

BOLTON PLANNING BOARD
Minutes of Meeting
May 24, 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

The Board reviewed and approved minutes from March 22, 2006; April 12, 2006, and April 26, 2006. The Board reviewed but did not approve minutes from May 10, 2006.

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

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

Delaney stated he had been in contact with Town Counsel since the previous meeting. Her opinion is essentially that receiving an opinion from the Planning Board and/or Town Counsel will not settle the issue at hand on whether the Rate of Development bylaw applies. The presiding body over this matter who could issue an opinion is the Zoning Enforcement Officer, which in Bolton is the Board of Selectmen. Delaney also reported that Town Counsel is not convinced that the Bolton's Rate of Development Bylaw is similar enough to that of Templeton's, that a reviewing court would assuredly rule the same way. Delaney asked West and Bendetson to clarify what they were seeking. West stated that she would like a letter signed by the Zoning Enforcement Officer that in their opinion the Rate of Development Bylaw is unconstitutional and is not applicable.

Larry Delaney stated that at present there are only five approved lots. He argued at present the case is not ripe for the type of determination requested, and in his opinion would need to wait until the project is built out. Delaney and Storey both stated they are not convinced that the bylaw is unconstitutional and it isn't the Board's job to do so. The Board would like a formal write-up of what they are requesting. Attorney West stated that she feels that they would like to ask for clarification and how the zoning bylaw applies to their development. Bendetson stated that the courts have ruled that in order for a Rate of Development bylaw to be valid, it has to be abundantly clear that the bylaw has a sunset provision. The way the bylaw was worded in its initial passage in 2003 suggested to him that it was not abundantly clear. West suggested that she work with Town Counsel to determine if there is a way for the project to come under the revised bylaw. Storey responded he would be surprised if an applicant could essentially choose to have a less onerous bylaw apply to them even though it was not in enactment at the time the town receives their application. Delaney thought the applicant should work with town counsel at their own expense to determine if this could be done. Andrea Gilbert, an abutter to the project, stated she thought it could not work both ways for the applicant. The applicant had filed a plan specifically to freeze zoning to protect them from the inclusionary housing bylaw. They are not in a position where they could choose to have bylaws that benefit their cause apply to them, while remaining absolved from bylaws that would be detrimental to their goals. . Another possibility raised by Bendetson was to limit the amount of houses that could be built in a particular year. He reiterated that if he cannot reach an agreement with the town on how this issue would be treated, he was in an uncomfortable situation.

It was determined that the Board would contact Town Counsel for her opinion and have the applicant work with Town Counsel at their own expense to determine if the 2004 bylaw could apply to them.

2. Limited Business District Rules and Regulations - Draft #1

Tipton explained he reviewed the Stow Special Permit regulations and thought they could be used as a template for Limited Business and Business Special Permit rules and regulations. Given that there have been landowners in these districts expressing interest in either developing their property or expanding an existing facility, it was important for the Board to pass regulations to help them evaluate the eventual application. Without these rules and regulations, an applicant could essentially turn in whatever they wanted as part of an application and the town might not have legal grounds to demand further information on their project.

Tipton mentioned that he received an inquiry about where Great Brook Farms stood now that they were zoned as Limited Business. The business had been considered a nonconforming use that the town could not regulate because they at least 50% of the merchandise sold at the store are grown onsite. The Board agreed that Great Brook Farms should now come under the special permit bylaw. These regulations should be crafted in a way that provides flexibility to deal with different sizes of operations. If the town wanted to encourage smaller operations, it should allow the Board some flexibility in requiring less onerous materials as part of the application that might not be needed to begin with. Storey indicated he understood that the owner of Great Brook Farms was going to apply for a special permit. The Board thought it should send a letter to the owner to clarify its position. Storey suggested that a letter be sent to Skinner as well. Delaney responded that the Great Brook Farm situation is a little different because the Skinners were going to be applying to expand their facility anyways. When you come before us apply for Limited Business Special Permit.

The Board reviewed the draft regulations submitted by Tipton. Several suggestions were made to improve them and make them applicable to Bolton. Garner suggested adding a definition of agent. The abutters list should include those in a 500 foot radius of the project rather than a 300 foot radius. The Board thought the process of urging pre-application meetings would be helpful, though it should not be a formal process that required public notification or application fees. The Board asked to Tipton to do research on what other towns charged for application fees. Tipton indicated he would though this was something that needed to be determined by the Board in how much it costs the town to process an application for consultant fees, mailings, hearing advertising, etc... Karlon thought having the applicant submit a .pdf file to the Board with their application would ease its distribution amongst other town boards for comment. For Section 4.5, Garner thought the applicant should notify the town when other permits have been issued on the site by the Historical Commission (Demolition Delay) and the Tree Warden (Shade Tree permits). Lazgin suggested that Tipton contact the Stow Planning Board to find out if these regulations have operated effectively. Traffic studies should be made at the Board's discretion so smaller applicants did not have to spend the resources on a study for a smaller project where traffic was not going to be a key issue. Martha Remington of the Historical Commission suggested the Board include verbiage to include a requirement for applicants to add stone walls, trees of a certain size, and other items on plans.

3. Mixed Use Discussion

Present: Ken Troup, Curt Plante, Panny Gerkin (Board of Selectmen), Margaret Campbell (Master Planning Committee); Martha Remington (Historical Commission), Betsy Cussen (Town Clerk)

Storey started off by stating this meeting was called so the town could better determine what it wanted to see on the Kane site if it were developed. Storey felt the town had not given the applicant enough guidance and that its wishes would therefore not be reflected in a plan. Storey stated he did not feel that a high density housing was not appropriate on the site given it was literally right next to Route 495. A retail project could be desirable provided that the town had adequate input into its design and could have a say into the proper use. Campbell mentioned she attended a MAPC meeting last week. MAPC offers

services to help towns determine what mixed use development would be appropriate in their town. Although the idea of mixed use is relatively new to Bolton, perhaps having MAPC come to a Planning Board meeting would introduce the concept and spark some discussion on what the town would like to see on the Kane site. The Master Planning Committee has been advocating mixed use development though on limited sites and only when it is done in a manner consistent with existing development in Bolton. Small shops, offices and apartments would be an example of such a project. A large housing project (20 units +) with several large stores would not be well received in Bolton. Campbell mentioned she thought big box stores are not conducive with village zoning or Bolton.

Plante suggested that the town look at Masphee Commons to determine if it contains characteristics of development that the town could support. It was suggested also that the Kane property should be explored to provide an offramp off 495. Tipton thought this was a long process and could not be done overnight with MassHighway, and perhaps it was too late to be thinking about this given the landowner was expressing interest in building soon. Troup mentioned that the Kanes should be thinking about land uses that would generate less traffic as that would be the primary concern of the town. Troup also thought it would be good to explore how much space is needed to provide a straight offramp that would facilitate eastbound traffic on 117 for the Bose plant. Tipton agreed he would look into it.