

TOWN OF STOW PLANNING BOARD

Minutes of the December 13, 2011 Planning Board Meeting.

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

Called to order at 7PM.

REVIEW OF CORRESPONDENCE AND MINUTES

Minutes

No minutes to review.

APPOINTMENTS

AT&T Request for Modification to Wireless Service Facility at Hillcrest Street

Susan Roberts of Anderson Kreiger representing AT&T and Warren Kelleher of AT&T were present. Jon Witten, Town Counsel was also present.

Susan summarized AT&T's request for modification, which consisted of swapping out the existing fixture with a canister that is 3 inches thicker. She stated that there are no other changes and that this modification would comply with all other bylaws. She hopes the Board will view this upgrade as a minor amendment under the existing zoning relief provided by the court judgment. She stated that if it is granted tonight, AT&T plans to get a building permit as soon as possible.

Jon Witten stated that he spoke, and is in agreement with, Steve Anderson of Anderson and Kreiger and suggests a stipulation that both parties agree this request is a minor modification of the plan approved in 2001. Jon stated that he advises the Town to file the document with the Town Clerk, as it is a change to the original court judgment. He stated that this would provide the Town with a paper trail.

Jon stated that if the Board agrees this is a minor modification, they could make a determination, accordingly without any other information.

Ernie Dodd stated that he reviewed the court judgment several times and does agree this is a minor modification.

Steve Quinn asked if there was an agreement from the owner of the property.
Susan stated that he filed a letter of authorization.

Kathleen Willis moved that the Planning Board grant the request of AT&T for a minor modification to the wireless service facility located at 23 Hillcrest Ave. as proposed in the

application submitted on October 28, 2011. The motion was seconded by Ernie Dodd and carried a vote of five in favor (Kathleen Willis, Ernie Dodd, Steve Quinn, and Lori Clark).

Susan provided a copy of a Notice of Determination she wrote.

Ernie Dodd informed her that Karen Kelleher, would write the determination for the Board.

Karen stated that she would be able to write it the next day and have it ready for Planning Board members to sign, and then have it recorded with the Town Clerk.

Jon advised AT&T that typically there is a 20-day appeal period, which the Town Clerk signs off on. He stated that he was not sure if the Building Commissioner would sign off on a building permit without having this clearance from the Town Clerk even though it is a minor modification.

[Lenny Golder arrived at this point in the meeting]

Discussion with Town Counsel

Riverhill Estates

Jon stated that the Board's decision was upheld on all but one account; they cannot require public access be given to the Town. He stated that public access could be donated to the Town but not required by the Town.

Karen asked Jon if Mr. Collings wanted to take the land which was recently sold to the Collings Foundation, out of the subdivision, would he be required to submit a whole new subdivision plan.

Jon stated that it would constitute a new subdivision because the land area would be reduced. He stated that because there was a remand back from the court, unless a new application is submitted an application fee should not be required except for cost of posting public hearings and mailings, etc.

Jon said if Mr. Collings offers the land for public access the Board could write in the decision: "having been offered the land, the Board accepts the public access easement". Jon advised the Board that they should also obtain a written statement from the application that states: "I hereby offer..."

Jon stated that the ball is in Mr. Collings court; he could come back to the Board with the same plan, minus the one condition the court did not uphold or come back with something new. The Board currently has nothing to act upon.

Jon advised that the 2-year timeline on this special permit began when the court remanded the case back.

He suggested the Board repost for a public hearing if the applicant decides to continue with the same application, as it has been a long time and other property owners are involved.

Sprint Modification Request 301 Gleasondale Road

Karen reported that Sprint is asking for a minor modification as they are upgrading their equipment.

Ernie Dodd stated that he would want them to change to flush mounted antennas, as all the other carriers in that area are either flush mounted or inside the smoke stack. Ernie also noted that the imitation brick they painted was very poorly done and wants to require them to fix it, and they never painted the cupola as required by their previous decision.

Jon stated that if they deem it a standard special permit modification it would require a vote. The Board could conclude that the request is minor, or conclude that the original decision was not complied with and that you are not happy with the original conformance to the decision.

Jon noted the Board could bond any new construction as long as it is proportional to the work.

Wireless Service Facility Overlay District Study

Jon stated that he told the judge presiding over the T-Mobile/Star Tower case that the Board would most likely have an article prepared for Town Meeting regarding the overlay district, but that he could not assure them it would include the area T-Mobile would like to locate.

Kathleen stated that it would depend on the research.

Jon stated that the judge froze the case until May 24 in case an article is brought to Town Meeting that includes that area.

Lenny asked if there was any background information being done on the company in regards to the merger, which might be resulting in the lack of coverage. Lenny stated that he has had T-Mobile service for a while and has never had any issues with service and just over the past few months he has noticed poor service in his house and driving in Stow.

Jon said that they had only been through the first round of discovery, but this information should come out.

Steve Quinn asked if any findings from David Maxson's study currently being conducting could be used in court.

Jon said the court would hear anything that David produces.

Steve asked how wireless companies argue they can't get coverage when other companies can. Jon stated that there are two measures: Discriminatory practice and if they cannot find a site to locate to obtain effective service. He noted that the Board has not been involved in discriminatory practice and the study the ZBA had done by David Maxson concluded that there are other sites they could locate.

Jon stated that he felt the Board has a good case, but federal court is a difficult forum to be in and carriers have tremendous clout.

Karen said they should have the final report from David Maxson in January. Jon will check in with him as well.

Board of Health Regulations – Controlling Pesticide, Herbicide and Fungicide Usage

Lori explained to Town Counsel that the Board is looking to see if the Board of Health would create a regulation around existing DEP Zone II banned substances for use on golf courses and then the Board of Health raised the question about banning other uses such as residential lawns.

Jon stated that it could be possible to craft a bylaw that does restrict usage of certain pesticides as long as it is carefully worded. He noted a court case in Wendell, MA where the court ruled that the town could not regulate pesticide usage because the state has control over this. He noted that he could look into this, noting that the Board of Health may be able to deal with this in a different way like the Cape Cod Commission. They have a sole source aquifer regulation and their situation is similar to Town of Stow, which depends on private wells.

Ernie noted that they could always ask Kate Hogan to create legislation that would allow them to do so.

Jon said that this is always a possibility. He suggested checking with DEP first and then look into having special legislation created.

Steve said that on the flip side, if DEP does not have this regulated, they might not think there is a concern for it.

Jon suggested he look into the case law on Wendell, MA. He noted that this case was very specific. The Town could take the risk of creating the bylaw and having it struck down.

Bob Collings – Riverhill Estates Subdivision

Bob Collings was present, Attorney Robert F. Dionisi, Jr. was also present representing Bob.

Bob Collings submitted a summary titled “Framework for Discussion” to Board members, which included his understanding of the Riverhill Estates Subdivision history, current status and future items to discuss.

Bob stated that one thing had changed regarding the situation; the 16.35acre Parcel B was donated to the Collings Foundation.

Bob also noted that he just acquired the Parmenter property and he might be open to allowing public access to an area of about 7/10th of an acre along the Assabet River. He stated that this is a wonderful picnicking site with a pristine view of the Assabet River where the public could access from the river. Bob said that they still want to build on lot 5 and was hoping there could be some type of exchange for the easement to allow him to build on this area.

Lenny Golder stated that lot 5 is still located in the Recreation/Conservation District and would require a zoning change to allow a residential building on the lot.

Jon Witten asked if there would be an overland easement he would offer to access the area along the Assabet.

Bob stated that people would be able to access it by water, if there was a land access it would have to come across an area the Collings Foundation currently use for a landing area. He noted that there would need to be something that would restrict the use of the easement when the

landing area is being used, he supposed signs could be posted. Bob stated that he was not opposed to the idea of allowing a public access easement by land to get to the property along the river, but would not want any vehicles, it would just be for walking or cross-country skiing, etc.

Karen asked Jon Witten how that would be presented at Town Meeting.

Jon stated that there was a very famous case in Bellingham, MA in which an applicant asked for a zoning change in exchange for \$8 million dollars. Town Meeting approved this, it was appealed, then upheld by the supreme court. Jon stated that legally, although Massachusetts is the only state he knows of that allows this, contract zoning can be done. He noted that Town Meeting can't go into contract negotiations with Mr. Collings. Jon stated that he assumes Mr. Collings would be faithful in his agreement but would somehow have to make a contract negotiation with the Planning Board. Jon said procedurally they could do this, but it does raise all sorts of questions.

Karen noted that Mr. Collings could go to Town Meeting himself to request a zoning change instead of the Planning Board sponsoring the article.

Bob stated that the odds of gaining Town Meeting approval without the Planning Board and Conservation Commission's support are slim.

Jon also noted that the Board should also be concerned about spot zoning.

Bob stated that lot 5 was residentially zoned before and was changed. He noted that remnants of a chimney still stand on that hill.

Dionisi stated that the area on lot 5 was residential at one point.

Board members asked when the house was there.

Bob stated possibly back in 1920's or 1930's.

Karen stated that this was before zoning existed.

Ernie Dodd asked where the floodplain line was located.

Lot 5 is shown within the Town's floodplain/wetland district.

Kathleen Willis asked what portion of the subdivision included the 16+ acres that was donated to the Collings Foundation.

Bob stated that none of the donated land was required for anything in the subdivision, but was part of the 55 acres considered in the subdivision land.

Karen asked if the perimeter of the subdivision would be changed.

Dionisi said Bob hasn't come to this conclusion just yet.

Bob said there would still be 5 lots.

Jon stated that the Board would need the full perimeter of that which is subdivided. He stated that it is his understanding that if the area has changed, a new application would be required. Jon stated that since it was a remand back to the Board it would not require a new filing fee. He

would advise the Board that they re-advertise with notice of public hearing, as several years have passed since the subdivision was approved.

Jon stated that it seemed one of Mr. Collings' main goals is to build on lot 5 and with the two court decisions this would not be allowed. Jon asked if he would be looking for a zoning change in exchange for a land conveyance.

Bob stated he was not proposing a land conveyance, just allowing public access. He stated that they would want to make sure the land around the new homes was kept-up so it would still be part of the land they maintain.

Lenny stated that he was concerned about the big picture of changing the zoning and all the ramifications that follow.

Ernie stated that Mr. Collings would still have the issue of the floodplain district and access to the area.

Jon stated, speaking for the Board, that they have confidence in the Floodplain/Wetlands District line and the bylaw does allow an individual to appeal to the Zoning Board of Appeals to have it changed, but stated that Mr. Collings was unable to prevail twice in court.

Bob stated that the appeals court did say they could pursue it through the Board of Appeals. Jon stated that the appeals court did say that the applicant could appeal to the Board of Appeals as a remedy.

Bob stated that a portion was taken out of the flood plain by FEMA.

Jon stated that relief from the ZBA on the Floodplain/Wetlands District line would need to be obtained even if Town Meeting approved the zoning change.

Dionisi stated that he believes they would first try to get some type of consensus from Planning Board members if they would support a zoning change, then seek relief from the ZBA for the district line and then see what their options are.

Karen stated her understanding was that a mapping error would have to be proven to the ZBA. Jon stated that Mr. Collings has claimed a mapping error, but both the court and appeals court deemed no mapping error, but that he could always go back to the ZBA.

Bob stated that it is most likely not accurate.

Jon noted that he has every right to pursue this with the ZBA.

Bob stated that the Planning Board said they were looking to evaluate their maps to the FIRM map.

Karen stated that the Planning Board said they would be looking at FEMA's FIRM map, and the Assabet River Study to evaluate for accuracy of all studies.

Ernie noted that FEMA hasn't changed except for a small area, it was just digitized.

Jon stated that he is comfortable with what the Town has done for mapping, as it is rational and correct as the court is concerned.

Steve stated that requests for zoning changes for specific parcels by property owners has come up in the past and he still believes that it is not good practice for the Board to support a zoning change based on one resident's request.

Lenny stated that it does present a difficult situation for the Board if they sponsor a zoning change for a specific property owner.

Jon informed Bob that he is always welcome to submit a petition for warrant article and would only need ten signatures. He stated that the Planning Board would then hold a public hearing and issue a report of either support or not support.

Jon stated that he would advise the Board to not get too involved with the other conditions that Mr. Collings is proposing to change.

Dionisi said he was looking for a consensus not looking for a vote, and how the Board is thinking about other conditions proposed.

Ernie said that he would still see the Floodplain being an issue as well as obtaining access to the property. He stated that fire and police need safe access to the home and it would not be safe to have to drive through floodwaters.

Bob stated that the elevation of the proposed road is 181 + feet and if normal paving was constructed it would be above the floodplain line.

Kathleen asked Mr. Collings to explain #8c on his handout.

Mr. Collings wanted the Board to reconsider their condition where residents have to submit any topographical changes to the Board. He stated that if a homeowner wants to plant a tree he doesn't want them to have to come back to the Board.

Board members explained that this is part of the storm-water management requirement and they have run into problems when grading was altered.

Kathleen suggested they expand the wording so the intent is clear.

Steve noted he would assume this would not be necessary if someone wanted to plant a bush.

Lori asked Mr. Collings if he was just looking for the Board's initial reaction so he had more of an idea on how to move forward.

Bob said there are action items the Board needs to take in response to land court and appeals court and he is asking them to think about it in a broader sense for an accommodation that would work mutually.

Jon stated that he disagreed with Bob's statement that the Board needs to respond to Land Court and Appeals Court Decision. It is his opinion that the Board's only obligation is to react if Mr. Collings decides he wants to move forward with either the same plan, or an amended plan. He said the only obligation the Board has is to make the modification that public access is not

required on the remand and all other conditions apply in full. Other than that there is no burden on the Board except acting on a new application or the revised application.

Dionisi said if Mr. Collings gets the sense that the suggestion of the easement is significant to the Town and the Planning Board would be open to sponsoring or supporting that, then this would send Bob in on direction, if not they don't want to waste everyone's time.

Jon noted that the Board only carries advisory weight at Town Meeting.

Ernie Dodd stated that he would like to do more research on what FEMA has done and understand why the Army Corps included that area. He said he likes the idea of land being open to the public but would want land access to the easement. Ernie said as far as the sprinklers are concerned the reason the Board included that in their conditions was because this site is located down a long narrow drive and far away from the Fire Department. Also, the state fire marshal encourages sprinkler systems where homes are located on a 500ft. road.

Bob stated that they did not require sprinklers in another development because they had a fire pond, just like Riverhill Estates would.

Ernie noted that the Board bases their decision on the information presented to them and each decision stands alone based on the information they are given.

Lenny stated that it sounds like a nice idea to have public access to that area along the Assabet River but there would still be a problem with the overall proposal, due to the floodplain as well as the current zoning.

Steve stated that he was not on the Board when this development was approved but would be open to looking further into the proposal.

Bob encouraged Board members to come onto his property to see the site.

Lori stated that she thought the Parmenter property did sound interesting, but feels that she would need to do much more research before stating her opinion. She asked if he would like the Planning Board to discuss this and get back to him.

Jon stated that he could send Karen a copy of the Bellingham case. He noted that he is comfortable with the Board meeting with Mr. Collings without him as long as his attorney was not present.

Discussion with Town Counsel continued

AAN Bylaw Fee Simple Lots

Lori stated that the Board told Ridgewood they would not support a change to the zoning bylaw, to allow fee simple lots in an AAN.

Ernie noted that when the bylaw was created the intent was for condo style ownership.

Lori said they did not see an added benefit to the Town as a whole.

Lenny said he was the only one that was in favor of the bylaw change. He felt that if AANs were needed in Town and this property would not be developed otherwise, they should allow it. He

also noted that this portion of industrial land has sat vacant for several years and is not likely to get developed for an industrial use. Lenny said the AAN is their best bet in developing the site.

Kathleen noted that at the present they are at the maximum allowed number of AAN units in town. According to the bylaw unless the population changes enough to alter this or they change the bylaw, there wont be another AAN for a while.

Jon stated that he listened very intently to what Ridgewood was trying to say but he took a very stringent position, that the current bylaw does not allow fee simple lots, he said he made this very clear to Ridgewood's Attorney.

Lori said Ridgewood is coming back in January to close the public hearing.

Jon said he did speak with Ridgewood's attorney and suggested they create the illusion of land ownership within their bylaws but they were not interested in this.

AT&T

Jon stated that he made it very clear in initial discussions with Susan that he was just running the idea by her about the sidewalk donation. He felt the issue was blown up and was only on the table for discussion not bargaining.

DISCUSSION/ACTION ITEMS

Planning Board Positions

Kathleen Willis updated the Board about her move to California. She said she would be resigning at the end of January but will be here for all January meetings.

Karen stated that Kathleen will need to write a letter of resignation and file this with the Town Clerk, then the Planning Board can post a vacancy and the position will filled by a joint appointment by the Board of Selectmen and Planning Board. The position will be up for reelection next May.

Solar Bylaw Rules and Regulations

The Board reviewed their individual comments on the Solar Bylaw Rules and Regulations, substantive changes are as follows:

Section 1.7

- Reference section 9.2 of the Subdivision Rules and Regulations
- Add sentence about the Board being able to charge for consulting fees

Section 2.1

- Remove "All setbacks shall not be more than....."

Section 2.5

- State "in to the opinion of the Planning Board

Section 2.8

- Remove "A visual barrier of a 35ft. deep....."
- Add "The use of materials such as landscaping or natural features or other means agreed to by the Board"

Section 4.2.6

- Add, "population, and substantially similar locations"

Section 4.3.6.1

-Add that crushed stone must be used at the entrance during construction

Section 4.3.7.1

-Remove "is not visible from residential buildings

Section 4.4

-Remove entire Drainage Calculation section and replace with Subdivision Rules and Regulations Stormwater Management practices

Appendix C Development Impact Statement

-change so that 25 reads as follows: "Is the project contiguous to any section of the Assabet River Rail Trail or any Conservation land.

PLANNING BOARD MEMBERS' UPDATES

Elementary School Building Committee (ESBC)

Steve stated that the move in date for the new addition has been pushed back to Martin Luther King Jr. Day.

COORDINATOR'S REPORT

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

Taylor Road

Karen reported that the light fixtures would be installed tomorrow on Lot 1, Taylor Road.

Pedestrian Walkway

Karen stated that Bruce Fletcher, Project Manager, suggested holding some money back from Century Paving until next spring as retainer for the pavement markings. The Board agreed and decided to defer to Bruce and the Pedestrian Walkway Planning Sub-Committee for the appropriate amount.

Karen suggested the Board obtain something in writing from the Bonding Company for Segment 1 as the existing bond specifically references segments 3 and 4 and the Change Order is for a portion of Segment 1.

Board members agreed.

Memo to the Lighting Sub-Committee

Karen asked if the Planning Board wanted to clarify the memo requesting that the Lighting Committee make a recommendation about internally illuminated signs to provide additional direction to the sub-committee. (Whether you want to prohibit them inside the building, if they wanted input as to whether they would be considered a nuisance, or if allowed, should there be a statement to clarify the size should be consistent with requirements for window signs if it is installed within a certain distance from the window?)

Lori stated that she wanted to know what they would recommend.

Steve stated that he would be interested in how other Towns deal with internally illuminated signs inside windows.

Lori stated that she wanted their recommendations for a new policy.

Ernie stated that maybe they could let them know how bright they are.

Lenny suggested how far back from the window they could be.

Sylvan Drive

Karen reported that Bruce Fletcher met with Dave Coia about street tree placement on Sylvan Drive. He has ordered trees and plans to plant in the next few days. Karen asked if the Board thought it was too late in the season.

The Board suggested deferring to the Tree Warden.

Town Building Parking Lot Lighting

Karen reported that Craig Martin, Building Commissioner told her he plans on waiting until the spring before determining if additional lighting is needed. He thinks the lighting seems adequate for the time being.

Bank of America Lighting

Kathleen noted that lighting inside the Bank of America kiosk has been kept on all night as well as other businesses in that plaza.

Karen will let Craig know.

Linear Retail Sign and Sand storage

Karen reported that the ZBA has not received an application from Gordon Whitman for the pylon sign. She also noted that Craig Martin indicated he would not deem the sign a hazard unless it was a safety issue, which it currently is not.

Karen sent an email to Gordon Whitman requesting the sand/salt pile be properly covered.

Holiday Party

Karen reminded the Board that the holiday party is at noon on Friday 12/16/11.

The meeting was adjourned at 10:28 PM.

Respectfully Submitted,

Kristen Domurad-Guichard
Administrative Assistant