

# **Scituate Planning Board, June 13, 2013**

TOWN OF SCITUATE MASSACHUSETTS

## SCITUATE PLANNING BOARD

### MINUTES

June 13, 2013

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

Members Absent: None.

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 7:35 P.M. He announced the meeting was being audio recorded and asked if there were any other recordings being taken. The meeting was being recorded for airing on the local cable television station.

#### Documents

#### •6/13/13 Planning Board Agenda

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

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

- Plan Accessory Dwelling by Ross Engineering (JN-3232-SP-2) dated 4/21/13
- Accessory Dwelling Architectural Plans by Custom Home A-1 through A-5
- Existing dwelling Floor Plans designed by Custom Home Designs drawing by Off The Wall Design A-1 through A-7
- Application and supporting materials for detached accessory dwelling dated 4/24/13
- Board of Health Comment dated 5/1/13
- Conservation Commission comment dated 5/2/13
- North River Commission Approval dated 3/28/13
- 2/28/11 ZBA Section 6 Finding for 75 Moorland Road
- 5/21/13 email from Julie Johnson to Karen Joseph regarding building height, stairs
- Photo of 54 Moorland Road
- Photo of 57 Moorland Road
- Moorland Road Home Sizes within 350 feet of 75 Moorland
- 6/10/13 Water Dept Comment
- Email from Mike Benning to Laura Harbottle dated 6/13/13
- Email from Mike Benning to Laura Harbottle dated 6/13/13 forwarding Kenneth Golden's comments
- Email from Mike Benning to Laura Harbottle dated 6/13/13 forwarding Kevin & Eleana Jamison's comments
- Email from Katie Benning to Laura Harbottle dated 6/13/13

Chairman Limbacher read the legal ad and indicated that the applicant will present his proposal first, then

the Town Planner will report to the Board, then the Board will ask questions and then the public will be given an opportunity to speak. Paul Mirabito of Ross Engineering indicated he represents the applicants John and Catherine McNamara who purchased the property 2 to 3 years ago. Mr. Mirabito indicated the property is on the curve at the intersection of Moorland and Collier Roads. He indicated the applicants propose to construct a detached accessory dwelling and are entitled to build it if they receive a special permit from the Planning Board. Mr. Mirabito said he spoke with the water division who will require a separate water service and Bob Rowland indicated sewer could be via a wye connection so there are no issues with the Board of Health.

Mr. Mirabito indicated the applicants submitted a notarized letter indicating they will occupy one of the units. He indicated 2 parking spaces are shown in front of the garage and there is a driveway for the other house to meet parking requirements. He indicated the accessory dwelling is 2 ½ stories and is just under 30 feet tall according to the architect. Chairman Limbacher asked about the size. Mr. Mirabito indicated the accessory dwelling will be 1478 sq. ft. or 39% of the existing dwelling. He added that it can be up to 40%. He indicated that they have approval from the North River Commission and the Building Inspector has been notified of this.

Ms. Harbottle indicated that there are two garage bays under the accessory dwelling that don't appear to have driveways on the plan. Mr. Mirabito indicated the zoning bylaw says only 2 parking spaces are needed and that is what is shown. Mr. Taylor confirmed there are 3 garage bays. Ms. Harbottle indicated this accessory dwelling is the largest the Planning Board has seen. She expressed concern about the size of the accessory dwelling in relationship to the homes in the neighborhood. She indicated she reviewed houses in a 300 foot radius of the proposed unit and 5 are smaller than the proposal and many are smaller than 2000 sq. ft. She expressed concern about the height of 30'5" being taller than houses in the neighborhood. She said the plans show no screening for either 76 Collier or 59 Collier. She indicated this is a small lot neighborhood. Ms. Harbottle raised a concern about stormwater. She indicated if there is an increase of over 25% of impervious surface from the original house then a stormwater permit is needed.

Mr. Taylor questioned the height. Mr. Mirabito indicated the architect now says it is under 30 feet tall and not 30'5". Mr. Taylor asked if it was measured to the ridge line. Mr. McNamara said it was measured to the ridgeline and the cupola is above that. Mr. Taylor verified that there were three garage bays on the first floor and asked how the other 2 bays are accessed and if one was for a lawnmower. Mr. McNamara indicated the existing house has a 1 car garage and one garage door in the accessory dwelling will be for the primary house. Mr. Taylor asked if there was going to be a stone surface up to the other doors. Mr. Mirabito said there would be stone or pavement to the other garage doors. Mr. Taylor indicated it seems to fit the letter of the law, but it is not subordinate and looks like 2 single family homes. He thinks it is nicely done, but he has an issue with the size.

Mr. Mirabito said the lot is unique. It is 24,000 sq. ft. and everything around it is less. He questioned if the way this parcel was zoned was spot zoning and indicated this lot has 2 ½ times the area of other lots in the zoning district. He indicated that the accessory dwelling can be 40% or 750 sq. ft. whichever is larger and the bylaw was followed exactly here. He said the Board approved an accessory dwelling on Mann Lot Road a few years earlier at 1,200 sq. ft. Mr. McNamara said there will be landscaping around the lot for privacy and aesthetics. Mr. Mirabito disagreed that a stormwater permit was needed as the thresholds were not tripped. He indicated the accessory dwelling was large, but clearly complies with the zoning bylaw. He said it meets the purpose of making additional units available to single family homes in the neighborhood. He said the accessory unit will be used by the family. He said the bylaw is clear, and the requirement that it can't be over 40% is met.

Mr. Taylor indicated the accessory dwelling is supposed to be subordinate. He said if he didn't know they were together he would think they were two individual homes. Mr. Mirabito indicated that as a matter of right he could quadruple the size of the house. He said no other lots in the neighborhood are this size and compared to the lot size the accessory dwelling is not large. Ms. Harbottle indicated that a Section 6 finding was issued by the ZBA to locate the house where it is. It was not by right. Ms. Harbottle indicated the house

was pushed back about 1.5 feet from the existing house. Mr. Taylor confirmed that a notarized statement was submitted that the owner's will occupy one of the units. Chairman Limbacher asked that the Board speak and then Mr. Mirabito can address the Board again.

Mr. Mercer indicated he was not happy with the proposal, but it likely falls within the bylaw. He indicated from his perspective, it appeared to be 2 separate homes. He indicated Mr. Mirabito does a good job, but the accessory dwelling is not subordinate to him and it looks the same size as other houses in the neighborhood. He said he understood the desire of the owners to do this, but this is not necessarily the right way to do it.

Mr. Vogel concurred. He said the proposal is crafted to fit within the bylaw; however, the Board still has special permit authority. He indicated a very important purpose of the bylaw is to provide homeowners with an opportunity to remain in their homes. He indicated that was not being addressed here. He indicated that the most persuasive argument for allowing it is the lot size as it is a big lot for the area. He thought that the accessory dwelling wouldn't look out of place, but would look like 2 houses. Mr. Vogel indicated he was concerned with the representation that the family will live there. He said it could be rented out. He indicated it fits within the confines of the bylaw wording and dimensions once the original home is extended.

Mr. Pritchard concurred with Mr. Vogel's sentiments. He said it was not subordinate to the main house and essentially it was a second home that meets certain segments of the bylaw. He indicated that dimensional requirements are not the only issue a special permit addresses, but subordination is important. He disagreed by the letter of the law that this can be done as it is not subordinate. He indicated it was a nice design and he should have reviewed the lot sizes in the area. He said it feels like a second home. Mr. Greene indicated it feels like 2 separate homes.

Chairman Limbacher summarized his concerns. He is concerned with the size of the structure and it looks like 2 buildings on one lot. He reviewed the Town Planner's analysis and expressed concern about neighborhood impact and was concerned about the height in relationship to the abutters to the north. He said the subordinate component was not there. He also believes that the proposal does not protect the property values of the neighborhood. He indicated if the family would have repositioned the accessory dwelling, it would be a complex. He said it is not handicap accessible. Chairman Limbacher said he drove by the Mann Lot Road accessory dwelling and it is not visible and sits on a larger property.

Mr. Mirabito indicated that by its very nature an accessory dwelling is a second unit. He said the bylaw does not say anything about seeing the accessory unit. He said it is separate because the North River Commission has strict requirements. He said there is 50 feet between the main home and the accessory dwelling. He said other lots in the R3 district have 8 foot side yards. He said this is a detached unit and will look like a separate house and that this is what is allowed. Mr. Mirabito indicated it could be handicap accessible by putting in an elevator. He said the owners wanted it separate. He said that he was not clear on the Board's definition of subordinate. Mr. Taylor indicated clearly secondary to the main dwelling. He said one way that can be done is with materials. Mr. Mercer indicated there needs to be a visual balance. Chairman Limbacher indicated size makes it subordinate and that it is subjective for each Board member.

Chairman Limbacher read the list of comments that have been submitted. John McNamara indicated he wanted to retain the character of the existing house and could have built a 10,000 sq. ft. house on the lot. He said historically there were carriage houses in the area. He indicated he has lived in town since 1988 and wanted to preserve the house and provide a place for his family to come. He said he wanted to downsize and to keep a small cape to keep the character of the neighborhood. He said he's had the plans for 2 years and no one has said anything. He said maybe he would build a larger house. Mr. Mirabito indicated as a matter of right a 3 car garage can be built.

Mr. Mercer indicated that the accessory dwelling bylaw lacks some precision. One could build a big addition and turn it into an accessory dwelling. He indicated the neighbors need to be considered. He said he would like to see revisions and see if a better project can be attained. Mr. McNamara indicated that both houses are designed to be handicap accessible but for the elevator. He indicated there would be stone driveway

around the accessory dwelling to the north for access.

Mike Benning of 74 Collier asked if the plans submitted to the North River Commission were the same as the plans filed and if there were separate utilities for the accessory dwelling. Mr. Mirabito indicated the plans were the same and they would have separate utilities except for a common sewer. Mr. Benning inquired about the height and number of stories. Mr. Mirabito indicated the height is based on the average finished grade and 3 stories can be built by right. Mr. Benning inquired if it was possible to turn the garage into living space. Mr. Mirabito indicated no as they were at 39.26%; however, an unidentified person indicated if the main house was made bigger it would be possible. Mr. Benning indicated that this was a slippery slope. He said architecturally the dwelling was beautiful, but he is concerned that this is a valuable piece of real estate that could be rented out and is concerned about subsequent owners' use of the property. He reiterated his concerns identified in his letter.

Larry Howell of 36 Moorland asked if the lot could be subdivided. Ms. Harbottle and Mr. Mirabito indicated it could not. Chairman Limbacher indicated the lot size will be unchanged. Mr. Vogel asked if there was recourse to the ZBA or town meeting to change the zoning to R3. It was indicated it would need to go to town meeting. Mr. Kelly of 56 Moorland said the structure looks like a second house and could be sold as a condominium. Paul Barrett of 14 Michael Ave said the existing neighborhood is already very dense and there are few homes on lots larger than 10,000 sq. ft. He was concerned that Mr. Mirabito could not say what size home could be built and what the North River Commission said about house size. He expressed concern about Mr. McNamara saying he hoped to live in the house. Mr. Barrett was also concerned about controls for the future as the garage can't be converted to living space unless the main house is bigger. He has concerns for the long term.

Julie Burgess of 10 Michael Ave agrees with Mike Benning. She said this is a slippery slope despite it being a beautifully designed home. She is concerned with future renters. Mr. McNamara said he wished people came forward 2 years ago when he started the process. Janice Murphy of 42 Moorland Road said she agreed with Mr. Benning. She questioned what happens if the house is sold. Crowding could occur. Ms. Harbottle indicated that the lot can't be split without a town meeting vote. Chairman Limbacher indicated the owner has to live in one of the units to have an accessory dwelling. The audience was concerned that the structure would still be there. Questions were asked about inspections and future controls. Colleen Ellis of 18 Cliff Ave expressed concern about the height and indicated it looked like an oversized garage. Joe Annese of 62 Collier asked if there is a coverage restriction. Chairman Limbacher indicated there is no lot coverage or floor area ratio restriction. Mr. Annese indicated he supports Mr. Benning. He is concerned about opening up all of third cliff for development.

Mr. Vogel asked Mr. Mirabito about the grading to the east of the accessory dwelling. He said the rendering shows a flat piece of land. Mr. Vogel said the grade is higher in back so the building might not be as tall as it appears. He said he would like to talk to the architect before a decision is rendered. Mr. Taylor and Mr. Pritchard were concerned about the grading in relationship to the building height and its features as the lot slopes to the front. Chairman Limbacher was concerned about the height and the building being 15 feet from the property line. Mr. Mirabito indicated under the bylaw 40 feet is allowed and the North River Commission limits height to 35 feet.

Mr. Mirabito showed an assessor's map to the Board to review the lot sizes in the area. Mr. Benning asked if all homes on third cliff could have an accessory dwelling. Chairman Limbacher indicated there is a limit to the number of accessory dwellings allowed per year. Emmett Healey of 59 Moorland said he is the closest neighbor. The accessory dwelling would be 15 feet from his property. He would like it moved over away from his property line. Mr. McNamara indicated that was not possible due to zoning setback lines for the entire lot. Chairman Limbacher added that the dwelling must comply with all setbacks. Mr. Healey said he would like some privacy.

Chairman Limbacher asked what the Board would like to do. Mr. Taylor asked if the McNamaras are willing to revise the application and come back. Mr. Taylor indicated he was looking for reduced height, size and impact to the neighborhood as well as an accurate grading plan. Mr. Mercer wants a compromise. Mr.

Taylor indicated that a recent project made changes and was ultimately approved. The audience inquired about that project's location and was told 33 Garden Road. Mr. Pritchard was not certain about the project – height and size are among his concerns. The applicant indicated they would like to continue for 6 weeks until July 25. Mr. Pritchard moved to accept the applicant's request to continue the public hearing until July 25 at 7:30 pm. Mr. Mercer seconded the motion. Motion was unanimously approved.

3rd Pre-Application Meeting – for Definitive Flexible Open Space Plan – 214 Clapp Road  
Assessor's Map/Block/Lot 18/1/2  
Applicants/Owners: Fern Properties, LLC  
Engineer: McKenzie Engineering Group, Inc.

#### Documents

- Email from Pat Gallivan to Laura Harbottle et. al. dated 5/17/13
- Letter from Amory Engineers, P.C. dated 5/17/13 on Conventional Density Sketch Plan

Matthew Watsky, Deb Keller, Dave and Joe Iantosca and Paul Bourque were present for the applicant. Mr. Watsky indicated that at the last meeting it was decided that a peer review engineer would be hired to review the Conceptual Density Sketch Plan for the number of lots proposed. Amory Engineers were hired and Mr. Watsky indicated that Amory concluded that the number of lots was properly determined. He indicated there was concern by the Conservation Agent about the setback between the edge of homes and the 50 foot no build zone. Ms. Keller indicated the houses can be moved and will have large front and side yards. Ms. Keller briefly indicated that they met with abutters to discuss drainage and the development plans. She felt it may be possible to bring drainage from the upper basin to the lower basin to address abutter's concerns.

Ms. Harbottle indicated that the letter from Amory Engineers is a bit unusual in that it says 9 lots can likely be obtained, but other issues need to be addressed. She indicated the shape of the lots is a fault of the bylaw. She said Amory indicated that the soils are Group C which are not very absorbent so the size of the basins could be an issue. She indicated that the jurisdiction of the vernal pool setbacks is uncertain and the controls for rare species habitat will not be known until a letter is received from the Natural Heritage and Endangered Species Program. She advised the Board to think about getting all the proper information and an application prior to voting on the number of lots that can be obtained.

Ms. Keller indicated that there has been extensive soil testing done on the site. She indicated the regulations will be followed for the appropriate soil type and this has been factored in the design. She confirmed that the size of the basins shouldn't be too far off from what is currently shown as she has factored in the soil type. She said she concurred with Pat Gallivan's comments and has spoken with the Heritage Program and feels either the Flexible Open Space Subdivision Plan (FOSD) or Conventional Plan can move forward with minimal changes from Heritage Program.

Mr. Watsky indicated that the purpose of this process is to get support for the FOSD plan or the default plan of the conventional subdivision. He indicated the FOSD Plan is a better plan and integrates well with town open space and trails. He indicated the Board needs to choose which plan it prefers, and then they will go to Heritage Program and seek necessary approvals. Mr. Watsky said that at the last meeting they asked for a straw vote to know if there is support for the FOSD. Mr. Taylor asked if the changes to the house layout have been made. Ms. Keller indicated they will be done prior to the formal application as will switching the sidewalk to the other side of the road.

Mr. Vogel asked if the conventional plan could go forward based on the comments provided by Amory Engineers. Ms. Harbottle indicated probably, but if a vote is taken it should include the information in the Amory letter be supplied. Mr. Vogel said the FOSD is preferable and the issue is how many lots could the site accommodate in the conventional plan. He questions the Board if they agreed that 9 homes can be placed on a conforming plan. Ms. Harbottle indicated it looks possible on paper, but Amory qualified their statement on a few issues and a decision from the Heritage Program is one key item. Mr. Vogel said the Board is being asked if the FOSD is preferable with the proposed density. Mr. Taylor asked that if Heritage

and Conservation were removed, would the density be allowed. Mr. Pritchard indicated that the best the Board can give is a conceptual answer based on preliminary review and assumptions as not all the detailed information is provided. Mr. Watsky indicated that the bylaw indicates that the conventional plan does not have to be fully engineered. Mr. Pritchard indicated he would need information from the Heritage Program. Mr. Watsky acknowledged that if Heritage Program renders any additional land unusable, then the plans would need to be changed. He would have no problem with a vote contingent on the Heritage Program.

Mr. Taylor indicated his support of the FOSD Plan as it saves the house and is a better route. Mr. Pritchard concurred with Mr. Taylor on the approach of the FOSD. Mr. Mercer indicated 9 would be the maximum he would agree to. Chairman Limbacher indicated that a vote should not be taken without an application. He indicated the Board has voiced preference for the FOSD plan and he senses 9 lots would be the maximum. Mr. Watsky said he would like all the members to concur to the FOSD approach and the 9 lots subject to other permitting issues that could come up outside of subdivision control.

Chairman Limbacher said he supports the FOSD and based on the information in hand and a maximum of 9 lots contingent upon an application being received that represents what has been presented. Mr. Taylor agrees with the FOSD and a maximum of 9 lots. Mr. Pritchard concurs. He indicated that the issues that Amory raised need to be part of the subdivision application. Mr. Vogel agrees that based on the Amory letter 9 lots appear feasible and he prefers the FOSD. Mr. Mercer supports the FOSD with a maximum of 9 lots and no accessory dwellings. Mr. Greene thinks a FOSD is a good use as long as it meets the requirements.

John Niland of 232 Clapp Road indicated that the maximum number of houses is based on drainage being properly done. He indicated the neighbors do not want to see more runoff and their suggestion of flow going to the north or west is questionable. He said a traffic study has not been done yet and that might impact the number of lots. He also questioned that there is an assumption that the design is correct. If it is not then, he asked if lots would be lost. Chairman Limbacher indicated that the questions Mr. Niland asked would be answered in a full application. He said that if the Heritage Program determines areas as unbuildable, then lots would be lost. Mr. Niland asked about the setback of the detention basin to the property line. Ms. Keller said it was 10 feet as required by DEP. Ms. Keller indicated that the Loverings had been contacted by the applicant, but no one has agreed to anything with regards to drainage. She indicated that they want to keep water flowing in its natural direction. Mr. Niland indicated he preferred the FOSD, but believes 9 lots is too many. He indicated 5 would be better to not impair the character of the neighborhood.

Frank Snow of 189 Clapp Road asked what the Amory letter said. Ms. Harbottle indicated at this stage Amory only looked at zoning compliance and not drainage which will be reviewed upon a complete application being filed. Pat Gallivan, Conservation Agent, indicated he spoke with the Heritage Program who indicated they will comment when a Notice of Intent is submitted. He said it was very helpful to have the pre-application meetings. Ms. Keller indicated that a Notice of Intent will be filed concurrently with the Special Permit and Definitive Subdivision Plans.

Public Meeting – Site Alteration – 85 Maple Street  
Assessor's Map/Block/Lot:  
Owner: Ken Duval

#### Documents

- Letter from Town Planner to Ken Duval dated 5/21/13
- Letter from Adam Brodsky dated 5/8/13
- Letter from Adam Brodsky dated 6/12/13

Attorney Adam Brodsky was present on behalf of Ken Duval. Ms. Harbottle indicated that previously there were complaints about noise at 85 Maple Street due to stump grinding and grading operations. Subsequently, information was received that gravel had been placed over the area that had been cleared last fall and commented upon by the Board. She indicated there was likely some compaction to the gravel making the site not as pervious and a ramp was built. Ms. Harbottle said she talked with Mr. Brodsky about

filing a Stormwater Permit and he agreed that Mr. Duval will file a permit within 30 days and neighbors would be notified. She indicated that the Board had previously talked about requiring a Site Plan Review for this site; however, the zoning bylaw exempts single and 2 family homes so one will not be required. People have expressed concern that Mr. Duval is creating a boat storage yard which is not a permitted use in the residential district. Ms. Harbottle indicated that if the property is not being used according to zoning, then the building department can become involved.

Mr. Brodsky agreed with Ms. Harbottle's comments and indicated he was not aware of the drainage work that was done. He said Morse Engineering has been hired to do the Stormwater Permit. Mr. Brodsky indicated there will be no proposed change in use and understands if there will be one the Town will be contacted. The Board was agreeable.

Father Michael McNamara indicated a large area of more than an acre had been cleared and it was excavated down 8 feet. He said a huge ramp was built to bring docks to the site. He said he was concerned that this type of work was not really for a residential use. Mr. Mercer expressed a concern about creeping development and suggested to Mr. Brodsky that Mr. Duval convey his ultimate plan. Mr. Brodsky indicated that Mr. Duval has no comprehensive development plan and has done no additional work on the property since the gravel was placed. Father McNamara said that no additional work has been done since neighbors complained. Ms. Harbottle indicated that if a use not allowed by the bylaw is occurring, then complaints should be made. This site is in the Water Resource Protection District and the separation to groundwater is important. An unidentified man said the home was not really habitable. He was concerned that just because it is in the woods it should not take on a new character. Kevin Glynn of 115 Maple Street would like Mr. Duval to show his cards. He indicated the site may not be in use violation now, but Mr. Duval owns a marina and the site is looking like it could be a boatyard which is not a permitted use.

#### Accounting

#### Documents

- PO # 13007879 (\$159.79), PO # 13007853 (\$55.29), PR # 13008653 (\$217.08)

Mr. Taylor moved to approve the requisition of \$159.79 to WB Mason for office supplies, for \$ 55.29 to Laura Harbottle for reimbursement for hotel expenses for the MAPD Conference and for \$217.08 to Gatehouse Media MA for legal ads for Accessory Dwelling Special permits for 147 Border Street and 12 Salt Marsh Hill Drive. Mr.Vogel seconded the motion. Motion was unanimously approved.

#### Minutes

Mr. Taylor moved to approve the meeting minutes of 5/9/13 and 5/23/13. Motion was seconded by Mr. Pritchard. Motion was unanimously approved.

#### Input to ZBA re. Cell Tower, 361 Tilden Road

#### Documents

- Zoning Board of Appeals Agenda for June 20, 2013
- 5/21/13 memo from Bill Limbacher to Peter Morin

Ms. Harbottle indicated the Board was copied on a memo that was sent to the ZBA on the cell tower. She said the Board was at the forefront of the issue a few years ago when the rules changed and allowed companies more leeway if there was a gap in coverage. The memo was read. In summary, the Board urges towers to be located where they have the least impact on neighborhoods while meeting industry standards. The Board also advocates for alternatives to cell towers. Mr. Pritchard said the cell tower company must meet the standards. Ms. Harbottle indicated the Town has been looking into Distributed Antenna Systems (DAS) despite the applicant indicating they won't work in Scituate. She said if local zoning is exceeded and the ZBA desires to deny the application, scientific reasoning needs to be used. She indicated that is why the application is being reviewed by experts. Ms. Harbottle indicated that she and Chairman Limbacher concurred that if there is an alternative to the present site, then that should be presented.

Bill Schmid of 33 Egypt Beach Rd said a lot of research has been done. He said that at the ZBA meeting last night peer review was agreed to at AT&T's expense. Mr. Schmid said it is within the ZBA's power to deny the application as they are asking for exemptions to height and setbacks. He also said AT & T needs to prove there is no alternative technology. Mr. Schmid indicated that they talked about a significant gap in coverage, but if a call is handed off to a competitor it is still coverage. He said there is a big concern about property value assessments with a 150 foot tower in the middle of a residential neighborhood. He said alternatives should be explored and there is a concern in the end that this is a commercial use in a residential area. Janet Tooker of 397 Tilden Road expressed concern about the compound with 5 fuel tanks and cooling units which cycle on and off. Stephen Tooker said their last proposal was a monopole versus the proposed monopine. He said that under the 1996 FCC Act, historical resources must be reviewed by Mass Historical Commission. He said that this area is eligible for listing on the National Register of Historic Places as the Egypt/Litchfield Area and there would be an adverse visual impact. Mr. Tooker said the road wraps around the site and he believes there are vernal pools out in the area. Ms. Harbottle indicated if there is a certified vernal pool within 250 feet, then the Conservation Commission would need to review the plans.

Nancy Fay of 45 Egypt Beach Rd said AT&T came to the town first, then the private property owners. She is concerned about setting precedent here if the tower is approved and another carrier has a gap in service they could do the same thing. She indicated this affects more than this area in town. Mr. Schmid said that if this is approved, then Scituate won't be able to deny more towers based on the tax act of 2012. Mr. Tooker wants other town boards to look into their marketing map. Ms. Fay indicated that if a call is not in AT&T's service area and it gets bounced to another carrier, AT&T has to pay a fee. She said they want a tower to reduce fees they are paying. Mr. Tooker said that their radio frequency engineer said that a DAS system wouldn't work in this area due to the density of tree cover and dips in the terrain. He said it works in Palo Alto for precisely that reason. He also indicated Wellesley is going to the DAS system for the whole town. Diane Dunbar of 352 Tilden Rd asked if the Board went to the balloon test. She indicated that the area has old homes and a cell tower would have a negative impact.

Mr. Mercer suggested the Town should pitch the idea of flagpoles on Town property. He said that cell carriers can't be forced to come up with new technology, but they can be made to study alternatives. The residents expressed concern not just about putting the tower up, but taking it down when its useful life is over. Mr. Tooker suggested that the ZBA needs to feel supported. The ZBA will be talking about the cell tower again on July 18 after peer review and alternates have been studied.

Sign Homeowners Association Declaration of Trust and Covenant – Deer Common  
530 Chief Justice Cushing Highway

Ms. Harbottle indicated that the Homeowners Association Declaration of Trust and Covenants were new revised documents that the new owners have made some minor changes to including having the documents in their names. She recommends the Board sign them and they will be recorded at the Land Court. Mr. Taylor moved to approve and sign the documents. Mr. Vogel seconded the motion. Motion was unanimously approved.

Future Zoning/bylaw

Ms. Harbottle asked the Board the zoning issues it would like to be working on for future town meetings. She indicated that the medical marijuana bylaw should be on for next spring. She indicated that the state regulations highly regulate security, lighting, manufacturing and growth and sales at the facilities. She indicated locations for these centers would not want to be at the edge of a commercial zone. Mr. Mercer and Mr. Taylor indicated they would be on a sub-group to help develop the bylaw. A power point presentation would likely be needed for town meeting. Mr. Mercer suggested asking former member Nico Afanasenko if he would be interested in helping.

Ms. Harbottle suggested a lot shape factor bylaw to avoid rattails would be a good issue to resolve. Revisions to the Accessory Dwelling bylaw were indicated by Board members as a high priority.

Old Business and New Business

Documents

- Background and staff recommendations dated 6/5/13 for the meeting on 6/13/13
- ZBA Agenda for 6/12/13
- 5/28/13 letter to Town Clerk with resolution vote for The Glen, Hennessey Nominee Trust
- Email dated 5/31/13 to Nicole Harris from Laura Harbottle re: Bjorklund 141 Turner Road
- SJC-11401 filing notice 5-30-13

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 10:30 p.m. Mr. Pritchard seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph  
Planning Board Secretary

Richard Taylor, Clerk