

**MINUTES OF PUBLIC HEARING
HELD BY THE PLANNING AND ZONING COMMISSION
MAY 18, 2009**

ROLL CALL:

Members Present: Eugene Sierakowski, Chairman
Kevin Dougan, Secretary
Salvatore Mancini
Andy Kidd

Alternates: Eric Prause (sitting)

Absent: Joseph Diminico, Vice Chairman
Matthew Galligan
Adam Goodkin

Also Present: Mark Pellegrini, Director of Neighborhood
Services and Economic Development
Renata Bertotti, Senior Planner
Geoffrey Naab, Town Attorney
Ginger MacHattie, Recording Secretary

The Chairman opened the Public Hearing at 7:03 p.m. The Secretary read the legal notice for the application when the call was made.

BIRCH MOUNTAIN ESTATES VIII – 190V Coop Sawmill Road – Subdivision – Request for extension (S-165) - Continuation

Mr. Sierakowski explained that Birch Mountain Estates VIII has applied for an extension and the Planning and Zoning Commission received a petition to hold a public hearing on the extension request. The Planning and Zoning Commission agreed and scheduled a public hearing. Some residents spoke regarding several issues and there was a request to continue the public hearing because several of the neighbors were away during school vacation week. Since some Commission members had questions, it was decided that the public hearing be held open. Commission members have recently been made aware of radon issues and Mr. Sierakowski asked that Town staff bring the Commission up to date.

Mr. Pellegrini explained that Section VIII of Birch Mountain Estates was approved in 2001 and had a five-year period to complete its public improvements, which would give a deadline of 2006. The current developer acquired the property around 2003 and a three-year extension was granted, which expired on May 15, 2009. The Town holds an erosion and sedimentation control bond but that does not apply to the public improvements themselves. Bonds are not required unless a building permit is sought or land is sold. Mr. Pellegrini said he has received two e-mails regarding elevated radon levels compared with earlier readings, which is said to be a result of blasting. That is a possibility, however a number of variables affect radon levels. Radon is a natural occurring emission and the Birch Mountain area has natural characteristics that yield moderate to high levels of radon. If increased radon levels are due to blasting, that issue is between the contractor and the homeowner.

Mr. Sierakowski asked for anyone wishing to speak in favor or in opposition to this application to come forward.

Michelle Allinson, 64 High Ledge Circle, thanked the Commission for holding a public hearing. She said she believes it is necessary for Commission members to hear the multiple pleas of the neighbors and to be made aware of the noise, dust, and blasting they have endured with no end in sight. Ms. Allinson has lived in her home for over ten years and this construction has been going on the entire time. She spoke about sinkholes in her garden, her driveway crumbling, broken pipe, the ground shifting, inability to open windows due to dust, radon readings at 9.9, and a radon mitigation system costing \$1,300. Ms. Allison believes the Town did not do due diligence with this project. The developer is actually operating a very profitable mining operation. She asked Commission members to put themselves in the neighborhood resident's shoes while making their decision.

Gerry Guay, 20 Jenny Cliff, said he recommends denying the request for a permit extension. If it is approved, he recommended some conditions including limiting of hours, trucks taking the shortest route, and no rock crushing or sorting on the property. Mr. Guay believes the desire of the developer to make money on the crushed stone does not supersede the residents' rights. He would request that the Town ensure trucks are properly inspected and that it provide speed enforcements and that the pits are property cordoned off and maintained for neatness. Mr. Guay said he hopes the PZC reviews the regulations that allowed this developer to proceed and make changes so this unbearable condition does not happen again. He suggested consequences be considered when approving permits. The PZC should make the right decision for the residents of the neighborhood, he said.

Patricia Borjestedt, 70 High Ledge Circle, gave pictures of alleged violations to Commission members for their review. She reviewed the subdivision regulations and believes the PZC has heard plenty of evidence that would support denial of this application. She also distributed copies of subdivision regulations from South Windsor and Glastonbury to Commission members and requested they consider adopting similar regulations to protect Manchester citizens.

Bill Bartlett, 62 High Ledge Circle, expressed frustration over Section VIII being approved and asked whether there was any experience with the previous sections that would indicate the amount of ledge in the area. He spoke of a crack in his fireplace from top to bottom and other cracks in his home from blasting. Mr. Bartlett believes that if the developer really wanted to finish the public improvements, they would be done by now. There has not been a lot of effort to market the lots. He believes the best course of action is to deny the extension. Chances are, the developer would come back with a new plan and at that time the Commission can address issues and put teeth into the consequences.

Eric Kornbrust, 59 High Ledge Circle, purchased his home, which is next door to the construction site, in the fall of 2004 and has yet to be able to enjoy his home. With all of the cease and desist orders, mismanagement of the project, lack of respect, etc., the applicant should be pleading his case to the PZC for approval. This extension is a privilege, not a right, and this developer does not deserve it. When the extension was granted in 2006, the developer abandoned the site less than six months later. The site was entirely dormant for all of 2007.

Mr. Kornbrust said his house has \$40,000 worth of foundation damage due to the blasting. He mentioned issues with getting his lawn seeded, a tree cut from his property because the land was not surveyed, rocks and trees removed from another person's property behind the development,

non-compliance of proper work hours, and diesel fumes. He asked why everything has to be accomplished through many phone calls; why can't the developer just do things right the first time.

Mr. Kornbrust said for the past three winters, the cul-de-sac has been filled with mud, rocks, sticks, and debris that were a foot deep. The Town had to clean it up. Mr. Kornbrust mentioned other erosion control issues, including debris ruining his snow blower, boulders being used as erosion control, and piles of gravel being used as erosion control and being washed away. He said that blasting was done before any pre-blast survey was taken and blast sensors were not placed in the correct location. There is a 1" crack in his garage wall and damage in his basement due to blasting. He said the insurance company threw out the claim because of the seismic readings, which were taken in the wrong locations.

Mr. Kornbrust said Radon levels rose in his basement from 0.5 when he bought the home to 7.8 to 12.8 now. There are rocks lodged in trees in his yard from blasting. There are only three foundations blasted out now, which means there is a lot of blasting left to go. Mr. Kornbrust does not see how you can call this anything other than a commercial rock quarry in a residential zone. Mr. Kornbrust mentioned that when the site was dormant in 2007, it was not secured at all. There was a lot of car traffic in and out of the development, parties and bonfires were held and couches, recliners, tables and chairs were set up, as well as excessive litter and beer cans left around. After two months of many calls to the Police Department, the Fire Department, and the Town Manager, orange plastic fencing and no trespassing signs were finally put up. This developer has no concern for his neighbors.

Mr. Kornbrust said he does not think he should bear the cost of the damage to his home. He asked if it is even safe to continue blasting since the radon levels have risen so much. He left information on radon and pictures of the cracks in his foundation with Commission members. He said there have been so many problems with this development and the Planning and Zoning Commission has the power to stop this. The past should indicate the future of this project. After the last extension was granted, the site was abandoned. If this extension is granted, it will be like rewarding the developer for incompetence and encouraging his manner of doing business. He asked that the Commission deny this extension and put stricter regulations in place.

Richard Demars, 480 Dennison Ridge, has lived in his house for four years. He is a regional sales manager and has visited a large number of building and quarry sites; he has never heard of a neighborhood under construction for as long as this one. There is no doubt in his mind that this is a quarry. When he moved into his home, he did have a radon study done and will have another done now. He intends to survey his neighbors regarding cracks. It is in the best interest of the Town to end this construction project.

Mr. Sierakowski asked that the Fire Marshal identify the protocols and procedures followed when blasting.

Robert Barker, Fire Marshal, explained that the blasting company would send the blaster to pull a permit. He fills out an application, provides a plot plan, a copy of his license, and an insurance certificate for \$2 million. He provides a pre-blast survey, and pays a fee. The blaster will call him 20 minutes prior to a blast and if he is not working a structure fire, he will try to attend. There have been 215 blasts at this site and the Fire Department has been present for 99% of them.

In response to a series of questions from Mr. Sierakowski, Mr. Barker explained that he never tells the blaster where to put the seismographs; that is left to the blaster. He explained that post blast surveys are difficult to enforce; it would require the homeowner to be home after each blast. Mr. Barker said he would have to research the authority of the Fire Marshal to enforce stipulations set forth by the Planning and Zoning Commission. When a blaster comes in to pull a permit, he will indicate what he is blasting for and the amount of times required to do that. There are currently no more permits for blasting in this development.

In response to a question from Mr. Prause, Mr. Barker said that the 300' radius requirement is from the Fire Marshal's office. It was originally 250', but expanded to 300' prior to this project. Manchester's Fire Marshal's office makes it standard practice to attend blasts; other towns do not visit sites.

In response to a question from Mr. Mancini, Mr. Barker said he did have a few issues within the realm of safety and the State Statutes and he addressed them with the blaster, who is the responsible party. Mr. Sierakowski asked Mr. Barker if, based on his experience, there is an opportunity to tighten up regulations to mitigate issues. Mr. Barker responded in the affirmative.

In response to a question from Mr. Sierakowski, Mr. Barker said he was not aware of the conditions placed on a previous extension; he was never provided with a copy. He found out when Mr. Diminico recently told him about this issue.

Mr. Dougan asked whether the Commission could have a condition requiring a bond guaranteeing the work will be completed on time.

Attorney Naab explained that the Town's own zoning regulations specifically prohibit bonding if no building permit has been applied for and no lots have been conveyed.

Attorney Peter Alter, representing 770, LLC, said that the discussion tonight represents the frustration of the residents. He understands and said that the developer meant no disrespect. This is an extraordinarily difficult site to develop, which the plan's 2006 extension bears witness to. There are cuts, fills, grading, and sewer lines mandated on each lot. Trees had to be removed for grading. Attorney Alter said the radon is not a PCZ issue and that if the neighbors believe the activities of the developer have caused an increase in radon, each blast has a minimum of \$2 million of insurance in place and should be addressed among the blaster, insurance company, and homeowner. His client is willing to accept limits on the hours of operation, the hours in which to use a pneumatic hammer, and the hours in which processing is allowed.

Mr. Alter said some residents' complaints are past grievances that they are just now getting to speak about. The blasting is completed and a substantial portion of the public improvements have been completed. In 2001, it was clear that the crushing and removal of rock would occur. His client would like to be done with this subdivision. Processing of rock is not a profit making exercise; it is the only way to clear the lots to the grade approved.

Attorney Alter said he is aware of the staff recommendation to increase the erosion control bond by \$8,000, but has not been provided with the information about why this increase is required. His client does not object as long as this action is not punitive in nature. He referred to comments made by the public requesting the PZC deny this application and address the regulations. His client intends to reapply immediately and the current regulations will be in effect. In Attorney Alter's point of view, it is in everyone's best interest that these public improvements be completed and his client is prepared to finish them.

Mr. Dougan asked how much longer the rock processing would have to go on to complete the site work if the applicant were granted an extension to October 1. Attorney Alter said that it would be substantially removed when the public improvements are finished in October. There will still be stockpiling on site so materials can be used to finish grades at various sites.

In response to a question from Mr. Sierakowski, Attorney Alter said the trailer has been moved.

Mr. Kidd said he would like to invite the applicant to talk to the Commission about why he thinks it should approve this application. He asked that he discuss some issues raised by the residents and how he feels about finishing the project

Mr. Gary Faiman of 770, LLC, said this has been a long and difficult project. The contractor, Orlando Construction, has done a fantastic job and is in the final legs of building the road. The Town is satisfied with the work; it is top quality. The blaster, Blast Tech, has been there for the last two years and is the top blaster in the area. They have done a great job despite it being a tough blasting site. Mr. Faiman acknowledged there have been complaints from the neighbors regarding blasting, but he is unaware of a claim prevailing from the neighbors. He said he did make a decision to blast all foundations and grades on the lots and that it was impossible to save trees because there were grade changes everywhere. Blasting was completed per the plan. Mr. Faiman said he is committed to finishing the project and will meet the deadline set.

Attorney Alter said the bottom line is that a harder look probably should have been taken at this project in 2001, but it was in fact approved. Mr. Faiman has invested all of his money in finishing this subdivision and would like the opportunity to complete it by way of an extension.

Mr. Mancini questioned the cease and desist orders mentioned. He said it seems like there was talk of dozens of them. Mr. Pellegrini said there have been several over the course of the project going back to 2003. There are ongoing enforcement activities to address, he said.

The chairman closed the Public Hearing portion of the meeting at 9:17 p.m.

NOTICE: THE CASSETTE TAPE RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.

OFFICIAL TAPE NO. 1037, 1038