



Town of Duxbury Massachusetts Planning Board

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Minutes 08/10/16

The Planning Board met on Wednesday, August 10, 2016 at 7:00 PM at the Duxbury Town Hall, Mural Room.

Present: Brian Glennon, Chairman; Scott Casagrande, Vice Chairman; John Bear, Jennifer Turcotte, David Uitti, and George Wadsworth.

Absent: Cynthia Ladd Fiorini, Clerk.

Staff: Valerie Massard, Planning Director; and Diane Grant, Administrative Assistant.

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

OPEN FORUM

Economic Advisory Committee: Mr. Bear reported that no bids were submitted for a consultant to make recommendations on implementation, zoning and design guidelines for the Hall's Corner business area. Staff from the Metropolitan Area Planning Council (MAPC), one of the town's regional planning agencies, will provide assistance.

ANR PLAN OF LAND: 69 & 105 SAINT GEORGE STREET / THORBAHN & COOK

The applicant, Atty. Brian Cook, had advised staff just prior to the meeting that he has not been able to contact the Thorbahns who travel often and therefore were unable to co-sign the ANR application. Atty. Cook had asked to continue the discussion to the next Planning Board meeting and had signed a mutual extension form.

Planning Board members signed the extension form to continue the discussion to August 24, 2016.

DISCUSSION: REVIEW OF PLANNING BOARD AND ZONING BYLAW REVIEW COMMITTEE JOINT MEETING ON AUGUST 2 AND OVERVIEW OF ANNUAL TOWN MEETING ZONING ARTICLES ANTICIPATED

Zoning Bylaw Review Committee / Planning Board Joint Meeting: Ms. Massard stated that the Planning Board is working with the Zoning Bylaw Review Committee (ZBRC) after Annual Town Meeting (ATM) 2016 feedback that there should be more dialogue on zoning articles. She stated that it was a good meeting and a good partnership. The Planning Board will be holding zoning workshops over the next two months in preparation for ATM 2017.

Mr. Glennon asked for Mr. Casagrande's comments. Mr. Casagrande, who serves as Vice-Chairman of the ZBRC, noted that the ZBRC consultants were present at the meeting. The purpose of the meeting was to help determine which ZBRC articles to move forward for ATM 2017. It was decided to move forward with the same three articles indefinitely postponed ATM 2016. The Article 500 (Inclusionary Housing) revisions will

be coordinated with amendments to the Residential Conservation Cluster (RCC) bylaw rather than presenting them separately like was done at ATM 2016.

Ms. Massard stated that she anticipates six articles to be brought forward by the ZBRC for ATM 2017:

- Aquifer Protection Overlay District
- Inclusionary Housing (conflict with case law)
- Residential Conservation Cluster
- Nonconforming Uses
- Administrative Site Plan Review / Special Permit (streamline into one combined process with Planning Board as granting authority)
- Definitions (remove repetitions).

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Mr. Casagrande stated that the ZBRC will continue to work with the consultants on other Zoning Bylaw changes.

Mr. Glennon clarified that it was not truly a joint meeting of the Planning Board and ZBRC because a quorum of the Planning Board was not present.

Mr. Bear asked if there is a flaw in the Administrative Site Plan Review (ASPR) / Special Permit process, and Mr. Casagrande responded that the process will be streamlined for the applicant because the Zoning Board of Appeals had questioned why the Planning Board cannot be the Special Permit Granting Authority for special permits reviewed concurrently with ASPR. Ms. Massard added that currently an applicant has to file with one board and then the applicant is subject to review by another board. If the same board is reviewing both the ASPR and special permit, then there is less risk of conflicting permits from two boards. Mr. Casagrande stated that another issue is that site plans are required for the special permit and they have not necessarily been reviewed by the Planning Board yet, so it is confusing to the applicant.

Overview of Annual Town Meeting 2017 Zoning Articles Anticipated: Mr. Glennon asked Ms. Massard to provide an overview of other articles anticipated for Annual Town Meeting 2017:

- Demolition Delay – similar to proposal at Annual Town Meeting 2016. Historical Commission is expected to attend a future Planning Board meeting to discuss prior to submitting final language for the warrant. Mr. Glennon noted that Ms. Massard has provided significant guidance to the Historical Commission.
- Battelle – Ms. Massard stated that she anticipates a citizen petition to be filed. She talked with the proponents this week.
- Dwellings per Lot – Ms. Massard stated that this is one of two articles to be brought forward by the Planning Board.
- Stormwater Management (see further discussion under “Zoning Workshop”).

Mr. Casagrande commented that there appears to be a large number of zoning articles, especially if Battelle is included.

ZONING WORKSHOP

Aquifer Protection Overlay District (APOD): Ms. Massard stated that the Town of Duxbury was forward thinking with early adoption of the APOD bylaw when it became eligible for protection. At this point the bylaw needs to be tightened up and the language needs to be updated. Horsley Witten, one of the Zoning Bylaw Review Committee’s (ZBRC) consultants, has prepared draft language for Planning Board feedback. The language is updated using today’s standards and knowledge.

Mr. Wadsworth noted that he serves on the ZRBC along with Mr. Casagrande and stated that he would like to provide some history because this is one of the most important Zoning Bylaws because it protects a large section of the Town of Duxbury. The group that later became Horsley Witten created the original APOD bylaw language. Mr. Wadsworth urged residents to review the proposed amendments and determine if they are more or less efficient and whether or not they are reducing protections. He stated that it is important to know the impact of these proposed changes. What should be allowed by right versus through the permitting process?

Ms. Massard noted that the state Department of Environmental Protection (DEP) also needs to review the proposed amendments. She stated that she had worked on similar changes in Plymouth and they also used Horsley Witten as a consultant. She noted that Zoning Workshop information will be posted on the town web site, and she is working with the Board of Selectmen's office to develop the site.

Mr. Bear referenced language in the proposed re-write about "hazardous materials as identified in MGL" noting that these will change over time. Ms. Massard stated that the local bylaw would carry over any changes that the state makes.

Mr. Bear stated that in general he saw some inconsistencies in the proposed re-write. He cautioned that when a specific list is used there is a risk of leaving something out. Also some people may not be familiar with some of the standards mean.

Mr. Casagrande stated that Mr. Nate Kelly of Horsely Witten wrote the proposed bylaw and it reflects changes that have taken place over time. He noted that some language is the same as the existing bylaw but just re-organized into different sections. So, for example, it may be appear that "dumping snow" has been removed but in reality it has simply moved to another section.

Ms. Massard stated that she will go into a more in-depth explanation at the next Zoning Workshop, and invited Planning Board members to submit comments and questions that Mr. Kelly can address. She recommended that the Planning Board consider making the bylaw more current.

Mr. Uitti noted that the proposed bylaw appears to introduce a lot of new standards and thresholds, asking what expert do we have to make sure that they are correct. Ms. Massard responded that the new standards and thresholds are based on DEP regulations and may help with clarity and consistency. For example, "household use" in the current bylaw could vary from household to household.

Mr. Uitti noted that a definition is not provided for "Hazardous Material or Waste, Household Quantity of," noting that the consultant commented that the definition was "pulled together over the course of several projects." He asked exactly where the information was coming from and if the Town of Duxbury has an expert that can confirm it.

Mr. Glennon questioned the quantity listed in the same definition of 660 gallons or less of heating oil, noting that the typical oil tank holds only 275 or so gallons. Ms. Turcotte stated that the reference is to oil not diesel fuel. Mr. Casagrande stated that the quantity may allow larger homes to have multiple tanks.

Mr. Glennon noted that later in the same section, "Very Small Quantity Generator" is defined as producing "less than 27 gallons (100 kilograms) a month of hazardous waste," questioning how gallons are converted to kilograms. Ms. Massard agreed that it is unclear whether the reference is to volume or weight.

Mr. Glennon asked about a reference to "WRPD" in Section 406.10 of the proposed bylaw, asking if the reference should be to the "APOD" instead. If not, where is "WRPD" defined?

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Mr. Bear asked about a limit of nitrogen concentration as no higher than five milligrams per liter in proposed Section 406.10.10, wondering where that standard came from. Ms. Massard responded that they are using what is practicable for loading and what can be managed, noting that she can ask the consultant. Mr. Bear suggested that Title 5 practitioners might be consulted to make sure the numbers make sense.

Mr. Glennon opened the discussion to the members of the public. Mr. Fernando Guitart of 14 Powder Point Avenue stated that he was representing the Duxbury Civic Association. He stated that Mr. Wadsworth was "spot on" with his commentaries about the importance of the APOD bylaw. He asked why in proposed Section 406.7 "Uses and Activities Allowed By-Right," residential dwelling density and coverage limits are removed. Ms. Massard replied that Horsley Witten is not addressing density, noting that the Town of Duxbury needs to determine that issue. Mr. Wadsworth agreed with Mr. Guitart, stating that he is not sure why the density was removed because it could be included even if it is not addressed in other communities. Mr. Casagrande noted that in the commentary Horsley Witten states that density has been moved to the Development Standards section. Mr. Casagrande stated that the Planning Board needs to make sure all the pieces are in the right place, and Mr. Guitart agreed.

Mr. Bear asked if the APOD bylaw applies only to residential properties, and Mr. Wadsworth replied that while it does apply to businesses also, there is no business district within the APOD except Bongi Kingstown Way.

Mr. Bear asked about floor drains, noting the Horsley Witten comment in proposed Section 406.6 "Prohibited Uses," that "HW has worked with other communities that have been unwilling to place standards for floor drains in the zoning bylaw arguing that this oversteps the boundaries of zoning by going inside the structure." Mr. Glennon noted that zoning regulates uses, and floor drains do have an impact on the aquifer. Mr. Wadsworth stated that the Town of Duxbury does not want floor drains.

Mr. Bear asked about the process, and Ms. Massard replied that the discussion will continue at the next Planning Board meeting and then the bylaw will go back to the ZBRC and the consultant. Mr. Glennon asked how Planning Board members can submit comments and Ms. Massard responded that she is noting comments from tonight's meeting but more time may be needed in order for Horsley Witten to continue working on the bylaw after input is provided. Ms. Massard will start a draft. She noted that the Planning Board makes policy decisions and the Horsley Witten language could be adapted with input from experts and town departments to better fit the Town of Duxbury.

Inclusionary Housing: Ms. Massard noted that the thinking for Annual Town Meeting 2016 was that the Inclusionary Housing bylaw should be kept as is but moved to the section where it applies. The Zoning Bylaw Review Committee (ZBRC) also discussed that it needs to be updated. The current advice from Town Counsel is to consider ten percent affordable housing without a special permit. She noted that this removes a hurdle because currently there is no incentive for a developer to provide for affordable housing. She stated that the ZBRC is considering whether bonus units could be added so the developer could avoid losses. Mr. Casagrande noted that this is similar to the Residential Conservation Cluster issue where initially the ZBRC was attempting to amend it piecemeal and now the ZBRC believes it should be looked at more holistically in order to deal with potential legal issues.

Mr. Wadsworth asked how the public could view proposed language, and Ms. Massard replied that the Planning Board's dialogue eventually will be converted to proposed draft language that will be available on the town web site. She noted that anyone can come to the Planning Department to review any draft documents once they exist.

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Mr. Bear stated that the Planning Board should consider providing an alternative method of inclusionary housing, because purchasing a house off-site is by far the most efficient method of meeting inclusionary housing requirements. He stated that the fee-in-lieu of affordable housing appears to be the least efficient method because the numbers do not appear to work. He noted that historically the Town of Duxbury is not efficient at building affordable housing because it is not easy. He stated that taking an existing dwelling and using it for affordable housing is more practical.

Residential Conservation Cluster (RCC): Ms. Massard showed three Power Point presentations that she had created for Mass Audubon prior to her position as Planning Director for the Town of Duxbury. She noted that some of the presentations were influenced by a seminal book called *Rural By Design* by Randall Arendt. The presentation called "Planning for Resilience" focused on preservation of open space and the effects of climate change on the Commonwealth of Massachusetts. The presentation on "Losing Ground in Massachusetts" showed that climate change increases intensity of weather patterns, with stronger storms and longer droughts, and the infrastructure is not designed to handle these changes. The presentation on "Conservation Subdivisions in Action" focused on conservation clusters in the Town of Westford, Massachusetts that have been built with several versions of zoning.

Ms. Massard noted that the benefits of conservation clusters include lower infrastructure costs and using landscaping to handle stormwater. She noted that the Town of Duxbury has historically done a good job putting protections in place to preserve the picturesque character of the town. However, more needs to be done and changes to adopt zoning will address the issue little by little.

Mr. Wadsworth asked about the impact of climate change on the Town of Duxbury, and Ms. Massard replied that she has not been in the position of Planning Director for long enough to make an observation. Mr. Wadsworth asked how climate change applies to stormwater management. Ms. Massard stated that with more flooding and more droughts, fish and other wildlife are stressed and different types of plants and animals are emerging as well as major impacts to infrastructure capacity in storms. Also there is an increase in mosquito-borne viruses. Adaptation measures include protecting open space to provide shade, shelter and filtration of toxins and to allow for flood storage. Residential Conservation Clusters can help protect the land by providing open space. She noted that Duxbury is under heavy development pressure and developers say that they are forced to apply for 40B projects because the current RCC bylaw does not work.

Mr. Fernando Guitart of 14 Powder Point Avenue noted that change can be difficult and the cause must be robust. He stated that while prior talk has been about changes because of case law, Ms. Massard's presentation is more in line with what he believes the town would like to see in order to understand why it should be changed.

Mr. Wadsworth stated that the RCC bylaw would work better if more of an incentive was created to benefit the developer. Mr. Glennon noted that already the RCC provides lower construction costs. Ms. Massard stated that at the next meeting she will provide examples of what other communities do and the Planning Board will start looking at concepts. She cautioned that small steps are better and the entire development community is part of the process because the ZBRC interviewed 90 individuals.

Mr. Casagrande noted that due to the legal issue, some form of subdivision must be offered not by special permit but by-right subject to regulations. Ms. Massard stated that the Planning Board could consider by-right as an option, everything as a special permit with negotiating available, or something in between. Ms. Turcotte noted that in the by-right process there should be some option to negotiate rather than waiver requests. Mr. Glennon noted that the Planning Board could consider updating Subdivision Rules and Regulations. Mr. Wadsworth stated that the Subdivision Rules and Regulations were written to allow waivers so that the

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Planning Board could negotiate with developers to waive things the Planning Board wanted to avoid such as granite curbs, lights and sidewalks. Minimum standards were included to minimize excessive requirements.

Mr. Casagrande noted that mostly smaller individual parcels are available for development at this point in the Town of Duxbury. He stated that his concern is that with an RCC by-right for a 5-6 acre lot very clear guidelines are needed with no waivers. The Planning Board would have no say on keeping features like a stone wall because there is no special permit process. He suggested that the Planning Board could consider changing the RCC bylaw to by-right sometime in the future if the new RCC bylaw appears to be working well. He stated that the RCC bylaw needs to be workable for the developer.

Stormwater Management: Ms. Massard distributed copies of a packet of materials titled "DRAFT stormwater" for the Planning Board to review. She noted that one or two sentences on stormwater management could be added to the Zoning Bylaws with the intent that when work is done on a property that there should be no change in stormwater patterns and stormwater should be kept on the property.

Mr. Bear asked why the current approach to stormwater management appears not to support the use of drywells, and Mr. Wadsworth responded that over time they fill with silt and lose effectiveness. Mr. Bear noted that they need to be maintained in order to work. Mr. Wadsworth stated that stormwater should go to one place and be treated there. Ms. Massard stated that with underground drainage it may not be apparent when it is failing.

Ms. Massard noted that the Planning Board can continue the discussion but she does not want to get caught up with design standards. She noted that the Planning Board, Board of Health, Department of Public Works, and Conservation Commission should all agree on stormwater design standards. Ms. Turcotte noted that stormwater guidelines currently exist in Subdivision Rules and Regulations. Ms. Massard agreed it was a good point, noting that the issue could be addressed in the Aquifer Protection Overlay District bylaw.

Mr. Glennon noted that the recent change in the Board of Health now allowing mounded septic systems may affect stormwater runoff. Ms. Massard noted that a single stormwater management design guideline would apply to all permitting aspects. Mr. Wadsworth noted that this approach to stormwater management described by Ms. Massard has been a longstanding practice but has not been put into zoning regulations yet.

Mr. Uitti asked if current stormwater management regulations included in Article 600 of the Zoning Bylaws, Administrative Site Plan Review are more limited in applicability than the proposed language intended for Article 400 (basic requirements for all districts). Ms. Massard noted that Article 600 applies to new construction in the Neighborhood Business Districts and not residences.

Mr. Uitti asked about the term "significant" in proposed language ("Any construction or grading that *significantly* alters the surface water drainage patterns..."), noting that it could be interpreted in various ways. Ms. Massard responded that right now stormwater management is negotiated informally. Providing language in the Zoning Bylaws would give the Zoning Enforcement Officer something to stand on. Mr. Uitti asked how the "before" picture is known, and Ms. Massard replied that the Building Inspector can ask questions and reference the bylaw. Mr. Casagrande noted that it is possible that runoff issues already exist and additional construction makes it worse. Ms. Massard noted that remaining silent does not provide a way to address the issue. Mr. Uitti asked if language in Article 600 could be adapted to be included in Article 400, noting that it appears to use best practices and does not include before/after standards.

OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Bear made a motion, and Mr. Casagrande provided a second, to approve the following meeting minutes as written:

- February 7, 2013 (site visit)
- May 20, 2013.

VOTE: The motion carried unanimously, 6-0.

MOTION: Mr. Wadsworth made a motion, and Mr. Casagrande provided a second, to approve the meeting minutes of July 27, 2016 as amended.

VOTE: The motion carried 4-0-2, with Mr. Bear and Ms. Turcotte abstaining.

The Planning Board deferred a vote on the meeting minutes of November 13, 2014 Executive Session so that reference to a Board of Selectmen vote could be included.

Comprehensive Plan Update: Mr. Wadsworth asked about the status of the Comprehensive Plan update, and Ms. Massard responded that it has been deferred because there have been too many zoning issues to address. Mr. Wadsworth noted that he was asking in order to make sure the Planning Board did not need to request any additional funding at Town Meeting. Ms. Massard reported that the Town of Duxbury is looking into the possibility of applying for funding that may become available through entering into a Community Compact with the state. Mr. Glennon noted that some work can now be done in-house by Ms. Massard.

ADJOURNMENT

Mr. Glennon thanked the public for attending and/or watching the meeting on PAC-TV, and thanked the staff from PAC-TV for broadcasting the meeting. The Planning Board meeting adjourned at 9:21 PM. The next Planning Board meeting will take place on Wednesday, August 24, 2016 at 7:00 PM at Duxbury Town Hall, Mural Room, 878 Tremont Street.

MATERIALS REVIEWED

- ANR application, plan and materials for 69 & 105 Saint George Street
- Horsley Witten memorandum from N. Kelly to Town of Duxbury ZBRC dated 05/03/16
- PB minutes of 02/07/13
- PB minutes of 05/20/13
- PB Executive Session minutes of 11/13/14
- PB minutes of 07/27/16
- "DRAFT-stormwater" packet distributed by V. Massard

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