

Approved 08/25/14



Town of Duxbury Massachusetts Planning Board

TOWN CLERK
14 AUG 27 AM 11:20
DUXBURY, MASS.

Minutes 06/23/14

The Planning Board met on Monday, June 23, 2014 at 7:00 PM at the Duxbury Town Hall, 878 Tremont Street, Small Conference Room.

Present: George Wadsworth, Chairman; Brian Glennon, Vice Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, and Scott Casagrande.

Absent: Jennifer Turcotte and David Uitti.

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

Mr. Wadsworth called the meeting to order at 7:02 PM.

OPEN FORUM

Economic Advisory Committee (EAC): Mr. Bear provided an update on the Hall's Corner study that the Old Colony Planning Council is doing with the EAC. He stated that the Hall's Corner surveys have been collected from residents and business owners. During the week of July 11, 2014 there will be a second traffic study at Hall's Corner. The EAC will be providing an interim report on the Hall's Corner Study to the Planning Board on July 14, 2014.

Open Space Committee: Mr. Glennon reported that Mr. Paul Costello has resigned from the Open Space Committee. The new chairperson is Ms. Kathy Cross. The Open Space & Recreation Plan is scheduled to be updated this fall.

Zoning Bylaw Review Committee: Mr. Casagrande reported that the ZBRC chair, Ms. Judith Barrett, is requesting feedback from the Planning Board on the potential amendment of the Residential Conservation Cluster bylaw. He stated that the ZBRC has discovered that the Inclusionary Housing bylaw appears to be in conflict with the Subdivision Rules & Regulations also. Mr. Broadrick stated that it is not clear from recent court cases whether mandatory inclusionary housing provisions are an issue or not.

Mr. Wadsworth, also a member of the ZBRC, noted that Ms. Barrett has suggested a potential Zoning Bylaw amendment so that all commercial development applications would be approved by the Planning Board. Currently the Zoning Board of Appeals (ZBA) is the special permit granting authority (SPGA) for commercial uses and the Planning Board approves the Administrative Site Plan Review (ASPR). Mr. Wadsworth stated that it may streamline the process for commercial developers to provide "one-stop shopping" by allowing the Planning Board to become the SPGA for commercial uses and ASPR.

Mr. Casagrande added that it has been suggested at ZBRC meetings that the Planning Board could be the SPGA for Planned Developments as well.

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Open Space Plan: Ms. Ladd Fiorini reported that the Community Preservation Committee (CPC) would like the Planning Board to review the comprehensive goals outlined in the 2005 Open Space Plan to get comments for the 2013 update. She submitted the 2005 Goals & Objectives to staff for inclusion in the July Planning Board packet. Comments are due in September.

Planning Director Report: Mr. Broadrick reported that he had attended three conferences during the past two weeks:

- Cape Cod Coastal Conference on developing a Cape Cod wastewater plan and adaptation planning for sea level rise
- Climate Change Conference at MIT which had experts from around the world discussing cutting edge practices for adaptation planning to mitigate the effects of climate change
- FEMA / MEMA Workshop at the Framingham FEMA bunker on hazard mitigation plans.

Mr. Broadrick noted that he is working with the Metropolitan Area Planning Council (MAPC) on a Hazard Mitigation Plan for the Town of Duxbury.

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ZBA REFERRAL, COMPREHENSIVE PERMIT (CONTINUED): 56 & 70 BOW STREET / MCLEAN'S WAY LLC (REINHALTER)

Present for the discussion were approximately nine members of the public. Board members reviewed traffic studies that had been submitted to the Zoning Board of Appeals (ZBA), along with peer review reports. Mr. Wadsworth stated that he hopes to finalize the Planning Board's recommendations on traffic issues in order to submit a recommendation update to the ZBA.

Mr. Casagrande noted that the applicant's traffic report dated June 13, 2014 by Vanasse & Associates in Andover did not appear to indicate a significant increase in traffic with the proposed development. He stated that it is hard to believe that adding 24 new units would only provide a minimal impact. He noted that the traffic report assumes one vehicle per household departing in the morning and afternoon. Mr. Wadsworth stated that he would expect two household members to be leaving for work each day. Mr. Broadrick noted that in a Supplemental Traffic Impact Assessment submitted by Vanasse to the ZBA on June 17, 2014, Vanasse again concluded that the project "will not result in a material change in levels of service or vehicle queuing."

Mr. Broadrick pointed out the traffic analysis methodology for determining the predicted traffic flow, noting that it still does not sound like what he would anticipate. Mr. Glennon agreed, noting that although expert reports are generally helpful in understanding complex issues, in this case the numbers reported in the Vanasse study do not appear to make intuitive sense. He noted that Vanasse proposes a double yellow line on Bow Street, which is generally used on heavy traffic roads such as Tremont Street.

Mr. Broadrick noted that McMahon Transportation Engineers in Taunton did the peer review of the traffic study. In their letter dated May 19, 2014, McMahon questioned the trip distribution data and also questioned the peak hours. They also commented that sight distances are not being met on the current plans. Mr. Wadsworth noted that the intersection of Bow Street and Tremont Street is already difficult.

Mr. Glennon noted that the McMahon letter indicates that sight distance from Bow Street onto Tremont Street is a significant issue, stating that conclusion makes sense. Mr. Bear pointed out that Vanasse did not address the line of sight in its supplemental review and also did not mention that sight line issues are due to topography, not vegetation. Mr. Glennon suggested repeating McMahon's observation that "sight distance was obstructed by the horizontal geometry of Bow Street" in the Planning Board's updated recommendations to the ZBA.

Mr. Bear stated that the plan for moving the stop sign from Bowsprit to Bow Street is not clear. Mr. Broadrick stated that the applicants will work with the Highway Safety Committee on relocating the stop sign.

Mr. Casagrande noted that McMahon’s letter states that the access driveway was shown to have sufficient stopping sight distance along Bow Street in both directions for speeds of 45 miles per hour. He questioned if the actual speed limit on Bow Street is that high as it is a side street.

Mr. Wadsworth noted that in a letter dated May 20, 2014 by the town’s technical consulting engineer, Merrill Associates of Hanover, a general comment was that the radius of the common driveway in the development for lots 13, 14 and 15 is “tight” and may not provide suitable access for emergency vehicles. Mr. Wadsworth suggested that this recommendation should be part of the Planning Board’s updated memorandum to the ZBA.

Mr. Wadsworth stated that reducing density could be helpful in eliminating the radius issue. Ms. Ladd Fiorini asked if McMahon will be providing another peer traffic review, and Mr. Broadrick responded that we do not know. Mr. Bear stated that overall the traffic in that area is a problem and adding even one more vehicle adds to the problem. Mr. Broadrick noted that the ZBA will be addressing traffic at its June 26 meeting.

Ms. Ladd Fiorini noted that pedestrian safety was not addressed completely in the Vanasse traffic study. Mr. Broadrick noted that in a letter dated June 10, 2014 from Mr. Ezra Glenn of Somerville, another technical peer review consultant to the ZBA, recommendations were made regarding the proportional cost of sidewalks for pedestrian safety. Ms. Ladd Fiorini suggested that the Planning Board emphasize the need for traffic calming and pedestrian safety in its recommendation update to the ZBA.

Mr. Wadsworth invited public comment.

Ms. Linda Moriarty of 52 Bow Street stated that she was happy to see the Planning Board address the serious issue of traffic on Bow Street because it is a crucial issue for safety of everyone including children. She noted that although Bow Street is a narrow road for installing sidewalks, she believes they are necessary for pedestrian safety. Mr. Wadsworth suggested that pedestrian crosswalks should be added at the corner of West Street and Tremont Street.

Mr. George Reinhart of 110 Bow Street stated that the traffic study claim that traffic will not significantly increase is “hard to buy” considering that there are eleven homes on Bow Street now and 24 new homes are proposed with the comprehensive permit application.

Mr. Brian Moriarty of 52 Bow Street asked if a mirror could be installed on a pole on Tremont Street across from Bow Street to help see incoming traffic heading south on Tremont Street. Mr. Broadrick responded that the Town of Duxbury would not do that due to the liability factor.

Ms. Moriarty asked about the stormwater review, and Mr. Wadsworth responded that it is very technical but everything appears to be in order. Mr. Bear stated that the ZBA needs to consider the amount of cut and fill, noting that the Planning Board has already advised the ZBA of this issue. Mr. Wadsworth added that reducing the number of structures in the development would reduce the stormwater impact.

MOTION: Mr. Glennon made a motion, and Mr. Casagrande provided a second, to submit a memorandum update to the Zoning Board of Appeals with the recommendations listed above regarding the McLean’s Way comprehensive permit application.

VOTE: The motion carried unanimously, 5-0.

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DISCUSSION OF POTENTIAL GRID SUBDIVISION ALTERNATIVE FOR BOW STREET

Mr. Wadsworth asked Mr. Casagrande to speak to this topic because he had requested it. Mr. Casagrande stated that several residents have asked him to get feedback from the Planning Board on a potential five-lot grid subdivision alternative to the proposed 24-unit comprehensive permit on Bow Street. He stated that during the Residential Conservation Cluster (RCC)/Grid Subdivision review by the Planning Board in 2010, the roadway was originally placed on 56 Bow Street, a 1.22-acre lot, and subsequently the roadway was moved to the larger lot at 70 Bow Street.

Mr. Casagrande stated that it has been suggested to him that the subdivision of only the larger lot into five lots would not require an RCC determination because the lot size would be under ten acres. The proposal might be to re-build the dwelling on the smaller lot but keep it under separate ownership, then subdivide the larger parcel into five one-acre lots. Mr. Broadrick noted that the applicant could choose to have a subdivision application before the Planning Board concurrent with the comprehensive permit before the Zoning Board of Appeals (ZBA).

Mr. Bear asked if there were any implications of discussing this matter without an application before the Planning Board. He also asked if the Inclusionary Bylaw would be triggered with this potential subdivision application. Mr. Broadrick replied that the Inclusionary Bylaw kicks in with a subdivision of six or more lots. He also noted that he had advised the applicant, Dr. Emil Reinhalter, that this topic would be on the Planning Board agenda and Dr. Reinhalter had told him that he is interested to hear what the Planning Board has to say. He stated that it would be improper to discuss a subdivision outside of a public hearing but because there is no application before the Planning Board, it is not improper to discuss it conceptually.

Ms. Ladd Fiorini stated that she would think that Dr. Reinhalter would have considered this option already. Mr. Broadrick stated that if Dr. Reinhalter wanted to pursue a grid subdivision, he would need to submit a subdivision application before the Planning Board.

Mr. Bear stated that the positive aspects of the grid subdivision would be that the land disturbance would be much improved. The need to build on the slope would go away and construction costs would be greatly reduced. The only negative would be that no affordable housing would result.

Mr. Glennon noted that any property owner would be welcome to file a standard subdivision, noting that the density is similar to what the Planning Board approved in 2010. Ms. Ladd Fiorini agreed with Mr. Glennon's comments.

Ms. Betsy Page of 57 West Street asked if the 2.5 acres of land with Eastern box turtles would be available for subdivision. Mr. Wadsworth replied that the Planning Board cannot speak to any box turtle issue. Ms. Page noted that this issue came up during the Environmental Notification Form site visit.

Mr. Brian Moriarty of 52 Bow Street stated that he did not believe that Dr. Reinhalter was satisfied with the RCC determination, possibly because the income potential is higher with a 40B development.

Mr. Eric Pontiff of 125 Bow Street asked about the RCC bylaw, and Mr. Wadsworth explained it, noting that the Planning Board is coincidentally discussing the RCC bylaw as a separate agenda item later tonight.

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DISCUSSION OF COMPREHENSIVE PLAN UPDATE

Mr. Broadrick stated that when he and Mr. Wadsworth met with Town Manager, Mr. René Read, for Mr. Broadrick’s employee evaluation, they all agreed on a plan of action regarding the update to the 1999 Comprehensive Plan. Mr. Broadrick would begin the update of the 1999 Comprehensive Plan immediately with new data as needed for all sections using 2010 U.S. Census data, the 2014 Planned Production Plan, Annual Town Reports, and findings from research done by a student intern in 2009. No build-out analysis will be done, and no Open Space analysis will be done until the 2008 Open Space Plan is updated. No survey of town attitudes will be conducted.

If the update has not been completed by October 1, 2014, then the focus will be re-directed to prepare an article for Annual Town Meeting to hire a qualified planning consultant via the RFP process to complete a redefined set of tasks.

Mr. Broadrick pointed out that in a recent editorial in the *Duxbury Clipper* by columnist Will Zachmann, the population projections in the 1999 build-out analysis have been borne out. A complete build-out was predicted at 26,000 but no one expected that to happen. The 1999 build-out did expect a population of 15,000 between 2010 and 2012, and the current town population is approximately 15,000.

Mr. Casagrande stated that in 2012 he had submitted data to Mr. Broadrick and still recommends that the age brackets should be further broken down, especially in the 45-65 age bracket. Mr. Broadrick agreed that the age brackets could be adjusted.

Mr. Wadsworth stated that a consultant could cost between \$75-100,000. With plenty of demands on taxpayers already, this proposal may not be supported by residents.

Ms. Ladd Fiorini, who serves on the Community Preservation Committee (CPC), asked if a community survey would be done at some point. Mr. Broadrick suggested that the CPC could do its own survey.

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DISCUSSION OF POTENTIAL ZONING BYLAW AMENDMENTS FOR ANNUAL TOWN MEETING 2015: RESIDENTIAL CONSERVATION CLUSTER AND ADMINISTRATIVE SITE PLAN REVIEW

Residential Conservation Cluster Bylaw

Mr. Wadsworth reported that both the Residential Conservation Cluster (RCC) and Administrative Site Plan Review (ASPR) bylaws have been discussed at Zoning Bylaw Review Committee (ZBRC) meetings. He stated that the courts have held that RCC cannot be mandated. He stated that the ZBRC has asked if the Planning Board would agree to Town Counsel re-writing the RCC bylaw as part of its work as consultant to the ZBRC.

Mr. Wadsworth stated that the ZBRC proposes two options for developing land:

- RCC by-right with all the requirements laid out
- Standard subdivision by special permit.

Mr. Casagrande, who also serves on the ZBRC, noted that the Planning Board has also seen the RCC bylaw as an issue. He stated that rather than wait for the ZBRC formal recommendations, the Planning Board could go ahead and bring an amendment to Annual Town Meeting. He stated that the ZBRC would work with the consultant to formulate a bylaw that the Planning Board could sponsor.

Mr. Broadrick stated that he sees the issue with RCC from a different point of view than the ZBRC, namely that the bylaw makes a conservation cluster mandatory. He stated that the RCC bylaw was designed to provide open space around building lots on large tracts of land; however, the courts do not allow making the RCC mandatory. No one had tested the bylaw prior to Dr. Reinhalter’s filing on Bow Street. He stated that the RCC

bylaw is not an inherently flawed bylaw other than the mandatory requirement. Mr. Broadrick stated that with Fisher Ridge on Summer Street, the Planning Board told the applicant that he was required to develop the property as a residential conservation cluster. All the land that surrounds that development is already protected as conservation land, so the RCC open space provides an additional buffer around the conservation land. He stated that giving the Planning Board the choice between RCC and grid subdivision would address the issue. The ZBRC would be making the RCC by-right and the grid subdivision by special permit. Mr. Casagrande noted that the ZBRC approach to making the RCC by-right would provide an incentive for developers to choose that option, possibly with more units allowed.

Mr. Wadsworth stated that changing the current bylaw from "shall" to "may" might make the RCC obsolete. Mr. Casagrande agreed, noting that if the idea behind it was to get more lots on less land, he has not seen that happen with the two applications the Planning Board has seen. Ms. Ladd Fiorini stated that she would like to see an incentive for applicants to choose the RCC option. She stated that she has lived in different areas in Duxbury and now she lives in a cluster development and it works. She stated that the RCC is a great idea, and with the reduction in the Community Preservation Act surcharge there is currently not a lot of funding available for the town to purchase open space.

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Mr. Broadrick suggested that the Planning Board consider removing the mandatory RCC requirement for now and then review the bylaw overall in the future. Mr. Wadsworth stated that Ms. Judith Barrett, chairman of the ZBRC, would like the entire bylaw addressed right away. Mr. Broadrick noted that it is not the ZBRC's call; it is the Planning Board's. He noted that in this instance the ZBRC appears to be working on policy, which is outside its scope of work.

Mr. Glennon stated that he would prefer for now to change the "shall" to "may." He said that he understands that the developer may choose not to do a cluster. He stated that he would be inclined to make the RCC optional and find out if developers choose the RCC or not and how town residents respond.

Ms. Ladd Fiorini stated that 2003 Annual Town Meeting voters felt that it was important to maintain as much open space as possible, and she does not see any change in attitude. She stated that simply changing one word may give developers a way out of developing an RCC. She stated that if the Planning Board has an opportunity to provide an incentive they should encourage the RCC in order to stay within the spirit of Town Meeting.

Mr. Wadsworth stated that even though Town Counsel would be writing the bylaw, it would come through the Planning Board. He noted that when the RCC bylaw was originally written, it was thought that the RCC would lower costs by requiring shorter roads and smaller lots with less grading.

Mr. Bear stated that the Planning Board must make the one-word change from "shall" to "may." Beyond that, the Planning Board needs to decide whether cluster housing should be encouraged or not. The density may not change, depending on the nature of the land. He recommended that the Planning Board take some time to decide what should happen. For some properties the RCC option would make a tremendous difference in the developer's costs. Mr. Glennon asked which court case determined that RCC cannot be mandated, and staff offered to research it.

Ms. Ladd Fiorini asked if the ZBRC would be presenting a draft RCC bylaw, and Mr. Bear responded that it is not the mission of the ZBRC to present major re-working of Zoning Bylaws. Mr. Casagrande asked why not take advantage of the consultants? Mr. Bear stated that he believes that the RCC will offer a cost savings to developers. He stated that each piece of property has different sets of economic development standards.

Mr. Broadrick cautioned that if the RCC option was by-right, doing anything different from the bylaw would require a variance, so making RCC by-right would take away any type of discretion on the applicant's part. He

noted that Subdivision Rules & Regulations allow waivers, but Zoning Bylaws require a variance instead of a waiver.

Mr. Casagrande stated that if the Planning Board says to the ZBRC that only the one-word change is needed, then the ZBRC will review the RCC bylaw for consistency. He stated that it sounds like the Planning Board does not want to totally re-work the bylaw at this time. Mr. Glennon suggested the following comments to pass along to the ZBRC:

- The Planning Board will propose to convert the RCC bylaw from mandatory to optional.
- The Planning Board will look to the ZBRC for recommendations on what other changes are needed in the RCC criteria in order to provide consistency.
- The Planning Board will provide input regarding potential incentives that are used in other towns.

Administrative Site Plan Review Bylaw

Mr. Broadrick suggested that, from ZBRC recommendations regarding streamlining processes, it has been recommended that the Planning Board become the Special Permit Granting Authority (SPGA) for Administrative Site Plan Review (ASPR). Currently the Planning Board reviews ASPR applications and the applicant goes to the Zoning Board of Appeals (ZBA) for a use permit. Mr. Casagrande asked if Planned Development special permits would go through the Planning Board now, also. Mr. Bear commented that it makes sense to him to provide "one-stop shopping" because those applications address many issues the Planning Board already deals with, such as site work, parking, and drainage.

PLANNING BOARD FEE REVIEW

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to defer the "Planning Board Fee" topic on tonight's agenda to the next regularly scheduled Planning Board meeting.

VOTE: The motion carried unanimously, 5-0.

OTHER BUSINESS

Meeting Minutes:

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Casagrande provided a second, to approve meeting minutes of May 12, 2014 as amended and the meeting minutes of May 19, 2014 as written.

VOTE: The motion carried unanimously, 5-0.

Duxbury Estates: Board members reviewed a ZBA decision to amend this special permit. Mr. Glennon asked if the ZBA had endorsed what the Planning Board proposed, and Mr. Broadrick responded that they had. Mr. Broadrick stated that he has provided documentation reviewed by Town Counsel to the applicant for signing and recording.

ADJOURNMENT

The Planning Board meeting adjourned at 10:33 PM. The next Planning Board meeting will take place on Monday, July 14, 2014 at 7:00 PM at the Duxbury Town Hall.

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MATERIALS REVIEWED

ZBA Referral, Comprehensive Permit (Continued): 56 & 70 Bow Street / McLean's Way LLC

- PB memo to ZBA dated 05/13/14 re: interim comments
- Letter from McMahon Transportation to S. Lambiase dated 05/19/14 re: Traffic peer review
- Letter from Merrill Engineers to S. Lambiase dated 05/20/14 re: Drainage peer review
- "Update: McLean's Way 40B Review" from E. Glenn, Public Planning, Research & Implementation, Inc. dated 06/10/14
- Letter from Vanasse & Associates to S. Lambiase dated 06/13/14 re: Applicant's response to peer traffic review

Discussion of Potential Grid Subdivision Alternative for Bow Street

- Vision GIS map of 70 Bow Street

Discussion of Potential Zoning Bylaw Amendments for Annual Town Meeting 2015: Residential Conservation Cluster and Administrative Site Plan Review

- RCC ZBL Section 540.3 proposed amendment – Option A
- RCC ZBL Section 540.3 proposed amendment – Option B
- Harwich RCC bylaw
- ASPR ZBL Section 615 proposed amendments

Planning Board Fee Review

- Planning Board Fee Research, Selected Towns as of June 2014
- List of Potential Fee Hearings with notes from Duxbury and other towns

Other Business

- Meeting minutes of 05/12/14
- Meeting minutes of 05/19/14
- Planning Board Contact List dated 05/09/14
- ZBA decision: Duxbury Estates, Carriage Lane / Giacchetto
- ZBA decision: 143 Gurnet Road / Sheehan
- ZBA decision: 257 Gurnet Road / Deady
- ZBA decision: 321 King Caesar Road / Rachwalski
- ZBA decision: 500 Franklin Street / Webster-Walsh & Janousek
- ZBA decision: 341 King Caesar Road / Walkey
- ZBA decision: 0 River Lane / Lawson
- ZBA decision: 53 Ocean Road North / Norris
- "Managing Zoning Nonconformities" APA Quicknote
- Construction Cost Estimates for May 2014

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