

**SWANZEY PLANNING BOARD MINUTES
APRIL 5, 2007**

[Note: Minutes are not final until reviewed and approved by the Board. Review and approval of minutes generally takes place at the next regularly scheduled meeting of the Board.]

The April 5, 2007 meeting of the Swanzey Planning Board was called to order at 7:00 p.m. by Chair Glenn Page. Members present: Glenn Page, Scott Self, Victoria Barlow, Charles Beauregard, Sr., Steve Russell and Selectmen's Representative Nancy Carlson. Alternates Jeanne Thieme and David Belletete, appointed later in the meeting, were also seated at the table after their appointment. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following items were addressed:

A. OTHER BUSINESS –

1. Alternate Members - 2 alternate positions are available, with terms to expire at Town Meeting 2008 and Town Meeting 2010. The nominee for the one year term is David Belletete; the nominee for the three year term is Jeanne Thieme. Motion by Beauregard to appoint Belletete as an alternate member with his term to expire at Town Meeting 2008 and to appoint Thieme as an alternate member with her term to expire at Town Meeting 2010. Seconded by Barlow. Vote: All in favor.

B. PUBLIC HEARINGS –

1. Subdivision Application – Marty Reyes wishes to subdivide Tax Map 43, Lot 11 into 25 lots. The subject premises are located off Talbot Hill Road and situated in the Rural/Agricultural Zoning District. Tax Map 43, Lot 11 currently consists of 213 acres. The property is owned by Mirle Cross. Rob Hitchcock from SVE Associates and Charles Beauregard, Jr. appeared before the Board on behalf of the applicant. Interested citizens Grace and Mike Lilly were also present. Beauregard steps down from the table due to a potential conflict of interest. Belletete was seated for Beauregard; Thieme was seated for Fuerderer. Public hearing opened.

Hitchcock stated that after many public hearings, it appeared to him that the outstanding issue remained the development agreement.

G. Lilly inquired about the status of the plans. Page stated that the plans are basically complete, with the exception of a few minor corrections that are needed. These items are noted in Underwood Engineers' review letter dated February 23, 2007. Hitchcock also noted that minor revisions to the plans may be required after NH-DES completes its final review. Page stated that if there are significant revisions required after NH-DES' final review, the Applicant will be required to come back before the Planning Board.

Board members were provided a copy of a draft development agreement (see attached). Carbonneau informed the Board that this draft development agreement was reviewed and approved by Town counsel.

Carbonneau stated that after many attempts to prepare a "final" development agreement, it became clear to the applicant, the Town and Town counsel that it was premature to do so. Essentially, the timing of the completion of the phases and the bonding amounts could not be reasonably established until approvals are received from the State. Carbonneau stated that Town counsel recommended that if the Board was considering granting a conditional approval, that it could do so. However, Town counsel also stated that the Board must conduct a public hearing in the future to establish the final development agreement, establish the bonding amounts and the approve the final subdivision plat that will also include the locations of the easements for drainage.

Board members reviewed a list of proposed conditions prepared by Carbonneau (these conditions are set forth below in the approval of the subdivision). Carbonneau also noted that these proposed conditions were previously provided to the Applicant. Public hearing closed.

Board members considered the December 7, 2006 request by the Applicant to waive Subdivision Regulation 9.6.a. (The widths of blocks shall not be less than 200 feet, nor shall the length exceed 1,200 feet.) The request for waiver was made as the proposed road for the subdivision is in excess of 1,200 feet. Motion by Self to grant a waiver of Subdivision Regulation 9.6.a. Seconded by Barlow. Vote: All in favor.

Motion by Self to grant approval of subdivision application subject to the following conditions:

"This is a conditional approval. Items 5, 6 and 7 will be subject to a public compliance hearing. The public compliance hearing will be scheduled upon written request by the Developer. If substantial changes are required to the plans as set forth in Item 18, a public compliance hearing shall also be held.

It should be noted for the public that the public compliance hearing will address only the particular condition subject to the public compliance hearing. The public compliance hearing will be a public hearing, with notices sent to the abutters.

1. Receipt of state subdivision approval.
2. Receipt of the wetlands permit.
3. Receipt of site specific permit.
4. Receipt of Notice of Registration from the NH Attorney General's office pursuant to the Land Sales Disclosure Act (RSA 356:A)
5. Easements. Revised subdivision plans showing the easement areas for drainage shall be submitted to the Planning Board for review and approval at a public compliance hearing. The final subdivision plans as recorded at the CCRD shall show the easement areas for drainage.
6. Bond amount shall be established at a public compliance hearing to be held by the Planning Board after receipt of items 1, 2, 3, 4 and 5 and receipt of a construction schedule.
7. The project shall be constructed in three phases as reflected in a draft development agreement attached hereto; the final development agreement shall be submitted to the Town of Swanzey Planning Board for approval at a public compliance hearing once conditions 1, 2, 3, 4, and 5 have been met.
8. No amendment to the homeowners association documents that alters in any material way any provision that is a condition of approval of the subdivision by the Swanzey Planning Board shall be effective without the approval of the Planning Board.
9. The Developer and the homeowners' association may not cut, or cause to be cut, timber from any Open Space area of the development unless such operations are conducted in compliance with a forest management plan prepared by a professional forester.
10. No structure or improvement shall be constructed in the Open Space area of the development except for bridges, culverts, benches, and trail improvements, such as (but not limited to) steps, railings, fences, benches, picnic tables, lean-tos, sheds, wildlife protection devices, and the like.
11. No removal, filling, or other disturbances of soil surface, nor any changes in topography, subsurface of subsurface water systems, wetlands, or natural habitat shall be allowed in the Open Space except those which are (i) commonly necessary in the accomplishment of forestry, conservation, habitat management, or non-commercial recreational uses, and (ii) do not harm state or federally recognized rare, threatened, or endangered species.
12. All wires, cables, conduits and equipment used to transmit utilities to, among and from buildings should be installed underground in accordance with and to the extent permitted feasible by generally accepted engineering practices. Where ledge and wetland inhibits excavation, utilities shall be overhead.
13. NHDOT crushed gravel (Item 304.3) with fractured face per Section 304.2.5. shall be used in the construction of the roadway (See NHDOT 2006 specifications). Modified crushed gravel shall not be permitted in the construction of the roadway.

14. Two benchmarks shall be established for permanent control to assure the accuracy in executing the roadway plans during construction. These benchmarks shall be set prior to any site work.

15. Prior to the issuance of any building permits, the following shall be in place:

a. stop sign on the southerly side of Talbot Hill Road (at the intersection of Talbot Hill Road and Route 32) shall be in place;

b. The catch basins at the beginning of Talbot Hill Road shall be raised to road grade level; and

c. The extent of the State's right of way south of the Talbot Hill Road and Route 32 intersection shall be determined and any vegetation in the right of way impeding line of sight to the south shall be removed.

16. All drainage detention areas and outflows, and all fire protection cisterns, as shown on the final subdivision plans, shall be maintained and kept in working order, whether such areas or structures are located on Association Land, on house lots, or within the roadway rights of way. The responsibility and costs associated with these duties shall be borne by the Developer and/or the Homeowners Association and/or individual lot owners.

17. Monitoring by the Town's agent of construction of roadway, drainage devices and cisterns is a requirement of final approval, with the cost of the same being paid by the Applicant.

18. Should the State permitting process require substantial alterations to the plan, the Developer shall submit those alterations for Board approval."

Motion seconded by Barlow. Vote: All in favor with the exception of Russell.

Belletete steps down from the table and Beauregard resumes his seat at the table.

B. OTHER BUSINESS/DISCUSSIONS -

1. Discussion with Larry Holmes regarding the seasonal operation of an outdoor BBQ and fruit/produce stand at property situated at 935 West Swanzey Road, Tax Map 87, Lot 3 situated in the Business Zoning District. The property is owned by Toby DeBattiste.

Holmes was present to discuss his request that he be permitted to operate a seasonal outdoor BBQ and fruit/produce stand at 935 West Swanzey Road. Holmes stated that the stand/BBQ would be located under a temporary canopy and that picnic tables and chairs would be provided for seating. Holmes stated that no alcohol would be served.

Board members discussed whether this was similar to mobile food wagons in Town. Carbonneau stated that it has been the Board's practice in the past to permit mobile food wagons without public hearing. However, Carbonneau stated that it was her opinion that mobile food

wagons, as well as the use proposed by Holmes, are subject to the site plan review regulations.

Board members stated that they had questions regarding parking, power and traffic. Board members felt that a public hearing was required. Self noted that the property has previously undergone site plan review and that a multi-tenant application would be appropriate.

2. Sign Applications – Cheshire Horse. Board members reviewed 3 applications for attached sign permits for property situated at 8 Whittemore Farm Road (Tax Map 51, Lot 1-2). It was noted that the signs meet the zoning requirements. Motion by Russell to grant all three sign applications. Seconded by Beauregard. Vote: All in favor.

3. Discussion re storage of materials associated with Hamshaw Lumber's business at the Cheshire Horse property. Code Enforcement Officer Jim Weston stated that Hamshaw Lumber wished to store millwork (primarily windows) in the warehouse portion of the Cheshire Horse building.

Carbonneau questioned whether this would be permitted as part of Cheshire Horse's site plan review. Carbonneau stated that it was her opinion that Hamshaw Lumber and Cheshire Horse were two different businesses and that a multi-tenant application was needed, at the very least. Self felt that the use of the structure in question was permitted as a warehouse and that Cheshire Horse and Hamshaw Lumber were essentially the same business and that no further approvals were needed.

Motion by Self that Hamshaw Lumber did not require any other approvals to store millwork in the Cheshire Horse warehouse building. Seconded by Beauregard. Vote: All in favor with the exception of Russell.

4. Discussion re Diana Elfreich's home occupation approval regarding the number of children permitted (home-based daycare on Highland Circle.) Board members reviewed information provided by Becky Sharp from NH-DHHS. Board members felt that if Elfreich wanted to increase the number of children being cared for on site, that an application to modify her home occupation approval must be submitted. Board members felt that a public hearing should be held on the request, in order to provide abutting property owners the opportunity to express their opinions.

Motion by Self that the applicant must submit an application to modify her home occupation approval in order to increase the number of children being cared for on site. Seconded by Russell. Vote: All in favor.

5. Open Space Committee Update - Barlow provided an updated regarding Buck and Ike and the education campaign being undertaken by the Swanzey Open Space Committee.

6. Election of Officers – By secret ballot vote, Page was elected chair and Russell was elected vice-chair.

7. Minutes – Motion by Beauregard to approve the minutes from February 15, 2007. Seconded by Barlow. Vote: All in favor.

Motion by Beauregard to adjourn. Seconded by Russell. Vote: All in favor. Meeting adjourned at 8:35 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner

CANYON SPRINGS ESTATES, L.L.C.

Subdivision Development Agreement

This agreement made this _____ day of _____ 2007, by and between the Town of Swanzey, a municipal corporation with an address of, P.O Box 10,009, Swanzey, New Hampshire 03446-0009 (the “Town”); and Canyon Springs Estates L.L.C, a New Hampshire Limited Liability Company with a place of business at 103 Roxbury Street, Suite 201 Keene, New Hampshire 03431 (the “Developer”).

WHEREAS, the Developer is the owner of the land situated off of Talbot Hill Road in Swanzey, New Hampshire, by virtue of a deed from Mirle C. Cross, dated _____, and recorded at Book _____, Page _____ in the Cheshire County Registry of Deeds.

WHEREAS, the Developer now proposes to build and develop Phase I, Phase II, and Phase III of Canyon Springs Estates according to project plans approved by the Swanzey Planning Board on _____, entitled _____; dated _____, prepared by SVE Associates, and consisting of _____ pages. The approved plans are incorporated herein by reference (the “Project Plans”); and

WHEREAS, the Developer and the Town have agreed that the Developer may develop the subdivision and build the road in three phases, and the Developer shall

provide security for each Phase prior to any construction activity. No work may be done on any subsequent Phase until work on the prior Phase is completed to the satisfaction of the Town;

NOW, THEREFORE, the Developer and the Town mutually agree as follows:

1. The foregoing recitations are incorporated into this Agreement.

2. The Developer is responsible for the construction of all improvements shown on the Project Plans, including, without limitation, the roads, the construction and installation of the detention ponds and the installation of a fire cistern. The fire cistern shall conform to the specifications shown on sheet ____ of the afore-described plans of the "Canyon Springs Estates" prepared by SVE Associates. The fire cistern shall have a total capacity of 30,000 gallons and be constructed of 5000 psi H-20 rated concrete. The fire cistern shall be fitted with a dry hydrant nozzle with the following parts: 1) 8"x 6" N.P.T. pumper nozzle; 2) 8" x 6" cast iron reducing iron; and 3) standard 6" pumper nozzle cap (per Swanzey Fire Department).

Access satisfactory to the Town must be provided to the fire cistern via an asphalt pad located off Talbot Hill Road as shown on page ____ of the Project Plans. The Developer shall provide an easement to the Town, in a form and with terms and conditions satisfactory to the Town, for this access. This easement shall be tendered to the Town prior to the commencement of construction of the cistern and other improvements associated with the construction of the cistern. Bollards shall be provided to prevent damage to the dry hydrant and be located where deemed appropriate by the

Swanzy Fire Chief. The cistern is to be fully operational prior to any combustible materials being stored on site. Full details of the fire cistern are provided in the road plans, as shown on the Project Plans.

The fire cistern, together with all improvements shown on the Project Plans are collectively referred to herein as the "Required Improvements." The Developer shall furnish security satisfactory to the Town to guarantee that the Required Improvements will be built and installed in a good, workmanlike manner according to Town Specifications and fully paid for by the Developer; and

3. For the purpose of providing security for building the road and other Required Improvements, the subdivision shall be divided into three phases as follows:

A. Phase I

The Required Improvements for Phase I include, without limitation:

(1) The development of 7 lots, designated Lots 2, 3, 4, 5, 6, 7 and 8 on the Project Plans;

(2) The construction of approximately 1,072 linear feet of road. The road for Phase I will start at station 0 + 00 and end at Station 10+72.

(See Project Plans, sheet _____) The Phase I portion of the road will end in a hammerhead turnaround as shown on Sheet _____ of the Project Plans (see SVE's addendum on written description temporary turn-around easements Canyon Springs Estates). The hammerhead shall be deconstructed as a condition of acceptance of the Phase II portion of the subdivision roadway by the Town; and

(3) Installation of surface water drainage improvements and a 30,000 gallon cistern.

(4) All other improvements shown on the Project Plans in the area designated "Phase I."

Phase I must be completed to the Town's satisfaction by

_____ (date), or the Developer must apply to the

Planning Board for amended subdivision plan approval.

B. Phase II

The Required Improvements for Phase II include, without limitation:

(1) The development of 8 lots, designated as Lots 9, 10, 11, 12, 13 14, 15 and 16 on the Project Plans, and approximately 1,115 feet of road.

Phase II work must begin no later than_____.

(2) The road constructed in Phase II will start at station 10 + 72 and end at station 21 + 87, include construction and installation of surface water drainage improvements as shown on the Project Plans.

(3) The installation of all appropriate detention ponds as shown on plans.

(4) The road constructed in Phase II will end in a hammerhead turnaround (see SVE's addendum on written description temporary turn-around easements Canyon Springs Estates) The hammerhead shall be deconstructed as a condition of acceptance of the Phase III roadway by the Town.

(5) The construction and installation of surface water drainage improvements as shown on the Project Plans.

(4) All other improvements shown on the Project Plans in the area designated “Phase II.”

Phase II must be completed to the Town’s satisfaction by

_____ (date), or the Developer must apply to the

Planning Board for amended subdivision plan approval.

C. Phase III

The Required Improvements for Phase III include, without limitation:

(1) The development of 9 lots, designated as lots 17, 18, 19, 20, 21, 22, 23, 24 and 25 on the Project Plans.

(2) The construction of approximately 1,863 linear feet of road, beginning at station 21 + 87 and ending at station 40 + 50 (Cul-De-Sac).

(3) The construction and installation of surface drainage improvements as shown on the Project Plans.

(4) The remainder of the detention ponds will be installed and the road will end in a Cul-De- Sac as shown on the Project Plans. (See SVE addendum on location and design).

(5) All other improvements shown on the Project Plans in the area designated “Phase III.”

Work on Phase III must begin no later than

_____, and must be completed to the Town's satisfaction by _____ (date), or the Developer must apply to the Planning Board for amended site plan approval.

4. The Developer shall build the roads and construct all Required Improvements, on or before the Completion Date for each Phase. TIME IS OF THE ESSENCE to all dates in this Agreement, including the Completion date for each Phase.

5. The Developer shall not sell, convey, transfer, or agree to sell, any lots in any Phase, and the Town will not issue any building permits for lots included in any Phase, until the Developer has posted with the Town a Letter of Credit satisfactory to the Selectmen in the amount necessary to guarantee that the road and all Required Improvements as shown on the Project Plans for that Phase will be built by the Developer at the Developer's expense in accordance with Town specifications, and completed on or before the Completion Date for that Phase (the "Completion Date").

6. The Developer shall provide an Irrevocable Letter of Credit to cover the Required Improvements for each Phase; a blank draft of which is attached as Exhibit A. The Letter of Credit for each Phase shall not expire earlier than one year after the Completion Date for the Phase to which it pertains.

If the Developer fails to complete the road construction or any other Required Improvement in any Phase by the Completion Date for that Phase, TIME BEING OF THE ESSENCE, the Town may declare the Developer in default. Upon default, the

Town, without notice to the Developer, shall have the right to draw on the Letter of Credit. If the Town draws on the Letter of Credit, the funds drawn shall be used by the Town to pay for the completion of the roads and other Required Improvements in that Phase in a timely manner. The Town shall also be entitled to recover from the Letter of Credit all legal costs, including reasonable attorney's fees, and all other expenses of any nature or description which the Town incurs because of the Developer's default. The excess funds, if any, shall be refunded to the Developer.

If the Letter of Credit is insufficient to fully reimburse the Town for all expenses, damages, and other costs which the Town reasonably incurs as a result of the Developers' default, the Town shall have the right to recover the amount of any deficiency from the Developer.

7. If the Developer defaults in its performance with respect to any Phase, the Town shall not be required to accept Security or issue building permits with respect to any subsequent Phase until all defaults have been cured to the satisfaction of the Selectmen and Planning Board and until the Town has been paid in full for any and all expenses incurred in connection with the default.

8. When the road in Phase I has been built and the first course of pavement installed to the satisfaction of the Selectmen, the Developer may request that the Town release a portion of the Security for Phase I, with the understanding that the Town shall be entitled to retain an amount which the Town, in its sole discretion, decides is sufficient to provide adequate security should the Developer default in any of its obligations under

Phase I.

The Selectmen may agree, but will not be required to agree, to permit the Developer to delay installation of the second or top course of pavement in Phase I until Phase II and Phase III are completed so that the second or top course of pavement in Phase I, Phase II, and Phase III may be installed at the same time. In this event, the Developer shall leave an amount of security which the Selectmen, in their sole discretion, deem adequate, based on an evaluation of the expected future cost of the top or second course of pavement. This security shall be IN ADDITION TO THE SECURITY REQUIRED FOR subsequent Phases. The absolute deadline for completion of the second or top course of pavement for both Phase I and Phase II shall be no later than _____, TIME BEING OF THE ESSENCE.

9. Simultaneously with providing security for Phase I and prior to initiating construction of any Required Improvements in Phase I, the Developer shall execute and deliver to the Town, in escrow, three deeds (one deed for each Phase) in form satisfactory to the Selectmen and the Town Attorney, granting to the Town permanent, perpetual easements to drain surface water across and over certain lots in each Phase of the subdivision at the locations indicated on the Project Plans. The easements shall be conveyed free of all liens or encumbrances. The easement deed for each Phase shall be recorded as soon as the Developer posts the Security satisfactory to the Selectmen for that Phase.

10. Simultaneously with the posting of Security for Phase I, and prior to

initiating construction of Required Improvements required for Phase I, the Developer shall execute and deliver to the Town, in escrow, three deeds (one deed for each Phase) in form satisfactory to the Selectmen and the Town's attorney, transferring to the Town, free of liens or encumbrances, ownership of the strips of land shown as roads within each Phase on the Project Plans. The Town will hold the deeds in escrow, and will not accept or record the deed to the roads for any particular Phase until the roads in that Phase have been completed and approved by the Selectmen. However, the Town may, in its discretion, accept or record the deed conveying the roads in any Phase at any time after the Security for that Phase has been posted and accepted by the Town.

11. Any mortgage of the premises subsequent to delivery of the deeds of the easements and the roads to the Town shall be subordinate to the Town's interest in the roads and the easements.

12. Nothing in this Agreement shall excuse the Developer from complying with all Federal, State and local laws and regulations, including, but not limited to, environmental laws and regulations concerning erosion control.

13. While the developer is working in Phase I, the Developer may store earthen materials in areas encompassed within Phase II and Phase III before the Security for those Phases has been posted. While the Developer is working in Phase II the Developer may store earthen materials in the area encompassed by Phase III. However, the Developer shall not sell, convey, or transfer, nor agree to sell, convey, or transfer, any

lots in Phase II or Phase III until the Developer has posted with the Town Security satisfactory to the Town with respect to those Phases.

14. Any notices permitted or required under this agreement shall be deemed given upon the date of personal delivery or forty-eight (48) hours after deposit in the United States mail, postage fully repaid, return receipt requested, addressed to:

Town of Swanzey at: Town of Swanzey
P.O. Box 10,009
Swanzey, New Hampshire 03446-0009

With a copy to: Beth R. Fernald, Esq.
Bradley, Burnett, Kinyon, Fernald & Green, PA
P.O. Box 666
Keene New Hampshire 03431

Addressed to: Canyon Springs Estates, L.L.C.
103 Roxbury St Suite 201
Keene, New Hampshire 03431

With a copy to: Thomas R. Hanna, Esq.
41 School Street
Keene, New Hampshire 03431

or at any other address as any party may, from time to time, designate by notice given in compliance with this Section.

15. This Agreement is binding upon and inures to the benefit of the successors and assigns of both parties.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

WITNESS:

TOWN OF SWANZEY

By: _____
Deborah J. Davis, Selectman

By: _____
Nancy L. Carlson, Selectman

By: _____
Bruce L. Tatro, Selectman

CANYON SPRINGS ESTATES, L.L.C.

By: _____
Martin Reyes, President, duly
authorized

By: _____
Charles R. Beauregard, Jr., duly
authorized