

Present: Michael Fee (Chairman), Joe Sziabowski, Christopher Morely,  
Michael Hunter, Eric Poch, Craig Lizotte (Associate) (7:30 p.m.-  
8:30 p.m.) Jody Kablack (Director of Planning and Development)

At 7:35 p.m., Chairman Fee called the meeting to order.

**Public Hearing: Maple Meadows Senior Residential Community – Phase 2 –  
Modification**

Present: Developer Robert Roth and Drew Garvin, R. Wilson & Associates, Inc.

At 7:30 p.m., Chairman Fee opened the Public Hearing regarding an application for modification to the Maple Meadows Senior Residential Community (SRC) Special Permit dated June 29, 2004, said property located at 35 and 55 Maple Avenue and shown as parcel 20 on Assessor's Map K08 (#35) and Parcel 74 on Assessor's Map K09 (#55). He read the public notice and stated copies of the plans and application are on file in the Planning Office and may be inspected weekdays between 8:00 a.m. and 4:00 p.m. The Board was previously in receipt of copies of the "Application for Modification of the Special Permit of The Meadows and The Submission of a Two Lot Subdivision Under Chapter 41, Section 81P Approval Not Required," a letter from Attorney Saul Feldman dated February 15, 2011, opining on whether the applicant can pave a section of Maple Avenue without consent of abutters, a relevant section of the Planning Board Meeting Minutes of May 9, 2007, a letter from Attorney Myron Fox dated June 12, 2007 proposing modifications and the accompanying opinions presented in a letter by Town Counsel Paul Kenny dated August 2, 2007, a memorandum of comments from the Conservation Commission dated March 1, 2011, and site plans prepared by R. Wilson & Associates. In addition, copies were distributed to the Board tonight of revised plans prepared by R. Wilson & Associates.

Ms. Kablack briefly summarized the history of the request, referencing the 2007 discussions of the addition of 55 Maple Avenue into the Maple Meadows SRC at a future date. She highlighted the four current requests of the applicant as: (1) approval of a turn-around at the end of Maple Avenue, (2) modification of Section 11(n) of the Special Permit to allow inclusion of "all or a portion of the Second Parcel to the approved SRC" and by deleting the last sentence of that section, and thus allowing for future development of five units on all or a portion of the 4.07-acre parcel, (3) modification of the boundaries of the SRC and (4) the creation of two Approval Not Required (ANR) lots at the end of Maple Avenue.

Developer Robert Roth briefly reviewed his acquisition of the former McCarthy property, which was planned to be incorporated into the Maple Meadows Senior Residential

Community (SRC) as ten additional units. However, as the real estate market slowed in recent years, Mr. Roth reconsidered his original plan as too ambitious. He desires to revise the plan to retain the existing single-family home, construct an additional single family home where the barn is currently located as part of two ANR lots, and construct five additional SRC units. Mr. Roth further proposes to only incorporate a portion of the 4.07 parcel into the SRC.

Mr. Roth displayed plan exhibits. He explained the concept for the width of the turnaround, which is proposed at 18 feet to be more consistent with the entrance roadway and to better accommodate public safety vehicles. Mr. Roth believes the 18-foot width can be accomplished by widening the existing pavement within the right of way, but shifting the location of the road more towards his own property.

Chairman Fee referenced the former legal concern as to whether the cul-de-sac portion of Maple Avenue could be paved without consent of other abutters. He requested Town Counsel Paul Kenny be asked to review the issue as a second opinion to the one provided by Attorney Feldman. Ms. Kablack also noted that the Board might want to consider requiring a common maintenance agreement for the road so future responsibilities are clearly defined.

Mr. Morely asked for clarification that all of the expansion would be constructed on the applicant's side of the property. Mr. Roth responded affirmatively that he believes this can be achieved. Chairman Fee encouraged the applicant to do so; stating neighbors would also appreciate it.

Mr. Lizotte stated he assumes appropriate stormwater facilities will be provided on the applicant's property to accommodate the plan. He also asked if the wetlands barrier has been re-delineated as posed by the Conservation Commission.

Mr. Roth stated an Order of Conditions was reissued a year ago, and thus he believes the wetland line is still in effect and the plans are compliant.

Sudbury resident Harry Ainsworth, 44 Maple Avenue, addressed the Board. Chairman Fee explained to him, that according to State law, as an abutter to the private way, Mr. Ainsworth has rights to use the length of the roadway and owns a portion of Maple Avenue to its midpoint. In response to a question from Chairman Fee, Mr. Ainsworth stated he has no objections to the widening of the road as proposed.

Sudbury resident Mary Ainsworth, 44 Maple Avenue, asked if the 18-foot wide turnaround would be part of the required 50-foot setback. Ms. Kablack and Mr. Morely explained that the plan does not propose to alter the property lines as currently established.

Sudbury resident Danny Vellom, 28 Maple Avenue, expressed his concern for increased traffic to the area from new residents and from construction vehicles. Mr. Vellom stated the applicant has not adhered to previous conditions for accessing the site from Feeley Field. Chairman Fee explained that, although these concerns are not relevant to tonight's determinations, they will be addressed appropriately in future discussions and public forums.

Ms. Kablack stated she has discussed with the developer that stormwater issues will need to be addressed by the applicant in a Stormwater Management Permit prior to the construction phase of the project.

Chairman Fee asked the applicant why relief is being requested from including the entire 4.07 acre parcel to the SRC. Mr. Roth explained that due to the major slow-down in absorption rates and the real estate market, he believes a less ambitious plan is more appropriate at this time. He stated the project has been down-scaled and is now a better fit financially. Mr. Roth further stated the revised plan is more compatible with the surrounding landscape and neighborhood.

Chairman Fee noted the original plan was envisioned for 10 units, which has now been reduced to five units and the preservation of the existing single-family home. He asked if the calculations have been altered for the total number of units originally approved under the Special Permit? Ms. Kablack explained that if the Planning Board approves the requests before them, one of those requests is to allow the applicant to utilize the original density plan in creating the 4 new lots from the 4.07 acre parcel. This very issue was discussed in 2007 and the Board leaned towards granting the request at that time.

Ms. Kablack summarized issues raised in Attorney Myron Fox's June 12, 2007 letter and the responses by Town Counsel Kenny. Chairman Fee concluded that there appear to be no legal impediments to granting the relief the applicant is currently seeking.

Mr. Ainsworth asked if the developer plans to utilize the existing sanitary system. Mr. Roth stated this issue has not yet been fully investigated. Chairman Fee noted nothing has been determined regarding such matters for this phase of development. An additional modification will be necessary for construction of the SRC units at the appropriate time. Mr. Morely highlighted the applicant would be required in the future to come before this Board and the Board of Health regarding the septic system design. Ms. Kablack stated the site has more than adequate capacity and falls well below the required State Title V requirements of 10,000 gallons per day. However, Ms. Kablack further stated the applicant would be required to demonstrate compliant PERC tests, observed by the Board of Health, and sufficient upland area of at least 30,000 feet on the 2 new lots being created for the SRC.

A brief discussion ensued regarding the Conservation Commission's recommendation for a new wetland delineation. Ms. Kablack stated that the existing legal document, i.e., a

2010 Order of Conditions, indicates no wetlands in the area of the 2 new SRC lots. Chairman Fee stated he was inclined to disregard the recommendation, based on the re-issuance of an Order of Conditions last year.

Mr. Hunter suggested the Commission is possibly attempting to bring conditions up to the current regulatory standards which have changed from the time the original application was approved. He further stated this does not seem fair. The applicant's engineer Drew Garvin stated there are no wetlands on the proposed lots. Based on plans provided, Mr. Sziabowski questioned whether there are existing units within the conservation buffer zone. Chairman Fee stated the consensus of the Board is that, although it is appreciative of the Conservation Commission's input, it does not believe the Commission's recommendation has impact on the decisions before the Planning Board.

Ms. Kablack emphasized that public improvements, including construction of the 18 foot paved private way, would need to be completed before the two ANR lots could be approved. The applicant also needs to describe the total amount of disturbance for the overall development (including road widening, SRC development and the ANR lot construction) so that the appropriate Stormwater Management Permit can be applied for and issued.

Chairman Fee stated the consensus of the Board is that it is inclined to grant the Special Permit modifications to adopt the proposed language revisions to Section 11 (n) and to approve the turn-around as discussed this evening, to be constructed as much on the applicant's property as possible, subject to receipt of a determination by the Board of Health as to the suitability of soils and the opinion from Town Counsel Paul Kenny regarding the legality of the turn-around. It was suggested the applicant provide an updated turn-around plan prior to the next Board meeting.

Mr. Morely noted the applicant was previously encouraged by this Board to incorporate this parcel into the SRC. Additionally, Mr. Morely believes the revised plan will have less impact on the neighborhood than the original approved plan.

On motion duly made and seconded, it was unanimously:

VOTED: To continue the Public Hearing regarding the application for modification to the Maple Meadows Senior Residential Care (SRC) Special Permit dated June 29, 2004, said property located at 35 and 55 Maple Avenue and shown as parcel 20 on Assessor's Map K08 (#35) and Parcel 74 on Assessor's Map K09 (#55) to April 13, 2011 at 8:00 p.m., and to request that Ms. Kablack prepare and circulate a draft decision for review prior to the next meeting.

**2011 Annual Town Meeting - Potential Planning Board Warrant Articles, Schedule of Public Hearings, Determine Speaker Assignments, and Take Positions on Articles**

At 8:34 p.m., Chairman Fee opened a discussion regarding proposed Annual 2011 Town Meeting Warrant articles. The Board was previously in receipt of copies of a listing of draft Warrant articles dated February 16, 2011.

**Outdoor Hydronic Heater (OHH) Bylaw** – Chairman Fee opened a discussion regarding the proposed article. Ms. Kablack reported the Board of Health (BOH) has agreed to schedule a Public Hearing after the Annual 2011 Town Meeting for the purpose of adopting a regulation on Outdoor Hydronic Heaters. Chairman Fee asked if the Board would like to proceed with the warrant article or defer action to the BOH?

Mr. Sziabowski stated he does not believe this is a major issue at this time. He is inclined to wait for the BOH to enact regulations, and, if it does not do so, then the Board could present an article next year.

Sudbury resident Joseph Onorato, 2 Lee Anne Circle, addressed the Board and distributed copies of a handout of a presentation he wanted to read to the Board tonight accompanied by photographs. Ms. Kablack stated Mr. Onorato is in litigation with the Town, and thus she cautioned the Board to limit tonight's discussion to the draft warrant bylaw article.

Chairman Fee explained that the Board proposed the draft bylaw because it believes regulation is needed. However, Chairman Fee further stated he believes it would be easier to move this issue forward if the BOH would enact regulations rather than have it come before Town Meeting. He asked Mr. Onorato's opinion on why what the Board has proposed is different than what the BOH would consider proposing.

Mr. Onorato stated the outside heater topic involves complicated issues which are not all within the purview of any one Town board. He stated he has gone before the BOH three times, but that he perceives the BOH to still be reluctant to act. Mr. Onorato also believes the BOH would only address the health issues related to the topic, such as the effects of fine particle emissions, which he briefly explained. He believes there are other critical issues to address such as the loss in property values for abutters to these heaters. Mr. Onorato read relevant sections from his presentation. He also referenced a letter in his materials from an Access Realty real estate agent, opining that Mr. Onorato's home value should be discounted by a minimum of 10% due to abutting a property with an outdoor wood boiler.

Mr. Morely explained that nothing the Board is proposing or that would be done by the BOH would change the problem Mr. Onorato has with his neighbor's wood boiler. Chairman Fee concurred, and he asked if Mr. Onorato was asking the Board to entertain a change to the bylaw language to eliminate the "grandfather" clause. Mr. Onorato stated

that would be his preference. He also stated that he is not aware of what the BOH is considering proposing, and therefore he cannot compare it to the Board's draft bylaw.

Chairman Fee asked if Mr. Onorato believed it was incumbent on this Board to proceed with the article at this year's Town meeting, since it could not rely on the BOH enacting regulations in the future. Mr. Onorato stated he did, and Chairman Fee stated he was inclined to agree.

Mr. Onorato stated he agrees with the proposed bylaw except for the inclusion of the grandfather clause. Chairman Fee stated the Board is interested in hearing Mr. Onorato's perspective. However, he cautioned Mr. Onorato to not reference the party with whom he has entered into litigation, and to refer to OHH owners in general through his remarks.

Mr. Morely stated it would be highly unusual for a zoning bylaw to ban something *ex post facto*. Chairman Fee concurred. Mr. Onorato highlighted that the article has been presented as a general and not a zoning bylaw. Ms. Kablack concurred, noting the draft article includes setback requirements. Mr. Onorato stated he favors the proposed setbacks, which will make it difficult to site on OHH on a one-acre lot and will help to eliminate these heaters from residential areas.

Mr. Onorato continued to read from his presentation, focusing on his position that the outdoor wood boilers should be banned in Sudbury. He presented statistics comparing Sudbury's constitution to Holliston's, and he noted Holliston has banned them. Mr. Onorato displayed photographs outside his home, depicting the smoke generated from a neighboring OHH. He noted the locations he is aware of in Sudbury where other units exist. Mr. Onorato encouraged the Board to visit these locations and observe the heaters in operation. He also noted there is a misconception that these heaters are similar to wood burning stoves, and he briefly explained how they differ.

Chairman Fee asked if Mr. Onorato had other suggestions to improve the bylaw. Mr. Onorato read aloud from his presentation which included 13 suggestions.

Chairman Fee asked what was the life of a typical OHH. Depending on the manufacturer, model and weather conditions, it was estimated between five and thirty years.

Chairman Fee asked Mr. Onorato who he would suggest to annually inspect the units. Mr. Onorato suggested the additional work by Town staff be supported with a license fee.

Mr. Morely opined that many of the suggestions offered this evening are worthy of additional consideration. He suggested the bylaw be redrafted for presentation next year.

Chairman Fee stated the purpose of the Public Hearing is to help educate the Board on relevant issues. He thanked Mr. Onorato for the useful information, stating the Board

would need to determine if it will proceed with presentation of the article this year. If the Board proceeds with the article this year, Chairman Fee stated Mr. Onorato would have the opportunity to amend the article at Town Meeting. At Town meeting, Mr. Onorato stated he would only suggest the elimination of the grandfather clause. Based on conversations with Building Inspector Kelly and Board of Health Director Leupold, Mr. Onorato stated he is aware enforcement is problematic. Ms. Kablack stated Town Counsel would need to determine that any amendment offered at Town Meeting is within the four corners of the article, which does not typically allow for making the article more restrictive. Mr. Onorato opined that it is possible to eliminate language from a motion on the floor. If the article goes before Town Meeting, he also stated he would like the Board's support of removing the grandfather clause. Chairman Fee opined that, perhaps Mr. Onorato has a better chance of persuading the voters at Town Meeting than including his suggestions in the initial article language. Mr. Onorato disagreed, referencing the 2007 Town Meeting. He believes it is more difficult to make a change at Town Meeting than for voters to approve what is presented to them.

Chairman Fee stated the Board is inclined to want action on this issue, but it will consider further the suggestions made this evening and determine its position at a later time.

Sudbury resident Robert McDonald, 23 Aaron Road, stated he believes the timing of the Board presenting this article is suspect. He asked if the Board deliberately included the grandfather clause. Chairman Fee stated the Board did not. Mr. McDonald accused the Chairman and Board of previously not thinking this issue was important, and thus he questioned why an article is being presented now. He believes the article would create two class of citizens, i.e., those to be protected, and those who are stuck with conditions as is and the accompanying health issues. Chairman Fee stated he did not wish to engage Mr. McDonald further regarding his comments, and he asked if Mr. McDonald would prefer the article to be withdrawn. Mr. McDonald stated he would prefer if the Board removed the article.

Mr. Onorato stated he would send the Board a link to a website associated with the Department of Environmental Protection (DEP) where it suggests that one way of avoiding nuisance situations caused by these heaters is to shut them down. (Note: He later provided the Recording Secretary with a copy of the article "Outdoor Wood Fire Boilers" on <http://www.mass.gov/dep/air/community/burnwood.htm>.) Mr. Onorato highlighted the proposed bylaw does not provide a mechanism based on certain criteria to determine a boiler should be shut down.

Mr. Onorato further suggested providing expertise in place to assist enforcement officials, since often the technical aspects of the subject are beyond the scope of the Board of Health.

Chairman Fee concluded the discussion at 9:15 p.m.

Later in the meeting, the Board further deliberated tonight's discussion. Mr. Poch stated the issue is difficult to enforce and to define, and thus he questioned if banning is appropriate.

Ms. Kablack highlighted that all new units and replacement units will be subject to all new bylaw standards including the setback requirements.

Chairman Fee asked if the Board should proceed with the article or defer action to the Board of Health (BOH). He stated the ZBA had initially asked the Board to consider this issue.

Ms. Kablack reiterated the BOH has agreed to conduct a Public Hearing after Town Meeting, and it appears to be amenable to adopting a regulation.

Mr. Hunter stated it is up to how the BOH proceeds. Mr. Morely stated this Board was instrumental in the BOH considering the adoption of regulation. Mr. Poch stated he did not see a benefit to proceeding with the article at this time.

On motion duly made and seconded, it was

VOTED: To withdraw the proposed Outdoor Hydronic Heater (OHH) Bylaw article. (3-1-1) Chairman Fee opposed the vote and Mr. Sziabowski abstained.

**Allowing Retail within Industrial Districts** – Ms. Kablack stated a Public Hearing will be scheduled for the Board at its April 13, 2011 meeting.

**Inclusionary Zoning** - Ms. Kablack reported the Board of Selectmen has voted to withdraw this article.

**Wireless Bylaw – Adding Properties to the Overlay District** – Ms. Kablack stated a Public Hearing will be scheduled for the Board at its April 13, 2011 meeting. Following that Hearing, the Board will determine whether it will co-sponsor the article with the Selectmen.

Mr. Poch stated he believes the areas being added to the overlay district should be more specifically defined as they usually are in zoning bylaws.

Ms. Kablack stated approximately 200 Town-owned parcels could be considered if the article is approved. However, Mr. Morely emphasized 99% of these locations would not be appropriate for installations.

Mr. Sziabowski stated he too believes the article needs to more specifically define the locations to be added to the overlay district. He also stated he is opposed to the article as written.



Mr. Poch stated the proposed article may not be the best approach for the Town, since it is possible there are better non-Town-owned parcels to pursue. He stated the article appears to be an attempt to control the revenue stream in favor of the Town, but it does not comprehensively address the issue.

Ms. Kablack stated the knowledge does not currently exist to determine the perfect parcel, but the work done to date has not found many good parcels for cell towers.

Ms. Kablack stated the Board could further contemplate the articles, and that positions and speakers for Town Meeting would not be determined tonight.

**Landham Crossing Comprehensive Permit - Discussion & Comments for Zoning Board of Appeals**

The Board was previously in receipt of copies of a letter of comments from the Conservation Commission dated March 1, 2011 and a letter of comments from the Design Review Board dated February 24, 2011. In addition, copies of a memorandum from Ms. Kablack dated March 7, 2011, summarizing comments from the Fire Department were distributed to the Board tonight. Ms. Kablack stated she has not yet prepared a formal memorandum of suggestions and recommendations. She recommended the Board postpone its discussion.

On motion duly made and seconded, it was unanimously

VOTED: To postpone discussion regarding the Landham Crossing Comprehensive Permit application to a future meeting.

**Newbridge Farm Trust – Removal of Land from M.G.L. c. 61B – Newbridge Road – Discussion**

The Board was previously in receipt of copies of a memorandum from the Conservation Commission dated March 1, 2011, recommending that the Town not exercise its option to purchase the parcel and a letter of intent to sell the parcel from the Newbridge Farm Trust dated February 22, 2011, and accompanying site plan and Purchase and Sale Agreement.

Ms. Kablack explained the Town has the Right to First Refusal to meet the current Purchase and Sale price of \$375,000. She stated the Trust would like to construct a single-family dwelling. Ms. Kablack also recommends that the Town not exercise its rights to purchase the property.

On motion duly made and seconded, it was unanimously

VOTED: To authorize Ms. Kablack to draft a letter, on behalf of the Board, to be sent to the Board of Selectmen recommending that the Town not exercise its option to purchase the parcel offered by the Newbridge Farm Trust located on New Bridge Road and that it agrees with the reasons stated by the Conservation Commission in its letter dated March 1, 2011.

### **Minutes**

On motion duly made and seconded, it was unanimously

VOTED: To approve the regular meeting minutes of February 9, 2011.

### **Miscellaneous**

#### **Community Housing Workshop**

Ms. Kablack displayed a copy of a flyer announcing the Community Housing Workshop to be held on March 31, 2011 at Town Hall at 6:30 p.m. She explained the public forum will help Town staff develop Sudbury's Housing Production Plan, in accordance with State requirements.

#### **Citizen Planner Training Collaborative - Workshop**

Mr. Lizotte distributed copies to the Board of a flyer announcing the Citizen Planner Training Collaborative Tenth Annual Conference – Advanced Tools and Techniques for Planning and Zoning on Saturday, March 19, 2011 at Holy Cross College, Worcester, MA.

#### **Application For Endorsement of Plan Not Required – Pine Grove**

Ms. Kablack reviewed with the Definitive Subdivision Plans of Pine Grove for endorsement by the Board. She and the developer are continuing to work on all items required prior to recording the plan, and she will hold the plans in escrow in the office until all items are satisfied, which is anticipated prior to the Board's next meeting. Ms. Kablack recommended approval.

On motion duly made and seconded, it was unanimously

VOTED: To endorse the Definitive Plans for Pine Grove submitted by Peter Karrasik.

### **Upcoming Planning Board Meeting Schedule**

The Board's next meeting is scheduled for April 13, 2011.

The meeting was adjourned by Chairman Fee at 9:50 p.m.