

# **TOWN OF STOW PLANNING BOARD**

Minutes of the Tuesday January 5, 2010 Planning Board Meeting.

Present: Planning Board Members: Kathleen Willis, Leonard Golder, Steve Quinn, Ernest Dodd and Lori Clark

Planning Coordinator: Karen Kelleher  
Administrative Assistant: Kristen Domurad

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

## **REVIEW OF MINUTES AND CORRESPONDENCE** **MINUTES**

*Ernie Dodd moved to approve the minutes of the December 7, 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).*

### **Public Input**

There was no public input at this time.

## **PLANNING BOARD MEMBER UPDATES**

### **Meeting with Bill Wrigley, Town Administrator Re: Butternut Farm Golf Course**

Kathleen Willis reported on the meeting she and Karen attended to discuss the outstanding issues at the Butternut Farm Golf Course. Bill Wrigley advised the Board to have the Building Inspector rescind the occupancy permit or use the bond money to complete the outstanding issues that still need to be addressed if it becomes necessary. He did not support suspending their liquor license because it is unrelated to Planning Board jurisdiction.

In response to having Butternut Farm Golf Course pay for attorney fees, Bill felt it would be better to leave the issue alone, as they would have to obtain them retroactively and they had already paid the attorney fees.

[Lenny Golder arrived at 7:10PM]

### **Elementary School Building Committee (ESBC)**

Steve Quinn updated the Board on the progress of the ESBC. He explained that the engineers did not prepare an alternative Parking Plan. The ESBC will be going forward with their plan, which does not include the stone building.

### **Master Plan Committee**

Kathleen told the board that the committee will have a full draft version completed in the next weeks and they expect to be finished with a final draft in mid February.

Kathleen Willis had hoped that additional Boards and Committees would have shared their input on the document when individual chapters were released. Karen Kelleher notified the Board that there would be another release with a 30day review period. She also said the contract with the Ciccolo Group needs

to be wrapped up in February. Karen reminded the Board that the Selectmen did agree to extend the contract as recommended by the Planning Board.

### **Pedestrian Walkway Sub-Committee**

Lori Clark told the Board that there was no meeting last week, but the committee will be meeting this Thursday, January 07, 2010 at 7 P.M.

### **H1N1 Flu Clinic, Board of Health**

Kathleen Willis reminded the Board that the Board of Health will be running an H1N1 Flu Clinic Saturday January 9<sup>th</sup> from 9AM – 2PM and is open to everyone.

### **COORDINATORS REPORT**

Karen Kelleher updated the Board of the ongoing activities in the Planning Department.

### **Packard Road Building Permit**

Karen told the Board that she signed off on a building permit clearance slip for a house adjacent to the homes on Packard Road that were having issues with erosion. She notified the Board that she did not have any reason to hold back the permit, but added a cautionary note that erosion control measures should be in place.

### **Derby Woods**

Karen notified the Board that a Derby Woods resident had made a complaint about the walking trail behind her property. She and her husband were concerned that people would be walking very close to their house and backyard where their children play. Karen advised the resident of the appropriate people to speak with and plan modification would require approval for the Planning Board and Conservation Commission.

### **Emergency Access way on Mr. Collings property**

Karen reported that Mr. Collings requested a meeting with the Conservation Commission to propose an emergency access way on his property. Karen told the Board that the area he is proposing to put an emergency access way would lead to the land where his proposed subdivision would be. Mr. Collings justification for acquiring this emergency access way is because Honey Pot Farm was allowed to add an emergency access way.

Kathleen Willis suggested Karen double check on the status of the current litigation with Mr. Collings and have Town Counsel, John Witten contact Pat Perry, Conservation Commission Coordinator, so she can be prepared with updated information.

Karen Kelleher reminded the Board that Mr. Collings tried to add an access way in the past but was stopped by public safety and the Planning Board.

Kathleen Willis questioned the necessity for an emergency access way, as she was not aware of public safety issues from prior events.

### **National Flood Insurance Rate Map**

Karen Kelleher notified the Board that the Firm Maps will be updated this summer and the Federal Emergency Management Agency (FEMA) will be reviewing the Town's zoning bylaws, which may need to be updated to ensure Stow is not suspended from the National Flood Insurance Program. Once the bylaws have been reviewed someone will be in contact with Karen if there is anything that needs to be address. Karen said she would notify the Board if there are any necessary meetings with the agency. She said most of the changes are as a result of requests for map review from property owners, and that none of the changes should impact the Riverhill Estates Development because the Board had referred to different studies.

## **DISCUSSION/ACTION ITEMS**

### **Draft Banner Policy**

The Board reviewed Selectmen Steve Dungan's draft Banner Policy and offered the following suggestions:

#### **Purpose**

- Limit to the three existing locations on Great Road.

#### **Allowable sponsors**

- Banners shall be restricted to Stow Community events sponsored by a Town Board or Committee, or nonprofit or religious groups.
- Political and Lobbying banners whether federal, state, local government or privately sponsored are prohibited.
- Commercial Advertising Signs are prohibited.

#### **Fees and Insurance**

- The Board of Selectmen shall establish a permit fee, sufficient to cover the cost of the Town installing and removing the banner.
- The permit fee shall not apply to Town Boards and Committees
- Any request for waiver of the permit fee shall be subject to approval of the Board of Selectmen.
- Insurance

#### **Permit Authority and Process**

- Add the following statement after the third sentence: "In no instance shall an application be sought less than 30-days prior to the requested date of installation."

#### **Banner Application**

- Include date of event and date the banner is to be removed

#### **Size and Technical Specifications**

- Require a minimum and maximum length
- Sponsors name shall be included on the banner
- No offensive language

Karen will forward the Board's suggestions to Selectmen Steve Dungan.

## **APPOINTMENTS**

### **Senator Eldridge Re: Land Use Partnership Act (LUPA), Community Planning Act II (CPAII)**

Senator Eldridge serves as the Co-Chair of Municipalities and Regional Government, which oversee all land use and zoning.

Others in attendance were:

Representative Kate Hogan

Planning Director, Town of Acton- Roland Bartl

Planning Board Member, Town of Harvard - Kara Minar

Stow Residents; Don Rising, Marcia Rising, William Byron, Mike Kopczynski, Ellen Sturgis, Nancy Arsenault and Laura Spear.

Senator Eldridge explained the purpose of the committee he oversees and provided a brief history of his involvement with the CPAII. He explained that the committee he oversees is focused on land use and zoning reform and that he is the co-sponsor of CPAII.

The administration put forth LUPA, but he has been working with Jeff Lacey and Mr. O'Connell who were the original drafters of CPA. He expressed to the Board and attendees that he wanted to gain a better understanding of how the town perceives both pieces of legislation and specifically what the town would like to see added. He notified the Board that the final product would most likely be a hybrid of both LUPA and CPAII and in general the state wants to give more resources to the towns.

He stated that in general the State would like to help towns by removing the ANR legislation and repealing grandfathering rights and make clear the establishment of impact fees to address public safety and environmental issues.

He stated that he had heard differing opinions on changing Board votes from 2/3 to a majority vote for zoning changes. Another goal is to make it easier for towns to do Transfer of Development Rights, and overall provide more technical support and regional support for planning boards.

Kathleen Willis asked Senator Eldridge what his sense was from the legislators on both documents. Senator Eldridge explained initially, it was thought that everyone was on board with LUPA and this really hasn't been the case from both the communities and developers standpoint.

Senator Eldridge felt that the author's goal in writing LUPA was to create housing, and Senator Eldridge felt the purpose should be for good land use policy and giving communities control over their vision for their town/ city. He explained that developers want the permitting process to be quicker and more predictable and the State is looking at ways to achieve this while protecting the towns' interests.

The Board then expressed their concerns and gave input on LUPA and CPAII:

Ernie Dodd, told Senator Eldridge that the Town of Stow currently has Inclusionary Zoning and requires developers to produce 10% affordable or give the fiscal equivalent into a town fund. He stated that it would be more beneficial to the town for developers to build the affordable units themselves because it is very difficult for a small town to produce the housing units on their own.

Senator Eldridge noted that CPAII includes this in the statute.

[Representative Kate Hogan arrived at this point in the meeting]

Kathleen Willis presented another concern of the Planning Board. She explained that LUPA diminishes home rule and takes away the control of local citizens. She stated that the Commonwealth should be supporting the individuality of local communities and that one size does not fit all. She further explained that the Master Plan is very specific to each town's goals and in the 2009 Master Plan Survey, Stow residents valued "rural character" the highest and a trait they would like to see carried into the future. She stated that it would be very difficult to protect this goal if they were mandated to increase housing by 5% each year. Kathleen also discussed how the town is fortunate to have Open Space, and that this no longer seems to be a value shared by the State.

Lori Clark added that requiring regional approval for a Master Plan can take away the individual character of a town and regional agencies do not necessarily represent the interests of specific towns.

She explained further that setting limitations for off-site mitigation for subdivision requirements takes away essential tools that allow towns to shape the development with the image of the town.

Senator Eldridge asked the Board what their interactions with Regional Planning agencies have been. Kathleen explained that they have a positive relationship with the Minuteman Advisory Group on Interlocal Coordination (MAPC) and have been able to acquire assistance for developing a draft mixed use bylaw, though the town is not always represented as well as others. She was concerned that people who are not planners and do not live in the town would be making decisions for them under LUPA.

Representative Hogan agreed that MAGIC covers a large geographic area and the communities it encompasses cannot be put into the same category.

Selectmen, Laura Spear who attends MAGIC meetings as a Stow representative, noted although many of the MAGIC meetings are informative, the issues discussed often have little impact for Stow, simply because of the diversity the group covers. She gave the example of transportation along the Route 2 corridor.

Lori Clark discussed how LUPA's "Opt. In Communities" section keeps small towns like Stow out unavoidably. She explained the realities and culture of government and politics in small towns, describing how it is difficult to build and adopt a Master Plan due to fiscal constraints—especially one that needs to be passed at town meeting.

Lori Clark commented again on the Master Plan content as described in LUPA. She explained that the town has always viewed the document as a forward thinking-planning tool. LUPA states that the Master Plan should be consistent with the current bylaws. Lori explained that realistically it would be difficult to get Town Meeting approval of a Master Plan. =

Senator Eldridge explained that this idea came from several planners who thought having the bylaws and Master Plan in line would make them enforceable against each other.

Senator Eldridge asked if more technical and financial assistance would be helpful.

Karen Kelleher added that in the past when a Master Plan was brought to town meeting it was ineffective because there was too much information and the level of content overwhelmed residents and was never passed. She said if outside technical assistance were provided to write the document, townspeople might be skeptical of the product.

Lenny Golder added that bylaws are approved 2-3 articles at a time at town meeting. Passing an entire document would not be feasible. Seeing as a bylaw is already in place, another document with the same information would be unnecessary because the Bylaws should already be upheld. The Master Plan would be a better tool for planning goals.

Lori Clark noted that the town has hired a consultant and that financial assistance would be very beneficial but not if it meant giving control of the document to planners outside Stow.

Kathleen further discussed the impact of 5% housing increase in the LUPA document. She explained that Stow would have to build about 110 houses per year to comply, whereas 25-30 homes are built a year right now. She said the town lacks appropriate infrastructure for a 5% year increase.

Karen Kelleher explained that the Town has a phased growth bylaw, but developers actually build less than the minimum allowed, even in good economic times.

Kara Minar from the Harvard Planning Board told Senator Eldridge she would like to see concrete examples of how towns can push back on developers because without off-site mitigation, which is proposed in LUPA, the towns would not have much power.

Ernie Dodd explained that LUPA does allow for development impact fees, in exchange of off-site mitigation, but the fees are restricted. The aspects of town that are affected most from development such as schools and public safety can not accept money from development impact fees. He also mentioned that impact fees, as defined in LUPA, require more resources and require staff to manage the projects.

Resident Mike Kopinzynski suggested regional planning agencies consider planning affordable housing based on location of infrastructure such as transportation. He noted that progressive affordable housing efforts made by towns like Stow won't be recognized because the 5% housing increase under LUPA does not count 40B or AAN developments.

Roland Bartl noted that this was an interesting idea in theory, but towns with significant infrastructure also cherish their open space and it would be difficult to get buy-in.

Kara Minar from the Harvard Planning Department asked Senator Eldridge to consider the impacts of large developments on towns and how limiting the use of development impact fees could drive up taxes because of school and public safety funding, which in turn would push out senior citizens.

Lenny Golder agreed that there should be some sense of the individual communities when planning affordable housing. He argued that each town should create affordable housing but to the size and scope that is appropriate for the community that is appropriate to accomplish diverse opportunities without having massive amounts of housing thrown at towns.

Kathleen Willis explained to Senator Eldridge that transportation is one of Stow's greatest handicaps, and would become critical if an increase of housing is mandated.

Laura Spear commented that at one point the town experimented with a shuttle services to the rail line in Acton, but the lack of demand due to short hours and a narrow window of operation had forced the town to discontinue the service.

Kathleen noted that the Acton train station needs more parking and this may increase the number of commuters from Stow.

Senator Eldridge told the public that the State is conducting a 150-mile upgrade on the Fitchburg rail line as well as connecting the Assabet Rail trail to the train station in Acton.

Ernie Dodd complimented MAGIC on pulling the towns together to create the Assabet Rail Trail as well as keeping the town on the Transportation Improvement Program (TIP) list.

Ernie Dodd said the town's only transportation service is with the Montachusett Transit for the Council on Aging van.

Kate Hogan suggested using Metrowest transit because they are more established and maybe able to provide better services.

Lenny Golder also added that transportation services would help keep the senior population in town.

The Board then discussed some additional pros and cons of the proposed legislation.

Lenny Golder addressed the need to keep 2/3rds vote. He explained that local governments need to have a 2/3rds vote for zoning bylaw changes because meetings are easily stacked. He gave the typical

example of how popular items on the first night of town meeting agendas draw large crowds, and the second night attendees are mostly elected officials or employees. Lenny said that 2/3rds vote is really like a legislative protection so that the changes get made in a responsible way.

Lori Clark asked Senator Eldridge why he was under the impression that a majority vote is necessary. Senator Eldridge said that special interests are protected under a 2/3rds vote.

Kara Minar disagreed stating that the 2/3rds vote is a safety measure.

Roland Bartt felt similarly, stating that he disagrees with the planners that support the majority vote because zoning proposals could be passed without being well vetted. Zoning proposals can be shot down when you need a 2/3rds vote and if the town really wants something to pass they would need to support it, not the other way around.

Laura Spear discussed the lack of infrastructure in town, such as no public water or sewer. She said, under LUPA, limited resources and infrastructure affect the ability for towns to become an “Opt- in Community.” Laura suggested using Stow as the “test” community when creating laws so towns are not excluded. If the a law would work for towns similar to Stow with limited infrastructure and resources then legislators can be sure it would work for everyone.

Karen Kelleher said, the legislation seems like it was written in a way, that assumes all towns in Massachusetts have the ability to become an “Opt in Community”—which is not the case due to the differences in infrastructure and DEP regulations.

Board members expressed that Stow is a minority in the MAGIC group when it comes to infrastructure and this fact often is forgotten.

Ernie Dodd spoke on proposed concepts that would improve zoning for all towns (without an opt-in requirement).

- Allowing towns to have restrictions on minimum and maximum size of dwellings
- Form based zoning
- 3 Year Grandfathering limit, but not just for “Opt-in Communities”  
Inclusionary housing - would like the capability to require affordable units be built by the developer on-site or at least off-site rather than a fee without regard to bonuses.
- Minor subdivisions
- Requiring developers to build parks or playgrounds
- Suggestion to change the date of submission, to the date of the next Planning Board meeting instead of when it is given to the Town Clerk.
- Performance guarantees allow towns to specify which type of bond they will receive. State Laws should give towns more flexibility in allowing different bonds.
- Lori Clark suggested the idea of changing building code to encourage green buildings, Kara Minar suggested the Town look into Stretch Code.
- Development impact fees without the administrative burden

The concerns in the proposed legislation that he discussed were the following;

- Declaration of Development Intent (giving the developer the right to turn in a one page document which vaguely lays out a development idea without a preliminary plan which would entitle them to grandfathering rights), this would seriously handicap the town.
- Taking away the Attorney General review of town bylaws—Ernie stated that this review process should stay because it helps towns avoid potential problems with their bylaws.
- Eliminating off site mitigation and replacing it with development impact fees would be a financial burden to the town, and be easier for the town to have developers do the projects themselves

- Roland Bartl agreed that with mitigation fees, towns get more bang for their buck if the developer does the work. He understood that mitigation can become arbitrary but suggested the State create safeguards.
- Lori Clark reminded Senator Eldridge of another concern mentioned earlier about the restriction on development impact fees in LUPA.
- The proposal to minimizing the requirements for a variance is a concern for Stow because the law should be written more specific not more lenient.
- Land Use Dispute Avoidance- is a large cost to the town
- Overall, good planning tools should be available to all communities not just those who have the ability to “Opt-In”.
- Prompt and Predictable Permitting – the Town has rules and regulations and if the developers follow them, they get approved, but more often than not, developers leave out sections or neglect to file a complete plan. Karen Kelleher said, it’s not bureaucracy in Town that delays a prospect its the developers that do not file complete plans. Shortening the timeline might make it unrealistic for towns to respond to applications and could result in the town being forced to deny a plan due to incomplete application. Kara Minar added that many developers drag out the process hoping Boards get tired of them and approve the plan.
- In response to “Substantial Compliance to Bylaws”, Ernie Dodd commented that either the developers meet the bylaws or they don’t.
- “By right” development due to lack of meeting target numbers for housing
- Overall the feeling from the Board about LUPA was very negative due to its blanket assumptions and unrealistic requirements

The Board asked Senator Eldridge what type of feedback he received from other Commonwealth communities. Senator Eldridge said that he has been speaking more individually with people and mentioned that the difficulty is building the political support because this issue is not a hot topic on Capital Hill.

Steve Quinn suggested to the Senator, if the main goal for DHCD is to increase the housing stock, it might be more efficient and effective to create incentives for developers and towns to build, instead of creating a wide sweeping bill across all Massachusetts communities.

Senator Eldridge agreed that there is not enough work force housing and asked what types of policies could encourage this.

Kathleen Willis said that developers need an incentive to build smaller homes because the cost of land is so high.

Roland Bartl said he was not sure if CPAII or LUPA would change much in the way of housing or economic development. He said that the “one size fits all” concept is not going work and a lot of communities will not be able to buy into the certified community. He mentioned that the State has taken special legislation into account for the Cape Code region, and that the state needs to look at the other regions and similarities/differences amongst them and create different planning tools accordingly. Lori Clark added that the regions should be based on similarities in size, infrastructure and other things of this nature.

Ernie Dodd said that most of the infrastructure in other towns has been funded by the state.

Senator Eldridge said he would be meeting with the CPA II committee later this week, and said at this point they are reviewing the content of the bill. He mentioned that it would be very difficult going up against Developers especially in Boston.



Ernie Dodd asked Senator Eldridge what the reasoning was behind the proposal to change permit-granting authority for 40B projects to the Planning Board instead of ZBA. Senator Eldridge said that he is on the committee on housing and would check about this and get back to the Board.

Ernie also asked about CPA funds being used to help keep existing smaller homes by deeding them affordable. He explained that there are several seniors in town that don't qualify for affordable homes but can no longer afford to stay in their house.

Kara Minar explained that Harvard was able to obtain a home rule tax break for people who move back with parents or children. She said this allowed them to help people in the community by keeping them in their homes.

Laura Spear reported that she spoke with DHCD on this topic of buying a deed restrictions for senior members of the town as mentioned above. She said DHCD pushed back because they want new housing production.

Ellen Sturgis commented that many smaller homes in town are bought, torn down and then replaced with large homes. She said there should be funding to keep a diversity of homes in town as well as the residents because generations can no longer afford to live in town.

The Board thanked Senator Eldridge for attending the discussion.

#### **DISCUSSION/ACTION ITEMS CONTINUED**

##### **Highgrove Estates**

Karen Kelleher notified the Board that they are in receipt of the Notification of Site approval to the State. Karen asked the Board to review her draft of the response. Ernie Dodd asked Roland Bartl if he could also write a similar response because drainage mitigation was a main concern of Acton residents at the prior application from Highgrove Estate Public Hearings, Roland agreed.

Kathleen asked Roland how lenient the Acton ZBA was and if it would be likely for them to pass something like this. Roland said that the ZBA rarely grants variances.

Steve Quinn stated that the Planning Board would not have any control over the project after this point, but the Board should do what they can to get the plan denied before it comes back to the Town and to the ZBA.

Kathleen Willis commented on Title 5 issues, stating that the Board of Health was upset when the Planning Board denied the previous Highgrove Estate proposal because they were concerned they would come back with a plan for a 40B development.

Karen advised the Board that the Board of Health will be required to comment on the comprehensive permit application when filed and are very familiar with the site and its problems.

Lori Clark also noted that the Conservation Commission might have some issues with the wetlands crossing.

Karen said she would speak with both the Conservation Commission and the Board of Health to discuss this matter. The Board decided they would send the letter Karen wrote before they receive their notice from the funding agency.

**Orchard View**

The Board reviewed the letter Karen wrote to request the performance guarantee from the Metrowest Bank in order to complete necessary improvements.

*Ernie Dodd moved to approve and send the letter, 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).*

Steve Quinn asked what the cost would be to the town to complete the necessary improvements. Karen told the Board it is likely the cost will be greater than the amount to be released from their performance guarantee.

**Lot Release on Partridge Lane**

*Ernie Dodd moved to approve the release for lot 6A on Partridge Lane as un-buildable and have Kathleen Willis sign the document. The motion was seconded by Steve Quinn and carried a vote of five in favor (Kathleen Willis, Steve Quinn, Ernie Dodd, Lori Clark and Lenny Golder).*

The meeting was adjourned at 10 P.M.

Respectfully submitted,

Kristen Domurad  
Administrative Assistant