Board of Selectmen
Minutes of October 31, 2013
Bourne Community Building
Bourne, MA 02532

TA Guerino

Earl Baldwin, Chairman
Linda Zuern, Vice-Chairman
Peter Meier, Clerk
Don Pickard
Don Ellis

Documents
- None

Note this meeting is being televised and recorded. If anyone in the audience is recording or videotaping, they need to acknowledge such at this time

Call to order
Chm. Baldwin at 2:33 pm.

Board Discussion on Discretionary DRI of the Cape Cod Commission (CCC) – 9 Sandwich/1 Trowbridge Road
TA Guerino said in reviewing the DRI piece and looking at the schedule for the CCC, the Town Administrator is seeking guidance on how to approach this particular item. He's asked Town Planner Ms. Coreen Moore to put together a packet for the board to review as it relates to what we sent to the CCCC. There are some inconsistencies apparent with what the board is requesting and our current zoning by law as to what is allows. Under what we could request under the DRI, he is conflicted on a presentation, regardless of who makes it, on how to approach. This isn't for or against.

TA Guerino handed out packets from Ms. Moore to the board.

Ellis asked if TA Guerino put this on the agenda and if in fact he had already sent this to the Commission. TA Guerino did put agenda item together said he had sent the review form with the criteria he discussed with the board to the Commission which the board voted to do. In conversation with the Commission staff, the case has to be presented to the CCC. There are conflicts and he needs the board's guidance on the conflicts.

Ellis asked what the conflicts are. TA Guerino said the conflicts are relative to what the zoning allows relative to the project as proposed, relative to the Board of Selectmen's concerns for the request for the Discretionary DRI. Before someone goes up to testify – at this point Ellis

volunteered to testify in front of the CCC – he wants to make sure we are consistent on what the town has voted upon in the past.

Ellis asked TA Guerino for a copy of what was sent to the CCC. TA Guerino said a copy of the one-page document was in the packet the board has just received. TA Guerino explained that it was put under a limited Discretionary referral gave project location, project proposal of 8,033 SF addition for a doctors and professional office with auxiliary gravel parking lot across the street. The location is 9 Sandwich Road and 1 Trowbridge Road was given with map and parcel numbers. The form asked to list the municipal agencies before which a municipal development permit is pending and at the time was the Planning Board and the Conservation Commission who already approved. We sent this form on 10/17/13, he believes the board met on 10/15/13 to use land, use and growth management in Historic Preservation and Community Character.

Ellis said the document should also have had "transportation" on it. TA Guerino said transportation doesn't fit. Ellis said it fits if you are going to cross Sandwich Road. TA Guerino said that is some of the questions he has for the board today as we look at the other zones in village districts. That is one thing we need to discuss. And Sandwich Road being a State road is out of the town's jurisdiction. The transportation issue will be up to the Mass Department of Transportation (DOT) as the look at an expanded curb cut and the pedestrian issues that may or may not arise from crossing the road. It is a State road. The Commission does not have jurisdiction over that as it is a State highway related issue and that will be deferred to DOT who will look at as a matter of course. It is not an area where the Town of Bourne has jurisdiction.

Ellis said this follows under the umbrella of what he asked TA Guerino relative to the liability of the citizens of the Town of Bourne; people crossing from a residential zoned area across to a commercial site or a commercial site across to a residential zoned area. He is seriously concerned about the citizens of Bourne that use that and the control that is going to be there or not there.

TA Guerino said Ellis also asked to seek Town Counsel's advice relative to that issue and he has discussed with Town Counsel. He has followed what a member of the board has asked him to do. Ellis concurred.

Zuern agrees "transportation" should be included. When work was done at the Canal Side project, all that information was sent to the CCC. They do have jurisdiction over State roads as well.

Ms. Coreen Moore spoke with John Idleman, Chief Regulatory Officer of the CCC, and she brought up the items the board wished them to see. She also brought up transportation as an item. First, Mr. Idelman said if the board wishes to amend the document, then to add "transportation". Secondly, she explained the concern of the pedestrians crossing the road was a major concern. Mr. Idelman told Ms. Moore he did not feel it is a transportation issue but rather a safety issue. Transportation talks about the number of trips leaving the driveway, is there enough distance in the site driveway, is the radius correct on the driveway is what he saw

as transportation. Ms. Moore was told this does not preclude the board from putting on the document and making an argument on it. That was the conversation with him.

Zuern also has issues with the wetland on the side where the building is now. TA Guerino said that has passed by Conservation Commission. Ms. Zuern said she still is concerned with the wall that was put up was just mulch. If there is a lot of rain, she has concerns that would be washed into the wetland. She would like the CCC to look at all of that.

TA Guerino said he is fine with whatever the board so chooses. We tried to pick the ones that were the most appropriate where we knew we had jurisdiction. If the ConCom has already approved, I'm not sure they would review.

Ms. Moore said Mr. Idleman explained that the CCC has no jurisdiction after permits are issued. They do not have the authority to revoke or pull permits. If the permits are still pending, then the CCC can stop the permit. If it is a mandatory referral, all permitting stops locally. Under discretionary, you can still do your permits, you can still issue permits. That is the difference. Once it is issued, there is no recourse for them.

Zuern brought up possible future development like future expansion. TA Guerino said that building is included in the Discretionary DRI which is on the front page of the document.

Zuern asked if the CCC is looking at the future plans. Ms. Moore said the CCC can only look at what is on the plan. Zuern feels the CCC has some say on what happens with the future plans without the permits. TA Guerino said that is correct, but the issue that it is not a Town of Bourne generated issue.

Ms. Moore said the CCC has a Regulatory meeting on 11/12/13 which they will suggest the board makes a presentation at that meeting. That Regulatory Committee can either make a positive recommendation to the full Commission, a negative recommendation or no recommendation, depending on the information that is presented to them. It is not required, but an option. Or you can go to the straight, full Commission meeting which is two days later (11/14/13) to make a presentation. Mr. Idleman doesn't recommend the latter. He recommends going to the Regulatory Committee because they already have some Commissioners that have already heard the issue and they can also represent back to the full Commission. It is actually a two step process – the Regulatory Commission and then to the full Commission. The staff does not make the full presentation. The staff may review information and present what the RFP says, but they don't make a presentation for the town.

Zuern said the other issue she had was if there was any further development in the area, the septic system would be looked at and if it would be able accommodate further development.

Ms. Moore said if he issued the permits for this, and came back to the Town (ConCom, Planning Board) at that time we can send a Discretionary review to the CCC on future development.

TA Guerino said the Selectmen voted on 10/15/13, we sent the document on Thursday, 10/17/13. The Planner received back from the Commission by registered mail on 10/28/13 to her office. The Planning Board voted to approve a few weeks ago; ConCom voted to approve a few weeks ago as well. That clock starts ticking for their 20 or 30 days since stamped with Town Clerk on an appeal purpose once permits are issued.

Meier asked when was the Planning Board permit stamped in at Town Clerk's Office. Ms. Moore responded 10/16/13. Meier said maybe the best course of action for the Town of Bourne to sue the Planning Board for the town's best interest.

TA Guerino feels the timetable has expired. He doesn't know how it can be stamped on 10/16/13 at Town Clerk's Office and was turned over on 10/17/13 from his office. The board voted on a day and turned the document over to the CCC in two days' time.

Zuern said it was under her understanding that the board could file the Discretionary DRI anytime. There isn't an appeal process with the DRI.

Ms. Moore said discussion is about two different things. Meier is talking about appealing the decision of the Planning Board and Zuern is talking about sending the document to the Commission.

TA Guerino said there are some overlaps and he needs to know the other option. He agreed with Meier's suggestion of taking to the Superior Court if the board was of mind to do so. Meier said for timing purposes (Ms. Moore said the Planning Board you count weekends and the ConCom you don't count weekends), the board would have to meet before 11/5/13. 11/4/13 would be the latest the board can decide to take action.

TA Guerino said he will follow through on how the board votes tonight. He suggested reviewing briefly with the board at this time.

Ellis would like to amend the document to include "Transportation". TA Guerino said yes, based on what Ms. Moore has told the board today we can make that amendment today.

Ellis MOVED and SECONDED by Zuern to make a request that an amendment be made to the DRI submittal and also include under Natural Resources Wetlands and under Community Facilities and Uses, Transportation. VOTE 4-1 (opposition by Pickard).

TA Guerino said the amendments will be made and send up to the CCC first thing in the morning.

While reviewing the packet Ms. Moore gave to each board member, she said the Regulatory Commission requested supporting documentation also be sent. Ms. Moore sent that on Tuesday. They also required a narrative which is why she spoke with TA Guerino. In that narrative we explain the history of the project, what the project is and also what the concerns

are. Concerns will need to be verbalized tonight so we can put in the narrative tonight. This is another document we need to send to the Commission.

The second grouping, when you send down a limited DRI, a scoping checklist will be reviewed by the CCC staff and the Regulatory Committee.

The next grouping is historic information. There was concern about the house and included is some documentation of the house that is at Town Hall. There was a historic inventory done throughout the town. This house was identified as being over 75 years of age and having some historic significance in the town. However, it was recommended by the consultant, to not be on the historic register. The original house was inventoried and was recommended to be on the historic register.

Ellis asked Ms. Moore to clarify that the Keene house was not recommended to be put on the historic register by the consultant the town hired to conduct the historic inventory. Ms. Moore said the consultant didn't feel there was strong historic documentation for it to be on the National register because it had significant changes to it.

Ellis has a letter from the CCC historic person that is in absolute opposite of it. Ms. Moore said if the town wanted to put the house on the National Register, we could and that letter could be part of the opposing argument. Ellis said the Keene house is actually on a proposed list down the road to seek CPA monies to put on the list.

TA Guerino said to Ellis that no one is disagreeing, and only going on documentation that is at Town Hall.

Ellis asked if the documentation at Town Hall was available when this consultant did not recommend putting on the historic register. Ms. Moore said this was the inventory that was commissioned by the Historic Commission. That documentation is attached also.

The site plans that were approved are the next grouping. However, there was an easement on the rear portion of the parking lot which has been taken off the plans.

The next grouping is Zoning information. There was concern that this project was not consistent with zoning or the LCP. One of the things Ms. Moore mentioned that needs to be done is a comprehensive review of our zoning bylaw. There are many conflicts within the bylaw. If you look at Section 2140, it talks about the district purposes: VB the village business is to provide a village oriented business compatible with small scale environments and nearby residents. B1 says to provide high density, generally pedestrian oriented activity concentrations at village centers. Ms. Moore points out that: 1) We do not have a B1 anymore (used to be located downtown across from the park – under Use Regulation Schedule, second column, VB and B1 is the opposite in description.

Zuern asked if there was no longer a B1, then it shouldn't be a conflict anymore. TA Guerino said there is not one in conflict with what is proposed of site on Sandwich Road/Trowbridge Road.

Ellis said in reference to this argument, it needs to be very clear that the VB is dealing with 1 Trowbridge Road and 9 Sandwich Road is a separate entity and needs to be addressed through a Section 3310 of the bylaw under Village Business. What we are doing is the Use Concept of the Use Regulation Schedule and Zuern's point of just striking B1 is a good idea and valid. VB would apply through the rest of it, but you are only talking one half of the project. Zuern added that the other is in residential.

TA Guerino said in 3310, the Town Planner was not clear as to the applicability, therefore as a request through TA Guerino, an opinion through Town Counsel (which was appropriate for the TA to do), reviewed 3310 indicated the language was not clear and rule that it was a determination that had to be made by the Planning Board. The Planning Board did in their subsequent meetings.

Ellis said the issue as stated as requested by Town Counsel the answer was based on two words "any lot" and didn't answer the rest of the 3310 of the question as they apply. Therefore, the rest of 3310 has to have definitive action to apply to the rest of the bylaw. He feels Town Counsel only ruled on whether they could make a comment or statement relative to the parking in a residential zone. The rest of the bylaw must be applied to what goes on at 9 Sandwich Road.

TA Guerino said there isn't an agreement, but feels there is a conflict on interpretation on what 8 parking spaces mean and need Town Counsel to rule. Ellis said in the bylaw 3310 from the entrance is where you should measure 350FT, therefore the 7 spaces should be allowed and not addressed and not the 57 spaces. Zuern said Town Counsel looked at the issue Ellis just raised.

Ms. Moore said she disagrees with that interpretation. She also talked to Town Counsel after 3310 the key word is "AND" for premises located in a B1 and VB you are allowed up to 8 parking spaces in the street. You are not talking about an auxiliary parking lot. You can use parking within 350 FT as long as it meets the criteria. It is saying in these districts, you can count on street parking that doesn't belong to you. The question to Town Counsel was can a parking lot in a residential district be credited to a commercial project in a commercial district. Town Counsel said it was under the authority and jurisdiction of the Planning Board to make that decision.

Zuern said at that meeting she said Town Counsel was surprised to see that there were 57 spaces on that map. Ellis said in reference to up to 8 spaces off street, and on 2 below, it also says the applicant assures pedestrian access to those spaces and his premises by funding by carrying out constructional sidewalks the full length of the frontage of his premises while making needed improvements to sidewalks as required by the board. The 8 spaces in his

opinion that they may do that and that there is a lot of leeway given. He feels the bylaw needs to be protected and feels the town may be suffering and we need to protect at all costs.

TA Guerino doesn't agree with Ellis. It is our job to enforce the bylaws and work to institute the directives of the board to the best of our ability. What we are trying to do today, to find out how we best serve the vote the board took given that we have some quandary as to how to do that to the best of our ability. We want some help, which is why we are here.

Ellis is in full agreement. He also is in full agreement that it appears the vote was taken by the Planning Board. It is an interpretation of how it is done. He takes exception because it is the amount of people who have called him about this issue. In his reading of 3310 and discussing further with Town Counsel in Executive Session, he was rather pleased with his comment and this is why he instituted what he has done before. He sent a letter and a packet to the CCC himself under his only signature and support of action and why he volunteered to take responsibility at the Regulatory Committee. We need an unbiased approach as it will be a serious impact in this village.

TA Guerino said he hopes the board would prefer that the staff come before when it has a question as to how the board would like to proceed on any issue when we come and TA Guerino calls for a meeting to fulfill the wishes of the board to the best of our ability. When we have questions as to how to best approach, he would hope the board would want us to come before them where we may be misguided. He hopes the board sees this is what we are trying to do.

Pickard asked if there are questions we can expedite by answering your questions. TA Guerino said the parking was one question. The allowance of variance uses within the criteria in the bylaw has conflicting issues.

Ms. Moore said as far as the CCC, they will look at because it is a limited DRI. She is looking for issues to put in the narrative. Issues are with land use growth and wetlands.

Zuern doesn't see a conflict with the bylaw as she sees as two issues. TA Guerino said it is as it relates to parking, not to historic preservation or wetlands or pedestrian. Zuern said the whole project does and she doesn't know of any other place where a business is looking for 50 parking lots in a residential area.

TA Guerino said the issue we are most concerned about based on today's conversation is not historic, not the 8,033 SF building as allowed in zoning at 100% coverage, it is the transference in the ability to get to Point A to Point B crossing from a VB zone to a residential zone in order to accomplish this project to work.

Zuern said the easiest thing would be for the board to vote Ellis to make the narrative. Ellis commented about a paid professional to do as a Town Planner and reflect what the majority of what this board has voted.

TA Guerino said it is a VB zone. Zuern said it is two different zones. Counsel ruled up to the Planning Board. Zuern commented about Town Counsel was surprised there was 57 spaces in that area.

Pickard said the board voted 3-2 in favor of this discretionary DRI. If two members collaborated with Ms. Moore as to what their opinion is as to what should be in the application. He will vote against as the vote.

Pickard MOVED and SECONDED by Meier the Board of Selectmen two members from the majority of their vote of 10/15/13 to collaborate with the Town Planner with the majority of what would like to see in the application and to return the text to the board to a vote in a public meeting. VOTE 5-0.

Pickard believes it should be from the board who voted in the positive and suggested starting with the senior member working down to present to the CCC.

Zuern believes Ellis has the most knowledge and the best person to present to the CCC. She wouldn't mind to sit with Ms. Moore to do the narrative.

Meier MOVED and SECONDED by Zuern to appoint Ellis to present to the Cape Cod Commission. VOTE 3-1-1 (abstention from Baldwin, opposed by Pickard).

Mr. James Mulvey said where there seems to be a conflict, the will of the people by the approval of the LCP should be a determinating factor. Wording and intent should be a factor.

Meier said there is some deficiencies in zoning bylaws, as part of our next budget season, look at putting monies in the budget for Ms. Moore to hire people to review. TA Guerino said the budget will take the board's consideration.

Meier MOVED and SECONDED by Zuern to adjourn. Meeting adjourned at 3:30 pm.

Mr. Chris Farrell said the only guidance is two people work with Ms. Moore on arguments they want to see moving forward and has to come back to the board for a vote and the board to amend the original DRI (wetlands and traffic).

VOTE 5-0.

Chm. Baldwin called meeting to order at 3:37 pm for the view of various town roads. Chm. Baldwin and Pickard will not attend the road trip.

Adjourn

Respectfully submitted,

Lisa A. Groezinger, sec.