

TOWN OF NAPLES
BOARD OF APPEALS MINUTES
Tuesday, February 26, 2019

Skip Meeker called the meeting to order at 7:00 pm. Also present were Russ Sweet, Barry Freedman, Russ Lashua, and Code Enforcement Officer Renee Carter.

The minutes from the 10/30/18 meeting were reviewed by the board. Barry Freedman made a motion to approve the minutes as written. Russ Lashua seconded the motion. The board voted in favor.

New Business:

- 1.) An Administrative Appeal submitted by Bruce and Mary Kate Spainhour regarding preliminary approval of a Major Subdivision (Brandy Crossing Subdivision) for property found on Tax Map U24 Lot 1. This meeting was originally set for November 27, 2018 but was postponed.

Bonnie Gould Esq. was representing the Spainhours regarding their appeal. The appeal was filed on 3 grounds; inappropriate notice, concerns regarding impermissible runoff onto the applicant's property according to the approved plan, and the impermissible granting of the 2nd means of ingress and egress to the project over the Spainhour's land.

The concerns regarding the inappropriate notice were referring to the Planning Board meeting during the Site Walk. Mr. Spainhour claimed that the Board did not allow him to speak during the meeting following the Site Walk and was told he should have brought up his concerns during that time. Mrs. Carter stated that it was illegal to discuss the application during the Site Walk as it was not recorded so that portion was only for an information gathering for the Planning Board, not outside comments. The Board referred to the Planning Board minutes where Mr. Spainhour was noted bringing up his concerns, and believed it may have been a misunderstanding but not inappropriate notice.

The Spainhours were concerned about runoff, and they had brought that concern to the land developer's attention which was supposed to be addressed, but the Spainhours did not see any improvements to the runoff plan. Mr. Hollis, the developer who was present at the meeting, stated that they were waiting for the plans final DEP approval, which would address and show the runoff plan.

On April 30th, 1992 the Golf Course conveyed the ownership of the land running from the stone wall all the way up to new route 114 to the Spainhour's predecessor and title, the purpose of that being that old route 114 was being discontinued. In the deed it stated, "Reserving however, to this grantor, its successors and assigns, the right to utilize the 'proposed new road', depicted on said plan, running from new Route 114 & 11 to the driveway of the Grantees for ingress and egress to other property of the Grantor, to wit, Naples Gold & Country Club." Since that time, the Golf and Country Club has sought approval to put in a 17 lot subdivision and closed the Golf and Country Club. Because there are more than 15 lots, they have to have at least two street connection with existing public streets. The developer proposed the second entrance via the

easement that was in the aforementioned deed. Ms. Gould stated that the purpose of the easement was for ingress and egress to the Golf Club, not a major subdivision and that the granting of the easement was a private grant between private parties and that there was no allowance to widen or pave the easement.

Dawn Dyer, representing the Golf Course stated that the deed they the applicant had been referring to grants the successors and assigns which is what the new developer was and it clearly is given for ingress and egress to the land which is under contract with the developer. There was also an attachment to the deed, called 'Exhibit B' and under section 2B it states, "The road shall be constructed in accordance with municipal road standards as a minor road as defined in Naples Subdivision Ordinance."

Ms. Gould argued that unlike the typical language that is drafted where it would state reserving to the successor and assigns the ingress and egress to the property, but rather stated the Golf Course and Country Club specifically. She argued that the intent was for the ingress and egress of a seasonal business, and now the proposed change would be for 17 year round homes with multiple drivers, which would constitute and over burdening. She also stated that the Spainhours were currently it imposed upon Spainhour the obligation to maintain and plow the easement which would open up the Spainhour's to be liable for timely plowing etc.

Mr. Hollis (the developer) stated that the approval of the access over that easement was for a gated emergency ingress and egress and that it would not be used by the general public.

Mrs. Carter explained that the Planning Board was unable to waive the paving of the second means of ingress and egress to the Subdivision, and that is why the paving would be required. It was also just approved as an emergency ingress and egress as stated by Mr. Hollis and would be gated.

Ms. Gould stated that the developer had no right to access the easement over the Spainhour's land as they had proposed cutting down trees on their property. Mr. Hollis stated that the convenience of the subdivision would give the subdivision the burden of mainting and plowing the easement, and Ms. Gould stated that the responsibility would need to come from an agreement of the Spainhours and the Successors of the Golf Club, not a 3rd party convenience.

Mr. Sweet asked Ms. Gould about the three surveys that had been done of the properties all of which had conflicting boundary lines. He wanted to know if that was indeed true, how the Town could make a decision regarding the easement boundaries in question and which survey could be deemed correct. Ms. Gould stated that the survey discrepancy was on the opposite side of the easement and would not pertain to the area in question.

Mr. Hollis stated that he could redesign the second roadway, and bring that plan to the Spainhour's so that both parties could come up with a compromise. Mr. Meeker asked if it was something that the applicant would consider and Ms. Gould stated they would be open to working on a compromise that would suit both parties.

Mr. Sweet made a motion to table the application until March 26th. Russ Lashua seconded the motion. The board was in favor 4-0.

As there was no other business, the meeting was adjourned.

Respectfully submitted,
Kate Matthews
Administrative Assistant