

# BOSTON PLANNING BOARD

April 12, 2016

PRESENT:	David Stringfellow	Chairman
	Dr. Paul Ziarnowski	Vice Chairman
	Jennifer Lucachik	Secretary
	David Bowen	
	James Liegl	
	Elizabeth Schutt	
ABSENT:	Mitch Martin	
	Mary Ann Rood	
	Jay Boardway	Town Board Liaison
ALSO	Michael Kobiolka	Town Attorney
PRESENT:	Sarah desJardins	Planning Consultant
	Thelma Faulring	Secretary to the Boards and committees
	Michael Metzger	Engineer – Boston State Road Mixed Use Project
	Jake Metzger	Boston State Road Mixed use Project
	Bill Solak	Boston State Road Mixed Use & Brown Hill Road Duplex projects
	Sean Hopkins	Boston State Road Mixed Use Project
	Residents in the vicinity of the Boston State Road Mixed use Project	
	Bill Sodja	Meadow Drive
	Judy Sodja	Meadow Drive
	Susan Lakso	Meadow Drive
	Patricia White	Meadow Drive
	Arlene Weiss	Meadow Drive
	Vince Weiss	Meadow Drive
	Joyce Carr	Meadow Drive
	Rungen	Meadow Drive
	Don Rosa	Meadow Drive
	Paul Soss	Meadow Drive

Chairman Stringfellow called the meeting to order at 7:30 PM. and appointed Elizabeth Schutt to serve as regular voting member for this evening's meeting, in the absence of two members.

## MINUTES

Mr. Stringfellow asked if there were any additions or corrections to the draft minutes of March 8, 2016.

Mr. Liegl questioned agenda item heading: Discussion – Town Code Section 123-158 C, should that be Section 123-178 C? It was agreed that 123-178 C.

Mrs. Schutt: I move that they be adopted as corrected.

Mrs. Lucachik: I second.

Mr. Stringfellow: Motion and second, any discussion. Being none all in favor please say aye.

All members were in favor of the adoption of the minutes as corrected, except Mr. Bowen.

Mr. Bowen: Opposed to the minutes. When I got these I read them and there is a lot here in terms of this rezoning and this subdivision and thing that really stands out is that it no longer goes to Abbott. I just can't approve these minutes until I understand what's in them. Mr. Chairman thank you.

Mr. Stringfellow: It only take a majority and the majority approved the minutes so they stand approved.

## GENERAL CORRESPONDENCE

Secretary Faulring reported:

- Code Enforcement Officer Ferguson's March end-of-month report
- Chairman Stringfellow's e-mail dated April 7, 2016 with 'Welcome to the Town of Boston' letter revisions

At point correspondence:

- Town Board letter dated March 18, 2016 with decision the Town Board made at its meeting on March 16, 2016
- Mixed Use Correspondence
  - Letter of request to be on Planning Board agenda on April 12, 2016
  - Full E.A.F.
- Planning Consultant e-mail dated April 9, 2016
- Quaker Estates letter of request to be on Planning Board agenda on April 12, 2016

**BOSTON STATE ROAD MIXED USE DEVELOPMENT**

Mr. Stringfellow: This has been talked about before and the decision has been made to start tonight from absolute zero. So if there are representatives from that project we would be happy to hear a description of what you have in mind.

Mr. Metzger: If I could ask, we have Mr. Sean Hopkins who is going to making the presentation tonight, he's running a little bit late so could we ask that maybe the next item be heard first to give him more time to get here? We would appreciate that.

Mr. Stringfellow: Does anyone on the Board object to switching the agenda around. There were no objections from the Planning Board members.

**BROWN HILL ROAD DUPLEX**

Mr. Stringfellow: The Brown Hill Road duplex has been before us before and we got hung-up on the question on how far back do we go when our Code says there is no time limit. I would therefore like to take agenda item 7, which is hopefully getting to a decision on how far back we go to the problem that hung us last time because we didn't know.

**SUBDIVISION OF LAND - determine year for moving forward with new subdivision proposals**

Mr. Stringfellow: Mr. Kobiolka do you have anything more to add on that?

Mr. Kobiolka: I thought that the Board was going to, since this was in effect at the time that the applicant had made the application had made the application that he complies with all the divisions of the subdivision of land that we were going to go ahead and approve this and perhaps if need be get a moratorium on any further subdivision of land until we get a clarification and an adoption, for our Town Code which specifies exactly what we are going to do. I've contacted the Association of Towns, I've contacted numerous towns, I've spoken to Sarah our Town Planner and every town seems to have a different opinion in terms of how they do it, why they do it, and I think this Board has to take a look at that and make a decision in terms of what we want to do. That's my understanding of where we're at. I think the applicant doesn't meet the provisions for Brown Hill, that seems a little...someone putting one duplex on 48 acres, but that's not my choice, that's no the Board's choice, that's the applicant's choice. And if there is going to be something in the future I would hope the applicant would let us know there's additional plans going forward with that parcel, but at this point there's water, it's by the road, he's got the appropriate setbacks and spaces.

Discussion included:

- Creation of the Moon Subdivision when 5<sup>th</sup> single parcel was sold off
- Deed presented to us for this project was a 100 acre parcel divided in two on of which where this duplex is going to go
- This subdivision appears only to be the second division
- This parcel you can different lots to put houses on
- Some additions were added to existing parcels to even out property lines
- Our scheme is meant to simple but is incomplete, since we don't have ownership and don't have dates on it
- Name of purchaser – does it matter?
- Hamburg looks at every division
- Hamburg has set date of 1986
  - Every split is reviewed by Planning Board
- Orchard Park has set date of 1958
- Who monitors these subdivisions
  - Assessor
  - Code Enforcement Officer
- Hamburg and Orchard Park only looks at the division, they don't care who owns it

Discussion followed as to how Orchard Park and Hamburg deal with division of property

Mr. Stringfellow: I will make a motion that we use the date that our present zoning code was adopted which is October 5, 1988 as the date at which we begin looking at how many subdivisions have occurred.

That is similar to what Hamburg and Orchard Park are doing; it gives us a clear, fixed point in time to work from it is I guess somewhat arbitrary in a sense but... the Town Code was adopted with Zoning Map that was in effect at that time becomes part of the Code. It seems to be a reasonable place to start and a reasonable way to get something that we can work with and get on with this.

Dr. Ziarnowski: I second it.

Mr. Stringfellow: Is there any discussion?

Mr. Liegl: What does the Code say from 10/5/88? What was changed 10/5/88?

Mr. Stringfellow: With certification from the office of the Town Clerk, Joyce Carr at the time, that essentially says ‘we adopt this Code as of October 5<sup>th</sup>, 1988.  
Discussion followed regarding prior Codes and dates.

Mr. Stringfellow: There have been updates to the Code since then, the printed updates are included, there have been suggestions made for updates, but not approved. To say that we can only subdivide a lot five times we need a date to start from.

Mr. Kobiolka asked that the motion be read again.

Mr. Kobiolka: It’s good. I think that it has to be expanded upon and fill in some of the blanks that run with the land and not with the owner; so that if anybody reads it can understand what you want to do.

Mr. Kobiolka went on to explain the process for amending the Town Code.

Mr. Stringfellow: We need to do something. We have not voted on this motion yet...

Mr. Bowen: I’d like to see a copy of Orchard Park’s and Hamburg’s Code relative to this. I would certainly like to do that before I vote on the motion.

Mr. Bowen: There seems to be some uncertainty of the wording of the motion.

Mr. Kobiolka: I think what the Board needs to use what the Chairman suggested use the starting date of October 5<sup>th</sup>, 1988 as the starting date of the subdivision of land. And ask the Planner and the Town Attorney to review the other town’s with similar issues and bring it back to the Board.

Mr. Stringfellow: We are still in discussion. If we were to pass this motion tonight; can we simply pass that motion and use it and consider the duplex project on that basis?

Mr. Kobiolka: No. It has to go to the Town Board and why I’m suggesting you might want to grandfather in the Brown Hill project and then ask the Town Board for a moratorium on any further subdivision until we get some type of legislation up to the Town Board which would officially amend so the applicants coming in know exactly what they are applying for and what they have to do.

Discussion continued.

Mr. Stringfellow: I guess we should amend the motion rather say do it to say recommend that the Town Board do it.

Dr. Ziarnowski: With no moratorium.

Mr. Stringfellow: I really hesitate to go ahead and do it this time when a year ago we had a similar situation and we did not do it. That’s the next item on the agenda, we have a motion on the floor, is there any more discussion on that motion?

Mr. Stringfellow: Whatever the parcel of land looked like in October 1988, whether it was part of some other lot or not, whatever it looked like at that time, if it is now a total of 5 parts then it has to be approved as a subdivision before it’s a buildable lot.

Chairman Stringfellow took a roll call vote:

Mrs. Lucachik	aye	Mr. Bowen	I abstain
Mrs. Schutt	aye	Dr. Ziarnowski	yes
Mr. Liegl	nay	Mr. Stringfellow	yes.

**BROWN HILL ROAD DUPLEX**

Mr. Stringfellow: Mr. Solak do you have anything more for us.

Mr. Solak: So that I can understand this subdivision. Take any 100 acre parcel, that owner sells a lot off, a legal lot, so that can be done four times, correct?

Mr. Stringfellow: No, when he sell the fourth lot is there is any left then there are a total of five so it must be subdivided when he sell the fourth.

Mr. Solak: So assuming that they sell the 4, on the fourth one is when that occurs, is when that subdivision review occurs?

Mrs. desJardins: Yes. Because the fourth split creates the fifth.

If he only splits off three, if that owner then sells the lot to someone else the first time they try to subdivide one off then it has to go to subdivision?

Mr. Stringfellow: That’s right.

Mr. Solak: So because of the discussion here tonight what do I have to do, because now you have a motion here to look at this because it seems to be a bit ambiguous and difficult to figure out where it was subdivided and when it took place.

Dr. Ziarnowski: The assessor had documentation to show that it was split up.

Mr. Solak: But some of that land was added to properties that were already there.

Mrs. desJardins: That’s not considered a split, as long as you have the same number of lots as when you started.

Discussion continued

Mr. Stringfellow: So we have a request before us build a duplex on a lot which has very recently been split and we don’t know how many other splits have happened before that.

Discussion turned to the division of property on Cole and Omphalius Roads

Mr. Stringfellow: We have been asked to approve a site plan for a duplex on 47 acres on Brown Hill Road. The question came up when it came before this Board how many times has this lot been subdivided and does he need to apply for a subdivision rather than simply site plan approval. At this point our Code makes no time limit at all, it just says if a lot is divided is into 5 lots, there is nothing in the Code that says how far back you go, and we were stuck with that, we tabled it, we have now made a motion to recommend that the Town Board do something.

Mr. Bowen: I make a motion to table this again.

Mrs. Schutt: I second.

Mr. Stringfellow: Any discussion.

Mr. Metzger: As it is only one structure on 45 acres of land that is compliant with New York State Realty Subdivision Laws, 4 lots every 3 years and under NYS Realty Subdivision of Law a 45 acre parcel does not, it's not even recognized as a lot. So under that same law a 45 acre parcel can move forward without there being an issue. The reason actually falls under the environmental laws having to do exactly with what you're talking about making sure that you don't split of too many lots, too small a size, too quickly, that's why 4 lots in 3 years, it just kind of slows the pace

Dr. Ziarnowski: Boston does not have the New York State timeframe.

Mr. Stringfellow: I'm not comfortable approving this when a year ago we did not approve it in a very similar situation. Any other discussion on the motion on the table?

Mr. Stringfellow took a roll vote on the motion to table discussion:

Mrs. Lucachik	aye	Mr. Bowen	aye
Mrs. Schutt	aye	Dr. Ziarnowski	aye
Mr. Liegl	aye	Mr. Stringfellow	aye

Mr. Kobiolka instructed the applicant to check with the assessor regarding the numbers of splits based on the proposed date of October 5, 1988 as a starting date, and bring those results back to the Planning Board for their review.

Mr. Stringfellow: What do we need to do in order to get the Town Board moving on this?

Mr. Kobiolka: I think this Board has to send out proposed legislation to the Town Board saying this is what we recommend and this is why we recommend it. And then the Town Board will set it's agenda and hopefully act quick and put it out for Public Hearing and get it adopted. The onus would still be on this Board.

Mrs. desJardins will check with Orchard Park for their wording.

Mr. Kobiolka: The other thing is not just how it applies to the Planning Board and the approval of the Planning Board and final approval by the Town Board butt then you've got the assessor who will be affected, the Building Inspector and their responsibilities. And there should be follow-up.

Mr. Stringfellow: If the Planning Board is to submit proposed legislation we would probably aske the attorney to write.

Mrs. desJardins: I will get the verbiage from Orchard Park.

Mr. Stringfellow: Can I ask you to come up with something by the next meeting, this man wants to get his project and I understand that he does.

Mr. Kobiolka: By, the next meeting, I don't know. I'll see what I can do.

**BOSTON STATE ROAD MIXED USE DEVELOPMENT**

Mr. Stringfellow: I still don't see your attorney here, so go ahead and do the best you can.

I'm Michael Metzger, Metzger Civil Engineering, 8560 Main Street, Williamsville and with me tonight representing the owner is Bill Solak and my associate Jacob Metzger. I'm anxious to explain the project and then answer any questions. The only action that we are looking for tonight is a recommendation to the Town Board to commence with the SEQR Review process. We're not anywhere near the recommendation on the action itself but we need to get the environmental review started, there may be some questions that you have that will be answered via that process.

Mr. Metzger presented the following:

- The property in question is 26.4 acres
- Currently zoned C-1
- Met with Code Enforcement and he came to the conclusion that we should be seeking a C-2 Zoning
- The project itself contains
  - 5 60 X 200 high bay commercial lease space; leased to people with small business
  - Carwash
  - Adjacent to 219 3 spaces for future hotels
  - 8 apartments in each of 11 building
  - Clubhouse with a pool
  - Separate garage buildings for the use of the residents

- 60 foot entrance off of Boston State Road
- Entrance into project 'T' left arm to the commercial right arm to the residential area
- Buffering to Meadow Drive
- Commercial to residential to single family dwellings on Meadow Drive – a step-down component
- Also proposing to install a landscaped berm
- The project as is laid out would comply with all of the zoning requirements that are built into the C-2 zoning classification with the exception of one thing
- If successful in rezoning we would have to get a variance for the lot width at the road
- Our client does own property that extends beyond what the rezoning request is for and is willing to provide a permanent open space buffer
- Multi-phased project through the years
- A need for more diversity, that's why we're proposing a multi-use project
- Client feels very strongly that this project will fill the need of the community, and the location
- Environmental Review process has to start with a 30 day comment period for any involved agencies and also at the end of that 30-day period become the Lead Agency
- Town Board has to issue a declaration with positive or negative
- According to the Comprehensive Plan the hamlet of North Boston – there is a desire for a higher density residential projects

For the remainder of this discussion

Name of Planning Board member or associate

- Planning Board member or associate comments/concerns
  - Mr. Metzger or associate comment/response

Dr. Ziarnowski:

- Have a problem with phasing
  - Inclusion of the 3 hotel pads is in response to the Town asking what our future vision might be for that area, we don't have any definite plans for that area right now
- Can you tell me about cost of community services for high density apartment buildings, what is the benefit to the Town, not the owner, not the developer
- Comment for the greenspace provided, how about a continuous greenspace buffer and using that piece of property that isn't going to be developed
- Why isn't there an entrance off of Abbott Road, other than the easement for the power line
- Hardship variance criteria, this hardship is self-created
- Changing C-1 to C-2 forever that's off the rolls forever
- Should meet with residents

Mr. Bowen

- Is your client prepared to develop the hotels first of all
  - No, absolutely not, we have nobody lined up for that

Mr. Metzger introduced Attorney Sean Hopkins who just arrived.

Mrs. Schutt:

- Exactly how far from the entrance to the 219 is the proposed entrance to this project
- Is the land that you're going to crossing is that part of the D.O.T. feed with access or without access
- The D.O.T. maintains a fairly large or fairly long extension of rights at their entrance and exit points in the event that they wish to reconfigure their ramps
- I would be concerned with how they're going to view bringing that much traffic across their right-of-way
  - In certain instances where you have major highways like the 219, not only does the D.O.T. have jurisdiction over the actual right-of-way of the highway that is jurisdiction over areas that come off interchanges to restrict potential access for future projects, traffic impacts etc...
  - It is a very good question we will have to check
- The Rice Road exit extension is considerable off there and I would be gravely concerned especially if you are going to have any kind of permanent signage near that road that says that this leads to something; they are very particular about how they allow setbacks, access and how they allow that particular area to be used and if you're unfortunate enough to be in a feed out access you might as well close up the books right now
- Based on scale we're probably about 250 feet away from the interchange

Mr. Bowen:

- You're not prepared to stage from the commercial, the hotels and then move out from that the residential?
  - That's correct

Mr. Stringfellow:

- Please go to the Town code, read the permitted uses in C-2 zone because residential is not permitted
  - Spent a lot of time looking at the Code which is why we sat down the Code Enforcement Officer; the Code Enforcement Officer is the one who has the obligation within the Town to make a determination of the law, the uses based upon that Code and it has been his determination that C-2 is the appropriate zoning classification for these uses
  - I don't want to speak for Mr. Ferguson but I believe position relative to that is if you look at the C-2 it specifies dimensions, setbacks, etc. for multi-family
  - Under the C-1 Zoning it specifically excludes this type of use, under C-2 it does not specifically exclude it, while it does not specifically include it as Mr. Hopkins just mentioned, if you go to section where it mentions the setbacks, the minimum lot width it's all based upon 3 and larger residential units, so it's clear that the intent is for this type of use to be allowed and I believe that was what in Mr. Ferguson's head when he made that ruling

Mrs. desJardins:

- When it talks about required yards it's got for side yards, dwellings, other principal buildings so he's saying in the list of permitted uses you don't see it you see it in the required yards

Mr. Stringfellow:

- It says in here somewhere that any references to residential are for historical purposes only
  - That's for single-family and two-family homes

Mr. Bowen: Can we get that in writing from Mr. Ferguson whatever Mr. Metzger is representing.

Mr. Kobiolka:

- You were in front of the Planning Board 14, 16 months ago and you had asked the Town Board for an informal opinion in terms of this project which would include a rezoning, this Board made a recommendation to the Town Board not to do the rezoning
  - I was not representing the project at that time but I am aware of the fact that the recommendation was made by the Planning Board
- Has there been anything that has changed on these new plans, which is different from the other one to give you cause to think that this Board would go for the rezoning
  - I believe that project was entirely multi-family
  - I don't believe there were commercial components in that one
  - Commercial components that are being proposed at least partially are different than that
- I believe there was storage in the last plan and a car wash,
- I don't think there was any change in use – there's apartments, storage of a contractor and a car wash

Secretary Faulring: That request was to a rezone of R-3.

- A partial rezone to R-3

Mr. Stringfellow:

- Still it is not listed in permitted uses
- How high will the berm be?
  - 5 – 6 foot berm with plantings on top
- How high will the apartments buildings and the garages be
  - The buildings will be about 30 feet high, the garages will be less
- Why bother with a berm if you can see the other 25
  - It's a matter of perspective
  - There are ground uses that would certainly be a buffer
- I have serious reservations about an area this big containing 80 families, I don't know how many businesses, a hotel and a car wash and only one entrance and exit
- I know Mr. Emerling owns the next property which goes all the way to Abbott Road including thing stretching out onto the power line, he may own the power line, but he owns out to Abbott Road; now he's talking all of this on 60 feet of frontage, he could easily build a public road and dedicate it to the Town

Mr. Stringfellow:

- All from Boston State through to Abbott Road then he would have all the frontage he could ask for
- As far as the apartments being a buffer to the commercial project, yes, however one row of apartments along the back of the existing Meadow Road property would serve as a buffer, you don't need all these apartments extending out over half of your what is now commercial property
- I hesitate to recommend that we begin a SEQR on this because I don't think this is what we want in that area
- If you go through the whole SEQR process on this plan then we suggest that you change the plan and the SEQR is pretty well shot and you have to do it again

Mr. Metzger: With all due respect, the request by the Planning Board to change the plan may not necessarily result in a change to the plan because ultimately it would be a Town Board decision, obviously they would look to your recommendation and take that into consideration; but this is the project we are putting forth and we would like to begin the review and ultimately take it to you and the Town Board to determine whether it's an appropriate use or not based upon that Mr. Hopkins: The other thing Chairman Stringfellow, I understand what your question is 'well if changes are made in the future is that going to trigger the need to start SEQR again and again.' The representation that we're making is this is the maximum potential development with it being understood that there may be the need for modifications. If we have to do that it would result in a reduction of impacts, not an increase.

Mr. Metzger: So under the SEQR process what you effectively establish thresholds and as long as any adaptation of this project that comes out of the review process, once it gets to that point, as long as it doesn't hit or exceed any of those thresholds, then the SEQR process is still valid

Mr. Bowen: Mr. Chairman are they asking us to recommend a SEQR process?

Mr. Stringfellow: That's my understanding.

Mr. Hopkins: Yes.

Mr. Metzger; What that will do is answer many of these questions and any questions that come up through that process to be answered.

Mr. Bowen: I would make a motion that we not recommend that they start a SEQR without commercial development hotels being the first stage in the process.  
There was no second, motion dies.

Dr. Ziarnowski: I would like to see a resolution that the C-2 qualifications in what you can do and what you can't do in C-2. This is going to open up a can of worms like our lighting codes and this is going to be another one of those things where somebody is going to speculate on what we can do and what we can't do in a C-2. I'm out for voting for anything that will start forward if we don't have the clarification on where we're going with this.

Mrs. desJardins: You want something from the Building Inspector?

Dr. Ziarnowski: Is that the final step? Because it seems that we have a little bit of disagreement here on what is available in C-2. It's open to interpretation. Where does the buck stop Michael?

Mr. Kobiolka: I think it stops with Bill Ferguson and after that you get into an administrative review process where...

Dr. Ziarnowski: Do we have to take that up or do they take that up?

Mr. Kobiolka: They would have to take that up. And I think our administrative review process would then go to the Town Supervisor, I believe.

Mr. Hopkins: It would go to the Z.B.A.

Mr. Kobiolka: Right the Z.B.A. and then they would have to make the decision on it.

Mr. Hopkins: SEQR is a legal prerequisite.

Mr. Stringfellow: Would someone like to make a motion as to where we go with this?

Dr. Ziarnowski: I make a motion that we get written clarification on the C-2 Zoning on what's allowed and what's not allowed.

Mr. Stringfellow: And do nothing until then?

Dr. Ziarnowski: And do nothing until then, table it

Mrs. Schutt: Can we also ask Mr. Ferguson to appear at the next meeting so that we may discuss this with him and how he came up with this?

Dr. Ziarnowski: Yes.

Mrs. Schutt: I would like to amend the motion that Mr. Ferguson's presence be requested.

Mrs. Lucachik: I second.

Mr. Stringfellow: Any question on the motion. Being none all in favor?

All were in favor of the motion for written clarification from Code Enforcement Officer Ferguson and request his attendance at the next meeting.

**PLANNING CONSULTANT**

Mr. Stringfellow: Anything new or coming up that we haven't heard about?

Mrs. desJardins: No, other than what I wrote to you about this project.

**LIAISON – COUNCILMAN BOARDWAY**

Mr. Stringfellow: Liaison from the Town Board is not in attendance. Do we have any report?

Mr. Kobiolka: I don't have any.

**TOWN ATTORNEY KOBIOŁKA**

Mr. Kobiolka: The last Town Board was not held. The next Town Board meeting is in a week and a half.

**ADJOURNMENT BY MOTION**

Mr. Stringfellow: Is there any further business for tonight? If not is there a motion to adjourn?

Dr. Ziarnowski: Is there any way we can get representation from the Town Board? It sure would be nice if you didn't have to be the go between, do you have any pull up there, representation from our Town Board Liaison that we haven't had in a year and a half? We tried before to ask for someone to come down. Thelma tells us stuff, you tell us stuff, it sure would be nice to hear it from one of the councilman.

Mr. Kobiolka: I could try.

Dr. Ziarnowski: I make a motion to adjourn.

Mrs. Lucachik: I second.

All were in favor of the motion.

Respectfully submitted,

Thelma Faulring  
Secretary to the Boards and Committees