

**Harvard Planning Board
Meeting Minutes
February 25, 2008**

Chairperson Mary Essary called the meeting to order at 7:35pm in the Hapgood Room of the old library.

Members Present: Mary Essary, Barbara Brady, Kara Minar, Joseph Sudol, Peter Brooks and Leo Blair (Associate Member)

Others Present: Richard Breyer (Harvard Hillside), Al Barbieri, Paul Willard, Al Combs, Lucy Wallace, Lorin Johnson, Rhonda Sprague, Valerie Hurley (Harvard Press), Tim Firment, Adam Horowitz, Donald Green, Tim Clark and Chris Tracey.

Minutes

Sudol made a motion to accept the minutes of January 7, 2008, January 28, 2008 and February 4, 2008 as amended. Brady seconded the motion. The vote was unanimously in favor of the motion.

Open Space & Recreation Plan Representative

The Conservation Commission has requested a member of the Planning Board be appointed as a representative for the updating of the Open Space and Recreation Plan. Sudol made a motion to appoint Essary as the Planning Board representative on the Open Space and Recreation Plan Committee. Brady seconded the motion. The vote was unanimously in favor of the motion.

Proposed Town Center Overlay District Provision

Sudol informed the Board the joint committee of the Town Center Planning Committee and the Master Plan Implementation Committee had a meeting on February 12th. Sudol explained comments were taken from different sources during that meeting. The Committee revised the provision to be much shorter than previously written. The Committee recommended that this go forward for Annual Town Meeting (ATM).

Sudol wanted to make it clear the joint Committee worked on this effort for about a year now with a charter that expressed that was what was to be done on the Town Center in regards to zoning, septic and parking. Sudol added the Master Plan recognized that all three issues could not be resolved at one time. Drafting a frame-work of the bylaw enables the town to recognize the other constraints of Town Center. The Committee realized development in Town Center would be restricted to whatever the Town Center septic system becomes. Many asked then "why should an Overlay District be completed now?" Sudol stated to provide a frame work. Sudol pointed out that even with no septic system or parking issues resolved some of the goals of the Master Plan could be achieved. The Committee felt they have put their best foot forward to move on these issues. Sudol still thinks this is a good idea and the Board should move forward with this for ATM. Essary asked how many members were at the meeting on the 12th. Sudol stated about five (5), with comments received from others, out of about twelve (12) members in total..

A letter had been received from the Harvard Historical Commission; Essary read the letter into the record. The Historical Commission is asking that the Board hold off on its recommendation of the Town Center Overlay District until issues with the boundaries of Town Center and how it relates to the Historical District can be determined.

For clarification, Brooks asked what the Planning Board is being asked to do. Sudol stated to be the proponent of this bylaw. Essary stated the Board does not have a good sense of what restrictions could be put into place and not at all clear to what extent an increase in the amount of retail development would be allowed – especially without some idea of what constraints the town wants on the septic capacity servicing the area. Brady appreciates all of the work that has been done by the Committee, and stated in theory she supports setting up the frame-work if that is

what the Town wants, but she thinks that having the Overlay District being the first step for that to come together perhaps falls short of setting up enough of a frame- work and leaves it a little open ended on its own.

This discussion was suspended at 7:51pm to open a scheduled hearing.

1990 Special Permit Modification & the Continuation of 2006 Special Permit Modification Hearing – Donald Walter, Lot 102 Lovers Lane (Map 17D Parcel 29.1). Opened at 7:51pm

Protective Bylaw Amendments Hearing – Amendments §125-40 Lighting. Opened at 8:04pm, suspended at 8:21pm and reopened at 9:52pm

Continuation of the Protective Bylaw Hearing – Amendments to §125-2 and §125-16D and the addition of §125-16H in regards to Museums. Opened at 8:21pm

Proposed Town Center Overlay District Provision, Continued

This discussion was re-opened at 9:00pm. Brady stated the potential may have been not to address parking and other issues that the Town Center has, but in light of these issues, looking at a plan in conjunction with other aspects might be the best way to move forward. McGuire Minar had an addition to the draft overlay district to include children as well as the elderly within the “Purpose and Objective” section. In addition McGuire Minar believes it is worth while to restrict franchising in the Town Center.

Brook stated his concern with there being no traffic study. Brooks stated there are no parking requirements for this area right now and this has become a cart before the horse issue. Brooks added that the Board is not even sure what the boundaries of the district are. Essary stated the real question is “Are we protecting the Town Center to exist in its current state or are we allowing it to be expanded?” Essary added as for septic systems, if we want to discuss it or not, one solution is small and another is large, and the implications for the consequences of an Overlay District would be quite different according to what was adopted Essary believes there is not have enough information to go before Annual Town Meeting, especially since we don’t have answers for questions that are sure to be raised

Sudol made a motion to reconsider and reopen the discussion of the Town Center Overlay District. McGuire Minar asked “By dealing this, what do we lose?” Sudol’s personal feeling is that he thinks the Planning Board needs to vote their conscious at this time. McGuire Minar appreciates all the work Sudol put in on this and other things. McGuire Minar asked if the Board is watering the issue down at this point. Brady seconded the motion. A final vote was not taken.

Adam Horowitz, owner of the General Store, urged the Board to move forward with this provision. McGuire Minar asked what the status of the General Store is. Horowitz stated he is in the process of clearing up the record and making the future clear for use in the Center. McGuire Minar stated the passage of this provision does not guarantee there will be Town Center septic.

Al Combs, a member of the Master Plan Implementation Committee, stated the Master Plan included what this Town wanted and the Town had two issues, primary to protect the rural character of this Town and secondary to preserve the vitality of the Town Center. This Board (PB) came to the two separate Committees last spring and said they wanted to move forward on this. The cart before the horse can go round and round. We are seven years into a ten year plan. Most people have no status on their property because the way it is zoned.

Carlene Philips, a member of the Town Center Planning Committee, agrees with Combs. To hear the Board say they do not know what the Town wants, well we do not want to see the old library just sitting here unused. McGuire Minar stated she has an issue with the ability for any houses in Town Center to convert to a multi-family with no parking. Philips stated then you do not issue the Special Permit.

Tim Clark, a member of the Town Center Planning Committee, thinks because of the time line the Joint Committee cannot go through any more revisions of the proposed Overlay. The Committee has taken in consideration and addressed the most pressing issues; they have taken it as far as they can go today. Clark wanted to stress the Committee has tried to address the concerns of the Planning Board: that being multi-family conversions and creating vitality the Planning Board was looking for. This is the conclusion of our work. Even with this revised draft the map does not clearly identify the district. Clark would recommend that the implication to revised language would be confusing and difficult to understand.

Clark noted the district currently shown is reduced from the 2005 Town Center Action Plan. There is the possibility to shrink down the Town Center area. McGuire Minar asked what if the Board has a request to have a spa in the Center, what grounds we have to deny this type of application. Town Counsel, Mark Lanza, stated it is how the decision is written and he could aid in that.

Paul Willard, a member of the Town Center Planning Committee, stated he does not see how you can proceed without a defined map of Town Center boundaries. Willard believes you can not ask people to comment on a plan that has not been defined.

Blair stated the new version of the Overlay District is a scaled down version and took out the multi-family language. Blair feels there is the idea of uses or need of establishments of uses within Town. In order for the General Store to work you need a change of use. It would be nice to solve that problem. It would be nice to get a smaller scale septic system that individuals would have access to, as long as they bore the cost, which would be realistic with a smaller system. Horowitz agreed with that statement. The "could be" is what this Board has issue with with this Overlay District. Blair thinks what people want for the Town Center is for it to stay vital and not to create extensive amount of new traffic. Blair thinks this a really good frame work, but it is still rough around the edges.

Don Green thinks Town committees are working apart, those being the Sewer Study Committee, the Master Plan Implementation Committee and the Town Center Planning Committee. Green does not want to see the Town Center destroyed to satisfy one individual's needs. Until we can get together we are not going to get this through Annual Town Meeting.

Essary believes that it is clear the Board should not go forward with this provision. Brady thinks that what the Board has in front of them is much closer to what they are looking to do, but agrees that there are still questions to be answered.

Brooks made a motion that upon reconsideration our previous vote of February 11, 2008 stands, to take no action at Annual Town Meeting on the Town Center Overlay District provision. Brady seconded the motion. The vote was unanimously in favor of the motion. Sudol did not participate in the vote as he was the Chair of the requesting Committee.

Brady left the meeting at 10:15pm

Proposed Residential Wind Energy Conversion Systems Provision

Sudol stated the Board has not fully discussed why they should go forward with this provision at Annual Town Meeting (ATM). The Board has not discussed what the benefits of this provision are to the Town of Harvard. Why is it needed? While the purposed bylaw tries to make a feel good effort towards energy conservation no one has looked into these aspects. The purpose really needs to be cleaned up and Sudol is not in favor of putting it on the warrant for ATM. Sudol had many concerns with the proposed bylaw as written. Sudol had shortcomings with the proposed bylaw and had comments the Board should take into consideration when deciding whether to support a bylaw at this time.

Sudol comments included: no definition for small-scale systems, there are no limitations on where these turbines may be erected, what is the definition of "unobtrusive as possible", the height should be limited to 70 -100 feet, there is no provision for liability insurance requirements, noise, view shed and there is no restriction on other uses being added.

Brooks state the Board should put the provision out there for the Town to decide if they want it or not. Essary stated the purpose of ATM is to let the Town decide if they want this. We have an obligation to go to the next step. People have the right to do what they want on their own property as long as it is balanced against impacting their neighbors. McGuire Minar stated the Board is close here, but not done yet with this provision. Essary stated the Board has the option to withdraw the provision from the warrant at ATM, but has no options if they vote against putting it on the warrant.

Brooks made a motion that the Planning Board recommend to the Board of Selectmen that this provision be included as a warrant article for the 2008 Annual Town Meeting. Essary seconded the motion. The vote was 2-2. A tie vote resulted in a negative outcome.

Adjournment

Brooks made a motion to adjourn the meeting at 10:40pm. McGuire Minar seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Peter Brooks, Clerk

Harvard Planning Board

1990 Special Permit Modification & the Continuation of the 2006 Special Permit Modification
Hearing Meeting Minutes

Donald Walter, Lot 102 Lovers Lane (Map 17D Parcel 29.1)

February 25, 2008

This hearing was opened at 7:51pm by Chairperson Mary Essary under M.G.L. Chapter 40A and
"The Code of the Town of Harvard" Chapter 125-29 in the Hapgood Room of the old library

Members Present: Mary Essary, Barbara Brady, Kara Minar, Joseph Sudol, Peter Brooks and
Leo Blair (Associate Member)

Others Present: Richard Breyer (Harvard Hillside), Al Barbieri, Paul Willard, Al Combs, Lucy
Wallace, Lorin Johnson, Rhonda Sprague, Valerie Hurley (Harvard Press), Tim Firment, Adam
Horowitz, Donald Green, Tim Clark and Chris Tracey.

This hearing is filed on behalf of Donald Walter for the modification of the 1990 Special Permit
issued to the Hildreth Trust, 20 Lovers Lane, which references the driveway covenant and the
allowance of not more than three (3) driveways off of the common driveway. This hearing was
open in conjunction with the continued hearing of February 4, 2008 for a Special Permit
modification also filed on behalf of Donald Walter at Lot 102 Lovers Lane, Harvard.

Al Barbieri, representation for the applicant, informed the members the driveway covenant has
been signed by all of the parties involved and the only changes from the original covenant other
than allowance of a forth driveway off the common driveway was that none of the land served by
the common driveway could be further divided.

Town Counsel Mark Lanza was asked by the Board to comment; he said that he had reviewed
the covenant and agreed that there were no changes other than those represented by Mr.
Barbieri from the original Special Permit for the common driveway.

Brooks made a motion to close the 1990 Special Permit Modification hearing. Sudol will draft the
modification of the 1990 Special Permit decision. McGuire Minar seconded the motion. The vote
was unanimously in favor of the motion.

Barbieri requested the 2006 Special Permit modification hearing remain open until the above
mentioned modification is recorded at the Registry of Deeds. Brooks made a motion to continue
that portion of this hearing to April 7, 2008 at 7:50pm. Sudol seconded the motion. The vote was
unanimously in favor of the motion.

Signed: _____
Peter Brooks, Clerk

Harvard Planning Board

Protective Bylaw Amendments Hearing Meeting Minutes - Chapter 125-40 Lighting

February 25, 2008

This hearing was opened at 8:04pm by Chairperson Mary Essary under M.G.L. Chapter 40A §5 and the Code of the Town of Harvard, the Protective Bylaw §125-50 in the Hapgood Room of the old library. At 8:21pm the hearing was suspended to open another scheduled hearing and then re-opened at 9:52pm.

Members Present: Mary Essary, Barbara Brady, Kara Minar, Joseph Sudol, Peter Brooks and Leo Blair (Associate Member)

Others Present: Richard Breyer (Harvard Hillside), Al Barbieri, Paul Willard, Al Combs, Lucy Wallace, Lorin Johnson, Rhonda Sprague, Valerie Hurley (Harvard Press), Tim Firment, Adam Horowitz, Donald Green, Tim Clark and Chris Tracey.

Members discussed the requirement of residential lighting and temporary decorative lighting such as holiday lighting being an exception to "shall not be illuminated between 11p.m. and 6a.m". It was agreed that that line could be removed from section D of the provision. Members also agreed to remove the text "newly installed or replaced" from section A of the provision.

Brooks made a motion to sponsor and recommend the amendment of §125-40 Lighting, as written and agreed upon this evening to the Board of Selectmen to be a warrant article at the 2008 Annual Town Meeting. Minar McGuire seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Peter Brooks, Clerk

Harvard Planning Board

Protective Bylaw Amendments Hearing Meeting Minutes – Chapter 125-2 & 16 D & H

February 25, 2008

This hearing was opened at 8:21pm by Chairperson Mary Essary under M.G.L. Chapter 40A §5 and the Code of the Town of Harvard, the Protective Bylaw §125-50 in the Hapgood Room of the old library.

Members Present: Mary Essary, Barbara Brady Kara Minar, Joseph Sudol, Peter Brooks and Leo Blair (Associate Member)

Others Present: Richard Breyer (Harvard Hillside), Al Barbieri, Paul Willard, Al Combs, Lucy Wallace, Lorin Johnson, Rhonda Sprague, Valerie Hurley (Harvard Press), Tim Firment, Adam Horowitz, Donald Green, Tim Clark and Chris Tracey.

Chris Tracey, the Chairman of the Zoning Board of Appeals (ZBA), was present to discuss where the ZBA is at with the settlement agreement with Fruitlands. Tracey explained the ZBA modified the proposed language, which is now acceptable by the ZBA and others involved. Sudol stated he has no problem with the changes suggested, but is looking to be reassured that the settlement agreement with Fruitlands has been reached. Tracey stated the ZBA has not entered into a settlement agreement with Fruitlands, there is still more that needs to be done. Blair asked does it help the Town for the Planning Board (PB) to act affirmatively on this or does it hurt it. Attorney Lanza would advise the PB not to take an official position on this evening, and only decide on the language, and if it wants the proposed bylaw changes to appear on the warrant. Attorney Lanza added he has sent the language to the Attorney General and has not heard back from him as of yet.

Tracey stated for anyone who has taken the time to understand what transpired with Fruitlands, they understand that Fruitlands felt they were an educational facility, but the ZBA, the Building Inspector and Town Counsel felt they were not. The ZBA felt uncomfortable with §125-2 definition of museum using the term “educational”. It is the ZBA’s desire to have what ever documentation that comes out of this to have the appropriate language that applies to all facilities in Town and not just Fruitlands.

Don Green wants to be certain the abutters concerns will be addressed and not swept under the rug. Attorney Lanza thinks it is obvious to anyone there is a settlement agreement out there and until we see a final document that is executed he cannot publicly give any details. Rhonda Sprague asked what if the abutters do not agree with the settlement agreement. Attorney Lanza stated there is always recourse, but he is not in a position to give advice in a public meeting.

Sudol stated that given the fact we have not seen the final settlement agreement and something happens between now and the end of March is there anything wrong with letting this go by on this year’s warrant? Essary stated that she believed the settlement agreement is not the purview of the PB, but only the concern of the ZBA and the BOS Sudol stated that he gathered that this bylaw was part of the settlement agreement. Blair stated if the PB does not recommend this provision, then he would imagine that would negatively impact the Town’s negotiations. There is no risk to acting on this provision this evening as the abutters can come to the PB if the settlement agreement is reached before Annual Town Meeting (ATM) and express their feelings. This is not a vote to recommend for or against the warrant article, only to keep the door open by allowing it to appear on the warrant.

Lanza stated that because of the withdrawal of the amendment, the article needs a positive recommendation from the PB in order to be approved at ATM; there is a two year window in such a situation before a warrant article can be re-represented without approval from the PB.

Al Combs and Lucy Wallace both suggested moving forward with this language on the warrant. A lot of good faith has been shown here, and Wallace pointed out that at last ATM there was not a realization from Fruitlands that by agreeing to withdraw the article, they were also raising the barrier for approval in the future.. Tracey asked "If for some reason some of the components of the settlement agreement are not reached prior to ATM is the PB comfortable with a vote?" Blair stated his hunch is the PB would unlikely vote to recommend the passage of a warrant article in the absence of a settlement agreement or go against the ZBA.

Brooks made a motion for the Planning Board to sponsor and include this amendment as a warrant article for the 2008 Annual Town Meeting. Brady seconded the motion. The vote was 4-1, with Sudol casting a "No" vote

Without a final recommendation to support or not support the amendment Brooks made a motion to continue the hearing to March 17, 2008 at 8:00pm. Sudol seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Peter Brooks, Clerk