



Town of Duxbury TOWN CLERK  
Massachusetts 10 OCT 25 AM 10:48  
Planning Board DUXBURY, MASS.

**Minutes 06/14/10**

The Planning Board met at Town Hall, Small Conference Room, on Monday, June 14, 2010 at 7:00 PM.

Present: Amy MacNab, Chairman; George Wadsworth, Vice-Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, Josh Cutler.

Absent: Brendan Halligan and Harold Moody.

Staff: Thomas Broadrick, Planning Director; and Diane Grant, Administrative Assistant.

Ms. MacNab called the meeting to order at 7:04PM.

**OPEN FORUM**

There were no items brought forward for Open Forum.

**DISCUSSION REGARDING POTENTIAL MODIFICATION OF ADMINISTRATIVE SITE PLAN REVIEW FOR 104 TREMONT STREET / WIEMEYER RE: PARKING**

Dr. Wiemeyer was not present as scheduled so the Board did not discuss the proposal.

**INITIAL PUBLIC HEARING, DEFINITIVE SUBDIVISION MODIFICATION: FREEMAN FARMS, OFF ELM STREET / ELM STREET REALTY TRUST**

Ms. MacNab opened the public hearing at 7:05 PM. Present for the discussion were the applicant's representatives: Mr. Mark Casey of South Shore Survey, Atty. Jay Norris, and Mr. John Moon. Homeowners from Freeman Farms were also in attendance. Also present was the town consulting engineer, Mr. Walter Amory of Amory Engineers. Ms. Ladd Fiorini read the public hearing notice and correspondence list into the public record:

- Definitive subdivision modification application and plans submitted on 03/15/10
- Development Review Team minutes of 04/27/10
- Letter from Amory Engineers dated 05/04/10 re: peer review
- Public hearing notice published in the *Duxbury Clipper* on 05/26/10 and 06/02/10
- Letter from G. Wadsworth dated 05/27/10 re: no conflict of interest notification
- Letter from J. Shea dated 06/04/10 re: Highway Safety recommendation.

Mr. Wadsworth disclosed that he resides on Elm Street across the street from the subdivision. During the original subdivision approval process he had recused himself. At this point in time he is interested in participating unless his colleagues or the applicants have any issue. Board members and Mr. Casey had no objection to Mr. Wadsworth's participation.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

---

The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

TOWN CLERK

Ms. MacNab disclosed that her husband rents space from Mr. Cushing, the trustee of Elm Street Realty, and also expressed a desire to participate unless there were any objections. Board members and Mr. Casey had no opposition to Ms. MacNab's participation.

TO OCT 25 AM 10:18  
DUXBURY, MASS.

The applicants propose to modify their 17-lot Definitive Subdivision approved in 1995 and modified in 1998 in order to remove required sidewalks and add streetlights. Mr. Casey showed the Board where the streetlights would be proposed and where the sidewalks have been approved.

Mr. Mark Keating of 36 Ice House Road made a presentation on behalf of the current homeowners. He stated that he was representing six families with fourteen children. Their concern is safety and security. Freeman Farms is not a throughway and it is very dark at night without streetlights. There have been many incidents over the past few years of cars parked at night and vandalism of homes. When the homeowners spoke to the developer about this issue the solution they came up with was to eliminate the sidewalks and add lights to the neighborhood. The cost would be the same, and currently there are no sidewalks adjacent to the subdivision to connect, so sidewalks would not enhance safety. They prefer streetlights.

Mr. Keating stated that Rogers Way, a neighborhood adjacent to Freeman Farms, originally was supposed to have sidewalks but the requirement was dropped, setting a precedent for no sidewalks. The cost of sidewalk maintenance is also a concern. He noted that although streetlights do have a cost, solar-powered lights would minimize the energy cost. He stated that cost should not be a factor that drives the decision.

Ms. MacNab explained that the Rogers Way subdivision originally included sidewalks but the requirement was removed as a result of negotiations through litigation. She stated that when the Freeman Farms subdivision is built out it will be densely populated with many families and sidewalks will be utilized.

Mr. Keating referenced a letter from the Highway Safety Committee dated June 4, 2010 which recommends that sidewalks should remain and streetlights should not be installed, objecting that no one had consulted the homeowners for any input regarding safety. Mr. Wadsworth noted that Subdivision Rules and Regulations require sidewalks. The applicant accepted sidewalks in order to obtain subdivision approval.

Mr. Cutler asked if the homeowners have a preference over removing sidewalks or adding streetlights. Mr. Keating stated that they want both. Mr. Cutler suggested that the homeowners consider adding their own lamp lights. Mr. Keating responded that some of the neighbors have done this but it has not deterred cars from driving on their lawns in the middle of the night.

Mr. Paul Szachta of 70 Cushing Drive noted that teenagers are using the end of the cul-de-sac as a drinking hangout. Although he does not have a lamp at the end of the driveway he does have motion sensor floodlights on the house that frequently turn on at night.

Mr. Mike Schultz of 26 Ice House Road stated that children ride their bicycles through the neighborhood and it is a hilly area. Sidewalks may not be safe. Ms. MacNab stated that the Board went through great lengths to ensure that the sidewalks and roadway would be designed properly to prevent drainage runoff onto sidewalks or streets and she believes it was engineered correctly. Mr. Wadsworth stated that the road is fairly flat.

Ms. Ladd Fiorini stated that she believes the homeowners' issue is one of policing. She expressed concern that streetlights would not fit in with the town's goals to work toward becoming a "green" community. She noted an article in today's *Boston Globe* reporting that the Town of Concord is removing streetlights from areas that are less well-travelled. To add streetlights at Freeman Farms would be a reversal of that pattern. Ms. MacNab

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

---

The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

agreed, noting that at previous town meetings the concept has been introduced to turn off existing streetlights in order to save money.

Mr. Schultz noted that homeowners have researched solar streetlights. Ms. MacNab asked Mr. Amory if he had any experience as town consulting engineer with streetlights, and Mr. Amory responded that he did not. Mr. Broadrick noted that he saw some solar streetlights at a recent site visit at Mass Maritime Academy, and he was told that they are quite expensive, nearly \$30,000 each. The Department of Public Works tends to want streetlights at intersections only. Ms. MacNab agreed that most residents prefer a lack of streetlights in town.

Mr. Bear suggested that the situation is not an either/or scenario and recommended that the Board consider each request on its own merit rather than as a trade-off.

Mr. Amory addressed the request to remove sidewalks, noting that they provide safety for pedestrians. He noted that sidewalks on the currently approved plans are five feet in width when Subdivision Rules and Regulations require only 4.5 feet in width. Mr. Keating asked if sidewalks are so important for safety, why they were removed at Rogers Way. Ms. MacNab responded that the sidewalk removal at Rogers Way was not a Board decision. Each application is considered separately and there are no precedents. Mr. Keating noted that paving over grass for sidewalks is not "green."

Mr. Schultz asked who determines the placement of streetlights, and Mr. Broadrick replied that the applicant works with the Department of Public Works within the guidelines of the Subdivision Rules and Regulations. A Development Review Team of department heads also has input regarding placement and a major consideration is traffic and pedestrian safety.

Mr. Szachta suggested that the sidewalks across Lots 10 and 11 are completely useless and asked if the Board would consider removing at least this section of the sidewalk. Ms. MacNab provided some history about why sidewalks are required in Subdivision Rules and Regulations, and noted that only six of the potential seventeen lots have been built on so far. Future homeowners may have different preferences than the few who reside there now.

Mr. Denis Sovik of 45 Cushing Drive noted that escrow funds were put in place so that sidewalks would be installed eventually when the subdivision is complete. Mr. Wadsworth commented that he believed that the subdivision may not be completed for another twenty years. Atty. Norris requested to reconsider allowing Mr. Wadsworth's recusal, and Ms. MacNab noted that the applicants had already agreed to allow Mr. Wadsworth to participate and the determination has already been decided. Atty. Norris withdrew his objection.

Mr. Casey requested a ten-minute recess to consider the homeowners' suggestion to revise the modification to remove only sidewalks at Lots 10 and 11. Ms. MacNab granted the request and the public hearing was recessed at 8:03 PM.

At 8:16 PM the applicants returned and Ms. MacNab called the public hearing back to order. Mr. Casey asked for confirmation that his original request to eliminate sidewalks and add streetlights would not prevail, and Ms. MacNab polled each Board member, who indicated that they would not be amendable to the proposal.

Mr. Casey then requested to revise the modification in order to eliminate sidewalks at Lots 10 and 11 only. Mr. David Kelly of 65 Cushing Drive stated that he is in favor of removing sidewalks in front of Lot 13 (his property) as well. Mr. Bear responded that it would not be fair for the future owner of Lot 12, which has not been built yet. Mr. Broadrick noted that only the applicant can request a modification, and the homeowner is not an applicant. Mr. Szachta objected that it is not a fair way to address the request and Mr. Broadrick

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

responded that it is a procedural issue. Mr. Bear added that homeowners' comments will also be taken into consideration.

10 OCT 25 AM 10:49

Ms. Ladd Fiorini commented that she would prefer to visit the site to further consider the amended modification. Board members had no objection to continuing the public hearing.

DUXBURY, MASS.

**MOTION:** Mr. Cutler made a motion, and Mr. Bear provided a second, to approve an amendment to a Definitive Subdivision Modification for Freeman Farms, off Elm Street / Elm Street Realty Trust to remove only a requirement to eliminate sidewalks for Lots 10 and 11.

**DISCUSSION:** Ms. MacNab noted that the public hearing had not yet closed.

**WITHDRAWAL OF MOTION:** Mr. Cutler withdrew his motion, and Mr. Bear withdrew his second.

Ms. MacNab asked for public comment. Ms. Kay Foster of 134 Surplus Street noted that installation of sidewalks would mean more impervious coverage. She commented that there is no safety issue with the number of people walking and playing there.

Mr. Broadrick advised the Board to not close the public hearing if they want to go forward with a site visit.

**MOTION:** Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to continue the public hearing for Freeman Farms Definitive Subdivision Modification to July 12, 2010 at 7:10 PM, with revised plans due by June 28, 2010 and a decision deadline of July 30, 2010.

**VOTE:** The motion carried 4-1, with Mr. Cutler voting against.

Mr. Casey and Board members signed a mutual extension form.

### **CONTINUED PUBLIC HEARING, DEFINITIVE SUBDIVISION: CUSHING'S RETREAT, OFF OLDE PASTURE ROAD / ELM STREET REALTY TRUST**

Ms. MacNab opened the public hearing at 8:35PM. Representing the application were Mr. Mark Casey of South Shore Survey, Atty. Jay Norris, and Mr. John Moon. Ms. Ladd Fiorini read the correspondence list into the public record:

- Draft decision distributed to Board on 04/26/10
- Email from Dept. Chief West to South Shore Survey dated 04/21/10 (and submitted at PB meeting of 04/26/10) re: fire hydrant placement
- Mutual extension form to continue public hearing to 06/14/10, signed by Board and applicant on 04/26/10
- PB meeting minutes of 02/08/10, 03/08/10 and 04/26/10
- Emails between D. Grant and South Shore Survey dated 06/14/10 re: inquiries regarding 06/14/10 public hearing
- Draft decision dated 06/14/10.

Board members reviewed a draft decision that was distributed to them by staff. Mr. Casey noted that he was reviewing the decision for the first time. Mr. Broadrick noted that the decision incorporated comments from previous public hearings.

Mr. Casey submitted a letter from the Board of Health dated June 7, 2010 granting a one-year extension of a

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

TOWN CLERK

required septic system upgrade for 287 Summer Street, the original dwelling lot, to May 15, 2011. He also submitted soil logs as requested at a previous meeting. Mr. Broadrick noted that the town consulting engineer, Mr. David Glenn of Fay, Spofford & Thorndike, will need to review those submissions.

10 OCT 25 AM 10:49  
DUXBURY, MASS.

Mr. Casey was reminded that he still needs to update plans to remove the words "weed and pest control" from subdivision plans.

Mr. Broadrick reported that he had confirmed with Mr. Peter Mackin, Water Superintendent, through email today that the required water main minimum diameter is eight inches. The existing water main starts at eight inches on Olde Pasture Road at Chandler Street and immediately reduces down to six inches for the remainder of Olde Pasture Road. However, Mr. Mackin added that he believes it is unreasonable to expect the applicant to replace the entire Olde Pasture water main for a two-lot subdivision.

Mr. Wadsworth requested staff to confirm with the Fire Chief that the fire flow is adequate. Mr. Broadrick noted that a letter has been submitted by the Deputy Fire Chief relative to the placement of a proposed fire hydrant, and he will confirm the fire flow as well.

Board members continued reviewing the draft decision. Mr. Casey objected to a Homeowner's Association but eventually agreed to create one. Mr. Casey also objected to installing property bounds, stating that it should be the homeowner's decision, but after brief discussion he agreed to install bounds on the four corners of the lot.

**MOTION:** Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to continue the public hearing for Cushing's Retreat Definitive Subdivision to July 12, 2010 at 7:15 PM, with a decision deadline of July 30, 2010.

**DISCUSSION:** Mr. Ben LaFrance of 34 Olde Pasture Road requested that existing scrub brush be replaced with landscaping vegetation at the location where the proposed driveway is to be constructed, as a visual buffer at the end of the cul-de-sac. Mr. Moon agreed to work with the Planning Director on this. Mr. LaFrance also noted that the proposed water line to the new lot is outside the street but within a right-of-way and may need to be extended through a neighbor's driveway. Mr. Moon agreed to restore all property back to its original satisfactory condition.

**VOTE:** The motion carried unanimously, 5-0.

Mr. Casey and Board members signed a mutual extension form.

**ZONING BYLAW STUDY SUBCOMMITTEE INITIAL SET UP (CONTINUED FROM MAY 24, 2010)**

Mr. Broadrick, who along with other Board members had attended a Zoning Board of Appeals (ZBA) meeting on June 10, 2010, reported that no ZBA member present had expressed interest in participating on this subcommittee. He noted that Ms. Sara Wilson and Mr. James Lampert, both former ZBA members, are interested in serving. Mr. Cutler recommended that Mr. Lampert be asked to serve. Ms. MacNab confirmed that she would serve on the subcommittee. Mr. Bear declined, noting that the Zoning Bylaws are clear and enforcement is needed instead.

Mr. Scott Casagrande of 500 Washington Street offered to serve, noting that he could bring a fresh perspective regarding the process of how permits are being handled currently. Mr. Cutler asked if he had an issue regarding this topic and Mr. Casagrande responded that actions being taken on his property are driven by the

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

TOWN CLERK

Planning Board. Ms. MacNab explained that the Board is simply upholding the Zoning Bylaws. She explained that the Town Manager, Mr. Richard MacDonald, has requested a subcommittee to review current Zoning Bylaws and to craft proposed revisions and educate the public through an expected two-year process. Mr. Bear noted that it is a working group rather than a sub-committee and will bring recommendations back to the Board for a potential Annual Town Meeting article.

## OTHER BUSINESS

52 Sunset Road: Mr. Bear noted that a Zoning Board of Appeals (ZBA) public hearing for the Planning Board's appeal of a building permit for this property was continued to July 22, 2010 because the property owners had not been notified despite the fact that the property owners and their attorney were present.

At a later point during the meeting, Board members discussed the merits of proceeding with the appeal since it appears that the project has been built according to the latest set of plans. Ms. Kay Foster of 134 Surplus Street noted that the building permit as initially presented should have been denied by the Building Inspector and then appealed to the ZBA where a public hearing would have been scheduled to allow the homeowner and abutters to participate.

Mr. Scott Casagrande of 500 Washington Street asked if the Board's issue is with the potential ability to rent a guest house or the mere fact of them. Ms. MacNab responded that the Zoning Bylaws do not allow second dwellings on a lot. Some that exist in the town were built prior to zoning but at this time only one dwelling is allowed per lot. Ms. Foster added that the issue affects intensity of demand for public services.

Indemnification: Ms. MacNab reported that a lawsuit has been filed by Atty. John McCluskey against Mr. Dennis Murphy, chairman of the Zoning Board of Appeals, related to a comprehensive permit for Merry Village on Lincoln Street. The lawsuit alleges defamation. Mr. Murphy immediately requested indemnification from the Town Manager but his request has gone unanswered to date. He has been advised that the question was referred to Town Counsel, who in turn referred the request to the insurance carrier. Members of the ZBA have also requested indemnification with only an acknowledgment from a Selectman but no confirmation. Mr. Gene Orosz of the ZBA has resigned due to the stress of the situation.

Ms. MacNab expressed concern as chairman of the Planning Board that all board members expect indemnification as long as they are acting within the boundaries of the board's scope and the law. The ZBA is considering not moving forward with open applications because of the risk.

Mr. Scott Casagrande of 500 Washington Street stated that his business insures towns and claims such as slander are often excluded from indemnification. He stated that the wording of the lawsuit is crucial. Mr. Wadsworth noted that it may take time for the insurance company to respond.

Mr. Broadrick noted that the Planning Board members need to feel comfortable that Town Counsel will support their decisions. Ms. Ladd Fiorini expressed concern over Atty. Driscoll's raising her name negatively at a ZBA hearing last week because as Clerk she had signed the appeal of a building permit. She stated that she is uncomfortable signing Board documents at this time because of potential damage to her home and family. She expressed dismay over the lack of indemnification.

Mr. Bear suggested that the Board could draft a letter to the Town Manager confirming that the Town would indemnify the Board if a decision were to be appealed. Ms. MacNab agreed that some type of response is needed. She expressed concern that as a special municipal employee, Mr. Murphy is being left out.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

Mr. Cutler recommended drafting a letter reiterating the Board's support for indemnification of board members. Ms. Ladd Fiorini suggested that the Board should consider not rendering decisions until the matter is resolved. Ms. MacNab noted that the Board needs a comfort level in support of their work for the Town's best interest. Mr. Cutler recommended that the letter should be strongly worded and mention the Board's disappointment at the lack of the Town's response to Mr. Murphy's request. Ms. MacNab added that the letter should include wording that the Board hopes that the matter is resolved by its next meeting date. She urged that the Board needs solidarity because this could happen to anyone. Ms. Ladd Fiorini added that every board in town is affected. She suggested that it should be expressed that in the theme of solidarity, the Board requests that the ZBA chairman be given immediate indemnification. It was agreed that a letter would be sent to Mr. Richard MacDonald, Town Manager, with copies to the Board of Selectmen and Town Counsel.

Release of Escrow Funds for 126 Tremont Street / Newcomb: Board members reviewed a letter dated May 20, 2010 from the applicant, who has withdrawn his application, requesting release of escrow funds.

**MOTION**: Mr. Cutler made a motion, and Ms. Ladd Fiorini provided a second, to release any remaining escrow funds for Administrative Site Plan Review of 126 Tremont Street / Newcomb Farms Dairy.

**VOTE**: The motion carried unanimously, 5-0.

21 River Lane: Board members discussed their concerns and Ms. MacNab directed Mr. Broadrick to draft an appeal for noncompliance with zoning enforcement as soon as possible. Mr. Broadrick noted that the Board is not charged a fee to file an appeal. Ms MacNab suggested that Ms. Nancy Landgren, an abutter who is appealing the permit, should be notified of the Board's appeal.

Engineering Invoices:

**MOTION**: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to pay Horsley Witten invoice #28129 dated April 30, 2010 in the amount of \$820.00 for services related to MacFarlane Farms.

**VOTE**: The motion carried unanimously, 5-0.

**MOTION**: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to pay Amoroso Engineers invoice #13132A dated June 2, 2010 in the amount of \$635.00 for services related to 30 Railroad Avenue / Clifford.

**VOTE**: The motion carried unanimously, 5-0.

Meeting Cancellation: Board members agreed to cancel their next meeting of June 28, 2010 due to lack of agenda items.

Meeting Minutes: Because of the late hour Board members deferred approval of meeting minutes for May 10, 2010 and May 24, 2010.

**ADJOURNMENT**

The Planning Board meeting adjourned at 10:53 PM. The next meeting of the Planning Board will take place on Monday, July 12, 2010 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

TOWN CLERK  
10 OCT 25 AM 10:49  
DUXBURY, MASS.