

**PLANNING BOARD  
APRIL 2, 2015  
MINUTES**

Chairman Barringer called the meeting to order at 7:30 PM at the Town Hall

Members present: Barringer, Burke, Giger, Perkins, Svarczkopf, Vega, and Wilson

**PUBLIC HEARING – TARBELL SCHOOL REZONING**

In accordance with the provisions of Chapter 40A, §§ 5 and 11, M. G. L., the Groton Planning Board held a public hearing to consider the following proposed zoning amendments:

**ARTICLE:** To see if the Town will vote to amend the Zoning Map established under Chapter 218 of the Code of the Town of Groton to rezone from Public Use (P) to Residential-Agricultural (R-A) a parcel of land located at 73 Pepperell Road consisting of approximately 1.44 acres, being shown on Assessors' Map 102 as Parcel 44, or take any other action relative thereto.

Chairman Barringer called the public hearing to order. Clerk Vega read the notice posted with the Town Clerk on March 10, 2015, and published in the March 13 and 20, 2015 issues of *The Groton Herald*. Town Manager Mark Haddad represented the Board of Selectmen, sponsor of the article, at the public hearing.

Mr. Haddad explained the background of the proposed article to rezone the Tarbell School. He said a realtor approached him about converting the building into residential units. The new sewage disposal system, installed by the Town, is designed for six bedrooms. The Board of Selectmen issued a Request for Proposals for the sale of the property. Bids are due on April 16, 2015. The Selectmen requested that the Planning Board recommend the proposed rezoning to Town Meeting.

Member Svarczkopf asked if the property is presently tax exempt. Mr. Haddad said, "yes," the residential units would be on the tax rolls.

Member Vega asked when the new sewage disposal system was installed. Mr. Haddad said the system was installed in 2011 and has not been used.

Member Wilson asked how the surrounding area was zoned. Mr. Haddad said the residential neighborhood zoning is R-A.

Member Wilson asked if any of the units would be affordable. Mr. Haddad said, "no," they would all be market-rate.

Member Giger asked about permitting. Town Planner Michelle Collette said the permitting would be through the Zoning Board of Appeals. Mr. Haddad said the bidders understand the permitting process and Code issues.

Member Giger asked about continued recreational use of the playground which is valuable to the Town. Mr. Haddad said that is up to the bidders. The playground was included in the RFP.

Chairman Barringer said this a good opportunity for the Town. He agreed that the playground area is valuable to the Townspeople.

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Member Svarczkopf asked if the building would be preserved as a historical resource. Mr. Haddad said the building is not in the Historic District and not on the National Register. Town Planner Michelle Collette said the building would be subject to the Demolition Delay by-law.

Member Vega said Tarbell School is part of the charm and character of West Groton.

Member Perkins said preserving the playground for the neighborhood is a nice idea. She asked about insurance cost. Mr. Haddad the playground could be leased and insured by the Town.

Member Svarczkopf said the Park Department is making improvements to Cutler Field which is nearby. Mr. Haddad said the playground equipment at Prescott School will be moved to Cutler Field.

Abutter Alison Manugian, 7 Shepley Street, said the Tarbell playground and Cutler Field are dramatically different. Cutler is remote and wooded with no parental supervision. Tarbell's playground is part of the residential neighborhood.

Ms. Manugian said the current condition of Tarbell School with windows boarded up and graffiti is very unattractive. She asked why the school and non-conforming lot were being rezoned to R-A rather than to R-B. She asked about the process. Mr. Haddad said the RFP is open to any use and the Town will negotiate the Purchase and Sales Agreement after the Town Meeting votes to sell the property and rezone it.

Ms. Manugian asked what happens if the deal falls apart and the property is not sold. Mr. Haddad said the Board of Selectmen would take final action on the sale of the property.

Member Giger asked if the Selectmen are convinced that the land should be rezoned to R-A. Mr. Haddad said if there are no bids for residential use of the property, the Selectmen will not go forward with the article to rezone the property at the Spring Town Meeting.

Member Vega expressed concern that the historic building may be demolished.

*(Member Burke arrived.)*

Ms. Manugian asked if the land is used as a park, should it remain zoned "P" for public use. She said she is not in favor of keeping an abandoned building on the property.

Member Giger said the Planning Board's role is to make a recommendation to Town Meeting. The rezoning is not the Planning Board's decision.

The motion was made by Perkins, seconded by Svarczkopf, to close the public hearing. The motion passed with Barringer, Burke, Giger, Perkins, Svarczkopf, and Wilson; Vega opposed.

The motion was made by Svarczkopf, seconded by Perkins, to recommend that the Town Meeting approve the rezoning of the Tarbell School property located at 73 Pepperell Road, to Residential-Agricultural. The motion passed with Barringer, Burke, Giger, Perkins, Svarczkopf, and Wilson; Vega opposed.

The motion was made by Svarczkopf, seconded by Vega, to recommend to the Board of Selectmen to consider the public interest and make every effort to preserve public access and use of the property exclusive of the building. The motion passed unanimously.

### **OPEN MEETING LAW COMPLAINT**

*(Note: The Water Commissioners and members of the Great Ponds Advisory Committee, including Mr. Luening, were present.)*

The Planning Board received an Open Meeting Law Complaint from James Luening, dated March 18, 2015, alleging that the Planning Board violated the Open Meeting Law at its meeting on March 5, 2015. The Board reviewed the Complaint with Mr. Luening at its meeting on April 2, 2015. Chairman Barringer read the complaint aloud at the meeting. The Board's response was as follows:

The Board confirmed that Mr. Luening filed the complaint as an individual, not as Chairman of the Great Ponds Advisory Committee. Mr. Luening agreed.

In his complaint, Mr. Luening stated that he requested the minutes of the March 5, 2015 meeting on March 10, 2015 and had not received them by March 18, 2015. Chairman Barringer explained that Land Use Director/Town Planner Michelle Collette was out of the office from March 6, 2015 to March 23, 2015 with a critical family emergency. She prepared the minutes when she returned to work. The Board approved the minutes at its meeting on March 26, 2015. The Board sent Mr. Luening the minutes electronically on March 27, 2015. Mr. Luening said he received the approved minutes for the March 5, 2015 meeting.

Chairman Barringer stated that he met with Ms. Collette at 3:30 PM on Thursday, March 5, 2015, to review the agenda for the meeting that evening. Ms. Collette informed him of an email sent by the Water Department at 2:35 PM that day regarding the Notice of Intent filed with the Conservation Commission to apply Sonar (the herbicide Fluridone) to Baddacook Pond located in the Zones I and II of the Water Resource Protection Districts (Section 218-30 of the Zoning By-law). The Water Department message included a forwarded message dated January 14, 2014 from Town Counsel David Doneski regarding the application of Sonar in a WRPD. Town Counsel stated that a special permit from the Planning Board is not required under Section 218.30.

Chairman Barringer added the topic to the March 5, 2015 meeting agenda as a topic not anticipated by the Chairman at the time the meeting was posted. Chairman Barringer and Ms. Collette met with Town Manager Mark Haddad to inform him the Planning Board would be discussing the matter at its meeting that evening. Mr. Haddad signed the Notice of Intent on behalf of the Board of Selectmen (the applicant). Mr. Haddad was present at the April 2, 2015 meeting and agreed this was true.

At its meeting on March 5, 2015, the Board discussed Town Counsel's opinion. The Board did not agree with Town Counsel's opinion because it believes Sonar is a Hazardous Material as defined in the by-law. The Board voted to send comments to the Conservation Commission for its public hearing on March 10, 2015 stating that a special permit is required for application of Sonar in Zone II of the Water Resource Protection Districts.

Chairman Barringer and Ms. Colette met with Mr. Haddad on Friday morning, March 27, 2015, to inform him of the Board's vote to send comments to the Conservation Commission and to request that Town

Counsel clarify his opinion sent to the Water Commission on January 14, 2014. Mr. Haddad agreed that Town Counsel should clarify his opinion.

Mr. Luening asked why the matter was an emergency. Chairman Barringer said the matter was time sensitive and not reasonably anticipated when the original agenda was posted. The Board wanted to send comments to the Conservation Commission for its hearing on March 10, 2015 while the hearing was still open. The Board did not discuss the Notice of Intent.

Chairman Barringer asked Mr. Luening if he was satisfied with the explanation regarding the Open Meeting Law. He responded that he was satisfied.

The Board received clarification from Town Counsel David Doneski regarding his opinion on the special permit requirements in his email message to the Board sent on April 2, 2015 at 5:11 PM. Chairman Barringer read Mr. Doneski's opinion aloud for the record.

Member Burke stated that he was not present at the meeting on March 5, 2015 and that he would not have voted in favor of the motion to determine a special permit is required. He said the Building Commissioner is the Zoning Enforcement Officer and should make the decision.

The motion was made by Svarczkopf to notify the Conservation Commission that, according to Town Counsel's opinion, the Planning Board no longer has the opinion that a special permit is required for the application of herbicides in Baddacook Pond. The motion was not seconded.

Member Giger said the Planning Board is no longer involved in the process. Member Perkins said the Board must correct the record with the Conservation Commission. Chairman Barringer said the clarification from Town Counsel was needed before the Conservation Commission's hearing on March 10, 2015.

Art Prest, member of the Great Ponds Advisory Committee, said the Board of Selectmen approved the application of diquat in Knops Pond in 2002. At that time, the Building Inspector determined that a special permit for the Water Resource Protection Districts is not required. Mark Bobrowski, consultant to the Planning Board, informed the Planning Board that the Department of Agriculture regulates pesticides. He referenced the Town of Wendell Board of Health v. the Attorney General of Massachusetts case.

The motion was made by Burke, seconded by Vega, to withdraw the March 5, 2015 memorandum to the Conservation Commission. The motion passed unanimously.

#### **CRYSTAL SPRINGS ESTATES – LO 3 CLEARING LIMITATION**

The Board discussed the clearing limitation on Lot 3 at 27 Crystal Springs Lane. The homeowner recently applied for a building permit for a new swimming pool. During the review of the building permit application and definitive subdivision plan, it was noted that area beyond the clearing limitation line on the definitive plan had been clear cut. The area subject to the conservation restriction held by the Department of Fisheries and Wildlife and the Conservation Commission has not be disturbed. The Board discussed whether the clearing limitation on the definitive plan applied only to the builder during construction or to the future homeowner. The conservation restriction line is clearly delineated in the field with markers as required by the Conservation Commission. The Board is still holding a surety on the subdivision.

The Board recalled that the importance of the clearing limitation was discussed at the public hearing on the definitive plan. Town Planner Michelle Collette said the homeowner may not have been aware of the clearing limitation shown on the plan because there is no reference to it in the deed.

The motion was made by Burke, seconded by Svarczkopf, to advise the Building Commissioner that the Board has no objection to the installation of a swimming pool at 27 Crystal Springs Lane. The motion passed unanimously.

The motion was made by Burke, seconded by Vega, to send a letter to the developer expressing the Board's concern about the amount of clearing at the Crystal Springs Estates subdivision. The Board will require that the developer have the design engineer/surveyor delineate the limit of clearing as shown on the definitive plan on all lots in the subdivision and that he submit a landscaping plan to restore the disturbed area. The surveyor must also show the clearing limitation area on the as-built plan. The Board will not reduce funds held in the performance bond until the matter is resolved. The motion passed unanimously.

#### **BERTOZZI FARM LOT RELEASES**

The Board received a request to sign a confirmatory release for lots in the Bertozzi Farms subdivision because the original lot release form was not recorded at the Registry of Deeds. The motion was made by Burke, seconded by Svarczkopf, to release Lot 1 -7 inclusive in the Bertozzi Farms subdivision and to ask the Building Commissioner to hold building permits until the developer provides the Town with evidence of recording the lot release form at the Registry of Deeds. The motion passed unanimously.

Meeting adjourned at 9:30 PM

Respectfully submitted,

Michelle Collette  
Land Use Director/Town Planner