



**TOWN OF EASTON**  
**Planning & Zoning Board**  
136 Elm Street  
North Easton, Massachusetts 02356  
Tel: (508) 230-0630 Fax: (508) 230-0639

**Meeting Minutes**  
**February 13, 2008**

**Selectmen's Meeting Room, 1<sup>st</sup> Floor, Easton Town Offices**  
**136 Elm Street, North Easton, MA 02356**

Present: Colin Gillis, sat in as Chair; Walter Johnson, Gregory Strange, Carol Symmons

Absent: Christine Santoro

Staff: Alice Savage, Staff Planner; Pamela Almeida, Recording Secretary

**6:30 P.M. DISCUSSION - Dorchester Brook Water Line**

Present: Attorney Michael Sites

What we have here is a dangling end of finishing up the subdivision and relates to the water easement. What happened was when the Board issued its Special Permit back in 2002, one of the documents that was required to be submitted and actually was submitted for review and approval by Town Council, was the deed of easement for the water lines going through the road know as Arborway and passing through Lot 16 of the Dorchester Brook subdivision, so the water line could be looped into the existing water line at Marshall Lane. For some reason that particular water easement, which was drafted at the time, by the then attorney, representing the developer and submitted to Town Council for review, never got formally accepted or recorded at the Registry of Deeds. In the meantime, the subdivision has been completed, all the lots have been sold, the ownership of the roadway, which of course will remain private under the OSRD and has been transferred to the Homeowners Association, and the Lot 16, which the easement went to the looping of the water main, has been transferred to the Counihan's (now the second homeowners), as a result, when I became aware of the fact that the water easement had yet to be formally accepted or recorded, I was informed by Mr. Rousseau the Town Council is determined that, in fact, the formal acceptance of the easement would require a town meeting vote for acceptance. I had submitted two revised documents, one from the Homeowner's Association passing over Arborway and one from the Counihan's for the particular strip of Lot 16. Represented in the deed of easement of Lot 16, is a license agreement which had been entered into between the Counihan's and Board of Selectmen given the fact that the Counihan's wish to erect a fence within the boundaries in that particular area of the lot. The license agreement was reviewed

and approved by Town Council, was voted by the Selectmen and recorded at the registry of deeds and the deed of easement from the Counihan's to the Town references that and subjects the granted easement to that particular license agreement, which the Counihan's were given the right to erect the fence with the understanding that if the Town, at any time, needed to come in and do work on the part of the water line which might be located under the fence, the Counihan's have the responsibility of removing the fence, replacing it after the work was done and be subject to the Town's approval. Therefore, consequently what we are here for tonight is the acceptance from this Board of the two easement documents that were submitted to the Director of Planning some time ago and I trust were forwarded onto Town Council for review (two documents in one package) and we would respectfully request that this complies to the particular terms of the special permit and we could move this along and get it out to the spring's Town Meeting to get it voted, approved and recorded.

Walter Johnson asked if the fence was over the water line. Attorney Sites responds that the fence is placed within the boundaries of the easement and does not interfere with the water line itself. Walter Johnson asked what the berm width is. Attorney Sites responds that it is shown on the subdivision plan. He recollects it is a strip of about 12-20 feet width.

Alice Savage asks who has ownership of the part of the water line that is on Lot 16. Attorney Sites reports that the Counihan's (present owner's) have, there is a deed from them to the Town. The reason is, because since the original easement from Mr. Costa was never formally approved or recorded and the lot has since been sold they are the only ones who can grant that easement.

Colin Gillis reiterates that the conveyance is already done, the previous easement that was supposed to be filed was never filed, we now have a conveyance and now the deeded owners have proceeded with a move and at this point we are looking to see if Town Council has approved the easement.

Alice Savage states that Town Council has some issues and has not gotten back to her on what the proposal would be. It says conveyance of easement and in there it says the title and fees are also being granted. Colin Gillis states that it would be unusual that an easement would have language of title and fee. Alice feels she may have a different document. Attorney Sites responds that it would not, those documents do not grant title and fee to anybody. He states that there was a deed from Mr. Costa to the Homeowner's Association of the fee in Arborway, which may be the document being referred to.

Colin Gillis asks if it is fair to say that Town Council has yet to approve the language of the deed of easement. Attorney Sites requests that if the Board could get some determination as to whether subject to Town Council review, the Board would be inclined to accept the easements that are being proposed, and if Town Council has problems then they could be worked out. Attorney Sites informs that Board that in the license agreement, the Counihan's agree to indemnify the Town against any issues that may arise, which may alleviate any concerns the Board has. Walter Johnson is concerned that if the Town has to do any work in the area, who will be held responsible. Attorney Sites states that in the license agreement

provides within it that it is the Counihan's responsibility to remove any fence in the work area of the Town and they would then replace it after the work is done.

Walter Johnson motions to accept the opinion of Town Council and the Board will accept approval of the easement subject to Town Council's decision, seconded by Gregory Strange. Motions PASSES (4-0)

**6:45 P.M. ROAD COST ESTIMATE - Michelle Way**

Present: Azu Etoniru, E.T. Engineering

Mr. Etoniru is before the Board tonight to establish a bond for release of lots. Alice Savage gave the Board the amount from the Land Use Agent's Road Cost Estimate in the amount of \$28,670.00

Walter Johnson motioned to set bond amount at \$28,670.00, seconded by Carol Symmons. Motion PASSED (4-0)

**6:50 P.M. APPROVAL OF MINUTES**

January 16, 2008 (signature by Clerk only) – Colin Gillis signed the meeting minutes that were approved at the meeting of January 30, 2008

Gregory Strange motioned to approve the meeting minutes of January 30, 2008, seconded by Carol Symmons. Motion PASSED (3-0) Walter Johnson abstained.

**7:00 P.M. DISCUSSION - Quset Smart Growth Overlay District (QSGOD)**

Present: Adam Costa, Blatman, Bobrowski & Mead, LLC; Stephanie Danielson, Land Use Agent representing the Conservation Commission; Diane Howard, representing the Eisenhower Drive Homeowners Association

Adam Costa handed out copies of a PowerPoint presentation entitled "Ch. 40R Smart Growth Zoning & Housing Production". Sections include What is Ch. 40R?, Location, Density, Mapping the District, Drafting the Zoning Bylaw/Ordinance, Affordability, the Approval Process, Payments (incentives) to the Town, Resources.

He then provided a brief overview of what a Ch. 40R is, the in's and out's of the statute and regulations and take questions from the public and the Board.

He states that a 40R allows for a creation of a Smart Growth Overlay District, which is seen as an alternative to Ch. 40B, when it provides for a mixed used development. So unlike a Ch. 40B development the housing/residential housing only, a 40R development also allows for some mixed used, whether that is strictly commercial use in a different sub-zone within a district then residential uses, or in some cases the commercial uses may be located below the

residential uses. So there might be a 3-story building where the top two stories of the building are residential units and the first story is office space. What is being proposed in Easton is what is being called the Queset Smart Growth Overlay District. And what this district provides for is three different subzones and each subzone has a different set of criteria and density requirement. Ch. 40R and the purpose behind it, is to establish more allowable density that would not otherwise be allowed in the zoning bylaw. The focus is to establish this in a location that is beneficial to individuals who are looking for both affordable and market rate housing close to public transit or commercial areas or other areas potentially designated as areas beneficial for future growth. Queset Commons is an area of Town and has been an area that is highly suitable for this type of development.

There are three minimum density requirements set forth in Ch. 40R, depending on the type of housing being constructed. The lowest minimum is eight units per acre for a single family house; the second minimum is twelve units for a two and/or three family house and the last minimum is twenty units per acre for a multi family house.

Of the housing created in a 40R district, 20% must be affordable housing, unless they are rental units. For all housing units in a rental development to count on the Subsidized Housing Inventory, at least 25% of the units must be affordable. These units are sold to individuals, households and families that are making between 70-80% of the area-wide median income.

The process for establishing a 40R district begins with the completion of a Ch. 40R SGOD application. It is then submitted to the Selectmen for recommendations and drafted and then submitted to the State for review and approval (the Queset Commons application has been submitted to the State and Don Schmidt, Director of the Department of Housing Committee Development (DHCD), has acknowledged receipt of the application.) Upon receipt of the application it is officially deemed submitted on the last day of the month and the Department has 90 days to review the application. (The Queset Commons review has been begun, as of today and Mr. Costa received an email of the copy of the Zoning portion of the application with Don Schmidt's red-lined edits. So the process is already moving forward.) Other components of the application include a variety of different maps showing the overlay district, the density within the district, the subzones within the district, copy of the existing zoning bylaw, copies of the Town master plan, and also includes certification's such as that there is sufficient water and sewer capacity for the site.

The reason we are here tonight is to discuss and answer questions about Ch. 40R. There is a usual process for the zoning modification or amendment process in that the Planning Board will hold a public hearing to allow public comment and then put in their recommendation to Town Meeting whether or not to adopt this district. The public hearing is scheduled for February 27, 2008 to officially discuss the zoning that is being recommended for this development. Once the recommendation is made to Town Meeting and the Town does adopt the zoning, the zoning is then submitted to the DHCD for final approval.

Once the Town Meeting has accepted the bylaw and the DHCD has approved it, there are a couple of benefits to the Town. The first benefit is a one-time incentive payment that is written into the statute and regulations and based upon the number of incentive units approved. An incentive unit is in the existing zoning you can put 10 units on a 10 acre parcel (1 unit per acre); in the new zoning SGOD allows for 20 units per acre (because it is multi-family) now allowed 200 units. The difference being 190 units, these are the incentive units. Based upon the number of incentive units the State provides a one-time incentive payment ranging from \$10,000 - \$500,000. (In this case for Queset Commons payment would be of \$200,000). There is a per unit incentive called a 'density bonus' payment. The density bonus payment is provided to the Town upon issue of the building permits for the individual units. The way it is set forth in the statute and regulations, the DHCD will accept a tally of the building permits issued on a quarterly basis. So, if in the first quarter of 2009, there are 20 incentive units that have been issued building permits (copies provided to the DHCD) an additional payment of \$3,000 per unit (\$60,000) will be provided to the Town. Mr. Costa states that if there are no building permits pulled within three years, the funds are to be returned to the State.

In a usual creation of a Ch. 40R the Town would define an area for the overlay district, they would submit the application and then a developer would submit a proposal for the district. In this case, the developer has already created the project, and now the Town has to create the district to allow the project.

Colin Gills asks if the Town approves this district and feels in the future it is well received, if another 40R district is proposed, in what fashion can the bylaw be limited so that if the Planning Board says 'don't think that is such a great idea' are we now bound to grant a 40R because we now have it on the books, or is there any compulsory mandate a development that limits the ability of the Town to oversee a traditional 40R district. Adam Costa says that there is no requirement of a traditional 40R district. A 40R district is area specific, not development specific. In this case, we are working backwards. There are protections that are written in zoning for the benefit to the Town so that in the event, for example, if the developer of this 40R walks away after it has been zoned 40R and a new developer comes into this parcel that has now been zoned 40R is held at a particular requirement, those that are set forth in the bylaw and design standards. The new developer has to abide by the 40R for that overlay district.

Colin Gillis questions, that if, down the road, assuming it is approved 40R as proposed and approved by Don Schmidt and everyone is happy with it, and it comes into existence, at that point, does the Planning Board acquire the ability and have some oversight into how the developer obtains a special permit, abilities to say, "well we don't like that", but we really like this.

Adam Costa says that there is no special permit process. The idea behind 40R is a requirement is established in the statute and the regulation creates as-of-right housing. The development of a 40R is as-of-right. That is not to say that it is not subject to a review proceeding, as reference before to the Planning Approval Authority (a member of the Board of Selectmen, Planning Board and Zoning Board). This three member Board has the

authority to review a proposal and there is a specific procedure in the bylaw, a similar process to a site plan review. So unlike a special permit process the PAA process is a by-right process, meaning the applicant can move forward by-right of developing. But the PAA wants to make sure the development is in accordance with not only the requirements of this bylaw but also the design guidelines. To the extent that a developer comes forward with the project that doesn't comply with the letter of the bylaw or any of the requirements of the design guidelines, which is a circumstance the PAA can deny a project. There are three specific criteria set forth in the bylaw to allow a denial, 1) the fees haven't been paid; 2) the information required has not been provided; 3) if there are significant adverse impacts on neighboring properties.

Gregory Strange asks if those are set by the State. Adam Costa agrees. Gregory Strange asks where the design review fits in. The criteria required of the second of the three part series is the provision of information – criteria one: the applicant has submitted the required fees and information set forth in criteria one. Criteria two: the project and site plan meet the requirements and standards. Criteria three: the adverse impacts. If any of the requirements of this bylaw are not met, the PAA at their discretion can deny the project.

Colin Gillis brings up the Queset project is next to an aquifer, what if anything would the PAA be able to do protect a design review so that it doesn't violate the aquifer? Or say a conservation district or a historic district, how are these reviewed? Adam Costa states that normal review procedures will still be followed. Conservation Commission will review and comment on a project.

Gregory Strange asks if the design standards (for Queset Commons) have been submitted. Adam Costa responds that what they have tried to do is prepare design standards, working on behalf of the Town with the developer, there are a number of drafts and having difficulty nailing down the specific standards that were thought to be fair to both the development as proposed as well as representative of the Town. Working with Marc Rousseau, we thought we had come up with a good set of standards, and received feedback from this Board a couple of weeks ago and felt more review and/or discussion of the standards is needed. There wasn't enough time devoted to setting the standards to get them incorporated into this Bylaw. We submitted the Bylaw, and it is appropriate to allow the PAA to create the design standards at a later date. After the approval of the Bylaw and adopting of the Bylaw at Town Meeting, the PAA can then meet and create the design standards and discuss them more in depth. The Bylaw states that the PAA must provide copies of the application to various Boards for comment. The rules and regulations that are adopted by the PAA can be more specific, and require the PAA to solicit input, specifically as to the compatibility of the project with the rules and regulations of other Boards. Though there is nothing that says that the PAA can require or mandate a respond to their request for comments from other Boards. Walter Johnson asks if the 40R is not accepted by the Town, what happens. Adam Costa responds that if the district is not created, he has not idea specifically with respect to the developer what will happen, but the projects plans that are currently on record will likely not move forward.

Walter Johnson's then questions how this site qualifies for a 40R. He then refers to the location section of the handout. Adam Costa explains that there are three types of eligible locations a 40R can be located. Easton falls in the third qualification of "being a highly suitable location."

Walter Johnson expressed his concerns of a treatment plant and the Board of Health not giving comments. Adam Costa responds that under a 40R, any local regulations, Board of Health review, any permits from the Building Department still apply. None of those are exempt from a 40R project.

Gregory Strange asks about the payments to the Town, the developer is proposing this project in phases, how does this affect payments. Adam Costa states that once a building permit is issued, they are locked in.

Colin Gillis asked if the public had any questions.

Diane Howard, 14 Eisenhower Drive, representing the Eisenhower Drive Homeowners Association read a statement of opposition of the zoning. A copy of the statement will be mailed to the Planning office for the record.

Colin Gillis reminded the public that the public hearing will be held on Wednesday, February 27, 2008 at 6:30 p.m. at the Olmsted/Richardson school cafeteria.

Stephanie Danielson, Land Use Agent, asked if a developer had a specific area in mind, and the project was approved, but the developer moved on, and the development does not move forward, does the Town have the right to revoke or repeal the zoning for that district?

Adam Costa responded that the Town has the right to repeal the zoning altogether or amend it. Because, however, this is largely a result of the involvement of payments, and the DHCD had to approve any project, he doesn't see any circumstance where the DHCD would deny a request to revoke or repeal a district, they would of course require a refund of any payments made to the Town.

Alice Savage asked, when a project is approved in phases, is there a separate approval process or do they have to apply to the State for each stage? Adam Costa responded that generally the project is approved as a single project, regardless of how many phases.

Walter Johnson motioned to adjourn at 7:45 p.m., seconded by Gregory Strange. Motion PASSED (4-0)

Respectfully submitted by *Pamela J. Almeida, Recording Secretary*