

**Town of Needham
Board of Selectmen
Joint Meeting with Planning Board
Minutes for December 10, 2013
Powers Hall**

7:00 p.m. Call to Order:
A joint meeting of the Board of Selectmen and the Planning Board was convened by Chairman Daniel P. Matthews. Those present were John A. Bulian, Maurice P. Handel, Matthew D. Borrelli, Marianne Cooley, Planning Board Chairman Bruce Eisenhut, Sam Bass Warner, Jeanne McKnight, Martin Jacobs, Elizabeth Grimes, Planning Director Lee Newman, Town Manager Kate Fitzpatrick, and Recording Secretary Mary Hunt.

Mr. Matthews reviewed the agenda. He said many times residents ask questions of the Selectmen, noting the Planning Board may have some role in terms of Town policy. He said the meeting is not a public hearing, but residents are free to observe.

7:05 p.m. Further Review of Needham Center Zoning
Mr. Matthews gave an overview saying this issue began during discussion regarding the development on the corner of Dedham Avenue and Great Plain Avenue. He asked the Planning Board about zoning changes and other items that should be addressed.

Mr. Eisenhut said since the overlay district was established, the Planning Board has not done any further study. He said the Planning Board feels the Mackin proposal is a solid, esthetically pleasing project which met zoning requirements. He said the Planning Board is reluctant to go forward with trying to increase the height requirement since it was so controversial at the time. He said after completion of the Mackin building, the Planning Board may revisit the issue.

Mr. Handel said it makes sense, and noted the Board of Selectmen made a commitment to Town Meeting that it would ask the Planning Board to re-study the issue.

Mr. Matthews asked if the Planning Board has considered other potential proposals, and whether current zoning is adequate.

Mr. Eisenhut said projects have been proposed to go around the corner, but have been blocked by construction issues. He said that if a developer wishes to build something current zoning does not allow, the Planning Board would be open to reconsideration.

Ms. Grimes said she would be open to reviewing additional height limits, both higher and lower.

Mr. Jacobs said since the Planning Board made zoning changes there has not been enough time to see what would develop.

Mr. Matthews commented on parking and traffic issues, and suggested the possibility of structured parking.

Mr. Handel said the reaction received from the public from the first proposal indicates the need for testing.

Ms. Cooley said structured parking is something the Town may want to consider, not just because parking continues to be an issue, but for storm water management.

Mr. Warner said there are attractive ways to surround structured parking.

Mr. Handel commented there are two basic types of parking; either long term storage and/or retail parking. He said structured parking would work well for people who need cars stored for a longer periods time. He said most retail customers do not like structured parking.

Mr. Borrelli said it is a work in progress based on the acquisitions recently made by the Town, as well as the impending downtown street scape project.

7:13 p.m. Review of the Thresholds for Site Plan and Special Permit Review, particularly in the Downtown, and Options for Streamlining the Site Plan Approval Process.

Mr. Matthews commented the Selectmen hear from aggrieved residents, which raises the issue of whether or not thresholds are lower than necessary, or the process is more burdensome than need be.

Mr. Eisenhut said two members of the Planning Board are on the Council of Economic Advisors. He said Ms. Grimes has presented ideas for streamlining the process. He said the Planning Board is committed, but it can get complicated because of the parameters of State law. He noted the Council of Economic Advisors has made specific proposals, and noted the potential for draft by-law changes.

Mr. Borrelli said there has been some discussion for streamlining municipal projects, but it is a fine line for special treatment, which is not wanted. He noted some special projects could be considered. He suggested the possibility of a municipal exemption for zoning.

Mr. Eisenhut said it is something that could be considered. He noted some municipal projects have been enhanced by the interaction of the Planning Board. He cited the Pollard Middle School modular project as an example. He commented

the philosophy of the Town of Needham has always been “you don’t want to give the perception that the Town is getting specialized treatment.”

Mr. Jacobs said that while he has been on the Board, the Planning Board has not discussed the topic of partial or full municipal exemptions for zoning, noting it would be a lively debate.

Mr. Borrelli said with the scarcity of land in Town, it may be the time address the issue, should certain parcels of land become available. He said there should be a way for the Town to, at least, get in the process.

Mr. Handel commented on improving the process, and noted both the Board of Selectmen and Planning Board have worked very hard to streamline the approval process. He suggested raising the threshold for items not needing a full review or major public process.

Mr. Eisenhut said the Planning Board is looking for ways to give the Planning Director and staff more discretion so that decisions can be made at the staff level.

Mr. Warner commented on the municipal exemption for the St. Mary’s St. pump station, noting the Planning Board had limited power and the neighbors were not satisfied as the project was “unnecessarily too big.”

Ms. Grimes said the bigger issue was that the Planning Board had no discretion as to anything other than a parking waiver. She said she did not feel the residents understood that that was all they were there to hear about. Ms. Grimes said neighbors should have a chance to speak, even though they may not be heard.

Dave Roche, Building Commissioner commented the St. Mary St. pump station fell within the threshold that may not have needed Planning Board approval. He said he was concerned that if there wasn’t some sort of public hearing process and it was approved, residents would want to know what was going on. He said he pushed for some sort of public hearing process.

Ms. Fitzpatrick said the Town will work to make sure residents in a neighborhood know public deliberations are occurring.

Mr. Matthews commented it is also important to inform residents if the jurisdiction of a particular Board is limited.

Mr. Eisenhut noted some positive developments from the process, including some re-design and minor adjustments.

Mr. Jacobs agreed there were some specific positive changes, however the process presented many disgruntled neighbors who felt they should have been involved.

Mr. Matthews suggested it may be better for the Permanent Public Building to hold hearings with notice to abutters from the outset. He noted it is an issue that should be considered.

Ms. McKnight commented on the review of thresholds for site plan and special permits. She said the Planning Board asked the Planning Director to look at special permits that have been issued at different thresholds, particularly connected with parking waivers in the downtown area, and report on the conditions attached to the decision.

Mr. Eisenhut commented the Planning Board is “greased lightning” regarding permitting, compared to other jurisdictions.

Ms. Cooley suggested it may make sense to look at completed projects and “debrief” them with respect to regulations.

Ms. Grimes commented it may be helpful to look at past decisions.

Mr. Jacobs gave an example of a current case where a change to a facade was being proposed. He suggested that if the Design Review Board approves a project, the Planning Board does not need to hold a hearing. However, he said there is a problem imbedded in the zoning by-law, in that the Design Review Board does not have approval authority. He suggested a change to the Town by-law.

Mr. Borrelli asked what the role of the Planning Board would be, if the Design Review Board were to rule against a project.

Mr. Eisenhut said the Design Review Board works with the applicant, and it is very rare they would just say no. He said issues are normally worked out.

Ms. Grimes said her proposal, along with the CEA sub-committee, is to make the Planning Board an appellate process. She cautioned the proposal has not been discussed by the Planning Board.

Mr. Handel said the approach makes overall sense, and also makes sense for administrative reviews.

7:35 p.m. The Impact of Broadening the Historical Demolition Delay By-law

Mr. Matthews said the demolition delay by-law was adopted to require developers of historic properties to think about alternatives before simply demolishing a home. He said there is a feeling that the time limits may be too short, and developers are just waiting them out, and then knocking the buildings down.

Mr. Borrelli commented Mr. Matthews is correct. He stated the demolition delay by-law does not “have enough teeth” and certain homes should be examined by the

Historical Commission for the historic value. Mr. Borrelli suggested extending the time limit to one year and homes built prior to 1910 should be considered for their historic value. Mr. Borrelli noted a fine line exists between home value and the procedure.

Mr. Bulian said he is open to developing a plan with a one year delay. However, he said he is not interested in supporting an arbitrary date on a house. He said support and consent must include the homeowner, as the home is probably their largest asset. He commented it is not fair for homeowners to be “tied up” in a bureaucratic situation where they can’t sell their house for a period of time, or that a delay puts them at a financial disadvantage.

Mr. Handel summarized the issue saying there are historic properties and homes that are not historic. He said there have been preliminary discussions about providing an incentive for people to list their home on the Needham historic inventory.

Mr. Warner said Mr. Handel has a very good idea, and added there is no reason why the Town should not invest in purchasing the right to forestall demolition of a property from owners. He suggested having a small cash amount to try the idea.

Mr. Eisenhut asked what is the role of the Planning Board?

Mr. Matthews summarized the issues as lengthening the delay period in the by-law on historical homes, does the Town, in some instances, want to classify some properties as historical, and is it worthwhile for the Town to invest some portion of its CPA funding in securing preservation easements.

Ms. McKnight said in the past twenty years the Town has obtained preservation restrictions on two homes, one on Garden Street and one on Central Avenue at Nehoiden Street. Ms. McKnight said it is certainly worthwhile to seek Massachusetts historical approval, but it is a lengthy process. She asked whether the Town has ever considered establishing an historic district? She commented there are some areas on both sides of the downtown that are worthy of preservation.

Mr. Matthews said he feels it is worth extending the demolition timeframe to one year, but that he is not ready to require people register their home as historic. He said it is a slippery slope for the Town to purchase easements.

Mr. Borrelli said a historic district may “paint an area with too broad a brush”, noting some homes are historic and some are not. He suggests looking at surrounding communities to see how they are handling the issue. He stated he supports Mr. Handel’s idea of incentives.

Mr. Jacobs asked if this is a function of the Planning Board.

Ms. Grimes asked if this is something the Board of Selectmen would like the Planning Board to look into. She suggested to Mr. Eisenhut the issue be put on the Planning Board agenda.

7:55 p.m.

Zoning Provisions Relating to Residential Construction

Mr. Matthews said most questions about planning in Needham concern whether or not there should be more restrictions in teardown and replacement of older, smaller homes, with new homes being built to the legal maximum that affect a major change in a neighborhood. He said the current pace is approximately 100 homes per year. He commented on the possibility of increased setbacks, residential FAR, and lot coverage restrictions. He noted Town Meeting addressed the issue fifteen years ago based on a proposal by the Planning Board that addressed setbacks. He commented the issue was delayed and has not been revisited since that time.

Mr. Bulian said he agreed with the discussion fifteen years ago when the decision was made by Town Meeting not to get involved, other than with minor changes. He said many people feel it changes the character of the neighborhood. He continued, now that it is fifteen years later, and any major changes will leave neighborhoods half built. Mr. Bulian said he will not support any major change in zoning restrictions, but would be open to minor changes. He commented much of the smaller housing stock in the Town is the largest single asset owned by senior citizens. He said making zoning changes will have a financial impact on senior citizens.

Mr. Handel commented it is a tough issue, as it affects the right of people to maximize their gain. He said many times the seller does not realize a significant gain selling to a developer, compared with a private sale. Mr. Handel said he feels the issue should be considered again, and that there should be a broader community-wide discussion about the implications. He said the Town should consider the experiences of other towns, commenting Wellesley has a public process concerning tear downs, where people can weigh in on the discussion.

Mr. Borrelli said this is the primary issue he gets calls on, and said there is a way to have a big home on a lot, but there is also a way to exploit it. He said it is time to address the issue. He said there it is a fine line, but that there are ways to make a level playing field. He commented on setbacks, lot coverage, and lots under 10,000 sq. ft., the noise by-law, and drainage.

Mr. Eisenhut said the Planning Board staff has been looking at what other towns are doing about the issue. He said the Wellesley model is fascinating and encouraged the Board of Selectmen to look at the model. He commented the public has an opportunity to weigh in on a project.

Mr. Matthews he is very interested in seeing the Wellesley model and using it as a starting point, but wants to know of problems Wellesley has encountered. He

cautioned the Town must be careful of being over-restrictive. He asked the Planning Board keep the Board of Selectmen informed on its progress.

Mr. Bulian said it is critical the Town deal with drainage and flooding, and that it must be the centerpiece of any change. He said it starts at the building/construction level, both municipal and residential.

Dave Roche, Building Commissioner said he has already talked with some of the builders and they know a storm water by-law is coming. He noted he has not met any negative response. He commented the builders are not opposed storm water by-law, but prefer a permitting process with Town staff during the day, rather than having to attend nighttime meetings.

Mr. Bulian suggested “fast-tracking” the storm water by-law to the May 2014 Town Meeting.

Mr. Matthews suggested considering “best practice” by-laws that exist in other towns to avoid unintended consequences.

Ms. Grimes commented it is crucial to keep the value of the home, but important to look at mistakes other towns have made with similar by-laws.

Mr. Warner said it is important to recognize that it is possible for a new large home to damage its neighbors by reducing value by casting a shadow, or by destroying trees. He continued the value of a home is related to the behavior to the neighboring homeowner. He said, if people keep up their property it is a good thing but if they do not, it is not good. He said if a town is prosperous, people want to keep up their home, but if a town is not prosperous, there will be trouble.

Mr. Matthews reiterated he is interested in the Wellesley model, but wants to know of problems and unintended consequences so that Needham can make improvements to get a better result. He said he is encouraged that the Planning Board is working on the issue.

8:20 p.m.

Tree Removal By-law

Mr. Matthews commented on the public hearing shade tree process and residents who are surprised when hundreds of trees are removed on a lot prior to development. He said there must be a balance between responsible development and removal of trees.

Mr. Bulian said it is a travesty when all the trees are removed for large scale development. He said aesthetics and storm water management are the issue and that something should be done.

Mr. Handel agreed “clear cutting” needs to be reviewed.

Mr. Jacobs said there is a lot of case law concerning the rights people have on trees. He said it would take time for the Town to consider what it could do concerning tree removal.

Mr. Warner suggested looking at the Newton, Lexington, and Wellesley tree removal by-laws.

Mr. Borrelli said the issue must be considered carefully regarding private trees and “clear cutting.”

Ms. Cooley said she would support requiring developers to replace a tree if one is removed from a property during development.

Mr. Matthews said the Town should consider the best practices and problems that other towns have faced. He commented he likes the idea of requiring replanting trees.

Ms. McKnight said current Town by-laws do not support preservation of existing trees and suggested adding language to the by-law.

Mr. Eisenhut said the Town could be more sensitive to the issue of trees during special permit hearings within the existing by-law framework.

Dave Roche, Building Commissioner said he has discussed the issue with the Town Tree Warden and suggested a process to identify trees on plot plans prior to building. He commented on the extensive review process in Wellesley and suggested a committee be formed to address issues during normal business hours.

Mr. Jacobs said a very small number of developers actually go through the process in Wellesley, noting that just because the process exists it is a disincentive to many builders. He noted the number of applications in Wellesley was in the single digits per year.

8:33 p.m.

Options for Siting of Digital Billboards on Town Property

Mr. Matthews said the State is now allowing the construction of a limited number of digital billboards along the interstate highways. He said there is significant economic value and that the Town has been approached by business developers who are willing to pay substantial licensing fees to the Town in exchange for help with the zoning. He said the Town could also zone its own piece of property for the same purpose of franchising.

Mr. Borrelli noted the fees are in the hundred of thousands of dollars per year for some locations. He said it would be a detriment to some residents near the highway who may be impacted, but said the Town should consider the benefits.

Mr. Warner said he sometimes feels harassed by the amount of marketing and advertising that exists.

Ms. Grimes asked for clarification on which Town property would be used and the amount of revenue.

Mr. Matthews confirmed the Town property is on Route 128 and that the revenue is approximately \$30,000 to \$40,000 per year to the Town.

Mr. Bulian also suggested the State could have use of the billboard during an emergency.

Ms. McKnight asked the Selectmen what it would like the Planning Board to do: review the sign by-law and/or possible re-zoning.

Mr. Matthews said the Planning Board could consider whether or not there is value in pursuing digital billboards.

Ms. Grimes said it is worth exploring as long as it does not negatively impact neighbors.

Mr. Matthews said the Selectmen will obtain more information and share it with the Planning Board.

8:42 p.m.

Medical Marijuana Zoning

Mr. Matthews outlined the process to this point, commenting on the moratorium currently in place and set to expire after Town Meeting has the opportunity to consider a permanent by-law to address local zoning laws for medical marijuana, if a dispensary is advanced to Town Meeting. He said the State has issued regulations which seem to indicate a broad range of local participation. He said the most important feature to consider is the question of location. He said one applicant out of five, who originally contacted the Town, has chosen Needham as a potential site. He noted the applicant indicated they were looking in the area opposite Route 128, as a possible location. He noted the possible location may remove a potential difference of opinion between the two Boards concerning siting. Mr. Matthews said the Selectmen propose to limit the locations identified at its public hearing last summer, i.e: Needham Crossing, the other side of Route 128, or areas along Gould Street.

Mr. Eisenhut said the Planning Board took a vote (3-2) that broadens locations compared to the Board of Selectmen recommendation. He commented the two dissenting votes would have preferred even broader locations. Mr. Eisenhut said the Planning Board also proposes the overlay district plus the addition of Chestnut Street. He noted a public hearing will be held.

Ms. Newman said she is preparing a draft article in conjunction with the recommended options for the overlay district with the addition of Chestnut Street, through the special permit process and a by-law that is modeled after a by-law developed in Cambridge, which creates a 500 ft. limit even within the overlay against sensitive land uses. She said the Planning Board will consider the draft at its next meeting, which will then be forwarded to the Board of Selectmen.

Mr. Handel commented the issue of medical marijuana was passed by the voters of Massachusetts, but in analyzing the likely impact on Needham, said the Town can not even come close to supporting the economics of a dispensary. He suggested it will be a regional activity and does not make sense to place a dispensary away from regional access near Route 128.

Mr. Eisenhut suggested the Selectmen attend the public hearing and present their view as a body, or individually.

Mr. Borrelli asked for clarification on the locations being considered by the Planning Board.

Ms. Newman said mixed use Route 128, two industrial districts located on the other side of Route 128, Industrial 1 (Muzi property), plus a portion of lower Chestnut Street on the Roche Bros. side of the street.

Mr. Jacobs said the Planning Board also discussed the possibility of a backup article to extend the moratorium, in case whatever the Planning Board proposes does not pass.

Mr. Matthews said the only major issue between the Boards is the consideration of lower Chestnut Street as a permitted zone. He suggested it may be a moot issue based on the choice made by the one applicant.

Mr. Warner said there is a strange discourse in Town with most discussion revolving around children. He noted there has been no discussion about people with cancer. He said the needs of adults who suffer from cancer and the needs of the high school students must be balanced.

Mr. Matthews reiterated the Board of Selectmen is not trying to limit access to marijuana, but there is a potential for unintended consequences including public safety, substance abuse, and the quiet enjoyment of the community. He said the issue is one of balance.

Ms. Grimes said one of the reasons lower Chestnut Street is being considered is for public input at the public hearing. She said part of the reason to include lower Chestnut Street came from public input heard at the Board of Selectmen hearing on the issue. She concluded the issue is one for public debate.

Mr. Eisenhut encouraged people to read the fifty-one page Department of Health regulations.

Mr. Handel said the Planning Board approach makes sense in order to get the public involved.

Ms. Grimes said the Planning Board will hold its public hearing on January 21, 2014.

9:02 p.m.

Update on Needham Mews

Mr. Matthews said the Town may be on a course to prolonged litigation regarding the Needham Mews and wanted the Planning Board's thoughts or suggestions about how to proceed.

Mr. Matthews explained the many issues including density, a deeply sloped site, proximity to the highway, setbacks, and woodlands all contribute to the current status. Mr. Matthews said the developer has reduced their proposal from 300 units to 268 units. He commented the ZBA advanced the notion of permitting 108 units (apartment zoning). He commented the Selectmen feel 108 units is too dense a development, but will support the view of the ZBA. He commented on the engineering and the developer representations to the State authorities, which he said, are not accurate. He noted the law tends to be on the side of the developer, particularly the track record of the HAC, which tends to favor housing advocates and the 40B developers. He said it is likely to be an uphill effort. Mr. Matthews commented the project does affect the Town in the big picture, and that the Selectmen have been working within the Town guidelines setting it on a course to achieve 10% affordable housing, but in a more measured approach than the project.

Mr. Eisenhut commented the Town should not be so pessimistic about the HAC if there are engineering and/or easement issues.

Mr. Matthews explained the sewer easement issue.

Ms. McKnight asked about a public way that was laid out, but never built.

Ms. Grimes asked about the next steps.

Mr. Matthews said the ZBA has completed oral testimony at public hearings, noting some financial analysis may be received. He said under the law, the developer could push for more than 108 units if it can show it was not economically feasible to be limited to 108 units. Mr. Matthews commented it is not clear what is considered uneconomic and it is a gray area. He said it appears the ZBA will deliberate and render its decision at their next meeting. He said the ZBA decision could be an outright denial or approval of 108 units, with the matter moving on to appeal at the HAC.

9:15 p.m. Other Topics Not Reasonably Anticipated

Ms. Grimes explained some of the issues the Planning Board is undertaking including a streamlining process and large house review process. She asked who will handle the storm water by-law and the tree removal by-law.

Mr. Matthews said the Selectmen will look at best practices on the issue of demolition, tree removal, storm water, and digital billboards.

Dave Roche, Building Commissioner suggested the Board of Selectmen get the Historical Commission involved, as they have very good ideas they would like to implement.

9:20 p.m. Adjourn.

Motion by Mr. Bulian that the Board of Selectmen and the Planning Board vote to adjourn the joint meeting between the Board of Selectmen and the Planning Board of December 10, 2013.

Second: Mr. Handel. Unanimously approved 11-0.