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## Planning Board Minutes 05-15-2013

**Mashpee Planning Board  
Minutes of Meeting  
May 15, 2013 at 7:00 p.m.**  
Waquoit Meeting Room, Mashpee Town Hall  
Approved 6/5/13

**Planning Board Members Present:** Mary Waygan, George Petersen, David Kooharian, Joe Mullin, Joe Cummings, Dennis Balzarini

**Also Present:** Tom Fudala-Town Planner, Charles Rowley-Consultant Engineer

### CALL TO ORDER

The Town of Mashpee Planning Board meeting was opened in the Waquoit Meeting Room at Mashpee Town Hall by Mary Waygan at 7:00 p.m. on Wednesday, May 15, 2013 and the Pledge of Allegiance was recited.

With approval of Planning Board members, Mary Waygan moved discussion of Board Reorganization to the top of the agenda.

### BOARD ITEMS

#### New Business

##### Planning Board Reorganization

**MOTION: Mr. Mullin made a motion to open up nominations for Chair, Vice Chair and Clerk. Mr. Kooharian seconded the motion. All voted unanimously.**

**MOTION: Ms. Waygan made a motion to nominate George Petersen for the position of Chair. Mr. Mullin seconded the motion.**

**MOTION: Mr. Petersen made a motion to nominate Mary Waygan for the position of Vice Chair. Mr. Mullin seconded the motion.**

**MOTION: Ms. Waygan made a motion to nominate David Kooharian for Clerk. Mr. Petersen seconded the motion.**

**MOTION: Mr. Mullin made a motion to close nominations. Mr. Kooharian seconded the motion. All voted unanimously.**

**MOTION: Mr. Mullin made a motion to vote in the nominated officials: George Petersen as Chair, Mary Waygan as Vice Chair and David Kooharian as Clerk. Ms. Waygan seconded the motion. All voted unanimously.**

Mr. Mullin stated that he would not run for re-election in May 2014 and expressed his pleasure and honor to serve the residents of Mashpee alongside Planning Board members. George Petersen began chairing the remainder of the meeting.

### APPROVAL OF MINUTES—May 1, 2013

**MOTION: Mr. Mullin made a motion to accept the minutes. Mr. Kooharian seconded the motion. All voted unanimously.**

### BOARD ITEMS

#### Old Business

**Discussion of Greenways Proposal and Surrounding Commercial Property-**Ms. Waygan stated that she would be in contact, by email, with individuals who had expressed interest in the Greenways proposal in order to generate volunteers for the project. Ms. Waygan will also provide Mr. Kooharian with any appropriate contact information.

#### **MMR Military Civilian Community Council/MMR Joint Land Use Study (JLUS)-**

Mr. Fudala reported that the MMR narrowed down topic consideration to wastewater, energy and solid waste. Action points were identified for each topic and Mr. Fudala confirmed that each town was represented.

**Design Review Committee**-Mr. Cummings confirmed that the Mashpee Commons veterinary establishment had been discussed at the meeting and that Blue Castle had been sent back for additional review. Stop & Shop's Pea Pod received a 3-month approval but there were concerns regarding signage and access.

**Community Preservation Committee-**

**Environmental Oversight Committee**-Chairman Petersen reported that the EOC voted to review Falmouth's nitrogen-free fertilizer bylaw.

**Historic District Commission**-There was no meeting.

## **PUBLIC HEARINGS**

**7:10 Applicant: Mashpee Commons, LLC**

**Location: Mashpee Commons North Market Street neighborhood**

**Request: Modification of special permit to allow veterinary establishment**

The appointed time having arrived, Chairman Petersen opened the public hearing and read for the record the public hearing notice. Attorney Mike Ford represented Mashpee Commons. Mr. Ford stated that Mashpee Commons was seeking a modification of the 1993 Special Permit for the North Market Street Commercial Center Complex. At the time, veterinary use was not one of the permitted uses and Mr. Ford was present to seek permission from the Board to allow a veterinary establishment at the North Market Street Commercial Center. Mr. Ford stated that the space was 5,000 square feet and had initially been occupied by Blockbuster Video. The proposed new tenant would operate under the name of Pet Depot as a retail operation, with a veterinary office component run by one veterinarian providing veterinary services. Due to the veterinary services being offered, it was noted that there could be a possibility of an animal staying overnight, in an emergency situation, and that someone would be present at the facility should an animal remain at the site overnight. Mr. Ford stated that, other than signage, there would be no exterior changes. Plans have been reviewed by Cape Cod Commission who has indicated that no further permission would be needed, provided the new use complied with all DRI conditions. Design/Site Plan Review has reviewed the plans.

Mr. Ford referenced #8 in the proposed decision regarding a violation of the current Special Permit Condition #14, requiring that any monitoring reports or annual traffic count report be filed with Mass Highway and with Mashpee's DPW Department. Mr. Fudala located just one report from 1996. Regarding the proposed Condition #6 regarding the issuance of the Occupancy Permit, Mr. Ford requested that "unless this requirement was otherwise waived by Mass Highway or the Planning Board" in case the annual monitoring reports were not created, and therefore could not be reproduced or that were no longer required by Mass Highway.

Mr. Fudala described documents provided to Board members regarding the request. Site plans for the unit were also provided to Board members. Mr. Fudala clarified that the applicant was not requesting an outdoor walk or housing as outlined in Condition #2. Ms. Waygan inquired whether pets would be allowed entrance to the shop and Mashpee Commons Manager John Renz responded that dogs were allowed throughout Mashpee Commons. Mr. Fudala stated that the conditions also required that the applicant apply for a kennel license should animals be sold at the pet store. Mr. Ford confirmed that they would be selling animals.

Chairman Petersen inquired about an attendant for an animal staying overnight and Mr. Ford confirmed that someone would stay if a regular pet patient needed to remain overnight, but that it was not intended as a 24-hour veterinary office. Chairman Petersen inquired about the location of the kennel within the unit in relation to the neighboring units and Mr. Renz stated that a 4 inch thick wall with insulation would be installed. Ms. Waygan inquired whether a restaurant or café would be allowed as a neighboring unit should animals be at the site. Mr. Ford felt there were no Board of Health regulations that would preclude it but food service permits would be reviewed by the Board of Health. Mr. Kooharian inquired about disposal issues and Mr. Renz suggested that the Board of Health likely would handle the issue. Mr. Ford added that the Cape Cod Commission required regular reporting. Mr. Fudala added that the Health Department confirmed that pet waste would be part of solid waste and not a problem. Chairman Petersen inquired about use of the two entrances and Mr. Renz confirmed that they would both be utilized.

There was no public comment. Mr. Fudala read the conditions. Regarding Condition #6, there was discussion about adding "to the extent that said reports exist and are generated in the future" to the condition. There was discussion regarding whether or not the reports were still required. There was agreement that if the reports were still required, Mashpee Commons would be required to continue providing the reports, but that past reporting could not be recreated. Mr. Ford indicated that he would follow up with Mass Highway.

**MOTION: Mr. Balzarini made a motion to close the public hearing. Ms. Waygan seconded the motion. All voted unanimously.**

**MOTION: Mr. Balzarini made a motion to accept Modification #4 with the changes to Condition #6. Mr. Kooharian seconded the motion. All voted unanimously.**

**7:20 Applicant: Bayswater Seaside II, LLC / Bayswater Development, LLC**

**Location: 108 - 116 Shore Drive West, Assessors' Map 132, Blocks 7, 8, 10, 11 & 38**

**Request: Approval of Definitive Plan for 17 lot "Oceanfront" subdivision (Continued from 5/1/13)**

Chairman Petersen opened the public hearing and immediately continued the public hearing until opening and continuing the next public hearing.

**MOTION: Mr. Mullin made a motion to continue the public hearing.**

The Chair reopened the public hearing and read the public hearing notice. Tom Bunker of BSS Design represented the applicant along with Joe Colasuonno, Project Manager at New Seabury. Mr. Bunker indicated that he had submitted letters to waive the requirement for a sidewalk because it would be out of character for the street, as well as a waiver for street lighting because the houses would be close to the road with a post light and house lighting. The additional waiver would be from the nutrient reduction requirement because the subdivision would front Nantucket Sound where nitrogen would not impact a water body. Mr. Bunker referenced small bio-retention basins that were added to the plan and described three sets of catch basins.

Mr. Bunker referenced Mr. Rowley's list of comments and addressed many of the concerns. Mr. Bunker indicated that the bank and highwater mark were located on May 1 and added to the plan. Mr. Bunker indicated that the small triangular piece of 1697 was adjusted and added to Coastline Drive allowing improved emergency access. Regarding the test pits, Mr. Bunker indicated that work had been completed over the years and a perk test at Popponesset showed that the groundwater highwater elevation was at 2 and that the lowest leaching pit was 7 feet above.

Ms. Waygan expressed concern about the nutrient waiver and Mr. Rowley stated that it would take more than what was shown on the plan to be compliant. Mr. Rowley stated that there were 2 small swales in the south, 2 small swales in the access easement area and 2 catch basins near the north end. Mr. Rowley stated that the Subdivision Regulations did not address whether there were sections of town where the regulations would not apply. Regarding groundwater, Mr. Rowley indicted that the test pits had fill showing and suggested that a condition require that suitable tests be conducted during construction to address the depth of fill, to ensure a good soil profile at the bottom of the system and to determine whether a strip-out of poor material would be needed in the leaching portion of the structures. Mr. Rowley recommended the Board review the waiver for the stormwater. Regarding the street light waiver, Mr. Rowley indicated that post lights at each dwelling could be considered as a substitute. Mr. Rowley indicated that all other issues had been addressed in Mr. Bunker's letter.

Mr. Bunker indicated that the houses would be tied into the sewer system and would not flow to a constrained water body. Mr. Fudala stated that the Zoning Bylaws and Subdivision Regulations were designed to protect the three bays, adding that the project would be located in the "golden triangle" where nitrogen would not be a problem. Mr. Rowley suggested that the Board may wish to consider placing a notation in the Regulations showing that nitrogen would not be an issue in respect to coastal waters and that waivers may be granted for a nitrogen type system. Mr. Rowley also recommended not referencing the Board of Health in the waiver related to nitrogen or septic systems because it was not under the purview of the Planning Board. Chairman Petersen suggested acquiring documentation from a hydrologist confirming that groundwater flow would not be an issue in that area, in order to support the Planning Board's decision. Ms. Waygan inquired whether it was in writing that the homes would be connected to a wastewater treatment plant and Mr. Fudala confirmed that the sewer plans were provided. Chairman Petersen inquired about the lighting and Mr. Colasuonno confirmed that the lighting would be on timers. Ms. Waygan inquired whether Tidewater's concerns had been addressed and it was suggested that they had been addressed.

Members of the public were invited to address the Board. Abutter Sergei Liev inquired how residents would access the beach without sidewalks and Mr. Bunker responded that residents would walk on the shoulder of the road, adding that the road would be short and a slow speed. Mr. Colasuonno added that the area would be a gated community for 16 homes on the water and would feature a low volume of traffic. There was discussion regarding access through lot 1699 where a gravel roadway would be located with a set of stairs accessing the beach during the season. Chairman Petersen inquired whether vehicles could drive on the roadway and Mr. Bunker confirmed that it was the emergency access for Tidewatch and beach nourishment. The Chair expressed concern about cars parking in the roadway or dropping off beachgoers. Mr. Colasuonno stated that parking would not be allowed on the roadway. There was discussion about a weak fence that would be installed to allow emergency access. Mr. Liev inquired about the vegetation on the coastal bank and Mr. Colasuonno stated that the issue would be addressed by the Conservation Commission when the buildings were built. Mr. Bunker stated that currently there was no vegetation.

There were no additional comments.

**MOTION: Finding that there are no sidewalks along the streets in any neighborhood in New Seabury, Ms. Waygan made a motion to waive the Mashpee Subdivision Rules & Regulations Section 8L-Sidewalks. Mr. Balzarini seconded the motion. All voted unanimously.**

**MOTION:** Ms. Waygan made a motion to waive the Mashpee Subdivision Rules & Regulations Section 80-Street Lighting, finding that there are generally no streetlights in New Seabury and that the homes in this neighborhood will have a post light at its driveway, which will be on a photo sensor year round. Mr. Kooharian seconded the motion. All voted unanimously.

**MOTION:** Mr. Balzarini made a motion to waive the Mashpee Subdivision Rules & Regulations Section 8J1 & 5 for nutrient reduction in the area since the groundwater in this subdivision flows directly into Nantucket Sound and that the houses are on a sewer system. Mr. Mullin seconded the motion. All voted unanimously.

Mr. Balzarini made a motion to amend the motion to have it supported by the project proponent to show that the groundwater in the area is discharging into Nantucket Sound. Mr. Mullin seconded the motion. All voted unanimously.

Documentation must be submitted prior to the signature of the plan.

**MOTION:** Mr. Balzarini made a motion to close the public hearing. Mr. Mullin seconded the motion. All voted unanimously.

**MOTION:** Mr. Balzarini made a motion to approve the Definitive Plan for 17 lot Oceanfront Subdivision, as presented and subject to conditions to include; at the time of construction suitable soil tests shall be done to address depth of fill and suitable soils, to require a 5 foot strip-out that may be needed and to confirm the depth of suitable soils to a minimum of 3 feet below the bottom of each system. Mr. Mullin seconded the motion. All voted unanimously.

A brief recess was taken.

**7:40 Applicant: Southworth Mashpee Properties , LLC**  
**Location: Simons Road / Fin' Me Oot / Willowbend Drive**  
**Request: Approval of definitive subdivision plan modification. (Continued from 5/1/13)**

**7:40 Applicant: Southworth Mashpee Properties , LLC**  
**Location: Simons Road / Fin' Me Oot / Willowbend Drive**  
**Request: Approval of Special Permit Modification of site plan for 40 condominium units (Continued from 5/1/13)**

The appointed time having arrived, the Chair opened the public hearing and immediately continued the public hearing to return to the previous public hearing.

**MOTION:** Mr. Mullin made a motion to continue the public hearing. Mr. Balzarini seconded the motion. All voted unanimously.

The meeting was reopened at 8:40 p.m and Chairman Petersen read the public hearing notice. Jack McElhinny, attorney for Willowbend Country Club, stated that confirmation had been received from the Fire Department about the plan and engineering and construction details had been addressed. Mr. McElhinny confirmed that the approved Town Meeting Warrant Articles authorized the relocation of Simons Road and new easement. Mr. McElhinny reported that the applicant had re-filed a variance application with the Zoning Board of Appeals regarding the altered orientation of one of the buildings.

Mr. Fudala referenced the draft decision. Chairman Petersen recommended a date change on page 2 from March 6, 2013 to March 6, 2013. Mr. Fudala recommended review of the findings, such as the well irrigation near Santuit River. Mr. McElhinny referenced Condition #3 and suggested that the wording be changed to one proposed building rather than three buildings since the variance was being sought for only one of the buildings. It was determined that the wording was acceptable because the applicant was already in possession of a variance for two of the buildings. Mr. Fudala read Finding #6 and there was discussion about making the variance singular in the text. Mr. Fudala noted that a name was needed to connect Simons Road with Willowbend Drive and Mathew Road was selected. Mr. Fudala also read Condition #6. Mr. Rowley provided a letter and recommended that soil tests occur at the time of construction and referenced in Condition #5.

There were no additional comments.

**MOTION:** Mr. Balzarini made a motion to close the public hearing on Simons Road/Fin' Me Oot. Mr. Mullin seconded

the motion. All voted unanimously.

**MOTION: Mr. Mullin made a motion to approve Special Permit Modification of Site Plan for 40 condominium units subject to the changes described in Part III in chronology, under Findings point #6 3-story variance, as to has. Mr. Balzarini seconded the motion. All voted unanimously.**

**MOTION: Mr. Balzarini made a motion to close the public hearing of Southworth Mashpee Properties, LLC for approval of definitive subdivision plan modification. Mr. Mullin seconded the motion. All voted unanimously.**

**MOTION: Mr. Mullin made a motion to approve the definitive subdivision plan modification. Mr. Balzarini seconded the motion. All voted unanimously.**

Mr. Rowley inquired about the issue of the covenant and Mr. McElhinny responded that the covenant was not on the existing plan and that he will submit a form of release for the prior covenant. Planning Board members signed the decision.

## **BOARD ITEMS**

### **Old Business (continued)**

**Discussion of Zoning By-law Section 174-45.B. regarding definition of “private wastewater treatment plant” and potential amendment of Section 174-25.1.2. regarding maximum building footprint in C-3 zoning district-**Ms. Waygan indicated that the discussion was in reference to a lot located at Route 151 and Old Barnstable Road. Mr. Mullin made a motion to table the discussion but Ms. Waygan expressed interest in hearing from Mr. Fudala. Ms. Waygan stated that it had previously failed at Town Meeting and that she had heard there still was no support for it. Mr. Fudala indicated that Southport did express interest. It was suggested that it previously failed due to a height issue. Ms. Waygan summarized that the Town had been approached two times to develop an assisted care facility at the location. Mr. Fudala stated that the previous zoning change would have allowed a 3-story building and the ability to exceed 20,000 square foot, but Mr. Fudala noted that the new proposal would not be a 3-story building. Ms. Waygan suggested that, since it failed previously, some sort of a workshop should be provided to address questions and concerns prior to a Town Meeting vote. Ms. Waygan expressed interest in learning more about viable options for the site. Mr. Fudala stated that a public hearing would allow conversation about the proposal. Mr. Fudala also noted that the 3<sup>rd</sup> party interested in purchasing the property would be reluctant without knowing how the Planning Board would interpret the zoning bylaw related to the wastewater treatment plant issue and whether the Board would submit a zoning bylaw relative to the 20,000 square feet. Ms. Waygan stated that there was resistance to a facility larger than 20,000 square feet and indicated that she would be interested in knowing why the facility would need to be larger than 20,000 square feet. The Chair agreed that a full explanation would be needed prior to drafting an article. Mr. Balzarini recommended offering a workshop. Mr. Fudala indicated that he would invite the project proponent to attend a Planning Board meeting to share their concept. Mr. Rowley pointed out that a change in square footage would not be specific to one applicant and recommended that discussion center around whether increased square footage would be appropriate for that zone. Mr. Fudala noted that the parcel was Natural Heritage, requiring 70% of it to remain as open space. Mr. Fudala also noted that the property was split into five parcels that could result in five individual businesses, as compared to the one project with reduced traffic and lower impact. Regarding possible buildout of the property, Mr. Fudala stated that there could potentially be five, 2-story, 20,000 square foot footprint buildings compared to a less than 50,000 square foot structure. There was also discussion regarding whether an IA system could be considered a plant and the possibility of changing the wording in the bylaw from plant to system. Chairman Petersen cautioned against changing wording without considering impacts to future requests and potential systems.

### **New Business (continued)**

**C. Rowley Expense Vouchers-**No invoices at this time.

**Town Owned Land & Proposed Uses-**Ms. Waygan pointed out that the Article did not pass and reported that there was discussion regarding the possibility of dividing the land among a variety of uses to include affordable housing, conservation and sale of land. Ms. Waygan recommended that the Planning Board review the parcels to provide comment. The Chair suggested that attendees at the Town Meeting seemed interested in reviewing each parcel individually. Ms. Waygan has reached out to the Chair of the Affordable Housing Committee, Selectman Tom O’Hara and Beverly Kane and will continue to work on the issue and meet with the Affordable Housing Committee.

## **WATERWAYS LICENSES**

-Kathleen A. Impey, 90 Captains Row, construct and maintain a wooden pier, ramp and float in Popponneset Bay

## **CORRESPONDENCE**

-WhiteWater, Inc. – SouthCape Village WWTP March 2013 report N=5.6 mg/l

-Barnstable Planning Board, Zoning Hearing Notice re: amendments to Personal Wireless Communication by-law

## **ADJOURNMENT**

**MOTION: Mr. Balzarini made a motion to adjourn. Mr. Mullin seconded the motion. All voted unanimously. The meeting adjourned at 9:15 p.m.**

Respectfully submitted,

Jennifer M. Clifford  
Board Secretary

**LIST OF DOCUMENTS**

- Planning Board Decision/Mashpee Commons, North Market Street Project, Modification #4
- North Market Street Plan
- Minutes of 5/7/13 Design/Plan Review Meeting
- Email from Jonathon Idman, Cape Cod Commission
- 1996 Traffic Monitoring Program from HTSD
- Bayswater Development, LLC Plans
- Thomas Bunker, BSS Design, Waiver Requests
- Board of Health 5/9/13 Email Regarding Bayswater
- Mashpee Fire Department 5/1/13 Email Regarding Bayswater
- Charles Rowley 5/9/13 Letter Regarding Bayswater
- Thomas Bunker 5/13/13 Letter Regarding Charles Rowley's Review of Oceanfront/Bayswater
- Planning Board Decision/Willowbend Special Permit, Modification #29
- Charles Rowley 5/7/13 Letter Regarding The Village at Willowbend
- Minutes of 4/16/13 Design/Plan Review Meeting
- Baxter Nye, The Village at Willowbend Plans