



BARNSTABLE
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**Town of Barnstable
Planning Board
Minutes
April 22, 2013**

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

Paul Curley, Vice Chairman sitting in for the Chairman tonight, Matt Teague, not in attendance.
Also in attendance were Art Traczyk, Regulatory/Design Review Planner.

Approval Not Required Plans: – Kevles/Barnfield - A plan entitled “Plan of Land in Centerville, MA prepared for Kevles/Barnfield, dated April 1, 2013” Prepared by Down Cape Engineering, Inc., has been submitted for endorsement as an Approval Not Required Plan. The properties are addressed as 215 and 233 Bay Lane, Centerville. The purpose of this plan is to divide Lot B into Lot B1 and Parcel B2. Parcel B2 is for conveyance purposes only and is to be combined with Lot A. The subject property is in the RD-1 Zoning District.

Dan Ojala of Down Cape Engineering in attendance. He gives an explanation of the proposed ANR. The lots are undersized. He refers to the stone wall and hedge on the plan (see Exhibit A) and correcting the boundary line.

The owners have an agreement to fix the lot line. The issue is that these lots are in the RPOD, 2-acre and there is a zoning clause that states any existing lot prior to the 2000 adoption, has in perpetuity grandfathering rights and that would be in jeopardy if these lot lines were adjusted.

He’s asking the Board to endorse it and then send to Building Commissioner (non conforming) not to issue any permits until corrected with a ZBA action. Would not record mylar until this is done.

Ray Lang asks which lot would be smaller as a result of this?

Dan Ojala answers, it is an equitable situation in that the larger lot gets a little smaller and the smaller lot gets a little larger.

David Munsell directs to Staff if this is unusual for it to go to ZBA before being endorsed by the Planning Board?

Art Traczyk recommends that the Applicant withdraw this application and wait until after the ZBA issues are done.

Dan Ojala asks if we can endorse the plan administratively? He will resubmit the application after Zoning is done.

Art Traczyk answers no, it should come before the Planning Board to get endorsed.

Paul Curley entertains a motion to approve the withdrawal without prejudice, so moved by Felicia Penn, seconded by Ray Lang, so voted unanimously.

Subdivisions:

7:00 P.M. Public Hearing

Proposed Definitive Subdivision No. 820, Wayside Lane Ext. Stephen E. Wallace et al.

To all persons deemed interested in the Planning Board acting under the General Laws of the Commonwealth of Massachusetts, Chapter 41, Sections 81A, through 81GG, Subdivision Control and all amendments thereto and the Town of Barnstable Chapter 801, Subdivision Regulations of the Code of the Town of Barnstable you are hereby notified of a Public Hearing to be held to consider Subdivision No. 820. The plan for this subdivision is entitled "Definitive Plan of Land in West Barnstable, MA "Wayside Lane Ext."" as prepared for Stephen E. Wallace et al. The plan proposes the division of 5.84 acres addressed 0 High Street, West Barnstable into two developable lots and the extension of Wayside Lane to serve the new lots. The subject property is shown on Assessors Map 110 as Parcel 007.

Art Traczyk states that they are asking for a continuance.

Dan Ojala in attendance for this matter. He states that June 14, 2013, would be good for him.

Ray Lang makes a motion to continue this public hearing to June 24, 2013, at 7 p.m., seconded by Felicia Penn, Patrick Princi abstains. It is continued to this date.

Discussion:

Subdivision 454 – Whistleberry

Discussion to affirm staff analysis of work required to complete Whistleberry Definitive Subdivision and effect the release of lots 52, 55 and 64 as described in memo from Stephen Seymour, PE dated April 16, 2013, pursuant to Development Agreement executed January 24, 2002.

Note- Memorandum dated April 22, 2013, from Attorney Charles S. McLaughlin, Jr. handed out to Board Members and Staff (see Exhibit B).

Town Attorney Charles McLaughlin in attendance. He gives a history of the Whistleberry subdivision. They have had some productive meetings with Staff and with representative of the subdivision/counsel. Reference is made to Steve Seymour's memorandum dated April 16, 2013, (Exhibit C), which lists the work that needs to be completed. There are three lots that are still under covenant at present. There is some disagreement regarding the Definitive Subdivision Plan and the Development Agreement of 2002.

Ray Lang recalls a meeting, wants confirmation if it is 3 lots being held in escrow or 4? Is it officially 3?

Attorney McLaughlin answers 3 is correct.

Ray Lang asks about the valuation, monies needed to complete the project.

Attorney McLaughlin states that they did not get into the question of valuation.

Ray Lang asks if there is a third party coming in to finish the subdivision?

Attorney McLaughlin answers that there is some debate, and there is no firm request.

Attorney McLaughlin states it is worthwhile to put this to rest in reference to the memorandum issued by Steve Seymour. Need to get this clarified.

Felicia Penn refers to Steve Seymour's memorandum (Exhibit C) and makes reference to the Development Agreement, January of 2002 (Exhibit D) which states all of the items to be completed. The Homeowner's Association is frustrated. The Town appears to be powerless to get this executed. What is the recourse if the current developer doesn't complete?

Attorney McLaughlin answers that litigation may be the only other alternative.

Felicia Penn asks what is/if there is a price tag for this, if the Town was to pick it up?

Attorney McLaughlin answers that it would be at the Town's cost plus 50% contingency. Paving costs have gone down. He directs to Staff for price information.

Art Traczyk responds that as of September 10, 2012, with the 50% above estimate, it was \$480,000.00.

Felicia Penn states that a private developer/person could do for far less.

David Munsell confirms that the Town will only be doing the list of items that is on the Development Agreement? Are there any other thoughts in doing any of the other work that the homeowners requested?

Attorney McLaughlin answers, from the Town's perspective, no, nothing beyond the Development Agreement. There was a developer who was making a good faith estimate, but it is beyond the parameters of the Development Agreement. The Town will only be working with the definitive subdivision. The homeowner's have a larger prospect of what they want done.

David Munsell asks about a previous request by a developer that wanted to have the lots released before work done.

Attorney McLaughlin answers that there are conflicting views of what work is to be done. The prospective, new developer was only proposing to do the work that was itemized. He refers to a previous meeting (the Planning Board Chairman, Matt Teague was present) whereby the Homeowners Association made very clear that they thought they had a legal right to challenge a release of covenant even if this particular developer came in and did that body of work. He suggests may be possible to do a partial release on one or all of the lots, this would trigger a 60 day window within which to appeal, and after the appeal period the developer (providing no appeal) could proceed with the work and the release from the covenants would be in escrow and lots released when work done. The potential developer doesn't want to put a lot of money up front for this project only to find out that he could be involved in litigation with the Homeowner's Association while trying to extract the releases from the Town. We should first define the body of work to be done, prove to the Town that the work is done, then get the releases. These would be the legal confines. The Town doesn't have the power to give the Homeowner's Association everything that they want. There are many more private roads than public.

Ray Lang asks if the items on Steve's list could be done by any other developer? Is it correct that Hostetter is the current owner?

Attorney McLaughlin answers yes, Hostetter is the current owner and any other developer that would take over the work would have to enter into an agreement with them and the terms of such. This is beyond the Town's responsibility.

Paul Curley suggests putting off any action until the Chair, Matt Teague is present and an executive session may be needed.

Art Traczyk states that the next agenda is full, possibly June 10th or June 24th for an executive session?

Patrick Princi remarks that this information from Steve Seymour's report would stand with the existing Development Agreement. We may not need an executive session.

Steven Helman asks for input from fellow Board members as to what kind of a solution may be possible.

Paul Curley answers that everyone would like to see this issue solved, but may need litigation. The Town's hands may be tied.

David Munsell states this is a discussion tonight, no vote necessary.

Felicia Penn refers to page 3, of the Development Agreement (Exhibit D), paragraph 5. She states that Steve's report redefines this. Unfortunately the homeowners don't have much to say about this because the agreement document does not include them. She doesn't have any problem with Steve's report, it is redefining what was originally made.

David Munsell agrees that this list, per the agreement is what has to be done.

Paul Curley asks if there is any public comment?

Attorney Brian Wall in attendance, representing the Applicants of the Whistleberry Association. He states his client does have the right to appeal a covenant release, however they would like to resolve the problem. The Hostetter family, the Developer, should be required to complete the original agreement. There is now so little security left. They would like to reach an agreement with the scope of work that needs to be done. Reference is made to the Development Agreement (Exhibit D), page 3, paragraph 4, he quotes "The Developers shall remain responsible for any other defects in the roads and utilities installed as part of the requirements of the subdivision plan approval that may become evident, until such time as the Planning Board finds that the subdivision is fully complete and has released all securities and the Retainage Funds. In the event of default by the developers, the Planning Board may apply the Retainage funds to the repair of any further defects construction of the roads and utilities that the Board finds have become evident." The Developer should not be excused because of the length of time taken to finish the development.

In a joint meeting between his client, Tom McKeown, Steve Seymour and an Engineer, Matthew Costa of Costa Associates, Falmouth, they found that there is a lot of commonality in relation to the work that needs to be done. There are some disagreements, not major. They would like to avoid litigation.

In regards to the three lots/security, they do not dispute the recording of the covenant release done in the mid 1980's, they do contend that it was done by mistake, encumbered in a different way.

The 2002 Development Agreement (Exhibit D) references Lot 47, page 3, paragraph 2, he quotes "Upon execution of this Agreement, new covenant against lots (52) (55) and (64), and easements required under paragraph number 1, a further release of the original covenant against Lot 47 shall be issued to Developers.....".

It is their contention that this was in reference to the fact that the Board recognized the mistake in releasing Lot 47 and wanted to clarify the issue by giving the Developer a further release to make sure that it was unencumbered on condition that the Developer do specific things that were referenced in that sentence and those things were never done as far as they can tell. This issue came up in a meeting, three years ago.

He makes reference to the Massachusetts Subdivision Legislation, Chapter 41, Section 81-Y, summarizing; the Building Commissioner shall not issue building permits if any condition imposed by the Planning Board has not been satisfied or waived. They suggest that the Board not allow any building permits be issued.

Paul Curley suggests that he would like to have the Chair present and Steve Seymour in order to discuss this in further detail.

Attorney McLaughlin makes comment that it's clear that this is a discretionary issue for the Building Commissioner. Could provide a formal opinion if Board would like.

David Munsell states the Board should listen to any information the public may have to present.

Felicia Penn agrees with Paul Curley that it would be better if the Chairman, Matt Teague be present for any discussion on the matter.

Paul Curley states that Steve Seymour not here either and he is a key player.

Jacques Morin, of Marstons Mills in attendance. He states that 85 to 90 % of work that is being done is on Berry Hollow Drive. He questions the validity of the 2002 Development Agreement. Berry Hollow Drive wasn't on earlier list. He makes reference to item No. 7 of Steve Seymour's report (Exhibit C). There are no specifics here. The residents want to see this road paved. The Board should take a position that the Developer did not perform to the Agreement. Drainage issues as well.

Ray Lang moves to continue this discussion to June 10, at 7:00 pm, seconded by David Munsell, so voted unanimously to continue.

Correspondence: Cape Cod Commission Notice of Minor Modification to Cotuit Landing Redevelopment and Expansion Development of Regional Impact Decision, March 29, 2013

Cape Cod Commission Notice for Joint Transportation Committee Meeting, April 12, 2013

Future Meetings: Regularly Scheduled Board Meetings: May 13, 2013, and June 10, 2013, @ 7:00 p.m.

Paul Curley entertains a motion to adjourn, moved by David Munsell, so voted unanimously

The meeting adjourned at 8:05 p.m.

Respectfully Submitted



by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

September 9, 2013

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

List of Exhibit Documents

Exhibit A – Plan of Land in Centerville, MA, Prepared For Kevles/Barnfield, dated April 1, 2013 – File ANR/Withdrawn 215 and 233 Bay Lane, Centerville (Map/Par 186-013 and 166-056)

Exhibit B – Memorandum from Town Attorney Charles S. McLaughlin, dated April 22, 2013 – Whistleberry Subdivision No. 454

Exhibit C – Memorandum from Steve Seymour, dated April 16, 2013 – Whistleberry Subdivision No. 454

Exhibit D – Development Agreement of January 2002 – Whistleberry Subdivision No. 454

APPROVED