

TOWN OF STOW PLANNING BOARD

Minutes of the August 22, 2006, Planning Board Meeting.

Present: Planning Board Members: Ernest E. Dodd, Malcolm S. FitzPatrick, Kathleen Willis
and Leonard Golder

Planning Coordinator: Karen Kelleher

The Meeting was called to order at 7:05 PM.

MEADOWBROOK ESTATES (Trefry Lane)

Ken Kaulbach met with the Board to discuss the Meadowbrook Estates (Trefry Lane) Subdivision.

Ken Kaulbach advised that he completed all of the work in accordance with the Plans and requested that the performance guarantee be released.

Plantings at wing wall – Ken Kaulbach advised that larger bushes were recently planted at the wing walls. Ernie Dodd said that he didn't see the new bushes. Ken said they planted three junipers on each side.

Retention basins – Ken Kaulbach said they worked with Sue Sullivan, the Board's Consulting Engineer, on the retention basins. He said that Sue Sullivan was present to observe the work. They cleaned out the basins and brought in new dirt. Ernie Dodd noted that he saw Sue Sullivan's email and agrees with her comment about the second basin. He also observed silt. Ernie Dodd said he has no problem in releasing the bond once the Board has a report from Sue indicating the basins are functioning as designed. Ken Kaulbach noted that the front basin has a slight tilt and Sue didn't seem to have a problem with that. He said $\frac{3}{4}$ of the basin is now dry.

Malcolm FitzPatrick asked if the rest of the site is stabilized. Ernie Dodd said it appears that all of the lots have vegetation along the road. Ken Kaulbach said the road was swept in June and again by hand a month ago and again last Saturday. Ernie Dodd said he didn't observe sediment after the heavy rain the other day.

Malcolm FitzPatrick asked Ken Kaulbach if he educated the Homeowners Association on how critical they are to maintenance of the stormwater drainage to ensure that it functions properly. Ken Kaulbach said he has not, but he can. Joe Hogan, Trefry Lane, noted that there is no Homeowner's Association for Trefry Lane. Karen Kelleher explained that there is no homeowners association because the Open Space Parcel was deeded to the Conservation Commission and the road is intended to be a public way.

Kathleen Willis asked if the erosion problem on Lot 6 has been resolved. Ernie Dodd noted that the Conservation Commission is working with the property owner on that problem.

Terri Kostas, Trefry Lane, asked the Board to explain what role the homeowners play in maintaining the retention basins. Ernie Dodd explained that the Town has a bylaw that requires that runoff be contained on-site and the drainage design included swales on some of the lots. Some of the homeowners flattened the swales. Malcolm FitzPatrick said that it is important that the basins at the foot of the hill be maintained free of sediment so that water can be infiltrated. Sediment from the rest of the site could clog up the system. He noted there were problems

during construction and that is why the developer had to clean out the basin a few times. He said the properties downstream will get the runoff if the basins don't function properly.

Joe Hogan, Trefry Lane, asked who will be responsible to maintain the drainage system. The Board advised that, once the road is accepted, the Highway Department will be responsible for the drainage system.

Maureen Hogan, Trefry Lane, asked about the sidewalk funds. Ernie Dodd noted that the Board sometimes waives the requirement to install sidewalks and accepts a donation to the sidewalk fund in lieu of construction of sidewalks. He noted that the Board is looking for volunteers for a sidewalk committee to determine where those funds should be spent. Malcolm FitzPatrick asked Maureen Hogan if she would have preferred that sidewalks be constructed on Trefry Lane. Maureen Hogan responded yes because there are a lot of children in the development. Ernie Dodd noted that one of the reasons the Board waives sidewalks is to minimize site disturbance and impervious surfaces.

Emergency Connection to Cricket Hollow Subdivision in Boxborough – Ken Kaulbach noted that he received the Planning Board's letter to the Town of Boxboro concerning the Cricket Hollow Subdivision, indicating support of a plan with no connection to the cul-de-sac in Stow and that the right-of-way easement on Lot 1 in Stow, shown on the Meadow Brook Estates (Trefry Lane) Definitive Subdivision Plan, be maintained as a pedestrian access easement; and to further recommend that pedestrian access be provided from the Town of Boxborough, connecting to the right-of-way easement on Lot 1. Ken Kaulbach said the Cricket Hollow Subdivision is still in the preliminary stage and will evolve over time. He always understood the Board did not want a full-blown connection, and he has tried to honor that and has made Stow's wishes clear to Boxborough. He said he believes that he can, as a matter of right, put in a way; however, he has been sensitive to Stow's wishes and has sought to minimize any impact. He proposed an emergency access. He feels that that it benefits Trefry Lane because it provides an alternative access for emergency vehicles in the event that Trefry Lane is blocked. He realizes it would be an infrequent event, if at all. He would propose a 12' wide driveway between the end of Trefry Lane and where it will intersect with the proposed Cricket Hollow road. It could be constructed with a gravel base to accommodate emergency vehicles and designed to look like a hiking path. It will be a safety benefit to Trefry Lane Residents as well as Boxborough residents. Ernie Dodd noted that the Board discussed this issue during the hearing and considered Trefry Lane to be safe without an emergency access. Ken Kaulbach said he feels that the Subdivision Rules require that he provide the connection. Kathleen Willis read a finding from the Meadowbrook Estates (Trefry Lane) decision indicating that adequate means of access is provided. Ken Kaulbach said he believes he has a legal right to make the connections and on appeal, would prevail. Malcolm FitzPatrick questioned who owns the easement. Ken Kaulbach said that he (Eldamar Development) owns an easement on Lot 1. Ernie Dodd said that he will stand by the Board's original decision. Ken Kaulbach asked if the Board has a legal position. Len Golder said this is not his area of practice, but it is his understanding that the cases referenced in Ken Kaullbach's letter have to do with safety issues within a community. He doesn't read them as to obligate to provide access to another community. He asked Ken Kaulbach if there is any other way to gain access through Boxborough. Ken said, practically speaking, they do not have another access through Boxborough. He said they will do what they have to do. He doesn't understand why the Board would object because what it would end up being is a path. Malcolm FitzPatrick said if it is 12' wide, it would most likely be used as vehicular access. Ken Kaulbach said he could install a gate to block non-emergency vehicular access.

Joe Hogan, Trefry Lane, referred to a letter from residents of Trefry Lane. Their main concern is that Trefry Lane was constructed subject to a number of waivers. He also noted that the road is very steep and there are several kids at the top of the hill. They are also concerned that the

cul-de-sac would have to be redesigned. He read Ken Kaulbach's letter to the Planning Board and feels that the Board addressed the issue of denial of the access and that decision should stand.

Martha Monroe, Trefry Lane, said she owns Lot 1, which contains the easement, and she pays taxes on that area. She also noted that, based on the Decision for Trefry Lane, adequate emergency access is provided and the road is not conducive to emergency vehicles from both Stow and Boxborough. Martha Monroe also noted that many waivers were granted to keep the rural nature of the area. If a connection to Boxborough is allowed, all of the waivers should be overturned.

Sue _____, Trefry Lane, said she feels safe because she lives on a cul-de-sac. She is concerned that it won't be as safe, if the road is opened up to another neighborhood.

Martha Monroe noted that the Developer states he is concerned about safety, but questioned isn't the real concern that he wants the ability to construct another development?

All members agreed to stand by its previous position stated in letters to the Town of Boxborough.

PUBLIC HEARING – RIVERHILL ESTATES

Ernie Dodd explained to Mr. Collings that only four of five Planning Board Members are present this evening and the fifth member will not be able to vote on the Decision. He offered Mr. Collings the opportunity to continue the hearing without testimony so that all five members would be eligible to vote. Mr. Collings said he wants to go forward with the hearing.

At 7:35 PM, the Public Hearing to consider the RiverHill Estates Subdivision was called to order.

Kathleen Willis moved to waive reading of the Legal Notice. The motion was seconded by Leonard Golder and carried by a unanimous vote of four members present (Ernie Dodd, Malcolm FitzPatrick, Kathleen Willis and Leonard Golder).

Ernie Dodd explained that the Board is not in receipt of a complete application. Because the drainage calculations were not delivered to the Board's consulting engineer until last Friday, she did not have sufficient time to prepare a report for the Board. Karen Kelleher noted that the Board has not yet received a copy of the calculations. Ernie Dodd explained that he will have the Applicant make a presentation and provide an opportunity to provide input and then ask for a continuance to another date. The Board will withhold comment until it has an opportunity to review the complete application and the Consultant's report.

Bob Collings provided an overview of the Plan, explaining that the property proposed for development is owned by him and his wife and is currently enrolled in Chapter 61B, and a parcel is also currently owned by Linda Cornell. The property abuts a 22-acre parcel owned by Maynard Sand and Gravel. He explained that a year or so ago, Maynard Sand and Gravel had a proposal for a Comprehensive Permit (40B) for a 250-unit apartment complex. He tried to see what they could do to avoid a 40B development and entered into an agreement with Linda Cornell to swap the Cornell parcel (located along the Assabet River) in exchange for 2 of the proposed subdivision lots and an agreement not to provide access to the Maynard Sand and Gravel parcel.

Bob Collings further reviewed the plan explaining that it is a 5-lot conventional subdivision. All lots comply with the dimensional requirements of the Bylaw with 200' of frontage and at least 1-½ acres of land. No variances are necessary. They propose to use the existing pond for fire

protection. He explained that the existing pond now has 30,000 gallons, which is not enough for fire protection. They plan to clean the pond out and not increase the surface and will then have 80,000 gallons, which is adequate for use as a fire pond. He said the fire pond will become a nice asset to the area, providing a good resource for the Fire Department, particularly for brush fires because the abutting area is heavily wooded. He said it will also re-establish the fish population and eliminate the mosquito population. He also noted that DEP and the Conservation Commission can allow them to clean out the pond for purposes of creating a fire pond. There are no certified vernal pools on the site.

Bob Collings said that since the informal meetings with the Planning Board, they have listened to all who had input, and they met with the Town's Consultant. They feel they have addressed all of the concerns. Since the initial filing, they changed the configuration of Lot 5 from a hammerhead lot to a conventional lot and believe the plan is in full compliance.

They are requesting a waiver from the requirement to construct sidewalks and will make a contribution to the Town's Sidewalk Fund instead. They are also requesting a waiver from the requirement for street trees because the site is heavily wooded and they will retain as many trees as possible.

Tom DiPersio of Thomas Land Surveyors, representing the Applicant, reviewed the site plan. The proposed roadway is a 40' right-of-way with 18' pavement. The drainage system was designed for a 2-, 10- and 100-year storm event. The 2- and 10-year storm event will be controlled in a basin, and the 100-year storm event will spill over to the pond. They propose to place a stone construction apron at the entrance to prevent tracking mud onto Barton Road. They will also have two temporary sedimentation basins, which will be removed after construction is complete. The basements will be equipped with 4' sumps, and they propose dry wells for the roof. All of the lots have been perc'd and deep hole tested with the Board of Health. All soils are class A. The Plan set indicates how the volumes are calculated.

Ernie Dodd asked if the Conservation Commission agreed to the fire pond. Bob Collings said they have not yet submitted an application to the Conservation Commission.

George Dargaty, Barton Road, noted concern about the proposed development exasperating an already bad condition. He said a proposed 40' right-of-way off of a 10' wide (Barton) road does not make sense. He said under existing conditions, garbage trucks take up the entire roadway, and a fire truck would not be able to pass. He questioned how this situation could be made safe. Bob Collings noted that Barton Road is a publicly maintained road. He agrees it is narrow, but 5 more homes will not make a difference. He said that they have events with 500+ people and have not blocked Barton Road. He said, with regard to fire safety, this proposal will provide another water source for the Fire Department.

Mrs. Cressman, 199 Barton Road, said she wants to make sure that her well is far enough away from the proposed septic systems. Tom Dipersio said they will have a more detailed plan showing the well and septic offsets.

Shirley Burchfield, Barton Road, noted that in an earlier presentation to the Zoning Board of Appeals, they made note of access off of Sunset Road. Bob Collings noted that this plan does not rely on the use of Sunset Road. Shirley Burchfield noted, although Mr. Collings refers to it as Sunset Road, the access that exists is a private driveway and not Sunset Road.

Pat Soar, Barton Road, questioned why they don't propose to use the Collings' existing driveway. Bob Collings said that access doesn't work because of the road length limitation. Pat

Soar said she would like to see an alternative plan using the existing driveway rather than proposing an additional curb cut.

Kathy Sferra, Stow Conservation Commission, questioned what assurance the Planning Board will have that the house on Lot 5 will be located as shown on the plan presented tonight. Bob Collings noted that the house locations are only a concept to show that the lot can support a house, well and septic system. Kathy Sferra asked if he is willing to place a restriction on the property, prohibiting a house lot to be located along the riverfront. Bob Collings said he is keeping 68 acres in Chapter 61B. Kathy Sferra asked about the excess frontage. Bob Collings said there will be a note on the plan indicating that if they propose more than 5 lots, they need to come back to the Planning Board for approval. Ernie Dodd said the Planning Board is aware that the area along the river is zoned Recreation-Conservation and is in the floodplain. Kathy Sferra said it would be great if the application were willing to consider a Conservation Restriction.

Tom French, Barton Road, questioned what prevents the cul-de-sac from being extended further south to the Maynard Sand and Gravel property. Tom DiPersio said they would have to go back to the Planning Board to do so. Bob Collings said the road length would be an issue.

Tom French, Barton Road, noted that in 1973 the Town's consultant raised the issue of fire protection. A subdivision was denied due to the inadequacy of Barton Road, which has not changed. He further noted that the 1973 plan would have accessed Barton Road where it was 40-feet wide; this subdivision proposes to access Barton Road where it is only 20 feet wide. He said they are trying to take a conforming subdivision onto a road that doesn't conform, and therefore, the subdivision should be denied. Bob Collings said that Barton Road is a Town-maintained road. Tom French said Barton Road is a private road and is not maintained.

Mrs. Cressman, 199 Barton Road, referenced a statement that they want to eliminate development on the Maynard Sand and Gravel Property, and she asked how it could be developed, if it has no access. Ernie Dodd explained that they referred to a Chapter 40B development, which would be a Zoning Board of Appeals permit, and they are allowed to waive zoning requirements.

Barbara Clancy, Barton Road, asked if they are saying it will technically be a driveway and not a road. It was explained that it will be a subdivision road but will not be maintained by the Town.

Gladys Baudette, Hudson, asked if this would be a way to let Maynard Sand and Gravel to remove gravel. Tom DiPersio said the plan is designed as a balance of cuts and fills. There will be no need to remove gravel from the site. He said they have no control over Maynard Sand and Gravel's site. George Dargaty questioned if the only thing to be removed is trees. Bob Collings responded yes.

Wes Fisher, Barton Road, asked if they would arrange for Maynard Sand and Gravel to access the proposed road. Tom DiPersio said the road does not extend to the Maynard Sand and Gravel site.

Carla French, Barton Road, noted concern about the impact of additional traffic generated from the proposed homes.

George Dargaty, Barton Road, said they need to address the issue of access to Barton Road. He asked Board members to visit the site on a Monday when the garbage trucks are there.

Pat Soar asked about the size of the homes. Ernie Dodd said the only restrictions are property line setbacks and height.

Wes Fisher, Barton Road, asked if they could consider looping Collings' existing driveway to the location of the proposed subdivision. Bob Collings said it is an issue of the length of the road and it would be more impact on the site and more impervious surface.

Carla French, Barton Road, said Mr. Collings doesn't get any of the impact, like others will, because his house is further down.

Tom Quinn, Maynard Sand and Gravel said they would like to develop their property for 4 or 5 homes. He noted that the Subdivision Control Law and the Town of Stow Subdivision Rules and Regulations speaks to access to abutting properties. It requires that the plans should make provisions for future access to abutting properties. He said the subdivision road should be continued to the property line with a 50' stub. He said it is not their intention to remove gravel, but they have as much right to develop their property. He submitted a letter for the record. Bob Collings noted that the Subdivision Control Law states that access to abutting properties should be "taken into consideration". Mr. Quinn read Section 7.5.4 of the Stow Subdivision Rules and Regulations: "**Projection of Streets** - Provisions shall be made for proper projection of streets and ways to ensure adequate future access to adjoining property. If suitable easements or other connections to a street exist on adjacent streets, streets and ways shall be constructed to connect the subdivision street with the existing street." Malcolm FitzPatrick asked if Maynard Sand and Gravel has access by any other means. Mr. Quinn said they only have access through the Town of Hudson. Bob Collings noted that there was a legal case by DeTomaso that says there is a 10' x 10' right-of way. Ernie Dodd said the Board would like to see that right-of-way for the record. Tom French said the access that Bob Collings referenced is a result of a land court case, and the right-of-way is only for recreational and wood lot purposes. George Morey, Maynard Sand and Gravel, said the access from Hudson is through Industrial Zoned Land and they are prohibited by law to gain access through industrial zoned land for residential development.

Linda Cornell, Barton Road, said that when they bought the 12-acre parcel along the river, they never dreamed they could not build on it. They then found a house on Barton Road and still tried every which way to find a way to build on the riverfront parcel. In order to prevent a 40B, which was an option, they talked for 2 to 3 years to conservation groups to buy the riverfront parcel. When they heard there was opposition to development of the Maynard Sand and Gravel property, they came to an agreement with Mr. Collings. She said this is their neighborhood and they are only trying to preserve the land, get something out of it and prevent access to Maynard Sand and Gravel for a 40B development, which is an option they don't want. She said she is the one who owns the property on Barton Road that could be used to gain access to the Maynard Sand and Gravel property. Tom Quinn noted that they only talked about the potential for a 40B in the past when they were looking at potential options for the property. He noted that it was Ms. Cornell's plan for a 250-apartment complex. He also noted that she owns frontage on Barton Road and if they care about safety, she could provide access.

Members noted additional information required:
A copy of the Land Court Decision is to be provided.

Development Impact Statement - Tom DiPersio said the Development Impact Statement was provided with the original submission.

Malcolm said he would like a copy of the submission to be on file in the public library. Bob Collings noted that the public has access to the submission in the Planning Department. Malcolm said he would like a copy in the Library so those who are not available during Town Building business hours can review the file. Tom DiPersio said he will make a duplicate file for the Planning Board to provide to the Library.

Karen Kelleher said that a copy of the drainage calculations should also be on file with the Planning Board and requested two copies so that one can be loaned to Planning Board members.

Kathleen Willis moved to continue the Public Hearing to October 17, 2006 at 7:30 PM. The motion was seconded by Leonard Golder and carried by a unanimous vote of four members present (Ernie Dodd, Malcolm Fitzpatrick, Kathleen Willis and Leonard Golder).

Bob Collings signed an agreement to continue the Public Hearing and an extension for the time in which the Planning Board has to render a decision to 60 days after the close of the public hearing.

PLANNING BOARD MEMBERS' UPDATES

Trefry Lane - Kathleen Willis requested that the Board discuss the Trefry Lane decision at the next working meeting. She would like to understand the decision concerning the emergency access to the Town of Boxborough.

Fire Cisterns - Kathleen Willis noted that Fire Cisterns in all of the subdivisions do not have signs (Cranberry Circle and Cider Mill Road) and suggested that it be included in the Subdivision Rules. Karen Kelleher will check with the Fire Department's design standards.

Riverhill Estates - Malcolm FitzPatrick said he had the impression that Bob Collings expects that his public hearing will be closed on October 17th and suggested that he be forewarned that it probably won't be.

Subdivision Rules – Drainage – Malcolm FitzPatrick said he is concerned that the Board's discussion on proposed amendments to the drainage section of the Subdivision Rules is going slowly and asked if there is anything he can do to facilitate discussion. Ernie Dodd suggested that members read through the Stormwater Management Policy Handbook in advance of the next working meeting so the Board can determine if it should be adopted, along with a design package that supports the document. Malcolm FitzPatrick said he would also like to reference other documents. Malcolm Fitzpatrick also noted that the key to Low Impact Development is that the Board needs to spell out what we want. Leonard Golder suggested that the regulations should specifically spell out the objectives and techniques.

Street Signs - Kathleen Willis asked if Karen got information on street sign standards.

Stop Signs – Malcolm FitzPatrick said we should require a bond for stop signs so the Town will have the money available to install the sign after the Selectmen amend the traffic rules and orders. Karen Kelleher said she thought the Board could require the developer to install the sign (even though it would not be enforceable until the traffic rules and orders are amended) and have the Selectmen amend the traffic rules and orders after the fact.

SPECIAL TOWN MEETING

Karen Kelleher urged the Board to provide the Board of Selectmen with a recommended date for Special Town Meeting so that the Board will have a deadline to aim for. Members discussed

the fact that they should be ready with a bylaw for Signs, Lighting, Lower Village Overlay District, Gleasondale Village Overlay District, and housekeeping articles.

BOSE CORPORATION - Members agreed to forward a letter to Bose Corporation thanking them for adjusting the site lighting for compliance with the Bylaw.

ZONING BYLAW ENFORCEMENT

Members noted concern about zoning bylaw enforcement in Town. Kathleen Willis noted that the Building Inspector does not take enforcement action unless he is in receipt of a formal complaint, even if he personally observes the violation. Karen Kelleher said it could be a matter of time on the part of the Building Inspector, who also maintains the municipal buildings. She suggested that maybe he should have an assistant that is charged primarily with enforcement issues.

Malcolm FitzPatrick said the Board should ensure that all Special Permits are enforced and suggested that the regulations be amended to require an annual Special Permit review for 10 years.

PRESTI PROPERTY, GREAT ROAD

Members noted zoning bylaw violations at the Presti property on Great Road:

- Signage
- Expansion of non-conforming uses (U-Haul rental)

Malcolm FitzPatrick said that he thinks the used car lot is in violation of the Bylaw because it should be considered a change in use from the new-car dealership. Karen Kelleher said she thought they had a Special Permit from the Zoning Board of Appeals for the used-car lot. She will obtain copies of the Special Permits for the Board to review.

MINUTES

Postponed to the next meeting.

The meeting adjourned at 10:05 PM.

Respectfully submitted,

Karen Kelleher
Planning Coordinator