

TOWN OF STOW
PLANNING BOARD

Minutes of the September 18, 2012 Planning Board Meeting

Planning Board Members Present: Steve Quinn, Ernest Dodd, Len Golder, Kathy Sferra, Lori Clark

Voting Associate Member: Brian Martinson

Non-Voting Associate Member: Mark Jones

Lori Clark called the meeting to order at 7p.m.

Public Input:

None

Correspondence Update:

Assistant Planner Jesse Steadman explained the day's correspondence regarding the Escrow Account condition for the Delaney Solar PV project. He noted that through an email, Syncarpha seeks a revision of the draft decision section 7.43, regarding an extension of the validity of the special permit, from the 12 month period to 18, or possibly 24 months.

Planning Board Member Update:

Center School:

Steve Quinn reported that things are going smoothly at the Center School. He said the water system has been installed but is not yet operational.

Economic Development Meeting:

Ernie Dodd reported on the economic development meeting on September 12, saying that overall it was a positive atmosphere. Ernie Dodd said discussion seemed to center on water issues in Lower Village, but that issues of permitting and Town regulations were also discussed. Kathy Sferra agreed that it was a positive discussion, adding that there was some agreement to plan another meeting, perhaps in a subcommittee form to discuss next steps.

Ace Hardware Propane Tank:

Brian Martinson reported that Ace Hardware's propane tank is operational although the door, required as part of Linear's special permit for the tank, has yet to be installed. Brian Martinson's said vehicles are driving to the rear of the building where there are no markings to direct vehicles and no screening in place. Ernie Dodd said that Linear has tasked Ace Hardware to install the door. Brian Martinson said that the door was part of the special permit, not to be negotiated between Linear and Ace Hardware. The Planning Board agreed that they should not be filling the tanks yet, especially with cars needing to travel to the rear of the shopping

center. Kathy Sferra recommended that planning department staff speak with the Building Inspector to decide who can reach out to the businesses.

Star Tower ZBA Meeting:

Kathy Sferra reported that she attended the on ZBA's Executive Session regarding Star Tower's proposed cell tower.

Outside of Executive Session, Kathy Sferra said that two residents were concerned about the tower's health affects and stated they would independently pursue the issue with Star Tower.

Sylvan Drive:

Ernie Dodd said some owners expressed complaints at the Selectmen's meeting for Sylvan Drives street acceptance regarding trash and debris along the road. Ernie Dodd said he made a visit and noticed that although it had yet to be removed, the landscaping in front of the homes did not show any major potential problems. Issues of ponding and pooling water were not evident he said. Ernie Dodd said it is up to Habitech to finish cleaning the site, but it appeared they did a decent job.

Coordinator's Report:

Derby Woods

Jesse Steadman reported that Karen Kelleher spoke with Mark White regarding the patio/water feature encroachment into the open space off Sylvan Drive. Mark White said although he has not yet seen the encroachment himself he spoke with the landowner and believes there is a chance that he may have placed the property bounds stakes in the incorrect location that led to the encroachment. He said that if he finds this to be the case he would take care of the situation himself. He asked about the possibility of a land swap that Karen Kelleher had suggested when she observed the irregular lot shapes. Karen Kelleher told Mark White that he would likely need to file an ANR plan to complete the land swap, as well as request a minor modification of the special permit, which would not require a separate public hearing.

Jesse Steadman noted that the conservation commission has reported that Habitech has agreed to add a map to the baseline report marking the position of every boundary marker upon completion of the work and add a list of encroachments containing the status of each. He said that otherwise Habitech and the Stow Conservation Trust are in agreement on the Baseline Document. Aside from Mark White's potential removal of the patio encroachment, Jesse Steadman said Habitech's attorney has agreed to draft an agreement that ensures that all encroachments will be removed in the event that they are not removed by Town Meeting. There will be a provision in the agreement that allows the Town to retain a portion of the bond to be sure Habitech complies. Karen Kelleher and Pat Perry have recommended not going forward with the land transfer until the issue of the encroachments is resolved.

Jesse Steadman said the land transfer will not be on the warrant for this October's Town Meeting. Pat Perry has said the Conservation Commission does not feel comfortable accepting the land until the conservation restriction is signed and the encroachment issues have been worked out.

Economic Development

Jesse Steadman reported that the exploratory meeting on economic development was well attended by business owners and town officials. Although the conversation was tense at times with different people explaining past grievances and explaining their take on the issues, there was a general consensus that there is opportunity to move discussions forward through the creation of either a committee for economic development or a business association. Although the conversation often revolved around the issue of bringing water to the Lower Village and the Route 117 corridor in Stow, both town officials and business owners generally agreed that a mutual effort was needed to make informed decisions and provide a unified voice for business interests.

Citizens Bank

Jesse Steadman said that Gordon Whitman clarified with Citizens Bank on the type of lights to be installed. Pat Fitzgibbon of Citizens Bank Facilities Management indicated that the lights shown to the planning board at the previous meeting are meant to be situated on the both the freestanding sign as well as the wall mounted, east facing sign, at Citizens Bank. They are under the impression that the light chosen will focus a much narrower dome of light on the two signs. Planning staff have alerted Gordon Whitman that we would discuss the issue and get back to him, Jesse Steadman said.

MAPC Agricultural Planning Project

Jesse Steadman reported that a MAGIC meeting was held last week here in Stow regarding MAPC's new Agricultural Planning Project. The meeting allowed planners from the different MAGIC towns to weigh in on the final project scope before submission to the Sustainable Communities Board for funding approval. The scope has been approved and will essentially aim to improve the economic viability of farming in the region, protect and enhance the food system and build on the work of agricultural support organizations such as Mass Dept. of Agricultural Resources and Mass Farm Bureau among others. The project will focus on three deliverables: Inventory the current agricultural resources, identify critical issues, and develop best management tools and action items to serve local needs. Stow has pledged some staff time to help research and facilitate the process. Initial research will commence this fall, including a survey and a decision to continue with a needs assessment when a county wide needs assessment is finished in a couple of weeks.

Arbor Glen

Jesse Steadman said the Arbor Glen Condo Association contacted the office for input on proposed contracts for landscape and storm-water management. The

Stormwater Contract basically follows the Operations and Maintenance Report for the Arbor Glen Development – Karen Kelleher suggested adding some clarifying language with regard to the time of year certain tasks should take place as well as attaching the Operations and Maintenance Report to the contract.

With regards to the requirement for streetsweeping, Jesse Steadman said the landscape contract refers to spring clean up to include “air sweeping the roadways, parking areas and sidewalks clean of sand and debris.” Karen Kelleher recommended that Arbor Glen use a streetsweeper in the spring to ensure that debris does not end up in the catch-basins.

Stow House of Pizza

Jesse Steadman said, Steve Poole, the engineer for Stow House of Pizza, reported on a meeting he had with DEP. Steve Poole said although DEP made no commitment, they suggested that they would allow the House of Pizza’s current well to serve a 5000 sq. foot footprint building, such as the one Kostas has already been permitted for. However, DEP suggested that there would need to be a use restriction placed on the building to ensure that pump flows would remain under DEP’s threshold. This scenario assumes the Pizza shop will remain at this site. Steve Poole said that they will likely be seeking a modification to the special permit, to allow for the permitted 5000 + square foot building to have a second floor, retaining the same foot print and doubling the square footage. Kostas has a potential tenant but is not in the position to announce who it is at this point. Steve Poole said DEP noted that the Beef N’ Ale property was much more complicated because the site shares a well and septic with the abutting property (Sunshine Café). Jesse Steadman said although Beef N’ Ale was approved for 100 seats, DEP may require a separate well

Center School

Jesse Steadman said he has forwarded correspondence from Joe Mishley and Greg Troxel to Craig Martin and Steve Quinn to look into.

Delaney Decision:

The Planning Board reviewed the draft decision for the Delaney Solar PV project .

Section 7.13

Kathy Sferra asked if the Zoning bylaw required removal of the installation as part of the security terms.

Ernie Dodd replied that the Town needs a security deposit that gives sufficient protection; one which can be released when the planning board allows it to be released. Ernie Dodd said that certain actions would need to be taken for removal, and that the applicants should outline the costs associated plus fifty percent extra to arrive at a security amount acceptable to the Planning Board. Ernie Dodd said that as Syncarpha’s latest revisions to Section 7.13 are stated, there is not any assurance that another party, in this case Terradyne, will be responsible with the issue of removal and potential remediation of the site to pre-project standards. As it is

worded now he added, Syncarpha and Terradyne have access to the funds but not the Town. Ernie Dodd said that although the exact language can be worked out prior to the issuance of a building permit, it may be best to have a tri-party agreement rather than have the security controlled by a bonding company, which have refused to pay in the past.

Brian Kopperell noted that Terradyne does not want to be in the position where they cannot take care of removal issues. He added that they would like to be able to access the funds to get the work done. Ernie Dodd replied that the Town would like the protection if no one else is doing the work.

Larry Beals said they are thinking of proposing a cash deposit to cover the potential costs. He added that Syncarpha just wants to be on the same page as the Planning Board and they are hoping they can work out a tri-party agreement. Beals noted that due to the lease agreement with Terradyne it is just not tenable for Syncarpha to do make two deposits. Ernie Dodd replied that they just need it to be acceptable to the Planning Board's standards and that the details can come at a later time.

Brian Kopperell said that he hopes the final agreement can be signed off prior to the issuance of building permit and at the time of occupancy the security can be funded.

Members agreed to require an executed security agreement in a form as approved by the Board, including the terms of payment to be identified.

Section 7.18

Len Golder asked about the proposed screening of the slatted fence as well as the height of the landscaped trees to be added along the property frontage. After some discussion the Planning Board agreed that the screening would suffice.

Larry Beals added that they have modified the plans and sent them to Sue to make sure they comply with the decision terms.

Section 7.20

Kathy Sferra said she believed the Board had agreed to waive the requirement for appraisal as it does not seem necessary in this application. Members agreed.

Section 7.25

Planning Board Members agreed that the project will not generate any increase in foot traffic and that there is sufficient area for an informal walkway. Therefore, the Board agreed that that a sidewalk easement rather than construction is sufficient. The easement shall be provided before the installation becomes operational.

Section 7.26

Len Golder said he thinks there should be two access drives for safety access of fire trucks. Ernie Dodd said a fire truck would have trouble tuning around in the proposed construction access due to the fence. Larry Beals said that in the event a fire truck needed to enter at a separate area other than the proposed entrance, it could run down the fence without issue.

Section 7.37

Members agreed to add a condition stating that “the Petitioner shall request a permit from the Board of Selectmen before the removal of any dirt from the site.”

Section 7.43

Regarding the extension of the special permit validity, Ernie Dodd said it would be reasonable to make the extension 24 months. Lori Clark recommended adding a finding to section 7.43 which would grant an extension for an extra twelve months based on a request by the applicant.

Proposed Section 7.46

Add Condition: “Unless otherwise specified all application bylaws and rules and regulations apply to this application.”

Kathy Sferra motioned to approve draft decision for Delaney Street Solar PV project special permit and site plan approval as amended.

Ernie Dodd seconded.

VOTED: (5-0) in favor (Ernie Dodd, Len Golder, Kathy Sferra, Steve Quinn, and Voting Associate Member Brian Martinson. Lori Clark Abstained)

Conceptual Plan for Subdivision of Land: 117 Walcott Street

Present:

Engineer Jeff Brem of Meisner Brem

Applicant/Owner Penny Cushing

Son, Jeffrey Cushing and Son in-law, Mark

Jeff Brehm explained a conceptual subdivision plan of land at 117 Walcott Street. He pointed out the locations of wetland meadows and other natural features, referring to past conceptual plans in relation to the current one.

Jeff Brem showed the location of past soil testing, noting difficult soils in the proposed open space area. Although the deep hole tests at the areas of proposed development were not great, they did pass and were witnessed by Jack Wallace with the Board of Health. Jeff Brem added that he is pretty comfortable that the proposed northeast lots have decent soils. He claimed that with the wetlands and slopes at this property, it would be difficult to get 35-40 lots on the property, but 15

seemed more realistic considering the conditions and restrictions. Jeff Brem said it is easy to envision the development as planned and if he can envision it he believes the planning board can to. He noted that instead of trying to develop 8, one acre lots along the hill, he is only proposing four, with the existing driveway to 117 Walcott as the primary access. Jeff Brem explained that to attain 15 buildable lots at the property, he is planning on filing a planned conservation development with 41 acres of open space, more than 50% of which is upland. Jeff Brem said the Permit extension act allowed for the existing wetlands delineation to stand.

Jeff Brem stated that they would not do any improvements to the existing driveway other than the construction of a fire truck turn around, and he would need to ask for waivers because they will not be changing the right of way.

Kathy Sferra expressed concern over the term “remaining land” in regards to a large portion of the property’s northern end. Jeff Brem said that the owner is trying to work out an agreement with conservation organizations, perhaps the Stow Conservation Trust, on a purchase of the remaining land. Jeff Brem said the property owner’s wish is to allocate a portion of the property for permanent preservation represents a melding of the bylaw intent and the needs of the Town and his Client.

In regards to questions regarding the drainage of the existing driveway, Penny Cushing said there was lot of drainage already built in.

Ernie Dodd said the access drive should be 18 feet across. Jeff Brem said he would like to use Low Impact Development practices as the process moves forward.

Lenny Golder asked about the grades on the driveway. Jeff Brem said 12.5% would be the steepest section.

Mark Jones asked about the maximum grade. The Board agreed that the maximum grade for a rural lane is 10%.

Kathy Sferra noted that the 40 foot wide access strip off Walcott Street will likely not be able to become a public roadway.

Jeff Cushing said his mother can no longer afford to keep the house. He said that the first plan submitted seems to be the best scenario as the goal is not to maximize profit but to sell the house, preserve a large portion of the land and move on. Jeff Cushing said that because the road will not be able to be partially built and bonded within a year, perhaps the board can issue a lot release before the road is built and bonded, which would allow the driveway to be useable and for the house to be sold.

Mark, son-in-law of the applicant, said he did not understand the statements in a past planning board decision, regarding the need for the public benefit when requesting a waiver. He said it is impossible for Penny Cushing to come up with

several hundred thousand dollars to build the road and sell the house. He said that the first plan seems to be the best because it allows for the most open space. A waiver should be given because it is the prudent thing to do.

Penny Cushing said that the Planning Board is forcing her to develop the land because they denied two earlier concept plans containing significant open space in the first two steps.

Kathy Sferra replied that although it is the owner's wish is to see the land protected, without any documented restrictions there is no way to know if the land will not be sold to another buyer that has plans to develop. Penny Cushing said it is unfair to put that on her. Jeff Cushing argued that the Town should purchase the open space. Penny Cushing said that when she had a developer, the Town had a right of first refusal but the Town missed the deadline for purchasing the property. She added that the mishap has cost her a lot of money.

Steve Quinn said that for the Board to approve a subdivision of land there needs to be adequate road frontage.

Pennie Cushing asked the board to clarify the definition of "public benefit." Lori Clark said typically each waiver has to be discussed on its particular merits. In some of the past conceptual plans for this property, the Planning Board past was being asked to waive almost all of the regulations in the subdivision rules.

Kathy Sferra read from the Subdivision rules and regulations. Lori Clark added that the Planning Board has no idea what would happen with the rest of the property under the initial plan.

Jeff Cushing said if further development was possible on the remaining land, it would have already been done.

Jeff Brem said that there is a key difference between public interest and public benefit. Lori Clark said the public benefit could be the maintaining of open space. However, she continued, the challenge is that there is no guarantee that the land will not be developed.

Jeff Brem said that in other towns they create right of ways that will never be a public roadway but yet still allow frontage to be included. Kathy Sferra said that if this was approved there would be access frontage due to the new road, allowing for the potential for multiple hammerhead Approval Not Required lots which would have no review.

Lori Clark said that the Board understands the applicant's issues and would like to converse more with another before feeling comfortable about granting any waivers.

Jeff Brem said that a voluntary action that prohibits ANR development could be written in as a condition of the subdivision. He added that the first concept plan he submitted, dated July of 2011, could preclude the proposed development of the most recent plan. Jeffrey Cushing said most everyone at the meeting seems to be aligned on the first plan.

Mark Jones said perhaps the issue of future development could be precluded by the owner's recording of a conservation restriction that could be and handed to the Stow Conservation Trust or another body that would satisfy the issue of the unknown potential for development.

Penny Cushing replied that she would never do that.

Steve Quinn said they are getting into hypotheticals and that in order to subdivide the one lot you need area and frontage. You have area, Steve Quinn said, however there could be as many as three ANR lots that could be built under the plans submitted.

Ernie Dodd said that at the time of review of these past plans he believes their conclusions are still valid. He said he did not come prepared to this meeting to discuss the merits of the past plans.

Jeffrey Cushing said the board could revisit the plans and perhaps they could work together to find what possibilities may exist.

Jeffrey Brem said that they should consider giving partial releases so the owner could sell the home.

Ernie Dodd said if they approved the plan with the open space in place, a future buyer or ANR developer would still have to meet the requirements.

Lori Clark said that the Board can take some time at a further meeting to discuss the various plans and will let the applicants know when they can come back for further discussion.

Sylvan Drive Public Street Acceptance:

Ernie Dodd does not think there is any reason Sylvan Drive cannot be accepted by the Town. Len Golder asked about time frame and the Planning Board responded that the bond is the leverage to finish the project soon.

Ernie Dodd motioned that the Board of Selectmen accept Sylvan Drive as a public way.

Kathy Sferra seconded.

Voted (6-0) Unanimously in favor (Lori Clark, Steve Quinn, Kathy Sferra, Ernie Dodd, Len Golder, and Voting Associate Member Brian Martinson.

Regarding Upcoming Linear Retail Pylon Sign ZBA Hearing:

The Planning Board agreed that they should review a letter dated August 18, 2011 and find what was agreed to. The Planning Board decided to hold a meeting on Friday, September 28 at 3 p.m. where a letter can be drafted based on the outstanding special permit issues. The meeting can then be followed up on Monday, Oct. 1st meeting at 6:30 p.m. to finalize the letter before the ZBA hearing.

Brian Martinson said that he does not want to see a bigger sign in Lower Village proposed. Lori Clark agreed.

Meeting adjourned. 9:51 pm