

HOPKINTON PLANNING BOARD

Wednesday, March 19, 2008 7:30 PM
Hopkinton Fire Station, 73 Main St.

MINUTES

PRESENT: 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 – Open Space Mixed Use Development District (OSMUD)

Mr. Dourney described the process to date with respect to planning the future of the Weston Nurseries property, beginning with the development of the East Hopkinton Master Plan.

Jane Moran, 70 East Main St., asked when the Planning Board would vote on the OSMUD District bylaw. Mr. Dourney stated the Board could vote tonight if few or no changes are to be made or at a future meeting if the hearing is to be continued.

Mary Pratt, 102 Fruit St., member of the Board of Selectmen but speaking as an individual, stated she has heard that approving the affordable rental development is better done by comprehensive permit than by Local Initiative Program application, as there is a possibility that not all of the units will count.

Steven Zieff, Boulder Capital LLC, referred to changes made by the Board at the hearing on March 17, and stated they discussed some minor issues with Town Counsel today and would like to address and/or revisit those items. He referred to the definition of Restricted Land as it relates to municipal uses and the 30 acres to be for private use. He stated they preferred municipal uses to be limited to those that are consistent with the open space uses. He addressed the maximum size of building in the Village Center subdistrict, stating they have struggled with how to word the change discussed on March 17. He stated they think the original language gives the Planning Board enough discretion and it should not be changed. He questioned whether the term “street line” in the dimensional requirements section was defined, and it was noted that the current zoning bylaw contains a definition. He read proposed language that would modify the language relative to a 100 ft. buffer between the Commercial Subdistrict and land outside the district, as discussed on March 17.

Mr. Coolidge suggested that relative to the 100 ft. setback, the single section should be divided into two, since two subdistricts would now be treated differently. It was agreed this change would be beneficial.

Ms. Moran stated the bylaw shouldn't discriminate against abutters of the Village Center subdistrict, as there are residences next to them too and they should also have a 100 ft. buffer.

Roy MacDowell, Boulder Capital, LLC, stated the Village Center is unique and different than the other commercial areas. He stated he envisions that there will be more privacy than there is now, and parking will be further back from the street than it is now at the Weston Nurseries Garden Center. He stated that the retail can't be hidden, as people need to see it. Ms. Altamura noted that it will be a more intense use of the land than is there today. Mr. MacDowell noted that the site plan review process will address screening.

Raymond Miyares, Town Counsel, asked if the OSMUD District boundary is in the street or concurrent with property lines. Mr. MacDowell stated the boundaries would be on the edge of the road right of way, not within the right of way.

Mr. Zieff stated that another issue to be discussed is how to permit shared parking. He stated they would prefer to see no change to the present language.

Steven Schwartz, Goulston & Storrs, representing Boulder Capital, LLC, stated the reduction should be handled in the site plan stage because that is the right place to discuss parking. Mr. Miyares stated the Board discussed changing it at the last meeting to a special permit so there would be a consistent standard applied throughout the Town, and there could also be a conflict because site plan review decisions are appealed to the Board of Appeals. He noted the issue for the Board is whether a reduction in parking requirements for mixed uses would be authorized in the Master Plan Special Permit (MPSP) and shown on a future site plan, or if a separate special permit is required for the shared parking. Ms. Lazarus noted that from an administrative standpoint, the draft bylaw already puts a lot into the MPSP, and it may get too unwieldy and large, necessitating a lengthy hearing process.

Ms. Wright stated it would be best to use the process that is less vulnerable to appeal. Ms. Altamura stated she would defer to the advice given by Town Counsel that it be by a separate special permit. The Board agreed.

Mr. Markey addressed the issue of building size in the Village Center subdistrict in light of the information provided by Clark Waterfall today. He noted that Sasaki Associates had recommended smaller 15,000 sq. ft. buildings. Mr. MacDowell stated that Weston Nurseries wants to have a building with a 10,000 to 11,000 sq. ft. footprint and a 5,000 to 6,000 sq. ft. second floor plus greenhouses, so this could result in total square footage of about 25,000. He stated that they have discussed the size issue with potential grocery store tenants, and they would need a minimum of 30,000 to 35,000 sq. ft. Mr. Markey stated he understands the need for an anchor store, but he wants to make sure that the wording is clear. Mr. MacDowell noted that the conceptual plan for the Village Center has 6 or 7 buildings which are within walking distance of each other.

Ms. DeVeuve arrived at this time.

Ms. Wright noted that the commercial component affects the bottom line. She stated that the size of building is more of a design issue than a numbers issue – there can be well-designed larger buildings and poorly designed smaller ones. She stated she is concerned with the numbers

provided by Mr. Waterfall, and chain stores are unlike Hopkinton. Mr. MacDowell stated they will refine building size and design as they go along, but need flexibility. He stated they would like to see a greengrocer at the site. Ms. Wright stated that if a chain store locates there, she would like to see that its design is unique and unlike its regular stores elsewhere. Mr. Zieff referred to the Design Guidelines. Mr. MacDowell stated that for retailers, there is not enough traffic on East Main St. after buildout. Mr. Weismantel noted that the Zoning Advisory Committee discussed this issue. He noted that Hopkinton Village Center will have 42,000 sq. ft. divided among 3 floors. He noted that if the 45,000 sq. ft. building is two stories, the footprint is smaller. Ms. Wright stated that for her, the issue is how it is done, not the number. Mr. Markey noted there is an economic reality with respect to this. He asked about the buildings other than the anchor store and the size of those buildings. Mr. MacDowell stated there will be many chances to review the buildings through the MPSP with Design Guidelines and site plan review. He stated they won't build them if they don't have tenants. Mr. Coolidge stated he agrees with Ms. Wright with respect to the design issue. Ms. DeVeuve stated the zoning bylaw is the law, and it is written so that 45,000 sq. ft. is allowed. She stated she has a problem with that. Ms. Altamura stated that 45,000 sq. ft. is too big and 30,000 to 35,000 sq. ft. would be better. She noted that 45,000 sq. ft. would be better if it was two stories and it is the footprint that is the issue.

Ms. Moran stated the OSMUD District needs to be clear with respect to this. She suggested continuing to study the issue by looking at buildings and square footages and continuing the hearing to do that.

Robert Falcione, 93 Downey St., stated that zoning should not limit maximum building size.

Chris Barry, 17 Clinton St., stated that the OSMUD should have specific limits, as there is no guarantee that this developer will always be the developer.

Mrs. Pratt stated she hoped the Village Center could be unique, more like Wellesley Square, with its mix of stores and pedestrian environment.

Julia Linnell, 5 Reservoir Rd., stated that Sasaki already did a study and recommended a 15,000 sq. ft. maximum.

Mr. Weismantel stated that Sasaki noted in their report that there was a lack of market experience with regard to this. He noted that the Village Center is on 20 acres and will be limited to 150,000 sq. ft. He stated that the Planning Board has approved a site plan for Hopkinton Square with 100,000 sq. ft. on 8 acres.

Mr. MacDowell stated they will agree to a change in the OSMUD Village Center subdistrict to a maximum of 38,000 sq. ft. with 45,000 sq. ft. allowed by special permit. He stated that greengrocers have indicated that 38,000 sq. ft. is a standard number.

Ms. Moran asked how big Colella's Supermarket is, and it was stated that it is 19,683 sq. ft. Mr. Falcione stated that the density of Wellesley is different than Hopkinton, and there are a lot of people living close by, including college students.

Leonard Holden, 10 Pleasant St., stated he is a member of the Library Building Committee and if the State requires that the Library be on a larger parcel than they have right now, they want an alternative. He stated they want a new Library to be in proximity to the retail uses and would need 3 acres, and suggested it could be located at Legacy Farms.

The Board decided that the OSMUD language would be changed so that the maximum size of the buildings in the Village Center subdistrict would be 25,000 sq. ft. with the exception that one building can be 38,000 sq. ft. by right or 45,000 sq. ft. by special permit.

Ms. Linnell asked if there would be public input during the MPSP and site plan review processes. Mr. Dourney stated the Planning Board would be required to hold public hearings in both instances.

The Board continued its review of specific sections of the OSMUD District bylaw where it left off on March 17, 2008.

§ 210-170, Restricted Land

Ms. Pratt stated that the open space/restricted land as defined is too broad and no cemeteries should be allowed. Mr. Dourney noted that the ZAC had crafted the language and that Boulder Capital is not proposing the municipal uses there.

Nancy Peters, 258 Wood St., stated that open space and restricted land are very different and the terms should not be used interchangeably.

Ms. Moran stated that “open space” is used in the title of the district and should be continued within the bylaw. She stated that the term needs to be defined.

Muriel Kramer, 39 North St., member of the Board of Selectmen speaking as an individual, stated that the lack of open space in the bylaw is a fatal flaw. She stated that residential, commercial and open space uses were always discussed for the site and if one goes away, the balance is lost. Mr. MacDowell stated he is happy with the open space term. Mr. Markey noted that people complained when the term “open space” was used, and that is why it was changed. Mr. Miyares stated that the revision to “restricted land” was an attempt to respond to previous comments that the uses included in the “open space” definition was not acceptable and that it wasn’t “open space”.

Mr. Falcione stated that the traditional definition of “open space” shouldn’t be used here, or no active recreation could be allowed.

Mrs. Pratt suggested removing “municipal buildings” from the definition.

Kerry Davis, 10 Curtis Rd., asked about the definition of “substantial” as used in the bylaw regarding land substantially in its natural state. Mr. Miyares stated that a lot of the land has been previously disturbed, and needs work before it is good land again. He stated the term means that

it isn't as-is, but needs improvement. Mr. MacDowell stated a lot of gravel roads run through the property that need to be removed and the land restored.

Robert Foster, 85 Frankland Rd., stated there is a lot of discretionary control under the special permit process. He stated the discussion will be held during the MPSP and site plan review processes. He stated it can't be locked in now. He stated that doing so would remove the discretionary control the Board will need and want.

Mr. Weismantel noted that at the Land Use Study Committee meetings, 500 acres was always discussed, which would include 77 acres for agriculture, a wastewater treatment facility, etc. He stated the definition of open space was broader than the strict definition in Hopkinton traditionally. He stated the term "open space" was a stretch in previous OSMUD versions and "restricted land" is better. He stated the issue is the benefit to the Town.

Chuck Joseph, 5 Benson Rd., stated that flexibility is needed for the future. He stated he trusts future town residents and officials to make the right decision at that time. He stated there will be control over uses on the property.

Mavis O'Leary, 11 Curtis Rd. stated that the OSMUD District is zoning, and questioned how the MPSP gets to change the zoning. Ms. Wright noted that the MPSP represents the choices that are made within the range of opportunities that the zoning creates.

Ms. O'Leary asked if restricted land is under a conservation restriction (CR), can it be changed by the Town in the future. Mr. MacDowell stated he has a concern with regard to other potential uses. He stated they are designing a concept of a quality of life, with trails, fields, etc. and are concerned about what might happen with regard to a municipal building on the site. He stated the vast majority of the undeveloped land will be dedicated open space with ball fields, etc. He stated that it is too open ended with regard to municipal uses.

Ms. Wright stated the Town is out of cemetery space and there is a serious need. She stated the current land being used wet, next to a swamp, and is a disgrace to the Town. She stated one can use open space that will still look natural, for a cemetery. She stated it isn't the same as a library, school, etc., noting that more land won't be available 20 years from now. Mr. Markey noted that the land owner wants mostly open space, not municipal uses and the Town doesn't own the land. He stated the Town will be allowing very dense building in exchange for protection for the rest of the property. He stated that a school in the restricted land is sprawl. Ms. Wright stated she doesn't like the idea that things can keep getting changed around. She stated the Town should be carving out some land for development of things such as a cemetery and putting restrictions on it. Ms. Altamura asked about putting a maximum percent on the amount of restricted land that could be for municipal uses. Mr. Coolidge stated the definition of restricted land is ok now, better than when it was "open space". He stated there is an opportunity here to do some planning, adding that the land has been previously disturbed and is not pristine.

The Board discussed the formula in the bylaw for the provision of restricted land along with development. Mr. Miyares stated that there will be 733 acres in the district, 500 of which will be restricted and 233 available for everything else, including roads, etc. He stated there will be 9

development pods with restricted land provided at a rate which would yield about 400 acres, so a makeup provision has been added that would take effect at the end of 15 years. Mr. Zieff noted that the original draft was different, and it was too tight a schedule. He stated they always had a concept of some coming at the end. Mr. MacDowell suggested 1.8 instead of 1.75 acres of restricted land per 1 acre of buildable area in a development project. Mr. Dourney noted that there isn't a definition of "buildable area". Mr. Miyares stated there isn't a definition yet, as he wanted to discuss the concept first with the Board. He stated that development projects have areas and he would like to work off those, but the land area of each hasn't been identified. It was decided that there should be a definition of buildable area and the number would be increased to 1.8.

David Goldman, 20 Fruit St., asked about section 210-170 F, addressing ownership entities for the restricted land. He asked if restricted land owners would need have to have payment in lieu of taxes (PILOT) agreements, and if so, it would not be feasible for non-profit organizations to own any of the land. He stated since it wouldn't be feasible, then the provision allowing land to be held by non-profit organizations should be deleted.

Mr. Schwartz stated that the Host Community Agreement provision regarding PILOT payments is applicable to the developable land only. Mr. Coolidge asked who would pay the taxes on the restricted land. Mr. Zieff stated that common land in condominiums is not taxed. Mr. Markey stated that there should be flexibility with regard to ownership, and he wouldn't delete non-profits from the list of potential owners.

Section 210-170.G relative to restricted land covenants and CR's was discussed. Mr. Coolidge stated that his concern is that covenants can be dissolved because they are only between two parties. Mr. Miyares stated the restricted land covenant is defined in the bylaw and there are only two ways of which he is aware that the land can be restricted: 1) a CR or agricultural preservation restriction; and 2) a deed restriction as part of a conveyance of a parcel of land to the Town where the parcel is benefited by the restriction. He stated the Town would own the dominant estate and the other is the servient estate. He stated it is more awkward, but the land will be restricted. He noted that the manner of restriction for the land will be part of the MPSP process.

Mr. Goldman asked about the legal mechanism for reversing the restriction. Mr. Miyares stated the CR can be written to include a procedure that is different than Article 97. He noted that Article 97 requires a 2/3 vote of the legislature and that new land take its place. He stated that the covenant might require a 2/3 vote of the legislature as well, and a restriction can include possible uses in the restricted land.

§ 210-171, Administration

Mr. Barry asked when a MPSP application would be submitted. Mr. MacDowell stated it would be as soon as possible after town meeting. Ms. Linnell asked if the MPSP and site plan review applications would be submitted concurrently, and Mr. Markey replied no. He noted there will be one MPSP and several site plans submitted in accordance with the MPSP and its conditions.

§ 210-172, Master Plan Special Permit

Ms. Moran asked about subsection 2 (c), (d) and (e) and the use of the word “general”.

Mr. Foster asked to whom the MPSP will be issued, and Mr. Miyares replied it would be Boulder Capital. Mr. Foster asked what happens to the special permit when they sell the land. Mr. Miyares stated the special permit is issued to the owner of the land and runs with the land. He stated the special permit is unique because there will be conditions that can only be satisfied in the aggregate, such as a total of 940 housing units. He noted that if the land is divided up, this still applies. He stated when the last parcel is sold, a number of owners will share in the special permit. Mr. Foster asked about attempts to amend the MPSP at the end and if it would need to go to all owners. Mr. Miyares stated it depends on the kind of amendment it is. He stated if the item applies to all owners, then all owners are needed. If it applies to one spot on the plan, then that amendment can be considered as applying to that owner only. Mr. Foster referred to applications for special permits for uses, such as a neighborhood restaurant. He stated it would go to the use, but what standing do the other owners have – are they abutters or more? Mr. Miyares stated if someone applies for a use special permit, the owner of the land where the use will be located would be the applicant or co-applicant. He stated if it is necessary for the special permit to run with the use and not with the land, then the Board will need to do that. He stated that non-owners in the OSMUD District have the same standing as elsewhere, except that they could argue that a use is inconsistent with the MPSP. Mr. Foster asked if the issuance of a use special permit would require an amendment to the MPSP. Mr. Miyares stated that if someone needed to amend the MPSP because of a specific use, then they would need to do that. He stated that use special permit by itself doesn't require an MPSP amendment, but there could be a need for two applications. Mr. Foster stated if a MPSP doesn't have a neighborhood store and someone applies for one 15 years later, there is more control to the owners. Mr. Miyares noted that this is intended to be a planned community and function as an organic unit.

Mr. Miyares asked the Board about the provisions relating to the fiscal analysis and traffic analysis submitted with the MPSP application, and whether the Board wanted them to be for the project as a whole or for each component of the project. He noted that one needs to know the order in which things will be done in order to evaluate the whole. Mr. MacDowell stated he has a problem with doing this as it will be too costly. Mr. Coolidge asked what would happen if the components change after the permit is issued, and Mr. Miyares stated that the permit would need to be amended.

Mr. Miyares clarified that the list of items to be submitted in the bylaw is a minimum and if the Board needs additional information it can require it. He stated that traffic can still be addressed by component during the site plan review process, but the fiscal analysis can't really be addressed at the site plan level. He stated it would need to be done with the MPSP, as it would be the last shot at an economic impact analysis.

Mr. Coolidge stated there is a premise out there that this will be profitable from the start, in two years, but he doesn't think that is true. Mr. Dourney suggested removing the provision from the bylaw if it is in the Host Community Agreement.

Ms. Moran stated that a stormwater analysis needs to be submitted plus a requirement to conform to DEP standards. She stated that traffic is important too.

Mr. Barry referred to the traffic study and asked about mitigation and when it would be discussed and established. He stated there needs to be fiscal analysis and commitments made.

Ms. Linnell noted that the economic analysis requirement should also include the components such as schools, fire, and emergency response times.

Ms. Pratt stated the stormwater should be as required in the ENF Certificate.

The Board discussed § 210-172.E with respect to minor amendments. Mr. Miyares stated that the case law on amending special permits is that they can be amended without a hearing for a very limited number of things, such as errors and mistakes, unless the bylaw includes a provision for more than this. He asked if the Board wants to allow for more amendments without a hearing, and at what point in the process. After discussion, the Board decided to leave the language unchanged.

§ 210-173, Site Plan Review

After discussion of Section 210-173 A(2), it was decided to delete the last sentence.

Mr. Foster asked about rules and regulations relative to pavement widths and construction details. It was noted that the MPSP would incorporate Design Guidelines, and that roads requiring approval under the Subdivision Control Law would be approved pursuant to the Subdivision Rules and Regulations.

§ 210-174, Design Guidelines

No comments.

§ 210-175, Miscellaneous

Mr. Foster asked whether the Water Resources Protection Overlay District (WRPOD) would be amended to include the area covering the new well, and if it is known where this area will be. Mr. Weismantel stated as part of the well development, the zone 2 will be identified and the WRPOD map will be amended when the area is known. Ms. DeVeuve asked if the WRPOD can be applied when the area is known, before the WRPOD is amended. Mr. Miyares stated the MPSP criteria can be amended to add that a zone 2 area must comply with the WRPOD requirements. Ms. DeVeuve asked about underground parking in the WRPOD. Mr. Zieff stated it is better than open parking with runoff, and it also reduces impervious surface. Mr. Miyares stated that specific issues and concerns can be addressed in the Design Guidelines.

The Board concluded its review of each section of the OSMUD District bylaw. The Board voted unanimously to continue the public hearing to Monday, March 24, 2008 at 8:30 PM.

2. Hopkinton Village Center – 25 & 35 Main St.

The Board voted unanimously to request the use of Town Counsel relative to the appeal of the Board's Decision of Site Plan Review for Hopkinton Village Center. The Board voted unanimously to send a letter to the Board of Appeals requesting that it request that a representative of Fay, Spofford & Thorndike be present at the hearing.

3. Administrative Business

The Board voted unanimously to approve the Minutes of March 4, 2008.

Adjourned: 10:55 PM

Elaine Lazarus, Planning Director

Approved: April 7, 2008