

HOPKINTON PLANNING BOARD

Tuesday, March 4, 2008 7:00 PM
Hopkinton Town Hall

MINUTES

PRESENT: R.J. Dourney, 1st Vice Chairman, Joe Markey, 2nd Vice Chairman, John H. Coolidge, Carol DeVeuve, Ken Weismantel, Claire Wright

Elaine C. Lazarus, Planning Director

1. Open Space Mixed Use Development (OSMUD) District – Special Permit Granting Authority

Board of Selectmen members present: Muriel Kramer, Mary Pratt, Mike Shepard, Brian Herr

The Planning Board met jointly with the Board of Selectmen, and it was decided that the Planning Board would move to Rm. 211 to meet with representatives of the Board of Appeals in order to discuss which entity should be the special permit granting authority in the OSMUD District, then report back to the Board of Selectmen later in the evening.

Board of Appeals members Robert Foster and Wayne Davies attended the meeting. Mr. Dourney referred to a letter received from the Board of Appeals and noted it seems like all agree that the Planning Board should be the entity that issues the Master Plan Special Permit (MPSP). Mr. Markey reviewed the sequence of permitting and the types of permits contained in the most current version of the OSMUD District bylaw. Mr. Weismantel noted that the Zoning Advisory Committee had spent months working on the bylaw, noting that the intent is that it be a planned community. He stated there needs to be one chief cook working with the developer to make sure that the planned community develops as planned. He stated that the uses by special permit need to be part of a site plan review discussion.

Mr. Foster stated that 5 or 6 years from now Boulder Capital will want someone to have a hotel in an OSMUD Commercial Subdistrict, after the MPSP has been issued. He noted this kind of thing could happen frequently. Mr. Davies asked why the Planning Board should be the entity that issues the special permits for use. Mr. Weismantel stated that the permits in this district are all linked together. Mr. Coolidge stated he thinks the Board of Appeals should issue the special permits for use. Mr. Dourney stated he thinks the Planning Board should control the process via the MPSP process, with the second level of permitting/review being site plan review from the Planning Board. He stated that if someone needs a special permit for a use in addition to those permits, he would want the ZBA to manage that. Mr. Weismantel disagreed.

Ms. Wright stated that this is a special zoning district where certain types of uses are allowed that aren't necessarily allowed elsewhere. She stated it is a unique district that will have a certain look and land use that isn't the same as anywhere else in Town. Mr. Davies stated that one use

can't be treated differently from one district to another. Ms. Lazarus noted that this district will be different because it is a planned community subject to MPSP, and the integrity of the district needs to be maintained over time in order for it to work. She noted that all of the permits are linked together, and added that the "master plan" part of the MPSP won't be just a picture on paper, it also consists of a traffic study, economic analysis, and other documents and analyses that are based on assumptions, the reality of which will change over time as specific uses are known. She noted that there may be instances where a proposed special permit use may also necessitate an amendment to the MPSP, and it makes sense for the Planning Board to review both of these at the same time, as they are linked. Ms. Wright stated the bylaw contains tools to plan the project and in this district, the special permit is a planning tool, like the Village Housing and Senior Housing bylaws. She noted there are overall site details that need to be considered. She stated that variances and certain appeals would go to the ZBA as usual. She stated it is important that the district have consistency and implement the vision.

Mr. Davies stated that special permits aren't a planning tool. He stated that special permits need to be seen as a way to address potential threats. He stated the purpose of the public hearing is to determine the incompatibilities, threats and concerns and to mitigate them. He used the recent Lonza Hopkinton application as an example. He stated that the Board of Appeals is not concerned with buildings, but the uses and safety. Mr. Foster stated his concerns are long term, after development is complete. Ms. Lazarus noted that in the case of the OSMUD District, the special permit granting authority needs to be concerned with the building, site design and the use all at the same time, as the design of the site is integral to the overall master plan for the planned community.

The Board decided to continue its discussion after the next agenda item.

2. Interim Agreement/OSMUD Moratorium

The Planning Board joined the Board of Selectmen. Ray Miyares, Town Counsel, described the process whereby the proposed Interim Agreement between the Town and Boulder Capital LLC had been developed. He described the provisions of the Agreement, which addresses what would happen if the OSMUD District is not adopted at the annual town meeting.

During discussion, it was decided to modify the draft agreement. The Board of Selectmen voted 3 in favor (Ms. Kramer, Mr. Herr, Mr. Shepard) with one opposed (Mrs. Pratt) to sign the agreement, as modified.

The Planning Board left the meeting of the Board of Selectmen and returned to Rm. 211. The Board voted unanimously to sign the Interim Agreement as modified.

3. Open Space Mixed Use Development (OSMUD) District – Special Permit Granting Authority

Discussion with representatives of the Board of Appeals continued. Mr. Davies stated that the Board of Appeals thinks that the Planning Board should issue the special permits needed under the Water Resources Protection Overlay District and Floodplain District within the OSMUD, if any. Mr. Foster stated that the Board of Appeals has sent a letter to the Board of Selectmen with its recommendation and the Planning Board should do the same. Mr. Davies stated that with

respect to the MPSP, the Planning Board would do that best. He stated that the Board of Appeals has issued use special permits since zoning was adopted in the 1950's, and it can do a better job than the Planning Board. He stated the Planning Board has no experience in pre-existing nonconforming uses and the nuances of special permit uses, such as Lonza, where a special permit issued to a different company did not transfer to Lonza. He stated the Planning Board doesn't have the expertise to deal with the nuances in the law. He stated the Planning Board has planning expertise.

Mr. Coolidge stated that both boards have the same goal, which is to protect the Town. Mr. Markey stated he doesn't want another board unraveling the MPSP in the future. Mr. Dourney stated there is agreement that the Planning Board should issue the MPSP. He stated that the Board of Selectmen has said that it will decide which entity will issue the use special permits, and the Planning Board disagrees with that, adding that the Planning Board is the author of the zoning bylaw amendment.

Ms. Wright stated that the Planning Board needs to consider the appropriateness of the use with the area. She stated that an alternative could be that an out-of-the-ordinary use could come to the Planning Board for review of how it fits with the planned community. She stated that if the criteria are met and the Planning Board deems it is appropriate, then they could get a special permit from the Board of Appeals. She noted that the Boards should cooperate and that the process should start as a land use issue and then be fine-tuned. Mr. Davies stated that concurrent review processes should happen all the time, and stated the Boards need to talk to each other. He stated that this bylaw needs to get past town meeting. He stated that some people may be concerned that all of the permitting is with the Planning Board, because the Planning Board has been friendly with Boulder Capital throughout this process.

Mr. Foster stated that people should think about future boards. He stated that the approach of the ZBA to special permits is different, and everyone understands that. He stated the Boards are sensitive to different issues. He stated the Planning Board can't deal with variance requests, either. He stated that maybe there should be a distinction between pre- and post-MPSP. He stated that if Boulder Capital comes in for a MPSP with special permit uses, then it makes sense for the Planning Board to look at it. He stated that post-MPSP when there are residents there, then the ZBA would be best to listen to abutters concerns. He stated this is not a turf war, and no one wants more work.

Mr. Weismantel asked if there are specific uses in the OSMUD that stand out more as ones with planning concerns rather than health and safety concerns. Mr. Foster replied no. Mr. Davies stated that the special permit should go to the owner, not the land. Ms. DeVeuve noted that all applications should go through the hearing process.

The Board decided to post a Planning Board meeting for March 19 at 7:30 PM to discuss the OSMUD District, as there has been no time at meetings for Board discussion.

The Board returned to the meeting of the Board of Selectmen. Mr. Dourney reported that the public hearing on the OSMUD District, which began on March 10 and was continued to March 17, will include a discussion of the permit granting entity. He noted that at the conclusion of the

hearing, the Board will consider all comments and recommendations received before making a decision on the wording of the bylaw with respect to the special permit granting authority for uses. The Board of Selectmen asked Mr. Miyares to make a recommendation to the Board of Selectmen as to which entity should issue the special permits, and that similar districts in other Towns be reviewed. In response to a question, Ms. Lazarus stated that it is important that the permitting process in the OSMUD District be as streamlined as possible and that it work well.

Adjourned: 10:00 PM

Elaine Lazarus, Planning Director

Approved: March 19, 2008