

**TOWN OF HOPKINTON
PLANNING BOARD**

Wednesday, February 6, 2008

**HOPKINTON TOWN HALL
ONE TOWN HOUSE ROAD
HOPKINTON, RI 02833
7:00 P.M.**

CALL TO ORDER

The February 6, 2008 meeting of the Hopkinton Planning Board was called to order by Chairman Al DiOrio at 7:07 P.M.

ATTENDANCE

Board members present: Al DiOrio, Tom Holberton, Howard Walker, Ray Cox, and Hazel Douthitt.

Also present: James Lamphere, Town Planner; Scott Levesque, Town Solicitor; and, Harvey Buford, Conservation Commission.

APPROVAL OF MINUTES

MR. WALKER MOVED FOR ACCEPTANCE OF THE MINUTES OF THE JANUARY 2, 2008 MEETING AS CORRECTED.

MR. HOLBERTON SECONDED THE MOTION.

MESSRS. HOLBERTON, WALKER, COX AND MS. DOUTHITT VOTED TO APPROVE THE MOTION.

MR. DIORIO ABSTAINED. MOTION PASSES.

OLD BUSINESS: None

NEW BUSINESS

Preliminary - 3 Lot Minor Subdivision (no street creation) - McNulty Plat, Plat 5 – Lot 102, Collins Road. Margaret R. McNulty, applicant.

Attorney John Payne represented the applicant. The property is at the corner of Collins Road and Tomaquag Road. Lots 1 and 2 meet the 80,000 square foot minimum and Lot 3 has 90,000 plus square feet. All lots meet the frontage requirement and setback requirements.

Mr. Lamphere has visited the site and sees no issues.

Mr. Payne said they have subdivision suitability and will retain a no-cut / no-clear zone in the front of each lot to the setback line, excluding driveway entrances and grading on Lot 3 into the front setback line; notation will be integrated into the Final plan.

Mr. Lamphere said the Zoning Official found no problem with the plans.

Mr. Payne asked for the Final to be approved Administratively.

Joe DiPalma, 141 Collins Road, an abutter on the southwest corner of Collins Road, Lot 57, asked if the AT&T line was an issue.

2 Mr. Payne responded that AT & T has an underground easement for the line.

4 MR. WALKER MOVED TO APPROVE THE PRELIMINARY PLAN SUBMISSION SUBJECT
TO THE FOLLOWING CONDITIONS:

- 6 1) THE FINAL WILL BE APPROVED ADMINISTRATIVELY;
8 2) THERE WILL BE A NO-CUT / NO-CLEAR ZONE TO THE SETBACK LINE
EXCLUDING DRIVEWAY ENTRANCES AND ANY GRADING NEEDED ON
LOT 3.

10 MR. WALKER BASED THIS MOTION ON THE FOLLOWING FINDINGS OF FACT:

- 12 1) THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE TOWN'S
COMPREHENSIVE PLAN;
14 2) COMPLIES WITH THE STANDARDS AND PROVISIONS OF THE TOWN
ZONING ORDINANCE;
16 3) WILL CAUSE NO SIGNIFICANT NEGATIVE ENVIRONMENTAL IMPACTS IF
BUILT AS SHOWN ON THE FINAL PLAN WITH ALL REQUIRED
CONDITIONS FOR APPROVAL;
18 4) WILL NOT RESULT IN THE CREATION OF ANY LOTS WITH PHYSICAL
CONSTRAINTS THAT WOULD MAKE IT IMPRACTICABLE TO CONSTRUCT
20 PROPOSED BUILDINGS ACCORDING TO PERTINENT REGULATIONS AND
BUILDING STANDARDS;
22 5) HAS ADEQUATE AND PERMANENT PHYSICAL ACCESS TO A PUBLIC
STREET, MAINLY COLLINS ROAD AND TOMAQUAG ROAD;
24 6) PROVIDES FOR SAFE CIRCULATION OF PEDESTRIAN AND VEHICULAR
TRAFFIC, SURFACE WATER RUN-OFF CONTROL, PRESERVATION OF
26 NATURAL, HISTORICAL AND CULTURAL FEATURES THAT CONTRIBUTE
TO THE ATTRACTIVENESS OF THE COMMUNITY;
28 7) THE DESIGN OF THE SITE, INCLUDING THE PUBLIC UTILITIES,
DRAINAGE IMPROVEMENTS AND OTHER IMPROVEMENTS, SHALL
MINIMIZE FLOODING AND SOIL EROSION.

30 MOTION SECONDED BY MR. HOLBERTON.

32 MESSRS. WALKER, DIORIO, HOLBERTON, COX AND MS. DOUTHITT APPROVE.

MOTION PASSES.

34 *Mr. DiOrio recuses. Mr. Holberton takes the Chair.*

36 **Administrative Subdivision – Ashville Corporation, Plat 14 – Lots 27H, 27I, 27J,
Canonchet Road. Ashville Corporation, applicant.**

38 Richard Pinkover of the Addison Agency represented the applicant. He read a statement
from the applicant:

40 “We acknowledge that this normal type of application would qualify as an
42 Administrative Subdivision which would not require the review of the Planning
Board. However, in this instance, the Planner, Mr. Lamphere, has requested that
44 due to the unusual nature of the reconfiguration, specifically the adequacy of the
existing gravel drive, that we present this to the Planning Board for their review,
any comments they have, and then their approval.”

46 Mr. Pinkover continued, the existing gravel drive is about 600 feet above the lot line of
48 Lot 27J. He presented the Planner with a copy of the deeds of the existing lots for the
record. The design team believes that a regulatory permit should be issued for these
50 parcels due to the current status as existing lots of record. The applicant would prefer to
reconfigure these parcels for four reasons: 1) the parcels will be more closely
52 conforming to today's regulations; 2) no visual impairments on Canonchet Road; 3) all
proposed improvements will be away from Ashville Pond; 4) all access will be through
the existing gravel road that the applicant will bring up to the twenty foot wide standard

2 of a family compound. They will need RIDEM approval to improve the crossing. He
will contact Captain Bader to assure that the drive meets his requirements.

4 Mr. Holberton asked if increased lot sizes are coming out of Lot 27.

6 Mr. Pinkover responded that they are; they are not increasing the number of lots.

8 Mr. Walker asked if the existing gravel drive goes to the dam at Blue Pond.

10 Mr. Pinkover said he doesn't know if it actually accesses Blue Pond.

12 Mr. Walker asked who owns the gravel road.

14 Mr. Pinkover responded the Ashville Corporation, owner of Lot 27, with possible
easements over the road. It will not be a public road.

16 Mr. Holberton said this could be considered the reverse of a family compound since there
18 is access to a road and the applicant is not creating a new road, but has chosen to access
these lots in a unique way.

20 Mr. Pinkover said the Ashville Corporation feels as though they could get better
22 configured lots, away from Ashville Pond, with no new driveways on Canonchet Road.

24 Ms. Douthitt asked if the houses will be closer to the private road.

26 Mr. Pinkover responded, absolutely.

28 Mr. Walker asked if the streams are the outflow from Blue Pond.

30 Mr. Buford said he is familiar with the stream which splits in several places; one into
Ashville Pond and goes back under Canonchet Road.

32 Mr. Pinkover said the wetlands have been flagged by a biologist.

34 Mr. Holberton said the dirt road goes through Lot 27 to Lots 25 and 26. His concern is
36 the need to upgrade the dirt pathway to meet safety standards. Lots 25 and Lot 26 also
need to be considered. The Board needs to know the legal rights of those lots.

38 Mr. Pinkover said Lots 25 and 26 are also owned by the Ashville Corporation.

40 Mr. Holberton responded that they may not always be owned by the Ashville
42 Corporation. He is concerned about the upgrading of the gravel pathway and wants to
know about Lots 25 and 26. He asked the Board if they want the Planner to handle this
44 Administratively or if they want it back before the Board.

46 Mr. Walker said his preference if for the applicant to come back before the Planning
Board as a Minor Subdivision and would like to include a site walk by the Planning
48 Board. He asked if the applicant also owns Lot 24.

50 Mr. Pinkover said DEM owns Lots 23, 24 and a portion of 70F.

2 Mr. Walker said it would be appropriate for DEM, as an abutter, to receive notice.

4 Mr. Pinkover said they are requesting that the Planning Board grant approval of the
6 Administrative Subdivision. The applicant would then obtain a RIDEM wetlands section
8 approval for the upgrade to the existing gravel drive. If the applicant cannot obtain
10 RIDEM approval, the applicant will return before the Planning Board with an alternative
12 proposal for an upgrade. They are aware that they will have to provide a Class II
14 boundary survey and set forth everything in the checklist for an Administrative
16 Subdivision.

18 Mr. Holberton said the applicant has the right to ask, when you are not creating a new lot,
20 that the Planner handles this internally. He concurs with Mr. Walker that it should come
22 before the Board.

24 Mr. Cox said he thought the application should go again Before the Board.

26 Ms. Douthitt said the application should go before the Board as a Minor Subdivision.

28 Mr. Lamphere said that the Subdivision Regulations, Article IV, Section C (3) (b),
30 currently require that access be obtained through the frontage. Frontage for the lots is on
32 Canonchet Road but access is not proposed to go through that frontage. Therefore, the
34 applicant may require a waiver from the Planning Board, which would bump it up to a
36 Major Subdivision.

38 Mr. Walker said the regulations say physically accessible, but doesn't necessarily mean
40 that the actual access to the property has to be from the road.

42 Ms. Douthitt commented that they are not landlocked.

44 Mr. Holberton said it has always been interpreted as you must be able to access the lot
46 from the legal road frontage, that you can not access your lot in different way if your road
48 frontage is blocked off by a physical constraint.

50 Mr. Walker said, if for example, there were some topographic features along the frontage
that made it physically impossible to access the lot through there, it would not be
allowed.

Voices speak of wetlands on the front of the lots.

Mr. Holberton said they are existing lots.

Mr. Pinkover said that they are seeking an Administrative Subdivision since the subject
parcels are existing lots of record. The applicant's design team believes that regulatory
permits might well be issued for the parcels as they exist.

Mr. Holberton said they could do that now without the Planning Board.

Mr. Cox asked if these would be year round homes.

Mr. Pinkover responded yes.

2 Mr. Walker said he believes the application needs to go to at least a Minor Subdivision procedure.

4 Mr. Holberton said he doesn't see the need for a waiver.

6 Mr. Walker said he is not at the point where he can decide if there is anything to waive.

8 Mr. Holberton said the Board will give the applicant a list of concerns, will schedule a site walk and the applicant can notify the Planner as to what he would like to do. Mr. Holberton said he is concerned that abutters of Lots 25 and 26, especially DEM, should be notified. He is looking favorably at the concept but wants to see the upgrade of the road to at least fire and police standards.

14 Mr. Walker said there is an existing house across from Ashville Pond, that needs to be notified along with DEM.

16 Mr. Cox said he agrees they need to upgrade the road for safety and complete the checklist. He likes the concept.

20 Mr. Lamphere said he thinks the Board is on the right track.

22 Mr. Walker said he too likes the concept and would much rather not see the houses.

24 Mr. Buford said Mr. Pinkover mentioned that the applicant owns more lots in the area. He would like to see some indication of ownership and where the house is situated. The map that was provided does not show the boundaries of Lot 27.

28 Mr. Pinkover said they will provide a larger map.

30 Mr. Buford asked what the rear setback is of the dogleg lots and if the rear is to the road.

32 Mr. Pinkover said they want to keep the actual setbacks as in an RFR-80 zone, off the existing gravel road.

34 Mr. Buford said he is not sure how you would determine frontage in this situation and whether that frontage is on the gravel road or Canonchet Road. He also asked if when they breach Blue Pond if it will affect the wetlands in any way.

38 Mr. Pinkover said if anything, breaching Blue Pond will control the actual flow. He sees it as positive.

42 Mr. Buford asked if these are lots of record as they appear to be smaller or less than current standards.

44 Mr. Pinkover said he believes that to be correct, but the lots were created before those standards were in place. The applicant has tried to bring them closer to the standards that are now in place.

48 Mr. Buford said there is a provision in the Zoning Regulation for two substandard, adjacent lots, to be merged, and didn't know if it applied to this application.

2 Dorothy Gardiner, Canonchet Driftway, asked if the Ashville Corporation owns the dam.
DEM has told her that Union Twine is the owner. She asked if the different owners were
4 shown on the map.

6 Mr. Pinkover said they were not shown on this particular map. He said the dam is out of
the parameters of what we are talking about tonight.

8 Ms. Gardiner said that the road goes to the dam. She asked if this development will
10 impact Blue Pond which is considered a pristine pond at the present time.

12 Mr. Pinkover believes everyone will be very happy with the end result.

14 Ms. Gardiner asked if other people will be able to pass on this gravel road.

16 Mr. Pinkover responded that for everyone who now has the right to use the road, that
right will continue. He doesn't know if enhancing the right will happen.

18 Ken Mott, Canonchet Driftway, said the southern most lot, 27F, doesn't have a building
20 envelope on it as it stands; a brook goes through the middle of it which is a constant
stream.

22 Ms. Douthitt asked Mr. Mott if he is saying that if this configuration change isn't made,
24 the lot isn't buildable.

26 Mr. Mott said he believes that lot is not buildable as it stands.

28 Mr. Pinkover said he doesn't have the qualifications to make that determination.

30 Mr. Holberton said that is marked clearly on the map.

32 Mr. Pinkover said he does not know who owns the dam.

34 Mr. Buford said that DEM's website lists Ashville Corporation as the owner of the dam.

36 Ms. Gardiner said she received notification today from DEM that Union Twine owns the
dam.

38 Peter Marek asked if the gravel road will be public or private.

40 Mr. Pinkover said it would remain private.

42 Mr. Walker said the applicant believes he has three buildable lots, when in fact; he may
44 not have any buildable lots. If you take out Lot 27H for environmental reasons, which is
not grandfathered, and if the setback requirements went into effect after you carved this
46 parcel out, by merging the other two lots, you might have one buildable lot, not three.
The Board needs to know what the situation truly is and what the applicant can do as of
48 right. The applicant needs to clear up the historical ownership and merger issue. He
would like to have the sitewalk.

2 MR. WALKER MOVED TO CONTINUE THIS MATTER TO THE MARCH MEETING WITH
THE PLANNER TO ARRANGE A SITEWALK SOMETIME BEFORE THE NEXT MEETING
AT A TIME MUTUALLY CONVENIENT FOR THE BOARD AND THE APPLICANT.

4 MS. DOUTHITT SECONDED THE MOTION.

6 MESSRS. HOLBERTON, WALKER, COX AND MS. DOUTHITT VOTE TO APPROVE.
MOTION PASSES.

8 **PLANNER'S REPORT**

❖ **Administrative Business**

10 Mr. Lamphere said the Exit One Ad Hoc Committee meeting is scheduled for
tomorrow night. Mr. DiOrio and Mr. Walker will attend. The committee is near
12 completion. There will be meetings on February 19 and February 26.

14 *Mr. DiOrio returns to the Chair.*

16 Mr. Lamphere distributed a chart to the Board showing what other Washington
County towns have done with affordable housing.

18 Mr. Lamphere has signed off on two administrative subdivisions: Vilandre and
20 Heller.

22 ❖ **Proposed No-Cut / No-Clear Language**

24 Mr. DiOrio said the Board has a copy Richmond's no-cut/no-clear language to
use as a starting point.

26 The Board discussed the document.

28 Mr. Levesque said he is satisfied with the proposal as a valid starting point.

30 Mr. Buford would like to see a version of this proposal on every plat.

32 Mr. Levesque will work on the wording of the document.

34 ❖ **Discussion Regarding Hydrologic Consultant**

36 Mr. DiOrio said water will become a significant issue in the future. When
reviewing subdivisions, perhaps the Board needs some steps to insure the
38 developer has adequate water to supply the project and that the extraction of the
water will not adversely impact the surrounding properties.

40 Mr. Holberton said we do everything to make the applicant prove that they can
get rid of the water without proving they can get water. We depend too highly on
42 DEM's septic approval to create lots.

44 Ms. Douthitt added, especially in the areas that are left that are ledge and swamp.

46 Mr. DiOrio said if a developer were to come in with a site where there is no
adequate water, there are probably engineering solutions that should be
48 incorporated in the Board's approvals.

50 Mr. Holberton asked if that is something we can put in our Subdivision
Regulations as part of the checklist.

2 Mr. Levesque said that to a certain degree, this is already in the regulations in a
4 general form, by showing that the subdivision is feasible. He added, it is this
6 Planning Board's prerogative to inject requirements into subdivisions.

8 Mr. Holberton said it has been too subjective because local knowledge tells us
10 whether a piece of land is a dry piece of land.

12 Mr. Lamphere said the seven Findings of Fact focus on the ISDS by stating that
14 "there will be is no significant negative environmental impact." Water supply
16 could be included in number four which says that "the subdivision, as proposed,
18 will not result in the creation of individual lots with such physical constraints to
20 development that building on those lots, according to pertinent regulations and
22 building standards, would be impracticable."

24 Mr. Levesque said the Comprehensive Plan also envisions that there is adequate
26 water supply as a general principal. The question is, how do we make it specific?
28 We may want someone to review it.

30 Mr. Buford said West Greenwich requires you to put in a well and have it tested
32 to show production before a building permit is issued.

34 Mr. DiOrio said he is suggesting the applicants prove adequate water before the
36 lots are created and before other people take title. He suggested a series of
38 test wells scattered throughout the project at a density the Board deems
40 appropriate, proving an adequate water supply before the project is allowed to go
42 forward.

44 Mr. Walker said in Section 45-23-44 of the Rhode Island General Law, which is
46 part of the Subdivision Enabling Statutes, under General Provisions, Physical
48 Design Requirements: "all local regulations shall specify through reasonable
50 objective standards and criteria, all physical design requirements for the
development project which are to be reviewed and approved, pursuant to the
regulations. Regulations shall specify all requirements and policies for
subdivisions and land development projects which are not contained in the
municipality's Building Ordinance." It goes on to say, the requirements and
policies may include, but are not limited to, requirements involved in rights-of-
way, landscaping, proposed streets, etc. Mr. Walker continued, it seems a
requirement for a proven potable water reserve of a given objective standard and
flowage rate, would fit nicely in those general standards. There are provisions in
the Enabling Act that make specific reference to public water systems. There is
nothing that would prevent the Board from imposing some reasonable regulations
for private water systems and it would be prudent of the Board to do so.

Mr. Holberton questioned how this would be done: for major a subdivision; for
one lot? He would like to see some balance.

Ms. Douthitt commented that no matter the size of the subdivision, they still need
water.

Mr. Buford said if your thinking quantity, you should also think about quality.

2 Mr. DiOrio said he would like to hear consensus that this is an important enough
issue that the Board should start working on incorporating it. The Board agrees.

4 Mr. Holberton asked if DEM has ever held any workshops on this topic or if it
has ever been brought up at the state level.

6 Mr. Lamphere said that in a similar situation in Charlestown, the applicant tested
8 existing wells in the area.

10 Mr. Holberton said he doesn't like the subjectivity of depending on local
knowledge.

12 Mr. Buford said DOH is rewriting private well regulations with results of the
14 testing of wells submitted to building officials.

16 Mr. Walker questioned whether someone should develop a lot and sell it to a
clueless buyer that may not be able to get enough water to live on the property.
18 At some point, before you can obtain a building permit, you have to prove that
potable water is available, the same way you have to prove septic.

20 Mr. DiOrio said the problem with the building permit as the trigger is that the lot,
22 that the Board created, has already been purchased. In the process that a
subdivision goes through, you have to prove at a conceptual level to DEM that
24 you can put a house, fit a well, septic system, and that the soils are conducive,
and they give you a document that is one of the threshold items for getting into
26 Preliminary. At that point, DEM is saying that they are comfortable that the lot
can support an individual dwelling. We are suggesting that there should be a
28 similar mechanism for water. He asked Mr. Lamphere to call Lorraine Joubert to
see if she has knowledge of a community that does this. This will be kept as a
30 bullet item on the agenda.

32 ❖ **Rules of Procedure**

34 Mr. Levesque said the Board has in their packages, policy and procedure for
marking documents. If a project becomes an issue and there is an appeal,
36 marking documents makes things clear for the record. It is a way to preserve the
record so that anyone reviewing it later in time will know what you will know as
a sitting board.

38 Ms. St. Amour asked if marking documents was just for hearings or also for
40 items in the Planning Board's packages.

42 Mr. Levesque responded that anything that is designated as a project that comes
before the Planning Board would have to adhere to this policy. He would begin
44 at the first stage.

46 Mr. Holberton said that with the size of the staff and with storage issues, this is
not practical.

48 Ms. St. Amour said there is no room in the vault to store these files.

50 Mr. Levesque said they are not adding any papers to the files that you have

2 currently, but rather, each of those files that come before the Board, will be
3 marked as an exhibit.

4 Mr. DiOrio said then when a plan comes in, we want to be able to put the plan in
5 the record and say it is “A.” There isn’t an adding of staff time or paper.

6 Mr. Levesque said the general references that are made on the record are not
7 clear. Marked as “Applicant’s A” makes it clear.

8 Ms. St. Amour said we can give this a try.

9 Mr. Walker asked how much effort is going to be required of the staff and of the
10 Board to comply with, what to a lawyer, are reasonable sounding requirements,
11 and how necessary are they as a practical matter? He doesn’t recall ever
12 encountering a serious problem in his years on the Board that would be resolved
13 by doing this. There are certain situations where projects are plainly
14 controversial and clearly have potential for litigation where common sense would
15 dictate that we make sure that exhibits are clearly identified on the record. These
16 are unusual circumstances and should be apparent as such. Is putting an exhibit
17 sticker on every piece of paper that is submitted necessary?.

18 Mr. Buford asked if the Zoning Board uses exhibits

19 Mr. Walker said the Zoning Board is a legal fact finding body that has to make
20 legal Findings of Fact for the record in much the same way as a court does. Their
21 function is different than ours, but at extreme, ours can be very similar.

22 Ms. St. Amour said in the past attorneys have presented exhibits to the Board.

23 Mr. Walker said you create a problem when you have a universal requirement,
24 that as a practical matter, is not going to be followed in every case. What do you
25 do with the case where it isn’t followed and what kind of problems do you create
26 for yourself? What kind of legal impact will that have?

27 Mr. DiOrio said he is not swayed by the argument that small projects don’t
28 benefit from this kind of thinking, because small, i.e. several lots, can be as
29 explosive as a twenty lot project that is controversial. Mr. DiOrio said maybe we
30 don’t have to adopt this as a policy but we can try it on small and large projects
31 and see what we think.

32 Mr. Holberton said he is totally against it.

33 The Board decides to give labeling of exhibits a try.

34 ❖ **Public Forum Rules**

35 Mr. Levesque asked if the Board wants to keep its public forum. The question is
36 what are the rules by which this Board conducts a public forum? It should be
37 made clear that the public forum is not an opportunity to discuss projects that are
38 not on the agenda so that we do not run afoul of the notice requirements. Perhaps
39 the Board will want to consider some kind of procedure to address this issue.
40

2 Mr. Holberton asked why this has come about.

4 Mr. Levesque said Ms. Fontes has questioned whether any procedural rules are in effect.

6 Mr. Walker said he didn't know there weren't any procedural rules. He agrees that we should not be allowing the public in a public forum to be discussing projects that were not on the agenda or were on the agenda and were heard and the applicant is gone. The Board has generally enforced that.

10 Mr. Holberton said he always thought the public comment was nice and user friendly.

14 Mr. DiOrio said there are the Al DiOrio rules that we abide by: you are courteous, you behave yourself, and you have his guarantee that if you have something to say, you will be heard. Those few rules have gotten the Board through twenty something years without complication. Unless there is some thinking that says you must have a recognized set of procedural rules, he may not be swayed by this except by clear condition that you cannot be talking about projects that are not on the agenda.

22 Mr. Lamphere said we should allow comment on something that may not be on the agenda, even though the Board doesn't engage in discussion on it but listens to whatever a member of the public has to say. Alternatively, we could clarify that on the agenda as public comment specific to an agenda item.

26 Mr. DiOrio said in practical terms you don't get to talk about any application that is before this Board if the applicant is not here or it is not on the agenda. He suggested that under public comment, on every agenda, write: "We don't allow conversations on about applications that have been or are presently before the Board."

30 Mr. Holberton said to leave it as it is. We haven't had a problem.

34 Board agrees it should stay as is.

36 ❖ **Code of Ordinances – Chapter 18 Status**

38 Mr. Levesque said this Board can amend its regulations subject to its compliance with existing zoning in the Charter. To the extent that the regulation you're changing conflicts with an existing ordinance, the ordinance must also be changed through public hearing before the regulation can be adopted by the Board.

40 Mr. DiOrio said, in simple terms, it means we need to go before the Council.

42 Mr. Levesque said that is true. An example would be the Planning Board's intention to recommend a change in the regulations to take away the restriction on further subdivision in the Residential Compound language. Chapter 18, as it exists in the Zoning Code, has the language in it permitting further development. The ordinance must be changed first and then the regulations.

2 Mr. DiOrio said in this example, this is a subdivision process and should be
under the jurisdiction of the Planning Board. He doesn't understand how it got to
4 be an ordinance.

6 Mr. Walker said Chapter 18 of the Code of Ordinances is the Subdivision
Ordinance and includes provisions for Residential Compounds, PUD's and
8 Residential Clusters. The General Assembly, enacted the Zoning Enabling Act
of 1991 and the Subdivision Review Enabling Act of 1992. Provisions in those
10 enabling acts allow the towns, through their Zoning Ordinance, to provide for
PUD's, clusters and a general description that would be included in residential
12 compounds. Apparently it referred to the Zoning Ordinance, and specifically
stated that the Municipal Ordinance must assign to the Planning Board, the
14 Development Plan Review of these projects, even though they were defined in
the Zoning Code. Presumably, Tom Lenihan, former Solicitor, had the Town
16 Council adopt an ordinance which repeals Chapter 18 and adopted a new Section
14 under the Zoning Code which incorporates the old Chapter 18 by reference
18 and brings it into the Zoning Code. Now our Residential Compound Ordinance,
PUD and Residential Cluster Ordinances are part of the Zoning Code.
20 For example, there were two things the Board was talking about: 1) allowing
further use of subdivided parcels for residential compounds which the ordinance
22 prohibit, and 2) the possibility of allowing lot sizes below two acres. The
Planning Board cannot, by regulations, override those requirements; our
24 regulations have to be consistent with the ordinance. If we want to make those
changes, we have to get the ordinance amended by the Town Council.

26 Mr. Levesque said there are three things you are obligated to follow: the Rhode
Island Enabling Act, the Zoning Code, and the Comprehensive Plan. The Board
28 needs to be consistent with all three when coming up with regulations. To
change the substance or to try to differ with what is in the code, you must first
30 change the code.

32 Mr. DiOrio commented that if it wasn't in the Zoning Code, we would have the
ability to make these changes as we see fit. Here we have two bodies doing the
34 same thing.

36 Mr. Walker said that at one level, there are three bodies that have to act: the
General Assembly delegates to the town, sovereign powers that belong to the
38 state; the town, within the authority that has been delegated to it by the General
Assembly, has to adopt ordinances; then, the administrative Board can adopt
40 regulations consistent with those ordinances to help us in administering them.
Our regulations have to be consistent with the Town ordinances as well as the
42 Comprehensive Plan.

44 Mr. Lamphere asked if the residential compound regulations have to reside in the
Zoning Ordinance.

46 Mr. Walker said our regulations don't reside in the ordinance and stand entirely
48 apart from the ordinance. They have to comply with the ordinance but they are
not part of it. The question is should the Residential Compound Ordinance be
50 part of the Zoning Code or should it be organized in some different way in some
other section of the Code of Ordinances?

2 Mr. Lamphere said that since the Town Council has jurisdiction over the Zoning
Ordinance, the Council can make changes to the ordinance and the Subdivision
4 Regulations will have to comply with the Zoning Ordinance. Because the Town
Council has the power to make the changes, they will probably put Residential
6 Compounds and Cluster into the Zoning Ordinance and require us to comply.

8 Mr. Levesque said this comes down to what is the law and what are the
procedural regulations. The law is the ordinance. The Town Council is the body
10 that comes up with the law and has the legislative authority over its jurisdiction.
It is this Board's obligation to comply with the law and use it as its guide and to
12 come up with its regulations. If the Town Council wanted to delegate certain
functions to you, it would have to do so with clear directives.

14 ❖ **Residential Compound Workshop**

The Board has a draft from December 2007.

16
18 Mr. Holberton said the Board previously discussed reducing the minimum lot
size, increasing the number of lots and adjusting the dimensional regulations.
He proposes to reduce the minimum lot size, is fine with the density of one
20 dwelling per five acres, suggests increasing the maximum number of lots from
seven to ten, and changing the previously agreed to dimensional regulations of 75
22 feet to 25 feet on the front setback, 40 feet to fifteen feet for the side setback, and
from fifty feet to thirty feet for the rear setback, which would be consistent with
24 the cluster ordinance. He suggested the Board move this to the Town Council.

26 Ms. Douthitt felt one acre was too small, and if 2 acres were too big, she
suggested an acre and a half. She has a problem with wells, septic systems, and
28 with developers putting too many one acre lots together. A lot of the land that is
left is in areas where there's ledge or low land that is wet. She also is
30 concerned with privacy.

32 Mr. Holberton responded that clusters already allow one acre lots. Residential
Compounds will still only have one lot per five acres, so density is not increased.
34 He would also rather see use only half the land. Increasing the number of lots
will mean more compounds than subdivisions.

36
38 Mr. Walker asked if proving water as a condition would solve one of Ms.
Douthitt's problems.

40 Mr. DiOrio commented that he used to need to show a prime area and a second
area for ISDS. DEM no longer requires proof of a second area.

42
44 Mr. DiOrio asked the Board if they were okay with the changes: two acres to
one acre, total of seven lots increased to ten lots, minimum of fifteen acres for a
46 compound, and setbacks reduced.

48 MR. WALKER MOVED TO ACCEPT THE PROPOSED AMENDMENTS TO THE
RESIDENTIAL COMPOUND ORDINANCE AND RECOMENDS ADOPTION TO THE
TOWN COUNCIL INCLUDING: A MINIMUM PROJECT SIZE OF FIFTEEN (15) ACRES; A
50 DENSITY OF ONE (1) DWELLING PER FIVE (5) ACRES; REDUCING THE MINIMUM
LOT SIZE FROM TWO (2) ACRES TO ONE (1) ACRE; INCREASING THE MAXIMUM

2 NUMBER OF LOTS FROM SEVEN (7) TO TEN (10); DIMENSIONS CHANGED FROM
3 SEVENTY-FIVE (75) FEET TO TWENTY-FIVE (25) FEET ON THE FRONT SETBACKS,
4 FORTY (40) FEET TO FIFTEEN (15) FEET FOR THE SIDE SETBACK, AND FIFTY (50)
5 FEET TO THIRTY (30) FEET FOR THE REAR SETBACK..
6 MR. HOLBERTON SECONDS THE MOTION.
7 MESSRS. HOLBERTON, DIORIO, WALKER, COX, AND MS. DOUTHITT APPROVE.
8 MOTION PASSES.

9 **CORRESPONDENCE & UPDATES**

- 10 ❖ Mr. Lamphere received a package today regarding Mr. Marek’s property. He has
11 forwarded it to the Solicitor for a response.
12
13 ❖ Mr. Lamphere has received information regarding a water issue. Pam Sherrill has
14 warned him to be wary of bottled water companies coming to town and extracting
15 from the water supply. Mr. Lamphere will get more information for the Board.

16 **PUBLIC COMMENT**

- 17 ❖ Pat Fontes said she attends the meetings of all the boards. Her comments were not
18 meant as a criticism of the Planning Board.
19
20 ❖ Mr. Marek questioned the meaning of a merger discussed previously in the evening.
21
22 Mr. Walker explained that if two lots are non-conforming as to size, or are
23 substandard, the two abutting lots, if under common ownership, may be merged into
24 one conforming lot.
25
26 ❖ Mr. Mott said he has pictures of Blue Pond Dam. He said he believes the road was
27 built by the Civil Conservation Corps.
28
29 Mr. DiOrio said this matter is under review and cannot be discussed.

30
31 **DATE OF NEXT REGULAR MEETING:** March 5, 2008

32 **ADJOURNMENT**

33 MR. HOLBERTON MOVED TO ADJOURN THE MEETING.
34 MR. WALKER SECONDED THE MOTION.
35 ALL APPROVE.

36
37 The meeting adjourned at 9:57 P.M.

38
39 **Attest:** _____

40
41 Lynda S. St. Amour
42 Planning Board Clerk

43
44
45
46
47 **Approved:** _____