

# **TOWN OF STOW PLANNING BOARD**

Minutes of the October 13, 2009 Planning Board Meeting.

Present: Planning Board Members: Kathleen Willis, Leonard Golder, Steve Quinn, Ernest Dodd and Lori Clark  
Associate Member: Malcolm Fitzpatrick  
Planning Coordinator: Karen Kelleher  
Administrative Assistant: Kristen Domurad

The meeting was called to order at 7 P.M.

## **REVIEW OF CORRESPONDENCE AND MINUTES**

### **MINUTES**

*October 13, 2009- Ernie Dodd moved to approve the minutes of the September 15, 2009 meeting, as amended. The motion was seconded by Steve Quinn and carried by a vote of four in favor (Ernest Dodd, Steve Quinn, Kathleen Willis and Lori Clark).*

*October 13, 2009- Ernie Dodd moved to approve the executive session minutes of the September 15, 2009 meeting, as written. The motion was seconded by Steve Quinn and carried by a vote of four in favor (Ernest Dodd, Steve Quinn, Kathleen Willis and Lori Clark).*

*October 13, 2009- Ernie Dodd moved to approve the executive session minutes of the September 22, 2009 meeting, as written. The motion was seconded by Steve Quinn and carried by a vote of four in favor (Ernest Dodd, Steve Quinn, Kathleen Willis and Lori Clark).*

### **PUBLIC INPUT**

Speaking as a resident, Malcolm Fitzpatrick of 323 Great Rd., proposed the Planning Board formulate a plan to preserve the historic blacksmith shop at the Center School site, possibly moving it into Lower Village. He understood this would fall under the Historic Committee's jurisdiction but believed the Planning Board should assist in preserving the historic site. His main concern was Stow losing its historic identity. Malcolm explained that the building now sits in a low area where water drainage is likely to damage the shop.

Steve Quinn and Kathleen Willis mentioned they heard that Shelburne Farm has interest in the blacksmith shop, and possibly moving it to their property.

Kathleen Willis suggested Malcolm propose a plan on how the Planning Board could accomplish his wishes. She explained that the blacksmith shop was moved from Maynard and is not a native historic building to Stow, and this could be a reason as to why there is confusion among the Historic Commission about the site.

[Lenny Golder arrived 7:18]

Resident Malcolm Fitzpatrick questioned the Planning Board on the decision of the State Supreme Court on Affordable Housing under Chapter 40B and the length of time the restriction is placed.

Ernie Dodd added that for some towns inside of Route 128, the Supreme Court ruled they could not convert some of their 40B-restricted condos.

Kathleen Willis explained that the apartments at Pilot Grove would be affordable in perpetuity

The Board asked Kristen Domurad to look up more information on this specific time restriction.

### **PLANNING BOARD MEMBER UPDATE**

#### *School Building Committee*

No new updates

#### *Pedestrian Walkway Sub-Committee*

Lori Clark updated the Board on the committee's progress. The committee decided to concentrate on two areas they have deemed most important; 1-mile radius around Lower Village and 1-mile radius around Town Center. They chose to evaluate these two areas first because they have the most destinations, including schools. Lori explained that the committee would be taking inventory of the roads in the two areas, noting characteristics of sidewalks or lack of. The Committee is also creating a brochure for public education and plans to focus on outreach to town officials.

Malcolm Fitzpatrick mentioned hearing about possible state funds for the school building site if the town extended a walkway with the existing rail trail. He heard that another 3% of the school building project cost could be captured this way.

Lori Clark offered to speak with Ellen Sturgis about this matter.

### **COORDINATOR'S REPORT**

Karen Kelleher updated the Board on ongoing activities in the Planning Department:

Karen Kelleher updated the Board on her meeting with Kathleen, Laura Spear and Steve Dugan about Open Space and negotiating with developers for municipal land. Laura Spear offered to outline each type of property (Chapter 61, PCD, Subdivisions, Non-profit trusts, CPA funds, town purchases, town foreclosures, and 40B) for discussion at a future meeting.

Karen told the Board that an abutter to the Villages of Stow property was concerned about a fence being prepared for installation bordering his backyard. He believed that the setback was much further than where the developer was planning on constructing the fence. After consulting Sue Sullivan and the developer, the issue was resolved by Habitech agreeing to move the fence back 25/30 feet consistent with the Limit of Work line.

Karen notified the Board that an abutting property to the Ridgewood at Stow subdivision has potential of becoming an affordable home, or rehabilitated into a few units as affordable. Bill Roop, Laura Spear, Ernie Dodd, will be meeting next week to discuss the specific unit.

Karen told the Board that Sue Sullivan began subdivision inspections, and will be sending a checklist to Derby Woods. Karen sent a letter to Derby Woods to remind them to make a donation to the sidewalk fund.

The Board had received a complaint about erosion on Taylor Road, as well as complaints about light fixtures in violation of the special permit.

Karen informed the Board that the Mark White of Bentley Building Corp met with Mike Clayton to address the catch basin repair on Blueberry Court and granite curb repair on Foxwood Ln. The developer agreed to fix these items at his own expense.

A complaint was made about the ("Vote Yes" in support of the school building) banner hanging over Route 117. The Selectman sent an emailed recommending the Planning Board considers a bylaw amendment for political signage. Karen suggested that the Selectman revisit their policy for banners, as the zoning bylaw has restrictions on the size of signage for political signs.

Lori Clark asked Karen about the controversy about town employees hanging up the sign. Karen advised the Board that there is a permit fee and process to have banners hung by the town. She explained that a resident felt the fee was unjustified because it would not cover the cost of the employees or the equipment to hang it. Residents also felt that the placement of the sign gives the appearance that the town is telling residents to vote in a certain way, even though the town is not.

Lenny Golder agreed that the Board of Selectmen should address the issue as a town policy, not a zoning bylaw. Ernie and Steve both supported this thought.

## **APPOINTMENTS**

PUBLIC HEARING- PROPOSED ZONING MAP AMENDMENT, WEDGEWOOD PINES CC.

Kathleen Willis read the Rules of Conduct to the public and Board. She then explained the public hearing topic and described the request of the applicant to rezone a 1 ½ acre currently Recreation/Conservation to Residential for the purpose of building a caretakers cottage.

Mr. Daniel Campbell from the Level Design Group was present, representing Mr. Pitterino. Kathleen invited him to explain to the Board and the public the proposal. He expressed the desire of the applicants to build a caretakers cottage on the 1 ½ acre parcel which they had originally envisioned before the change to Recreation Conservation. He explained that the original zoning would have allowed for this. He also showed how the rezoned land would not create spot zoning and chose the most contiguous piece of land with the minimum amount of land required to build a single family home. He stated that the cottage would be for Mr. Pitterino and his father to live in and that they would not be leasing it out.

*Kathleen Willis opened the floor for Residents comments:*

Malcolm Fitzpatrick asked if there was land deeded as temporary or permanent Open Space on the Wedgewood Pines Country Club property.

Karen Kelleher explained that the requirements for Conservation Restrictions do not apply to Golf Courses in the R/C District. However the Conservation Restrictions have already been recorded before the property was re-zoned.

Resident Duncan Thorne, 227 Harvard Rd. expressed concern about how the property would be developed. He explained that Harvard Rd. used to feel rural and was concerned that further development would destroy the natural shape of the land. He hoped that whichever decision was made that efforts would be taken to preserve the natural beauty of the site.

Resident Tom Ryan, 453 Great Rd. asked if the golf cart path shown on the current site plan would be going through the proposed backyard where the applicant plans to build a home and if it would be an active cart path.

Mr. Campbell said that they plan on leaving the cart path when a new site plan is created so the caretaker could drive to and from work.

Resident Tom Ryan asked what value this proposal would bring to the Town and if it would open the land to future development. He explained that he did not have a problem with a caretaker's house on Recreation Conservation land, but questioned if there should be a tax penalty.

Resident Chris Sarno, 325 Boxboro Rd. also asked about the tax effect on the proposed rezoning.

Kathleen and Karen explained that there would be some financial benefit to the town. The financial impact would be the immediate payment to the town for Chapter 61 Roll back taxes. They would only pay tax on the 1-½ acre parcel if it were approved.

Resident Tom Ryan asked why the land was cut with a "jog" to the right.

Mr. Campbell explained that he and the applicant chose the specific area because it was contiguous with the rest of the residential zoning and that they decided to start at the furthest point of their natural property line on Harvard Rd.

Resident Tom Ryan mentioned that he would want a deed restriction placed on the caretaker's house, to have it stay with the golf course and always be a caretakers house, he also wanted limits placed on the overall size of the property.

Resident Duncan Thorne asked if the applicant could build on another piece of land instead.

Karen Kelleher advised Mr. Thorne that the property would require frontage if it were to be rezoned Residential.

Resident Malcolm Fitzpatrick expressed his interpretation of the original intent of the golf course bylaw, which was to preserve road frontage in exchange for commercial use. He suggested the applicant withdraw their application and work with the Planning Board to get the caretakers cabin in the Recreation Conservation land and limit caretakers homes just for golf courses.

Ernie Dodd explained that the caretakers cabin was in the bylaw at one time, but was removed in fear of creating a waterfall effect with other golf courses in town. The Planning Board was not looking to have caretaker's homes on each golf course.

*Kathleen opened the floor for Planning Board member's comments:*

Steve Quinn expressed his understanding for the applicant's proposal but stated that he feared reversing a prior negotiated decision could set a precedent for future development.

Lori Clark expressed that supporting the applicants request could put the Planning Board in a bind in the future. She said she would be in favor of supporting the request if the scenic vista could be kept, but because of the bylaw requiring frontage she is not sure if there would be a way to have both. Lori also expressed the same concern about setting a precedent with future rezoning requests.

Lenny Golder asked the applicant if in exchange for allowing the modification for a residential lot if land could be set aside and deeded for preservation.

Mr. Campbell mentioned that a significant portion of land is deed restricted, although it was not given to the town, 10% is in a permanent restriction, and 30% is in a 30 year restriction.

Mr. Campbell explained that he spoke with Karen Kelleher in order to go about this process by the cleanest route. She advised him that they would have to change the special permit, but cannot change the special permit before having the land rezoned through a town meeting vote. He assured the Board that if the proposal were accepted at town meeting then they would be willing to work with the Planning Board for their specifications on keeping the property as scenic as possible, taking into consideration their suggestions about keeping trees and the access to the property.

Kathleen Willis voiced her concern about the potential impact of setting a precedent, with property owners requesting their land currently zoned Recreation Conservation, be rezoned to allow for a caretakers cottages. She explained that some property owners have presented this idea in the past although they did not go, as far into this process, the Planning Board did not support the proposals. Kathleen agreed that this applicant did choose the most optimum piece of land but future proposals from other property owners may not come forward in the same way. In addition she expressed concern for the deterioration of existing wildlife corridors.

Mr. Campbell suggested looking at the entire parcel as a whole in order to maintain the natural amenities of Stow but said that this particular parcel would not ruin the natural amenities and the characteristics of Stow.

Resident Malcolm Fitzpatrick made another comment in response to a concern about it being subdivided in the future.

#### ***October 13, 2009-Ernie Dodd moved to close the public hearing***

#### **PUBLIC HEARING-PROPOSED ZONING BYLAW AMENDMENTS**

Kathleen Willis read Article 10 of the proposed zoning bylaw amendments.

Resident, Erick Bachtell, 4 Fieldstone Dr., asked the Planning Board why they drafted the article and where the desire to change it came from.

Kathleen Willis explained that as a result of the (Wildlife Woods) open land transfer to the town and then the Recreation Commission's request to designated acreage for Recreation; several Wildlife Woods residents expressed concern about keeping the open space in its natural state and were opposed to the use changed requested.

Lori Clark added the Boards motivation to draft amendments came strongly from town counsel. The Planning Board was advised to make clarifications to the language in the original decision so there would not be any confusion. He also advised the town to clarify the bylaws so that it better mirrors Massachusetts General Law.

Resident Eric Bachtell urged the Planning Board to rethink the zoning bylaw amendment because he felt it restricts it from ever becoming recreation land and does not want to take away the opportunity to acquire recreation land through developers.

Eric Bachtell gave examples of other towns such as Harvard, Carlisle, Amesbury and Raynham who use their OSRD land for recreational purposes, then urged the Planning Board to move no action.

Chris Sarno asked the Planning Board if developers could use the land for septic and well easements if they are supposed to keep the land in its natural state.

The Planning Board explained that the Developer is allowed to use the land for septic and well easements.

Karen noted that section 8.5.10.1 of the Zoning Bylaw states that ownership of the open land (whether by the Town, a Homeowners Association or non profit trust) requires a perpetual restriction shall be places on the land. This requirement was not stated in the decision.

Resident Tom Ryan 453 Great Rd., also felt that this amendment would make it impossible to obtain land in the future through Planned Conservation Developments. Without this opportunity Tom said the Recreation Department would have to go to town meeting every time they wanted to purchase property. Tom also said that horticulture and agriculture is allowed on open space land as well as parks, and does not understand why recreation uses are not. Tom read a letter that Mark White wrote concerning the Wildlife Woods open land and stated that he did leave room for both uses.

Kathleen Willis reminded everyone that the Decision on the Wildlife Woods open land had been modified at their last public hearing, and although the conversation is similar, suggested the discussion be focused on the zoning bylaw amendments.

Lori Clark added that although Mark White's original letter seemed to imply both uses, his latest letter stated that he always meant to the land to be used as passive recreation, keeping it in its natural state.

Tom Ryan asked if the town could reverse their decision on requiring a piece of property and if the Planning Board could determine the use.

Ernie Dodd advised Tom that the Planning Board would determine the use and that the land is under the care of the Board of Selectman.

Lori Clark added that taxes would be gained back if the residents of Wildlife Woods wanted to seek the land back from the town.

Resident Debbie Woods, 453 Great Rd., expressed that she does not want the Planning Board dismissing the Wildlife Woods conversation because the decision could always be overturned.

Tom Ryan stated that if the bylaws were changed then it would never be reopened, not allowing for recreation land through PCDs.

Ernie Dodd said that this too could be overturned; it would just be another layer of protection.

Debbie Woods stated that she believes recreation for kids is not passive but should be active, such as soccer fields. She felt that taking the choice away for recreation would be irresponsible.

Eric Bachtell stated that out of the 6 PCD developments that were built in town not all would be suitable for recreation land but some could be. He suggested having a land use plan for each new PCD, where they could designate both passive and active recreation.

Resident Malcolm Fitzpatrick believed that PCDs should have open space and open land in their bylaws as a defined term.

Kathleen Willis agreed that changing it would be important to have both the terms in the definition section so the reader could understand both. She also agreed that putting open space in small letters could get confusing.

Ernie Dodd pointed out that Massachusetts General law calls PCDs open land not open space.

Malcolm Fitzpatrick suggested the term Green Space, be used to as a defining term.

Eric Bachtell suggested the Planning Board use the Mass General Law Chapter 44B Community Preservation definitions.

Steve Quinn agreed that the town should not limit the uses of the open land through the current definition, but define the uses in the individual special permit process, here he said, the Planning Board could delineate a portion of land for active recreation if they choose to do so.

Ernie Dodd mentioned that most of the PCDs that have been built did not have suitable land for recreation, mostly, because developers want to keep the suitable land for building.

Kathleen mentioned that the Planning Board encouraged the Cider Mill Development to consider becoming a PCD but they were unwilling.

Eric Bachtell urged Board to reconsider the amended bylaw as a whole and reintroduce it at a later date.

#### PROPOSED ZONING BYLAW AMENDMENT ARTICLE 11 WIRELESS SERVICE FACILITIES

Kathleen Willis read Article 11 of the proposed zoning bylaw amendments and explained that town counsel recommended the decision be left with the ZBA and not require additional approval.

Resident Malcolm Fitzpatrick, 328 Great Rd., expressed concern about putting this responsibility before the ZBA because there would no longer be safeguards. He believed that the height limitation on wireless service facilities would be waived more often then it should be, and wanted the Planning Board to add something in the bylaw that ask for a recommendation from the Planning Board.

Kathleen Willis noted that this concern may be something the two boards could come to an agreement on, rather than making it part of the bylaw.

Lori Clark explained that state laws give the ZBA full authority. If the Planning Board were given authority their decisions would not be held up in court.

Resident David Walrath, 30 Samuel Prescott Rd, ask if would it be possible for the bylaws to contain a statement of the ZBAs decision with a list of the state law requirements that they must prove they addressed when making their decision.

Malcolm Fitzpatrick said that this had been tried but was unsuccessful due to the lack of enforcement. David Walrath asked if someone could appeal the decision if the ZBA did not do the minimum standard to make their decision.

Karen Kelleher explained that it would be very costly to have one board sue another. She also mentioned that the Planning Board has asked town counsel to meet with both them and the ZBA to discuss laws and procedures.

#### PROPOSED ZONING BYLAW AMENDMENT ARTICLE 12- DIMENSIONAL REQUIREMENTS

Kathleen Willis read the Article 12 proposed zoning bylaw amendment and stated that the 1<sup>st</sup> and 2<sup>nd</sup> bullet had not changed and the purpose of the change in the 3<sup>rd</sup> bullet was to make clarifications and keep bylaws consistent.

Malcolm Fitzpatrick suggested the need for a variance where the ZBA would be empowered to grant a special permit pursuant to GL c 40a s 6. He asked several questions about including the buffer zone.

## PROPOSED ZONING BYLAW AMENDMENT ARTICLE 13- RESIDENTIAL DISTRICT USES

Kathleen Willis read article 13 of the proposed zoning bylaw amendments.

Ernie Dodd explained that this proposed amendment came to the Planning Board's attention when a resident wanted to raise horses in a residential zone and the ZBA granted them the special permit. The Planning Board amended this article so residents could obtain special permits for preexisting structures to house animals. He explained further that anything less than 5 acres, the town can set requirements for uses, but the state exempts agricultural uses, which includes stables, on parcels greater than 5 acres.

The Board decided to revisit the slope requirement in the 4<sup>th</sup> bullet at a later date.

Malcolm Fitzpatrick made suggestions on the slope requirement.

Kathleen Willis encouraged Malcolm, as an associate member, to submit something in writing in regard to the slope, for the Board to consider in the future.

***October 13, 2009- Ernie Dodd motioned to close the public hearing. The motion was carried by a vote of five in favor. (Ernie Dodd, Kathleen Willis, Steve Quinn, Lori Clark, Lenny Golder).***

## **DISCUSSION/ACTION ITEMS**

### **STOW COMMUNITY RECREATION FIELDS DECISION MODIFICATION**

Karen Kelleher notified the Board that Judge Piper had dismissed the Golder VS. Stow ZBA case concerning the screening on the Stow Recreation Park.

The Board reviewed the draft decision modification.

Eric Bachtell asked if the board could give more specification on the height requirement for the plantings behind the stonewall

Kathleen Willis suggested making two separate conditions; to maintain the plants so the height does not exceed 4-5 ft or to be maintained a height that meets the public safety officer's criteria.

Eric questioned the use of lighting past dusk in section 6.8 in the pavilion. He stated that the Recreation Department would want to use the lights in the pavilion past dusk so that bands could pack up safely in the dark.

Kathleen Willis reminded Eric that the decision was very clear that the park closes at dusk and that the bands would have to plan to end their concert in a timely manner so they can avoid packing in the dark. She also stated that lights for the pavilion were never in the site plan or presented to the Planning Board for approval prior to their installation.

Karen Kelleher added that the only lights in the decision were security lighting.

### **WILDLIFE WOODS PCD SUBDIVISION DECISION MODIFICATION**

The Planning Board discussed their recommendations for the language to be used in the decision modification for the Wildlife Woods PCD Subdivision.

Kathleen Willis questioned if the current residents are aware or are abiding by the pesticide and nitrate restrictions. She suggested having someone review the plans with Wildlife Woods residents so they understand their responsibilities.



Karen Kelleher explained that the zoning bylaws read that no matter who owns the land it should be in conservation restriction but the decision stated that it would only be in conservation restriction if its maintained in the homeowners organization.

#### LUPA and CPA II

Karen Kelleher told the Board that she sent out the schedule for the Planning Board meeting with Senator Eldridge on the 27<sup>th</sup>.

#### Lighting Committee

Karen notified the Board that the Lighting Committee wanted to give the Planning Board and update.

#### VOTING ON PUBLIC HEARING ARTICLES

The Board discussed and then voted on the propose zoning map amendment for Wedgewood Pines CC.

Steve Quinn repeated his concern with the precedence that renegotiating would create.

Lenny Golder stated he did not think supporting the proposal would set too much of a precedent because the Board would take the same precautions if it were to occur in the future. He also stated that going back and forth is part of the nature when dealing with negotiations.

Lori Clark's main concern was that the vote at town meeting would not be connected with any restrictions, it would purely be to rezone the 1 ½ acre.

Ernie Dodd suggested negotiating with the Pitternios first and then going to town meeting, but Mr. Campbell was concerned with the timeline.

***October 13, 2009- Ernie Dodd moved to recommend the town meetings approval of the applicants proposed zoning change. The motion was seconded by Lenny Golder and did not carried by a vote, as four were opposed (Ernest Dodd, Steve Quinn, Kathleen Willis and Lori Clark).***

The Board discussed and then voted on the propose zoning map amendments,  
Zoning bylaw Amendments  
Article 10:

Steve Quinn suggested the Board insert "passive" recreation as an option but not take out active recreation.

Ernie Dodd agreed that the Planning Board could make their decision on the use of the open land when working with the developer on the special permit.

Lori Clark suggested still adding and defining "passive" recreation so the Planning Board could use it in their decisions, but not necessarily for the Planned Conservation Development bylaws. She noted that if the Board is very specific with decisions they could use the terms as needed.

Kathleen Willis stated that it would make sense to move no action until they have a chance to look over the information from Eric Bachtell and clean up the definitions of both open space and open land.

***October 13, 2009- Ernie Dodd moved to vote "no action" on Article 10 of the proposed zoning bylaw amendments. The motion was seconded by Steve Quinn and carried vote of five in favor (Ernest Dodd, Steve Quinn, Lenny Golder, Kathleen Willis and Lori Clark).***

The Board discussed and then voted on the propose zoning map amendment, Zoning bylaw Amendments Article 11:

***October 13, 2009- Ernie Dodd moved to recommend the town meetings approval of Article 11 of the proposed zoning bylaw amendments. The motion was seconded by Steve Quinn and carried vote of five in favor (Ernest Dodd, Steve Quinn, Lenny Golder, Kathleen Willis and Lori Clark).***

The Board discussed and then voted on the propose zoning map amendment, Zoning bylaw Amendments Article 12:

***October 13, 2009- Ernie Dodd moved to recommend the town meetings approval of Article 12 of the proposed zoning bylaw amendments with the last bullet removed. The motion was seconded by Steve Quinn and carried vote of five in favor (Ernest Dodd, Steve Quinn, Lenny Golder, Kathleen Willis and Lori Clark).***

Kathleen Willis will present Article 9, Steve Quinn will present Article 11, Lori Clark will present Article 12, Ernie Dodd will present Article 13 and Lenny Golder will attend the Stow Meeting to announce the presenters.

Karen Kelleher suggested holding a Planning Board meeting prior to Town Meeting at 6:30PM, all agreed to meet at Hale Middle School. Karen will put together power point slides for each Board member.

Light Pollution Study Sub-Committee- ***Ernie Dodd moved to appoint Margaret Tucker to the Light Pollution Study Sub-Committee. The motion was seconded by Steve Quinn and carried vote of five in favor (Ernest Dodd, Steve Quinn, Lenny Golder, Kathleen Willis and Lori Clark).***

Karen offered to notify Margaret of her appointment and the upcoming meeting.

The meeting adjourned at 11:05 P.M.

Respectfully submitted,

Kristen Domurad  
Administrative Assistant