

WEST CONCORD TASK FORCE
MINUTES
MARCH 3, 2011

Pursuant to notice duly filed with the Town Clerk, a meeting of the West Concord Task Force was held at 7:30p.m. at Concord Park.

Present were Phil Adams, Chair; Nancy Carey, Clerk; Bobbie Brennan, Gary Clayton, Sue Felshin, Don Hawley, Gary Kleiman, Chris Sgarzi, and Jimi Two Feathers. Also present were Planning Director Marcia Rasmussen, Finance Committee representative Pat Nelson, Bruce Freeman Rail Trail Advisory Committee members Gerry Boyle and Judy LaRocca, and members of the community Ray Hanselman, Dan Holin, and Bill Satterthwaite.

Absent: David Holdorf

The Meeting was called to order by Phil Adams at 7:30PM.

Call to Order

BRUCE FREEMAN RAIL TRAIL

BFRT

Judy LaRocca, Chair of the Bruce Freeman Rail Trail (BFRT) Advisory Committee attended the Task Force meeting to provide an update on the ideas for routing the rail trail around and through the West Concord commuter parking lot and across the commuter rail line. She informed the Task Force members of a public forum held in February 2010, where a number of residents asked that the BFRT Advisory Committee meet again with the MBTA to discuss crossing the rail trail at the existing pedestrian crossing (adjacent to the Depot). With the help of Representative Cory Atkins, that meeting is scheduled for late March or early April 2011. Ms. LaRocca then presented the two alternatives developed by Concord Public Works Engineering Division staff that would be shared with the MBTA. One option showed the rail trail following the existing "spur" or curved path of the former railroad right-of-way with one-way traffic circulation and one row of angled parking (adding approximately 50–55 new parking spaces in West Concord). The second option showed the removal of one row of parking spaces in the existing commuter lot to allow the rail trail to directly connect and cross the commuter line at the existing pedestrian crossing, and a double row of parking with two-way circulation over the existing railroad "spur" (yielding approximately 20–25 net new parking spaces). There was a brief discussion between Task Force members and Judy, with general support for the rail trail to cross the commuter line at the existing pedestrian crossing.

ARTICLE 36, WEST CONCORD CENTER ROADWAY-RELATED IMPROVEMENTS

Roadway improvem'ts

The Task Force discussed confusion over Article 36, which would dedicate \$500,000 to roadway and streetscape improvements, and the Task Force's recommendation in its letters to the Town Manager of August 3, 2010 and January 6, 2011 that land acquisition is the top priority, with certain roadway and streetscape improvements as the next priority for any available funds. Planning Director Marcia Rasmussen noted that the Town Manager is looking for the Task Force to approve that the funds may be used for any purpose coming out of the Master Plan, and that now that there is a specific project on the table, the Task Force may want to reconsider its recommendations for roadway and streetscape improvements. Task Force consensus was to retain its recommendation that land acquisition is the top priority, as well as retain its recommendations for roadway and streetscape improvements, with the exception of adding the Master Plan's stairway from the Harvey Wheeler Community Center to the parking lot behind Teacakes and Twin Seafood. Jimi Two Feathers offered to make this update to the WCTF's list of recommendations to Chris Whelan.

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TOWN MEETING / SPECIAL TOWN MEETING

Planning Board representative Chris Sgarzi noted that the developer of the 50 Beharrell St. proposal is still trying to get a development agreement ready in time for an article to be moved at the Special Town Meeting within Town Meeting. He reported that the Planning Board approved articles regarding use changes and special permit condition changes at its previous meeting, and that it will finalize language for the WCMUOD (West Concord Mixed Use Overlay District, for the 50 Beharrell St. proposal) article in a short meeting on March 8th before the Planning Board's public hearing. Ms. Rasmussen stated that she will confirm with the Town Moderator that both the moderator and Town Counsel agree that the changes to Article 52, Recommended Size Limitations for Grocery Store, Retail Store and Restaurant in W. Concord's Business and Village Districts, are within scope. She also noted that the change in use in Earth removal in Article 50 was changed from No to Special Permit in the warrant to reflect a clarification regarding the meaning of the use; the use covers excavation of foundations, drainage, etc., and must be allowed if any new development is to occur.

TM / STM

MINUTES

On a motion duly made and seconded, with one abstention, it was

VOTED: To approve the minutes of 15 February 2011, as amended.

Minutes

ARTICLES 54 AND 55, FORMULA BUSINESS BYLAWS

Sue Felshin, Don Hawley, and Jimi Two Feathers summarized the two Formula Business By-laws presented in the warrant for the purpose of discussion. [See List of Attachments.] An implicit third alternative is if neither article passes. There are currently 6 formula businesses in the West Concord Business district and the article with a cap would allow 10. An advantage to the cap article is less risk regarding discrimination once the cap was reached. The cap provides a much higher bar as a Town Meeting vote would be required to go beyond it. Mr. Hawley noted that Mr. Kevin Hurley commented to him that Mr. Hurley's Thomsen Reuters tenant in Junction Square would qualify as a formula business if both the tenant's sign and the logo on the sign are counted as separate formula features. Discussion included: is there anything formulaic about the sign other than the logo?; some people think the articles shouldn't cover offices; provided a logo on a sign doesn't count as two features, it should be easy enough for offices to avoid being defined as formula businesses that the articles should cover offices. The Task Force discussed Town Counsel's opinion on the articles. Ms. Rasmussen summarized the opinion as stating that Town Counsel has reservations, but takes the view that a special permit process is okay. Discussion included: the legal opinion obtained privately last year draws a different conclusion; more special permits means more opportunity for being sued; the Massachusetts Attorney General approved Chatham's article last year, upon which Concord's definition of formula businesses is based.

Formula Business

PLANNING BOARD HEARING

Ms. Rasmussen recommended to the Task Force to wait to vote its recommendations on articles until after hearing public comment at the Planning Board hearing on March 8. The Chair asked for volunteers to answer Planning Board member Elisabeth Elden's request for assistance in creating a presentation on Articles 54 and 55. Sue Felshin and Jimi Two Feathers volunteered.

PB hearing

MISCELLANEOUS

The Task Force reviewed its workplan for the weeks leading up to Town Meeting, and in particular for its April 5th public forum. The forum will begin at 7:30p.m. to accommodate filming by CCTV.

Miscellaneous

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Mr. Hawley and Mr. Sgarzi, who attended the previous Concord Business Partnership (CBP) breakfast, reported that it was well attended and that their presentation of West Concord related articles was well received with the exception of formula business articles; some CBP attendees stated they think it is excessive to have formula business bylaws on top of store size limits. Mr. Sgarzi noted that he responded at the breakfast that he agrees, but that some people feel strongly about the formula business articles and that those articles target different things. They noted that some CBP attendees stated that they agree some regulation of formula businesses is acceptable, but feel that a cap is overburdensome and that there was no objection to store size limits.

It was noted that the Planning Board's public hearing on Special Town Meeting zoning articles will occur on April 12th at 7:30p.m. at the Alcott School.

Gary Kleiman noted that he had only received feedback on the Task Force's draft FAQ from one member and requested further feedback.

A letter of resignation, dated March 1st, was received from former Task Force member Betsy Stokey, who has moved out of Concord.

Nancy Carey noted that she has been asked to join a Concord Recreation committee to replace the playground structure at Rideout Playground. If Article 35 passes at April's Town Meeting, monies available for the project will be \$250,000. Ms. Rasmussen noted that the proposed handicapped-accessible path from the Conant St. access point to the playground structure will be part of the improvements, but paid for with money previously negotiated by the Planning Board with the developer of Concord Commons on Conant St.

NEXT MEETING

The next meeting is scheduled for March 17th, at 7:30 p.m., location TBD.

ADJOURNMENT

On a motion duly made and seconded, it was UNANIMOUSLY

VOTED: To adjourn the Open Session and to conclude business for the evening.

Respectfully submitted,

Sue Felshin
Approved: 17 March 2011

LIST OF ATTACHMENTS

1. "Review of Formula Business Articles (#'s 54 & 55) April 25, 2011 Town Meeting of Concord MA.", Formula Business Articles2.doc

Miscellaneous

Next meeting

Adjourn

Review of Formula Business Articles (#'s 54 & 55)

April 25, 2011 Town Meeting of Concord MA.

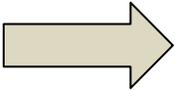
Purpose of this review:

- To compare the two articles and highlight differences between them and the “as is” alternative (if neither passes).
- To highlight the key issues that the WCTF (and ultimately the citizens at large) may wish to focus on.
- To highlight potential next steps that might provide additional data to further illuminate the choices.

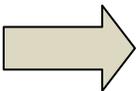
Summary of issues:

- The two articles are essentially the same except #54 (Formula business with a Cap) places a ceiling on the number of formula businesses in West Concord Business District and West Concord Village at ten (10). Article #55 has no cap, leaving the regulation to the Special Permit process (also present in Article #54).
 - Both articles have the same Purpose (to achieve the right balance of formula and non-formula businesses to preserve the character and appeal of the designated areas).
 - Both articles have the same definition for formula businesses. A business would be considered a formula business if it triggered two of five alternate criteria that are substantially the same as fifteen (15) or more other establishments. These triggers evolved over recent history to make the criteria less strict to help address the concerns of local business owners that they are unfairly losing legitimate business options.
 - The number of “like” locations has increased from the initial proposals for a limit of seven to ten to the fifteen now in the article.
 - The other trigger definitions for designating a formula business have been made substantially less tight.
 - The ceiling for number of formula businesses in the designated geography has been increased from eight to ten. There are currently six businesses in the defined area that would be defined as formula at this time.
 - The scope of the proposed restrictions has been reduced from both the West Concord Business District and the West Concord Industrial District to just the West Concord Business District.

- Both Articles have the same criteria to serve as guideposts for the Special Permit deliberation.
- Both Articles allow for a process for businesses to migrate from Formula Business designation to one that does not qualify.
- The essential difference is the cap which would bind the total number of formula businesses unless and until the article were overridden at a future TM. (There are circumstances where the total would exceed the cap of ten but future net additions would be subject to getting under the cap first).



- So the key alternatives are:
 - Article 54 allows formula businesses up to a limit, on the grounds that even if formula businesses adhere to the special permit criteria, there should still be an absolute ceiling on the number of formula businesses that can open.
 - Article 55 allows an unlimited number of formula businesses, on the grounds that the special permit process will adequately provide for an appropriate balance between community and individual interests.
 - Passing neither article places no specific restrictions on formula businesses, on the grounds that none are needed.
- Each of these alternatives is subject to other zoning restrictions (dimensions, use, etc.)



The key issues for deliberation by the WCTF (and ultimately citizens) should focus on:

- How to balance:
 - The potential freedoms of the property owners and business owners who may not want any restrictions imposed on them,
 - The future of the property owners and business owners who may conclude that the value of their properties or businesses would be harmed by an excessive presence of formula businesses,
 - The interests of current (and future) residents who appear to largely value the existing local character.
- What is the right degree of protection against an excessive proliferation of formula businesses?
 - A cap which serves as a firm, more rigid backstop,
 - The SP process which would be more flexible but less bounded and therefore ultimately more risky,

- The free market forces that would not have as many controls but would enable more individual business alternatives.
- Considerations to contemplate include:
 - The cap sidesteps individual suits that might otherwise be introduced (once the cap has been reached).
 - The cap implemented now also preempts future applicants who might otherwise argue that they were being individually discriminated against (once the cap has been reached).
 - The cap “closes the door” and provides protection against the event that the SP process alone proves not to be adequately effective. Doing this in reverse order may be too late to redress an undesirable outcome.

Other data we may wish to assess:

- A fact base to quantify how “tight” the current SP process is? There seem to be differences in opinion on this.
- Benchmarks from other area communities that have gone down the path we wish to avoid. Specific examples as evidence that there is a clear and present risk will be much more compelling than concerns that don’t have the evidence to back them up.