

**Harvard Planning Board
Meeting Minutes
May 5, 2008
APPROVED: May 19, 2008**

Chairman Joe Sudol called the meeting to order at 7:34pm in the Town Hall Meeting Room

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

Others Present: Richard Breyer (Harvard Hillside), Liz Allard (LUB Admin), Mark Lanza, Phil Shutt, Gary Shepard (Ross Assoc.), John Shutt, Adam Brodsky, Craig Bardenheuer, Bob Douglas, Gary Shepard, Bruce Waluck, Leo Blair, Larry Finnegan and Patricia Mac Roberts

Approval of Minutes

Brooks made a motion to accept the minutes of April 28, 2008 as amended by Sudol. Essary seconded the motion. The vote was unanimously in favor of the motion.

New Provisions of the Protective Bylaws for the 2009 Annual Town Meeting

Sudol discussed a potential drive-thru provision within the Protective Bylaw, Chapter 125. Essary stated that in general it would pertain to maintaining the characteristics of the Town Center. The current drive-thru on Ayer Road has worked well in the commercial district, but in Town Center they could create traffic and pollution issues. There are individuals concerned with fast food restaurants coming to Town and how they could affect a small independently owned restaurant. Sudol stated the only place this makes sense is in the commercial district. Although a drive-thru may increase traffic, it could reduce the parking requirements. It was suggested speaking with Town Counsel to determine how this subject has been dealt within other communities and what the possibilities are.

An additional suggested provision for the Protective Bylaw is a scenic view overlay district to protect some of the view sheds in Town. The members were interested in knowing what is prompting this provision. Sudol has reviewed the Reconnaissance Report completed by Freedoms Way that identifies twelve (12) notable view sheds within the Town of Harvard.

McGuire Minar joined the meeting at 7:45pm.

Sudol asked the members what they thought of this type of district. Essary would like to look at some examples. Brady stated it might be better to look at a wind energy conversion provision and this issue together. Minar McGuire stated if the Planning Board is talking about this in connection with wind energy and the wind is where these view sheds are, is the wind energy provision moot. Essary disagreed since the technology is forever changing. Brooks stated he can collect some bylaws/regulations from other communities. Minar McGuire stated she was willing to research that information.

Sudol suggested further discussing the wind energy conversion provision at the June 2, 2008 meeting.

Potential Associate Member

Craig Bardenheuer was present to discuss with the members becoming the Associate Member of the Planning Board. Bardenheuer has lived in Town for eight (8) years. He works in the high tech industry and has an engineering degree. He moved to Harvard because he wanted to live somewhere where residents care about the Town and people got involved. Bardenheuer has a general concept of Planning Board requirements. Brooks asked if he had any experience in land development. Bardenheuer stated he did not, that he has been in the high tech industry his entire career. Minar McGuire asked what his sense of Harvard was. Bardenheuer stated there are certain characteristics of Harvard as to why he and others move here, such as a sense of

community, green spaces and the availability of a top-notch education. How do you preserve green space and at the same time have the funding for education is a balance of economic growth. Bardenheuer stated that he does not have an attention to the minor details, but is able to see the big picture of things. The members thanked Bardenheuer for his interest in being the Associate Member and invited him to remain for the rest of the meeting.

Continuation of a Special Permit, Driveway Site Plan and Scenic Road Consent Hearing – Fox Realty Trust, Stow Road (Map 32 Parcel 7). Opened 8:03pm

New Provisions of for the Protective Bylaws for the 2009 Annual Town Meeting, Continued

Sudol asked Lanza how the Board could achieve a drive thru provision within the Protective Bylaw. Lanza stated the Board could require them by special permit. The Board will need to review how other communities are addressing this subject. Brooks will collect information from other communities and Sudol will review it.

Recommendation of an Associate Member

The members discussed recommending Craig Bardenheuer to the Board of Selectmen (BOS) as the Associate Member. BOS Chairman Leo Blair was present and stated the BOS could appoint Bardenheuer the following evening at their meeting. The members agreed that Bardenheuer would bring a different element to the Board that is not already being covered by any other member. Brooks made a motion to recommend to the Board of Selectmen that Craig Bardenheuer be appointed to the Associate Member position. Essary seconded the motion. The vote was unanimously in favor of the motion.

Planning Board Procedures/Regulations

Sudol has recommended using the June 2, 2008 meeting as a working session to review the procedures and regulations of the Planning Board. The members agreed.

Adjournment

Brooks made a motion at 9:55pm to adjourn the meeting. Minar McGuire seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Peter Brook, Clerk

Harvard Planning Board

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

Fox Realty Trust, Stow Road (Map 32 Parcel 7)

May 5, 2008

This hearing was opened at 8:03pm by Chairman Joe Sudol under The Zoning Act M.G.L. Chapter 40A, the Code of the Town of Harvard the Protective By-Law Chapter 125 and the Scenic Road Bylaw Chapter 90 in the Town Hall Meeting Room.

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

Others Present: Liz Allard (LUB Admin), Richard Breyer (Harvard Hillside), Mark Lanza (Town Counsel), Phil Shutt. Gary Shepard (Ross Assoc.), John Shutt, Adam Brodsky, Craig Bardenheuer, Bob Douglas, Gary Shepard, Bruce Waluck, Leo Blair, Larry Finnegan and Patricia Mac Roberts

This hearing was continued from April 28, 2008 on a Special Permit for a hammerhead lot, Driveway Site Plan Review and Scenic Road Consent filed on behalf of Fox Realty Trust on Stow Road (Map 32 Parcel 7), Harvard.

Sudol noted for the record an official letter from the Fire Chief and an email from Rich Nota Director of the Public Works had been received. Sudol stated that Nota was concerned about the location of the driveway and has stated as the plan is currently depicted he will not issue a permit for the driveway connection. Sudol stated the driveway connection permit would fall under the jurisdiction of the Board of Selectmen. In regards to access of the site for fire protection, Essary stated she believes that emergency access needs to be from the closest fire department and the Fire Chief has noted that would be Boxboro. Adam Brodsky, legal representation for the applicant, stated within the Bylaw it states the most likely route taken for fire protection.

The Planning Board had a site walk on Saturday May 3, 2008. Sudol asked if there was anything the applicant would like to bring to the Boards attention at this time before discussing the site walk. Brodsky understands that this hearing is to determine what additional information is needed for the Planning Board (PB) to make a final presentation. Brodsky and Gary Shepard of Ross Associates are prepared to discuss the site walk this evening. Essary was not at the site walk, but has a lot of preexisting knowledge of the location. Sudol has two points in which he has concerns; the first is he is still not totally convinced that the line of sight is adequate because of the tree. Sudol stated the tree as it sits right now is like his outside mirror of my car, with that 10% coverage that he will never see and will cause an accident. The tree is going to cause a vehicle being missed when it is behind the tree. Sudol would like to see additional information in regards to this concern. Sudol's other issue is the tree itself. Everyone realizes the tree is a very important part of Harvard and Boxboro, as a historic resource and everyone agrees we should find a way to protect that tree. It is over 200 years old and shows signs of wear and tear, but it is still a historic mark for both Towns and we need to find a way to protect that tree. We have seen reports from both the applicant's expert and the Tree Warden regarding paving over a portion of the root system of that tree. Sudol is uncomfortable trying to determine there is not an issue here until he is convinced of it with additional information from someone who does not have a vested interest in the tree. Sudol is also not convinced that there are no other alternatives for the location of that driveway.

Essay read from the "Purpose" of the Protective Bylaw, §125-1N, in regards to protection of water supply, with the establishment of a cistern how would that affect the flood plain that exists on the

other side of Codman Hill Road. Essary understands the PB is not the Conservation Commission (Concom) but we do have some obligation to look at those factors. Brodsky stated that the Fire Chief in his letter dated April 29, 2008 stated he has abandoned his original request for a cistern, but would like to see a dry hydrant assemble for the use of Elizabeth Brook. How this would be undertaken, whose property would it be on, would easements be needed and other issues associated with it would need to be worked out and the applicant and his representatives are willing to do so. Brodsky believes the Fire Chief is satisfied with this issue. Minar McGuire asked if the Concom has had time to comment on that use of Elizabeth Brook. Shepard stated he did not think it would be a Concom issue at this point. Minar McGuire stated going back to the Fire Chief's comments and marrying them with the Bylaw, the Fire Chief has stated in his letter that "The geometry of the driveway entrance would need to accommodate fire apparatus before I would approve.", Minar then read §125-39(5)(e)[2] which states "If the lot frontage and the roadway are too narrow to permit an AASO SU truck to make both turns in a single pass, the driveway layout shall favor the turn from the direction of the fire station, by the most likely route". Minar stated that although the Fire Chief has stated that his crew can follow any route possible, what the PB needs to follow here is the Bylaw and that states "the most likely route", so instead of taking a winding road over curvy hills the most likely route the fire department would take would be Route 110 to Route 111 and then right onto Codman Hill. Shepard will speak with the Fire Chief to get further clarification of this issue.

Brooks stated at the site visit Shepard had offered to sprinkler the home for fire protection. Shepard stated if the dry hydrant cannot be obtained at Elizabeth Brook he would work with the Fire Chief to determine if fire sprinklers were appropriate or maybe a combination of a cistern and a fire sprinklers would be appropriate. Brady stated she is unable to be a voting member of this application due to technical difficulty at the last meeting; however she was at the site walk and has concerns starting with the driveway having too much of a cone without visibility from the stop sign on Codman Hill Road. Today Brady stopped at the stop sign and did not feel comfortable with not being able to see where the driveway entrance is as proposed. Brady at the moment it feels very tenuous as to where the driveway is and the tree in regards to the sight line. Brady stated in respect to the tree and looking at where the roots mound and the canopy, on other proposals from the Tree warden, such as Sheehan, it seemed a general rule of thumb that you could assume you are affecting a tree is when you have to do some digging right under the canopy. Brady is uncomfortable that the construction of that driveway would not affect the tree. Essary pointed out that the arborist letter from the Tree Warden stated there should be no construction within fifty (50) feet of the tree. Brady is also not comfortable with the amount of wetlands and buffer zone being disturbed with the construction of the driveway and the associated runoff that will be created by that driveway.

Sudol stated there is a number of items that have been brought up at the site walk and this evening requiring additional information or additional expert testimony. Items include the line of sight for the driveway, water supply for fire suppression, confirmation of the most likely route the Fire Department will take, and protection of the tree; Sudol stated letters from the arborist and the Harvard Garden Club had some good recommendations and should be taken into consideration. Brodsky stated all comments that have been received are being reviewed and will be taken into consideration. Minar McGuire stated that some of the recommendations may be in conflict to each other. Brodsky stated they will use the Best Management Practices to improve on some of the issues. Minar McGuire stated the PB has the charge of determining if this is a lot or not, this lot is a complicated lot with difficult sight lines, an historic tree and a significant amount of wetlands at the front of the property. Minar McGuire added that what the applicant is proposing to saving the tree may not save the tree, but instead is a best case scenario and life is not always the best case. Minar McGuire looks forward to seeing what comes back to the PB, but when you stack up all of these pieces up it is a very difficult site.

Brodsky stated that his intention is to take a look at the requirements of the Bylaw and be certain that the application and plans meets all of the requirements. Essary stated meeting the

requirements of a hammerhead lot are just a minimal requirement, just because an applicant meets the requirements does not mean the PB must issue a positive decision.

Sudol added a last item on the list, which was the drainage of the driveway.

Brooks asked Brodsky if he and the applicant they were familiar with the history of the lot. Brodsky stated the owner is and was the applicant for the Approval Not Required endorsement in 1999. Shepard stated that the original parcel contained an extensive wetland with two upland areas. When looking at doing a subdivision road with the possibility of placing a roadway on the western portion of the lot it would have required the crossing of a wetland, in order to propose a wetland crossing you have to prove that there no other alternative, however the strip between the two wetlands creates an access to the upland area, the way the Wetland Protection Act is structured we have to use that access to get to the upland. When we split the lot it was not seen as creating a hardship because we had two pieces of upland area, we drew a line between the two creating the two lots and leaving the existing access between the two wetland areas. Brooks is concerned with the rights of property owners, but he is the same applicant as the ANR applicant and the applicant has received some beneficial use of his land by dividing off a parcel and selling that off. Essary stated the PB recognizes the right of property owners, but are not here to make the most money possible for an applicant on a site.

Brooks asked what the process is for installing pavers. Shepard stated that is something that will need to do additional research on. Sudol is concerned that the root system could be disturbed by installing those pavers. Brady wants to know if you eliminate the gravel base how that affects the drainage system. Brooks is concerned about the drainage trenches, worried about the steepness of those grades and drainage right into those wetlands. The driveway will require some type of treatment for ice and snow because of the grade he is concerned about the drainage to the wetlands. The number and types of trenches have not convinced Brooks they will function in the way that they should.

Essary stated the Fire Chief comments previously stated he did not like the width of the driveway. Brodsky stated the driveway is in accordance to the Bylaw. The Fire Chief's letter clearly states he would not approve of a driveway on that slope that is less than sixteen (16) feet in width. Minar McGuire would think the changing of the width of the driveway would change the recharge trenches. Brooks thinks there are conflicting concerns between the interests of the Chief and the interest in protecting the wetlands and there needs to be a balance of those competing interests.

It was noted that if the location of the driveway is changed it could affect the pending Appeal and in affect could change the Order of Conditions issued by the Department of Environmental Protection (DEP).

Bob Douglas, an abutter to the property, stated the driveway was a concern of the Conservation Commission, as was the drainage. The site contains a lot of ledge rock, especially where the trenches are proposed. Douglas suggested the PB obtain more information to determine if the trenches will work. Douglas also stated the wetland delineation in two locations is not correct. Douglas claimed the wetland closest to the road has a change of nine (9) feet and a variation of a foot or more at the wetland crossing. Douglas stated with living in the area he is aware the corner is a tricky location. Douglas would like the PB to consider the wetland issues on this site when making their decision.

Bruce Waluck, of 149 Stow Road, stated his driveway is 575 feet long and it was required to be twelve (12) feet wide and this driveway well over 575 feet is proposed at only an eight (8) foot width. Waluck stated this should be at least twelve (12) feet. Minar McGuire asked what happens when this driveway is plowed, how will the snow be removed. Shepard stated for the next meeting he will explain in detail the Storm Water Management requirements.

The wetland issues were again raised and the same comments were made from Lanza as at the previous meeting. Minar McGuire thinks it would be good for the PB's own purview to get a consultant in regards to wetland issues. Brooks would like to have the wetland line updated. Shepard stated the line was re-evaluated last Wednesday by a member of the DEP. Douglas noted that individual is not a soil scientist. Brady would say it would be prudent to the PB to have an expert here. Sudol suggested an expert look at the tree. The members feel the information received from the licensed arborist through the assistant Tree Warden was sufficient.

There has been no soil testing in the location of the trenches. How does the PB know that these trenches will work? Shepard suggested bringing in a backhoe to do the testing. Shepard would like to know how much is enough for the testing. Brodsky questioned whether or not this has been reviewed by the PB's engineering consultant. Rob Oliva, from Hamwey Engineering and consultant to the PB, stated he has made the suggestion that the trenches be tested during construction and if need be an alternative location be found for them. Minar McGuire asked if the applicant is asking the PB to permit something that may not work. Shepard stated if you look at the plan it is stamped by a registered professional engineer. Brooks stated no one is questioning your ability to engineer a plan, the PB is confident that the plans are done to the best of your ability. Sudol stated on most other applications he would agree with the engineering and that the trenches would work, but in this case, because of the soil conditions, the trenches may have to be moved to an extent that they would no longer provide the necessary protection for the wetlands. Brodsky believes the Concom issues are distinct and separate and should be taken that way. Brooks would like to know what the accident reports are for the previous three years from both Harvard and Boxboro for that area.

Phil Shutt, a previous long time member of the PB, stated there is a historical aspect of this area, the so called boundary oak may have had another name, known as the Rendezvous oak. Documentation would suggest the tree is older than suggested previously. Shutt would like the PB to take this information into consideration.

Patricia Mac Roberts, an abutter across the street from the parcel, asked if a safety study has been done. Mac Roberts believes this driveway will create a four-way intersection. The area could be re-engineered to reduce safety concerns. It was noted that there has not been a specific safety study for this project.

Sudol asked how does the PB determine what consultants are needed. Brady stated it is valuable to have Hamwey's feed back in regards to the trenches. As for the wetlands it would be what Hamwey feels comfortable with commenting on. Oliva noted that a single family home does not trigger the review of storm water management practices, as for the wetlands, Hamwey is not a wetland scientist and it maybe reasonable to hire a independent consultant. Brodsky could not understand why the PB would be concerned with wetland issues. It was explained to him that §125-46C(1)(a) clearly states "...will not result in substantial danger of pollution or contamination of the groundwater supply, a groundwater absorption area, a well, pond, stream, watercourse, W District, or inland wetland." Brooks stated the PB needs some wetland guidance, which Hamwey can contract, drainage issues can be dealt with by Hamwey and as far as the tree is concerned an expert has already spoken to that.

Essary made a motion to continue to June 2, 2008 at 8:00pm. Brooks seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Peter Brooks, Clerk