

Maynard Planning Board Meeting
July 14, 2020 – 6:30 p.m.
(Held remotely via Zoom due to COVID-19)

Board Members Present: Greg Tuzzolo – *Chair*; Andrew D’Amour – *Vice Chair*; Bill Cranshaw; Jim Coleman; Chris Arsenault; Natalie Robert – *Alternate Member*

Others Present: Bill Nemser – *Town Planner*; Kaitlin Young – *Assistant Town Planner/Conservation Agent*; Tim Hess – *Town Design Consultant*; Wayne Amico – *Town Engineering Consultant*; Jon Witten – *Town Counsel*; Angelo Catanzaro – *Capital Group/Maynard Crossing Attorney*; Danny Ruiz – *Capital Group/Maynard Crossing*; Victor Olson – *Stantec Engineering*; James MacDonald – *MacDonald Development*; Jacque MacDonald – *MacDonald Development*; Candace Ho – *MacDonald Development*

Called to Order at 6:32 p.m. by Greg Tuzzolo

Greg Tuzzolo welcomed new Alternate Board Member, Natalie Robert.

Approval of Minutes (5.19.20, 5.26.20, and 6.9.20)

Greg Tuzzolo made a motion to approve the Minutes for 5.19.20, 5.26.20, and 6.9.20, which was seconded by Andrew D’Amour.

The Board voted 5-0 in favor of the motion.

Update by Capital Group – Sewer cost reimbursement and hours of construction

Bill Nemser summarized the topic by stating that when the Maynard Crossing project began, a MassWorks grant was secured for the large majority of the sewer work related to the project. At the time of the decision, there was a rough split that was agreed upon between the developer and the Town. The final work and billing was done at the beginning of 2020. Since that time, the parties have not been able to reach an agreement of the proportionate share that the developer will incur. There have been meetings and email communications that have occurred with no resolution. Special Town Counsel, Jon Witten, had sent a communication to the developer with the amount that is due and the deadline for payment. The deadline was not met.

Greg Tuzzolo asked Jon Witten to provide a summary as well as advise the Board of their roles, responsibilities, and options with regard to the matter. Jon Witten stated that he has been in email communication with the developer’s attorney, Angelo Catanzaro. He stated that the applicant is disputing the amount due, which is well over \$200,000. Jon Witten stated that the amount due is not up for negotiation and that the Planning Board approved a special permit for the project with the condition of payment for the developer’s share of sewer infrastructure cost. The town of Maynard, including Town

Staff and the residents, have cooperated with the developer, even creating a zoning district specifically for the project through a vote at Town Meeting. Condition number 30 of the special permit for the project was a 33% match to be paid by the applicant for a sewer infrastructure. Jon Witten also stated that the conditions of the special permit provide the basis for the 33% based on the Supreme Court verbiage “uniquely and specifically attributable”, meaning that the applicant will pay its pro rata share of the sewer costs that are uniquely and specifically attributable to the project. The applicant could have appealed the condition at the time it was presented but did not do so. Jon Witten indicated that since the topic is non-negotiable as it is part of the conditions of special permit approval, the Board needs to consider enforcement options. He described the options as follows:

1. The Board can advertise for a public hearing in September or October to consider a revocation of the special permit. (This is the option that Jon Witten recommends the Board pursue.)
2. In the interim, the Board can withhold any further building or occupancy permits.
3. The applicant will be asking Town Meeting to amend either the by-law or the concept plan. The Board will inform Town Meeting of the outstanding payment prior to a vote, which will likely impact the decision of Town meeting.
4. Do nothing (which Jon Witten does not recommend).

Jon Witten also pointed out that Condition 30 and the legal support of that condition is non-negotiable.

Bill Nemser stated that the Building Commissioner is aware of the situation. Jon Witten noted that the applicant is out of compliance with the special permit, and as such, the Building Commissioner cannot issue further permits. Jon Witten reiterated that the payment amount is non-negotiable and the applicant is required to pay the outstanding balance.

Bill Cranshaw stated that Condition 30 of the special permit indicates that the Director of Public Works determines the total cost from which the percentage is calculated. He asked if Justin DeMarco agrees with the numbers presented. Justin DeMarco stated that everything has been thoroughly reviewed and vetted by his department, including review by Stantec Engineering and Wayne Amico. Bill Cranshaw agrees with moving forward with advertisement of a public hearing to revoke the special permit. Andrew D’Amour also agreed.

Jim Coleman expressed concern about the tenants whose spaces are near completion and that withholding occupancy permits would penalize those tenants more than the applicant. He suggested not withholding occupancy permits for those tenants. Andrew D’Amour pointed out that the pressure from those tenants might encourage the applicant to pay the outstanding amount.

Jon Witten stated that if Capital Group has transferred title for any portion of the project to other entities, then Jim Coleman’s comment should be taken under careful consideration. But if Capital Group still holds the title for the entire property, then the building and occupancy permits should be withheld from them. Victor Olson of Stantec clarified the final number that is due is \$218,752.35.

Greg Tuzzolo gave Capital Group an opportunity to briefly address the issue. The applicant’s attorney, Angelo Catanzaro, stated that he agrees with much of what Jon Witten said regarding Condition 30. He stated that the condition also includes obligations on the part of the Town. He disputes that there has been a violation of the special permit. He noted that the applicant has provided the Board and the Town with information on why the amount due is in dispute. Angelo Catanzaro contends that a large portion

of the amount due is not, according to the applicant, unique and specific to this project. He also noted that the condition included a proposed budget and that since the project began, there have been \$1,000,000 in change orders. He believes that the details of those change orders show that they are not entirely unique and specific to this project. He noted that the Planning Board's decision also states that if there are required changes, the Town must consult with the applicant prior to work being done. He stated that that never occurred. He indicated that there was a meeting scheduled for June 17 between the applicant and the Town to discuss the change order details and understand how the changes are unique and specific to the project, but the meeting was cancelled and the applicant subsequently received a demand letter. He feels that there are many facts that need to be reviewed by the Board and that the issue can be resolved without needing to advertise a special hearing for revocation of the permit. He stated that the applicant has repeatedly requested to meet with DPW, Stantec, and Wayne Amico to understand how the changes are directly related to the project.

Greg Tuzzolo asked for clarification of an email that was received from the applicant just prior to the meeting suggesting that the applicant owes no money to the Town. Angelo Catanzaro stated that it's possible the applicant owes nothing or it's possible that the Town owes the applicant money or that there is in fact money due to the Town. But he reiterated that a review of the change orders, as well as the grant money/spending, is required in order to know who is responsible for what portion.

Chris Arsenault and Jim Coleman both stated that they feel the Board should allow more time for the issue to get resolved among the parties.

Bill Cranshaw made a motion to hold a public hearing for revocation of the special permit on September 22, 2020 for violation of the conditions of the agreement, which was seconded by Greg Tuzzolo.

The Board voted 3 in favor of the motion and 2 against (Jim Coleman and Chris Arsenault).

Jon Witten noted that the applicant does have the option to pay the outstanding balance under protest or to pay the balance and then sue the Town.

Megan Zammuto asked for a written list of questions in preparation for a future meeting with the applicant and all the parties involved.

Greg Tuzzolo asked Bill Nemser for a summary of other work site violations that are outstanding. Bill Nemser stated that the special permit includes specific hours within which work can be conducted on site. If works is being done outside of the allowable working hours, a police report is written up and turned over to the Building Commissioner who then issues a fine. To date there have been at least five or six fines issued. The second issue is concerning security lighting that is considered to be disruptive by some of the abutters as well as the angle of some of the lighting, which the applicant has been working to resolve. Bill Nemser asked Wayne Amico to explain how the constructed lighting will be checked against the photometric lighting that was part of the approved plan. Wayne Amico stated that once all the lighting for the project has been installed, the illumination can easily be measured if necessary. He also noted that the light should be dimmed after certain hours according to the Operations Manual. Members of the police have checked a couple different days and observed that no dimming appears to be happening. Wayne Amico stated that he doesn't know if the applicant is aware of those observations and/or has attempted to address the issue.

Danny Ruiz of Capital Group stated that he was not aware of the dimming issue. The dimming function of the lights is not operational as of yet. Capital Group is waiting for the module that controls all of the light heads in the entire development. They expect to receive it within the next couple weeks. Once installed, they will be able to control the dimming function. Wayne Amico asked the applicant if anything can be done in the meantime given that the Town has received several complaints from abutters, particularly along Field Street. He asked if the lights can just be turned off at night. Danny Ruiz stated that he knows the site contractor wanted some of the lights on for security reasons, but he will meet with him at night to determine which ones can be turned off to decrease the lighting impact on the abutters.

Jim Coleman stated the he went to the site after the first complaint was received, and he spoke with the site contractor, who indicated that he would dim or turn off the lights at 11:30 each night. Wayne Amico asked that the issue be resolved within the next three days and Danny Ruiz agreed.

Bill Cranshaw stated that his understanding is that some of the lighting is illuminating areas off site, which is a violation. He noted that those lights need to be turned off until they can rectify the issue. Bill Nemser's understanding is that the issue was related to a spotlight for the flagpole. Greg Tuzzolo stated that he agrees with Bill Cranshaw and that if any lighting is creating illumination beyond what was approved in the photometric plan, then it needs to be turned off. Danny Ruiz stated that he will visit the site at night to observe any light spillover and will speak with the site contractor tomorrow to advise him to turn off all the lights at night.

Resident Trish Saunders stated that the Operations Manual indicates that the lights should be dimmed to 50% at 11:30 p.m. and then only security lighting should be used after 1:00 a.m. Wayne Amico noted that the Operations Manual provide the Police Chief with the power to determine what the security lighting level should be.

Danny Ruiz addressed the work-hour violation. He stated that the violation was incurred by Market Basket and that Capital Group has spoken with the contractor for Market Basket to reiterate that they cannot begin work prior to 7:00 a.m. Greg Tuzzolo also asked about a violation of work that occurred on July 3, which was a federal holiday. Danny Ruiz stated that Capital Group was notified that work should not occur on that day and they subsequently notified all of their contractors. He is not aware of any violations on the part of Capital Group for that day. Megan Zammuto stated that the violation was on the part of Market Basket. A fine was issued to Market Basket for the violation.

The Board Members expressed frustration with the issues that keep coming up. Bill Cranshaw asked if there's a way to require Capital Group to have someone on site at the start and end of each work day. He pointed out that Capital Group was given the special permit and they are the ones who are ultimately responsible regardless of who on site commits a violation. He suggested that the Board consider revoking the permit for these issues.

Natalie Robert noted that there have been ongoing violations and that there were previous discussions by the Board about more drastic measures that could be taken since the fines do not seem to be eliminating the violation issues.

Greg Tuzzolo asked for input from Town Counsel. Jon Witten stated that it is typical for a fine on a large project to not act as enough of a deterrent and that the Board has the same options available to them as they do for the non-payment of the outstanding balance, as discussed earlier. He suggested that the

Town can continue issuing fines in the interim until the special hearing for revocation of the special permit takes place.

Public Hearing – Coolidge School

Bill Nemser noted that the Coolidge School Working Group was fully prepared for the public hearing but that Town Staff requested that the public hearing be continued due to the extent of the other topics on the agenda for the evening.

Greg Tuzzolo made a motion to continue the Public Hearing for Coolidge School to July 28, 2020, which was seconded by Andrew D'Amour.

The Board voted 5-0 in favor of the motion.

Public Hearing – 115 Main Street (continued from May 26, 2020)

Greg Tuzzolo re-opened the public hearing for 115 Main Street, which was continued from May 26, 2020. Bill Nemser provided a status summary, stating that the Town was supposed to have received some updated material from the applicant but has not yet seen that material. He also stated that Town Staff drafted some conditions of approval and provided a copy of the draft conditions to both the Planning Board and MacDonald Development prior to the hearing. The applicant responded to the draft conditions the day before the hearing. Although progress has been made, there are still some outstanding issues. He asked for an update from the applicant.

Jim Coleman made a motion to approve the request for a special permit and site plan approval for a mixed-use project to be located at 115 Main Street with conditions and red-lined responses and variances submitted by the applicant on July 13, 2020 to the Planning Board.

Bill Cranshaw asked for clarification of what happens in the event it does or does not pass. Bill Nemser stated that it would require a super majority (4 out of 5) to pass. If there was a denial issued, the Board would have the option to deny the approval with or without prejudice. If it's a denial with prejudice, the applicant cannot reapply within two years. If it's without prejudice, the applicant can reapply at any time. If it was approved, there are a number of conditions that would have to be met prior to construction. There might also be additional conditions apart from what has been drafted so far. There is also a requirement for a development agreement. Because the application is for a special permit within the Downtown Overlay District, there will be two sets of special permit criteria that the Board has to consider. Bill Cranshaw pointed out that the Board needs to review whether or not the application meets all the criteria prior to a vote on the special permit. As a result, he noted that the motion is problematic. Jim Coleman stated that the applicant has submitted material addressing the conditions and he feels that the Board can have a discussion about the materials at this point.

Greg Tuzzolo stated that, during the last subject hearing, there were several items that the Board identified as required material to be submitted for consideration, but those materials have still not been submitted. Candace Ho asked if she could summarize the goal of MacDonald Development with regard

to the project. They want to build a meaningful building that falls under a mixed-use project that has a commercial space with 26 residential units, 32 parking spots, and a promenade that the town can share as a community. She believes the Town's goals and MacDonald Development's goals are aligned. They want to improve access to affordable housing in the town as well as riverfront access, connection to the rail trail, and overall redevelopment of the town in an important location. MacDonald Development is asking for the Board to express support for the project, and they feel that the details can be worked out through the conditions. Greg Tuzzolo stated that he is not comfortable with that as having aligned goals is not sufficient for approval of a project. He also pointed out that Town Staff and the Board have shown MacDonald Development the roadmap to approval for a year and a half, but it has not materialized. He pointed out that the Board's job is to evaluate the details of the proposed project.

Bill Nemser stated that, apart from the conditions of approval, there are certain materials that the applicant needs to present in order for the Board to make a determination (such as a landscape plan, elevations that are satisfactory to the Board, etc.). He asked Candace Ho if the requested adjustments to the elevations have been made. James MacDonald responded by saying that the building can be seen very clearly in the elevations. He stated that the Board can vote down the project if that's what they choose to do.

Bill Nemser asked for clarification from Candace Ho on whether MacDonald Development has presented all of the materials they intend to present or if they will be provide more material as requested in the previous meeting. Candace Ho stated that there will be no additional material submitted until a decision is made.

Greg Tuzzolo stated that the Board needs to make a determination about the current hearing given that the applicant does not intend to provide any additional material that was requested.

Jim Coleman withdrew his motion to approve.

Jim Coleman made a motion to deny the application without prejudice.

Chris Arsenault asked that the Board review the list of outstanding items they have requested from the applicant. Andrew D'Amour pointed out that the Board has done that already. Chris Arsenault stated that he would like to provide the applicant with one more opportunity to provide the requested material. Jim Coleman noted that the applicant has already stated they do not intend to provide more materials. Chris Arsenault encouraged the applicant to provide the requested materials and reiterated his request to go over the outstanding items. Jim Coleman asked to hear from the applicant.

Candace Ho asked for the Board to go over the list of outstanding items. Andrew D'Amour recommended that Town Staff arrange a time to meet with the applicant to provide that list. He noted that he will be happy to review any new material that the applicant produces. Greg Tuzzolo agreed. Bill Cranshaw stated that he feels there are additional items that need to be added to the list, such as the development agreement. He pointed out that it would be challenging for the Board to make a determination of a special permit that requires a development agreement without having that agreement completed beforehand. Bill Nemser stated that the effective date of a decision could be based on successful execution of a development agreement. Bill Cranshaw stressed that the purpose of Zoning By-laws is to protect the interests of the town and that it is the Board's responsibility to ensure compliance with the By-laws.

Candace Ho stated that the applicant would like to know why design items cannot be conditioned if some of the environmental and engineering items can be. Greg Tuzzolo stated that design review is within the scope of the Planning Board's roles and responsibilities and that no other Board is involved in design review. Greg Tuzzolo went on to say that the regulations require drawings to be submitted for design review. He reiterated that, in the last meeting, the Board noted that there were inconsistent, mislabeled, and unlabeled drawings related to the proposed project and that he is unclear which ones the Board would even be reviewing. Greg Tuzzolo also pointed out that future Board and Town Staff members would need accurate drawings on record that are related to any permit approvals. He stated that he does not believe the Board has an accurate set of drawings to vote on.

James MacDonald stated that MacDonald Development has spent \$400,000 already on the proposed project and that they do not intend to spend any more money until the Board votes. He stated that he has lived in Maynard for 51 years and wants to help redevelop the town. He believes the Board has the information they need to make a decision. He asked that the Board vote on the project. Greg Tuzzolo reiterated that the Board needs updated drawings regardless of whether the applicant pays for new drawings or not.

Greg Tuzzolo stated that he is willing to continue the hearing. The applicant stated that his understanding is that the request for a continuance needs to come from the applicant. Bill Nemser stated that he can consolidate the outstanding items as a checklist to send to the applicant. He also pointed out that both he and the Board view the project positively and that he feels that the project is close to reaching a positive conclusion. Bill Nemser clarified that the Board has the authority to continue any public hearing. Greg Tuzzolo gave the applicant the opportunity to choose the date of the continuance. The applicant stated that he does not care about the continuance date as he does not intend to provide any updates to the required materials.

Bill Cranshaw seconded the motion made by Jim Coleman to deny the application without prejudice.

The Board voted 4 in favor and 1 against the motion (Chris Arsenault).

Chapter 61 – First Right of Refusal (0 Parker Street)

Kaitlyn Young stated that, per state law, the Planning Board is required to comment on a right of first refusal. Chapter 61 is a land conservation law whereby a property's taxes are adjusted based on the natural resource value rather than the developmental value of the property. There is currently a property in the town at 0 Parker Street that was in Chapter 61 for forestry and agriculture. However, it is being taken out of Chapter 61 due to a proposed subdivision. The Town has the first right of refusal to match the buyer's price and acquire the property. The Planning Board has the authority to send its opinion to the Select Board. However, the Conservation Commission (ConsCom) is the only town entity that is able to purchase land without Town Meeting due to special Chapter 97 land purchase funds. In an executive session earlier this evening, the ConsCom determined that it will not move forward with a purchase of the property due to the cost of \$1.2 million. The developer has notified the ConsCom in writing of its interest in donating the back 6-7 acres of the property to the Town. Most if not all of the property is within the Water Supply Protection District and is a sensitive habitat with a history of

protection as an endangered species habitat (though it has since lost that designation). The ConsCom will notify the Select Board of its decision, but the Planning Board still has the right of first refusal on the property.

Bill Cranshaw asked when the land would be donated to the Town. Kaitlyn Young stated that it would most likely happen after the ANR process is complete. Bill Cranshaw stated that he thought there already was an ANR done on that property. Kaitlyn Young stated that it was done for another part of that site. Bill Cranshaw asked if the developer has provided an enforceable offer of intent to donate the land to the Town. Kaitlyn Young stated that the letter the developer sent to the ConsCom is not binding but that the ConsCom can urge the developer to donate the land. Bill Cranshaw asked if the ConsCom has explored other opportunities for funding such as the Community Preservation Committee (CPC) or the Enterprise System. Kaitlyn Young stated that the ConsCom would only have 120 days to act upon the purchase of the land. There is not enough time to get grant funding (through grant opportunities that would be large enough to fund the purchase). Kaitlyn Young stated that John Dwyer, who is head of the CPC, does not believe that CPC is an option at this time. Justin DeMarco stated that Enterprise funding has neither the resources available (due to other major capital improvement projects) nor the borrowing ability at this time (due to the requirement of Town vote and the timeline for the next Town Meeting).

The Board discussed the best way to proceed.

Greg Tuzzolo made a motion to direct the Town Planner to advise the Select Board and the Town that the Planning Board supports the acquisition of the subject property but is unable to pursue its acquisition within the Planning Board's means and would support any avenues that other town entities wish to pursue to acquire the property. The motion was seconded by Andrew D'Amour.

The Board voted 5-0 in favor of the motion.

Bill Cranshaw noted that it appears that there is more than one parcel of land within subject property and he asked if all the parcels are part of the Chapter 61 designation. Kaitlyn Young stated that the Chapter 61 status is only related to the large parcel of land (approximately 13 acres) and not the smaller 1.8-acre parcel.

Town Planner Update

Bill Nemser stated the he needs to have the Planning Board decisions signed by the Board members and asked that they visit the police station to sign the outstanding decisions so he can get them recorded.

Andrew D'Amour made a motion to adjourn, which was seconded by Jim Coleman.

The Board voted 5-0 in favor of the motion.

Adjourned at 9:43 p.m.