

W. T. PLANNING BOARD MEETING, FEBRUARY 8, 2010, 5:30 P.M.

PRESENT: Ginny Jones, Leah Smith, Susan Silva, Jim Powell, Eileen Maley

ABSENT: David Douglas

ALSO PRESENT FOR ALL OR PART OF THE MEETING: Richard Leonard, Philippe Jordi, Tony Nevin, Glenn Hearn, John Clift, Veronika VandeGeer, Isaac Russell, Susan Yalkwica, Mara Coleman, Lori DiGiacomo, Kim Heath, David Thompson, Tammy King, Caroline Flanders, Lesley Eaton, Jim Hickey, Rob McCarron, Nicki Patton, Michael Colaneri, Samantha Look, Candy daRosa, Jim Feiner, Ewell Hopkins, Doug Hoehn, Christian Strom, Simone DeSorcy

CORRESPONDENCE

In: Island Housing Trust re. Special Permit Amendment
Mark Lanza, Esq., Opinion re. 250 State Road

OLD BUSINESS

Continued Public Hearing: 250 State Road Special Permit Amendment: Ginny reread the public hearing notice. She said that one piece of correspondence had been received from Island Housing Trust in support of the Board's granting the Special Permit amendment. Ginny read aloud the legal opinion from attorney Mark Lanza concluding that the Board could not grant the amendment to the Special Permit. He wrote "The expenditure of CPA Funds under the 2008 Annual Town Meeting appropriation for the affordable housing development at 250 State Rd. was clearly conditioned upon the grant of a perpetual affordable housing restriction to the Town."

Philippe Jordi said that he was not aware of the wording of the warrant articles. He had been given the wrong copy of the warrant that did not have language re. perpetual affordability, so statements he made previously were inaccurate. Still, he said, he differs with the legal opinion. Richard Leonard said he too misunderstood how the warrant item was written, and also disagrees with the legal opinion.

Leah said that the Special Permit applicant presumes that the IHT or Town would automatically step in if one of the affordable homes were foreclosed upon, and that might not necessarily be possible. Ginny said that other properties had been approved for permanently affordable homes under this particular bylaw. She also said that the CPA could be voted out, and that there was a real possibility that the rate of funds from this source could drastically be reduced or disappear altogether. Eileen said that hundreds of thousands of public dollars had been spent on this project; she said she was concerned about protecting the Town.

Tony Nevin, CPC Administrator, said he had been working off an electronic version of the warrant items that did not have language regarding perpetual affordability. Caroline Flanders, IHT Board member, spoke in favor of lifting the restrictions in case of foreclosure. Ike Russell, IHT and Bridge Housing board member, agreed so that applicants can get the lowest mortgage rate possible.

Ginny said that the Planning Board is charged with protecting the Town's interest, including what is voted at Town Meeting. Leah said that the CPA fund warrant articles were couched under the guise of perpetual affordability. That's what Townspeople are concerned about, and it's our responsibility to the Town to protect that. Permanent affordability of these homes was what people understood at Town Meeting. She said IHT should be more clear at Town Meeting in the future, and that there needs to be more transparency in the process.

Caroline Flanders said that most deed riders are only good for 30 years with the possibility of an extension. She said she didn't feel that the Trust had misled the Town; it's just that most people aren't as familiar with the term "permanent" as the people working closely with affordable housing are. She said the ground lease is for 99 years which is more permanent.

Leah made a motion to deny the application; Eileen seconded the motion. Ginny, Eileen and Leah voted in favor to deny; Susan voted against denying.

Ginny said that the decision could be appealed. Philippe Jordi said that the Board needs to be more clear in the future as to what permanent affordability means. Ginny said the Board would welcome his input in rewriting the bylaw. She said she had thought that Philippe Jordi was at the Annual Town Meeting when the nearly \$600,000 was given to the 250 State Road housing developers.

Susan asked whether the Board was asking IHT to go back to ATM. Leah said this would be a necessary step. Tony Nevin said this would be a CPA article. Glenn Hearn said that the IHT would need to meet with the CPC. He said perhaps a special town meeting could be held just before the Annual. Ginny said at this point we are just second guessing what needs to be done.

Ewell Hopkins, the new director of the Island Housing Fund, introduced himself to the Board.

Rob McCarron, Doug Hoehn for Crow Hollow Farm Strom/Look, Possible Form A:

Attorney Rob McCarron recapped the proposed Form A application. He said he didn't understand how Attorney Mark Lanza arrived at the opinion that creating the 3-acre lot would trigger the need for the Looks to provide two affordable lots. He said that Mark Lanza's opinion is from a zoning perception rather than the 1991 permit from the MVC. Allen Look was bargaining with the MVC. Rob said he wanted to clarify that in 1991 Crow Hollow Realty Trust was the applicant, but none of the original Trustees have any ownership today. He said the obligation runs with the land by virtue of the MVC decision. He said this is not a continuing subdivision, just Carly and Samantha Look and Christian Strom dividing their lot.

Rob McCarron said that back in 1991 the decision allowed the applicant to make an “equivalent provision” to an affordable lot, and this is up to the Board to decide. He said he thought that Strom/Look would be willing to make a donation of one lot in some form.

Ginny said that this was a large piece of family property, the subject of numerous applications and decisions from this Board. Doug Hoehn said it seems like the property was the subject of many applications, but most of the plans drawn were ideas. Only two applications were filed previous to this one. Susan asked whether the Looks filed a Form A before the Form C; Doug said yes, the lot currently owned by Rodegast/Dole.

Michael Colaneri, Affordable Housing Committee Chairman, said he was on the MVC in 1991 when this project was referred as a DRI. He said the MVC has strict rules against incremental subdivision. Fifty-seven acres were held by the Look family. They agreed to provide two one-acre affordable lots at some time in the future. Land is more valuable to the Town for affordable housing than cash contributions. The Look family has dragged this out. He said they further benefitted by selling development rights to the Land Bank. He said he agrees with Attorney Mark Lanza’s decision.

Christian Strom said he and his wife Samantha Look were not just the next generation, they purchased the property. It could have been purchased by anyone from anywhere in the U.S.A. Doug Hoehn said that he had spoken with the LUPC, which wants the Town’s input before they can act on the Form A. There are no other outstanding issues with this project from a land use perspective at the MVC which would cause it to be reviewed as a DRI.

Glenn Hearn said that the ZBA gets legal money from applicants to review projects. The Planning Board should get some more money from the Looks so Rob McCarron and Mark Lanza can work this out.

Michael Colaneri said that Strom/Look had made an offer to a private developer in lieu of providing an affordable lot on their property. Rob McCarron said they had discussed the idea of contributing money to a project at an alternate site in order to protect their gorgeous, pristine, ecologically sensitive land. Also, the existing road is bad and the property is next to the pond. Jim Feiner and Nicki Patton’s approved project is having financing problems. Giving them \$80,000 to help fund two affordable units would be a win-win situation. And it would cover the Look/Strom affordable housing obligation.

Samantha Look said this has been a very confusing process for them. They are just trying to stay on the property. They have already permanently protected a lot of it. The property has too many constraints to provide on-site affordable lots. Susan said that this property has been cut up so much, and much has been protected. Flat Point Farm further down the road is also getting more lots. She said it would be out of balance if the Looks had to provide affordable lots on-site.

Michael Colaneri said that the Town and MVC were very sensitive when dealing with this property. The Affordable Housing Committee and Town need to be in the discussion of this offer of \$80,000. We need to negotiate the amount, and where it should be invested/spent. He noted that the Feiner/Patton project was already approved by the Town for 3 units on 3 acres, with two units affordable for people making up to 140% of County median income. He said giving the money to this project as the Looks' affordable housing contribution would thus result in a net loss of 2 affordable lots in Town. He said he didn't understand why the applicant gets to decide rather than the Town. Rob McCarron said that the applicant would give the money to the Town if that was preferable; the Feiner/Patton project was chosen because it was shovel-ready. Glenn Hearn said more discussion is necessary. He noted that there is a 2-acre building envelope on the Looks' lot that the Land Bank holds a conservation restriction on.

Ginny said that the Board has a long documented history of requiring developers to provide affordable housing on-site. Members allowed one developer to purchase an off-site lot to meet his requirement due to lack of water on-site.

Developer Jim Feiner said they were hoping to get 4 units on their 3-acre site, but the Planning Board only allowed 3. There were other delays. At this point, the affordable unit recipients will have to build smaller houses than they want. Getting this funding would give the project some breathing room. Ginny said that the Board consistently allows a maximum density of one unit per acre of land. This is a special provision allowing higher density for affordable housing. There were other issues delaying the Feiner/Patton project, including getting power to the site, unrelated to Planning Board/Town approval.

Leah said the basic question before us is whether one or two affordable lots are required. We need additional project review fees in order to have our lawyer talk to the applicants'. Once we have that discussion, we can have another one re. providing off-site affordable housing. Ginny said we need to be consistent so that we aren't slighting anyone.

Nicki Patton said that her project lost subsidies from the IHT after their financial issues last summer. Getting the \$80,000 could bring her 2 affordable lots down to prices affordable by people making 100% or 110% of median income, instead of 2 at 140%.

Michael Colaneri said we had already paid for one legal decision, so we should go with that, and see what happens. The burden is on the applicant. Counsel has given you guidance; you should go with that unless something else comes to light. Rob McCarron suggested that the Board re-read the opinion. Leah said she was not comfortable deciding tonight. Susan said she agreed more with Rob McCarron's opinion of one lot, either on or off site. She made a motion to agree with Rob McCarron's verbal opinion. Susan and Leah voted in favor, Ginny and Jim against, motion failed.

Jim said the Board needs to weigh the benefits and detriments of the proposal. He said he made this motion at the MVC. Ginny said she thinks the AHC needs to weigh in. Michael Colaneri said the Board has an obligation to seriously consider the legal opinion it got. The Board is representing the community and cannot ignore the opinion. Ginny said it is a dangerous precedent to ignore our legal counsel. Glenn Hearn said he'd rather have the land than the money. Leah said we should be providing another affordable lot rather than fund a project underway. Michael Colaneri agreed.

Rob McCarron asked to step out of the room with his clients to discuss the offer. When they returned he proposed the following: one Homesite Lot will be created somewhere on the Look/Strom property, and \$40,000 will be given to the Town at the time of sale of the subject 3-acre lot. The Looks will get credit for 2 affordable lots, which will cover the lot triggered when the Looks/Stroms carve out a lot from the large lot in the future. The Homesite Lot will be created within one year, with the possibility of a one-year extension granted in writing from the Planning Board. Michael Colaneri said it would be nice if this could have all been written down so the Board knew what it was voting on. Susan made a motion to accept the offer. Ginny said she was unhappy that it covered future affordable housing obligations. The vote was all in favor. The Board directed Simone to draft a letter to the MVC describing the deal reached.

NEW BUSINESS

Bramhall/Schneider, Form A, M23, Lots 6 and 8: The Board reviewed a minor change to this previously-approved Form A: the only change is removing "A" from each lot number to be consistent with Seven Gates lot numbering. Leah made a motion to approve the change and sign the plan; all in favor.

The meeting was adjourned at 8:30 p.m.

Respectfully submitted,
Simone DeSorcy, administrator