Town of Needham
Joint Meeting
Select Board and Planning Board
Minutes for Monday, September 11, 2023
Needham Town Hall
and
Via YouTube

5:00 p.m. Call to Order:

A joint meeting of the Select Board and Planning Board was convened by Chair Marianne Cooley. Those present were Kevin Keane, Heidi Frail, Marcus Nelson (via Zoom), Catherine Dowd, Adam Block, Jeanne McKnight, Artie Crocker, Paul Alpert (via Zoom at 5:15), and Town Manager, Kate Fitzpatrick.

5:01 p.m. Special Town Meeting Draft Warrant Article - Foster Property Open Space Zoning Non-Binding Resolution:

Ms. Cooley explained the Select Board placed the item into the draft Special Town Meeting Warrant, noting the Foster property continues to be challenging to bring to a close. She commented that Town Meeting a year ago expressed their strong support, voting to provide funding for the acquisition of 34 acres of open space at a price of $2.5 million. She said the transaction has not occurred and a draft development agreement was never filed. Ms. Cooley commented on the number of affordable units changing to 25% from 5% under a LIP, per state requirements. She said all possible options continue to be pursued including a rezoning of the parcel (484 Charles River Street). She said zoning is different from what was presented to Town Meeting a year ago, noting Town Meeting should have the opportunity to weigh in again. She noted additional funding is not being sought by the Town, just the opinion of Town Meeting as to whether the Town should continue making the investment of time in acquiring the open space.

Mr. Block said the Planning Board has not had the opportunity to review or discuss the draft resolution until now.

Mr. Crocker said questions remain including the percentage of affordable housing and who will fund infrastructure upgrades along Charles Rivers Street related to the project.

Ms. Cooley said it would be expected that zoning changes would go through a regular zoning process, should the Select Board ask the Planning Board to take up the zoning, including holding public hearings.

Mr. Block pointed out that as with any other developer, they would be responsible for the costs of mitigation.

Mr. Crocker claimed that this was not what was stated last year, perhaps because the developer thought the project would go through a LIP. He stated the developer said they would not pay for infrastructure costs. Mr. Crocker said bringing any housing to Needham is necessary and great, yet questioned the percentage of affordable housing and to make sure there is enough buffer between the residents on Whitman Road and the project.

Ms. Cooley and Mr. Block concurred zoning would be specific on the amount of buffer and setback requirements (100 ft.) that might be required for the project, which was committed to previously.

Mr. Crocker said 100 ft is not enough setback between the neighbors and the project.

Ms. McKnight said she is not sure there is a plan approved by the Planning Board expressly stating access should be provided to the Charles River and that protecting the areas around the river is an important goal. She commented on a conservation easement and public access on a separate subdivision project the Planning Board worked on. She said she has followed the Charles River Street project closely and was very surprised that the state would approve a local initiative project with only 5% affordability. She commented that to hear the state will not approve the project unless there is 25% affordability does not surprise her. Ms. McKnight expressed concern over the town goal of uniformly applying a 12.5% affordability requirement throughout town, and is torn about getting away from that percentage on this project because the town wants to acquire the land. She wondered if any discussions were had with the proposed developer or land sellers asking if 12.5% would work?

Ms. Cooley stated 12.5% would be a less economically viable project and would require additional funding from the town, or the seller would have to cut the price. She said economics comes from a variety of factors, which would have to change in order to make 25% affordability possible.

Ms. McKnight concurred rezoning would likely be the kind the town typically does prior to the Planning Board recommending adoption. She said she assumes the zoning would require a special permit by use.

Discussion ensued on the Finance Committee, preliminary discussion, and the resolution.

Mr. Block stated Mr. Crocker and Ms. McKnight are speaking about a specific mechanics of the construction of the zoning bylaw, which is not currently contemplated. He said the current discussion is whether the Town Meeting will approve the non-binding resolution that the Planning Board take up zoning in an ordinary zoning planning process in time for the Annual Town Meeting.

Discussion ensued on time necessary to prepare a draft resolution of the zoning by-law, resolve the framework for the dimensional regulations, proposed language, and to hold a public hearing to bring zoning to May Town Meeting.

Mr. Block reiterated Town Meeting approved the authorization, for the global purpose for the benefit of the whole of the town, of acquiring 34 acres of open land to be made available as public land for use by residents including access to the Charles River. He said having that municipal benefit removes a question that some may have had about spot zoning, noting Town Meeting is a legislative, representative body of the Town, and if this is resolved in October by resolution, it behooves the Board to take it up.

Mr. Crocker said he is unsure how having public land as part of the deal takes away from the fact that it's spot zoning. He stated a traffic study of the area would be necessary, and that many other things need to be done for the May Town Meeting. Mr. Crocker said he is unsure whether there is enough time to do things correctly. He commented on a lower section of the property, wondering how much of the property is actually developable. He noted the developer could contemplate giving the Conservation Commission any undevelopable land, noting the town would, therefore, not have to pay taxes on that land. Mr. Crocker concluded he does not believe that question has been finalized.

Mr. Block said to Ms. Newman, Director of Planning that it might be helpful to find alternative resources, if necessary, in order to help with the preparation of the zoning bylaws to make May Town Meeting work.

Discussion ensued on the question of developable land.

Ms. Cooley offered to attend a Planning Board meeting, noting the purpose of meeting tonight was to provide a brief update.

Mr. Block suggested Town Counsel could have a conversation about the legal standard for spot zoning. He asked Mr. Crocker and Ms. McKnight "if the Town Meeting desires and approves the non-binding resolution to advance zoning at the following Town Meeting, will the Zoning Board take it up?" Ms. McKnight said she would agree, however she said she is hesitant if the resolution specifically states 5% affordability, saying more discussion is needed.

Mr. Crocker said it makes sense to take it up, noting the vote is a mandate, per se, as the Town Meeting already voted they wanted to do something. He said it also makes sense to take it up to see what the town can do to preserve space and for the affordable housing component.

Ms. Cooley said it is also important to take up the question for the seller to understand whether the Town remains interested in this process as well, or that they could decide to put the property back on the market for single family homes to clear cut the site, noting there would not be the setbacks of the type Mr. Crocker is referencing.

Mr. Crocker stated he does not fear what might happen, but understands it is possible.

Discussion ensued on access to the Charles River, as brought up by Ms. McKnight and the Conservation Commissions' desire for the Town to acquire the parcel of land.

Ms. McKnight said the land is beautiful and wants the town to acquire it, but she is torn.

5:23 p.m. Executive Session: Exception 3 (Potential Litigation) relative to 1688 Central Avenue, Needham

Motion by Mr. Crocker that the Planning Board convene an Executive Session for the purpose of discussing strategy with respect to litigation, namely <u>Needham Enterprises Inc. vs. Needham Planning Board</u>, Land Court Miscellaneous Case #22 MISC 000158, where the Chair declares that doing so in Open Session will have a detrimental impact on the Planning Board's litigating position, with said Executive Session to include the Select Board, and to adjourn at the conclusion of the Executive Session without returning to Open Session.
Second: Ms. McKnight.

Christopher Heep, Town Counsel was asked, with consent of and through the Chairs, by resident Peter O'Neill "what the detrimental effect would be on the litigating position of the public body?"

Attorney Heep stated that discussion is expected to involve the decision of the trial court in this case, and whether or not to pursue or not an appeal of that decision. He said an open session would disclose to the public, among other things, counsel's analysis of the decision and the underlying law, and that such a discussion is properly conducted in Executive Session.

Motion approved 3-0-1 by roll call vote. Mr. Alpert abstained.

Motion by Mr. Keane that the Select Board convene an Executive Session for the purpose of discussing strategy with respect to litigation, namely <u>Needham Enterprise's Inc. vs. Needham Planning Board</u>, Land Court Miscellaneous Case #22 MISC 000158, where the Chair declares that doing so in Open Session will have a detrimental impact on the Planning Board's litigating position, with said Executive Session to include the Planning Board, and to adjourn at the conclusion of the Executive Session without returning to Open Session.

Second: Ms. Dowd.
Motion approved 5 – 0 by roll call vote.

A list of all documents used at this Select Board meeting is available at:
http://www.needhamma.gov/Archive.aspx?AMID=99&Type=&ADID