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TOWN OF BOLTON - PLANNING BOARD MINUTES

Meeting Held at the Town Hall – Board of Selectmen’s Room on **July 13, 2016** at 7:30 PM

Members Present: David Yesue (Chair), Erik Neyland (Vice Chair), Mark Sprague, and Danielle Spicer.

Also Present: Erica Uriarte (Town Planner), Fred Hamwey (Hamwey Engineering, Inc. – Planning Board Peer Reviewer), Fred Coon (Century Mill Estates), Jane Houde & Tim Houde (Country Cupboard), Michelle Tuck (Tuck & Tuck Architects), Adam Check, Peter Driscoll, Martha Remington (Historical Commission), Century Mill Estates Abutters (refer to sign-in sheet).

Call to order: 7:35 PM

D. Spicer entered the meeting at 7:37 PM.

- Hearings
 - None.
- Business
 - ANR Plan for 48 Meadow Road, Ducharme & Dillis Civil Design Group, Inc.
 - The original ANR Plan for 48 Meadow Road was presented by Ducharme & Dillis at the previous Planning Board meeting on July 22, 2016.
 - The Board requested the plan be revised to include a locus map and to replace the Lot 3 label with correct abutter information. An electronic copy was also to be submitted. All items have been addressed.
 - The Plan is to create New Lots 2A and 4A by adding Parcels A and B to New Lot 2A (Parcel 4.E-24) from New Lot 4A (Parcel 4.E-9). Parcel A was already approved under a previous ANR plan, but was never incorporated into the deed. Parcel A allows for the existing dwelling on New Lot 2A to meet the required zoning offset to the property line. Parcel B provides access to the existing driveway easement.
 - **M. Sprague motioned to approve the ANR Plan for 48 Meadow Road prepared by Ducharme & Dillis dated June 26, 2016. 2nd by D. Spicer. All in favor 4/0/0.**
 - Potential Associate Members, Adam Check & Peter Driscoll
 - A. Check and P. Driscoll attended the meeting to discuss the possibility of being appointed to the associate member position. D. Yesue gave a summary of the role and responsibilities of the Board regarding special permits, administrative items, and bylaw amendments for town meeting. D. Yesue indicated that the associate member was a good starting position to learn about the Board and the process. M. Sprague also included that the Board is responsible for attending site visits. D. Spicer noted that the Board meets every 2nd and 4th Wednesday of the month with exception of Thanksgiving/Christmas and summer. D. Yesue asked both A. Check and P. Driscoll to provide a little information about themselves.
 - A. Check recently moved to Bolton with his family. He has never been involved with town government and would like to understand the process.
 - P. Driscoll recently moved to Bolton with his family as well. He too has never been involved with town government and would like to be involved. He is looking to stay in Bolton long term. He is a scientist and is analytical. He is familiar with standards and having to follow and interpret them.
 - D. Yesue indicated that the number one challenge for Bolton is growth. Building the commercial base while keeping the rural character of the town. Bolton is at approximately 50% build out and the Board helps to shape the development.
 - E. Neyland noted that tonight’s meeting was a good representation of the types of issues the Board reviews. He recommended they stay to observe the meeting.
 - **D. Yesue indicated that the Board will wait to appoint the associate member to allow both A. Check and P. Driscoll to attend several meetings to see if they are still interested in the position. At that point, the Board will make a decision.**
 - Century Mill Estates (CME), Fred Coon
 - Bond Reduction for Old Stone Circle (Road C)
 - F. Hamwey completed the bond reduction for CME (\$102,245) dated 07/06/16. As requested at the previous meeting on 06/22/2016, F. Hamwey added the inverts and gas traps to the estimate.

- The Board reviewed the outstanding construction site items as listed in the email to F. Coon from E. Uriarte, Subject: CME – Summary of Site Visit 07/06/2016, dated 07/06/2016. The Board considered the following priority items:
 - No. 1 – Remove loam from 100 ft. wetland buffer near Lots 42A – 44A.
 - No. 2 – Replace silt fence and wattle along the toe of the swale near Lots 42A – 44A.
 - No. 3 – Remove sand and silt from Detention Basin 9C.
 - No. 4 – Sweep roads daily with water use to reduce dust.
 - No. 7 – Clean and maintain swale at Lots 50A – 54A.
- Construction entrances are installed and are helping to remove sediment from construction vehicles entering the subdivision roads from cleared lots.
- The Board also sought \$11,000 cover the cost of construction oversight by F. Hamwey and \$1,694 to pay for outstanding police detail invoices.
- **E. Neyland motioned to approve the bond reduction dated 07/06/2016 contingent upon CME replenishing funds for F. Hamwey, paying outstanding police detail invoices, and completing site items no. 1,2,3,4 and 7 (outlined in email to F. Coon from E. Uriarte dated 07/06/2016) satisfactory to F. Hamwey and E. Uriarte. 2nd by M. Sprague. All in favor 4/0/0.**
- Request for Saturday Construction from July to November 2016
 - F. Coon requested approval for Saturday construction from July to November 2016. Construction activity will consist of foundation work, house framing and landscaping. Some of the work will require heavy equipment that have back up alarms. No crushing, hammering or blasting of rock will be conducted.
 - D. Yesue stated the relationship between CME and the Town has not been reciprocal. CME continues to break the rules and the situation needs to improve before he feels the Board should consider Saturday construction.
 - E. Uriarte indicated that there have been three (3) recent violations where equipment was being off-loaded on Spectacle Hill Road without police detail.
 - F. Coon noted that the violations were conducted by a subcontractor who was hired to cut trees. He informed the Board that he had notified the owner of the company that he was required to contact the police department for police detail. F. Coon did not contact the police department directly because he did not know the dates of when the equipment would be off-loaded. F. Coon offered to include in his subcontractor's contracts a clause that would require them to obtain police detail for off-loading of equipment or be fined as an incentive to contact the police.
 - D. Yesue opened the discussion to the abutters in attendance at the meeting.
 - Steven Garner of 42 Spectacle Hill Road read an email written by Ray St. Martin of 37 Mill Pond Road to the Board regarding his objections to the Saturday construction. S. Garner indicated that the email represented his sentiments exactly as to why the request should be unequivocally denied. Below are the reasons as stated in the email:
 - *"Safety – In general and certainly on weekends CME and surrounding families have the right to use and enjoy the outdoors, hold BBQ's, have their children play, ride bikes, go for walks, etc. without concern for construction traffic or added traffic of any kind.*
 - *History of Construction – It has never been limited to one or two areas of the development. Nothing will convince me that it will be moving forward. Large trucks race from one end of the development to the other seemingly moving fill from one location only to have more fill brought back to that location the next day or week. There is no logical construction plan.*
 - *History of Defiance - The developer had YEARS where construction activity went on not only on Saturdays, but Sundays and Holidays – ALL Holidays well past 7, even 8pm. I had Christmas dinner listening to a backhoe in 2013 and listened to a jackhammer all day almost every Saturday and Sunday- long into the evening for 3 straight months because the developer refused to just spend a few days blasting instead. Historically the developer and his personnel have pushed the limits on*

- everything. Routinely, machines shut down at 5:15, 5:20 when they are supposed to stop at 5:00. Loading and unloading equipment on main roads, etc.
- *Dust/Debris – The developer NEVER uses the water feature which would control dust from sweeping activity. We’ve had tables of food ruined during back yard family dinners as dust clouds plume across our yard. Dealing with that 5 days a week is plenty.*
 - *Noise – there are upwards of 25 families living in or near the development that want peace and quiet 2 days per week. That is more than fair.*
 - *Trespassing – I’ve witnessed construction personnel enter and pass through my property and neighbor’s property without notice or recourse. Another day of this is not wanted.*
 - *Questionable hiring. I have proof, and can provide it, that the developer has employed convicted criminals. I do not want convicted criminals around my family or my neighbors families on weekends where there tends to be a little bit more freedom to let your kids be kids and roam the neighborhood. I don’t care what that sentiment might label me in the eyes of someone else – it’s important to the safety of my family.*
 - *Unfinished homes – Partially built homes (2 directly next to me) have sat partially finished for years – literally more than 2 years. Why does the developer not focus on completing those homes before focusing on other parts of the development?*
 - *Precedent – After ample research, I’m not aware of any other residential town in Massachusetts that allows Saturday construction to this magnitude.*
 - *Numbers – Numerous residents do not want this. Why rule in favor of a non-resident on an entirely unnecessary request?*
 - *Financials – All the residents in CME pay full (and high) real estate taxes. We “signed up” for this and happily pay them – we love this town to the point where many of the residents in CME donate incredible amounts of time and money to various town and school causes. The development currently generates about \$17,000 in taxes annually per household in CME. That’s close to \$450,000 total currently and growing. Our roads are not plowed, our mail is not delivered, our speed limits are not recognized... Please let us have our peaceful weekends.”*
- Christine Peters of 12 Spectacle Hill Road stated that CME does not have control over their subcontractors. She agreed with F. Coon’s approach to add a fine into their contracts if they off-load equipment on the public road without police detail.
 - Dusty Sheldon of 63 Spectacle Hill Road indicated that on Monday morning a tree trimmer came down Spectacle Hill Road from the Town of Hudson. The Use of Spectacle Hill Road (south) by construction vehicles for the development is not allowed in accordance with CME’s permits. D. Sheldon indicated that this occurs at least once a week.
 - F. Coon indicated that he has kicked drivers off the site for using Spectacle Hill Road (south). The issue is that the drivers use GPS systems to direct them to the site. CME has a contract with Light House Environmental Management, LLC for fill material. F. Coon stated he would contact Light House to make sure the drivers know they cannot use Spectacle Hill Road (south).
 - Linda Crabtree of 60 Spectacle Hill Road stated that CME needed to take more responsibility with delivery trucks. She recommended that F. Coon write a letter to Light House instructing drivers that they cannot use Spectacle Hill Road (south) when bringing fill material to the site. She also indicated that it was CME’s responsibility to contact the police department for police details.
- F. Hamwey noted that he does not conduct site inspections on Saturdays.
 - **M. Sprague moved to request the approval of Saturday construction at CME from July to November 2016. 2nd by Erik Neyland. All in favor 0/0/4. Motion did not carry.**

- M. Remington asked the Board about the stone walls that were supposed to be repaired throughout the property as part of the subdivision agreement.
 - The Board asked M. Remington to email E. Uriarte regarding the stone walls and she would follow up.
- Lot Releases for Lots 25, 26, 27, 33, 35, 36, 37, 42, and 43 on Old Stone Circle (Road C)
 - The Board agreed to release Lots 33, 35, 36, and 43 only given there are other remaining site items that need to be completed (e.g., handicap ramps to be installed this summer).
 - **D. Spicer motioned to approve the lot release of 33, 35, 36, and 43 at CME. 2nd by M. Sprague. All in favor 4/0/0.**
- Fast food Restaurant Bylaw Review (continued from meeting on 06/22/2016)
 - D. Yesue suggested focusing the meeting on understanding the existing fast food bylaw. He noted that the Board would eventually need to determine whether the intent of the bylaw is what the town desires and if revisions are necessary.
 - E. Uriarte read the email correspondence dated 07/13/2016 between E. Uriarte and Brian Falk (Mirick, O'Connell, DeMallie & Lougee, LLP - Town Counsel) regarding fast food and the addition of a Dunkin Donuts as an accessory use to Country Cupboard.
 - E. Uriarte stated *"Fast food is allowed as an accessory use to a primary use as long as the accessory use (fast food) is 50% or less of the lot area."*
 - B. Falk replied *"Yes, I believe this is a reasonable construction of the Zoning Bylaw, given the definitions of "fast food" and "accessory building or use" provided in Section 250-28 of the Zoning Bylaw. Per these definitions, the sale of "pre-prepared or rapidly prepared food" must not occupy more than 50% of the lot and must be "wholly incidental and ancillary to a conventional restaurant or other allowed principal use.""*
 - The Board discussed how the bylaw did not accurately measure accessory use (i.e., 50% of the lot area). Given an 8% maximum lot coverage, 50% lot area is likely unachievable. However, the Board agreed that the accessory use could be determined qualitatively by being incidental and ancillary to the principal use.
 - D. Yesue commented that maybe the 50% lot area took into consideration businesses like Kimball's Farm in Lancaster where uses extended outside.
 - E. Uriarte stated *"The Building Inspector, in coordination with myself and the Board, would make the determination whether or not the fast food is accessory by square footage of the floor area."*
 - B. Falk replied *"Yes, for sales of pre-prepared or rapidly prepared food intended as accessory to a principal use that requires a special permit from the Planning Board."*
 - The Board reiterated that the Building Inspector would likely seek input from the Board in determining a fast food accessory use. The Building Inspector's determination can be appealed to the Zoning Board of Appeals.
 - E. Uriarte asked *"Would Dunkin Donuts require a special permit as an accessory use to the convenient store given that subway already exists?"*
 - B. Falk replied *"Based upon your research, Country Cupboard's "allowed principal use" (for purposes of the "fast food" bylaw provision) is a preexisting, nonconforming convenience store, because the use predated the special permit requirement. Coffee sales and food sales appear to be permitted within the preexisting, nonconforming convenience store use, and/or permitted as an accessory use based upon the definitions referenced above. A change in Country Cupboard's use resulting from adding a Dunkin Donuts operation within the convenience store may qualify as an extension or alteration of the preexisting, nonconforming use, which would require a special permit from the Board of Appeals, per M.G.L. c. 40A, Sec. 6 and Section 250-3.C(1) of the Zoning Bylaw. I do not have enough information about the proposed use to evaluate whether this would trigger a special permit from the Board of Appeals."*
 - The Board discussed how the proposed use (Dunkin Donuts) would need to be evaluated in detail to determine whether a special permit is required. If the Dunkin Donuts proposed an extension or alteration of the preexisting nonconforming use then a special permit would be required through the Zoning Board of Appeals.

- The Board indicated how switching the coffee/bakery good vendor to Dunkin Donuts in the Country Cupboard would not likely extend or alter the preexisting nonconforming use. However, adding seating would likely require a special permit.
 - M. Tuck and J. Houde commented that if the Subway and bakery good section collectively switched to a Dunkin Donuts (no seating), the square footage of the accessory use in the Country Cupboard would likely remain the same and not require a special permit.
- M. Remington commented how gas stations have morphed into a more extensive use over the years. It's not just selling gas/auto service anymore, but convenient stores and now fast food counters. She questioned if the gas station is still considered the primary use.
- The Board indicated how the "no drive through" bylaw likely prevented fast food establishments in Bolton prior to the approval of the fast food bylaw at town meeting in 2012. Since the fast food bylaw, the Design Review Board and Mixed Use Village Overlay District have also passed.
- M. Sprague reiterated that chains and franchises cannot be prohibited.
- E. Neyland indicated that he would like for accessory fast food to be allowed by special permit in the future. The Board could consider a revision for next town meeting.
- E. Uriarte asked "If an existing restaurant or other primary use wanted to add a Dunkin Donuts and they have a special permit for that primary use, would a modification or new special permit be required?"
 - B. Falk replied "*It depends on whether the terms of the existing special permit restrict this type of accessory use. An accessory use is allowed as of right for any lawful principal use, unless the Zoning Bylaw or an existing special permit provide otherwise. Again, the sale of "pre-prepared or rapidly prepared food" must not occupy more than 50% of the lot and must be "wholly incidental and ancillary to a conventional restaurant or other allowed principal use."*
- Bolton 2 Solar Project, 125 Still River Rd, Syncarpha Capital, LLC
 - E. Uriarte stated to the Board that Syncarpha was seeking a minor modification to the approved site plans for the Bolton 2 Solar Project. Syncarpha requested to remove the bottom rail of the proposed perimeter fence and replace it with wire. Fred Hamwey reviewed and approved the revision. A pre-construction meeting with the Town was conducted on July 11, 2016.
 - **M. Sprague motioned to approve the modification to the perimeter fence for the Bolton 2 Project at 125 Still River Road. 2nd by D. Spicer. All in favor 4/0/0.**
 - **M. Sprague motioned that the revision to the perimeter fence design was a minor modification to the project. 2nd by D. Spicer. All in favor 4/0/0.**
- Administrative
 - Design Review Board Appointments
 - E. Uriarte to contact Don Lowe regarding the appointment of Jonathan Keep to the Design Review Board. The Board questioned whether Jonathan could be on Board of Selectmen and Design Review Board simultaneously.
 - **E. Neyland motioned to appoint Michelle Tuck, David Pettit, Marshall McKee, and Danielle Spicer to the Design Review Board. 2nd by M. Sprague. All in favor 3/0/1.**
 - MAGIC Appointment
 - **E. Neyland motioned to appoint E. Uriarte as MAGIC representative for the Town of Bolton. 2nd by D. Spicer. All in favor 4/0/0.**

D. Spicer moved to adjourn the Planning Board meeting at 9:52 PM. 2nd by M. Sprague. All in favor 4/0/0.