

Planning Board Minutes
February 6, 2018

Present: Chairman Pitney, Member Slosek, Member Raftery, Member Pearce, Vice-Chair Fletcher, Member Talbot, Member Sauer and Jennifer Carmichael Secretary. Also, attending the meeting were many town residents.

Chairman Pitney opened the meeting and asked for a motion to approve the January 16th minutes. Member Slosek moved to accept the minutes and Member Fletcher seconded, the vote was: Chairman Pitney – Yes, Member Slosek – Yes, Member Raftery – Yes, Member Pearce – Yes, Member Fletcher – Yes, Member Sauer – Yes, Member Talbot – Abstain, the motion carried.

Chairman Pitney asked for the Clerk, Member Pearce, to read the public hearing notice and to explain her handout describing the process to change a bylaw. Member Fletcher followed with a history/timeline of the Cottage Era Estate bylaw changes.

Attorney Jonathan Silverstein represented 35-37 Interlaken Road property and presented the proposal for the Cottage Era Estate Bylaw change. He explained 1 ½ years ago they had submitted a proposal, since then they have tried to engage in public outreach and various town boards and committees. It became clear they were not going to be able to have a dialog or negotiations with the Select Board or the zoning bylaw review committee prior to the deadline to submit a bylaw change, their proposal, in time to be considered at the Town meeting. They are following the process required by state law to propose a bylaw change. Zoning at this point would not allow the development project that Mr. Sheehan is working on; the present bylaw contemplates the development of 80 acres and his project for the 320 acres would be different. Presently the bylaw allows for one hotel and one single-family dwelling and is not economically viable. A change in the bylaw is necessary for his development proposal to move forward. The proposal would allow a resort hotel-condos and residential component desired and allow agricultural development. The residential component (the resort condominiums and the 34 single-family homes) is the real change to allowed uses. It will allow for single family homes to be clustered to preserve open space, detailed site plan review and allows Planning Board to impose conditions. At present the allowed density is one single family home for every acre dedicated to single family use and one unit in the resort condominium for every acre of land dedicated to that use. In their proposal they do not intend to double count the acreage for both the resort-condo and single-family dwellings. Atty. Silverstein read directly from the proposal, section 6.6.4.2 and subsection (b). The resort component is basically what is currently allowed in the present bylaw. Site plan review is meaningful; a regulatory process established to set forth the criteria for approval of a development, site plan goes through a detailed review and is typically done by the Planning Board. It confirms that the development satisfies the requirements and serves the purpose of the bylaw. Require significant submission of plans, analyses regarding water usage and other utilities. The Planning Board can request at the owners expense a peer review consultant for any issue that they feel an independent consultant could give input on. A site plan review does not give unlimited discretion to a board to approve or deny a project. A special permit can be denied for essentially no reason as long as the board does not act arbitrarily

or capriciously even if the applicant meets all the standards/requirements set forth in a bylaw. The purpose of site plan review approval is to determine whether or not the plan can be approved while still protecting the Town. The discretion of the Planning Board is to approve with conditions to address any impacts that the proposal will have. Only if there aren't conditions that can address those impacts is the Planning Board entitled to deny. Should a review board have unfettered discretion to deny whether or not there are negative impacts and whether or not those impacts can be addressed through conditions or should the ability to deny the project be limited to whether or not the negative impacts if any can be addressed through conditions. They will still seek approval from conservation, water and sewer, historic preservation, fire department and any other boards or officials. They are prepared to make changes.

Attorney Richard Dohoney representing several of the neighbors in the Interlaken Road area regarding the proposed bylaw spoke, citing legal and procedural defects. The proposal is not consistent with existing bylaw as it does not meet the goals and purposes the Town originally had or has for a zoning ordinance. The Town's purpose clause is one of the best purpose clauses he has ever read as it truly meets what he feels Stockbridge to be. Several meetings he attended had to do with money, all the economic benefits. He expressed that you can have this type of large development with a special permit process. Special permit is the only tool that the state legislature gave to communities. Site plan review does not appear in Massachusetts state law Chapter A, it is something communities have created. This ordinance will not just cover the Interlaken Road project but an ordinance that will cover the entire town. This should be done by planning professionals. A responsible review of the ordinance will lead to a consideration of the zones. Stockbridge is unique as the zoning map has gone through very little changes. This will change the character of the neighborhood it will not be fair to the entire Town as it will ruin the character of this town.

Member Pearce read two letters sent in regarding the proposed bylaw change, one from Barney Edmunds on Old Stockbridge Road and a second from the Andrea Abramowitz living in the Mahkeenac Heights area on Housatonnuck Road.

There were several from the audience who spoke both for and against the proposed bylaw change to the Cottage Era Estate.

Chairman Pitney invited the Planning Board to ask questions. Member Fletcher asked Mr. Silverstein what specifically 37 Interlaken wanted to do that they could not do under our current bylaws. Atty. Silverstein answered that the resort condominiums would not be allowed nor would the single-family homes. Under the current bylaw, only a hotel and one single-family home is allowed. Vice Chair Fletcher asked Atty. Silverstein additional specific questions with regard to the 37 Interlaken proposed bylaw and its ramifications. As an example, she asked about 6.6.6, commenting that the wording seemed brief and vague. Reading from the proposed bylaw, she asked if the wording puts developer attorneys in an excellent position to challenge any Planning Board decisions as being "unreasonable" and places the Town in a difficult legal position if they threaten litigation. Asked to comment, Atty. Ray Miyares (town counsel) said he was not sure what appeal process was intended in this bylaw, assuming an appeal would be appealable to land court or superior court. At that point in the site plan approval decision, the court would undertake to hear from witnesses and provisions in the proposal and the court would

make a new judgement as to whether the conditions imposed are appropriate. This would be costly to the Town.

Member Sauer felt the proposed bylaw had become the project. motioned to reject the current proposed bylaw at the Town meeting and as a board do nothing to change our existing bylaw and the Board would take it up at a later date. Member Fletcher seconded. Chairman Pitney asked to let all on the board who wanted to speak be allowed before a motion was made. Member Sauer agreed.

Member Pearce had questions; returning to the actual substance of the proposed bylaw and questioned why the site plan review should be in front of the Planning Board instead of the Select Board and the request not made to transfer the special permit process to the Planning Board. She felt the scope of the project was broadened by this bylaw amendment. Things like the effective date of when someone had to hold the property to be qualified under the bylaw had been taken out, allowing other property owners combining land to qualify to be a cottage era estate and then have the by right option to build large hotels. She asked if we would be creating a new zoning district of R-3, there is no bylaw considering a R-3 district and is worried property owners could request to be in R-3 instead of one of the zoned areas we have now. She felt it also removed any reference to affordable housing, which may not be included in the bylaw at this time but was mentioned in the last cottage era bylaw amendment which did not pass. She felt it was too vague at the moment, that the full implications were not clear.

Atty. Silverstein mentioned that this project had received a lot of public vetting. We feel the property fits the original definition of the bylaw and we can certainly remove some of the uncertainty. They would like to keep the public hearing open; mentioning this is the work we have been trying to do all along, to have meetings with Town Boards. If this isn't the exact bylaw to bring, we are open to this kind of discussion with Town Boards. We did come to the zoning bylaw review committee and were told we would have to wait through the 2 to 3 year process.

Member Pearce asked about dividing the property, one piece with the cluster housing and the other with the resort hotel. Atty. Silverstein mentioned the current bylaw states that the resort/hotel has to be on 75% of the property. Member Pearce felt that would require a change in one component of the bylaw. The current bylaw does not allow for any of the hotel-condos to be built.

Member Slosek felt we need to have a discussion, if there is a way to help the process happen we need to have that discussion, we have a problem with our governance that this seems like an all or nothing proposal, the project being the elephant in the room, he wants to see a way forward where there is a vehicle to have a discussion, have some negotiations, and not just throw everything out. There are benefits to this project, we need to look at it closely. He wants to hear from the neighbors, if there is a way forward, if there is a portion that they would approve or is it just that you do not want to see anything there. I want to have that discussion and not end this with a denial of the proposed bylaw. He is not sure we have done such a good job of preserving Stockbridge where we haven't strangled ourselves into a place where this type of project becomes undoable or unmanageable in a way we can't see away forward. He wants to see a discussion happen where this is not all or nothing.

Vice Chair Fletcher said the proposed bylaw amendments move control of large developments that will have the greatest impact on the future of Stockbridge from the Planning Board and Select Board to developers. She keeps the best practices of zoning in the forefront always. We have a central downtown and rural outskirt and this is part of our economy.

Member Talbot felt 25 years ago when he was a selectman, this is a large project, the Select Board would not have even considered it. He loves his property and if a project like this happened across the street from him he would question if this is the same town he came to love 65 years ago. He felt it important for Stockbridge to have its guardians and urged us not to change anything. The people he knows do not want to change very much and do not want to change the culture of Stockbridge. He called the vote.

Member Raftery felt it worth a try to come together with Mr. Sheehan and try to make something that we can all work with. It sounds like they are willing to work with us and we as a board need to try to find something on the property that is going to be workable for them and for the Town. Eventually something will happen to that property. We need to get a bylaw we can work with, they have some good ideas, they have worked hard to make something of this and they are not out to ruin our Town. It is worth the effort to try; the neighbors have said they are not against everything. We should not say no we can't do it or have it open for them to take over the town. Get to a place that works for all of us. One of the things we can recommend is recommend to accept the proposed change with amendments.

Member Slosek brought a concern with the regard to having a protection in place. He noted that this proposed bylaw would be retroactive to properties that had already been ruled on. He would like to see a way forward and does not want this to be the end for this potential project which could be beneficial to the Town.

Chairman Pitney asked for a motion to close the Public hearing; Member Sauer motioned to close the public hearing and Member Pearce seconded and the vote was: Chairman Pitney – Yes, Member Slosek – Yes, Member Raftery – Yes, Member Pearce – Yes, Member Fletcher – Yes, Member Talbot – Yes, Member Sauer – Yes, the motion carried.

Chairman Pitney thanked all for their comments, having a civil discussion with different points of view. Mentioning a few names of past board members, that we are citizen planners, with guidance from our master plan and bylaws, we perform our due diligence to interpret and maintain the character and values that we have come to cherish in Stockbridge. To have someone come into town and attempt to subjugate and undo all these years of history, stewardship, and caretaking of our town with this proposal, he urged citizens when it comes to the May Town Meeting to vote this revision of the bylaw down.

Member Pearce offered an amendment to Member Sauer's motion. Do not accept this amendment to the bylaw as proposed but to create a forum to have further discussions either with this bylaw or something else that could happen on the site. She wants discussions before the Town Meeting and would like to see more of the Planning Board members involved and not just the people who are involved with the Zoning Review Committee. Member Sauer said she would not accept that amendment.

Chairman Pitney asked Member Sauer to reiterate her motion which is now on the table; she did this, her motioned was to reject the current proposed bylaw at the current meeting and as a Board do nothing to change our existing bylaw and to take it up at a later date also saying it is too

confusing to add amendments, Chairman Pitney seconded it and the vote was: Chairman Pitney – Yes, Member Slosek – No, Member Raftery – No, Member Pearce – No, Vice Chair Fletcher – Yes, Member Talbot – Yes, Member Sauer – Yes, the motion carried.

Member Fletcher commented that the Zoning Review Committee is committed to having forums and is the logical place for such a discussion. They are reviewing all the bylaws.

Member Pearce asked in the Planning Board Report that the Zoning Review Committee look at this bylaw as a priority rather than 2 years from now.

Member Pearce made a further motion that the Planning Board as part of their report, recommends that Zoning Review Committee reviews the Cottage Era Estate Bylaw and, that they make it a priority before the Town Meeting in May, Member Slosek seconded.

Member Fletcher made a motion for Planning Board members to reconsider their prior vote Member Pitney seconded. Member Pearce made a motion that the Board recommend to the Town Meeting that they reject the amendment as proposed and that in the report the Planning Board ask the Zoning Review Committee to review the Cottage Era Estate Bylaw as the highest priority, Member Slosek seconded and the vote was: Chairman Pitney – Yes, Member Slosek – Yes, Member Raftery – Yes, Member Pearce – Yes, Member Fletcher – Yes, Member Talbot – Yes, Member Sauer – Yes, the motion carried.

Chairman Pitney motioned to adjourn and Member Fletcher seconded, the vote was Chairman Pitney – Yes, Member Slosek – Yes, Member Raftery – Yes, Member Pearce – Yes, Member Fletcher – Yes, Member Talbot – Yes, Member Sauer – Yes, the motion carried.

Respectfully submitted by,

Jennifer Carmichael, Secretary