

PLANNING BOARD MINUTES

March 8, 2023

Members Present: Bob Domnitz (Chair), Lynn Delisi (Co-Chair), Margaret Olson, Gary Taylor, Ephraim Flint

Staff Present: Paula Vaughn-MacKenzie, Jennifer Curtin

Attendees: Joel Bard, Buzz Constable

7:00 PM Informational Session to discuss Town Meeting Warrant Articles:

Article 25: To see if the Town will vote to amend its Zoning By-Law, Section 6.6, Cluster Developments, to make it consistent with MGL, c. 40A the Zoning Act, such as to remove the specific mandates requiring that a proponent of a cluster development give the Town and /or the Lincoln Land Conservation Trust interests in land as part of the approval process; or take any other action relative thereto. Vote Expected.

Joel Bard, Town Counsel, presented the changes. The issue is that to require that land be given to the Town or LLCT with public access in order to create a cluster mandates that the property owner give up property rights without due compensation which is in violation of federal law.

BD asked why it would be considered a taking since a special permit is discretionary.

MO said the developer has the option of just doing a traditional subdivision, they can still develop the land without doing a cluster.

Mr. Bard said there is no case law to support that providing the special permit would be considered due compensation. He added that this change would not be retroactive to prior Special Permits for clusters since appeals need to be filed within 20 days. With the proposed changes to the bylaw, the property owner would now have a choice to voluntarily convey the land to the town, a non-profit, or put it under a Conservation Restriction and would no longer require that the land be accessible by the public. Updates to State legislation also removed allowing the open space conveyance to a homeowners association.

GT said the law as written still does not seem to be a taking since the cluster zoning option is made available with certain tradeoffs and conditions and the developer has the option to not pursue it and can do a traditional subdivision.

Mr. Bard said that he will review some case law and get back to the Board.

BD asked what issue would there be with not changing it.

Mr. Bard said that through their due diligence in current litigation, this is a provision that could be challenged in a special permit if appealed during the 20-day appeal period.

A Lincoln resident and member of the LLCT/RLF Board, Buzz Constable, said that he does not see an issue with removing the requirement for public access. LLCT has worked with developers in the past to allow a trail instead of requiring it.

BD said the existing wording seems fine if the Planning Board works with future developers on their proposal for some benefit to the Town that is mutually agreed upon. He added that Mr. Constable had expressed issue with LLCT not being the designated land trust.

MO said the issue is that the proposed change says "other non-profit trust" which could be anyone. She added that she does not see the issue with the bylaw as it is and does not believe anything should be changed at this point.

Mr. Constable said it is fine remove explicitly calling out LLCT but that language should state that that the non-profit be specified as one whose mission is preservation of open space, has experience in the Town of Lincoln, has sufficient resource to care for the land.

BD said that there will be a lot of questions at Town Meeting about this issue and it is confusing. He asked if a developer comes along and appeals this provision in a special permit, could we then negotiate something else or would the developer just get their development without the open space.

Mr. Bard said that we would have time to negotiate a different result after the appeal is filed within 20 days. There would still be a requirement for open land, just not the requirement for public access or be given to the land trust or the Town.

MO moved to pass over this article. LD seconded. Roll Call: MO aye, LD aye, GT aye, EF aye, BD aye.

Article 28: To see if the Town will vote to amend its Zoning By-Law by amending Section 12.6, Wireless Communications Facilities District, to carve out an exception to the requirement of a special permit for modifications or addition of equipment that qualify as "Eligible Facilities Requests" pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Publ. L. 112-96 (also known as the "Spectrum Act"); or take any other action relative thereto. Vote Expected.

The Board reviewed the slides for Town Meeting and made adjustments. BD will present at Town Meeting. LD moved to move forward with this article on the Town Meeting warrant. EF second. Roll Call: BD aye, MO aye, LD aye, EF aye, GT aye. EF Moved to approve the final language of the bylaw change. MO second. Roll Call: BD aye, MO aye, LD aye, EF aye, GT aye.

Article 26: To see if the Town will vote to amend its Zoning By-Law by amending Section 14.3 Accessory Apartments in an R-1 District to allow accessory apartments by right within the principal dwelling unit and to streamline the permitting process for an accessory apartment in an accessory structure by deleting the requirement of a Planning Board recommendation to the Board of Appeals; or take any other action relative thereto. Vote Expected.

BD asked if this would be a majority or 2/3 vote at Town Meeting because bylaws related to accessory apartments are subject to only a majority vote if they meet the State definition of accessory apartment which is a maximum of 900 square feet, but the Town defines them as a maximum of 1,200 square feet.

Mr. Bard said that he will review the language in the bylaw and confirm.

The Board reviewed the presentation for Town Meeting and made edits to the slides. MO will present at Town Meeting.

GT moved to approve the bylaw language. LD seconded. Roll Call: BD aye, GT aye, MO aye, LD aye EF aye.

Business

Approval of February 7 and February 14, 2023 Minutes

LD moved to approve the minutes of February 7 as amended. MO seconded. Roll Call: BD aye, GT abstained, LD aye, MO aye, EF aye.

MO moved to approve the minutes of February 14 as amended. EF seconded. Roll Call: BD aye, GT abstained, LD aye, MO aye, EF aye.

LD moved to adjourn. GT seconded. Roll Call: BD aye, GT aye, LD aye, EF aye, MO aye.

Approved on April 25, 2023.