

TOWN OF STOW
PLANNING BOARD

Minutes of the August 7, 2018 Planning Board Meeting

Planning Board Members Present: Lori Clark, Margaret Costello, Karen Kelleher, Len Golder, John Colonna- Romano

Voting Associate Member: Megan Birch-McMichael

Associate Member: Mark Jones

Lori Clark called the meeting to order at 7:00pm.

Discussion of Meeting Minutes

Minutes of July 24, 2018

Karen Kelleher moved to approve the minutes as amended.

Margaret Costello seconded.

VOTED: 3-0 Unanimously in favor (Lori Clark, Margaret Costello, Karen Kelleher-Yea, Len Golder and John Colonna-Romano abstained).

Public Input

None.

Member Updates

Mark Jones said that during a recent Zoning Board of Appeals meeting, it was mentioned that all Planning Board Special Permits have the same fee structure, meaning that an applicant for an Accessory Apartment Special Permit owes as much as an applicant for a Planned Conservation Development. Mark Jones suggested that it may be best to rearrange the fee structure.

Karen Kelleher said that the Zoning Board of Appeals received a petition for a Special Permit for a change in use at 23 Gleasondale Road to operate a massage studio.

Planner's Report

Lower Village Traffic Safety Improvement Project

Jesse Steadman said that the two week look ahead for the project includes work at Bradley Land and White Pond Road that will take the road down to one lane. Jesse Steadman said that after this work, the contractors should be able to keep both lanes open while additional drainage infrastructure and manholes are installed. Jesse Steadman said that there have been a few change orders due to conflicts with underground piping and changing drainage structures, though the project is still within the contingency budget.

Municipal Vulnerability Preparedness Listening Session

Jacquie Goring, Jesse Steadman, and Valerie Oorthuys presented on the Town's Municipal Vulnerability Preparedness (MVP) program. Stow received an MVP grant through the State to complete a baseline climate change and natural hazard vulnerability assessment and to develop specific actions for dealing with priority concerns. Stow contracted with Geosyntec Consultants, Inc to conduct two workshops with local stakeholders and to develop a final report, available at www.tinyurl.com/StowClimateResilience. The presentation covered local climate change projections, top hazards and vulnerabilities in Stow, and prioritized action steps the Town can take to address concerns.

The resulting discussion included questions regarding the capacity of public and private wells in Stow and the impact of the 2016 drought, the potential assessment of culverts and dams located on private properties, and management plans for conservation areas in Stow. Additionally, it was mentioned that Stow could conduct a Farm Impact Study to assess the impacts of climate change on farms and explore options for mitigation and support.

Participants noted that water supply concerns are impacted by loss of electricity and may result in the need of pumper trucks and distribution of drinking water. Understanding the location of vulnerable populations would be useful in prioritizing municipal response to any potential long term electrical outage.

Lastly, it was mentioned that the Town could prioritize locations for requesting Hudson Light & Power to bury electrical wires as part of a statutory scheme.

Modification to Site Plan Approval for Wireless Communication Facility, 501 Gleasondale Road

Present:

Matthew McQuaid, SmartLink LLC

Jesse Steadman stated that this is an Eligible Facilities Request, and that the improvements would not increase visual impacts.

Matthew McQuaid said that this modification was requested in order to upgrade Sprint's equipment at the site. Matthew McQuaid said that the proposed changes include swapping out three existing antennas and adding six remoted radio heads to the existing mount and add three hybrid fiber cables.

Margaret Costello asked if the equipment would match the existing mounts. Matthew McQuaid said that the equipment will be placed on the existing mounts and painted to match the outside brick appearance.

Len Golder asked about the reasoning behind the equipment upgrades. Matthew McQuaid said that the upgrades will increase capacity, as customers are using increased data. Matthew McQuaid said that the upgrades will provide one channel solely for data, and that service speeds will increase.

Karen Kelleher moved that this request is a minor modification not requiring a public hearing.

Margaret Costello Seconded.

VOTED: 5-0 Unanimously in favor (Lori Clark, Margaret Costello, Len Golder, Karen Kelleher, John Colonna-Romano- Yea).

Karen Kelleher moved to approve the minor modification with conditions carried forward from the original decision and incorporated into a new site plan.

Len Golder seconded.

VOTED: 5-0 Unanimously in favor (Lori Clark, Margaret Costello, Len Golder, Karen Kelleher, John Colonna-Romano- Yea).

Public Hearing

Definitive Subdivision Modification- Springbrook Farm, Apple Blossom Way

Jesse Steadman said that the Planning Department has received a request to continue the Public Hearing without testimony and to continue to a meeting in September.

Karen Kelleher moved to waive the reading of the Public Hearing notice.

Margaret Costello Seconded.

VOTED: 5-0 Unanimously in favor (Lori Clark, Margaret Costello, Len Golder, Karen Kelleher, John Colonna-Romano- Yea).

Karen Kelleher moved to continue the Public Hearing to September 11, 2018 at 7:30pm

Margaret Costello Seconded.

VOTED: 5-0 Unanimously in favor (Lori Clark, Margaret Costello, Len Golder, Karen Kelleher, John Colonna-Romano- Yea).

Memo to Board of Selectmen on Recreational Marijuana Recommendation

Jesse Steadman provided the Board with a revised memo to the Board of Selectmen regarding Recreational Marijuana. Jesse Steadman said that the memo was updated to reflect the wish of the Planning Board to include both questions approving and prohibiting uses on the Town Meeting Warrant. Lori Clark said that the revised language allows residents to better understand what regulation would look like in Stow.

Tom Ryan asked about the benefits or disadvantages of addressing Recreational Marijuana through General Bylaws rather than Zoning Bylaws. Jon Witten, Town Counsel, noted that General Bylaw additions require a simple majority vote, rather than a two-thirds majority vote. Jon Witten said that the risk of addressing Recreational Marijuana zoning through a

General Bylaw is that it may not be allowed by the Attorney General, as it is a land use change. Tom Ryan asked whether Towns that have prohibited commercial Recreational Marijuana use have done so through General or Zoning Bylaws. Jon Witten said that it has been done through Zoning Bylaws. Jesse Steadman said that some Towns with Zoning Bylaws prohibiting Recreational Marijuana have later passed General Bylaws also stating the prohibition. Jon Witten said that the effective date of a zoning change is the vote of Town Meeting, whereas the effective date of a General Bylaw is the date of the Attorney General's approval, which may be up to 90 days after the Town Clerk's notice, which in turn may be up to 30 days after Town Meeting. Jon Witten noted that Stow's moratorium expires on December 31, which could provide a window of time with no regulation in place.

Jesse Steadman noted that the Planning Board may offer Zoning Bylaws without being overruled by the Board of Selectmen. Jon Witten agreed, saying that the Selectmen may put their own articles on the Town Meeting Warrant and that duplicative or competing articles would not be preferable. The Planning Board agreed that the Recreational Marijuana articles should be included in the Zoning Bylaws and that the prohibition articles should be included in the Zoning Bylaw as well. The Planning Board agreed that the rationale for including the articles in the Zoning Bylaw should be added to the memo.

Tom Ryan asked about how the Town may choose to cap the number of retail establishments. Tom Ryan said that unless prohibited, retail establishments are limited to 20% of off-site liquor licenses available, which may be increased or decreased through a ballot vote. Jon Witten said that if the Town is concerned about additional liquor licenses being issued, a question can be put on the ballot. Jesse Steadman said that the 20% is included in the proposed Warrant Articles.

Margaret Costello asked if Lower Village had mixed-use zoning, whether Recreational Marijuana Establishments would be allowed there. Jesse Steadman said that Establishments cannot locate in the same building as residential units.

Karen Kelleher moved to approve the memo as drafted with language added as to the rationale.

Margaret Costello seconded.

VOTED: 5-0 Unanimously in favor (Lori Clark, Margaret Costello, Karen Kelleher, Len Golder, John Colonna-Romano - Yea).

Gleasondale Neighborhood Area Subcommittee Member Appointments

Jesse Steadman provided the Board with three letters of intent from incumbent members of the Gleasondale Neighborhood Area Subcommittee.

Karen Kelleher moved to appoint Laurel Cohen, Dorothy Spaulding, and Margaret Costello to the Gleasondale Neighborhood Area Subcommittee.

Len Golder seconded.

VOTED: 5-0 Unanimously in favor (Lori Clark, Margaret Costello, Karen Kelleher, Len Golder, John Colonna-Romano - Yea).

Phased Growth Bylaw

Jesse Steadman said that the owner of Stow Acres is in the process of appraising their property and has notified staff that they are interested in the development value as part of the appraisal. Jesse Steadman said that the owner is concerned with the absorption rate for homes, which could be much higher than 6 homes per year, which is what the current Phased Growth Bylaw allows, depending on what type of housing is created. Jesse Steadman said that the owner feels the Phased Growth Bylaw may be illegal, as the Massachusetts Supreme Court decided in Zuckerman vs. the Town of Hadley that unlimited restrictions on development are unconstitutional. Jesse Steadman said that the Board previously asked for Town Counsel's opinion on whether Stow's bylaw is enforceable.

Jon Witten said that Towns may not have permanent growth phasing bylaws, though they allow for good planning and budgeting. Jon Witten said that the Hadley case confirms that there may not be permanent long term growth management, and that though it is not unlawful, Stow's bylaw should be updated. Jon Witten added that opt out provisions allow for the bylaw to remain.

Mark Jones asked if this has been contested in other municipalities. Jon Witten said that it hasn't, as each Town has its own unique opt out provision.

Karen Kelleher agreed that the Phased Growth Bylaw should be amended, though she mentioned her hesitance to raise it as a priority of the Board based on the need of a single property owner. Karen Kelleher said that it should be on the Board's work plan, though most developers have said that the development schedule has not held them back. Karen Kelleher said that she feels other items on the work plan take priority, such as design guidelines for Lower Village.

Jesse Steadman mentioned that Active Adult Neighborhoods are exempt from the bylaw, and said that he would be more comfortable with opt out provisions rather than conducting a growth study, however the conservation value of Stow Acres should be better understood.

Jon Witten offered that a new section could be added to the bylaw stating that Town Meeting may revisit Phased Growth every five years.

The Board agreed that including an opt out provision may be a useful amendment to the bylaw.

Collings Foundation Site Plan Update

Karen Kelleher recused herself as an abutter to the Collings Foundation.

Present:

Rob Collings Jr., Collings Foundation

Bob Collings Sr., Collings Foundation

Jesse Steadman said that since the Planning Board's last meeting, a letter had been sent to the Collings Foundation to describe the reasoning for the Cease and Desist and to codify the violations seen on site. Jesse Steadman said that in the packets is a memo providing guidance on items to consider if there is to be further action. Jesse Steadman noted that it would be important to have a discussion on the goals of any action taken, which may include a request for remediation or fines. Jesse Steadman noted that he believes the Earth Removal bylaw provides clarity around the nature of the violations, saying that while it does not minimize zoning violations, it provides a framework for the site activities.

Lori Clark asked if any information has been received from the Conservation Commission. Jesse Steadman said that it is included in the memo, along with a copy of the Enforcement Order. Jesse Steadman said that the Conservation Commission reiterated that their jurisdiction is within a ribbon of land, and that if the Planning Board needs assistance or wants to discuss restoration activities, they are available to lend insight.

John Colonna-Romano noted that the Board will need to define a desired end state. Mark Jones said that it is challenging to figure out what may be appropriate, as a large amount of material is believed to have been moved. Mark Jones noted that it may be burdensome to return the area to its prior state, though according to the bylaw a significant fine could be levied.

Margaret Costello said that rather than impose a fine, her preferred outcome is to have the area restored to its original condition. Margaret Costello said that images of the site show that the area was a hill and a buffer for the river. Margaret Costello said that considering the resilience of Stow, the buffer would need to be restored.

Rob Collings Jr. said that he believes there were no trees at the location and that they had a permit. Rob Collings Jr. said that no trucks have left the site with material, as it was used on site at the museum location. Rob Collings Jr. said that the location of the earth removal operation is still a hill and that materials have moved within the site. Regarding remediation, Rob Collings Jr. said that the area could be re-loamed, without planting trees.

Bob Collings Sr. said that as far as groundwater recharge, he believes there is no runoff issue as the area resembles a bowl. Bob Collings Sr. said that he believes the area is 20-25 feet above the water table, and that the sand and gravel filter any stormwater. Bob Collings Sr. said that the area is more efficient in its current state as trees consume water. Bob Collings Sr. reiterated that he believes that the Site Plan referenced in the Settlement Agreement did not detail what types of materials would be removed from which areas of the 4 parcels.

Mark Jones noted that the Earth Removal bylaw allows material to be moved from the area of the foundation of the museum, but not from other areas within the site. Mark Jones said that this was not a permitted activity and it was not on the Site Plan referenced in the Settlement Agreement.

Bob Collings Sr. said that he believes the Site Plan shows the end result of a project, such as the location of the building. Bob Collings Sr. said that his intent was not malicious and that he felt he had approval to do this work.

Lori Clark stated that the Site Plan put forth did not include much earth needed around the foundation. Bob Collings Sr. said that he is not sure of this, as he feels the Site Plan does not address this.

Lori Clark asked for clarification of the sequence of events, asking if material was taken off site for the construction of the museum foundation, then more earth was determined to be needed to fill in the foundation area, therefore more material was taken from the site to complete that work. Bob Collings Sr. agreed, saying that the foundation hole is larger than the foundation itself. Lori Clark asked if materials were removed to dig that larger foundation hole. Bob Collings Sr. said yes, and that his interpretation of the Earth Removal allows the stockpile of materials from the foundation to be removed from the site. Lori Clark asked again if it made the best business sense to take materials off site and then to dig up new earth to use as fill. Bob Collings Sr. said yes.

Mark Jones read from the General Bylaws Article 17 Section 3.4, noting the exemptions to Earth Removal operations not requiring an Earth Removal Permit. Mark Jones stated that from those exemptions, the quarry activity was clearly not permissible. Rob Collings Jr. stated that he does not feel the amount of earth removed from the site exceeded the limits set by Article 17, and maintained that the Building Inspector was aware of the work to replace earth around the museum foundation. Mark Jones noted that it may be possible that as much as 20,000 cubic yard of material was taken off site, which is considerably larger than the foundation, an unpermitted activity, and not exempt from the bylaw. Bob Collings Sr. said that he feels the Earth Removal Bylaw applies to moving material from the site rather than within it and that he felt he had Site Plan Approval. Mark Jones said that an exemption to the bylaw would pertain if a building were to be constructed where the quarry activities have taken place.

Lori Clark noted that the expectation is that activities such as this would come before the Planning Board. Lori Clark agreed that the parcel in question was included in the Site Plan Approval application as a whole, though in reviewing the site plan it is typically well known what will be the disturbed areas. Lori Clark said that the site of the quarry activity was an area not believed to have been disturbed.

Megan Birch-McMichael noted a previous proposal for a safety zone, asking if it a coincidence that the quarry activities took place in that space. Bob Collings Sr. said that was an application from 2014 to create a safety zone at the end of the runway, which was denied by the Board of Selectmen. Bob Collings Sr. said that he believes only part of the area quarried was the same as the safety zone area, and that he believes the activities were outside of the 200 foot buffer zone from the Assabet River. Bob Collings Sr. said that he believes that the area of the proposed safety zone is ten times larger than the site in question. Rob Collings Jr. added that trees were cleared off of the hill prior to the

commencement of the quarry activity. Bob Collings Sr. agreed that they had received a permit to clear the area last year.

Bob Collings Sr. said that he would like any action to be coordinated with the Conservation Commission.

Lori Clark stated that she finds that an open discussion would have a detrimental effect on the Board's litigating position.

Margaret Costello moved to enter into Executive Session to discuss litigation and to adjourn the regularly scheduled meeting of the Planning Board thereafter, and to allow Don Hawkes to be present during the Executive Session.

John Colonna-Romano Seconded.

Roll Call Vote: Lori Clark – Yea; Margaret Costello – Yea; Len Golder – Yea; John Colonna-Romano – Yea.

Meeting Adjourned.

Respectfully Submitted,

Valerie Oorthuys