

## **Scituate Planning Board, July 25, 2013**

### **SCITUATE PLANNING BOARD**

#### **MINUTES**

July 25, 2013

Members Present: William Limbacher, Chairman; Stephen Pritchard, Vice Chairman; Richard Taylor, Clerk; Robert Vogel and Eric Mercer.

Members Absent: Robert Greene, Alternate Member.

Others Present: Ms. Laura Harbottle, Town Planner.

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

Location of meeting: Selectmen's Hearing Room, Town Hall.

Chairman Limbacher called the meeting to order at 7:34 P.M. The meeting was being audio recorded. The meeting was being recorded for airing on the local cable television station.

#### **Documents**

- 7/25/13 Planning Board Agenda

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

Continued Public Hearing – Accessory Dwelling Special Permit – 75 Moorland Road

Assessor's Map/Block/Lot 64/09/08

Applicant/Owner: John F. III and Catherine M. McNamara

#### **Documents**

- Letter dated 7/17/13 asking for a continuance of the public hearing until 8/22/13

Paul Mirabito was present and indicated he submitted a letter asking for a continuance until August 22, 2013. Mr. Mercer moved to accept the applicant's request to continue the Accessory Dwelling Special Permit public hearing for 75 Moorland Road until August 22, 2013 at 7:30 pm. Mr. Pritchard seconded the motion. Motion was unanimously approved.

#### **Accounting**

#### **Documents**

- PO # 1400348 (\$1,576.58)

Mr. Taylor moved to approve the requisition of \$1,576.58 to Beals and Thomas for construction inspection service in June 2013 for Deer Common. Mr. Vogel seconded the motion. Motion was unanimously approved.

Minutes – There were no minutes to approve.

Liaison Reports – There were no liaison reports.

#### **Town Planner Report**

Ms. Harbottle indicated that the Town is applying for an incentive grant to buy electric and hybrid vehicles. They would be used for inspections and would be a good value for the mileage as there are a lot of short

stop and go visits. She indicated there would be 3 Chevy Volts, one for the Building Dept., another for the Health Dept. and the third to share by Conservation, Planning and others. These would replace any old vehicles being used now. She said the incentive is for \$5,000 per vehicle. The fourth vehicle would be a Ford Fusion. It would come with a free charger which would also be able to be used by the public. The charger location may be in the WPA Building parking lot in North Scituate. She said this vehicle may be used by the Water Department to read meters.

Ms. Harbottle indicated that a web blast went out on the new Flood Insurance Rate Maps. She indicated there was a problem with one of the links and another web blast will be sent. She indicated the new web blast will contain information on how to help people find their homes on the maps and on appeals to being in the flood zone which requires scientific information. She indicated appeals to the maps are due FEMA by October 17 and there are hard copies of the maps in the Building Department for residents to see. Mr. Pritchard asked if there were instructions to meet the October deadline. Ms. Harbottle said not really, but residents might need to hire a coastal geologist. She indicated the flood level is going up 5 to 6 feet in some areas. Ms. Harbottle indicated the Town getting the information out to residents so they can be informed. She indicated those that are affected should be getting letters from their banks, mortgage institutions and/or insurance companies.

Ms. Harbottle indicated she would like suggestions from the Board on area of the Subdivision Regulations that could be improved. She indicated that the Planning Department has been working on changes that the Board is in practice actually doing on a regular basis i.e. copying the Water Division, requesting pdf's. She indicated the Water Division would like changes to the Water As-Builts. Changes to details, Form A's to include additional information for access on private roads and some adjustment on fees are some issues the Board should address.

Mr. Taylor suggested that criteria for street lights be added so that there is uniformity for subdivisions. Mr. Vogel suggested spacing, height, and foot candles should be considered so there is no night sky pollution. Mr. Pritchard suggested sensors to shut off lights when not needed. Mr. Limbacher indicated the Street Acceptance Committee does not review lights. Ms. Harbottle said that street lights go through Selectmen in Scituate. Mr. Mercer suggested that when a new street sign is added for a subdivision, it also include the intersecting street. Ms. Harbottle said another item the Board may want to consider is implementing a minor category for subdivisions that reduces size of the road similar to what the Board has been approving. This could potentially reduce the number of waivers. The Board concurred and suggested talking to DPW as well.

Ms. Harbottle indicated that 214 Clapp Road FOSD was filed on 7/25/13 and another new subdivision is also supposed to be filed this summer. She indicated a public hearing will be required to change the regulations and a working session can be scheduled in the next couple of months. Ms. Harbottle and Mr. Taylor and Mercer scheduled a meeting to work on medical marijuana regulations. Mr. Mercer thinks that the Board should look at the Accessory Dwelling bylaw again. Mr. Pritchard inquired about the Stormwater Regulations. Ms. Harbottle said some changes she recommends are a fee similar to a Form A and enforcement provisions are needed. Chairman Limbacher indicated changes to the regulations need to not affect the bylaw or it will have to go back to Town Meeting.

Chairman Limbacher suggested taking a 20 minute break as the public hearing scheduled for 8:30 cannot start until then. Mr. Mercer moved to take a 20 minute recess. Mr. Vogel seconded the motion. Motion was unanimously approved.

Continued Public Hearing and Scenic Road Public Hearing – 305 Country Way  
Flexible Open Space Special Permit & Definitive Subdivision Plan & Scenic Road  
Assessor's Map/Block/Lot 37-2-2 & 37-8-13R  
Applicants/Owners: Douglas Sheerin/Kristen DeGaravilla

Documents

- Letter on Conventional Plan dated 7/15/13 from Morse Engineering

- Revised Conventional Plan dated 7/15/13 by Morse Engineering
- Conventional Plan review dated 7/22/13 by Chessia Consulting
- Comment dated 7/18/13 from Bill Krusell and Lance Van Lenten
- Email from Lance Van Lenten dated 7/19/13
- Comment from DPW dated 7/25/13 on conventional plan
- Revised Conventional Plan and letter dated 7/25/13 by Morse Engineering
- Email from John Clarkson dated 7/25/13

At 8:30 pm, Chairman Limbacher reconvened the meeting and indicated that the continued public hearing for the Scenic Road hearing and Flexible Open Space Subdivision at 305 Country Way was open. He said it was a continued from June 27 and a revised Conventional Density Plan was submitted. He indicated that the Board has received new comments from DPW, Bill Krusell, Lance Van Lenten and John Clarkeson. He indicated that only the Conventional Plan is being discussed tonight as the peer review was not complete for the remainder of the project. He indicated the voting members were himself along with Misterys Taylor, Mercer Vogel and Pritchard. He indicated that Mr. Taylor was not at the 6/27 hearing, but filed a Mullin Rule certification on 7/23 that he reviewed the video and minutes. He indicated the new name for the development is White Ash Farm.

Greg Morse, P.E. was present with applicant Doug Sheerin and Attorney Mike Hayes. Mr. Morse indicated they prepared the Conventional Plan as required under Section 550.3. He indicated they revised the geometry of the lots so there is now an 8 foot strip leading to the backland instead of a 3 foot rattail. He indicated this could be used as a walk. He said Road A was shifted slightly to the east to be 4 ½ feet minimum away from the 150' no disturb buffer zone. He said they revised the cross section per DPW comments regarding cut and fill, cross section pitches, setback to the no disturb area and the wall. He indicated the wall could be constructed without disturbing the buffer with sheet piles driven in right at the 150' line. He said all of the lots comply and are serviced by individual septic systems and driveways. Mr. Morse said the road complies with the subdivision regulations and they have a 3 lot conventional plan

John Chessia, the Board's consulting engineer, said that the wall is close to the no disturb buffer, but at this stage would not be fully designed. He said the lots are irregular shape, but meet zoning. He said the wall looks like it could be built as they have designed in the 4 ½ feet as the base is 2/3 the height. He said it was tight, but they could find a design that would work and it could be expensive. He said if this were the actual plan, the Board may not like or want to endorse it with a wall just outside the right of way as there would be no way to excavate the wall in the future without impacting the road. Mr. Chessia said that the plan was a sketch and not an actual design. He said all the requirements of the preliminary plan have been met and they could probably fit a wall design.

Ms. Harbottle indicated it is a very tight layout and the Board could go either way. She said she could see 3 lots and she believes the lack of a lot shape factor is impacting Scituate. She said she had a concern about the slab on the house and its proximity to the septic system, but those concerns have been addressed. Mr. Morse indicated that all of the lots have full foundations now and they comply with septic requirements. Ms. Harbottle said most other issues have been addressed and the plan probably meets the letter of the law, but it is a very close fit.

Mr. Pritchard confirmed that all of the houses meet the setbacks under Title V. He said he doubts he would want to approve the wall in the Conventional Plan, but there was probably a design that would fit. He said if the Board goes with the FOSD, there needs to be a way to protect the buffer zone. Mr. Vogel confirmed with Mr. Morse that the critical aspects of the wall are 40 feet at the curve and at the neck. He said that it looked like the only places where sheet piling would be needed are those places. Mr. Vogel inquired about shifting the road further to the east to minimize the wall. Mr. Morse indicated that if the road could be shifted further east, but the width of the tail of Lot 1 that leads to its back needs to be useful and has been changed from 3' to 8'.

Mr. Mercer said he was concerned about the wall. Mr. Morse indicated that walls can be outside the Right of Way (ROW). He indicated that Sam Tilden Farm has a wall just outside the ROW that holds back a lot of

material. Mr. Morse indicated this wall holds back a road. He indicated that the wall has not been designed as Mr. Chessia indicated, however it does not need to be at this point. Mr. Taylor confirmed that the DPW comments have been addressed. Mr. Taylor commented that the lots are irregularly shaped, but meet the regulations. Chairman Limbacher indicated that the lot shapes are more distorted in looking from the conventional to the flexible plan as they are trying to maximize house lots. He thought that if this was what they had to build they could do better. He thinks this is a lot of houses for the property. He said he would likely not approve this plan if it was a conventional subdivision.

Chairman Limbacher indicated that his concern is not disturbing the buffer zone. He believes engineers could design a wall, but he was not sure if it could be built due to cost. He indicated that the plan is a feasibly technical subdivision that in reality would not be built. Mr. Pritchard asked if there was a cost to build the wall. Mr. Morse said he didn't think the cost would be as much as a lot and not as much as might be thought. Chairman Limbacher said the trade -off for the cost of the wall is the third lot. Mr. Pritchard indicated the wall also protects the no build zone after the lots are occupied.

Martha Cook from the Water Resources Committee (WRC) said that the Committee discussed this project again and are concerned that the work is extremely close to the 150' buffer. She said the 150' buffer zone is perilously close to backyards, roads and septic areas. She asked where the snow would be pushed as it cannot go beyond the wall. She questioned how marketable the development will be if people are told they can never enlarge their homes or yards. She said the WRC prefers two lots. She said they are impressed by the engineering, but a lot of problems are not resolved. She said they want a wall to demarcate the 150' buffer as it feeds into the water source for the Town and it needs to be protected at all costs.

Lance Van Lenten said he has similar concerns. He said the bank for some of the tributary from IB8 to 1B100 has not been shown accurately. He said a hydrogeologist may be required. He said the Town is not receiving anything for the FOSD. He said the bylaw has been in existence since 1979 so the land in the buffer can't be used. He said the Town is not gaining any open space for the project. He said the hydrology will be changing and the slope of the no disturb zone will change by adding structures. He believes 2 homes would be more suitable for the property so the lots can be enjoyed and drainage is addressed properly.

Mr. Morse indicated that the WRC expressed their opinion that 2 homes would be better for the site, but the project complies with the bylaw for 3 homes. He said a previous plan for the site endorsed in 1989 had 3 lots. He said they are not here to discuss marketability. He said they have had calls and the homes are market able. Mr. Morse said the Conventional Density Plan could have a stonewall. It shows a yield and is not to be built. He said demarcation can be talked about in the future for the FOSD Plan.

Mr. Morse said that Mr. Van Lenten hasn't had the opportunity to review the wetland resources in the field. Mr. Morse said no bank was observed and he had the site reviewed with his consultants and the Town's consultant. He said the flagging is the most upgradient resource area. He said a 1986 plan has the bank running off the property not onto the property. He said he doesn't anticipate a problem with the 150'buffer or the bank and that drainage will be reviewed in the FOSD. He said the drainage basin shown on the Conventional Plan is larger than shown on the FOSD. He said that the Conventional Plan is fully compliant. It complies with zoning for 3 lots. Mr. Van Lenten said that he was on the property in 1986 and wanted DEP to come and look at this tributary as he thinks a bank can be found in the broad area. He said everyone is focused on the 150' no disturb area.

Mr. Taylor asked what the Board's obligations are. He asked if the Board had discretion in setting the number or was there a legal obligation to set the number based on the bylaw or is there an interpretation factor. Ms. Harbottle indicated there was always interpretation because of the Special Permit process that requires a 4/5 vote. She said points have been made about the issue of constructability of the wall and if it is reasonable to construct the wall all the way through with the same. She said the rattail has been changed to be more reasonable considering Scituate has no lot shape factor. She said the plan needs to be looked at as a whole. She asked the Board what the applicant's option would be if 3 lots are not approved.

Ms. Cook asked if the wall would be built first to protect the ecology. Chairman Limbacher felt it would be.

Mr. Morse reiterated that the conventional plan is not proposed to be built. He said it is done to determine the number of lots in the FOSD. He said the sequence of construction for the wall would be sheet piling, wall footing, wall, fill and the road brought to grade. Ms. Cook said that helped her understand her concern for the the protection of the ecology of the tributary from the beginning. She indicated she would like to see the 2 lot plan. Mr. Morse said he does not have a 2 lots plan as 3 lots are being proposed. Lisa Bertola questioned the need for 3 lots in a fragile location. She said the 1986 plan should not be referenced as it was not pertinent. She said the Town is experiencing growth and the DPW talks of water shortages and water quality. She said it was crazy to allow more than 2 homes based on environmental concerns.

Chairman Limbacher said they were all valid comments. He said the Board needs to look at does it comply with zoning and could it be constructed. He said in the FOSD they have control over construction. Mr. Pritchard inquired about snow disposal in the conventional plan. Mr. Morse said it is the same amount of snow that falls. He said the grass strip and slope to the back of the pavement will handle the snow. He said meltwater goes to the ROW where there are deep sump catch basins that take the drainage from snow runoff and process it through the stormwater system prior to discharge out of the 150' buffer. He said all of the homes and driveways go to swales that direct water to the basin so all stormwater is treated. Mr. Pritchard asked about the sight lines at the road and if there was an easement. Mr. Morse said they could have a sight line easement on both plans.

Chairman Limbacher asked the Board for a decision. Lance Van Lenten asked if the wall was constructed would more water flow to the buffer. Mr. Chessia indicated that runoff in the road would go to the drainage system. He said any water that does not infiltrate will go to the reservoir. He said today what doesn't soak in goes to the reservoir. Mr. Van Lenten inquired if the water from the outer slope would flow faster to the reservoir. Mr. Chessia said no as there is no change of grade on the back of the road. He said water is pitched to the road so runoff is connected to the system. Chairman Limbacher indicated that on the upper portion, less water is being put in the no disturb zone than before. He said it is being redirected and released further down on the site. Mr. Van Lenten asked if recharge or flow was being removed. Mr. Vogel indicated that the basin recharges the same amount of water, but the distribution is different. Mr. Pritchard concurred.

Ms. Harbottle indicated that she prepared a draft motion with Findings of Fact to support the decision. Mr. Taylor moved the following Findings of Fact with regard to the Conventional Density Sketch Plan for 305 Country Way by Morse Engineering Co., Inc., dated February 19, 2013, with revisions through July 25, 2013:

1. Douglas E. Sheerin filed an application for a Special Permit for a Flexible Open Space Development under Scituate Zoning Bylaw Section 550 on February 28, 2013. The property is an 8.56 acre parcel in the Residential R-1 and R-2 and Water Resource Protection Districts. A portion of the property is in the Floodplain and Watershed Protection District.
2. A portion of the property is located within a DEP Zone A Surface Water Supply Protection Area. There is a tributary adjacent to the property which has a 150 foot no disturb buffer per the Zoning Bylaw Section 520.5. The location of the tributary has been well established following direct review in the field by DEP.
3. A Conventional Density Sketch Plan for 305 Country Way by Morse Engineering Co., Inc., dated February 19, 2013 was filed with the application for the special permit and subsequently revised on May 13, June 6, June 24, July 15 and July 25, 2013 to reflect Zone A setback lines enforced by DEP and the Scituate Zoning Bylaw in addition a sketch plan of drainage improvements, as indicated by the Town's consulting engineer
4. Lots 1 and 3 as shown on the plan each have more than 100' of frontage. Lot 2 has 60' of frontage on a cul-de-sac. Lots 1, 2 and 3 have more than 40,000 sq. ft. of upland. From the plan, it appears a 175' lot width can be achieved on each of these lots. The septic systems on Lots 1, 2 and 3 appear to be horizontally separated from the property lines by at least 10', as required by Title V. These septic systems appear to be separated from the proposed houses by at least 20', except for the septic system on Lot 3 which is separated from a slab foundation by 10'. These setbacks are permitted by Title 5.
5. The lots shown on the Conventional Density Sketch Plan meet the requirements of the Scituate Zoning Bylaw and Subdivision Rules and Regulations as required by Section 550.3 Paragraph 2.

6. The Board finds that the Typical Roadway Cross Section as depicted on the July 25, 2013 plan meets the Scituate Subdivision Rules and Regulations and the road could be built without waivers.

Mr. Vogel seconded the motion. Motion was approved by a 4-1 vote with Mr. Mercer dissenting. Based on the Findings of Fact, Mr. Vogel moved to approve 3 lots for the Conventional Density Plan for 305 Country Way based on the revisions to the plan dated 7/25/13 to address the DPW comments. There was no second. Chairman Limbacher suggested discussion occur and the vote on the Findings of Fact be rescinded. Mr. Vogel moved to rescind the vote on the Findings of Fact. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Mr. Mercer indicated he was concerned that if this was a real conventional plan that only 2 lots would be built. He said he did not like the gerrymandering for 3 lots for economic reasons and he was sensitive to what the neighbors and John Clarkeson and his agency representative said. He indicated he was not sure that the basis exists to make the findings of fact. Mr. Taylor concurred with Mr. Mercer; however, he said that based on the current rules and regulations that are being asked to be adhered to, 3 lots would be technically allowed although 2 would be better. Mr. Mercer indicated that a Special Permit is being applied for and not a by right development. He indicated he does not support 3 lots. Mr. Pritchard indicated the vote is for the density going forward, not for the entire plan.

Mr. Vogel said that the Town Planner and Town's Consulting Engineer both provided their opinions. He said he cannot find any legal supportable way that the 3 lot plan can't be approved. Mr. Pritchard concurred with Mr. Vogel and he does not have a position on denying the Conventional Plan. He said he does not want to see the Conventional Plan built and indicated the Board has the ability to control the FOSD plan. Mr. Mercer disagreed saying that if the Board decides on 3 lots now, then they can't go back and change that. Mr. Pritchard indicated that the Board has the ability to fashion what the 3 lots ultimately look like. Mr. Mercer said Findings of Fact could decline to be made.

Chairman Limbacher indicated that once a determination is made, the Findings are academic. He said that if the Board votes 3 lots and then if 3 cannot be supported within the confines of the FOSD, then 3 lots aren't approved. He indicated that he would likely not approve the conventional if that were the only plan. He said that the wall could likely be built if enough money was put toward it. Ms. Harbottle indicated that what is set in the conventional vote is the density allowed in the FOSD Plan. Chairman Limbacher said that if all the requirements of the FOSD are not met, then 3 lots won't be allowed. Mr. Pritchard said there is information on the FOSD Plan that aren't on the conventional plan.

Chairman Limbacher asked the Board if they thought the Conventional Plan complied with zoning and the rules and regulations. Mr. Taylor said that if it conforms to the rules and regulations, then there is a legal responsibility to set the density. He believes Mr. Mercer is saying that the plan can be engineered for 3 houses, but the plan is so complicated it would never be built. Mr. Mercer said there needs to be a practicality standard. He asked if this was an academic exercise. Chairman Limbacher indicated the exercise says 3 houses. Mr. Taylor indicated that opinions shouldn't matter in the Findings of Fact and asked what Mr. Mercer disagreed with. Mr. Mercer said the wall and its cost and the cost of engineering and the possibility that another house could be built need to be looked at in a practical sense. He said just because it is theoretical on paper, does not mean it's real or practical.

Attorney Mike Hayes said that whether a property owner is willing to build is key. Mr. Mercer disagreed. Mr. Vogel said his opinion was that a Conventional Plan is not based on full engineering. Mr. Mercer said that what he heard is they are not going to build the conventional plan. Mr. Vogel said the conventional plan is theoretical based on what can be built that meets zoning. Mr. Pritchard indicated that if the issue is the wall, walls like this do get built and our engineer says it could be built. Chairman Limbacher indicated that this plan has gone through more iterations than any other FOSD and it is probably because it is a complicated site. He said he would have taken 2 lots and ran, but that is not what the Board is being asked. The Board is being asked if it could be built and if it complies with zoning. Mr. Mercer said with unlimited cost anything is doable and he does not like that as an artificial standard. Mr. Pritchard indicated it is doable not with unlimited cost. Mr. Taylor indicated if there was a lot shape factor, the Conventional Plan would not be able

to be done.

Mr. Vogel moved to approve the Conventional Density Sketch Plan showing three (3) lots for the parcel at 305 Country Way based on the revision of the plan to address the comments by DPW latest revision date 7/25/13 revision 5. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Mr. Limbacher moved to accept the applicant's request to continue the public hearings for the Definitive Subdivision Plan, Flexible Open Space Special Permit and Scenic Road/Public Shade Tree Hearing for White Ash Farm Lane at 305 Country Way until August 8, 2013 at 8:00 pm. Mr. Taylor seconded the motion. Motion was unanimously approved.

Old Business and New Business

Documents

- ANR withdrawal dated 7/12/13 for Saunders of Summer Street/Clapp Road
- 159-161 Front Street Site Plan Waiver dated 7/15/13
- Certificate of Action dated 7/15/13 for Stormwater Permit for 61 Border Street

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 9:45 p.m. Mr. Mercer seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph  
Planning Board Secretary

Richard Taylor, Clerk