commission, prior to coming before the Planning Board. Mr. Rafsky requested a motion to continue the public hearing to June 23rd at 7:30 PM. Mr. Gale moved to continue the public hearing and Mr. Montgomery seconded the motion. The Board voted unanimously in favor.

Consideration of Proposed Changes to Form and Amount of Security Permitted Under the Westwood Station Master Plan Special Permit and Westwood Station Phase 1A EIDR.

Dan Bailey, Esq., Special Counsel to the Board of Selectmen, attended the meeting. Mr. Bailey provided the Planning Board with a copy of an amended Development Agreement, signed and approved by the Board of Selectmen, which also requires a vote of the Planning Board to accept an alternate security in form, dollar amount and intention. Planning Board members discussed whether a formal notice of public hearing is required, as this document could be considered an amendment to the Special Permit for Westwood Station. Thomas McCusker, Town Counsel, offered the board his opinion and recommendation. He said the Planning Board's special permit has flexibility built into it that would allow a reduction or adjustment to the amount of performance guaranty, without constituting an amendment to the special permit. Mr. McCusker stated that no public hearing is required. He compared this request to a request for a bond reduction in a subdivision project, which would be granted by the town engineer, and would not involve a public hearing.

Mr. Malster expressed his desire for more time to review the document. He asked Mr. Bailey to explain why it was imperative for the Planning Board to vote on this matter tonight. Mr. Bailey explained that the developer's Letter of Credit is set to expire on June 15th and if this agreement is not approved before that time, the developer runs the risk of being in default. In addition, Mr. Bailey said the Town is expecting a payment of \$200,000 to balance the budget by fiscal year end, June 30th. Board members asked if the Omnibus Letter could be extended. Mr. Bailey said that it could not. He also said that the Town Engineer has complete authority to draw on the funds if the developer does not deliver the work specified in the agreement within the approved timeframe.

Mr. Bertorelli offered assurances to the board that he is confident that there will be sufficient funds to complete the work that has been agreed upon between the he and the developer. Mr. Rafsky said that if the Town Engineer and the Board of Selectmen agree that the new terms are appropriate, he is inclined to approve this change. He also said that he spoke to Ch. Olanoff earlier today, and that Ch. Olanoff shares that opinion.

Mr. Montgomery read the following motions:

To move to replace the existing letter of credit and reduction schedule with a performance guaranty in the amount of \$3.5 million, \$1.5 million of which is a cash deposit held in escrow and \$2 million of which is a guaranty from Commonfund Realty Investors, LLC. Of the \$3.5 million, \$1.4 million secures site stabilization work specified by the Town Engineer and the applicant, or made necessary by an emergency, and \$1.3 million secures

construction of a so-called enabling road from University Avenue to Blue Hill Drive, or, alternatively, reconstruction of University Avenue. These amounts are recommended by the Town Engineer. The remaining \$800,000 secures a development agreement payment that the applicant owes the Town.

To move to allow the performance guaranty to be reduced by \$1 million upon completion of either enabling road or the reconstructed University Avenue to the Town Engineer's satisfaction, to be reduced from time to time by any amount deemed unnecessary by the Town Engineer to secure performance of the roadway and site stabilization work described above, and to be reduced on a dollar for dollar basis by any costs incurred to perform this work and provide to the Town Engineer. Half of each reduction shall be allocated to the cash security, and the other half shall be allocated to the guaranty, except that the cash security shall not be reduced below \$800,000 until after the applicant makes the required \$800,000 development agreement payment to the Town.

Mr. Montgomery stated that he so moves. The motions were seconded by Mr. Gale. The Planning Board voted 3-1 to approve the abovementioned motions, with Mr. Rafsky, Mr. Gale and Mr. Montgomery voting in the affirmative, and Mr. Malster voting in opposition. (Ch. Olanoff was absent.)

Upon a motion by Mr. Gale and seconded by Mr. Montgomery, the meeting was adjourned at approximately 8:30 PM.

The next scheduled meeting of the Planning Board is Tuesday, June 23, 2009 at 7:30 P.M.