PLANNING BOARD
Meeting Minutes
Tuesday, December 21, 2010
Town Hall, 120 Main Street
7.00 PM

Present: J. Simons, T. Seibert, M. Colantoni, R. Rowen, R. Glover, C. LaVolpicelo

Staff Present: J. Tymon, J. Enright

Meeting began at 7:04

POSTPONEMENTS:
CONTINUED PUBLIC HEARING: 125 Flagship Drive: Application for a Wireless Facilities Special Permit-Site Plan Review. Proposal for a 140 ft. multi-carrier wireless tower, with associated equipment at the base of the tower and the installation of 9 panel antennas with associated equipment cabinets in the Industrial 1 zoning district.
CONTINUED PUBLIC HEARING: 1003 OSGOOD ST. Watershed Special Permit and Site Plan Review Special Permit for construction of a new 21,000 sq.ft. restaurant/office/retail building and relocation of an historic barn.

BOND RELEASE
Red Gate: Rick Dellaire requesting reduction of the surety bond for Red Gate Subdivision.
J. Tymon: I have received a letter dated December 6, 2010 from Gene Willis recommending the bond be reduced to $30,300. The binder coat has been put down. Several inspections have been completed by Gene. I have also inspected to site. The remaining amount held will be enough to cover all outstanding issues.
R. Rowen: asked if they are planning on finishing off everything so they can bring it for street acceptance at Town Meeting in May.
J. Tymon: No. He wanted to go through at least one winter with the binder coat and have the DPW go back out and inspect again. There may be a buyer for the forth lot. We still have a covenant on that lot.
MOTION
A motion was made by R. Rowen to reduce the Red Gate bond $30,300. The motion was seconded by T. Seibert. The vote was unanimous.

PUBLIC MEETINGS:
CONTINUED PUBLIC HEARING: 1679 OSGOOD ST. Definitive Subdivision for 8 single-family residential lots within the R-3 District, submitted by GMZ Realty.
J. Tymon: We have received a review by L. Eggleston. The applicant will address some of the issues noted. One of the primary issues to be discussed is the volume of discharge from the proposed gravel wetland to an abutting property. Also to be discussed is the integration of C. Adam's lot into the subdivision, the overall proximity to the commercial development district, and the waiver for the width of the roadway.
Joe Coronati, Representing GMZ Realty Trust: Starting with the detention pond, explained that there is room to make the detention pond large enough to handle L. Eggleston's concern about stormwater volume exiting the site. As far as separation from the commercial district, they have changed the layout of the house (on the lot towards the back of the proposed subdivision) and moved the house location on the lot. This will allow them to make the pond wider and move it closer to the road and to keep the tree buffer on the back of the lot, between the commercial district and subdivision, and could possibly place a 'no cut' deed restriction in this area of the lot. Next items the applicant would like to discuss are six waivers being requested for the proposed subdivision. Request for waivers were for: (1) road length, (2) from having to provide a nitrogen and phosphorous loading report (L. Eggleston, of Eggleston Environmental, provided her opinion on this request to the Board), (3) requirement to provide a full flow capacity for all the drainage pipes on the Plans, (4) regulation for concrete drainage pipes, (5) from having to provide a traffic study, (6) from providing all the test pit data on the Plans.
Applicant will add a formal waiver of sidewalks as well as a waiver for reducing the road width from 26' to 24'. Explanation for each waiver request was provided to the Board. The Board approved all waivers.
J. Coronati: Presented an option for incorporating C. Adam's residential parcel into the Plans. Handed out an Overview-Grading and Drainage Plan. The option included a 40' wide Right of Way with a hammerhead located on

C. Adam's property. The Right of Way provides frontage. A driveway would be constructed to provide access. The house position could be changed.
R. Rowen: The 40' Right of Way would be a road?
John Smolak: Attorney for SPC Trust. In order to create the frontage we are proposing the 40' wide layout with a hammerhead to provide the frontage for this particular lot. We propose a 12-14' width of pavement. It is the functional equivalent of a common driveway which is styled as a Subdivision roadway. We would have to request waivers from Subdivision roadway requirements.
R. Rowen: The width of the hammerhead would create the frontage?
J. Smolak: That is correct. We haven't discussed it with the applicant yet but we may end up having a shared maintenance agreement for that segment of roadway rather than creating a Public Way for that segment.
J. Simons: In the past, where we have waived the construction of a roadway, we have showed capability of constructing something that was conforming to our Rules and Regulations. We have done it with three lots but we have never combined a road with a road. It is really a three lot common driveway which we don't allow.
J. Smolak: We have had a conversation with the Fire Chief about the proposed layout. He will have to speak for himself but from a safety standpoint I think he was satisfied with the proposal as currently articulated. He did suggest that the three houses off the common roadway have sprinklers and granite markings at the fork, or intersection, of those three driveways from the main roadway.
J. Smolak: C. Adams did not want to be in this situation but as a result on the rezoning in 2008 he was left with a peninsula of land that is zoned residential that he really doesn't have any use for unless he goes back and rezones. It is 1 to 1.5 acres of land. You don't want commercial there but we are looking for the Board to accommodate residential because it is more suited for residential. I understand your concerns about the roadway and setting precedent on this circumstance but at least from a safety standpoint the Fire Department will submit more detailed comments if the Board wanted and we could make it work from a safety standpoint. In addition, maintenance could be accomplished through a common maintenance agreement.
R. Rowen: Could you make it a 50' and still get the lots that you are looking for, could you draw a plan that moves the new house back further, on a drawing, and get a conventional cul-de-sac? Then you could demonstrate that you have a conforming plan. Then you can go from there to maybe build something different once you are entitled to all these lots on a conforming plan.
J. Simons: That is the first step. I would like the potential to waive the construction of a roadway but I don't want to use it promiscuously when it doesn't make sense to do it and there are too many waivers being asked for here.
R. Rowen: The waivers should be for the common benefit of all not for the justification to adding a house that wasn't entitled in the parcel.
J. Coronati: Believes there is enough land area to demonstrate a conforming roadway.
J. Smolak: So, if we can demonstrate that we can get the Right of Way for a Suddivision roadway conforming with the Subdivision width requirements and cul-de-sac requirements and provided that we can satisfy the Fire Department in terms of any access concerns is the Board ……?
J. Simons: Those are the two key things.
J. Simons: Procedurally how do we handle this?
J.Tymon: We could do it as Modification to an approved Subdivision. We would have to approve this and then re-notice. We could make it a change to a current plan.
J. Smolak: I think we would need to submit a formal request to modify the existing proposal. We would provide newspaper notice, abutter notification, and clearly identify the extended parcel without having to withdraw.
J. Simons: asked J. Tymon to see if Town Counsel would approve that recommendation.
J. Coronati: Asked to come back in January with a modified plan showing what was discussed tonight and agreed to sign a continuance until the end of February 2011.

MOTION:

A motion was made by R. Rowen to accept the applicant's written continuance request to render a decision on the Subdivision until February 28, 2011. The motion was seconded by T. Seibert. The vote was unanimous.

Continued Public Hearing: 254 Great Pond Road. Applicant seeks to construct a new single family residence within the non-discharge zone, with accessory structures within the non-disturbance zone and to remove an existing tennis court within the non-disturbance zone.

MOTION

A motion was made by R, Rowen close the Public Hearing for the Special Permit for 254 Great Pond Road. The motion was seconded by C. LaVolpicelo. The vote was unanimous.

MOTION

A motion was made by R. Rowen to approve the Watershed Special Permit, as amended this evening. The motion was seconded by C. LaVolpicelo. The vote was unanimous.

Continued Public Hearing: 1857 Great Pond Road. Applicant, Steve Galizio, seeks to construct a farmer's porch and replace the existing brick walk with concrete pavers.

MOTION

A motion was made by R. Glover to close the Public Hearing for the Special Permit for 1857 Great Pond Road. The motion was seconded by R. Rowen. The vote was unanimous.

MOTION

A motion was made by R. Rowen to approve the Watershed Special Permit for 1857 Great Pond Road, as amended this evening. The motion was seconded by M. Colantoni. The vote was unanimous.

DISCUSSION ITEMS:

Zoning Amendment: C. Foster to present proposed zoning change regarding two-family dwelling units in the R-4 District for Annual Town Meeting 2011.

C. Foster: presented the Board some statistics on the number of families affected by the past zoning amendment regarding two-family units in the R-4 district. Would like a feeling from the Board as to what their experience has been with the existing two-family houses as opposed to the proposed two-family houses. Most people seem to agree that the problem arose because of the proposed two-families rather than the existing two-families. Does not understand why the existing two-family houses have to go through the Special Permit procedure. The present amendment provides that two-families are taken from the allowed use section. The second sentence of the Bylaw says that they may become an allowed use by a Special Permit. Believes the Bylaw is flawed and wants the existing houses be returned to an allowed use. Existing two-families should not have been included in the Special Permit process. Asking that the existing homes be returned to an allowed use.

J. Simons: asked for clarification of the problem that C. Foster is trying to cure.

C, Foster: existing two-families were not a problem. Why were they taken out of an allowed use?

J. Tymon: Existing two-families would have to go for a Special Permit for any alteration because they are non-conforming. Had asked the Building Dept. to do research into how many building permits were issued from 7/2005-7/2010. There were close to 100 permits for alterations/modifications.

J. Simons: If you do something requiring a building permit internally you don't have to do anything special. If you do something externally you have to do something?

R. Glover: The language reads 'no major exterior structural change'.

J. Simons: How many Special Permit requests have there been for existing two-families?

J. Tymon: None. The Building Inspector's interpretation is that he is allowing the existing two-families to have their alterations/modifications with just a building permit with his signature without going through the Special Permit process.

R. Rowen: asked if the Inspector is judging them non-major.

C. Foster: stated that he figures the Inspector believes they are grandfathered in.

S. Simons: The change being proposed is to make existing two-families an allowed use?
C. Foster: Yes. Handed out proposed language for an amendment to the zoning bylaw.
J. Simons: Recommended to have the Building Inspector come to a Planning Board meeting to discuss the issue. In addition, would like to sit down and work through the language of the proposed change and the language of the existing Bylaw in total.
C. Foster: Are you going to sponsor the article?
J. Simons: We do not know yet. We need to do a little more due diligence and make sure we fully understand it.
C. Foster: Asked when the warrant will be open until.
R. Rowen: We will certainly take action before the Warrant closes.
J. Simons: asked if someone on the Board would read the language in advance and do some homework on it. T. Seibert will review the language.

NEW PUBLIC HEARING: Amend the Planning Board Regulations, including applications and filing fees to accompany the Town of North Andover's Stormwater Bylaw, Chapter 160 of the town's Bylaw.

J. Tymon: We are opening up a Public Hearing to add a set of regulations that will accompany the Town's Stormwater Bylaw that was passed in 2008. The Bylaw granted the authority to enforce the Bylaw and to adopt the regulations. The regulations allow the Board to grant a Land Disturbance Permit. It applies to any land disturbance or change of surface of more than an acre and land that is not currently regulated by any other authority. The proposal has been reviewed by Town Counsel and comments have been provided.
L. Eggleston, Eggleston Environmental (Town's outside consultant): The proposed regulations are modeled after some of Andover's as well as some State Bylaws and Regulations. The Town's Bylaw goes into a fair amount of detail. In the regulations there are specific areas where the text is in bold because it is drawn straight from the Bylaw. If it is in the Bylaw we don't really have the flexibility to modify it. Given that DEP does have the State's Stormwater Management Standards it seemed wise to just defer to those and to say that things should be consistent with those standards. There are a couple areas where we have digressed from them and established more stringent criteria. One is in the size of the storms that we are asking to be modeled. Another is to establish a minimum 1" water quality volume rather than DEP's standard of 1/2" in certain areas and then 1" in more sensitive areas. We established 1" water quality volume across all areas. We have outlined the criteria for the analysis. I think it actually makes the applicant's job a lot easier if the criteria is spelled out and particularly if it is consistent across the different town departments so that Con Com is not looking for something different that the Planning Board, etc. These particular regulations will only apply where you have jurisdiction under the Land Disturbance Permit. Our goal is, through the next project, to bring in your Site Plan Review, Subdivision and Watershed Special Permit to all have the same rules pertaining to drainage. For tonight this is only going to apply to the Land Disturbance Permit under the Stormwater Bylaw.
R. Rowen: But we can always impose this as a condition of a Site Plan Review Special Permit?
L. Eggleston: You have language for Site Plan Review that says you must meet the State's Stormwater Standards. You can choose to waive where it is overkill.
J. Simons: Hypothetically, we could propose tomorrow a one sentence change to the Planning Board Rules and Regulations that the Subdivision has to comply with the Stormwater Regulations.
L. Eggleston: I could give you some quick language for the Subdivision Rules and Regulations that basically says you must comply with the State's Stormwater Management Regulations.
R. Rowen: Agrees with crafting the language but cautioned that in the past the infrastructures have not failed and that they have been designed adequately. We don't want to destroy the look of the town to protect it against something that is not really a problem.
J. Simons: Stated that we have the ability to waive requirements.
Public Comment:
John Smolak: Concerned that the Town and the Selectmen have tried to streamline the permitting process and he does not equate streamlining the process with making everything uniform so that it exceeds, in some

circumstances, what the State requires. Also, believes we need to look at what surrounding Towns are doing and to look at the cost implications for projects on the commercial and residential side. This proposal only deals with the Stormwater Bylaw. You are not triggering Con Com jurisdiction or Planning Board jurisdiction with respect to Subdivision. It is a limited population that you are effecting and you are hitting mostly residential. Single family homeowners that might disturb an acre or a raise and re-build. Not the large developers. There are 50 pages of regulations on top of a 13 page Bylaw. Suggests that the Regulations just defer to the DEP Stormwater Regulations as amended and as they may be amended. Believes that potentially this will lead to over-sizing in certain circumstances and driving up expense and costs. We already have the Stormwater Bylaw and that is all that is required. Handed out and discussed Regulated MS4 Areas in Ma mapping and Impervious Cover & Watershed Delineation by Subbasin or GWCA NA, Ma. Believes the Stormwater Bylaw itself is adequate. Concerned that the Town is over-regulating. Concerned with what will happen down the road with Site Plan Review and Subdivision Control. Believes this is a factor in driving up development costs. Does not believe the Town needs to go above and beyond the DEP Stormwater Standards. Believes it is unnecessary to have such an extensive set of regulations.
J. Tymon: What we are trying to do is to make it consistent with the existing MA Stormwater Handbook Standards. We have been essentially doing that for our projects for the last year and a half since we have had L. Eggleston as our outside consultant. We are also trying to make all our regulations consistent so that it is easier for developers. It will be a standard set of regulations and there are very few instances where we are going above and beyond the MA Stormwater Standards. There is also complete authority within the Regulations to waive any and all requirements. Stormwater management has been one of the biggest issues of any project that we have been looking at.
C. LaVolpicelo: Believes that having one document for a developer to reference is easier than trying to reference the State Stormwater Handbook and then have to reference each individual town's regulations as well.
L. Eggleston: A lot of items in the Regulations are procedural and those are not in the Handbook. The technical criteria are very similar to the Stormwater Handbook.
J. Simons: Asked for items that are in the Regulations that are above and beyond the State Handbook.
L. Eggleston: Procedures and Fees are administration items of the Bylaw. Section 7: the vast majority is consistent with the State's Stormwater Standards (except the Hydrologic criteria), the erosion and sediment plan and the O&M plan is consistent. Some of them have just been improved upon from what the State's guidance has. The inspections and surety requirements are not called for in the State's Stormwater Handbook.
J. Tymon: The Regulations would provide guidance for me. It is much more simplified than the DEP Stormwater Handbook which will make my job easier.
L. Eggleston: Does not believe the DEP manual spells out everything that the town requires for a submission.

Board had some discussion on what was presented. Some members did not believe they were ready to vote on the matter at this time.
J. Simons: asked if J. Tymon could work with L. Eggleston to review the document again and try to streamline it and to remove anything that may be redundant.
J. Smolak: Commented that the new permit will be issued in 3-5 months so the town will know what is required of it in terms of local Bylaws and Requirements. Suggests this topic is tabled until that is issued so we know what is going to be required and can act accordingly. Secondly, stated that his is not sure that any of the stake holders (people who will be impacted, development community) have been invited to be involved in this process.
J. Simons: Stated that this was a Public Hearing and that anyone that wanted to attend could have.

The Board agreed to review the material and continue the discussion at the next Planning Board Meeting.

MOTION

A motion was made by T. Seibert to adjourn the meeting. The motion was seconded by M. Colantoni. The vote was unanimous.

The meeting adjourned at 9:50 PM.

Meeting Materials: Dec. 21, 2010 agenda, G. Willis memo Red Gate Pasture Subdivision bond release, DPW Unit Prices Red Gate Subdivision, Zoning Bylaw Prior to May, 2004 with comments submitted by C. Foster, "History" memo submitted by C. Foster, NA Stormwater Management and Erosion control Regulations Land Disturbance Permit, Proposed Article X: Amend NA General Bylaw, New Chapter, Chapter 160, Stormwater Management & Erosion Control Bylaw, Urbelis & Fieldsteel, LLP Memo dated 12/20/2010, MA Stormwater Handbook-stormwater management standards, Legal Notice---Notice of NA Planning Board Public Hearing, Regulated MS4 Areas and Applicable Watershed-Specific General Permits in MA, Impervious cover & Watershed Delineation by Sub basin or GWCA ---North Andover, MA, Draft Decision 1857 Great Pond Rd, Draft Decision 254 Great Pond Rd, 1679 Osgood St Overview-Grading and Drainage Plan (C4), 1679 Osgood St Soil Erosion and Sedimentation Control Plan (C5), 1679 Osgood St Soil Erosion and Sedimentation Control Plan (C6), 1679 Osgood St 100' Wetland Buffer Impact Plan (C7).