

BOLTON PLANNING BOARD
Minutes of Meeting
May 10, 2006 at 7:30 P.M.
Bolton Town Hall

Present: Larry Delaney, John Karlon, Frank Lazgin, Douglas Storey, Nat Tipton (Town Planner)

DISCUSSION

1. Administrative Items

Storey explained he received an inquiry from a Bolton resident interested in subdividing his property. While he is arranging to obtain proper frontage in Bolton, there are wetlands on his property that would require a wetland crossing. The resident asked Storey if he could obtain frontage from an adjacent subdivision road in Hudson, and access the lot through Hudson. The Board felt that it was difficult to make a determination without knowing all the facts. The Board would need to know certain information such as how much frontage the resident would be able to obtain off the public way in Hudson, what the frontage requirements are for the applicable zoning district in Hudson, and whether the applicant was planning to construct a driveway or a subdivision road.

2. Discussion of Rate of Development Bylaw as Applied to Century Mill Estates

Present: Andy Bendetson (Merchant Financial); Meredith West, Alan Caggiano (Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.)

West stated they are requesting an opinion from the Zoning Enforcement Officer (ZEO) on whether the town's Rate of Development bylaw applies to them. She stated the question has been pervasive throughout project permitting and would like to get the question resolved for financing purposes. The preliminary subdivision application for the project was filed in May 2003, followed within seven months with a definitive subdivision application in November 2003. This action froze the existing zoning at the time of the submission when the town's Rate of Development bylaw did not have an "abundantly clear" sunset provision. The zoning bylaw was amended in November 2004 to comply with a court decision (Zuckerman vs. Town of Hadley) that clarified that rate of development bylaws must be explicitly temporary while the town engages in planning studies. West stated the Rate of Development bylaw has always been concerning to her client and abandoned his plans to construct a 40B on the property in part because of the Hadley case. Another court ruling (Lorden vs. Town of Templeton) from June 2005 clarified that a developer could not be held to comply with a Rate of Development bylaw if it did not have a sunset provision at the time of plan submission.

Delaney stated he understood why they were seeking a definitive answer on the subject, but didn't feel the town could provide the certainty they were requesting. The applicant has a definitive subdivision plan approved for six units, but has yet to file an amended plan seeking up to 78 lots approved in the FOSPRD. There could be a future court case that would lead the town to a different interpretation of its situation than the guiding case law to date, so the matter is not ripe until the Town has all relevant information. Storey felt the town was under no obligations to provide such an opinion. West requested that the Board as a first step get an opinion from Town Counsel on the matter.

The Board advised they would consider the request and reply with an answer to the applicant soon.

3. Bob Moss – Harvard Road Off Common Driveway

Present: Bob Moss, Karen Augustine (Conservation Commission)

Moss stated he had been in contact with the Town's consulting engineer (Rob Oliva of Hamwey Engineering) and 75% of the inconsistencies raised in Oliva's memo would be addressed this week. Moss stated he could get the items listed in the memo down to four or five, and work with his engineer and Oliva to provide comfort to the Board that the driveway will function safely and properly. He will ask Mr. Oliva to issue a memo to the Board when the less urgent issues are taken care of. Moss stated he thought there was discrepancies between what was approved by the Board and the plan issued to Rob for review, although Oliva received one of the signed copies of the Board. One major issue remaining is three detention ponds were built approximately two feet lower than what was on the plans. Moss stated he was confident the detention ponds would function normally and his engineer would issue a memo to the Board and Mr. Oliva to this effect if it is the case. Augustine stated the Conservation Commission wanted to be informed of changes from the plan.

4. Board Reorganization – Chair and Vice-Chair

The Board nominated Larry Delaney as its Chair, and Doug Storey as its Vice-Chair. No formal vote was taken as Stephen Garner was not present.