

TOWN OF GOSHEN
PLANNING BOARD
FINAL MINUTES
PUBLIC HEARING
AND REGULAR MEETING
AUGUST 2, 2011

MEMBERS PRESENT: Chairman Allen Howe, Vice Chairman John Wirkkala, Rich Moen, Ed Peckham, Select Board Representative Bob Bell and Sue Peacock, Secretary.

OTHERS PRESENT: Mark Loehr, Mountain Reach Development Group (MRDG), Attorney Uchida

AGENDA ITEM# 1: Mt. Reach Hearing:

This is a public hearing to address a request from Mt. Reach to extend their deadlines. Mr. Howe has communicated with Attorney Waugh, and Attorney Waugh sent a letter to Attorney Uchida. Atty Waugh's legal opinion is that RSA 674:39 gives the board authority to grant to projects like Mt Reach "6 years after date of approval to achieve substantial completion of the improvements as described in paragraph 2" (of RSA 674:39). Mr. Howe said at this stage the request was for an extension through 2015 for some of the deadlines. The board's last decision was 8-26-08, so 6 years from that date would be 2014. The request for 2015 would be 7 years which goes beyond what is stated in the RSA. Mr. Howe said that Attorney Waugh requested Attorney Uchida and Mr. Loehr think about what constitutes having substantial completion on the project, and then the Planning Board can address the request.

Mr. Loehr is here to gain an extension on Mt. Reach and to keep the options open to move forward with this project. Mr. Loehr said that having more time certainly allows for more opportunities. Mr. Loehr stated that the other issues are the phasing and then the performance bond. Mr. Loehr said that before we move forward with the project he will come back with updated performance bond and an updated phasing plan which is consistent with what was proposed before and then tie it to the specific date that is referred to in RSA 674:39.

Attorney Uchida stated he had originally asked to move the completion date from 9/15/2012 to 9/15/2015, and he is also asking that the deadline for the completion of the modifications to the existing house be extended again from 9/2011 to 9/2014. Attorney Uchida is also asking to modify the date for the completion of landscaping from 9/15/2012-to 9/15/2015. Attorney Uchida said that when he got the letter from Attorney Waugh, stating that he should address the issue of substantial completion, Attorney Uchida and Mr. Loehr both thought about what that might look like. Attorney Uchida and Mr. Loehr both agreed that what they are about to propose will also include the discussion of the issue of the financial security and posting of the bond as well as the phasing plan. Attorney Uchida stated that when the statute talks about substantial completion they usually look around all the degree of improvements that are important to the town.

Once you get so far into the project it's unfair or much more difficult for a developer to start over again. There is this whole concept of vesting a project, and usually if you substantially complete improvements, you then vest against those kinds of changes that may be enacted after the project is vested. Attorney Uchida stated that he and Mr. Loehr looked at plans and what they were going to originally going to do. Attorney Uchida said that the phase I improvements on the interior road including the build out down to the utility area. The second phase would be the construction of some units and the driveways, and the third phase would be the other units. Phase I would also include improvements to Old Province Rd, which would not be completed until phase III was completed.

Attorney Uchida said that his proposal tonight is in terms of substantial completion. Attorney Uchida said if we could get the road system in what is designated as Phase I, the main road, short of the pavement, put in the utilities and all of the soils, finishing the soils needed for the roadway, and put in all the drainage improvements associated with that. That will put us several hundred thousand dollars into the land. Attorney Uchida said that will pretty much dictate what we're doing to do with the land there.

Attorney Uchida said that the terms of substantial completion is never applied to having the units completed, rather it applies to how deep you are into the project, and how complete you are into the project where it's hard for a developer to turn back and redo the entire plan. Attorney Uchida said that our proposal would be to get the road in and we would do this by the August 26, 2014 date, which is the 6-year period from August 2008.

Attorney Uchida said that what we would propose to do is before we can record the mylar for this project and start to build we would agree to have another hearing and have another bond amount. At the same time, because the phasing plan is built in the bonding condition, condition # 7 in the approval, we would come in with a phasing plan that is consistent with the 3 phased idea that was negotiated back in 2008, only we would set the actual dates for the 3 phased build out plan once we know what the start date is. Attorney Uchida said that in that phasing plan he would address when we would actually the project based on the start, also we would address the issue of when the house would get retrofitted so that it architecturally fits with the project, then we would also address the final landscaping completion date.

Mr. Howe asked reiteration of the terms of signing the mylar. Attorney Uchida stated that he would not have the mylar signed until he has submitted the bond amount. Then the planning board would approve the bond estimate and hold a hearing on the amount and make sure this amount is approved. Mr. Howe asked about the conservation easement deed component and when this would be signed. Attorney Uchida said that we would put that all together at the same time. Mr. Howe stated that the board would like Atty Uchida to summarize for Atty Waugh's review the case law is associated with defining substantial completion.

Attorney Uchida said that the court looks at how much money is sunk into the ground and looks at those improvements that really go to the things that are important to the municipality. There is more concern with the cost that you sunk into the project, and those related to the kind of important critical infrastructure, utilities, roads, road drainage, and those issues that ultimately impact the layout of the project Attorney Uchida said that it is also the quality of the infrastructure done. Once all the groundwork is done, then that kind of seals the deal.

Mr. Loehr said that is also consistent with the slope work that has been done, because that corresponds to exactly where those buildings are going to get laid out.

Mr. Howe said that he thought it would be helpful to summarize substantial completion. Mr. Howe also said the other question is that he will get legal advice from Attorney Waugh on the timing of signing the mylar.

Mr. Howe questioned whether we should agree to the request to define putting this road in as substantial completion, then signing the mylar after.

Attorney Uchida reiterated that first substantial completion would be defined as putting the road in, and then we would post the bond before we even started.

Mr. Howe asked the board if anyone had any other questions. Mr. Howe said we will wait for an explanation of substantial completion from Attorney Uchida.

Attorney Uchida will put the proposal in writing and the explanation in writing, and he will try to get out by the end of the week.

Mr. Howe said that there will be something drafted for the next meeting from Attorney Waugh, which will be voted on at that that time.

Mr. Bell said that since he is an abutter to this project, he is asking the applicant if there are any concerns regarding him being a part of this hearing. Attorney Uchida raised no objections and Mr. Bell would serve as a board member for the remainder of the hearing.

Mr. Howe said that if all parties are in agreement as to the meaning of substantial completion from a legal standpoint we can continue this hearing until August 30th at 7 p.m.

The Public hearing was closed at approximately 7:35 p.m.

AGENDA ITEM # 2: Correct 7/26/2011 draft minutes

The minutes of July 26 were reviewed and corrections were made, Mr. Moen made a motion to accept the minutes with the corrections, Mr. Peckham seconded and all were in favor.

AGENDA ITEM # 3 Other business:

Mr. Bell stated that the ETAP inspection is scheduled for August 8th.

After that info is collected, and then the select board will revisit the \$50,000 funding suggestions.

Mr. Moen made a motion to adjourn the meeting, Mr. Peckham seconded, and all were in favor to adjourn at approximately 8:30 p.m.

FINAL SUBMITTED BY:

Allen Howe

Planning Board Chair