

**Harvard Planning Board  
Meeting Minutes  
April 28, 2008  
APPROVED: May 5, 2008**

Vice Chair Joe Sudol called the meeting to order at 7:35pm in the Hapgood Room of the old library

**Members Present:** Mary Essary, Joseph Sudol, Kara Minar McGuire and Peter Brooks

**Others Present:** Richard Breyer (Harvard Hillside), Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Gary Shepard (Ross Assoc.), Adam Brodsky, Bill Calderwood (Acting Tree Warden), George Watkins, Shirley Warren (Boxborough Historical Commission), Mary Larson (Boxborough Historical Commission), Alan Rohwer (Boxborough Historical Commission), Wendy Sission, Bruce Waluck, Bob Douglas, Valerie Hurley (Harvard Press), Vincent Palmieri and Robert Mignard (Harvard Fire Chief)

**Board of Selectmen Request for Comments – Chapter 40T**

Sudol had previously drafted a letter to the Board of Selectmen (BOS) in regards to their request for comments on the proposed Chapter 40T legislation. Minar McGuire had minor changes to the wording. Minar McGuire made a motion to approve and submit the letter to the BOS as amended. Brooks seconded the motion. The vote was unanimously in favor of the motion.

**Letter to the Board of Selectmen – Responsibility for Local Initiative Program (LIP)**

Sudol drafted a letter to the Board of Selectmen (BOS) in regards to the recently discussed LIP Criteria, specifically in regards to which Board should be in charge of the process. Under the program the BOS can delegate another Board to review the information provided and then make a suggestion to the BOS. The letter suggests the Planning Board should be the review Board. Brooks made a motion to submit the letter to the BOS. Minar McGuire seconded the motion. The vote was unanimously in favor of the motion.

**ZBA Request for Comments – Transformation, Inc. Stow Road (Map 36 Parcel 85 & 86.1)**

Sudol had previously drafted a letter to the Zoning Board of Appeals (ZBA) addressing the concerns the Planning Board has with the Comprehensive Permit Application for Transformations, Inc on Stow Road. Sudol made a motion to submit the letter to the ZBA. Brooks seconded the motion. The vote was unanimously in favor of the motion.

Sudol has drafted additional comments to the ZBA in regards to the subdivision regulations. Minar McGuire made a motion to submit the letter to the ZBA. Sudol seconded the motion. The vote was unanimously in favor of the motion.

**Continuation of a Special Permit Modification Hearing – Donald Walter, Lot 102 Lovers Lane (Map 17D Parcel 29.1). Opened at 7:54pm**

**Approval of Minutes**

Minar McGuire made a motion to accept the minutes of March 17, 2008 as amended. Sudol seconded the motion. The vote was unanimously in favor of the motion.

Minar McGuire made a motion to accept the minutes of March 29, 2008 as amended. Brooks seconded the motion. The vote was unanimously in favor of the motion.

### **Election of Officers**

Essary made a nomination to elect Sudol as the Chair of the Planning Board. Sudol accepted the nomination. Brooks seconded the motion. The vote was unanimously in favor of the motion. Essary would like to ensure that the Board continues with the rule not to have meetings times pass 10:00pm, as well as limiting hearing times. All members present agreed with this request.

Sudol made a nomination to elect Essary as Vice Chair. Essary accepted the nomination. Brooks seconded the motion. The vote was unanimously in favor of the motion.

Minar McGuire made a nomination to elect Brooks as the Clerk of the Board. Brooks accepted the nomination. Essary seconded the motion. The vote was unanimously in favor of the motion.

### **Special Permit, Driveway Site Plan and Scenic Road Consent Hearing – Fox Realty Trust, Stow Road (Map 32 Parcel 7).** Opened 8:00pm

#### **Request to Withdraw Driveway Site Plan Application – Laroache, 68 Prospect Hill Road**

The Board has received a request to withdraw without prejudice the Driveway Site Plan Approval filed on behalf of Karen Laroache at 68 Prospect Hill Road. Brooks made a motion to allow the application for a Driveway Site Plan Approval to be withdrawn without prejudice. Essary seconded the motion. The vote was unanimously in favor of the motion.

#### **Committee Appointments**

Essary made a motion for the following appointments of the Planning Board members:

Montachusett Regional Planning Commission – Minar McGuire

Montachusett Joint Transportation Committee - Sudol

Master Plan Implantation Committee - Sudol

Shaker Hills Ad Hoc Committee – Minar McGuire

Housing Partnership - Brady

Community Preservation Committee - Sudol

Brooks seconded the motion. The vote was unanimously in favor of the motion.

#### **Update of April 10<sup>th</sup> Land Use Boards Meeting**

Sudol stated a the recent Land Use Board meeting on April 10<sup>th</sup> the other Boards and Commission would like the Planning Board to look at developing a drive thru provision within the Protective Bylaw, as well as a scenic view overlay district. The members agreed that these are two issues that should be dealt with for the 2009 Annual Town Meeting.

#### **Update of April 15<sup>th</sup> Board of Selectmen Meeting**

Sudol stated that the Board of Selectmen discussed at their April 15<sup>th</sup> meeting setting up a training session regarding open meeting laws for all of the Towns Boards, Commissions and Committees.

#### **Refund Ginny Thurston Escrow Account**

Allard informed the members that the review needed for the Ginny Thurston project has been completed and all bills have been paid for. Allard recommended the remaining balance of the account should be refunded. Essary made a motion to refund the unused balance of the Ginny Thurston account to the contactor who established the account. Brooks seconded the motion. The vote was unanimously in favor of the motion.

#### **Revise Planning Board Meeting Times**

Sudol stated that he is in complete agreement with recent comments in regards to the meetings being completed by 10:00pm. In order to do so items on the agenda will need to be addressed in a timely manner and times established for discussion will need to be adhered to.. The members agreed with this statement.

**Lot 2 Stow Road Letter from Hamwey**

The Planning Board (PB) has recently received a copy of a letter from Hamwey Engineering in regards to the installation of the driveway on Lot 2 Stow Road (a.k.a. 339 Stow Road). According to the PB engineer consultant, Hamwey Engineering, the material used is not what was specified on the approved plan. Sudol suggested a follow up letter be written to the Zoning Enforcement Office (ZEO) to determine what measures have been taken in regards to this issue. The members agreed a letter should be written. Sudol will write a letter to the ZEO asking for a response to this matter.

**Planning Board Procedures/Regulations**

Sudol stated that Brooks, Allard and himself have put some time into drafting regulations for the Planning Board (PB) to replace the currently existing set. In order to have these codified, the PB will need to have them approved by the end of July. This matter will be further discussed at the next meeting.

**Adjournment**

Brooks made a motion to adjourn the meeting at 9:40pm. Minar McGuire seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Peter Brooks, Clerk

Harvard Planning Board

Continuation of a Special Permit Modification Hearing Meeting Minutes

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

April 23, 2008

This hearing was opened at 7:54pm by Chair Mary Essary under The Zoning Act M.G.L. Chapter 40A and the Protective By-Law Chapter 125 of the Code of the Town of Harvard in the Hapgood Room of the old library

Members Present: Mary Essary, Joseph Sudol, Kara Minar McGuire and Peter Brooks

Others Present: Richard Breyer (Harvard Hillside), Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Gary Shepard (Ross Assoc.), Adam Brodsky, Bill Calderwood (Acting Tree Warden), George Watkins, Shirley Warren (Boxborough Historical Commission), Mary Larson (Boxborough Historical Commission), Alan Rohwer (Boxborough Historical Commission), Wendy Sission, Bruce Waluck, Bob Douglas, Valerie Hurley (Harvard Press), Vincent Palmieri and Robert Mignard (Harvard Fire Chief)

This hearing was continued from March 3, 2008 for a Special Permit Modification filed on behalf of Donald Walter for Lot 102 Lovers Lane, Harvard.

The applicant's representative has requested the application be withdrawn without prejudice. Minar McGuire made a motion to allow the withdrawal of the application for the modification of a Special Permit without prejudice. Sudol seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Peter Brooks, Clerk

Harvard Planning Board

Special Permit, Driveway Site Plan Review & Scenic Road Consent Hearing Meeting Minutes

Fox Realty Trust, Stow Road (Map 36 Parcel 7)

April 23, 2008

This hearing was opened at 8:00pm by Chairman Joe Sudol under The Zoning Act M.G.L. Chapter 40A, Protective By-Law Chapter 125 and Scenic Road Bylaw Chapter 90 of the Code of the Town of Harvard in the Hapgood Room of the old library

Members Present: Mary Essary, Joseph Sudol, Peter Brooks and Kara McGuire Minar

Others Present: Richard Breyer (Harvard Hillside), Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Gary Shepard (Ross Assoc.), Adam Brodsky, Bill Calderwood (Acting Tree Warden), George Watkins, Shirley Warren (Boxborough Historical Commission), Mary Larson (Boxborough Historical Commission), Alan Rohwer (Boxborough Historical Commission), Wendy Sission, Bruce Waluck, Bob Douglas, Valerie Hurley (Harvard Press), Vincent Palmieri and Robert Mignard (Harvard Fire Chief)

This hearing is for a Special Permit for a hammerhead lot, Driveway Site Plan Review and Scenic Road Consent filed on behalf of Fox Realty Trust for the construction of a single family dwelling on Stow Road (Map 36 Parcel 7), Harvard.

The applicant was informed that all special permits application requires a site walk so most hearings consist of at least two hearings. Both Adam Brodsky and Gary Shepard were present to represent the applicant. Shepard gave a brief background of the process taken as it pertains to this parcel of land. Shepard stated due to work within the 100' buffer zone of a wetland the applicant decided to file with the Conservation Commission first. The Commission denied the application and the applicant appealed that decision to the Department of Environmental Protection (DEP). DEP overturned the Commissions decision and issued a Superseding Order of Conditions for the parcel. The DEP decision was appealed to Department of Administrative Law Appeals (DALA) by the abutter to the parcel, Robert Douglas and the Conservation Commission. Brooks asked where the appeal process was at this point. Brodsky stated the appeal currently at DALA. Brodsky and the applicant thought it best to obtain other required permits during the DALA proceeding.

Shepard explained the lot is a current existing parcel consisting of 6.5 acres, with 98 feet of frontage on Stow Road; an Approval Not Required was endorsed by the Planning Board in 1999. The access is proposed to be approximately 445 feet until it reaches the build circle. The structure will be outside the 100' wetland buffer zone. Compact contiguous buildable area proposed is 1.86 acres; the required amount is 1.125 acres. Upland area per the Protective Bylaw Chapter 125-29A (1) (C) is proposed at 4.16 acres, the require amount is 3/8 acre. The build factor is proposed at 18.4, the requirement is 60 maximum. From a zoning point of view the proposed plan meets all of the criteria for a hammerhead lot in the Town of Harvard. The driveway is double lane width where required, with turn outs as well. There is sufficient room for an SU30 vehicle turn around at the top of the driveway. As well an SU30 vehicle can turn into and out of the driveway from Stow Road, however from Codman Hill Road it cannot make it in a single sweep, but would need to cross the centerline or make a two point turn. Shepard stated the only reason to be coming from Boxboro would be back up emergency vehicles. The site distances in both directions are excellent according to Shepard. Shepard added a driver could see around the large oak tree at a car stop at the corner of Codman Hill Road. Elizabeth Brook is a reliable water source for fire protection, which is about 330 feet down the road from the base

of the driveway. Essary asked what the proposed slope of the driveway. Shepard stated there is about a 200 foot stretch at 10%. The plan proposes stone filled recharge trenches, to make the site behave the same as it did before the development. The trenches will also provide for treatment of pollution as well. As for the wetland crossing with the proposed driveway, the plan calls for the replacement of the existing clay pipe. There is a possibility that what is proposed now may be changed due to the requirements of DEP.

As for the Scenic Road Consent, the existing wall is modest stonewall and approximately 25 feet of the wall area will be disturbed. The removed stones can be used on either side of the driveway or to rebuild the remaining stonewall. A number of trees will need to be removed within the right of way. All of the trees are 15 to 20 feet in height. The trees in that area that would require removal would consist of a 4" white pine, two 2" white oaks, a 2 1/2" black cherry, a 2 1/2" red oak, a 10" white oak, a 14" white pine and a 1 1/2" red oak. There is a 9" dead ash, as well as other saplings and shrubs. There is a large 60" diameter oak tree known as the boundary oak. Shepard stated when placing the driveway they tried to minimize the impact on that tree. An arborist was consulted, who stated white oaks do not like wet feet so the roots would avoid the direction of the proposed driveway. The most significant location for the roots of the trees would be away from the property. The applicant is willing to take steps to protect the tree by reducing the width of the base of the driveway and/or placing fencing around the tree during construction to reduce any harm it may endure. Essary asked how close the driveway will be to the tree. Shepard stated about five feet, but it is not five feet of suitable root area that slopes up to the tree. Essary asked if there are roots that head in that direction. Shepard stated there certainly are. It was asked if there will be an impact to the tree due to the construction of the driveway. Shepard stated certainly there may be, but the applicant will do his best to minimize those impacts.

Bill Calderwood, speaking as the acting Tree Warden, stated that the documentation from Carl Cathcart, a plant health care consultant, states the tree is growing at four inches a year and this proposal will add a significant threat to that tree. Shepard repeated that the applicant will do his best to minimize impacts to the tree. Calderwood added that at one time this tree had a fifty-foot canopy which has been reduced due to stress and having a driveway within five feet of this tree is not good. The feeder roots would be within fifty feet of tree. Calderwood also noted in the Garden Club record of recordable trees this is designated as a historic tree.

Minar McGuire asked the Fire Chief if fire equipment would use Stow Road or use Codman Hill Road. Chief Mignard stated the current fire fighters can drive Stow Road in their sleep, but it would not be unusual for one to use Stow Road and one to use Codman Hill Road. The Fire Chief would rather see a cistern installed. The Fire Chief asked how long the entire length of the driveway will be. Shepard stated 775 feet. Minar McGuire asked the Fire Chief if the Ambulance squad would have any issues accessing this location. Chief Mignard stated that he and Police Chief Denmark discussed public safety concerns this afternoon, unfortunately Chief Denmark could not be present this evening, but Chief Mignard will do his best to relay his concerns to the Board. Both Chiefs have concerns with the grade of the driveway and its width. At night with ice on that driveway getting a fire truck up there could be a bit of a challenge. Chief Mignard would like to see the driveway widened.

Chief Mignard read an email from Chief Denmark. Chief Mignard would settle for a 16-foot driveway but would like to see it be 18 feet. Shepard asked if the entire width is not paved would that be acceptable. Chief Mignard stated that he prefers to keep the tires on the asphalt, once you get the tires on two different surfaces you risk the chance of the truck tipping over.

Sudol reviewed the list of documents received and gave a brief overview of each. Sudol noted that sheet number three of the plans shows the building circle as requested by Hamwey Engineering.

Rob Oliva, the engineering consultant for the Planning Board, stated most comments he had in his March 31, 2008 letter have been addressed with the revised plans. Oliva would suggest that at time of construction the drainage trench locations be tested because the site is rocky. Brooks asked if this testing could be done now. Oliva stated that it could. Oliva would like to see where the seasonal high ground water will be and see how it effects drainage overall.

Bob Douglas, an abutter of the property, addressed the Board in regards to the vernal pools on the property. Douglas stated undeveloped areas of the buffer zone would be minimal as proposed. Douglas believes these vernal pools should be protected. Douglas has found marbled salamanders on his property. Marbled salamanders are a species of special concern under Natural Heritage and Endangered Species Program. In a study permitted by the Conservation Commission a four toes salamander was found on the site. Douglas would like these factors to be taken into consideration.

Sudol asked if alternative access has been sought. Shepard stated that they have looked at all of the possibilities.

Brooks wanted to know from Lanza what environmental aspects should the Board address when looking at a hammerhead lot. Lanza stated that the Board should refer to the Protective Bylaw under §125-46. It was asked of Lanza what if the Board feels there are no other issues other than wetlands what would the Board need to do in that case. Lanza stated the Board would have to hire an independent consultant to aid in making those determinations; they could not rely on what the Conservation Commission would have to say. Lanza added the Board should make its own findings not to be based on the Commissions findings.

Brodsky stated DEP has made a determination that superseded the Commission determination. Brodsky added that DALA has not required the filing with the Planning Board; they have taken it upon themselves to come to the Planning Board.

Members of the Boxboro Historical Commission were present to discuss the significance of the oak tree on the corner of Codman Hill Road. A letter from them has been received and had been made part of the record earlier. Those members present wanted to know what will happen next. Sudol explained the hearing would be continued to a specific date and time. Members of the Commission asked if the Planning Board had any protection in saving the boundary oak. Essary stated that under §125-1 of the Protective Bylaw there are the purposes of the Protective Bylaw that the Board should maintain. Sudol stated under the Scenic Road Consent the Planning Board has jurisdiction.

Wendy Sisson stated that she does not have an official comment from the Conservation Commission, but the Commission has never denied an application in her eight years on the Commission, so that puts this project into context.

A site walk was scheduled for May 3, 2008 at 9:00am.

Essary made a motion to continue the hearing to May 5, 2008 at 8:00pm. Minar McGuire seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Peter Brooks, Clerk