

Meeting Minutes
for Feb. 8, 2022 Meeting
Planning Board
(Approved March 8, 2022)

Attending: Pam Kueber, chair (PK), Tom Delasco, vice chair (TD) Kate McNulty-Vaughan (KMV), Jim Harwood (JH), Sue Lyman (SL)

Also attending: Land Use Clerk Jes Cote (JC), Heather Brown (HB), Lori Robbins (LR), J.R. Hashim, Rodney Galton

Documents: February 8, 2022 PB Agenda, Niagara Mills Redevelopment Summary, Zoning amendments re housing actions for consultant work, Draft Jan 25, 2022 meeting minutes, Draft Dec. 14, 2021 meeting minutes, Draft Jan 11, 2022 meeting minutes, Proposed Institutional Uses bylaw, Niagara Mills timeline,

Link to article: https://www.berkshireeagle.com/news/southern_berkshires/want-to-redevelop-a-brownfield-threesites-are-available-as-great-barrington-to-possess-another/article_1fb5b6b0-f554-11eb-8677-bb04af9dca51.html

Recorded by Town and Berkshire Eagle,

Update and discussion on Niagara Mill DLTA – Town Planner Gwen Miller (GM) could not attend.

PK noted Eagle article about Great Barrington having three cleanup sites – Kate had wanted to have someone speak to us who was very knowledgeable – do we want to ask Chris Rembold if he could speak at our community meeting or with PB at a separate time?

JH said he himself is current president of board of CDC of Southern Berkshires. He has first-hand knowledge, does not claim to be an expert. CDC has ownership of 8-acre site, formerly NE Log Homes, gave high-level summary of contamination issues. Remediation can be done – it brings a lot of uncertainty to a project, very expensive, brings up concerns of people that can be politically tough. Remediated but not capped – some things you can never do there such as grow food or drill for drinking water, very expensive, lots of regulatory hoops to jump through. State money is available but has its limits. CDCSB must remain owners of the land because of liability, and they have certain statutory liability protections. As a result, they will be selling land leases, ownership will need to be condo not straight ownership.

JH -- Biggest question: where is the owner of Niagara Mill on all this. PK -- GM has tried to connect with owner and has not received response. JH -- Until we have a dialog with the owner what are we doing. TD: agreed.

KMV: absolutely right get into contact before we run the bases. But also giving ourself an educational opportunity / be better informed when do engage with owner and town – if we do try and make contact with owner and we get better sense of past work done etc.,

places us in a better position to understand whether/what will take 5 yrs, 10 yrs. E.g. Eagle Mill going on more than 5 years at the point. We're in previews not even opening act. On the subject of continuing background work, GM via email in response to PK question: GM said, "Ownership changes. There are actions, tools and resources the Town can use or point current/future/prospective owners/developers/investors toward to help achieve a mutually desirable outcome at the property." PK agreed with KMV that our background document will be big educational process, GM is saying that this background work we're doing lays the groundwork for whoever steps up.

TD – noted several attempts to sell since property closed, several prospects but did not happen.

JH -- all we can do is incentivize development – offer tax breaks, assist and create infrastructure, predesign CPA-type grant money; TD -- Pittsfield PEDDA / got Mass Development money to help with remediation to prepare for redevelopment, city owns property. TD -- if Town could assist current owner in doing some of that remediation work / assist in getting access to public monies, to make it easier for someone to come in, aside from town actually owning property.

What are next steps we want to have taken?

SL – practical suggestion: letter drafted and send to owner certified mail to have an accurate read on what his interest is in discussing with us; ask GM how done the outreach – send letter. JH-key to connect with owner before we stand in front of people, may know someone who knows the owner, may be able to help with connection.

TD – no community meetings until we hear from the owner.

PK – we can still have background put together. Will get Word document to everyone; please go through it in track changes and send comments to GM.

GM will be at 2/22 meeting for update and next steps.

ANR – Review and vote whether to endorse application for Approval Not Required (ANR) under the Subdivision Control Act for property at 36 Pittsfield Road (Assessors Map 17 parcel 41) [8.11 acres on easterly side of Pittsfield Road – Rte. 7&20 and northerly side of East Dugway Road]; applicant Jason Smegal; owner June F. Hashim Revocable Trust

PK had reviewed tape from Jan. 25, 2022 meeting and summarized facts and questions that came up then, as follows:

- 8.11 acres being carved out of larger lot into a new single lot
 - Largest portion of proposed lot, 4.31 acres, is in the R1A district
 - Remainder of proposed lot, 3.79 acres, is in the C3A district
 - Entirety of proposed lot is in the Gateway Mixed Use Development District.

- Frontage requirement in R1A is 150 ft;
 - Proposal has 432.66 ft. on Rt. 7 and 519.48 ft on E Dugway.
- Frontage requirement in C3A is 300 ft;
 - Proposal has 211.20 ft on Rt 7
 - There is no frontage requirement outlined for Gateway Mixed Use Development District.

Town Counsel Joel Bard (JB), PK and GM had discussed/reviewed; Headline: In plan that was presented and discussed on Jan. 25 there is adequate frontage -- the 432' frontage along Rt. 7/20 in the R-1A zone. Discussion of the issue clarified: TD -- For ANR, there must be "adequate frontage" on an accepted town way, with "adequate frontage" determined by the zone. That is, at least one of the zones has to have the required frontage; as long as it meets the minimum requirement for one zone, it would be a lot in that zone. [Note, we do not know the answer if frontage was split between two zones and neither was conforming for their respective zone; a different question for another day.]

Regarding "limited access" roadway -- JC said she had spoken with JB: limited access road is like the Mass Pike, 7/20 is not a limited access highway.

KMV -- Commercial activity in a residential zone is preexisting nonconforming; PK - Entire parcel is in Gateway Mixed Use Dev District --more liberal in what it allows as long as you're in the district.

Heather Brown -- since last meeting, made some changes requested by the Board and is presenting an updated plan -- rotated plan; relabeled lots (took out those proposed for future development). Also adjusted frontage on C3A, which is now 300 feet. This afternoon also received three recommended changes on plan from JB --- relabel lot 4 to lot 1, remove hatching indicating Gateway District; zoning and remaining land to go on right-, not left-hand, size.

It was recognized that the parcel now has the required frontage in both R1a and C3a.

TD moved to endorse the (updated) Plan (submitted Feb. 3, 2022); PK moved to amend -- recognize that two changes suggested by JB will be made -- gateway zone lines taken off the part on left; part on left will go on right.

Lori Robbins (LR), attorney for the applicant -- asking our Board to endorse this plan that was signed by surveyor as submitted, that he has reviewed and in his opinion sufficient frontage in C3a; applicant does not want to make these changes, Board has recognized they are not necessary. Meets frontage access to a public highway.

TD reaffirmed original motion; PK retracted her amendment; JH seconded TD motion. Roll call PK yes, TD yes, JH aye, SL aye, KMV yes. Plan endorsed unanimously. LR noted that closing scheduled for Thursday; SL, JH, KMV will sign the plan by 10 a.m. Feb. 9.

Minutes –

Jan 25 2022 – TD moved to approve, JH 2nd, KMV minor amendment; roll call TD KMV JH all aye; PK and SL abstain.

Dec 14, 2021 – KMV moved to approve, TD second; roll call vote PK aye, TD aye, KMV aye, SL aye, JH aye

Jan 11, 2022 – KMV moved to approve, TD second; PK TD KMV SL – all aye, JH abstain

DLTA funding for FY2033 –

PK and TD suggested requesting annual DLTA funding to be focused on updating ground mounted solar bylaw since existing bylaw could be construed as effective prohibition. TD -- currently defined as certain KW or larger, technology has come such a long way since original bylaw, can get a higher wattage output on same footprint of land, we had started with a model bylaw; look at updating model bylaw, do mapping, and maybe tier it into small-, med-, large-; look at zoning. KMV -- would be interesting to see what other towns have moved to; first time around was such a learning experience

Niagara Mill document so far – send suggestions on current draft to GM; KMV -- thought first draft was well done, gave us good background; BRPC’s Wiley Goodman excerpted at least three other documents.

Preparation/discussion for meeting with Town Counsel on what we can and cannot do when it comes to regulating Religious & Non-Profit Educational Uses, etc. (Dover Amendment)

- KMV – are signs subject to “reasonable regulations”? If not, can we designate standards anyway that they might be amenable to; TD – is a free-standing sign considered a “structure” – eg “bulk and height of structures”.
- KMV -- If we consider certain things (other similar uses) that are similar as reasonable regulation would that survive a court challenge?
- Recall any issues related to St. Ann’s? TD and KMV – proximity to abutting property line; mechanical equipment that was on top of building (can make a lot of noise); traffic and parking – KMV believes that uses were limited as part of the SP; PK – what are “legitimate community interest”/”legitimate public interest” – does the community have a legitimate reason or concern to regulate something. Mark Bobrowski – yes, town has leg community as interest in regulating parking. SL – test restrictions put on it to prove they are a community interest.
- PK -- RLUIPA – makes it very difficult to regulate?
- KMV – what are we trying to get. The things on the opening page, the two bullets, pretty much encircle the ability to regulate that we have, we’re trying to find ways to kind of smooth out the differences in how we regulate certain types of public assembly vs. religious and non-profit educational, which are widely exempted but can have a lot of impacts.

- PK – draft bylaw now encompasses other types of institutional uses, see line 59 – certain things apply to ALL
- PK -- Is it okay to set up the bylaw the way it's set up
- KMV – are things like nonprofit nature centers, nonprofit etc – are those “exempt educational uses”? TD and PK -- All 501c3 entities – are they all nonprofit educational charitable use exempt? (If so, we can simplify use table)
- KMV – there are a variety of possible uses for large estates in R-districts that might be workable for adaptive reuse. PK - yes, this bylaw is intended to create standards for those types of uses where none may presently exist.
- KMV – existing bylaws are onerous in that most require SP; PK – there are no standards set for these “other such uses” for ZBA to consult.

PK – we can let JB start as he did with subdivisions, he will have narrative; and, if we do have questions in the future he will know where we are coming from.

- KMV – what have other towns done? TD – Stockbridge. PK – started with what was in our bylaw.
- PK – what's reasonable for these things in residential zones; we could go to form-based bylaw, would have to research (need to understand form-based zoning for multifamily housing as well.)
- PK – we could ask the ZBA for their thoughts; SL – what was the process on Cozy Nook property and what concerns did ZBA have in reviewing that
- PK – need to understand what kind of guardrails we can ask for and are they defensible
- TD – when we first started this process – can't do anything more restrictive with underlying zoning was where we've started; PK – we can reasonably request certain things but they must be comparable to other such similar uses – and we don't have any – just a bunch of BA's. KMV – we have a lot of different uses sectioned off. For religious, 200' – markedly out of any comparable range; sheer amount of different uses landed in R zones and language and text (requirements) seems to be all over the map; PK, e.g. Great Estates and Resorts have different sets of standards but as a use, they can be pretty much the same thing. KMV – look at impacts – traffic, larger buildings, what kind of buffers do we want to put around those?

SL – PK in her brief uses language ‘bylaw is illegal’ – PK will correct language, bylaw has been challenged; SL – suggests “parts of it such that it opens the door to litigation.”

- SL – real issue if there are these great discrepancies; hard to get a sense of where the correction should take place or be; not sure you have to have consistency all across the board, but if more restrictive, that's problematic.
- PK – institutional uses in residential districts / be open to adaptive reuse of large estates – but needs to be compatible, not disrupt
- TD – are we making this too complicated?

- KMV – can JB recommend any other towns’ bylaws that work
- KMV – we have all kinds of activities in residential zones across the town, that have resulted in different bylaws, maybe we look at an approach like 50-150 setback depending on # people involved in the activity
- KMV – form based is complicated
- TD – “intensity of use” – PK – maybe a range depending on intensity of use

7:53 adjourned

Respectfully submitted,

Pam Kueber

2/28/2022