

HAMILTON PLANNING BOARD
MINUTES OF MEETING
April 3, 2018

Members Present: Richard Boroff, Peter Clark, Ed Howard, Rick Mitchell, Bill Olson, Brian Stein (Chair) and Claudia Woods.

Associate Members: Janel Curry and Chris Sheperd.

Planning Director: Patrick Reffett

Public Hearing – Citizen’s Petition

Brian Stein read the public hearing notice to open the public hearing. Rosemary Kennedy (61 Rust St.), proponent for the petition, presented the concept that changes had been made to the Zoning By-law without notice to the citizens. According to Ms. Kennedy, the effect of the change was to take the previously voted in mixed-use By-law for one apartment over a commercial space to an unlimited number of apartments over a commercial space in the downtown district. Ms. Kennedy added that reasonable people would think it was a substantive change that should have been brought to the town as a formal article for town meeting vote.

The Board debated if one or more units had been allowed over a commercial space in the downtown district prior to the By-law change. Rosemary Kennedy asserted that only one unit was allowed. Brian Stein responded that it was untrue. Bill Olson noted that the verbiage of the amendment was different. Mixed use was defined as two or more uses on a single parcel as a part of a single development plan. This By-law would require Site Plan Review. Mr. Stein said it did not say one unit in the previous By-law and that the Board had discussed the multiple unit change one and one-half years before. Mr. Stein recalled that after discussion, Donna Brewer had developed the final language, but the Hamilton Development Corporation (HDC) attorney, Kathleen O’Donnell realized that the rest of the By-law didn’t specify more than one unit. Special Town Meeting in 2016, clarified the change. Almost everyone had voted for the change as part of the Zoning By-law rewrite.

Brian Stein said he had spoken with Bill Bowler (ZBA) to find that single residential units were allowed above commercial units in a couple of instances, but it was not mixed-use in 2015. The ZBA allowed the double use in a couple of cases by exception through Site Plan Review. In 2015 at Special Town Meeting, the language as written by Donna Brewer, was passed allowing for two or more uses on a single parcel as part of a single development, which required Site Plan Review. Janel Curry noted that the By-law did not say the number of apartments, but the number of uses. Rick Mitchell said the By-law did not limit the residential uses above the commercial uses. The Hamilton Development Corporation’s attorney wanted it more specific to include multiple residential units even though they did not believe the number of residential units were limited in the 2015 language.

Rick Mitchell said the Planning Board went through the legal process to change the Zoning By-law and that the Planning Board voted unanimously to approve the changes. Peter Clark asked if there was a public hearing on the change of use for the second change. Mr. Mitchell responded that it was all part of a 140 page revision of the entire Zoning By-law. The discussion of multiple units did not occur until the day of Town Meeting, according to Rosemary Kennedy. Mr. Mitchell said the multiple units had been discussed, but the language was not specific until the day of Town Meeting. The Planning Board had held a publicly noticed meeting to review all the changes and voted to approve the changes including the mixed use By-law that incorporated language for two or more uses in a mixed use development.

Rick Mitchell recalled that Rosemary Kennedy brought the topic up at Town Meeting as she thought it could yield uncontrolled development in the downtown. Patrick Reffett and Mark Brobowski both responded to her concerns. There were no other comments to the Zoning By-law changes and the article passed by a 2/3's vote. Mr. Mitchell continued that all changes were in the errata sheet distributed at Town Meeting.

Rosemary Kennedy said she had voiced her concern at the 2016 Town Meeting that the change was substantive and had not been discussed. Ms. Kennedy said no one responded because no one knew anything about the change and the errata sheet was available one hour before Town Meeting. The Chairman of the Planning Board mentioned it by stating that these changes on the errata sheet were not very significant and that the first change would make the By-law consistent with the previous Spring Town Meeting change.

Discussion ensued that there were public hearings on October 4, 2016 and October 22, 2016 in which the topic was debated. Rosemary Kennedy said the topic was mentioned but not discussed and that the Chairman had asked if the change was substantive and needed more information. Ms. Kennedy recalled that more information would be provided for the next meeting, but the conversation did not occur until the language was provided with no further discussion happening. Ms. Kennedy continued that if there were discussion that would have meant it was a public hearing, with notice for an article in the Warrant presenting a substantive change and it was not presented. Ms. Kennedy concluded that it was not part of the Warrant and presented at Town Meeting as a change that was not substantive. Ms. Kennedy said that on August 23rd, Mark Brobowski didn't know anything about the change. Ms. Kennedy thought one apartment allowed versus increasing to unlimited density anywhere in the downtown district was a substantive change. Bill Olson responded that it was approved in 2015 and this was a clarification.

Bill Olson asked if the issue was with the process or the By-law; and said he did not appreciate the characterization that the Board did anything improper. Mr. Olson said if the issue was the process, the Citizen's Petition article was not fixing it. If the issue was the By-law, it should be fixed in a proper way.

Jerry Fallon (Goodhue St.) said he read the transcript of the October 4th language when it was clear the Board believed the change to be a slight modification of what was proposed earlier. Mr. Fallon read that Jeff Melick (Planning Board Chairman at the time of adoption) had asked if the change was substantive and that Claudia Woods had requested to see the language. The final changes were adopted on October 18th with “final tinkering” of language after that meeting. The Planning Board meeting was posted for 8:00 am the morning of Town Meeting. Mr. Fallon said in November 2015, Brian Stein and Rick Mitchell downplayed the changes indicating that there might be a couple of apartments for a shopkeeper to rent out while the HDC was planning on using it for their Request for Proposal (RFP), which would produce 15 to 25 units. Mr. Fallon said the HDC needed it to be more clear so they could “pull a fast one” on the 15th. Mr. Fallon suggested that if the Board wanted the By-law change to pass, they should present the Warrant Article and obtain a 2/3rds vote indicating that their vision for downtown may have buildings with 25 units in them. Mr. Fallon did not think the townspeople would pass the By-law change.

Brian Stein said there was a year’s worth of discussion including the MAPC, ULI and citizen charrettes, which all discussed mixed use. The concept originated when two business owners wanted more than one unit in 2013 or 2014. Mr. Stein thought the original language provided for one or more residential units but the attorney found that it did not include multi-family. Claudia Woods asked why it was changed unless the By-law was tested. Mr. Stein responded that the attorney said the By-law did not allow for multi-family use.

Rick Mitchell said the 2015 By-law did not limit how many units were allowed and that there was no intent of slipping something by to create huge developments but the intent was to make clear what could be approved. Mr. Mitchell said the Petition would repeal the mixed-use By-law. Richard Boroff said he was afraid and wanted to call a recess to have the police attend the meeting.

Rosemary Kennedy wanted to leave the 2015 edition of the mixed use By-law. Ms. Kennedy read from the HDC minutes that the original By-law was changed in October 2016. When the original RFP was issued, the old By-law was in effect, which would have only one unit above the commercial use, but the current By-law would allow for multiple units above a commercial use. Ms. Kennedy said the HDC brought the change to the Planning Board for the purpose of their property. Ms. Kennedy recalled that people voted for mixed use in 2015 with one unit above a commercial space.

Claudia Woods noted the multi-unit size would be limited by septic and parking and hoped a compromise could be arrived upon. Ms. Woods remembered Brian Stein saying not a lot of apartments and that not many lots could do this. Mr. Stein said a change must go through the proper process and that Rosemary Kennedy’s proposal could not be changed except for Town Meeting floor. Rick Mitchell wanted the topic discussed at a public hearing.

Bill Olson said the proposed change would eliminate multi-use. The Board discussed having a hearing and discussing the limitations for multi-unit residential use, which Brian Stein said would also be limited by height. Rosemary Kennedy said people should not have to worry about another Willow St. property, which was out of character of the town. Bill Olson said the By-law did not govern size but limitations would be considered by the property and numerous parts of the By-law. Brian Stein added that the proposal was pulling out one phrase of the entire By-law and saying it was unlimited while it was governed by other portions of the By-law.

Discussion ensued that repealing the 2015 and 2016 changes would not allow for impact consideration. Claudia Woods and Rick Mitchell agreed that the original By-law never limited the number of residential units but the HDC attorney wanted clarification. Mr. Mitchell said repealing the votes of 2015 and 2016 would disenfranchise the voters who voted for the By-law change. Peter Clark said there was never a discussion or advertised hearing regarding what kind of apartments, which is why the Planning Board put it into an errata sheet as clarification.

Bill Olson reiterated the Citizen Petition did not fix process or the By-law because the 2016 language replaced the 2015 language and removing them would remove the legality of mixed-use entirely. Peter Clark suggested having a public hearing but Brian Stein responded that everything had been decided at the meeting and the errata sheet was not a substantive change, which was voted upon unanimously. Mr. Clark said a Zoning change could not be done via an errata sheet, but Mr. Stein responded it was only the wording.

Bob Curry (Bay Road) questioned the meeting at 8:00 the morning of Town Meeting and the public hearings of October 4th and 18th for Special Town Meeting on October 22. Peter Clark said the issue had been passed before his arrival. Claudia Woods was not present. Mr. Curry wondered where the meeting minutes were as they were not available. Mr. Curry thought the errata sheet was significant. Brian Stein responded that the Board voted that it was not a significant change. Ms. Woods said she recalled Mark Bobrowski saying he knew nothing about the change. Mr. Curry added that as a citizen having a hurry up meeting before Town Meeting and a publicly advertising hearing 48 hours before Town Meeting was concerning. Mr. Curry said he believed the change was significant. Bill Olson responded that if Mr. Curry were aware of the entire process it would make more sense in context.

Jerry Fallon said he believed the changes initiated by Brian Stein and Rick Mitchell who were wearing two hats, Planning and HDC, were substantive. Mr. Fallon thought there were different objectives between the two Boards and that the whole reason to pass the By-law was for the HDC RFP as they wanted a larger project. Mr. Fallon referred to the one acre parcel that had a proposal to develop 30 units if possible and that another parcel downtown could also be developed into 30 to 40 units. Mr. Fallon said 20 units was not what was presented at Town Meeting and that it would behoove the Board to correct the change with a fair and open meeting when HDC members could state to the voters that they had a vision for downtown. Mr. Fallon said he believed they had “pulled a fast one.” Mr. Stein responded that discussion regarding

downtown development, including commercial use, parking, beautification, waste water treatment and mixed use had occurred out in the open. Richard Boroff said the HDC said they only wanted one or two units and did not think they had a 20 unit development in 2015. Mr. Mitchell said the intent was to do smart planning to have a nice village, which existed currently and that the Planning Board was proposing a housing Master Plan to revamp the vision.

Rosemary Kennedy stated that she was at the three charrettes and thought a vast majority of the people were against multi-unit housing. ULI did not speak with any downtown residents but only spoke with business owners, developers, and an outlying resident. Brian Stein said they talked to board members who lived downtown. Ms. Kennedy said MAPC didn't come and talk to people and had a vision that was not that of the downtown residents, who wanted to maintain a village feel. The downtown residents did not want a vision of a town with high density apartments everywhere, according to Ms. Kennedy. Ms. Kennedy suggested having a hearing where people can express their opinion and if they want multi-unit mixed use development that would be their decision, but sticking the words on an errata sheet was taking the decision away from the downtown people.

Rosemary Kennedy agreed to have a public hearing with public notice to give an opportunity to people to understand and decide about limits for multi-unit housing above a commercial space. Ms. Kennedy agreed to withdraw the proposal for the current time but added that if a multi-unit development were proposed, it would be successfully challenged in court. Ms. Kennedy did not want to see the case in court but wanted to see a reasonable discussion in the best interest of the citizens of the town.

It was decided that Rick Mitchell and Brian Stein would not recuse themselves as members of the HDC who originally brought the By-law change.

If a project were to come forward, Rosemary Kennedy would have a problem with it. Rick Mitchell responded that the proposal would need to go through Site Plan Review, which would analyze parking, septic, and setbacks. Ms. Kennedy noted that 59-63 Willow St. was potentially an as of right apartment building, but Mr. Mitchell responded that it would be proposed as a 40B. Brian Stein said nothing had been filed for the property to date. Mr. Stein said funds were being requested to study housing, which would be a great time for the discussion regarding multi-unit use above commercial space. Ms. Kennedy said the town had made it clear that they didn't want high density and that she wanted to work in collaboration with the Planning Board. In response to Ms. Kennedy's question if a ten unit building were proposed, Bill Olson said the By-law in 2015 would have allowed the approval.

Richard Boroff indicated that nothing was in front of the Board and having a project approved by Special Town Meeting would be impossible while having a small change to the By-law would be extremely high.

Rosemary Kennedy said she would take no action on the Citizen's Petition as it could not be withdrawn without all who signed it agreeing. If the Planning Board did not vote on the Citizen's Petition, all the steps would not have been taken. If the Planning Board voted not to support it, it could go forward.

Motion made by Bill Olson that the Planning Board agreed to continue the conversation and hold a public hearing prior to the next Town Meeting to discuss Section 3 of the Hamilton Zoning By-law in paragraph 8.7 of the Table of Use Regulations in regards to multi-use within the Business District and quantity of residential units above those units.

Seconded by Richard Boroff.

Vote: Unanimous in favor.

Motion made by Bill Olson that the Planning Board recommend unfavorably action on Article 5-6.

Seconded by Rick Mitchell.

Vote: Unanimous in favor.

Abbreviated Site Plan Review- Patton Park Bleachers

Phil Monahan (Red Coach Road) had submitted drawings for new bleachers at the Patton Park little league field. Parents and grandparents currently sit on folding chairs, which was a safety issue due to the in play location of where they were seating. The bleachers would be constructed behind the fencing. Similar bleachers were at the high school field and were 15' wide, 8' deep with four seats. The High School bleachers were bolted into a concrete pad and these would likely be as well. The bleachers would be constructed this season on the first and third base side of the field.

Motion to approve the Hamilton Wenham Little League application to place bleachers at Patton Park, made by Rick Mitchell.

Seconded by Richard Boroff.

Vote: Unanimous in favor.

Correspondence Received Regarding William Wheaton.

Patrick Reffett had spoken with legal counsel, Jen Merrill who opined that if Bill Olson put the topic on the agenda, the Planning Board should only acknowledge receipt, read the letter into the record, and refrain from discussion. Attorney Merrill continued that if the Board were to elect to discuss the matter, it must be seen as neither endorsing nor disparaging any candidate for election through its statements. Brian Stein and Rick Mitchell had been advised to recuse themselves, which they did.

The Planning Board received a letter from Jeff Scuteri (Essex St.) indicating that in 2017, William Wheaton presented a report that appeared to be supported by MIT. Mr. Scuteri felt it was important to bring the matter to the attention of MIT. Bill Olson read the letter into the

record. Also attached were a second letter from Mr. Scuteri's to MIT and the response from MIT. Jen Scuteri asked to have Nancy Rose's (MIT) response placed into the minutes. Peter Clark asked if Ms. Scuteri had the impression that William Wheaton represented MIT to which she responded that every page of the report had the logo for MIT Center for Real Estate on it. The public document was not produced by MIT, but was a compilation of his personal views on development, which was verified by Ms. Rose, according to Ms. Scuteri. Mr. Clark recalled that Mr. Wheaton said it was his opinion. Ms. Scuteri disagreed and said he should not use the MIT logo. Ms. Scuteri said she thought MIT took it seriously because they FedExed their response to her.

Jen Scuteri thought it was a public concern to have a power point with an MIT logo on it as one would conclude it represented the views of MIT, which have an effect on a voter. Ms. Scuteri said he misrepresented to the Planning Board. The Cottage Housing By-law had been voted down by the public and Ms. Scuteri thought the presentation might have made an impact on the voters. Richard Boroff said he googled William Wheaton and could not locate any supporting documentation that would have proven it was research conducted for the center for Real Estate.

Bob Curry (Bay Road) Recalled the presentation was made in December 2016 and that he was curious why it was not brought up before the current time when William Wheaton was running for Planning Board office. Jen Scuteri said it was much more relevant now that he had taken steps, whether it be negligence, which would be a misrepresentation or intentional, which crossed over into fraud. Ms. Scuteri said the fact that he was running made it more relevant as timing was important. Ms. Scuteri said she knew of the situation when she was Moderator and that someone had once reached out to MIT, but had never received a response. Mr. Curry stated that using terms such as "fraud" when it was nine days away from the election and questioning the man's credentials for Planning Board was suspect. Mr. Curry questioned why Ms. Scuteri had brought the issue up so close to the election when it could have been brought up anytime.

Jen Scuteri said the letter was written before William Wheaton had taken his papers out for the Planning Board position. Peter Clark responded that he was a possibly returning member of the Planning Board, who was well known to the public in this town and that he did not mislead anyone. Claudia Woods recalled that she had asked him to present the relevance of the tipping point on new property tax weight. Judy Barrett had also done so for the Master Plan when she cited that it took a \$1.25M home to carry all the tax revenue earned for costs incurred by the public, according to Mr. Clark who continued that smaller houses did not contribute enough. Mr. Wheaton gave information and a perspective at the invitation of Ms. Woods. Ms. Scuteri responded that Mr. Wheaton gave his personal opinion that was weighted more heavily due to the MIT logo. Ms. Woods said he never said it was never represented as MIT. Ms. Scuteri argued that he did not say it wasn't and that a reasonable person would assume the financial impact of the Town was as presented because it had the color of MIT on it.

Claudia Woods noted that William Wheaton was not an owner of a great estate. Jen Scuteri argued that his property could be subdivided for cottage housing and could be subject to By-law revisions that his property could come under. Ms. Scuteri said Mr. Wheaton did not measure the impact of the Patton property and its tax generation. Ms. Scuteri said Mr. Wheaton had no right to have MIT on his stationery. Ms. Woods asked if Ms. Scuteri had talked to Mr. Wheaton, who had been a member of the community for 30 years. Ms. Scuteri said she and her husband did not have a relationship with him. Bill Olson noted the letter had been placed on the record.

Ed Howard noted that Jen Scuteri and Jeff Scuteri had made the assumption that William Wheaton was an owner of a large estate and asked Ms. Scuteri to define a large estate. Ms. Scuteri said it larger than five acres. It was noted that Mr. Wheaton's home had 4.5 acres. Ms. Scuteri said at one time it was a large estate and that he also abutted one. Mr. Howard responded that he himself abutted a large estate but that did not mean he had a large estate. Ms. Scuteri repeated that Mr. Wheaton represented his findings as those of MIT. Richard Boroff added that Mr. Wheaton owned land that was under Chapter 61 for forestry, which had a minimum acres of 10 to 20 acres.

Board Discussion-Accessory Apartments

Next meeting.

Other Board Business and Discussion

Minutes from March 20, 2018. March 6, 2018 would be approved at the next meeting.

Adjournment

Brian Stein made motion to adjourn.

Seconded by Bill Olson.

Vote: Unanimous to adjourn at 9:32 pm.

Prepared by:

Marcie Ricker

Attest

Date