Rowe Planning Board
July 13, 2021
7:00 P.M.

Planning Board: Chair Paul McLatchy III, Vice-Chair Ben Werner, Charles Sokol
Absent: Daniel Burke, Jessica Albrecht

Audience of Citizens: None

Approved Motion Summary:
(discussion details and vote records in minutes below)

- Approve the minutes of June 17th 2021 as presented.
- Adjourn the Planning Board meeting at 8:21 P.M.

Meeting Minutes:

Call to Order: Chair McLatchy III called the Planning Board meeting to order at 7:03 P.M., a quorum of the committee present.

Minutes of June 17th:

A motion was made by Paul McLatchy III and seconded by Ben Werner to approve the minutes of June 17th 2021 as presented.

Paul McLatchy III	-	Yes
Ben Werner	-	Yes
Daniel Burke	-	Absent
Jessica Albrecht	-	Absent
Charles Sokol	-	Yes

Counsel Response to Clear-Cutting Activities Inquiry: Mr. McLatchy III corresponded with counsel MacNicol regarding the clear-cutting activities and related concerns raised by Jim Lively at the June 17th meeting, specifically for information regarding the possibility of town action to limit clear-cutting activities through zoning bylaws or other restrictions.

Counsel MacNicol responded via email on Tuesday, June 22, 2021 at 2:07 PM stating:

"I have had the opportunity to look into your question regarding local control of clear cutting and of course have gotten varying answers from the municipal lawyers list serve.

"Atty Robert Ritchie (retired from municipal government division at the AG's office, reviewed municipal bylaws for approval) has indicated that the State's Forest Cutting Practices Act, M.G.L.

c. 132, section 40 - 46, and the regulations thereunder, 302 CMR 16.00, administered by DCR services foresters 'occupies the field' in this area and would pre-empt any local bylaws."

She provided the text from Section 44, which reads:
"The provisions of sections forty-two and forty-three shall not apply to

(1) cutting by an owner or tenant of any forest product for his own noncommercial use;
(2) cutting or sale of such products by any owner to an amount not exceeding twenty-five thousand board feet or fifty cords on any parcel of land at any one time;
(3) cutting for clearance or maintenance on rights of way pertaining to public utilities and public highways;
(4) clearing land for building or for purposes of cultivation or
(5) maintenance cutting in pastures."

She further opined:

"Point here is that probably any other clear cutting is subject to the Act [...] *First you might want to investigate whether the clear cutting is in violation of c. 132, section 40 - 46. If it is then I believe the state forester would act to prevent further cutting etc. If it is not in violation of c. 132, section 40-46, but Rowe would like to make stricter cutting practices, then we can investigate with the AG's office and DCR about how they feel. We can also call the AG's office and see if they have approved any ZBLs that would allow more stringent requirements for cutting."*

Mr. Sokol observed that this suggests the state is most likely the party holding jurisdiction in this matter.

Mr. McLatchy III said he would write a letter to Mr. Lively explaining that there was neither local remedy nor local authority as it is pre-empted by state law, and would include information about how to contact the DCR if he had concerns about a specific clear-cutting activity.

Effect on Special Permit Timeline of COVID-19 Legislation: Mr. McLatchy III corresponded with counsel Donna MacNicol regarding potential automatic granting of special permits after an expired timeline if a four-member vote could not be held within a specific timeframe. He explained to her that at the meeting of the Planning Board on May 19th, the board voted to accept a special permit. He explained that his understanding was that a special permit would be automatically granted if no action is taken within the time frame established in M.G.L Chapter 40A, Section 9.

Counsel MacNicol responded via email to Mr. McLatchy IIII on Friday, June 18, 2021 at 3:54 PM stating:

"M.G.L. c. 40A, section 9 details constructive grant of a special permit. While the statute requires a hearing to be held within 65 days, the constructive grant does not come about until after the 65 days has run, and then 90 days thereafter. If this time runs, then the applicante [sic] *needs to give notice to the Town Clerk for a constructive grant and follow the procedures in section 9."*

She went on to explain the effect COVID-19-related legislation may have on constructive grants of special permits:

"c. 53 of the Acts of 2020 stayed all time lines for special permits (among other permits) from March 10, 2020 until December 1, 2020. So that is when you [sic] *counting starts if the special permit application was not filled* [sic] *by March 10 of last year."*

This suggests that the special permit would be granted automatically on October 22nd, 2021 if no additional action was taken by the Planning Board as the special permit was filed after March 10, 2020, barring any additional staying provided for by state legislation.

Mr. Sokol accessed the Massachusetts Legislature website to view the text of Chapter 54 of the Acts of 2020, and noticed that there was no specific mention of an end date other than the ending of the state of emergency, which occurred on June 15th 2021. This suggests that the special permit would be granted automatically on November 18th, 2021 if no additional action was taken by the Planning Board.

Mr. Sokol suggested we get clarification from counsel MacNicol. Mr. McLatchy III said he would ask counsel MacNicol when the permit would be constructively granted given the specific filing date of the special permit application of May 19th, 2021.

Date for Special Permit Public Hearing: Mr. McLatchy III stated he was hesitant to schedule a special permit hearing date to consider approving the special permit application filed on May 19th, 2021 until we had certainty of the availability of at least one additional member of the Planning Board beyond the three members present as a special permit application cannot be considered for approval without at least four voting members present. He did say that other Planning Board business could proceed with the three-member quorum present at this and future meetings if required.

Public Hearing Date for Proposal to Change Section 20 of Zoning Bylaws (Notification of Public Hearings): Mr. McLatchy III said that he was hesitant to schedule a public hearing to discuss altering Section 20 of the Zoning Bylaws as there is a strict time limit after such a hearing of when a town meeting may occur to allow for voting on any proposed zoning bylaw changes. He suggested we schedule a hearing to consider more than one bylaw change at a time closer to a known town meeting date.

Mr. Sokol asked if there was a draft of the proposed changes to Section 20 we were considering at this time. Mr. McLatchy III suggested changing the current wording:

"The Planning Board and the Board of Appeals shall mail notice of their public hearings to all property owners in the Town."

To the following:

"*The Planning Board and the Board of Appeals shall mail notice of their public hearing*s in accordance with state law."

Mr. McLatchy III suggested this would place the onus on State Law, which he believes requires notice be sent to property abutters and surrounding towns' planning boards.

Identify Priorities for Bylaw Review: The Planning Board identified which sections of the current zoning bylaws would be the focus of review moving forward, categorizing each section as either "high," "medium," or "low" priority as follows:

High Priority:

Section 2: Relating to use regulations
Section 6: Relating to number of dwellings per lot
Section 10: Relating to number of unrelated persons within a single dwelling
Section 18: Relating to special permit application filing and issuing
Section 20: Relating to public hearing notices

Medium Priority:

Section 4: Relating to non-dwelling structure setback from roadways
Section 5: Relating to dwelling setback from roadways
Section 7: Relating to lot size and road frontage requirements
Section 8: Relating to structure setback from side and rear lot lines
Section 9: Relating to chassis-based mobile home and trailer restrictions
Section 15: Relating to zoning board of appeals

Low Priority:

Section 1: Relating to the purpose of zoning bylaws
Section 3: Relating to the on-site storage of unregistered and/or inoperable vehicles
Section 11: Relating to the storage of brush, timber, or other cuttings
Section 12: Relating to earth removal
Section 13: Relating to construction permits
Section 14: Relating to sewage systems
Section 16: Relating to the beginning of construction
Section 17: Relating to modifications to pre-existing non-conforming structures
Section 19: Relating to the applicability of zoning bylaws to existing non-conforming structures
Section 21: Relating to zoning bylaw changes via town meeting vote
Section 22: Relating to site plan reviews
Section 23: Relating to solar generating installations

Additionally, the group determined it would be worth reviewing the definition of the Planning Board and term length of Planning Board seats as defined in the general bylaws.

Next Meeting Plans: Mr. McLatchy suggested that, at the next Planning Board meeting, the group begin reviewing the zoning bylaws identified as "high" priority.

The group determined the next meeting would be scheduled to occur August 17th at 7pm at the town hall.

Adjourn:

A motion was made by Charles Sokol and seconded by Ben Werner to adjourn the Planning Board meeting at 8:21 P.M.

Paul McLatchy III	-	Yes
Ben Werner	-	Yes
Daniel Burke	-	Absent
Jessica Albrecht	-	Absent
Charles Sokol	-	Yes

Respectfully Submitted,
Charles Sokol, Secretary

Approved: 08 / 17 / 2021

Chair Paul McLatchy III

Vice-Chair Ben Werner

Daniel Burke

Jessica Albrecht

Charles Sokol

Attachments:

- Agenda
- Email correspondence between Paul McLatchy III and Donna MacNicol