12.6.23 meeting minutes

This was a hybrid meeting.

Members present: Virginia Clarke, Mark Fausel, Joy Reap, Adam Wood
Members absent: Alison Anand, Chris Granda, (one vacancy)
Others present: Keith Oborne (Director of Planning and Zoning), Tom Astle (MMCTV), Michelle Beal, Linda Donovan, Bradley Holt, Jason Pelletier, John Linn, Kerry Walker, Cassandra Wilday

1. Welcome
The meeting began at 7:07 PM, and Clarke welcomed members and the in-person and Zoom guests

2. and 3. Review and adjust agenda.
Public comment on non-agenda items.
As there were no adjustments, the meeting proceeded with the published agenda. There were no public comments about non-agenda items.

4. Review minutes of 11.20.23 meeting.
As there were no corrections or additions to the minutes of the Planning Commission's (PC's) 11.20.23 meeting they were accepted into the record as written.

5. Public Hearing:
"Residential Uses via the PUD process in the I/C District" and
"Revisions to the Planned Unit Development (PUD) Procedure"
Fausel moved to open the public hearing, seconded by Wood. The motion was approved by the four members present, so the hearing was opened. Clarke stated that the hearing involved section 3.7, the Industrial/Commercial District I/C), and section 5.12, the PUD section. A map of the I/C district was screen shared., and Clarke mentioned that she would proceed along the lines of the memo that was included in the meeting materials. The three sections of the I/C district were then discussed, starting with the two least impacted by the proposed changes. The Kenyon Rd portion is shared between the Conant Farm and Eden Sand and Gravel, and as there appear to be no existing residences on these properties, there will be little change here. The second portion of the I/C is bounded by Governor Peck Rd, !-89 and Route 2. There are 4 commercial properties here, 2 belonging to GMP including the solar array; one property belonging to Cleary Stone, and the Mobil Station lot. There is also a large area belonging to the state of Vermont including portions of Exit 11, !-89 and ramps, Route 2 and the Park and Ride lot. None of this area is impacted by our proposed changes to the I/C district.

Moving on to the third portion of the district, Clarke described the 8 lots making up this northern-most section. Businesses occupy 2 of the lots – J.Hutchins and Landshapes on one lot, and Patterson Fuel storage tanks on the other. One additional lot is our recycling area, and one is a swamp; both of these are owned by the town of Richmond. The other 4 lots, all up near the Jericho town line, are residential. Clarke continued that, in response to a resident's request to add housing on a residential lot (currently "dwelling units" are not listed in the I/C as an allowed use), the PC developed the strategy of allowing this through the Residential PUD provision (5.12). This required clarifying some discrepancies between the wording of sections 3.7 and 5.12 as described in the memo.

Clarke reviewed the two changes that were needed in the I/C district section to align the language and make this strategy possible. First, "dwelling units as part of a Residential PUD" needed to be added as an

allowed use; and second, the words ”if no subdivision is proposed” needed to be removed from the I/C use section since the new residential lot would need a subdivision. Clarke then asked for any comments or questions so far, before moving on to the changes that would be needed on the PUD side to allow this strategy to be used. The PC felt that this was a good compromise between allowing some additional housing where it was needed and appropriate while still retaining commercial space in the district. Fausel concurred with this assessment, which Oborne termed a “targeted” solution to a problem. As there were no other comments or questions at this point, Clarke moved on to the changes that were needed in the PUD section to effect this strategy.

She reminded everyone that the PC had decided early in the zoning update work to try to make as few changes as possible to any district that had not been discussed. This includes work on the PUD section. The significant change needed in 5.12 is the wording of 5.12.2[b] which says that **in the IC district a Residential PUD is only allowed on lots that are already hosting a residence as of the date of adoption of these amendments.** This is similar to other language that describes various special conditions for other districts when using the PUD process. There may be special parameters that we add for other districts as we come to update those districts. Most of the remaining language in 5.12 was left as is, or rearranged for better clarity. The only other substantive change that we are proposing is removal of the “Master Development Plan” language from section 5.12.4[c][viii] and replacing it with different language in order to try a different approach to a longstanding, troublesome zoning issue, which is gaining information about future development in a PUD beyond what is currently permitted.

Clarke continued that the “conceptual” nature of the plan, and the fact that there were no parameters or standards associated with such a plan, as well as the fact that it is entirely self-reported (or not) have made it difficult to assess such a plan. And because the plan can be amended at any time, it doesn’t actually provide definitive information about future development in the PUD. At the PC’s meeting of 10.20.23 the PC approved the amendments presented at the meeting **with** the additional changes discussed at that meeting regarding the removal of the master plan language. The exact language was to be developed by Oborne and Clarke in consultation with the town attorney prior to the public hearing. Based on the attorney’s recommendation, language regarding “critical permit conditions” was introduced to replace the master plan language. This designation identifies certain conditions imposed by the DRB that they decide are essential to their decision to approve the PUD and which will be very difficult to later amend. In most cases, in the attorney’s experience, these conditions involve open space provisions. Clarke said this approach seemed like a more realistic way to prevent both neighbors and developers from feeling that they have a vested interest in a known future, which, in fact, cannot be assured and leads to false expectations.

As there were no other commissioner comments at this point, Bradley Holt offered his views. He asked if this strategy would prevent piecemeal development if a developer did not present a full plan at the beginning. Clake answered that there was no protection from piecemeal development even with a master plan, as the plan and the permit could be amended at any time to allow future unanticipated building. She added that when we look at the A/R district where there is more open land, the PC may attempt to describe in greater detail conditions designed to protect such natural features as wetlands, forest blocks, open space etc. that the DRB could then list as “critical permit conditions” that would be hard to amend due to the so-called *Stowe Club Highlands test* legal restriction.

Holt then asked why the critical permit condition language did not appear in the Subdivision Regulations where the PC is also proposing to remove the master plan language. Clarke said she felt it was not clear that a master plan was actually required in all subdivisions because of the way section 610.1 was written.

Oborne offered that the master plan language was usually related to the remaining open space of a PUD, but that the current regulations likely required it of all subdivisions, which seemed to him to be unnecessary. He said the zoning department could look at this and weigh in to reduce confusion on this point if the current ordinance remained as is. Clarke suggested that if it is confirmed that all subdivisions need a master plan for remaining land, the critical permit conditions language could be added to that document as well as to the zoning document. Oborne added that the advantage to a developer in presenting an entire project all at once, is that if it were to be phased, all the phases could be approved at once and the developer wouldn't have to keep returning for further permits.

Jason Pelletier then offered his comments. He wondered how much more likely was it that the DRB would pay attention to the "critical permit conditions" requirement than they currently do to the "master development plan" language in the current ordinance, and that we're not really fixing the problem. Oborne replied that the biggest problem for him as a zoning administrator is the non-binding "conceptual" language of the master plan, as opposed to the binding nature of a permit condition that the DRB has imposed. Pelletier said he thought it would be helpful for there to be some expectation as to what the critical permit conditions might be. Oborne and Pelletier continued to discuss how a developer might be compelled to disclose future plans, and how the DRB might be compelled to attach critical permit conditions. The fact that a developer could change plans at will seemed problematic to Kerry Walker, who felt that the point of a PUD should be to guarantee some certainty that the entirety of the project be known to those who had bought into it. She questioned why a PUD is called a "planned unit development" if there is no "plan".

Wood entered the discussion stating that it's a misunderstanding to say there is no plan, because there's always a "plan" in the sense of a site plan, drawings etc. in any application that need to be approved. He continued that the point we're trying to make is that these plans are not necessarily the end plan for the project, because it is possible for the permit to be amended and allow for more development later. But if, for example, the permit approves some common land that is to be owned by the homeowners, that would be a critical permit condition that the DRB could deny an amendment to on the grounds that it violated the intent of the initial approval. Realistically, Wood said, a lot of PUD's come into being, and then many years later a second phase might be proposed for various reasons – different market conditions, housing or regulatory environment, for example – that wasn't part of the original plan. It is much clearer to just understand what the plan is for the current permitting.

Fausel offered his insights into the flexibility that allowed the Church St condos to be built. He said that the master plan language the PC is proposing to remove really doesn't have any value as it has no teeth, and can be amended at will. He suggested that an alternate approach would be to create language that did have teeth, but he didn't have an idea what that might be. He wondered if specific requirements could be put in place that a developer would have to meet. Oborne suggested that, in general, that was the job of the DRB, but specific rules could be a tool for the DRB. He said that flexibility was important, but that density regulations still had to be adhered to, and that typically "left over" open land was put into conservation. Clarke suggested that when the PC starts to consider the A/R district, certain specific open space requirements may need to be put into that district, rather than in the PUD section, in order to meet current standards for preservation of forest blocks, farmland and open space. There will have to be a significant discussion with the DRB, zoning staff and attorney about the kinds of things that could trigger "critical permit condition" status. Wood thought that maybe the PUD process existed to allow some ambiguity, in that a relaxing of the restrictions also subjected the developer to the preferences of the DRB. Clarke mentioned that the proposed *Stowe Club Highlands* test is called the "finality vs

flexibility" test because it wrestles with just these questions of whether to allow flexibility or impose a final end point on a project.

Holt suggested that the DRB might not have approved a project if all the subsequent phases had been proposed at once due to the cumulative nature of the impacts. Wood felt that the DRB would look at all previous phases of a project when approving later phases, because amendments are allowed by our PUD process, and that it should be brought up if the DRB does not seem to be looking at the whole package in a particular case. Holt also brought up the possibility of misrepresentations allowing for permit approval, and also the possibility that the subdivision regulations don't afford the same protections as the PUD process. Wood reiterated the basic point here, that there is often no way of knowing whether or not developers have a future plan, and that it is more straightforward to just look at plans that are presented for permitting.

Holt then read a prepared statement. He cited a lack of transparency in the PC's not mentioning the removal of the master plan language from the subdivision regulations; he feels that "unscrupulous developers" may avoid comprehensive review and carry out piecemeal development, which he feels should not be allowed; he feels that a stronger master plan policy is what is needed and that developers must be made to disclose the entirety of their plans. He would like PC to discuss a more strongly worded master plan section that allowed the zoning administrator and the DRB to "ask probing questions when there are obvious red flags of misrepresentation." Wood agreed that it was important to make clear that we are interested in preventing misrepresentations, but said he was concerned that we do not make the DRB the "police" of applications, as that is not their primary role here. Clarke offered that the zoning ordinance does have a section specifically about misrepresentation (5.3.3). There was then some further discussion about whether or not the removal of master plan language from the subdivision regs was adequately warned for this hearing. Wood suggested that it was, based on the interpretation of the PC's instructions on 10.18.23 to remove all language referring to the "master development plan."

Fausel suggested that we remove the "toothless" master plan language now as it gives us false confidence that we are actually managing future development, and also that we would like to move forward with the rest of the amendments as proposed. He appreciated Holt's point that at a future date we revisit the whole master plan concept and develop more specific language to regulate development. Clarke suggested that we are not only removing the master plan language, because we are also proposing adding the critical permit conditions language, which actually is more specific.

As there were no further comments from the public, Fausel motioned to close the public hearing. After a second by Wood the PC approved closing the hearing by a vote of 4-0. Wood confirmed that the public was still welcome to attend our discussion session on these amendments at our meeting on 12.20.23. Clarke said that the PC would now take all information gathered and refine our proposal as we choose, hopefully voting to transmit it to the Selectboard on the 20th, but that there is no time limit for our discussion. Hearing no additional remarks, Reap motioned to adjourn the meeting at 8:52, with Wood seconding. There was no opposition, so the meeting was adjourned.

Submitted by Virginia Clarke