

PLANNING BOARD MINUTES  
MEETING OF SEPTEMBER 28, 2005

A regular meeting of the Lexington Planning Board held in the Selectmen's Meeting Room, Town Office Building, was called to order at 7:30 p.m. by Chairman Manz with members Harden, Galaitsis, Hornig, Canale and planning staff McCall-Taylor and Schilt present.

\*\*\*\*\* ZONING INITIATIVES \*\*\*\*\*

Inclusionary Housing: Members of the Lexington Housing Partnership (LHP) were in attendance to present a draft of an amendment to the Zoning Bylaw pertaining to requirements for affordable housing. The LHP has retained planning consultant Philip Herr to facilitate development of an inclusionary housing bylaw amendment. Mr. Herr gave an overview of the draft amendment, stating the initiative would fulfill goals in the Comprehensive Plan to provide housing for households with a diverse range of income levels. While inclusionary initiatives are becoming common in Massachusetts in response to state requirements for affordable housing, this bylaw takes the initiative a step further to ensure social diversity and equity in Lexington by providing housing that is affordable for people in between low- and high-income levels.

Mr. Herr noted that there are not many properties left in Lexington to accommodate large-scale development, and in order to achieve a greater number of affordable housing units the regulations need to be applicable to smaller projects. Applying a requirement based on a fixed percentage of housing units in a development often results in a fractional unit. While other communities round off the fractional unit to the nearest whole number, this bylaw allows units affordable to those with incomes higher than eighty percent of the area median income to count as a fractional unit. It provides units for households that earn up to 140% of the area's median income level, which is still below the market rates in Lexington. The process is less cumbersome for developers, as it provides alternatives for them to sell or rent affordable units to households with higher income levels and recoup some of the costs to provide the affordable units. The bylaw addresses concerns about administering what could be a rather complex program given the number of smaller development projects in town. Members of the LHP noted that the intent is for the Planning Board to sponsor the bylaw amendment at Town Meeting, but the LHP will advocate for the measure and assist the Board with any work needed to complete the proposal.

The Board stated their appreciation for the work of the LHP, and added that this proposal allows the town to control its destiny and keep abreast of the 10% affordable housing requirements under Chapter 40B. Mr. Galaitsis stated that he would like to see a mechanism to make more units qualify for the Town's inventory under Chapter 40B. Mr. Herr noted that the requirements fit into a greater array of what the Planning Board oversees, and it broadens access for housing for people that are priced out of the market because they earn too much to qualify for affordable units. He further added that the regulations are a good device to meet the town's goals, but should not be the only means to reach the end. Mr. Galaitsis replied that while he agreed that the bylaw would not be the only means necessary, he still had concerns that this may have a negative impact, citing the example of the cluster development that allows more units, which would raise the denominator used in calculating the percent of subsidized housing units so he would rather see a conventional development.

Mr. Herr stated that most communities provide a density bonus in exchange for inclusionary housing requirements but this bylaw does not. Both Town Counsel and the Attorney General's office gave informal opinions that not providing a giveback, such as a density increase, could be defensible if challenged.

Ms. Manz asked if the bylaw would be a way for the Board to ask for more affordable units when reviewing cluster subdivision proposals. Mr. Harden noted that the proposed bylaw is intended to be the affordable housing requirement for such a cluster proposal, thus providing the Board flexibility to negotiate other benefits that should be provided with new developments. Mr. Hornig stated that it does

give the option to require more affordable units as a public benefit if the Board felt it appropriate and desirable. Mr. Harden stated that this was not what the LHP intended, rather the bylaw would stipulate what level of affordable units are required. Mr. Canale stated that the process of determining the density in a cluster is related to the impact measurements for conventional subdivisions and that a density bonus would provide more housing units than would regularly be allowed. Mr. Galaitis stated that the number of affordable units resulting from smaller subdivisions would give more units that are attainable to a range of incomes, but would not provide enough affordable units according to Chapter 40B standards. Mr. Canale noted that the overall need is to address the requirements of Chapter 40B at the state level in order to enable greater options for towns under their rules and regulations.

Ms. McCall-Taylor said that the Comprehensive Plan has as a goal the provision of a range of housing attainable to diverse income groups, and asked the Board if there would be support to use this bylaw to achieve that goal. Ms. Manz stated that she supports the bylaw, but would like to do more to provide more affordable units. Mr. Harden noted that recent small cluster subdivisions have not resulted in any affordable units, and this bylaw provides a significant public benefit by getting units that are at least attainable. Mr. Hornig stated that his goal is to get a range of units for all income levels, that this bylaw fulfills that policy, and that the bean counting rules under Chapter 40B should be a secondary provision when considering the merits of this bylaw. Mr. Galaitis concurred that the bylaw does provide public benefits, but he does not want to miss the opportunity to get more affordable units.

Mr. Hornig inquired whether the bylaw would be more effective under Section 47 of the Zoning Bylaw in order to keep the flexibility for cluster subdivisions and raise the bar for conventional subdivisions. Mr. Canale disagreed, adding that this should be the baseline for all developments, and that in clusters the flexibility is needed to negotiate benefits other than affordable housing; these requirements should be the minimum and should not be able to be waived if it becomes a subject for negotiation in cluster developments. Mr. Hornig stated that there is a lot that the Board can waive in cluster subdivisions and that he would prefer to see more flexibility in the rules. Mr. Herr stated that in his experience with Lexington he has seen achievements in negotiating for affordable housing vary with the board membership. He further added that developers would see this as a burden, and if it is embedded in the rules it will apply to everyone and not become a trade-off in some projects and not apply to others; the regulations should be non-negotiable. Mr. Galaitis added that he agreed that the bylaw should apply to all subdivisions requiring a special permit.

Mr. Hornig stated that the bylaw should not apply to developments in the RD and CD planned developments districts; Town Meeting should have flexibility to determine affordability requirements for those projects. Mr. Canale stated that the Planning Board's recommendations should be consistent to Town Meeting on rezonings. Mr. Harden noted that the bylaw sets a clear standard and threshold to apply to all developments, and if it is not clear then it becomes negotiable.

Mr. Hornig stated that the section of the bylaw related to dispersion of the affordable units needs more flexibility pertaining to the location and size of the units; this would be hard to attain in smaller projects. Mr. Canale noted that it should be up to the determination of the special permit granting authority to evaluate the size and location of units on a case-by-case basis. Mr. Hornig stated that the bedroom mix of the affordable units should not always be the same as the market rate units in the development. Mr. Herr stated that they shouldn't have to be, and that he could revise this section with better language.

Mr. Hornig asked if there were alternatives considered to allow provision of a fee in lieu of providing the units on-site. Mr. Canale added that this would be difficult to manage, and that there should be clarification as to who should be responsible to provide the units off-site and how they would be developed. Mr. Herr noted that there were provisions for a developer to provide the affordable units off-

site. Mr. Galaitsis stated that there should be flexibility for smaller developments, but if the development includes a large number of units, the affordable units should be required on-site to maintain diversity in the development. Mr. Canale suggested that there should be provisions to require a time schedule for when the affordable units would be required to be built, a responsible party to ensure that they are built, and clarification about what the special permit granting authority should expect when approving projects where the units are provided off-site. Audience member Todd Cataldo asked whether it would be feasible to allow developers the option to purchase condominiums elsewhere in town in order to provide the affordable units. Ms. McCall-Taylor stated that this could be allowed by the special permit granting authority in special circumstances. Mr. Galaitsis cautioned that this could create ghettos of affordable units. Mr. Cataldo stated that at current market rates, ghettos would not be created where families earn over \$100,000 a year but can't afford market rate units. He further noted that landowners would be impacted by these requirements, not the developers, as the owners will get less money for their land.

Ms. Manz asked how the LHP felt about the concept of allowing developers to purchase existing units elsewhere in town. Bob Bicknell, chair of the LHP, stated that the intention was not to get money to buy units but rather to see the units created. Mr. Canale stated that getting money from developers may not enable the creation of more housing units, and could potentially sit in a fund somewhere until the responsible entity finds affordable land to purchase and then develop the new units. Mr. Galaitsis stated he was concerned that purchasing units that are currently attainable to provide units that are affordable is not consistent with the town's goals. Mr. Hornig added that he would expect that in most conventional subdivisions the preference would be to provide the units off-site in order to get higher market rates with the sale of the units. Mr. Herr noted that scattering the units throughout the town was not necessarily a bad idea, and might actually make a better use of the current housing stock. Mr. Harden suggested that there be a subtle revision to the bylaw that states the preference is that the units are expected to be provided on-site but that it would be negotiable. Mr. Galaitsis stated that he would prefer to see provisions for creating units off-site to save ranch houses from being torn down and replaced by larger homes.

Mr. Canale asked what was meant by the term site approval agency, and Mr. Herr replied that it had been corrected to mean subsidizing agency.

Mr. Harden inquired whether the requirement to match the number of bedrooms of the affordable units was too rigid, and if it met the housing needs in town. Mr. Hornig added that units with three or more bedrooms had been resisted due to the fiscal impacts of school-aged children. Mr. Herr explained that the demand in the suburbs for subsidized units of three or more bedrooms has declined, and it is a question of what is being expected of the developers; the market may want smaller units. Ms. Manz added that she felt there should be requirements for units that would be developed on-site, and flexibility for units built off-site. Mr. Cataldo stated that it is more economical for developers to provide the units off-site, and the bylaw would have a better chance of being approved at Town Meeting if it had that provision. Mr. Harden noted that off-site dispersion of the affordable units might be more desirable. Mr. Hornig stated that off-site units might not be desirable if they all end up in one place, such as Emerson Gardens. Mr. Galaitsis suggested that if off-site affordable units are provided, the requirement should be for the number of bedrooms to be comparable to those in the market rate units.

Mr. Harden stated that the market is not changing that much, and that developers of recent cluster subdivisions of eight to ten units have not asked for the option to build the affordable units requested by the Board off-site; this may be different in the case of subdivisions with a fewer number of units. Mr. Herr added that there might be some discomfort level for people that qualify for the affordable units living in neighborhoods of larger houses in terms of social stratification. Ms. McCall-Taylor asked how the bylaw would apply to accessory units, and if providing the units off-site would add to the number of

units allowed in the subdivision. Mr. Cataldo suggested that there be provisions to allow for which units can receive a certificate of occupancy prior to the provision of the affordable units, perhaps allowing the affordable units to be provided later in the construction process.

Mr. Hornig inquired what Section 44b was intended to achieve, and Ms. McCall-Taylor replied that it was added to avoid segmentation of projects to get around the requirements. Mr. Galaitis asked how Table 4 in the appendix applied to the regulations. Mr. Herr stated that it was an example for how the number of units and the range of affordability could be applied; he added that the table was also in the process of being revised. Ms. Manz suggested that Mr. Herr make revisions to the bylaw based upon the Board's discussion with continued input from the LHP, and asked if another meeting with the Planning Board was possible after the revisions were made. Mr. Galaitis asked Mr. Herr to consider provisions for continued compliance with the requirements of Chapter 40B, and to get the maximum number of units affordable to households earning 80% of the area's median income. Mr. Hornig stated that it was important to provide for a broad range of prices, not just for those at 80%; he suggested that one-in ten units could qualify for the provisions at 80%, rather than one out of seven as currently shown. It was determined that Mr. Herr would revise the bylaw and return for the Board's meeting on October 19, 2005 to continue the discussion.

\*\*\*\*\* MINUTES \*\*\*\*\*

Review of Minutes: The Board reviewed and corrected the minutes for the meetings of July 6, August 17 and 24, and September 7, 2005. On a motion duly made and seconded, it was voted to approve the minutes as amended.

\*\*\*\*\* ADMINISTRATION OF LAND DEVELOPMENT REGULATIONS \*\*\*\*\*

#### DETERMINATION OF GRADE AND CONSTRUCTION OF UNACCEPTED STREETS

14 Bird Hill Road, Mr. Walter Scott: Mr. Scott stated that he was appearing before the Planning Board as he had torn down a house at 14 Bird Hill Road and the building permit to construct a new house is pending the Board's determination of adequacy of the portion of Bird Hill Road adjacent to his property. Based on staff recommendations, Mr. Canale moved that Bird Hill Road was currently not of adequate grade and construction, but would be if certain improvements are made. Mr. Hornig seconded the motion. Mr. Hornig stated that he felt that the improvements should include minimal curbing due to the slope of the roadway. Mr. Schilt stated that in his discussions with Engineering, curbs should not be provided as there is no curb along any portion of Bird Hill Road, and new curbing would direct surface runoff onto other properties. Mr. Schilt stated that based on what was required for recent projects on Bird Hill Road, the improvements should be for a 20-foot pavement width with a new coat of 2-inch binder and 1½-inches of top coat of bituminous concrete, and a waiver of shoulder width to 2-feet. The improvements should be along the frontage of the property, continuing toward the nearest intersection and connecting to the improvements to be constructed by the owner of #8 Bird Hill Road. Mr. Hornig stated that he reviewed the file for #8 Bird Hill Road, and could not find a requirement for a 20-foot pavement width; his discussion with the property owner indicated that the owner was not planning to construct that width. After suggesting that Mr. Scott work with the owner of #8 Bird Hill Road to coordinate construction activities, the Board voted 5 to 0 to require the improvements in accordance with staff's recommendations.

#### SUBDIVISION OF LAND

Wisteria Lane (58 Colony Road) Definitive Subdivision Plan, Homes Development, Inc., Endorse Approved Plan: The Planning Board endorsed the definitive plans for the Wisteria Lane Subdivision as approved at the meeting of August 17, 2005.

48 Summit Road Subdivision, Mr. Fred Russell, Extension of Time for the Board to Act: At the request of

applicant Fred Russell, the Planning Board approved an extension for approval of the preliminary plan for a subdivision at 48 Summit Road until December 31, 2005.

Solly's Way Definitive Subdivision Plan, Endorse Certificate of Action: As the Planning Board had approved the Solly's Way Definitive Subdivision Plan for property at 112 Laconia Street at its meeting on September 14, 2005, Board members endorsed the Certificate of Action.

\*\*\*\*\* REGIONAL, INTERTOWN ISSUES \*\*\*\*\*

Quinn Perkins Sand and Gravel, Burlington, MA: Ms. Manz stated that there is a proposal before the Town of Burlington Planning Board to redevelop the Quinn Perkins Sand and Gravel site on Adams Street adjacent to the town border to a ready mix concrete facility, and there are many concerns among residents in the area related to public health and other neighborhood impacts. Ms. McCall-Taylor explained how ready mix facilities operate, and noted that most of the impacts would be related to truck traffic and clean-out facilities for the concrete trucks. She recommended the Planning Board submit a letter to the Town of Burlington encouraging their support to address shared community concerns. The Board discussed the potential impacts of cut-through traffic from trucks using residential streets. It was noted that a letter to Burlington should also come from the Board of Selectmen, and the Planning Board should advise the Selectmen of their concerns. The Board asked staff to draft a letter and provide a copy to the Selectmen.

\*\*\*\*\* PLANNING BOARD POLICIES, ORGANIZATION, SCHEDULE \*\*\*\*\*

Naming of Streets, Policy Discussion: Staff presented a report documenting past discussions and policies pertaining to the naming of streets in new subdivisions. Ms. McCall-Taylor noted that a list of names of Minutemen and other historic Lexington families no longer has many valid or desirable options. Ms. Manz stated that she preferred the suggestion that developers provide the Board with three choices to choose from. Staff prepared a list of eight guidelines for the Board to consider when approving street names. Ms. Manz suggested that the requirement that street names shall reflect the history of Lexington and of the particular area in which the street is located be revised to state that it is a preference. Mr. Hornig stated that he preferred the terms street or road be used, and felt that in the past more creative terms had led to some undesirable results. Mr. Galaitis stated that the current list does not have many attractive options, and it should not be used. Mr. Harden stated that the policy should be general, and not just reflective of colonial history. Mr. Canale stated his preference that the policy should have a locally sensitive context. Ms. McCall-Taylor asked if it was the Board's preference to delete the reference to the Planning Department maintaining a list of names that reflect local history, and the Board concurred. On a motion duly made and seconded, it was voted 5 to 0 to approve the guidelines and policy on street names as proposed and amended by the discussion.

\*\*\*\*\* REPORTS \*\*\*\*\*

#### Staff

Staff distributed the results received to date from the parking survey distributed to businesses in the Center. It was noted that less than 20 surveys had been returned thus far, so the results are very preliminary. Ms. McCall-Taylor noted that the survey was modeled after one conducted by the Chamber of Commerce in the 1990's to determine if there were any trends or different issues that may need to be addressed. Ms. Manz stated that the results would help to identify issues and to see if some of the problems are in fact with employees using short-term spaces that should be available for customers or visitors to the Center. She added that the Lexington Center Committee is looking at ways to gain more parking spaces in the Center, and they have been in contact with representatives from NSTAR about the possibility of using part of their property to provide additional parking. She noted that NSTAR has a plan that could provide up to 35 spaces at the back of their property and they are willing to work with the Town. She also stated that other ideas have included issuing a request for proposals to businesses in the Center with private parking to see if they were willing to provide unused spaces for employees at other

businesses. Mr. Hornig stated that the Selectmen will ultimately determine siting of parking spaces, and it is the Planning Board's role to determine the need. Mr. Canale asked if the survey had been distributed to Town Staff, and Ms. Manz stated that it should be. Ms. Manz stated that it has been suggested that the Selectmen appoint a Parking Structure Committee to evaluate the need and feasibility for a structure in the Center. Mr. Canale asked if there were any environmental issues with building a garage on the NSTAR site. Ms. Manz noted that NSTAR has long-range plans for their property, that the facility is a prime location for the services they provide, and they are not willing to sell the property.

#### Planning Board

Mr. Hornig stated that he and Mr. Harden had discussions pertaining to regulating the number of stories and building heights, but do not yet have anything to present to the Board.

Mr. Hornig noted that he had been researching previously approved subdivisions to identify the amounts of impervious surface: Wisteria Lane had approximately 21%, and Cedar Street had approximately 31 to 32%. He noted that adjustments might need to be made to the cluster regulations to allow for a range of 20 to 30% of impervious surface. Ms. McCall-Taylor stated that Town Counsel might be coming to a future meeting to review the impervious surface policy with the Board.

Mr. Canale reminded the Board that on October 18, 2005 at 7:30 p.m. at the Town of Belmont, there will be an advisory committee meeting for the MAPC joint town study of the Trapelo Road corridor in Lexington, Belmont and Waltham.

On a motion duly made and seconded, it was voted to adjourn the meeting at 10:45 p.m.

Anthony G. Galaitsis, Clerk