

# **TOWN OF STOW PLANNING BOARD**

Minutes of the August 2, 2005, Planning Board Meeting.

Present: Planning Board Members: Bruce E. Fletcher, Malcolm S. FitzPatrick, Ernest E. Dodd, Laura Spear and Kathleen Willis

Associate Member: Donna M. Jacobs (Voting Associate)

Planning Coordinator: Karen Kelleher

The Meeting was called to order at 7:30 PM.

## **MINUTES**

***Malcolm FitzPatrick moved to approve minutes of the June 21, 2005 meeting as amended. The motion was seconded by Laura Spear and carried by a unanimous vote of five members present (Bruce E. Fletcher, Malcolm S. FitzPatrick, Ernest E. Dodd, Laura Spear and Kathleen Willis).***

## **CORRESPONDENCE**

Members reviewed a letter from Mr. McGloughlin to the District Attorney, lodging a complaint about a site walk at Hudson Road concerning the proposed AAN Development. Members noted that site walks are not subject to the open meeting law. Those present were there to observe the site with the Conservation Commission and did not deliberate.

## **PLANNING BOARD MEMBERS' UPDATES**

### **Proposed Zoning Bylaw Amendment – Non-conforming lots**

Malcolm FitzPatrick noted that he is reviewing the bylaw for a potential amendment addressing non-conforming lots and asked Board Members to think about the idea of creating an overlay district that allows alteration or expansion on all structures on non-conforming lots in the residential district without the need for a Special Permit, provided that the dimensional setback requirements are met.

### **Special Town Meeting**

Donna Jacobs noted that the Master Plan Committee will not likely be ready for a November 7, 2005, Special Town Meeting.

Laura Spear questioned if the Board might be ready for a Low Impact Development Bylaw?

Laura Spear reported that, based on a recommendation from the Dept. of Revenue, the Community Preservation Commission plans to have Town Meeting rescind the warrant articles for the Kunelius property (Affordable Housing and Open Space) rather than simply transferring unspent funds back into the CPC reserves from Affordable Housing and Open Space.

## **PUBLIC HEARING - AAN SPECIAL PERMIT/EROSION CONTROL SPECIAL PERMIT and NOTICE of INTENT**

### **79 & 81 Hudson Road (R-10 #55 & 56)**

At 8:15 PM, Bruce Fletcher, Chairman of the Planning Board, announced the continued Public Hearing for an Active Adult Neighborhood Special Permit, filed by Pulte Homes of New

England, for property located off of Hudson Road and opened the Public Hearing to Consider a Petition for an Erosion Control Special Permit for the same property. ***Laura Spear moved to waive the reading of the Public Hearing Notice for the Erosion Control Special Permit. The motion was seconded by Ernie Dodd and carried by a unanimous vote of five members present (Bruce Fletcher, Ernie Dodd, Malcolm FitzPatrick, Laura Spear and Kathleen Willis).***

Kathy Sferra, Chair of the Conservation Commission, announced the continued Public Hearing for a Notice of Intent, filed by Pulte Homes of New England, proposing to construct a 66 unit active adult community, including a private well system, a private common septic system and open space.

The Planning Board and the Conservation Commission introduced themselves to the applicants and the public in attendance. They were Bruce Fletcher, Donna Jacobs, Ernie Dodd, Kathleen Willis, Laura Spear and Malcolm Fitzpatrick from the Planning Board, and Kathy Sferra, Doug Moffat, Steve O'Riorden, Becky Mattison, and Associate Member John Harding from the Conservation Commission, Sue Carter Sullivan, the Planning Board and Conservation Commission's Consulting Engineer, Karen Kelleher, Planning Coordinator, and Pat Perry, Administrative Assistant to the Conservation Commission.

Sue Carter Sullivan began the public hearing with a report to both boards on working meetings and site walks that she attended with representatives of Pulte Homes and Marchionda Associates to discuss engineering solutions to address concerns raised by the Planning Board and the Conservation Commission. Key concerns that they discussed were the amount of fill in the field, cuts into the hillside and the wetlands. They also discussed drainage alternatives and found that it would not be feasible to use the farm pond as storage because it would require major disturbance to the wetlands. They also discussed using a retaining wall to reduce the amount of cut and fill. Sue stated that she made it clear to the Applicant that it is up to both Boards to make a determination, if the revisions are adequate.

Ted Gowdy of Pulte Homes of New England introduced Mathew Leidner from Marchionda Associates, who presented revised plans to the Boards. Paul Marchionda was also present.

Matt Leidner explained that their goal is to get consensus on a plan. They met with Sue Sullivan and walked the site on two occasions. Some of the alternatives they discussed turned out to be beneficial and some not. The main issue is the amount of cut and fill. He presented a plan showing elevations at the lowest points in the field area under existing conditions. He explained that in order to get stormwater to flow to those points, fill is required, as the pipes need to slope.

Matt Leidner noted that they also looked at other locations inside the 35' no disturb buffer and found, in most cases, those areas are fairly flat and wouldn't gain much as far as fill. Sue Sullivan agreed.

Matt Leidner said they also explored the possibility of using the existing farm pond. He stated that they had inspected the pond three weeks ago and determined that to build up the berm enough to use the pond would require a significant amount of fill and require substantial wetland alteration. Therefore, they decided not to pursue this option. Sue Sullivan Carter agreed with their determination.

Matt Leidner said they looked at adding a fifth detention pond near the proposed septic tanks and determined that it would reduce the amount of fill as much as 4 feet in some areas. Matt

also presented a profile view of the fills along the proposed road still inside the 35 foot no disturb zone. Two thirds of the area around the road would also be reduced. He noted they looked at other alternatives and found that the additional detention pond would make the most difference in fill.

Matt Leidner said that they looked at two alternatives for the road design to limit the cuts to the existing hillside, but neither was a viable alternative. The first alternative was to provide a parallel access road along the main access in order to get units higher. They found that they couldn't get the units high enough and ended up with a greater cut. They also thought about adding an eyebrow with the parallel road, however, they couldn't lower the units because of the location of the detention ponds.

Matt Leidner said they also looked at the possibility of using retaining walls behind the units to reduce the amount of cut. By using a series of terraced walls, with an eight-foot maximum high wall, there would be 25 feet of wall above units. This design saved 1-½ acres of hillside. He noted it was apparent at the site walk that this proposal was not warmly received by Board Members present.

Doug Moffat of the Conservation Commission said he was not complaining just about the wall, but the cut and the size of the slope. He also said that retaining walls would be better than cuts into the hillside, but would still result in 25 feet or more of wall. He doesn't think either is a good solution. Matt Leidner agreed that the retaining walls were not an appealing alternative. The woodland seed mix, along with erosion control measures as proposed originally, would be the best option to restore vegetation on the slope. He would like to stay with the plan of cutting into the hillside and reducing the back yards to 20' in order to reduce the extent of the cut.

Matt Leidner asked for feedback from the Boards on the cut and fill issues before they proceed with engineered plans and addressing other issues.

Kathy Sferra opened up questions from the Conservation Commission.

Becky Mattison asked if they have had success grading and vegetating a 2:1 slope and if they have an example of a similar slope that is completed and stabilized. Paul Marchionda said they will find an example for the Board to see. Becky said she is concerned about slopes that she sees along the highways and asked if they discussed the issue of underdrains with Sue Sullivan. Matt Leidner stated that it was very important to have an underdrain system. Becky is not convinced that the hill would not slump into the back yards of the units. Matt Leidner responded that there are ways to treat the slopes for both long and short-term. Sue Sullivan asked that they address the issue of slumps in the event that they encounter springs. She said that Pilot Point on Boxboro Road was a good example in that they did a good job with erosion control. There are methods for good stabilization; however, they will need a very attentive contractor.

Doug Moffat asked if could they get away from the hillside, if they removed the eyebrow from the road. Mr. Leidner said it would help the situation and they were willing to do so. Doug questioned if they could move the eyebrow to the other side and move the retention pond. Matt noted that they ran into a zoning issue with the 10% impervious surface cap in the Water Resource Protection District. Doug stated that he thought the idea of adding a 5<sup>th</sup> detention basin was good.

Kathy Sferra asked if they were willing to reduce rear yards by 10 feet further up the hill. Matt Leidner said they would be discussing this later in the presentation and noted that, if they do so, the extent of the cut could be reduced by 10 feet and up to 20-25 feet further out of the hill.

Kathy Sferra noted that she appreciates their efforts in being conservative in their drainage design and asked to what extent does that have a bearing on the amount of fill. Matt Leidner responded that the basin may be larger than necessary. Sue Sullivan noted the key is they need to be 2' above maximum water table. She also noted that they did not give themselves credit on infiltration and they need to be concerned about the zoning bylaw requirement for no increase in volume.

Kathy Sferra said it seems the units are large and asked if it would make a better site plan if the units were smaller, noting that the units at Faxon Farm are smaller and they had no problem in selling them. Mr. Leidner said that they would be offering a mix of three different units. Ted Gowdy said the units would be 1,650, 1,900 and 2,200 square feet. The typical buyer likes 1900 sq. ft. He stated that, from a marketing standpoint, they have a nice mix. Basements are additional square footage. Matt Leidner said they rearranged the unit mix using the shortest units in the hill.

Bruce Fletcher opened up questions from the Planning Board.

Laura Spear noted that she heard they are addressing the issue of cuts and fill by adding a basin, reducing the back yard, eliminating the eyebrow of the road, and using shorter units in the hill. She referred to the colored plan showing cuts and fill and said it would be helpful to see that same plan with the proposed revision. Matt Leidner noted that, although the cuts and fill will be reduced significantly, you still see purple and red (cut and fill) on most of the site.

Bruce opened up questions from the public.

Jim Sauta, 218 Hudson Road, asked what happened to the first three sets of plans (referring to plans presented at Town Meeting requesting support for a zoning change.). He said that the current plans are nothing like what was proposed at Town Meeting and he would lobby against the plan being presented this evening.

Doug Moffat of the Conservation Commission said that the Commission was not pleased with one of the earlier plans showing a wetlands crossing. The Commission did not like the wetland crossing and wanted the agriculture fields preserved. Kathy Sferra also stated that the Conservation Commission likes the earlier plan. Ted Gowdy said that they would address those issues when they get to the zoning part of the presentation.

Steve Mong, 70 Old Bolton Road, asked what the average steepness of the hill is. Paul Marchionda replied that it was 3:1 slope. Steve Mong is advocating for cutting the hillside and preserving the agriculture fields.

Malcolm Fitzpatrick, Planning Board Member, asked Steve Mong where the best farmland is located on the site (Mr. Mong presently leases the fields for farming.). Mr. Mong replied that it was where the houses will be located, but the fields closest to Applefield Farm are more valuable to them, noting that proximity to existing farmland is a higher priority for them. Ted Gowdy said they surveyed the area that Mr. Mong is currently farming and limited disturbance in those areas. Mr. Mong noted they previously farmed the land in the front, but understand there needs to be some compromise.

Donna Jacobs, Planning Board Associate Member, said that the July 28, 2005 letter references low impact development design and from reviewing the plans, including the new sheets, she thinks that, if they included more LID protocols, it would reduce runoff considerably. She also referred to reducing the tightness of the site and bio retention areas, such as pervious pavers in guest parking areas, would help reduce the tightness of the site.

Matt Leidner noted that many of the LID principals are employed in the plan. They are proposing 5 retention basins. They reduced the impervious areas through the use of shorter driveways and requested a waiver for the width of the roadway and walking trails. Given the constraints of the site, he doesn't see how they can loosen up any more and doesn't think anything will affect the magnitude of the fill.

Steve Coan, 102 Hudson Road, said that the Town went to a great extent to craft an AAN Bylaw. Section 8.8.1 of the Bylaw says that the development shall be in harmony with the natural terrain, stating it is important to remember that. Mr. Marchionda replied that it is a subjective standard.

Paul McLaughlin, 110 Hudson Road, said too many units are proposed for the site and noted that many of the issues can be solved by reducing the number of units.

Matt Leidner noted that the AAN overlay district is in land that is zoned industrial. The front portion of the site is zoned residential (250 feet, but varies). Ted Gowdy said when they came before the Board months ago, they assumed that certain land was in the AAN District. They based their designs on zoning maps provided by the Town that were erroneous and now must take steps back. Matt Leidner said that they had to relocate 10 units to another portion of the site because the front portion is maxed out. He also noted that they cannot compromise on unit counts.

Matt Leidner presented a concept wetland crossing plan entitled "Wetlands Alteration Area – North Crossing" and another plan entitled "Wetlands Alteration Area – South Crossing". The south crossing results in fewer disturbances and less wetland alteration. He then presented a concept plan entitled "Modified Roadway Layout". This conceptual layout moves 16 units to the backfield outside of the cultivated area and loosens up the front a little. He noted that the primary leach field falls in the area currently cultivated by Steve Mong. They propose to strip the top soil and extend the other field to an equal area so there will be no net loss of agriculture fields.

Doug Moffat, Conservation Commission Member, said the Conservation Commission does not look favorably on units located on the other side of the wetlands.

Kathy Sferra, Conservation Commission Chair, said that the proposal is in conflict with the MEPA Certificate. Mr. Leidner agreed and said that the MEPA Certificate needs to be revisited.

Laura Spear, Planning Board Member, stated for the record that comments she made a year ago on the preliminary plan have not been taken into account. She also noted that the April 8, 2005 plan clearly shows the residentially zoned portion of the property. Matt Leidner says that they received the zoning map from the Town that showed the entire parcel in the AAN overlay. Laura said that the Bylaw clearly states industrial. Laura asked where the new septic is being proposed and she asked if the reserved area could be farmed. Steve Mong said that the reserve area can be farmed; however, he is not in favor of that plan.

Ernie Dodd, Planning Board Member, referred to original comments about Section 8.8 of the Bylaw. Section 8.8.10 includes a list of mandatory findings that the Board must make in order to Grant a Special Permit, one of which is that the site is “appropriate to the natural terrain of the tract of land to be developed”. He said that he could see a minor incursion into the hillside, but does not feel the Board can find that the plan, as proposed, meets this mandatory requirement. He does not feel that the site can handle 66 units and there is nothing in the Bylaw that says you need to build 66 units. He said, as one member of the Board, he will vote against the plan, as proposed. He does not want to see the drumlin destroyed and that they should apply LID techniques and reduce the amount of fill. He also said that some members of the Planning Board would like an access road through Bose property in order to divert traffic to the traffic signal. He feels that everyone’s time is being wasted because they are not trying to meet the spirit and intent of the Bylaw. He suggests that they withdraw this plan and take time to come up with a new plan and an application.

John Halpern, 143 Hudson Road, stated that he sent a letter to the Boards strongly supporting the protection of the drumlin and forested areas. He also does not want development visible from Hudson Road. He is concerned that the Conservation Commission is protecting a field that the farmer could have protected through purchase of the property. He doesn’t want to see Applefield gone, but also does not want the drumlin disturbed. He said there needs to be a reasonable response from Pulte Homes. He appreciates what he heard from the Planning Board and wishes he heard the same from the Conservation Commission. He also noted that amphibians need the drumlin to reproduce.

Steve Coan, 102 Hudson Road, thanks the Planning Board for their comments and stated that the abutters would strongly oppose any attempt to rezone any portion of the property. They worked together for the AAN Bylaw, as adopted. Ernie also noted that he is in support of an AAN stating that the Town needs it.

Malcolm FitzPatrick said he sees this plan as being very linear thinking in the site design. They started with 66 units and then proposed a loop site plan with no variation. He feels that the site plan, as proposed, is a horrible result. It is not the AAN envisioned when the bylaw was approved. He thinks they could fit 66 units in the front. He referred to the Assabet Village Development in Hudson that was well designed. He said we need to start thinking about the environmental issues first.

Kathy Sferra, Conservation Commission Chair, said that this was trying to fit a square peg in a round hole. As we learn more about the site, it seems that the unit types do not fit. Although the agricultural land is outside the Conservation Commissions jurisdiction, the fact that the Town decided against this site for a school because of the agricultural land, shows the value that the Town puts on its agricultural fields.

Becky Mattison stated that she does not like the wetland crossing for units to be located in the agricultural land.

Doug Moffat, Conservation Commission Vice Chair, does not want units in agriculture fields or a wetland crossing and noted the Commission fights hard to protect agriculture where we can.

Ted Gowdy spoke about how Pulte Homes had come to the Town 2 to 3 years ago when the land was zoned industrial. A 40B development was suggested, but the Town wanted an AAN, so they went to the Town to have the land rezoned. Last summer, they presented several options, some showing units in the front and the back of the parcel. It was agreed that they would put the units in the front and use the hill for the well. It was very costly to dig the two

wells. They have enough water for 150 to 200 units and also thought about selling water to Bose or Villages at Stow. They have 64 acres and the AAN bylaw allows 3 units per acre. With the Plan as proposed, they are saving 90% of the drumlin and the agricultural land. They understand that DEP would allow a wetlands crossing of less than 5,000 square feet under a superceding order, if denied by the Conservation Commission. They hear from the Planning Board that they need a vote of four. They hear from Laura that they don't have her vote. They hear from Ernie that they don't have his vote. They understand from abutters that they were concerned about units located in the residentially zoned portion of the property and thought those concerns would have been appeased with the new zoning information. They are now at a point where one of their two options is going down the tubes. The only other option is to go to a 40B development, which requires 25% of the units to be affordable. This means they would be forced to increase the unit count. With this option, they will not have to worry about the agricultural fields, the 250' buffer from Hudson Road or the 35' buffer to wetlands. They would also have ANR lots along Hudson Road. They could be back in 9 months time with a plan showing 153 units and 3 ANR lots that they know will fit on the property. He urged the Boards to think carefully about the direction they would like them to go.

Selectman Janet Wheeler, 151 Wheeler Road, asked if Pulte Homes has actually purchased the land. Ted Gowdy said they have a Purchase and Sale Agreement.

Donna Jacobs expressed disappointment, noting that she would only have a vote in the case of absence or inability to act on the part of another member of the Board. She feels that the plan, as presented, does not comply with the bylaw. She just heard the Applicant's unwillingness to work with the Board's concerns. Ted Gowdy responded that they feel they tried hard to address concerns. They have done things to mitigate impacts. They are not hearing credit for the things they have done, only slapped for what they have been unable to do. They are giving up the Agricultural Land and the Drumlin. In 5 years time, when the site is established, you won't even notice the changes. He said that once we get beyond the big issues, they can work on mitigation solutions with plantings, etc. He noted that any development will cause disturbance. They are looking for a nod from the Boards before spending time on engineering on ideas discussed. He stated that they would rather do the AAN.

Doug Moffat reiterated the fact that he likes the 5<sup>th</sup> retention basin and moving the eyebrow and does not like units across the wetlands.

Ted Gowdy noted that, if it were not for the restriction of 66 units in one development, this site could accommodate 90 AAN units. He also stated that they did prepare a 40B concept plan showing 153 units.

Sue Sullivan said the current plan would not require a variance, if they stay under the 10 percent and asked if they still end up with 10 percent impervious cap under the Water Resource Protection District. Ted Gowdy said that the water resource area has a 10 percent cap on impervious surface and when they slide the units over, it raises the 10 percent. Ted wants the support of the Planning Board before they consider going to the Zoning Board of Appeals for a variance, noting they do not have a hardship since they can put units and still be within the 10 percent cap.

Bruce Fletcher asked if Planning Board Members are willing to work with the Applicant and support a variance request to the 10% cap under the Water Resource Protection District. Bruce, Malcolm and Ernie said they will support a variance from the Zoning Board of Appeals, provided that runoff is recharged. Laura Spear said she would support a variance, depending on how much of a variance they were looking for.

Malcolm FitzPatrick said he is willing to work with the Applicant. He feels that 66 units can fit on the site. He said we can't legally have working groups and therefore, suggests they withdraw and then work together so we can get an AAN Plan that everyone is happy with. Bruce Fletcher noted that they still have the option to withdraw, even if the hearing is continued. Laura Spear said she supports an AAN on this site; however, the plan should not be bulldozed through the Board. She also noted that Malcolm makes a strong argument for withdrawal of the Application.

Kathleen Sferra, Conservation Commission Chair, said we are at a deadlock with the Plan and noted it may be beneficial to have a working group. Bruce Fletcher noted that he understands there will be a need for cuts and fill, but thinks they could do more to reduce the amount, if they used more LID techniques.

***Ernie Dodd moved to continue the public hearings for an AAN and Erosion Control Special Permit to August 30, 2005 at 8:00 PM. The motion was seconded by Kathleen Willis. Malcolm questioned if the Board will see a different configuration. Ted Gowdy responded that they have done a lot to evaluate the site, and it seemed to help to have Pat, Karen and Sue in attendance at working meetings. They can continue to work on the plans based on input that they heard tonight. Bruce noted there is potential for further revision based on the Board's consensus to support a variance. The motion carried by a vote of four in favor (Bruce Fletcher, Ernie Dodd, Laura Spear and Kathleen Willis) and one opposed (Malcolm FitzPatrick).***

***Doug Moffat moved to continue the public hearing for a Notice of Intent Application, filed by Pulte Homes of New England for an AAN located on Hudson Road, to September 6, 2005 at 8:15 PM. The motion was seconded by Becky Mattison and carried by a unanimous vote of four members present (Kathy Sferra, Doug Moffat, Steve O'Riorden and Becky Mattison).***

The Hearings adjourned at 10:28 PM.

Ted Gowdy asked for specific comments from board members with regards to LID techniques to be channeled through Karen. Bruce Fletcher announced that the Planning Board has received correspondence from many people, and have read them. He invited people to feel free to submit additional correspondence, which will be made part of the record.

#### **ADJOURNMENT**

The Planning Board Meeting adjourned at 10:30 PM

Respectfully submitted,

Karen Kelleher  
Planning Coordinator