

SCITUATE PLANNING BOARD MINUTES February 11, 2016

Members Present: Stephen Pritchard, Chairman; William Limbacher, Vice Chairman; Richard Taylor, Clerk, Robert Vogel, Robert Greene and Ann Burbine, 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, 600 C J Cushing Highway, Scituate.

Chairman Pritchard called the meeting to order at 7:30 P.M. The meeting was being recorded for airing on local cable television.

Documents

- 2/11/16 Planning Board Agenda

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

Public Hearing - Stormwater Bylaw – General Bylaw Section 32050 and Criminal and Non-Criminal Disposition – General Bylaw Section 10230

Documents

- Email from Laura Harbottle to the Board dated 2/5/16 with draft revisions to the Stormwater Bylaw dated 2/2/16 and changes to Criminal and Noncriminal Disposition General Bylaw dated 1/27/16
- Legal ad for Stormwater General Bylaw
- Email from Laura Harbottle to John Clarkeson dated 2/5/16 with 2/2/16 Stormwater Bylaw changes
- Email from John Clarkeson to Laura Harbottle dated 2/3/16 with discussion of the Stormwater Bylaw
- Email from Laura Harbottle to Board dated 2/9/16 with comments from John Clarkeson

Chairman Pritchard opened the public hearing by reading the legal ad. Ms. Harbottle indicated that the changes to the bylaw were prompted by some of the development community who indicated the process for a stormwater permit for a single family lot is too onerous and engineering peer review is inconsistent. She said a stormwater working group was formed and they held four meetings to work on changes. She indicated that they met with the Water Resource Commission (WRC) and the NSRWA was present at that meeting. Ms. Harbottle indicated that there is no requirement for a public hearing on a general bylaw, but the Board felt that stormwater was an important topic and wanted to have a public process. She indicated what is before the Board represents a modified bylaw with compromises to meet the objectives of the bylaw.

Ms. Harbottle reviewed the changes. She said definitions were added as well as performance standards for rainwater produced stormwater to conform to the Town's federal NPDES Permit and land subject to coastal storm flowage. She indicated that clarifications on whether the Planning Board or Conservation Commission administers the bylaw were added as well as provisions for enforcement and a deadline for remediation of a problem. She said the biggest concern is the

amount of disturbance that triggers the bylaw. She indicated it is currently 15,000 sq. ft., the developers would like to see 20,000 sq. ft. and a compromise position has been put in for 18,000 sq. ft. Ms. Harbottle indicated that the WRC would also like to see some type of legal means to protect properties with stormwater measures like easements or deed restrictions so that the stormwater measures are preserved. Mr. Taylor inquired who would hold the easement. Ms. Harbottle guessed it would be the Town as they would be in charge of enforcement.

Patrick Gallivan, Conservation Agent, said that an Order of Conditions has some perpetual conditions that are recorded. He asked if the bylaw would have that ability. Ms. Harbottle said she was not sure if a stormwater permit could have conditions in perpetuity. Mr. Gallivan said subdivisions have Homeowners Associations that monitor conditions in perpetuity and asked if this is possible for single family lots. Ms. Harbottle said drainage structures in a subdivision are usually in easements. Mr. Vogel asked if owners have wetlands and other restrictions recorded against their deed why couldn't stormwater be similar. Mr. Gallivan said that the Conservation Commission has enforcement powers without having easements as their Orders of Conditions and Certificates of Compliance are recorded.

Mr. Vogel asked about land subject to flooding. He said that FEMA wants open foundations which can impact what is happening on the far side of a road when the houses are raised on the ocean side. Mr. Gallivan said DEP is working on developing language for Land Subject to Coastal Storm Flowage. Mr. Vogel asked if the permitting authority has the right to stop work on the building or just the stormwater on a site. Ms. Harbottle said the stormwater. Mr. Pritchard asked how this applies to erosion control. Ms. Harbottle said if the erosion control was a problem for the grading or house construction, then the construction could be shut down until the controls were installed.

Chairman Pritchard indicated that the last time the Board talked about adding language on a default design of infiltrators for single family homes and language to limit the ability to discharge to the public/private ways. He said the language has not been added. Ms. Harbottle said that there already is the ability to control stormwater off site and she said the Board indicated if infiltrators were installed, disturbance could go to 20,000 sq. ft. Paul Scott offered that the bylaws already prohibit discharging stormwater to a public way. Steve Bjorklund agreed it was in the general bylaws. Chairman Pritchard asked if the retention of the first 1" of runoff is a federal requirement and this is the defacto standard. Ms. Harbottle said it is for lots of 40,000 sq. ft. or more. Mr. Bjorklund said for disturbance of 40,000 sq. ft.

Samantha Woods of NSRWA was present. She said eight years ago the association was supportive in getting the bylaw in place as stormwater needs to be addressed and water needs to get back into the ground. She said Scituate's waterbodies are impacted by stormwater runoff pollutants and the water quantity is also stressed. She said she does not want to see the threshold for disturbance go to 18,000 sq. ft. as that would lose opportunities to recharge water into the ground and could exacerbate flooding. She said there is no standard for disturbance; but Norwell has 40,000 sq. ft., Cohasset has 500 to 5,000 sq. ft., the Massachusetts guidelines are 5,000 sq. ft., Rhode Island has 10,000 sq. ft. and Maryland has 5,000 sq. ft. She said the question is how protective does Scituate want to be of its already stressed resources. She said the bylaw is meant to protect all of the Town's residents and resources and with climate change the future really needs to be thought about. She indicated redevelopment needs to be better managed and won't support an increase in disturbance at Town Meeting. She said she is not sure how to make the process less onerous.

Chairman Pritchard asked about the Massachusetts guidance of 5,000 sq. ft. Ms. Woods indicated that the Smart Growth Tool Kit for the state recommends 5,000 sq. ft. of disturbance. She said that pollutants from land flow to Scituate's water bodies including the North River, First Herring Brook, the surface water supplies and the harbor which are public responsibilities. She indicated that by not asking developers to control stormwater on their sites is transferring responsibility to the public. Mr. Gallivan asked if there were any good examples of towns that have criteria for a simple and complex review. Ms. Woods suggested looking administratively to Cohasset.

John Baron of 14 Bayberry Road said his house in Minot was built in 1875 and is located safely from the water. He said he was a victim of enforcement and feels the Board should enforce the bylaw. He said some builders want to get around the bylaw leaving others to preserve and protect the environment. He said the adjacent lot was clear cut so now there is nothing to absorb the water and seven feet of fill has been brought in to comply with FEMA changes. He said the fill is dirty and the dirtiest material is being buried. He opined that a 20,000 sq. ft. lot which is 100% modified lets a builder do whatever they want. He said the Board also has to protect other properties. He said that his pool and fence have been undermined and the Town told him to get a lawyer. He said new development should be required to protect existing homes and wants all people in Town protected, not just the builders. He said enforcement is critical.

Paul Scott of 359 Country Way said he was brought on by the Conservation Commission to help with driveways, parking and access to trails and wondered if the bylaw would apply to the Commission for disturbance on vacant land. Mr. Gallivan indicated that some of the projects are adjacent to wetland and would require wetlands permitting. Chairman Pritchard commented that he cannot opine without specifics, but the bylaw applies to both public and private projects. Ms. Harbottle said that the Town would want the same standards to apply to all. She said the drainage may not be extensive if pervious material is used. Mr. Scott said he can appreciate that the Town should comply, but the cost is a concern for the Commission. Chairman Pritchard said that 15,000 sq. ft. of disturbance triggers the process, but the criteria are still the same as stormwater is supposed to remain on site. Stormwater needs to be kept on its site. Ms. Harbottle said maybe a volunteer engineer could help to reduce costs. Ms. Woods commented that it might make a perfect demonstration project for a grant.

Ms. Burbine said that the bylaw was enacted in 2008 and the regulations in 2010. She offered that water from one property should not affect another and enforcement is what is needed. She said stormwater is about recharge and not discharging on ways or adjacent properties and was unsure why Mr. Baron had not been helped. Ms. Harbottle commented that with the proposed language fines will now be possible providing for enforcement. She said enforcement is needed so that situations like Mr. Baron's don't happen. She said the bylaw provides lots with drainage that likely wouldn't be there without the bylaw and Scituate has high groundwater making tough soil conditions so any help is good. Ms. Burbine commented that 12 months to remedy an enforcement issue is a long time. Ms. Harbottle said the Board can change that. Chairman Pritchard said a schedule can be determined on a case by case basis inside of 12 months. Mr. Gallivan said the bylaw will help people stick to their plans and not do whatever they want. Ms. Burbine said that "people need to be accountable for what they don't do." Mr. Baron indicated that dirty fill is still coming in next to him without a building permit and invited the Board to his house to see the offending property at 8 Bayberry Rd. He said something needs to be in the bylaw about fill. Ms. Woods indicated that there can't be accountability unless there is a process. She said it costs money to plan and treat water and for remediation. Mr. Bjorklund asked if a lot was filled for 15,000 or 18,000 sq. ft., would it make a difference if 2,000 sq. ft. was left untouched. Mr. Baron offered that water is being pushed into his

fence and if less area was disturbed it would have less effect on him. He said there is a problem with enforcement and leniency. Mr. Bjorklund said whether 0 or 5, or 15,000 or 18,000 sq. ft. is disturbed, the issue is enforcement. Mr. Baron said the limit should be closer to 5,000.

Mr. Bjorklund said he's changed his view and thinks disturbance should go to 0 and Scituate should be the strictest in the state. He said then all of the houses in Scituate would be under the bylaw and not just the builders who are developing the last 5% of the Town. He said vacant lots will pick up the burden of the bylaw when it is enacted. He indicated an owner would have a tort if someone put water on a property, but people don't want to spend money in their own defense. Mr. Bjorklund said there are a lot of good things in the bylaw, but enforcement is critical. He said the cost of the studies for the bylaw is outrageous and can cost more than a system itself and the thresholds make no difference to him now. He said that infiltrators placed above the groundwater table should be the default to get water back into the ground and the number of infiltrators should be determined by the design engineer. He said implementing new regulations is far more important than the bylaw. He said the bylaw is better than before; but getting the design work done properly is the most important thing.

Mr. Taylor asked where the change from 15,000 to 18,000 sq. ft. came from. Mr. Bjorklund said there is less rainwater on a smaller lot and he would rather clear an entire 20,000 sq. ft. lot and put in nice landscaping than leave existing ugly trees. He said the intent is to deal with impervious areas. He indicated that Tricia said go with 18,000 to compromise. He opined "every new house should have to do something with their stormwater." He said no one should have to put in 156 infiltrators for a single family house and driveway to take the 100 year storm. He said that the big issue is mitigating for the small storms as one shouldn't have to store the 100 year storm on a lot for a few hours once in 100 years. He said NPDES regulations still need to be met. He said a flat 20,000 sq. ft. lot shouldn't cost \$15,000 to prove the regulations don't work. Chairman Pritchard offered that homeowners have legal remedies and we want to have requirements that everyone can live by. Mr. Taylor said that it sounds like everyone is saying the same thing. He asked if the threshold is not changed, are the other changes acceptable. Mr. Bjorklund said that anyone who puts a shovel in the ground should come in and deal with stormwater. He said putting infiltrators in accomplishes recharge and avoids huge expenses. Mr. Baron said that \$15,000 is nothing compared to the cost of the lot next door and his house and litigation. Ms. Woods said lower the threshold so that more people come through the process. She said stormwater is a cumulative problem and the bylaw is also getting at redevelopment. Mr. Bjorklund said that no one is disputing that on a developed lot an increase in impervious area by 25% or more triggers the bylaw. He said there should be requirements that with 20,000 sq. ft. or less of disturbance that infiltrators will be put in above groundwater. He said with that solution he wouldn't change the threshold.

Chairman Pritchard said he would like to see 15,000 sq. ft. of disturbance with the enforcement provisions. He said there is engineering input into infiltrators. Mr. Bjorklund and Greg Morse both indicated that soil testing is needed to determine seasonal high groundwater and soil conditions. Ms. Harbottle said that requiring infiltrators can be put in the regulations. She said testing and grades don't change the trigger of the bylaw. Mr. Vogel commented that when the regulations are changed, there may be additional changes to the bylaw. The Board concurred. Chairman Pritchard summarized that it appears everyone is okay with all the changes and keeping the level of disturbance at 15,000 sq. ft. Mr. Limbacher moved to close the public hearing. Mr. Vogel seconded the motion. Motion was unanimously approved. Mr. Limbacher moved to accept the general language of the bylaw and retain the criteria at 15,000 sq. ft. Mr. Bjorklund said he concedes and why not make the criteria 0. Ms. Woods said that would put the slope from 15 to 25%. The Board

agreed as it is steeper. Mr. Limbacher moved to recommend the changes to the Town of Scituate General Bylaw – Stormwater dated 2/2/16 except with the limit of disturbance at 15,000 sq. ft. Mr. Taylor seconded the motion. Motion was unanimously approved.

Informal Discussion – 105 Hatherly Road – Residential Compound Development

Documents

- Scituate ZBL Section 610.2.D. Residential Compound Developments

Mr. Bjorklund was present for the informal discussion. He indicated that the site at 105 Hatherly Road is 3 acres and as a partner of Diamond Development, he has a purchase and sales agreement for the property. He said they would like to do a residential compound development, also known as a shared frontage development, which allows up to five homes. He said with four times the square footage for the zone (10,000 sq. ft. zone) 40,000 sq. ft. is needed for four houses. He said there would be a fifty foot frontage lot with double the lot area and three additional houses after the existing house is razed and a new one built. He indicated there would be a private access drive for the four homes and there is already an 8” sewer stub which they would like to use for all the houses. Mr. Bjorklund said that under 6102D he would be allowed 5 homes, under a common drive 3 and more if he did a subdivision. He said there is a requirement to have 20,000 sq. ft. around the houses and DPW requires lots to have frontage for sewer. He indicated he will go to the Selectmen to seek a waiver for the frontage for the sewer as the frontage is shared along Hatherly Road with the back houses having no direct frontage. He said there would be an easement for the driveway which will be at least 18 feet wide with Fire Chief approval and he would provide two fire hydrants. Mr. Bjorklund said the detention basin will likely be on its own lot and there would be a turnaround for a fire truck. He indicated there would be a Homeowner’s Association for all four homes. He said it is a good use of the property and the Conservation Commission has approved the wetland line.

Ms. Burbine asked if there was a paper street. Mr. Bjorklund said that it had been extinguished. He said the driveway would be private in perpetuity. He said there is high groundwater and he wants to be able to tie into the sewer to reduce the amount of fill needed. He said he would be in front of the ZBA for the 50 foot frontage lot next week and that the Form A is on the Board’s agenda for tonight. He said there needs to be 40,000 sq. ft. for each house in the tract so there will be 3 houses plus the one on the 50 foot frontage lot. Mr. Vogel asked if they would consider setbacks for the R-1 zone. Mr. Bjorklund said that 30 feet around is in the bylaw. Mr. Taylor asked if there was any advantage to doing a common driveway. Mr. Bjorklund said there was not as a common drive does not provide frontage and he only wants to do one drive with easements for all the houses. Mr. Vogel said it is a good use of the land.

Form A – 105 Hatherly Road

Assessor’s Map/Block/Lot

Applicant/Owner: Diamond Development Realty Trust

Documents

- Application, deed, purchase and sales agreements, assessor’s information and Plan of Land in the Town of Scituate, MA 105 Hatherly Road showing a division of the lot for Diamond Development Realty Trust by Morse Engineering Group, Inc. dated 1/14/16
- Email to the Board from Laura Harbottle dated 2/5/16 with above noted materials

Mr. Taylor moved move to endorse as approval under the Subdivision Control Law Not Required a Plan of Land in the Town of Scituate, MA 105 Hatherly Road prepared by Ross Engineering Co., Inc. for Diamond Development Realty Trust dated 1/14/16 as the division of the tract of land shown is not a subdivision because every lot shown on the plan has frontage of at least the distance presently required by the Scituate Zoning Bylaw on the public way of Hatherly Road when the 50 foot frontage special permit from the ZBA is approved and recorded. The Plan shall be held in escrow by the Town Planner until proof of recording of the ZBA special permit is furnished. Mr. Limbacher seconded the motion. Motion was unanimously approved.

Form A – 24 Wood Island Road
Assessor's Map/Block/Lot
Applicant/Owner:

Documents

- Application, deed, assessor's information and Plan of Land in Scituate, MA showing a division of parcel 4-1-11 24 Wood Island Road for James I and Linda S Tribble, TRS. Wood Island Realty Trust by Morse Engineering Group, Inc. dated 1/26/16
- 1988 ZBA decision
- 1948 USGS Map excerpt
- Email to Karen Joseph from Alfred Elliott dated 2/4/16 with Fire Department comments
- Email to the Board from Laura Harbottle dated 2/5/16 with above noted materials
- Email from Laura Harbottle to the Board dated 2/10/16 with 1974 ZBA decision, 1976 PB endorsed plan, 1988 ZBA decision, 1948 USGS map excerpt, request to withdraw dated 2/10/16

Mr. Taylor moved to accept the applicant's request to withdraw without prejudice the Form A Plan showing a division of parcel 4-1-11 24 Wood Island Road prepared by Morse Engineering Co., Inc. for the Wood Island Realty Trust, James I. & Linda S. Tribble, TRS. dated 1/26/16. This action is taken in accordance with the attached letter from Walter B. Sullivan dated 2/10/16. Mr. Limbacher seconded the motion. Motion was unanimously approved.

White Ash Farm – Lot Releases for Lots 1 & 2 and surety reduction

Documents

- Request for Lot Releases and surety reduction dated 2/4/16
- Review by Amory Engineers dated 2/5/16

Ms. Harbottle indicated that Pat Brennan of Amory Engineers reviewed the site and came up with a letter for the few remaining items. She said the surety can be reduced with money for the maintenance guarantee and few remaining items held.

Mr. Taylor moved to accept Morse Engineering Company, Inc.'s request on behalf of Douglas E. Sheerin, to release **Lots 1 & 2** of the White Ash Farm Definitive Flexible Open Space Plan approved by the Board on 5/14/2014 from the covenant recorded 11/3/14 in the Plymouth County Registry of Deeds in Book 44908 Page 102, and to reduce the cash surety being held by the Town to secure the performance of the remaining work to \$8,605.00. This represents the 10% maintenance guarantee which the subdivision regulations require to be held for eighteen (18) months after the completion of a subdivision and the remaining items to complete \$6,4443.85 rounded up + \$2,160). Amory Engineers has verified that the as-built substantially complies with the design and the work nearly

complete. The recorded lot releases shall be provided to the Town Planner prior to application for a Building Permit on Lots 1 & 2. Mr. Limbacher seconded the motion. Motion was unanimously approved.

Accounting

Documents

- PO # 1605420 (\$100.00), PO # 1605428 (\$249.24), PO# 1605451 (\$75,207.90), PO # 1605493 (\$200.00)

Mr. Taylor moved to approve the requisition of \$100.00 to Tracey Sales for toner for the Oce 100 large format printer, for \$249.24 to Gatehouse Media MA for legal ads in the Scituate Mariner for the Scenic Road hearing for Country Way Multi-Use Trail and 9 Blanchard Farm Lane Accessory Dwelling Special Permit application, for \$ 75,207.90 to Douglas Sheerin for a surety reduction for White Ash Farm Lane and for \$200.00 to Horsley Witten for pre-Definitive Plan services associated with Task 2. Mr. Limbacher seconded the motion. Motion was unanimously approved.

Minutes

Mr. Limbacher moved to approve the meeting minutes of 1/28/16. Mr. Vogel seconded the motion. Motion was unanimously approved with Mr. Taylor abstaining as he was not present.

Liaison Reports

Ms. Burbine indicated that the CPC will vote on March 7 for the projects they will recommend to the Town Meeting. She said the EDC is reviewing the possibility of 16 locations for monument/directional signs. She said that the EDC concurs that the next area for development in Scituate is Greenbush. She said the Fitts Mill property is under agreement, there is the MBTA lot and South Shore Auto Parts is for sale. Ms. Burbine said that North Scituate does not have as much potential without sewer. Ms. Harbottle said that the MBTA is hoping to combine their land with a little bit of Town land.

Town Planner Report

Ms. Harbottle indicated that she has been working on the Hazard Mitigation Plan as well as providing support to the EDC. She said there was no word on when Toll Brothers would file their subdivision. She indicated that she had presented the budget to the Advisory Board and will be before the Selectmen next week. She said an assistant planner will not be in the budget for FY 17. Ms. Burbine said that adequate staff is needed to enforce Planning Board decisions. She said the Board should put together a letter to the Town Administrator. Chairman Pritchard asked Ms. Harbottle to provide the argument basis to him for the position and he would do a letter.

Old Business and New Business

Documents

- Email to Board dated 2/5/16 from Karen Joseph with agenda for 2/11/16
- Email to Board dated 2/9/16 from Laura Harbottle with memo from her and Neil Duggan on protecting trees at the Public Safety Complex

- Email to Board dated 2/9/16 from Laura Harbottle on Kimberly Estates

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 9:55 p.m. Mr. Limbacher seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph
Planning Board Secretary

Richard Taylor, Clerk
2-25-16
Date Approved