

Leicester Planning Board Meeting Minutes
August 7, 2007

MEMBERS PRESENT: Debra Friedman (*arriving at 7:10pm*), Sharon Nist, Bill Wright, John McNaboe and Jason Grimshaw

ASSOCIATE MEMBERS: Scott Broskey

MEMBERS ABSENT:

IN ATTENDANCE: Michelle Buck, Town Planner and Barbara Knox, Board Secretary

MEETING DATE: August 7, 2007

MEETING TIME: 7:00 pm

AGENDA:

7:00 PM Stormwater Bylaw

7:30 PM Old Business:

A. 1535 Main Street

B. Tracy Estates (Street Trees)

7:45 PM Approval of Minutes

7/10/07

8:00PM Town Planner Report:

A. FY08 Goals & Objectives

B. Open Space Plan Update

C. CMRPC Grant/Master Plan

D. CDBG Grant

E. Request for comments regarding 40B

F. Request for Amendments to Zoning Bylaws

(Limited Frontage Lot and setbacks with Decks)

John McNaboe, Vice Chairman opened the meeting at 7:00 pm

Discussion:

Stormwater Bylaw

Ms. Buck introduced Mr. Ed Himlan from the Mass. Watershed Coalition. He has been helping the Bylaw Committee put together a Stormwater Bylaw and associated Stormwater Regulations. Once this is completed, the Bylaw will go before Town Meeting, either in the fall or spring. Ms. Buck provided the Board with draft copies of the Stormwater Bylaw and Draft Regulations

Mr. Himlan gave some background information and then opened to the Board for questions. Mr. Himlan said the Mass Watershed Coalition's focus is on helping Towns to prevent pollution and prevent flooding that will damage local streams, ponds & water supplies. He has been working with Ms. Buck and the Bylaw Committee helping to create a Stormwater Bylaw. The State provides a recommended model bylaw, which is fairly long and technical. What he is helping the committee do is, trimming it down and making it less technical, so that it is easier and clearer to understand. They were able to accomplish that and finished the Bylaw in April.

Since April, they have been working on Stormwater Regulations that will need to be adopted once the Stormwater Bylaw gets accepted at Town Meeting. Mr. Himlan informed the Board that there are minutes on all of the meetings for anyone to review. He said this is at the point where the Bylaws and Regulations are ready to go before Public Meetings and Forums, get comments from the community and start preparing for Town Meeting. The Committee strongly felt that the Planning Board should be the regulating Board.

Mr. McNaboe asked if other Boards & Committee's will need to adopt these rules and regulations and would they enforce them as well. Mr. Himlan said the Planning Board would be the permit granting authority, but to help with the review process, other Boards such as Conservation & Zoning, would need to adopt the same Regulations as the Planning Board.

Ms. Nist said wouldn't the Regulations be adopted town wide? Why would each Board need to adopt these Regulations?

Mr. McNaboe agreed and felt it would cause confusion. Ms. Nist said her impression is that this is a Bylaw and are accepted Town wide and all Boards will have to follow this. It will all have to come to the Planning Board, because we are the permit granting authority.

Mr. Himlan said it can be made that way, because the way it is written now, it would allow the Conservation Commission to review a Stormwater Permit based on the Regulations that were adopted Town wide, but Conservation would have to adopt those Regulations. The Conservation Commission can make their findings; send that to the Planning Board to help in their review process, because the Planning Board will be the one issuing the permit. That way it takes the total burden off the Planning Board for having to review everything.

Mr. McNaboe said this might become confusing, because another Board might think they have an equal type of authority on these Regulations. It will need to be made clear that the Planning Board will be the permit granting authority.

Ms. Buck said the way the Bylaw is currently written, the Bylaw primarily applies to projects that already go through the Planning Board, which makes the Board the logical granting authority. There a couple of things that are still not too clear; one of the main purposes for doing this was to make it a consolidated process on reviewing Stormwater.

The Water Resource Overlay District comes to mind, because right now that is a special permit under the Zoning Board of Appeals. There are one of two ways to approach this; either remove the special permit granting authority from the ZBA to the Planning Board or have ZBA adopt the Regulations and trust that they will do their review the same way as the Planning Board would.

Ms. Friedman said it would make the process easier by moving the granting authority to the Planning Board.

Ms. Buck asked if it would be politically feasible taking another special permit away from the ZBA, because recent zoning amendments have already moved special permit granting authority for several types of special permits to the Planning Board already.

Mr. McNaboe asked if the ZBA can hire engineers. Ms. Buck said they can, although they have not adopted appropriate regulations to do so. When the ZBA has hired consultants, they have voluntarily gotten the applicant to follow it through the Planning Board accounts.

Ms. Friedman felt it would make more sense making the Planning Board the granting authority.

Mr. Broskey said the Planning Board will be the one who will give out the Stormwater permits, so for accountability reasons; it's appropriate that the Planning Board be that authority.

Ms. Friedman said that would be for the Water Overlay Bylaw.

Ms. Buck said to change that would require a zoning amendment.

Mr. McNaboe said because of the name, Zoning Board of Appeals; on a Planning Board Decision that's appealed, is it appealed to the Zoning Board of Appeals who will not be granting the initial permit; will they be the Board who will oversee if it was done the right way or not.

Ms. Buck said she is glad to see the Board is consistent on supporting a zoning amendment to move that special permit process to the Planning Board.

Ms. Friedman said it should be discussed with the Zoning Board first, just to show that the Planning Board is not trying to take away anything from them, just that it makes a lot of sense to do it this way.

Discussion

Mr. McNaboe asked about enforcement; who will be the enforcement officer? Ms. Friedman said it's a Zoning Bylaw; therefore, it would be the Zoning Enforcement Officer.

Mr. Wright asked in the Order of Conditions given to subdivisions, which refer to Stormwater Management, there are requirements that have to be met, who oversees that? Ms. Buck said it would be the Planning Board and the Zoning Enforcement Officer would come first.

There are Stormwater issues that don't trigger this new bylaw and it has not been completely thought out on how to make that review more consistent.

Mr. Wright asked if that would be above and beyond what gets presented when a Stormwater Management Plan is submitted. Ms. Buck said not above and beyond it, the regulations tell you what has to go in that document.

Even though, right now, stormwater is reviewed for every project, there are no specific standards on what has to go into a drainage report. The regulations are more for informing the applicant what needs to be in the drainage report. The regulations are meant to make the process more consistent and to have better tools in place for long term monitoring.

Mr. Himlan said the resource areas under the Wetland Protection Act; if it is not within the resource protection area, then the length between the drainage and resource protection area has to be shown. Conservation currently uses the stormwater standards for managing wetlands, which is what this bylaw will do.

Ms. Buck asked if a project has to go before both Conservation and Planning; to comply with this bylaw, they should, as a matter of course, comply with what they do with the Conservation Commission.

Mr. Himlan said that was the intent, having Conservation adopt these regulations. Then they can just give out their review on a Stormwater permit and inform the Planning Board to grant the permit. The Planning Board would still be the permit granting authority, because there will not be any vague areas as to who is the granting authority.

Mr. Broskey asked when an applicant presents their plan, the Planning Board is reviewing water runoff to begin with, whether it has to do with catch basins or water runoff and where it is going; is there a permit that has been issued at that point in time and the Board is reviewing that. Ms. Buck said right now it is rolled together.

Mr. Broskey said all this is doing is making it a separate process. Mr. Himlan said yes, it would be a separate permit from a regular submission, but it also allows the Town to regulate conditions on stormwater.

The State is looking to encourage low impact development and on-site treatment rather than adding more strain to the existing detention basins. It will be less expensive for the Town to maintain after it has been built.

The regulations also specify who will maintain drainage systems after they have been constructed. Through this process, the owners would be responsible for the operation and maintenance of the Stormwater Management Systems.

The whole idea is to try and reduce the amount of detention basins and end up with a better Stormwater System that is more cost effective.

Mr. McNaboe said in the section under Waivers, it reads, that the Board can waive compliance to regulations if such action is allowed by the State. The Board could find itself in trouble every time somebody brings in a plan and reads that they can request waivers; applicants may take advantage of that. Sometimes it is better when the Regulations state there are no exceptions.

Ms. Buck said only the Regulations can be waived, not anything in the Bylaw. However, if the Board is concerned about waivers, that language could be tightened, so that it can't be so broadly interpreted.

Ms. Friedman said it's hard, because it's a constant balance act. It is so much easier to be able to say, we can't waive that and you have to comply, then to decide, who gets to waive what, but, there are times when you wish you could waive something. Maybe, tightening up the language would be good, but you need a little wiggle room.

Ms. Buck said the main concern is that you don't want applicants to have to duplicate things between two boards, with slightly different issues. If an applicant has to submit to both Boards just because of the nature of the project, you would want it so that the standards are the same. That would be so they don't have to do one Stormwater Management Report that complies to Planning Board and a different report that complies with Conservation. Mr. Himlan said this was the intent on having the Conservation Commission adopt the Regulations.

There would have to be a Public Hearing to adopt the Regulations and once the Planning Board adopts them, then Conservation could adopt them and then you would be working from the same set of Regulations. Rather than having an applicant meet before both Conservation and Planning with possible differences, you would be working off of the same set of Rules, which would simplify things. The Board can still do that without delegating that review process to the Conservation Commission.

Ms. Buck asked how that would work if it wasn't delegated to Conservation. Mr. Himlan said you would need to get an agreement with Conservation that they would use the same criteria the Planning Board is using, which is consistent to the policy they operate under now.

Ms. McNaboe said to have members of Conservation involved in the hearing, then any objections they may have or things they would like to add, can be address at the hearing.

Ms. Friedman suggested having a joint hearing, where both Boards can adopt the same set of rules at the same time, so there won't be any discrepancies. Ms. Buck said that was a good idea.

It was the intent that the Bylaw would not go into effect until the Regulations were adopted.

The idea is to meet with the relevant Boards within the next few weeks; ZBA & Conservation, and discuss the proposed Regulations.

Mr. Himlan said when you do the Regulations; you want to make sure that all the relevant Boards are there, so everyone has their input.

Mr. Wright said when you talk about enforcement or inspections, such as, inspecting if the Stormwater Management is being complied to. Who will do the inspections and long term monitoring?

Ms. Buck asked how the long term monitoring works in other communities. Currently, the Town Engineer reviews those types of issues during construction and there really isn't any post construction, unless there is a complaint.

Mr. Himlan asked if Conservation has an Engineer. Ms. Buck said no.

Mr. Himlan said that is how a lot of communities handle it, through Conservation, because they have a full time Conservation Agent who enforces Stormwater Regulations.

Ms. Buck said one other point of concern was about driveways and asked if that should be taken into account and if there needs to be any changes to the Driveway Bylaw related to Stormwater. That is more of a highway department concern, but would like it brought out at the next Stormwater meeting.

Ms. Buck asked the Board if there were any further questions, comments or concerns for Mr. Himlan.

The next Stormwater Meeting is scheduled for August 23rd. This item will be put on the September 4th Planning Board Meeting Agenda to update the Board on the 8/23/07 meeting.

The Board thanked Mr. Himlan for coming.

Old Business

1535 Main Street (Laney's)

Ms. Buck presented the Board with a draft document; "Planning Board Determination" to sign, which is a written determination that all permits for 1535 Main have expired. The primary reason is that work at the site has not been actively and continuously pursued to completion; there has been no activity for approximately one year. Also, relevant variances have expired and construction has not commenced on the proposed new building. Therefore, it is the determination of the Planning Board that all approvals for this project have expired and that development on this site will require new review and approval.

MOTION: Mr. McNaboe moved to approve the written Determination for 1535 Main Street, Leicester.

SECONDED: Ms Nist – Discussion: None

Vote: UNANIMOUS

Tracy Estates (Street Trees)

Ms. Buck said Mr. LaFlash has planted the street trees and planted them before showing the Board the plans. Ms. Buck said she had ask Mr. LaFlash, before starting any tree planting, to submit a simply plan showing where the new trees will be and where the existing trees are, so that the Board can evaluate whether the plantings will be sufficient. Mr. LaFlash submitted a drawing only showing where the new trees were planted and it didn't show where the existing trees were.

Ms. Friedman said to give the drawing back to Mr. LaFlash and have him show exactly where each new and existing tree is located.

Ms. Nist suggested differentiating the new and existing trees by different colors; one color showing where the new trees have been placed and another where the existing trees are located.

Ms. Buck said this issue will be put back on the September 4th agenda.

Mr. Wright asked if the asphalt problem had been corrected. Ms. Buck was not sure, but has been informed Mr. LaFlash has had somebody out there doing some asphalt work. The problem in front of Paul Doray's property has been corrected along with some of the other areas that had problems. Ms. Buck said she has not had the chance to discuss any inspections with Kevin Quinn, due to vacations, but will make a point to soon.

Pepin's, Route 9 West

Ms. Nist asked about Pepin's re-landscaping after Route 9 was reconstructed.

Ms. Buck said believes some of the plantings may have died. Mr. McNaboe suggested sending a letter informing him that new trees need to be put in. Ms. Buck will send a letter as appropriate.

Cumberland Farms

Ms. Buck informed the Board that the stop signs have been put in place. Ms. Nist said she has driven by and noticed the signs were up and the word stop was painted on the pavement exiting the lot.

Approval of Minutes:

7/10/07

MOTION: Mr. McNaboe moved to approve the minutes of July 10, 2007

SECONDED: Ms Nist – Discussion: None

Vote: UNANIMOUS

Town Planner Report

FY08 Goals & Objectives

Ms. Buck submitted a draft report for the Board to review for any changes and for any changes in the projects priority ranks.

-Discussion-

#7-Assist Historical Commission with protection of Town's historic resources should be made a higher priority. This is to assist with establishment of a local historic district in Leicester Center.

Ms. Friedman said this item should be made a top priority, but will be difficult to accomplish without the assistance of the Historical Commission.

Mr. McNaboe asked what the benefits to the Town would be with the establishment of a historic district in the center. Ms. Buck said a national designation is more of an honor & there are no regulations tied to it, other than Federal Funds can not be used to knock down a building. With a local historic district, the Town would have the authority to adopt local regulations and there is a wide disparity between towns on what you can do.

Mr. McNaboe asked if it would preserve the center of Town. Ms. Friedman said yes, which is why it should be a high priority.

Discussion held on changes in the priority rank for FY08 Projects.

The Board concurred to the following: 1) Master Plan Update; 2) Incomplete Projects; 3) Hillcrest Country Club; 4) Assist Historical Commission with protection of Town's historic resources, with the establishment of local historic district in Leicester Center; 5) Stormwater Bylaw; 6) Open Space Plan Update and 7) Burncoat Park.

Open Space Plan

Ms. Buck said there is not much to say on this. She will be trying to schedule another meeting for Tuesday, August 21st at 4:30PM.

CMRPC Grant/Master Plan

Ms. Buck said this was discussed at the last meeting and it turns out that an eligible activity for this grant is preparation of Economic Development Chapter of the Master Plan. This is a Technical Assistance Grant; not money and Central Mass Regional Planning would do that chapter if the Town gets the grant. There is a good chance the Town will qualify for this Grant and should know within the next few weeks, however, CMRPC would like to see a Master Plan Committee in place by September.

There was discussion regarding who the Board wants to recommend for appointment to the new Master Plan Committee. Ms. Buck passed out copies of the list of people that served on the last Master Plan Committee.

Also discussed was notification on acquiring 2 Citizens at-Large to serve. Ms. Friedman suggested putting the notice on the Town's Web Site.

Ms. Nist & Ms Friedman volunteered to represent the Planning Board. Mr. Broskey said he would be interested in volunteering as a Citizen At-Large. Mr. Grimshaw said he would be interested in volunteering under the Historical Commission. Ms. Friedman said because Mr. Grimshaw is also a Planning Board member, it makes 3-Board members serving and that would require to post as a Planning Board Meeting.

Ms. Buck suggested having the Master Plan Meetings as an agenda item at a Planning Board Meeting. Have one meeting a month and the first 45-minutes would be dedicated to Master Plan discussion. Ms. Friedman said because some of the Planning Board meetings tend to go late suggested starting that one meeting earlier at 6:00PM. Board members concurred.

CDBG Grant

Ms. Buck said the Town did not get approved for that funding (this was the grant for housing rehabilitation in Rochdale).

Request for comments regarding 40B

Ms. Buck said the Board of Selectmen had asked the Planning Board a while ago what their opinion was on a letter received from the Town of Walpole regarding a moratorium on 40B requirements. A memo was sent to the Selectmen letting them know that Planning Board had discussed that issue and that the Board shared the concerns of the Town of Walpole. The

Selectmen have now asked that the Planning Board directly send a letter of support to the Town of Walpole, with copies to Senator Augustus and Representative Binienda. The Board members felt it was a good idea and suggested to send essentially the same letter that was sent to the Selectmen.

Request for Amendments to Zoning Bylaws

(Limited Frontage Lot and setbacks with Decks)

Ms. Buck said she had received an inquiry from the Building Inspector regarding a request to amend the Limited Frontage Lot Bylaw to allow such lots “by-right”, rather than by special permit. Currently a Special Permit from the Zoning Board of Appeals is required. The Board did not support changing allowing Limited Frontage Lots by right, especially as the Bylaw is currently written. While the Board might consider revisions, this would be a more comprehensive revision, and is not a priority to act on in the near future.

Ms. Buck said a request was also received regarding reducing the setback requirements for attached decks. The Board members were not in favor to making changing on this requirement, Since decks are often converted to permanent structures, they should be constructed in compliance with required setbacks.

Henshaw Street

Ms. Buck said she has talked with the Building Inspector about the two houses that are on one lot on Henshaw Street. He advised her that he is aware of that situation and intends to make sure the old house is fully demolished before issuing an occupancy permit for the new house.

Hammond Street

Ms. Buck said there is a subdivision application before the Board and she has requested an opinion from Town Counsel asking if the applicant has to prove the legal right to pass over or to use the right-of-way. It is her understanding that the abutters on the other side, the Girl Scout Council, own a portion to the middle of the right-of-way, because the road was discontinued by Town Meeting in 1976.

The Girl Scout Council Attorney contacted Ms. Buck and told her that they do not intend to grant such rights; this is why she has requested an official opinion from Town Counsel as to whether the Girl Scout’s consent is required to use that right-of-way.

Another interesting piece of information is one of the reasons why the Girl Scouts won’t grant access is because there is the possibility that the property might be sold. This is a perfect example of why the Board should always consider future build-out possibilities, because this Board has always said, you can never assume that a piece of property won’t be sold. Members of the public have indicated that development should be allowed with reduced standards because the Girl Scouts are never going to sell.

Mr. Wright said the Girl Scouts have found themselves in financial trouble. Ms. Buck said they are in financial trouble and they are considering selling some of their properties. Once Hammond Street is extended, it will allow the right to build off the road.

Vacation Day Request

Ms. Buck requested a vacation day for August 31st.

MOTION: Ms. Nist moved to grant Ms. Buck a vacation day for August 31st.

SECONDED: Mr. Grimshaw – Discussion: None

Vote: UNANIMOUS

Stafford Hill Estates

Mr. Wright informed the Board that he read in the newspaper this property is being auctioned off. Ms. Buck said she received a call from the potential buyer inquiring on the status of this project.

MOTION: Ms. Nist moved to adjourn.

SECONDED: Mr. McNaboe

Vote: UNANIMOUS

Meeting adjourn at 8:45PM

Respectfully submitted:

Barbara Knox