

Board of Selectmen Minutes 04/27/2015

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Board of Selectmen	April 27, 2015
Regular Meeting	Teachers' cafeteria, Lynnfield Middle School, 505 Main Street

Present:	Philip Crawford, Chairman
	Thomas Terranova Jr, Selectman
	Christopher Barrett, Selectman

Chairman Crawford called the meeting to order at 6:30 p.m. He announced that the meeting was being recorded by reporter Maureen Doherty and Selectman Terranova.

Review of warrant articles

Town Administrator James Boudreau informed the Board that the appraisal on the Center Farm property with the proposed development and historical restrictions on the deed, came in today at \$825,000 for residential use. The commercial use appraisal has not been completed.

Chairman Crawford asked that the Board review Article 21, regarding further restrictions on signs.

Planning Board C-Chair Alan Dresios said that the Planning Board is working on a Town-wide sign bylaw, with the intent of making the limitations on signs in the Planned Village Development District (PVDD), which governs Market Street, effective Town-wide, with adjustments to be made in the future. The proposed changes presented by Mr. Dresios to the Board at its meeting of February 23, 2015 have been eliminated for the most part. What is being presented tonight is a subset of those proposals. This proposal reflects the limitations imposed on flashing or moving signs at Market Street and would impose similar restrictions in all other zones.

Chairman Crawford asked if the language in the proposed zoning bylaw revision was the same as the language used in the PVDD and for Market Street. Mr. Dresios said they were substantially similar, and they far exceed the stringency of such restrictions in other areas of Town.

In response to questions from Board members, Mr. Dresios said this change would address restrictions on signs that are lacking in the area of a portion of Route 1 North and the area near the Kernwood Plaza and Kimball Lane, which are prime candidates for large signs or billboards. He said two existing signs that would violate the proposed changes, at the Fat Cactus restaurant and at the Kelly auto dealership on Route 1 North, would be grandfathered unaffected by this change. He said it is his belief that the Kelly sign is not in compliance with the current bylaw, as it is on a lot without a structure. Kelly has been given the option of putting a small building on the lot but as yet has not.

Chairman Crawford said that he and the Finance Committee were told that these restrictions would not affect Market Street. Mr. Dresios said that the restrictions imposed in this bylaw change already apply to Market Street. He said Market Street objected to the proposed changes. The Planning Board consultant believes certain signs at Market Street are in violation of the existing standards, but the Planning Board is not in favor of changing the existing restrictions.

Town Counsel Thomas Mullen said that it is ambiguous whether the proposed changes to the zoning bylaws in Article 21 would apply to Market Street. He said the language in the zoning bylaw for the PVDD says that nothing else in the zoning bylaw applies to the PVDD, but this proposed revision states that it applies to all districts. He said a judge could rule that this change affects the PVDD, which could lead to legal action brought against the Town by Market Street.

Planning Board Chairman John Faria suggested the language for the motion on Article 21 be revised by adding "except as otherwise allowed in the Planned Village Development District."

Resident Mark McDonough presented a copy of the letter from National Development to the Planning Board, which had previously been distributed to members of the Board of Selectmen, and said that the letter indicates National Development agrees this proposed change, without the proposed limiting language in the motion, would affect the Market Street development.

Mr. Faria said that the Planning Board believes that there are signs at Market Street that are in violation of the existing standards and that it has written one letter asking Market Street to cease and desist. He said this effort on moving signs is aimed at Route 1 and the PVDD. Mr. Dresios said that excluding the PVDD seems like an end run and said he would rather see the subject tabled than for it to go forward in this manner. Mr. Faria said he does not agree.

Chairman Crawford and Selectman Barrett said this measure is important to protect residents along Route 1 and other commercial areas. In response to questions from Mr. Barrett, Mr. Faria said National Development is disputing the language of the proposed change as well as the existing language on signage in the PVDD.

Mr. Mullen said he liked the language that Mr. Faria proposed to add to the motion. Selectman Terranova asked why Market Street should be excluded from the proposed revision to the zoning bylaws on signs. Mr. Faria said he believes that Market Street is already excluded due to the language in the PVDD section of the zoning bylaws. He said it was the Planning Board's understanding that this revision was intended to protect Route 1 and the commercial zone near the Kernwood Plaza. He said he believes the signs with video displays at Market Street are not in compliance with the existing restrictions, but the Planning Board has no enforcement authority and must come to the Board of Selectmen to resolve the issue.

Mr. Faria said this proposal would not lessen or broaden what is allowed at Market Street. Market Street has applied for and received waivers from the design standards on signs for certain kiosks, which were granted, but has not applied for others. They have acknowledged moving signs are not allowed.

On the motion of Selectman Barrett, duly seconded by Chairman Crawford, the Board voted 2-1 (Selectman Terranova opposed) to recommend passage of Article 21 with the addition of the language offered by Planning Board Chairman John Faria.

Selectman Terranova said that he opposed the change that would exclude the PVDD from the revision to the zoning bylaw relating to signs, as everyone should have fair treatment across the Town.

Mr. Faria said he offered the exclusion because Market Street and the PVDD are already under similar restrictions and that this motion would clarify any dispute that may arise from a complaint from National Development that this change applies to them unlawfully. Chairman Crawford said the intent is to offer similar protections to Route 1 area residents. Selectman Terranova said this does not protect Walnut Street area residents. Chairman Crawford and Mr. Faria said Walnut Street area residents already are protected.

Selectman Barrett said that the Town needs to enforce the current restriction in place at Market Street. Mr. Faria said the Planning Board voted 4-1 to do so. He said the next step is coming to the Board of Selectmen for enforcement action, and that a thorough review of the signage issues there should take place. He said the existing issues do not affect neighbors, as the signs cannot be seen or heard outside of the property, and the displays are very small. He said it is a question of whether it is worth expending funds to force compliance. He said that there is no impact on the Town and its residents as the signs not in compliance can only be seen and heard from a few feet away.

Selectman Terranova said that failure to enforce in these cases could cause a discrimination claim if the Town attempted enforcement in another instance. Mr. Faria said enforcement authorities are always allowed some discretion. He noted this same argument was raised at a Planning Board meeting. He noted that because the signs at Market Street are controlled through the design standards, they can apply to the Planning Board for waivers. The appeal process for relief from a zoning bylaw would be with the Board of Appeals.

Resident Mark McDonough asked if the proposed changes as amended would apply to Market Street. Mr. Faria said they would not. Mr. McDonough asked why they would not. Mr. Faria reiterated that Market Street already face substantially similar restrictions.

Resident Joseph Yurkus asked about the existing provisions for signs in the PVDD. Mr. Faria said some portions have no teeth that should have teeth, but the restrictions on moving signs have teeth. Mr. Mullen said that the design standards are applicable under the bylaw and that the Board of Selectmen can instruct the Building Inspector to issue a cease-and-desist order. The owner would have two weeks to comply; if it did not, the Town could seek court enforcement.

Resident Heather Keane asked what area of Route 1 would be affected by this change to the zoning bylaw. She said digital signs along Route 1 in Peabody are a concern to Lynnfield residents. Chairman Crawford said that this would strengthen restrictions in the general business zone along Route 1 North; Route 1 South has stricter restrictions already as it is zoned for limited business. Mr. Faria said the new restrictions would cover the entire Town except for the PVDD. Ms. Keane asked if a car dealership on Route 1 North could put up a digital sign on Route 1 North. Mr. Faria said it could now, but could not after the proposed bylaw changes are approved.

Mr. Yurkus asked if sign sizes are restricted in the PVDD. Chairman Crawford said there are several pages related to these restrictions. Selectman Terranova asked why Market Street would not be placed under the same restrictions as the rest of the Town. Mr. Faria said these restrictions are already in place at Market Street. Mr. Boudreau said that exempting Market Street from the proposed zoning bylaw revision is intended to eliminate confusion and the possibility that National Development could sue the Town for improperly placing restrictions in the PVDD. Mr. Faria said the language on signs in the PVDD is cast in stone and that the state would have to be involved in any changes to the regulation in the PVDD as it was created under Chapter 40R. Chairman Crawford said the state Department of Housing and Community Development has to approve changes to the bylaw related to the PVDD.

Declaration of Center Farm as surplus property

Mr. Boudreau said that in order for town meeting to have the opportunity to authorize the Board to sell the Center Farm property on Main Street, the Board must declare the property as surplus. Selectman Terranova asked if the Town would take a \$675,000 loss on the purchase and then sale of the property. Mr. Boudreau said that if the highest bid received by the Town is the minimum bid, the result would be a loss of about \$575,000. This

reflects the impact of restricting further development of the property. He said a higher bid may be received. Selectman Terranova asked about the deed restrictions that would be placed on the property. Mr. Boudreau said that the Historical Commission is seeking additional restrictions that would affect the interior of the property. He said he does not believe these additional restrictions will affect the property's value. The state, the Board, and the Historical Commission would have to approve the historical restrictions on the deed. Selectman Terranova asked if there would be a time limit on the deed restrictions. Mr., Mullen and Mr. Boudreau said that the restrictions would be in effect in perpetuity.

On the motion of Selectman Barrett, duly seconded by Selectman Terranova, the Board voted unanimously to declare Center Farm on Main Street as surplus property.

Appointment of temporary member, Board of Registrars

Town Counsel Thomas Mullen explained the process for appointing members of the Board of Registrars. Selectman Terranova asked if Selectman Barrett should recuse himself as he was a candidate in the election for which the Board of Registrars will be holding a recount. Mr. Mullen said he did not believe this would raise a conflict of interest. He said the Board appoints three members of the Board of Registrars and the fourth member is the town clerk. As one member was serving as an alternate on the Board of Appeals and as state law does not allow any elected or appointed board members of a municipality to serve as a member of the Board of Registrars, the Board has been reduced to two Board of Selectmen appointees and the town clerk. The Board of Registrars has asked that the Board appoint a temporary third member until the process for a permanent member can be completed. The two Board-appointed registrars have each nominated two members to be considered. Under state law, no more than two members of the Board of Registrars can belong to the same party. The Board of Registrars now consists of one Republican, one Democrat and one unenrolled voter.

Bradford Keene, attorney for Board of Selectman candidate Katy Shea, said that his belief is that Selectman Barrett should refrain from participating in this discussion because of his interest in the outcome of the recount. He asked that Selectman Barrett recuse himself from this matter. Chairman Crawford said the Board would be guided by town counsel's opinion. Mr. Mullen said that if there is even the appearance of a conflict of interest, a public official can file a disclosure form in advance. Since there is not time to do so in this case, he said, it may be advisable for Selectman Barrett to recuse himself. Mr. Mullen said that he still believes that the alleged conflict would not bar Selectman Barrett from participating. Mr. Keene said he respectfully disagreed and said there is at least the appearance of impropriety. Residents Michael Walsh and Mark McDonough agreed with Mr. Keene's point of view.

Selectman Barrett asked what would happen if the Board could not come to an agreement. Mr. Mullen said that the recount could proceed with the existing Board of Registrars. Selectman Terranova noted that in appointing a fourth member, the Board created the possibility of a 2-2 deadlock in voting. Mr. Mullen said that it is unusual that an even number of board members is contemplated, but that this is the case for the Board of Registrars.

Selectman Barrett said he believes that he would be unbiased and vote solely in the best interests of the Town, but said he would recuse himself due to the suggestion that he may have a conflict of interest that has been raised. He left the room for the remainder of the discussion.

Chairman Crawford said the four nominees supplied to the Board by the Board of Registrars are Wayne Shaffer, Karen Culbert, Jodene Sanford and Lori Priestley. He said his choice would be Ms. Sanford due to her past service on the Finance Committee and her intelligence and other qualities. He asked if all four candidates were available for the planned recount on Saturday. Board of Registrars member Robert Casoli said Ms. Priestley is not available.

Selectman Terranova asked if any of the three remaining candidates are unenrolled. Mr. Shaffer said he was unenrolled. Town Clerk Trudy Reid said she believed that Ms. Sanford is a Republican and Ms. Culbert is a Democrat. Selectman Terranova said to keep it fair, he would prefer to appoint the unenrolled applicant. Selectman Crawford felt that Mr. Shaffer would have a conflict of interest due to his involvement with Ms. Shea's campaign. He said Ms. Sanford did not campaign for either candidate and is a very impartial person.

Mr. Shaffer said that the registrar's role in the recount would be looking at ballots cast to judge the intent of the voter and said he believes he would be able to carry out that duty impartially.

Chairman Crawford said that as the two voting members could not agree on an appointee, no temporary appointment would be made.

Selectman Barrett rejoined the meeting.

Administrative matters

On the motion of Selectman Terranova, duly seconded by Selectman Barrett, the Board voted unanimously to approve the minutes of the meeting of April 13, 2015 with minor corrections.

On the motion of Selectman Terranova, duly seconded by Selectman Barrett, the Board voted unanimously to adjourn at 7:20 p.m. to attend town meeting.