

Minutes Meeting of September 3, 2002 – Decoteau (Exec. Sess.), Washington Green, Collins, Farmers Row LLC

Members Present: Stuart Schulman, Bob Cadle, Mark Mulligan, David Gandle, Chase Duffy

The Chairman convened an open meeting and then the Board moved and voted to go into executive session regarding the Decoteau matter.

Judith Cutler, in summary, said that she was advised that this matter could go to summary judgment rather than trial.

Discussion ensued regarding the ramifications of summary judgment. Atty. Cutler said that opposing counsel asked for her to approach the board regarding a re-presentation of some alternative facts. The Chairman felt that there was a discrepancy in this situation. Atty. Cutler felt that the case could be ruled either way and certainly the BI decision could be upheld.

Mr. Cadle felt that there could be some conflict with her representing the town when the board disagreed with her written opinion. Atty. Cutler said that because of the case, she could represent the Board with no conflict.

BOS moved and voted to go into executive session.

The Chairman said that that the facts are not in question, but rather a matter of interpretation.

Atty. Culter noted that there is no law directly on point, but that one could argue regarding phases of construction/development. She said that the one lot does not lose protection, but on the other hand, if 15 years lapses, is that too long for the lot to remain buildable.

Atty. Culter said that given the split vote of the Board, a decision needs to be made regarding whether this should be defended all the way or whether there should be a remand. She said that the Decoteaus are arguing that no merger occurred. She said that the Board could win if the court decides that merger is an issue.

Discussion ensued regarding the facts of ownership: joint vs. separate.

Atty. Cutler said that the main focus of defense is that the two board members voted with no arbitrariness or capriciousness. She said that even though they differed from TC opinion, the law was followed and the Board is not bound legally to agree with TC. She noted that the case will be expensive and yet fascinating.

Discussion ensued regarding the BOH variance and the Chairman noted that abutters are present at all hearings and feel aggrieved in a big way. The Chairman said that he would feel really

uncomfortable to come back and have a meeting just to see if someone changes his or her mind. Mr. Gandle agreed with the Chairman.

Atty. Cutler said that with a split vote, a summary judgment action is more difficult to pursue. She said that a lot of court issue is determining the Decoteaus' intent.

The Chairman reiterated that he could not reopen the case in good conscience.

Discussion ensued regarding other possible resolutions.

The Chairman said that the threat of litigation should not be cause for the Board to change its mind.

Mr. Cunningham noted concern regarding the expense of creating case law.

Discussion ensued regarding the cost of summary judgment (\$5000.00) and what the Board could do to settle.

Of interest is how heavily the flexible development issue will play in the case.

The Board moved to go back into open session. The motion passed unanimously.

The Chairman reconvened the Washington Green hearing. The agent for applicant requested a continuation. Discussion ensued regarding a date for continuation, which was determined to be 9/24/03 at 8:00 pm.

Atty. Lyons suggested setting up a work group with one or two members from several boards in town, the results of which are not binding but will provide input for the ZBA.

Mark Bobrowski, attorney for the Board, arrived and was asked about the workshop. He said that it is not a bad idea once the conceptual plan has been presented.

Abutters wanted to know what to do since they are opposed to the project.

The Chairman summarized the town's position regarding 40b projects. The abutters would need to find some violation of State law.

The abutters voiced concern regarding the density of the project.

The Chairman said that they should send a letter and read the engineering reports into the record.

Discussion ensued regarding the benefits of a work group.

The hearing was continued to 9/24/03 @ 8:00 pm.

Mark Bobrowski is booking space for the ZBA on 10/15/03.

The Chairman convened the Collins hearing by reading the Legal Notice.

Bob Collins, agent for his brother, noted that a barn on the property is desperately in need of a new roof. The barn was added on to and there are many different rooflines that are aesthetically displeasing and the roof leaks. The applicant wishes to fix the roof lines and improve the building in general. The roof will be raised by approximately six feet to make the roof lines comparable. The previous owners had an attached second dwelling that the applicant has not kept. There will be some additional storage space with the increase in roof height. A variance could be granted because it is a corner lot and setbacks need to be maintained and the topography is such that the location of the garage is logical and there is little flexibility regarding relocation of the garage. The footprint will remain the same and the base of the existing building will be kept. The change is in the roof line.

Discussion ensued regarding whether there is space for a dwelling in the structure and whether there would be any to change to the pitch/height such that the roof line could be lower.

Of note: the two structures will be connected with a roof to keep water away from that area.

Discussion ensued regarding the ambiguities of the zoning by-law. Atty. Collins said that this would be an improvement to the neighborhood. He said that the applicant could by right just re-roof but this plan is much more pleasing aesthetically.

Of note: there is approximately 12 to 15 feet between the garage and the abutting structure.

Dearborns, abutters, noted concern about aesthetics and the resale value of their house. Mr. Dearborn also worried about the possibility of a fire.

The Chairman felt that the new proposal looks better than the existing structure.

Mr. Dearborn felt that the increase in the mass of structure will make it more noticeable to them. He said that the town should determine whether the existing structure is worthy of expansion, etc.

Atty. Collins said that keeping the height at 14 feet would not be in keeping with the rest of the neighborhood. The garage will be substantially less tall than the main house and slightly less tall than the Dearborn house.

The hearing is continued to 9/24/03 at 8:30 pm.

A site walk is scheduled for 9/20/03 at 9:00 am.

The Chairman convened the Surrenden Farms (Farmers Row LLC) variance hearing by reading the Legal Notice.

218-26.2©

Atty. Lyons and Engineer O'Connell (Beals Ass.) represented the applicant.

The Chairman read a memo from the Planning Board into the record recommending the grant of this variance.

Atty. Lyons noted that the PB has been working to preserve the view of Mt. Wachusett and thus dwellings have been moved back on the property and trees have been cut down. The land slopes down away from Farmers Row flowing westerly toward Mt. Wachusett. There will be only a farmhouse located in view of Farmers Row with land restrictions. Houses have been clustered in a compact group that is well treed. The by-law does not allow more than 10 houses to share a driveway. To keep the distance required there needs to be many short driveways, but to allow a longer driveway and to save trees, etc., a variance is required. Due to the soil and topography, the houses have ended up clustered as shown on the plan. The soils are conducive to more intensity, as well as topography. The view from Farmers Row is also better preserved with this cluster development. This situation is unique for the zoning district and the town as a whole. The white pines where development is occurring will be cut but the hardwood trees will be preserved as a buffer. Shirley Road will be slightly upgraded to accommodate emergency vehicles and a bridge that is out will be replaced. A portion of the development is 55+ and six units are affordable. The Housing Authority is getting two three-bedroom units in exchange for a TDR. There are four different types of housing, from high end to affordable, single family and multi-units.

The variance effects two parts of the project, one 71 units and one 25 units. Atty. Lyons thinks that only one part will require the variance but the PB wants the option to suggest a second part if necessary.

Mrs. Duffy asked whether there would be any safety issues sharing this many drives.

Ms. O'Connell said that the circulation is much simpler when more units share a drive and thus safety is better. Also affords more green space within the development because of fewer roads. Also made an effort to have access points meet rather than enter randomly onto the larger road within the subdivision. Also kept more vegetation on the Ayer side of the project for further screening for Ayer residents. The project is surrounded by land that will be donated to the Town (approximately 35 acres). Also a big chunk will be placed under a conservation restriction for a total of about 54 acres of town/conservation restriction land.

Of note: the 25 unit project will have a single house with condo ownership.

Mr. Degen noted that this is an opportunity for the Board to grant a variance to allow the PB to continue to work with the applicant for a better cluster development. He said that everything is much better with this variance, including safety, aesthetics, buffer zone, etc.

Mr. Cadle said that it makes sense but is somewhat theoretical b/c one variance may not be necessary.

Mr. Degen said that it cannot be more concrete without a variance.

Board moved to grant a variance to allow more than ten dwellings to share a driveway, and subject to PB site plan review. Also register with deeds.

Motion seconded and passed unanimously.

The meeting adjourned at 9:45 pm.