

Goshen Planning Board

Mountain Reach Development Group, LLC – Request for Extension of Time

Public Hearings: August 2, 2011, August 27, 2011, September 27, 2011

Members sitting: Howe, Wirkkala, Moen, Peckham, and Bell.

1. The development at issue before the Board is the “Mountain Reach 24-Unit Development, Old Province Road, Goshen, New Hampshire” [herein “Mountain Reach”]. The original conditional subdivision approval was granted by the Board on December 27, 2006 (21-page written decision). That decision was amended by the Board’s decision dated August 26, 2008 (11 pages). The approved plans involved are the plan set with the above title dated July 23, 2008 (88 plan sheets in total). All three of these documents are incorporated herein by reference, and remain in effect as part of the approval except to the extent modified in this decision.

2. The time frame for construction of the Mountain Reach development is affected by the N.H. Legislature’s 2009 enactment of Paragraph V of RSA 674:39, which says (among other things) that any site plan or subdivision approved between July 1, 2005 and July 1, 2009 shall be allowed 6 years after the date of approval to achieve substantial completion of the improvements as described in RSA 674:39, II. The concept of “substantial completion of improvements” in that statute has also been analyzed by the N.H. Supreme Court – for example in the case of *AWL Power, Inc. v. City of Rochester*, 148 N.H. 603 (2002) – as being consistent with the degree of substantial construction which would confer “vested rights” upon a project under the doctrine of vested rights grounded in the N.H. Constitution, and the Court described RSA 674:39 as constituting a statutory extension of common-law vested rights.

3. Based upon legal advice, the Board finds that the relevant approval date for purposes of the above statute is August 26, 2008, and that therefore the 6-year period allowed by the Legislature for substantial completion of improvements will end on August 26, 2014.

4. Consistent with that conclusion, Mountain Reach has submitted for our action a proposed revised version of the “General Construction Notes” which appears on sheets P-1 and P-2 of the approved plans. The proposed revision alters the time frame for completion of the various phases of the development. A copy of that revision is attached to this decision. Of prime significance is the new Phase I schedule, wherein Mountain Reach proposes to complete construction of the road base from the top of Old Province Road to the existing house (with the roadway to be completed to the asphalt binder course, as detailed on Sheet D-3 of the original plan set), as well as associated utilities, by August 26, 2014. The time frames for construction of the other phases are also similarly adjusted in the proposed revision.

5. The Board finds, based on these documents and on testimony, that the Phase I road and utility improvements, as so described, meet the standard for “substantial construction” which would establish vested rights to complete the project under the N.H. law of vested rights, and would therefore, if completed by August 26, 2014, satisfy the time frame established by RSA 674:39, Paragraph V, for the achievement of substantial completion of improvements which is applicable to the Mountain Reach Development.

Action of the Board: It was moved by Mr. Howe, seconded by Mr. Moen to *grant* the requested extensions of time requested by Mountain Reach Development Group, LLC, subject to the following conditions:

- A. The revised time frames set forth in the revised “General Construction Notes” document attached to this decision shall be substituted for those printed on Sheets P-1 and P-2 of the existing approved set of plans, and all completion dates and deadlines contained in the Board’s decision shall be adjusted accordingly. In particular, without limitation, the Phase I improvements as described therein shall be completed by August 26, 2014. All features and conditions in the original approval, as described in Paragraph 1 above, which are not modified by the attached amended “General Construction Notes” shall remain in effect.
- B. On or before January 15, 2014, Mountain Reach shall submit to the Planning Board revised estimates for purposes of establishing bonding for the improvements, including all of the elements specified by Paragraph 7 of the Board’s decision of August 26, 2008. As set forth in that paragraph, the sufficiency of the bonding amount shall be reviewed, at the applicant’s expense, by a Professional Engineer employed by the Town and licensed in the State of New Hampshire.

In addition, as provided in existing decision Paragraph 18, the actual bond or other security instrument shall be subject to review by the Town's attorney at the applicant's expense, and must be approved prior to the recording of a mylar plan at the Registry of Deeds, and prior to the beginning of construction of the improvements.

Voted in Favor: Howe, Wirkkala, Moen, Peckham, and Bell

Voted in Opposition: None

GENERAL CONSTRUCTION NOTES:

- A) WITH THE EXCEPTION OF OFF-SITE IMPROVEMENTS, ON-SITE GROUND DISTURBANCE IS PROHIBITED IN AREAS THAT CANNOT BE GRADED AND SEEDED BY SEPTEMBER 15 OF ANY CONSTRUCTION YEAR
- B) EXTERIOR OF HOUSE (BUILDING F) WILL BE MODIFIED TO CONFORM TO CONDOMINIUM ASSOCIATION REQUIREMENTS. TIMING TO TAKE PLACE BETWEEN JANUARY 2014 AND SEPTEMBER 2016
- C) ACCESS TO EXISTING HOUSE SHALL BE MAINTAINED AT ALL TIMES VIA EXISTING DRIVEWAY OR PROPOSED ROADWAY

PHASE 1-CONSTRUCT ROADBASE FROM TOP OF OLD PROVINCE ROAD TO EXISTING HOUSE AND ASSOCIATED UTILITIES:

ESTIMATED CONSTRUCTION SCHEDULE: SPRING 2014 TO AUGUST 26, 2014

- A) CLEARING SHALL BE COMPLETED AS REQUIRED FOR BUILDING C AND ASSOCIATED SEPTIC AND UTILITIES. ADDITIONAL CLEARING TO BE COMPLETED TO ENABLE ROUGH GRADING AND STOCKPILING OF MATERIALS
- B) ALL NECESSARY EROSION CONTROL MEASURES TO BE INSTALLED PRIOR TO COMMENCEMENT OF ANY EARTHWORK
- C) GRUBBING, OVERBURDEN, BLASTING AND ROCK REMOVAL/TRANSPORT TO BE COMPLETED AFTER CLEARING AND GRUBBING TO EXTENTS REQUIRED FOR CONSTRUCTING BUILDING C, ROADWAY AND ALL ASSOCIATED UTILITIES. ADDITIONAL CLEARING TO BE COMPLETED TO ENABLE ROUGH GRADING AND STOCKPILING OF MATERIALS.
- D) CONSTRUCT ROAD SUBGRADE INCLUDING ALL BURIED UNITS, WATER LINES, SEPTIC LINES AND FIRE PROTECTION LINES. ALSO CONSTRUCT FIRE CISTERN AND FIRE PULL-OFF. CONSTRUCT ALL DRAINAGE STRUCTURES ASSOCIATED WITH ROADWAY DRAINAGE.
- E) PRIOR TO COMPLETION OF RESIDENTIAL BUILDING, CONSTRUCT ROADWAY SUBBASE, BASE AND ASPHALT BINDER COURSE. SEE MISCELLANEOUS DETAIL SHEET D-3, IN THE AMENDED SITE PLAN APPROVED BY THE GOSHEN PLANNING BOARD ON AUGUST 24, 2008, FOR TYPICAL SPECIFICATIONS TO COMPLETE THE PROJECT ROADWAY TO ASPHALT BINDER COURSE.

PHASE 1A-CONSTRUCT BUILDING C AND ASSOCIATED UTILITIES:

ESTIMATED CONSTRUCTION SCHEDULE: SPRING 2014 TO FALL 2015

- F) CONSTRUCT HAMMERHEAD TURNAROUND AT THE END OF OLD PROVINCE ROAD AS REQUIRED BY THE TOWN OF GOSHEN (REQUIRES MINIMAL BLASTING & EARTHWORK)

- G) CONSTRUCT WELL HOUSE AND MAINTENANCE BUILDINGS DURING CONSTRUCTION OF RESIDENTIAL BUILDINGS AND PRIOR TO ISSUANCE OF OCCUPANCY PERMITS.
- H) OFF-SITE PERRINO FIRE POND TO BE DREDGED AND NEW DRY HYDRANT CONSTRUCTED PRIOR TO ISSUANCE OF OCCUPANCY PERMIT TO ANY UNITS, AS REQUIRED BY T/O GOSHEN FIRE CHIEF.
- I) BEGIN CONSTRUCTING AND COMPLETE BUILDING C AND ASSOCIATED DRAINAGE AND UTILITIES.**
- J) OFF-SITE ROADWAY IMPROVEMENTS TO OLD PROVINCE ROAD TO BEGIN DURING PHASE 1A AND TO BE CONSTRUCTED TO ASPHALT BINDER COURSE BEFORE THE EARLIER OF ISSUANCE OF PHASE 1A OCCUPANCY PERMIT ~~OR BUT IN ANY EVENT BY NO LATER THAN SEPTEMBER 15, 2015.~~ SEE OLD PROVINCE ROAD RECONSTRUCTION PLANS & DETAILS, SHEET OS-1, IN THE AMENDED SITE PLAN APPROVED BY THE GOSHEN PLANNING BOARD ON AUGUST 24, 2008, FOR TYPICAL SPECIFICATIONS TO COMPLETE OLD PROVINCE ROAD TO ASPHALT BINDER COURSE.

PHASE 2-CONSTRUCT BUILDING B&D AND ASSOCIATED UTILITIES:

ESTIMATED CONSTRUCTION SCHEDULE: FALL 20**14** TO SPRING 20**17**

- A) CLEARING SHALL BE COMPLETED AS REQUIRED FOR BUILDING B&D AND ASSOCIATED UTILITIES.
- B) ALL NECESSARY EROSION CONTROL MEASURES TO BE INSTALLED PRIOR TO COMMENCEMENT OF ANY SOIL DISTURBANCE
- C) GRUBBING, OVERBURDEN, BLASTING AND ROCK REMOVAL/TRANSPORT FOR BUILDING B&D TO BE COMPLETED
- D) BEGIN CONSTRUCTION OF BUILDING**S** B&D AND ASSOCIATED DRAINAGE AND UTILITIES
- E) COMPLETE CONSTRUCTION OF BUILDINGS B&D AND ASSOCIATED DRAINAGE, UTILITIES AND SITE GRADING.

PHASE 3-CONSTRUCT BUILDING A AND ASSOCIATED UTILITIES:

ESTIMATED CONSTRUCTION SCHEDULE: SPRING 20**17** TO SEPTEMBER 15, 20**18**~~9~~

- A) BEGIN CONSTRUCTING BUILDING A AND ASSOCIATED DRAINAGE AND UTILITIES.
- B) CONSTRUCT FINAL WEAR COURSE FOR OLD PROVINCE ROAD AND ON-SITE ROADWAY PRIOR TO ISSUANCE OF FINAL OCCUPANCY PERMIT
- C) COMPLETE CONSTRUCTION OF REMAINING BUILDINGS AND ALL ASSOCIATED DRAINAGE, UTILITIES, SITE GRADING AND OTHER INFRASTRUCTURE WORK.

LANDSCAPING:

ESTIMATED LANDSCAPING SCHEDULE:

- A) LANDSCAPING AROUND EACH UNIT WILL BE COMPLETED WITHIN 9 MONTHS OF COMPLETION OF SUCH UNIT.
- B) LANDSCAPING NOT ASSOCIATED WITH A PARTICULAR UNIT WILL BE COMPLETED WITH IN 9 MONTHS OF THE COMPLETION OF THE ASSOCIATED PHASE.
- C) ALL LANDSCAPING WILL BE COMPLETED BY SEPTEMBER 15, 20**189**

GENERAL CONSTRUCTION NOTES:

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ESTIMATED CONSTRUCTION SCHEDULE: SPRING 2014 TO AUGUST 26, 2014

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PHASE 2-CONSTRUCT BUILDING B&D AND ASSOCIATED UTILITIES:

ESTIMATED CONSTRUCTION SCHEDULE: FALL 2014 TO SPRING 2017

- A) CLEARING SHALL BE COMPLETED AS REQUIRED FOR BUILDING B&D AND ASSOCIATED UTILITIES.
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PHASE 3-CONSTRUCT BUILDING A AND ASSOCIATED UTILITIES:

ESTIMATED CONSTRUCTION SCHEDULE: SPRING 2017 TO SEPTEMBER 15, 2018

- A) BEGIN CONSTRUCTING BUILDING A AND ASSOCIATED DRAINAGE AND UTILITIES.
- B) CONSTRUCT FINAL WEAR COURSE FOR OLD PROVINCE ROAD AND ON-SITE ROADWAY PRIOR TO ISSUANCE OF FINAL OCCUPANCY PERMIT
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- C) ALL LANDSCAPING WILL BE COMPLETED BY SEPTEMBER 15, 2018