

AMHERST PLANNING BOARD
Wednesday, October 19, 2005 – 7:00 PM
Town Room, Town Hall
MINUTES

PRESENT: Paul Bobrowski, Chair; Adrian Fabos, Carl Mailler, Aaron Hayden, Rod Francis, Chris Boyd, Mary Scipioni, David Kastor

ABSENT: Leandro Rivera

STAFF: Jonathan Tucker, Interim Director; Niels la Cour, Senior Planner; Sue Krzanowski, Management Assistant

Mr. Bobrowski opened the meeting at 7:00 PM.

I. MINUTES – Meeting of October 5, 2005

Mr. Kastor MOVED: to accept the Minutes of October 5, 2005 as submitted. Mr. Boyd seconded, and the Motion passed 6-0-2 (Fabos & Hayden abstained).

Since it was not yet time for the scheduled public hearing, the Chair moved ahead on the agenda.

IV. OLD BUSINESS

A. Election of Officers and Reorganization/Signature Authority

Mr. Francis MOVED: that due to the complexity of issues coming before Town Meeting, the Board postpone action until after Town Meeting. Mr. Boyd seconded, and the Motion passed 8-0.

B. Other – None

VI. UPCOMING ZBA APPLICATIONS

The Board decided not to review the following:

ZBA2006-00017, 867 North Pleasant Street, Dotty Meyer
ZBA2006-00019, 53 Meadow Street, George Scialoia
ZBA2006-00020, 163 Lincoln Avenue, William Gillen

The Board decided to schedule an extra meeting on November 9th in order to review the following:

ZBA2006-00016, 20-24 Ball Lane, Shaul Perry DBA Sunwood Builders
ZBA2006-00018, 893 Belchertown Road, Tofino Associates, Inc.

II. PUBLIC HEARING – ZONING AMENDMENTS

Mr. Bobrowski read the preamble and opened the public hearings.

A-7-06, FPC Boundaries

To amend the Official Zoning Map and Section 3.233 of the Zoning Bylaw to alter and redefine the boundaries of the Flood Prone-Conservancy (FPC) District.

Mr. Rob Kusner, Select Board, introduced Mr. Mike Olkin (Amherst's GIS Coordinator), who, Mr. Kusner said, had prepared the FPC maps. He summarized the proposal and said that areas that flood but are not designated as FPC would be added under this amendment. Mr. Kusner said that in 2002, in the discussion leading up to the rezoning of the Andrews-LaVerdiere property, the Conservation Commission Chair had recommended a comprehensive review of the FPC District. Although this proposal isn't perfect, it's a vast improvement over the current maps, said. It also adds a provision for future map improvement, he noted.

Mr. Bobrowski asked Mr. Tucker to discuss the FEMA maps. Mr. Tucker reported that he had been informed by Town Counsel that the Land Court has ruled against the Town in a previous FPC rezoning on Meadow Street. The Land Court had ruled that the rezoning was "spot zoning" and the Meadow Street rezoning has, therefore, been invalidated. The FEMA mapping proposed to be part of the new FPC District was created using standardized data and methods, he said. The existing FPC District was created in 1974 for a wider set of purposes than simple flood protection, and although accurate at that time, the conditions affecting flooding in Amherst's watersheds have changed.

Ms. Scipioni asked if the impacts on affected properties had been studied. Mr. Kusner said that much of the affected land is in farms or property owned by the University or colleges and noted that an extensive study had not been done.

Ms. Cinda Jones commented that the value of her property would be greatly reduced if the amendment is adopted.

Mr. Francis MOVED: that the Planning Board recommend that the Select Board postpone further action until there is more information on the Land Court decision.

Mr. Phillip Sweeney, owner Maplewood Farm, said that the FEMA lines proposed to be added to the new FPC District boundary are highly inaccurate. This proposal would greatly reduce his property's value, he said.

Mr. Mailler said that the court case shouldn't really impact this hearing and that the Board should continue.

Mr. Bobrowski agreed that the hearing should be continued. Because of the extent of the impact, it should have as much public airing as possible, he said.

The Board continued to discuss the proposal. Mr. Kastor said that he was interested in hearing from the people who were in attendance. Because this proposal affects all FPC areas in the town, it addresses the "spot zoning" issue, he said.

Mr. Francis agreed to amend his Motion to recommend that the Planning Board continue the public hearing to November 2, 2005 at 6:30 PM. Mr. Boyd seconded, and the Motion passed 5-3 (Mailler, Kastor, Scipioni opposed).

A-8-06, FPC Dimensions and Use Regulations

Mr. Bobrowski read the preamble for this proposal to amend Sections 3.226, 3.3, 6.5, 12.22 and 12.36 to amend the way in which lot dimensions and specified land uses are regulated in the FPC District.

Mr. Kusner, Select Board, explained the proposal which would change the dimensional and land use requirements, and alter the definition of upland.

Mr. Leigh Andrews, Precinct 2, said that while the proposed Master Plan is advocating smart growth, this seems like “dumb growth” because more land would be needed to have a viable building lot.

Mr. Irv Rhodes, Pondview Drive, said that it was astounding to him that this proposal would be brought to Town Meeting in its highly unfinished state.

Mr. Kusner said that the Select Board expects to take a position on the article at one of their next two meetings.

Mr. Boyd said he had undertaken an examination of the existing FPC District and noted that this article would affect about 464 parcels with approximately 277 owners, even if the FPC boundary changes were not adopted.

Mr. Bobrowski asked what would happen to this article if the map changes fail. Mr. Kusner said that the articles are independent.

Ms. Jan Mowka, 132 Belchertown Road, said that 20 to 30 acres of her property will be affected by the new (FEMA) line that she knows from years of observation will never flood. This is misinformation, she said.

Mr. Bobrowski said that new technology is available for the next flyover in 2008-09. He asked what the rush was for this amendment. He said he agrees that the lines need to be fixed but it would seem to make more sense to do it when accurate new information is available.

Mr. Kusner said that he agreed with Mr. Bobrowski, however, the flyover to gather the new data should be done sooner than 2008-09. The proposed new FPC District boundaries are a better approximation of reality than what we currently have, he said, and can be refined over time.

Mr. Bobrowski expressed concern about the lack of public process.

Mr. John Tesla, 716 Amherst Road, Sunderland, said that he owns land in Amherst and expressed concern that this would reduce the value of the land. If not for a notice that he just received from another concerned landowner, he would not have known about the proposal and said that the process should be slowed down.

Mr. Vince O'Connor said that many communities use the FEMA line. Our IT Department and GIS system provide the ability to do the things that a consultant would be used for.

Ms. Scipioni said she was concerned about the motivation, process and timing. There needs to be correct motivation with proper process and not before the master plan is undertaken, she said.

Mr. Kastor asked why the amendment was being proposed. He said the public hearing should be continued and that more information on impacts was needed. He asked what the impact would be on already built lots that might be put into non-compliance because of the amendment.

Mr. Hayden said that he would like more information on the need for these changes.

Mr. Paul Jones, 232 Amity Street, said that accuracy is important. He noted the marked difference between the FEMA mapping at the town line of Hadley and Amherst, and said that this proposal is based on the anti-growth sentiment of some individuals.

Mr. Irving Rhodes said that he was attending the hearing in order to get some clarity on the article before he votes on it at Finance Committee. He expressed concern that this amendment would take land off the tax rolls and take revenue from the Town. He said that this article did not give accurate information in order to make an intelligent vote.

Mr. Francis said that action should be deferred because both of the FPC articles are tied into the legal decision that came down today. This will put the Town in a precarious legal and political position. There is not enough credible evidence to proceed. The correct process for changing the zoning should be employed or it shouldn't be done, he said, and cautioned about making the Town vulnerable.

In response to the comments above and discussion, Mr. Kusner said that flooding is more extensive than shown even by the FEMA lines. The motivation for the proposal is to be in better compliance with the FPC purposes described in the Bylaw, he said. The basic motivation is to try to protect the public interest. The Select Board would be happy to have input from the Planning Board, he said. It would only impact a small portion of the Town's area, he said. Mr. Kusner said that he was concerned about the argument(s) that this would amount to a taking. On the other hand, he said, it protects other people.

Mr. la Cour said that mapping the floodplain requires good data and good engineering.

There were additional comments from people who had spoken earlier and were generally opposed to the amendment as the discussion between the Board, staff, proponents and citizens continued.

Ms. Maryann Mitchell, North East Street, expressed concern that her land would be affected by the proposal.

After additional discussion, Mr. Hayden suggested the Board consider two motions, one to close the hearing and one to recommend that the Select Board ask to have the article referred back. The purpose needs to be established and the full costs understood, he said, which probably can't be accomplished in time for Fall Town meeting.

Mr. Boyd MOVED: to close the public hearing. Mr. Francis seconded.

Mr. Kastor said that he agrees with Mr. Hayden that there is not time to consider the article properly for this Town Meeting. He said that he likes parts of it but agrees that it needs more time.

Mr. Mailler said that it's been a great educational process, but he's not sure the Board would hear anything new if the hearing were continued.

The Motion passed 8-0.

Mr. Francis MOVED: that the Board recommend that Town Meeting reject A-8-06, FPC Dimensions and Use Regulations because it is premature. Mr. Boyd seconded.

Mr. Kastor said that there are some merits in the article. However, Mr. Francis replied that it wasn't a question of merit, the FPC rezoning was just not ready. It's inconsistent, he said. There would be no problem revisiting the merits of this proposal, he said, but we've already discussed it for two hours. It's openly in conflict with other zoning principles that the Board has endorsed recently, he noted, and possible legal issues need to be understood and addressed.

Other Board members supported Mr. Kastor's suggestion to have the article referred back.

The Motion failed 3-5 (Bobrowski, Hayden, Mailler, Kastor, Scipioni opposed).

Mr. Kastor MOVED: that the Board recommend that Town Meeting refer the article back to the Planning Board. Ms. Scipioni seconded.

Mr. Mailler asked if the Board was prepared to sponsor the article if it was referred back. Mr. Tucker noted that rezoning the FPC District has been on the Zoning Subcommittee's work plan for a very long time.

The vote continued and was 5-3 (Francis, Boyd, Fabos opposed) to recommend that Town Meeting refer the article back *to* the Planning Board.

Citing a potential conflict with the next article, Mr. Kastor stepped down from the Board and left the room at 9:08 PM.

A-9-06, AG District

Mr. Bobrowski read the preamble for this hearing to add a new language to Section 2.05, new Sections 3.29 and 6.7, and amend Section 5.090, to create a new Agricultural (AG) District and associated regulations.

Mr. Rob Kusner said that the Select Board is sponsoring this article and asked Mr. Vince O'Connor to make the presentation. He suggested that people refer to the Warrant for the language.

Mr. O'Connor pointed out changes between a new draft made available at the meeting and the language on the signed warrant. The language was changed based on Town Counsel's review,

he said. Some uses are allowed under APR (Agricultural Preservation Restriction) contracts but are not in the Zoning Bylaw. This proposal would put all of the APR regulations in one section of the Bylaw.

Mr. Francis stepped down from the Board at 9:34 PM.

Mr. O'Connor distributed copies of an email from former Conservation Director Peter Westover regarding a proposed Meadow Street Development which was subsequently denied by the ZBA.

Ms. Scipioni asked about the intent of the proposed 50 foot buffer. Mr. O'Connor replied it was both to protect farms from development and development from farm impacts.

Mr. Fabos asked Mr. O'Connor to comment on the impacts of the buffer on properties outside the zoning district. Mr. O'Connor described what he felt were the failings of current zoning illustrated by the Meadow Street project, and the reason for the buffer. Mr. Tucker drew a diagram of the Meadow Street development to illustrate that project proposal and point out the potential conflicts on that property between the public purposes of protecting farmland and those of directing new development into existing village centers. In this case, an APR property was immediately adjacent to a village center.

Mr. Bobrowski commented that the Zoning Bylaw deals with "use" regulations. Different maps could be used to indicate APR properties instead of trying to put APR's into a new zoning district, which would be a lot of work for not a lot of gain. Requiring a "50 foot buffer is like killing a flea with a sledgehammer," he said. There are different kinds of APRs he said, some are actively farmed, some inactive. This would be a heavy-handed approach to issues that could be better dealt with on a case-by-case basis.

Mr. Fabos reported on the Farm Committee meeting which he attended. He said that there had been no quorum, so the committee was unable to take a formal vote. However, the members present had discussed the proposal. They agreed that they needed more information before making any recommendation on the article, and had also noted that there were sometimes potential conflicts between town interpretations of zoning and state interpretations of APR contract provisions for a specific property. A conflict over a farm stand operation in Hadley had been discussed.

Mr. Boyd commented that this could discourage APRs because it would be another level of complexity that farmers don't want to deal with.

Mr. Lyle McHugh, 29 Columbia Circle, said this would put most of his property in the 50 foot buffer for Bramble Hill.

Mr. Gary Bordeaux, South East Street, said that he would lose a quarter of his property.

Mr. John Tesla, 716 Amherst Road, Sunderland, said that he owns APR properties in other towns. Farmers are suspicious of the state and would be suspicious of the Town, he said. What often happens when a property is put under an APR is that two acres are set aside and intended to be used after retirement. This could preclude being able to ever build on the reserved two acres, he said.

Mr. O'Connor replied that the proposed amendment exempted such properties.

Ms. Mary Ann Mitchell, speaking for her deceased father, said that he never would have put his property in APR if he had known this would happen. Although Mr. O'Connor is well intentioned, she said this will be just another thing they have to contend with.

Ms. Cinda Jones, Jones Properties, said that about 400 property owners would be affected. The motivation seems to be to inhibit development in this Town, she said.

Mr. Tucker noted that, given the reduced supply of buildable land in Amherst, any further substantial restrictions on remaining buildable land will shrink the supply further, increase housing and development costs, and make it even more difficult to ensure affordability.

Mr. Hayden MOVED: to close the public hearing. Mr. Fabos seconded, and the Motion passed 6-0.

The Board took no action, given that a second public hearing was scheduled for November 2, 2005.

III. NEW BUSINESS

A. Town Meeting – Warrant Review; Movers/Speakers

The Board reviewed the Warrant. They discussed Article 7, Transfer Control of Wentworth Farm, but took no action. Ms. Scipioni urged the Board to support Article 11, Master Plan.

Mr. Hayden MOVED: that the Board recommend that Town Meeting adopt Article 11. Mr. Fabos seconded and the Motion passed 6-0.

Mr. la Cour recommended that the Board review Article 10, Amherst Area Transportation Plan. The Board did so, and took no position. Mover/Speaker assignments were made as follows:

#	<u>Article</u>	<u>Mover</u>	<u>Speaker</u>
17	Zoning Bylaw-Planning Board Appointments	Paul Bobrowski	Chris Boyd
18	Zoning Bylaw-ZBA Appointments	Select Board	Chris Boyd
19	Zoning Bylaw-Design Review Board Appointments	Select Board	Adrian Fabos
20	Zoning Bylaw-Cluster Dimensions	Paul Bobrowski	Paul Bobrowski
21	Zoning Bylaw-Fences	Paul Bobrowski	Paul Bobrowski
22	Zoning Bylaw-R-G Dimensions (Footnote m.)	Paul Bobrowski	Carl Mailler
23	Zoning Bylaw-FPC District Bylaw	Select Board	Rod Francis

24	Zoning Map-FPC District Boundaries	Select Board	Rod Francis
25	Zoning Bylaw & Map-Agricultural District	Select Board	Carl Mailler
26	Zoning Bylaw-Demolition Delay	Historical Comm.	Paul Bobrowski
11	Capital Program – Master Plan	CPC/JCPC	Mary Scipioni/ Aaron Hayden

V. FORM A SUBDIVISION APPLICATIONS

The Chair endorsed the following:

ANR2006-00008, 86 Cows Road, Beverly & Stanley Ziomek
ANR2006-00009, Heatherstone Road, Peter W. MacConnell

XI. REPORT OF THE DIRECTOR – Mr. Tucker noted that the Schedule of Precinct Town Meeting Forums was included in the packet. The Conservation Commission will review the AG article at its October 27 meeting. The next Planning Board meeting is scheduled for Wednesday, November 2nd at 5:00 PM at the Middle School. A site visit for the Lawrence Circle Definitive Subdivision is scheduled for Thursday, October 27th at 8:00 AM. Mr. Tucker and Town Counsel, Alan Seewald, will conduct a joint training session for the Planning and Zoning Boards next Thursday, October 27th, in the Town Room, Town Hall at 7:00 PM. Ms. Krzanowski will send reminders to the Board.

Mr. Tucker also noted that the Board had been asked to consider a representative for the Community Development Block Grant (CDBG) Committee.

Ms. Scipioni MOVED: to adjourn this meeting at 10:55 PM. Mr. Fabos seconded, and the Motion passed unanimously.

Respectfully submitted:

Sue Krzanowski, Management Assistant

Approved:

Paul G. Bobrowski, Chair

DATE: _____