

Scituate Planning Board, December 20, 2012

SCITUATE PLANNING BOARD

MINUTES

December 20, 2012

Members Present: William Limbacher, Chairman; Daniel Monger, Vice Chairman; Richard Taylor, Clerk; Eric Mercer and Stephen Pritchard, Alternate Member.

Members Absent: Robert Vogel.

Others Present: Ms. Laura Harbottle, Town Planner.

See Sign-in List for names of others present at this meeting.

Location of meeting: Scituate Harbor Community Building, 44 Jericho Road.

Mr. Limbacher called the meeting to order at 7:30 P.M. The meeting was being recorded for airing on Scituate Cable Television.

Documents

- 12/20/12 Planning Board Agenda

ACCEPTANCE OF AGENDA: Mr. Monger moved to accept the agenda. Mr. Mercer seconded the motion and the vote was unanimous in favor.

Workshop, Local Issues & Control of Medicinal Marijuana Dispensaries

Documents

- Full text of ballot question from November 2012
- Article found at <http://www.wbur.org/2012/12/17/medical-marijuana-law-delay>
- Medicinal marijuana Town Ordinances
- Email from Karen Joseph to Board with pdf 112912 hilllaw.pdf

Chairman Limbacher indicated that on November 6 the ballot question for medicinal marijuana dispensaries passed in Scituate and the state and the new law will take effect January 1. The meeting is to determine how Scituate will respond to the issue. Board of Selectmen Chairman, Joe Norton, indicated that Scituate must now deal with the consequences as how to site the facilities to protect the health, safety and welfare of the residents. He indicated Annmarie Galvin of the Scituate FACTS Group would speak and he thanked those present for being up front with the issue.

Chairman Limbacher indicated this will not be the first meeting. He indicated that Scituate has an early town meeting and there are two spots on the warrant reserved for medicinal marijuana articles. The Board is looking for feedback from the Town on what it wants to do for implementation.

Jennifer Sullivan, Scituate's Director of Public Health, indicated that the Department of Public Health (DPH) would be developing regulations that will require public hearings. She indicated that communities must comment on the regulations during the public hearing process to be heard. Chairman Limbacher indicated the Planning Board will look at the land use aspect of the dispensaries.

Annmarie Galvin said she believes restricting the use to a medical building would be appropriate. She indicated some towns are going with a total ban. Chairman Limbacher indicated that Town Counsel said a total ban may not be legal. He indicated that the proposed DPH regulations will not be enacted until after town meeting so the Board sees are two major decision points as a course of action –so enacting a town bylaw, which could be difficult at a spring town meeting, and a moratorium of a determined length. He said

he believes the Town must be proactive. Police Chief Stewart indicated that according to the MMA it doesn't sound like a stay of the enactment will happen, but it doesn't sound like there will be any dispensaries until the state regulations are passed. Chairman Limbacher indicated that there needs to be some action by the Town in either the annual or special town meeting.

Superintendent John McCarthy is concerned about drugs entering the schools when there is already a drug issue. He believes people look at marijuana as a drug without many issues and believes it is often a gateway to other drugs. Chairman Limbacher indicated that the legislation in other states regulates dispensary use so the product is not to be used on school grounds or public places. Medicinal use will be clearly differentiated from non-medicinal use.

An outright ban of medical marijuana dispensaries versus a moratorium was discussed by the Board. Mr. Monger believes a ban won't be legal based upon the rulings the Attorney General has made on adult entertainment uses. Total bans against these have been overturned in favor of reasonable regulation. Mr. Valerio Romano, an attorney from Indian Wind Drive questioned Mr. Monger on his interpretation based on the first amendment. Mr. Monger indicated that the Attorney General hasn't ruled upon the Wakefield or Reading bans yet and his research from a few law firms indicates reasonable regulation is the way to proceed.

The Board discussed having two articles. One for a ban or moratorium and one for siting of facilities in the event the ban or moratorium is not upheld. Ms. Harbottle indicated that Town Counsel believes a moratorium could be awkward due to the ADA Act. Some people would go the other route and decide to grow at home due claiming serious health issues. Ms. Galvin believes it is better to have a local dispensary than have people growing their own supply at home which will become legal on January 1 with proper certification. Mr. Romano indicated that electrical and fire department inspections could be required prior to home growing to attempt to control people rewiring their home for the lights required for growing.

Mr. Monger indicated it was probably not advisable to prohibit dispensaries. In all likelihood, a dispensary may not even come to Scituate as only 5 are allowed per county, but reasonable regulations seems the way to proceed. He suggested an overlay district with regulations as if nothing is done, a dispensary could go in any business location. Jennifer Sullivan indicated that she talked with the Cambridge Health Director who indicated they put a 9 month moratorium in place as there is much to consider on this issue. She said their action had not been challenged and wondered when the Attorney General will rule on the November votes. Chairman Limbacher said they will probably take 90 days so by the end of February towns should know something on the legality of bans and moratoriums.

Chairman Limbacher asked the audience if they would prefer to have a dispensary without a growth component. Mr. Romano indicated that under state law the treatment center will have that component. Chief Stewart indicated that growing will require a hardship situation and there will be limited access. He would like to see some type of appeal process if a neighbor is allowed to grow. Chairman Limbacher indicated that kind of regulation would likely be in the state regulations that will be subject to public hearings.

Selectman, Joe Norton, indicated his preference is to work as fast as we can to get an article together for the annual town meeting. Mr. Romano asked if the town meeting date could change. Chairman Limbacher indicated there could be a Special Town Meeting in the future to handle refinements. Ms. Harbottle indicated that there is a big expense and many timeframes for Town Meeting and it can't be changed by adding a month or so without major implications.

The Board discussed coming up with reasonable regulations based on the Hill Law information that was distributed to the Board. The Hill Law information discussed putting restrictions for locations for dispensaries from schools, child care facilities, play grounds, alcoholic sales locations and the Board agreed with all of these. A Special Permit procedure was also discussed. Chairman Limbacher indicated that the Board will discuss draft language at their January 10 meeting. The Board discussed the Greenbush location as a place for the overlay district as medical office buildings are already located in the area and it is very accessible to traffic routes.

Dave Zimmer, a new resident from California, indicated that he knows people in the industry and he was not aware of any issues with dispensaries when they were located within office buildings. He knows of issues with dispensaries in California that were located close to enjoyment areas. He thought that most of the growing would be done offsite with the product shipped in via delivery services. Discussion occurred between the Board and audience over the size of the growing facilities and federal law compliance. The Board does not think a large growing facility will come to town.

The Board discussed other requirements of the law to include a legitimate doctor/patient relationship and a debilitating medical condition. These items will be included in the state regulations.

Mr. Monger moved to create two articles for the town meeting warrant – 1) to create regulations for an overlay district with a Special Permit and restrictions 2) to place a moratorium of one (1) year on medicinal marijuana dispensaries with a fallback that if the Attorney General doesn't approve the moratorium then proposed regulations as indicated in number 1 would be enacted. Mr. Taylor seconded the motion. Motion was unanimously approved.

Discussion, Additional Zoning and General Bylaw Changes for 4/8/13 Annual Town Meeting

- Accessory Dwelling Bylaw
- Stormwater Bylaw

Documents

- 2012 changes to the Stormwater Bylaw
- 2012 changes to the Stormwater Regulations
- Accessory Dwellings – Willmer Model
- Cohasset – excerpt from bylaw on accessory dwellings
- Marshfield – excerpt from bylaw on accessory units
- Marshfield – ZBA Certification form for accessory units
- Redline changes to accessory dwelling by law by Mr. Monger

The draft of the accessory dwelling bylaw done by Mr. Monger with Mr. Vogel's comments was discussed. Mr. Monger indicated he took out the affordable accessory dwelling sections as there is no reason to do one. There are less hoops with a regular accessory dwelling. Ms. Harbottle concurred and indicated that no one is using that bylaw section as it can't be counted as an affordable unit by the state if a relative lives there. Chairman Limbacher indicated that the one time the affordable restriction was used, the applicant later went to the Board of Selectmen to have it removed.

Mr. Monger indicated that he researched several towns, but focused on Cohasset and Marshfield as our neighbors. They generally have more detail than the current Scituate bylaw. Mr. Monger indicated he also took out the accessory dwelling over a business as the Village Business Overlay District Bylaw now exists providing for a special permit for mixed use. He focused the draft on single family homes. He proposes an annual certification and permit expiration to address issues of owner occupancy. He added a section to deal with a future owner prior to a sale occurring. Lot size restrictions and pre-existing non-conforming lots were addressed. Mr. Monger believes applicants should go to the ZBA first for a Section 6 Finding prior to coming to the Planning Board for an Accessory Dwelling Special Permit. Ms. Harbottle indicated that wording should be put in the bylaw if desired.

The Board generally agreed on adding a timeframe in which a house must exist prior to coming in for an accessory dwelling. 3 years was decided upon. Several Board members indicated that they are not opposed to new housing with an integral accessory design; however, the 3 year timeframe prevailed as the argument was made that in the recent Garden Road hearing the neighbors were concerned about the character of the single family neighborhood with one house per lot.

A new draft will be circulated incorporating the size of the accessory dwelling can be 33% of the net floor area, no more than 25 special permits can be issued in a year and single curb cut and single driveway. All agreed any changes to the bylaw need to be done as an integral thought.

The Stormwater bylaw was not discussed due to the late hour and remaining agenda items.

Form A Plan – 568 First Parish Road

Assessor's Map/Block/Lot 31/1/27, 28, 29, 39, 40, 41

Applicant/Owner: Martha A. Nugent, Trustee

Documents

- Transmittal, Application and Plan of Land in the Town of Scituate, MA located at 568 First Parish Road prepared by Ross Engineering Co., Inc. for Martha A. Nugent, Trustee dated 9/26/12.
- Zoning Board of Appeals decision filed with the Town Clerk on 12/11/12 for 568 First Parish Road

Paul Mirabito was present for the applicant and indicated that the Zoning Board voted to issue a Special Permit for a 50 foot frontage lot. He indicated there will be two lots with access and frontage.

Mr. Taylor moved to endorse, as approval under the Subdivision Control Law not required a plan of land in the Town of Scituate located at 568 First Parish Road prepared by Ross Engineering Co., Inc. for applicant/owner Martha Nugent, Trustee dated September 26, 2012 as the division of the tract of land shown on the plan is not a subdivision because every lot shown on the plan has frontage on First Parish Road, a public way, of the distance required under the Scituate Zoning Bylaw and Lot 1 has received a Special permit from the Zoning Board of Appeals for a 50 foot frontage lot. Mr. Monger seconded the motion. Motion was unanimously approved.

Request for Lot Releases for Lots 2, 3 and 4 - Dreamwold Estates Subdivision

Approved 6/23/05; Covenant dated 10/26/2006

Documents

- Letters from John Tedeschi dated 12/11/12 asking for Lot Releases for Lots 2, 3 and 4 of the Dreamwold Estates Subdivision
- Letter dated 12-10-12 from Bill and Audrey Hogan
- Dreamwold Estates Inspection Report from Beals and Thomas dated 12/10/12
- Surety Estimate from Beals and Thomas dated 12/18/12
- Email from Karen Joseph to John Tedeschi dated 12/18/12 regarding ownership
- Email from William Hogan dated 12/18/12
- New deed for Lots 2, 3, 4, drainage lot and open space lot dated 11/21/12
- Email from Laura Harbottle to John Tedecshi dated 12/20/12 regarding special permit work. Forwarded to Board 12/20/12 by Karen Joseph.
- Letter dated 12/20/12 from Al Bangert to the Board
- Copies of the Special Permit, Definitive Subdivison Approval and Covenant forwarded to the Board

John Tedeschi indicated that he would like lot releases for the remaining three lots. He indicated a meeting by the review engineer was held on site that he was not present for and he highly objects to that. Ms. Harbottle indicated that that was untrue. Mr. Tedeschi indicated the review engineer should be reviewing basic information and he should be able to review the bills prior to the engineer being paid. He indicated to the Board he was being overcharged.

Mr. Tedeschi handed the Board a letter he received earlier in the day from Albert Bangert, Director of DPW indicating that the replacement of two fire hydrants was waived. Mr. Tedeschi told the Board that the water line has been installed and was looped from Briarwood through the project to Dreamwold Road and these hydrant replacements were no longer necessary. He indicated he spent a lot of money on the waterline improvements. The original conditions called for upgrading the waterline in Orchard Road from 6" to 8" to improve the Town's water system and replacing two hydrants on Dreamwold Road per the request of the Fire Chief. Mr. Tedecshi said the DPW waived the hydrants and he does not want to install them. Ms. Harbottle indicated that the Board made the conditions as part of the Special Permit and the Board will need to waive this condition.

Mr. Tedeschi indicated that he felt the surety estimate was too high. He proceeded to go through the items and tell the Board what had been done that was on the estimate and that the engineer's paving estimate did not agree with his estimate. The Board agreed after considerable discussion that they would talk to their consulting engineer, but it seemed that with the difference in opinion on work completed, that there would be no lot releases given at the meeting.

Mr. Tedeschi indicated he has two more issues. The first one is that he wants to just put two coats of pavement on the road. He said that Kevin Cafferty told him he could do a 2" base and 1 1/2" topcoat. He said there are conflicting cross sections on the plan. One shows a 2" base with 1 1/2" top and another 1 1/2" of binder for 5" of pavement and the other shows 2" of top and 2" of binder. He indicated the engineer should have caught that discrepancy so he wants to do the 2 1/2" section. He said Dreamwold Road has only 2" of pavement. Ms. Harbottle indicated that Kevin Cafferty told her he was not willing to waive the pavement section and that is what she indicated to Mr. Tedeschi previously. Mr. Tedeschi indicated that Mr. Cafferty told him it was okay to go with the lesser section. The Board indicated that Mr. Cafferty will be contacted on the pavement issues.

Mr. Tedeschi indicated he does not want to set all the concrete bounds. Ms. Harbottle indicated that the bounds are there to help show the lot boundaries. These can be important to property owners. Mr. Tedeschi indicated the bounds are in the middle of the hammerhead as the cul-de-sac is not being constructed. The Board agreed that the last 6 monuments could be installed as rebar with caps.

Town Planner, Laura Harbottle, brought up the condition about improving the drainage on Dreamwold Road by adding a berm so that the water is directed to the catch basin. She estimated its cost to be around \$400. Mr. Tedeschi said he had no problem with that.

Mr. Taylor moved to vote to modify the Special Permit for the Flexible Open Space Development – Dreamwold Estates dated 6/27/2005 and change condition 6 as a field change as the waterline was looped through Briarwood Lane and Dreamwold Road providing the intent of the former condition 6 and Condition 7 is waived. Mr. Monger seconded the motion. Motion was unanimously approved.

Mr. Monger moved to modify Condition 5 so that the requirement is for minor improvements to be made to Dreamwold Road to add berm to direct water to an existing catch basin. Mr. Taylor seconded the motion. Motion was unanimously approved.

Mr. Monger moved to modify the waiver granted from the subdivision regulations Section 8.3.12 that the last six monuments shown on the cul-de-sac be installed as rebars with a cap. Mr. Taylor seconded the motion. Motion was unanimously approved.

It was agreed that the lot releases would be put back on the agenda for the next meeting.

Minutes and Accounting

Mr. Limbacher moved to pay the outstanding bills and approve the meeting minutes from 12-6-12. Mr. Mercer seconded the motion. Motion was approved unanimously.

Documents

•P.O. # 13003574(\$48.00), P.O. #13003692(\$2,049.11), P.O. # 13003574(\$112.56), P.O. #13003776(\$125.00)

Purchase orders approved: \$48.00 to Laura Harbottle for an office chair, for \$2,049.11 to Beals and Thomas for inspection services for November 2012 for Dreamwold Estates Definitive Subdivision – Coby's Run, for \$112.56 to Gatehouse Media MA for the legal ad in the Scituate Mariner for the Accessory Dwelling Special Permit for 562 First Parish Road and for \$125.00 to Ockers for a typewriter service contract for 2013.

Liaison Reports

None.

Town Planner Report

Town Planner, Laura Harbottle, handed out the revised budget. She indicated that a building permit was issued for the property on Hillcrest Avenue that was before the Board recently for a Form A that was withdrawn. Several members of the Board expressed concern that a building permit was issued without proper Planning Board action and they want to write a letter to the Building Inspector. Chairman Limbacher indicated he would talk to Neil Duggan to get some information. Mr. Mercer indicated he would write the letter after he talked with Chairman Limbacher.

Old Business

Documents

•Planning Board FY 14 Proposed Budget

Mr. Taylor moved to adjourn the meeting at 11:25 pm. Mr. Monger seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk