

# TOWN OF STOW PLANNING BOARD

Minutes of the February 13, 2007, Planning Board Meeting.

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

Planning Coordinator: Karen Kelleher

The Meeting was called to order at 7:00 PM.

## **MEADOWBROOK ESTATES (TREFRY LANE)**

Members discussed a letter, dated January 12, 2007, from Attorney Michael Fee of Fee, Rosse & Lanz, P. C., representing Eldamar Development Company, concerning Eldamar Development Company's intent to construct an emergency access way to the Town of Boxborough and noted the following:

Section 10.24 of the Meadowbrook Estates (Trefry Lane) Decision states that the right of way easement shall be left in its natural state until it is determined what will happen with the Boxborough property. The Planning Board is of the opinion that it has not been determined what will happen with the Boxborough Property. A Definitive Subdivision Plan has not even been filed with the Town of Boxborough. Further, as noted in a letter dated January 18, 2007 from the Boxborough Planning Board, the Town of Boxborough has jurisdiction only over land within the Town of Boxborough, not in the Town of Stow.

Section 10.24 does not "obligate" the Planning Board to "permit" an emergency access road. It simply states that the Stow Planning Board shall "consider" a connection through the easement. The Planning Board's requirement to approve any plans for development of the right of way "is" justified. The Planning Board is legally obligated to protect the safety of residents by ensuring that the emergency access road, if approved, is designed and constructed to standards that are adequate for emergency vehicles and adequate and/or necessary for the number of lots being served.

Paragraph 1 and 3 of Attorney Fee's letter is inconsistent. Paragraph 1 states that the Town of Boxborough is "not" requiring a through connection. Paragraph 3 refers to the easement in question as part of the Right of Way. It is the Board's opinion that it is merely an easement and not part of the layout for Trefry Lane.

***Laura Spear moved to forward the letter to Town Counsel to respond. The motion was seconded by Malcolm FitzPatrick and carried by a unanimous vote of four members present (Ernest E. Dodd, Malcolm S. FitzPatrick, Laura Spear, and Kathleen Willis).***

## **CHAPTER 61 – CHANGES APPROVED DECEMBER 22, 2006**

Members reviewed the Chapter 61 Changes approved on December 22, 2006 to become effective March 22, 2007. Ernie Dodd said he doesn't feel the changes are extensive enough.

## **PLANNING BOARD MEMBERS' UPDATES**

### **Chapter 40B Subsidized Housing**

Malcolm FitzPatrick noted that DHCD's certification on Chapter 40B Subsidized Housing Inventory for Stow indicates that the Elm Ridge Road homes are not protected in perpetuity.

He suggested that the Community Preservation Committee contact the property owners and offer to purchase a deed restriction in perpetuity. Laura Spear will bring the suggestion forward to the Community Preservation Committee.

Parcel 14 on Map Sheet, owned by Mary Moura and Mark A. Parmenter

Malcolm Fitzpatrick suggested that the Moura/Parmenter property, located off of Barton Road, along the Assabet River is worth looking at by the Town, if it is possible to get Community Preservation Act Funds.

Community Preservation Committee

Laura Spear updated the Board on Community Preservation Committee projects:

- Three Historic proposals:  
Sprinkler system for the Town Hall - The Building Inspector obtained estimates.
- Replace Fire Alarm at Town Hall – The Historic Commission has design plans for a dry well. If they want a larger tank for other Historic buildings, they will need an electric generator. Estimated cost is \$166,000.00 to \$200,000.00 for the sprinkler system and fire alarm..
- Re-build/rehabilitate stonewalls at cemetery – approximate cost \$12,000.00 to \$15,000.00.

**OMNIPPOINT**

Attorney Brian Grossman of Prince, Lobel, Glovsky & Tye LLP, representing Omnipoint Communications, Inc. a wholly owned subsidiary of T-Mobile USA, Inc., met with the Board to discuss a proposed wireless service facility collocation at the First Parish Church.

Malcolm FitzPatrick recused himself from the discussion and stepped away from the table, as he is an abutter to an abutter of the property in question. Laura Spear noted that she is a member of the church but does not have a conflict because she has removed herself from any discussions or meeting with regards to the Application.

Attorney Grossman explained that they applied for a use and dimensional variance for the proposed Wireless Service Facility at the First Parish Church. At the Zoning Board of Appeals hearing, there was some discussion as to whether the application should be before the Zoning Board of Appeals or the Planning Board. Attorney Grossman said that Town Counsel Jon Witten, views the proposal as a permissible modification to the original facility with an application to the Planning Board.

Attorney Grossman presented copies of the Application to the Zoning Board of Appeals and reviewed the plan, explaining that Sprint is currently located in the Church Spire. T-Mobile proposes to be located in the bell tower. The proposal includes:

- 3 equipment cabinets
- An external HVAC unit, which is similar to a residential home unit.
- 2 very small antenna for E911 service, painted to match the structure.

Attorney Grossman noted that the Zoning Board of Appeals is anxious to make a decision and wants to close the Public Hearing on March 1.

Attorney Grossman views the application as a Special Permit Modification and should be noticed as a Public Hearing.

Ernie Dodd said he feels it should be a separate Special Permit. Attorney Grossman said there are things required in the Regulations, such as a crane test, that he does not think should apply

to this application. He hopes that the Board will find that the plans and documentation prepare for the Zoning Board of Appeals Application would be sufficient.

Laura Spear noted that the Board had a similar case and treated it as a new Application.

Ernie Dodd said the application can be based on the previous Special Permit granted to Sprint, which required collocation, which is in keeping with the intent of the bylaw. He said that he would be bothered by the proposal, if they were extending the height. Ernie Dodd also noted that the proposal would be viewed different, if Sprint were not already located at the site. Kathleen Willis said it is the Planning Board's position, and Town Counsel agrees, that the Planning Board is the Permit Granting Authority.

Attorney Grossman said he feels the Zoning Board of Appeals has authority. However, in this instance, after discussing the issue with the Planning Board and Town Counsel and knowing this is the route the Town prefers, it will streamline the process for them. He said at the last Zoning Board of Appeals meeting they made it clear that March 5, 2007 is the drop dead date for the hearing to be closed. The Applicant wants to keep the hearing open until the Planning Board acts on the application.

Ernie Dodd suggested that they take a look at T-Mobile's antenna at the Gleasondale Mill Smoke Stack to see if they are willing to change the external antenna array. Attorney Grossman said that Omnipoint would not like to discuss another installation at this time. Omnipoint is of the general opinion that they want to leave the Gleasondale Mill installation as is.

Laura Spear feels they need a new Special Permit and is not sure that they don't need a variance. Karen Kelleher and Attorney Grossman said they thought Jon Witten felt that they only need one permit from the Planning Board. Laura Spear questioned who would be considered to be the owner of the facility. Sprint, First Parish Church or Omnipoint? Brian Grossman said Sprint could not be considered as the owner because they would say no. Laura Spear said she would like clarification from Town Counsel to determine if it is a new Application or a Modification and as to whom the owner would be. She will contact Jon Witten.

Members noted that the Public Hearing could be scheduled for March 13, 2007, provided that the application is submitted by February 20, 2007.

#### **ANR PLAN HUDSON ROAD/MAGUIRE LANE (TARANTO)**

Members reviewed the ANR Plan for the Taranto Property on Hudson Road/Maguire Lane, revised in response to the Planning Board's letter of February 1, 2007.

***Laura Spear moved to approve the ANR Plan entitled "Plan of Land in Stow, MA", prepared for Donald & Debra Taranto, dated November 20, 2006, revised through February 5, 2007, creating one new building lot, and one parcel to be conveyed to the Conservation Commission, and to authorize Malcolm FitzPatrick or Karen Kelleher to endorse the Plan. The motion was seconded by Kathleen Willis and carried by a vote of three in favor (Ernie Dodd, Laura Spear and Kathleen Willis) and one abstention (Malcolm FitzPatrick).***

#### **ANR PLAN APPLE BLOSSOM WAY (Bolton)**

Members reviewed the ANR Plan for property off of Apple Blossom Way, revised in response to the Planning Board's letter of February 1, 2007.

**Laura Spear left the meeting at this time.**

***Kathleen Willis moved to approve the ANR Plan entitled: “Plan of Land—Apple Blossom Way-Stow, MA”. Prepared for Richard E. Bolton, Sr., dated December 15, 2006, revised through February 6, 2007, prepared by Acton Survey & Engineering, creating Parcels 7A, 7B and 7C. The motion was seconded by Malcolm Fitzpatrick and carried by a unanimous vote of three members present (Ernie Dodd, Malcolm FitzPatrick and Kathleen Willis).***

#### **ANNUAL REPORT**

Members approved the Draft Annual Report, as amended.

#### **WHITNEY HOMESTEAD**

Karen Kelleher reported that she has had many discussions with the Real Estate Broker for the Whitney Homestead, who asked if the Planning Board would be supportive of a Zoning Bylaw amendment to reduce the 100' setback for kennels. Ernie Dodd said he would not be supportive of such a proposal. Members further discussed this site and how the structure might be preserved. Malcolm FitzPatrick suggested that providing an incentive for a Bed and Breakfast by relaxing the Bed and Breakfast Bylaw. He also suggested amending the bylaw for historic structures, to allow an alternative use not otherwise permitted, provided that adequate mitigation measures are implemented and to require an annual review for compliance. Members agreed with Malcolm's suggestion to apply to the Residential, Business, Compact Business and Industrial Districts.

#### **ORCHARD VIEW**

Members reviewed the letter, dated January 29, 2006, from Attorney Joseph W. Holmes of Holmes and Associates, P. C., on behalf of Robert M. Hicks, Inc., in response to a Planning Board letter, requesting inspection fees. Attorney Holmes, in his letter, pointed out that the Planning Board is currently holding performance guarantee funds in the amount of \$10,000.00 for a detention basin and suggested that the passbook funds be split 50/50 so that the Town can take and use the \$5,000 to do any work to the basin which the Board believes necessary and that the remaining \$5,000.00 may be returned to his client.

Members determined that the performance guarantee funds cannot be returned until the basin is corrected and agreed to send notice of the Board's intention to take the bond.

#### **COLLINGS PROPERTY – NOTICE OF OPTION TO PURCHASE**

Members reviewed the Notice of Option to Purchase, dated February 1, 2007, from Robert and Caroline Collings, and question whether or not the notice constitutes a bona fide offer and agreed to forward a letter to the Board of Selectmen recommending that Town Counsel review the notice, and suggesting that the Town may want to consider deeded land for public access to the river, in lieu of exercising its right of first refusal, if such deed is satisfactorily negotiated as part of the subdivision process.

The meeting adjourned at 9:40 PM.

Respectfully submitted,

Karen Kelleher  
Planning Coordinator