

COHASSET PLANNING BOARD MINUTES

DATE: WEDNESDAY, JUNE 24, 2009
TIME: 7:00 P.M.
PLACE: COHASSET TOWN HALL – AUDITORIUM
41 HIGHLAND AVENUE, COHASSET, MA 02025

Board Members Present:

Alfred S. Moore, Jr. - Chairman
Stuart W. Ivimey, Vice Chair
Jean Healey Dippold, Clerk
Charles A. Samuelson
Clark H. Brewer

Board Members Absent:

Recording Secretary Present:

Jo-Ann M. Pilczak

Meeting called to order at: 7:00 P.M.

7:00 P.M. COOK ESTATE, ABBOTT DEVELOPMENT – ENDORSE FINAL PLANS - Review not completed in time for meeting – to be rescheduled.

7:00 P.M. ZBA RECOMMENDATIONS (Building Inspector Egan represented both applications)

• **52 STOCKBRIDGE STREET, SPECIAL PERMIT APPLIC. – APPL: MARK, ABIGAIL ALVES**
The applicants seek to build an addition on the NW side of their home within the front setback. The existing home is a pre-existing, non-conforming structure that does not meet the required minimum lot size, lot width, front, side or rear setbacks. These factors are however, typical of the small lots in this area of Town. The Planning Board is of the opinion that the modest addition proposed by the applicants is reasonable for this lot size in this area of Town. In addition, special permits for similar situations are routinely granted.

MOTION: by Member Brewer to recommend that the ZBA approve this special permit application

SECOND: Member Samuelson

VOTE: 5 – 0 MOTION CARRIES

• **140 BEACH STREET, SPECIAL PERMIT APPLICATION – APPL: STREKALOVSKY**
ARCHITECTURE, OWNER: SOLSTICE LLC

The applicant seeks to build a deck, covered balcony, stairs and detached two-story garage. The existing lot is a pre-existing, non-conforming 35,880± SF lot. Portions of the existing home are build in or above the flood plain. The proposed garage on the east side of the property backs into a ledge outcropping and a small portion of the front corner of the proposed garage is in the flood plain.

MOTION: by Member Ivimey to recommend that the ZBA approve this special permit application

SECOND: Member Healey-Dippold

VOTE: 5 – 0 MOTION CARRIES

7:10 P.M. ADMINISTRATION

• **VOTE TO APPROVE JUNE 10, 2009 MINUTES**

MOTION: by Member Ivimey to approve the June 10, 2009 minutes

SECOND: Member Brewer

VOTE: 5 – 0 MOTION CARRIES

• **WALKABLE COMMUNITY WORKSHOP** – (Member Brewer) MPO will conduct workshop in communities interesting in hosting. Board thought it an interesting idea to explore. Brewer will contact MPO.

7:15 P.M. 8 JAMES LANE, SITE PLAN REVIEW AND SPECIAL PERMIT CONTINUED PUBLIC HEARING, OWNER: STEPHEN CLEARY, APPLICANT: SOUTH COASTAL DEVELOPMENT GROUP, LLC filed on: March 5, 2009

In attendance for applicant: Applicants Paul Cleary, Stephen Cleary; Eng. Robert Hannigan; Traffic Engineer Bill Carlson. In attendance for Town: Town Counsel Richard Hucksam; Town Engineer John Modzelewski.

Robert Hannigan: reviewed existing conditions and proposed conditions. Plan to widen James Lane to Pleasant St to 20' and move road 1.0' to 1.5' closer to the applicants' site and further from the existing house on James Lane. BOS would have to approve widening road. 5' green space. 8" main from Pleasant St. to existing line. Propose overhead power subject to easement from MBTA then go underground to the building. Drainage calcs have been submitted. Checked on past suggestion to provide pedestrian access across the MBTA tracks – better to provide sidewalk along track from site to Pleasant St. Will need easement.

Capt. Trask: asked if ladder truck will be able to make the turn in the new proposed road. **Hannigan will check.**

Member Ivimey: asked why driveways and parking are still shown within 5' of the lot line. Hannigan explained that Ivimey was looking at an old plan and that the new plan shows they are further from the lot line. Board members expressed frustration with the confusion caused by the changing plans that the Board cannot keep up with. Ivimey suggested that the proposal be rejected because the applicants continue to submit plans that do not conform with zoning. Hannigan explained that the newest site plans show they are a minimum of 5' from the lot line. Modzelewski commented that the applicant is trying to be fluid in his design as he gets feedback from the Board, but the question is – is this the right forum for this or should the applicant come in with his best shot at a proposal which the Board makes a decision on. Modzelewski admitted that submissions have been coming from disparate sources on different days and this has been confusing. **To help avoid confusion about revised plan pages, the Board asked the applicant to submit a new, dated, complete and full set of plans every time an individual page is revised.** Brewer mentioned that he does not have a problem with the iterative process but the Board needs coordinated plans that agree with each other and that the Board could not vote on the plans as they exist today. Moore added that if the applicant needs more time to revise plans in order to submit complete, coordinated sets, they should ask for the hearing to be postponed to a later date rather than submit individual revised pages at different times. Modzelewski added that this is a very tight site that is not simple to look at and evaluate and that is why the Board is asking for complete and coordinated plans.

Paul Cleary: Cleary mentioned that a checklist does not exist for a special permit (Village Design Review Guideline is in draft form), so they are not following it. Cleary feels they are going around in circles between the Planning Board and the Design Review Board.

Bill Carlson, Carlson Consulting: reviewed traffic study that was submitted to the Board. Project this small does not entail a full traffic study, but rather uses data generated from many studies. He summarized by noting that: while this proposal results in an increase in traffic, the starting baseline is very low; a residential building generates less traffic than either a commercial, retail or mixed use building; weekends generate less traffic than weekdays. Modzelewski replied that he is in agreement with the right hand only turn onto James Lane and, that while there is 10% more traffic with the proposed residential use than currently exists, no one knows if this will remain as apartments in the future. If the use changes, traffic could change also.

Alix White, 25 James Lane: drew the site on an easel. Asked about the threshold setbacks in Zone 1, 2 and 3 to a well field that pumps 100,000 gal./day? She also asked how they can fit a bldg. of this size onto this tiny parcel while meeting the required setbacks. Paul Cleary stated that Norfolk Ram report from Water Dept. (in Planning Board file) says the Bldg. is in Zone 2, not Zone 1 - **Modzelewski will look into.** Modzelewski also noted that Conservation Commission deals with these setbacks

Modzelewski: did preliminary review of the drainage calcs – they need work. Modzelewski could not recommend approval of drainage design as shown.

George Cooney, 43 James Lane: pointed out that future use of water in Cohasset – if Lily Pond were suddenly not available, the well fields may need to be used – these wells have growth potential and should be taken into account.

MOTION: by Member Ivimey to continue to July 29th at 7:15 PM

SECOND: Member Samuelson

VOTE: 5 – 0 MOTION CARRIES

8:30 P.M. SPECIAL TOWN MEETING ARTICLE #2 – CITIZENS' PETITION - "WIND ENERGY CONVERSION FACILITY BYLAW AMENDMENT" - PUBLIC HEARING

Member Healey Dippold read Public hearing advertisement. Town Counsel in attendance for the Planning Board. Member Moore carefully

outlined the ground rules for the hearing in terms of max. time each individual has to speak; individuals must be recognized by the Chair to speak; individuals must speak from table at front of room etc.

Nathaniel Palmer, 9 Little Harbor Road: (submitter of the article) Intent is for a time out for the Wind Energy Conversion Facility Bylaw. A specific expiration date for the moratorium has been added to a new amended version of the article to be introduced on the floor of town meeting. If pending Wind Energy Siting Reform Bill is passed during the moratorium Cohasset will not be exposed – the Reform Bill is intended to override local bylaws.

Member Moore: has seen four iterations of the proposed bylaw – is confused – asks what version the Board is now looking at. Palmer explained the version to be read by the Town Moderator is not the version that was contained in the mailed warrant. Moore stated that this is why he is very uncomfortable holding public hearings on such short notice when the proposed articles are still being amended.

Kenneth Ingber, 5 Woodland Drive (Also the Attorney for CCI Energy, applicant for the site plan and special permit for 2 wind turbines at Cohasset Heights) Noted that the people who are in attendance at this public hearing still do not know what article (version) the Board is considering – Member Moore agreed and added that the Planning Board is confused over which version they are now considering.

Paul Carlson, 18 Old Coach Rd. and BOS Chairperson: handed out a the motion to be read at Town Meeting. BOS has not come to a decision yet – meeting tomorrow, June 25, 2009, at 6:30 PM before the STM.

Sam Wakeman, 255 Atlantic Ave. and Advisory Board Chair: Advisory Board has been having hard time with the proposed article. Read Advisory Board statement that will be read at Town Meeting. Adv. Board is polarized. Main point is that there is insufficient time for a thorough review of such a complex topic. Bylaws should only be amended when all town boards, committees and constituencies have had adequate time for investigation, analysis of alternatives and input from numerous parties that may be affected. Although the proponents have the legal right to submit a citizens' petition, the Adv. Board does not think this short time period is an effective way to amend zoning bylaws or any bylaw. The majority of the Adv. Board believes the bylaw as currently written is not so seriously flawed so as to require a moratorium and that the prescribed process to amend zoning articles should be followed and should be considered at annual spring town meeting. Minority of the Adv. Board thinks the moratorium with a sunset clause is sensible. Wakeman clarified that the wording in the Town Manager's motion to be read on the floor of Town Meeting is the version the Adv. Board reviewed and voted on. Wakeman added that there simply has not been enough time to deal with this article.

Kathryn Earle, 36 Ash St. and one of the founders of "Sustainable Cohasset": Asked procedural question as to how Planning Board will use the information they hear during this public hearing. Member Moore addressed and explained procedure and Planning Board options. Earle stated that the current bylaw is adequate as is after the great deal of consideration and collaboration that went into the writing of this bylaw. Despite what the proponents of a moratorium state, this bylaw does send a message to the State that Cohasset has a bylaw in place and is trying to comply with the Green Communities Act. The fact that the Planning Board was able to make a decision on the Cohasset Heights Wind Turbine by following this bylaw is indication that it is adequate. There is a large amount of silent support in Cohasset for the turbines. The Town should adhere to the due process used to amend bylaws and not support this moratorium.

Marie Caristi-MacDonald, 41 Oak St: Very concerned by the proposed moratorium. Troubles her that there have not been specific recommendations made regarding what specifically should be changed in the bylaw. Existing bylaw should remain in place while specific changes are identified and vetted. Proponents of the moratorium should follow the prescribed amendment process and, this is not the prescribed process.

Brian Murphy, 471 Beechwood St.: stated that he had not attended any of the public hearings for the Cohasset Heights Wind Turbine application. Asked if the bylaw only addresses commercial (A: Yes). Suggested that if bylaw is revised, it would be great to include residential turbines.

Merle Brown, 546 Beechwood St.: clarified that the Planning Board could either recommend the moratorium article or not recommend the moratorium article, or, continue the public hearing. Asked what would happen if the public hearing was continued. A: no vote could be taken at Town Meeting.

Kenneth Ingber, 5 Woodland Drive (Also the Attorney for CCI Energy): Planning Board has significant latitude in dealing with this. It would be a disservice to people who attend STM to not offer guidance. Ingber is still not clear about what version the Planning Board is considering at this public hearing – this puts the public at a disadvantage. He never saw a handout at the Advisory Board meeting (which he attended). Everyone did learn a lot through the Cohasset Heights Wind Turbine filing and hearings – but that is always the case. If Planning Board does not make a recommendation on this, Town Meeting cannot vote on this article, that is how critical it is. It is not appropriate to take a procedural view that 45 days is not enough time. The Planning Board owes the STM a full, vetted process - the proponents owe the Planning Board a much greater explanation of what the supposed flaws in the bylaw are.

There has been a lot of talk about financial benefits which is a very complex issue that a lot of people are genuinely concerned about. Planning Board should take a shot at looking at the financial benefits. Before coming to a conclusion that the bylaw should be suspended or repealed it should be determined if this “time out” is appropriate in order to determine financial benefits. The figure of \$250K heard during the hearings was a mathematical and educated “guess” to help the conversation along and should not be taken as a given when contemplating financial benefits. Just in terms of the financial consideration, and there are many others, the Planning Board should ask Town Counsel for advice and then deliberate, it is not appropriate for the Board to say there is not enough time to consider it and then merely say no. There is no emergency issue at hand that should pressure the Board into making a decision that should be a considered and deliberate decision.

Gordon Deane, 90 Gammons Rd., 672 Jerusalem Rd. and office at 13 Elm St.: obviously has a vested interest in the Town. He is unclear about what will be considered on the floor of town meeting. Addressed the 5 talking points in the Cohasset Wind Advisory Committee letter. Disputed all. Noted that the Green Community Act is evolving and will continue to evolve – will still be evolving once the moratorium ends – projects have to move forward, not wait for the evolution to end.

Ed Lappen, 18 Deep Run and member of Advisory Board: All bylaws could probably be improved. Proponents of the moratorium did distribute a list of substantive changes, but this citizens’ petition and 45 day process deadline is not the way to amend bylaws. This should not be supported – bylaws should be amended by proper process and this is not it.

Charles Higginson, 159 Atlantic Ave: supports the Advisory Board position. This is no way to amend bylaws. He does not agree that there are issues with the bylaw as it exists today. Townspeople have a duty to future generations to consider and support alternative energy.

Jeffrey Patterson, 10 Sanctuary Pond Rd.: Proponent of moratorium. One major goal is to put more objective guidance into the bylaw – for example: what is “significant” flicker impact or “substantial” visual impact. These subjective measures need to be clarified. After final vote on Cohasset Heights filing, people were no clearer on what is “substantial” or “significant” flicker or visual impact. Introducing certainty eliminates appeals and animosity that develops from subjective measures. The moratorium would allow certainty to be added to the bylaw which would be helpful to the Town and the developer. Moratorium is a better process than cramming in substantive changes and provides opportunity to see if, in a collaborative fashion, consensus can be reached regarding more objective measures.

Donald Steele, 31 River Road: should give more thought to other sources of alternative energy.

Kenneth Ingber, 5 Woodland Drive (Also the Attorney for CCI Energy): in response to Mr. Patterson. First, Planning Board found that there are sources of objective guidance that the Board could rely on – regarding flicker, turbine height, 10db sound measure etc. It is customary to grant discretion to the Board and more objective guidelines in the bylaw do not necessarily improve the bylaw as it may introduce less discretion and less opportunity to apply common sense. Second, there is a difference between exercising discretion and issuing a permit with conditions that are specific – and the Planning Board is perfectly capable of issuing a permit with conditions that are objectively verifiable and that will have little difficulty in measuring. Last, regarding the 10db over ambient sound measure - is a very specific way of being measured with specific DEP policy values – there may always be a little uncertainty at the margins, but the 10db measure is rigorously defined and does not suggest there is ambiguity in this portion of the bylaw.

Mimi White, 22 Sheldon Road and member of AEC: Work done by AEC has been advisory. AEC provided the best information they could based on a great deal of research. It is difficult to talk about this whole issue because the public does not know which version of an article is before the Board or if it is legal to substitute an article for the article that appeared in the warrant. Member Moore noted that it can happen on the floor of town meeting as an amendment to the article.

Karen Quigley, 27 Clayspring Road and member of BOS: speaking as private citizen. Supports the opinion that this citizens’ petition and STM are not the way to amend a bylaw – there is a process in place to do this – it should not be done on the fly and a zoning bylaw should not be amended on the floor of town meeting. This sets a bad precedent – this could become the norm and not the exception.

MEMBER MOORE POLLED THE PLANNING BOARD MEMBERS AS TO THEIR THOUGHTS:

Member Brewer: On one hand, it is remarkable that a town of this size can have members so committed to their neighborhood that they can be so organized to bring a town meeting warrant article together, get the requisite signatures for a STM etc. That said, he does not support the article as written or as might be amended on the floor of town meeting. He cannot vote for the moratorium.

Member Ivimey: First: the language of the bylaw as sent to the people in the warrant is different than the executive summary in the warrant – he is deeply troubled by the thought that the public may vote on the executive summary in the warrant (moratorium) which is not consistent with the intent of the bylaw amendment (suspension of the wind turbine bylaw) in the warrant – the two are irreconcilable. He believes it would be a terrible disservice for gatekeepers of the zoning bylaws to let this blatant inconsistency proceed. He recommends sending this back to the BOS to reissue the warrant without the inconsistencies as this inconsistency cannot be remedied by amending on the floor of town meeting. Second: typically citizens' petitions are sent to the Zoning Advisory Committee (ZAC) to review and make recommendations to the Planning Board. This is standard procedure and this procedure did not happen in the case of this proposed bylaw amendment. Is the proponents' argument that the bylaw is flawed, real and legitimate or, based on something else? This bylaw amendment needs to be studied – the proponents' position that the bylaw is flawed should not just be accepted without sufficient review and study.

Member Healey Dippold: Shares concerns about the process and the language in the warrant – not sure people will really know what they are voting for. Has concerns with some of the substance of the bylaw and felt the Planning Board, developer and audience struggled with some parts of the bylaw. Sees areas that could be improved and made more objective. Prefers to see more guidance in the bylaw to provide more certainty, avoid appeals etc. Feels vague regulations have negative effects that fall on citizens, taxpayers, community. Has to chuckle that almost 1,000 people have come forward and signed a petition against the current bylaw whereas only 230 people attended the Spring 2009 Town Elections – quite a hot topic.

Member Samuelson: Not opposed to considering amendments to any bylaws by way of the correct process. Using STM for establishing zoning is not the correct process and is not appropriate. As he understands it, the STM petition was presented to the BOS before anyone even had text of the proposed bylaw amendment. Disturbed by the multiple versions of the proposed bylaw amendment that are still evolving and, the night before the STM another new version has been distributed. Strongly agrees with Ivimey about the fact that the article as appears in the warrant is inconsistent with the executive summary in the warrant and is of great concern to him. Bylaw as currently written worked – the Cohasset Heights turbine filing was not approved – there is no emergency requiring this bylaw to be amended via STM.

Member Moore: Is confused by the multiple versions of the proposed bylaw and is not ready to vote on it. Last minute substantive changes are confusing. Procedurally, this is a horrible way to approach zoning.

MOTION: by Member Ivimey to table this discussion and keep the public hearing open to allow the Planning Board to send the proposed bylaw to the Zoning Advisory Committee (ZAC) and wait for the ZAC to report back to the Planning Board and to, as a board, communicate and have dialogue with the BOS about having warrant articles and executive summaries that are consistent.

SECOND: Member Samuelson

DISCUSSION: Member Brewer would like to make alternate motion to Member Ivimey's motion. He thinks the bylaw recommendation can always be sent to the ZAC for review but, he thinks there are many people in town who want to have a definitive answer from the Planning Board as to whether they support this article, as the Board understands it, or, that the Planning Board does not support this article.

MOTION: by Member Brewer to amend Member Ivimey's motion to: to take a vote on the language of the proposed article as stated in the Town Manager's suggested motion for STM that was received by the Planning Board tonight

SECOND: Member Healey Dippold

VOTE: 2 – 3 MOTION DOES NOT CARRY

RETURN TO ORIGINAL MOTION:

MOTION: by Member Ivimey to table this discussion and keep the public hearing open to allow the Planning Board to send the proposed bylaw to the Zoning Advisory Committee (ZAC), take their input and communicate as a board with the BOS to have a dialogue about what can be done to when someone submits an article for the warrant and executive summary that are not consistent with one another.

SECOND: Member Samuelson

VOTE: 3 - 2 MOTION CARRIES

Public hearing continued to July 29, 2009 at 7:15 P.M. to allow time to reform the ZAC and send this proposed article to the ZAC.

Town Counsel explained that, under the Zoning Act Chapter 40A, Section 5, in order for the town to vote on a zoning amendment, the Planning Board has to either issue its report or, 21 days have to pass after the Planning Board closes the hearing on the proposed warrant article. Therefore, since the hearing has not been closed, the 21 days cannot pass until it has been closed and, since no report will have been issued, there cannot be a vote on the proposed warrant article at town meeting.

MOTION: by Member Ivimey to adjourn at 10:10 P.M.

SECOND: Member Brewer

VOTE: 5 – 0 MOTION CARRIES

NEXT MEETING: SPECIAL TOWN MEETING, THURSDAY, JUNE 25, 2009 AT 7:00 P.M.

NEXT REGULAR MEETING: WEDNESDAY, JULY 8, 2009 AT 7:00 P.M.

MINUTES APPROVED: JEAN HEALEY DIPPOLD, CLERK

DATE: JULY 8, 2009