



TOWN OF SWAMPSCOTT

PLANNING BOARD

ELIHU THOMSON ADMINISTRATION BUILDING
22 MONUMENT AVENUE, SWAMPSCOTT, MA 01907

MEMBERS
ANGELA IPPOLITO, CHAIR
GEORGE POTTS, VICE CHAIR
BETH ISLER
BILL QUINN
JR YOUNG

STAFF
S. PETER KANE, DIR. OF COMM. DEV.

APRIL 25, 2016 MEETING MINUTES

Time: 7:00 -9:20p
Location: Swampscott Senior Center, 200 Essex Street (rear)
Members Present: A. Ippolito B. Quinn, G. Potts, B. Isler, JR Young
Members Absent: None
Others Present: Pete Kane (Dir. of Community Dev), Peter Spellios (Selectman), Naomi Dreeben (Selectwoman), Connie Goudreau (resident), Dan Cobbett (resident), Sylvia Belkin (resident), Patrick Jones (resident), Sarah Pruett (resident), Ellie Miller (resident), Fred Phillips (resident), Gail Brock (resident), Jeff Sprague (resident), Drew Epstein (resident), Kate Greehan (resident), Ellen Winkler (resident), John Callahan (Selectman), Sarah McLaughlin (resident), Clark Sprague (resident), Art McLeod (resident), and 20+ additional residents

Meeting called to order at 7:03 pm by Chair Ippolito.

MEETING MINUTES

The Board reviewed the drafted minutes for the April 11, 2016 meeting. G. Potts made a motion to approve the minutes, seconded by JR Young, and unanimously approved.

ZONING ARTICLE HEARING

ARTICLE B

GREENWOOD AVE PDD

A. Ippolito read the agenda item and then invited Naomi Dreeben (chair of the Board of Selectmen) to outline the zoning bylaw proposal. Mrs. Dreeben stated that the Town is currently in litigation with regards the Greenwood School property. The building is deteriorating and has been vacant for a number of years. The Town wants to move forward and end issues with regards to the litigation. The Board of Selectmen has put together a proposed bylaw that modifies the previous zoning regulations for the property. The Town is apprehensive of the outcome of the litigation which could include a possible 40B project which would mean the Town wouldn't have any control over the outcome and size of the project. The Selectmen have thus put together this bylaw that changes the maximum size of the previous zoning from 41 units to 28 units, including parking and lot coverage changes. Included in the proposal is a limit that there would be no allowance for zoning relief on top of the PDD zoning regulations. There's also a requirement for an affordable housing element either done on site or via a payment to an affordable housing trust.

The Board of Selectmen voted 4-0 (with 1 abstention) to recommend this article and feels that its passage is in the best interest of the town.

JR Young inquired what the bylaw has to do with the litigation. Selectwoman Dreeben stated that regardless of the outcome of the litigation, the Town can still do the rezoning. If this change is approved, the developer will have the opportunity to respond to the next RFP.

G. Potts asked what happened to the original zoning. Selectman Spellios answered that there was the spot zoning litigation which resulted in the zoning change. The developer then filed a case against the Town for breach of contract. Because the litigation is pending, the Town is limited as to how much they can say about the case but there's a chance the litigation could be in favor of the developer. If the developer wins the case, the one tool they can use to get a sizable project would be a 40B project which takes the Town out of the process. The hope is that by doing this new zoning change, it will still make the economics worthwhile for a developer but also more appropriate for the neighborhood. This isn't perfect, but this is about saying that it's been eight years and the building is in great disrepair. This sets up the framework to close the litigation. But there's no guarantee.

W. Quinn asked the Selectmen to expand on the zoning proposed here versus a possible 40B. Selectman Spellios said the zoning requires that 15% of the units must be affordable. This zoning sets a maximum unit count. However under 40B there is no limit to number of units. The Town has had a few 40B projects. The old church on Burrill St was originally going to be 14 units of a 40B (however the developer didn't move forward). A multifamily on Humphrey St (Ocean Watch) was also a 40B project.

W. Quinn: "What's to prevent a 40B even if we change the zoning?" Selectman Spellios responded that with the disposition agreement between the Selectmen and the developer, the developer would be required to follow through with a development that conforms.

G. Potts asked about the approval process under the proposed bylaw. Selectman Spellios said that the site plan approval authority would be the Board of Selectmen plus the chair of the Planning Board. Additionally, there would be a land disposition agreement between the Town and developer.

W. Quinn asked why the proposed bylaw deviates from the normal site plan review process. Selectwoman Dreeben explained that the Selectmen feel they're responsible for ensuring the project follows through correctly. They want to be true to their intentions. The process was difficult during the previous reviews for the property proposal at Greenwood. This limits the number of steps and ensures that the commitment is being followed.

W. Quinn stated that the role of the Planning Board is to perform site plan review. It appears the Board is being cut out. Selectman Spellios said that there's also the Zoning Board who does these types of reviews. We're hopeful this resolves the litigation. Doing this provides predictability for both the neighbors as well as the potential developer.

JR Young asked how long the conversations have been going on regarding the zoning bylaw drafting. Selectwoman Dreeben answered that the Board has been going through it for a year (via Executive Session) and then meeting with neighbors for the past six weeks.

G. Potts asked what the developer is requesting through the litigation. Selectman Spellios said they're requesting both the land and damages.

B. Isler inquired if it would be possible to have the Planning Board review and provide recommendation to the Board of Selectmen as part of the review process. Selectman Spellios stated that there are elements that may not be flexible. They're willing to discuss and look at options with the Planning Board.

B. Isler followed with "Do you consider this development to be an isolated event or are there certain things in the bylaws that got us to this point? Is there something that can't be done so this doesn't happen again?" Selectman Spellios confirmed that it's isolated. The property has been unfortunate and not well handled in the past.

W. Quinn noted that there are other properties in queue which could repeat this such as the Hadley School. Selectman Spellios said the Board's happy to continue discussion on this. The uniqueness comes from the situation we've ended up in with the Greenwood property.

Selectwoman Dreeben informed the Board that they have a scheduled Board of Selectmen meeting at 7:30p so one of them (Selectmen) will have to leave. Selectman Spellios said he'd stay to hear questions and comments.

W. Quinn asked how the proposed Affordable Housing Trust is administered which is in the warrant article as well. What happens if that doesn't pass but the Greenwood PDD passes? Selectman Spellios answered that there's a payment of fees if they don't provide the housing on site. They have to provide the funds to the housing trust. He wasn't sure what'll happen if the housing trust article doesn't pass but they'll need to look into it.

A. Ippolito noted that the bylaw states that on-site units would be 15% and fee would be 20% and was curious about the difference. Selectman Spellios said the 15% is stated as "at least" though the Board can compel for more.

W. Quinn pointed out that the article they have in hand has some differences than what was printed in the warrant. Selectman Spellios said the garage setbacks in the warrant has a typographic error but can be corrected on the floor with an amendment.

A. Ippolito noted that in 4.5.1.0, in point 4, they should replace "the public including" with "thereby".

W. Quinn asked if there are any actual plans that have been put together based on these zoning recommendations. Selectman Spellios stated that there aren't any. He hasn't seen any. They've discussed elements of concern like unit count and garages.

Chair Ippolito then opened the hearing to public comment.

Drew Epstein (99 Rockland St) : I'm trying to read between the lines regarding the ongoing litigation. It seems there are four possibilities: Groom could win the litigation and get the property and do the 41 units or even more through 40B. If there's no change in bylaw and Groom loses and Town wins, then no one would build on the property until Selectmen sell it. If we change the zoning, there's a hope we could come to a settlement with Groom and we may pay less money. Is my summary what's before the Planning Board and Town Meeting.

Selectman Spellios : That's a fair assessment. If Groom wins and we don't have a settlement, he could do as many units as he'd like (through 40B) plus a damage fee. That's the biggest concern for the Selectmen. We can't tell Groom that the project is his - we have to go through an RFP process after the zoning changes. Groom won't end the litigation until he knows he can build his project.

Drew Epstein : Is the same law firm representing the Town in the litigation the same as the one that handled the previous sale?

Selectman Spellios : Yes

Dan Cobbett (Greenwood Terrace) : where did the 28 units come from? This recommendation allows for development on Fuller Ave? Why doesn't the zoning say you can't use the Fuller Ave slope?

Selectman Spellios : There's a 60 foot setback for both front and rear lot lines. Only Town Meeting can change the bylaw. The Town has the ability to reject a proposal for parking on Fuller Ave. Land value is based on what you pay for the land and what you have to do to make the land ready. The building is not salvageable and there's a cost to remove it. Based on the calculations, 28 units was determined as an economically viable count to redevelop the site. Groom didn't have any input in the unit count. The Board of Selectmen came up with the unit amount.

Freddie Phillips (57 Greenwood Ave) : This is like what happened a few years ago - we weren't informed, it was jammed down our throat. Who told you the building is no good? That building is one of the most historic buildings in the town. Why wasn't the neighborhood involved since they're more affected than everyone else? The parking requirement is only two per units with no allowance for guests so they'll park on the street but there's no space on the street. There are so many better uses for that land and building.

Selectman Spellios : There are two Selectmen that voted to end the appeal because they felt 41 units was too large for the property. And they're in support of this zoning proposal. Having a judge dictate what happens on the property is not comfortable. We're at a point where the Town has lost control of the site. This allows us to put some controls on the property and to make sure it's better. This isn't an organic planning exercise that could have included the neighborhood.

A. Ippolito : I'll echo what Peter's saying. It's not a perfect process. The property's now an A-2. If we don't rezone with controls, we could lose the case and the property could become a 40B project.

Ellie Miller (57 Greenwood Ave) : I don't think we're going to lose the case. Let's suppose that we leave it as a residential building. Ed Moll has gone through and says it's very sound.

Selectman Spellios : Town Meeting's on May 16. The Selectmen are happy to continue the discussion with the Planning Board and the neighbors. We can't give you the odds of winning the litigation. But we're open to hearing ideas to make sure the project materializes the best way possible.

Ellie Miller : There's nothing in the bylaw that considers design, that reflects the neighborhood.

A. Ippolito : That'll be handled in the land development agreement.

John Callahan (speaking as resident of 19 Greenwood Terrace) : You've talked about the unpredictability of the case. If Groom does win, does the Board feel it might challenge the decision?

Selectman Spellios : We haven't had any conversations about a possible appeal.

Ellie Miller : Can this be postponed a couple months for another Town Meeting? This is going fast.

Selectman Spellios : This is tied to the litigation and we need to move forward.

John Callahan : Regarding the loss of site plan review from Planning Board, it appears to be a more political process. I'd like the Planning Board to consider the power you're giving up. Related to that, you're creating precedent in this.

If another developer wants to subvert the process because they aren't getting anywhere with the Planning Board or ZBA, they could ask for another.

Sarah McLaughlin (80 King St) : I recognize that property is likely to be redeveloped. Concerned with the process - seems fast tracked. The discussions with the neighbors were primarily those in the original law suit. More detail would help the public. I don't think the review process should be different for this property. I don't think anyone else will respond to the RFP. What is involved with a 40B review?

P. Kane : If the property is awarded to Groom and a 40B project is proposed, it would go through state review. Swampscott doesn't meet the 10% requirement for affordable housing. This means that a comprehensive permit can be sought from the state rather than through the local process.

Kate Greehan : If this moves forward and gets approved, I'm confused about the process. We go to RFP and Groom applies and he is awarded, is the Town opening itself up to other litigation? Is it possible that it goes to RFP and someone else gets it, Groom could still keep his case?

P. Kane : Yes, as Peter Spellios stated, Groom won't drop their case unless they get the approval to build.

A. Ippolito : We can't not go through the RFP process.

Ellen Winkler : It seems like we're going in a circle. If he sues or not, there's the request to change the zoning. The Selectmen have made an assessment based on Town Counsel and haven't included anyone else in the decisions. If they put this out for a public bid, that's supposed to be on the theory that it's a fair and open process but no one believes it'll be a fair and open process. It shouldn't have the Planning Board rushing forward to push it through.

A. Ippolito : I'm glad to know everyone here has taken the time to review the proposed bylaw and your honest take on it. Do you have any thoughts on what would be a workable solution? What kind of risks is the Town willing to take?

Clark Sprague : Can the Planning Board really vote on something you just read a few days ago? If the height requirement is 65 feet to top of eave - it's due to the original school. If that school wasn't built, what would have happened to that property? It would have a little street with similar homes in the neighborhood.

G. Potts : There's a building there that needs to be removed.

Jeff Sprague : We wish people in the past had asked us about solutions - it's not right to do it here. It's not for the benefit of the town. You're destroying a neighborhood. The proposed PDD is maximizing the Town profit. It's not context responsive. Once the school is demolished, you no longer have the mass and scale for context. There should be a repeated rhythm like the neighborhood of the homes. The master plan recommends preserving the neighborhoods but this proposal doesn't preserve the neighborhood. How can you justify such a radical zoning change in the neighborhood?

G. Potts : The school is there. And the cost of removal has to be offset by the development potential.

Kate Greehan : Another developer showed us a development of a subdivision. This process takes that potential away. The property is worth more now than it was back in 2008.

G. Potts : Groom made that deal back in 2008. That Purchase & Sale is based on the prices back in 2008. Now you have to pay Groom for his lose and then to remove the building.

Freddie Phillips : Kate has a house that's six feet from the school. She probably wants to see something happen to that property more than anyone else.

Art McLeod : We need to see the calculations that says 28 units has to happen.

Clark Sprague : Most neighbors wouldn't mind to see a grammar school. The original building could be restored back to a school.

Ellie Miller : Can I request that no decision be made now? There needs to be more time.

P. Kane : Tonight the Planning Board is holding this public hearing to discuss the proposed zoning changes which will come before Town Meeting. The Board will then take a vote on each of those articles to decide whether they want to recommend favorable action, unfavorable action, or an amendment to change the printed proposed bylaw to Town Meeting.

W. Quinn then inquired if there was anyone in the room in favor of the proposed article. There were none.

Chair Ippolito then closed the public comment.

B. Isler stated that she doesn't feel good about the proposal. There's a lot of history she's not aware of but based on the discussion tonight and what she's read, she wouldn't recommend passing it. There needs to be more of a public process. It needs to wait till the fall. JR Young agreed. He doesn't think the Planning Board authority should be taken away. W. Quinn also agreed, and added that as the Planning Board they didn't get to see this until late. JR Young replied that it makes it seem like the Selectmen don't respect what the Planning Board does.

W. Quinn said that he'd be in favor of tabling or indefinite postponement.

G. Potts added that he has concerns about Town Counsel. They've had errors and omissions based on the original PDD. And yet they're advising on this proposal. A. Ippolito clarified if he means a vote of no confidence in Town Counsel. G. Potts "Yes."

A. Ippolito then asked to be clear that the sense is to table the proposed bylaw to the fall to either bring this or something else back. W. Quinn confirmed that he thinks the Town should indefinitely postpone and work through the process.

MOTION : by G. Potts, for indefinite postponement, seconded by B. Isler, unanimous.

MOTION : by G. Potts to submit to the Selectmen recommendations that the Planning Board remain authority as site plan reviewer, the main building should be kept since economics have changed since 2008, that separate counsel should be used due to liabilities with current Counsel, and that the process be open and not Executive Session, seconded by JR Young, 4-0 with 1 abstention (B. Isler).

ARTICLE A

TRAVEL LODGING BYLAW

P. Kane stated that the hotel bylaw was removed from the warrant because the Selectmen want further discussion and development on the proposal. The Planning Board won't review the article since it won't go before Town Meeting.

ARTICLE C

SIGN BYLAW – AWNING EXCEPTIONS

P. Kane informed the Board that the Selectmen recommended that there shouldn't be a two-step with two different boards. The Planning Board discussed that there could be further changes but they want to get this in now and make changes later.

MOTION : by G. Potts to recommend favorable action, seconded by W. Quinn, unanimous.

ARTICLE D

SIGN BYLAW - TYPOGRAPHIC

P. Kane noted that there was a typographical error in the warrant printing as the struck "parameter" is missing from printed warrant. The Board discussed that this should be corrected on the floor at Town Meeting.

MOTION : by G. Potts for favorable action (with typo error corrected), B. Isler seconded, unanimous.

Meeting adjourned at 9:20PM.

S. Peter Kane
Director of Community Development