

HOPKINTON PLANNING BOARD

Monday, June 27, 2005 7:30 PM
Hopkinton Town Hall

MINUTES

PRESENT: Mark Abate, Chairman, Brian Herr, Vice Chairman, Scott Aghababian, Sandy K. Altamura, Evan Ballantyne, John H. Coolidge, R.J. Dourney, Jaime Goncalves, Claire Wright

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

1. 81-P Plan – Overlook Road – Issadore & Arons

Andrew Ruggles, representing the owner, described the plan to create two parcels. One parcel will contain the approved Hopkinton Highlands III Garden Apartment development, and the second parcel would be donated to the Hopkinton Area Land Trust. The Board voted unanimously to endorse the plan as not requiring approval under the subdivision control law.

2. Land Use Study Committee

Finley Perry, Chairman, Land Use Study Committee, appeared before the Board to update it with respect to the Committee's activities to date. He stated they are anxious that the rest of the Town be involved and give the Committee feedback, and the Planning Board is important in this process. He submitted a report to the Board of the Committee's activities, highlighting that a "Request for Expressions of Interest" (RFI) had been issued, which is a public way to discuss the alternatives for the land. He stated they are also looking at financial modeling of land uses, with the model being prepared by Community Opportunities Group. He stated they don't know how many responses to the RFI there will be.

Mr. Aghababian arrived at this time.

Ms. Altamura asked if there will be an article on a September Town Meeting warrant to purchase the land. Mr. Perry stated he didn't know, adding that it isn't clear whether there will be fall town meeting, plus there isn't a purchase and sale agreement to respond to at this time. He noted that there may never be an opportunity to purchase it if there is no sale. He noted that the Town has 120 days to act following receipt of a bona-fide offer by the Board of Selectmen. Mr. Coolidge stated the Town could make an outright offer to the owners on its own.

Mr. Abate asked if a private investor could come along and develop the property, and Mr. Perry replied yes, but larger national developers would have the resources to stay the planning process. He stated that the Town wants a partner that shares the Town's values. He stated that the Town can think about planning the whole area of Town instead of just these parcels, and arrive at a more comprehensive master plan for the area. He stated it is creating an opportunity for the Town and developers with respect to this property. Mr. Abate stated he would rather see a developer with a local presence come in, as they would have a more vested interest in the

outcome. Mr. Dourney stated that the Town putting out its ideas is a good thing. He added that he doesn't want someone to come in and play hardball with the Town. He asked what the Planning Board can do to help. Mr. Perry stated that the continued services of Ms. Lazarus, and future CPA funding are needs. He listed the members of the Committee, noting that it has been interesting work.

Mr. Dourney asked if there is an ongoing conversation with the Mezitts. Mr. Perry stated the Mezitts have resisted direct negotiation because of the family dynamics. He stated that there may be an opportunity later for that.

Ms. Altamura asked if the land is in one parcel ownership or fragmented.

David Goldman, 20 Fruit St., asked if the Committee has thought about having an appraisal done for the Town. Mr. Perry stated they have discussed it, but the real appraisal may come through the marketplace. Ms. Altamura noted it would be hard to appraise land if it is going to be rezoned for another use. Mr. Goldman stated that could be taken into account.

Mr. Ballantyne arrived at this time.

3. Public Hearing – Whitehall Estates – OSLPD Concept Plan – 279 Wood St.

Mr. Abate noted that the Board only has 8 voting members for the application, as Mr. Coolidge will not be voting. Daniel Feeney, representing the applicant, stated that is fine.

Mr. Feeney described the plan, noting it was initially proposed in conjunction with the Garden Apartment plan and there were two reasons for filing it: 1) the road to Reed Park was to be a public way; and 2) to achieve a zoning freeze. He stated that now the Garden Apt. plan has been denied they still want to go ahead with the special permit request for this plan. He described the road design. He stated that waivers are requested to have a road in excess of 1,000 feet long and for pavement width because of the double-barrel road design. He stated the applicant would rather go ahead with this plan than withdraw it.

Ms. Altamura stated she doesn't understand this plan. She stated it does not count as a viable Open Space and Landscape Preservation Development (OSLPD) plan, and the applicant can follow it up with a conventional definitive plan if this is denied. She stated it was originally the plan to follow the conventional plan. Mr. Feeney stated the Board can deny it if it wants to, but the applicant would not come back with a conventional subdivision plan. He stated the only benefit to this is to continue toward the zoning freeze. Mr. Coolidge stated the applicant needs to show the by-right/grid plan for comparison, according to the OSLPD bylaw. Mr. Feeney stated there would be two building lots on this plan. Ms. Wright noted that there may be two lots but not necessarily two houses, since the large lot would have enough frontage for several more lots. Mr. Feeney stated that could be a reason for denial. Ms. Altamura asked if the Board can approve it as a two-lot OSLPD plan. Ms. Lazarus replied yes, with whatever waivers the Board decides to grant.

Ms. Wright asked why the double-barrel road is proposed again when the Board has already denied it twice. She stated that if the developer really wanted the plan approved, he would have

revised the plan. Mr. Feeney stated that the plan was submitted when the Garden Apartment proposal was ongoing, and the intent was to have it rejected so they could have a definitive subdivision plan with the road to be accepted. Mr. Coolidge stated it is not a normal OSPLD submittal, noting that a single roadway is sufficient for two houses. He recommended that the applicant withdraw and submit a regular OSPLD plan. Mr. Feeney stated the Board could condition its approval on the road design. Mr. Coolidge stated the Board would set a precedent with regard to waivers, and the applicant hasn't provided all the necessary information. Mr. Feeney stated the proposed design is on the plan.

Mr. Dourney asked if the Board could approve the plan without the waivers. Ms. Altamura stated she thinks the plan denied by the Board before was submitted in good faith, but now the applicant is just playing games and she is disappointed. She stated the Board shouldn't bypass the OSPLD plan requirements, and this is a slap in the face. Mr. Abate stated the applicant can withdraw and resubmit a better plan or play his cards and get a vote with the Board's imposed conditions and/or no waivers. Mr. Feeney stated he wants to keep the options open, and he doesn't want to waste time on a plan that won't be built. Mr. Goncalves stated the plan is not feasible. Mr. Ballantyne stated the Board should approve it without granting the waivers, noting the applicant will be locked into an OSPLD definitive plan rather than a conventional one.

Andre Griben, 6 Winter St., asked what the difference between this plan and previous submittals is. He questioned what has changed with respect to traffic concerns. Mr. Coolidge stated there are only two lots.

Jim Weckback, 273 Wood St., asked how the road could be built if the 100 ft. perimeter buffer was not waived, as all of the frontage would be a buffer and along Reed Park there would be a buffer required. Ms. Lazarus stated that the intent of the buffer requirement is not to block access to the street or adjoining property, and the Board has always interpreted it in a manner that would allow access to streets and adjacent property.

Mr. Weckback stated that the double-barrel road forces egress to the east which is a dangerous situation. He stated that sometimes people are confused by double-barrel roads and go in the wrong way.

Paul August, 65 Winter St., asked how many lots could be built on a conventional plan. Mr. Feeney stated the plan submitted for comparison purposes has 3 lots.

Mr. Goldman asked why not propose a shorter road at the center of the property instead, which might be better in that location. Mr. Feeney stated the plan was submitted to get roadway access to Reed Park and accommodate the Garden Apartment proposal.

Mr. August stated he is confused, and there is no plan that actually says what the developer is going to do. He stated that Friends of Whitehall has tried to respond to this plan, and it was difficult. Mr. August distributed a letter dated June 27, 2005 to the Board. He stated they have concerns with the waiver requests, traffic, sight lines, and viewshed.

Ms. Altamura stated if the plan is approved without waivers, there would need to be a 100 ft. buffer and one building lot plus another lot with the existing house. Mr. Ballantyne stated the land will be developed eventually, but probably by a different plan. He stated that this plan is the best alternative for the Town right now.

Bill Moser, 4 Wescott Dr., questioned which plan was submitted. Mr. Feeney showed the plan. Mr. Moser asked if this means there will be only two houses or it will be a Garden Apartment development eventually. Ms. Altamura stated that the definitive plan submitted could be a two-lot plan, or other plans could be submitted. Mr. Moser stated the developer has wasted people's time, and the Board needs to tell him to come back with a serious plan. He stated the hearing should be continued. He stated the developer is trying to circumvent the laws and the Board should get legal advice.

Steve Warren, 23 Parker Point Rd., asked if the applicant owns the land.

Kevin Kohrt, 35 Winter St., noted that there is a limit of 500 ft. of dead end road on conventional plans. He stated that plan shouldn't be considered a threat.

Barry Richards, 39 Parker Point Rd., asked how long a plan approval is valid. Ms. Lazarus replied that a special permit is valid for two years.

Ms. Wright stated this might mean a new disturbing chapter in planning, and someone could submit any OSLPD plan that is garbage with the intent that it be denied, so they can then submit a conventional one. Mr. Ballantyne stated the Board should approve the OSLPD plan to lock it in.

Mary Pratt, 102 Fruit St., asked if a conventional plan was submitted for comparison, and the answer was yes. She stated that Article 97 of the Massachusetts Constitution is triggered if Reed Park is disturbed. Mr. Feeney stated that the plan only provides access to Reed Park, it does not change it.

Brian Morrison, 22 Piazza Ln., stated the Conservation Commission has the ability to deny something because there is insufficient information, and asked if the Planning Board could do the same.

Mr. Coolidge stated if he was voting on this matter, he would ask for a continuance of the hearing and ask for more information to be submitted. Ms. Wright stated the applicant is playing games. She stated there is lots of information missing, but the Board can play games too by locking him into an OSLPD plan, but the Board shouldn't have to behave that way. Mr. Goncalves stated the applicant should request to withdraw the plan and if they are unwilling to give the information requested, the Board should act accordingly. He stated the Board needs to consider precedent made by approving the plan. He stated they should continue the hearing and request information or allow the plan to be withdrawn. Ms. Altamura agreed, adding that she is tired of going through this. Mr. Herr and Mr. Dourney stated the hearing should be continued. Mr. Aghababian stated the hearing should be continued and the Board should get more information and look at the bylaws. He stated the filing may be incomplete. Mr. Feeney asked

what information isn't shown on the plan. Mr. Goncalves noted that conceptual house locations aren't shown. Mr. Feeney stated he does not have the authority to request to withdraw the plan.

The Board voted 7 in favor with Mr. Ballantyne voting no and Mr. Coolidge abstaining to continue the public hearing to August 8, 2005 at 8:00 PM.

Mr. Herr stated the Board should seek advice from Town Counsel relative to the pitfalls of every possible course of action. Mr. Abate reminded the applicant and those in the audience of the submission deadline of noon on Thursday before a Planning Board meeting.

The Board voted 8 in favor, with Mr. Coolidge abstaining, to request the use of Town Counsel in this matter.

4. 19 North St. – Kevin Hoey

Mike Shepard, Director of Municipal Inspections, stated that about two years ago, Mr. Hoey applied for a permit to build a barn/shed at 19 North St. and a plot plan was submitted that showed the location meeting the setback requirements, so he issued the permit. He stated he subsequently received a call from an abutter when the land was cleared, informing him of the no-cut easements. He stated that the permit was revoked in May, 2004. He referred to a letter received recently from the abutter with photographs of the area cut and now being used for a parking area. He stated that there is open space along North St. and houses are set back.

Mr. Abate asked when the land was clear-cut. Mr. Hoey stated that he never intended to build a parking lot, but a barn. He stated he had no prior knowledge of the problem, and he got the requirements for a building permit from the Building Dept. and the Bd. of Health. He stated he thought he asked the right questions, and was informed of the zoning setback requirements. He stated it was his original intent to put a garage in a different place at the back of his lot, but there was a problem with the setback requirements there. He stated he provided plans, the permit was approved, and site preparation began. He stated he was then informed of the no-cut easement. He stated there has been no deliberate attempt to circumvent the easement. He stated there was no easement described on his deed and he has spent \$19,000 on clearing and on a builder. He stated he spoke with Ms. Lazarus, who advised him of some options. He stated he was remiss in not addressing it then.

Ms. Altamura stated the attorney preparing for the closing would have noticed the easement, which is clearly marked on the Hopkinton Meadows subdivision plan. Mr. Hoey stated that the deed only mentions a driveway easement. Mr. Goncalves asked if a plot plan was received when he bought the house. Mr. Hoey showed the plan to the Board that was submitted with the building permit application. Ms. Lazarus stated that the Tye's, the abutters at 17 North St., were away and unable to attend this evening.

Ms. Wright asked if it didn't strike him as odd that clearing so close to a neighbor was a good thing, and is out of character for the area. Mr. Hoey stated that other people have detached garages in the area. Ms. Wright stated that tree cutting right up to the property line is an issue. Mr. Hoey showed pictures of nearby homes with garages and cleared areas. He stated he has a proposed solution, and that is to submit an application to increase his building envelope by 100

ft. to the north, toward North St. He stated that some building envelopes on the plan were arbitrary, noting that lot 1 is 300 feet wider, for example. He stated he could then build the garage and re-landscape the area, providing a buffer to the abutter. Mr. Coolidge asked Mr. Shepard if all of the other lots shown in the pictures are in compliance, because they appear to show a lot more clearing. Ms. Lazarus stated that those lots are on the other side of North St., are outside the subdivision, and do not have such easements.

Mr. Coolidge stated the intent of the no-cut easement was to have the area remain wooded. He stated the Board saw the reason the developer saw, which was to lessen curb cuts, so the Board allowed the OSLPD plan with the common driveways. He stated the no-cut was to protect the woods between houses and the street and to keep the character of the street and the Town. He stated the easement should have been on the deed, and he hopes an attorney would have pointed the easement out to him when it was purchased. Mr. Goncalves asked if he is the original owner of the property, and Mr. Hoey replied yes. He submitted a letter from the Coffmans at 21 North St. Mr. Abate read the letter of support from the neighbors at 21 North St. Mr. Goncalves referred to the photos sent in by the Tye's at 17 North St. He stated the clearing is in direct violation of the purpose of the easement. Ms. Wright asked Mr. Hoey if he had known about the easements, would he have been able to locate the garage elsewhere. Mr. Hoey stated it would have been in the southwest corner, but it would need a variance from the setback requirement. He stated he thought it would be difficult to get a variance. Mr. Shepard stated that the Zoning Bylaw authorizes the ZBA to grant a special permit to reduce the side and rear setback requirements, and such permits for things like this have been granted easily. He stated he would probably qualify for such a permit, and could apply to the ZBA for that. Mr. Shepard stated that the plot plan submitted with the application showed missing information, the easement, because they used the certified plot plan for the original foundation.

Mr. Abate asked what should be done. Mr. Shepard stated Mr. Hoey should apply to the ZBA for a special permit to put the garage at the end of the driveway. Ms. Altamura asked Mr. Hoey if he would be willing to apply for the special permit. Mr. Hoey stated he has spent \$19,000 on this already. Mr. Ballantyne stated if it isn't built where the land has been cleared, it should be reforested. Ms. Wright stated that the property value of the abutter at 17 North St. has been affected. Ms. Altamura noted that whether or not the owner knew about the easement, it did exist. She stated that ignorance of it is no excuse. Mr. Abate stated it would set a precedent if the easement can just be moved because this has occurred. Ms. Lazarus stated that Mr. Hoey is seeking feedback from the Board. Mr. Hoey stated he could move the garage 30 feet from the 17 North St. property line. He described the proposed garage, which would be 42 ft. x 50 ft. Mr. Abate noted the garage would be larger than some houses. Ms. Wright stated that the grading was also done and the structure would be above the natural grade. Mr. Hoey stated he leveled it for the building. He stated he talked to the Tye's a while ago, and they said they wanted a buffer. Ms. Wright asked why not build the garage on the original grade level. Mr. Hoey stated he needed to meet the grade of the driveway and have a level area.

Mr. Abate stated he is not in favor of changing the plan because it sets a precedent. He stated the owner should improve the views there. Mr. Ballantyne stated Mr. Hoey could come back and amend the plan and discuss it with the Tye's, and move and buffer the building as appropriate. Mr. Goncalves and Ms. Wright stated they were not likely to approve a change in the easement

location. Mr. Aghababian stated that something needs to be done. Mr. Coolidge stated the Board should pay attention to the plan and the deeds. He stated that easements count and people need to be aware when they buy property. He stated the plan was a compromise, and the easement is on the plan which is recorded, and in the Board's decision also.

Mr. Shepard stated a compromise could be to move the no-cut easement to the back of the lot instead of the front and shift the garage so it isn't next to a neighbor. Mr. Abate stated he isn't looking for an out, he wants to uphold the Board's prior decision. Mr. Coolidge stated the intent was to protect North St. Mr. Shepard stated it will take time for the land to grow back. Mr. Ballantyne stated the Board should get the Tye's input and look at alternatives. Mr. Abate asked if the abutter would really want a 42' x 50' garage next to them instead of woods, and Mr. Ballantyne replied he didn't know. Mr. Coolidge stated that the letter from the abutter asks for reforestation of the area. Mr. Aghababian stated it should be worked out somehow, and the Board shouldn't take a hard line. Ms. Wright stated that would send a message. Mr. Herr agreed, noting that Mr. Hoey has pointed out that it is better to ask for the approval after the fact. Mr. Dourney stated that Mr. Hoey has done the right thing, going through the process. Mr. Abate stated it seems like 5 or 6 members aren't willing to amend the subdivision plan. Mr. Ballantyne asked Board members if it would make a difference if the Tye's were in favor of the garage. Mr. Coolidge stated that puts too much pressure on the abutter to leave it up to them. Mr. Goncalves noted this plan was intended to protect a scenic road, and it would send a message if the Board made the change. Mr. Hoey stated there is an appeal process if the Board denies his request. The Board agreed.

5. Continued Public Hearing – Maspenock Woods – Garden Apartment Concept Plan – 5 and 11 West Elm St.

The Board reviewed the request of the applicant to continue the public hearing without discussion this evening. The Board voted 8 in favor, with Mr. Aghababian abstaining, to continue the public hearing to September 12, 2005 at 7:30 PM.

6. Deerfield Estates/Dempsey House

It was noted that a representative of the Historical Commission was not in attendance as expected. Ms. Wright stated that Board members should go to see the inside of the house. She stated she thinks a preservation architect, i.e. a specialist, should look at the building. She stated she doesn't think that Gerry Lindsey, Capital Group Properties, who met on-site with them, has the authority to do anything. Mr. Ballantyne stated he is disappointed that no one from the Historical Commission has shown up tonight, and that is typical. Mr. Coolidge stated he thought the developer had agreed to hire a preservation architect to come out, and that the Commission was waiting for that. Mr. Goncalves suggested sending a letter to all parties asking for a timetable for a definitive outcome. He stated this could hold up the bond process if it isn't done with due diligence.

Ms. Wright stated the Planning Board should support the Historical Commission, and the developer will pay attention to that. She stated the developer can ignore the Commission, but if they have a message from the Planning Board that this is important, they will pay attention to it.

David Adelman, 183 Pond St., stated that Christopher Noonan of Mendon is an individual with experience in this field and he could help.

Mr. Herr stated he will call Mr. Lindsey, since he owes the Board some options. It was decided that Mr. Herr would call Mr. Lindsey and Roger Mezitt of the Historical Commission.

7. Master Plan Committee

The Board voted unanimously to re-organize the Master Plan Committee as follows:

Regular Members: Sandy Altamura, Julie Burke, Ken Clark, Carol DeVeuve, R.J. Dourney, Gail Fallon, Russ Greve, Muriel Kramer, Roger Mezitt, Trish Perry, George Riemann, William Shaw.

Associate Members: Mark Abate, Brian Morrison, Jack Speranza, James Sterbenz, Dave Adelman, Pam Duffy, Ron Eldridge, Jim Hendry, Allyson Hughes, Nancy Kelleigh, Jeanne Rodeck.

8. Other Business

The Board voted unanimously to pay outstanding bills.

Whitehall Estates Garden Apartment Concept Plan Decision – The Board reviewed and discussed the draft decision, and decided to review it again at the next meeting.

Ms. Wright referred to some case studies received, and asked if the Town has looked at logging or having forestry management plans on the land it owns. Mr. Coolidge stated the Open Space Preservation Commission has talked about it a lot. He stated that when the Planning Board creates open space in subdivision plans, they are generally small, but when the OSPC purchases land it is larger and they could have such a plan. He noted that the Phipps land that was bought by the Town has such a plan, where wood is to be cut every 20 to 25 years.

Adjourned: 10:00 PM

Elaine C. Lazarus, Planning Director

Approved: July 25, 2005