

HAMILTON PLANNING BOARD  
MINUTES OF MEETING  
December 6, 2016

Members Present: Peter Clark, Ed Howard, Jeff Melick, Rick Mitchell, Bill Olson, Brian Stein, and Claudia Woods  
Associate Members Present: Richard Boroff  
Planning Director: Patrick Reffett

This meeting was called to order at 7:10 pm

434 Asbury St., Public Hearing Closed – Board Preparation of Decision

Ed Howard wondered what provisions were in place if the cell tower was no longer needed. Bill Olson responded that the By-law stated that it should be torn down. Claudia Woods said it should be a condition of the decision. Jeff Melick wondered who would be responsible, to which Patrick Reffett suggested successors and assigns be added as a part of the condition. Rick Mitchell read the section regarding the abandonment and Mr. Melick said he believed that the By-law covered it.

Bill Olson questioned the generator testing schedule. Jeff Melick suggested the applicant be able to test the generator during the hours between 10:00 am to 2:00 pm. Claudia Woods asked if the lease agreement was included in the application and asked Patrick Reffett to request a copy. Mr. Melick wanted sheet numbers added to the plan pages in the draft approval.

650 Asbury St. Site Plan Review for the Gravel Parking Lot – Decision Preparation

Jeff Melick said he knew the Open Space Committee wanted to be involved in the decision. Zachary Peters had sent a letter to the Board outlining his concerns, which included reserving open space, vistas, and fields. Mr. Peters noted errors in the plans, including the layout and design of the parking lot. The number of spaces should have been better defined to avoid excessive change to the landscape. There was a need for calculations of various uses and a phasing of construction based on specific needs, which would benefit the environment and limit erosion. The RFP didn't indicate an exact use. Patrick Reffett said the 43 spaces were proposed because the Homestead could handle 51 people. Mr. Reffett continued that the original plan included 75 spaces but was cut to 43, which was tethered to how many people could be at the Homestead itself. Mr. Peters said he saw 48 spaces on the lower lot plan.

Zachary Peters said he was concerned about the modular concrete retaining wall and asked for the use of natural materials rather than concrete block to minimize the visual impact. Patrick Reffett responded that the Town was looking for a reasonable cost in materials. Mr. Peters suggested using timber.

Zachary Peters said the rock wall at the entrance should be re-used as Asbury St. was a designated Scenic Road. Mr. Peters thought the fencing was an eyesore and would look like a corral then added that the Open Space Committee would prefer it be lowered to match what existed. Visual screening should use native shrubs and trees. The Open Space Committee suggested using real gravel or stone in the driveway and parking areas. Lighting should be restricted to dark sky standards including downward lighting.

According to Zachary Peters, a better explanation for the replacement of trees and shrubs for erosion control should be considered. The hillside plan for erosion control and how it would be accomplished, needed more detailed plans. Stormwater Control plans had no details for the drainage swale or detention basin for during or after construction. The road was pitched away from the drainage swale on the plan. Check dams were used at the Patton Ridge development and the Open Space committee recommended the same for the parking lot proposal. Stormwater basins should be rain gardens. Mr. Peters said there were no details as to how the parking lot would be constructed, only notes on the parking lot plan. Reffett said what was proposed was a simple, pervious gravel parking lot which didn't require drainage structures.

Peter Clark wondered how a revised plan might accommodate the recommendations. Jeff Melick agreed and asked for construction plans which reflected the changes. Patrick Reffett said the comments were submitted after the public hearing was closed. Mr. Reffett agreed with some of the comments and would provide them to the Town Manager, adding that having the engineers change the plans would create yet another added cost. Mr. Clark said the area had been tilled for years until recently and had been flooded by the river. Mr. Reffett responded that the surface material was pervious which would act as a receptacle or reservoir for water when necessary.

Claudia Woods requested a visual of what the entrance would look like. Ms Woods believed that as a Scenic Road, the Board had an obligation to request it. Jeff Melick asked to include the items that the Open Space Committee raised.

#### 227 Willow St. Project – Status Review

Patrick Reffett provided an update of the property with a discrepancy being noted between what was permitted and what followed the language of the By-law. In the opinions of the Building Commissioner and Town Counsel, what had been constructed had followed the language of the By-law. The Board debated the height and term “occupy-able” space. Brian Stein offered that the project was a special permit and if an applicant didn't show something in a special permit application, they should not be allowed to build it. Jeff Melick said the approval did not show the tower. Claudia Woods said the Board would not have given the applicant the waiver from 35' to 41' if they were aware of the tower. Mr. Melick reviewed the elevation drawings and noted that the elevator tower was not on it. The plan view included the elevator, but the elevator was not in the section drawings. Brian Stein recalled that in the meeting the Board was told there was a roof deck.

Patrick Reffett said when he discussed the situation with the Building Commissioner, the Commissioner referred to the fact that language allowed for elevators to be added to the building. Jeff Melick questioned the fact that the submitted pictures did not show what was constructed and wondered how Town Counsel opined that regardless of what the Board approved, the applicant had a right, under the existing By-law, to build the elevator. Mr. Reffett said he had explained to Town Counsel that the elevator was not shown and the Board was not able to know what the height would be but was told that the language still prevailed under the By-law. Mr. Reffett said it was not a rarity when a conceptual drawing for permitting purposes would have a design change particularly adding mechanical elements to make the building work like HVAC and elevators.

Brian Stein agreed but thought it was an integral part of the building not just a mechanical element. "Occupy-able" space was defined in the Building Code, according to Mr. Stein. Bill Olson argued that elevators were to carry humans up and down so the feature was not legal. The spiral staircase was shown on the plan but was not constructed yet. Jeff Melick stated that he would ask Town Counsel to come to the next meeting. Rick Mitchell added that knowing case law would be helpful and that he thought the construction violated the spirit of what was approved. Mr. Stein added the violation may be different as it related to special permits.

Bill Dery described the elevator and suggested that if what was presented to the Board included an elevator 15' higher than the building, the Planning Board probably wouldn't have approved it. The top of the elevator did not meet the definition of a penthouse mechanical, according to Mr. Dery who thought Town Counsel was incorrect. The patio should have been considered living space making the applicant in violation of the By-law. The Board discussed writing a letter to the Building Department to ask for a Cease and Desist Order asking for the elevator shaft be torn down as it not only violated the spirit but the application of the By-law. The Board would also ask Town Counsel to reinvestigate the definition of mechanical room.

Jeff Melick drafted a letter to the Building Commissioner stating: "The Planning Board requests that you issue a Cease and Desist Order on the construction at 227 Willow St. in Hamilton MA due to our belief that 1) the elevator shaft does not meet the definition of a mechanical penthouse as it is serving as an occupied space in its current design and construction, 2) it violates Hamilton's Zoning by-law, 3) it was misrepresented in the application, and 4), it is inconsistent with the special permit application dated September 24, 2013.

Rosemary Kennedy said she wanted the opportunity to discuss her investigation. Ms. Kennedy said the first issue was in regard to when the building began. The Building Commissioner responded to her inquiry, that he personally saw the infrastructure go in before 1/4/15, but according to an abutter, the infrastructure began in spring of 2016, after the permit would have expired. Ms. Kennedy had viewed plans but found no documentation of the Building Commissioner having issued a Building Permit. Reportedly, the Building Commissioner said the

plans and file had been misplaced which was a concern for Ms. Kennedy. Roof decks were covered under CMR 780 which required a permit with certain specifications. This roof deck did not meet any requirements which exonerated the need for a permit. The plans on file at Town Hall indicated the roof deck was above the 41' approved height and the elevator plans showed mechanicals were sited in the basement, according to Ms. Kennedy.

Bill Dery said the Town of Hamilton did not follow the State protocol for official stamped drawings staying at the construction site with any major changes being submitted to the Town and added to the construction site plans. Mr. Dery suggested that in the next round of ZBL changes, it be added to the local By-law.

Rick Mitchell made a motion that the Planning Board approve the language and submit the letter to the Building Commissioner, requesting that a Cease and Desist Order be issued.

Claudia Wood seconded.

Vote: Unanimous in favor.

#### Board Discussion Phase II of the Zoning By-law

Bill Olson volunteered to help Claudia on housing issues, in particular the density that the Town could support. William Wheaton (Bridge St., MIT Economics Professor) described increased density as a costly proposition. Mr. Wheaton said many people had the opinion that the Board should consider allowing more development as a way to lower the tax rate as well as to provide housing for local workers. Mr. Wheaton referred to another argument for development which was to use this housing as a way to convert low paying land parcels into higher paying parcels.

According to William Wheaton, in Hamilton, the cost to the Town was \$8,900 per single family house, which had an average appraised value of \$517,000, causing a tax rate of \$17.24. The Town did not receive a lot of state aid or have a wide commercial base. Mr. Wheaton compared other towns in the area. Boxford spent \$9,700 per single family house but the houses were appraised at \$590,000 on average so the tax rate was about the same. Wenham spent more with an appraised value of \$600,000 but an identical rate. Manchester spent \$11,700 per household but the average house was appraised at twice that of Hamilton with a lower tax rate. Topsfield, Essex, and Ipswich were 25% less with houses being less valuable and a lower tax rate. Of all the local towns, except Manchester and Weston, Hamilton was the highest.

William Wheaton worried about the assessed fiscal impact of the Zoning By-law changes and said if the appraised value for proposed houses was less than \$517,000 and service usage was higher than \$8,900, the taxes would rise. Currently, the assumption was that there was one child per every two houses. If units had appraised values higher than \$517,000 with fewer than one child per every two houses, the taxes would fall.

Commercial use created a positive fiscal benefit because there were no kids in school and public safety use was minimal. William Wheaton referred to a range of studies that asked if the

population and density rose, a Town should see the tax rate fall as a town increased, but the tax rates rose as communities grew. According to Mr. Wheaton, if any development paid for itself, it would be million dollar houses on large lots paying enough in tax revenue to cover the children, but affordable or cottage housing would cost the town.

William Wheaton compared estates versus cul de sac development with \$2M appraised estates paying \$35 to 40K in taxes per year. The estates typically didn't use services, which created a cash cow for the Town. Mr. Wheaton stated that many estates had conserved their land in 61A or B to provide open space, which added value to the surrounding houses. If a development carved the land into houses worth \$800,000, it would bring in \$200,000 in taxes rather than \$35,000 but if one new child were in each home, the tax rate would increase and the development would have eliminated open space that had benefitted neighbors, reducing the surrounding homes' values.

According to William Wheaton the Board should consider all of these things before making a decision to densify as it was not the way to lower the tax rate. It was a good way to provide affordable housing but the negative to affordable housing was that it could not be restricted to civil servants. Mr. Wheaton suggested building dense housing downtown to create a vibrant downtown and leave the outlying area alone. In response to Claudia Woods' question as to whether infill was a positive idea, Mr. Wheaton responded that dense infill would have a lower value compared to its service usage.

Rick Mitchell argued that it set up open space people versus downtown people and that the tax reduction for open space was being funded by others and that the majority of two million dollar homes that Wheaton referred to actually had Ch 61 tax reductions and did not pay the level of taxes that was stated. Mr. Mitchell did not believe there was land or infill space downtown. Bill Wheaton asked what the problem was that was being solved, to which Rick Mitchell responded building affordable housing. Peter Clark said the context of the conversation was that Claudia Woods felt it would be useful information regarding cottage zoning and where it should occur either in tight areas or in open space. Ms Woods said the Board needed to understand density and the consequences to decide how much the Town could support while looking at the big picture.

Patrick provided documents from Doug Trees who would be invited to a future meeting.

Claudia Woods and Bill Olson would hold a discussion looking at the option of cottage housing, planned residential and cluster development as well as reviewing the Great Estates By-law to make it more useful. The appearance, size of buildings, set backs and density issues would be better understood as a visual. Ms Woods said she would present options then the Board could discover what it would look like. Mr. Olson said he would have concrete examples from other towns.

Board Business

Patrick Reffett discussed the calendar for 2017. Shawn Farrell stated that on the previous Monday night, the Selectmen had set the Annual Town Meeting date as April 8, 2017. Brad Hill had e-mailed an announcement regarding a symposium workshop about marijuana legalization, which would be held on December 19, at 7pm at Ipswich Town Hall. There was also a CPC meeting on the upcoming Thursday night.

Minutes

November 1, 2016

Motion made by Peter Clark to accept the minutes with minor changes.

Seconded by Ed Howard.

Vote: Majority in favor with Brian Stein abstaining due to his absence.

November 15, 2016

Motion made by Rick Mitchell to accept the minutes.

Seconded by Ed Howard.

Vote: Unanimous in favor.

Motion to adjourn made by Rick Mitchell.

Seconded by Brian Stein.

Vote Unanimous to adjourn at 9:05 pm.

Prepared by:

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Marcie Ricker

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Attest Date