

**HARVARD PLANNING BOARD  
MEETING MINUTES  
MARCH 5, 2012  
APPROVED: May 7, 2012**

Chair Kara McGuire Minar opened the meeting at 7:38pm in the Town Hall Meeting Room under M.G.L. Chapter 40A and the Code of the Town of Harvard Chapter 125

**Members Present:** Kara McGuire Minar, Michelle Catalina, Peter Brooks, Tim Schmoyer and Rich Marcello (Associate Member)

**Others Present:** Liz Allard (LUB Admin), Rich Maiore, Bruce Ringwall (GPR, Inc.), Jim Saalfield, Sydney Blackwell (Harvard Press), Tim Myllykangas, Paul Green, Wade Holtzman, Worth Robbins, Bill & Robin Calderwood, Rhonda Sprague, Bruce Gallagher, Roseanne Saalfield, Eric Broadbent, Susan Tarrant, Margaret Nessler, Steve Matson, Barbara Brady and Mark Lanza (Town Counsel)

**Master Plan Steering Committee Update**

Catalina reported the Phase I final report from the consultant should be sent to the Committee shortly and then to the Planning Board for comments.

**Driveway Site Plan Review – Myllykangas, Westcott Road (Map 32 Parcel 90 & 91)**

Bruce Ringwall, of GPR, Inc., was present to represent the applicant Tim Myllykangas, who was also present. Ringwall stated that Myllykangas is looking to purchase the Wade property on Westcott Road. The property is just shy of 11.5 acres, with 257' of frontage, building setback lines have been shown on the plan. The proposed driveway will be greater than 500' in length, but less than 1400'. Under the Protective Bylaw, §125-31, driveways greater than 500' require site plan approval from the Planning Board. §125-39B details the standards for driveways. The minimum width is 12', which has been expanded for this proposal due to the curvature of the driveway. The driveway has been designed to be 13' wide with 3' shoulders on either side. The driveway is extended to 16' from the connection to the roadway and at approximately 300' intervals as required under the Bylaw. The widened areas have been located in areas that make the most sense, so they are not always at 300'. The driveway will be at grade where it connects to the roadway. Additional fill will be required along the length of the driveway. The driveway will have a 10% grade and an under drain. The plan shows detail of the under drain. Mr. Ringwall stated that ground water was found to be as shallow as 30" to up to 3 ½'. Ringwall anticipates cutting into ground water during construction of the driveway. The proposed plan calls for a fair amount of fill in the area of the proposed culvert. An 18" pipe has been proposed with a slight depression in front of it to allow water to pass on through. The water traveling through the culvert will be dissipated over a level spreader and then will flow over land before entering the wetland area. Details on the proposed plan show the SU-30 turn around. A letter from the Fire Chief has requested the lengthening of the driveway for suitable turn around, during the winter months. The applicant is acceptable to the change. The last page of proposed plan shows erosion and sediment controls that will be used during the construction of the driveway. The proposal calls for the driveway to be paved. The applicant may potentially use a reconstituted pavement. Ringwall stated that the material has the binding ability as required by §125-39B(6)(c)[4][a-c]. Ringwall requested the Board consider the use of this material.

McGuire Minar thinks it would be helpful to attend the site walk recently scheduled with the Conservation Commission. Catalina stated she had attended the Commission's meeting on Thursday evening and that there are a lot of unknowns because they were unable to do the site walk prior to their hearing. McGuire Minar would like further review of the reconstituted pavement. McGuire Minar asked if the proposed material would reduce runoff. Ringwall stated not necessarily. Catalina asked if the driveway meanders due to topography. Ringwall explained

in order to stay outside the setbacks under the Harvard Wetland Protection Bylaw and avoid the septic system the driveway was designed in the manner shown on the plan.

Brooks asked about site distance. Ringwall stated that the access is at the apex of curve and there is visibility for a long distance as shown on plan. Brooks asked about snow storage areas. Ringwall stated it is an 11 acre lot there should be plenty of room for snow storage.

McGuire Minar would like to have an engineer review the plans for compliance with the bylaw. Ringwall asked what the consultant would review. McGuire Minar stated the runoff calculations. Ringwall stated that the application was triggered by the fact that the driveway is over 500' in length, requiring site plan review. No where does it state that drainage is required on this type of lot. Ringwall stated that the review process from a zoning point of view should be a short for this type of review. McGuire Minar stated she would like to know from the consultant if the material is suitable. In addition, McGuire Minar would like to wait on issuing an approval until the Conservation Commission is done with their process. Catalina asked if the connection of the driveway would require Scenic Road Consent. Ringwall stated it would not. Brooks made a motion to continue the discussion to March 19<sup>th</sup> at 7:40pm.

**Protective Bylaw Amendments Hearing.** Opened at 8:06pm

**Adjournment**

Schmoyer made a motion to adjourn the meeting at 10:21pm. Marcello seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Peter Brooks, Clerk (in Green's Absence)

Harvard Planning Board

Protective Bylaw Amendments

March 5, 2012

This hearing was opened at 8:06pm by Chair Kara McGuire Minar under M.G.L. Chapter 40A and the Harvard Protective Bylaw, Chapter 125 of the Code of the Town of Harvard in the Town Hall Meeting Room

**Members Present:** Kara McGuire Minar, Michelle Catalina, Peter Brooks, Tim Schmoyer and Rich Marcello (Associate Member)

**Others Present:** Liz Allard (LUB Admin), Rich Maiore, Jim Saalfeld, Sydney Blackwell (Harvard Press), Paul Green, Wade Holtzman, Worth Robbins, Bill & Robin Calderwood, Rhonda Sprague, Bruce Gallagher, Roseanne Saalfeld, Eric Broadbent, Susan Tarrant, Margaret Nessler, Steve Matson, Barbara Brady and Mark Lanza (Town Counsel)

### **§125-41 Signs**

Revised marked up versions of the amendments to the sign provision of the Protective Bylaw had been previously distributed to the members and Rich Maiore. Brooks asked in §125-41B(1) states signs must be visible, visible from what. Brooks suggested from a public or private ways. It was recommended that §125-41B(2) use the term “may” rather than “shall”; shall makes it sound as if you have to illuminate the sign. §125-41B(5) required an adjustment to the context of the sentence. Schmoyer suggested for a better flow of the document it should start with on site signs, then off site signs, followed by temporary signs. Members agreed. Under temporary signs it was agreed that it should be split into two parts; the first will be the number and duration of a temporary sign and the second will be the allowed size of a temporary sign. Adjustments will be made as suggested this evening for inclusion on the warrant for annual town meeting.

With no further questions or comments Schmoyer made a motion to continue the hearing on the proposed amendments to §125-41 Signs to March 19<sup>th</sup> at 8:40pm. Marcello seconded the motion. The vote was unanimously in favor of the motion.

### **Affordable Accessory Apartment Bylaw**

Wade Holtzman was present from the Municipal Affordable Housing Trust (MAHT) to discuss the proposed provision for affordable accessory apartments. Brady arrived shortly after the conversation began. The current version of the provision reflects the changes made at the last meeting and suggestions from Attorney Lanza. Brady stated the goal of the MAHT is to develop a program through which we will be able to meet the State and local needs for affordable housing. Attorney Lanza questioned some of the language within the provision. Brady stated the Department of Housing and Community Development has seen the language and had no issues with it.

Brady explained that the MAHT hopes to have the Local Program Administrator designated by the time the Attorney General approves the provision. The MAHT is still trying to determine if this should be an individual in Town Hall or an outside contractor. Attorney Lanza suggested that there be a fall back person such as the Building Commissioner.

Rhonda Sprague asked about the lottery process and will the homeowner have any choice in the occupant. Brady stated as long as there is no age discrimination. The homeowner will have a choice of the top three applicants. Brady added that there will be a local preference. Sprague further asked if the owner could decline the top three applicants. Brady stated it could be done as long as there is no obvious discrimination. Sprague asked who would conduct credit checks and how the decisions are made as to the chosen tenants. Brady stated there are extensive background checks for the applicants. Sprague asked what would happen if a tenants income

increased during their tenancy. Brady stated there is an allowable percentage that an individual's income can raise over time before they become ineligible for an affordable accessory apartment. Sprague asked if you are able to terminate the lease with a 90 day notice without finding them another location to reside. Brady stated that would be correct.

With no further questions or comments Brooks made a motion to continue the hearing on the proposed Affordable Accessory Apartment provision of the Protective Bylaw to March 19<sup>th</sup> at 8:10pm. Schmoyer seconded the motion. The vote was unanimously in favor of the motion.

### **Commercial Solar Photovoltaic Installation**

McGuire Minar began the discussion by explaining the evolvement of this potential bylaw proposal. In looking at the potential development of commercial photovoltaic areas in Town and where they are permitted to go and what type of regulations would be appropriate. Mass General Law (MGL) states that no unreasonable barrier shall be implemented to prevent solar photovoltaic use. The other side of that is where abutters are in this scenario. Catalina has been spearheading the development of this bylaw for the Planning Board. One of the primary items that has come out of all of this is whether or not it is appropriate for a commercial enterprise in a agricultural/residential (AR) district. Brooks's view is that unless you allow for a commercial use in an AR district then you are unable to have a commercial use in the AR district. Town Counsel Mark Lanza stated that there is a lot of legislation out there surrounding the regulation of solar. Lanza asked if the Town on regulate the location of these systems, he is not sure, but would suggest that you don't regulate them to just the commercial district due to its limited size. A bylaw on its face could not prohibit, but once applied it could. Brooks thinks there are two issues: the legal and the policy issue; does the Planning Board (PB) want to allow this type of development in a AR district with reasonable regulations or does the PB want to restrict this use to a commercial zoned area, that's the policy issue. Brooks thinks legally, there are opinions out there that you may ban this use in a residential district and can reasonable regulate it in other districts. Brooks respectfully disagrees with Lanza and thinks we could legally limit it to the commercial zone.

Catalina stated this has been a long process, in which she took a look at other Towns Bylaws and how they interpret MGL Chapter 40A. In addition, the Attorney General (AG) has recently approved bylaws that regulate solar facilities. Catalina explained that Littleton views solar as commercial, the Town of Dennis only allows solar greater than 5kW in the industrial/commercial districts. Salisbury has zoning districts for solar. Stow allows commercial solar in a residential district with a special permit and site plan approval in the industrial and commercial districts. Warren requires a special permit for two of the three districts, which have been approved by AG. Monson does not have a special permit requirement, but does require a minimum of 50 acres, that has also been approved by the AG.

Catalina stated that Harvard has a very limited commercial district along Ayer Road that would make it difficult to develop large scale residential solar along there. Catalina tried to determine what is reasonable; she has then taken in comments from many who voiced their opinions, which are very far apart on whether or not it is reasonable in an AR district. The opinions on such regulations on size and setbacks were dependent upon whether you are an investor or an abutter to the proposed location. The Bylaw Catalina drafted aside, she is not really sure where to go from here, feels like at Town meeting based on what she has found that she is not going to be arguing that if we don't put this (bylaw) in we are not going to have any protection, she feels like she is going to be arguing the other side, that if we want green energy and want to support technology, and we should decide what are the constraints we are willing to live with throughout the Town.

Residents were allowed to read their statements into the record, those include a letter sent to Worth Robbins from and read by Susan Tarrant, 136 Oak Hill Road; a fact sheet compiled by Jim Elkind, entitled "Why solar is a Preferable to Conventional Energy".

McGuire Minar stated that the goal of the PB is to try and create a reasonable bylaw that addressed the placement and location of solar panels. The options in from the PB currently are to leave the bylaw as drafted with them only being allowed within the commercial district or can to come up with a reasonable hybrid that takes into consideration the legitimate concerns of abutters and other members of the Town with a need or desire to have greater alternative energy generated from solar panels. Schmoyer stated that from a policy standpoint you need a good definition of commercial solar. Brooks stated the Protective Bylaw states if a use is not permitted use in a district then it is not allowed use; under the present Bylaw this is not an allowable use in an AR district. Lanza agreed. What makes it commercial? Lanza wanted to take a step back and state that right now solar is unregulated, it sounds as if the primary concern is regulating commercial solar arrays. It sounds like to Lanza that the objective is to tackle the big ones (solar gardens) right now. Lanza stated there needs to be some regulations in place or he is going to continue to get calls from Building Commissioner for guidance.

Catalina pointed out that large scale photovoltaic ground mounted systems are allowed in the overlay district on Depot Road by right. Brooks is not sure we should be making this type of decision for the Town; it should be brought to a Town Meeting vote. The PB should put together a Bylaw and bring it to Annual Town Meeting and let the residents decide. Schmoyer agrees with Brooks, however questioned how detailed should this Bylaw be. Catalina stated she tried to be as detailed as possible within the provision. Marcello asked how Catalina felt about the provision she has written. Catalina stated she is not sure at this point as she has been in the weeds over the last week. There are some areas that could use some tweaking such as setbacks, limits on area and height.

Worth Robbins gave the highlights of his previously sent information; the zoning Bylaw is our Bylaw and should reflect what we want to see in the community; Harvard residents voted to become a Green Community; Harvard has received \$142,000 in grants for municipal projects; more than half of the people who wanted to participate in Solarize Harvard could not due to limitations on their site; the proposed community solar garden does take into account the requirements of the proposed Bylaw, such as setbacks and screening, however other sites may not be suitable due to the requirements. Robbins would like to see a Bylaw that would not have built-in constraints that would ultimately keep the community solar gardens from doing what would be a good thing to do. The community solar garden is not being created for the purpose of selling energy generated to the grid; it is for the benefit of the owners of the facility. If Robbins could advocate for a few things it would be to take a look at the idea of a tiered Bylaw that makes a distinction between a shared solar system and a commercial system. Catalina stated that the proposed Bylaw does allow for the PB to reduce setbacks in specific cases in where that could be done. Catalina stated the definitions would be the key between community solar and commercial solar. Robbins read the definition of community solar garden.

Margaret Nessler asked if under the proposed Bylaw could there still be a large scale solar generating plant in an AR district, which is still problematic for her. Schmoyer suggested a tiered approach to this Bylaw with more detail, for example the first tier could be residential roof mounted, second being a small group of property owners, and a third that states if the systems are greater than 250kW or 500kW it would be considered a commercial development. Catalina asked if she wanted to generate power above and beyond the amount needed for her home, would she be discriminated against. Lanza stated there has to be a rational reason for the limitations.

Jim Saalfield stated that the proposed community solar garden is absolutely a commercial enterprise that is only beneficial to those involved; participants get a subsidy; the electric company gets the benefit. Saalfield believes the proposed Community Solar Garden is the enemy of open space and conservation, which is the reason people move to this Town. Saalfield believes it will reduce habitat, not to mention that it is a proven case that solar is environmental friendly. Saalfield requested that his letter date January 10, 2012 be submitted into the minutes.

McGuire Minar questioned whether or not land under Chapter (61, 61A or 61B) could be used for a solar garden. Lanza explained that unless it is accessory to the use then it would not be exempt from zoning.

Paul Green, an investor of the community solar garden, is a neighbor to an existing solar facility, thinks the solar arrays will be acceptable in later years; it is just the newest thing on the horizon. Green asked that the PB not focus on the commercial versus the residential. McGuire Minar stated the PB is trying to create a Bylaw that has a balanced approach.

Eric Broadbent felt it necessary to support the community solar garden as a part of his values; Harvard would be served well if the State were to make the determination between commercial and residential development in regards to solar. Broadbent stated Saalfeld's letter was ill researched and some things were taken out of context.

The discussion of whether the existing proposed community solar garden is a commercial development was vetted with very differing opinions. Steve Strong explained the community solar garden has been established as a for profit entity in order to sell Solar Renewable Energy Credits. Strong doesn't know anyone in this room who is willing to live without electricity and the way it is being achieved now is increasingly detrimental to the environment.

Robin Calderwood stated the work being done by the Master Plan Steering Committee right now indicates the conservation of open space is important to a majority of the people in Town. Calderwood is uncomfortable with the potential of these types of solar arrays being distributed around Town.

McGuire Minar suggested the PB review the provision as drafted by Catalina line by line at the next meeting and consider the tier system as suggested by Schmoyer.

Brooks made a motion to continue the public hearing on the proposed Commercial Solar Photovoltaic Installation provision of the Protective Bylaw to March 19<sup>th</sup> at 8:00pm. Marcello seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Peter Brooks, Clerk (in Green's Absence)

## **DOCUMENTS & OTHER EXHIBITS**

### **Driveway Site Plan Review – Mylykangas, Westcott Road (Map 32 Parcel 90 & 91)**

- Residential Development Site Plan Westcott Road, Harvard, MA Prepared for Timothy Mylykangas, 7 Walnut Street, Apt. 3 Boston, MA 02108, JOB 121003, dated February 2012

### **Protective Bylaw Amendments Hearing**

- ARTICLE XX: AMEND THE PROTECTIVE BYLAW – SIGNS
- Proposal for AAA Bylaw to Complement existing Accessory Apt Bylaw\_, Dec 2011\_ Jan 17, 2012\_Feb 2012\_Mar 2012
- Susan Tarrant, 136 Oak Hill Road letter to Worth Robbins, received March 5, 2012
- Why solar is a Preferable to Conventional Energy, by Jim Elkind, received March 5, 2012
- Colorado Community Solar Garden Act, submitted by Worth Robbins, undated
- Before Granting Public Subsidies to the Energy Industry, by Jim Saalfield, dated January 10, 2012