

**I. The regular meeting of the Scituate Plan Commission was called to order at 8:08 p.m. on Tuesday, August 17, 2004. Members present were Chairman Jeffrey Hanson, David Provonsil, Nicholas Piampiano, David Hanna, Jr. and Lester Young. Not present was Vice-Chairman William Jaspardo and Jeremiah Allen**

## **II. Meeting Minutes**

**Motion made by Nicholas Piampiano to accept the minutes of the July 20, 2004 meeting. Seconded by Lester Young, unanimously approved.**

## **III. Administrative Subdivisions**

**David Provonsil reported the Hopkins application on Danielson Pike AP 27 Lot 16, which is a 50-acre parcel that has 2 legally existing houses on one lot. They have been before the Zoning Board under the ordinance to create two lots with a Special Use Permit and received approval. The Plan Commission has given its advisory opinion. They put a 1-½ acre parcel around one of the houses and existing barn. They prepared a plan that went to Zoning and received approval. They prepared a plan for Zoning and are now using the same plan for the administrative subdivision. I am only reporting this to the board out of a sense of caution. Technically this is an administrative subdivision because it is not creating any new lots for development; both parcels have houses on them.**

#### **IV. Pre-application – Minor Subdivision; AP 49/2 – Lot 253, Bourque Property, 93 Matteson Road; 2 Lots – Residential Compound**

**Mr. George Bourque explained that he has 16+/- acres and has received Zoning Board approval for a Residential Compound. He wanted to create the second lot in the front. It is very hard to create the lot in that area and I would have had to relocate the existing paved drive. Proposed Lot 1 with the existing house and structures will be 4½ acres and the other is 12+ acres. I will use the existing private paved drive as the right-of-way, continuing it to the new lot. A biologist has flagged the wetlands. Chairman Hanson asked if Mr. Bourque has done any soil testing for the septic system for proposed Lot 2. Mr. Bourque stated that he has not done any testing. Chairman Hanson informed Mr. Bourque that he would need to get the soil evaluation and water tables done in order for Lot 2 to be an approved lot. The water tables are required for a minor subdivision. David Hanna asked how far the driveway is from the wetlands? Mr. Bourque said the drive is 30' – 40' from the actual wetlands. At the end of drive is an old culvert that goes under Matteson Road. The Town came out last year and put a 12" plastic drainpipe. If the Town requested I would improve that culvert.**

**David Provonsil explained to Mr. Bourque that his next requirement to create a lot eligible for a building permit would be to get a Final Minor Subdivision from the Board and record the lot; then it would be**

eligible for a building permit; with an approved septic design. Mr. Provonsil questioned if the dotted area would be an easement over proposed Lot 1. Mr. Bourque stated yes. Mr. Bourque stated that he was under the assumption that whatever private drive went into this compound it would have to include a 50' width; the drive would actually only be 20' to 25' wide but would include a 50'strip. Mr. Provonsil stated this easement; driveway & utility, over Lot 1 accessing Lot 2 should a minimum of 50'. The plan should also show some geometry of the drive. The plans should show how the driveway improvements would be extended at least through the portion of Lot 1. Before you can receive Final approval you must have an approved water table. The plan should state who the biologist was that was responsible for flagging them and a statement that the wetlands jurisdiction indicated are the only wetlands on the subject property. There should be a name on the plan and the date that you were granted the extension from the Zoning Board should also be on the plan. Where you indicated the cross-section of Jan's Way, there should be widths indicated.

Mr. Bourque asked when he has the plans prepared with everything asked for, how do I get on the next meeting? Chairman Hanson stated that Mr. Bourque would have to get the checklists for Preliminary & Final Minor Subdivision and when he has met all the requirements on the checklists he can apply at the Building Dept. 14 days prior to the meeting. David Provonsil the Town Engineer will go over the application and if everything is in order it will be placed on

the next agenda.

**V. Work Session – Lanni/Whiting Property, AP 49 – Lots 202 & 212, Stanley Mowry/Franklin Roads**

**Francis DiPrete informed the board that he is here this evening representing Mr. Lanni. This is the second work session for this property. We have taken the comments and advise which we received from the board the last time we were here and revised our plan. Mr. Lanni has entered in an agreement with his neighbor to purchase enough property so Mr. Lanni's lot would be the conforming 240,000 sq. ft. We are now looking for the Plan Commission to permit the applicant to create a 2nd buildable lot with Flex Zoning.**

**The conventional development would create a maintenance burden on the Town by developing 300 linear feet of Stanley Mowry Road. It would also be a large expense for Mr. Lanni and would have a negative impact on the environment and pristine nature of the neighborhood. Therefore, we had DiPrete Engineering prepare a preservation plan using the Flex Zoning. Each lot would have the required 120,000 sq. ft. The land has not been surveyed for these purposes. We ask that the remainder of Stanley Mowry Road remain in its current condition to keep the forestland and not to create water run off. This evening we are asking for permission to use flex zoning before we continue with further testing and engineering.**

Chairman Hanson asked Mr. DiPrete what the applicant would be preserving on his land that would make this plan eligible for flex zoning. The board needs to see something that is going to be protected. Mr. Lanni stated that the forestland would be preserved and there would be no undo water runoff from a road. Chairman Hanson stated that if Stanley Mowry Road was to be developed, the plan would have to come to the Plan Commission and the board would make sure that the road is built to protect the environment. Chairman Hanson stated that it looks like the applicant is looking at ways to not build Stanley Mowry Road, by configuring the lot lines as shown on the plan. We need to see what you are protecting inside the lots. Nicholas Piampiano asked what is unique about the lot. Mr. DiPrete stated that it is the unnecessary development of the road. Mr. DiPrete explained that they have not gone into the lot.

Chairman Hanson brought up the history of Lot 212. While researching these lots for this evenings meeting, I'm not sure if Lot 212 is eligible for sub-division. Lot 212 was created out of Lot 44; then Lot 214 was created out of 212, leaving Lot 212 sub-standard with only 40' of frontage. That would make Lot 212 sub-standard lot of record. Mr. Lanni explained that Zoning allows sub-standard lots with possible restrictions; as far I see there are no restrictions on that property. Chairman Hanson explained that he is not sure if that lot went to Zoning; so the question is, is this lot eligible for sub-division?

David Provonsil asked Mr. Lanni if he could research that lot and see

if the lot is eligible for sub-division. Mr. Lanni stated that he would make it a prerequisite in continuing this application.

The next issue for this proposal was the burden for the applicant to supply the board with a conventional 2-lot subdivision. Chairman Hanson stated that he doesn't think the applicant can develop a conventional 2-lot subdivision. The existing lot does not maintain the 300' frontage back to the 150' mark as required by the zoning ordinance. In order to develop a conventional 2-lot subdivision that needs to be accomplished. There continued to be a lengthy discussion on "flex zoning". Mr. DiPrete and the board differed on the definition of "flex zoning".

## **VI. Discussion – Ordinance Amendment Concerning Illegally Non-Conforming Lots and Merger Clause**

The members discussed the possibility of an ordinance amendment regarding illegally non-conforming lots and mergers of abutting lots in common ownership. David Provonsil explained to the members about lots that were created through deed and are not eligible for a building permit. The people who created these illegal lots have created their own hardship. The Superior Court has stated that owners can't make mistakes and then come back to Zoning years later to correct that mistake. The Zoning Board has been strongly upheld by the Superior Court in the Martinelli case. Another issue is a lot that was cut out on Chopmist Hill Road by putting a line down

the middle of the parcel. Up until 1995 if you were cutting out conforming frontage lots on an approved road you did not need Plan Commission approval. When this lot was sub-divided one lot had 20 acres with 600' of frontage, but the new lot only had 240' of frontage and 11 acres. There was a small lot in front of these two pieces. If you went back 150' this lot did have the 300' of frontage. At the time this lot was cut in, they did record a map locating Parcel 'A' and Parcel 'B'. Technically it was a frontage lot, but I believe it is illegally non-conforming. When this particular lot applied for and was denied a building permit, many people became involved. The owner's lawyer contacted Dianne Izzo of Gorham & Gorham, the Town Solicitor. After many discussions with regard to this parcel, Ms. Izzo questioned if we should do something about these lots that are so close. Chairman Hanson asked isn't that what Zoning is for. David Provonsil stated that if a lot is illegally non-conforming, it couldn't go to Zoning. Ms. Izzo has brought up discussion that we put in an amendment that addresses these lots; i.e. as long as the illegally non-conforming lot has 75% of the required frontage they may be buildable. Never conceding on area; just the frontage. Mr. Provonsil informed Ms. Izzo that he would get the board's thoughts on this issue. Chairman Hanson stated that we couldn't substantiate illegal activity. David Hanna stated his concern of not having the accessibility to the back lots with minimum frontage. Mr. Hanna referred to the Zoning Ordinance that states grand fathered lots must have 100' frontage and 10,000 sq. ft. This lot in question has 240' frontage and 11 acres. A builder came in for the building permit and

already had an approved ISDS. David Hanna asked how long the Town has had the 300' frontage requirement. It has been 300' frontage since July of 1979. David Provonsil state that this amendment would only be for lots from 1965, when Zoning was started, until 1995. After 1995 everything was a minor subdivision and had to go to Planning. David Hanna asked why it was created in the first place. David Provonsil stated that the owners are responsible for every deed or document they record. It doesn't make the Town liable to allow them to build on it. However, the Tax Assessor can tax you on it. David Provonsil stated this is a double edge sword; you can't get a building permit but your taxed on it. You don't know you can't get a building permit until you try. David Hanna asked if we would want to reduce the taxes on these lots. If you were denied approval to build on a lot, I would assume the owner would ask the Tax Assessor for a reduced tax. Chairman Hanson stated that he could merge this with another lot and then go through the process. Chairman Hanson asked if we could do this legally. David Provonsil stated that this would have to be done by a Town Council amendment to the Zoning Ordinance. Chairman Hanson stated that the Plan Commission would have to prepare the amendment. He also stated that we would have to get some legal advice as to what can possibly be done, we can't do anything. Lester Young made a motion to table. Seconded by David Provonsil, unanimously approved.

**Merger Clause – David Provonsil stated that this was placed on the agenda because there are quite a few substandard lots in the town,**

abutting lots with common ownership. Grand fathered lots have to have 10,000 sq. ft. and 100' of frontage. In some towns the merger clause merges sub-standard abutting lots that are in common ownership. David Provonsil read the merger clause in our ordinance.

Our merger clause is not clear. We have had two adjacent sub-standard lots in town that the owner wants to build on one; the Zoning Board has denied that. There are some lots in town that are actually in the same ownership, but are recorded in two different names. David Provonsil passed out a sample of the Burrillville ordinance regarding their merger clause. This was discussed between the members and decided that David Provonsil would discuss this over with Dianne Izzo.

## **VII. Discussion and/or approval of Affordable Housing Plan; Scope Requirements – Consultant.**

David Provonsil informed the members that Statewide Planning has approved the 5-yr. Comprehensive Plan Update. Michelle Mahar of Practical Planning Services has given us a proposal to amend her contract and write the Town's Affordable Housing Plan. Her proposal price would be \$11,500. The Town received a CDBG for \$10,000 for the Hope Village Housing Plan. Michelle has contacted Jeff Gofton to see if we can use this \$10,000 for the scope of the entire Town's housing plan and he said that would be acceptable. Donna Faria got involved soliciting consultants to do the Hope Housing Plan; but for some reason they never executed a contract. The consultant they

chose was Barbara Sokolorf and asked if she would amend her proposal. At this point we are not sure if Barbara Sokolorf has entered into a contract with anyone or not. Michelle Mahar's price would be \$11,500 and she has \$1,500 left in her contract. We could also apply for a RIHMFC grant of \$5,000. The members agreed that they liked Michele's work with the 5-yr. update and would like to see her do the Housing Plan; but we would ask Ms. Sokolorf for a price.

### **VIII. Zoning Applications**

**GEFFRE, DONNA, Case #919. Location of premises 8 Richard Street, listed on Assessor's Plat 4, Lot 47, RSW 60 HVOD under the Zoning Ordinance; Request for a Dimensional Variance to exceed the maximum lot coverage of 15%; requesting 16.4%.**

**David Provonsil made a motion to send correspondence to the Zoning Board that this is consistent with the Comprehensive Plan as it maintains the village character. Seconded by David Hanna, unanimously approved.**

**CARPENTER, BRIAN E. (OWNER NANCY A. ESAU), CASE #920. Location Of Premises Opposite pole 123 Rocky Hill Road, Listed On Assessor's Plat 24, Lot 15, RR120 Under The Zoning Ordinance; Request For A Dimensional Variance On Pre-Existing Non-Conforming Lot – Right Side Of 20.3' (35' Required) And Rear**

**Yard Of 59' (60' Required).**

**David Provonsil made a motion to send correspondence to the Zoning Board that we can offer no opinion on this proposal in that the topic involved is not addressed in the Town's Comprehensive Plan. Seconded by Nicholas Piampiano, unanimously approved.**

**CARPENTER, BRIAN E. (ESTATE OF JANET C. BEATTIE), Case #921. Location of premises 180 George Washington Highway, listed on Assessor's Plat 51, Lot 87, RR120 under the Zoning Ordinance; Request for a Special Use Permit for a 2-lot Residential Compound.**

**David Provonsil made a motion to send correspondence to the Zoning Board that pursuant to all the applicable rules and regulations of a subdivision of land being met; we find that these residential compounds are in compliance with the Comprehensive Plan. Seconded by Nicholas Piampiano, unanimously approved.**

**MARCELLO, THOMAS, Case #922. Location of premises 207 Old Plainfield Pike, listed on Assessor's Plat 51, Lot 70, RR120 under the Zoning Ordinance; Request for a Special Use Permit for a 3-lot Residential Compound.**

**David Provonsil made a motion to send correspondence to the**

**Zoning Board that pursuant to all the applicable rules and regulations of a subdivision of land being met; we find that these residential compounds are in compliance with the Comprehensive Plan. Seconded by Nicholas Piampiano, unanimously approved.**

## **IX. Old Business**

**A. Application Fees – Jeremiah Allen and Nicholas Piampiano previously researched the application fees of other towns. The members discussed the amount of hours that it takes to research these applications and monetary value placed on that time for both David and Calista. The members agreed that we should look at this and make the necessary fee adjustments for the Plan Commission applications.**

### **B. As required**

**David Provonsil brought the members up to date on the project in Hope between Rt. 116 and Hope Avenue/Jackson Flat/Sammy Brown's place. David explained to the members that Ted Richard, Richard Iverson, Carol Mumford and himself met with RIDOT in regards to that part of Rt. 115. Kent County is putting the water through that area. The Director of DOT stated that we could due this paving project under a TIP program. We are going to tell Kent County Water Authority to trench patch Main Street and then give us the difference. There is approximately \$30,000 left. We would have to get**

**the design done.**

## **X. Correspondence**

**Practical Planning Invoice for \$112. David Provonsil made a motion to pay. Seconded by David Hanna, unanimously approved.**

**Memo from boards of Design Professionals**

**RI State Conservation Committee**

**Planning Guide memo**

**Blish & Cavanagh Appeal for EFC Construction**

**Public Notice TIP**

**State Planning Council 2005**

**Statewide Planning**

**American Planning Association**

**DOH**

## **XI. Adjournment**

**Lester Young made a motion to adjourn at 10:20 p.m. Seconded by David Provonsil, unanimously approved.**

**Respectfully submitted**

**Calista A. McDermott**