

**HARVARD ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING**  
**February 27, 2008**  
**APPROVED: March 26, 2008**

Chairman Chris Tracey called the meeting to order at 7:34m in the Town Hall Meeting Room

**Members Present:** Chris Tracey, Steve Moeser, Robert Capobianco, Theodore Maxant and Orville Dodson.

**Others Present:** Liz Allard, Mark Lanza, Tim Bragan, Bob Eubank, Paul Willard, Joe Sudol, Lorin Johnson, Robert La Pierre, Sally Carrona, Warren Henderson, Valerie Hurley (Harvard Press), Barbara Henderson, Chris Durham, John Whever, Cindy, Femino, David McDonell and Carter Scott.

**Continuation of a Comprehensive Permit Hearing – Transformation, Inc., Stow Road (Map 36 Parcel 85 & 86.1).** Opened at 7:34pm

**Local Initiative Program Informative Discussion**

Joe Sudol, Paul Willard and Lorin Johnson were all present to discuss with the ZBA the Local Initiative Program (LIP) criteria drafted by the Board of Selectmen (BOS). Mr. Sudol explained why the Land Use Boards (LUB) are collectively pursuing the development of the criteria. Some individuals feel that allowing for comments from the LUB during the LIP process is a conflict of interest. The fact that the Town of Harvard and a developer have agreed a project is a good project does not mean it is approved. Town Counsel, Mark Lanza, stated almost all subsidiary programs have a financial benefit to the developer; however a LIP has no financial benefit to the developer. The developer has to convince the Town that its development has such public benefit to the Town that the Town should sign on to do the project in conjunction with the developer as a LIP. Attorney Lanza stated the ZBA is suppose to treat all applicants equally, but when the BOS is a co-applicant how can you say that an applicant is on the same playing field, there is an expectation that the ZBA should approve it.

New State regulations, 760 CMR 56.00, went into effect on February 22, 2008. These regulations require during that the review period a site visit is conducted and an opportunity to comment is given by the BOS. Sudol asked Attorney Lanza with the new CMR what happens to 760 CMR 45.00. Attorney Lanza stated 56.00 supersedes 45.00 and replaces it. Attorney Lanza thinks it is a good idea that the Town develops it own policy on reviewing LIP applications.

Chris Tracey asked why the ZBA should stay out of the review process. Attorney Lanza stated because the ZBA should only receive and hear info about a project during the Comprehensive Permit hearing. Mr. Tracey stated it sounds like the most appropriate information should come from the Planning Board, Board of Health and the Conservation

Commission. Mr. Tracey asked if the ZBA given up any rights by denying a LIP Comprehensive Permit? Attorney Lanza stated no.

At 8:54pm Theodore Maxant left the meeting

Attorney Lanza was asked if the BOS could endorse a LIP with conditions. Attorney Lanza stated the BOS can endorse with the requirements and if the developer does not concede then the BOS can pull out of the LIP.

### **Executive Session**

At 9:15pm 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 pending litigation with Fruitlands Museum, Inc. and the Board of Appeals and Massachusetts Housing Opportunities Corporation and the Board of Appeals because a public discussion of these matters will have a detrimental effect on the litigating position of the Board. The Board will return to open session solely for the purpose of adjourning this meeting. Steve Moeser seconded the motion, a roll call vote was taken and it was unanimously voted to go into executive session.

### **Adjournment**

Steve Moeser made a motion to adjourn the meeting at 10:44pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Steve Moeser, Clerk

**Zoning Board of Appeals**  
**Continuation of a Comprehensive Permit Hearing Meeting Minutes**  
**Transformations, Inc., Stow Road (Map 36 Parcels 85 & 86.1)**  
**February 27, 2008**

This hearing was opened at 7:34pm by Chairman Chris Tracey under M.G.L. Chapter 40B §21-23 in the Town Hall Meeting Room

**Members Present:** Chris Tracey, Steve Moeser, Robert Capobianco, Theodore Maxant and Orville Dodson.

**Others Present:** Liz Allard, Mark Lanza, Paul Willard, Joe Sudol, Robert La Pierre, Sally Carrona, Warren Henderson, Valerie Hurley (Harvard Press), Barbara Henderson, Chris Durham, John Whoever, Cindy, Femino, David McDonell and Carter Scott.

This hearing was continued from January 23, 2008 on 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, Harvard (Map 36 Parcels 85 & 86.1).

Chris Tracey reviewed the events of the last meeting and any updates since that meeting. Mr. Tracey stated letter have been received from the Department of Environmental Protection (DEP) and from Meridian Associates, representation for the applicant. The DEP letter makes no conclusion and requires additional information. Mr. Tracey stated he had not seen any documentation within the application that supports Mr. Carter claim that he intends to convey four or five lots to other parties as stated in the letter from Meridian Associates. Mr. Scott stated that was in response to the concern over the Public Water Supply (PWS). Mr. Tracey stated that if the ZBA had to issue a Comprehensive Permit based on this information, he would not be inclined to issue that permit. Town Counsel, Mark Lanza, stated DEP has hit the nail on the head and the ZBA needs to know more information to make a decision, it is premature to come to a final determination.

Robert Capobianco wanted to know when the lots would be subdivided. Mr. Scott stated that could come over time or as the project gets built. Steve Moeser asked if the affordable units have been dispersed over the entire site. Mr. Scott stated that his original plan had six (6) affordable units, with one on each lot, after the Mass Housing approval letter the locations were changed and they are not equally dispersed. Affordable units were identified on the plan; there will be no affordable single-family dwellings. Mr. Scott stated Werner Lohe of Massachusetts Housing Appeals Committee said you could cluster them. To tighten up the numbers Mr. Scott changed any of the single-family dwellings to market rate rather than affordable.

Mr. Tracey asked what happens if Mr. Scott builds out the market rate houses and then sells off the rest and the buyer never builds any of the affordable units. Attorney Lanza stated the ZBA can condition the permit to require that for every four (4) market rate units built one (1) affordable unit must be constructed. Mr. Scott stated he is happy to build affordable units up front.

Mr. Capobianco wanted to know where the application was at in terms of consultant review. Mr. Scott had decided to wait to hear from DEP before moving forward with submitting the appropriate fees for consulting. Mr. Scott is hoping to have the issues with DEP resolved before the next hearing. If this does happen, Mr. Scott will get the appropriate fees to Liz Allard so that she may forward the application on to the consultants.

The ZBA requested Mrs. Allard to invite the Police Chief and Fire Chief to the next hearing to receive their input.

Questions were raised by the general public in regards to the exchange of funds for additional affordable units. Attorney Lanza states the Municipal Housing Trust is not a Town Board or Committee, but a separate legal entity. Any questions in regards to their actions should be directed to the Board of Trustees of the Trust.

Mr. Moeser stated Appendix C 5 refers to septic systems and a series of retentions ponds. The plan noted in the narrative is not available with the current documents. Mr. Scott will get the ZBA the plan mentioned in the document.

The list of ZBA consultants was reviewed by the members.

Mr. Moeser asked Mr. Scott if he knew of the history of the site prior to purchasing it. Mr. Scott stated yes.

The members requested that when Nitsch Engineering does their site walk they would like to be present. Mr. Scott agreed to allow abutters to join the site walk. Mr. Moeser suggested the site walk be conducted in April, tentatively the week of April 7<sup>th</sup>.

Robert Capobianco made a motion to continue the hearing to April 23, 2008 at 7:30pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Steve Moeser, Clerk