

HOPKINTON PLANNING BOARD

Monday, January 29, 2007 7:30 P.M.
Hopkinton Town Hall

MINUTES

PRESENT: R.J. Dourney, Vice Chairman, Scott Aghababian, Sandy K. Altamura, John H. Coolidge, Jaime Goncalves, Joe Markey, Claire Wright

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

.....Cobi Wallace, Administrative Assistant

1. Joint Meeting with the Board of Health and Conservation Commission

The members of the Planning Board were joined by Tom Ryder, Public Health Administrator; Jeff Barnes, Michael Carmody, Steven Radel, Jack Speranza, David Teitelman, Conservation Commission; Ellen Chagnon, Conservation Scientist; Don MacAdam, Conservation Administrator; J.T. Gaucher, Director of Public Works; and David Glenn of Fay, Spofford & Thorndike (FST), Consulting Engineers.

Mr. Dourney stated the Boards and Commission are meeting together to discuss drafts of a Stormwater Management as well as a Low Impact Development bylaw in order to determine the comfort level for submission into the Annual Town Meeting warrant. He noted that this is not a public hearing.

Stormwater Management Bylaw

Mr. Glenn stated he has reviewed the bylaw and found it to be very good in general. He noted that the approach is appropriate and sets up basic parameters that will allow the Town to establish further regulations. He stated the framework is there but it will have to be tweaked a little.

Mary Pratt, 102 Fruit Street, speaking as an individual and not as a member of the Board of Selectmen, stated that the Town will be fined under Federal law if it does not have some type of bylaw within a year. Mr. Glenn noted the bylaw would create a funding mechanism for inspections and maintenance as well as procedures for developers and Town boards to work together. Mr. Gaucher referred to the NPDES Phase II Stormwater Management Program. He noted that they are now entering the 4th year and that by the 5th year a Town has to have a bylaw in place.

Mr. Speranza asked about the stormwater management requirements and scope under the EPA mandate. Mr. Gaucher stated the draft bylaw is consistent with what DEP is looking for. He added that there are more components to the current program including public education and

participation, illicit discharge investigation, construction site stormwater runoff control, and pollution prevention but that the bylaw will fall right into line with what has to be done.

The Boards and Commission reviewed the draft bylaw language. Mr. Dourney asked if there are examples of stormwater management bylaws adopted by other Towns. Ms. Lazarus noted Southborough has adopted a similar stormwater management bylaw and that they are typically based on two or three models.

Ms. Pratt referred to a serious runoff problem on Fruit Street which was created by clear cutting and grading activities on adjacent lots. She stated that currently there is nothing that can be done about it.

Mr. Coolidge asked about procedures and paperwork in connection with a General Stormwater Management Permit (GSMP). Ms. Lazarus stated that the paperwork could be handled at the time of a building permit application and that applicants can be given a list of procedures to follow. Ms. Wright noted she is concerned about exemptions for small projects, and Ms. Lazarus noted that the Boards have discretion as to what should be exempt.

Ms. Pratt noted runoff is the problem, not the project itself. Mr. Coolidge stated that this bylaw will be an enforcement tool currently not available to the Planning Board or the Building Inspector for individual lots. Ms. Wright noted she is concerned about the minimum thresholds. Mr. Coolidge made a comparison to getting a driver's license where you still have to follow the rules of the road. Mr. Glenn noted that the bylaw language just sets up a mechanism to set up the GSMP.

Ms. Altamura asked if this would cure small nagging problems and whether it enables the Town to go back to a neighbor with a runoff problem. Mr. Goncalves stated this will be a general bylaw without grandfathering options. Ms. Lazarus noted it would be a lot of work to go back and fix existing problems and it does not seem fair to expect people to comply with regulations that were not in effect when they constructed their project. She stated that certain activities will not require a full-scale application but it depends on how the bylaw is written. Mr. Dourney asked about State recommendations and Ms. Lazarus noted that every Town is putting in their own thresholds. Mr. Speranza referred to the GSMP and asked whether there would still be some type of application required. He stated he prefers a friendly approach where applicants only have a formal hearing before a Board if the thresholds are met. Ms. Chagnon suggested a notification instead of an application procedure. Mr. Coolidge suggested using a list of general criteria and that possibly the Building Inspector could be the watchdog. Mr. Speranza referred to the wetlands questionnaire included in a building permit application package and stated it might be a good system in this case although there will be a learning curve. Mr. Coolidge stated that the bylaw is not intended to add more regulations but that it will provide an enforcement tool in case of a problem. Mr. Speranza noted the bylaw as currently written suggests there will still be some type of application process to go through.

Mr. Coolidge asked about the origin of the 7,500 sq.ft. threshold figure, and Ms. Lazarus stated it probably came from one of the models.

Mr. Goncalves noted there are activities not covered by a building permit which can still cause runoff problems like for instance regrading of a lawn. Mr. Markey stated that the bylaw provides the authority to develop a list of conditions. Mr. Dourney noted that this type of project could slide under the radar.

Ms. Altamura stated that she wants to know that the work is done properly and, if not, something can be done about it. Mr. Goncalves stated that if water is running onto abutting property, then the proper procedures were not followed. Mr. Aghababian asked about recourse, and Ms. Lazarus stated that fines could be levied although actual correction of the problem would be the first choice. Mr. Speranza noted that people can take legal action through an attorney but that this would be another type of recourse. Ms. Altamura stated that not everyone can afford a lawyer. Mr. Dourney stated that property owners have the option to resolve the problem themselves.

Ms. Pratt referred to the Highland Park development where the developer left a lot of vegetation. She stated the Town should be able to educate people.

Mr. Aghababian asked what the Town can do if the fine has been paid but the problem remains unsolved. Ms. Lazarus noted that they could continue fining under a 1st, 2nd, 3rd etc. offense system.

Mr. Ryder asked if pre- and post-development review of runoff conditions is required for every project. Mr. Glenn explained that the bylaw will determine the threshold for this requirement. He added that under a GSMP there is no need to provide these studies. He noted that currently they only look at these conditions for site plans and subdivision applications and everything else falls through the cracks. Mr. Ryder noted it would be ideal if applicants could provide this documentation before construction.

Ms. Wright referred to the Definitions section and asked for clarification regarding special assessment districts. Ms. Lazarus noted that if the Town wants to establish a Stormwater Utility it will have to follow separate procedures under the Town statute. Mr. Gaucher referred to the NPDES Phase II stormwater map and noted that the shaded areas are regulated and fall under the Phase II permit while the white areas do not. He stated the Town could set up a Stormwater Utility in the regulated areas, for example. Ms. Wright asked whether all people in this district can now expect to have to pay a stormwater fee assessed to them. Mr. Gaucher stated that the City of Danvers does that but, if that was in place here, any new construction will be assessed and the money to be put into an account for catch basin cleaning, etc. He added it depends on how it is set up but that DEP recommends districting the whole town. Ms. Lazarus noted this bylaw does not set up a utility, only indicates that it could happen. Ms. Wright noted that she wants to be prepared for this type of questions at Town Meeting. Mr. Dourney noted that as written now this bylaw does not deal with this. Mr. Speranza noted that it would be another process outside of this bylaw. Ms. Pratt stated that the cost of cleanup currently comes out of the General Fund.

Mr. Dourney referred to the Planning Director's comments regarding the choice of permitting entity. Mr. Speranza noted that the Conservation Commission has the expertise through Ellen

Chagnon, Conservation Scientist, but that she has to be paid as a consultant. Ms. Pratt asked about use of an escrow account.

Ms. Wright asked about a hierarchy depending on the complexity or scale of the project. Mr. Coolidge suggested a Building Inspector/DPW Director/Planning Board chain of authority. Ms. Wright asked if the DPW Director would have enough time for that. Mr. Speranza questioned whether they could use Wetland Protection Act money for that and Ms. Chagnon stated the Commission has legislative jurisdiction if the project is in the wetland buffer zone but not if it is outside.

Mr. Goncalves recommended a tiered hierarchy for a GSMP through the Building Inspector but that applicants have to go before the Planning Board in case of a more comprehensive project. He added it would make sense to incorporate this with other Planning Board activities. Mr. Dourney asked about qualifications, and Mr. Goncalves noted that the Building Inspector will be able to handle GSMP's. Mr. Markey noted that there will be regulations which will spell out what type of activity falls under the GSMP and it will really be more of a notification process. Mr. Coolidge stated the Building Inspector is also the Zoning Enforcement Officer. Ms. Lazarus noted that the Building Inspector does not necessarily have expertise in stormwater management issues and should not be expected to develop the GSMP's. Mr. Dourney stated everything should go through the Planning Board. Mr. Coolidge noted the issue is more with problems down the road when something unexpected occurs and the bylaw will provide the mechanism to correct it. Mr. Goncalves noted that a full-scale application will have to be filed if the project trips the threshold.

Mr. Gaucher referred to his list of suggested changes to the bylaw supplied by memorandum dated January 29, 2007.

Mr. Goncalves stated this will be a general bylaw without a grandfathering clause and all runoff will be subject to regulation. Mr. Speranza noted it would be unconstitutional to pursue correction of existing problems. It was noted that it should be clear that the bylaw will apply only to new construction.

Mr. Speranza referred to the 7,500 sq.ft. threshold with respect to the construction of a tennis court as an example. He stated that this use could theoretically be in the middle of a large parcel of land with no impact on abutting properties but the owner would still have to go through a review process. Mr. Markey noted slope is also a factor, and Ms. Lazarus referred to potential erosion problems. Mr. Gaucher noted that it is important to consider the intent of the regulations which is recharging the ground. He added that this example involves a reduction in impervious area and that it is not just about impact on neighbors.

Mr. Speranza asked how the Planning Board can exempt the property owner, and Mr. Goncalves noted it could be through a waiver request. Mr. Dourney noted he likes Mr. Goncalves' idea but questioned where to draw the line. Mr. Speranza noted the bylaw should permit the Board to grant waivers.

Ms. Altamura asked if the Board members are comfortable with the numbers used for exemptions. Mr. Glenn noted it can be kicked back to the GSMP, and Ms. Altamura stated this would be a good starting point. Mr. Goncalves asked what other Towns do in this case, and Ms. Lazarus noted she does not know.

Ms. Lazarus referred to the exemption for repair or replacement of an existing roof of a single or two-family dwelling. She noted that multi-family structures are not listed but that it should not make any difference what is under the roof of a dwelling. She noted that some Towns do not allow multi-family housing which might be why the model is worded this way. Mr. Speranza noted that he does not have to worry if he is repaving his residential driveway but has to file an application for repaving the parking lot at his commercial building at 15 Main Street. He added this appears to be a meaningless distinction. Ms. Chagnon noted it is not necessarily meaningless as different types of roofs result in different runoff patterns and referred to industrial and commercial buildings. Mr. Dourney stated it appears that Mr. Speranza wants to extend the exemption to industrial and commercial uses. Mr. Goncalves stated that it would be acceptable unless there is a change in roof style and materials. He noted they can keep residential and industrial/commercial categories separate. Mr. Glenn suggested to use a reference to change of drainage pattern. Mr. Dourney noted the Planning Board would still have the authority to grant waivers.

Mr. Dourney referred to septic systems. Mr. Ryder noted there have been problems with raised septic systems but that under Title V you have to swale water away from abutting property and that this should be exempt in many cases. He stated he has to look at it a little more. Mr. Coolidge stated replacing a septic system is probably ok but enlarging could be tricky. Mr. Ryder noted that septic work in connection with the addition of a bedroom does not fall under repair. Ms. Chagnon noted that replacement can cause problems and suggested to limit the exemption to repairs. Mr. Gaucher noted that would work. Mr. Coolidge agreed that system enlargement should not be exempted. Ms. Wright noted that additions can be very big and that the interpretation could be open-ended. Mr. Aghababian asked if these would still be covered under the GSMP, and Mr. Goncalves noted that they would be unless the 7,500 sq.ft. threshold is met. Mr. MacAdam referred to a Conservation Commission policy where the applicant can come to the office to demonstrate that a formal application is not necessary. Mr. Speranza noted that people basically act on their own peril under that policy.

The Board voted unanimously to place the Stormwater Management Bylaw into the Annual Town Meeting Warrant.

Low Impact Development (LID) Bylaw

The Boards and Commission reviewed the language of the draft LID bylaw. Mr. Dourney referred to the summary of the proposed bylaw provided in the Planning Board memorandum prepared by the Planning Director. Mr. Gaucher referred to reduction of impervious surfaces under the management plan and indicated that curbs should stay and that narrow streets are problematic with respect to efficient snow removal. He explained snow removal methods and that it is especially difficult in case of back-to-back storms. Mr. Dourney asked if he has any suggestions and Mr. Gaucher stated that there could be a circle in the middle of a cul-de-sac and

that he is in favor of shared driveways and parking. Mr. Goncalves stated that these are just examples of appropriate solutions and that narrow streets might work in some instances.

Mr. Aghababian asked whether the Town is going to require compliance with these criteria and if failure to do so will be used as grounds for denial. Mr. Dourney stated the Board would use discretion as is normally done and that some criteria will be negotiable while others are not. Mr. Goncalves stated it is up to the applicant to demonstrate how he is complying with the regulations. Mr. Aghababian noted this adds another layer of regulation, and Mr. Dourney stated it is a necessary step. Mr. Goncalves stated he understands Mr. Aghababian's point and questioned where to draw the line. Ms. Altamura noted it is a matter of common sense. Ms. Wright stated she is worried about future lawsuits where the Town will be accused of being arbitrary and capricious. Mr. Speranza noted the Board will have to be consistent. Ms. Lazarus referred to the site plan review process where denials are not that possible and that decisions can be written with conditions.

Mr. Glenn stated the bylaw might be good when applied to condominiums but problematic for single family subdivisions as there would be conflicts with the Subdivision Rules and Regulations. Ms. Lazarus noted that it would require an amendment to the Subdivision Rules & Regulations. Mr. Glenn stated this could put an additional burden on the DPW.

Ms. Chagnon questioned listing items like rain gardens and open channels under the requirements as they are not proven to work under frozen conditions. Ms. Wright noted she has seen permeable pavement in walkways, and that it appeared to work. Ms. Chagnon noted it may not work in winter.

Mr. Dourney asked whether the members feel they know enough about the subject matter to go forward and back this bylaw at Town Meeting. He asked whether the Zoning Advisory Committee should be charged with further study of this subject. Mr. Markey noted he would vote for putting this on the warrant for Town Meeting and work out something between now and then. Ms. Wright noted the Boards and Commission should agree on what they want. Ms. Altamura asked where this language came from and Ms. Lazarus noted it was prepared using the LID toolkit promoted by the State. Ms. Lazarus suggested adopting LID guidelines for people to use for a year or so to see how it works.

Ms. Wright asked how this bylaw would interface with Chapter 40B applications. Ms. Lazarus noted it will be a local bylaw and the applicant would have to ask the ZBA for a waiver or comply. Mr. Speranza noted the ZBA has been good in working with the Conservation Commission.

Mr. Dourney stated he would like the Planning Director to do further research on this subject. He noted that companies are generally trying to do good things, not only because they have to but because it is the right thing to do. Mr. Aghababian suggested the item be placed on the next meeting agenda to work on modifying the language into guidelines for distribution to developers. Mr. Dourney stated that the Planning Board would look favorably on developers who follow the guidelines. Mr. Coolidge stated it is worth telling Town Meeting that the Board is working on this.

Mr. Dourney thanked the members of the Conservation Commission, DPW and Board of Health staff for participating in this discussion. He thanked Mr. Glenn for attending the meeting.

2. Town Meeting Articles

Water Resources Protection Overlay District (WRPOD) Map

Mr. Dourney referred to discussions held at the Zoning Advisory Committee meeting on January 23, 2007. He referred to statements made by Mark Nelson, a consultant engaged by Friends of Whitehall, in connection with a proposal to return to the old WRPOD map. He noted that Mr. Nelson at the meeting incorrectly stated that EarthTech drew the new map and removed Zone 3 protection of the Fruit Street well. Mr. Dourney referred to email correspondence on this subject received since January 23. Mr. Dourney noted that Mr. Nelson represents Friends of Whitehall and either does not know the facts or purposely misrepresented them. Mr. Dourney stated he does not want to put up with this type of behavior wasting volunteers' time and feels the Board should rise above this. Ms. Pratt noted that Dick Joubenville of EarthTech was paid to look at wellhead protection.

Flexible Development Bylaw

The Board reviewed the draft Flexible Community Development Bylaw recommended by the Zoning Advisory Committee on January 23, 2007, for submission into the Annual Town Meeting Warrant. Mr. Dourney noted the Board is looking at ways to encourage developers to create an affordable housing component in a development. He stated that the developer would be allowed an additional market rate unit if he agrees to create an affordable unit (on or off-site) or make a contribution to the Housing Trust Fund. It was stated that the Town does not want to get land. It was noted that the requirement would kick in at 6 lots. Mr. Dourney noted he spoke to Ron Roux who agrees the bylaw is a good thing but that he wants it to kick in at 10 lots. Ms. Altamura stated they have looked at other towns and that 6 appears to be a reasonable number.

Ms. Lazarus noted that it looks like this has to be done by Special Permit and that it would be combined with other special permits if one is already required, such as for OSPLP and Garden Apartments. She stated that the affordable unit can be on or off-site and that the Planning Board would have the flexibility to make it fit within the buildable area of the site. Mr. Coolidge asked if it would mean waivers of everything and Ms. Lazarus responded that it could mean waiving frontage, lot area or setback requirements. Ms. Altamura noted that developers want the maximum amount of lots and that the Board should review the proposals as it normally does. Ms. Lazarus noted that the focus in OSPLP is always on finding the area that is best to develop and best to preserve, and in essence, this re-focuses attention on this. Mr. Goncalves noted the developer can also go to another part of town or give money. Ms. Lazarus noted the developer can propose how to do it but the Board approves it.

Ms. Wright noted she likes the general concept but that the option to go off-site worries her as there is not that much land available and that they would end up demolishing a historic structure or building on lots in areas where the modest homes are. She noted the demolition delay bylaw has a 6 month maximum which will not be a deterrent for big developers. Ms. Altamura noted she does not want to encourage teardowns. Mr. Dourney stated that compliance with the Master Plan is part of the application process. Ms. Lazarus noted that the Planning Board has to approve

an off-site location. Ms. Wright noted that the Master Plan has general goals and that a future Planning Board might not have the same commitment. Ms. Wright noted that the Historic Commission has signed off on about 90% of demolition requests because in many cases it is too late to save the structure. Ms. Altamura noted it is important to set the bar. Mr. Aghababian noted that it would not make sense to replace an existing modest home with an affordable house using this bylaw. The Board decided to add language discouraging teardowns.

The Board voted unanimously to place the Flexible Community Development bylaw into the Warrant for Annual Town Meeting.

3. Other Business

Mr. Dourney reminded the Board members of the East Hopkinton Master Plan kickoff meeting scheduled on February 1, 2007, in the High School auditorium at 7:00 P.M.

Adjourned: 9:55 P.M.

Cobi Wallace
Administrative Assistant

Approved: February 12, 2007