

2 TOWN OF HOPKINTON
4 PLANNING BOARD

6 Wednesday, May 7, 2008

8 HOPKINTON TOWN HALL
ONE TOWN HOUSE ROAD
HOPKINTON, RI 022833
10 7:00 P.M.

12 CALL TO ORDER

14 The May 7, 2008 meeting of the Hopkinton Planning Board was called to order
by Chairman Al DiOrio at 7:03 P.M.

16 ATTENDANCE

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

20 Also present: James Lamphere, Town Planner; Scott Levesque, Town Solicitor.

22 APPROVAL OF MINUTES

24 MR. WALKER MOVED ACCEPTANCE OF THE MINUTES OF THE APRIL 2, 2008
MEETING AS CORRECTED.

26 MS. DOUTHITT SECONDED THE MOTION. MR. HOLBERTON ABSTAINED.
Motion passes.

28 OLD BUSINESS

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

30 **Public Hearing. Amendment to Approved Site Plan – Hopkinton Industrial**
32 **Park, Plat 4 – Lot 9, Gray Lane & Wellstown Road. Hopkinton Industrial Park,**
applicant.

34 Attorney George Comolli represented the applicant. Also present was Lydia
Teixeira of Hopkinton Industrial Park.

36 Mr. Comolli said the Board has received a supplemented package. He asked the
Board to reschedule the Public Hearing as notice was not complete. Eighty
38 percent of construction is done.

40 Mr. Levesque said the Public Hearing will have to be re-noticed.

42 MR. WALKER MOVED TO CONTINUE THE PUBLIC HEARING TO THE NEXT
REGULAR MEETING, JUNE 4.

44 MR. COX SECONDED THE MOTION.

46 MESSRS. HOLBERTON, COX AND WALKER AND MS. DOUTHITT VOTED IN
FAVOR OF THE MOTION. MOTION PASSES.

2

Mr. DiOrio returns and resumes Chair.

4

Final, Phase II. 3 Lot Minor Subdivision – Atkisson Subdivision, Plat 20 – Lot 7B, Woody Hill Road. Dale L. and Robert J. Atkisson, Jr., applicants.

6

Richard Greene of Richard Greene & Associates represented the applicants.

8

10 Mr. Greene said that in July of 2007, the Planning Board approved Phase I or Lot 2, to the north of Lot 3. The lots appeared to overlap by deeds. The Planning Board asked for clarification and for the applicant to return as Phase II, once the discrepancy was resolved, for approval of Lots 1 and 3. The applicants hired Attorney Vincent Naccarato to research the titles and who concluded that the orange hatchwork was not appropriate and the property line is the yellow line shown on the plan. His survey and deed research for the survey concurs with Mr. Naccarato's findings. Those findings are substantiated in a letter from Mr. Naccarato's office. Subdivision suitability and wetlands had been previously approved. Lot 1 was reduced from the Phase I plan to 27.25 acres and Lot 3 will be 2.81 acres. The lot lines have not changed from the original plan and they are showing the improvements on Lot 2. Mr. Greene asked if the proposed changes to the Residential Compound Ordinance have been adopted, referring to Lot 1.

22

Mr. Walker replied that the revisions have not taken place.

24

Mr. DiOrio suggested that if the ordinance were to change, there could be reconsideration, but is speculation at this point.

26

28 Mr. Greene said Mr. DiLibero reviewed the verbiage on the plan for Phase I. He requested that the Board approve the Final for Phase II. The ISDS for Lot 3 is not complete; subdivision suitability is complete.

30

32 MR. WALKER MOVED APPROVAL OF THE FINAL BASED ON THE SAME FINDINGS AND CONCLUSIONS ARRIVED AT AT THE HEARING ON PRELIMINARY.

34

MR. HOLBERTON SECONDED THE MOTION. ALL APPROVE.

36

38 MR. WALKER FURTHER MOVED THAT THE PLANNER BE AUTHORIZED TO SIGN OFF ON THE FINAL PLANS.

38

MR. HOLBERTON SECONDED THE MOTION. ALL APPROVE.

40

NEW BUSINESS

42

Ms. Douthitt recuses.

44

Preliminary. 4 Lot Minor Subdivision – Evans Estates, Plat 11 – Lot 57B, Woodville-Alton Road. Robert Evans, applicant.

46

2 Attorney John Payne represented the applicant. Also present was the applicant.

4 Mr. Payne said this is a minor 4 lot subdivision with no road creation in an RFR-
80 zone. The smaller lots, 1 and 2, are each two acres. There are 16.76 total acres.
6 Lot 3 is 5.6 acres. Lot 4 is currently owned by Carlene Bowen and Tom Sparrows
who will continue to reside there. Lot 3 was once a rock quarry with a pond that
8 is dry part of the year. Lots 1 and 2 have ISDS, wetlands, and subdivision
suitability approval.

10 Mr. DiOrio said the grading on Lots 1 and 2 is such that the topography is higher
12 where the houses will go and lower than the street and the same for Lot 3. He
would like to see notation on the plan that no stormwater runoff will be
14 discharged into the town roadway system from all three lots.

16 Mr. Payne said he has spoken to Mr. Harrington about this. Mr. Harrington has
no concern.

18 Mr. DiOrio would also like to see a no-cut zone for the front of Lots 1 and 2.

20 Mr. Payne said they are open to no-cut and it was discussed previously.

22 Mr. Evans said there is scrub pine at 15 feet in front of the lots 1 and 2 that
24 creates a natural buffer. He will preserve the front setback of fifty feet, excluding
driveways.

26 Mr. DiOrio requested this notation be added to the Final plan for Lots 1 and 2.

28 Barbara Smith, an abutter, said she has no problem if developed. Her concern is
30 a vernal pool on her property and has talked with DEM and with Dan
Harrington. She asked for a fifty foot no-cut barrier where the stone wall is so
32 that there is no runoff to the pond.

34 David Smith said the property is under the forestry program.

36 Mr. DiOrio said the plan shows that the edge of the pond has been flagged with a
fifty foot perimeter wetland regulated by DEM.

38 Robin Bressette asked where the driveways will come out; she lives on Lot 57A,
40 and asked if the lots will be built on immediately.

42 Mr. Evans said he will build on the big lot and keep the other two lots for his
children.

44 Tom Bressette asked where the water from Lot 4 will run when the ponds fill up.

2 Mr. DiOrio said that regarding drainage, if the topography is pitched to the road,
4 the developer will have to take whatever actions are necessary to prevent runoff
from reaching the road.

6 Mr. Evans said he understood.

8 Councilor Capalbo asked if the Lady Slippers can be moved.

10 Mr. Bressette said the Lady Slippers live in a fungus in the ground and can not be
12 moved.

14 Mr. Payne requested the Final be approved Administratively.

16 MR. WALKER MOVED TO APPROVE THE PRELIMINARY PLAN SUBMISSION SUBJECT TO
18 THE FOLLOWING TWO CONDITIONS: THERE WILL BE A NOTE ON THE PLANS THAT NO
STORMWATER IS TO BE DISCHARGED ON TO WOODVILLE-ALTON ROAD OR ANY OTHER
TOWN ROAD; AND IT WILL ALSO BE NOTED ON THE PLANS THAT THERE WILL BE A
FIFTY (50) FOOT NO-CUT BUFFER ZONE ALONG THE FRONTAGES OF THE PARCELS.

20 THIS MOTION IS BASED ON THE FOLLOWING FINDINGS OF FACT:

22 THAT THE PROPOSED DEVELOPMENT

- 22 1) IS CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN;
- 24 2) COMPLIES WITH THE STANDARDS AND PROVISIONS OF THE TOWN'S ZONING
ORDINANCE;
- 26 3) WILL CAUSE NO SIGNIFICANT NEGATIVE ENVIRONMENTAL IMPACTS IF BUILT AS
SHOWN ON THE FINAL PLANS IF THE TWO REQUIRED CONDITIONS FOR APPROVAL
ARE MET;
- 28 4) WILL NOT RESULT IN THE CREATION OF ANY LOTS WITH PHYSICAL CONSTRAINTS
THAT WOULD MAKE IT IMPRACTICABLE TO BUILD THE PROPOSED HOUSES
30 ACCORDING TO PERTINENT REGULATIONS AND BUILDING STANDARDS;
- 32 5) HAS ADEQUATE AND PERMANENT PHYSICAL ACCESS TO PUBLIC STREETS, NAMELY
WOODVILLE-ALTON ROAD AND OLD DEPOT ROAD;
- 34 6) PROVIDES FOR SAFE CIRCULATION OF PEDESTRIAN AND VEHICULAR TRAFFIC;
AND, IF ALL CONDITIONS ARE MET FOR SURFACE WATER RUNOFF CONTROL, THE
36 PRESERVATION OF NATURAL, HISTORICAL AND CULTURAL FEATURES THAT
CONTRIBUTE TO THE ATTRACTIVENESS OF THE COMMUNITY; AND
- 38 7) THE DESIGN AND LOCATION OF THIS SITE DONE ACCORDING TO OUR CONDITIONS
WITH IMPROVED PROPOSED UTILITIES, DRAINAGE IMPROVEMENTS AND OTHER
IMPROVEMENTS SHALL MINIMIZE FLOODING AND SOIL EROSION.

40 MR. WALKER FURTHER MOVED THAT THE FINAL BE DONE ADMINISTRATIVELY.

42 MR. HOLBERTON SECONDED THE MOTION.

44 MESSRS. DIORIO, HOLBERTON, WALKER AND COX APPROVE THE MOTION.

MOTION PASSES.

46

Ms. Douthitt returns.

48

PLANNERS REPORT

Administrative Business

50 ☞ Mr. Lamphere said the Affordable Housing Partnership meeting for last
night was cancelled due to lack of quorum. There are now four members,
which soon may be three.

2 Mr. Holberton commented that the people of the town don't understand how
3 serious the Affordable Housing Partnership is, that it is required by the state,
4 and how important it is that the partnership meets.

6 ≈ Mr. Lamphere said there will be a Public Workshop on well water on May 15
7 with two speakers. He would like questions emailed to him to relay to the
8 speakers.

10 Mr. Levesque said obtaining maps or helpful information that would address
11 our concern of where pockets of water are.

12 Mr. Walker commented that one of the speakers may be a candidate for the
13 hydrology position.

14 ≈ Mr. Lamphere said the Exit One Ad Hoc Committee will meet on May 20th
15 and May 27th with two additional meetings in June. The changes will then go
16 to the Council.

18 ≈ Mr. Lamphere said there will be a joint meeting with the Council on the
19 Residential Compound proposed changes on May 22.

20 Mr. Levesque suggested one member be prepared to present the changes to
21 the Council so they understand the intent of the changes.

22

Planning Board Alternates

24 ≈ Mr. Levesque said he is concerned absences on the Board will result in the
25 lack of a quorum. He understands that the Council had advertised for the
26 position, and that as of yet, no one has applied. He urged to Board to contact
27 anyone that is qualified to apply for the alternate position.

28 Councilor Capalbo suggested that Town Solicitor, Pat Buckley, speak to
29 Council members.

30 Mr. Levesque said it draws the dichotomy between what is political and
31 what is legal. Those issues may crop up and all they can do is give the best
32 legal advice and address the issues.

33 Councilor Capalbo said it is not just political; it is family with issues that
34 continue for generations.

36 **Hydrologic Consultant** – Discussed under Administrative Business

Conservation Easement

38 ≈ Mr. DiOrio said the Board has received a copy of the Conservation Easement
39 that Richmond uses; we call ours a No-Cut Zone. They ask for no-cut zones
40 around the property, at different widths. He believes it says the right things
41 but would defer it to the solicitor to review. He does not like the term
42 Conservation Easement feeling it has much broader ramifications and would
43 change it to the language that we are accustomed to.
44

2 Mr. Levesque said he believes this is the original not his revision. He asked
that the revised copy be included on the next agenda.
4 Councilor Capalbo asked if no-cut meant you can't plant other species than
what was there before to improve what was there.
6 Mr. Walker responded that the term nuisance vegetation is undefined and is
in the eye of the beholder.

8 **Gravel Bank Ordinance**

10 ↻ Mr. Lamphere said the Council would like comments from the Planning
Board before the end of June. Board members commented that they have
12 already made comments.

Mr. Lamphere said the Board needs to resubmit their earlier comments.

14 Mr. Holberton suggested they be reviewed now.

The Board recommends:

- 16 1. 102 E - Keep the farm ponds
2. 102 E.1 - Cubic yards
- 18 3. 105 N - Sufficient to cover the cost of reclamation
4. 106 A - Percentage for restoration – 20% or not to exceed five acres,
20 whichever is less
5. 107 F - The Board agrees to 4 feet.
- 22 6. 107 P - This should be handled by best management
practices attached to the earth removal plan.

24 **Administrative Fees and Major Subdivision vs. Development Plan Review**

26 Mr. Levesque said the Board was concerned whether it could amend its own
checklists and fees without going to the Council for approval. There is no
28 ordinance that would govern what you can and cannot do, provided you
comply with state law and the Comprehensive Plan. State Law reads, "you
30 can provide for reasonable fees in an amount not to exceed actual cost
incurred, to be paid by the applicant for the adequate review and hearing of
32 applications, issuance of permits and recording of subsequent decisions."
Findings should be made directed to that issue; are there actual fees, are they
34 reasonable.

36 Mr. Levesque also reminded the Board of his prior opinion regarding the
hydrology expert and the requirements of having that an issue for every
38 application versus limiting it somehow. If a lot does not have water, it is not
suitable for development. If there is some reason to believe water is an issue
40 the Board always has the power to require hydrology testing. If you decide
to make it something across the board, is it reasonable? If you do it on an
42 individual lot basis, you will have to justify it as well.

44 Mr. Walker said it would be overkill to require hydrologic opinion on every
project. Having the requirement for some projects and not all opens the door

2 for potential abuses and potential attack as being unreasonably required. We
4 will have to justify our hydrology requirement by fact finding and without
the benefit of a hydrologist to advise us.

6 Mr. Levesque said the Board already faces those issues to some degree with
8 some of the projects that come before you, as an example, Mr. Marek,
requiring him to bring in his own experts, and, when we bring in our own
10 experts. You have to have some reason to believe that you need this
requirement.

12 Ms. Douthitt asked that [would it be reasonable] if you know an area doesn't
14 have good water because of DEM maps.

16 Mr. Levesque replied that it would if you have a map that says that that area
has a problem with the water table.

18 Mr. Holberton asked what if there is a subdivision and every lot in that
20 subdivision has two to three wells. If a subdivision comes in next door, that
would be factual.

22 Mr. Levesque said that would be enough to sustain a reason to have a
24 hydrologist come in. The Zoning Board had the applicant bring in a
hydrologist for Ashaway RV because abutters said the campground will
26 draw down their wells. If there is enough reasonable evidence, it can be
required by the Board. Each case has its own merit and decisions must be
justified.

28 Mr. Holberton said the applicant must now prove he can do a septic system,
30 so why not prove water? There must be an easier process than getting a
hydrologist, such as proving a septic system through DEM.

32 Mr. Walker said he would suggest that the Board consider adopting it as a
34 requirement for subdivision approval, proof by the applicant that sufficient
water is available at each building site so that it does not fall back on the
36 town if the well is dry.

38 Mr. DiOrio said he would be content with a note put on the plans that the
40 lots will deliver adequate potable water to the building sites. Whoever
makes that statement has to stand behind it, as with the earlier stormwater
42 issue; somebody represented that no stormwater will be discharged to the
abutting properties. We then come to find out that somebody is discharging
44 stormwater, they will have to handle it and not involve the town. He would
accept a note on the plan by the applicant or the engineer. A hydrologist may
be required for a major land development or major subdivision, but for a

2 three lot subdivision, they could make the representation and put it on the
4 plan.

6 Pat Fontes said that deals with their getting the water but it doesn't deal with
8 where they are getting the water.

10 Mr. DiOrio said that speaks to the specifics of the application. He doesn't
12 believe that in a three lot subdivision, water drawing down adjacent wells
14 would be an issue.

16 Ms. Fontes asked where the upper limit would be.

18 Mr. DiOrio said on the other side of the equation, you take an example like
20 the RV park, where a lot of water would be consumed there. That may be the
22 type of application where somebody has to prove water through professional
24 testimony. His intention is not to impose more requirements on applicants
26 but to protect the town.

28 Councilor Capalbo thinks local knowledge of the area comes into play.

30 Mr. Walker likes the idea of notation on the plans that the developer attests
32 that adequate potable water is available on each building site. At the very
34 least, this would give any purchasers from that developer, contract claim
36 against him if they do not have adequate water.

38 Mr. Lamphere will draft a paragraph to include this notation and give it to
40 the solicitor to review to include on the checklist.

42 Mr. Lamphere said we have compared fees with other towns. For the most
44 part, they seem to be inline with a few adjustments. This will all be done as
part of the subdivision revision.

Mr. Levesque said to be prepared to justify fees to actual costs, and that the
fees are reasonable based upon the Board's findings in the event that you
decide to increase the amount. He believes the statute states that the town is
not to make money on fees.

Mr. Lamphere said any fees charged have to be rationally related to costs. He
passed out the Development Plan Review as currently written in Hopkinton
and Charlestown. He would like to incorporate some of Charlestown's
elements into Hopkinton's. Currently our Development Plan Review does
not provide for notice to abutters, advertisements, or a public hearing. He
requested the Board look at what Charlestown has and would like to see their
suggestions. He is accustomed to doing all commercial review via

2 Development Plan Review and not as a Major Land Development, a process
that involves Pre-application, Master plan, Preliminary plan and a Final plan.
4 Development Plan Review could give a thorough review in a more expedited
time frame.

6
8 Mr. Levesque said the Residential Compound Ordinance was repealed and
readopted in the Zoning Ordinance. This would need Council review, too.

10 Mr. DiOrio questioned why Residential Compound and Development Plan
Review are not in the Subdivision Regulations.

12
14 Mr. Levesque responded that when the Enabling Statute was introduced that
created this at state level, it said that you could enact your own regulations
provided that you comply with certain things; one is the Enabling Act, one is
16 the Comprehensive Plan, and the third is the Zoning Code. When the
Enabling Act came out, they took certain provisions from the Ordinance
18 Code which previously resided in the Subdivision Regulations, repealed it
and brought it back into the Code of Ordinances under the Zoning Code, so
20 we are now obligated to follow what now resides in the Zoning Code. One is
the Residential Compound Ordinance; under state code we are required to
22 follow the ordinance that exists in the Zoning Code. This is the same
situation as it also resides in the Zoning Code.

24
26 Mr. DiOrio asked if we could get it out of the Zoning Code.

28 Mr. Levesque responded that the Council put it there and the Council makes
the law. The Council can delegate that responsibility to the Boards and does
30 so with specific instructions. It has done it by creating the ordinances in the
Zoning Code and the Planning Board is obligated to follow it. You can
32 expound on the ordinance as long as it remains consistent with the
ordinance. For the Board to revise it, the Council has to approve it.

34 Mr. DiOrio said the history of this goes back before the 1992, 1994 enabling
legislation when the Town Council did subdivision review; the Planning
36 Board was an advisory board who did the review and presented their
findings to the Council who had different obligations, but yet approved
38 subdivisions. Development Plan Review, especially since it expedites
commercial review, could be an outcome. This may be the opportunity to
40 remove it and put it in the Subdivision Regulations.

42 Mr. Lamphere said state law requires Development Plan Review be in the
Zoning Law through the 1991 Zoning Enabling Act.

44

2 Mr. Walker suggested some go back and revisit the state enabling legislation,
4 both for zoning and for subdivisions, and review what the current state of
6 town ordinances is in those areas, recommend some kind of revision and
8 simplification of these ordinances, and modify to the extent that is necessary.
This may be done when considering revisions to the PUD ordinance,
restructuring it so it would be one of the kinds of developments under the
purview of the Planning Board.

10 Mr. Lamphere said he believes the PUD belongs in the Zoning Ordinance as
12 well.

12 Pat Fontes commented that expeditiousness puts the town's people
14 at a higher risk.

16 Mr. DiOrio replied that timing is important to all applicants. The Board is
18 not in favor of a streamlined permitting process. Under the scenario we
20 currently have, many times stages are combined but issues are still dealt with
by the applicant in a timely fashion. Streamline doesn't sacrifice
comprehensive review.

22 Mr. Lamphere said that may be one of the benefits for the developer.
24 According to the laws Hopkinton currently has, Development Plan Review
exists in the Zoning Code. He is not trying to eliminate review, but wants it
26 done properly. In Hopkinton, everything is done through Major Land
Development, which is not really following the law the town has.

28 Mr. DiOrio suggested they continue this discussion after reviewing
30 Charlestown's and Hopkinton's Development Plan Review.

32 Mr. Lamphere asked for a motion for the six comments the Board made
regarding the Gravel Bank Ordinance as outlined in the February 14th memo
34 from the Town Council.

36 MR. WALKER SO MOVED.

MR. HOLBERTON SECONDED THE MOTION.

38 ALL APPROVE.

40 **CORRESPONDENCE AND UPDATES:** None

PUBLIC COMMENT

42 Councilor Capalbo commented that in this recession, Hopkinton has had better
44 selling because planning has been properly done. Prices are also five percent
(5%) higher and sell 20 days faster.

46 **DATE OF NEXT REGULAR MEETING:** June 4, 2008

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ADJOURNMENT

MR. WALKER MOVED TO ADJOURN THE MEETING.
MR. HOLBERTON SECONDED THE MOTION.

The meeting adjourned at 9:02 P.M.

Attest: _____

Lynda St. Amour
Planning Board Clerk

Approved: _____

Draft