

TOWN OF STOW
PLANNING BOARD

Minutes of the July 29, 2015 Planning Board Meeting

Planning Board Members Present: Lori Clark, Ernie Dodd, Len Golder, Steve Quinn,
Margaret Costello

Voting Associate Member: Mark Jones

Lori Clark called the meeting to order at 7:00 pm

Collings Foundation Hammerhead Lot Special Permit

Barbara Huggins, Town Counsel and staff discussed three issues that they would like to see resolved regarding the Special Permit application.

- Barbara Huggins noted that the plan did not indicate a circle of 150' proving a building could be constructed according to the rules and regulations, and feels it should be proven prior to voting so as not to set a precedent of approving a plan that has not demonstrated that all of the requirements have been met.
- Barbara Huggins said that regarding the sidewalk easement, it should be recorded rather than the Board waive the issue.
- The Board discussed the inclusion of note referring to further subdivision and the trigger of the inclusionary housing bylaw, noting it is not applicable in this situation.

Karen Kelleher said she will work with Town Counsel to make the necessary amendments to the decision and bring it before the Board at a later date.

Apple Blossom Lane Discussion

Karen Kelleher asked if the Board would be amenable to removing the easement on a piece of land owned by Dick Bolton, with frontage on the Assabet River, if he were willing to donate the property to the Town. The Board said they would like to see a formal request in writing and will discuss at a later time.

Collings Foundation Inc. Site Plan Approval and Special Permit Deliberation:

Lori Clark discussed the Dover deliberation matrix and discussed how the Board should proceed to go through the Open House events and special events, followed by a discussion of whether education is the primary and dominant use of the site.

Summary of Current Activities

Lori Clark noted that Section 7 of the Dover Guidance document prepared by staff includes the various types of activities that may be considered educational based on the application. Lori Clark said the activities are essentially components that make up each event. The Board agreed they would use the list of activities to discuss the events by category and call out any specific events for further review as necessary.

General Events

Mark Jones noted that the general events listed essentially function as rentals of a facility where people come visit and that it has nothing to do with the Foundation's educational purpose other than that they own a building. Mark Jones said participants can visit, can take a tour, but nothing is certain. Mark Jones believes the primary purpose of the general events is as a rental space. The components and activities listed in the Summary of Current Activities are an attractive aspect of the facility but do not denote educational activities.

Len Golder said that he does not believe the general events are primarily educational and appear to be more for fundraising and charitable events.

Margaret Costello agreed with both Mark Jones and Len Golder, saying it seems clear cut that the primary and dominant intent is not educational regarding the general events.

Ernie Dodd agreed. Ernie Dodd further noted that these are listed as taking place in one year, although it is uncertain how many events take place each year.

Steve Quinn said that some of the examples could be considered to have an educational component. But other events such as a wedding would utilize the activities as a supplement. Steve Quinn said some are and some are not, but he does not know the percentage. A veteran event could perhaps be, but Steve Quinn said there is not enough information and it does not strike him that they are primarily educational.

Lori Clark said there are some activities that could be educational but they are more anecdotal additions to the events.

Educational Organizations

Steve Quinn said the educational organization events listed do appear to be educational.

Ernie Dodd noted that there are numbers of times listed that the events took place, however he is uncertain when those events occurred. Ernie Dodd said that coming to a museum for a short duration visit is not a significantly educational event and it seems from the application that educational organizations are supplementing learning that they provide with something that you can see in person, and he is not too sure what educational aspect the Foundation itself could provide. Ernie Dodd said the Stow Fifth Grade tours are little more than a field trip.

Regarding the minimally challenged children's tours, it is unknown whether it will help them in any of their life pursuits. Is there any educational value in any of these, I don't know, said Ernie Dodd.

Mark Jones said that when looks at curriculum and evaluation he sees the Foundation as a place where an educational program is being brought to then taking the education back to their program. Although people are being educated, it is the schools that are undertaking the educational activity and it is a kind of an educational experience but not the type of category they have been discussing under the Dover amendment. Mark Jones said he sees it as educational as a supplement to the schools curriculum. Mark Jones said that for the educational organizations that are not schools, they appear to be taking a field trip.

Len Golder said that the ones that are connected to schools would be educational and there is a range of different levels of schools and grades and skill levels represented. Regarding non-schools, boy scouts, cub scouts and 4h club are questionable. The Harvard example sounds more like a class reunion.

Margaret Costello noted that these educational events are listed as taking place over 6 visits a year. Margaret Costello said that she questions the depth of education, and does not believe it is primarily educational.

The Planning Board temporarily suspended discussion of the Collings Foundation Site Plan Approval to open the Special Permit Modification Public Hearing for Ridgewood at Stow.

**Special Permit Modification Public Hearing:
Ridgewood at Stow Active Adult Neighborhood**

Jesse Steadman notified the Board that they are in receipt of a letter from the Applicant requesting to continue without testimony.

*Ernie Dodd Move to continue the Public Hearing for Special Permit Modification of the Ridgewood At Stow Active Adult Neighborhood until 7pm on August 5th, 2015.
Steve Quinn seconded.*

VOTED: (5-0) Unanimously in favor.

The Planning Board resumed the Site Plan Approval Decision and Deliberation on the Collings Foundation Inc. Application

Lori Clark said she does feel there is an opportunity for the educational events being discussed to be educational and it is clear that most of them are led tours where you learn about the artifacts. Except for mathworks, Cub scouts, and others Lenny Golder noted, she believes the educational visits are primarily educational.

Open House Events

Mark Jones said that regarding the three Open House events, they are a lot like having a festival or a concert even though the components are a bit different for each. In many

ways, he said the events are like a convention with various activities that people can choose to notice and come and go as they please. Mark Jones said it seems more like entertainment and not the type of educational activity that the Board has been discussing.

Mark Jones said he does not see a purposeful and planned development of information in an educational sense, even though other concerts or festivals do have a plan, he just cannot say it fits the concept of a curriculum. There is no systematic way of delivering the information as it is up to the participant to determine what they want to do, Mark Jones said. Mark Jones added there is no evaluation whatsoever. Regarding qualifications, he imagines there must be a lot of intelligence and thoughtfulness required, as is the case with showmanship, but he does not necessarily think those qualifications are educational. Regarding the development and delivery of educational materials - there are none, he said.

Len Golder said that he does believe the open house events have educational value in an enactment type of space. Regarding the Battle for the Airfield it was an important historical event and it is important to understand what the Battle was about. Len Golder said the Race of the Century shows transportation throughout history. Len Golder said there is a purpose and planned development and it is presented in a systematic and uniform way. Len Golder said he agrees there is no evaluation. Regarding qualifications, he is unsure what their qualifications are. Regarding conformance with the Board's fifth indicator, does it in some way enhance the understanding in life? Len Golder said that he believes in some sense these events can. Do they have educational value? Len Golder said that these events are entertainment and education. Len Golder said he believes the three open house events are primarily educational.

Margaret Costello said there was a lack of purposeful and planned development of information and sees no evidence of a curriculum or planned program and no scripts for the reenactment. The operational artifacts listed in the Summary of Current Activities document seem more about entertainment and recreation and are not educational. The blacksmith and piano player are entertainment.

Steve Quinn said that the three events are an extension of the living history museum and finds that they are educational using the same criteria and reasoning he applied to his analysis of the museum. The only exception is that he does not believe there is an evaluation component. Steve Quinn said you see the artifacts working and in action. Steve Quinn said he believes they are primarily educational.

Ernie Dodd said it is pure entertainment and the script they follow is for presenting displays. They do use a systematic way and there is some narration to describe the events. Ernie Dodd said there is no evaluation and no requirement that people pay attention or understand what they are presented. The qualifications are limited to the scripts for entertainment and it is unclear if anyone really follows history and it does not at all appear to be educational. Ernie Dodd said these events are the same as going to a theater or a play.

Lori Clark said when she looks at the different activities at each event, there are some aspects that could be educational, such as the museum visit and docent conducted tour

which she believes show educational indicators 1 and 2, regarding evidence of planned development of information and a systematic way of delivering the information. The challenge is that thinking back to the case law, those activities seem incidental to the main demonstrations. Lori Clark said she does not see the evidence that there is a curriculum and people can experience what is presented in many different ways. Lori Clark said there is no evaluation. Regarding qualifications there does appear to be a subject matter expertise but there is no information presented that regards the educational delivery of information. And there is nothing in the application that mentions that in any way, Lori Clark said. The primary use is entertainment and is not educational.

Museum Interactions and Affiliations

Lori Clark asked the Board to discuss the list of Museum Interactions and Affiliations. Ernie Dodd said they do seem to meet with other museums for logistics or trades, but he does not see anything within the list that is educational. Len Golder said that they are established and worthy museums but the question is more substantive regarding the interaction that they have. Mark Jones said they are not really an indicator. Margaret Costello agreed. Len Golder said he would like to see more of a syllabus but the activity could indicate something educationally worthwhile. It could be educational or could not be said Steve Quinn. Lori Clark said she is neutral on the topic as well.

Scholarships

Ernie Dodd said he is neutral regarding the scholarships. It does not add or subtract from his opinion, said Ernie Dodd. Len Golder said that he believes it does add something educational. Mark Jones said it is a typical activity of a Foundation and not particularly educational in nature. Margaret Costello, Steve Quinn and Lori Clark agreed.

Regarding Wings of Freedom

Lori Clark said the information presented on Wings of Freedom is not applicable as it does not take place in Stow.

Preservation of Artifacts

Mark Jones said that one of the major remarks seems to be that it is undertaken outside of Stow. Ernie Dodd said that the issue of maintenance and preservation of the artifacts is germane to the discussion of the functions of the Trust versus the corporation. Ernie Dodd said some maintenance may happen in Stow but is primarily done offsite, although the significant administrative tasks for the preservation and maintenance of the Wings of Freedom are undertaken in Stow.

Collings Foundation Inc. Site Plan and Uses as Primarily Educational

Lori Clark discussed that there are three main components to finding of protection on G.L Ch.40a s.3:

- The applicant must prove they are a Non Profit Corporation
- There must be proof of educational intention in the organizational language

- The Board must make a finding that the proposed use is primarily educational

Ernie Dodd said the Applicant has demonstrated that they are a non – profit corporation through submission of their Articles of Organization, and they will eventually become the non-profit through the IRS and it has not yet been received but can be shown.

Barbara Huggins said that it needs to be a non-profit corporation and some organization either from the state or federal seems to comply with the courts. The Board does have the evidence of incorporation under Chapter 180 and that should be sufficient under the statute. Mark Jones said the Articles of Organization note the religious activities but it is not represented in the record.

Relationship between Collings Foundation Trust and Inc.

Ernie Dodd said there will be two activities taking place, those undertaken by the Corporation and those undertaken by the Trust. Ernie Dodd said the Trust is not an insignificant part of the site - they own the artifacts and collect, acquire, maintain, and arrange for artifact exchanges. That is not an insignificant effort, he said. The Wings of Freedom tours are managed from Stow, which takes a lot of support, more than one person and is taking place in Stow and is not protected by Dover. Ernie Dodd said the Trust manages nearly 3.2 million dollars.

Lori Clark asked Barbara Huggins that given the non-profit educational discussion, what can be done by the corporation under Dover or another entity? Barbara Huggins said there are no examples in the case law regarding two entities, one qualified and one not operating on the same lot.

Barbara Huggins said if the Board approves the project, they could condition that all activities be provided by the corporation because the other entity is not protected. Barbara Huggins said that the Bylaw does not give greater protection than Dover, so Section 9.9 is not applicable. Len Golder said this is similar to other museums that have other entities that provide support to the museum. Barbara Huggins said the question is how far do the protections extend. Barbara Huggins said even in situations that look the same factually, it may not be legally permissible on this site and in this district.

The Board discussed business uses in the bylaw.

Lori Clark said they can move on without having to address this at this time and if discussions and conditions need to be made that can happen at a later time. Ernie Dodd said if the use is taking place that is not protected it has to be formulated into the overall decision.

Lori Clark said that at this point it is time to aggregate all of the discussions of Dover, including the frequency and volume of events and activities if members of the Board so wish.

Ernie Dodd said that the museum appears to be open about 80 days per year and does not provide much opportunity for students to use the facility as most institutions are not available on weekends. There are 26 Fridays that the museum could be used by schools during the open times to visit the museum and he questions the availability to the younger students in public or private schools for any extended period. Ernie Dodd said the exposure when they do attend is limited and not quantified. A typical field trip leaves only three hours to visit the museum and are the students learning something to fit the definition of Dover and help them in their lives? He does not think so. Ernie Dodd said regarding participation by families, the three events are mainly entertainment and he is unsure how much they get out of the displays and presentations. Are the 80 days that are available primarily an educational exposure. He does not think so. Lori Clark summarized Ernie's statements saying he is calling out some additional information to add to the analysis. Ernie Dodd said regarding the schedule of yearly events, there are not too many items that he can consider educational taking place.

Barbara Huggins said there is no guidance in the case law that discusses duration of openness. Although it can be part of the analysis, Barbara Huggins cautioned against applying that criteria too strongly. Ernie Dodd said that some of the Dover qualifying cases were exposed for significant amounts of time.

Steve Quinn said the hours of operation are also available by appointment during that time and it appears that they can be available if need be. Steve Quinn said the hours and duration of availability do not add or detract from his opinion. Steve Quinn said he is unsure whether there is a minimum hours of operation to qualify a use as primarily educational. Overall Steve Quinn said he thinks the use and museum are educational and each argument could be applied in both directions of a decision. The way that it is laid out is part of a type of curriculum that takes you through history. The museum and different functions are primarily educational. Steve Quinn said additionally as someone charged with protecting the Town, this use approved and conditioned would be an improvement to get traffic off of Barton Road and there is an opportunity to gain control over something that is currently unregulated.

Lori Clark asked Barbara Huggins to weigh in on the options regarding whether which activities the Board can assess. If it ends up being protected is everything protected or just some aspects, Lori Clark asked. Barbara Huggins said if the Board decides the use is protected under Section 3, then they can still apply conditions based on reasonable regulations. The Board can find the museum use itself is educational and protected but that other activities are not in the scope of Dover protections, such as in the Timothy Hill case.

Len Golder said that the museum is primarily educational and believes that the Town has the right and power to regulate the activities in terms of time manner and duration, which would be more beneficial to the community than what there is now. Regarding the duration of accessibility, from a planning perspective, it is better that it is 80 days rather than 180 and allows management of the use's regulation.

Mark Jones said he finds the additional activities that bring the largest number of people to the site as not being educational activities and that aspect of the site plan is not a qualifying activity. Mark Jones said regarding the museum, until they are conducting trainings for curators or programs on World War II, they are not qualifying as Dover protected.

Margaret Costello said she would agree that there are elements of education but it is more of a veneer that is applied to the use and that acquisition, renovation and curation is the predominant proposal. Margaret Costello said the Applicant has not submitted adequate documents to be entitled to a finding that the primary purpose of the use is educational. She believes the application was more representational than documentary and came across as vague and amorphous, education being engrafted onto the main purposes of acquisition, renovation and curation of artifacts.

Margaret Costello said in the Regis College case the Judge said the purpose of Dover is not served if education can be applied to any purpose. In this case, she said, form is elevated over substance and this seems like a museum to house a collection, with education as an offshoot and a loosely interpreted educational label. Margaret Costello said it is not educational within plain meaning. It is not a quantifiable amount of evidence where educational in the true sense of Dover is met. It has been stretched and attempted to fit the Dover amendment.

Margaret Costello said one reason for her opinion is the lack of evidence showing a systematic and uniform method of delivering the educational information. The delivery of information is varying and not uniform, and shows no evaluation and that education is a secondary function of the use. I feel like the museum is primarily curative and scope and depth is limited by location and access, budget, staffing and competing priorities. Education is a small part of the overall use of the site and the maintenance cannot be considered educational. The public events are entertainment and recreational rather than educational. Margaret Costello said the Primary dominant purpose is collecting, preserving and curating.

Lori Clark said that she feels the museum itself has the potential to be educational and there are components that could be. Lori Clark does not disagree that there was a lot of information to substantiate those points. Lori Clark said she has been wavering on the museum and the challenge is that the majority of the people using and participating on the site today are doing so for the Open House events and in aggregate that makes it not necessarily primarily educational. Lori Clark said she goes back to whether it is all or nothing or are there some educational elements that can be pulled out? Could those elements be pulled out with conditions under reasonable regulation? Barbara Huggins said the zoning question needs to be decided first, prior to a discussion of conditions. Lori Clark said the fact that the majority of the participation on the site is tied to the events makes it hard to say it is primarily educational. Lori Clark asked the Board for their thoughts. Lori Clark said if it is not all or nothing do other board members see that certain aspects could be protected as educational?

Margaret Costello and Ernie Dodd said that it is all or nothing for them. Ernie Dodd said it is very hard to control something after it has been approved. Lori Clark said that the Board should not be making a decision based on the prior history of the Board, but on the issues as they apply to the Dover Amendment.

Ernie Dodd said he has seen the whole picture and the information presented was so limited it is difficult to know which events really are educational. If in the future there is a different plan that is one thing.

Steve Quinn said that there are some components that could be allowed and some that should likely be prohibited. Steve Quinn said he thinks the three public events and museum are similar and primarily educational. Are there certain things that are not Dover protected, yes he is willing to look into that to see if it is not covered and cannot happen.

Margaret Costello said that when she discussed the daytime educational organizations there seemed to be a lot of events listed but they happen very infrequently. This feels like a warping of information based on what actually occurs.

Len Golder said that regarding substance, they went through a list of activities that he does not think are educational. Regarding process, there are things that could be substantively educational but could be regulated under time and other particulars. Len Golder said there are neighborhood impacts that could be regulated. Mark Jones said he has nothing to add.

Ernie Dodd said the Timothy Hill case repeatedly comes up, and describes the ability of the Board to look into different activities on a site, and determine which aspects of the plan would qualify for Dover protection. Ernie Dodd said to cut things at this point is a major surgery to the record presented and to remove a number of major activities could change the entire picture, which is why he believes it is all or nothing regarding his vote.

Lori Clark said what she hears is that Lenny and Steve believe it is primarily educational but would be willing to further review particular activities to determine their compliance.

Margaret Costello, Ernie Dodd and Lori Clark are in agreement that it is not primarily educational in terms of the museums and events. Lori Clark said she is attempting to look for a medium ground but does not see that that is the case among the majority of the Board.

Len Golder said he is willing to look at it in terms of a component part and he is willing to discuss taking some things out. Lori Clark said she does not believe the major events are primarily educational and it does not seem they have the same opinion.

Steve Quinn said regarding the five indicators the 5th indicator is a major indicator and can be a substantial part of education.

Lori Clark said she does not see a display alone as educational. Steve Quinn said that for history buffs or students, they could potentially get a lot of the events.

Lori Clark said there are means to be educated but it is not the primary purpose for why those people are there. The majority of what people are getting is not primarily educational. Len Golder said he took the tour and did learn something. Lori Clark said someone could definitely learn something. Lori Clark said the museum has potential to be educational, but does not believe the events are.

Margaret Costello said she knew nothing about Dover the day of the tour and when she drove up the driveway and saw the beautiful house and asked Bob Sr. about the brick, he responded that it was from Virginia and she said she knew that this was a person who valued good craftsmanship. Margaret Costello said they then took the tour with Bob Sr. as their docent and impressed with the craftsmanship of the structures and the beautiful garden layouts. But in terms of the educational material, she left with the impression that she had viewed a collection, but had not partaken in an educational experience.

Lori Clark said there was very little in the way of people with subject matter expertise that thoughtfully put together information to be shared. In terms of the events, and conformance to qualifications, there was not evidence that anyone had qualifications regarding educational credentials.

Len Golder said the Board could take two votes. One for the museum and one for the events.

Lori Clark said the vote needs to be a vote on the primary educational use.

Barbara Huggins said they could do a straw poll on the use as a whole. Regarding the exclusion of uses, if they realize it is a protected use they can revisit those issues later on in the decision, she said. Barbara Huggins said it is most appropriate to take a vote on the application as it has been presented.

Barbara Huggins said that is something to be done down the line if the use is found to be protected.

Barbara Huggins said the vote could be less formal than a motion. Barbara Huggins said if the Board finds the use is protected they can reasonably regulate the use going forward. They could also stop the process after the vote and vote on the application itself if it was found unlawful by the Board. Barbara Huggins said whether to go ahead with findings on the site plan is a strategic concern but not a legal concern. Len Golder said that a court might see it differently.

Barbara Huggins said review is denovo, but if the Board is comfortable putting their full thoughts in the record they can do so.

Steve Quinn said it may sound to others like he is defending the Collings Foundation but he is simply under the impression that a museum is educational and there is nothing stating otherwise that is black or white. Any of the case law and the five indicators could be

applied to form an argument either way and his argument is that it is educational. If the museum is the classroom the three events are the lab.

Lori Clark said that against the five indicators there has been very limited information based on the five criteria.

Planning Board Straw Poll:

Is education the primary and dominant purpose of the site use?

Lori Clark – Nay; Margaret Costello – Nay; Ernie Dodd – Nay; Mark Jones – Nay; Len Golder – Yay; Steve Quinn – Yay.

Barbara Huggins said the Board has done a good job of applying the law to the facts. If the Board wants to address the reasonable regulation aspect they can do so.

The Board discussed the process for drafting a decision. Barbara Huggins reminded the Board that if they end up finding the use is protected, they cannot apply the Special Permit criteria as they typically are accustomed to and rather will need to assess the concerns under Site Plan Approval.

The Board agreed they will go through site plan findings on August 3rd and 5th. The August 3rd meeting will begin at 7 pm.

Meeting Adjourned.

Respectfully Submitted,

Jesse Steadman