

**ZONING BOARD OF APPEALS  
MEETING MINUTES  
JANUARY 23, 2008  
APPROVED: March 26, 2008**

The meeting was opened at 7:18pm by Chairman Chris Tracey under M.G.L. Chapter 40A The Zoning Act and Chapter 40B Section 20-23 Regional Planning in the Town Hall Meeting Room.

**Members Present:** Chris Tracey and Robert Capobianco

**Others Present:** Liz Allard, Carter Scott (Transformation, Inc.), John Mc Garvin, Barbara Henderson, Warren Henderson, Tom Philippou , Judy Gustafson, Avard Mc Gavin, Mary Allen, Kelly Anelons, Valerie Hurley (Harvard Press), Tony Marolda, William Campbell, Gregory Barros (Nashoba Publishing), Robert La Pierre, Sherlie La Pierre, Robert Mignard (Fire Chief), Sally & Rob Carrona, Deborah Skauen-Hinchliffe, Lorin Johnson, Ron Ricci, Peter Warren, Donald Green, Chris Durham, Lynn Alder, Paul Willard, Heidi Wright and Wade Holtzman

**Comprehensive Permit Hearing – Transformations, Inc., Stow Road (Map 36 Parcels 85 & 86.1).** Opened at 7:18pm

**Executive Session**

At 9:35pm Robert Capobianco made a motion that the ZBA go into executive session pursuant to Massachusetts General Laws Chapter 39, Section 23B (3) to discuss strategies with respect to potential and pending litigation with Fruitlands Museum, Inc. and because a public discussion of this matter will have a detrimental effect on the litigating position of the Board. The Board will return to open session in approximately twenty (20) minutes only to adjourn the meeting. Chris Tracey seconded the motion and a roll call vote was taken.

**Adjournment**

Robert Capobianco made a motion to adjourn the meeting at 10:07pm. Chris Tracey seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Robert Capobianco, Clerk (in Moeser's absence)

**Zoning Board of Appeals  
Comprehensive Permit Meeting Minutes  
Transformations, Inc., Stow Road Map 36 Parcel 85 & 86.1  
January 23, 2008**

This hearing was opened at 7:18pm by Chairman Chris Tracey under M.G.L. Chapter 40A the Zoning Act and Chapter 40B Sections 20 – 23 Regional Planning in the Town Hall Meeting Room.

**Members Present:** Chris Tracey and Robert Capobianco

**Others Present:** Liz Allard, Carter Scott (Transformation, Inc.), John Mc Garvin, Barbara Henderson, Warren Henderson, Tom Philippou, Judy Gustafson, Avard Mc Gavin, Mary Allen, Kelly Anelons, Valerie Hurley (Harvard Press), Tony Marolda, William Campbell, Gregory Barros (Nashoba Publishing), Robert La Pierre, Sherlie La Pierre, Robert Mignard (Fire Chief), Sally & Rob Carrona, Deborah Skauen-Hinchliffe, Lorin Johnson, Ron Ricci, Peter Warren, Donald Green, Chris Durham, Lynn Alder, Paul Willard, Heidi Wright and Wade Holtzman

This hearing is for a Comprehensive Permit filed on behalf of Transformations, Inc., for the construction of twelve (12) single-family detached and twelve (12) condominiums as duplex and triplex homeownership units on Stow Road (Map 36 Parcel 85 & 86.1), Harvard.

Chris Tracey noted letters were received by the Planning Board, Conservation Commission, Board of Health and Fire Department.

Cater Scott from Transformations Inc. was present to present his plan for a mix proposal for his site on Stow Road that takes a lot of elements in to account. The proposed plan calls for Low Impact Development (LID) which would include stormwater management practices such as permeable pavement and small rain gardens. The proposed plan would reduce storm water runoff from the two (2), ten (10) and hundred (100) year storm events. Working with LID reduces stormwater on the site. This is the third (3<sup>rd</sup>) development of this type Mr. Scott has done. Mr. Scott explained that LID equals a reduction of pollution from normal stormwater runoff. Mr. Scott explained that in conjunction with the Harvard Municipal Affordable Housing Trust he has increased the number of affordable units from six (6) to ten (10). Twelve (12) of the single family homes have first floor master bedrooms. Mr. Scott's project in his hometown of Townsend, known as Coppersmith Way, has units similar to those proposed here. Mr. Scott development at Coppersmith Way is a Leadership in Energy and Environmental Design (LEED) which includes low flow toilets and carpets made with recycled plastic bottles. These aspects create a reduction in the over all cost in maintaining the houses. Additional the proposed plan calls for five individual lots each with its own septic system

and well servicing those lots. Each lot will have its own home owners association. A sixth lot will be retained by Transformations Inc. to be maintained as open space. The plan proposes a bus enclosure and parking area for school bus drop off and pick up. Cascading pond are also proposed to aid in stormwater runoff.

Mr. Tracy read into the record the letters submitted by the Board of Health (BOH), Conservation Commission (Concom), Planning Board (PB) and the Fire Department.

The BOH requested that the Zoning Board of Appeals allow the BOH to seek counsel with the Department of Environmental Protection (DEP) to ascertain whether or not the project will meet the requirements of the State Codes. Specifically, the BOH will be requesting Department review of the project under 310 CMR 15.011.

Mr. Tracey stated if DEP responses is that the proposed development is in violation of Title V, neither this Board nor the BOH can waived that decision. Mr. Tracey added that until this box is checked off he does not want to spend time on other boxes pertaining to this project. Mr. Tracey is aware that under State code more than twenty-four (24) occupants on a particular parcel of land requires an approved Public Water Supply (PWS) from DEP. The requirements of a PWS include, but are not limited too, that there is a two hundred (200) foot no build radius round a PWS that must be contained within the property boundaries. If this project is required to have a PWS there would be a profound impact on this project.

Mr. Tracey asked Mr. Scott if he would like to respond to the BOH letter. Mr. Scott stated he has spoken with two (2) different engineers from two (2) different companies who have assured him that the plan is allowed under the State codes. Mr. Scott added he has in the past received letters from DEP that allowed different owners on one site. Mr. Scott stated he has the required acreage for the septic as well as not exceeding the 10,000gallons/day requirement. Mr. Scott is confident the points addressed by the BOH do not pose a problem for him. Mr. Capobianco asked if the Board was at a point were their consultants can agree with Mr. Scott's engineering. Mr. Scott feels there is enough information. Mr. Scott submitted the traffic study as well as drainage calculations.

Mr. Scott believes the Title V issues will not be settled here and he would have to go to BOH for that. Mr. Capobianco asked if test borings have been done and does Mr. Scott know the system will work as proposed. Mr. Scott stated the BOH has reviewed previously done test borings and the system will work as proposed. Mr. Scott added extensive testing has been done over the years for the septic system.

Abutters to the property were surprised that a septic system would work in that location since the site very wet. Mr. Tracey asked if the application submittal included testing for the septic system. Mr. Scott stated no, that will be filed with the BOH. Mr. Tracey noted the application does not request any waivers from the BOH regulations. Mr. Scott stated they have requested waivers from the BOH. Mr. Tracey informed Mr. Scott the ZBA will be asking for comments from other Town Boards and Committees to determine if any of the waivers may cause a public health or safety issue.

Mr. Tracey stated it is hard for him to understand that if you have a single lot with a "X" number of frontage, why you would cut this lot up into five lots. The ZBA agreed that the BOH should send information to DEP as soon as possible to get a reply as soon as possible. Lorin Johnson, a member of the BOH, is not certain as to the time frame DEP would have, but would want at least thirty (30) days. A letter will be sent to BOH allowing them to move forward with the DEP review. Mr. Tracey wants to make sure there are no clean water issues here.

Mr. Tracey explained to Mr. Scott that a peer review will need to be done of the application. In order to begin that process an escrow account will need to be established in the sum of \$10,000.00. Mr. Tracey gave Mr. Scott the option to wait to hear from DEP before sending out the application to be reviewed. Mr. Scott stated he would think about that and get back to the Administrator. Mr. Capobianco asked if Mr. Tracey is comfortable with the consultants as previously used for this type of application review. Mr. Tracey stated he was okay with that, but with Nitsch Engineering he would like to do a site walk with them before any significant review is done. The Administrator will send Mr. Scott the list of consultants to determine if there are any conflicts, as well as double checking with the consultants. Mr. Capobianco asked Mr. Scott to let the ZBA know if any of the consultants have been used for any other previous work.

Bob La Pierre an abutter of this property stated the first time he heard of this project was in the spring at an all boards meeting. And then he had not heard about it again until he received the legal notice. There were no minutes taken at that meeting and some of the issues the abutters had with the site had been left out of the letter sent to the State. Mr. La Pierre is concerned with sound once this project is complete. The developer had stated that there would be no difference in sounds because sound goes up. Mr. La Pierre would like a sound study done. Mr. La Pierre is also concerned with the impact of the development on the school system.

Judy Gustafson an abutter of this property has seen many different plans for this location. Sound is an issue with her in regards of her health. Ms. Gustafson is also concerned with her drinking water well as it can not be moved due to the location of her septic system. If her well fails who is going to pay for remediation. Ms. Gustafson is worried with egress on the site. The remaining trees could be a potential fire hazard in the event of a fire. Ms. Gustafson is also concerned with the site producing additional water and creating mosquito habitat.

Avard Mc Gavin would like to know where machinery has ever entered the site, where is the driveway? Mr. Scott explained the plan shown this evening a conceptual plan and there is no driveway currently on the site. Mr. Scott then pointed out where equipment has been accessing the site.

A letter was submitted in regards to the septic system within the condominium development on Codman Hill Road. Mr. Scott has been asked previously what the association fees would be, which he had stated were between \$160 and \$180. Mr.

Tracey stated the PB and the ZBA would require that the association fees would allow for excess funds to cover these types of cost.

Mr. La Pierre stated Stow Road does flood and water drains to a large swamp. Mr. La Pierre understands the applicant has proposed all kinds of drainage that may work on paper, but in the spring when the ground is still frozen Mr. La Pierre does not believe there will not be proper drainage.

Mr. Capobianco stated what a lot of people do not understand is that the market rates units are supporting the affordable units. A lot of individuals who buy into these types of developments do not know they are buying into this type of situation.

Tom Philippou, the Chairman of the BOH, was present as an abutter only this evening. Mr. Philippou asked if a septic system fails will all of the residents be required to pay for it or will it be lot specific. Also would the Town become responsible to step in if the solution can not be paid for? Mr. Scott stated repairs would be attached to each of the lot themselves. Mr. Tracey stated the infrastructures would have to have some type of common agreement. Mr. Philippou would be more comfortable with one association and he feels Mr. Scott is trying to circumvent DEP regulations.

Peter Warren a Town resident and former Fire Chief is taken back by a plan of this size on this lot. Mr. Warren stated Town Boards should be proactive and stopping this development.

Warren Henderson an abutter had taken photos after rain event about two years ago. The photos were submitted for the file. Pictures were taken approximately in January of 2005. Mr. Capobianco asked Mr. Scott if he is planning any retention or detention basins on the site. Mr. Scott stated yes and the drainage calculations were submitted tonight. Mr. Scott further explained the drainage calculations show a reduction of pre and post of -74.8%, reducing drainage by almost three quarters. Mr. Capobianco asked how that would be done. Mr. Scott stated a variety of techniques such as limiting roof run off; walkways are proposed in pervious pavement, a bio retention basin in the cul-de-sac and over flows to cascading pools to a retention basin, as well as rain garden have been proposed. Mr. Capobianco asked what the subsoils are. Mr. Scott stated they are various types which are noted in the drainage report.

Kelly Anelons a resident of Old Littleton Road and previously resided at 260 Stow Road had questions for Mr. Scott. Ms. Anelons wanted to know how many units there are in the development in Tyngsboro that Mr. Scott has done. Mr. Scott stated that development was five units. Ms. Anelons asked if the first level master bedrooms have any other bedrooms. Mr. Scott stated there are different floor plans in each; some have two (2) bedrooms on the second floor. Mr. Scott added there are less than sixty (60) total bedrooms in this development.

Rob Carrona an abutter to the project is concerned with drainage in regards to the retention ponds. Mr. Carrona stated the project in Tyngsboro is only two (2) years old,

how will the retention basins work in ten (10) years, and who will maintain these structures. Mr. Carrona is also concerned with the additional traffic with this development, which could make a potential safety issue.

Mary Allen, of 291 Stow Road, has seen a change in the quality of her water. Ms. Allen stated we are drawing from perhaps from the same sources and she is concerned with all of these units drawing off of that same source. Mr. Tracey explained the application is sent to a water quality expert for review.

Deborah Skauen-Hinchliffe a Town resident has questions on when the perk test were done. It was explained that nothing has been submitted to BOH as yet and that under Chapter 40B the applicant proceeds at their own risk. Mr. Tracey requested Mr. Scott to submit any information in regards to the water table, soils and drainage.

Mr. Tracey noted that he was excited to see additional information in the application that has not been seen in other applications. Mr. Scott is aware new testing for the septic system will need to be viewed by the BOH.

Mr. La Pierre asked if the units will have basements. Mr. Scott stated that they would have basements. Mr. La Pierre asked if they would be walkout basements. Mr. Scott stated some of them will be. Mr. La Pierre asked if that space could be construed as a bedroom. Mr. Scott explained that Title V requirements would not allow for those spaces to be converted into bedrooms and would be part of a deed restriction. Mr. La Pierre asked if there is a plan that shows the drainage and the pools. Mr. Scott stated there was and that a plan would be available in the ZBA office for review.

Ron Ricci, a Town resident, asked if the application was available in an electronic version. Mr. Tracey stated that was an excellent suggestion and the ZBA are working on rules and regulations so that could be implement, but this application is currently not.

Ms. Skauen-Hinchliffe asked if the open space included the septic systems area. Mr. Scott explained that the LEED criteria is that open space is undisturbed area, so there is 40% undisturbed area on this property.

Sally Carrona, of 267 Stow Road, is very concerned about the drainage. Ms. Carrona's house is across the street from the existing fire pond, water comes from around her house. Ms. Carrona asked what type of recourse she would have from five different home owners associations. Mr. Tracey stated that it is pretty clear from the drainage report that the drainage will be reduced; however future meetings will have consultants in attendance to address this issue.

Chris Durham of 252 Stow Road asked for clarification to the BOH letter. Mr. Tracey stated he is not the right person to answer since this is a BOH issue, his first reaction is that if you have twenty-five (25) people drawing from one water supply you have a PWS, so by creating separate lots you have few than twenty-five (25) people drawing from that

system and it is not considered a PWS. There are creative ways to get around these compliances.

With no further questions from the public in attendance Robert Capobianco made a motion to continue the hearing to February 27, 2008 at 7:30pm. Chris Tracey seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Robert Capobianco, Clerk (in Moeser's absence)