

HOPKINTON PLANNING BOARD

Monday, September 15, 2003 7:30 PM

MINUTES

PRESENT: John H. Coolidge, Chairman, Jaime Goncalves, Vice Chairman, Mark Abate, Scott Aghababian, Sandy K. Altamura, Brian Herr, Tina Rose, Claire Wright
.....Elaine C. Lazarus, Planning Director

1. Joint Meeting with Conservation Commission and Board of Health

Conservation Commission members present: Brian Morrison, Chairman, Mark Bullinger, Chris Lee, Richard Litchfield, Robert Murphy

Board of Health members present: Richard DeMont (no quorum)
Ellen Chagnon, Conservation Scientist
Don MacAdam, Conservation Administrator

A. Areas of Critical Environmental Concern

Mr. Coolidge described the attempt in 1999/2000 to designate a Whitehall ACEC, and stated that the Planning Board would like to revisit the idea. Mr. Morrison stated that last time there was fear that it would affect property rights. Mr. Litchfield stated it could be difficult for the Conservation Commission to advocate for it because there has been some bad publicity lately. Mr. Coolidge stated there would be a series of public hearings involved in the process, and the State is the entity that designates ACECs.

Mr. Litchfield asked if it would affect aspects of the Town's development plans for the Fruit St. property, such as for a DPW. Mr. Coolidge stated he didn't think so, but there could be more scrutiny of plans. Ms. Chagnon stated that ACEC designation can trigger a higher level of review under MEPA but also has benefits with respect to receiving state funding for open space purchase, for example. Mr. Morrison stated it shouldn't affect Fruit St., and an ACEC would be two years away at the least. Mr. Goncalves asked if the Town could incur additional costs because of the ACEC, and Mr. Coolidge replied he didn't think so.

Mr. Murphy asked what an ACEC would accomplish. Mr. Coolidge noted that the data and documentation collected would identify significant features and natural resources so there is more knowledge about the land, which is beneficial for land owners/developers and the Town. He stated that it could save them some money and time because these things would already be known. Mr. Murphy asked how it would affect homeowners. Mr. Coolidge stated they wouldn't be affected. Mr. Morrison stated there are more restrictions on the filling of wetlands in ACEC's. Ms. Chagnon noted that from personal experience in the Miscoe, Warren, and Whitehall Watershed ACEC, a subdivision can go through the whole process unaffected if nothing triggers a MEPA review. Mr. Goncalves stated it would be helpful to get input from people who live in an ACEC. Mr. DeMont asked how the information would be gathered. Mr. Coolidge stated the Boards would have to do it.

Mr. Lee arrived at this time.

Mr. DeMont stated there are good sources of information around. Ms. Altamura stated another question that came up before is why do it if there is no effect, or why not designate the whole town. She noted that questions about what is special about this particular area came up. Ms. Rose stated the report will identify the features of the area, and there are criteria that other parts of the Town don't meet. She stated that during the hearing, Leslie Luchonok couldn't answer a few of the questions and people were lost at that time. Mr. Goncalves suggested putting Frequently Asked Questions on the web site. Mr. Morrison stated that maps on the web site could also be good. He stated that proponents will have to go beyond the minimum and have an open and full process. Mr. Coolidge suggested having pre-hearings, as DEM will be holding the official hearings. Mr. Litchfield suggested writing articles for the newspaper about the unique features of the land. It was decided that Ms. Chagnon would get a list of the Upton stewards of the Miscoe ACEC.

Mr. Aghababian arrived at this time.

Mr. Coolidge recommended that Ms. Chagnon and Ms. Lazarus go through the previous draft and see what is missing and what more needs to be done. It was decided to send out ACEC web site information to Don MacAdam and meet again in 1 month to review the criteria and the previous draft document. It was noted that the draft document could be typed and be available in electronic format by Oct. 15.

Mr. Herr arrived at this time.

The Boards decided to schedule public informational meetings leading up to the nomination process, possibly starting in January. Mr. Morrison asked if both boards could commit the resources to it. It was noted that the Planning Board had identified this item as a goal for FY03/04. The Planning Board voted unanimously to support the ACEC nomination. The Conservation Commission voted unanimously to support the ACEC nomination.

B. White Oak Estates

Mr. Morrison stated that slow progress is being made, noting that the Commission had a good discussion at the last meeting. He stated the developer is ready to do the right things. Mr. Coolidge stated that the pipes at Spring St. need to be cleaned. Ms. Lazarus noted that the developer said that the catch basins had been cleaned. Mr. Coolidge stated he is concerned that silt is getting in through pipe joints and undermining the road.

Ms. Chagnon stated that next week they are doing testing to see where silt is coming from. She noted that Don Provencher, the developer's engineer, thinks a lot of it is re-suspended materials in pipes and from the sandbags that have been there for years. She stated the goal is to get the basin at Longwood Dr. completed and swales also. She stated they are working on the design and she is meeting with him at the site tomorrow. She noted that the Commission discussed taking small steps, with the first step getting the basin and swales done, and making good channels, then see how things go. She noted if there are still problems, then the Town would

move forward. She stated she doesn't know if DEM will cooperate with regard to this. Mr. Morrison noted that DEM's position is that they don't want anything on State property, and the developer should fix it within the subdivision. Ms. Chagnon noted that DEM agreed to accept the runoff at the very beginning of the process. She added that Mr. Provencher thinks they can use non-degradable matting for the channels instead of rock, and they probably won't need to cut trees. Mr. Morrison stated that Ms. Chagnon will work with Mr. Provencher, then they will come back next week. Mr. Coolidge stated that there seems to be a link between septic systems in the vicinity of the old vernal pool and the level of water in the pool, because when the level is high, the septic systems fail. Mr. Morrison noted there was recent siltation from the 81-P lots on Spring St.

The Conservation Commission and Mr. DeMont left the meeting at this time.

Ms. Wright arrived at this time.

2. Public Hearing – Elizabeth Rd. OSLPD – Concept Plan Special Permit

Ron Roux, applicant, and Doug Resnick, attorney, appeared before the Board. Mr. Roux noted that he has submitted an Open Space and Landscape Preservation Development (OSLPD) plan for 8 lots on the DiCarlo property where there is currently a commercial earth processing operation. Ms. Altamura asked where the processing operation would go. Mr. Roux stated it is being moved to Upton. He described the 17 acre site. He stated he hopes that the submitted concept plan will be denied so he can submit another plan. He stated that given the purchase price for the property, he can't recover that price with the proposed plan. He stated the Zoning Bylaw requires the filing of an OSLPD plan for parcels of 10 acres or more, so he has done that. He stated he has also included a conventional plan layout with the OSLPD plan because it is required, but he doesn't want to build that either. He stated both would yield insufficient revenue. He stated if the Board approves either one, he can't build them. He stated he hopes to submit an alternate plan if the OSLPD concept plan is denied, and showed the Board a preferred 5-lot subdivision plan with a road off Elizabeth Rd. He stated he didn't bring the Approval Not Required (ANR) plan that could be developed for the property, but 5 lots are also possible on existing streets. He referred to the property at 38 Elizabeth Rd., noting that they have an odd shaped lot due to a zoning issue and grandfathering problem. He stated he has met with the owners and would modify their lot so they have a different lot configuration and more useable land.

Piran Aliabadi, 38 Elizabeth Rd., stated they met with Mr. Roux but have not reached an agreement. He stated that they would probably like the idea.

Mr. Roux stated if it isn't resolved, then Mr. DiCarlo will develop the land.

Paul Winshman, 27 Elizabeth Rd., noted that Mr. DiCarlo says he will develop low income housing on the property if the plan isn't approved.

The Board discussed the various alternative plans. Mr. Coolidge asked for feedback from abutters present.

Mr. Aliabadi asked for clarification with respect to the 5-lot plan and whether it could be built if he did not reach agreement with Mr. Roux. Mr. Coolidge stated he didn't want to influence their decision with regard to the shape of their lot, and they may need to discuss it more with Mr. Roux.

Mr. Winshman stated that he is familiar with Mr. Roux's work and supports his efforts to develop the property. He stated the property is now a hazard to children in the area and a disgrace. He stated he wants it to be improved.

Mr. Aliabadi stated that both the OSLPD plan and the 5-lot plan would improve the neighborhood. He noted that his concerns need to be discussed more with Mr. Roux.

Mr. Aghababian stated he wants to explore whether denial of the OSLPD plan would set a bad precedent. Ms. Altamura noted that the conventional subdivision plan shows 10 lots, the OSLPD plan has 8 lots, and 5 would be ultimately proposed. Mr. Aghababian stated that if the OSLPD plan meets the criteria, he is concerned about precedent, and he likes the OSLPD plan.

Mr. Resnick stated they have had the conversation before with respect to other proposals of Mr. Roux. He stated that the Board makes a decision on a unique set of facts for each site. He stated that the decision shouldn't set a precedent. He stated the Board should make the decision because it thinks the end result will be better. He stated that other sites won't have the same set of issues/conditions. Mr. Roux stated that there have been other situations where the number of lots was reduced by the submission of a different plan.

Ms. Wright stated that the open space shown on the concept plan doesn't make sense, because it consists only of strips of land. She stated it doesn't preserve the natural features of the property or accomplish open space goals. Mr. Coolidge noted that the land will be developed by someone anyway. He stated that the 5-lot conventional plan preferred by Mr. Roux would improve this particular area, and it doesn't change his general preference for OSLPD plans.

The Board voted unanimously to close the public hearing. The Board voted unanimously to deny issuance of the Special Permit for the following reasons:

1. The Applicant requested a reduction in the percentage of open space from 50% to 30%, and the OSLPD bylaw states that this may not occur unless larger lot sizes (45,000 sq. ft. minimum) are required because of soils or topographical conditions. No information relating to soils was submitted to the Board and the land is generally flat. The Board will not reduce the percentage of open space required merely to allow an Applicant to create larger lots and provide less open space.
2. Special Permit criterion (a) was not met. The plan does not meet the purpose and intent of the OSLPD bylaw because it is not designed to accommodate the site's physical characteristics. The open field and woods adjacent to the Upton State Forest would not be preserved.
3. Development Standard #4 was not met and therefore Special Permit criterion (b) was not met. The plan does not preserve significant and special natural features on the property. There are few natural features on the property worth preserving, but there are two: 1) a small section of woods adjacent to West Elm St. and the Upton State Forest, and 2) the open field

on the east side of the property. Little of this land would be preserved, destroying those natural features.

4. Special permit criterion (d) was not met. The Applicant requested a waiver of the 100 ft. perimeter buffer requirement adjacent to Elizabeth Rd. and West Elm St. The Board has waived the buffer requirement for other projects where larger open space parcels were to be created in lieu of a parcel solely consisting of a perimeter buffer, in order to preserve significant features, and while ensuring adequate screening to abutting property. However, in this case, the buffer is not provided adjacent to these streets where it is needed, and there is little vegetation in these areas. In addition, the waiver would appear to allow the creation of more lots. If the buffer was provided as required, there could be fewer lots in the subdivision because of the shape of the parcel. The Board does not find that there is adequate separation or screening of abutting properties or that the waiver is in the public interest in this case.

3. Administrative Business

The Board voted unanimously to approve the Minutes of August 11, 2003. The Board voted 7 in favor with Ms. Altamura abstaining to approve the Minutes of August 25, 2003.

The Board set a date for a site walk of 176 Spring St. for October 4, 2003 at 8:00 AM.

4. Emerald Hills East/Hopkinton Highlands

Steve Mirick, representing Lodge Corp./A. J. Lane, appeared before the Board. Mr. Coolidge noted that there had been a site walk which included the residents, Board members, developer representatives, and FST. Mr. Coolidge asked about the area near the HALT parking lot near Saddle Hill Rd. Mr. Mirick stated that Dave Goldman was concerned that contractors are ruining the lot, and the area behind the berm, landscaping, and sign in that area were also discussed. He stated since the walk, all street trees have been planted and the Con. Comm. is going to act on a request to treat the former parking lot farther down the road with something other than bark mulch. He stated if it is approved, they will loam and seed the area. He stated that they have addressed most of the residents concerns. He stated that all bounds have been installed, and all guardrail that is necessary has been installed. He stated they want to reduce the \$23,000 held for street trees by half because all are in. He stated they have re-seeded the sparse areas. He addressed the entrance off Wedgewood Dr., noting that Toll Brother's involvement in that area is an unresolved issue between Lane and Toll. He stated that there are perimeter drains tied into the drainage system and Toll did that. He added that Toll has spoken to the DPW and they said it was fine. He stated the catchment area in front of the house next to the soccer field has a perimeter drain flowing into it, and this occurs at other locations too. He requested that the Board reduce the bond amount as requested.

The Board decided to send a letter to the DPW Director which notes that current regulations prohibit the tying in of perimeter drains into the stormwater management system, but this subdivision predates that regulation. The letter would request his opinion as to whether the perimeter drains constructed in this subdivision are acceptable to the DPW. The letter would also ask about the two areas of groundwater breakout that flow into Greenwood Rd. and whether there were problems in the winter or foreseen in the future with these areas.

Mr. Aghababian asked about the slope of the embankment up to the soccer field from the parking lot. Mr. Mirick stated they don't intend to put steps there. He stated there is a ramp on the east side. Mr. Goncalves asked if steps would meet ADA requirements, and Mr. Mirick replied no. Ms. Lazarus noted that the Parks & Recreation Commission expects stairs to be built.

The Board discussed the path to the soccer field from the other side, off Greenwood Rd. It was noted that this land will be owned by the Town and discussion centered around whether it was better to have a defined path there or not. It was noted that the Town is not likely to routinely maintain the path, which was to have a bark mulch surface.

Ms. Wright stated she is concerned about people climbing up the slope from the parking lot and disturbing the area. Mr. Mirick stated that it looks like the ramp is being used now. Mr. Coolidge stated that from Al Rogers (Chairman of Parks & Recreation Commission) perspective, stairs was one issue with the field. The Board discussed alternatives.

A suggestion to place timbers to define the path from Greenwood Rd. was discussed. Mr. Abate suggested erecting a sign directing people to the soccer field. Ms. Wright suggested marking the entrance with a split rail fence.

After discussion, it was agreed that a split rail fence would be erected to delineate the path opening, instead of the bark mulch path. It was noted that there would be one section of fence parallel to Greenwood Rd., and two sections into the property defining a path, and the opening at Greenwood Rd. would be at least 12 ft. wide.

Mr. Aghababian asked about the HALT overlook parcel, noting the residents had issues there.

Peter Ficcari, 57 Greenwood Rd., stated they are still in discussion with HALT and Toll Bros. about that. He stated that Lane added trees and grass along the road. He noted that they have discussed planting juniper along the hillside with Toll, but it isn't resolved.

The Board voted unanimously to reduce the performance guarantee amount for the subdivision to \$140,000.00 and to authorize the return of funds held in excess of this amount to the developer.

Mr. Mirick stated that the final paving will be done in 2 to 3 weeks. He asked the Board to write a letter to Toll Bros. telling them that they can't use Greenwood Rd. for construction vehicles accessing Hopkinton Highlands II. He stated they have spoken to them and there hasn't been much response. The Board asked Ms. Lazarus to see if the Hopkinton Highlands II decision prohibited Toll Bros. from using Greenwood Rd.

5. Continued Public Hearing – Deerfield Estates – Senior Housing Development Site Plan – 148 Lumber St.

The applicant submitted a letter requesting a continuance of the public hearing and an extension of time for the Board to file its decision. The Board voted unanimously to continue the public hearing to October 20, 2003 at 9:00 PM and to extend the time to file a decision with the Town Clerk to October 24, 2003.

6. Whisperwood Preserve

Doug Resnick, attorney, and Kevin Bohan, Meyer Homes, appeared before the Board. Mr. Resnick described the proposed tri-partite agreement between the Town, Meyer Homes, and the Hudson Savings Bank, which would guarantee subdivision performance. Mr. Coolidge noted that the agreement discusses when amounts would be reduced as work is done, but doesn't address the possibility that the amount might need to be increased in the amount of work increases. Mr. Resnick stated there isn't a provision for that in the agreement, noting that the bank is concerned about the prices going up. He stated that Ms. Lazarus asked that a provision be added but he didn't think it was necessary. Mr. Coolidge stated it should be included. Mr. Resnick stated he doesn't have much of a problem with it, but he doesn't want work items to be added later. He stated he has seen punch lists that have expanded before. Mr. Coolidge noted that unless new items arise, it shouldn't happen. Ms. Wright noted there can be weather-related issues that increase the amount of work.

Mr. Resnick provided 3 copies of the agreement, noting that the Board's signatures are on a separate page. He suggested leaving that page with the Board, and adding it when he returns with the signatures of the bank and Mr. Meyer. He stated that from the bank's perspective, they are holding funds and any increases would be the responsibility of the developer, not the bank. He stated the language allowing the increase will be included.

Mr. Aghababian stated the Board should wait to sign after it reviews a completed signed document. Mr. Coolidge stated it would be acceptable to him to hold the signature page, as there is only one change to the document to be made. Mr. Abate stated he would feel more comfortable if the Board could sign the document after it is signed by others and modified.

Ms. Rose asked what would happen if Mr. Meyer is responsible for providing additional funds but goes bankrupt and the amount is gone. Mr. Resnick stated that work has been continuing in the subdivision and more has been done since the Board's engineer reviewed the performance guarantee estimate. He stated they want the lots released now.

The Board voted unanimously to establish a performance guarantee amount for the subdivision at \$134,604.40. The Board voted unanimously to sign the Agreement, and hold the signature page until it is complete with the additional language. The Board voted unanimously to release lots 1, 2, 3, 4, 5, and 6 upon receipt of the completed Agreement and a letter from the Fire Dept. indicating that the cistern for fire protection has passed inspection.

Mr. Resnick raised the issue of a permanent development sign at the entrance, noting that one was prohibited in the Board's decision approving the subdivision. He stated that they will be constructing a stone wall at the entrance and they want to insert "Whisperwood Preserve" into the wall. Ms. Altamura stated she is against it. Ms. Wright stated that people should identify with a street name instead of a development name for emergency response purposes. She noted that it also sends a message that there are private/exclusive enclaves. Mr. Resnick stated that it fosters a sense of neighborhood and helps marketing. Ms. Wright disagreed. It was noted that a temporary marketing sign is allowed. Ms. Altamura noted that the Fire Dept. and Police Dept.

are against them, and they want street names. She stated that subdivision streets become part of the Town, and subdivision names should go away.

It was noted that there are many permanent development signs now. Mr. Coolidge noted that the issue is enforcement, and there is enforcement now but there wasn't any in the past. Ms. Rose stated it looks like the Planning Board is targeting certain developers when some subdivisions have signs and others don't. The importance of consistency was discussed. The Board discussed the issues further and decided not to modify its condition of approval.

7. Spring Hill Estates

Peter Bemis, engineer, informed the Board that they had recently received approval from Land Court. He stated they have a local buyer for the subdivision who will build it, and expect a closing within a month. He requested an extension of the OSLPD Special Permit for one or two years. The Board voted unanimously to extend the Spring Hill Estates Special Permit for one year from November 23, 2003.

8. E. L. Harvey & Sons – Wood St.

The Board discussed the draft letter to the Zoning Board of Appeals prepared by Ms. Lazarus. Mr. Goncalves stated that in his work experience, he has never been to an underground tank that did not leak, and has a problem with underground tanks in the Water Resources Protection Overlay District. The Board approved sending the letter.

9. Wild Road

The Board reviewed the request for reduction in the performance guarantee estimate submitted by Normark Construction. Ms. Lazarus noted that after it was submitted, Norman Wilfand, the developer, passed away and apparently there is no one to take over the company. It was noted that a letter to the surety company had been written requesting that they hire a competent contractor to complete the subdivision work as soon as possible. No response has been received. The Board decided to see if additional street trees are needed at the end of the cul-de-sac, and not to reduce the amount at this time, pending information from the surety company.

10. 272 Pond Street

Ms. Lazarus noted that a fine for removal of a tree within the scenic road layout without a permit had been issued to the O'Sheas at 272 Pond St. on Sept. 3. It was noted that it had not been paid yet.

11. Administrative Business

The Board voted unanimously to pay outstanding bills. The Board decided to meet at 7:15 PM on Sept. 29 because of the length of the agenda.

Adjourned: 10:35 PM

Elaine C. Lazarus, Planning Director

Approved: October 20, 2003