

Minutes: Selectmen's Meeting – Monday, March 1, 2010

Present: Chairman Wesley D. Goss, Walter F. Alterisio, Clerk and Procurement Officer and Member Kevin Welch

Meeting was called to order at 7:00PM with all members present. Road Commissioner Mike Martin and David Crandall appeared before the board to request signature on another snow overrun in the amount of \$50,000. The Board voted to approve and signed accordingly.

The Board met with Planning Board members George Basbanes, Judy Larter, Joyce Cail and John Goldthwaite. Chairman Goss asked them to go over the zoning proposal sent for approval. Mr. Basbanes advised the Planning Board feels the location was the perfect location; concerns about pollution though appropriate can be addressed in the special permitting process; recommending B-1 with B-2 rights via special permit. He referenced discussions at the town meeting – feels property looks good is clean and indicated if and when the town gets rezoned – that's the perfect location. B-1 proposal will include the general store – which is commercial as well. Judy advised she wasn't in favor of it – noting when planning board voted for B-1 a few years ago were going to remove the buildings and have a protective buffer to protect the aquifer. Selectman Welch expressed concerns with special permitting authority being designated as the Planning Board suggesting the ZBA might be the more appropriate choice. Selectman Welch explained that in general the planning board 'plans' before the actual area takes hold. Once there is a developed parcel or area, the zoning board of appeals is the more appropriate board to address existing concerns. Mr. Basbanes advised the board that the language for the B-2 special permit came from Town Counsel & Town Engineer who put it together. Cheryl Mann stated that Town Counsel and Town Engineer did not work on the issue at all.

Selectman Alterisio asked what the resistance was to stepping up and looking at an overlay district – what is the resistance from carving out along that corridor – an overlay. Selectman Welch cautioned the overlay is more similar to a special permit for a series of parcels or region. If the area is in an R-1, the R-1 rules and constraints take precedents. The example given was the antique shops in the center of town. Both are operating on a special permit; this could easily go over as an overlay for an antiques dealer region as the R-1 area would not be noticeably changed. The current entities do not have excessive employee parking, noise, odor, lighting, customer parking issues, late hours, or signage and have had no complaints from neighbors. To have an R-1 and to overlay to a B1-B3 would be a major zoning undermine. Judy inquired whether anyone has looked into the septic

Minutes: Selectmen's Meeting – Monday, March 1, 2010

system, drainage, etc. noting when the 40B was projected for the property, there was going to be state of the art septic system installed. Discussion continued on whether those items would be automatically addressed pursuant with the special permit application. George advised this is not an accommodation to a specific individual – this is the perfect location for a business. Discussion continued on what should or shouldn't have been done and what was the best approach on what should be done for the property. Selectman Welch noted we have a very large area zoned for B-3 – has access for sewerage and water and a B2 operation could fit very well in there. Judy indicated if we wanted to zone this B-1 with 200' conservation restriction to protect the brook. Planning Board felt that it hasn't had a round of support from the Selectmen. Selectman Welch noted it's come up 4 times in the last 5 years for a zoning change vote at the Annual Town Meetings and the voters have voted against it and felt the elected Planning Board should be supporting the wish of the voters. When Wes asked if Rich has seen it, Judy advised that Rich came up with the scenario for the B-2 permit within a B-1. Selectman Welch questioned why one would not just make it a B2. Discussion continued on what the Planning Board does with Mr. Basbanes advising they have in the past on the request of the Board of Selectmen taken on special tasks they'll do it. If the Board of Selectmen were to give them the task to take on plans for rezoning Route 113, they'd be happy to do it. George noted there's no restriction that the town has to have only one B-1 area and Selectman Alterisio noted that if this goes through, he's aware of at least 4 others who are prepared to move forward with their own petitions for rezoning their property to B-1 as well. Selectman Alterisio noted that he'd been to Planning Board on a number of occasions to talk about this specific issue but the way that's being proposed isn't attractive to the Board of Selectmen – came forward despite the board's position. Judy isn't sure what the Board's opposition is to B-1 being there especially with 200' of waterfront protection. Selectman Alterisio advised that the primary concern is that level of application in that particular area, being an environmentally sensitive area with no strings attached. Selectman Welch advised that gas station can't be B-1 by definition, would have to be a B-2. Judy doesn't know how we got gas station to be B-2. George advised all aware of environmental protection – all can do is to point out that 60-70 years ago, there was a very active gas station there with no problems. Selectman Alterisio noted that 50-60 years ago we had Charlie George's landfill with no problem – until the problems showed up in recent years.

Minutes: Selectmen's Meeting – Monday, March 1, 2010

2nd thing that Selectman Alterisio is concerned about is whether we're opening up Pandora's box. George advised that's really not a problem, so you'd just say, it doesn't fit. Selectman Welch stated, we and the voters are saying that now but you are not listening. Planning Board would via their special permit – sets conditions and would just say it doesn't fit. Selectman Welch reiterated this would be a ZBA task and not a planning board task.

Amendment to section 8 – inserting specific provisions for B-2 within a B-1 district: Planning Board members indicated when a permit application is received they'd refer to town engineer for any environmental concerns, etc. and would design the permit accordingly. George Basbanes indicated he felt the select board was assuming that Planning Board would rubber stamp any application that comes before them. Judy referred to B-1 and allowable businesses and the new provisions that would allow for B-2 operations within the B-1. John Goldthwaite inquired what do we have to have in order to get this on the warrant – Planning Board has scheduled the hearing. Selectman Welch stated the selectmen could not knowingly add something illegal to the warrants. Discussion continued with George Basbanes noting that spot zoning isn't really illegal – it could be an opportunity for a court to knock it out as spot zoned, but the Town of Dunstable would just have to accept the consequences. If the town goes ahead and approves an illegal thing, it will go by the Attorney General and the town will live with what it puts in there. Cheryl stated the selectmen put the rezoning on the warrants last year and also before that for Bob Nelson. Selectman Welch replied those were posted to the warrant because they both came in on petition and therefore, by law had to be posted. Discussion continued on the merits and defects of each of the proposals at Town Meeting. Judy would like to see it B-1 with protective provisions – she notes that there were a number of properties, it wouldn't be spot zoning. She's open for B-1 with a lot of restrictions.

On another subject, Judy advised she has a bunch of stuff in her barn cellar from when we emptied Town Hall that needs to go to junk and would like Highway to come and take the stuff out.

Wes noted that he's been visited by John Cover pursuant to the outstanding payment for the railing installed at 91 River Street. The board briefly discussed the conditions relative to the transfer request from Fincom. Wes has advised Mr. Cover to charge the town interest on the money due. The board was not in agreement, and deferred the issue to FinCom and the Building Inspector.

Minutes: Selectmen's Meeting – Monday, March 1, 2010

Discussion continued on the zoning amendments presented and Selectman Welch noted that town counsel and engineer worked diligently to put these together with no authority to do so. Selectman Alterisio advised that his concern was that there are a lot of people working to accommodate a bad situation which has existed for a number of years, thinking this is the best way to address a problem, and although indicated otherwise, residential use could continue there.

Chairman Goss advised he won't be here the next two Mondays, Board will go to the hearing and listen to the proposals being put forth but Selectman Welch noted he's not of the mind set to go along with spot zoning just because it keeps coming up. Selectman Alterisio noted that two times in a row it's been put there by the applicant – the only reason it's coming up again this soon is because they changed it enough to make it look different. If the petitioners can't do it again for two years, does the Planning Board bringing it forward make it right?

Wes suggested having Mark in here on the 22nd – Wes wants to hear it from Mark that it's unlawful. Selectman Welch stated that Mark made it clear to the ATM last year that it was unlawful and again 4 weeks ago at the ZBA hearing on the property. Discussion continued on whether it made things more complicated by including the Dunstable General & gas station into the B-1 zoning and the effects of opening this whole can of worms again. Wes noted he still thinks we should get Mark to come in again and give us his input – and town counsel to address whether the Selectmen have the authority to refuse to include on the annual town warrant. Wes wants to be sure that if we say nay, we're covered. If he's going to say no, he wants to be sure the Board is within their rights to refuse to put it on the warrant. Selectman Welch asked where do we want to stop it, we've gone over every one of these things and yet it's back. Selectman Alterisio advised he'd had a conversation with Rich as recently as this afternoon and he didn't get the impression that Rich was as involved as it's being reported.

Selectman Alterisio to accept minutes of 1/25, 2/1 & 2/8 as written, motion was seconded and voted with Selectman Welch & Alterisio in favor. Chairman Goss seconded & approved the minutes for 2/16. Selectman Alterisio referred to reported outstanding minutes and secretary was asked to pull 5/18, 6/1/ & 10/5 for inclusion in our next meeting packet.

Minutes: Selectmen's Meeting – Monday, March 1, 2010

Chief Rich reported on activity in Dracut where they're approaching Patriot requesting payment for their service to the town. Chief Rich suggested looking into other options such as with contracting ambulance service with the Town of Pepperell as we'd done in the past. Selectman Alterisio noted he advised he wasn't interested at this point pursuing contract options for \$100K with Pepperell. Board discussed the concerns relative to volunteers for Fire Department, etc. and lack of response. Selectman Alterisio noted the problem is due to changes in communities. Discussion continued on the changes in the fire department – volunteer to call and the effect

The board voted to appoint Gerald Durkin to Historical Commission to replace Ronald Wood who has submitted resignation from that position.

Use of the Town Hall for the Babcock scholarship reception May 6th 6-9 approved. The board also voted to accept donations as presented to the Conservation Commission toward the Carter property purchase. Selectman Alterisio provided motion to accept, motion was seconded and voted unanimously to accept those donations itemized by Conservation.

Selectman Welch reported on the grant from the state for the Swallow Union windows, insulation, etc. Selectman Alterisio wanted to be sure that 47584.00 plus up to \$20K from CPA; S.U. weather stripping around 5-6K. Ball park is 70-90K (up to 20K from CPA). Selectman Alterisio just wants to make sure that Historical Commission has revisited in their meeting at Prescott and was 100% buy-in from Historical. Selectmen Welch suggested letter of thanks for their help & support to Gary Hoglund, Steve Burns & Dave Mitchell; BOS & Historical Commission to sign.

Selectman Welch noted his disappointment with the statements made on budget from Gov. Patrick – when they flat out lie. He noted there were rumors that school district was going to cut maintenance budget to zero and leave the towns to come up with the funds separate via override. At Saturday's meeting all was included but they've cut their budget down some more but would still need to hold an override. Selectman Welch noted he'd taken a copy of the agreement with him to the meeting but the proposal didn't come up.

In the mail, Selectman Welch drew attention to LUST grant for underground tanks and suggested investigation into converting Swallow Union's heating system to gas. He cautioned that at some

Minutes: Selectmen's Meeting – Monday, March 1, 2010

point soon we'll be expected to take on those buildings. He suggested the use of the Union building for district offices. Selectman Alterisio noted prior investigation into the optional uses for the building.

The board noted the copies of correspondence to BORC re: McGovern wall and briefly discussed the zoning proposals and the support Planning Board. Zoning Review committee will be at hearing and at Town Meeting with their comments.

Meeting adjourned at 8:20PM after proper motions and vote.

Respectfully submitted,

Danice N. Palumbo,
Board Secretary

