



BARNSTABLE
TOWN CLERK

'13 JAN 18 P3:06

**Town of Barnstable
Planning Board
Minutes
December 10, 2012**

Matthew Teague – Chairman	Present
Paul Curley – Vice Chairman	Present
Patrick Princi - Clerk	Not Present
Felicia Penn	Present
Raymond Lang	Present
David Munsell	Not Present
Stephen Helman	Present

Also in attendance were Elizabeth Jenkins, Principal Planner and JoAnne Buntich, Director Growth Management.

Approval Not Required Plans:

Vincent A. Wolfington and Scott F. and Lisa A. Hilinski – A plan entitled “558 and 586 Scudder Avenue, Hyannis Port, Massachusetts, 02647” as prepared for Vincent A. Wolfington and Scott F. and Lisa A. Hilinski, dated 11/30/12, as prepared by Baxter Nye Engineering & Surveying has been submitted to the Board for endorsement as an Approval Not Required (ANR) Plan (Precincts 3 and 13).

Attorney Mark Boudreau, in representation of Mr. Wolfington and Steve Wilson from Baxter Nye Engineering in attendance.

Steve Wilson explains the history of the three one acre lots. The splitting of the two lots will result in two 1 ½ acre lots. These lots meet all necessary requirements.

Ray Lang asks if the lot designated as the third lot now, is that the one that will be shared as Parcel A and Parcel B? Has that always been a lot in different ownership than the houses?

Steve Wilson answers yes, that is his understanding. The lot that's being cut up is empty.

Ray Lang asks about the lot lines which appear to him to border/touch the front of both properties? The approach to these lots was the shared gravel driveway?

Steve Wilson answers no, both structures conform to all required zoning setbacks. Yes, there has been an existing gravel driveway.

Ray Lang asks is this the plan that states there may be other rights of way?

Steve Wilson answers that he doesn't believe so. The two lots that have most of their frontage on the golf course and both have 20 ft. strips that run out to Scudder Ave., that's their access.

Ray Lang asks if there is a 35 ft. recreational easement on one of these lots?

Attorney Boudreau answers yes. There is a site easement and also a recreational easement, which goes between the two lots. It is for the benefit of 586 Scudder, which is lot 2A. This easement does not extend beyond the properties and stays on the property.

Matt Teague asks about the tax amount that is owed on the properties, which is a large amount, how will this be handled?

Attorney Boudreau replies that this is to be paid by this Friday, or Monday which payment will be processed through his office and he will see that the town gets paid.

Matt Teague asks for something more tangible to ensure that these taxes will be paid and refers to due diligence obligation.

Attorney Boudreau explains that the funds are to be wired to him at his office and suggests that he would be willing to have someone from the town be present in order to confirm payment.

Matt Teague directs to JoAnne Buntich as to how the town would handle this situation?

JoAnne Buntich replies that this is out of the ordinary and she does not know what person would do that. The board has to make the determination based on the ordinance, most likely the tax collector would like to see these funds collected.

Matt Teague asks what the current timeline is?

Matt Teague states that his only concern is that because of the substantial amount of money, he doesn't know how to ensure/protect the town's interest, the property could still be conveyed.

Attorney Boudreau states that he would be happy to deliver a check in exchange for the plan on the way to the registry.

Matt Teague asks if it could be certified funds?

Attorney Boudreau answers, yes, although he would prefer to have someone with him.

JoAnne Buntich makes a suggestion that the Board could take a vote on the endorsement based on the merits of the plan itself, but defer the actual signing of the ANR plan until the Applicant has met the conditions. This is an option.

Matt Teague moves to endorse the plan as presented, said plan to be held at the Planning Board Office until and in exchange of said funds, seconded by Paul Curley, so voted unanimously.

Subdivisions:

Preliminary Subdivision No. 822

Plan Prepared for William Riley

Property at 2519 Main Street (Route 6A), Barnstable

Review of Preliminary Plan for Subdivision No. 822 entitled; "Preliminary Subdivision Plan of Land in Barnstable, MA, 2519 Main Street (Route 6A), Prepared for William Riley". An Application for Tentative Approval of a Preliminary Plan to divide a 9.25 acres parcel into 6 lots has been submitted for consideration to the Planning Board. The subject property is located south of Route 6A just west of the railroad overpass in Barnstable Village. The property is shown on Assessors Map 257 as Parcel 010. The property is zoned Residential F-1 for the first 500 feet fronting Main Street (Route 6A) and the remainder of the lot is Zoned Residence G. (Precinct 1)

- *This is a preliminary plan being submitted to the Board for consideration.*
- *Permission to further extend the Preliminary Plan Decision period through January 18, 2013, dated November 16, 2012, received via email from Dan Ojala.*

Dan Ojala in attendance.

NOTE: Dan Ojala hands out email correspondence with revisions noted to the preliminary plan and a revised plan, dated December 10, 2012. Received and replaced at the PB meeting.

Dan Ojala of Down Cape Engineering in attendance he explains the details of the subdivision (6 lots) being presented and the revisions that he just handed out to the board (December 10, 2012, correspondence and plan). It is a historic road. He states that they have been before the Board of Health which is requiring a master well and septic plan if they are not able to tap into the water main in the street.

They will have to remove two three foot diameter Maple trees, one has internal rot and they are both close to the road, he will be working with the tree warden and Old King's Highway to replace/compensate with other trees. Formal calculations for drainage to be submitted at the definitive plan. These are panhandle lots, rather than pave and have two driveways, he thought that the driveways could be shared. He directs to the revised plan and explains the revisions; moving of and an addition of hydrants, widened gravel base to 22 ft., widened, 14 ft. full turning tee.

He explains the waivers that are being requested. Sidewalks may be required, only 6 homes here, very short road with 18 plus feet of walking area, he does not think they wouldn't be required. The second waiver being requested is appendix design standards, typical road cross section, the right of way from 50 to 40 ft. in overall pavement, including berms, from 22 to 18. An existing 18 foot for 6 homes does seem reasonable.

In regards to the site distances at the intersection, if permission is granted for removal of the two trees the last waiver would not be needed. Four minor items submitted with his revisions today.

Paul Curley asks why didn't they move the cul de sac, take it up to the two rear homes?

Dan Ojala replies that you would be looking at an additional 300 foot of road width and more pavement. Why pave all that way, the houses may not be built for a length of time from now. This way maintains the rural character and still has the safety features.

Paul Curley asks if the shared driveway would be asphalt?

Dan Ojala answers yes, they would pave it.

Paul Curley asks about the maintenance of the roadway.

Dan Ojala answers, the town does not like to plow/maintain private roadways, he makes reference to his document, general note number 4 "shared driveway maintenance to be split between the homeowners of lot 5 and 6 through binding agreement with the homeowners association documents" and general note number 5, "The S form is required, maintenance of the main roadway to be split evenly between all the homeowners through binding agreement with the homeowners association documents".

Ray Lang states that this is his first time seeing a cul de sac going into a cul de sac.

Dan Ojala replies that the only reason for the turning tee at the end was a request from the Fire Dept. for a long, shared driveway.

Ray Lang asks if the right of way/roadway now a 40 ft. right of way is all the way from Rte 6A to lots 5 and 6?

Dan Ojala answers the roadway proper is just the cul de sac, but the panhandle lots are part of lots 5 and 6, they provide the legal 20 ft. frontage. There is a cross easement/shared driveway easement, it's a pseudo right of way,

Ray Lang asks if the southern portion that goes to lots 5 and 6, if that is a 40 ft. right of way also?

Dan Ojala answers that it is a 40 ft. driveway easement area. Lots 5 and 6 also take frontage of the cul de sac.

Ray Lang asks what is the longest road that can use a cul de sac, in terms of footage? Is it 750?

Dan Ojala answers yes, but it is often waived. This property is surrounded entirely by conservation land.

Ray Lang asks if the tee turnaround will be paved at the beginning or after the houses are put in?

Dan Ojala answers that will be at the discretion of the board. The water main, utilities and one catch basin would have to be put in. A lot depends on the housing market.

Ray Lang asks how far is this road from Rte 6A going to be paved? All the way to lots 5 and 6 or just to the cul de sac?

Dan Ojala answers at a minimum they would pave the road through the cul de sac, 350 ft. or so, when a final definitive plan is made then he will be able to give a more definitive answer at that time.

Ray Lang replies the turnaround should be called a temporary turn around, rather than a turn around. He doesn't like the fact that there are 2 turn arounds here it doesn't feel right.

Felicia Penn confirms that this is entirely surrounded by conservation land, and there are stone walls here on the East and West as well, on both sides. Was this a farm previously? These are on the boundaries.

Dan Ojala replies that the stone walls are not to be disturbed and that these would remain

Felicia Penn asks is there is any passive recreation that would be affected by this development? Is there a lighting plan?

Dan Ojala answers no, there is no recreation and that they hadn't planned on any lighting. They could look into it.

Felicia Penn asks about signage, if approved by DOT there would need to be new signs on Rte 6A, is there going to be a name/development? Are there any plans for this, will it effect the sight distance?

Dan Ojala answers that that is a good question. There will be a legal street sign/reflective etc.

Felicia Penn mentions the DOT approvals for coordinating/maintaining a right of way along subdivision frontage for vegetation management, homeowners association documents. How would this be coordinated with DOT?

Dan Ojala answers that this is a very important issue to keep the sight adequate here in this area, it can be dangerous, it has been historically trimmed. They will work with the DOT.

Felicia Penn confirms that the existing driveway off of Rte 6A now will be changed and come off of this new road, that curb cut will be closed up in favor of this one? Is it across from the B&B? This is a tough location.

Dan Ojala answers yes. It is just east of the B&B. There is surprisingly good sight distance.

Matt Teague points out that a shared driveway location may be a problem. The Fire Dept. may have an issue with this. He would like to see something that prevents these houses from going all the way to the end of the street. The southern portion of the property may need a major road improvement/change.

JoAnne Buntich makes some points to the board for consideration; The Applicant may want to consult with the Barnstable Historical Society for an appropriate street name, suggestion re prior use/memorialize. The roadway, the board could waive the full construction of the cul de sac and allow that to become a tee within the layout, the pavement would be reduced, storm water reduced etc. The homeowners association documents will be very important, the engineer's preference is that the shared driveway be paved because they will be privately maintained, the H20 load meets the requirements but becomes more difficult to maintain over time. The building envelope is probably a good direction, considering the depth of these properties and the Fire Dept's concern at present.

Ray Lang asks if it is correct that there is no immediate drainage on the temporary cul de sac to the tee? Is there any drainage planned for this section?

Dan Ojala answers yes, there is a thousand gallon pit with four foot of stone. This is country style drainage, whereby the road is super elevated, very economical way to have the drainage.

Ray Lang asks what is the natural no fill overflow drainage easement. Does this drain onto the conservation land property?

Dan Ojala explains that there is a natural low spot contained on Lot 4. This is a low area and it is sandy material that naturally can soak up a lot of water.

Ray Lang confirms, so lots 5 and 6 wouldn't need drainage?

Dan Ojala answers that he did put one catch basin here anyway.

Matt Teague asks about maintenance/construction of a head wall.

Dan Ojala states the way it is handled now is probably the best way, no chance of a mosquito ditch. Everything is at sub service. No need for a fence etc. if to substantial.

JoAnne Buntich interjects that the board should be sure about the provision of public water and hydrants being installed. The issue of country runoff, this precludes this roadway system ever being taken by the town because there is no defined drainage easement so there's no ability to maintain the drainage by any party other than the owners of the lots.

Paul Curley would like to see the cul de sac go all the way to the end, he thinks this may be a problem/issue.

Matt Teague reiterates, specifically to get the information re the water. He would like to see the cul de sac instead of the tee.

Dan Ojala will review the input and get a definitive end.

JoAnne Buntich states that the board has until January 14, 2013, meeting to vote/make a decision. In a preliminary plan you can vote to approve, vote to approve with modifications, or vote to deny.

Matt Teague answers that most likely approval with conditions, specifically water issues, cul de sac, and the building envelope, the road naming, and the ownership of maintenance documents remain critical for long term issues.

Ray Lang interjects also the definition of the width of the road from Rte 6A all the way back to lots 5 and 6, he wants to make sure it is 40 feet.

Dan Ojala answers yes, and the pavement width drops to 14 ft., currently on the shared driveway. The cul de sac area is approximately 23 feet wide.

Matt Teague directs to JoAnne Buntich about preparation for a decision.

JoAnne Buntich answers that the applicant has given an extension until January 18, 2013, which allows the board time to act at the January 14, 2013, meeting.

Continued to January 14, 2013, Planning Board meeting.

Lot Releases:

Subdivision No. 288 – Lot Release:

Release of Lots Under Covenant – Pilots Way Charles F. Crocker

A letter dated October 5, 2012, from Peter S. Farber, Esq. has requested the release of Lot Nos. 5, 6, 7 and 8 from the covenant executed by Charles F. Crocker and recorded July 29, 1983, in Book 3831 Page 307. The applicant's Priscilla Crocker Dreir, owner of Lot No. 5, recorded in Book 25937, Page 59, and David

W. Crocker owner of Lot No. 6, recorded in Book 622, Page 5, and Tamsin C. Peckham owner of Lot No. 7 & 8, recorded in Book 622, Page 5, are the heirs of Charles F. Crocker.

Attorney Peter Farber, representative for the applicant(s) and Timothy Brady, from East Cape Engineering in attendance. Also in attendance are; David Crocker and his wife Jean Marie, the owners of lot 6, Tamsin Peckham and Tom, owners of combined lots 7 and 8, and Priscilla Drier owner of lot 5. Also, neighbors in attendance; Gordon and Sheryl Starr, owner of lot 4, and Richard Prchlik, owner of 68 Pilot's Way, adjoining property on the east.

He explains the history of the property. He shows a 1973 subdivision plan with the stone wall/boundary. The ownership/chain of events is as follows:

In 1973 lot 2 was sold to a nephew of Mr. Crocker, Bill Lewis. Lot 1 was further subdivided in 1983 and lots 3, 4, and 5 were created and that is when the covenant was executed which they are presently requesting release of. In 1988 Mr. Crocker had further division made, which created lots 7 and 8, this plan was not recorded until after the death of Mr. Crocker. The property was willed to his three children. The reason they are requesting release of the covenant is because they do not want to pave the road, provide drainage, etc. they wish to have the road remain as is.

Since 1983 a variance was issued in 2005, from the Zoning Board of Appeals, requesting that there be some improvements made to the road. Further improvements were made last year as well. He makes reference to the correspondence from the Fire Dept., which states that the road meets their requirements.

Matt Teague interjects that it is not in question as to who owns the road or condition of the road, the only concern is who will maintain the road?

Note: Attorney Farber hands out to chair and staff copies of correspondence from neighbors

Attorney Farber gives a history of the boundary stone wall of the two neighbors, east/west.

Attorney Farber states that there is no formal agreement for maintenance between the neighbors, they have been maintaining this for many years.

They have spoken to the DPW regarding putting the road on the list for snow/ice removal and for signage.

Paul Curley states that a long term maintenance agreement would be very desirable to the point of recordal as well.

Felicia Penn points out that there may be two other lots that will be developed in the future, as pointed out in several pieces of correspondence. Reference is made to a map from Assessing.

Mr. Brady explains/points out the lots to the board. Lot number 63 has an existing driveway access that goes through to service the lot on the other side.

Felicia Penn states that lot number 2110 (corner of Pilot's Way and Main St., Rte 6A) has been divided into two lots and the second lot is number 63, these are the two empty lots.

Ray Lang refers to Steve Seymour's report about the Subdivision No. 288, an incomplete subdivision, whereby the road and drainage were never completely installed or approved. He asks if there are any

plans to consider finishing this subdivision?

Attorney Farber answers that the family/owners are looking to stop the subdivision process, they want to keep it the way it is at present. They wish to leave it as a rural road.

Ray Lang states that he doesn't know if the board can revoke a subdivision plan?

Attorney Farber replies that the Crocker's want to have the requirements for the subdivision waived because they feel as the road has been constructed and used for the past years 20 years is satisfactory for the use that it has.

JoAnne Buntich directs to Ray Lang's comments that what is being explained by Attorney Farber is a modification of the subdivision, this is not the Planning Board's purview to do this in the context of release of covenant. In order to modify the original subdivision they would have to enter into a modification of the definitive plan, whereby needing an application for. Also, the 2011 deeds, all three of the deeds give the new owners the rights to use Pilot's Way, but doesn't appear to give them ownership. The fee in the way wasn't deeded out, there is some confusion.

Matt Teague asks if something similar in this nature was done recently?

JoAnne Buntich answers yes and they had to go by this procedure/process as well.

Attorney Farber replies/refers to the deeds and makes reference to the Massachusetts Derelict Fee Statute, which states that when a piece of land is conveyed and it borders a road, a way, that unless the fee is retained specifically in the deed the fee passes with the conveyance. All of these lots have frontage on Pilot's Way. In regards to the question of modification, they are not seeking to change the width of the road, or the lot lines, they are only seeking a release of the covenant.

Matt Teague explains this release of covenant cannot be done because the covenants were predicated on the performance standards set at the time of the initial filing.

Mr. Brady asks would the board consider doing a modified covenant first, then do a release of the modified covenant?

Matt Teague answers that this may have to go to the legal dept. This may be something that can be done by cleaning up the covenant issue and backing it up with some type of maintenance agreement and allow for future access for any potential development.

JoAnne Buntich suggests that at the request of the Chair the Planning Board could request/obtain an opinion from the legal dept. as to what procedure the applicant would have to follow. A Homeowners Association is critical to this request.

Public Comment

Priscilla Crocker Drier in attendance. She would like to know when/how long it will be before there is any information from the legal dept.?

Matt Teague answers that as soon as they speak with legal they will get back to Attorney Farber.

JoAnne Buntich replies this is not a Public Hearing so there is no need to continue. Staff will hopefully, pending what the Legal Dept's. schedule is, be able to get an answer/information to the Applicant and the Board sometime in January.

Correspondence: Cape Cod Commission Decision for the Barnstable Municipal Airport Master Plan Notice of Intent to File a Development Agreement, approved November 29, 2012

Future Meetings: Regularly Scheduled Board Meetings: January 14th, 2013, and January 28, 2013, @ 7:00 p.m.

Matt Teague asks about the Medical Marijuana Hearing?

JoAnne Buntich briefs the Board re this issue. Public Hearing advertised on the Zoning Amendment for the January 14, 2013, meeting. Sixty seven percent of the Town of Barnstable adopted the law. This is a use that is not currently included in table of uses, so it has to be designated as to where the use can go. No town has received any guidance from either the Attorney General's Office or the Dept. of Public Health. Growth Management's recommendation is that the hearing move forward on January 14, 2013. The District that is set aside for this includes the Hospital and some commercial properties in and around the area.

Matt Teague states that they can discuss procedures but not the merits of this matter.

Stephen Helman asks what other states have done/information for this?

JoAnne Buntich replies that they have looked for some type of direction, however Massachusetts has a regulatory scheme and this newly passed law fits within that scheme. The zoning regulation may or may not have any similarity to what other states have.

Felicia Penn asks what if someone opens an office sometime between now and January 14, 2012, how would that be handled?

JoAnne Buntich answers that once the publication/advertisement is published, which was December 7, 2012, it starts the process. There are still no regulations, people can proceed at risk. Should the ordinance pass and limit the use to the medical marijuana treatment area then the town would have the ability to enforce uses outside of that overlay district.

Ray Lang states that this is a major decision and the Planning Board should be part of all aspects of it. He will recuse himself if this is not the case, he will be speaking to the Town Manager about it.

Matt Teague entertains a motion to adjourn, so moved by Stephen Helman, so voted unanimously.

The meeting adjourned at 8:28 p.m.

Respectfully Submitted

Karen A. Herrand
by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

JANUARY 14, 2013

Further detail may be obtained by viewing the video via Channel 18 on demand at
<http://www.town.barnstable.ma.us>

APPROVED