

TOWN OF STOW PLANNING BOARD

Minutes of the Tuesday January 12, 2010 Planning Board Meeting.

Present: Planning Board Members: Kathleen Willis, Steve Quinn, Ernest Dodd and Lori Clark
Absent: Lenny Golder
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 15, 2009 meeting as amended. The motion was seconded by Lori Clark and carried a vote of four in favor (Kathleen Willis, Lori Clark, Ernie Dodd and Steve Quinn).

Ernie Dodd moved to approve the minutes of the December 15, 2009 executive session as amended. The motion was seconded by Lori Clark and carried a vote of four in favor (Kathleen Willis, Lori Clark, Ernie Dodd and Steve Quinn).

Ernie Dodd moved to approve the minutes of the January 4, 2010 meeting as amended. The motion was seconded by Steve Quinn and carried a vote of four in favor (Kathleen Willis, Lori Clark, Ernie Dodd and Steve Quinn).

PUBLIC INPUT

No public input at this time.

COORDINATOR'S REPORT

Karen Kelleher updated the Board of the on going activities in the Planning Department.

[Laura Spear, Board of Selectmen, arrived at this point in the meeting.]

Highgrove Estates

Karen told the Board that Town Counsel, Jon Witten, would be looking over the draft letter to Massachusetts Housing before it is sent. She reported that the Selectmen suggested the town send one letter.

Laura Spear commented on the letter stating it was very well written and encompassing. She noted a few items to add; the town's enactment of the Affordable Housing Trust and the town meeting approval of the Community Preservation Act projects.

Ernie Dodd suggested the Planning Board and the Board of Selectmen sign one letter.

The Planning Board has received official notice from Massachusetts Housing that they have been in receipt of Highgrove Estate's Application of Site Approval and the town now has thirty days to submit a response. Mass Housing will be holding a tentative site visit on January 26.th

Laura Spear said she would like to attend the site visit.

The Board also thought it would be important for members of the ZBA to attend the site visit and Karen offered to forward the notice to Ed Tarnuzzer.

Laura Spear also mentioned that the applicant's response to the smart growth score card was misleading because there are no services in this area.

Karen told the Board that she encouraged The Town of Acton Town Planner, Roland Bartl to respond to the Highgroves Estate site approval application.

Elementary School Building

Karen Kelleher notified the Board that she spoke with Jamie Warren from SMMA and they would like to schedule a preliminary discussion with the Board before they formally file their plan. The Board decided to meet and schedule them on January 26, 2010 agenda.

Karen told the Board he would come into the meeting with the plan and cover letter outlining a list of permits required.

Karen also noted that the plan would not include the stone building.

Ernie Dodd said they should be prepared to discuss drainage in a general manner.

Banners

Karen Kelleher updated the Board that she had sent Steve Dungan the Planning Board comments for the banner policy.

Laura Spear said the draft policy written by Steve was sent directly to the Building Department, Planning Board and Highway Department and he plans on collating the suggestions.

Laura said she would prefer a working group discussed the final draft of the policy together to make sure everyone agrees on it.

Kathleen had some additional comments to the Planning Board comments that were sent earlier last week.

Light Pollution Study Committee

Greg Troxel and Russ Willis represented the Light Pollution Study Sub-Committee.

Russ reported the committee meets about once a month. The committee recently welcomed Tory Fletcher and Margaret Tucker to make a total of five members. He said the committee continues to monitor light compliance at Arbor Glen, the Taylor Road PCD and with individual homeowners.

Russ explained that some Arbor Glen residents had removed part of the full cut off adaptor from the fixture. He spoke with Craig Martin, Town Building Inspector, who recommended that it might be good to attend a homeowners association meeting to explain to the residents why this fixture is in place.

The Taylor Road PCD also had lighting fixtures that were not in compliance, the Light Pollution Study Committee spoke with the new project manager and he said he would change them.

Kay Desmond will be in contact with a member of the ZBA to get on the agenda for discussion about adding requirements for full cut off lighting fixtures as mitigation to counter the density in 40B projects.

They are currently consulting with the First Parish Church who wants to improve the lighting on their property.

Russ Willis investigated a complaint about an exterior light located at 146 Boxboro Road (Map Sheet R18, Parcel 10), which shines onto the abutting property (158 Boxboro Road, Map Sheet R18, Parcel 13).

In response to this complaint, the Planning Department requested the Light Pollution Study Sub-Committee investigated the matter. The Light Pollution Study Sub-Committee found the wall pack light installed on a garage at 146 Boxboro Road shines through the woods and onto the abutting property (158 Boxboro Road), approximately 200 feet off the property, and therefore constitutes a nuisance in violation of the Zoning Bylaw Section 3.8.1.5. In addition the wall pack fixture does not comply with the requirements of Section 3.8.1.5.6.

Karen Kelleher notified the Board and Committee that she drafted a memo to the Building Inspector. Karen asked the Lighting committee if they would want to send a letter to the homeowner advising of the town bylaw and the recent complaint from his neighbor before have the Zoning Enforcement officer issuing an official letter. .

Greg Troxel discussed their concern about enforcement issues. He felt that the zoning issues should go directly to the Building Department, who can use the Lighting Committee for help. Over the past 5 years they have been trying to combat the lighting issues in Lower Village, specifically at Stow House of Pizza, Citizens Bank, the video store and fitness center. The committee suggests having Craig Martin issue citations and then if the problem is still not taken care of, to issue the fine. Greg offered to assist the Building Inspector in drafting a policy concerning enforcement of light pollution complaints.

The Light Pollution Study committee will hand out information at Springfest
Overall the committee has felt they are still able to serve a purpose. They have noticed lighting issues getting better since the zoning was amended and from monitoring and working with residents and builders.

Karen and Lori advised that the Lower Village Sub-Committee discussed distributing an informational letter annually or whenever a new business opens in town about the lighting bylaws on streetscapes and signs.

The Planning Board thanked them for all of their hard work.

APPOINTMENTS

Star Tower Company

Frank Kelly, Consultant from T-Mobile

Cale Miller, Star Tower Company

Scott Heffernan, Star Tower Company

Cale Miller said that Star Tower Company is ultimately looking to build a cell tower on the Wedgewood Pines Country Club property.

He explained that during the site acquisition process T-Mobile looked for the least intrusive place to put up a tower. They thought it was a great site because the area is zoned recreation/conservation, it can be well hidden and people complain often about not receiving service in the area because there are coverage gaps.

Cale also explained that Star Tower always offers space for the town public safety services free of charge. He mentioned that he spoke to Chief McLaughlin who expressed an interest in putting up their antennas, free of charge.

Kathleen Willis asked where else in Stow T-Mobile had cell towers.

Cale showed the Board a coverage map of the town and the area they are looking to put the tower, explaining where existing towers are and how T-Mobile has poor coverage in the area and no coverage at the golf course.

He said that this parcel would be optimal because it is a fairly large parcel, which can easily accommodate the project; it's screened well by trees. They said they had this property in mind for a few years and think it's a great space.

Ernie Dodd said there was one major problem—the place they are proposing is not in the overlay district. Cale Miller said this was something that Frank saw during the site acquisition process but even though the town might have a wireless district it could still be possible and they were having a difficult time finding other properties as good as this one.

Cale explained that the group looked into putting a cell tower up near the airfield but determined that they would need a 150ft pole for the necessary coverage. They also said that they need a reliable percentage of overlap for coverage. They stopped evaluating this site once they knew the pole would have to be 200ft high, which would also require a beacon.

Ernie Dodd asked the representatives why they were not on the AT&T tower at Hillcrest. The group said again that they knew it wasn't in the wireless service overlay district but constructing one near the airfield would be more difficult because of the wetlands and height of the pole. The group said the only other usable parcel, still not in the wireless service area, was further out on the golf course but they felt this would be an eyesore.

Kathleen Willis asked what the town currently uses for their emergency service communication. Ernie Dodd said they do not use wireless service facilities right now. Cale said they noticed there is a small tower on the police station.

Kathleen Willis noted that the Town has a 100ft. height limit.

Ernie Dodd reminded the Star Tower group again that the Wireless Service Facility Overlay district is a zoning bylaw requirement and the only way the Board could approve it is if it were within this district. Ernie advised the group their other options would be to propose and have a new zoning district approved at town meeting.

Frank Kelly of T-Mobile said there are federal telecommunication laws that would allow them to have this tower in the space discussed without it being illegal. He said they would be prepared in their application to provide legal justification that would give the Planning Board authority to grant the relief. Frank said they have been able to overcome this with other communities they have worked with because they are not allowed to preclude the carriers from providing adequate coverage. Star Tower sees this as a hurdle but is prepared to make this argument.

Frank asked if they could just obtain a variance from the ZBA, Ernie Dodd told them the ZBA cannot issue use variances.

Kathleen Willis expressed her concern that they are asking the Planning Board to support undermining the Town Bylaws and Massachusetts State Law. She did not think it would put the Planning Board in good position to consider or allow a outside of the overlay district. Kathleen said it is the Planning Boards job to make sure the bylaws are upheld. She said she empathizes with their problem to provide coverage and that technology has come faster than the existing bylaws have changed, but was unsure the Planning Board could help.

Cale stated under this circumstance they would be a good candidate to use the telecommunications act. . Kathleen Willis asked if they had spoken with the owners of the Airport. Cale said they did not because they ruled out the site because of the height and coverage signal.

Steve Quinn asked if the company has data on the coverage in that area for other carriers. Cale said he was unsure about the coverage for other carriers but that he has Verizon and does not get coverage at Wedgewood.

Cale said a few other carriers have expressed some interest but many don't contact them until the project is done because it is cheaper.

Lori Clark noted that having a 150ft pole on the golf course poses two problems—not being inside the overlay district and the limit of 100ft requirement.

Kathleen Willis suggested they provide the Planning Board with the legal justification in writing about the telecommunications act which they think supports their position.

Ernie Dodd asked the applicants if they had considered using a radiating cable to go underground, similar to wireless connections in subways.

Cale responded stating that this would not be feasible.

Frank then showed the Board the set of plans they had designed for the site.

Kathleen asked how long the group had been working on this project. Cale said they began looking at sites in Spring of 2009, and approached the golf course to finalize where a good location would be without clearing trees or creating a separate access road.

The Board noted the plan showed external antennas. Karen told the group that the bylaw calls for internal antennas.

Cale said they are able to get more carriers on the pole this way and it would eliminate other carriers from needing to put up another pole. Cale explained how it is difficult to design an internal mount with many carriers.

Cale said the group could look into close mounted platforms with 10-12ft. in width, which looks like a triangle frames.

Kathleen asked where the public safety towers could go. Cale said they could be put anywhere on the pole.

Frank explained that they would not install cabinets, because T-Mobile does not require a shelter, the equipment is self contained in a shelter and the fans only turn on in the summer when it gets too hot. He said fans are very quiet and do not produce much noise. He noticed in the application that there is a requirement for ambient sound and that they will be able to provide information to show that it is at a low level.

Kathleen Willis mentioned keeping lighting to full cut off and making sure a fence would keep people out of the area.

Ernie Dodd noted the two problems they face, the overlay district and the height requirements. He said their easiest approach would be to modify the bylaw through a town meeting and possibility it would require a balloon test before hand to demonstrate the need and screening.

Lori Clark commented that bringing images of how the site would look to town meeting would be the best way to show people what it would actually look like.

Frank asked when the last date to submit items to the warrant would be, the Board advised him it would likely be in March but to contact the selectmen's office to confirm.

Steve Quinn wanted to know what other carriers get coverage in the area to see if this is a tough spot. He stated that this would be good justification at town meeting for need if it can be proved.

Frank summarized the issues they needed to address, not being in the overlay district, 900ft set back from residential, 100ft height limitation and external antennas.

Ernie Dodd said it may be easier to change the zoning at town meeting and then have the ZBA address the other changes.

Karen Kelleher asked the Star Tower group if they have been successful in other towns where they would have to overcome overlay districts.

Frank said a lot of overlay districts do not allow carriers to provide adequate networks, and that is why they would be able to get something approved by providing the argument that the Board has the authority to issue a waiver or they could do this through litigation, challenging through court.

Karen asked them if they have been successful in court.

Cale said the carriers have been successful in implementing the towers.

Lori Clark asked if they had been successful in avoiding litigation. Cale said the other boards they worked with denied the plan so Star Tower filed an appeal.

Karen asked if they had been able to settle the issue outside of court instead of going through an appeal process or been able to convince towns they can approve a waiver under the telecommunication act.

Frank said they had been able to win outside of court.

Cale said they were able to build outside of wireless service zones, but did not feel like they could mention which towns.

Cale said if they show they have a significant gap in coverage and this would be their only mean to fix it.

Frank said the criteria are showing a significant gap in coverage and to construct the pole in the least intrusive way to provide the coverage, which they believed they would be doing.

Frank said he believed the crane test would be very important and would like to get this scheduled and advertise it.

Kathleen said it would be a good time to conduct one, as the trees that are deciduous trees have lost all their leaves which would show what the tower would look like at its worst.

Cale said they did a site on another golf course in Northbridge and in Whitinsville where they painted the tower brown to match the back of the hill.

Steve Quinn said he wondered what type of legal opinion they would be able to provide the town with that would be able to allow them to permit it. He said the Board is not trying to flex their muscles but would not want to do something illegal.

Ernie Dodd said the Board would need to check with their town counsel on the matter.

Steve Quinn suggested passing a zoning bylaw change at town meeting would probably easier.

Frank said if they submit an application with the arguments in it and see how this takes, and if they have to go to town meeting at least they will have begun the process.

Ernie Dodd asked if they could send the Board a separate letter from their legal counsel in advance.

Karen Kelleher explained that if they submit an application as they had explained the Board would have to hold a public hearing and would not be able to approve it without the Zoning Map amended.

Lori Clark said if they are open to extensions then this would be ok.

Karen voiced concern that such a process would speed up the applicants' likeliness to file an appeal.

Cale said they would seek advice from their legal Counsel as to what to do.

Kathleen told them it would be easier for the Board to get the advice of their legal counsel first.

Ernie Dodd said he did not see how the Town's legal council could advise them to relieve the Board of their duties to uphold the Town and Massachusetts General laws without acting unconstitutionally without a court decision.

Kathleen Willis asked if they intended to sponsor a bylaw change or the property owner could be the petitioner.

Frank then asked questions about some submission requirements outlined in the bylaws.

Karen advised him that they would need to provide a map of all existing towns and existing wireless service facilities that extend into Stow. Frank felt this was not relevant.

Kathleen explained that this was to show that T-Mobile had explored co-locating.

Karen Kelleher advised the group that the Planning Board has no authority to waive a Zoning Bylaw.

Frank asked if they could conduct the drive test before the application was submitted, the Board said the bylaw was written in a way that would allow it to be done before the submittal as long as it was before the 21 days after filing.

Frank asked if they had some leeway for an exterior mount opposed to an interior mount.

Kathleen Willis advised him that they will need to provide adequate justification to the ZBA for not using surface mounts.

Star Tower thanked the Planning Board for entertaining their questions.

Discussion

Steve Quinn said he wanted to see the maps of the coverage area of T-Mobile and other carriers.

Lori Clark stated they made it sound that the last town they went up against with the telecommunication act, they appealed.

Steve Quinn, said it would be important to show that they could not get coverage any other way

Lori stated she would like to see the coverage, but that it would come down to what it would look like and if no one was able to see it, it may not be too bad. Her one fear was that some areas in the overlay district would be more visible than this one they are proposing that is not in the overlay district.

Steve Quinn stated that he did not think it was a bad idea, if residents truly needed it.

Ernie Dodd's main issue would be the 150ft.

Kathleen stated that it is unfortunate that there aren't many areas in the overlay district that are town owned.

The Board questioned how the telecommunication act would hold up against their bylaws

Karen said if it does go to town meeting for a zoning change it could be considered spot zoning.

Lori said if it goes to town meeting then the whole golf course could become part of the wireless service facility and poles could be put up where it is visible or not.

Steve wondered why other carriers could provide coverage in the area why they aren't able to. Ernie Dodd questioned if service was as bad as they portrayed in this area why hadn't residents complained. He said he didn't know how Counsel could advise them that the Board would have the ability to grant this waiver.

The Board discussed that the land proposed for the cell tower to be installed is in Chapter 61, which would have to change since the owner is changing the use.

PLANNING BOARD MEMBER UPDATE

School Building Committee

Steve Quinn reported that the committee would be meeting later in the week. He told the Board that the plans submitted did not include an alternative plan to preserve the stone building.

Karen told the Board that plans came in today to the Building Department.

Lori Clark asked if Steve knew why they were so confident that the Massachusetts Historical Commission research process would not hold up the project. Steve told the Board that the committee asked the architect and project manager what their best option would be. In their view the Massachusetts Historical Commission cannot demand the building be torn down, and although they can legally delay the project they felt it would be best to roll the dice.

Steve expressed that he was a minority in the decision and did not think the plan with the stone building should be sent out because of the delay that could result from the Massachusetts Historical Commission. He said that Craig Martin also agreed with sending alternate plans.

Steve said the architect priced out a new plan for the parking lot at \$50,000 for the drawings. Steve's concern was that the Massachusetts Historical Commission would investigate the stone building because the Stow Historical Commission brought it to their attention and they would not want to step on the toes of the Town.

Karen Kelleher said that she was told the Massachusetts Historical Commission did have some jurisdiction because state money was granted for the project.

Lower Village Committee

Lori Clark said that the committee will be meeting tomorrow and that data from the speed test has been calculated.

DISCUSSION/ACTION ITEMS

Butternut Farm Golf Course

Karen Kelleher notified the Board that they received a request for a bond reduction. She stated that the request is incomplete and suggested the Board review the items that had not yet addressed. The Board reviewed the list of outstanding items. In summary they found the following (listed by item number);

1. Completed with the exception of posting a "No Trespassing Sign" (The Board has not seen one but is unsure if it may be posted).
2. Outstanding- Submission of ANR plan
3. Completed
4. Completed
5. Outstanding- Maintenance truck is parked in the buffer zone
6. Completed

7. Outstanding, wont be available until May
8. Planning Board needs to check on this item
9. Outstanding- Screening for the maintenance building with Rhododendrons are not planted, they say they intend to plant them but the Planning Board will use the Bond money in this effort if it does not get taken care of. (Karen offered to check if the wording needs to be adjusted)
10. Outstanding- A lighting detail plan (The Board will be speaking with Hudson Light and Power to discuss one of the lights that is not conforming to they bylaw). Karen was asked to add this as an action item in next meetings agenda.
11. Completed
12. Outstanding- Kathleen will ask the Conservation Commission if they have completed the necessary documents
13. Completed
14. Completed
15. Completed
16. Completed
17. Completed
18. Completed

Other issues noted was a pad was added to protect the fuel tank. Kathleen suggested requiring written confirmation from the engineer, John Farnsworth, that all the storm water and drainage is functional and operational. The Board noted that the parking issue was resolved at their last site visit.

Karen Kelleher notified the Board that Butternut paid the last consultant invoice, but refused to pay the anticipated cost plus the 10% required to the account. Karen spoke with Jon and he advised the Board to hold whatever is left in their bond until the end to make sure all of the items are completed and that Places Associates is provided compensation for their work.

Ernie Dodd noted, according to their bylaw and policy they are only to make two payments from the bond back to the applicant and that all monies are not released until the projects are completely done.

Steve Quinn motioned to deny the bond request from Attorney Marc Burrell for Butternut Farm Golf Course. The motion was seconded by Ernie Dodd and carried a vote of four in favor (Kathleen Willis, Steve Quinn, Ernie Dodd, Lori Clark).

Kathleen Willis asked Karen Kelleher to bring up the lighting issue when speaking with Hudson Light and Power later this week.

Karen said she did not remember the Board requiring the full cut off fixtures on the pole but that the Board can require the lights on the stonewall to be address as they were never permitted and are a problem.

Stow Community Housing Trust – Applications for Site Approval

Karen Kelleher asked the Board if they would like to send comments to Massachusetts Housing for the two 40B projects as they had done with the Sweeney Project.

The Board decided to create a letter in support of the two 40B projects at Pilot Grove and Plantation Apartment.

Taylor Road PCD Bond Release

Karen notified the Board that the Bond for Phase II was never received. Karen said some building permits were issued and there was no record her issuing clearance slips.

She told the Board that the developers are expecting to provide the bond and Karen asked them to also correct the lighting.

Kathleen asked if the bond would cover the cost for all the lighting.

Kathleen said the decision says all exterior lighting, which consists of two fixtures per house. The Board decided on asking for \$100 per fixture. Karen will also add the Board concerns about the deed into the letter.

Kathleen Willis motioned to establish a bond amount of \$62,000 for Phase II (Lots 3, 4, and 5) of the Taylor Road Planned Conservation Development as follows:

Item of Work	Unit	Quantity	Unit Price	Amount
Filter Fabric	LF	975	6.00	\$ 5,850.00
Install 12" RCD	LF	198	22.00	4,356.00
Flared End outlet	EA	2	5,50.00	1,100.00
Clean Drain	LF	42	2.00	84.00
Grass Swale	LF	410	12.00	4,920.00
Check Dams- stone	EA	6	67.00	402.00
6" PVC pipe (keep 200' for lot 3)	LF	200	14.00	2,800.00
D-Box (keep 2 for Lot 3)	EA	2	50.00	300.00
Drywell w/extended top to grade (7 for Lot 3)	EA	7	200.00	8,400.00
12 Extensions (Lots 4 and 5)	EA	12	200.00	1,200.00
Trench Drain with grate (11' for each Lot)	LF	33	90.00	6,720.00
Stone Entrance (Lot 3 only)	EA	1	500.00	500.00
Engineering	Day	0.5	1,160.00	580.00
On-going Erosion Control	LS	1	2,000.00	2,000.00
Lighting (3 lots, 2 fixture each)	EA	6	104.00	624.00
As-Built Plans	LS	1	1,500.00	1,500.00
Total Remaining Work				41,336.00
Plus contingency				20,664.00
Bond Amount				\$62,000.00

and upon receipt of a performance guarantee in acceptable a form, the Planning Board will release lots 3, 4 and 5. The motion was seconded by Ernie Dodd and carried a vote of four in favor (Kathleen Willis, Ernie Dodd, Lori Clark, Steve Quinn).

The Board discussed requiring deeds include more detail and to discuss this with surrounding towns.

Ernie Dodd suggested the town send out information with the census regarding lighting, setbacks and other laws that pertain to residential landowners to educate the public about the town laws.

Steve Quinn suggested putting this information in the Stow Independent quarterly or weekly. Lori agreed and gave suggestions on how to make the information interesting to the public. Steve mentioned speaking with Nancy from the Stow Independent about these ideas and for her suggestions.

Ernie Dodd motioned to enter into executive session for the purpose of discussing ongoing litigation and to adjourn at the end of executive session. The motioned was carried by unanimous a roll call vote (Kathleen Willis, Ernie Dodd, Steve Quinn and Lori Clark).

The meeting was adjourned at 11:23 P.M.

Respectfully submitted,

Kristen Domurad
Administrative Assistant