



Town of Duxbury Massachusetts Planning Board

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DUXBURY, MASS.

Minutes 11/16/16

The Planning Board met on Wednesday, November 16, 2016 at 7:00 PM at the Duxbury Town Hall, Mural Room.

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

Absent: Cynthia Ladd Fiorini, Clerk; and David Uitti.

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

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

OPEN FORUM

Freeman Farms Subdivision: Mr. Wadsworth noted that the road in this subdivision was accepted as a public way prior to completion of the subdivision, against Planning Board recommendation, and now a house is under construction and the road is a "muddy mess." He stated that he hopes that the Department of Public Works has the situation under control.

PLANNING DIRECTOR REPORT AND PRIORITIES

Because it was not yet time for the public hearing, the Planning Board addressed Ms. Massard's Planning Director report. She referenced a list of articles distributed at tonight's meeting with the following expected zoning articles:

- One unit / lot
- Amend 530 regarding 6 or more dwellings per lot
- Solar by-right for Green Community status
- Zoning map references
- Stormwater containment
- Demolition Delay Bylaw
- Odd Lot Bylaw.

Ms. Massard stated that the public hearings for the first three zoning articles are tentatively scheduled for December 14, 2016. The public hearings for the remainder of the zoning articles will be scheduled in January or February 2017.

Other non-zoning articles that Ms. Massard is involved with include the following:

- Zoning recodification
- Stormwater EPA-mandated regulations
- Stretch Code for Green Community status
- Possible easements for sidewalks on Railroad Avenue
- Design of a pedestrian path on Tremont Street from Chestnut Street to Prior Farm Road

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- New historic districts
- Local Historic District General Bylaw clean-up.

Potential citizen-petitioned articles that the Planning Department would be involved in include:

- Battelle rezoning
- Plastic bag ban
- Acceptance of Sawmill Road.

Ms. Massard noted that she has not yet seen any further zoning proposals on Battelle since the discussion with the Planning Board in September. Mr. Wadsworth asked why Ms. Massard has not seen any revised language, and she replied that she is not involved in reviewing draft language for this citizen petition. Mr. Wadsworth expressed concern over a late submittal with no time for Planning Board or public review and input. Ms. Massard stated that there will be an opportunity for dialogue through the public hearing process.

Mr. Glennon noted it was time for the public hearing. The Planning Director Report and Priorities discussion continued later in the meeting.

INITIAL PUBLIC HEARING, SPECIAL PERMIT: 1065 SUMMER STREET / DUCKS BERRY LLC

Mr. Glennon opened the continued public hearing at 7:12 PM. He asked Mr. Bear to serve as Clerk *pro tem*.

MOTION: Mr. Bear made a motion, and Ms. Turcotte provided a second, to waive the reading of the public hearing notice and correspondence list.

VOTE: The motion carried unanimously, 5-0.

The correspondence list for the public record:

- Memorandum from A. Kreiger to R. Read, V. Massard and S. Lambiasi dated 09/14/16 re: Zoning Bylaw – RCCs, Special Permits and Inclusionary Housing
- Application, plans, materials and drainage calculations submitted to the Planning Office on 10/11/16
- Emails between M. Tedeschi and S. Lambiasi dated 09/28/16 re: Town Counsel memorandum
- Emails between V. Massard and B. Brennan dated 10/14/16 re: Peer review
- Email from M. Tedeschi to V. Massard dated 10/17/16 re: Public hearing schedule
- Emails between P. Brennan and V. Massard dated 10/19/16 re: Peer review
- Email from V. Massard to M. Tedeschi dated 10/19/16 re: Chapter 61
- Email From V. Massard to K. Cross dated 10/19/16 re: Sidewalk & Bikepath comments
- Public hearing notice stamped with Town Clerk on 10/26/16; mailed to abutters within 300 feet; mailed to Planning Boards of abutting communities; and published in the Duxbury Clipper on 10/16/16 and 11/02/16
- Letter from P. Brennan of Amory Engineers dated 11/01/16 re: Review letter
- Email from D. Grant to V. Stebbins dated 11/02/16 re: Transmittal of plan
- Email from J. Silvia to D. Grant dated 11/03/16 re: Abutter concerns
- Emails between M. Tedeschi and D. Grant dated 11/07/16 re: Transmittal of Amory letter
- Email from R. Jeffers to D. Grant dated 11/09/16 re: Abutter concerns
- Emails between V. Massard and A. Kreiger dated 11/13/16 re: Applicant concern
- Email from D. Grant to T. Kelso dated 11/15/16 re: Applicant’s contact for Town Historian
- Letter from applicant dated 11/15/16 re: Request for withdrawal without prejudice
- Email from D. Grant to T. Kelso dated 11/16/16 re: Update on application status
- Email from D. Grant to P. Brennan dated 11/16/16 re: Update on application status.

Ms. Massard noted that this filing was submitted under ZBL Section 530.2, “Division of Land and Development of Multiple Dwellings, Applicability” which relates to development of six or more dwelling units on a single lot; and ZBL Section 906.2, “Special Permits.”

Ms. Massard stated that after discussion and preliminary review, yesterday the applicant, Mr. Matthew Tedeschi of Ducks Berry LLC, submitted a letter to request withdrawal of this special permit without prejudice. Planning Board members reviewed the letter from Mr. Tedeschi dated November 15, 2016, which was distributed at tonight's meeting.

Mr. Glennon invited public comment and there was none.

Mr. Glennon asked for Planning Board comments. Mr. Wadsworth stated that he did a fair amount of review work on this application, with Ms. Massard's help, and it did not appear to him that this application fit anywhere in the Zoning Bylaws. It had the look of a Planned Development or Residential Conservation Cluster but the design did not fit those requirements. He stated that the Planning Board should not accept applications that are not within the scope of Zoning Bylaws. Ms. Deborah Frangesh of 399 North Street asked Mr. Wadsworth for clarification. Mr. Wadsworth responded that the proposed plan was missing components of those two sections of the Zoning Bylaws.

MOTION: Ms. Turcotte made a motion, and Mr. Wadsworth provided a second, to close the public hearing and accept the request by Mr. Matthew Tedeschi through his letter dated November 15, 2016 to withdraw the special permit application for 1065 Summer Street / Ducks Berry LLC without prejudice.

VOTE: The motion carried unanimously, 5-0.

Mr. Glennon directed staff to notify Town Clerk of this decision.

PLANNING DIRECTOR REPORT AND PRIORITIES (CONTINUED)

Planning Director Priorities: The Planning Board continued its discussion with Ms. Massard regarding her report and priorities. She reported that last Thursday she was asked to find out if the Planning Board would consider sponsoring an article for Annual Town Meeting to recodify the Zoning Bylaws. It is scheduled for the Board of Selectmen agenda next Monday. The Zoning Bylaw Review Committee (ZBRC) would not be involved, so the task falls to the Planning Board and Planning Director.

Mr. Glennon asked if the recodification would be done in-house, and Ms. Massard responded that even with outsourcing, as Planning Director it would fall to her to coordinate public meetings and oversee the work of the consultant, and such coordination and oversight is anticipated to be significant.

Ms. Massard reviewed her list entitled, "Planning Department Stuff – Incomplete Working List" with identified needs and breakdown of estimated Planning hours, along with the cost of farming out the cost. She summarized that the list shows that the Planning Department would need a full-time staff in order to complete all the work. She noted that she is involved with up to fourteen committees and doing the committee meetings, Comprehensive Plan, and recodification would mean over 100 night meetings this year, which is unreasonable.

Mr. Glennon noted that the list includes some important goals. He stated that there is an adage that says, "How do you eat an elephant? One bite at a time." He stated that the Planning Board is supportive of the Planning Director and understands that the Planning Board has a broad set of goals. He noted that Ms. Massard's work with other boards and committees will be handled outside this forum. He noted that the issue is not unusual, because government has limited resources and must live within its means.

Mr. Glennon stated that it is important to him that the Planning Board gets the Comprehensive Plan underway. Other priorities include cleaning up the Zoning Bylaws and zoning maps. He stated that while recodification is

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a laudable goal, the Comprehensive Plan should be updated first, and any re-write of the Zoning Bylaws would come from the Comprehensive Plan goals. He stated that the Comprehensive Plan should be the number one priority because it is a source document. Mr. Glennon stated that no Zoning Bylaw is completely "bulletproof," and people will always challenge language. It is a never-ending task.

Mr. Glennon entertained Planning Board comments. Mr. Casagrande agreed that the Comprehensive Plan should be a top priority because it has been put off for too long. He stated that his priorities would be the Comprehensive Plan and zoning map clean-up. He stated that he also understands the Board of Selectmen's concern with the recodification of Zoning Bylaws. He stated that he has been a member of the Zoning Bylaw Review Committee (ZBRC) for six years now, and the ZBRC has a good understanding of the hierarchy of issues with the Zoning Bylaws and agrees that clarifications are needed.

Mr. Casagrande stated that he would like to see the recodification work get underway, and asked if the Planning Board could get the ball rolling at least and dovetail it with work already done by the ZBRC. Ms. Massard stated that she needs to set aside time to tackle several zoning articles per year along with the Comprehensive Plan. Mr. Casagrande stated that once the recodification work gets underway it will end up looking more like a re-write. Ms. Massard offered that she could get an estimate for recodification but she is not ready to address that issue until the zoning maps are fixed and at least the public outreach component of the Comprehensive Plan is completed. Mr. Casagrande stated that because it is a "hot topic" now it could get Town Meeting support.

Mr. Casagrande addressed other topics on Ms. Massard's list. He stated that the hazard mitigation plan needs to be completed, and asked if the Building Department could take on getting the Stretch Code adopted. Ms. Massard noted that Mr. Seth Pickering of the Green Communities program is on the Planning Board agenda in December, and that work is almost done. She noted that the Green Communities program will bring significant funding resources to the town.

Mr. Casagrande stated that the Hall's Corner work is pretty far along so it does not need to be a top priority. Ms. Massard stated that the Metropolitan Area Planning Council (MAPC) could provide further technical assistance such as a charrette and an implementation plan, but the project will not wrap up anytime soon. Mr. Casagrande agreed it should not be put on the back burner.

Mr. Casagrande stated that the archive work has been discussed with Town Manager and is at the bottom of the list now. The RFP for consulting engineers can be put on hold for now, along with the Subdivision Rules and Regulations. He stated that sea level rise is not an immediate, pressing issue at this time.

Ms. Turcotte stated that she agrees that zoning maps need to be cleaned up and the Comprehensive Plan update and Hazard Mitigation Plan should be priorities as well.

Mr. Wadsworth stated that he agrees with Mr. Glennon that the Comprehensive Plan sets the direction for zoning and last year's Town Meeting provided funding for the important task of surveying the public. He noted that this work will be done in large part by a consultant under the guidance of the Planning Director.

Mr. Bear stated that he had rated the tasks on Ms. Massard's list and the top priority was the zoning maps. He stated that some tasks should go back to the committees who can check in with the Planning Director occasionally, because the committees have capable volunteers.

Mr. Bear stated that he was disappointed that there was no output from the ZBRC. He stated that it is not necessary to do a total re-write of the Zoning Bylaws. He noted that it takes a lot of time to recodify the Zoning Bylaws and it probably could not be done with current resources.

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Mr. Bear expressed skepticism with the “free money” the Green Communities status could bring, noting that there is no such thing as free money. He stated that stormwater containment should not be a priority because the town already does a good job. He noted that the OCPC has done some good work on traffic and safety, and perhaps the Department of Public Works could get involved with some of their projects.

Mr. Glennon asked if Ms. Massard would like a motion from the Planning Board, and Ms. Massard replied that the Planning Board needs to speak with the Board of Selectmen because she also reports to the Town Manager. She stated that she cannot take on any new projects that require professional staff because the current project list is already full. She noted there are 14 or 15 articles for Annual Town Meeting that she is working on. Mr. Glennon agreed to contact Mr. René Read, Town Manager, the next day.

DISCUSSION OF POTENTIAL ZONING ARTICLES

Solar Array: The Planning Board reviewed draft language for a new Zoning Bylaw for a Ground-Mounted Solar Photovoltaic Installations Overlay District. Ms. Massard noted that the Green Communities status helps with obtaining state grants in the six-figure range in order to help offset the costs of energy consumption. She reported that the public hearing for this proposed amendment will be scheduled for December 14, 2016.

Ms. Massard provided some history on how this bylaw developed. She stated that it became a priority from the town’s Facilities Director, Mr. Brian Cherry, who asked for help when he identified a project that could qualify for funding if the Town of Duxbury had Green Communities status. Ms. Massard is currently working with Mr. Cherry and Ms. Barbara Bartlett from the School Department on an application for a Municipal Energy Technical Assistance (META) grant from the Metropolitan Area Planning Council (MAPC) that is due next fall. The Town of Duxbury would need to have adopted a by-right Stretch Code and become a Green Community through having a by-right solar zoning district. That process led to the drafting of the Ground-Mounted Solar Overlay District. The draft language was adapted from the Town of Cohasset’s solar bylaw.

Ms. Massard noted that the town is rural in character and there is not a lot of town-owned land available for a solar array. However, there is land near the transfer station next to the existing solar array.

Mr. Glennon noted that the idea is not to encourage ground-mounted arrays for residential use, but rather, to focus on a large-scale municipal solar project. Ms. Massard stated that about an acre is needed for Green Community status. Land on the North Hill Golf Course was identified also but there was some pushback on that idea.

Ms. Turcotte noted that although it is not possible to back-zone the existing solar array to count toward Green Community status, does it make sense to include the existing area in the solar overlay district? Ms. Massard stated that it does make sense, because if there is any change in the status of the current array operator, it would allow a new group to operate it. Mr. Bear asked if the current solar array is on the border of the transfer station operations area, and Ms. Massard responded that the existing solar array does tend to inhibit the DPW’s ability to operate the transfer station. The new solar array zoning district would be located down the hill at an area identified as less invasive to the transfer station operations.

Mr. Wadsworth asked if the proposed bylaw is in conflict with the town’s status as a “tree community.” He suggested that the Town of Duxbury consider open land such as the O’Neil Farm for a potential solar array site, or someplace other than town-owned land. Mr. Glennon stated that town conservation and open space land should be off-limits, as those resources are protected and intended only for specific conservation and recreation uses.

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Mr. Glennon invited public input and there was none. Mr. Glennon asked if the proposed bylaw is still under review, and Ms. Massard replied that the Alternative Energy Committee, the state, and the Planning Board are being asked for comments before it is reviewed by Town Counsel.

Mr. Bear asked if there was overlap between the "Operation and Maintenance Plan" section and the "Monitoring and Maintenance" section of the proposed bylaw. He asked if another parcel is identified in the future, could it be added to the overlay district? Ms. Massard responded that it could.

Ms. Turcotte asked if the proposed solar overlay district runs the risk of being called out as spot zoning, and Ms. Massard replied, "No."

Mr. Glennon requested that Planning Board members submit comments to Ms. Massard.

Stormwater Containment: Planning Board members reviewed a "Draft – Stormwater v. 3" document dated August 25, 2016, with updated language as a result of Planning Board discussion at its August meeting, along with input from Mr. James Lampert, who formerly served as chairman of the Zoning Board of Appeals.

Ms. Massard noted that Mr. Bear had suggested that in addition to a new proposed article under ZBL Section 400, "Basic Requirements for All Districts," language should be updated in the "Administrative Site Plan Review" and "Land Clearing and Grading" sections as well. She noted that the public hearing will take place in January or February so there is still time to review the language.

Mr. Glennon summarized that the intent of the proposed amendment is for property owners to keep stormwater on their own property. Ms. Massard agreed, noting it also asks property owners to use Best Management Practices.

Mr. Neil Frangesh of 399 North Street asked how the proposed bylaw would affect existing property owners. He stated that he has a drainage easement from several other lots across his property and onto a ditch along North Street. He asked how he can keep stormwater off his property. Mr. Glennon replied that existing properties are grandfathered and this bylaw would apply prospectively.

Mr. Frangesh stated that there is a large property next to his that is proposed for the development of five or six houses, and asked how stormwater can be contained on that property. Mr. Glennon suggested several methods of stormwater containment, including drywells, swales, retention basins and natural drainage. Ms. Turcotte noted that stormwater containment is required for subdivisions in Subdivision Rules & Regulations, and this proposed bylaw is for individual properties. Mr. Wadsworth noted that Zoning Bylaws require less than 15 percent impervious coverage on properties. Mr. Glennon noted that pervious pavement is a newly developed technology that is being used in town and helps with stormwater drainage.

Zoning Map Reference: Ms. Massard noted that this proposed bylaw was indefinitely postponed at Special Town Meeting and is being re-introduced for Annual Town Meeting 2017 with some edits suggested by Mr. James Lampert, the former ZBA chairman.

Strike Section 530.2.3 with Respect to Six or More Dwellings Where Land is Not Being Subdivided:

Ms. Massard reported that she had not seen language yet from Town Counsel, but expects to have the language tomorrow with the intent to publish a legal notice next week for a public hearing on the Annual Town Meeting zoning article on December 14, 2016, assuming the language is available.

Ms. Massard noted that the proposed article was initiated by the Board of Selectmen in order to halt building permits for six or more dwellings on a lot unless through the Residential Conservation Cluster (RCC) Bylaw,

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the Planned Development (PD) Bylaw, or by a subdivision. The idea is to freeze the issuance of special permits that have been applied for due to a recent interpretation by Town Counsel, Anderson & Kreiger, that they are allowed according to Zoning Bylaw Section 530 for six or more dwelling units. Ms. Massard noted that there is a lack of clarity in the Zoning Bylaw.

Mr. Glennon stated that Atty. Arthur Kreiger, Town Counsel who is advising town officials, attended the last Planning Board meeting and made it clear that the interpretation was only his opinion and not binding on town officials.

Mr. Casagrande noted that the Zoning Bylaw Review Committee (ZBRC) had introduced a zoning article at Annual Town Meeting 2016 that may have eliminated this issue. That article was indefinitely postponed. Mr. Bear asked if that language could be used in drafting an article for Annual Town Meeting 2017 and Ms. Massard offered to bring it to Atty. Kreiger's attention to find out if last year's language could be a fix.

Mr. Bear asked who would sponsor the article, and Mr. Casagrande suggested that it could be the Planning Board. He stated that he did not believe the ZBRC members would object.

MOTION: Mr. Bear made a motion, and Ms. Turcotte provided a second, to direct the Planning Director to consult with Town Counsel to find out if the Residential Conservation Cluster Inclusionary language brought to Annual Town Meeting 2016 is adequate to address the issue of building permits for six or more dwellings on a single lot, for an article to be sponsored by the Planning Board for Annual Town Meeting 2017, as opposed to a single-purpose amendment proposed by the Board of Selectmen.

VOTE: The motion carried unanimously, 5-0.

Mr. Bear asked if the public hearing will be held on December 14, 2016, and Ms. Massard responded, "Yes," assuming the language is available. She noted that the December meeting would be the last Planning Board meeting in 2016.

Ms. Sara Wilson of 120 Bay Road, a former Planning Board chair, stated that she was surprised to find out that building permits were being issued according to Zoning Bylaw Section 530.2.3. She stated that although she is not particularly fond of the language, it does not allow a new form of development. She noted that a tortuous interpretation has led to this absurdity. She noted sections of Zoning Bylaws that do address multiple dwellings through the RCC bylaw or the PD bylaw, both of which require inclusionary housing. She noted that there was another subsection that was erroneously thought to allow multiple dwellings on smaller lots.

Ms. Wilson stated that Section 530.2.3 does not include design standards like the RCC bylaw and PD bylaw do. She called the situation a "tempest in a teapot."

Mr. Glennon thanked Ms. Wilson for her helpful comments, and suggested that staff could send a link of tonight's Planning Board meeting video recording with Ms. Wilson's articulate comments to Town Counsel.

OTHER BUSINESS

Route 3A Corridor Study: Ms. Massard noted that this study was initiated by former Planning Director, Mr. Thomas Broadrick, and the Old Colony Planning Council (OCPC) has issued findings. Mr. Glennon asked if there was a study provided, and Ms. Massard replied that typically a draft is sent for review prior to issuing findings; however, no draft was received by the Planning Office. She noted that there was a survey published

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on the town web site and in the Duxbury Clipper, and a traffic count was done. Suggestions for future Transportation Improvement (TIP) projects will most likely be included in the final stages of the report. Mr. Glennon asked if there are any deliverables from OCPC, and Ms. Massard replied that on similar projects in other communities she has received a binder and CD.

Mr. Glennon stated that the Town of Duxbury appears to be getting its money's worth from our OCPC dues. Mr. Bear also lauded the OCPC's work, particularly Mr. William McNulty of OCPC, who helped the Economic Advisory Committee and has researched the potential for traffic lights both at Exit 10 and at Route 3A and Tobey Garden Street. Mr. Casagrande noted that Cox's Corner on Route 3A is also dangerous and a number of traffic accidents have occurred there. Mr. Bear noted that this traffic work is mainly under the purview of the Highway Safety Committee. Ms. Massard offered that the Planning Board could invite the Highway Safety Committee members to attend the OCPC transportation meetings held once per month.

Planning Board Meeting Schedule: The Planning Board agreed to continue its current meeting schedule of the second and fourth Wednesdays of the month (except for holidays).

ADJOURNMENT

The Planning Board meeting adjourned at 8:38 PM. The next Planning Board meeting will take place on Wednesday, December 14, 2016 at 7:00 PM at Duxbury Town Hall, Mural Room, 878 Tremont Street.

MATERIALS REVIEWED

- Planning Board revised agenda for 11/16/16
- Public hearing notice for 1065 Summer Street / Ducks Berry LLC
- Application, check list and plan for special permit, 1065 Summer Street / Ducks Berry LLC
- Letter dated 11/01/16 from P. Brennan of Amory Engineers re: Peer review
- Email from R. Jeffers to D. Grant dated 11/09/16 re: concerns with 1065 Summer Street special permit
- "Zoning for Discussion" undated, provided by staff
- Draft language for Ground-Mounted Solar Photovoltaic Installations Overlay District new Zoning Bylaw
- "Draft – stormwater v. 3" dated 08/25/16 provided by staff
- Draft language for Zoning Bylaw amendment regarding Official Zoning Map
- Email from V. Massard to PB dated 11/10/16 re: zoning amendment for six or more dwellings on a lot
- Email from V. Massard to S. Casagrande dated 11/10/16 re: helper (with attachment)
- OCPC Bicycle and Pedestrian Advisory Committee announcement received by the Planning Department on 11/10/16
- OCPC agenda and Joint Transportation Committee meeting minutes

DISTRIBUTED AT MEETING

- Email from J. Silvia dated 11/03/16 re: concerns with 1065 Summer Street special permit
- Letter from M. Tedeschi dated 11/15/16 re: request for withdrawal of 1065 Summer Street special permit
- Email from S. Dahlen to V. Massard dated 11/16/16 re: Application for 20 units on Summer Street
- "Working Draft Compiled by Planning Office of Duxbury, ATM 2017" dated 11/16/16

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