

HOPKINTON PLANNING BOARD

Monday, March 17, 2008 7:30 PM
Hopkinton Town Hall

MINUTES

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

Elaine C. Lazarus, Planning Director

1. Continued Public Hearing – Proposed Zoning Bylaw Amendment – Open Space Mixed Use Development (OSMUD) District

Mr. Abate stated the Board would go through the draft OSMUD District bylaw by section.

Section 210-162, Development and Design Objectives

There were no public comments.

Section 210-163, District and Sub-District Delineations, Applicability

Tom Garabedian, 5 David Joseph Rd., member of the Board of Appeals, stated that the wording of subsection C is awkward and confusing.

Section 210-164, Definitions

The definition of “restricted land” was discussed. Ms. Altamura noted she is concerned with the inclusion of municipal buildings in the restricted land. Mr. Garabedian noted that municipal “buildings” was eliminated elsewhere in the bylaw in favor of the term “municipal uses” last year, and it should be the same here.

Raymond Miyares, Town Counsel, stated that in earlier drafts, municipal uses was included in the definition of “open space” and it was very broad as to what those could be. He noted that the term “open space” has been changed to “restricted land” because it isn’t necessarily open space in the traditional sense, and is better termed restricted land. He stated there are some municipal uses that don’t involve buildings, like cemeteries, but there are others, like a Library, that would involve a building. He stated it is the Planning Board’s call as to whether it wants the language to restrict municipal uses in the restricted land.

Mr. Weismantel stated he would like to see it very broad, and it will be an asset to the Town. He stated that to prohibit all municipal uses would be too restrictive, noting it would require a vote of town meeting to build anything there anyway. Ms. Altamura stated she has some concerns. She noted that they originally thought it would be something small there, but now larger building possibilities have been mentioned. She stated the impacts of municipal buildings can include parking, lighting, etc. Mr. Weismantel asked if it would have to be part of the Master Plan

Special Permit (MPSP) and require site plan review also. Ms. Altamura asked about a school on this land, noting that allowing this might be a mistake in the future. Mr. Coolidge stated all of the land will be restricted somehow. He noted that the State definition of restricted land is open space with a conservation restriction (CR). He stated the majority of land here will be for traditional open space uses. He cautioned against allowing everything in one place. He noted that a CR is in perpetuity. Mr. Weismantel stated the Zoning Advisory Committee (ZAC) wanted the land to be more than the traditional open space included in a CR. He stated that some of it will be used by Weston Nurseries, which may need to put up greenhouses, for example. Mr. Markey stated the whole idea of this district is to preserve maximum open space by increasing density in other areas. He stated he is concerned about filling in the undeveloped portion with large municipal uses so that the result is sprawl, not the kind of development that the OSMUD is supposed to achieve.

David Goldman, 20 Fruit St., stated if the Town wanted a CR on land that included these uses, the State wouldn't approve it. He suggested splitting up the land into separate categories with traditional open space/natural areas identified in some locations and places with other uses noted elsewhere.

Mr. Weismantel stated the intent was not to put all of the land in a CR.

Mary Pratt, 102 Fruit St., member of the Board of Selectmen but speaking as an individual, stated Mr. MacDowell promised a minimum of 500 acres of open space last year with fields, trails and preservation of Weston Nurseries, referring to a publication from early 2007. She stated the ENF Certificate should be responded to. She noted that Mr. MacDowell never said anything about a cemetery or school site, and there is nothing preventing him from donating other land for those uses.

Jane Moran, 70 East Main St., asked why the change was made, and it was always "open space" before. She asked if this is a mistake. She stated the issue could be easily solved if there was a fourth subdistrict for open space, so people could have a visual idea of what it is. She stated that 20 acres next to the state park should be preserved as the State requests.

Roy MacDowell, Boulder Capital LLC, stated they are sticking to the intent of the 500 acres. He stated if the Town wants, land could be dedicated to other uses but it is the Town's issue, not theirs. He stated the current plans show where the open space will be. Mr. Coolidge noted that this needs to be accepted by town meeting. Mr. MacDowell noted that the quality of the open space is important to them.

Steve Schwartz, Goulston & Storrs, attorney for Boulder Capital, stated that some uses might not fit under a CR, but there could be another kind of perpetual covenant to cover those uses. Mr. Miyares stated the bylaw says that the form of restriction must be approved by the Planning Board as part of the MPSP. He stated some uses would fit under a CR and while it is generally known where the open space will be, the exact boundaries are not known yet. He stated the boundaries won't be known until the site plan stage. He noted the restriction will be enforceable by the Town, adding that depending on the type of restriction, it may be necessary to tie it to a

specific parcel in Town ownership. He noted that whatever the Town decides, a restriction can be designed for it.

Mr. Markey stated he would delete the provision restricting the maximum size of a municipal building in the restricted land. Ms. Altamura agreed.

Mr. Goldman stated he is concerned that people could use these bylaw provisions elsewhere in the Town. It was noted that it would only apply to the OSMUD District.

Robert Falcione, 93 Downey St., stated that more uses of the land makes sense, and the definition is good as drafted.

Muriel Kramer, 39 North St., member of the Board of Selectmen speaking as an individual, stated she has concerns about the Town Meeting vote if the open space term is changed. She stated the bylaw could cap the amount of land for municipal uses, adding that it is important that the language be clear.

Chris Barry, 17 Clinton St., questioned the meaning of item 6 of the definition and whether it meant that there can be 30 acres of private restricted land in every Development Project or in the whole OSMUD. It was noted that it should be within the whole district, and the language needed to be clarified.

Mr. Weismantel asked if the temporary plastic greenhouses would be allowed in an agricultural area that is restricted, and Mr. Miyares replied yes.

Ms. DeVeuve asked if the definition of Height means that in the OSMUD Height Zone there is 10 feet below the finished grade of the first occupiable floor which is not counted in the overall height distance, and what is within that 10 feet. She asked why this provision is in the bylaw.

Steven Zieff, Boulder Capital, stated it is so that they can grade buildings into a hillside without disrupting the site further, allowing for walkout basements and garages under units, for example. Ms. Lazarus added that it could include parking under a building.

Section 210-165, Uses

Mr. Miyares discussed a policy issue for the Board relative to “facilities used for water supply or sewage treatment, or associated with the provision of electrical, telephone, gas or cable services...” in the table of uses. He noted this is a new use and asked whether it should be by right or special permit in each subdistrict. He noted that most of these uses will be underground, but there will be some above ground items. Mr. Zieff stated that Comcast and Verizon, etc. will want nodes and will need certain types of facilities there. Mr. Markey asked if site plan review of the facilities would be required. Mr. Weismantel noted that if a condominium association needs to put in a sewage treatment facility right now, there is no problem and it is by right. He stated it shouldn’t be more restricted here. He noted that in the case of Legacy Farms, everyone knows where the wastewater treatment facility will be and what it is for. Mr. Abate stated he would want it to be reviewed under site plan review.

Mrs. Pratt stated that uses such as day care, bed & breakfast, renting of rooms, and conference center could all affect the amount of water needed by the development. She suggested limiting the number of bathrooms.

Mr. MacDowell stated the special permit will outline the uses and there will be a direct correlation with the uses on the site and water consumption, since they will not be able to exceed a certain amount. He noted that the water budget for the site would be limited to 290,000 gallons per day.

Ms. Moran stated that a conference center in the Commercial Subdistrict (CS) would be allowed by right, and expressed concerns about that. She stated the current zoning was written 50 or 60 years ago when conference centers did not exist. She stated they can generate a lot of traffic and suggested changing it to a special permit use. Mr. Markey stated that a conference center might generate less traffic than a fully occupied office building. Mr. Weismantel noted that the use is limited to two areas of the site. Ms. Altamura stated that she feels that the more uses under special permit, the more oversight there is. She stated she would change it to a No or a Special Permit in the CS.

Fred Merrill, Sasaki Associates, noted that the maximum size of a building in the Village Center Subdistrict is 45,000 sq. ft., which is too small for a conference center. He noted that a conference center is not a convention center.

The question was asked of Mr. MacDowell as to whether changing “conference center” to a use by special permit in the CS would be acceptable, and he replied no, but “senior housing” should be changed to a “yes” in the CS. Mr. Abate expressed concerns about doing that, noting that it could mean by-right assisted living facilities. Ms. Altamura stated that senior housing should stay a special permit use in the CS.

Mr. Garabedian asked whether the Town wants to allow municipal uses by right in the OSMUD as listed. Mr. Weismantel noted they are allowed everywhere else by right. Mr. Weismantel asked about changing “cemeteries” to “municipal cemeteries” as the ZAC had originally proposed.

Mrs. Pratt asked about funeral homes in the CS, stating they should be by special permit instead of by right. Mr. Weismantel stated it is traditional in Hopkinton to have them in residential districts.

Ms. Altamura addressed continuing care retirement communities (CCRC), nursing homes and extended care facilities. She asked if such facilities are considered residential or commercial and whether the units count toward the 940. Mr. Miyares noted that the definition of Dwelling Use in the bylaw states the units do not count toward the 940. Ms. Altamura expressed concern that Town Meeting would be very concerned about that.

Mr. MacDowell stated they don't have the water and sewer for 1,500 CCRC units and if such a use was located in the OSMUD, it would be smaller, probably 100 to 125 units. He stated there is a maximum square footage in the CS that can't be exceeded either. Mr. Zieff stated CCRC's

typically have a nursing component, rehab facilities and common facilities for the occupants. Ms. Altamura stated she doesn't want people to feel betrayed because there will really be more than 940 units on the property.

Ms. DeVeuve asked about the definition of home occupations. Language in the current zoning bylaw was referred to.

Associated/accessory uses was discussed. Mr. Miyares noted that a policy issue for the Board is the use: "uses customarily associated with any permitted use on a lot within a Development Project, which may be on a different lot within the same Development Project", which is newly separated from "accessory uses" and should be reviewed by the Board. Mr. Schwartz described the purpose of the provision. Mr. Zieff stated there will be multiple clubhouses in the OSMUD District with different facilities, and residents will interact with more than one.

Ms. Altamura asked who polices the accessory uses in the future, and it was noted that the Zoning Enforcement Officer and the landowners association would be doing that.

Section 210-166, Intensity of Use Limitations

Mr. Abate asked if the Weston Nurseries Garden Center is included in the maximum square footage of commercial buildings, and the answer was yes.

Alex Brown, 22 Wood St., stated he has been trying to model the impacts of the development. He noted that the lot sizes for the multi-family dwellings are small. He asked what the basis is for the maximum number of units of 940, and expressed concern with the definition of "restricted land". He noted that there have been debates elsewhere as to the meaning of the word "perpetuity".

Mr. Merrill stated that the 940 came out of the East Hopkinton Master Plan process relative to the density, as clustering pushes uses together to create large open space systems. He stated the implied density here is consistent with the East Hopkinton Master Plan. Mr. MacDowell stated that the number of units was up to 1,700 at one time, and it has been reduced to a number that is as low as possible. Mr. Merrill stated that the idea of performance zoning has been driving this idea, noting that not all types of units have the same impacts.

Mr. Barry stated that the Sasaki report (East Hopkinton Master Plan) recommends that the maximum size of retail buildings be 15,000 sq. ft. to ensure that local character is maintained, but the OSMUD District proposes 45,000 sq. ft. Mr. Weismantel stated that to make the Village Center subdistrict work, an anchor store is needed. He noted that the 45,000 sq. ft. is less than a Stop & Stop, and is more equal perhaps to something twice the size of Colella's. Mr. Merrill stated he remembered the debate over the size, and the goal was not to have big box stores. He stated there is no magic number, and one can have a small supermarket in 40,000 sq. ft. He stated there isn't much difference between 20,000 and 40,000 sq. ft. as to the type of store. He stated that 60,000 sq. ft., for example, would make a big difference.

Michael Kennedy, 111 Winter St., asked who determined that an anchor store is needed. Mr. Merrill noted that the Village Center needs an anchor store to be viable.

Clark Waterfall, 7 Clinton St., asked what buildings are this size in Hopkinton now. Mr. Weismantel noted that some buildings on South St. are this size, but they are not retail buildings. Mr. MacDowell stated the plans now show 6 buildings in the Village Center with the square footage divided between them. He stated they need some kind of anchor, like a greengrocer, to have the retail work because there needs to be some kind of draw. The size of buildings and stores was discussed further. It was noted that a 45,000 sq. ft. building could have more than one story, which would mean a smaller footprint. Mr. Weismantel stated that if the area isn't economically viable it won't be built, and the Town will get a single family subdivision instead.

Section 210-167, Affordable Housing

Mrs. Pratt noted that it has been pointed out to her that the affordable housing would be built under the zoning and not require a comprehensive permit from the Board of Appeals.

Ms. Moran asked if it would be in the Town's best interests to require that all of the units the Town needs to achieve 10% be built at this location. Mr. Abate stated the Town shouldn't put the burden of that on Boulder Capital, and it would likely be unfeasible.

Section 210-168, Dimensional Requirements

Mr. Abate asked if anyone has done the math to see if 940 dwelling units can be achieved with the dimensional requirements proposed, and Mr. Zieff replied yes. Mr. Weismantel noted there should be no variances here, as there would be no hardship with respect to this new planned community. Mrs. Pratt stated that stormwater needs to be addressed. Mr. Abate asked if the maximum height can be increased to 4 stories on the north CS. Mr. MacDowell stated that at the request of the neighbors, he has agreed to reduce it to 3 stories.

Mr. Garabedian noted that zero lot line dwellings are proposed, and asked if sprinklers would be installed. Mr. Zieff stated they will conform to all fire suppression requirements.

Mr. Barry addressed the setback to abutting property outside the OSMUD District, stating that it should be 100 feet without the possibility of waiver and it should not include parking or access. He noted this has been discussed before. Mr. MacDowell stated it might be ok as long as there doesn't have to be a 100 ft. setback from the street and it is part of the MPSP. Mr. Barry stated there isn't enough protection to Clinton St. abutters with less than a 100 ft. buffer. Mr. MacDowell stated that with respect to the CS on the south side of East Main St., he would have no problem with the 100 ft. provided on the east and north sides of that subdistrict. Ms. Moran noted that the 50 feet required in subsection B would allow for parking and access in the buffer. Mr. Zieff noted that there may be issues with requiring 100 feet in the Village Center subdistrict, where there will be parking and access within this area.

Mr. Abate asked Mr. Barry if he is comfortable leaving the language as is, and Mr. Barry stated he wants the development to succeed and doesn't want to be obstinate. He stated he is concerned for the future. Ms. Wright stated the Planning Board wouldn't not require screening. Mr. Dourney stated the concern is that the Planning Board should address abutters concerns. Mr. Miyares stated it sounds like there needs to be a waiver provision because of unique circumstances. He stated they could try to craft some language to address this. It was noted that

the language could say that the buffer could not be waived on the east side of the East Main St. CS. Ms. Altamura stated she doesn't have an issue with access in the 100 ft. there, but parking could be an issue. Mr. Zieff noted that the Village Center is where they need the flexibility, so if the language said there could be a waiver in the CS but not the Village Center, that would be acceptable.

The Board decided that the language should say that a waiver of the 100 ft. setback could be granted in the Village Center but not the Commercial subdistricts.

Julia Linnell, 5 Reservoir Rd., stated the last sentence of subsection C should be deleted, noting that land across the street from the OSMUD District should be buffered too, specifically the north CS. She stated that Wilson St. is narrow, with a 40 ft. right of way, and it isn't right to exclude this area. The issue was discussed. Mr. MacDowell noted that a 50 ft. setback is required, and that plus the 40 ft. right of way equals 90 feet already. He stated he doubts they would be 50 ft. from the property line with their parking or building. He stated that they will be going through the MPSP and site plan review processes, and they will get a good sense of the problems by then. He stated that one needs to access the site also. Ms. Linnell asked what would happen if there is a different developer than Mr. MacDowell. Mr. Abate noted that the zoning goes with the land.

Section 210-169, Parking

Ms. DeVeuve questioned the parking requirements for hotels. She expressed concern that one space per room would not be sufficient. Ms. Lazarus noted that the Zoning Advisory Committee had reviewed parking requirements for other communities before deciding on the one in the bylaw. It was noted that other uses in a hotel, such as a restaurant, would add to the parking requirement, as the calculation is cumulative.

Ms. Pratt stated that one bedroom residential units should require more parking than indicated in the bylaw. Mr. Dourney and Mr. Markey stated the amount of parking should be kept to the minimum necessary, so there isn't more paving than necessary. Ms. Altamura asked if visitor parking will be provided, and Mr. MacDowell replied yes. Mr. Merrill noted that future parking expansion areas can be shown on a site plan.

Mr. Miyares brought the Board's attention to subsections C, D, E and F relative to shared parking. He noted that the language presently says that the Board could authorize a reduction in the amount of parking in the MPSP and implement it during site plan review. He stated he thinks it is up to the Planning Board as to whether it is comfortable having two separate processes in two different sections of the bylaw, referring to an article proposed by the Planning Board at the annual town meeting relative to shared parking elsewhere. Ms. Lazarus asked if site plan review would address changes of use issue adequately, or if it would be best by special permit. Mr. Miyares stated there needs to be a special permit process to authorize a reduction in the parking requirement.

Mr. Garabedian raised the issue of use special permits and referred to letters from the Board of Appeals in this regard. He stated the premise that there will be use special permits issued with other permits is not right. He stated it won't happen at the same time as site plan review, as has

been said. He stated that permitting will go on for years, and the Board of Appeals is better able to do this since it is already used to doing it. He stated the Planning Board will find itself burdened. He stated the permits will run with the uses, not the land. He stated that when a tenant changes, a new special permit will be needed. He asked why the regulatory structure should be different here than elsewhere in Town.

Ms. Lazarus noted that for this planned community, the goal is to have a streamlined and integrated permitting system. Mr. Markey noted that the OSMUD District is different than elsewhere. He stated that there will be a planning approach to determining uses. He noted that having the Planning Board issue the special permits for use reduces the risks of the Town of having things creep away from the MPSP in the future. He stated a coherent plan will be implemented.

Mr. Miyares stated the Board of Selectmen requested his opinion on this issue, which he provided. He stated it can be done legally either way, but in the case of this district, the idea is to put all permitting processes together. He stated that everything needs to work together. He stated if he was designing this from the beginning, he would design it so the Planning Board had the special permit granting authority.

Mrs. Kramer stated that at its meeting earlier this evening, the Board of Selectmen voted to recommend the Planning Board as the special permit granting authority for this district. She stated they believe it will be a workable solution.

Bob Foster, 85 Frankland Rd., member of the Board of Appeals, stated his concern is 4 or 5 years from now when the development is 60% complete and people are living there. He stated it may make sense for the ZBA to take over permitting at that time because it is used to dealing with adversarial processes. He noted that at some time, the special permits could revert back to the ZBA.

The Board voted unanimously to continue the public hearing to March 19, 2008 at 7:30 PM.

Adjourned: 10:30 PM

Elaine Lazarus, Planning Director

Approved: April 7, 2008