

HOPKINTON PLANNING BOARD

Monday, December 8, 2003 7:30 PM

MINUTES

PRESENT: John H. Coolidge, Chairman, Jaime Goncalves, Vice Chairman, Scott Aghababian, Sandy K. Altamura, Pamela Duffy, Tina Rose, Claire Wright

.....Elaine C. Lazarus, Planning Director

1. Joint Meeting with Conservation Commission

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

Ellen Chagnon, Conservation Scientist; Don MacAdam, Conservation Administrator; Thomas Ryder, Public Health Administrator

A. Wildwood Glen

Mr. Coolidge referred to correspondence received from Aaron Cohen, attorney for the developer of the Wildwood Glen subdivision, requesting that the Town allow the placement of a Title 5 Nitrogen Loading Restriction and Easement on the open space in the subdivision. He noted that the open space is now owned by the Town and under the jurisdiction of the Conservation Commission. Mr. Ryder noted that the location of nitrogen sensitive areas are designated by Title 5, such as where septic systems and private wells are on the same lot, or in the zone II of a public water supply. He stated that in nitrogen sensitive areas, the wastewater limit is 110 gallons per day per bedroom per 10,000 sq. ft. of lot area, which equals 4 bedrooms on a 40,000 sq. ft. lot. He noted that many of the lots in the subdivision have less than 40,000 sq. ft.

Carlos Ferreira, engineer for the developer, stated that he spoke to DEP and the problem is that to use the open space for nitrogen loading credit, there needs to be language in the property deed allowing it.

David Depietri, developer, stated the nitrogen loading restriction should have been part of the deed in the beginning, but his engineer at the time missed it. He stated that he donated 50% of the parcel to the Town, and he should have kept the right to use the land for calculation purposes before he conveyed it.

Mr. Morrison noted that the infrastructure in the subdivision was not complete and perhaps it should be before further buildout. Mr. Coolidge asked how many lots were not built on, and Mr. Depietri replied two. Ms. Duffy asked if there is enough credit for the lots that are built. Mr. Depietri stated that the nitrogen loading calculation was not done for the subdivision. He stated they just concluded the permitting for lot 28 with the Conservation Commission, then the permit was denied by the Bd. of Health because there is no nitrogen loading restriction. He stated it was a surprise to him that one was needed. He stated that none of the lots that are built meet the requirement and that the right to use the land for calculation purposes

should have been part of it from the beginning. He stated that his engineers didn't tell him about it, and the Board of Health didn't pick up on it either, until recently. He stated that Mr. Ferreira has done the calculations for the subdivision.

Mr. Coolidge asked if there are other subdivisions similarly affected by the lack of a nitrogen loading restriction, and Mr. Ryder stated he has heard there may be two or three. Mr. Goncalves asked if the requirements would be met for the lots built on without the open space used in the calculations, and Mr. Ferreira replied no. Ms. Altamura asked how many bedrooms are in the houses, and Mr. Ferreira stated there seem to be four.

Mr. Morrison asked what the assumptions were when the subdivision was approved, and Mr. Coolidge replied it was assumed the lots would meet Title 5 or permits wouldn't be issued. Mr. Morrison stated they need to make sure that it won't affect the use of the open space. He noted that a lot of the open space wasn't buildable anyway. Ms. Chagnon asked what the restriction does to the open space, legally. Mr. Coolidge noted that it already can't be built on.

Mr. Morrison asked what would be happening if the open space had been conveyed to a private organization, such as the Hopkinton Area Land Trust (HALT).

Mary Pratt, 102 Fruit St., stated that HALT was requested to allow the placement of a nitrogen loading easement on a parcel that it owns, and it agreed to for \$5,000.

Mr. Goncalves asked if the land has to meet any requirements in order to be included in the calculations. Mr. Ryder stated the land can't be in a FEMA flood zone and it must be within the subdivision. Mr. Goncalves asked if wetlands can be included in the calculations, and Mr. Ryder stated that only land in the FEMA floodplain and surface water can be excluded.

Ms. Rose arrived at this time.

Mr. Coolidge asked Mr. Depietri when the subdivision would be completed, noting that it was supposed to be done in 2000. Mr. Depietri stated that there are only two items left, the property bounds and a road item. He stated that one lot in the subdivision meets Title 5, where three were combined into one. Ms. Duffy stated that the developer should finish the work before the Town agrees to the easement. Mr. Depietri stated he might want to move lot lines around so he doesn't want to install the bounds yet. It was noted that the two lots left were separate from each other, and each is bounded by open space and a lot that is built on, so boundaries can't be moved. Mr. Depietri agreed that he is done with moving the lot lines, but he stated was still moving them earlier in the year and that is why he didn't install the bounds.

Scott Aghababian, 12 Breakneck Hill Rd., asked what affect it has on the residents if their lots don't meet Title 5 and they want to sell. Mr. Ryder stated that one needs to look at the permitting that took place relative to the number of bedrooms. He stated that the Bd. of Health would have to look at enforcement. He stated there are no failure requirements for nitrogen loading and the property sale wouldn't be stopped.

Aaron Cohen, attorney, stated that enforcement implies future problems with the sale of lots.

Ms. Altamura asked if the Town open space is harmed if this is allowed, noting that it doesn't seem as there is a choice in the matter. Mr. Morrison stated it doesn't affect the use of the land.

Wayne Davies, 3 Stoneybrook Rd., asked if a property transfer doesn't have the proper Title 5 condition, what happens if another Title 5 problem arises, and would it require compliance eventually. Mr. Ryder noted that as a reviewer, he would consider alternatives, especially if the flow isn't going to be increased. He stated he didn't think the Bd. of Health would look at nitrogen loading if there was a failure, but he would need to do research on that.

Ms. Wright noted the Town is still holding over \$60,000 in performance guarantee funds, and reviewed the list of remaining work. Mr. Depietri stated that most of the work is done. He stated there was a walk-through a few years ago about that. He stated that the engineering problems with the subdivision slowed things down, but it is 99% done. He stated that all systems are functioning properly in the subdivision.

Mr. Morrison asked how the problems for the existing homeowners can be corrected. Mr. Depietri stated they have prepared the calculations for all of the lots. Mr. Cohen stated that there will be an easement, and it can be granted for the benefit of all of the lots. He read some of uses of the open space that would be restricted by the easement, noting that they are already prohibited uses.

Mr. Coolidge expressed concern that the Town would set a precedent for having this occur where other entities own the open space. Ms. Altamura stated the Board should approve it. Ms. Duffy stated the Board should wait for the installation of bounds. Mr. Goncalves stated there should be compensation to the Town, and any easement or conveyance of rights should cost money. Mr. Coolidge asked about the market value of the homes, and Mr. Depietri replied about \$500,000 each. Mr. Cohen stated that people pay for an easement because it reduces the value of the land when rights are conveyed, but that isn't an issue here because there is no loss requiring reimbursement. He stated that if the rights were retained originally as was supposed to happen, there wouldn't be a cost.

Mrs. Pratt stated that the Open Space and Landscape Preservation Development bylaw requires 50% of the land be open space and no more than 50% of that be wetlands. She stated that it doesn't say that the land can be used for this, and the subdivision is too dense because the lots need the open space to comply with Title 5.

Mr. Ryder stated that approving the easement would make it easier for the Bd. of Health in going forward. Mr. Morrison stated that Town Counsel should review the proposed easement language.

Ms. Altamura moved to grant the request to use the open space for Title 5 calculations pending Town Counsel approval of the language, that the language should include a

provision stating that the easement will apply to all of the lots in the subdivision, and that the legal fees for the review are to be paid by the developer.

Mr. Depietri agreed to pay Town Counsel fees in this matter. Mr. Cohen noted he had sent a proposed easement to Town Counsel already, but he hasn't looked at it yet.

The motion was seconded, and the Planning Board voted 4 in favor (Altamura, Coolidge, Goncalves, Wright) with Ms. Duffy opposed and Ms. Rose abstaining.

The Planning Board voted unanimously to request the use of Town Counsel in this matter.

Mr. Aghababian joined the Board at this time.

B. White Oak Estates

Ms. Chagnon updated the Board on the status of the White Oak Estates subdivision. She noted that the Mass. Dept. of Conservation and Recreation had submitted a draft Memorandum of Understanding, which the Con. Comm. has forwarded to its attorney for review. It was noted that the attorney had not yet provided comments to the Commission.

C. Area of Critical Environmental Concern (ACEC) – Whitehall Area

Mr. MacAdam distributed a map showing the possible Whitehall area ACEC boundaries discussed at a previous meeting, and described the items shown on the map.

Vascen Bogigian, 204 Winter St., asked what the Boards are doing with respect to an ACEC. Mr. Coolidge noted that ever since the original proposal in 2000, the Planning Board felt it would revisit the idea some day. He stated they are now trying to look at the information and gather data on what is there, to see if it supports a nomination effort. He stated after the information is gathered, then they will decide whether to proceed with it. Mr. Coolidge stated that the Board intends to hold informational sessions before it makes a decision on whether to proceed, to see if the public supports it. Mr. Morrison noted that the public information sessions would be held before they decide what to do. Mr. Bogigian asked if the residents who will be affected will be notified of the hearing, and Mr. Coolidge replied yes. Mr. Morrison stated they want to fix the ACEC process, and involve the Town before it goes to the State for the formal process and hearings. Mr. Goncalves noted that ACEC designation doesn't add regulations to the land.

Mr. Bogigian stated that part of the problem last time was that people at the State said there was not an impact on residents. He stated that Leslie Luchonok said there would be no impact on permitting or taking of rights, but others said there would be an effect because new restrictions would be added. He stated it affects the Conservation Commission's ability to approve some things. He stated he doesn't want it to get out of hand. He asked why propose it if it has no effect. He asked what science, fact, or calculations justify the boundary.

Wayne Davies, 3 Stoney Brook Rd., suggested that the Boards consider if the purpose is to gather additional information for people, then it is dangerous too, because it could result in more regulation for a property owner. He stated the Planning Board has a credibility

problem. He stated when the Board approaches residents, it needs to say why they are doing this.

Mr. Morrison asked Mr. Davies and Mr. Bogigian if they would be willing to get a list of questions about the ACEC together so they can have it in advance and be able to prepare. Mr. Bogigian stated he will think about it. He stated he would cooperate, but that he may not be able to come up with all, or the best questions to ask. Mr. Morrison stated the Boards are going to look at a broad picture during its review of whether to proceed with an ACEC or not.

2. Capital Improvements Committee

Finley Perry and Ken Allor, Capital Improvements Committee, appeared before the Board. Mr. Perry distributed a “Proposal for an Inter-Committee Dialogue on Ways to Increase Income for the Town of Hopkinton”. He stated they are thinking of convening a meeting of various Committee and Board representatives to look at and discuss factors that influence the development of additional value in the industrial and commercial areas of Town. He noted that it would be a large group discussion with a lot of brain-storming. He asked the Board whether it thinks it would be worthwhile to do this. He stated there are a lot of funding needs and limited income, and increasing the value of the Industrial and commercial zones could be the answer. He stated it could include a discussion of zoning changes, such as allowing 4 story office buildings instead of three. He noted that South St. is underdeveloped now.

Ms. Duffy asked if South St. has municipal water and sewer, and the answer was yes. She asked if more intense development would increase water needs. Ms. Altamura noted the Town already allows 4 story buildings between South St. and Rt. 495. She stated the Town needs to make sure that anything that is done also protects neighborhoods. She stated that a forum is a good idea, but changes could end up with a short term gain and a long-term loss if not done well. She noted there would be traffic impacts and other tradeoffs, and the Town needs to be careful. She stated a forum would be a good starting point.

Mr. Goncalves recommended a public-private partnership in order to do this well. Ms. Altamura asked about including groups other than the ones listed, such as the Historical Commission. Mr. Perry stated that a group could come up with a lot of ideas, then examine them in detail. He noted that not all of the ideas will be good ones, and they would be narrowed down and studied. Mr. Goncalves stated the process needs to include those people who want to increase income.

Mr. Perry stated that this is the time to do something like this, when there is a lull in activity. Ms. Rose asked if there are model towns to look at. Mr. Perry replied he doesn't know. Mr. Goncalves asked if there is a business group for the South Street area, and if so, they should be contacted so the property owners can discuss their long-term intentions. He stated the property owners need to be included in the dialogue.

Mr. Allor stated this is a good time to look at zoning changes. He stated the Town needs to think about revenues, not just from South St. He stated the Town needs to plan for the future, and revenue should be part of this planning. The Board stated that the forum would be a good idea.

3. Pine Acres

It was noted that the appeal period had passed with no appeal of the Board's approval of the Pine Acres definitive subdivision plan. The Board reviewed the Conditional Approval Agreement submitted by the owner. The Board voted unanimously to sign the Conditional Approval Agreement. The Board voted unanimously to allow a foundation to be built for a new barn on the property, as requested by the owner. The Board voted unanimously to endorse the definitive subdivision plan. Upon examination, it was noticed that the plans did not include signature blocks. Ms. Lazarus will call the engineer, and new plans will have to be provided for signature.

4. Mezitt Agricultural Corp./Montrose School

Mr. Coolidge noted that the Board of Selectmen has requested the Planning Board's input on the proposal of Mezitt Agricultural Corp. to sell Montrose School 38 acres on East Main St., which is currently in the ch. 61A program. Ms. Lazarus noted that no formal request had been received from the Board of Selectmen.

Mr. Coolidge noted that the choice seems to be 38 houses or one school on the property, it seems like a good use for the land, and the Town doesn't have the funds to purchase it. He noted the Town has some money, but it has other priorities.

It was moved to recommend the Town not purchase the land as open space, that there are better uses for the land, and it is already disturbed. The Board discussed the ch. 61A program and potential site plan issues, such as traffic impacts.

The Board voted unanimously on the motion, adding a recommendation that the Board of Selectmen negotiate for payments-in-lieu of taxes to the Town, since the school will be tax exempt. The Board noted that the Town will have to provide services to the school, and there could also be traffic impacts.

5. Zoning Advisory Committee Update

The Board discussed the list of bylaws the Zoning Advisory Committee is working on. Mr. Goncalves noted the ZAC discussed a proposed zone change on West Main St., and there was no consensus on ZAC with regard to it. He noted they understood the problems experienced by the land owners, but couldn't recommend it one way or the other because it affects the Town and its future planning. Ms. Wright noted that a parcel commercially zoned across the street from the properties recently changed uses from commercial to residential, and questioned whether there is not still a market for residential uses on those lots.

Mr. Coolidge asked about the proposal relative to adding review by the Design Review Board (DRB) of minor project site plans, and if it was necessary. Ms. Wright stated it is necessary, citing the recent changes to Middlesex Savings Bank as an example. Ms. Lazarus noted a proposed change to 15 Main St. is also an example where DRB input would be beneficial. Ms. Wright suggested that the DRB should also review multi-family proposals. Mrs. Pratt stated that DRB review could help the revitalization of downtown.

Mr. Davies stated he has discussed with the Historical Commission the appeal process in the Historic Preservation bylaw, and there will be a proposed modification to the bylaw relative to that.

Ms. Wright referred to a discussion about the Historic District bylaw, stating she spoke to the Mass. Historical Commission which stated it should be a general and not a zoning bylaw. It was noted that moving it from the zoning bylaw to general bylaw is an item proposed by the ZAC.

6. Deerfield Estates

On November 22, 2003, the Planning Board conducted a site walk of Deerfield Estates, 148 Lumber St., in accordance with condition #23 of the Senior Housing Development Site Plan approval decision dated October 24, 2003. The Board discussed the information gathered at the site walk. The Board decided to recommend:

1. No additional trees need to be cut at the southerly entrance onto Lumber St. as it appears as though the required sight distance will be provided.
2. The amount of trees and grading required to provide adequate sight distance for vehicles exiting the northerly driveway entrance onto Lumber St. would be extensive. Therefore, this entrance should be one-way into the site.
3. The Board observed on the site walk that many of the existing stone walls within the property would be destroyed for construction purposes, both for dwelling units and infrastructure. Therefore, the stones should be saved and re-used on the property and/or donated to the Town or to others for use elsewhere in Town.

7. Stagecoach Heights

The Board reviewed revised plans for Stagecoach Heights, a plan for 44 condominium units submitted to the Zoning Board of Appeals for a comprehensive permit under MGL c. 40B. It was noted that the major change was elimination of one of the roadway entrances from Wood St. and provision of a double-barrel road instead. Mr. Goncalves suggested a one-way traffic pattern inside the site. Ms. Altamura suggested eliminating the double barrel after the first intersection within the site, which would allow for a narrower road after that and for the road to be more curved instead of straight. Mr. Goncalves suggested eliminating the road adjacent to Rt. 495 after the first intersection. The Board discussed the plan and the amount of site disturbance and blasting that would be required to build it.

Mr. Davies suggested waiting until Fay, Spofford & Thorndike's (FST), the Town's consulting engineer, comments on the plan before making a recommendation to the ZBA. Ms. Lazarus noted that the plans were received in September, and should be reviewed soon. The Board decided to review FST's comments on the road system before making recommendations to the ZBA.

8. Administrative Business

The Board voted unanimously to approve the Minutes of October 20, 2003. The Board voted unanimously to approve the Minutes of November 3, 2003.

Adjourned: 10:20 PM

Elaine C. Lazarus, Planning Director

Approved: January 12, 2004