

## Planning Board Minutes, 08/09/2016

### Town of Lenox Planning Board Minutes Land Use Meeting Room August 9, 2016

**Present:** Kameron Spaulding (KS); Tom Delasco (TD); Kate McNulty Vaughan (KMV); Pam Kueber, (PK)

**Also present:** Ken Fowler (KF)-Liaison from the Board of Selectmen

**Staff present:** Town Planner Gwen Miller (GM); Peggy Ammendola, Land Use Clerk, (PA)

#### Actions and Decisions

- July 26, 2016 –Minutes which were tabled that are to be approved at next meeting
- All documents that are a part of an application or discussion to be bulleted in future minutes
- Determine Board's future role and purpose in relation to large projects and Special Permit review so it will be placed on the next agenda.
- Local Tax Incentive Policy Memo to Board of Selectmen-KMV, PK and GM create document which will include recommendation to not establish another committee. ~KMV and PK will create personal responses
- GM will provide to Board language on legislation for making it mandatory to allow an ADU in certain zones.
- Zoning Bylaw Discussion will resume but limited to parking and Accessory Dwelling Units
- PK will establish a website for the members where all of the documents which come before the Planning Board them can be placed ~

#### Approval of Minutes:

May 24, 2016-PK made a motion to approve. KMV seconded the motion. The Board voted to approve 3-0-1. TD abstained as he was not at the meeting.

June 14, 2016-TD made a motion to approve. PK seconded the motion. The Board voted to approve 3-0-1. KMV abstained as she was not present at that meeting.

June 28, 2016 –These had been approved 3-0 at the July 12<sup>th</sup> meeting, KMV moved & TD seconded. KMV noted she had discussed changes w/ Alison Sneider after the meeting July 12<sup>th</sup> meeting.

July 12, 2016- KMV made a motion to approve as amended. TD seconded the motion. The Board voted to approve 3-0-1. PK abstained as she was not at the meeting.

July 26, 2016 –No vote, tabled until next meeting. PK commented that the summary of discussion was not detailed enough, whereas KVM felt that perhaps too much detail was provided in the public comments, and that the minutes should convey how the PB arrived at a point of project endorsement. PK hoped AS would listen to the audio and provide more detail. GM pointed out the minutes provided were not the most recent version. PA provided those later in the meeting.

KMV commented that AS has referred in the minutes to an applicant as “guest”. She said that guest is not an appropriate appellation and the description should always be “applicant”.

PK said that at the end of all minutes there should be a bulleted list of all documents that are a part of an application or discussion. This, she said, should include all emails and other communications. KMV preferred having that list at the beginning. PA said that she has tried to make it a point to provide a list associated within the section of the minutes to which that list would relate.

#### Review of Letter to ZBA re: Miraval Special Permit, as necessary

Present was Attorney Sydney Smithers who represents Miraval.

The Planning Board, at their July 26<sup>th</sup> meeting, heard the presentation of this application:

**CRW Holdings, LLC, d/b/a Miraval Lenox, for the property owned by 55 Cranwell LLC, 55 Lee Road (Map 3, Parcel 54 and Map 4, Parcel 71-1)** Modify existing Special Permit under Section 9.4 “Special Permits” and Section 6.10 “Estate Preservation Area” of the Lenox Zoning Bylaw, to complete previously permitted development through renovating and repurposing existing structures, the addition of five new buildings, reconfiguring the driveway and parking throughout the property, and constructing a pedestrian and golf cart tunnel under Lee Road.

At the close of the July 26<sup>th</sup> meeting, KMV moved to endorse the project as presented, PK seconded and the motion was approved (3-0). At that time it was agreed that the Board would gather its comments and GM would draft a memo for the PB's approval prior to the ZBA hearing on August 3, 2016. It was further agreed that if a quorum was available, the PB would meet to review and approve the memo. If a quorum was unavailable due to travel plans, GM or TD would bring the PB's comments as provided to GM to the ZBA hearing on August 3 and state them for the record. The comments that had been provided were from KMV and PK. PK said that she had wanted this on tonight's agenda so that the board could discuss how it handled the Miraval meeting, along with clarifying the materials that the Board was submitting to the ZBA which included the following:

- Planning Board letter to the ZBA
- PK's bulleted items

- KMV's bulleted items
- Minutes of the July 26th meeting.

PK thought it was important to discuss should the Board want to take any further action.

The discussion tonight began with KMV asking if the Board should continue with the letter or let the process unfold. GM noted that the ZBA did meet on August 3<sup>rd</sup>, but have continued to August 29<sup>th</sup>, with a site visit on August 11<sup>th</sup>. The correspondence has not yet been read.

KMV said that the requirements of the Planning Board is to make a recommendation to the ZBA that would not necessarily be for or against a project, but rather to point out to the ZBA what the Planning Board thinks the ZBA should explore more when the ZBA hears the petition. She expressed disappointment in the fact that the Planning Board meeting was "quick", they didn't have a site visit, and that she didn't do follow-up questions. Additionally she commented that she regretted that she had used the word "endorsed" when making her motion. She said that she felt that this was a "preliminary endorsement", and felt awkward after the fact.

TD did not understand what more could be gained with a site visit as there had been plenty of drawings and renderings provided. He did say that he would have liked to have had a graphic which showed an overview of the entire site and then a superimposed version with the proposed changes. He said that the purview of the Planning Board is to look at the criteria for a special permit and determine if the petition complies, which he said this application did and that implies that it is an endorsement.

PK said that in a recent meeting, the Board had a discussion on their role, which is to review a petition before it goes before the ZBA and to make sure that it is consistent with the Master Plan. The Zoning Board has adjudicatory power. The Planning Board does not. While PK agrees that the word "endorsement" is strong, she thinks that it may be "splitting hairs". She suggested that the Board come to an agreement on what the Board's role is in the review of a petition and to develop guidelines to use on a consistent basis. Rather than giving an endorsement, the Board could submit a list of bulleted findings. KMV preferred to use a "list of framework" instead of the word "findings".

PK stated that she felt that there were gaps in the presentation and that the Board was not prepared with regard to the Great Estate Bylaw. She felt that they should have gone through this bylaw item by item. She also believes that 6.10.8.2 of the Great Estate Bylaw is confusingly written and should be "fixed".

KS said that he didn't feel that the Planning Board should review the petitions at all. He said that the Board crafts the Master Plan, rules etc., and it is up to the other boards to determine if a petition complies with those documents. Since this Board has no adjudicatory authority, he feels that it is a waste of time to review projects. He commented that the Board would probably spend two hours tonight discussing items for which the Board has no power before getting to the fourth item on tonight's agenda, unless that item gets put off to another meeting. He concluded that the Board wastes hours and hours when its focus should be on more important issues, e.g., the Master Plan and zoning bylaw amendments. He suggested that if a member wanted to individually express their opinion or concerns to the ZBA, they could do so.

The materials for applications are available for review well in advance of a ZBA hearing.

KMV argues that a review by the Planning Board gives the public extra weeks and the publicity afforded by the local newspaper. She didn't feel that there was enough time for the Planning Board to mull over the Miraval presentation. KS asked what more did KMV need and stated that they now have the Planning Board letter which is the final step of their review.

PK said that she is in agreement with KS in that the Board is spending time unnecessarily to review projects when they cannot rule on them, but with one caveat and that is the members of the Planning Board are the "masters of the master plan" and if they are the only board who is going to look through it as a "filter" she feels that it is a viable reason for them to be a part of a review. KMV stated that she looks at the Planning Board's review from the public's perspective as it gives them a chance to see who else is interested in a project and get a sense of the public's concerns before the ZBA hearing. KS argued that it was not the Planning Board's role to hold a hearing to provide the public the opportunity to form sides for who is for or against a project.

Rules and regulations have established that the ZBA asks for review by the Planning Board, but it is not required. Most developers, because it is suggested, will request this review, but if it were not suggested, would probably skip a review. The rules and regulations can be amended. KMV asked if they should review or not. PK suggested that the Board could sit with the ZBA at the first presentation and ask questions then have a follow up discussion at their own meeting and determine if it is consistent with the Master Plan. If there are any concerns, they could then inform the ZBA.

PK asked KF for his opinion. He responded that he didn't feel that a site visit was necessary, but did feel that the Board's review was helpful to a developer.

TD agrees with KS that without having authority, it is a waste of time to spend hours and hours. He felt that the Board could have simply reviewed Miraval's petition by looking at the required criteria as outlined in the zoning bylaws and then drafting a letter to the ZBA.

Attorney Smithers commented that because of the rules and regulations he presented the Miraval petition to the Planning Board, but if this were not addressed in those rules, he would not. He also stated that the Planning Board requested BRPC to draft those rules for the Town to adopt in 2006.

KMV spoke in favor of the Board holding hearings as she feels it benefits the public and supports the Bill Belichick's (Patriot's football coach) "rule of presentation," where the applicant uses the clock as much as one can to explain in copious details and the Planning Board's job is to slow down the project long enough to allow people to "wrap their heads around it". She did say that the Board could make a decision to "wave through" some projects, but if the Board didn't think others had "enough bells and whistles", the Board could review before going to the ZBA.

TD said that he was split on how the Board should handle. He felt that they could frame the review to not take public comment or questions and review the criteria requirements as stipulated in the zoning bylaws and then submit a letter to the ZBA.

Further discussion ensued and the Board concluded that the letter will not change. It was also agreed that the Board needs to determine their future role and purpose in relation to large projects and Special Permit review so it will be placed on the next agenda.

**Local Tax Incentive Policy Memo to Board of Selectmen**-Three documents were presented to the Board this evening.

- PROPOSED LOCAL TAX INCENTIVE REVIEW PROCEDURE

- VERY PRELIMINARY ROUGH DRAFT-August 8, 2016
- Planning Board's letter to the Board of Selectmen citing their opinion of the draft of the Local Tax Incentive Procedure

KMV began the discussion with if the Board of Selectmen (BOS) was looking for an immediate response from the PB, adding that it seemed that Lenox was overflowing with motel/hotel projects.

KS commented that one had applied for the Special Tax Assessment/TIF (Economic Development Incentive Program), but did so only because if money was being given out they wanted it.

GM said that Allegrone received a TIF (Tax Increment Finance agreement) in 2010, which was the first time this had come about. In 2016 there have been three to ask and they were the Marriott, Magnuson, and Morrison Home Improvement. KS said that he is not in favor of a TIF or STA for a hotel chain, but would be in favor of something like Morrison's as it is a small business, paying higher wages than a hotel, and it is locating in a long vacant building.

In regards to a timeline, GM said that individuals applied to the BOS. GM said the process is that a business owner has to fill out defined, specific forms for the EACC (Economic Assistance Coordinating Council). The applicant is to submit to the Town a letter of intent and their proposed tax agreement or TIF agreement or their special tax assessment agreement. This would then have to have Town Meeting approval. If approved they then apply to EACC for a certificate. The EACC meets four times a year, and because the Town doesn't have a policy, the applicants have missed the last two EACC meetings and deadlines to submit materials such as Town approval.

The Town does not have a formal application. It was discussed that if the Town approves a policy, PK suggested a fact sheet or score card that would provide at a glance key information that would help in determining whether the applicant's request would justify approval.

KMV said that businesses formerly would come to Lenox without any expectation. She feels that the program should be approached with caution and stated that EACC has loosened their qualifications to enable any community to participate.

PK stated that she is opposed to the program fundamentally. She pointed out that the program would create another board/committee and that there is always a shortage of people to fill the positions. She said that the existing hotel/resort projects are projected to bring another 3.3 million dollars into town, which she feels should be spent on infrastructure and schools which will continue to make Lenox a desirable location for businesses. She believes that this program would be a political nightmare to manage, and people would question why one received an incentive and another did not. KMV agreed saying that those who have studied the merits of such a program, can't catalogue information to determine if it makes a difference. She referenced the Lincoln Institute of Land Policy.

KF questioned the Board on how many meetings it has had to discuss this topic. He said that the BOS requested that the Board come to some kind of decision rather than redesign or philosophize on whether or not it works.

KMV responded that some of the members feel like the discussions are both educational and informational. She said that when a newspaper article brought to light that the Marriott had applied for an incentive, everyone she knew was negative and shocked that the Town was even considering. She doesn't feel that they should rush through the Selectmen's request to review.

PK explained that she had written an 8 page document and had researched to see in a methodical way how this program would work in Lenox. She added that the Board was not foot dragging.

GM said that at the request of the BOS, she submitted their draft in early April to the ZBA and Board of Assessors has review. The consensus of the ZBA was that they felt that an applicant should make it a part of their application, before the fact, that they would be requesting a tax incentive. GM said that she met with the Board of Assessors in April or May and they said that they wanted less discretion to be left with the BOS. GM presented their comments to the BOS and the policy draft that is circulating now reflects their comments.

It was agreed that KMV, PK and GM will work on wording for a general statement to give to the BOS and KMV and PK will send out their own personal comments. In the general statement, PK feels it should be included that another committee should not be established.

## **Zoning Bylaw Discussion**

- **Outline of Next Steps**
- Chart prepared by PK on existing hotel/resort projects which gave investment figures that were taken from the Berkshire Eagle story of August 6, 2016.

PK reviewed the information she had provided. Included in the figures, but not limited to, were the number of existing rooms, new rooms, cost to build and anticipated dates of completion. She said that 330 new rooms, an increase of 33% over the number of rooms already available, would be added with these projects. (KS said that he thought that the number of existing rooms was low by 100-200.) If Elm Court is built out, this would add over 100 more rooms. PK's concern is with the parking to accommodate the influx of people to the village center. KS said that in general he feels parking should be addressed, but the goal of Elm Court, Springlawn and Miraval resorts would be to keep their guests on their property. He added that Canyon Ranch provides transportation to their guests. PK wondered if the Town could be prepared to purchase property that is for sale to create parking. KMV cautioned about creating parking for the "summer playground" leaving expanses of space unused in the winter months.

GM stated that Judi Barret, the consultant hired to review the zoning bylaw and make recommendations to improve it, had suggested the Town consider two separate zoning districts for the Village Center and Lenox Dale. There could be a joint visioning work shop for both districts and a focused session on Lenox Dale. There could be key topics, issues or opportunities that the Board wants to address in a new zoning district. This would result in a revised table of uses and dimensional requirements and parking could come up as a priority as well as housing. It would be important to make sure that any intervention would work year round, i.e., more blacktop throughout the year that would require regular maintenance.

KMV suggests looking in depth at other communities that are like Lenox and what people are doing to manage tourist impact or parking.

PK asked about the parking project the Board had worked on a few years ago that did not pass at the Annual Town Meeting and if that could be revised. Elements of that plan were discussed as well as parking in general in the downtown area.

Discussion ensued regarding acquiring property to develop for parking i.e., where would it be located and how to go about it. KMV feels that it should not be done all at once but to utilize a 5-10 year plan and constantly review.

KMV said that the Board should be more strategic with their time and how the Board looks at things and how to make sure that they are in sync with the Finance Committee, HDC and BOS.

KS said that the Chamber of Commerce has handed out 700 parking maps this summer. PK asked if they could be put in the tax bills so that residents can be informed.

Discussion ensued on ADU (Accessory Dwelling Units). KS said that there is legislation now for making it mandatory to allow ADUs by right in certain zones. GM said that she would send that language to the members.

GM said that consultant Judi Barret recommended that certain uses currently requiring a Special Permit from the ZBA could instead go through an administrative review, and some recent ADUs Special Permits were mentioned. PK was apprehensive about that as she said that she found the language in the section of the bylaw related to ADUs to be subjective. In particular she found that the part which states an ADU has to be "subordinate" means to her that it can't be seen.

It was agreed that with regards to the Zoning Bylaw, the Board would like to have on the next agenda parking and ADUs. KS suggested that it be put on the agenda specifying what would be discussed so the people who are interested in a particular bylaw would know when it was being discussed. GM said that she had some updated definitions which she had sent prior to the July 26<sup>th</sup> meeting.

**Other Committee/Board Updates-**There was nothing.

**Planning Board Temporary Committee Assignments.** All were agreed to by acclamation.

TD serves on the CPC and is the Vice Chair. He is the de facto delegate to BRPC. PK said that she would be interested in serving on BRPC. PK will now serve as the BRPC Delegate. Ken Fowler was appointed as the Alternate at a previous Selectmen's meeting.

KMV said that she is on Affordable Housing Committee, but is considering stepping down. PK said that she would replace her if KMV decides to make a change.

KS is on the Land Management Committee.

KS said that he would fill in on the HDC for the next month. PK said that she would serve as an alternate for that duration if needed.

It is expected that Deborah Rimmner will be joining the Board after the end of August and at that time she can look at the various committees that the Board members serve on and decide what interests her.

Regarding PK's interest in the Affordable Housing, she said that she had read documentation composed by Joanne Magee and Debbie Burke from 3-4 years ago and she questioned the data findings provided by Judi Barrett: perhaps the median income information is skewed because of the many Lenox residents who live in nursing homes, retirement communities or affordable housing units. GM stated that the Housing Production Plan requires updating every 5 years, and that the Town has funding from DHCD to work with a consultant to update this plan. When that is done, the Board will have a better sense of housing need in Lenox.

**Correspondence-**Tabled

PK made a motion to adjourn and TD seconded the motion. The Board voted to adjourn at 8:23 PM.

Minutes submitted by Peggy Ammendola