



TOWN OF HOPKINTON

OFFICE OF THE PLANNING BOARD

TOWN HALL
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DATE: September 23, 2003

TO: Wayne Davies, Chairman
Zoning Board of Appeals

FROM: Elaine Lazarus, Planning Director

RE: **Stagecoach Heights, Wood St.**

This is in response to your request for clarification of comments made in the Planning Board's letters of April 30, 2003 and August 28, 2002 to the Board of Appeals relative to the Stagecoach Heights application for comprehensive permit. Open Space and Recreation Plans (OSRP) were prepared by the Town in 1996 and 2001. The comprehensive permit application states that the plan complies with the 1996 OSRP, and the applicant has stated that their application to the Town pre-dated the October 29, 2001 OSRP, so they need not comply with it. The Board disagrees.

For clarification, I have provided the following dates:

- October 29, 2001** – OSRP adopted by the Planning Board and subsequently approved/accepted by the Mass. Dept. of Environmental Management
- July 17, 2002** – Project Eligibility Letter issued by Framing Co-operative Bank under New England Fund
- August, 2002** – Comprehensive Permit Application Submitted to Zoning Board of Appeals

The application to the Zoning Board of Appeals was submitted nearly one year after the adoption of the OSRP by the Town. The applicant has stated that they submitted an application to the Conservation Commission before October, 2001 so this should grandfather them under the 1996 OSRP. Whether applications for anything on this property were submitted to the Conservation Commission or any other Board has no bearing on this issue. The issue is the date of application to the Board of Appeals, or possibly the date of the Project Eligibility Letter. The comprehensive permit application could not have been submitted to the Zoning Board of Appeals until after the Project Eligibility Letter was issued in July, 2002. Therefore, technically, there was no "project" before that date, only individuals working on one.

It would be unusual for the submission of an application to a Board with separate jurisdiction to grandfather them under the regulations/statutes of another, where an application has not been submitted. For example, if the proponents of a Garden Apartment development in Hopkinton

submit a Notice of Intent to the Conservation Commission prior to their Special Permit application to the Planning Board, this has no bearing on grandfathering relative to the Special Permit. The relevant date for grandfathering is not set by the earliest application to any Town board for any purpose.

This OSRP issue is important because of Housing Appeals Committee regulations. 760 CMR 31.07 (3) (c) Open Space, states that the Housing Appeals Committee may receive evidence of the following matters:

3. Relationship of the proposed site to any city or town open space or outdoor recreation plan officially adopted by the planning board, and to any official actions to preserve open spaces taken with respect to the proposed site by the town meeting or city council, prior to the date of the applicant's initial submission. **The inclusion of the proposed site in said open space or outdoor recreation plan shall create a presumption that the site is needed to preserve open spaces unless the applicant produces evidence to the contrary.**

6. Inventory of sites suitable for use as open spaces, and available for acquisition or other legal restriction as open spaces, and available for acquisition or other legal restriction as open spaces, in the city of town, provided that the Committee shall admit no evidence of any open space plan adopted only by the local conservation commission or other local body but not officially adopted by the planning board.

The OSRP describes this parcel and the surrounding area as follows:

This area contains woodland with at least 3 vernal pools, an old cart path where an old road was discontinued when Rt. 495 was constructed, old foundation, and significant geological features, such as cliffs and dramatic rock outcrops. Adjacent to Rt. 495, it also provides a noise buffer for the surrounding area. The parcel, along with significant town-owned open space across Wood St., also serves as a separation between the village of Woodville and the center of Hopkinton, helping to maintain the integrity of the historic village.

The OSRP was officially adopted by the Planning Board on October 29, 2001. In addition, the Planning Board amended the 1999 Master Plan on Nov. 5, 2001 to incorporate the 2001 OSRP. The applicant should address the presumption that the land subject of the comprehensive permit application should be open space.

I hope this answers some of your questions. Please contact me if you require additional information.