

Oak Bluffs Planning Board

Meeting Minutes

March 10, 2016 at 5:00 p.m. at the Oak Bluffs Council on Aging

Members in attendance: Brian Packish (Chairman), Robert Fehl (Vice Chair), Ewell Hopkins

Members absent: Erik Albert, Kris Chvatal

Staff in attendance: MacGregor Anderson (Clerical Assistant)

Chairman Brian Packish called the meeting to order at 5:00 p.m.

Non-binding recommendation and report to Town Meeting on Hospital/Windermere Road Warrant Article

Chairman Packish said the Selectmen had referred the warrant article to the Planning Board for a non-binding recommendation to Town Meeting. The Chairman said the big question was what additional burden this put on the Town, including the maintenance of the retaining wall and drainage.

Mr. Murphy described the three warrant articles to accept the new road, discontinue the old road, and discontinue a portion of Windermere Road under the Hospital. The discontinuances were self-explanatory and would revert to the Hospital. Acceptance of the new Hospital Road included a maintenance agreement which was under review by Town Counsel. The Town would be responsible for the roadway, but the Hospital would maintain good repair of all improvements adjacent to the road including landscaping, the fence and guardrail, fire retention areas, the southern retaining wall and all lighting fixtures including bulbs. It would become a public way, and the Town would have responsibility for the asphalt, and the Hospital everything else in perpetuity.

Member Hopkins asked if there was the potential to negotiate the draft agreement. Mr. Murphy said yes, if Town Counsel wanted to tweak language, there was.

Patrick King said the roads and byways committee had discussed the safety of the intersection of Windermere and the ambulance staging area, and asked about liability if there were an accident. He said he had films of people blowing the stop sign on cell phones texting. Chairman Packish said the liability was the same as any other Town road, and if the Town was negligent there could be liability. Mr. King further questioned the situation if the road didn't meet Town or State standards. He said the Police Chief in 1995 did a road study and recommend vehemently against having the traffic route around the Hospital because it would become a cutoff during high traffic times. That was the issue when Windermere nursing home was being built he said.

Chairman Packish said he was speaking to two different things. He was speaking about concerns of traffic and safety, but the width of Windermere Road is a 40 foot right of way, and the new road was at least that. Mr. King said when ambulances were stacked up you couldn't fit a Volkswagen through there. Chairman Packish said traffic was a different discussion and once it was a Town road, if it was blocked consistently, you could call the police. Mr. King said there were five ambulances in summer, and nobody was going to walk into ER to ask an ambulance to move. Chairman Packish said he owned two properties on Dukes County, and Tony's Market trucks blocked access systematically day in and day out year round. There were many days he sat and waited. One day it took 40 minutes. This was a common situation in Town. He understood people were more sensitive about ambulances but he'd be calling the

police. He then explained that the Board was meeting to discuss three warrant articles and make a recommendation to town Meeting. He said there had been extensive meetings on the subject. He said the Board consistently heard at those meetings that the bulk of the neighborhood wanted a resolution to the situation and this plan was workable for them. Questions about curb cuts, drainage, lighting and maintenance had been addressed.

Member Fehl made a motion to recommend article A to Town Meeting. Member Hopkins seconded. The vote was 3-0 in favor of the motion.

Member Fehl made a motion to recommend article B to Town Meeting. Member Hopkins seconded. The vote was 3-0 in favor of the motion.

Member Fehl made a motion to recommend article C to Town Meeting. Member Hopkins seconded. The vote was 3-0 in favor of the motion.

Susan Klein Preliminary Subdivision Plan Form B, 26 Debettencourt Place, map 17-54

Chairman Packish announced that Susan Klein had asked to reschedule.

Lagoon Ridge request for letter from Planning Board to MVC stating that the affordable housing proposal offered by the applicant is consistent with Oak Bluffs Zoning By-Laws

Davio Danielson described Lagoon Ridge as 32.5 acres with 23 lots and approval for 25 total units. He said they had been at it for quite some time and the affordable housing issue has been discussed at the MVC and with the Planning Board. The MVC said the requirement could be satisfied by giving two lots with three units to Habitat for Humanity. Habitat did not accept the offer. It came back to the Planning Board and he had offered to give the lots to the Oak Bluffs Housing Trust, and having read the organizing documents, he felt they appeared to be in the position to take them. He still wanted to offer two lots, one for a duplex, which would satisfy the 10% requirement of the Flexible Development by-law.

He said the Flexible Zoning by-law was stated in terms of dwelling units. He said there had been suggestions by members of the Affordable Housing Committee that he needed to build houses. He said he did not intend to do that. He was selling lots. He was 77 years old and bootstrapping the development. He was not a large developer who builds houses.

Mr. Danielson said his request had been mis-stated in the agenda. He didn't want a decision on whether his offer met the Board's requirements, but he wanted a letter to the Commission saying their requirements had been met and that by the time the public hearing process was complete at the Planning Board level, they would come up with something that met MVC requirements and Town requirements. He said he was aware of conversations between the Planning Board and Town Counsel but it was second hand to him. He said there were half a dozen towns with identical flexible development by-laws, but he'd searched in vain for case law.

Chairman Packish said he'd met with Michael Goldsmith and had been part of the e-mail chains. He said the general thought process was that Mr. Danielson would have to provide a mechanism for those houses to be brought to market. You can say the mechanism you are providing is lots for them to be built on, or you could build units all the way through, hold lotteries and manage the process yourself under the affordable housing restrictions. Chairman Packish noted that the Town did not allow you to build a new duplex, although you could convert to one, but Flexible housing allowed it.

Chairman Packish asked for input from Mark Barbadoro. Mr. Danielson asked to first clarify his request. He said the staff from the MVC requested a letter from the Planning Board stating that the Board would interpret the regulation and satisfy the affordable housing requirement in a way that met the needs of the Town and was as good as, or better than what the Commission requires. Chairman Packish said he understood and didn't know if they would be able to get him where he wanted to be or not, but they might well be able to provide enough to continue the conversation which had stalled at the MVC. Chairman Packish said the special permit would move through the building inspector and affordable housing people and a lot of other people. He felt it was a process they all needed to move through together, because if they handled it independently then it would take a lot longer and be a lot more difficult.

Mr. Barbadoro said he had spoken with Mr. Danielson but hadn't yet seen the hard numbers determining what the maximum number of dwelling units would have been under standard zoning. The Flexible Housing by-law describes creating a Form B type plan showing lots compliant with the zoning by-law, excluding unbuildable land due to septic or conservation issues. That determines the number of lots under standard zoning. You then petition the Planning Board to modify size and shape.

Mr. Barbadoro said when he discussed this with Mr. Danielson he was told that he had used the area of the parcel and set aside 10%, and used the rest to determine maximum potential lots. Mr. Barbadoro said this approach didn't take frontage into account and so he didn't know that the maximum lot calculation under this approach was even correct. Further, Mr. Barbadoro said he would like to see some calculations that say the area set aside was 40% of the total lot. He explained that 40% was a requirement that didn't get you any extra dwelling units. Above that, for each 10% you got a dwelling unit. In addition, you should supply a minimum of 10% to affordability, but to increase your basic maximum number, for every two affordable dwelling units you create, you gain an additional lot. He wanted to see they were getting the correct number of affordable lots to create the number of total units he was requesting.

Mr. Hopkins said it sounded like Mr. Danielson's calculations would err on the side of showing more lots because of restrictions. The total number of lots could only decrease, which also meant a lower requirement for affordable lots. Mr. Barbadoro agreed you might well end up with fewer lots under the approach outlined in the by-law. That did indeed mean a lower required number of affordable lots, but he could increase his full price lots by adding additional affordable units.

Mr. Danielson said they were at the Form C stage now, were at Form B in 2011, and had presented their methodology before Chairman Packish came in as Chair. He said it was accepted. Mr. Danielson said he thought he could come up with the same number or might come up one short using the approach described in the by-law. He said they were keeping 60% of the land undeveloped and receiving two units for that. They were building four units of elderly housing and getting two units for that. Mr. Danielson said the interpretation of affordable in 7.3 was extremely mysterious as affordable housing shall not be counted in the maximum number. You could look at that as you get to add more affordable housing or you have to subtract it from the maximum number.

Peter Bradford from the Affordable Housing Committee said that despite upcoming Southern Woodlands money, they were not very well capitalized in the trust and were not in a position to build units. He said speaking for himself, if there was an organization that was in a position to follow through they might be a better option. He was not saying as a Town they didn't want it, but they weren't in a position to build units, and the municipal bidding process made it more expensive for them to build the

units relative to others. He wanted to hear more about what Town Counsel had to say regarding units vs land, but wanted to be sure units got built.

Chairman Packish said there were a variety of ways to fund once a project has been fully defined. That is where the gap has been. There have been interesting situations that have impacted the affordable housing process in the past, despite good intentions. He gave the example of a proposal on Towanticut, where the lack of a fully prepared proposal meant available funding went unused. He felt personally he didn't want to see the Town developing Town owned lots and essentially giving them away. His preference for single family and duplex affordable development was that it comes out of developments like this. He also felt they should be looking for opportunities to monetize these donations under flexible development, that all they had been hearing was scalability was the only way to address affordable housing. He hoped the money from Southern Woodlands was not squandered on a few houses, but instead maximized and used to attract state and federal dollars to do some real good.

Member Hopkins summarized that Mr. Danielson wanted a letter from the Board assuring the MVC that the Board would adhere to the by-law as the Board interpreted it, and that the Board would assume that responsibility. He didn't have any problem making that statement but felt there was a lot to be done before getting to that point. He could assure the MVC they wouldn't approve something that didn't adhere to the by-law. He also agreed that the applicant should not break this up into two processes and that this should all happen together in a congealed fashion.

Member Fehl said he was surprised they needed a letter but had no problem writing one. Chairman Packish said it was important to figure out what the letter said. He was not comfortable saying two lots were acceptable, that they didn't have all the information yet. He acknowledged that they had been through a Form B process, but that there had also been a lot of informal discussions back then. They were happy to help guide people but it was water under the bridge now, they were entering into Form C discussions and from then out everything had to be in black and white, printed, in the formal fashion meeting all the requirements. If during the Form B process a yield plan was created, he'd love to have that brought forth, updated, as the project had morphed considerably since being a larger scale development in many iterations. He asked for something updated and dated March or April of 2016, with math as Mark requested. The Board had changed, it could change again in April, and they needed to see it in black and white.

Chairman Packish said he had no issue writing a letter saying they were aware of the Lagoon Ridge development Form C, our process is on hold while the MVC decides on it, here is our affordable housing by-law, and we will be working at a minimum with these restrictions and regulations. If that provides enough comfort to the MVC for the process to move forward, even if there is a placeholder for the affordable component to return to the MVC, he was comfortable with that. However, if the letter were to speak to the two lots, to the numbers, he couldn't do that.

Mr. Danielson said if Chairman Packish read a memo he had sent him, he was asking for more suggestions on affordable housing, he wanted to get affordable housing built, but that he had to go to the bank and get money, and he can't if he adds debt and responsibility.

Mr. Danielson noted that despite Mr. Packish saying he wanted monetized contributions he had been turned down by the Town for that option. Chairman Packish said they could not currently do that, but as zoning and master planning were discussed, there could be situations where that made sense. He said it was a great grassroots thing when resident home site lots went for \$7000 and banks came in and provided inexpensive financing, but now it had evolved. Now they built a house for \$550k and sold it for

\$225k, giving preference to residents. The last situation was a donated home, they spent more than they would selling the property getting it up to code, and there was single qualified resident. It wasn't a lottery but was an awarding. He struggled with choosing one family out of four thousand and awarding them a \$300k gift.

Member Hopkins made a motion to follow Chairman Packish's guidelines on the letter recorded in the minutes earlier, outlining the limits of the letter and what they were willing to state to the MVC, produce that letter, have it reviewed by Brian, and if it matched what was on the tape, submit it to the MVC. Member Fehl seconded. Mr. Anderson confirmed he could write the letter based on the tape. The Board voted 3-0 in favor of writing the letter.

Member Hopkins said that for the record he was an abutter to Lagoon Ridge but had checked with the ethics commission and had no conflict.

Vote to approve written report/recommendation to Town Meeting on proposed zoning by-law warrant article: Fema Floodmap Adoption

Chairman Packish read the written report and recommendation to the Board. Member Fehl made a motion to accept the written report. Member Hopkins seconded. The Board voted 3-0 to accept the written report. Chairman Packish confirmed with Mr. Anderson that sponsors ConCom or Building would be writing the summary for this article.

Vote to approve written summary and report/recommendation to Town Meeting on proposed zoning by-law warrant article: Manufacturing/Light Manufacturing

Chairman Packish read the written summary and report and recommendation to the Board. Member Hopkins noted that sales hadn't been discussed earlier and wondered if that meant it could be a retail store. Chairman Packish noted it was B-1 and retail was part of that district, and ultimately what was manufactured would likely be for sale in some fashion.

Member Fehl asked how Offshore Ale fell under this. Chairman Packish said technically the distillery was a very similar use to Offshore Ale, and although he couldn't speak for the building department, he didn't think if Appendix A were applied literally that Offshore could get its permit if it applied today. He thought this proposed by-law cleaned up a lot of things, and that was a prime example of what a special permit could bring to the Town. It could be conditioned appropriately to make sense for the specific area.

Member Hopkins made a motion to accept the executive summary and recommendations. Member Fehl seconded. The vote was 3-0 in favor of the motion.

Vote to approve written summary to Town Meeting on Hospital and Windermere Road warrant articles

Mr. Anderson noted the recommendation would have to be done later as it wasn't possible to write it ahead of the previous discussion. Chairman Packish read the summary to the Board, noting it applied to all three articles. Mr. Murphy suggested changes to the language resulting in "Hospital Road would be relocated to its present location."

Mr. Anderson suggested he could write the recommendation with the Board's permission for the Chairman's approval in order to meet publication deadlines.

Member Fehl made a motion to approve the summary with Mr. Murphy's proposed modification of language. Member Hopkins seconded. The Board voted 3-0 to approve the motion.

Member Fehl made a motion to write the recommendation based on the minutes for Chairman Packish to sign. Member Hopkins seconded. The Board voted 3-0 to approve the motion.

Town Hall survey and educational content updates

Member Fehl dispensed copies of the survey to the Board and several members of the public. He had passed out a draft version at the last meeting, and asked for input from the Board. He said his goal was to meet the objective and also acquire the relevant data.

The objective was to determine the general mood of the registered voters and property owners. That was different from the residents, as not all residents owned property or were registered voters. Did the Board consider this appropriate? Chairman Packish said residents would use Town hall, and being a registered voter didn't mean you owned property. Member Fehl noted the first few questions of the survey broke this out, which the Board felt provided helpful detail.

Member Fehl asked if the Board felt they had the questions they needed to meet the objective. Chairman Packish said he did, as this was just one tool in the discussion, allowing input from those that didn't want to come to the meetings or wanted anonymity. Member Fehl asked what level of precision was needed. He said a town their size required 98 surveys for 10% precision, 194 for 7%, 364 for 5%, 870 for 3%. Although this would define itself, Chairman Packish felt 500 was a good target. Member Fehl noted that at the ballot there were 844 votes, with 24 votes deciding.

Member Fehl asked how to administer the survey. The Board felt they did not need to go to the expense of mailing them, but should publicize on social media. There was some discussion of offering the survey at school but Chairman Packish was uncomfortable with that personally. As Member Hopkins wished to further explore the school option, Chairman Packish authorized Mr. Anderson to ask permission from the Principal. The Board decided to put the survey on Survey Monkey, hand out copies at Town Meeting, and leave copies at Town Hall, the Library and the Council on Aging.

Chairman Packish said he wanted people to see these buildings. He had suggested to the Selectmen that they do walk-throughs of all the buildings as the High School had done. He felt it was not possible to hold the discussion by providing a report on all that was wrong with Town Hall without having reports on all buildings. He acknowledged that Mr. Barbadoro was short staffed and hoped they would get more funding at Town Meeting so they could complete those reports.

Chairman Packish asked about timeframe. The Board decided to run it for the month of April, thereby embracing Town Meeting timing.

Member Fehl asked how understandable the questions were. The Board said he had done a good job. He then asked how to avoid false answers, duplicate entries, etc. The Board felt you couldn't prevent it, although Survey Monkey might detect it, but it would be a small portion of responses. Chairman Packish thought it would be helpful to get a database of interested parties from this. However, Member Fehl said that greatly limited participation in surveys. Chairman Packish accepted his point, but hoped to prevent people from saying they didn't know about the project as often happened, and hoped they grew that database, perhaps as a separate optional page.

Member Fehl then read the remaining questions for the benefit of the audience who did not have copies of the draft. He noted input from Bill McGrath led to inclusion of a response saying building two buildings at once was a reason for voting against the new town hall. He requested further comments but the Board had none.

Walter Vail wanted it to be clear to people that the building was approved at Town Meeting, but the debt exclusion lost at the ballot box. Member Fehl agreed to change question nine's language to reflect that by removing "town meeting."

Mr. Vail suggested changing the order of several questions to better educate the respondent on topics like renovation. Chairman Packish said Mr. Vail's idea of renovation, building to new standards, was very different from the person on the street's idea, which meant meeting compliance. Mr. Vail said people didn't know about the research and work that had been done on this previously regarding renovation. Chairman Packish suggested moving question 11, "have you reviewed data..." up near the front. Mr. Vail and the Board agreed. Member Fehl said he would move question 10 as well for the same reason.

Mr. Vail suggested ADA issues be added to the safety issue question. Member Fehl agreed to change "physical to structural" and then add "Americans with Disabilities Act compliance issues."

Peter Bradford said there were really four kinds of residents: year round and seasonal, taxpayer and not. He suggested the first question reflect that. Member Fehl agreed to add the seasonal question. Chairman Packish said he wasn't interested if they were a taxpayer or not. If they were a resident he was interested in their input and if they were a renter they lived in a property that paid taxes.

Bill Vrooman suggested adding another category to question 7, as people didn't know the numbers and were more interested in dollars than how it was done. The Board agreed. He also suggested leaving the year in for the ballot vote in the earlier modified question.

Davio Danielson said he thought people didn't understand universal design, and since safety and ADA were included it could be left out, along with security systems. He wondered if people understood campus and perhaps a description was in order. Member Hopkins agreed. Chairman Packish said parking was essential as it was a mess at the Fire Station.

Mr. Barbadoro was concerned that those who felt passionately were more inclined to fill out a survey while others with an opinion might overlook it. Chairman Packish said this was one of many tools, and with all of the outreach everybody would know about the proposed project, just as had happened with Streetscape.

Mr. Barbadoro recounted the park and ride, where the Streetscape meeting was positive but the later meeting had loud voices in opposition. Chairman Packish said the Planning Board made a recommendation to the Selectmen that the Town should look into and move forward with a park and ride. It then became a closed discussion outside of public discussion. He said he was involved in the process and attended the first meeting where it was discussed, and then went to the second meeting and it had already been decided. It got dumped on the people and the people lost their minds. The VTA drove the discussion with a very small number of people and that's why there is no park and ride today. He was one of the biggest supporters of a park and ride, but because of the way it was handled, he took a position against it.

Chairman Packish said he thought Member Fehl did a great job, and he knew how many people had chimed in on it. He was appreciative of the hard work he had put in. Member Fehl said the input was what made it good. Chairman Packish said it was great he'd done the initial research on how to create an effective survey. He said what they found with Streetscape was that in handing out surveys downtown and engaging people, they stuck around to fill out the surveys. They got some responses at Town Hall, but the engagement worked better. The people who vote and show up to Town Meeting don't necessarily go to Town Hall regularly. Chairman Packish thought he might be able to get a box at Reliable.

Mr. Vail agreed the timing of the survey before and after Town Meeting made sense.

Chairman Packish said his goal at the end of the process was to have a vote with 750 people agreeing, and though that may not be achievable, that was the goal of the outreach. When Streetscape started he had Richie Combra calling extremely upset along with many others, but now people were calling excited asking when the next stage was starting. He could have 80 people on the Streetscape Board if needed.

Chairman Packish asked Member Fehl to finish up his end on the survey before the next meeting, said he would speak with Reliable, asked Mr. Anderson to speak with the school principal and Rose at Council on Aging. At the next meeting they would firm up the last specific details.

Board Member Updates

Chairman Packish said the HPP group would meet again on Friday, Marie Doubleday had stepped down and Peter Bradford was taking her place. He said they were getting to a rough draft framework and things were moving along nicely. The bulk of the information existed. You took the information from the housing needs assessment on a town by town basis to create the HPP then the MVC would blend the information for an Island wide plan.

Chairman Packish said he had been getting asked a lot about a Master Plan. He did not want this to fall by the wayside because one individual was unable to attend. He wanted the discussion to be as alive and well as the town hall discussion. He said the 1998 plan was consistently ignored because it was old, yet every study that was done recently echoed it. He would be working with Mr. Anderson to get the process moving over the next few weeks.

Member Hopkins said there had not been a formal answer as to whether the Land Bank had frontage on County Road. This frustrated him because the Land Bank announced to the public that they planned a campground on one of those lots. He clarified that this was 52 acres and either the Town or the Land Bank owned it.

Member Fehl asked if the Water District had withdrawn plans on solar. Chairman Packish said they had not yet been to DEP.

The meeting adjourned at 6:45 p.m.

Documents used in this meeting:

Agenda

Sign-In Sheet

Hospital Road proposed warrant articles, plan, and draft maintenance agreement

E-mail from Davio Danielson to Oak Bluffs Planning Board dated March 2, 2016 Affordable Housing Component

Draft Planning Board FEMA map change recommendation

Draft Planning Board Summary of Hospital Road proposal

Draft Planning Board summary and recommendation of manufacturing zoning proposal