

Deerfield Planning Board
April 7, 2008
Minutes

MONTHLY MEETING called to order in Deerfield Municipal Offices at 7:07 pm

Members Present: Peter LaBarbera/Chair, John Baronas, James Pasciesnik, Roger Sadowski,
Elizabeth Schmitt
Members Absent: Lynn Rose

PROPOSED NEW FEES SCHEDULE

Mr. LaBarbera presented a draft of *Regulations Governing Fees and Fee Schedules* which offers proposed language for regulations pertaining to consultant fees. Mr. Waite reported that the proposal was discussed at the previous meeting and that the Board supported the proposal in principle.

Mr. LaBarbera explained the proposal. In the Subdivision Rules and Regulations there is a provision to charge applicants for consultant fees. The State Statute which pertains to charging applicants for consultant fees is Chapter 44 Section 53G. Town attorney provided a template based on the Statute, which has been used by the Conservation Commission. Mr. LaBarbera stated that he used that template to draft the proposal before the Board. Adoption of the proposed regulations would empower the Board to charge the new fees.

Although the Board had previously incorporated a formula for assigning fees, the template from the Town attorney is different in that it breaks out fees into administrative fees and project review fees. Following that format, Mr. LaBarbera took what the Board had done for the Site Plan Regulations and divided it into 2 parts; Administrative Fees and Project Review Fees. He copied Section 3.3, which pertains to Administrative Fees, verbatim. However, for Project Review Fees, the Town attorney's template was tied to a formula that was more quantitative terms of numbers of lots and that did not seem to fit what the Board was trying to do; therefore, he transformed the formula to address square footage of disturbed land. Mr. LaBarbera pointed out that the fees are paid ahead of time with the guarantee that unused fees will be refunded. It is a procedural requirement that the Board must adopt some form of regulation before it can assess these fees and the proposed regulations are recommended by the Town attorney.

Mr. Waite noted that Administrative Fees are not refundable and that the fee for Project Review would be \$10 per 100 square feet of Disturbed Land. Mr. LaBarbera stated that he had used Disturbed Land versus Lots because a fee per lot would only be applicable for Divisions – ANR Divisions and Subdivisions. Previously, the Board had handled fees for Site Plan Review by applying the fee for any property; it didn't have to be a Subdivision.

Section 4.3 contains a provision which empowers the Board to require additional fees if the Set Aside is exhausted. An example of a need for Project Review Fees would be if the Board need to hire an engineer to review calculations or some other technical aspect of a project.

Mr. Baronas stated that Section 4.6 offers Checks and Balances which ensure that an applicant won't be raked over the coals. Mr. LaBarbera stated that rigid accounting system is required of the consultants. He said that there are two conditions under which an applicant can appeal to the Select Board to challenge the Board's choice of a consultant: (1) Conflict of Interest and (2) lack of qualifications,

Mr. Baronas asked if the proposed regulations were the final draft and Mr. LaBarbera stated that it was a draft for consideration and be changed. Mr. Baronas asked whether the proposed regulations need to be voted by Town Meeting in order for it to become a regulation. Mr. LaBarbera explained that the Board is required to adopt it by a vote at a public meeting. Mr. Waite clarified that Town Meeting action is not required.

Mr. LaBarbera stated that the regulations that the Board adopted before applied only to Site Plan Review. One aspect that is different is reference to project size and quantifying the amount of land to be developed. The proposed regulations will accomplish the same thing, except that it is getting a little more specific regarding what the Board would anticipate for costs. The proposed Fee is \$250 plus \$10 per foot of developed land plus the cost of any outside consultation. For example, anytime the Board consults with Wesson and Sampson, it costs a minimum of \$750-800.

Mr. Waite observed that the fees are essentially an advance against what expenses the Board might have and that it makes sense. Mr. Baronas stated that it is well written. Mr. LaBarbera reported that the Conservation Commission has used this fee schedule. Ms. Schmitt asked what other communities are doing. Board requested information on the use of the proposed system by other communities and committees.

Mr. Waite asked what procedure is required for the adoption of this policy change. Mr. LaBarbera stated that no public hearing is required and that it could be adopted at a regular public meeting of the Board, after a 7 day posting during which the proposed policy is available at Town Hall for public viewing. Mr. Waite pointed out language in the proposed regulation that specified the need for a Public Hearing.

Mr. Waite stated that it would be necessary to provide a definition of "disturbance of land". Mr Sadoski asked whether seeding a field would constitute a disturbance. Mr. LaBarbera will discuss the issue with Town attorney. The matter will be address and brought to a vote on May 5, 2008.

PUBLIC HEARING on Proposed Amendment to Zoning Map for Assessor's Map 168, Parcel 68 and Parcel 69 from District C3 to District C2.
Hearing opened at 7:30 p.m.

Members Present: Peter LaBarbera/Chair, John Baronas, James Pasciesnik, Roger Sadowski, Elizabeth Schmitt
Members Absent: Lynn Rose
Others Present: John Paciorek, Sharon Paciorek, Attorney Donna MacNicol, Michael Frisbie & Andrew Henson (from Pearson Acquisitions), Steve Sheckle

Mr. LaBarbera opened the Hearing with the reading of the public notice for the Hearing:
The Deerfield Planning Board will hold a public hearing on a proposed amendment to the Town of Deerfield Zoning Map. The amendment proposes to change the zoning district designation of the parcels known as Assessors Map 168, Parcel 63 and Assessors Map 168, Parcel 64 from district C - III to district C-II. The public hearing will be held on **Monday, April 7, 2008, at 7:30 p.m.** in the Town Offices located at 8 Conway Street, South Deerfield, MA. Copies of the proposed Zoning Map amendment may be viewed at the Office of the Deerfield Town Clerk weekdays between the hours of 9:00 a.m. and 4:00 p.m.

Mr. LaBarbera stated that he had filed a Conflict of Interest disclosure Letter with the Town Clerk with respect to Attorney MacNicol, who is representing the applicant in this case.

Attorney MacNicol, represents Hunter Development, a development firm which wishes to purchase and develop the Paciorek property. She requested that the Board support the proposed zoning change for several reasons:

1. the rezoning would be in keeping with the Town's Master Plan;
2. development of the property is limited by their size (2 acres +/-) and by the use table.
3. uses for the property which the Board does not want are currently allowable By Right under current zoning;
4. abutters support the rezoning
5. it makes sense and has the potential to attract tourism to Town

Developers presented images of two gateway projects in Longmeadow, MA and Newington, CT which are similar to the concept they have in mind for the rezoned parcels. Mr. Frisbie stated that his firm is a conservative and long-term investor and willing to work with the Town to ensure the highest and best use of the property. He cited the zoning guidelines which call for the preservation of the Town's cultural, historic, and agricultural heritage and an increase in the amenities for the Town.

Mr. Pasciesnik said that it was a 'no brainer' that the whole side of the street should be rezoned to make it contiguous with the village. Ms. Schmitt asked if the Developers had done any pieces the size of Deerfield – a little gateway the size of ours. Mr. Henson responded that the two examples which they had provided, although larger, are essentially the same scale as the one proposed for Deerfield.

Mr. LaBarbera stated that if the proposed project looked like either of the 2 projects shown, it would seem like something potentially attractive and something for the Town to consider seriously. He suggested to the Board that they do not have any mechanism in the Zoning Bylaws that gets the Town assurances that what comes out is going to look anything like the work the Developers have done on their previous sites. Once the property is rezoned the Town has no assurance that the Developers are going to remain. They are offering a verbal representation on their part, but the Town doesn't have an assurance that they are going to remain a part of the development equation. They could sell it to someone else who would have, perhaps, not the same degree of aesthetic detail. He stated that this is his reservation on approving the rezoning and that is where the idea of a Development Agreement (DA) came up.

A DA is a way to create a legal mechanism to give the Town some assurance that what comes out of the pipeline is reasonably similar to the verbal understanding of what is going into the pipeline. Deerfield Zoning Bylaw doesn't have any architectural design standards and the landscaping standards are pretty paltry. If the Developers or anyone else were to follow out the Zoning Bylaws to the letter under the C2 District, what could come out might not anything like the examples shown.

Mr. Henson noted that all practical uses are by Special Permit and at that point they would be back before the Board again. Trying to spell out rules ahead of time is onerous and potentially dangerous to the Board, because it is difficult to ensure that everything is covered. He said that his firm has sold only three properties in 72 years. He said that the benefit of the Special Permit Process, is that they will come and show it to the Board.

Mr. Sheckle stated that the C2 zoning is preferable, because it allows no manufacturing plant. C2 fits better with the Town's plans. Mr. LaBarbera stated that the property is not large enough for the

purposes for which it is zoned.

Attorney MacNicol stated that there are a whole lot of uses that are more Commercial than Industrial that are allowed in that site now that 2 does not allow. She state that the DA is onerous; it is intended to serve like a covenant for a subdivision which ensures that infrastructure is done right. In this case, the infrastructure is already there.

Mr. LaBarbera stated that the DA could address the amount of landscaping and parking. The DA would compensate for the shortcomings of the Zoning Bylaw, as it is written today. The Board was planning to consider the rezoning of the Paciorek property as part of a larger area and were probably going to get into design standards and performance standards, but today they are not there. He explained that a DA constitutes a Condition of Proceeding and specifies the terms that control the use of a property that involves rezoning. Town Meeting will consider a revised DA, if the property is subsequently sold again.

Mr. Henson pointed out that Site Plan Review can provide the necessary oversight. Mr. LaBarbera stated that the Special Permitting Process is limited by how well the Zoning Bylaw is written. Mr. Henson stated that it was not in the interests of this firm to build something ugly. Mr. LaBarbera stated that rezoning does not keep his firm in the picture. Mr. Henson stressed the need to be guided by principles rather than specific goals and stated that his firm does not want to do harm.

Mr. Waite stated that he is excited at the proposed project and reiterated the need to be cautious. He said that he thought that at the previous meeting the Board and the Developers were moving toward a DA. He stated that with rezoning, the Town loses control. He said that a DA ties everything together.

Mr. Barbara stated that a Special Permit cannot be unreasonably denied. Attorney MacNicol stated that such denial can be based on traffic or environmental issues and that there were lots of protections in place. It is a huge battle to get the denial of a Special Permit overturned.

Ms. Schmitt asked if the Developers are planning a mixed use project. Mr. Frisbie stated that they do not have a specific plan in mind. Mr. Paciorek stated that he has received various offers for the property over the years, but has held out for a commercial development which he believes would be good for the Town. Mr. Waite asked if Mr. Paciorek intended to wait to sell the property until he knew what was going in there. Mr. Paciorek said that he has been requesting rezoning for several years and was told to come back with a particular project.

Mr. Sheckle stated that the Board is asking for too much control. Mr. LaBarbera asked how anyone can know if the Developers are the ones who are going to be involved over time. Attorney MacNicol stated that the risk is better under C2. Ms. Paciorek asked if the Board holds everyone hostage, how is the Town ever going to grow; and stated that the proposed rezoning is an opportunity and needs the support of the Board.

Mr. Frisbie reiterated that the Developers do not know what the specific use will be, but that it would be a first class development. Mr. Pasciesnik stated that he does not believe that they do not know. Mr. Frisbie explained that clients want a permitted site and that his firm spends its money upfront on development then finds appropriate tenants. Mr. LaBarbera asked how they can design the development without knowing who will use the space. He asked if the Developers were unwilling to create a DA. The Developers expressed reluctance to sign the boilerplate DA which was sent to them by the Town attorney with instructions to return the signed the DA with a check for \$5000. They stated

that after the previous meeting they had been prepared to proceed with a DA and expected to do so face to face with the Board. Mr. LaBarbera stressed the need to avoid discussions outside of the public arena and emphasized the need for clear and precise parameters.

The Board and Developers agreed that a DA could be created around the statement that the rezoning would be conditioned on Site Plan Approval by the Planning Board which would be binding for all potential buyers. The DA would have to be included by the Pacioreks as a condition of the Purchase & Sales Agreement. The Board and Developers agreed to work on creating a DA and the Board agreed to continue the Hearing in order to allow opportunity to address the DA in time to bring an endorsement of the rezoning amendment to Town Meeting. Mr. Frisbie asked if the DA needed to be more than one page long and there was general agreement that it would be as short as possible.

Ms. Schmitt moved to continue the Hearing until Monday April 14, 2008 at 7 p.m. Mr. Waite seconded the motion. Board voted unanimously to approve the motion.

Hearing paused at 9:05 p.m.

GENERAL MEETING continued at 9:05 p.m.

Members Present: Peter LaBarbera/Chair, James Pasciesnik, Roger Sadowski, Elizabeth Schmitt
Members Absent: John Baronas, Lynn Rose

Board reviewed minutes for February, March and April.

Mr. Sadoski moved to accept minutes of February 4, 2008, as amended, and Mr. Waite seconded the motion. Board voted unanimously to approve the motion.

Mr. Waite moved to accept the minutes of March 3, 2008 and Mr. Sadoski seconded the motion. Board voted unanimously to approve the motion.

Mr. Waite moved to accept the minutes of April 1, 2008 and Ms. Schmitt seconded the motion. The motion passed with 4 votes in favor and 2 abstentions.

Mr. LaBarbera reported that the Town Administrator requested that the Board participate in the process of drafting a Storm Water Bylaw for Deerfield. He stated that Debbie Shriver has obtained a grant to help 10 communities to develop their own Storm Water Bylaw. She has developed a template for use by all the Towns; therefore, it should be a relatively easy process. Since the Town has been involved with addressing storm water problems and since State standards on storm water only apply to wetland situations, which are not an issue in Deerfield, this is a good opportunity for Deerfield. Mr. LaBarbera suggested that the Board appoint a subcommittee to work with Ms. Shriver and reported that he and Mr. Baronas are willing to serve on the subcommittee. He recommended appointment of .

Ms. Schmitt moved to appoint a Subcommittee, consisting of Mr. LaBarbera, Mr. Baronas, Mr. Pasciesnik, Mr. Sadoski, Bridget Mitchell, Debbie Shriver, and Darien Gray, to draft a proposed Storm Water Bylaw. Mr. Waite seconded the motion. Board voted unanimously to approve the motion.

Ms. Schmitt moved to adjourn. Meeting adjourned at 9:22 pm