

September 28, 2009
Planning and Economic Development Board - SPECIAL Meeting
Sanford Hall, 155 Village Street

BOARD MEMBERS PRESENT: Andy Rodenhiser, Bob Tucker, Chan Rogers, Karyl Spiller-Walsh, John Williams

ABSENT WITH NOTICE – Tom Gay

ALSO PRESENT: Susy Affleck-Childs, Planning and Economic Development Coordinator
Gino Carlucci, PGC Associates
Sean Reardon, Tetra Tech Rizzo
Glenn Murphy, Conservation Commission
Brian Snow, Conservation Commission
Dave Travalini, Conservation Commission
Glenn Trindade, Board of Selectmen

The meeting was called to order at 6:45 p.m.

CITIZEN COMMENTS - None

Miscellaneous Business

Susy Affleck-Childs – I have distributed to you the draft Sign Violation Warning form John Emidy and I have worked on. Also a working list of likely sign violations. That will start soon.

I also have a letter to you from Dick Steinhoff. Letter is attached. He is buying 146 Main Street and wants to talk with you about using the adaptive use overlay district option. He pretty much wants to demolish the building and build a new office building. By AUOD bylaw requires renovation. I believe this comes down to how you want to define renovation. How much can be demolished/removed and still consider it to be rehab?

Karyl Spiller-Walsh – Okay by me

Andy Rodenhiser – It protects the neighborhood –

Bob Tucker – Okay, let's see what he has to say.

Susy Affleck-Childs – With this, we would consolidate site plan review with the AOUD special permit process into one hearing.

Meeting Minutes

A motion was made by Chan Rogers, seconded by Bob Tucker to approve the minutes of the July 28, August 4, August 25 and Sept 8, 2009 meetings. The motion was approved.-----

Discussion on Proposed Concom Rules and Regs

Reference to:

- draft ConCom Rules and Regulations – undated document, 34 pages in length.
- 9-17 09 review memo prepared Gino Carlucci and Dave Pellegrini (attached).

Gino Carlucci – I want to apologize for not including info on Medfield – their info is not on line; and the ConCom offices were closed on Friday and Monday – I can add info later

Andy Rodenhiser – sounds like the chair of the ConCom is going to be continuing the public hearing anyway so we can continue to give them some data

NOTE - Also here are Glenn Murphy and Brian Snow of the Conservation Commission

Gino Carlucci - In all cases the categories are not perfectly identical, but they are close enough to make this chart. The issues listed on the left side match up the issues we identified in our first letter.

Jurisdictional – seems to be a definitional issue – buffer zone to resource area to buffer zone – seemed a little confusing. In the Millis and Franklin bylaws, there didn't seem to be that confusion, but I know in this chart Tetra Tech Rizzo notes some difficulties with a certain definition – question on how to measure.

Sean Reardon – In the definitions, buffer zone is circular.

Andy Rodenhiser- A key word may be “except” – when we last met, we were looking at the letter and matrix and a set of recommendations. Are you still going to do that?

Gino Carlucci – Yes, I did have a recommendation in the initial letter

Sean Reardon – or follow the guide in the Wetlands Protection Act (WPA). They do a really good job with the definitions.

Andy Rodenhiser –Do you think you can make recommendations/requests in a clear and usable way?

Karyl Spiller-Walsh – It sounds like they (ConCom) have added another layer – another protected area. Does the buffer zone become another resource area - it needs separate definitions – don't want them to become one and the same – peel it back.

Gino Carlucci – Terminology creates confusion.

Sean Reardon – You have to look further in the document. Buffer zone is used later – the way it is now, there is no buffer zone. It appears that that is the intent.

Chan Rogers – They defined the buffer zone as a resource area.

Sean Reardon – 2 critical things- they are adding buffer zones 100 feet more. Under the regs, the riverfront and bordering wetlands now have buffer zones - key is that the buffer zones are now considered resource areas.

Andy Rodenhiser – If they do not intend to increase regulation any more than what they are doing, then this text doesn't match

Sean Reardon – The wording increases the jurisdiction

Bob Tucker – If it is their intent, let it be clearly defined.

Sean Reardon – There should be no other reference to buffer zone – call it something else.

Gino Carlucci – A few definitions that are listed – river/stream –

Andy Rodenhiser – If we see something in the chart under river/stream and it is blank, what should the reader take away from that?

Gino Carlucci – I think this is a matter of lacking one more iteration of the chart. I hadn't included them in mine but Dave did in his. I can add those in.

Sean Reardon – The Medway regs are fairly silent on the riverfront resource area where other sections have their own text. That is not the case here.

Bob Tucker – Would that mean then that it would be comparable to the WPA?

Sean Reardon – I don't think it was their intent to define another boundary beyond the 200 foot.

Gino Carlucci – “Best available means” excludes economics in the Medway regs – none of the other towns address that. Not used in Millis and Franklin

Sean Reardon – The WPA doesn't either.

Bob Tucker – They are basing it strictly on technology.

Gino Carlucci – Question on what distances constitute the buffer zone – varies from town to town re: vernal pool

Gino Carlucci – re: ponds – There were some comments about defining a pond.

Andy Rodenhiser – By no definition, it defaults to WPA.

Andy Rodenhiser – It would be nice to be able to compare among the towns. Is it possible to revise the chart and fill in the blanks?

Sean Reardon – Will there be a redraft (of the ConCom rules and regs)

Andy Rodenhiser – I understand they will open the public hearing, and then continue it, and during that time they will make changes. They will take testimony. They will continue the public hearing.

Chan Rogers – There is going to have to be some major introduction of their position. The proposed regs are onerous and severe as they are now written.

John Williams – You need to provide some context.

Chan Rogers – Now Dave Travalini is telling Andy Rodenhiser that that was not their intent. At some point, some interpretation of what they have written has to be given.

Sean Reardon – It is not an easy task to do this. It is an iterative process. This is a good effort.

Andy Rodenhiser – It is just a matter of timing of the public hearing. There was a fear that the adoption of the rules and regs would make for a flood of applications. They may not be aware of the idea of putting in an effective date. I don't understand the concern there if you aren't concerned about doing deeper.

Chan Rogers – Several potential developers are panic struck by what has been proposed. That is not an exaggeration. Our current industrial park will become useless if these regs are adopted.

Sean Reardon – There is a variance process. It is not like the exclusions are set in stone. There is an opportunity to go beyond. The tone of it is pretty aggressive. If I were reading this as a consultant to a developer, I would read from this that they are serious about defending this area.

Sean Reardon –The variance process is how the commission decides to implement the regs

Sean Reardon – I would come away from reading this as there is a tough row to hoe.

Gino Carlucci – Relationship to the Massachusetts Environmental Protection Act (MEPA) – none of the other towns have that element.

Andy Rodenhiser – impact of that?

Gino Carlucci – concern about time to complete an EIR

Sean Reardon – The MEPA process is a state process for coordinated review. It puts all the state agencies in one pool, and it can take months/years – exceeding certain thresholds and certain types of activities. What triggers MEPA? You want the MEPA and the local ConCom process to occur concurrently. I don't think the language here is such a big deal. Have to keep it open until the MEPA process is completed.

Gino Carlucci – keeping the hearing open is a good thing

Glenn Trindade – We have certain areas that we have designated 43D sites -

Andy Rodenhiser – What is the impact of this on our 43D sites? If we have 180 days to make a local decision, what if MEPA process extends on much longer?

Brian Snow – The intent is to keep the process open. If MEPA decides they want to do xyz, we wanted to be able to incorporate that into the local decision.

Andy Rodenhiser – In the case of a 43D

Glenn Trindade – MEPA project, certain thresholds – what are they? Comes into play for a huge project

Sean Reardon - 1000 parking spaces is one item. MEPA review and wetlands are not really connected too much. I am not sure what the bang for this buck is. There are mechanisms to change

Bob Tucker – It sounds like we may need to have some additional text at least for the 43D sites.

Sean Reardon – You are creating a linkage here that is not presently there.

Glenn Trindade – 43D sites are not likely to trigger a MEPA review. This is less an issue of 43D and more about keeping a hearing open

Sean Reardon – In most towns it is a totally independent processes. Not all MEPA reviews are tied to wetlands.

Andy Rodenhiser – The board could have rules to allow them to have the provisions.

Sean Reardon – What is the benefit to the ConCom that they don't already have to have this language in there

Brian Snow – We are trying to make the two decisions come together so the advertising and decisions come together.

Andy Rodenhiser – the cost of postage for abutter mailings

Sean Reardon – That is nothing; the real issue is project financing. The bank is going to be looking for the ConCom approvals. To the extent you are linking a local process to a cumbersome state process, it could be a barrier to financing.

John Williams – As you describe it, isn't it a hand in glove ruling that goes along with the ConCom?

Sean Reardon – Depends on the scope of the MEPA review – that covers many things unrelated to wetlands. I could have a MEPA filing that has nothing to do with wetlands but still have a local wetlands filing. MEPA is so much bigger and broader in scope than a local ConCom review. 90% of MEPA has nothing to do with wetlands.

Bob Tucker – The only link should be if there was a . . .

Sean Reardon – Even then, ConCom could seek to continue the hearing until a MEPA review is over. In most cases they aren't going to feel a need.

Andy Rodenhiser – really more of a financing problem, because ConCom can't close a hearing

Bob Tucker – Gino Carlucci, by NA noted in the other towns, there is no tie?

Gino Carlucci – Yes, correct.

Bob Tucker – suggestion – Instead of saying NA, just state what the WPA reg is

Andy Rodenhiser – To know that there is no definition or use of the term

Bob Tucker – I want this to be reader friendly –

Andy Rodenhiser – We want this to be useful -

Gino Carlucci – re: permit extensions – The draft regs directly conflict with the bylaw. The bylaw expressly allows for a 1 year extension. The regs do not allow extensions for RDA and Orders of Conditions

Sean Reardon – WPA allows up to a 3 year extension.

Brian Snow – The problem is that people forget.

Gino Carlucci – re: septic systems- There seems to be a contradiction between the regs and the bylaw.

Sean Reardon – You are talking about quite a ways away.

Andy Rodenhiser – 200 feet

Sean Reardon – yes . . .

Bob Tucker – We need to show where the holes are with this.

Gino Carlucci – Franklin had a reference to septic system. They allow for emergency repairs. None of the other towns had any mention of septic systems

Bob Tucker – What does the WPA provide?

Sean Reardon – Allows work right up to the limit of the wetland.

Gino Carlucci – A septic system would be considered a disturbance.

Sean Reardon – Adding a buffer zone around the flood plain is HUGE. There is a lot of development that would be excluded in the buffer area around the flood plain.

Gino Carlucci –No disturb, no build zones vary considerably among the various towns.

Bob Tucker – Add another column in here on what WPA provides. Show how the various towns compare.

Sean Reardon – Build and disturb are not defined. If it is silent, it could be anything.

Bob Tucker – You should say that those definitions are missing. Those are critical attributes that need to be well defined.

Andy Rodenhiser – How does this relate to the bylaw? Seems to conflict.

Sean Reardon –yes

Gino Carlucci – Hopkinton has different setbacks for different uses. They require a commercial industrial building to be 50-75 feet away from the wetlands, but a road can be as close as 30 feet and a driveway can be 15 feet. They had a finer breakdown.

Andy Rodenhiser – It would almost seem that a building would really have less long term impact than a road.

Brian Snow – Buildings tend to have areas around them that grow with sidewalks, lawn, etc. – a lot of the exterior stuff - added driveways – throw pallets back there

Sean Reardon – POD units or storage container –

Gino Carlucci – re: exemptions – There are exemptions provided. I need to fill that in some more. There are fewer than what is exempted in the bylaw.

Gino Carlucci – Millis didn't have any exemptions listed. Franklin allowed for minor without having to do an NOI

Sean Reardon – Under WPA, exempt means you are exempt from the whole act. to the extent that the local bylaw is different, you are creating a process that might not otherwise be there.

Question – on vernal pools?

Brian Snow – comparison of practice vs. regulation

Andy Rodenhiser – Dave Travalini said they wanted to put a freeze for 100 feet around what they think may be a vernal pool.

Brian Snow – We want to put the hold on the vernal pool area.

Sean Reardon – It is already a power they have through the WPA. I think you are confusing things a bit. This does say people have to wait until spring to do a vernal pool determination.

Andy Rodenhiser – I am told that a project can go forward except for the disputed area.

Sean Reardon –What performance standards would apply?

Brian Snow – Applicants will present a project with a vernal pool on it

Sean Reardon – Is the intent that the regs would extend another 100 feet

Brian Snow – We want the 100 feet from the bank of the vernal pool to be a no disturb zone. Most builders in town know that

Andy Rodenhiser – Does the language match the intent?

Sean Reardon – If it does, it does so awkwardly.

Andy Rodenhiser – Can you make a recommendation?

Andy Rodenhiser – We want to offer a recommendation to the ConCom. We recognize their autonomy. We want to give them a work product they can consider.

Susy Affleck-Childs – It seems we will need at least one more work session.

Chan Rogers – I think it could be a presentation by Gino Carlucci and Tetra Tech Rizzo on behalf of the Planning Board.

Bob Tucker – or at least an overview of what the issues are

Andy Rodenhiser – It is not Brian Snow’s intent, but that is how it is written. That is why people have so many burrs under the saddle.

Gino Carlucci – One last thing on vernal pool – the definition includes the 100 foot buffer zone. The intent could be the same, but say there is a 100 foot no disturb area

Gino Carlucci – re: variances – I would prefer the term waiver. Variance in zoning is very difficult. The language is very aggressive. They do provide for them but only in rare and unusual circumstances.

Andy Rodenhiser – Maybe a variance request form – with explanation on public interest.

Sean Reardon – WPA is years and years of drafting. The moving of the Neponset River for the Patriot Stadium did not require a variance.

Sean Reardon – I have always heard it referred to as a waiver – little bit lower threshold.

Bob Tucker – Holliston has no provisions for waivers. I find that surprising.

Sean Reardon – Chances are it is because they don't have the aggressive language.

Bob Tucker – Please check that out.

Gino Carlucci – re: replication – I didn't look at that for Millis and Franklin. I will now.

Bob Tucker – Are there any other issues that you think should be added?

Gino Carlucci – There was another issue I had identified in my first letter. I just didn't think it would show up in the other rules and regs. It had to do with requiring a full build out plan for all land owned by the applicant. That seemed very difficult to do with a big piece of land. It might be 20 years in build out. Market conditions change, economy changes. If the point was to prevent somebody from creating their own hardship, I think that could be addressed another way.

Andy Rodenhiser – Was it specific? Let's say somebody had 100 acres and only wanted to do 20 acres.

Gino Carlucci – I think you are hitting on some of the problems. Does that mean they are precluded from coming back later?

Sean Reardon – There is also an enforceability issue with subdivisions, enforcement actions.

Brian Snow – We have a lot of properties that have been subdivided over the course of 20-25 years. How do I deal with people?

Andy Rodenhiser – Would it just be not permissible?

Dave Travalini – It is difficult to track previous work.

Andy Rodenhiser – Perhaps you should file Conservation decisions with the property.

Dave Travalini – Sell off 10 lots, then you have the street left, and the developers take a walk. Who do we go after? We can't go after the homeowners. We are looking for a certificate of compliance for the entire development. They should know that going in. If the developer decides to abandon the road, the residents have to pick up

Andy Rodenhiser – Gino Carlucci, could we incorporate as part of our construction in our rules of regs a way for us to bond

Dave Travalini – We have talked about it. . . that idea has been challenged in court – bond was held by the Planning Board, held back dependent on ConCom – determined that ConCom would have to hold a separate bond.

Chan Rogers – We can only bond the road completion.

Andy Rodenhiser – Maybe there are some changes that could be made on our side.

Glenn Trindade - I think the whole purpose of public meetings is to do what you are doing right here. I don't believe ConCom is going to tell anybody that they have all the answers. Dave Travalini said here is my concern – Andy Rodenhiser is saying how can we address it?

Sean Reardon – There are measures that the Planning Board could employ.

Glenn Trindade – Find something that fits the need, which passes muster, makes it easy for folks that want to comply.

Sean Reardon – There are good leverage points – the releasing of building permits and certificates of occupancy.

Sean Reardon – You are going to accept the roadways. ConCom could end up putting an enforcement issue on you.

Dave Travalini – part of the issue that may – you bond the road – what we are talking about different work that may be required – just making it part of a bond. I don't believe the Planning Board can bond ConCom work.

Sean Reardon – That seems odd. If we saw replication work that was part of a subdivision plan, we would include it in a subdivision bond.

Dave Travalini – Can the Planning Board bond wetlands work on private property?

Andy Rodenhiser – I am trying to make the connection with the bonding process.

Andy Rodenhiser – Do formulate what the question might be. Ask town counsel if at some point in time during a ConCom hearing for a matter that is also with the Planning Board, if that resource area is determined to need attention or replication that that is in the public interest of protecting our watershed, the Planning Board is going to basically make that part of the bonding process for accepting streets so that the bond can be connected.

Chan Rogers – I think it can be done.

Karyl Spiller-Walsh – I think it is a spoiler. This is all part of general storm water management process. I don't see how it can really be separated

Andy Rodenhiser – Dave Travalini is talking about wetlands replication that is needed to allow for a road - replication to occur elsewhere on the property. The only reason they were allowed to go forward is because that replication.

Sean Reardon – The subdivision would not be approvable without the replication.

Andy Rodenhiser – We may not have looked at this from this perspective.

Dave Travalini – I seriously suggest you talk to town counsel. You might be overstepping your bounds. She may tell you that it has to be ConCom's. I don't know if you are going to be allowed to do that

Sean Reardon – If it is replication somewhere else not in the subdivision at all, then I could see how that would apply . . .

Dave Travalini – The topics I am concerned about wouldn't fall under storm water management. Reapplication areas don't generally fall under storm water.

Sean Reardon – I think what you are talking about is much less challengeable that these draft rules and regs . . .

Andy Rodenhiser – Sean, can you take this all back to Dave Pellegrini?

Sean Reardon – Based on the dialogue today, we might want to draft a different way to present our input

Bob Tucker – Eliminate the blanks in the form, show us the WPA provisions.

Dave Travalini – There is a recent court decision called the Heeler Decision. Waste of court time if bylaw is not stronger than the WPA.

Andy Rodenhiser – Please get info from Barbara Saint Andre on this case.

Dave Travalini – Town counsel has told us that our bylaw is not really strong because we don't have rules and regs in place. The goal is to define the why and the how.

Andy Rodenhiser – If the bylaw is not any stronger than the WPA, you can't strengthen the bylaw by making stronger rules and regs.

Dave Travalini- But you can define what they need to do. We protect the 100 feet, he said, she said - court asks if the town has told them HOW to protect.

Andy Rodenhiser – Shouldn't we strengthen the bylaw?

Dave Travalini – re: definition of a vernal pool – What the state says and what we consider – it has to be better – not make it more onerous, but better defined. If we say we protect, that is too nebulous – we can't exceed the bylaw.

Dave Travalini – My guess is that we will talk with whoever shows up. Our agent says this, we are getting letters from folks, something from you – we have no problem with discussing and changing it. What we are putting forth is not necessarily the end product.

Sean Reardon – We will prioritize our comments, and a whole slew of other miscellaneous comments.

Andy Rodenhiser – I had said earlier, there was a concern that a flood of plans would come into them at the last hour – in order to set a date in stone for effective date of rules and regs.

Gino Carlucci – With zoning, for special permit requirements, there is no grandfathering even if application comes in before town meeting votes.

Andy Rodenhiser – I also want to distribute a letter from EcoTec Environmental consultants dated 9-24-09. Comments on the ConCom regs.

Bob Tucker – Go ahead and expand and improve upon the matrix.

Bob Tucker – Have concluded we are not going to have all of our info completed for Thursday night (10-1-09)? What do we want to do Thursday night? What do we want to say? I don't want to leave ConCom out hanging.

Dave Travalini – They could just give it to us directly.

Bob Tucker – If we are going to give you a product, we owe you a due diligence look at it ourselves.

Dave Travalini – We will open the meeting on Thursday. I don't see the value in postponing (beginning the hearing). Get people talking. I don't want to sit there and say bam this is it. This will be a majority decision of the board. I can't just unilaterally postpone the public hearing. If there is a case for more information, I see us with some delay. I think we have given a lot of people a lot of time. We followed the bylaw in terms of giving it to everybody. I don't want to wait 2 months to get it in a completed state.

Chan Rogers – What you have proposed is not clear – there is a lot of contradictory info – this whole issue of boundaries on top of boundaries - that has to be sorted out – you have to take a position on it. I don't think there is any way you can go ahead without hearing testimony and take your own time to deliberate.

Dave Travalini – I understand. I can't speak for the rest of the board. We won't ignore anybody

Andy Rodenhiser – We could ask for some more time.

Dave Travalini – Our next meeting is the October 15th – get it into our hands before that.

Gino Carlucci – The Planning Board is meeting on October 13th –

Dave Travalini – It has gone through a number of meetings and working votes.

Glenn Trindade – The rules and regs can be amended if they need more changes. I have heard some good input tonight. Work toward something that everybody can live with – maybe there is some language in the first pass. That is what these meetings are for.

Andy Rodenhiser – making defensible decisions –

Dave Travalini – The process was done according to the bylaw – town counsel

Gino Carlucci – I think it is okay to work on this through the public hearing. I think it is OK for them to change part of the document.

Chan Rogers – You have heard some concerns about extending out the boundaries ad infinitum.

Andy Rodenhiser – Dave Travalini has already told us that was not the intent – and that would never hold up in court – it could be a taking.

Dave Travalini – These people have not shown up at our meetings to discuss – open to the public and – nobody bothered to show up and say what they think.

Chan Rogers – We have a problem with the compounding of the boundary, and I don't know how they are going to sort that out.

Glenn Trindade – It is just a question of changing the language. We will take that into consideration.

Sean Reardon – I would hope it is their intent to hear what we had to say, and take it under advisement.

Dave Travalini – If you have 6 board members that do not want to be reasonable, what would happen?

Glenn Trindade – What would happen is that the wetlands bylaw would be amended at spring town meeting. I expect the concom will be reasonable. I think tonight was a positive example. I thought this was very useful. Bringing this to bear is important. I think at the end we will have a dam good set of rules and regs that will come out of this.

Andy Rodenhiser – Who should we send to the meeting?

Dave Travalini – You have to gauge what the reasonableness of our board is to grant that extension. I can't tell you whether I will vote for that? If you want to not send the consultants, you have to gauge.

Sean Reardon – I don't know how much value we would add by being there. Put our comments on record and give them to you.

Andy Rodenhiser – I think we have said the 15th at the ConCom meeting.

Get comments to Susy Affleck-Childs, distribute to PB members, feedback to Susy Affleck-Childs.

Dave Travalini – If we decide to continue, and we make some changes, I will get that to Susy Affleck-Childs.

Dave Travalini – Trish Brennan says we pretty much fall in the middle –

NOTE - Bob Tucker will attend the 10-1 public hearing – may provide some highlights of the preponderance of our concerns. We are working on our recommendations.

Dave Travalini – We are going to listen to everybody.

Andy Rodenhiser – Thanks to Gino Carlucci and Sean Reardon for putting this together.

Blueberry Hill Bond Discussion

Andy Rodenhiser – What other streets does this have an implication for?

Susy Affleck-Childs -

Chan Rogers – I don't see how anybody can do anything to solve this problem.

Andy Rodenhiser – We need to acknowledge and be prepared for the fall out, and make a decision on a cut off point.

Gino Carlucci – In this case there was a special provision. This is unique because of the agreement.

Susy Affleck-Childs to draft a motion for October 13th re: bond refund for Blueberry Hill Road.

A motion to adjourn was made by Karyl Spiller-Walsh, seconded by Chan Rogers. The motion was approved unanimously.

The meeting was adjourned at 9:30 pm

Respectfully submitted,

Susan E. Affleck-Childs
Planning and Economic Development Coordinator

Steinhoff Realty Trust

21 September 2009

Medway Planning and Economic Development Board
Town of Medway
153 Village Street
Medway, MA 02053

RECEIVED
SEP 21 2009

TOWN OF MEDWAY
PLANNING BOARD

Re: 1. 146 Main St., Medway In AR-II District, Parcel ID 5-264-0-R
2. Medway Adaptive Use Overlay District for AR-II
3. Medway Historical Commission Decision to Demolish 146 Main St., Medway
dated July 28, 2009

Subj: Working with the Medway Adaptive Use Overlay By-Law

Dear Planning Board:

As you may be aware, Steinhoff Realty Trust is in the process of purchasing the property at 146 Main St., Medway (Ref. 1) which currently is a residence. The 2-story residence consists of approximately 1,832 SF and was built in 1880. The site size is 0.7 Acre. The reason for the purchase is the need for additional small professional business office space for ValuTrack Corporation from our current 700 SF office at 133 Main St., Medway. This property is attractive as it is in the Adaptive Use Overlay District (Ref. 2). However, as the 146 Main St. residence is in a badly run down condition, Steinhoff Realty Trust and the Seller received a decision to allow it to be demolished from the Medway Historical Commission (Ref. 3).

This said, I would like to explore, with the Planning Board, a way to rebuild the 146 Main St. property maintaining a 2-story residential building appearance in such a manner that the Medway Adaptive Use Overlay By-Law remains in effect while:

- a. building a similar looking 2-story building for small professional office environment that meets current building code. If our discussions are positive, Steinhoff Realty Trust will pursue relief from any disability based requirements with the Commonwealth for 2nd Floor access;
plus
- b. add new construction for an additional 2 floors of small business professional offices off the back of the rebuilt building (44' x 60' footprint for an additional 5,280 SF and a total of 7,110 +/- SF). These would be 2 separate floors with no connectivity. ValuTrack Corporation would utilize the upper floor. The lower floor would provide rentable area as would part of the rebuilt structure;
plus
- c. exploring the use both geothermal for HVAC and wind power for electrical generation so that the completed site is totally Energy Neutral (i.e. produces as much or more energy than it uses.). Note that Steinhoff Realty Trust has met with both Mr. John Emidy, Building Inspector, and Ms. Susan Affleck-Childs, Planning Board Coordinator,

Steinhoff Realty Trust

Page 2

Working with the Medway Adaptive Use Overlay By-Law

regarding adding a Wind By-Law to Medway's By-Laws at the Spring 2010 Town Meeting.

At this point, as Steinhoff Realty Trust has not started any engineering drawings, I am open to working out an approach to achieve the above with the Planning Board that would be beneficial to both the Town of Medway by maintaining the residential architecture and Steinhoff Realty Trust. If this approach is of interest to the Planning Board, I am willing to sit down with the Board and address the above. I will then provide sketches of an approach that, in my opinion, will work.

I look forward to your timely response.

Respectfully,



Dick Steinhoff
Steinhoff Realty Trust
133 Main Street, Ste. 300
Medway, MA 02053-1576
(c) 508-446-4183
(f) 508-533-4936
rsr@energynutraldesign.com

PGC ASSOCIATES, INC.

1 Toni Lane
Franklin, MA 02038-2648
508.533.8106
508.533.0617 (Fax)
pgca@comcast.net

September 17, 2009

Mr. Andy Rodenhiser, Chairman
Medway Planning Board
155 Village Street
Medway, MA 02053

Re: Draft Conservation Commission Rules and Regulations

Dear Mr. Rodenhiser:

I have reviewed the draft Conservation Commission Rules and Regulations. My primary focus was to identify any conflicts between the Rules and the Medway wetlands bylaw, Planning Board Rules and Regulations and DEP Rules and Regulations. I also identified potential impacts on development projects, and I have prepared a Town-wide map indicating Medway wetlands with 25, 50 and 100-foot buffer zones delineated, as well as maps of the Industrial I and III districts enlarged. It should be noted that this map understates the situation as it only includes those wetlands that are available from MassGIS. It also does not indicate riparian areas. David Pelligri of TetraTech Rizzo has also reviewed the draft Rules and Regulations. He has provided comments on my comments as well as several additional comments, all of which appear in *italics* below.

My comments are as follows:

1. Section 1.03 Jurisdiction – This section states that a buffer zone surrounding a Resource Area is itself deemed to be a Resource Area protected by the By-Law. I think this creates some confusion since there are later references to “Resource Area” and it becomes uncertain as to whether the buffer one is included or not. This is especially true when distances from the “Resource Area” are mentioned. Perhaps something like the following would have the same effect without the confusion: In addition, the buffer zone surrounding a Resource Area it itself deemed to be a resource protected by the By-Law.”

Throughout the document there are references to buffers and resource areas, however they are defined differently in the Regulations and the WPA. As I read the Regulations there is technically no buffer zone associated with the Medway By-Laws. Once the buffer zone is defined as a resource area, the definitions need to be clarified.

Additionally, it is unclear how the buffer zone applies to the outer Riparian zone which itself is a Resource Area.

2. Section 1.04 Definitions – Several of the definitions in this section simply refer to the section of the bylaw where those terms are described. The DEP regulations also do this. It would be simpler to include the definition in the definitions section and not repeat it later in the

Planning

Project Management

Policy Analysis

document or delete it from the Definitions section and rely on the description in the later sections.

The “Bank” definition references section 2.5 for the definition. I believe the definition is in Section 3.01.

The WPA does not exclude economics from their definition of “Best Available Means”. While economics should not define this term, it should be included as a component of the definition.

Several definitions in this section extend, but do not conflict with, the coverage of the By-Laws beyond the WPA. For example, the definition of “Owner of Land Abutting the Activity” extends the coverage beyond the WPA by adding “lake, and pond” to the end of the definition. Additionally, the definition for “Pond” in the By-Laws requires an area of 5,000 square feet, while the WPA requires an area of 10,000 square feet.

The definition of “Prior Disturbance” notes that “any disturbance in the vicinity of the project”. This wording of vicinity is typically too vague for regulations.

Some of the items described in the definition of a “Small Project” such as the construction of decks, patios, pools, sheds, etc are exempt from the WPA if they are beyond 50’ from the mean annual high-water line within the Riverfront Area or from the BVW. This extends the coverage of the By-Laws beyond the WPA but does not conflict with the WPA.

3. Section 2.3 – This section seems to require that an “entire project, including full build out” must be included in any Filing. I am not sure it is reasonable or useful to require that a plan for an owners entire property be required if the present need requires just a small part of the land. I think it is reasonable to require a resource delineation of the entire parcel or parcels (in part to ensure that incremental development does not result in a self-induced hardship), but for large parcels it may be difficult to project potential development that may not happen for many years since economic and market changes may result in very different projects in future years. Also, this section includes a reference to “adjoining subdivisions under the control of the same owner but not yet built, shall be considered the same project.” The term “subdivisions” should probably be changed to “parcels” since even in the residential districts there are development options other than subdivisions, e.g condominium developments.
4. Section 2.9- *This section requires the completion of actions associated with the MEPA submittal prior to the close of a hearing by the Commission. This will make the permitting of the project more difficult for the applicant because when filing the ENF the applicant does not always know whether an EIR is required. Therefore, the ENF response would need to be received prior to submitting the local Notice of Intent to ensure proper timing of approvals.*
5. Section 2.11 – This subsection says that Determinations of Applicability cannot be extended beyond their initial 3-year term. This is contrary to the Wetlands By-Law which, in Section 21.6, expressly authorizes a single 1-year extension provided a written request for it is received at least 45 days prior to expiration.

6. Section 2.13 – Same as 2.11, except it does allow the Commission to approve an extension. However, the By-Law specifies that a 1-year extension can be obtained if requested 45 days prior to expiration.
7. Section 2.17 – Subsections (a) and (b) are contradictory since (a) says it presumes septic systems compliant with Title 5 or Medway Board of Health requirements protects the interests identified in the By-Law, then (b) says they can't be within 100 feet of a Resource Area because they don't protect those interests.

Additionally, subsection (b) requires a 100' offset from the Resource Area. Because the buffer zones are defined by the By-Laws to be resource areas themselves, this requires the system to be located 200' from the Resource Area as defined by the WPA. This could substantially restrict development.

8. Section 2.19 provides for the Commission to limit lawn area and impose irrigation restrictions. I think this is a good idea, but I wonder if there is a legal basis for this authority for the Commission.

Section 3.02 (2) (a) when describing Freshwater Wetlands this section states "Said Resource Areas shall be protected whether or not they border surface waters". It should be noted that the WPA does not include this stipulation, therefore the By-Laws may extend the local jurisdiction.

9. Section 3.04 (1) (b) defines "Isolated Land Subject to Flooding." This definition does not include a minimum area. This conflicts with the By-Law, which states that in order to be afforded protection, Isolated Lands Subject to Flooding must encompass a minimum surface area of 5000 square feet. It should also be noted that DEP regulations define Isolated Land Subject to Flooding as encompassing at least a ¼ acre-feet of water with an average depth of at least 6 inches at least once per year.
10. Section 4.01- *When this section refers to Wetlands I assume they mean Freshwater Wetlands as defined by the Regulations.*
11. Section 5.06 specifies Minimum Performance Standards. It establishes a "No Disturb Setback" of 25 feet. This is accordance with the By-Law. However, the By-Law provides exceptions for certain utility work, agricultural practices and emergency projects. The regulations should include language such as "except as provided in the By-Law."
12. Section 5.06 also provides for a 100-foot "No Build Setback," and "No Disturb Setbacks" of 25-, 50- and 75-feet for different circumstances. The 25-50-foot setback applies to already-disturbed areas. The 50-foot setback applies to new disturbances on previously undisturbed land. The 75-foot setback applies to certain specified sensitive areas. The By-Law does not provide for these but it does not preclude them either so there is no direct conflict unless the intent of the By-Law is to allow disturbance in these areas. This, of course, reduces the land available for building by 75 feet adjacent to any wetlands and for disturbance of any kind (e.g. for parking, lawns, storage, etc. by 25 to 50 feet. It should be noted that a 50-foot "no-build"

setback is common and there is scientific evidence to support such a setback. Logically, greater setbacks will generally provide better protection, but at the cost of reducing developable area.

13. Section 5.06 also states that the Rules and Regulations should not be construed to preclude access paths, vista pruning of construction of water-dependent structures within the buffer zone subject to the discretion of the Commission. It is not clear under what process such discretion may be obtained. It would seem appropriate for this to occur under a Request for Determination of Applicability. It should be noted that DEP regulations provide for “minor activities” that are not subject to regulation. These include unpaved pedestrian walkways for private use, fencing (as long as it is not a barrier to wildlife); vista pruning more than 50 feet from a resource area; planting of native species of trees, shrubs or groundcover (excluding turf lawns); conversion of lawn uses to decks, patios, etc. (if more than 50 feet from resource area); conversion of impervious surfaces to vegetated surfaces with erosion controls; and temporary activities with negligible impacts.
14. *Section 5.06 (a) states that the No Build Setback shall be 100 feet from any Resource Area. Since the By-Laws define the buffer zone as a Resource Area, this would require a No-Build setback 200’ from the Resource Area as defined by the WPA. Clarification of these terms as previously stated would alleviate this issue.*
15. It should be noted that DEP regulations also exempt from regulations certain activities within the 50 to 100 foot buffer zone if certain conditions are met. The conditions include that the buffer zone does not contain slopes greater than 15%, there are no Estimated Habitat areas in the buffer zone, the buffer zone does not border on an Outstanding Resource Water (i.e. vernal pools, public water supplies, or Area of Critical Environmental Concern), impervious surface in the 50-100 foot portion of the buffer zone will not exceed 40% and no alteration of the 50-foot buffer zone will occur, stormwater management complies with DEP standards, and no Notice of Intent for work within the 50-foot buffer will be filed during the three years of the Order of Resource Delineation. Such exempt work may be authorized through an Abbreviated Notice of Resource Area Delineation.
16. Section 6 Vernal Pools – The regulations state that a depression that possesses the physical characteristics of a vernal pool will be assumed to be one whether or not it is certified as such by DEP. The burden of proving it is not a vernal pool will be on the applicant, and this may require that observations of the depression during the appropriate seasons take place.
17. Section 7 Variance – The Rules and Regulations provide for the opportunity for the Commission to grant variances from the rules but only in “rare and unusual cases.” It is the responsibility of the applicant to provide “clear and convincing” evidence that the proposed work will not have any adverse effect upon the interests protected by the By-Law. It may also grant variances in cases where not doing so would result in an unconstitutional taking of the property, or where the work will have an overriding public benefit.
18. Section 8.02 specifies that plans shall include elevation contours and indicate the referenced datum used. Since the Planning Board requires North American Vertical Datum of 1988, it is probably a good idea to specify this standard to avoid conflict with Planning Board standards since an applicant is likely to apply to Conservation Commission first.

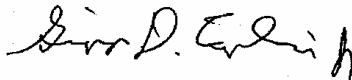
19. Section 8.03 specifies drainage information. It requires drainage calculations for the 1, 10, 25 and 100-year storms, while Planning Board requires calculations for the 2,10, 25 and 100 year storms. These should be consistent.

Section 8.03 (2) states that storm drains and retention basins shall be designed for a 10-year frequency, while the Planning Board requires that the storm piping system be designed for the 25-year storm.

Section 8.03 (2) states that culverts shall be designed based on a 25-year storm, while the Planning Board requires the culverts be designed for the 50-year storm event.

If there are any questions about these comments, please call or e-mail me.

Sincerely,



Gino D. Carlucci, Jr.

Sincerely,



David R. Pellegrini

Comparison of Draft Medway Conservation Rules and Regs with Area Communities

DRAFT 9-28-09 - PGC Associates and TTR

	Medway	Millis	Medfield	Franklin	Holliston	Hopkinton
Jurisdiction	Includes resource areas in addition to those in WPA and Bylaw. Buffer zone definition causes confusion.	Wetlands, water bodies and land within 100 feet of wetlands or 200 feet of streams. No confusion about buffer zones.		Wetlands, water bodies and land within 100 feet of wetlands or 200 feet of streams. No confusion about buffer zones.	Wetlands, water bodies and land within 100' of wetlands and 200' of streams. 100' and 200' buffers described as Adjacent Upland Resource Areas, causes some confusion similar to Medway.	Wetlands, water bodies, and land within 100' and 200' of streams. No confusion about buffer zones. Minor extension of jurisdiction beyond WPA. (1).
Definitions						
River/Stream					Similar to WPA definition of perennial stream.	Same as WPA
Best Available Means	Excludes economics	No definition		No definition	No definition	No definition
Buffer Zone	Any land within 100' horizontally outward from the edge of any resource area as defined in this section. Confusing because of the Resource Area Definition.				Any land within 100' horizontally outward from the edge of any resource area as defined in this section. Confusing because of the Upland Resource Area Definition.	Any land within 100' horizontally outward from the edge of any resource area, 200' from rivers and streams, and 125' from vernal pools.
Pond	5,000 sq. ft.	5,000 sq. ft.		No definition	5,000 SF	No definition
MEPA Relation	MEPA action required to	NA		NA	NA	NA

	be completed before hearing closed.					
Permit extensions	None for RDA, OOC at discretion of ConCom.	1-year extensions allowed		Not addressed	Valid for 3 years. Permit may be renewed for one year periods.	Valid for 3 years A one time one year extension (4)
Issue/Town	Medway	Millis	Medfield	Franklin	Holliston	Hopkinton
Septic systems	Excluded within 100 feet of resource.	Not specifically addressed		Emergency repair allowed, new systems not specifically addressed.	No Reference	Not specifically addressed
No disturb/No build	100-foot no-build No disturb varies from 25 to 75 feet.	50-ft “no Build.” Disturbance on 50-100 discouraged structures allowed up to 30% of area with alternatives analysis and mitigation.		25-ft No Disturb; No structures 25’- 50’ with exceptions for previously-disturbed areas; Structures allowed in 50’-100’ zone up to 30% of area and mitigation required for more.	No disturb – 50’, however the Commission is granted latitude in assessing the impact to the Upland Resource Area (URA). The URA is broken into several categories including No Disturb, Temp. Disturb, Limited Disturb, and Permanent Disturb. (2)	The Commission is granted latitude in assessing the impact to the Upland Resource Area (URA). The URA is broken into several categories including No Disturb, Temp. Disturb, Limited Disturb, and Permanent Disturb. (3)
Exemptions		No specific exemptions		Minor disturbances on previously disturbed properties may be allowed by Negative Determination with conditions.	No specific exemptions.	Only those specifically noted in Section 206-4 of the By-Laws (2)(7)
Vernal Pools	Includes 100 foot buffer	Has separate definition for buffer zone and	Isolated wetland subject to flooding		Similar definition as WPA with a few	Similar definition as WPA with a few additional

		excludes lawns, gardens and other developed areas.	voted by ConCom to meet requirements of vernal pool as defined by DEP		additional requirements. Has a 100' associated buffer.	requirements. Has a 125' associated buffer. (5)
Issue/Town	Medway	Millis	Medfield	Franklin	Holliston	Hopkinton
Variations		Waivers allowed when in public interest and consistent with intent of bylaw		Allowed if evidence shows interests are protected	No Reference	No reference but the guidelines provide the Commission with latitude.
Replication					Commission strongly discourages any plan that requires replication. In those instances where replication is approved by the commission, specific conditions must be applied as outlined in section 6.3.5 including a replication area 2X as large as destroyed area.	Commission strongly discourages any plan that requires replication. In those instances where replication is approved by the commission, specific conditions must be applied as outlined in section 6.3.5 including a replication area 1.5X as large as destroyed area.

Hopkinton (1) - Resource areas are not required to border water bodies, and vernal pools and their buffers are protected regardless of whether they have been certified under the state program or whether the pool/buffer is located within state protection. Vernal pool buffers are extended from the state 100' to the town 125'.

Hopkinton (2) - Applications and permits required by the Bylaws shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, sanitary sewers and storm sewers, provided 48 hours notice is provided and work conforms to performance standards and design specifications meet the regulations. Also, the permit is not required for emergency projects necessary for the protection of the health and safety of the public per the requirements in 206-4 (B). Lastly an exception may be made at the discretion of the Commission.

Hopkinton (3) – The commission shall consider proposals for work in the buffer zone in terms of four (4) broad forms of disturbance areas. These terms are determined on a case by case basis unless applicant provides evidence

deemed credible and sufficient that the area or part of it may be disturbed without harm to the values protected by the law.

Hopkinton (4) – The commission may at its discretion issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work.

Hopkinton (5) – The commission discourages any plan that requires replication. In those instances where replication is required by state law and/or approved by the commission, certain conditions found in section 5.6.2 must be met. These candidates require a replication area 1.5 times as large as the area of resource area being destroyed. Actual ratio shall be determined on a case by case basis.

Hopkinton (6) – All storm water runoff systems shall at a minimum conform to best management practices as specified in the DEP Storm water Management guidelines, volumes I and II. The conservation commission may impose the state regulation criteria located in 5.12.1.

Hopkinton (7) – The commission will consider a negative determination of applicability under the bylaw for all projects that qualify under the following guidelines which are more stringent than but otherwise parallels the state regulation criteria located in 5.12.1

Hopkinton (8) – The Regulations provide specific distances for Limits of Work or Disturbance and Limit of Structure from Resource Areas for varying types of work including residential activities, utilities, storm water management, roads, driveways parking lots and all other activities.

Holliston (1) – Resource areas include 100' from resource areas defined in WPA. Holliston has the same issue as Medway where the use of the words “Resource Area” and “Buffer Zone” gets confusing.

Holliston (2) – The commission may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the 100-foot (200 feet for rivers and perennial streams) adjacent upland resource area that shall meet the specification provided in the regulations and set other conditions on this area, unless the applicant provides evidence deemed sufficient by the commission that the area or part of it may be disturbed without harm to the values protected by the bylaw. The bylaw gives the commission broad description to permit, condition, and prohibit work within the adjacent upland resource areas as the specific situation warrants. Therefore the commission shall consider proposals for work in the adjacent upland resource area in terms of four (4) broad forms of disturbance areas. This approach is intended to allow maximum flexibility for property use while maintaining adequate levels of resource protection. Categories include: No Disturbance Area, Temporary Disturbance Area, Limited Disturbance Area, and Permanent Disturbance Area. In general, work and activity within 100 feet of wetlands should be avoided and discouraged and reasonable alternatives pursued.

