

Oak Bluffs Planning Board
Meeting Minutes

August 11, 2016 at 6:00 p.m. in the Oak Bluffs Town Hall Lower Level Meeting Room

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

Members absent: Jeremiah McCarthy

Staff in attendance: MacGregor Anderson (Clerical Assistant)

Chairman Brian Packish called the meeting to order at 6:00 p.m.

Lagoon Ridge Form C definitive subdivision plan decision deadline extension agreement

Eric Peters representing David Danielson said he wanted to bring the Board up to speed after productive work with Mr. Anderson on an extension. He hoped to stick to an October 28 deadline vs. November to facilitate bank loans. He had made progress with the surveyor and expected plans at the end of August, with all the necessary application materials ready for a hearing in September. Mr. Peters said he had a couple questions he hoped would move things along going forward.

Mr. Peters said there had been previous discussion of the affordable component and also the covenants for elderly housing. He didn't know if the Board wanted to discuss these before a hearing or if they just wanted to see the proposal. He said Mr. Danielson had at one time asked for guidance, he thought from Town Counsel, on the elder component and possibly affordable.

Mr. Peters said that he felt the special permit application Mr. Danielson had submitted was deficient and had withdrawn it. He would submit a new special permit application with the revised plans.

Chairman Packish asked the Board if they had any questions or thoughts on the October deadline. Member Fehl and Member Hopkins said no. Chairman Packish said they could see the challenges ahead, and he'd seen the withdrawn application, and there were some insinuations that the Board had taken stances on certain things associated with the development. There were no hard feelings but that was not the case. It was important for the client to understand this would not be a one meeting process. He expected this would be a three or four meeting process. Each item needed to be explored individually with various boards and committees involved in the special permit. He had been contacted by the Affordable Housing Committee that day after Mr. Danielson had asked to be put on their agenda along with the Selectmen's agenda. He has the right to make a presentation anywhere, and the Board would associate value with that committee's opinion, but at the end of the day the process happened in front of the Planning Board. The Board had spoken with Town Counsel and did have legal opinion on it. Although he'd been exhausted at the MVC on nitrogen, the Joint Lagoon Pond Committee took a stance that the MVC regulations were not stringent enough for the watershed. The Board imposed stricter requirements on the Southern Woodlands. Buildout schedule, timing, bonds, release of roads and lots...it really wasn't as simple as just holding a public hearing.

Mr. Peters said he understood and didn't expect it to be resolved in one hearing. Chairman Packish said he understood that Mr. Peters was realistic about the process, but on the other hand he had the MVC calling him throughout their process asking if the Board was ready to sign off because that was what had been represented by the applicant. He just wanted to make it as clear as possible that there was a process to go through. That's why the Board wanted this timeline, because they didn't want to waste their resources, and had exhausted the entire permit fees on Town Counsel already. He understood that there was tax value in this, and that's why the Town did this, but they were exhausting resources rapidly to try to be as flexible for this flexible development as possible. They didn't want to get into drafting multiple extensions. Chairman Packish did not have an issue with October 28th.

Member Hopkins said he thought it would behoove the Board to make a list of what boards needed to be involved so the applicant didn't cherry pick. He thought they would want a lot of input from the Joint Lagoon Pond committee for instance. Chairman Packish said it would get them in trouble because multiple conversations would occur and misinformation would develop.

Mr. Peters said the MVC rules didn't say affordable housing had to be given to a specific person, nor did the by-law. At one point the applicant was planning to give them to Habitat for Humanity, though that had changed. When Mr. Peters spoke with Town Counsel, he was told about the Affordable Housing Trust, so the applicant was now talking to the Affordable Housing Committee. Chairman Packish said that had been going on for a year and a half. Mr. Peters said independent of the Board's decision, these other groups would have to decide if they wanted to do something. He also noted that there had been difficulty with rollover of members of those committees.

Chairman Packish said they should take this back to the yield plan which they'd been requesting for two years. Mr. Peters said there were different ways to define a yield plan and the Board had the option to waive one, but if they were asking for an engineered plan then the applicant would produce one. Chairman Packish said they'd had that conversation with Mr. Danielson at multiple meetings. The reason the Board had an application and a check was because they finally took the standpoint that those informal conversations, in which it appeared the applicant was attempting to construct an approval, were not serving that purpose in any way. The Board looked forward to working with the applicant to put together a situation that was viable for everybody, but they could no longer have small conversations represented all over the place in different manners. At this point the Affordable Housing Committee would be participating through the Planning Board's special permit granting process, as would the Selectmen and the Joint Lagoon Pond Committee. He had spoken with all three chairs that day and had reached that decision because everyone had reached an epic level of frustration. So they would stay in a holding pattern and hopefully the information would be forthcoming.

Mr. Peters said he was provided a Form C application in December, and that was the only time he had been before the Board. He couldn't speak to conversations that happened before that meeting. The yield plan was being worked on and would be part of the package. Still, if the Oak Bluffs Affordable Housing Committee decided they didn't want to be part of the project, the applicant would have to resolve affordable housing. Many permit granting authorities say you need to give something that is

affordable to somebody. Chairman Packish said they didn't even know how many structures they were discussing as they didn't have a yield plan yet. Mr. Peters said regardless of the number somebody might still not want to be involved.

Mr. Peters said he inferred that for instance with elderly housing they should just come up with something. Chairman Packish said they had to start the process somewhere. And the first place to start was how many lots you would be able to have under standard zoning. Then how many lots under flexible zoning? Then what percentage would be affordable? Mr. Peters said he understood but regardless of numbers he would still need to have provisions that govern those lots. That was his question. Would the Board prefer that they come up with those provisions independent of numbers or could he talk to Town Counsel ahead of time? Chairman Packish said this should be part of the complete proposal, "here is what the applicant would like to do", "here is what your zoning affords us", "here is what advice from Town Counsel is" etc. Then the Board would navigate each of those items and things would morph and change along the way. They would reach a point where they would feel they needed the Chair of Affordable Housing to be at the next discussion. But, there had been so many hypotheticals and conversations that he didn't even know what the project looked like anymore. He needed it in black and white in front of him. Mr. Peters said they would have a complete package, and that the plan approved by the MVC is no different from what was submitted in the fall in terms of the number of lots and configuration. The Board of Health had approved the septic system that was approved by the MVC. He would plan to file the package and schedule a public hearing. Chairman Packish agreed that was the next logical step.

Mr. Peters said he hoped he had been having productive conversations with Mr. Anderson and would let him know if he needed to come to the meeting at the end of the month for an update. Chairman Packish said that was fine and it sounded like Mr. Peters had moved this along more in the past 15 days than it had moved in the past ten months. Mr. Peters said movement was his interest, and Chairman Packish said it was theirs as well. Member Hopkins withdrew his request.

Mr. Anderson asked to make a point. Affordable housing had come up in e-mails but hadn't been presented to the whole Board. The dialog with Town Counsel, where specifics weren't provided, did offer one basic message. There needed to be a mechanism for the affordable housing to be built. There had been conversation about just giving lots. This guidance wasn't telling the applicant how to achieve this, but when the applicant presented his proposal to the Board, he should defend it in that sense. Chairman Packish said the first question the Affordable Housing Committee had for him that day was "is it built units or empty lots, or lots that come with funding?" Mr. Anderson said the point that Town Counsel made to him was the by-law required affordable housing that people could live in. There could be many creative ways to do that, it might have been very close with the agreement with Habitat, and if the Affordable Housing Committee wants the lots, and they convince the Planning Board that they would be built, that could work. Mr. Danielson has said a number of times that he is selling land not building houses, so he is just giving away lots. It won't be adequate to just give away lots if there is no mechanism that shows affordable homes will exist.

Chairman Packish said he was just looking forward to framing this in a consistent conversation over a fairly short period of time so ultimately the applicant could get his special permit.

Member Albert made a motion to accept the extension agreement and have Chairman Packish sign it on the Board's behalf. Member Hopkins seconded. The Board voted 4-0 to have the Chairman sign the extension to October 28. The Chairman signed the agreement.

Mr. Peters said he'd noticed a form of covenant he hadn't seen before. He was used to an agreement to complete infrastructure before sales or bonds. He wondered if the Board was familiar with a third form, where an applicant with a construction loan schedule used that as a method of releasing lots. Chairman Packish wasn't familiar with that. The Southern Woodlands had put up a bond, and he felt it was signed off prematurely albeit with good intention. There would be options regarding buildout that the Board could consider, and there was a fear from the public that all the lots could be built out in one year. Mr. Peters was surprised to hear there were that many builders ready to build here. Chairman Packish said real estate agents were saying there wasn't any inventory. Mr. Peters said the applicant was seeing if one of the local banks would lend him enough to build it all out at once, but at some point they would probably want to see his permits. Chairman Packish said they'd learned a lot from Southern Woodlands, and they didn't want to leave the door open for another eyesore that existed for ten years. Mr. Peters said that wasn't in the applicant's interest either.

Accessory Apartment Affordable Housing by-law discussion

Chairman Packish said they'd had a good experience participating in the Falmouth Planning Board meeting on the topic. The Falmouth Board had done a lot of work on the by-law, and the mantra was that it didn't allow you to do anything more than you would otherwise in terms of septic and bedrooms. If you had four bedrooms you could choose to use two as an accessory apartment. Really, it allowed you a second stove. This helped answer concerns from the Board of Health there. They removed the affordability restriction, because they had an affordable by-law but it was only used once under neighborhood insistence. They had heard at AIPB that there was a massive need for market rate housing, and it wouldn't happen without a by-law like this as duplexes weren't allowed. This agenda item had followed looking at West Tisbury's by-law so they could gather some information and consider it ahead of next April.

Member Albert asked if Falmouth's by-law had passed already. Chairman Packish said it had not, that they'd tried before without public outreach and got slaughtered. They've now done the outreach. Chairman Packish said short of public outreach a lot of the work on this had been done in OB. Member Fehl noted it did not allow seasonal rentals and Chairman Packish noted there was a mechanism for enforcement with inspections and affidavit.

Chairman Packish said they'd been able to help the Falmouth Board after the meeting regarding Streetscape as they have a lot of the same issues. The Falmouth Board planned to attend an All Island Planning Board meeting in the future.

Member Hopkins said they were still struggling with parking and water. The water authority wasn't allowing dual sources into the home yet. Chairman Packish said that wasn't a problem here as our authority still allowed it.

Chairman Packish said the market rate piece meant people would have to spend real money to provide safe housing but they would be able to charge real rent. The current affordable numbers weren't realistic. A market rate one bedroom was \$1700 or \$1800 a month but affordable through the housing authority would need to be \$800.

Minutes review and approval: 4/28/16, 7/28/16

Mr. Anderson said the April 28 minutes were not yet available. Member Hopkins made a motion to accept the July 28 minutes. Member Fehl seconded. The Board voted 4-0 to approve the minutes.

Member Hopkins asked what remained outstanding. Mr. Anderson said there was April 28, a portion of December 9 of 2015, and two joint meetings, including the beach rake which he put as a low priority. There was an affordable housing joint meeting that the Selectmen were putting up. There was an AIPB that were complete but hadn't been approved.

Vote to appoint Chair and Vice Chair to Planning Board

Member Hopkins made a motion to maintain the current leadership. Member Albert seconded. Member Hopkins asked Member Fehl if he would consider this a training position to eventually become chair. Member Fehl said he wouldn't commit to that, but he was willing to be Vice Chair at this point in time. The vote was 4-0 in favor of Brian Packish as Chair and Member Fehl as Vice Chair.

Master Plan update

Member Hopkins reminded the Board that they had voted to put Member McCarthy in charge of the Master Plan. Member Hopkins had some preliminary discussion with Terry Appenzeller and Renee Balter as they wanted to be involved but he felt they should get Member McCarthy up to speed on the situation. Chairman Packish said he had done a lot of thinking about the topic and wanted to get it going again in September. He said some people wanted no professional help and some wanted it done only by professionals. He thought it should be somewhere in the middle. The first step would be to take the existing master plan and try to inventory against it, asking what has and hasn't happened. That might identify some questions to ask as they moved forward. He'd reviewed the recent Open Plan, and he was looking at the Housing Production Plan which should be available by mid-winter. That addressed all housing. The grant from the MVC meant two dedicated professionals were working on that, so he was confident it would be ready.

Peter Goodale asked if the Town was considering real apartment complexes. Chairman Packish said it was already allowable under 40B, and any project that size would get bumped to the MVC, so it didn't matter if it were part of zoning in a sense. If there were no MVC, 40B projects would override zoning and the Town would stand back and watch. But over three units gets you bumped to MVC. Mr. Goodale said that if you had an area zoned for apartments, and somebody came in with a project

outside that zone, the MVC would say no, go build it over there. Chairman Packish said until the new director arrived, the MVC didn't much care what the Town wanted. Since Mr. Turner's arrival, Mr. Goodale's point was more valid. He was directing the MVC to stay on task and let items the Town could handle go back to the Town.

Mr. Goodale thought an apartment complex should be considered as part of the Master Plan. Chairman Packish said you had two types of plans. You had a policy plan, favored by people who were scared they couldn't control and manipulate the process. You also had an action plan, favored by people who wanted to get things done. Chairman Packish said he was in the middle personally but he didn't want to set a bunch of policy that wasn't honored. He wanted people to be able to read something, come up with a project, and have a reasonable expectation of its being approved. They didn't have that now.

Member Fehl asked if it would be advantageous for the Board to have a meeting discussing nothing but a master plan for Member McCarthy's benefit. Chairman Packish supported the idea. He said Member McCarthy had read the various relevant plans and was familiar with Streetscape as well. He was a quick study, so they should be ready to dig into this and Town hall in September. Member Fehl said he wasn't suggesting the requested master plan meeting be opened up to input from the floor, but rather that it focus on determining direction as a Board for the master plan. Chairman Packish thought it could be both, where some comments were taken at the end. It would be about creating structure in the process.

Mr. Goodale said he would be curious to hear what the Board's wish list was in terms of what they wanted to achieve in Town. Member Fehl said that was part of the development of the plan itself. Chairman Packish concurred, and said he understood Mr. Goodale had experienced a lot of frustration as the Board tried to get through structure. There were different personalities with different ideas on structure and there were people in town who thought a master plan was their opportunity to do what they wanted to do. The master plan would be done strictly by the Planning Board and brought to the people. MGL did not say planning boards brought this to the selectmen, but rather they brought it directly to the people. The Board would take input from everybody, but this was clearly a Planning Board responsibility.

Mr. Goodale said he was sitting on 55 acres and perhaps he'd hear an idea from the Planning Board that he liked for using that land. Chairman Packish said the Board consistently said they were here to help people but not develop their projects for them.

Mr. Goodale said he'd suggested the building inspector create a map of illegal home businesses and the response had been "that's easy it is a map of Oak Bluffs." Chairman Packish said when he had been brought in for an unlicensed home business 15 years or so back, he created a map with 91 illegal businesses within a half mile radius. It changed the conversation and Town Counsel found a way for his business to exist where it was.

Town Hall update

Chairman Packish met with Bob Whritenour after a contentious Selectmen's meeting to discuss the timeline for town hall. Chairman Packish thought they had reached an agreement weeks earlier with Ms. Barmakian and Mr. Vail but the Selectmen had taken a different course. Mr. Whritenour provided a draft timeline that everyone had agreed on. They were going to meet one more time, and while Mr. Vail couldn't attend he was said to be in support of the draft timeline. Chairman Packish wanted to get that timeline out to the rest of the Board when it was agreed. The timeline laid out a path between the September 15 report on the condition of the various Town buildings and a presentation to Town Meeting in April.

Maura McGroarty asked for a copy of the timeline. Mr. Anderson said he'd send her a copy when he had it. Chairman Packish said the meeting was planned for the upcoming Thursday.

Board Member Updates

Member Hopkins encouraged the Board to be aware of a taping he did on FCTV (Falmouth) with the head of the Falmouth Planning Board discussing parallels in planning with the two towns. Member Fehl asked that Member Hopkins provide information to Mr. Anderson so the Board could see the program.

Member Albert noted that the presidential motorcade video on OB Downtown hit 17,000 views with a reach of 35,000.

The Meeting was adjourned at 7:05 PM

Documents used in this meeting:

Agenda

Sign-In sheet

e-mail from Eric Peters to OBPB dated August 4 2016 re extension agreement

July 28 draft minutes

Agreement for Extension of Time for Planning Board to act pursuant to MGL c 41 sec 81U