



**Town of Barnstable
Planning Board
Minutes
August 13, 2012**

BARNSTABLE
TOWN CLERK

12 SEP 11 P2:32

Matthew Teague – Chairman	Present
Paul Curley – Vice Chairman	Present
Patrick Princi - Clerk	Present
Felicia Penn	Present
Raymond Lang	Present
David Munsell	Present
Stephen Helman	Present

Also present were Art Traczyk, Regulatory/Design Review Planner.

Approval Not Required Plans:

Robert Sharkansky and John E. McElhinney – A plan entitled “72 and 92 South Bay Road Little Island Osterville, MA., 02655 Being a Division of LOT 4 Shown on Land Court Plan 8730 F Creating Two Lots”, as prepared for Robert Sharkansky John E. McElhinney Trustees of the 72 South Bay Road Nominee Trust, dated 07/23/12, as prepared by Baxter Nye Engineering & Surveying, has been submitted to the Board for endorsement as an Approval Not Required (ANR) Plan.

Attorney Eliza Cox in attendance for the Applicant. She explains the property locations and refers to the Staff Report, lots 3, 4 and 5. The original 3 lots were created by an ANR that was endorsed in 1986. This proposal is to make three lots into two larger and more conforming lots. Lot 7 will have all existing development on it, house, dock and the proposed lot 8 will be a vacant lot. They are located in the RPOD, and a variance has been issued for this from the Zoning Board of Appeals. They meet the frontage requirements and endorsement is requested by the Board.

Ray Lang asks if it is possible that the ZBA can reduce lot acreage size from 2 acres to 1 acre?

Attorney Cox states yes, that is what a variance is and that is what was issued by the ZBA.

Felicia Penn moves to endorse this ANR plan, seconded by Paul Curley, so voted unanimously.

7:00 pm Public Hearing - Continued

**Special Permit Application No. 2012-03
Cotuit Solar/John T. Peck Wind Energy Conversion Facilities**

To all persons deemed interested in the Planning Board acting under the General Laws of the Commonwealth of Massachusetts, Chapter 40A, Section 9, and all amendments thereto and the Town of Barnstable Zoning

Ordinances you are hereby notified of a Public Hearing to be held to consider a Special Permit Petition No. 2012-03. The petitioner is John T. Peck seeking a special permit pursuant to Section 240-44.1 Land Based Wind Energy Conversion Facilities. The petition seeks to reuse the existing 100-foot mono-pole and reinstall a new wind turbine upon it to generate electrical power for use on the property. The subject property is addressed 3800 Falmouth Road (Route 28), Marstons Mills, MA and commonly known as "Peck's Boats". The property is shown on Assessor's Map 058 as parcel 001 and is zoned SD-1 Service and Distribution Zoning District.

- *Opened April 23, 2012 continued to May 14, July 23, and August 13, 2012 – continued for update on peer review*

Recent Items submitted to file:

- *July 24, 2012, Letter to Conrad Geyser, Cotuit Solar, notifying selection of peer review consultant and request for funding.*
- *August 1, 2012, Email correspondence from Richard Lesniewicz with copy of a February 2, 2010, letter to Tom Perry, Building Commissioner regarding turbine noise.*
- *August 3, 2012, Administrative extension of the July 24th Notification until August 14, 2012.*
- *August 3, 2012, Agreement to Extend Time Limits for Rendering and Filing of a Decision on the Special Permit.*
- *August 6, 2012, Correspondence from Richard Lesniewicz enclosing Attachments A-D.*

Matt Teague opens the public hearing for public comment and then this will be continued due to awaiting the engineering reports from the consultant engineer who has been hired by the Town.

Richard Lesniewicz in attendance. He resides at 1500 Old Post Road. He gives a history of how he is connected with the community and that he is an advocate for alternative energy. He refers to the previous turbine and the failure of the unit. He requests that the board consider what could happen if a turbine was to be installed at this property again. The noise factor and safety is a concern/issue for him.

Ray Lang confirms that Mr. Lesniewicz's letters mainly refer to the noise level concern. It seems as though mechanical problems are an issue as well.

Richard Lesniewicz responds that the nuisance noise created by the traffic (Route 28) which was factored into his property when purchased, however now the additional noise created by the wind turbine is a concern on how it will reflect on his property value.

Joe George of 1520 Old Post Rd., in attendance. He is new to Cape Cod. He has just learned of this proposed new turbine. He states that commercial electric power is not really expensive. He doesn't think that one person's request should come before the property value of the surrounding residents. He thinks that this may have an effect on his children and that there is an unknown issue regarding the noise and what its effects really would have. He does not think that this turbine needs to be there and is in opposition for this.

Attorney Mike Ford in attendance, representing Bob Hayden. He asks where is the independent study that the Planning Board commissioned and whether there will be further public hearings?

Art Traczyk responds that the contract is in the midst of being reviewed/finalized. Engineering packages are to be processed and will be sent to him for review. The Consultant needs to review the materials. We are awaiting

word from the Consultant. Paul Bergman is the associate that has been chosen and he was the best qualified and had the best proposal.

Attorney Ford asks if there will probably be another public hearing once the report is available?

Matt Teague states yes, the Board's plan is to take some public comment tonight and to continue the public hearing once the Engineer report has been reviewed.

Attorney Ford confirms that this will give them further opportunity to provide the board with testimony?

Matt Teague replies yes.

Bob Hayden in attendance. He refers to the article in the Cape Cod Times, he states that the blade landed too close for comfort on his property. He states that if the more predominant wind direction, northeast, had occurred, it could have had a much more detrimental impact, towards Dunkin' Donuts and a more populated area.

Matt Teague states maybe there should be some comparison information regarding the decibel level regarding the noise statistics of the old turbine versus the new turbine? He would be interested in seeing this.

Conrad Geyser in attendance. He refers to Bob Hayden's previous insurance question (from the last hearing) as to who would be liable for any problems that may occur with the turbine. He states that they would insure the facility that they own and that the site that the facility is located has it's own insurance, there would be some overlap with the insurance coverage. He mentions that the concern of the condition of the property was mentioned previously and he would like to inform us that the owner uses scrap and refurbished materials for building purposes and that is why the building does not look like the surrounding buildings/businesses. The litter by the fence is a result of the surrounding stores/businesses etc. The on site materials that are on the property are used for building trailers and being junked/scrapped and that is in keeping with the zoning in the area. He mentions that the new turbine has a lower noise rate. It is a completely different machine. He states that there are no noise complaints on Martha's Vineyard and some of these are in close proximity of residents. This is the same machine that they will now be using and it has a slower tip speed.

Attorney Caroline Schmittiel in attendance, for the applicant, Cotuit Solar. She reiterates what Mr. Geyser stated and that the new turbine will be 10 decibels below the previous turbine. The by law does state that the turbine is permitted to be at 10 decibels above the ambient noise, and it does meet that criteria. Any noise that is higher than allowed after the turbine is installed, the by law provides for recourse of this by filing a complaint to be determined and addressed as such. She states that they can provide any additional comparison information.

David Munsell mentions an article from a newspaper, and how much of the information we would get from this particular consultant would be unbiased information. He wants to make sure that the client is getting his money's worth.

Paul Curley asks about the turbines that are now in Martha's Vineyard, and if the applicant can get some information regarding these turbines/documentation on noise, this would be helpful? He asks how many of them are there now?

Attorney Caroline Schmittiel states that there are seven of them. She states that they can look into getting the noise information as soon as possible.

Patrick Princi moves that this item be continued to the next public hearing, September 10, 2012, seconded by Paul Curley, so voted unanimously.

Conrad Geyser asks if they do not have the information by the next public hearing would they have to open and continue again?

Matt Teague states that they may have to move to continue it that night.

7:00 pm Public Hearing – New

Subdivision No. 821

Francis Lahey and Sheila R. Lahey

**Discontinue an Unnamed Way and Adjust Alignment
of Laurel and Circuit Avenues, Craigville (Barnstable),
MA**

To all persons deemed interested in the Planning Board acting under Chapter 41, Sections 81A, through 81GG, and all amendments thereto of the General Laws of the Commonwealth of Massachusetts; and Chapter 801 of the Code of the Town of Barnstable, the Subdivision Rules and Regulations, you are hereby notified of a Public Hearing to consider eliminating a 25-foot unnamed and undeveloped Way that is situated between 145 and 151 Ocean Avenue and extends between Ocean and Laurel Avenues, and to make adjustments in the alignment of Laurel Avenue and Circuit Avenue as it abuts 10 Laurel Avenue and 153 Ocean Avenue in Centerville (Craigville), Barnstable, MA.

The subject Ways were created and delineated by an 1872 Subdivision Plan recorded at the Barnstable Registry of Deeds in Plan Book 24 Page 49. This hearing is being held to discontinue the unnamed Way and merge the underlying land with 151 Ocean Avenue and to adjust the layout of Laurel and Circuit Avenues. This modification request was submitted by Francis Lahey and Sheila R. Lahey with the assent of the Christian Camp Meeting Association. The proposed alignment and reconfiguration of the lots is shown on a plan entitled "Plan of Land at 151 & 153 Ocean Avenue in Craigville Beach, MA prepared for Francis Lahey and Sheila R. Lahey", dated June 29, 2012. The parcels affected by this realignment and reconfiguration are 151 & 153 Ocean Avenue and 10 Laurel Avenue. They are shown on Assessors Map 227 as parcels 7, 8 and 6.

Matt Teague entertained a motion to open the public hearing, so moved and seconded by Felicia Penn.

Attorney Brian Wall in attendance for the applicant, Francis and Sheila Lahey. 153 Ocean Avenue is a small piece owned since 1982, a cottage on 30 by 60 ft. lot within the Christian Camp Meeting Association (CCMA) area, in 2003, they purchased 151 Ocean Ave. which is adjacent to the first property. It was later found that part of the structure was partially on the unnamed way and the same with the later bought property. The plan prepared by JC Engineering proposes to discontinue the unnamed way and to swap some land with the CCMA and reconfigure the lots into two new lots. These lots will be more conforming. Correspondence received from the CCMA and the Goodings has assented to this proposal/modification to this subdivision. He refers to the Staff Report and the longstanding problem with this development. He confirms that the Board of Health report is still needed in order to proceed and finalize.

Mr. Pimmental, Engineer from JC Engineering in attendance. Lot 242 is lot of ownership, proposed to continue the use of lot 242, parcel E which would be combined with unnamed way, parcel C and parcel B1 and the remaining lot, to be merged, would be Parcel A1, which is part of lot 241 that CCMA owns. The lot

area is 3,595 sq. ft., it meets all requirements except for land area. The proposal is to merge lot 239 with the remaining half of lot 242 and also merge with lot 241 (CCMA) and lot 240. It does not conform with zoning as of today, but this proposal makes it more conforming than it is currently.

Ray Lang confirms that it sounds like the Lahey's bought a piece of property and then found out that part of their house was on the roadway. He asks if the financing was an issue?

Attorney Wall states he does not know whether the owner's tried to get financing, however in speaking with Mrs. Lahey it was found that after having the land surveyed (two neighboring properties) there was a shed within the unnamed way there, that's when they learned of the problem. They have been preparing this for 4 years, but when the DCPC went into effect they had to wait. From 1982 until the survey was done, they didn't know that their house was not on their lot.

Ray Lang asks if the resulting buildings will have any dimensions/improvements within the normal by law?

Mr. Pimmental answers that they would not be encroaching within the minimum set back requirements, it is a conforming dwelling on the property.

Felicia Penn asks what is there now on the unnamed way? Is there any indication of passage?

Attorney Wall states that there is nothing there except a shed on the way. Also, the reconfiguration of the curve makes for easier use of Laurel Avenue and Circuit Avenue.

Patrick Princi, asks Staff if this should be continued to August 27th ? Could the results be obtained from the Board of Health by the date of the next meeting?

Art Traczyk answers that he can't speak for the Board of Health, however he suggests that this matter be continued to the September 10, 2012, meeting. He cannot say when the Board of Health will have the results for this?

Matt Teague asks if there is a community septic system here/on-site septic system?

Mr. Pimmental states that the two lots have on-site septic systems.

Matt Teague asks if there is any public comment?

James Lane in attendance, President of Christian Camp Meeting Association. He states that they do assent to this and would like to see this confusion of the property/land transition be corrected. He would like a matrix from the Engineer which points out how much of the CCMA property would be conveyed to the Lahey's and how much CCMA would be expected to buy when there is a final sale.

Mr. Pimmental states that they could provide that.

Matt Teague entertains a motion to continue to September 10th, 2012, at 7:15 p.m., moved by Ray Lang, seconded by Paul Curley, so voted unanimously.

Discussions:

- **Annual Election of Board Officers – Appointment of Nomination Committee**

Matt Teague asks if there are any volunteers for the nominating committee?

Mr. Lang, and Ms. Penn and Mr. Princi volunteer.

Matt Teague states that they could have the nominations at the next hearing/meeting.

- **Amendment to Barnstable's Land Use Vision Map**, modifying designated Economic Center and Village Areas - *This item is at the request of Jo Anne Miller Buntich, Director, Growth Management Department.*

Jo Anne Buntich in attendance, also John O'Brien and Mike Trovato of Growth Management in attendance. She explains the implementation of the revitalization. Resort and Conference Center at Hyannis, why wasn't it incorporated in the the GIZ (growth incentive zone)? This is viewed as a key parcel, providing possible redevelopment of the land. She states that it is encouraging redevelopment, they have been in conversation with the property owner and they have no plans. Growth Management's consensus is to streamline the permitting somehow with this property. She hands out the Regulatory Agreement Map to the Board (copy attached). She explains the process of a regulatory agreement and that during the DCPC process the Centerville Village District was added to this map and the Hyannis Inn and Conference Center was added as well by Town Council recently.

Ray Lang asks when this was done and if the Planning Board was consulted about this?

Jo Anne Buntich replies about two months ago and that it is a Town Council ordinance.

She explains the workings/makings of the Land Use Vision Map and the review of the Strategic Planning Area map and the Commissions map. Since the adoption, the Cape Cod Commission Regional Policy Plan has incorporated the Land Use Vision Categories into the minimum performance standards. The outlines have been changed for two of the village center zoning districts, Marstons Mills village has been shrunk and the Centerville business district shape has changed. In conclusion, Growth Management would like to include the Hyannis Inn and Conference Center property as an economic center on the Regulatory Agreement Map, which change requires a vote from the Planning Board and then it requires a vote from the Commission.

Matt Teague clarifies the location of the property.

Jo Anne Buntich explains the shape changes that were made and the color legend on the map and the location of the topic parcel.

Matt Teague asks if we allow this to become part of the Land Use Vision Map, what is the inherent benefit?

Jo Anne Buntich answers that because the property is not in the Growth Incentive Zone now, the minimum performance standards related to the Land Use Vision Map for economic centers are reflective of the needs of an economic center, therefore the open space requirements would be reduced because having a large open space requirement in an economic center go against the ideas of compact development and towns are not allowed to maximize the available land to be used for non residential properties. The revenues would be maximized. She mentions the property off Route 134 in Dennis is an economic center.

Matt Teague asks isn't this already in the regulatory agreement district?

Jo Anne Buntich answers, no, because this is a local option and it is hoped that this property would be involved as a project that would be greater than 10,000 square feet due to its available location for new development.

Ray Lang asks about the borders of the property and how it relates to the Growth Incentive Zone?

Jo Anne Buntich explains that she was informed that it would push the offsets. The town had to provide an offset of non residential development in another part of the town, and that the action taken by the Marstons Mills residents enabled this to be accomplished. It was in a very large area and the offsets would not be able to be achieved that were required by the GIZ regulations.

Ray Lang asks, outside of Route 132, what is this zone called and what does the Cape Cod Commission need to know? Why does the Cape Cod Commission need to know that for? Is this something that they would participate in if there was development there?

Jo Anne Buntich answers that this is referred to as the Regional Commercial Center on the Strategic Planning Area Map. The Cape Cod Commission reviews a development of regional impact that comes before them by reviewing the mapping category for the property and they apply minimum performance standards as set forth by the town, open space requirements etc., this is mitigation. The way the Commission uses it is now different since first adopted.

Felicia Penn comments that this is disturbing to her, firstly this is in an RD zone/residentially zoned area. She shows a document/map from 2003, and points out what is outlined on it. She states that the property in question is clearly not included in any of the districts for future development. It is also in an environmentally sensitive area, ocean view, creek and pond and wetlands in the area. This is a major buffer area as well. She is afraid that there is not a lot of room here. She is surprised that Town Council voted it as a Regulatory Agreement District. If there are no development plans for it now, why change it? Unless this is for a large convention center?

Jo Anne Buntich states that the Growth Management Dept. doesn't believe in a large scale convention center, it would be more of a compact, scattered site facility that would be administered through central programming and booking. The property could expand today, because they have vested rights, inclusion on the Land Use Vision Map would not make them immune to any wetland provisions. The zoning would remain the same. We are just making the DRI process a little simpler for them. The Economic Development Program/Growth Management thinks that this is a good idea. Ultimately this would be up to the board.

Matt Teague suggests that this be continued to another meeting/hearing. There are valid points on both sides of this issue.

Jo Anne Buntich states that if there is a desire for more information she could provide, she is not sure of her availability for the next meeting.

- **Downtown Parking Study** - *This item is included at the request of the Chair for staff update on GMD proposed application to the Urban Land Institute's Technical Assistance Panel Program.*

Jo Anne Buntich in attendance for this matter. Growth Management has been meeting with MASS Development and they have offered some technical assistance/information. She explains how the process works and funding. They in turn work with the Urban Land Institute which bring professionals in and there is a study prepared. The town provides them with a list of stakeholders, businesses/retailers etc. in the area, and then they conduct stakeholder interviews. They do a site visit and assess/analyze and come up with recommendations which get presented at a public meeting. The hope is that they provide long and short term solutions for the parking dilemma.

Felicia Penn asks if they could include the tour busses as part of their analysis and not just residential and projected tourists parking as well?

Jo Anne Buntich answers yes, if it is not in there as of yet they will see that it is included. Growth Management has submitted the application and they have not heard back from them as of yet.

Ray Lang asks how is the Planning Board going to be involved or is it Growth Management?

Jo Anne Buntich replies we are not involved, we are only supplying them with information. Any ideas or suggestions she will be happy to send along to them for their review.

Approval of Minutes: Approval of July 23, 2012, Board Meeting Minutes.

Matt Teague entertained a motion to approve the July 23, 2012, minutes, moved by Ray Lang, so voted unanimously.

Future Meetings: Regularly Scheduled Board Meetings: August 27, and September 10 & 24, 2012 @ 7:00 p.m.

The meeting for August 27, 2012, was cancelled. The next scheduled Planning Board Meeting will be held on September 10, 2012, at 7:00 p.m.

Matt Teague entertained a motion to adjourn, moved and seconded by Felicia Penn, so voted unanimously.

The meeting adjourned at 8:10 p.m.

Respectfully Submitted



by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on



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

Sug. Aug. 13, 2012
@ Hearing

PROPOSED REGULATORY AGREEMENT DISTRICTS **DRAFT** December 28, 2011

