

# **TOWN OF STOW PLANNING BOARD**

Minutes of the July 13, 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 CORRESPONDENCE AND MINUTES**

The Planning Board will review the minutes of July 6, 2010 at their next meeting.

## **CORRESPONDENCE**

### **Email from Joe Ianelli RE: Sweeny Property – New Development?**

Karen Kelleher referred the Board to the email sent from Joe Ianelli of Acton, concerning the new proposal for 6 hammerhead lots on the Sweeney Property in Stow.

Steve Quinn noted that this proposal was more palatable because of the drastic reduction in the number of units. Also, hammerhead lots cannot be further subdivided.

Kathleen Willis noted that wetland crossings and grading would still be a concern.

### **Sylvan Drive Swimming Pool**

Kathleen Willis noted property owners from Sylvan Drive were issued a building permit for at 21 Sylvan Drive.

### **Planning Board Contact List**

*The contact list will be emailed to the Board members.*

## **PUBLIC INPUT**

Selectmen Laura Spear reported on the ZBA meeting that she attended as the Board of Selectmen Liaison. She told the Board a resident on Taylor Road is looking for a variance for a two-story garage, which would encroach on the open space set back. She said the ZBA would be making a decision on this matter.

Laura reported the ZBA would be opening their hearings for the Plantation Apartment comprehensive permit on August 2, 2010 for both the Modification of Plantation I and for the new construction of Plantation 2.

Charles Barney, Michelle Shoemaker, Ed Tarnuzzer and Ruth Kennedy would be conducting the hearings.

[Lenny Golder arrived at this point in the meeting.]

## **MEMBERS' UPDATES**

### **Pedestrian Walkway Planning Sub-Committee (PWP)**

Lori Clark reported members of the PWP committee were concerned the new subcommittee under the Board of Selectmen (Multi-Use Recreational Path Committee) might cause confusion to the public. The PWP committee would like to understand where overlap would be between the two committees and how they envision working together.

Laura Spear explained that it was recommended that the Selectmen dissolve the Assabet River Rail Trail (ARRT) committee because focus has changed from continuing the AART connection to Hudson and possibly link Track road to the Wildlife Refuge.

Laura said a meeting is planned for tomorrow to discuss how the two organizations can work together.

Lori also noted that the goal of PWP phase 2 is to create a prioritized list of areas in town where sidewalks should be implemented. The PWP committee is concerned that the two committees might end up competing, as certain areas dictated by the Multi-Use Recreational Path Committee may not be consistent with the PWP priority location. Lori explained that the PWP committee feared their public relation efforts might be ruined if there was confusion between the two committees efforts. They also wanted confirmation that the Multi-Use Recreation Path Committee would not use sidewalk funds.

Laura Spear assured her the funding source for the Multi-Use Recreational Path Committee would be entirely separate and that the Multi-Use Recreational Path Committee's focus is Track road and tying it to the Town of Acton's project. They will not be building sidewalks and would not use the sidewalk funds. Laura said some are considering changing the title of the committee to avoid these problems.

### **Master Plan Committee**

Kathleen Willis reported the Master Plan Committee held their last meeting this week. The final plan should be available in August.

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

There was a discrepancy between the flagged wetlands on the new Elementary School Building site and the wetlands shown on the plans.

Steve Quinn reported the ESBC is scheduled to meet with the Conservation Commission to get a modification to the order of conditions for the wetlands. Steve said the project would stay on schedule if they were able to remediate this problem quickly.

Steve said the hay bales near the utility work for Hudson Light and Power could not be installed because the Blacksmith Shop takes up too much room, but there is little to no erosion impact in that area. Hay bales need to be reinstalled after the Blacksmith Shop is disassembled.

Steve noted the disassembling team would have to work around the construction and the children once school is back in session.

Laura Spear said Shelburne Farm is still interested in the Blacksmith Shop. Shelburne Farm must acquire funding by July 15, 2010, if not a volunteer group will disassemble the Blacksmith Shop and store salvaged lumber at the West School parking lot.

### **COORDINATOR'S REPORT**

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

#### **Lower Village Request for Quote**

Karen told the Board a revised draft for the Lower Village Proposal is in their packets. The Board will discuss the proposal at their next meeting.

#### **Light Pollution Study Committee**

Karen reported that Tori Fletcher has resigned from the Light Pollution Study Committee. The Board will need to formally accept her resignation and discuss this vacancy with the Lighting Committee.

Kathleen Willis noted several members of the Light Pollution Study Committee have not been active.

*Karen Kelleher will discuss this with the Light Pollution Study Committee Chair, Russ Willis.*

#### **Zoning Bylaw Compliance**

Karen sent a follow up note to Building Commissioner on the Planning Board's June 11<sup>th</sup> memo.

#### **Arbor Glen**

Karen asked Sue Sullivan to check on a resident's complaint that a culvert under the trail at Arbor Glen was blocked. Sue found it was a matter of simply raking leaves out of the culvert.

Karen sent an email to homeowner and Pulte Homes advising them of the situation and reminding them about the requirement that the shields must remain on the light fixtures in order to comply with the Special Permit and current Bylaws.

Craig Martin said within approximately 60 days all units at Arbor Glen would be finished. Karen noted they have not requested their bond for Hudson Road yet. The Highway Department will need to check the condition of the road to determine that it was not damaged during construction before the Board releases the bond.

#### **Call from Resident Connie Schwarzkopf**

Karen reported that Connie Schwarzkopf called asking if the Town had a bylaw that would require public access trails be located 100' from farms. Karen suggested she work with the Agricultural Commission. She also asked if the Town could require a chain link fence along Derby Woods trail.

#### **Pedestrian Walkway Study Subcommittee/Villages at Stow**

Karen sent a letter to Bruce Wheeler about sidewalk construction and donation at Villages of Stow.

### Wellhead Protection Controls

Karen contacted the Board of Health to let them know the Planning Board is interested in meeting with them to discuss Wellhead Protection Controls. Marcia Rising, Board of Health Chair, suggested a joint meeting with Planning Board, Board of Health and Conservation in the month of September.

### Board of Selectmen License and Permit Applications

Karen reported she sent a note to the Board of Selectmen following up on the Planning Board's request for prior notification on license or permit applications before the Board of Selectmen. This would provide them an opportunity to review and comment on the request.

### Assabet River Rail Trail (ARRT)

Karen reported on the Assabet River Rail Trail Committee meeting she attended today. The ARRT is looking for support from the Board of Selectmen on design funds for the FY 2011 TIP and to be included in the Acton and Maynard construction funding for Track Road. The Town is required to make a 20% match for design funds, which they will act to be funded through CPC. The timeline is for construction in 2014, which would result in a continuous 5 miles from Acton and Maynard to Sudbury Road in Stow.

## **APPOINTMENTS**

### Craig Martin, Building Commissioner:

#### Discuss Process to coordinate Special Permit Reviews and Resulting Zoning Compliance

Steve Quinn explained that the Board has been having issues with ensuring completion of conditions in Planning Board special permits. He said the Board has little leverage when special permit projects are built out and occupied.

Steve asked what mechanisms Craig could suggest to ensure completion of special permit conditions.

Craig Martin said the Board could use him as their last resort by issuing a zoning violation. He said he could look into specifically adding special permit conditions to his checklist when issuing building permits and occupancy permits.

Craig explained that building clearance forms for new construction are given to all departments for comments.

Karen said she would continue writing outstanding Planning Board items on building permit clearance slips.

Craig offered to have pamphlets or fact sheets on zoning bylaw compliance in his office to attach or keep on the front desk for applicants to review.

Craig mentioned Linear Retail's open building permits. He noted if special permit conditions are not yet completed, he could address them under their facade contract.

Kathleen Willis asked if all signs at the Stow Shopping Center had permits.

Craig assured her he has permit numbers for all signs on the facade of the Linear Retail property and that some are posted underneath the sign, which might not have been clearly visible.

Karen Kelleher suggested the Planning Board should first work with Linear and if they are not successful in gaining compliance then give Craig a list of the special permit conditions that still need to be met.

Lori Clark asked about creating a standard process consisting of a certain amount of notifications and deadlines associated with fines.

Craig Martin suggested putting similar language into the Planning Board special permits under the administration section.

Karen Kelleher referenced Jon Witten, Town Counsel's, letter to the Planning Board. Jon recommended a condition concerning zoning compliance to be included in Planning Board decisions.

*Karen Kelleher will provide Craig Martin a copy of Jon Witten's letter.*

Ernie Dodd suggested the Planning Board be more specific in their requirements for homeowner's association, by asking for a list of the association's board members.

Steve Quinn noted there are only a few homeowners' associations with on going responsibilities, such as the ground water monitoring at Wildlife Woods.

Ernie Dodd stated the Board has been frustrated with compliance issues.

Craig Martin said he handles complaints as they come into his office. He stated that an assistant would be extremely helpful and would allow someone to focus solely on the compliance issues.

Craig said when he is out on inspections he investigates the area and where non-compliance issues are noted he discusses them with the owner. Craig said he deals with a lot of non-compliance issues where they fix the problem after he speaks with them but a few months pass and the violation reoccurs. Craig said there are several cases when management changes, and the new managers are not aware of the bylaws, especially lighting timers.

Ernie Dodd noted a suggestion made at a past Planning Board meeting, to create a summary of the bylaws for businesses and residents.

Brian Martinson asked to discuss zoning compliance in the Lower Village. He asked Craig Martin if he keeps a master list of resident complaints.

Craig Martin said when he receives a call or a memo complaint, he notes this down and takes care of the items as they come in.

Steve Quinn reminded the Board that at their last meeting they read through Jon Witten's opinion on Planning Board duties relating to zoning compliance. He stated that it is not within the authority of the Planning Board; it is the sole duty of the Building Commissioner.

Ernie Dodd said the Planning Board is supposed to apply the Zoning Bylaws to new construction and special permits, but existing owners are not complying with them, putting the Planning Board in a difficult situation.

Craig Martin said he addresses every complaint he is notified about and has called at least once to try and resolve the issues. He explained that the construction starting at the new school is a big priority for the town, not to mention every day permits and building superintendent duties.

Craig said the process that has worked well for him is obtaining formal complaints by memo.

Steve Quinn said the Board should focus on gaining zoning bylaw compliance through future development. He stressed concern about spending too much time on zoning compliance when it is outside the Planning Board's purview.

Lori Clark believed there to be a general sense that if the Town cannot maintain compliance with existing bylaws, then the town and Planning Board loses credibility when proposing new bylaws.

Craig Martin said he tries the best he can to address complaints when there are violations brought to his attention.

Ernie Dodd noted that Craig has done a tremendous amount of work as a building commissioner since his short time in Stow.

Chair of the Board of Selectmen Laura Spear stated that hiring another position for the sole duties of zoning enforcement is not likely something residents would support. She noted, with the current fiscal constraints the likelihood of creating a new position is unlikely. Laura asked the Planning Board to consider where their priorities are financially and what goals they are trying to accomplish.

She noted that creating zoning bylaws are the Planning Board's greatest tool in shaping development.

Craig Martin said he has the list the Planning Board sent him concerning Linear Retail zoning violations and has taken care of several items on the list already. He has had several conversations with Kostas at Stow House of Pizza about the lighting on his property and will continue to follow up with him.

Board members questioned if it were Hudson Light and Power's responsibility to make the lights full cut off, or the renter.

Lenny Golder compared the Board's stance that Linear Retail is responsible for compliance of their renters to Hudson Light and Power.

Steve Quinn believed Hudson Light and Power are responsible for fixing their light because they own it.

Craig Martin said he could speak with Bill Gould from Hudson Light and Power about lighting safety concerns on Kosta's property.

Brian Martinson asked Craig if he addressed the 10.0 Academy sign that blocks the view of on coming traffic.

Craig said he met with Police Chief Mark Trefry at the site of the 10.0 Academy sign and the Chief said the sign was not a safety concern.

Brian asked if Craig had exhausted his investigation on this sign.

Craig said traffic safety issues would be the Police Department's call and they didn't think it needed to be moved.

Craig said he would discuss lighting safety in Lower Village with Mark Trefry.

Steve summarized the Planning Board's decisions to work with Linear on special permit completion and then send a memo to Craig if all work is not completed.

Kathleen Willis and Ernie Dodd asked about the swimming pool permit for 21 Sylvan Drive.

Craig Martin said the residents reworked their plan and meet all required set backs, allowing him to issue the permit. In addition Craig said he requested they provide an as built plan when construction is completed.

#### Center School

Ernie Dodd asked if photographs of Great Road are required for the Center School project.

Karen relayed a response from Ellen Sturgis. She did not think it was part of the contract and would need an amendment. Ellen suggested that the Planning Board take photographs. Karen suggested that they ask the Highway Department to do so.

Steve will inquire through the owner's project manager if this is in the scope.

***Ernie Dodd moved to approve the updated drawings of the Elementary School Building based on Sue Carter Sullivan's review. The motion was seconded by Kathleen Willis and was carried by a vote of five in favor (Ernie Dodd, Kathleen Willis, Steve Quinn, Lori Clark and Lenny Golder.)***

Planning Board members will stop by the office to sign the documents.

#### Community Land Use Partnership Act (CLURPA)

Laura Spear asked if the Planning Board could create a list of their biggest concerns with CLURPA, so that the Board of Selectmen could have a better understanding of how this legislation would negatively affect Stow.

Ernie Dodd suggested a joint boards meeting with Senator Jamie Eldridge and Representative Kate Hogan to discuss the impact CLURPA could have on Stow.

The Planning Board reviewed comments on CLURPA:

- Pg. 8 Consistency with Master Plan
  - Master Plan should be a forward-looking document
  - Towns can be sued for inconsistencies between their Master Plans and Bylaws

- Pg. 9 Exemption from Zoning, Limitations on Local Authority
  - A. Building Code: needs clarification, language reads that Stretch Code would be prohibited
- Pg. 17 Nonconformities and Vested Rights
  - 1. Building Permits, Special Permits, and Subdivision Plans: authorizing the 8 year vested rights did not change for subdivisions, that board feels 8 years is too long, many things change in a town over 8 years and the board would want to revisit the plan. Also the make up of the Board wouldn't consist of any members who originally approved the Plan.
- Pg. 29 Permits and Approvals, Procedures, and Zoning Tools
  - d. Saying one can start construction at their own risk, even if under appeal is detrimental to the Town, the construction could be started and then the town would be left with the mess and be forced to bring them to court.
- Pg. 31 Site Plan Review
  - d The time line should be 95 days after the public hearing, not from the filing date.
  - Need clarification on "complete" application does a simple statement start the clock on the submission or is it the Boards determination of a complete application
- Pg. 32 Approval Criteria for Uses Allowed By-right
  - This would deter towns from creating by-right PCD
  - No discretion on determining approval for Open Space
- Pg. 33 Variances
  - The sentence " The permit granting authority may also take into consideration the extent to which the claimed hardship is self-created." Should be explained further.
- Pg. 34 Use Variances: Use existing language from Mass General Law. Proposed Language is more lenient
  - #3 Change words "included within the scope of this section to "not allowed"
- Pg. 37 Inclusionary Zoning
  - The Board likes the provision where they can require units be built on site
- Pg. 38 Development Impact Fees
  - Requiring a full study would be financially difficult for towns.
  - Limitations: communities that cannot opt-in do not get the benefits of impact fees for elementary schools, public capital facilities municipal offices public safety
- Pg. 41 Funds not expended or encumbered
  - Time limit is too short for a small town; it is very unrealistic and does not accommodate step functions.

The Board stopped at page 45, Judicial Review Procedures and will continue their review at the next Planning Board meeting.

The meeting was adjourned at 10:30 P.M.

Respectfully Submitted,  
 Kristen Domurad  
 Administrative Assistant