

HOPKINTON PLANNING BOARD

Monday, March 27, 2006 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. Public Hearing – Deerfield Estates – Amendment to Senior Housing Development Site Plan – Lumber St.

Chuck Scott, engineer, Bill Depietri and Martin Loiselle, Capital Group Properties, and Bill Fleming, landscape architect, appeared before the Board. Mr. Scott described the changes that were approved by the Planning Board in the concept plan special permit, and described the requested changes to the Site Plan. He reviewed the Board's special permit conditions. He stated that 450 linear feet of new stone wall is proposed near Lumber St. with a landscape berm behind it, and the housing side would be 4 to 8 feet lower than the top of the berm. He referred to the comment from the Board's engineer, Fay, Spofford & Thorndike (FST), relative to the infiltration system proposed in the berm, noting that it is the only appropriate place for it. He stated there would be 2 ft. between the bottom of the system and the groundwater, the chambers would be 3 ft. tall, then another few feet of earth and landscaping on the top. He stated they will provide additional information to FST as requested. He referred to condition #3, stating that utilities would be provided to the building that will be conveyed to the Historical Commission. Mr. Herr asked if it would be the Town's responsibility to hook up to the utilities, and Mr. Depietri stated that Capital Group will connect the house to water and sewer and it already has electric service.

Mr. Scott referred to condition #4, stating that the Bd. of Health has approved the expansion of the septic system to accommodate the additional usage, and a letter has been sent to DEP requesting review of the new data and approval of the new radius around the well. He stated they need to provide a plan to DEP to start that process, which shouldn't be a problem. He referred to FST's comments about drainage, noting that there will be additional water flowing toward Lumber St. because of the landscape berm, so they need to look at that. He stated they may need to place a catch basin there which should not be a problem. He stated they will provide soil testing information, plus cross sections. He stated that the property line around the house will create a lot that does not meet zoning requirements, so they will need some relief from the requirements.

Mr. Depietri stated they may have a problem getting a variance, and an alternative is an easement donated to the Town instead of a lot. Mr. Scott noted that an easement may be easier. Mr. Goncalves asked if it had been discussed with the Historical Commission, and Mr. Depietri

stated it had not. Mr. Ballantyne stated an easement may make more sense, and Mr. Depietri stated it would be easier with respect to the utilities. Ms. Lazarus noted that a lot which does not meet the area or setback requirements could be created as long as the frontage requirement was met. The various alternatives were discussed. Mr. Ballantyne noted that if there is an easement and the Town doesn't support the building, it could be deeded back to the condominium association. Ms. Wright stated her concern is the house and if the lot is owned by the Town that would be best. Mr. Depietri stated he would bring a plan of the lot to the next meeting.

Mr. Fleming described the landscape plan and plant materials proposed. Ms. Wright asked if there would be a conflict between the landscaping materials and the underground infiltration chamber, and Mr. Fleming replied no. Ms. Wright questioned the white picket fence on the plan at the old house. Mr. Fleming stated they were thinking that may be attractive and in the historical context if the Historical Commission agrees. He stated they are also proposing lilacs.

Mr. Scott reviewed conditions #6 and 7. He stated the Board has received a copy of a letter of agreement between Capital Group Properties and the Makynens, and they would plant 25 arborvitae on their property as described in the letter.

Mr. Herr asked what the house will be used for. Ms. Wright stated it is most likely that the Historical Commission will use it as a museum with small tours.

The Board voted unanimously to continue the public hearing to Monday, April 10, 2006 at 9:00 PM.

2. 81-P Plan – Beach St. – Busconi

Jim Troupes, surveyor, described the plan to the Board, which would create two lots out of the right of way of Beach St. He stated the purpose of the plan is to start the process for the owner to claim the property. He stated that a 1930's plan created the lots and roads in this area, and this portion of Beach St. is a paper street that has not been constructed. He noted that the applicant owns adjacent property on Beach St. and Duffield Rd. Board members expressed concerns about whether the owner has the right to assume ownership of the land, and what the impact would be on property owners further down the road. Mr. Troupes stated the land can't be deeded, the plan would just begin the process of him trying to obtain ownership. Ms. Lazarus noted that the plan creates parcels labeled as unbuildable and appears entitled to endorsement. She noted that plan endorsement only means that the plan is not a "subdivision" as defined in the Subdivision Control Law (SCL), and nothing else. She noted that the SCL does not require that the applicant be the owner.

Wayne Davies, 3 Stony Brook Rd., stated that the owner may lose the nonconforming status of the abutting lots if the area of each is expanded.

The Board did not take any action on the application.

Mr. Aghababian arrived at this time.

3. Proposed Zoning Change – 159, 161, 167 West Main St. and 22 South St.

Peter Markarian and Chuck Joseph appeared before the Board. Mr. Markarian described the proposed zoning change to Business for 159, 161 and 167 West Main St. and 22 South St. He stated they wanted to provide some information to the Board prior to the public hearing, and they will also be attending the next Zoning Advisory Committee meeting. He stated they had met with the Economic Commission and it stated its opinion that the area is underdeveloped and the change could provide better tax revenue for the Town. He stated they could have a commercial or retail project on the property, and they haven't yet determined how it would be redeveloped. He stated that the numbers for either commercial or retail would work. He stated that they could build office or retail uses, they haven't gone to the marketplace with it to see what interest there would be, and they don't have specific tenants in mind.

Mr. Dourney stated it is a good example of what can be done to increase the tax base, and it is already commercially zoned. He stated the area is conducive to this use.

Ms. Altamura stated this could result in strip malls, which is what the Town doesn't want. She stated she doesn't want retail on this side of town, noting the Town worked hard to implement the Rural Business zone that is there now.

Mr. Aghababian stated he would like to see these uses in the downtown where lots can be combined.

Mr. Markarian noted that before anything is built they will need to go before the Planning Board and Design Review Board for review of the plans.

Mr. Abate stated his concern is the road and the intersection, which already have capacity problems. Mr. Markarian noted that depending on the uses of the property, it could serve the South St. community during weekdays and the larger Hopkinton community at different times. Mr. Ballantyne noted that mixed uses on the property could create such a balance.

Mr. Joseph referred to the master plan survey, Voices for Vision, and other indications that residents are in favor of more retail, and the Economic Commission agrees. He stated this will not be intrusive into residential neighborhoods, and Hopkinton now has 15,000 people. He stated that if it is done well, it could be an asset.

Ms. Wright stated that an egress onto South St. could alleviate some of the traffic concerns. Mr. Markarian agreed, stating they would also have to design a project so people do not use the property as a shortcut. Mr. Ballantyne asked if they are willing to pay for a study and mitigation with some changes to the traffic lights. He stated there is a problem there now. Mr. Markarian stated they are not ready to commit now, but they will do a traffic study if a project is proposed.

Mr. Goncalves expressed concerns on the impact of residents in the Lake Maspenock area, especially with respect to traffic.

Finley Perry, Chairman, Economic Commission, stated they met with the proponents and voted unanimously to support the proposal. He stated this area needs attention since no business has worked at 167 West Main St. since the Stickey Wicket left.

4. Land Use Study Committee

Finley Perry, Chairman, Land Use Study Committee (LUSC), noted that the Committee was formed to deal with the impending Weston Nurseries sale, and their initial effort was to formulate the Town's response to a ch. 61A offer. He stated they prepared a financial model and Request for Interest (RFI) to find potential partners for the Town in developing and/or buying the property. He stated the process has gone on longer than anticipated, and the recent ch. 11 bankruptcy filing by Weston Nurseries has changed it again. He stated they are not entirely sure where the ch. 61A right stands and what the town options to purchase the property are now. He stated that through the process opportunities would be created, such as to match or exceed a price, and also the ch. 61A process. He stated they have a clear understanding of what the opportunities are in response to a private sale, but there has been no private sale yet, if at all. He stated the Town has a chance to plan the ultimate disposition of the property. He stated that in any sale, the purchaser will need to get economic value substantial enough to equal 10 to 12 times the purchase price of raw land. He stated that any plan will require a major rezoning and/or special permit process, so there needs to be a plan backed by the will of the people in Hopkinton. He stated the LUSC voted to undertake a master planning process for East Hopkinton, and described the study area. He stated large parcels within the area include the YMCA, Barry Smith, Laborer's, and Weston Nurseries. He noted that Ms. Lazarus had prepared a Request for Proposals (RFP) which has been distributed to the Board for review. He noted that the outcome of the master planning process could be an overlay zoning plan, and read a portion of the scope of services from the RFP. He stated the Community Preservation Committee (CPC) voted to support a town meeting article for the funding. He requested Planning Board support for the process.

Mr. Herr asked about the budget for the process. Mr. Perry stated the CPC has authorized up to \$200,000. He stated it is likely to be a one to two year process to complete the plan. He stated that they will receive the responses before town meeting, so will know more about the cost.

Mr. Aghababian stated the Town could end up with something that is not useful. Ms. Altamura stated she is concerned that developers could ignore an overlay and choose not to apply under it. Mr. Perry noted that it is his personal assumption that it would be an overlay, but that isn't what the RFP says. Ms. Altamura stated she keeps hearing that Pulte Homes will buy the property, and is concerned about that. Mr. Perry stated that the bankruptcy process has a "stalking horse" system, where one entity has an exclusive right to negotiate, then others can match or better it. He stated that Pulte is the stalking horse at this point as they would build a Del Webb community, but that that Tony Green, possibly the entity that the Town prefers, is more about the process than a specific product.

Mr. Ballantyne asked why downtown wasn't included in the area, as the plan could resolve some of the traffic problems there.

Ms. Wright stated the Planning Board is the planning board and it should be involved and control the process as is proposed. Mr. Aghababian stated he would want to review the responses before starting a process.

The Board voted unanimously to endorse the RFP process and issue the document.

5. Continued Public Hearing – Proposed Zoning Bylaw and Map Amendments

Mr. Herr described the process for the hearing, with 30 minutes to conclude discussion of the Water Resources Protection Overlay District map, 30 minutes for the Water Resources Protection Overlay District bylaw, then the remainder of the articles.

A. Water Resources Protection Overlay District (WRPOD) Map

Eric Sonnett, Chairman, Board of Selectmen, stated the reason why the new boundaries are proposed is because of a warning from Town Counsel relative to the Fruit St. parcel. Mr. Sonnett stated that Town Counsel said that overlay districts for water protection are at risk if it can't be proven that the area contributes to the water supply. He stated that the current overlay was from an era where there was no scientific study and they defined a district that connected hilltops. He stated the Comprehensive Wastewater Management Plan (CWMP) defined the areas. He stated the Town asked its engineers to show on a map all of the areas in town that affect the water supply of all towns in the area, and those are shown on the new map. Mr. Sonnett described the zone 1, 2, and 3 areas on the map. He stated that a court case has put the burden on the Town to show that the areas contribute to the water supply.

Kevin Kohrt, 35 Winter St., noted that at the last hearing Mr. Sonnett stated the current district was illegal, and questioned where this fact was identified.

Mr. Sonnett stated that the district hasn't been challenged in Hopkinton, but elsewhere. He stated he is concerned there could be the same result here. He stated he may have misused the term "illegal".

David Goldman, 20 Fruit St., read from the judge's decision in *Lorden v. Town of Pepperell*, and distributed a printout of a PowerPoint presentation to the Board regarding the court case and the current WRPOD. He recommended that the Board combined the old and new maps to create a larger district. Mr. Dourney asked if the old hand drawn one is better than the new scientific one. Mr. Goldman stated that the old one was done on a different scientific basis which included more surface water, and they should be combined.

Joe Strazzulla, 219 Pond St., stated he is a former member of the Planning Board and Board of Selectmen, and remembers that the current map was based on high ground connections and there were no engineering studies. He stated he would concur with the professional studies, and the map should have a scientific basis for it.

Mary Pratt, 102 Fruit St., stated that Jim Whalen was on the Conservation Commission for many years and participated in the original delineation. She stated that he said it was delineated scientifically. Mrs. Pratt stated that recently, the Town tried to find another well location close to #1 on Fruit St. and it couldn't be done.

Lyn Branscomb, 8 Kerry Lane, asked what the consequences are for development of the Fruit St. property if the map is changed or not changed. She asked if it would affect the DPW or the sewer treatment plant. Mr. Sonnett stated development of the Fruit St. property has

nothing to do with this proposal. Ms. Branscomb asked if it has no effect on those uses. Mr. Sonnett stated that Town Counsel has opined that the uses approved by Town Meeting are allowed by right on the Fruit St. parcel and the overlay district doesn't make a difference.

Karen Webb, 5 Huckleberry Rd., asked about the impact on the town if the wells on Fruit St. are contaminated. Mr. Sonnett stated that studies approved by the State said the plant location and the hydrology and modeling indicated that they can't create a situation where contamination would happen. He stated the Town hired engineers to review this and validate the findings, and they did that. He stated they said that if some assumptions were changed in the model the results would change, so they changed them and got nearly the same result. Ms. Webb asked what would happen if there was a sewer pipe break or something goes wrong like in Holliston.

Joe Markey, 39 Ash St., noted that the district expands with the inclusion of the zone 3 for the Ashland well, and the existing uses that would be prohibited will be allowed to remain. He asked what the Town would do differently there to protect the water when these uses, such as gas stations, will remain. Mr. Sonnett stated that existing businesses will be grandfathered and some uses would be prohibited in the future.

Ron Nation, 43 Smith Rd., submitted a petition, stating it was signed by residents who think the change is a good idea. He asked if the Town plans for a problem like an explosion and contamination, a doomsday scenario. Mr. Sonnett stated the Town has a disaster plan that addresses a lot of scenarios, like the house explosion a few years ago. He stated the plan is very detailed.

Carol DeVeuve, 47 Chamberlain St., stated she had submitted comments at the last hearing. She stated the bylaw provides protection in the areas that are covered by the district. She noted that the proposed map cuts the aquifer in half, and the bylaw which strives to protect aquifers, is in conflict with the map. She stated that Fruit St. is the sole source aquifer for Hopkinton. She stated that the State has said that the zone 2 for well H2 will be re-drawn if effluent is discharged to the Fruit St. property.

Ken Weismantel, 145 Ash St., stated the plan protects the part of the aquifer that is used by the well. He stated that the Town once tested water in the Huckleberry Rd. area and it was unusable. He stated the Pratt's did not allow for exploration on their property but Jim Pyne did. He stated that DEP said that the Town can't put more than one more well in this area, and DEP may require the recharge by treated effluent on the property.

Mr. Sonnett stated that the zone 2 in the Fruit St. area is approved except for well H2. He stated that the information has been submitted to DEP and they will approve it when the well is permitted. He stated the aquifer is a good one, but Whitehall Brook is stressed so the treated effluent discharged to the brook would be beneficial.

Andre Griben, 6 Winter St., asked if the purpose of the bylaw is to protect the whole or part of the aquifer. Mr. Sonnett stated the issue is the water supply and its protection.

Mr. Davies stated that if the map is questioned, the Town wouldn't call the person who drew the current map to testify, it would call EarthTech which did the science and study which resulted in the new map. He stated the Planning Board needs to study the new map to see if it protects the Town's interests. He stated the WRPOD is bigger on the new map and a section is carved out on Fruit St. He stated the problem is that the Board of Selectmen is the proponent for construction on the Fruit St. property, and Town Counsel hired by them said he represents the Fruit St. development interests. He stated the Planning Board should address this issue. He stated the Board should talk to EarthTech and ask them these questions.

Mr. Kohrt asked if the Pepperell case is applicable to this situation. He stated he has read the case and doesn't think so. He stated that if someone sues, the whole district doesn't get thrown out, and the Town shouldn't reduce the district area just to protect the Fruit St. project. He stated that if the whole sub basin of the Ashland well is included in an expanded area, why not do the same for Hopkinton's wells on Fruit St.?

Mr. Sonnett stated that at the Zoning Advisory Committee meetings on this topic, both EarthTech and Town Counsel appeared and discussed these issues.

B. Water Resources Protection Overlay District Bylaw

Ms. Lazarus noted that the modifications to the WRPOD bylaw were in response to issues which had arisen with the present language, and to conform more closely to the DEP model bylaw which was revised in 2005.

Mr. Davies, Board of Appeals, related the history of a disagreement between the Zoning Enforcement Officer and Town Counsel/Board of Selectmen with respect to this bylaw and the Fruit St. parcel. He stated this issue has not been resolved. He stated that the Board of Appeals requested the Planning Board look at the bylaw and provide clarity. He stated that the bylaw is more clear as proposed. He stated that now he understands the language.

Mr. Strazzulla questioned the provision which requires a special permit for application of pesticides, herbicides and fertilizers for commercial purposes on nonresidential properties, and asked if it is the intent to require businesses to apply for a special permit for normal lawn maintenance. The Board stated it was not the intent. Mr. Strazzulla questioned another provision which requires that the groundwater recharge systems be covered with natural vegetation, and asked why they couldn't be under parking lots, for example. The Board noted that the language should be changed to permit that.

Don Bartlett, 7 Lorigan Rd., asked if the bylaw would apply to all areas within the district in the same way, and the answer was yes.

Robert Falcione, 12 Claflin Pl., questioned a provision which requires a groundwater recharge system/drainage if 15% or more of a lot has impervious surface, and asked if that number is too high. Ms. Lazarus stated that realistically, such a system would be required before the 15% figure is reached.

Ron Roux, Zoning Advisory Committee, stated the ZAC was formed in the fall, and it discussed this topic weekly. He stated that the ZAC heard a lot of information and at the conclusion there was a 6-2 vote to support this new map and bylaw. He stated that EarthTech doesn't have a vested interest in this. He asked the Planning Board to support the article.

Ms. DeVeuve stated that Ashland's zone 3 includes the whole basin, the vast majority of which is in Hopkinton and only a small portion in Ashland. She stated the change to cover the downtown in this district will affect development potential downtown and in the Lumber St. area.

Mr. Davies asked if the term "truck terminal" includes the overnight parking of trucks. Ms. Lazarus noted that ZAC discussed that and its conclusion was that overnight parking or long term storage should be prohibited.

Mr. Strazzulla asked that basements be included in the list of items that are allowed to be within 4 feet of the high groundwater table, noting that the downtown does have high groundwater.

Bill McCarthy, 5 Linden St., raised an issue with respect to the issuance of special permits. Mr. Davies stated that the language is acceptable as written.

Mrs. Pratt asked that J. T. Gaucher, DPW Director, provide information with respect to underground infiltration basins and possible problems with water flowing to other properties. Mr. Gaucher stated that such systems typically have emergency overflow systems.

C. Historic Resources: Open Space and Landscape Preservation Development, Senior Housing Development, and Garden Apartment Bylaws

It was noted that the Planning Board had submitted a nearly identical bylaw to that submitted by the Historical Commission (HC) and that the HC had submitted two others with similar changes to the Senior Housing and Garden Apt. bylaws. Ms. Wright stated the intent is to add the word "historic" to each bylaw, and it is the same concept for each. She stated the proposal doesn't change anything that is being done and it is intended to save an applicant a lot of time when proposals are submitted for properties with historic structures. She noted that they had thought it was covered by the existing language, but it is not. She stated there is a desire to speed up and streamline permitting, and this will help. She stated the bylaw would be more specific as to what the Town is looking for.

Mr. Strazzulla asked about the meaning of "historic".

Mr. Dourney stated that the rural character that people want to preserve includes old houses and history.

Mr. Markey stated it is a good idea to let applicants know what the Town is looking for.

Mr. Kohrt asked if other terms in the bylaw, such as "natural resources" are defined.

The Board voted unanimously to close the public hearing.

The Board voted unanimously to recommend that Town Meeting adopt Planning Board Article A, which would change the dimensional requirements in the Business District, with the language as modified by Town Counsel.

The Board voted unanimously to recommend that Town Meeting adopt Planning Board Article B, which would allow mixed use buildings in the Business District, with the language as modified by Town Counsel.

The Board voted unanimously to recommend that Town Meeting adopt Planning Board Article C, which would add Off-Street Parking Facility as a use allowed by special permit in the Business District, with the language as modified by Town Counsel.

The Board discussed Planning Board Article D, Landscaping Business and Storage/Staging Facility. Ms. Altamura stated she understands why it needs to be addressed, but it shouldn't be proposed as written, it would be spot zoning, and could be next to anyone's house. She stated she feels it isn't ready for town meeting. She stated if it must go forward, it should include limits on the number of vehicles parked outside and other restrictions. She stated the bylaw needs work and she is opposed.

Mr. Dourney stated it could have more limiting language, but there is a problem that needs to be addressed now.

Mike Shepard, Director of Municipal Inspections, stated he could tell all of the landscaping businesses there now to go away or the Town can try to find a place for them. He stated the ZBA process will address the concerns, or it will not grant the special permit.

In response to a question, Mr. Davies stated the Board would apply the bylaw however it is written.

Mr. Roux stated there are a lot of these businesses around with no problems, and others where there are. He stated this new process would allow them to go to the ZBA and it would decide which to permit on a case by case basis.

Mr. Davies stated that uses allowed by special permit are analyzed by the ZBA, and it respects property rights but permits may not derogate from the purpose or intent of the bylaws or unreasonably interfere with the neighbors. He stated each is evaluated on a case by case basis. He stated that conditions of special permits come about through members experiences and information received from abutters and neighbors.

The Board voted 8 in favor with Ms. Altamura opposed to recommend that Town Meeting adopt Planning Board Article D, Landscaping Business and Storage/Staging Facility, with the modified language recommended by Town Counsel and Ms. Lazarus.

The Board voted 7 in favor with Mr. Goncalves and Ms. Altamura opposed to recommend that Town Meeting adopt the new Water Resources Protection Overlay District Map.

The Board voted unanimously to recommend that Town Meeting adopt the new Water Resources Protection Overlay District bylaw, with the language changes discussed at the public hearing and recommended by ZAC and Town Counsel.

The Board voted 7 in favor with Mr. Aghababian and Mr. Ballantyne opposed to combine the HC and Planning Board historic resources articles into one, and recommend that the Town Meeting adopt the changes.

6. Administrative Business

The Board voted unanimously to pay outstanding bills. The Board voted unanimously to approve the Minutes of March 13, 2006.

Adjourned: 11:05 PM

Elaine C. Lazarus, Planning Director

Approved: April 24, 2006