

**Town of Maynard Planning Board**  
**April 8, 2014**  
**195 Main Street, Room 101**

7:05 Max Lamson opened the meeting.

Members present: Max Lamson(ML), Vice-chair; Chuck Shea(CS), Jason Kreil(JK), Greg Tuzzolo(GT)

Absent: Bernard Cahill, Chairman

**7:05 Public Hearing: Modification to the Definitive Plan Subdivision entitled Taylor Road Subdivision, Definitive Subdivision Plan of Land in Maynard, Massachusetts originally approved May 30, 2006.**

Max read the public hearing legal notice request for a modification to the Definitive Plan submitted by Foresite Engineering on March 6, 2014, as shown on Assessors Map 23, recorded plan 82 of 2007. The locus involves streets of Boeske Avenue , Karlee Drive and Gabrielle Circle, the modification consists of the proposed reconfiguration of Lots 7, 8, 9 and parcel D open space as shown on the 2007 plan.

Scott Hayes of Foresite Engineering and James Fenton of Distinctive Homes of Acton Mass appeared before the Board. Scott Hayes stated that Distinctive Homes has purchased the subdivision. The remaining lots have not been developed, have an issue with allowable lot coverage 50% building coverage, doesn't provide for an adequate size of house, the applicant proposes to add 30 feet to the back of Lots 7, 8, and 9 and revise the limits of work and boulder wall between developed and undeveloped land, this change increases the three lots by approximately 3000 s.f. each and reduces the open space area by 8900 s.f.. Scott Hayes stated that they have gone to the Conservation Commission with this proposal and the result of that meeting was a trade off process, Conservation have restricted more land than originally by putting all the land, shown on the plan as the green area, in a restricted easement to remain undeveloped, this was condition of the Conservation Commission to get an Order of Conditions, they have pushed the limit of work back and which encroaches further into the riverfront, Conservation wants to restrict as much of the land. More land will be more restricted, but the additional lot area allows for these lots to be developed comparable to the subdivision.

Scott Hayes stated that a year ago this was presented as an Approval Not Required plan (ANR) it was rejected because the Board said that they were altering the subdivision by altering the open space, so now they are applying for an amendment instead of an ANR.

(CS) asked if the houses on 7,8 and 9 would be any bigger than the houses that are already constructed.

Scott Hayes replied that the houses would be about the same size, the other house lots have 13-14000 s.f. these lots only have about 10, 000 s.f., on the original subdivision the open space disposition wasn't clear, having been to Conservation the area highlighted in yellow was originally Parcel D.

(CS) clarified that the Open Space was not unclear, it said it was to be deeded to the Homeowners Association(HA), this approach is better for the town, but the original was not unclear. Also under Sec. 81W, modification requires consent of the owners, was that done.

Mr. Fenton stated no consent was needed, he owns the lots, it was given up by the town, and referred to a letter by Town Counsel Lisa Meade.

(JK) stated the applicant is talking about the covenant, it was partially released. There are some existing owners in the subdivision what Chuck is saying is that they need to give consent for a modification as part of the Homeowners Association.

Mr. Fenton stated there was never a homeowners association established, he can get the owners consent, but it is impossible when you are dealing with mortgage companies, there is nothing on the deed that refers to a homeowners association. As part of the modification public notice all abutters were notified by certified mail.

(CS) the option you are following is preferential to the town instead of a homeowners association the town gets the control but because you are trying to modify under 81W you need the consent of owners of lots.

Scott Hayes stated that the portion that is being modified is owned by Distinctive Acton Homes.

(ML) the Board doesn't dispute this, but you have sold homes under a subdivision that you are requesting to alter, be it minor or significant, you need to get consent from owners and mortgage holders to prevent owners from going around what was in decision.

(CS) problem is the open space, listed to be deeded to the HA, have lots that are not affected by the modification but they are in the subdivision, uncomfortable doing without the consent of the owner, not sure how Board wants to deal with it but state what the statute is, still have to work it out with Conservation.

Mr. Fenton stated that town counsel says we don't have to finish the road, the town took Lot 10 as collateral, but Lot 10 is released, huge problem for town, can finish the houses, town will have to finish road. I want to get in and finish the houses and the road and be done by fall. Can get consent form the owners, but probably not the banks, the owners probably don't realize who owns the open space.

(CS) well it is on the definitive plan and labeled to be deeded to HA, the covenant was recorded and the release was recorded 1/26/10.

Mr. Fenton again referred to the letter from Lisa Meade dated 6/12/12 that he has no responsibility to finish the road.

The Board reviewed letters from Town Counsel dated 6/7/2012 and 6/12/2012, which were two opinions the 12<sup>th</sup> is amended. There was more discussion on whose responsibility it was to finish the road, the lot release of Lot 10, the consent of owner and mortgage companies.

(ML) stated talk about modification, then talk about administrative issue of consent.

??? on the west side property abuts wildlife refuge, the current parcel D-1 is open field, then wetlands, then wooded, then brook, Lots 7, 8, and 9 have minimal backyard space, from proposed expansion is there a separation between what homeowner can use.

Scott Hayes pointed out on the plans the crosshatched area is endangered species area between developed area there is a stone wall, Conservation wants limits marked, when the town acquires D-1 nothing will be allowed beyond the boulder wall.

(JK) asked if the Board can we vote on something expressing opinion of modification conditional upon the consent issue.

Mr. Fenton stated he will send out a letter to the owners, the mortgage holders will not reply.

(ML) need a legal interpretation of the statute, can do legal research or pursue the modification question or agreement to legal opinion with consent of homeowners,

(CS)in reviewing the application you don't have a locus, it is like a brand new subdivision, a modification is the same as if you walk in brand new filing.

(ML) the request to take some of the open space for larger lot size, no one can do anything with the open space section regardless of who the owner is, so in a way this is not significantly different than other sites we have looked at of land encumbered by easements or conservation restrictions. On lot 9A there is a pork chop piece that goes into detention basin, is that the preexisting lot line.

Scott Hayes replies that currently the detention basin is maintained by applicant, it is all gravel, Conservation reviewed it, it is working good.

(ML) who does it get turned over to

Mr. Fenton stated that the town will actually own it, at the acceptance of the road, the road, detention, drainage and utilities become responsibility of the town.

(ML) Subject to approval of the conservation, the pretty much restricts alteration structures beyond the wall, intent is not to go beyond the wall

Mr. Fenton stated that Conservation will do wording of the deed restrictions, so they can control, Lot 9 proposed work has not changed at all Lots 7 and 8 changes in limit of work

(ML) opened the public hearing to the public asking if there were any abutters present that want to comment.

Mr. Charles Ball of 36 Boeske Ave addressed the Board, he stated the entire time he has lived there he always wondered who the owners are across the fence from me, here tonight to stay aware of what is happening not objecting, fine the proposal but don't understand who eventual abutter will be, just want to make sure have a responsible neighbor.

(ML) the town would be your neighbor – town owned open space, development has changed hands,

(ML) stated that he doesn't have a problem with modification of lots as long as can meet the Conservation Commission requirements, but has a problem that they don't feel they have to complete the roadways.

(CS) the road has to be completed as approved, town is currently holding Lot 10 as security, need to determine what needs to be done to complete subdivision according to the 2006 approval, what is the statute of the replacement of the water line from Sheridan to subdivision, need clarification from Town Counsel.

Mr. Fenton stated the waterline improvement was never part of the subdivision; Bob was going to do it, but not part of decision.

(ML) referred to a memorandum of agreement for water line, was that tied to the subdivisions? Need to clarify.

(CS) need to find out, with the project or land, there was an inspection in Oct 2013 and at that time absent the water main there was approximately \$140,000 worth of work to still do according to town's consultants, so if this water main needs to be installed it is going to require more than Lot 10 to cover the cost, would like to take Lots 7,8 or 9 or a bond to cover cost.

Mr. Fenton stated the memorandum of agreement was not signed, the town tried to get Quirk to put it in, town counsel said he didn't have to, so he didn't, Mr. Fenton read from memo from town counsel the water main upgrade was not made part of the subdivision, bought the subdivision, the water line has nothing to do with it.

(CS) disagrees, says that is not what the June 12 opinions say, it implies that it should be done, need answer.

(ML) asked if the other homes are served by water

Mr. Fenton stated the water line looped on other side

(ML)asked if there is a hydrant, do you meet fire flow requirements, if not cannot get certificate of occupancy.

Mr. Fenton again stated that he bought the subdivision the memo he has says its not part of it, I am cleaning up Quirks mess, Lot 10 there is nothing recorded from the town, I have mortgage on that lot

(CS)again state there is a recorded covenant from the registry – valid or not I don't know

(ML) in theory the Board could have withdrawn the subdivision after this many years, ten years – where we are is where we are

Mr. Fenton stated what has been done on other projects is last occupancy permit is not issued, until the road is built to satisfaction, bounds are in for road acceptance, that is the way it is normally done.

(CS)need ruling from town counsel whether the water main is required or not, appear to have Lot 10 under the covenant, if not in worse shape don't have any guarantee for road construction, need Wayne to go out there and give cost, with/without, to determine if holding of Lot 10 is enough.

(ML) could entertain a motion contingent on receipt of consent from existing homeowners and mortgagees or continue hearing.

(CS) come back and do it when it is right, have 135 days from date of submission to make decision, info is missing.

Mr. Fenton stated he has to talk to town counsel, may just pull this, want to get road done and signed off by fall, have to know what is going on, should not have been able to get a mortgage on it if there is a covenant.

(ML)addressed Mr. Fenton, respectfully want to get this done, if had consent could have been done tonight.

Mr. Fenton stated there is no HA, no mechanism they don't even know they own the property, all I am requesting is three lot line changes.

(CS) no one is arguing that they own it, that is how it was set up, you are seeking to modify the plan

(GT) made a motion to continue the public hearing of Taylor Street subdivision until April 22, 2014 at 7:45 p.m, will have opinion on water, covenant on Lot 10 and consent homeowners, applicant, seconded by (CS). The Board voted 4 to 0 in favor of the motion.

## **2 -Vote for special counsel for 129 Parker Street**

(CS) the Board of Selectmen voted 3 to 1 to do hire special counsel for the 129 Parker Street project, I sent letter to (ML) today that I had been contacted by Kevin Sweet for feedback, going to make a recommendation on special counsel, I said don't involve me in this wanted ML and rest of the board that I will not be involved in this selection. I don't want to be involved it is a conflict of interest to sit on the PB, giving input on someone who will be special counsel for the PB and serve on the PB, duty not to have that happen.

(ML) asked can we give you the authority.

(CS) would not take it, Kevin Sweet is ok with my decision, just wanted Board to know.

(JK) considering the comments the from a perception point of view the less involvement Planning Board has the better. It needs to be the Town Admin office to make the decision, Kevin Sweet needs to operate from the motion made, to hire expert counsel, skilled in zoning.

### **3- Hiring of Town Planner**

(CS) I was asked to discuss this with the Board, the Town Administrator is looking for two people from the Planning Board to participate in the interview process. CS has offered to be part of committee, ML can't do it, there are 14 applicants, the timetable is next week. Final review by Stephanie Duggan, Andrew, Dawn want another Planning Board member.

(JK) Brought up at last meeting Dawn volunteered she is local during the day, Andrew putting together departmental schedule, first pass internally and then bring a short list to group in next week or two interviews starting the week of the 21<sup>st</sup>. Goal is to have offer on table by early May.

(GT) will attend as much as possible.

(CS) will let the committee know that himself and GT will serve as the Planning Board members.

### **4-Zoning By-law amendments**

(CS) table of contents wants to change what is in there.

(JK) this is clerical, Planning Board can make changes,

(CS) Eric Smith had a few formatting issues, but other than that the zoning map amendments are the way worded in the original warrant.

A motion was made by (CS) to approve the corrections to the zoning bylaw, seconded (GT)

Next item on agenda

(CS) made this up because didn't understand sign code, this is what was going on during the hearing Eric Smith and Rick says this is a correct analysis of the sign code, thought we looked foolish at the last meeting with sign issue.

(JK)look it over and the bylaw, everyone get familiar with the sign bylaw.

### **Approval of minutes**

The Board reviewed the minutes of February 25 and March 11, 2014

On the February 25<sup>th</sup> minutes, article 10 is roman numeral X, otherwise fine, Bernie and Max were absent. A motion was made by CS to approve the minutes of February 25, 2014 as amended, seconded by GT, the vote was 3 to 0.

On the March 11 minutes, (CS) stated some stuff mixed up with who said what, did Eric do these? No these were done by Deb, is she going to do these now, no office solutions, supposed to identify yourself when you speak. Name spelled wrong. A motion by (CS) to approve the minutes of March 11, 2014 as amended, seconded by (JK).

(ML) asked if anyone had any further items for discussion.

(JK) only thing going to TM is budgeting, recommended by ML. Did a handout, map on overhead go with more than need, don't want to have to answer impertinent questions. Also banks have notified people affected by FIRM changes. Town has nothing to do with it between homeowner and the federal government.

Motion to adjourn by (JK), seconded by CS – 5 to 0.

