

**Town of Westwood Planning Board**  
**Meeting Minutes**  
**Location: Thurston Middle School Cafeteria**  
**March 19, 2008**  
**7:30 PM**

**Board Members Present:** Chairman Robert Malster, Robert Moore, Steve Olanoff, and Bruce Montgomery.

**Board Members Absent:** Henry Gale

**Staff Members Present:** Nora Loughnane, Town Planner; and Peter Alpert, Esq., Ropes & Gray. Michael Jaillet, Town Administrator, Dan Bailey, Esq., Steve Rafsky, Economic Development Advisory Board.

Chairman Malster opened the meeting at approximately 7:40 p.m.

**Meeting with Representatives from the Board of Selectmen to discuss proposed Zoning Article 11: Amendment to the Town of Westwood Zoning Bylaws affecting MUOD Residential Controls.**

Chairman Malster explained that following the last meeting of the Planning Board, March 12<sup>th</sup>, a request was made for the Board of Selectmen to participate in a joint meeting with the Planning Board to discuss proposed amendments to the Westwood Zoning Bylaws affecting MUOD residential controls. Members of the Board of Selectmen were unable to attend this meeting, so the Board of Selectmen sent the following representatives: Town Administrator Michael Jaillet, Attorney Dan Bailey, and Steve Rafsky, Chairman of the Economic Development Advisory Board.

Attorney Dan Bailey explained that the Selectmen were seeking to amend section 9.6.8.4.1 of the Zoning Bylaw in order to provide the opportunity for an applicant to propose, and for the Town to consider, alternative approaches to meeting the affordable housing requirements in a Mixed Use Overlay District (MUOD). He stated that the proposed zoning amendment would most immediately affect the development of affordable housing units related to Westwood Station.

Mr. Bailey discussed the following points with respect to Westwood Station:

- Permit requires providing 12% of the units as affordable and 5% as moderate
- Construction of the housing units above retail must be complete simultaneously with the construction of the retail proposed for the first phase of the project.
- Housing market, mortgage and credit markets, and general economy currently distressed. Lending is extremely constrained.
- The developer remains committed to mixed use concept, which includes a balance of retail, office and residential. Due to residential over retail, cannot opt to postpone the construction of the Phase 1 residential to a later time. Phase 2 residential not likely to be built until for sale housing market returns.
- The developer is committed to the construction of high-end condominium units that will be sold when the residential market rebounds.
- To obtain financing the developer must demonstrate the ability to generate cash flow on unsold units and a positive financial plan.
- The developer proposed alternative approach for accomplishing the affordable and moderate income housing requirements in the first phase of the project is necessary to produce the necessary positive financial plan.

Mr. Bailey summarized the revised Westwood Station affordable and moderate income housing plans. He stated that the affordable housing program for Phase 1 could be developed under a Friendly 40B proposal, or under a Local Initiative Plan (LIP), within a single 60-unit permanent rental building. Mr. Bailey told the Planning Board that 25% of the units would be leased to households earning less than 80% of the median income, and that all 60 units would count towards Westwood's affordable housing inventory. He said that the Phase 1 moderate income housing program would involve a cash payment from the developer to the town to fund a subsidy or voucher program. Mr. Bailey explained that subsidies or vouchers could then be given out by the town to qualified applicants to use toward down payments and/or mortgage payments on owner-occupied housing. Mr. Bailey noted that the intent would be to operate the moderate income housing program with a substantial local preference for Westwood residents. This concluded Attorney Bailey's presentation.

Mr. Rafsky told the Planning Board that the Board of Selectmen still has concerns about issues related to Westwood Station, and is planning to devote time to these issues within the context of considering the development agreement. Chairman Malster asked when the next meeting of the Board of Selectmen would take place. Mr. Rafsky stated the Board of Selectmen would be holding a brief meeting just prior to the Finance Commission's meeting on March 24<sup>th</sup>, with its next regularly scheduled meeting to be held on April 7, 2008. Mr. Rafsky stated that the Board of Selectmen had concerns related to the mitigation of possible school impacts and making sure that guaranteed revenue was in place. He said that the Selectmen would take the steps necessary to ensure positive impacts of the development, meeting goals and balancing resident's concerns. Mr. Rafsky stated that the Board of Selectmen would reaffirm its goals for Westwood Station, including that high-end condominiums are built, that all traffic issues are properly addressed, and that the proposed changes to the MUOD affordable housing requirements are adopted to provide flexibility to the Planning Board. This concluded Mr. Rafsky's presentation.

Mr. Jaillet gave a presentation on the Westwood Station Housing Program. (A copy of the presentation is included with these minutes.) Mr. Jaillet stated that the Westwood Station Housing Program was designed to meet many objectives of the town, including housing opportunities at Westwood Station for residents and employees, to promote condominium sales, to further integrate the Westwood Station community into the existing community and to meet the Town's affordable housing obligations. He noted that the Westwood Station program is designed to be broader and more inclusive than typical moderate housing programs which prevent most residents and employees from participating. Mr. Jaillet provided the Planning Board with a list of the issues that the Town must address in the design of a moderate housing program:

- 1. Who is eligible to participate in the Local Preference Program?*
- 2. What income will qualify within the established income limit?*
- 3. Will there be any asset limits and what will be considered assets?*
- 4. How is the level of subsidy to be paid from the developer's contribution calculated?*
- 5. How will the Town ensure that the cash contribution is used appropriately?*
- 6. How will the Town choose the households that are qualified to participate?*

Chairman Malster asked Jerry Wolfe, Chairman of the Housing Authority, if he would like to comment in response to the presentations. Mr. Wolfe requested clarification of a report that the developer would benefit from an additional profit revenue of \$25 million under the proposed affordable housing program. He stated that he could live with the addition of only 15 actual affordable rental units in Phase 1, but would like assurances that the affordable units in Phase 2 would be more substantial. Mr. Wolfe stated that he would like to see the Planning Board work out the details the moderate housing program in conjunction with the

Board of Selectmen. Furthermore, he agreed that concessions must be made in order to see Westwood Station built, and thus see any new affordable and moderate housing benefits.

Mr. Olanoff asked Mr. Wolfe if he agreed with the proposed changes to the affordable housing requirements within the MUOD. Mr. Wolfe responded that he saw no other alternatives and he did not want to see the deal fall apart. Mr. Wolfe expressed concern about the details of the housing program. Mr. Montgomery clarified that the \$25 million previously mentioned would not be profit for the developer, but would rather provide a stream of income necessary for the developer to obtain construction financing.

There was some discussion on what could be expected for affordable housing in Phase 2 of Westwood Station. Mr. Jaillet responded that the Board of Selectmen was initiating a local preference program in which 80% or more of the beneficiaries of the moderate housing program would be "Westwood connected" residents. Mr. Moore questioned if the program was still in the conceptual phase. He asked what the target audience would be and what kind of research had been conducted to date. Mr. Jaillet responded that the program was not yet in place but was pending. Discussions followed about housing needs, flexibility and balance, local preference, capital needs negotiation, and weighing fiscal needs. Planning Board members requested more information from the Board of Selectmen on financial figures and impacts of the proposed Zoning Bylaw amendment.

Mr. Moore asked why the existing affordable housing requirements could not be met under the current proposal. Mr. Olanoff stated that he calculated the affordable housing units under the new plan would amount to 9.4% rather than the 12% required under the current Zoning Bylaw. Questions were posed regarding the range within which rents would be set, the income requirements for eligibility, etc.

Mr. Moore said he would like the Board of Selectmen to publicly discuss the housing program and explain its reasons for endorsing a very big change in the zoning bylaws. He stated that Town Meeting must be completely informed before making such an important decision. Mr. Rafsky stated that a letter would be sent to residents in advance of the Town Meeting.

### **Continuation of Public Hearing: Proposed Zoning Amendment Articles**

Chairman Malster reopened the public hearing and began the review of the Proposed Zoning Amendments. He stated that the Planning Board would be considering Articles 5, 6 and 11 only. Ch. Malster noted that the Planning Board had already voted to approve Articles 1, 2, 4, 7, 8, 9 and 10 had been approved, as amended, at the first session of this public hearing on March 12, 2008. He noted that the Board had withdrawn Article 3 and had voted to oppose Article 12 at that same meeting.

#### **Article 5:**

**To see if the Town will vote to amend Section 8.6 [SENIOR RESIDENTIAL DEVELOPMENT] to insert a new Section 8.6.2.6 that reads as follows, or take any other action in relation thereto:**

**"8.6.3.6 The minimum lot area shall be five (5) acres."**

Ch. Malster explained that state regulations for proposed Senior Residential Developments were recently amended to remove a 5-acre minimum lot size requirement. Section 8.6 of the Zoning Bylaw does not currently specify a minimum lot size for such developments. This section was originally developed with the understanding that all proposals would be required to meet the both the local bylaw and the state regulations. In order to maintain

the original context of section 8.6, the Planning Board proposed amending section 8.6 to include a minimum 5-acre requirement.

Ch. Malster pointed out that the Board discussed this article on March 12<sup>th</sup>, and appeared to be divided 2 to 2 on the proposed article. He stated that he had been unsuccessful in his attempts to obtain an opinion on this article from absent Planning Board member Henry Gale.

The Board members participated in further discussion concerning the proposed article. Chairman Malster and Mr. Moore expressed support for the proposed article, while Chairman Mr. Olanoff and Mr. Montgomery expressed opposition to the proposed article. The two members voting in support of the proposed article stated their intention to maintain the conditions under which section 8.6 was originally conceived, until such time as the entire section 8.6 could be reviewed and revised to better meet the needs of the community. The two members who voted not to support the proposed article were opposed to making the proposed amendment prior to a complete review and revision of Section 8.6.

On a motion by Mr. Moore and seconded by Mr. Montgomery, the Planning Board voted 2 in favor and 2 opposed to proposed Article 5.

#### **Article 6:**

**To see if the Town will vote to amend Section 4.5.8 [RECONSTRUCTION AFTER CATASTROPHE OR VOLUNTARY DEMOLITION] so that it reads as follows, or take any other action in relation thereto:**

**"4.5.8 Single and Two-Family Reconstruction after Catastrophe or Voluntary Demolition. Any single and two-family nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions:**

**4.5.8.1 Reconstruction of said premises shall commence within one (1) year after such catastrophe or demolition.**

**4.5.8.2 The building as reconstructed shall:**

**4.5.8.2.1 be located on the same footprint as the original structure, and shall only be as great in volume or area as the original nonconforming structure; or;**

**4.5.8.2.2 comply with all current setback, yard and building coverage requirements and shall have a maximum building height of twenty-five (25) feet regardless of whether the lot complies with current lot area and lot frontage requirements.**

**4.5.8.3 In the event that the proposed reconstruction does not meet the provisions of Sections 4.5.8.1 and 4.5.8.2, a special permit shall be required from the Board of Appeals for such demolition and reconstruction."**

Currently, the Zoning Bylaw permits additions to non-conforming one and two family structures. However, in the case where an applicant chooses to demolish a non-conforming structure and reconstruct it to match exactly the existing structure with a new addition, a special permit is required from the Board of Appeals. The proposed amendment would

allow for more flexibility in the voluntary demolition and reconstruction of non-conforming one and two family residential structures, where the stated conditions are met.

On a motion by Mr. Moore and seconded by Mr. Montgomery, the Planning Board voted unanimously to support proposed Article 6, as amended.

**Article 11:**

**To see if the Town will vote to amend Section 9.6.8.4.1 [MUOD RESIDENTIAL CONTROLS] to insert the following after the word "Bylaw": ", unless the Planning Board determines a proposed alternative to be at least equivalent in serving the Town's housing needs" so that Section 9.6.8.4.1 reads as follows, or take any other action in relation thereto:**

**"9.6.8.4.1 A minimum of twelve percent (12%) of the housing units in the Area Master Plan shall be "affordable" as defined in this Bylaw, unless the Planning Board determines a proposed alternative to be at least equivalent in serving the Town's housing needs."**

Chairman Malster stated that the Planning Board was being asked to consider proposed amendments to the Westwood Zoning Bylaws affecting MUOD residential controls. He said that the Board would not be reviewing or commenting on the specifics of an affordable housing plan for any single development during the public hearing.

Chairman Malster stated that the proposed article had been amended since the March 12<sup>th</sup> start of the public hearing to remove the alternative language of the proposed amendment. He explained that, currently, Section 9.6.8.4.1 of the Zoning Bylaw requires 12% of the housing units in an MUOD to be affordable housing units. Section 9.6.8.4.2 requires an additional 5% of those housing units to be either affordable or moderate income housing units, but permits the Planning Board to consider alternative proposals for meeting the Town's moderate income housing needs. The proposed article would use similar language in both sections 9.6.8.4.1 and 9.6.8.4.2, to give the Planning Board the same authority to consider alternative proposals for meeting both the Town's moderate income and affordable housing needs.

Mr. Jaillet stated that the proposed zoning amendment would really just increase the opportunities and alternatives for consideration by the Planning Board and Board of Selectmen. He said that the proposed amendment still allows the Planning Board to determine whether or not an affordable housing plan is acceptable.

Chairman Malster opened the hearing up for the public to comment.

John Cummings of Chickadee Lane asked about safeguards for the schools in the form of mitigation payments to minimize impacts of the number of housing units being occupied with children. Linda Walsh of Philips Brook Road asked if there would be deed restrictions on 40B Housing to prevent the housing being changed to market rate housing in the future. Mr. Jaillet stated that there would be deed restrictions requiring the housing to remain affordable in perpetuity, similar to the housing restrictions imposed at Highland Glen. John Harding of Forbes Road asked what monetary gain the developer would receive through the proposed zoning amendment, and what benefits the Town would receive. Mr. Rafsky responded that the proposed zoning amendment would benefit the Town by helping to keep the project viable.

Chairman Malster stated that there is more work to be done in reviewing changes to the

plans for Westwood Station. He said that the Planning Board would consider those plans at another public hearing, and that if the proposed zoning amendment was approved by Town Meeting, the Planning Board would have greater flexibility in considering those plans. Chairman Malster reiterated that tonight's hearing was to consider the broad affects of changes to the MUOD requirements, not the specific affects of such changes on any single development.

Ms. McCusker of Whippoorwill Drive questioned why the members of the Board of Selectmen were not at this meeting. Mr. Jaillet stated that the members were not available but had sent him, Mr. Bailey and Mr. Rafsky to address any questions the Planning Board might have. Jim Fox of Whitewood Road asked when the next meeting of the Board of Selectmen would be. Mr. Jaillet stated that the next regularly scheduled Board of Selectmen would be on April 7<sup>th</sup>. He noted that the Board of Selectmen would have a brief meeting on March 24<sup>th</sup>, just prior to meeting with the Finance Commission.

Chairman Malster brought the meeting to order by stating that the Westwood Station development agreement is related to the special permit for Westwood Station, which is not the subject of tonight's public hearing. He said that tonight's focus is on the proposed zoning change which would add flexibility to the Planning Board's consideration of affordable housing plans for MUOD developments.

Mr. Germano of Whitewood Road stated that the economy is always a gamble. Dan Waldman of Whitewood Road pointed out that interest rates are in flux. Joanie Morgan of Weatherbee Drive said that she was disappointed that the Board of Selectmen were not at the meeting. Mr. Harding said that the Planning Board and the residents needed to be given the whole picture in order to make an informed decision. Mr. Rafsky responded that the Selectmen have planned a series of meetings to better inform the public.

Chairman Malster asked the Planning Board if they would like to continue or close the hearing. Attorney Alpert stated that the Planning Board could close the hearing if it is finished taking evidence, and would then have 21 days in which to develop its report of the proposed zoning amendments.

Chairman Malster and Mr. Montgomery expressed their support for the proposed zoning amendment which they felt would allow the Planning Board greater flexibility in addressing the town's affordable housing needs. Mr. Olanoff and Mr. Moore expressed their opposition to any changes to the affordable housing provisions of the bylaw absent a complete and open review of the Town's policies governing the provision of affordable housing.

On a motion by Mr. Montgomery and seconded by Mr. Olanoff, the Planning Board voted 2 in favor and 2 opposed to proposed Article 11, as amended.

On a motion by Mr. Moore and seconded by Mr. Montgomery, the Planning Board voted to close the public hearing at 10:30 pm.

### **Request for Comments on Zoning Board of Appeals Application for Earth Material Movement Special Permit at 90 Far Reach Road**

Ms. Loughnane stated that the Planning Board had been asked to comment on a Zoning Board of Appeals application for an earth material movement permit for 90 Far Reach Road. She stated that the permit was requested in relation to an ongoing residential construction project, and noted that no component of the project would require Planning Board approval. Mr. Moore asked if the application had been reviewed by the Engineering Department. Ms. Loughnane replied that the application had been reviewed by Assistant Town Engineer Chris

Gallagher. She read a letter from Mr. Gallagher to the Zoning Board of Appeals, dated March 18, 2008, recommending conditions of approval.

Chairman Malster asked Ms. Loughnane to send a letter to the Zoning Board of Appeals stating that the Planning Board concurred with Chris Gallagher.

The meeting adjourned at 10:35 p.m.