ACTON PLANNING BOARD

Minutes of Meeting
March 8, 2005
Acton Memorial Library

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Planning Board members Ms. Lauren Rosenzweig (Chairman), Mr. Greg Niemyski (Vice Chairman), Mr. Christopher Schaffner (Clerk), Mr. Gary Sullivan, Ms. Ruth Martin, and associate Mr. Edmund Starzec were in attendance. Also present were Town Planner, Mr. Roland Bartl and Assistant Planner, Kristin Alexander. Absent were Ms. Stacy Rogers, Mr. William King, and associate Ms. Barbara Epstein.

Ms. Rosenzweig called the meeting to order at 7:30 PM.

I. Citizens Concerns

None.

IIA. Robbins Mill – Vote Initial Bond Amount

Ms. Rosenzweig recused herself from participating in the discussion as an abutter to Robbins Mill. Mr. Niemyski presided. Mr. Mark Mastroianni of Pulte Homes stated that he has a concern with Line Item 1B, Hauled Fill, in the Engineering Department's bond calculation. He requested that the Hauled Fill unit cost be reduced from $22.00 to $12.00 per cubic yard and the bond be adjusted to a rounded $5 million. Mr. Mastroianni also stated that Pulte Homes will accept the Engineering Department's original figure of $5,673,500 if necessary. The Planning Board agreed to send Pulte Homes' request for reconsideration to the Engineering Department and to revisit the issue at its next meeting.

IIB. Annual Authorization for Roland to Sign Documents and Plans

The letter to the Middlesex South Registry of Deeds from the Planning Board authorizing Roland Bartl to execute and sign routine releases of lots, units, performance guarantees, and to sign other documents on behalf of the Planning Board, was circulated among Board members for their signatures.

III. Reports

MAGIC: Ms. Rosenzweig reported from the 2/28/05 MAGIC meeting that attendees discussed issues affecting their towns, most notably transportation, affordable housing, and the desire to save community preservation act trust funds.

IV. Amateur Radio Towers Zoning Article Discussion – Selectman Dore' Hunter

Mr. Dore' Hunter, Chairman of the Acton Board of Selectmen explained that, after discussions with Town Counsel, the Selectmen have decided to place two amateur radio tower zoning articles on the Annual Town Meeting warrant. Article 25A will be the Planning Board's recommended article and article 25B will be the Selectmen's preferred version. Mr. Hunter said that he wanted to explain to the Planning Board the Selectmen's rationale for that. He stated that, while the Federal Communications Commission (FCC) and federal and state law give privileged status to amateur radio tower operators, some local control remains. Mr. Hunter said the Planning Board article does not give clear duty to the operator to remove the tower when not used, and that the Selectmen prefer to have a maximum height restriction on towers: up to 80' by-right, or higher by special permit. Mr. Hunter explained that the Selectmen feel allowing any tower height by right is more than the law requires and lacks a process for dialogue between the tower operator and neighbors. Mr. Hunter pointed out that compromises are often made as a result of a hearing. Comments on article 25B can be sent in through Monday, 3/14/05.

Planning Board comments/concerns

- Not sure there should be a special permit approval process for amateur radio tower installations if by law the special permit granting authority will virtually have to approve the installation as proposed.
- The Selectmen's article is asking a hobbyist to pay extra money for a special permit, lawyer, and an amateur radio tower expert because Board members don't have the expertise. It's too much control.

Citizens' comments/concerns re: Selectmen's article

- The language about tower removal is acceptable but the timeframe should be longer (1 year).
- Every restriction is arbitrary.
- Concern about the limit on the number of towers per lot. It restricts lots to a single tower, but the simplest amateur radio antenna stretches between two towers.
- Local regulations on design, placement, and height of amateur radio towers are subject to FCC regulations, and may not balance community interests against those of the amateur radio operator.
- Regarding the tower removal language what is the affect of a trust owning the tower?
- Does the Town have (1) a formal, written legal opinion that the proposed articles will hold up in court, and (2) the money to support a bylaw that might not hold up in court?
- Suggestion that, for time reasons, only the Planning Board's recommended article go to Town Meeting. Then the Selectmen could form a committee to re-look at it.
- The 80' tower height limit in the Selectmen's article is arbitrary. Tower heights are site specific. There should be more discussion on height limits.
- It would be costly for an amateur radio tower operator to go through the special permit process.

Citizens' comments/concerns re: other

- Why did the amateur radio tower discussion tonight not have to be re-posted in the newspaper since the public hearing has been closed?
- Towns usually lose in amateur radio tower court cases because federal and state laws consider amateur radio operations a privilege. However, such cases are uncommon because there really aren't any problems.
- There is not a lot of public awareness, and there is a lot of confusion, about amateur radio installations and the two proposed articles. The worst possible situation at Town Meeting would be that neither article passes. Groups should get together before Town Meeting to discuss the amateur radio installation warrant article motions.

Mr. Niemyski moved that the following language be included in the Planning Board's recommended warrant article: "The operator of the Tower or the owner of the LOT shall dismantle and remove the Tower within one year after the cessation of the FCC-licensed operator's ownership or tenancy, or the expiration or rescission of the operator's FCC license." Mr. Schaffner 2nd. The motion passed 4-1.

Mr. Sullivan moved that language requiring the tower to be constructed with anti-climbing devices or surrounded by fences be included in the Planning Board's recommended warrant article. Mr. Schaffner 2nd. The motion passed 5-0.

Ms. Rosenzweig moved to include language in the Planning Board's recommended warrant article stating that if the tower is located in the front yard, it should be at least 200 feet back from the front lot line of the property. Mr. Sullivan 2nd. The motion did not pass: 2 in favor, 2 against, and 1 abstention.

The Planning Board voted unanimously to defer making a recommendation on the Selectmen's amateur radio installations warrant article (Article 25B).

V. QRCC – Environmental Audit, Progress Report

Ms. Rosenzweig recused herself from participating as a member of the Quail Ridge Country Club (QRCC). Mr. Niemyski presided. Jay Peabody of Graham & Harsip, P.C. was present for QRCC.

Mr. Bartl updated the Board on the QRCC scoping meetings with Mr. Toohill of ENSR; QRCC representatives; and Planning, Health, and Natural Resources Departments staff. Mr. Toohill's draft scope of services is a result of the meetings. Everyone still needs to comment on the draft scope. Mr. Bartl explained that Town Counsel advised that the Town can continue working with ENSR under the existing contract. Mr. Bartl said that in the meantime, QRCC needs to supplement funds for task 310 of the draft scope, which is already underway.

Planning Board comments:

- Build into the scope (1) the flexibility for the applicant to get bids from various firms, not just

ENSR, and (2) the ability to bid out different parts of the proposal.

- After task 310 of the draft scope is completed, it should be the applicant's responsibility, not the Town's, to prove to the Planning Board that they are fulfilling the annual audit obligation.
- The scope should require that the auditing firm's documents be stamped by certified professionals.

Mr. Peabody's comments:

- He would let QRCC know that task 310 of the draft scope needs funding.
- QRCC is happy with Mr. Toohill, but would be willing to work with another firm who is qualified.
- QRCC would prefer that one firm provide all monitoring services.

Mr. Bartl's comments:

- The next step is to get comments on the draft scope from staff and QRCC. On March 22nd or April 12th, a revised scope will be presented to the Board based on everyone's comments.

VI. MAGIC TIP projects – Input for Bill King for 3/10 MAGIC Meeting

The Planning Board agreed to ask Mr. King to report to MAGIC the following Transportation Improvement Projects (TIPs) priorities for Acton:
1st priority - DM0208, Littleton - Route 2 interchange for access to new MBTA station.
2nd priority - 602091, Concord - Route 2/119/2A Rotary.
3rd priority – DM0256, Assabet River Rail Trail.
4th priority – DM0235, Bruce Freeman Rail Trail.

VII. Assignments of Town Meeting Articles

Mr. Schaffner - Amateur radio installation warrant article
Mr. Sullivan - Housekeeping warrant articles

VIII. Assign Gagliano Residential Compound Application

Ms. Martin.

IX. "Life After NESWC" Briefing

Ms. Rosenzweig reported that the most controversial issue related to the transfer station, landfill, curbside pick-up, and business center proposals was the business center proposal related to Home Depot and a supermarket with Rt. 2 flyovers. Ms. Rosenzweig said that there will be a presentation of all the different options at Annual Town Meeting. The Selectmen are also planning on presenting the options to the different town boards and committees.

The meeting adjourned at 9:40 PM.