

**The Planning Board held a meeting on January 5, 2010 at 7:00 in the GAR Room, City Hall. Members present: Chairperson Wayne McAllister, Susan Nicastro, Anthony Donegan, Vahan Boyajian, Steve Demos, Paul Sullivan, Steve Demos and Avalon McLaren. Also present was Secretary Pamela Gurley.**

A motion was made (Sullivan) properly seconded (Donegan) and unanimously passed to accept the minutes of the December 1, 2009 meeting.

### **Discussion**

Renaissance Village – Mr. McAllister said that they had received a letter from Attorney James Burke withdrawing their application for the 40R Renaissance Village Project. The secretary stated that the letter is on file with the City Clerk's office.

Oak Hill Way Definitive Subdivision - Mr. McAllister said that notices of tonight's discussion of this matter were published in the Enterprise on December 22, 2009 and December 29, 2009. The applicant and the abutters were notified of the hearing by certified mail, return receipt requested and as a result all procedural requirements are satisfied.

He said that the application for approval of a non-residential subdivision and request for waivers was before the Board on September 1, 2009 and October 6, 2009. By a vote of seven in favor with one abstention the Board denied the application on October 6, 2009.

A motion was made (Donegan) and properly seconded (McAllister) to bring this matter back before the Board again. Motion passed by a unanimous vote.

Mr. McAllister said that this hearing being held pursuant to MGL Ch 41 Sec. 81W because it is their understanding that the plan entitled "South Brockton Industrial Park" may have been constructively approved as a matter of law.

Mr. McAllister said that at this time, the Board is entitled to rely on and take notice of the testimony and discussion of this application that took place on September 1, 2009 and October 6, 2009 of last year. At those meetings the applicant was advised that the standards for approval set forth in the Brockton Planning Board Rules & Regulations and the state Subdivision Control Law were not met by the plan before the Board.

He said that as Chairman he was making a motion that, to the extent the plan has been constructively approved as a matter of law, to rescind the plan's approval and directs the Board's secretary to issue a certificate of such rescission and promptly file it with the City Clerk. Motion was seconded by Ms. Nicastro.

On the motion: Ms. Nicastro said that Section III: Procedure for the Submission and Approval of Plans A. Preliminary Plans clearly states that in the case of a

non-residential subdivision, the submission of a Preliminary Plan is mandatory. She said that the section further states that *once receiving approval or approval with modifications, the developer may begin to prepare the Definitive Plan*. She said that the applicant failed to receive an approval to their Preliminary Plan.

Ms. Nicastro said that for the record the plan did not conform to the Board's Rules & Regulations as follows:

Section III, B. Definitive Plan 3. Contents t. *states that a certification clause signed by a registered professional engineer and the registered land surveyor of record stating that the design and content of the Definitive Subdivision Plan conforms with all applicable rules and regulations established therein*. The certification clause on the plan is incorrect in that it states that "plan conforms to the rules and regulations of the Registry of Deeds only. The certification is signed only by registered land surveyor and not registered professional engineer and RLS.

Sec. IV Design Standards C. Easements 2. *states that where a subdivision is traversed by a watercourse, drainage way, channel or stream, the Board shall require that there be provided a storm water easement or drainage right of way which shall not be less than thirty (30) feet in width to conform substantially to the lines of such water course, drainage way, channel or stream and to provide for the possibility of flood, protection of banks, future maintenance or construction or other necessary purpose*. There is no existing or proposed drainage easement shown by the applicant for the existing brook and culvert on the plan.

Sec. V Required Improvements for an Approved Subdivision A. Street and Roadway 3. *states that all roadways shall be brought to a finished grade as shown on the profiles of the Definitive Plan with at least the top twelve (12) inches consisting of well compacted binding gravel to a width of at least thirty-four (34) feet for residential and forty (40) feet for commercial or industrial*.

Sec. V A. 4. *states that surface of roads in commercial and industrial zones shall be composed of 2 1/2" of Type I-1 bituminous concrete laid in two layers of 1 1/4" base and 1 1/4" top over a base course of 3" of compacted crushed stone penetrated with 1/5 gallons OA-3 per square yard chinked with pea stone. The foundation shall be a twelve (12) inch gravel foundation as directed by the Department of Public Works Operations Division – Highway Section and Department of Public Works Engineering Section in accordance with the specifications and the sample cross section*.

The pavement detail (see sheet C11) does not conform to the standards in the Rules & Regulations for commercial/industrial roads.

Mr. McAllister called for a vote of the Board and the vote was unanimous.

Mr. McAllister said as Chairman he was making a motion that to the extent that the waiver requests submitted with the plan were constructively approved as a matter of law, that the Board rescinds all the waivers and further directs the Board's secretary to issue a certificate of such rescission and promptly file it with the City Clerk. Motion seconded by Mr. Donegan.

On the motions: Mr. Donegan stated for the record the waivers as requested on the plan were as follows:

*Sec III Procedure for the Submission and Approval of Plans:*

*B. Definitive Plan*

*11. Time Limit - The Planning Board shall set a two (2) year time limit within which construction of all streets, sidewalks and utilities must be completed. If the work is not completed within the specified time the Planning Board may rescind approval of the plan. An applicant may request a time extension from the Planning Board. Mr. Donegan stated that there was no need to waive this provision as it clearly states that the applicant may request an extension.*

*Section IV Design Standards*

*B. Streets*

*3. Width*

*The minimum width of residential street rights-of-way shall be fifty (50) feet with a thirty-four (34) foot pavement centered within the layout except when the proposed subdivision is located on an existing way of record.*

*The minimum width of a commercial and/or industrial street shall match existing pavement width but shall be no less than twenty-four (24) feet. Rights-of-way shall be sixty (60) feet with forty (40) foot pavement centered within the layout. Greater width shall be required by the Board when deemed necessary for present and future vehicular traffic.*

Mr. Donegan said that the applicant has requested a reduction of layout width from 60 feet to 50 feet and pavement width from 40 feet to 30 feet.

*Section IV Design Standards*

*B. Streets*

*5. Dead-End Streets*

*b. Dead End shall not be longer than seven hundred (700) feet, unless in the opinion of the Board a greater length is necessitated by topography or other local conditions.*

Mr. Donegan said that he felt that there were sufficient public safety issues with the length of the roadway and the road only having one means of egress.

*Sec V Required Improvements for an Approved Subdivision*

*C. Curbs and Sidewalks*

*In a Residential Subdivision the sidewalk layout shall be eight (8) feet in width and as follows: Five (5) foot bituminous concrete two (2) inches thick put down in two (2) layers of one (1) inch thickness with a three (3) foot variable width grass strip on the curb side with straight faced type vertical GRANITE curbing. Top of curb shall be two (2) inches above the crown of the road.<sup>1</sup> See Addendum "A".*

*In a Commercial or Industrial Subdivision the sidewalk layout is to be ten (10) feet bituminous concrete in width with straight faced GRANITE curbing.*

The applicant has requested no sidewalks and to replace the required granite curbing with cape cod berm.

Mr. Donegan also said that the applicant has asked for a waiver from the requirement of having four feet of drain pipe cover and would like to have two feet of cover. He noted that this particular item is covered in the Revised Ordinances City of Brockton in sec. 20-41 and is not addressed specifically in the Rules & Regulations except for Addendum B which is the "Typical Cross Section of Roadway". He said therefore he does not believe that the Board can issue a waiver.

Mr. McLaren questioned whether or not the Chair should be making the motions. He said when Mr. Murphy was chair it was not customary to have the chair make the motion and wanted to make sure that the Board would not have to revisit the issue again.

Mr. McAllister said that as a matter of procedure he will withdraw his motion.

Mr. Donegan said that the waivers were not voted on at the hearing as the plan was denied, but to error on the safe side he was making a motion to disapprove the waiver requests. Motion was seconded by Mr. McLaren and passed unanimously.

Mr. McLaren made a motion to reconsider the matter of the denial of the definitive plan. Seconded by Mr. Sullivan and passed unanimously.

Mr. McAllister stepped down as chair and Mr. Donegan assumed the chair. Mr. McAllister repeated his motion (above) to rescind the plan's constructive approval. Second by Mr. Boyajian and passed unanimously.

**Definitive Subdivision** (Hearing Continued from 12-1-09)

Property: 388 Battles Street

Lots: 2

Applicant: Gerald & Laura Skeen

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Representative: Attorney William Wainwright  
Bruce Pilling, Pilling Engineering

Mr. Pilling said that he had revised the plan and added the invert and rim elevations as requested by Mr. Demos and said he also added a cleanout that was requested by the DPW. The previous revisions had already been approved by the DPW. There was no opposition to the plan.

A motion was made to approve the definitive plan as submitted (Demos), seconded (McAllister) and passed. In favor: McAllister, Demos, Sullivan, Nicastro, Boyajian and Donegan. Opposed: McLaren No waivers were requested.

The secretary asked what the method of surety would be and the applicant agreed to secure the subdivision by covenant.

### **Other Business**

Mr. Demos asked if anyone had been in touch with the owner of the Briarcliff subdivision. He said that he received a letter from him that it was up for auction and that the owner was hoping to buy it back. He said that he asked to have a gate put up to stop people from entering. The secretary said she spoke with Mr. Bearce and that she believed that it was gated or if it was not gated that he was not able to gate it because of Algonquin Gas needed access to their pipeline, she could not remember which one he did. Mr. Demos said he would take a ride by.

He also asked who he should speak with about dumping on a lot in his neighborhood and was told to contact the BOH.