



Town of Tyngsborough
Planning Board
25 Bryants Lane,
Tyngsborough, Massachusetts 01879-1003
Office: (978) 649-2300 ext. 115

MINUTES
September 20, 2012
APPROVED

Attachments:

1. Meeting Agenda
2. Westford Road Development Letter for Tyngsborough Commons – 9/20/12
3. Request for Comment forms regarding the proposed Zoning By-Law Amendments
4. Proposed Town Meeting Warrant Articles for the Zoning By-Law Amendments
5. Town Counsel Opinion Letter regarding the Zoning By-Law Amendments – 9/7/12
6. Street Acceptance Filing Checklist & Engineer Report – Primrose Lane, Black Oak Circle, Overlook Dr.
7. Street Acceptance Filing Checklist & Engineer Report – Strawberry Hill Lane
8. Street Acceptance Filing Checklist & Engineer Report – Diamond St., Emerald St.
9. Street Acceptance Filing Checklist & Engineer Report – Sequoia Dr., Hemlock Lane, Cedar Lane, Cypress Lane, Nandina Dr.
10. Tyngsborough Sewer Commission Letter regarding the Sequoia Dr. & Coburn Rd. pump stations at Evergreen Estates – 8/21/2000
11. Tyngsborough Sewer Commission Letter regarding Evergreen Estates – 11/15/2001
12. Tyngsborough Sewer Commission Letter regarding the bond release for Evergreen Estates – 7/24/2002
13. Town Counsel Letter regarding Evergreen Estates Surety – 8/1/2002
14. David E. Ross Associates Street Acceptance Status Report – 9/17/12
15. David E. Ross Bond Worksheet for Whitetail Drive – 9/7/12

Members Present: Steve Nocco
William Gramer
Tom Delmore
Caryn DeCarteret
Steve O'Neill
Jesse Johnson, David E. Ross Associates

7:00pm - Meeting called to order by Chairman Tom Delmore

7:02pm 50 Westford Rd. (Tyngsborough Commons) – Special Permit Modification

Developer Walter Eriksen appeared before the Board and submitted a letter to withdraw without prejudice the application to amend the existing Special Permit. He went on to explain that due to the recent changes in FHA lending rules, and listening to residents' concerns regarding the proposed changes, he decided to do further research on the available options.

S. Nocco: Motion to accept the applicant's request to withdraw without prejudice the Special Permit amendment.

S. O'Neill: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

7:10pm Zoning By-Law Amendments

S. Nocco: Motion to waive the reading of the legal notice.

C. DeCarteret: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

The Board proposed amendments to ten sections of the Zoning By-laws. The proposed amendments were distributed to Town departments and Town Counsel for their comments. All comments were supportive of the proposed changes. The following votes were taken:

Section 1.16.11 (Special Permits: Rules and Regulations and Fees)

To see if the Town will vote to amend Section 1.16.11 of the Town of Tyngsborough Zoning Bylaws as shown below, by adding the sentence which is underlined; or take any other action relative thereto.

Rules and Regulations and Fees - The Special Permit Granting Authority shall adopt, and from time to time amend, Rules and Regulations, not inconsistent with the provisions of this By-law or Chapter 40A of the General Laws or other applicable provision of the General Laws, and shall file a copy of said Rules and Regulations with the Town Clerk. Such rules shall prescribe as a minimum the size, form, contents, style and number of copies of plans and specifications, the town boards or agencies from which the Special Permit Granting Authority shall request written reports and the procedure for submission and approval of such permits. The Special Permit Granting Authority may adopt, and from time to time amend, fees sufficient to cover reasonable costs incurred by the Town in the review and administration of special permits. **The applicant shall be responsible for payment of all fees associated with advertisement notice and postage for abutter notification.**

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 1.16.11 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 1.16.15 (Special Permit Conditions)

To see if the Town will vote to amend Section 1.16.15 of the Town of Tyngsborough Zoning Bylaws by adding after Paragraph 8, the following; or take any other action relative thereto.

9. Requirement of an as-built plan and certification by the applicants' engineer regarding a projects' completion prior to issuance of an occupancy permit.

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 1.16.15 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 2.12.41 (Intensity of Use, Dimensional Requirements: Lot Area)

To see if the Town will vote to amend Section 2.12.41 of the Town of Tyngsborough Zoning Bylaws by adding the sentence which is underlined; or take any other action relative thereto.

2.12.41 Lot Area - Lot area shall be determined by calculating the area within a lot excluding any area within the lot over which easements have been granted, provided that no area within a street shall be included in determining minimum lot area. **Minimum lot area shall consist of contiguous area exclusive of wetland and floodway areas as defined in Section 2.12.20 of this By-Law.** When the distance between any two points on lot lines is less than 50 feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall not be considered in computing the minimum lot area unless the distance along such lot lines between such two points is less than 150 feet.

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 2.12.41 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 2.12.42 (Parking and Loading: Frontage)

To see if the Town will vote to amend Section 2.12.42 of the Town of Tyngsborough Zoning Bylaws by adding the sentence which is underlined; or take any other action relative thereto.

2.12.42 Frontage - Frontage shall be measured in a continuous line along the sideline of a street between the points of intersection of the side lot lines within the street.

A. Common Driveways cannot be used as part of the frontage.

B. Frontage that has no real and actual access from the street to each lot is illusory and that particular lot has no frontage. Access is defined as the actual or potential provision of vehicular entry onto a lot by means of its frontage on a street to a degree consistent with the use or potential use of the lot. For example, in the case of a residential lot, access shall mean that (1) there is sufficient right of vehicular passage onto the lot from the street on which it has frontage and (2) vehicular passage is or may be provided between the frontage and the dwelling unit on the lot.

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 2.12.42 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 3.10.42 (Parking and Loading: Parking Dimensions)

To see if the Town will vote to amend Section 3.10.42 of the Town of Tyngsborough Zoning Bylaws by deleting the number which is lined out and by adding the number which is underlined; or take any other action relative thereto.

3.10.42 Parking Dimensions

On any lot, in any district, with the exception of single and two family dwelling use, parking spaces and maneuvering aisles shall have the minimum dimensions as set forth in the following table.

Minimum Parking Stall Dimensions (in feet)			
Angle of Parking	Width	Depth	Width of Maneuvering Aisle
<i>Standard</i>			
45'-90'	10	20	22-24
Parallel	9	22	15
<i>Compact</i>			
45'-90'	9	16	22-24
Parallel	8	18	15
<i>Handicapped</i>			
45'-90'	12 10	19 20	22 24
Parallel	12 10	22	15

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 3.10.42 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 4.10.30 (Special Permits – Major Business Complex: Decision Criteria)

To see if the Town will vote to amend Section 4.10.30 of the Town of Tyngsborough Zoning Bylaws by deleting the sentence which is lined out; or take any other action relative thereto.

4.10.30 Decision Criteria

A special permit for a Major Business Complex shall be approved only upon determination of the Special Permit Granting Authority that the requirements of section 1.16.00 Special Permits including section 1.16.14 Mandatory Findings of Special Permit Granting Authority and the following additional criteria:

1. The proposed plan is consistent with any submittals made under section 4.10.20 and 4.10.21 or in the event of inconsistency, satisfactory explanation has been made submitted showing why the departure is necessitated by changed conditions or earlier error, and that the departure does not reduce compliance with the objectives for the Major Business Complexes specified in section 4.10.10.

2. The Complex shall be so designed and located such that annual average daily traffic is not increased more than 25% above current levels at any point more than 1,000 feet from the site, with current levels as determined by the Tyngsborough Planning Board; and shall be so located that resultant traffic is not above the capacity of roads and intersections at level of service "C" at any point within one mile of the premises, using definitions and methods of estimation as outlined by the Transportation Research Board Highway Capacity Manual, Special Report #209 or later editions.

3. Site design and storm water facilities shall be so designed that in a twenty-five year storm the peak stormwater flows leaving the premises will not be increased ~~more than 10%~~ above current flows or cause design capacity of receiving structures or channel capacity of receiving streams to be exceeded.

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 4.10.30 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 4.11.21 (Special Permits – Major Industrial Complex: Specific Requirements)

To see if the Town will vote to amend Section 4.11.21 of the Town of Tyngsborough Zoning Bylaws by deleting the sentence which is lined out and by adding the sentence which is underlined; or take any other action relative thereto.

4.11.21 Specific Requirements - The application for a special permit under this section shall provide to the Special Permit Granting Authority:

1. ~~A site plan as per section 1.16.20.~~ The application shall include the information outlined in Section 1.16.22, Application Contents, unless waived in accordance with Section 1.16.23 of this By-Law.
2. Analysis of the consequences of the proposed development, evaluation of the following impacts at a level of detail appropriate to the scale of development proposed.
 - a. Natural environment: groundwater and surface water quality, groundwater level, stream flows, erosion and siltation, vegetation removal (especially unusual species and mature trees), and wildlife habitats.
 - b. Public services: traffic safety and congestion, need for water system improvements, need for public sewage
 - c. Economics: amount and types of employment, labor force area.
 - d. Visual environment: visibility of buildings and parking, visual consistency with existing development in the area.

All applicants for a special permit under this are encouraged to consult with the appropriate Special Permit Granting Authority at a regularly convened meeting prior to formal application.

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 4.11.21 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 4.11.30 (Special Permits – Major Industrial Complex: Decision Criteria)

To see if the Town will vote to amend Section 4.11.30 of the Town of Tyngsborough Zoning Bylaws by deleting the sentence which is lined out and by adding the sentence which is underlined; or take any other action relative thereto.

4.11.30 Decision Criteria

A special permit for a Major Industrial Complex shall be approved only upon determination by the Special Permit Granting Authority that the requirements of section 1.16.00 Special Permits including section 1.16.14 Mandatory Findings of Special Permit Granting Authority and the following additional criteria:

1. The proposed plan is consistent with any submittals made under section ~~4.20.20~~ 4.11.20 and ~~4.20.21~~ 4.11.21. ~~or~~ In the event of inconsistency, satisfactory explanation ~~has been made~~ should be submitted showing why the departure is necessitated by changed conditions or earlier error, and that the departure does not reduce compliance with the objectives for the Major Industrial Complexes specified in section 4.20.10.
2. The Complex shall be so designed and located that annual average daily traffic is not increased 25 %, or more, above current levels at any point more than 1,000 feet from the site, with current levels being as determined by the Tyngsborough Planning Board; and shall be so located that resultant traffic is not above the capacity of roads and intersections at level of service "C" at any point within one mile of the premises, using definitions and methods of estimation as outlined by the Transportation Research Board Highway Capacity Manual, Special Report #209 or later editions.
3. Site design and storm water facilities shall be so designed that in a twenty-five year storm the peak storm water flows leaving the premises will not be increased more than 10% above current flows or cause design capacity of receiving structures or channel capacity of receiving streams to be exceeded.

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 4.11.30 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 4.14.00 (Special Permits – Open Space Residential Development)

Resident and Selectman Cory Lambert voiced his concerns with this amendment. He was concerned about the different appearance of cluster-type subdivisions and was not keen on facilitating cluster housing projects unless on a case-by-case basis. Town Meeting is now able to weigh in on these types of subdivisions. T. Delmore noted that the expertise lies with the Planning Board due to the extensive engineering review process. W. Gramer added that projects are almost always discussed at more than one public meeting over the course of months. The Town Meeting format only allows for one night and very little understanding of the entire project from a technical perspective.

To see if the Town will vote to amend Section 4.14.00 of the Town of Tyngsborough Zoning Bylaws by deleting the sentence which is lined out; or take any other action relative thereto.

4.14.00 Special Permit - Open Space Residential Development

The Planning Board may grant a special permit for Open Space Residential Development in the R1 District for single family detached dwellings and accessory structures subject to the provisions of this section.

~~**Town Meeting approval of an Open Space Residential Plan is required prior to the granting of a Special Permit.**~~

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 4.14.00 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Section 4.15.30 (Special Permit – Temporary Independent Living Quarters: Decision Criteria)

To see if the Town will vote to amend Section 4.15.30 of the Town of Tyngsborough Zoning Bylaws by deleting the sentence which is lined out and by adding the sentence which is underlined; or take any other action relative thereto

4.15.30 Decision Criteria - A special permit for temporary independent living quarters shall be approved only upon a determination by the Special Permit Granting Authority that the requirements of Section 1.16.00 Special Permits including 1.16.14 Mandatory Finding of Special Permit Granting Authority and the following additional criteria have been met:

1. The proposed exterior changes to the principal residential unit are such that the appearance does not deviate to any substantial extent from the appearance of the residential dwelling prior to the change and conforms to the established residential character of the neighborhood.
2. That the total square foot areas of the proposed temporary independent living quarters **shall** not exceed ~~20% of the existing living space up to~~ 700 square feet of living space.
3. That the design of the proposed living quarters be engineered to be easily assimilated or reincorporated into the primary structure for use once the need for the use ceases.
4. That the design incorporates the provision for additional off street parking areas as required.
5. That the proposed design and plan shows the provision for not more than one temporary independent living quarters per existing residential unit and that not more than one additional bedroom be constructed.
6. That the design and plan does not provide for separate metered utilities serving the proposed temporary independent living quarters.
7. A restriction including all the conditions must be recorded at the Middlesex North District Registry of Deeds together with a subordination agreement by any bank or lease holders.
8. The proposed temporary independent living quarter must be within or have a common wall with the single family dwelling unit and not be separated by a hall, stairwell or foyer. For the purpose of this section, the definition for a common wall is one that is connected, usable, and heated on both sides of the existing dwelling unit.
9. That the proposed temporary independent living quarters must be entered through the main dwelling unit and ~~may not~~ have **an one direct exit egress** directly to the outside **side or rear**, unless waived by the Special Permit Granting Authority for reasons of handicap accessibility.

W. Gramer: Motion to recommend to Town Meeting the amendment of Section 4.15.30 as written.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

7:45pm

S. Nocco: Motion for a five minute recess
W. Gramer: 2nd the motion
In Favor: 5 Opposed: 0 Absent: 0
Passes: 5-0-0

7:50pm

Street Acceptance – Strawberry Hill Lane

Although this street are generally in fair to good condition, J. Johnson’s review of this street yielded some lingering documentation issues that still need to be resolved before the street can move forward with acceptance. The Board felt that instead of pushing through a street that isn’t quite ready, they would wait until the Annual Town Meeting in the Spring.

S. Nocco: Motion to “Not Recommend” Strawberry Hill Lane to the Board of Selectmen for street acceptance.
S. O’Neill: 2nd the motion
In Favor: 5 Opposed: 0 Absent: 0
Passes: 5-0-0

Street Acceptance – Highland Street & Heather Way

Although these streets are generally in fair to good condition, J. Johnson’s review of this street yielded some lingering documentation issues that still need to be resolved before the street can move forward with acceptance. The Board felt that instead of pushing through a street that isn’t quite ready, they would wait until the Annual Town Meeting in the Spring.

S. Nocco: Motion to “Not Recommend” Highland Street and Heather Way to the Board of Selectmen for street acceptance.
W. Gramer: 2nd the motion
In Favor: 5 Opposed: 0 Absent: 0
Passes: 5-0-0

Street Acceptance – Diamond Street & Emerald Street

Although these streets are generally in fair to good condition, J. Johnson’s review of this street yielded some lingering documentation issues that still need to be resolved before the street can move forward with acceptance. The Board felt that instead of pushing through a street that isn’t quite ready, they would wait until the Annual Town Meeting in the Spring.

S. Nocco: Motion to “Not Recommend” Diamond Street and Emerald Street to the Board of Selectmen for street acceptance.
S. O’Neill: 2nd the motion
In Favor: 5 Opposed: 0 Absent: 0
Passes: 5-0-0

Street Acceptance – Primrose Lane, Black Oak Circle, Overlook Drive

These streets are generally in good condition, and they have 99% of the necessary documentation for street acceptance from the developer. These streets can be recommended for acceptance.

S. Nocco: Motion to recommend Primrose Lane, Black Oak Circle and Overlook Drive to the Board of Selectmen for street acceptance.

S. O’Neill: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Street Acceptance – Sequoia Drive, Hemlock Lane, Cedar Lane, Cypress Lane, Nandina Drive

These streets are generally in good condition. Since these streets have a surety bond that has been forfeited by the developer, any lingering documentation and condition issues can be rectified using those funds. Therefore, these streets can be recommended for acceptance.

S. Nocco: Motion to recommend Sequoia Drive, Hemlock Lane, Cedar Lane, Cypress Lane, and Nandina Drive to the Board of Selectmen for street acceptance.

S. O’Neill: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

ENGINEER REPORTS – Whitetail Drive

This street was put in six years ago and was inactive until recently. Two homes were built on the property, and the builder was notified that he must post a performance bond on the street in order to get occupancy for those homes. Currently, J. Johnson is working with the builder and his engineer on this issue. C. DeCarteret noted that during her investigation that the Form H was recorded at the Registry of Deeds without the Planning Board’s endorsement. Any claim that the developer or builder has regarding not posting a bond is bogus due to the fraudulent manufacturing of this document. This should be noted with Town Counsel in the event it becomes an issue.

C. DeCarteret: Motion to set the Bond amount for Whitetail Drive at \$104,426.00 and notify Town Counsel of the issue with the fraudulent Form H.

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

ADMINISTRATIVE

The August 16, 2012 minutes were not ready for tonight's vote.

8:25pm

S. O'Neill: Motion to adjourn

S. Nocco: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 0

Passes: 5-0-0

Minutes respectfully submitted by
Pamela Berman, Planning Board Administrative Assistant