

TOWN OF STOW PLANNING BOARD

Minutes of the September 13, 2011 Planning Board Meeting.

Present: Planning Board Members: Kathleen Willis, Steve Quinn, Ernest Dodd, Lenny Golder
and Lori Clark
Associate Member: Brian Martinson
Planning Coordinator: Karen Kelleher

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

CORRESPONDENCE – No comments

PLANNING BOARD MEMBERS' UPDATES

Board of Health - Kathleen Willis reported on the Board of Health Meeting.

The Board is still dealing with the issue of the Elm Ridge Road horse paddock encroachment onto Stow Conservation Trust property.

The Flu Clinic will be held on November 5, 2011. The Board of Health is unsure who will be eligible.

Community Preservation Committee – Kathleen Willis reported on the Community Preservation Committee meeting.

Lew Halprin attended the meeting and spoke about the Stone Apple Barn. Other residents are looking into raising funds. The Historic Commission recommended using up to \$100,000.00 from Community Preservation Funds to relocate the Barn. If the project moves forward the Community Preservation Committee will handle the Request for Proposal (RFP). The Committee talked about conditions of the RFP. The proponents are scheduled to come back to the Committee on September 26th. Although CPC did not vote to draft a warrant article or to support the project they did give those present, a sense of the meeting. A majority supported the project.

Elementary School Building Committee (ESBC) - Steve reported that the ESBC did a walk-through. The Building is coming together. The rooms are somewhat finished. It will be a nice facility. The contractors do have to speed up to meet the deadline.

Pedestrian Walkway Planning Committee (PWP) – Lori reported on PWP. Lori reported that she will be meeting with Habitech on September 27, 2011. PWP wants to talk to Century Paving about Segment one, but want to see what Habitech is willing to do first. Members noted that it might be best to meet with Habitech sooner than September 27th so they will have an idea of funding before Century Paving finishes the other segments. Karen Kelleher will try to reschedule the meeting with Habitech for next Wednesday afternoon or Thursday morning. Ernie Dodd volunteered to attend the meeting.

COORDINATOR'S REPORT

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

Community Development Block Grant. Karen Kelleher was contacted by Michelle Ciccolo, Hudson Assistant Town Manager, who advised that Hudson is considering filing for a Community Development Block Grant for a down payment assistance grant program for first

time eligible affordable housing buyers. She asked if Stow would be interested in joining the application. Karen responded that she thought the Town would be interested and suggested she contact the Stow Municipal Affordable Housing Trust.

Habitech- Karen Kelleher received a call from Attorney Lou Levine in response to the Board's letter about walkways. He and Bruce Wheeler would like to schedule a time to meet with Lori and myself at 1:00 pm on Monday September 26th or Tuesday, September 27th.

Arbor Glen – Karen Kelleher reported that a letter was received from Pulte Homes concerning the remaining bond, which is being held for landscaping. The letter is included in the Board's packets along with notes from Kathleen Willis on a site walk that was held with Arbor Glen Residents and representatives from Pulte Homes. This issue will be included on a future agenda for discussion.

Karen Kelleher reported that she received an inquiry from a resident about the retaining wall on Hartley Road for Center School – concerned about safety. Ellen Sturgis responded explaining there will be fencing on top and plantings to cover the wall. She also noted that there is some discussion about a mural.

RidgeWood – Karen Kelleher reported that she spoke with Town Counsel about the RidgeWood Active Adult Neighborhood Subdivision application. It is Town Counsel's opinion that the bylaw, as written, does not allow for fee simple lots. He did note that, if the Board wished to allow fee simple lots, a simple amendment to section 5.4 of the Zoning Bylaw stating that the configuration can be in fee simple ownership or condominium ownership. If the Bylaw is changed, he could work out the legal documents to cross-reference the Homeowners' Association and Condominium Association Documents.

ACCESSORY APARTMENT DECISION – 128 BARTON ROAD

Steve moved to approve the Special Permit for an Accessory Apartment at 128 Barton Road, as drafted and amended. The Motion was seconded by Ernie Dodd and carried by a unanimous vote of four members present at the Hearing (Lori Clark, Ernie Dodd, Kathleen Willis and Steve Quinn) and one abstention (Len Golder, who was not present at the public hearing).

PUBLIC HEARING – RIDGEWOOD AT STOW SUBDIVISION

At 7:30 p.m. the Public Hearing to consider an Application for Subdivision Approval for the RidgeWood at Stow Active Adult Neighborhood (AAN) was called to order.

Ernie Dodd moved to waive the reading of the Public Hearing notice. The motion was seconded by Steve Quinn and carried by a unanimous vote of five members present (Lori Clark, Ernie Dodd, Kathleen Willis, Steve Quinn and Leonard Golder).

Board Members introduced themselves and Lori Clark explained the Public Hearing Procedure.

Bill Roop and Harry Blackey, representing the Applicant were present.

Harry Blackey explained that they currently have an approved AAN for 66 units (some attached and some detached). They have been waiting with anticipation for the economy to change so they can move forward with development.

Harry Blackey reviewed the currently approved plan and explained that the only thing they are proposing to is to change the 18 units that were originally intended to be detached condo units with exclusive use areas. They propose to change the exclusive use areas to individual lots so

they may be sold fee simple. They do not propose to change the design, location, floor plans or anything else to do with the property. The Planning Board Special Permit Approval, Conservation Commission Approval, Board of Health Approvals and well permitting will still be in place and will impact the entire development as was proposed in the original permits.

Harry Blackey stated that there is still a lot of interest in age restricted housing, but they are looking for more choices. Originally this development provided two options – free standing and attached condominiums. They want to be able to offer a third option for detached fee simple units. They are only trying to be responsive to the market. They are trying to enhance the property so there will be a better chance for success.

Harry Blackey said the Homeowners' Association Documents and Condominium Association Documents have been drafted so that the Condominium statute can be used to enforce Homeowners' Association. Harry Blackey said he understands that Town Counsel has reviewed the documents and that, according to their attorney Feldman, who spoke with Town Counsel, he is satisfied that they are sufficient to protect the interest of the people who live there, the Town and the Developer.

Harry Blackey noted that they have been discussing this issue with the Board over last year and are requesting that the Board approve a minor modification to the special Permit. There was discussion about how the bylaw permits the Board to approve fee simple lots. Harry said he and Bill Roop thought the answer to that question had been satisfied, but they now understand there are new questions about that issue. Over the last year, they had their zoning attorney study the zoning bylaw and regulations and State statutes and he is unquestionably satisfied that Board has the authority. They are willing to get into that discussion on a lay basis, but if it goes beyond that, he would have Town Counsel and their Zoning Attorney look at it more closely.

Rich Fisher, 181 Taylor Road, stated that he is not clear as to why the applicant is proposing the change. He can't see the difference if everything will be under the Condominium umbrella. Harry Blackey said the issue is pretty subjective. There is a segment of the market that feels more comfortable with fee simple ownership. He recalls that when they first proposed the AAN, there was a member of this Board who said he would not be interested in a condominium but would be interested in fee simple ownership. An other member noted it would be good for their mother but she doesn't want a condominium. Harry said they are in the market place everyday and hear that some people don't want condominiums.

Harry Blackey explained that there will be different rules for fee simple lots, but all of the units will be subject to an umbrella Condominium Association.

Rich Fisher, 181 Taylor Road, asked if they are proposing a change to exterior lighting. Harry Blackey said they are not proposing a change to exterior lighting. The Public Hearing Notice referred to exterior lighting because it was a combined permit for the Active Adult Neighborhood, Erosion Control and Lighting. Although those terms had to be mentioned they are not proposing any change to lighting.

Bill Roop said they found the idea of Homeowners Associate for smaller neighborhood is more attractive to some. He said this could not be allowed by itself, it has to be part of the AAN. They are small-scale houses for people with similar background and age. The infrastructure (water and septic) will be shared and the Homeowners' Association will have restrictions.

Len Golder asked about pricing structure of the fee simple units vs. the condominium units. Bill Roop said the pricing structure intended to be same, however they have not gotten into pricing at this point. Harry Blackey said the real truth is they can't think about pricing because they don't know when will start development. The market place will make that decision.

Mark Jones, Boxboro Road, asked if all 66 units are intended to be fee simple. Harry Blackey explained that, as originally proposed there were 66 condominium units. They are proposing that 48 units will be condominium units and 18 units will be fee simple subject to a Homeowners Association and an umbrella Condominium Document. The lot areas are also very restricted by the Special Permit that would still be in place.

Rich Fisher, 181 Taylor Road said he is curious to hear about exterior lighting. Kathleen Willis explained that, in lieu of street lighting, the Petitioner asked for post lights in front of the units. Those post lights must be full cut off lighting. Lori Clark noted that Stow has pretty strict lighting bylaw. The theory is to keep dark sky.

A resident at 111 Taylor Road, said he is a recent resident of Stow and is concerned about the impact this development may have on the environment. Harry Blackey explained that this site consists of over 100 acres. One-half of the property is intended to be transferred to the Stow Conservation Trust. Harry Blackey explained that both the Planning Board and the Conservation Commission conducted an in depth review of the drainage plans. Kathleen Willis noted that Conservation Commission also conducted an in depth review for impact to the wetlands. Lori Clark said there was a similar review of the proposed lighting. Bill Roop said they have a very extensive comprehensive Special Permit. It was also noted that they also must abide by federal and state storm water regulations, as well as Stow's.

Jon Colona-Romano, Boxboro Road, asked what happens if the Homeowners Association and Condominium Associations go bankrupt. Harry Blackey explained that the Homeowners Association and Condominium Associations are made of the owners. They are obligated to abide by regulations. Individual owners fund the Association and if an individual owner fails to pay the fee, the Condominium Association can put a lien and in affect foreclose and take title. He said lenders have incentive to pay fees because the Condominium Association could take hold in front of lender. That statute will apply all units, including the 18 fee simple units.

Mark Jones, Boxboro Road, asked, if we know this will be an elder population, would it be relatively high turnover. Also, he would like to see confirmation that fee simple lots have same power as condominiums.

Bill Roop noted there is also a mechanism for seniors to get a reverse mortgage.

Mark Jones, Boxboro Road, asked if a Condominium Association can step in to ensure enforcement of the provision of the Special permit. Harry Blackey said the Condominium Association would have enforcement powers, as well as the Town. The Town has reserved the right to inspect the property and to take enforcement action. Mark Jones said the Town should not have to be responsible for enforcement, that is why the Condominium Association should have enforcement powers. His big concern is to keep the Town's expenses down.

Bill Roop explained that the documents outline the provisions of the Special Permit so that the Homeowners Association and the Condominium Association can enforce them. He said this type of development is pretty much self-policing. He said they developed the Villages at Stow and Faxon Farm and doesn't think the Town has had to step in. Ernie stated that the Town in general has very weak enforcement mechanism.

Courtney Frecha, Boxboro Road, said she thought the distinction of Homeowners' Association was for those who wouldn't want a condominium. As a person who wouldn't want a condominium, they sound very similar. Bill Roop explained that it is a little psychological in this case. In this case, people like to know they own the house and that they own the yard. They also like idea that they don't have to put up with a neighbor that is a nuisance. Harry Blackey lives in condominium development that has two kinds of units - stack flats and town houses, but it is a single condominium. After the homeowners move in they can change the rules. His personal experience is that the needs and desires of both types of units are different, but are subject to all rules. For example, the people in the 18 fee simple units might want dogs and others might not because of the density. The Homeowners' Association could give up that level of control to the 18 units.

John Colona-Romano asked if they could change rules within the confines of zoning bylaw and special permit.

Lou Roda, 208 Boxboro Road, asked if the age restriction could be changed if they are unable to market the units. Kathleen explained that such a change would take a zoning bylaw amendment with a 2/3 vote of Town Meeting and this present Planning Board would not recommend such a change.

Harry Blackey said that a lot of developments have tried to change the age restriction in order to open up the market to make a successful development. They are trying to get a little more flexibility with the fee simple lots. They did think about changing the age restriction requirement but know that would not be appropriate in Stow.

Ernie Dodd noted that the concession the Town made for age-restricted development is to allow it on industrial zoned land, where residential housing would not otherwise be permitted. He would not support a change in the bylaw to remove the age restriction.

Len Golder noted that we have so little Industrial zoned land, the Town would have to have a public policy for reason to allow a residential use in the industrial district that is not age-restricted.

Karen O'Neil, Boxboro Road, asked if the development would change the physical character of the road. Harry Blackey explained that there is only the one entrance from Boxboro Road and there is a required buffer for units to be set back.

Karen O'Neil asked if the 2.6-acre parcel that is for sale is part of the ANN. Harry Blackey responded that it is not part of the AAN.

Steve Quinn noted that, when this proposal was discussed a year ago, he is the one liked the idea of this option. His concern is if they are sold as separate lots, those lots could be sold off individually with no plans to develop in the near future. He is concerned that we might be relying on a homeowners' association that is not as familiar with the restriction as when the property was first developed. He would be concerned about the potential for the new owner to change development of the lot in terms of grades, etc. Harry Blackey said he understands that concern. The only thing he would say is that would not make a difference whether it was a condominium or fee simple lot. He said they could start development and not build the last few exclusive use areas, which could be sold later on. Within a Condominium Association, one could create as many smaller condominiums as they want. They could create 18 condominiums. He noted that the dwellings have to comply with the Special Permit.

Lori Clark said part of the problem is when so many years go by and there is a change in Board Members and Staff. Harry said it is important that the Homeowner and Condominium Associations documents are drafted so that it will be self-regulating. He said, because there is an umbrella condominium with shared septic and water it will always be reviewed. He said there are too many state regulations to forget there is a Homeowners' association or Condominium Association. Ernie agrees this is different because of common infrastructure. Harry Blackey when HO docs were prepared they drafted the docs to be sure the Town's interest is protected. Special Permit conditions, building plans, etc. are clearly defined in the documents.

Ernie Dodd noted that when they first came before the Board with this proposal he voiced concern as to whether it could be allowed under the Bylaw. Karen Kelleher said she spoke with Town Counsel, who agrees that the Bylaw does not allow for a single family dwelling on a separate lot. Such a use would require a bylaw amendment.

Harry Blackey said they would like to see if they could establish a line of communication between Town Counsel, their zoning attorney to discuss this issue. They hope the Board would be open to providing a mechanism for the attorney's talk.

Ernie said he understands what are trying to do and may make the AAN more marketable. However, the fact is the bylaw presents a problem. The Board needs to rely on Town Counsel to determine that the documents cannot be challenged. He is concerned about the risk of the use being challenged. Harry Blackey said he agrees the Board has been specific about needing town counsel to pass judgment. Ernie said the Board is one that has to pass judgment, however the Board needs advice from Town Counsel. Ernie said this should be important for the developer as well because those questions will come up with the closing attorney.

Kathleen Willis asked if Lot 1 will have access from Ridgewood Drive. Harry Blackey responded, yes.

Kathleen asked if they would be limiting the square footage of the dwellings on the fee simple lots. Harry Blackey said the only houses that can be built are the houses referred to in the Homeowner's Association Documents, which include limitations on the square footage of the dwelling and limited area of disturbance, setbacks, etc. all as shown on the plans approved by the Board.

Ernie Dodd noted that the Town had a problem with another development in which a lot was sold to be developed by someone other than the main developer and they had major erosion problems.

Ernie Dodd asked if they have identified the affordable units. Harry said they have not yet and noted that the Special Permit calls for those units to be identified at a certain point. He said it is his intent to have them distributed throughout the condominiums. Kathleen Willis said in her mind, the distribution should include the detached units proposed for fee simple ownership.

Len Golder asked, if it turns out that the market calls for a higher price structure, does that call into question that the affordable housing be spread amongst all unit types. Harry Blackey said they had discussion with the state who said they want to make sure they are spread out but if there is a diversity in type and size of house the state doesn't want to see larger units designated as affordable because, along with the larger size, are expenses that go along with

that. Harry said each of these units are designated with a specific house size. Len said he wonders if, when state adopted the affordable housing law, whether they envisioned this type of development. Harry Blackey said there are a number of these types all over state. There are example is 100's of units of many different types, including condominium and fee simple ownership. Len said he thinks it is a good concept to create different housing types. He is concerned about longevity of home ownership and requirements being brought forward.

Lori Clark said there needs to be a dialogue with Town Counsel and suggested the public hearing be continued.

Harry Blackey agreed that the attorneys need to have a discussion about the Condominium and Homeowners' Association documents and whether or not the bylaw provides for what they are proposing. He is hoping the extension will allow for a process for both their attorney to have a discussion with Town Counsel.

Mark Jones, Boxboro Road, noticed that the Homeowners' Association and Condominium Documents both specify the developer maintains control until the last parcel or unit is sold and questioned what happens if it takes 15 years to complete the development. Harry Blackey said there is nothing to say there will not be several associations. Bill Roop said the Condominium statute doesn't allow them to wait until last unit is sold. He believes they must, by law; turn over the Condominium Association after 75% of the units are sold. They want to maintain control over time, but may want to turn over control at a certain point. Mark Jones said sees no transition mechanism in the documents. Harry wouldn't want owners to change things to detriment of future sales.

Harry Blackey said that their Attorneys are Saul Feldman and Mark Kablach. Mark is the zoning attorney. It was agreed that Town Counsel will first concentrate on the use issue and if that is not resolved, it is not worth going through the Homeowners' and Condominium Documents in detail.

Ernie Dodd moved to continue the hearing to October 4th at 7:30 PM. The motion was seconded by Steve Quinn and carried by a unanimous vote of five members present (Lori Clark, Ernie Dodd, Kathleen Willis, Steve Quinn and Len Golder).

PUBLIC HEARING – ZONING BYLAW AMENDMENT – SOLAR PHOTOVOLTAIC RENEWABLE ENERGY BYLAW

At 9:15 pm, the Public Hearing to consider a Solar Photovoltaic Renewable Energy Bylaw was called to order.

Ernie moved to waive the reading of the Public Hearing Notice. The motion was seconded by Kathleen Willis and carried by a unanimous vote of five members present (Lori Clark, Ernie Dodd, Kathleen Willis, Steve Quinn and Len Golder).

Members reviewed the draft bylaw:

Section 8.10.1 (Purpose) – Members agreed to change the term “minimizes impacts” to “minimizes undesirable impacts”.

Section 8.10.2 (Applicability) – Members agreed to add the term “in the opinion of the Planning Board at the end of the section.”

Section 8.0.3.2 (Visual Impact) – Members agreed to include the term “Whenever reasonable, in the opinion of the planning Board....”

Section 8.10.3.3 (Compliance with Laws, Ordinances and Regulations) – members agreed to include reference “local regulations and bylaws”

Section 8.10.3.4 (Utility Notification) – Members agreed to include the statement “Proof of mutual agreement with the utility company shall be provided to the Special Permit/Site Plan review Authority”.

Section 8.10.3.5 (Maintenance) – Members agreed to include “Police Chief”.

Section 8.10.3.6 (Emergency Services) – Members included to change the change the term “cooperate with local emergency services in developing an emergency response plan” to “provide an emergency response plan”.

Section 8.10.3.7 – Members agreed to add a new section: “Safety and Security – Safety and measures of security shall be subject to the approval of the Special Permit/Site plan Approval Permit Granting Authority, the Fire Department and Police Department.”

Section 8.10.4.2 (Sign and Advertising) – First Paragraph - Members agreed to change the term “consistent with the requirements of Section 6.3 (Signs) of the Zoning Bylaw and shall identify the owner and provide 24 hour emergency contact phone numbers” to “shall be limited in size as determined by the Special Permit/Site Plan Approval Granting Authority.

Section 8.10.4.2 (Sign and Advertising) – Second Paragraph – Members agreed to change the term “manufacturer” to “owner or operator” and to add “and emergency contact information.

Section 3.10 – (Table of Principle Uses) – Members noted that the terms referenced in the table are incorrect. Karen Kelleher will amend the table to reference the correct terms.

Steve Quinn moved to close the public hearing. The motion was seconded by Kathleen Willis and carried by a unanimous vote of five members present (Lori Clark, Kathleen Willis, Ernie Dodd, Steve Quinn and Len Golder).

ARBOR GLEN

Pedestrian Access Easement – Members reviewed the Access Easement document from Pulte Homes. Karen Kelleher reported that the document was reviewed and approved by Town Counsel. Ernie Dodd suggested that the document include a restriction that prohibits parking on Heather Lane. Karen will request that Pulte Homes amend the easement document.

Kathleen Willis said that she would like to discuss the issue of Landscaping at Arbor Glen with the Board at a future meeting. She noted that Pulte Home’s proposal in response to the site walk ignores many of the recommendations.

ADJOURNMENT

The Meeting adjourned at 10:25 pm.

Respectfully submitted,

Karen Kelleher
Planning Coordinator