

**Town of Medway
Zoning Board of Appeals Meeting
School Committee Presentation Room
Medway Middle School
45 Holliston St, Medway MA**

MINUTES OF MEETING

February 1, 2017

Present: Chairman David Cole; Clerk Carol Gould (arrived at 7:46 pm); Committee Members: Eric Arbeene, Brian White, William Kennedy; Associate Member Rori Stumpf.

Also present: Stephanie Mercandetti, Director, Community & Economic Development; Mackenzie Leahy, Administrative Assistant, Community & Economic Development

Ezra Glenn; Consultant

Chairman Cole called the meeting to order at 7:33 PM.

Citizen Comments:

There were no members of the public that wished to make comments on items other than those already on the agenda.

Any other business that may properly come before the Board:

Warrant Article to revise Section 5.5 Nonconforming Uses and Structures

Ms. Mercandetti noted there were changes that were made through the State Legislature, relative to the commencement of construction for Nonconforming Uses and Structures, in Chapter 219 of the Acts of 2016 that changed the 6 month commencement to 12 month commencement. The change would be required, per advice from Town Counsel.

Ms. Mercandetti explained that a use is not considered abandoned for period of 2 years, but there was the option to change the period to 3 years. This change would not be required. The Planning and Economic Development Board was suggesting to keep the period of 2 years as at present.

Chairman Cole and members of the Board felt that it was fine as is, as well.

Warrant Article to revise Section 3.4 Special Permits

Ms. Mercandetti explained that Staff and the PEDB were looking to clarify and clean up some of the Special Permit criteria.

Chairman Cole noted that he had been requesting that clarification be made to the Special Permit criteria for years, and he did not see anything wrong with the changes.

Ms. Mercandetti noted that there was also the option to change the Special Permit lapse period from the current 2 years to a period of 3 years.

Chairman Cole felt that if the Nonconforming Uses abandonment language was for 2 years, the Special Permit language should also be 2 years.

Correspondence:

Ms. Mercandetti stated that there was one item of correspondence which was a modeling analysis for Timber Crest, done by DPS consultant, Kleinfelder, for which the applicant had already paid into the Peer Review Funds.

Chairman Cole moved to pay \$3,750 to Kleinfelder for Hydraulic modeling services rendered to the Town, seconded by Mr. White, and approved unanimously, 5-0-0. (Ms. Gould did not vote.)

Approval of Minutes:

A motion was made to approve the minutes of January 18, 2017 by Mr. Kennedy, seconded by Mr. Arbeene, and approved 4-0-1; Mr. White was not in attendance for the meeting on January 18, 2017. (Ms. Gould did not vote.)

Upcoming Meetings:

No further discussion.

Public Hearings:

7:35 P.M. – The Applicant, Timber Crest LLC, seeks a Comprehensive Permit under MGL c. 40B, Sections 20-23 as amended, to allow construction of a 157 unit development to be called “Timber Crest Estates” containing 25% affordable units on 170.36 acres which is comprised of the properties located at 143 Holliston Street, 153R Holliston Street, 177A Holliston Street, 21R Fairway Lane, 13 Ohlson Circle, 102 Winthrop Street, 11 Woodland Road, 0R Woodland Road, and 165 Holliston Street, Medway, MA.

(Opened at 7:47 pm)

The Board is in receipt of the following materials:

- DRC Comments, dated January 12, 2017
- Traffic Safety Working Session – Proposed Sign Mitigations, Crash Locations, and Sight Distances, dated January 24, 2017
- Traffic Safety Working Session – Turning Movements for Fire Tanker Truck, dated January 24, 2017
- Traffic Safety Working Session – Turning Movements for Fire Ladder Truck, dated January 24, 2017
- Traffic Safety Working Session – Tetra Tech Follow Up Comments from Sean Reardon, dated January 27, 2017
- Traffic Safety Working Session – Tetra Tech Follow Up Comments from Courtney Jones, dated January 30, 2017
- Kleinfelder Water Hydraulic Analysis Memo, dated January 20, 2017
- Updated Plan Submission Cover Letter to ZBA, dated February 1, 2017
- Revised Plan Set, dated January 30, 2017
- Revised Preliminary Waiver List, dated January 30, 2017
- Supplemental Drainage Calculations, dated January 30, 2017

Mounir Tayara, Applicant, Attorney Agostino, RIW, Paul Cusson, Delphic Associates, and Jim Pavlik, Outback Engineering were in attendance.

Ms. Mercandetti explained that since the last hearing, the applicant and staff had held a traffic and safety working session to review revised data and studies that the applicant had undertaken, with respect to the crash history, sight distances, and proposed mitigation. The applicant will present some of those changes as well as the revised plans. The information was received electronically after 5 pm [that day], hence the information isn't copied for the Board, but there are two large plan sets that the applicant has provided which they can present on, but Ms. Mercandetti would like the Board, Staff, and Consultants to have the opportunity to really "delve into" the revised plans.

Attorney Agostino stated that the applicant was working to address concerns of residents, Town Official, the Board, and the Board's Consultants. During hearings, the applicant was looking for the Board's input on their particular concerns and the applicant has had these working session to discuss those issues, raised by the Board, with the Board's Consultants and see what can be done to address some of those concerns. The result of that is the revised plans before the Board, which is a combination of all the refinements and adjustments, based on public comments, discussion during the working sessions, and comments from Town Boards and Officials. The applicant is looking for feedback on whether the Board feels the applicant has addressed concerns or if there are areas that still haven't achieved a particular concern, then the Board and applicant can help narrow those down.

Attorney Agostino summarized that there had been a traffic and safety working session on January 24, 2016. The Board and the public had expressed concerns with the site entrances; the applicant went back and did a detailed survey, particularly of the Holliston Street entrance to confirm intersection stopping distances and sight distances at the driveway and there is a full report to confirm that the applicant meet the minimum requirements under AASHTO. The applicant has provided a sheet in the plan set of the traffic mitigation measures along Holliston Street that will bring down the speeds and increase the safety and allow the applicant to meet the requirements for the site intersection. There has been concern about students congregating at the intersections waiting for the bus, so the applicant is proposing to eliminate 1 house lot and put in a waiting area, bus shelters, and mail pickup [on both the eastern and western portions of the development]. The applicant has widened the roads to 26 feet to reduce traffic concerns within the site. At the meeting on January 24, Officer Watson and Chief Lynch attended. The Chief continued to express concerns about Road F, the applicant has proposed a few mitigation measures to alleviate those concerns, the applicant's hope is that with the 26 foot paved width—the applicant meets general recognized safety standards and reach a level of comfort with all safety officials. Officer Watson expressed generally that he was satisfied with the proposed safety mitigation measures.

Attorney Agostino noted that the other working session and other studies that were done related to Water and Sewer and there was a public hearing held. Charles River Pollution Control District and DEP had indicated that there is enough [water and sewer] supply; it would bring the Town to the point where the Town will need to consider what happens next. In meeting with Town Officials, another concern was the pressure and pumps in Town. Ideas were floated in terms of what the applicant might contribute to the Town in order to get some redundancy to the pump and general Town water pressure issue. Two other concerns were the water pressure and local sewer pipe capacity. The applicant metered the sewer lines and determined that there was enough capacity to handle the flow that would be there post development. The Kleinfelder report relates to water pressure, a concern raised from the public. Ultimately, the applicant could install a pump for the pressure within the development, but the applicant had the entire area modeled, the size of the pumps, the existing pressure, and what the pressure would look like post-development. That report was received the previous week, but there was one model missing which the applicant was going to follow up with Kleinfelder for. Initially the applicant had proposed a pressurized sewer line to get some of the sewage from lower elevations up to the

higher elevations where the sewer connections are located. One of the things that came out of the working session was the Tetra Tech had questioned still doing gravity sewer by installing lift stations. There was a concern from the public regarding the noise of some of the pump stations, and the applicant was able to remove those stations and redesign the sewer proposal by having those lift stations. Instead of pumping uphill for a large distance, there are gravity lines and then lift station up, then gravity line and lift station up, to get to the elevations the applicant needs. There is no longer a water and sewer connection from the eastern portion of the development down to Fern Path. The [proposed] Fern Path [units] will be connected to the water and sewer within the Fern Path area; the rest of the project will be independent [from Fern Path].

Attorney Agostino continued that they had mentioned at the December 7, 2016 hearing that there had been a working session [regarding Wetlands and Vernal Pools] prior to that hearing and the applicant had submitted a letter to the Conservation Commission summarizing some of the details and proposals from that working session and the applicant was hoping for some feedback, but the Commission noted that they had felt more comfortable solely commenting on the revised plan set. Attorney Agostino explained some of the proposal that came out of the project: There has been a concern about whether the depression at 165 Holliston St constitutes a perennial stream versus intermittent stream and the consequences of that would be if it was determined that it was ultimately perennial. The applicant has added a note to the plan [sheet 6 of 14] regarding the status of the stream and that the Board could condition that those lots would not be built on due to the fact that they would need to comply with the Wetlands Protection Act if it was perennial. The Town has a 25 foot no disturb around Wetlands; the Conservation Commission asked if the applicant needed to go down to 0 feet. The applicant has identified a 15 foot buffer that the applicant is able to adhere to, shown on the plans, except in certain areas for infrastructure, decks, and a few foundations; generally this makes it easier for the Conservation Commission to manage potential changes to the lots over time. The Town has a 100 foot no disturb around Vernal Pools, the applicant has shown on the plans that they are trying to adhere to that buffer as best as they can and they have proposed to eliminate two (2) lots to maintain a contiguous habitat. Under DEP guidance, Vernal Pools are either certified or not certified; vernal pools that are not certified do not have protection. The applicant is proposing to treat all vernal pools the same [under DEP regulations].

Attorney Agostino stated that the applicant is looking forward to the Board's consideration of this proposal. To the extent that there is additional feedback, with the next round of peer review or [board/department, public] comments, that reveals additional needs or requests, perhaps those can be addressed as conditions or descriptions or revisions to the plans. A lot of effort has gone into the revision of the plans, and the applicant feels they have addressed or mitigated every concern heard to date. There is a revised waiver list as well, with some justifications and waivers from the Town Bylaws, asking for the waivers necessary in order to develop the project.

Mr. Pavlik described the two locations of the bus shelters, one at Holliston St and the other at the opposite end on Winthrop St. The applicant is proposing two small parking areas with grasscrete, which is a porous type of concrete paver that allows grass to grow through the spaces between the blocks so it will be less of an intrusive pavement. The bus shelters [intended to say lots, not shelters] plan to be a combination with mail stations so that they will be centralized for each side of the development.

Mr. Pavlik stated that there had been a more detailed survey of the topography, existing trees, and driveways between the proposed site drive and Fairway Lane to focus on some of the sight distance issues there. Based on the detailed survey, Green International determined there is adequate sight distance from the proposed site driveway over the crest of the hill towards Fairway Lane. The real issue is Fairway Lane looking over the hill

towards the south; it is an existing issue. The applicant is looking to reconstruct a portion of that roadway to improve the sight distance. By reconstructing and lowering the crest of the hill, the applicant can improve the sight distance significantly.

Attorney Agostino stated that the applicant had just received comments back from Tetra Tech. The applicant is proposing reconstruction of the roadway in conjunction with traffic signs and speed control devices along the roadway. Studies have shown that speed control devices do reduce speeds. Green International believes that all traffic mitigation will help the speeds to decrease.

Attorney Agostino stated that the other outstanding issue is satisfying the Fire Chief's concern for the roadway [road F, safety concerns], which the applicant feels they can adequately address.

Attorney Agostino stated that the applicant would be lowering the crest approximately 12 inches, and the work zone would be about 320 feet. The plans do show the proposal. This is a pre-existing condition [the area that the applicant intends to improve] and it was a previously identified area to be improved but nothing had ever been completed.

Karyl Spiller-Walsh commented on the previous proposal to drastically change the crest of the roadway and the impact it was going to have on the existing driveways as reasoning for why the work never commenced.

Chairman Cole asked about the sewer connection and whether or not the applicant was definitely eliminating the connection [from Road F] down to Fern Path. Mr. Pavlik stated that they are not including that connection and they have reduced the number of force mains by incorporating more lift stations which will connect to the primary location at the intersection of Lovering St and Buttercup Ln. There will be a gravity line up Ohlson Circle, across the property at 13 Ohlson Circle, through the emergency access road, to the end of Road D. Road A is the intersecting road onto Winthrop St. The gravity line at ending at the cul-de-sac of Road C would have a separate gravity sewer line down the hill to the bottom of Winthrop St, which will have a pump station at the bus shelter and a short force main back up into the gravity line of Road C. There is a pump station along Road A, including about 15 homes. Heading towards the east, there is a cul-de-sac at the end of Road D, there is pump [lift] station to the north. As a side note, Mr. Pavlik explained the composition of a pump station. It is a pre-cast concrete structure with a wet well. They are 15 to 20 feet deep; inside there are duplex pumps that takes the sewage and lifts it back up to a higher elevation. The east side [intended to say west, not east] of the project would flow by gravity sewer to a second lift station to the north of Road D and the lift station would pump it into the gravity sewer that then flows to Ohlson Circle. The west side of the project has two additional lift stations, one at the low point servicing approximately 13 homes, pumping across the wetland area [Road F near Holliston St], and the remainder of Road F flows by gravity to the final lift station at the intersection of Road F and Road I. By including the lift stations, the applicant was able to raise the sewer lines by about 6 feet for a significant length of the project, reducing the depths of the sewer lines.

Chairman Cole asked where the crossing was from the east side to the west side.

Mr. White asked how many lift stations there were in total; Mr. Pavlik answered that there were 4.

Mr. Kennedy asked what the maintenance was for the stations; Mr. Pavlik stated that they would be privately owned by the Homeowners Association. Mr. Tayara explained that lift stations are fairly simple systems; all of them would be on private property. This has allowed the applicant to mostly comply with the Town's regulation that Force Mains should not be within the roadway. There is a stream crossing with about 200 feet of force main [that cannot be on private property].

Ms. Gould asked if any of the pump stations were near or on wetlands; Mr. Tayara responded that they were all in uplands.

Mr. Kennedy asked if the applicant was still looking for the waiver for the extension to Buttercup with the Town Moratorium; Mr. Tayara stated they were.

Mr. Kennedy asked how fees [for Homeowners Association] would work with the affordable units. Attorney Agostino explained that the affordable unit prices would come down to what someone, earning 80% of the area median income, would spend as 30% of their income on housing. All the housing expenses need to fit within that 30%; that would require some adjustment between the affordable and market rate units. Mr. Cusson explained that a home that may cost \$200,000 might drop to \$180,000 or \$160,000 based on the Homeowners Association fees and that would be reflected in the sales matrix; pricing also needs to be approved by the State prior to initiation of the lottery.

Mr. White asked what the overall energy use would be for the lift stations. Mr. Cusson stated that it would need to meet DEP standards. Mr. White stated that he would assume the Life Cycle Cost of the 4 lift stations would be pretty significant.

Chairman Cole asked where the water supply would come from. Mr. Pavlik answered that they are proposed a number of looped connections. Holliston St will be undergoing new 12 inch [pipe] upgrade in the next few years. The applicant is proposing to tie into the water main on Holliston St, running down Road F and out through Road I onto Fairway Ln. There would be an east-west connector that would follow the sewer line that would then run out to Winthrop St as well as a connection out to Ohlson Circle. There are 4 connections to existing water mains, and then there will be the east-west connection, where currently there is no connection. There is a water main at Fern Path and depending on water the Kleinfelder report shows, connection up to Road F is another possibility.

Mr. White stated that he would assume that the water pressure would improve with the [looped] connections, but he would wait for the report and peer review for that information. Mr. White would also like to know what the water pressure would look like for the surrounding residences as well.

Mr. White would like to see an additional analysis, similar to that which was done to show the lots impacted by the 15 foot no touch wetland buffer as proposed, for the 25 foot no touch wetland buffer and the 100 foot buffer for vernal pools within the local bylaw. Attorney Agostino asked if that would include wetlands crossings; Mr. White answered that was a different topic for discussion but he assumed that the Board would be okay without that information, given the nature that those crossings are the best possible scenario.

Mr. White asked if the 12 inches proposed to be taken of the top of the crest for the roadway on Holliston St was the minimum and what would be the "best practice" amount. Mr. Tayara stated that Green International was preparing full response to Tetra Tech, but wanted to give a brief summary of the response. The changes to the crest would help to meet the posted speed limit, currently it does not. The site drive will meet a higher speed limit [than posted].

Mr. White said that he was hearing that the mitigation would help to meet the traffic issues today, but was concerned about that lasting with the additional car loads [of the project] and what that would look like 20 years down the road. He would like to see a net improvement; Mr. Tayara believe that the mitigation is enough to show that improvement.

Mr. White asked if Courtney Jones' [Tetra Tech] comments from her email had been addressed in the revised plans or would be in the Green International response; Attorney Agostino responded that would be a separate submittal. The plan set addresses the concerns that were in the peer reviews. Attorney Agostino stated that the applicant knew what the minimum requirements where Tetra Tech is pushing for the desirable standards that Tetra Tech believes may be a result of altering the road profile.

Ms. Mercandetti stated that there was additional information that the applicant was going to provide in an email, so she wanted to make sure that information would be going through Staff via email and not directly to the Board's consultant [Tetra Tech]. Per the email exchange after the working session, everything was to be bundled up in a formal submittal, which Tetra Tech would peer review to provide comments to the Board. Mr. Stumpf asked if the reduction of the crest and a reduced speed of 5 mph would result in the correct SSD; Mr. Cusson responded correct. Mr. Stumpf said he did read that radar signs do reduce speeds. Attorney Agostino stated that part of the delay was that Tetra Tech was unable to make it to the working session [though they did call in via phone], so some of the exchange that the applicant was hoping to have would have occurred at that face to face.

Mr. White asked if the auto-turn calculations include the 26 foot width roadways; Attorney Agostino stated they were new. Ms. Mercandetti said that they were provided at the working session and emailed to Courtney [Tetra Tech] and the additional materials were sent after. Mr. White asked if DPS and life safety staff were present. It appears that some curbs are being crossed in those calculations. Ms. Mercandetti stated that Interim Director Dave Damico for DPS, Safety Officer Sergeant Watson for the Police Department, Chief Lynch, Fire Chief, the Superintendent of Schools, as well as the School Business Manager who manages safety and bus issues. There weren't any issues raised with the turning movements. Mr. White said that a lot of those movements seemed tight; Ms. Leahy stated that Chief Lynch was okay with the turning movements. Ms. Mercandetti said that snow storage really hadn't been discussed because it wasn't addressed at the public hearing; Mr. Tayara stated that they have proposed some snow storage and they didn't believe that it would be an issue with the road layouts. Mr. Tayara said they re-affirm their commitment to have one side [of the roadways] of no parking. Mr. White stated that there close or crossing onto the curb of the middle of cul-de-sacs. Attorney Agostino stated that there was evidence that all turning movements were satisfactory. He stated the applicant would look at the snow storage areas to make sure they are where they need to be.

Mr. Arbeene stated that he was still concerned about the water limit, that the applicant can work with the Town to mitigate, but to be a good partner with the Town, there should be some consideration of that limit, especially for future development. Attorney Agostino stated that the suggestion that was identified by Tom Holder was that there are a limited number of pumps in Town, and if the Town is at peak demand and a pump goes down, then the Town would be in a critical condition. The Town was considering adding an additional pump [satellite well] to assist in that and the applicant could help fund that, there hasn't been much of a follow up. Mr. Arbeene stated that water pressure around Fairway Ln is already poor. Mr. Tayara stated that the pressure should improve with the additional connections; the problem with Fairway Ln is that the water is going from a 6 inch pipe [on Holliston St] to an 8 inch pipe [on Fairway Ln] the pressure drops. Attorney Agostino stated that typically in these developments, an applicant will look solely at the internal pressure, however, water pressure of the neighborhood was raised as a concern, and the applicant has already paid to have a study done for the neighborhood; a lot of those studies are done at the final permitting stage without knowing if the applicant even has a permit.

Mr. Arbeene asked how big the lot is on Winthrop St for the bus lot; Mr. Pavlik said that the lot will accommodate 7-9 cars, there is also a 20 foot wide entrance where cars could queue as well. Mr. Tayara said that the School Superintendent was satisfied with the bus shelter, and the applicant had ensured that it would not just be benches, but would have three sides surrounding the benches.

Ms. Gould was concerned with taxing the Town on the water supply; and was also concerned on the length of Road F. Mr. Tayara stated that they had suggested mitigation, but is waiting for the okay from the Fire Chief. The length of the Road is about 1150 feet. Attorney Agostino stated the local limit is 600 feet and there are about 18 homes beyond that limit. The Fire Chief would usually determine the safety but ultimately the Board can make that decision. Generally within 1200 feet isn't an issue in these types of developments.

Chairman Cole asked if the Fire Chief was concerned with only having an emergency entrance to the southern end of the western portion of the development. Attorney Agostino stated that the Fire Chief did not seem to have a concern, the only concern was for the homes at the end of Road F.

Mr. Arbeene asked if there was an issue with the distance between the homes. Mr. Tayara stated that the building code says 10 feet separation is acceptable before needing to sprinkler homes, and the project has more than that but the Fire Chief has asked to install 1 Hour Fire Rated Walls, which the applicant has no issue providing.

Mr. Arbeene asked how many units the project was at now; Mr. Tayara said 154; and how many the project started with; Mr. Tayara answered 188.

Mr. Glenn stated that the applicant had addressed where the bus stops, snow, and mail would be but asked where garbage would be; Mr. Tayara responded that it would be curbside. Attorney Agostino stated that it is always difficult to reference scale on a plan set. Mr. Glenn asked where sidewalks would be; Mr. Tayara said one side throughout.

Mr. Arbeene asked where snow storage would be; Mr. Tayara said in the center of the cul-de-sacs. Mr. Tayara said this mimics other subdivisions in Town.

Mr. Kennedy asked if for the 15 foot no touch, the houses be pushed closer to the roadway. Mr. Tayara said that when applying under State, the applicant hadn't looked at that, but throughout the hearing there was a local concern for the no touch zone and the applicant was able to meet a 15 foot no touch for most lots. Attorney Agostino stated that the Conservation Commission has said that there is not enough information to approve the plans as is in the preliminary stage that they are in. The applicant can do things that will provide a greater setback in particular areas and other lots may prove that it is not feasible to maintain the 15 feet.

Ms. Leahy said that at the Water & Sewer working session that Mr. Tayara said the requested demand under Title 5 is more than what would be needed; Mr. Tayara said the request is more than what the actual usage would be. Ms. Leahy asked if the new plans include the actual need; Mr. Tayara used the Town average per home, assuming the sewer usage would be the same as the water usage. Mr. Pavlik said that the cover sheet had previously included the Title 5 request, somewhere around 56,000 gpd for water and sewer demand, and the Town's number indicate that the water demand would be around 164 gallons per home per day, and under the Town's number would be a little over 25,000 gpd. Ms. Leahy asked if that included any calculations for peak flow demands versus average daily use; Mr. Pavlik stated that he submitted a letter to DPS following the working session and those numbers were used in the Kleinfelder analysis.

Ms. Leahy asked if the parking spaces were marked [for the bus lots] and if there would be any narrowing of the roadway near the entrances or a sign stating no parking so that there would be no queueing within a certain distance from the entrances. Mr. Tayara said that at the Holliston St entrance there is some room for queueing beyond the road layout, also using grasscrete. On the Winthrop St side, there is not enough room for that. Ms. Leahy stated that she was less concerned with the actual queueing and more concerned with cars affecting the sight distances by queueing right up to the stop sign; Mr. Tayara said they could provide a sign that there would be no parking alongside that lot.

Ms. Leahy said that Mr. White had asked for no parking around the cul-de-sacs and asked if that had made it into the plans. Mr. Tayara said it had not, but the applicant believes they've complied with the Town bylaw regarding the parking. Attorney Agostino said that Sergeant Watson would be designating which signs would be included internally in the development and where. Ms. Leahy said that she wanted to make sure that the Board was made re-aware of the concern.

Public Comments

Lori MacKay – 106 Winthrop St – would like to see her concerns addressed. She is upset that she will now be having a parking area, lift station, and water retention area; is concerned about the value of her property; the safety of children crossing Winthrop St.

Attorney Agostino stated that the development team is willing to work directly with abutters to mitigate the impacts of the development. They have been meeting with other abutters and a few abutters on Fairway Ln have asked if they would be able to tie into the sewer if the development goes forward. The connection now shows on the plans.

Mr. Kennedy said that Ms. MacKay brings up an appropriate comment that the development should include screening for directly affected homes, which looks like about 10 homes.

Mr. Tayara said as an example, he has met with homes on Fairway Ln to include screening and he has no problem including that if it will alleviate concerns.

Mr. White explained that it is only during the hearings that the Board asks all correspondence to go through the Board. Mr. Glenn says it is advisable to meet with the developer, but the key is to put it in writing and submit that information to the Board so that it is put into the record and can be included as conditions.

Attorney Michael Sams – Kenny & Sams, speaking on behalf of owners at 4 Fern Path – stated that he heard mention that there is still an intent to build off of Fern Path. Understanding that Access was not an item for the agenda that night, the proposal is contingent upon homes being built at the end of Fern Path. It is important for the Board to keep in mind that there is no legal right to build off Fern Path. He has reviewed meeting minutes from last May and the Board of Selectmen noted to the developer that they would need permission to access Fern Path, in May of 2016 the Planning Department noted the same thing. He went before the Board in the fall to discuss the same thing. Not only is Fern Path a private way, but it is a private way owned by numerous individuals based on the Derelict Fee Statute. Following that he submitted something to the Board and the applicant submitted something as well, all which went to Town Counsel. In November, Town Counsel was asked if there was access, and she had said that the developer had, at that point, shown no legal access to use Fern Path. The developer provided a document that Town Counsel's opinion is non-binding, which legally is true, and

the Board could reject Town Counsel's opinion. The Town has been looking for evidence from the developer since last year that there is right to access Fern Path. He stated that whether the property was owned by Mr. Narducci, which would be overburdening his easement, or owned by someone else, who has no easement, there is no right that Timber Crest can obtain to use Fern Path.

Mr. White asked for further explanation. Chairman Cole stated that though he lacked proper legal understanding, he believed the issue was that Mr. Narducci had strict easement of necessity to access his lot, however, that does not contain the power to grant further easements. Mr. Sams stated that a number of the lots when transferred to the owners, the rights to the road also transferred. There is a right to get past the lots on the road, but there is no right to continue to build past the lot.

Mr. Glenn stated that although the Board has Town Counsel opinion and the Board should respect that opinion, he believed this wasn't the appropriate venue to discuss the matter. If the Board approved something that needed that proved could not be built, there would need to be further discussion. Mr. Sams said that the Board could deny an application based on right to access. Mr. Glenn stated that if it was a clear case, they could, but where it is not, they would need the opinion from their counsel.

Ms. Mercandetti stated it might be a private issue, or the Board could condition that if the project was approved, there would be a condition that access must be proved. Mr. Glenn stated that there could even be condition that the road needs to be built before the houses, which would also need to prove access before houses could be built.

Mr. Sams asked that Town Counsel's comments from the November 16, 2016 hearing be reflected in the minutes.

Mr. White stated that so long as the plans are on the sheet the Board should be keeping it in mind. Mr. Cusson stated that it could very easily be a condition.

Chairman Cole asked if there were any other working sessions scheduled. Ms. Mercandetti stated that there wasn't. Mr. Tayara stated they would like to talk to Tetra Tech regarding traffic issues. Ms. Mercandetti stated the next step was for Green International to submit the response package. Chairman Cole stated that he respectfully suggested the applicant and Tetra Tech discuss the more technical issues. Attorney Agostino stated that the design, look, feel of the overall design has not been addressed. Chairman Cole stated that he was interested in an explanation of the lots with almost no frontage, "pipe stem lots." Ms. Mercandetti stated that Site Design, Open Space, Landscaping, etc... would be next topics to address at the next hearing.

Attorney Agostino stated that the new plans should be circulated and within the next two hearings comments would be received by Town Departments and Boards, and the Board can determine remaining issues.

Ms. Mercandetti also noted that there are three other dates before the extension lapses and would like to consider that as a topic for the next agenda.

Mr. Glenn said once the issues are codified, the other remaining issues are maintenance, including Bonding and Phasing, and then making sure that those other issues are included as conditions.

Chairman Cole stated that he believed they'd need an extension of at least 2 to 4 weeks to write the decision. Attorney Agostino stated that they'd be proposing at a set of conditions, and that the Board could take a look at the conditions.

Ms. Mercandetti stated that she would prefer that the Board had the opportunity to have a discussion about the decision rather than close the hearing and not have a discussion.

Attorney Agostino stated that he had mentioned it before, and Town Counsel weighed in on the issue; Attorney Agostino had stated that he wouldn't mind meeting with a single Board member to resolve some of the issues.

Mr. Glenn stated that the meeting could have been more productive if the Board had already seen the new plans.

Ms. Mercandetti stated that any information that goes to the Board or Consultants should be going through staff.

Chairman Cole moved continue the hearing for Timber Crest LLC to February 15, 2017 at 7:35 PM; seconded by Mr. White; approved unanimously.

Adjournment

A motion to adjourn was made by Mr. White, seconded by Mr. Arbeene and approved unanimously. The Board adjourned at 9:59 p.m.

Respectfully submitted,

Mackenzie Leahy
Administrative Assistant
Community and Economic Development