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Southborough Conservation Commission

Memorandum

To: Planning Board
From: Beth Rosenblum, Conservation Administrator, for the Conservation Commission *BR*
CC: Advisory Committee, Board of Selectmen, Eric Denoncourt and Mark Purple
Date: 2/11/2013
Re: Proposed changes to the Southborough Zoning Bylaw

The Southborough Conservation Commission (SCC) has reviewed the 3rd Hearing Draft of the proposed Southborough Zoning Bylaw (revised September 4, 2012) and is pleased to offer comments on areas that pertain directly to SCC oversight and/or environmental issues affecting the town. These areas include the LID Bylaw, the Flood Plain Overlay District, the Stormwater and Erosion Control Bylaw, as well as some other observations that we feel require noting.

Several of these comments relate to the broader context of Southborough's ability to comply with imminent revisions to state and federal regulations under the proposed Zoning Bylaw (Bylaw).

While we have previously offered review comments on the earlier versions of the draft Bylaw, those related mostly to readability and consistency. These comments on the other hand, relate primarily to administration and coordination, substance, and how the Bylaw correlates to state and federal agency regulations.

Having had an early role in the discussion and review process with the consultants hired to draft the new Bylaw in early 2009, the SCC was surprised to discover that several of the recommendations agreed to by the SCC (as described in the Regulatory Review Report dated May 22, 2009) were either not included in the proposed Bylaw or had been altered. Of particular concern was that these changes had occurred without any communication to the SCC of the proposed revision and without asking if the changed were acceptable.

Also, while agreeing that there is opportunity to streamline some of the redundant processes and permitting requirements, we do not agree that environmental protections

and regulations presently in place should be relaxed so that numerous projects that now require oversight, review and permitting will now be exempted under the proposed Bylaw.

To be frank, the Zoning Bylaw review process has been somewhat of a challenge to follow; the final Regulatory Review document was not readily available (only the draft document was posted online) and the Side by Side chart was only produced after repeated requests by many in the community to produce a comparison document. In fact, until the Side by Side chart was made available, it had not been readily apparent that the Stormwater and Erosion Control bylaw (SEC) under the SCC jurisdiction had been completely eliminated from the proposed Bylaw.

Lower Impact Development

While we could not locate a statement in the proposed Bylaw which confirms this, it does appear that an attempt was made to combine parts of the SEC into the LID review process, under the jurisdiction of the Planning Board rather than the SCC. While the SCC concurs that overlap exists between the current LID and SEC bylaws, there are also noticeable distinctions, as illustrated below under the next section.

Additionally, the new LID bylaw has identified a “LID Reviewing Board” which includes the SCC and the Board of Health. However, it is unclear how this new proposed board would be convened, or how the process would be coordinated and initiated, and how oversight would be transferred or shared. Currently, some projects that do “not otherwise require a review or a decision by the Planning Board...” are captured under the provisions of the SEC bylaw, and review and permitting is completed by the SCC for the proposed development. Under the proposed Bylaw, a LID Reviewing Board would be convened, after public notice and public hearing, to review and approve the permit. The current process captures these few projects under the SEC bylaw and is working smoothly. There is no reasonable explanation offered why the current process should be changed to one with more complexity.

Stormwater and Erosion Control Bylaw

This existing bylaw overseen by the SCC and approved by Town Meeting in 2006 has been deleted in its entirety from the new Zoning Bylaw. It is unclear how fully the LID bylaw is supposed to replace it. The SEC bylaw was enacted to comply with updates to the federal Clean Water Act regulations as well as the National Pollution Discharge Elimination Permit (NPDES) “General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) on Massachusetts Interstate, Merrimack, and South Coastal Watersheds”, issued to the town by the EPA to cover a 5-year period.

The new draft MS4 permit proposed by the EPA increases the town’s burden to ensure that any new discharge to impaired waters are both treated and monitored. The EPA and MassDEP have classified the Sudbury Reservoir, Sudbury River, and all of their tributaries and surrounding wetlands as impaired waters in Southborough.

This will greatly affect all land development activities proposed in the town. The existing SEC bylaw greatly assists the town in complying with these onerous federal requirements since it guarantees that any proposed development projects are thoroughly reviewed and that they conform to all of the Massachusetts Stormwater Standards; its elimination will leave a noticeable gap and will likely require that new regulations be enacted by the town in the near future to assure compliance with the new federal MS4 permit.

The current SEC bylaw is applicable to soil disturbance of one acre or more, **or more than fifty percent of the parcel or lot, whichever is less.** The new LID does not include this provision which means that some projects that are currently being reviewed will slip under the radar if the SEC bylaw is eliminated.

The current SEC bylaw also requires review and permitting of: a) **any activity that will increase the amount of impervious surfaces more than 50% of the area of a parcel or lot,** and b) **any activity that will disturb land with 15% or greater slope and where the land disturbance is greater than or equal to 15,000 square feet within the sloped area,** which LID does not. If the SEC bylaw is eliminated, any proposed development that formerly triggered permitting based on the above criteria will go forward without review.

As previously stated, the SEC bylaw was originally enacted in response to the 2003 EPA NPDES Phase II MS4 General Permit, and ensured the protection of the town's natural resources by setting in place standards and protocols that diminished impacts from runoff, soil erosion and sedimentation. The SEC bylaw requires compliance with each of the ten Stormwater Standards for all new development and re-development projects disturbing one acre of land, or through other applicability triggers, regardless of proximity of the discharge to a Massachusetts regulated wetland. Eliminating these requirements may not be in the best interest of the health and safety of the town, or in the town's ability to comply with federal and state regulation requirements.

In addition, as part of the current NPDES MS4 permit requirements that Southborough is operating under, the town is required to submit an annual Stormwater Report to the EPA to demonstrate compliance with the MS4 permit regulations. The SCC regularly supplies the Department of Public Works (DPW) with data collected from their issuance of permits under the SEC bylaw, and which allows the DPW to compile and submit the compulsory annual Stormwater Report. If the SEC bylaw were to be eliminated as is proposed, the town will no longer be gathering the necessary data to complete the MS4 permit requirements.

Flood Plain Overlay District

During the regulatory review process, it was recommended that this district be eliminated since it matches the FEMA 100-year flood zone already protected under the Wetlands Protection Act and the Southborough Wetlands Bylaw. Any development or redevelopment proposed within the flood plain already requires review and permitting by the SCC. The proposed Overlay District requires a Special Permit to be issued

from the Board of Appeals (ZBA) if “a technical evaluation by a Massachusetts registered professional engineer demonstrates that the new construction or encroachment will not result in any increase in flood levels during the occurrence of the base flood discharge.”

If one of the goals of the proposed new zoning bylaw is to reduce redundancies and to streamline permitting, then it is unclear why requiring an applicant to appear before both the SCC and the ZBA has been retained, and why a special permit would be necessary. The SCC is already performing a comprehensive technical review of the proposal; this will simply add cost and time to the permitting process and will require a special permit to also be issued.

Definitions and Minor Site Plan Review

As presently exists, the Development Coordinating Group (DCG) is an informal group of all land use and public safety department heads brought together to offer technical review and advice to applicants proposing development in town, prior to applying for permitting. It allows potential applicants and their engineering representatives the opportunity to receive guidance and feedback from all of the relevant departments on development projects they are considering bringing forth. It allows for a free flow of exchange, and for the crafting of an improved product.

As defined in the proposed Bylaw, the DCG will be the entity responsible for review and approval of any application subject to minor site plan review. No longer does the DCG provide technical review and guidance for all proposed development; its role has been restricted to minor plan review only. No mention is made of requiring applicants to seek review by the DCG before they actually file for permitting. The process, when utilized, has been beneficial to both applicants and permitting boards since each department is able to clearly articulate their requirements and the projects go through a preliminary vetting process. Overall, it allows for smoother permitting. Instead of as defined in the proposed Bylaw, the role of the DCG should be reconsidered and expanded.

The SCC takes exception to the composition of the DCG, which as defined consists of the Building Inspector, the Superintendent of Public Works, the Board of Health Agent, the Police Chief and Fire Chief or their designees, the Town Planner and a member of the Board of Selectmen. Patently absent from this list is representation by the SCC, which we find conspicuous. Shouldn't the environmental permitting department have a seat at the table on any committee which reviews land use projects for the town? There is no explanation why the SCC is being excluded from this process.

Conclusion

The SCC applauds the hard work and time commitment given by both the Zoning Advisory Committee and the Planning Board to improve and update the current zoning bylaws, some of which are confusing, redundant and are disregarded. The SCC saw the comprehensive zoning review process as Southborough's opportunity to clarify

language, insert new requirements for responsible and sustainable future growth and development, and to streamline permitting and reduce or eliminate inefficiencies.

While many of these goals have clearly been achieved, there remain some concerns as outlined above. While the preliminary regulatory review suggested some enhancements to the permitting process, it certainly did not recommend the complete elimination of the SEC bylaw. The SCC respectfully asks that serious reconsideration be undertaken about the sensibility and practicality of eliminating the SEC bylaw, and that it be reinserted into the proposed Bylaw.

While the rationale for the proposed changes to the LID bylaw is understood, its administration, functionality and timetable may be more exacting than first realized. There does not seem to be clear definition of how the LID Review Board will be convened, tasked and utilized in actual situations.

The SCC is in support of simplifying the permitting under the Flood Plain Overlay District under the existing regulatory review process, and raises doubt that there is a need for the issuance of two (2) permits and simultaneous review processes. We feel that this should also be revisited and reconsidered.

The SCC believes strongly that it is crucial to have a seat on the DCG. While the other departments indisputably bring their areas of expertise to the table, it is clear that the environmental regulatory perspective would bring value and benefit to the review process. The SCC would also like to see the scope of the DCG expanded and re-defined in the proposed Bylaw to include a requirement for applicants to attend a project review meeting with the DCG prior to filing any major or minor site plans.

Finally, the SCC asks that the provisions of the proposed Bylaw that deal with land use issues be evaluated by Fuss & O'Neill, the town's on-call engineering firm, to check for consistency with all existing federal, state and local regulations. Providing the residents of the town and its boards, committees and departments with an additional layer of review and vetting might help to dispel some fears and concerns and allow for greater town-wide support.

Thank you for the opportunity to offer comment.

Southborough Conservation Commission