

**LOWELL PLAN COMMISSION SPECIAL MEETING MINUTES
DECEMBER 18, 2008
7:00 PM**

President Kelley called the meeting to order at 7:00 PM. The Pledge of Allegiance was recited. Roll call was taken. Members answering the roll call were Richard Kelley, Elias Karras, Don Huseman, Greg Shook, Jim Konradi, Frank Lovely and Matt Felder. Also present was Director of Community Development Wilbur Cox, Attorney Steele and Recording Secretary Christine Marbach.

Approval of Consent Agenda:

- a) President Kelley asked for a motion to approve the August 14, 2008 meeting minutes. Mr. Huseman moved to approve the meeting minutes. Seconded by Mr. Carras. Voting was **all in favor**.
- b) **Claims or expenditures – None.**

Public Hearings:

None.

New Business:

Petitioner: KM & N Properties, LLC

Request: Waiver of Ordinance 154.041 (A) (1) for posting a maintenance Bond less than required by ordinance for Heritage Falls Subdivision.

Purpose: Single Family Residential

Attorney Jim Wieser representing the Developer was present and stated that they applied for the letter of credit for \$280,000. The Citizens Bank responded by saying they would not issue this letter of credit due to the current loan to value of the project, stagnant sales in the development and the current stressed housing market. The Bank suggested that they would post the same amount as the Performance Bond in the amount of \$80,984.90 if the town were willing to accept a lower maintenance bond. Jack Kovich, a principle in KM & N Properties stated that had they sold more lots, the bank would have looked at this a little differently. He further stated that he felt the \$80,000 amount would cover any maintenance. He stated that V & H and Asphalt Services would take care of any maintenance for two years and if they don't, KM & N will take care of it and if KM&N doesn't take care of it, the \$80,000 will be there. Mr. Huseman expressed concern regarding setting precedence with other developers asking for reductions of bonds. Mr. Konradi agreed and stated that the cost of replacement of infrastructure and streets would not go down. He asked how the \$280,000 amount came about. Mr. Cox explained that the ordinance requires a maintenance bond in the amount of 25% of the performance bond. He further stated that their performance bond was only \$80,000 because they put in all of the improvements but they did not want to put on the final coat because of the Parade of Homes. Mr. Cox also expressed concern that there was nothing in writing from the bank that guarantees that the \$80,000 would be given to the developer and that the performance bond has lapsed in September and the town still does not have a bond on this project. Mr. Kovich stated that he has spoken to the bank and he gets the impression

that they would definitely commit to the \$80,000. Mr. Kovich further stated that if there were an access from the \$80,000 needed for improvements, they would be willing to put their personal guarantee and reputation behind it. Mr. Cox wanted to know what other guarantees can the developer give the town that they would go beyond what needs to be fixed should it fall apart. Mr. Kovich stated that he would give the town his personal guarantee. Attorney Steele explained that a “personal guarantee” gives one the opportunity to go after all their personal assets. There needs to be a document drawn up that outlines and covers all the peoples that would be on the line. A discussion on what type of personal guarantee should be drawn up with time lines of the principles, partners and spouses. Mr. Huseman asked what would happen if the board said no to this request. Mr. Cox stated that since there is no bonds on this project, it would be shut down per the ordinance. Mr. Cox suggested that this item be tabled to give the attorneys time to draw up the proper documents. Mr. Wieser stated that he would go back to the bank for more discussion.

Mr. Felder moved to table this item until the first meeting in February. Seconded by Mr. Huseman. Voting was **all in favor**.

Old Business:

None.

Discussion:

None

Adjournment: Mr. Huseman moved to adjourn at 7:40 PM

Richard Kelley - President

Elias Carras- Secretary

Note: The above-proposed minutes are submitted for review and approval as the official minutes by the Plan Commission.

Christine Marbach – Recording Secretary