



**TOWN OF WESTPORT**  
**856 Main Road**  
**Westport, Massachusetts 02790**

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**PLANNING BOARD**

**PLANNING BOARD MEETING MINUTES**

**January 25, 2018**

Chairman James T. Whitin called the meeting to order at 6:00 pm with Vice-Chair, David Cole and members Marc De Rego and Robert Daylor and Town Planner Jim Hartnett. Member Andrew Sousa was absent.

**Approval Not Required (ANR) Lennon/Frost (18-001A) Request by applicant to transfer parcels between existing lots. Land located at 7 Forsythia Lane and 87 Center Street, Assessors' Map 28, Lots 169 & 170.**

Marc Boucher of Boucher & Associates was present. The plan shows reconfiguration of Lots 169 & 170 by combining Parcel A with Lot 169 and Parcel B with Lot 170. Frontage and area remain unchanged. The reconfiguration is to remedy the existing driveway encroachment.

Lot 169 contains 61,943 s.f. and over 30,000 s.f. are uplands.

Lot 170 contains 60,684 s.f. and over 30,000 s.f. are uplands.

De Rego motioned to endorse the plan entitled "Approval Not Required Plan drawn for Donna & John Lennon and George & Judith Frost and Andrea L. Frost Plat 28, Lots 169 & 170, 7 Forsythia Ln. & 87 Center St. Westport, MA" dated December 15, 2017, because it complies with the provisions of MGL Ch 41 Section 81P and is not a subdivision as defined under the subdivision control law. Seconded by Daylor. The vote was unanimous with four in favor.

**Approval Not Required (ANR) Ponte (18-002A) Request by applicant for endorsement of a 2-lot plan of land located at 210 Blossom Road Assessors' Map 1, Lot 4. Parcel A to be combined with abutting Assessors' Map 1 Lot 3A.**

Sean Leach from SITEC Inc was present. The purpose of this plan is to create Parcel A from Lot 4 and convey it to Lot 3A. All remaining and new lots are in conformance with dimensional requirements. None of the frontage is changed.

Lot 4 contains 60,007 s.f. all uplands

Parcel A contains 12,031.90 s.f

Daylor motioned to endorse the plan entitled "Approval Not Required Plan of Land in Westport, MA prepared for David Ponte" dated December 17, 2017 because it complies with the provisions of MGL Ch 41 Section 81P and is not a subdivision as defined under the subdivision control law. De Rego seconded the motion. The vote was unanimous with four in favor.

**Approval Not Required (ANR) Aspen Property Holdings, LLC. (18-003A) Request by applicant for endorsement of a 2-lot plan of land located at 201-203 Davis Road Assessors' Map 5, Lot 4B.**

Nick Dufresne from Farland Corp was present. The purpose of this plan is to create Lots 1 & 2 from Assessor Map 5, Lot 4B

	Frontage	Area	Uplands
Lot 1	245.58	80,251+/- s.f.	30,000 s.f. minimum
Lot 2	150.00	62,818+/- s.f	30,000 s.f. minimum

Cole motioned to endorse the plan entitled “Approval Not Required Plan 201-203 Davis Road Assessors Map 5, Lot 4B Westport, Massachusetts” prepared for Aspen Property Holdings, LLC., dated January 16, 2018, because it complies with the provisions of MGL Ch 41 Section 81P and is not a subdivision as defined under the subdivision control law. Seconded by Daylor. The vote was unanimous with four in favor.

**Public Hearing Continued from December 12, 2017.**

**FRANCIS ESTATES (17-0016C-OSRD/IHSP) Request by applicant for approval, in accordance with Massachusetts General Laws, Chapter 41, Section 81T, Article 18 Open Space Residential Development (OSRD), of a definitive subdivision plan entitled “Open Space Residential Development Definitive Subdivision Plan for FRANCIS ESTATES Charlotte White Road and Main Road Assessor’s Map 68 Parcel 7, Westport Massachusetts” prepared for ELJ Inc. dated September 8, 2017, located between 50 and 58 Charlotte White Road. The applicant proposes to develop 16 single-family house lots. The Applicant has also requested a Special Permit under Article 13 Inclusionary Housing.**

Attorney Richard Burke addressed the drainage easement. He said that Attorney Peter Paul, a well-known title agent in New Bedford, reviewed the plans of record and the lots in the drainage easement in Plan Book 157, Page 6 and it is his opinion that all the deeds that came out of the parent parcel, make reference to the drainage easement. Attorney Burke read the portion in the deed which refers to the plan where the easement is shown and recorded. It is Attorney Paul’s opinion that it is a valid drainage easement. Burke stated that unfortunately, the abutting lot owners may not want to hear this but the deeds are clear. Burke submitted a copy for the record of the deeds and plan as referenced in the deeds with clear reference of the drainage easement.

Whitin noted that the Assessor’s plans do not show the easement as it is on the deed and added that the assessor’s maps are not legal documents. Mr. Burke also noted that the Assessor’s plans are not title records.

Hartnett stated that the deed for Lot 3 does not reference the easement. Attorney Burke stated that may be correct however, all the deeds reference the plan book and page of the plan that shows the easement clearly on the plan.

Hartnett read the Tibbetts Engineering report dated January 9, 2018 into the record. A response from Site Design was received on 1-11-18. Michael Russell of Site Design Engineering was present and read the report regarding various aspects of the drainage easement for the purpose of the inquiries from the abutters and described the configuration of the drainage easement which segways into the landscape plan that was submitted. They are proposing a fence to screen the residential properties. The landscape plan was reviewed by the Board. Russell stated that the Board had asked about the potential homes, and submitted a few examples of modern-type dwellings. He stated that it will depend on the type of market at the time but will be comprised of a typical single family structure. The clearing will also depend on the builder and OSRD requirements. Russell explained that they had counted the detention area in the total area twice and submitted a new plan this evening in response to a department review. He noted Tibbetts feels there is no adverse impact to this subdivision. Russell asked about the comments from

Daylor that were submitted this afternoon. Hartnett read the comments from Daylor dated 1-25-17 into the record.

Russell noted that the shared system will be a denitrification system and that would be handled post Planning Board. He stated that he would be willing to meet with Messrs. Hartnett and Daylor at the Planning Board to go over the plan details.

Whitin asked about the landscaping plan and wanted to know the caliper of the trees in addition to the height. Hartnett had no further comments as he had already provided notes to the engineer.

Daylor stated he would be glad to meet with the engineer. He discussed the current plans, the 3 watersheds and diagrams and felt that the future plans are rather scary. He discussed the progression of a homeowner's association that is not able to take on the responsibilities.

Cole said in light of the issues at Noquochoke Village, he asked if there is something built into this to have our engineer review construction monitoring and if that process was already in place. Hartnett stated that it would be part of the condition of approval so there would be more inspection.

Whitin noted they would have to file a NPDES and SWPPP permit.

Attorney Nikolas Gomes representing Ron Oliveira owner of two lots was present. His client and abutters present were in opposition of the drainage easement placed on the abutting lots; it interferes with the land owned by them. He made note of Tibbetts report item numbers 3, 5 & 6. He feels these will negatively affect this environmentally sensitive area. He believes the waiver requested by the applicant for the subdivision road and the detention pond moves everything closer to the other lots. Gomes thanked the Board for the consideration and asked they tailor the needs of the Town and not just those who stand to benefit. Mr. Oliveira's position is that this plan falls short of the Subdivision Control Law because the nearest abutters will be impacted. He asked for a least invasive alternative plan if it can be possible.

Whitin asked him what was his issue with the request for a road waiver. Gomes stated that if the waiver is allowed for the OSRD, it is more conducive to the character of the town. However, if the road waiver is allowed then the tradeoff should not be more development. Open space should be there for everyone. He said it did not make sense to reduce the road for safety and egress means in exchange for additional development. Gomes asked in this 16-lot subdivision if it were possible to reduce the number of lots so there is no burden on the abutters and better alternatives for the town. He suggested reserving the southwest corner for the detention basin instead of creating another buildable lot.

Kyle Howard of 20 Charlotte White Road (Lot 7 on the corner of Charlotte White Rd and Main Rd) said he was very concerned with the detention basin and not in favor of the subdivision and asked the Board to consider this subdivision carefully. He said he was never notified of the meetings and just recently found out through word of mouth.

Gregory Cabral prospective buyer of 36 Charlotte White Road said he is currently in the process of purchasing this property and is concerned about the detention ponds because his well is on the perimeter of the pond. He said the distance from his rear property line to his well is 120 feet.

Russell stated that the stormwater facility is a three-pronged system comprised of the fore bay, detention area and infiltration area. The submitted plans do not show the new construction and the well. He noted the lower portion of the proposed detention basin is where the setback is to be kept.

Jack Silverstein, the conveyance attorney for Mr. Oliveira, said that the seller did not reserve the right to enter on the property and the buyers did not know there was going to be a detention pond on their property. They will need permission to enter the property. He said this should have been disclosed and it is not fair or just. He said all the residents want is that the basins and ponds are off their properties.

Heather Cabral the prospective buyer of 36 Charlotte White Road asked why the detention pond was not shown on the plans they saw. There is plenty of land the applicant can use on their property and they are being greedy. We have all worked hard to pay for our land.

Whitin noted the Board will need three out of five votes for the OSRD and four out of five votes for the Special permit for IHSP and there will not be enough votes in February as some members are expected to be absent. The applicant was in favor to continue to March 6, 2018 and submitted a written request accepted by the Board and a request for an extension of time for the Planning board to act.

Daylor motioned to continue the public hearing for Francis Estates to March 6, 2018 at 6:30 pm. Seconded by De Rego. The vote was unanimous with four in favor.

De Rego motioned to accept the extension of time for the Planning Board to act on the subdivision to March 6, 2018. Seconded by Daylor. The vote was unanimous with four in favor.

#### **Noquochoke Village (15-012 SPA-IHSP) – Letter to Tibbetts request for comments relative to site.**

Hartnett read the letter addressed to Tibbetts dated 1-19-18. He further read the response letter from Tibbetts dated 1-25-18 including the report from Wally Galluska dated 1-24-18 attached to the letter.

Phil Cordeiro from Allen & Major was present. He noted the culverts are clogged with debris and they intend to clean them commencing tomorrow. It was their intent to do so earlier this week but were delayed for Tibbetts review. He asked to proceed as planned.

Cole noted both pipes are diminishing to the outlet. Cordeiro stated he does not know where that reduction happens but he will document it when they clean it. Cole asked if closing the driveway would have to happen if the culverts need to be replaced or repaired. Cordeiro stated that it depends if they can be inserted or if the concrete would have to be remediated.

He stated that will need to be verified. If it all hydraulically functions, once all stormwater controls are in place and it is monitored for a year and if needed, these culverts would be replaced. Cordeiro said they are in the process of construction and once finished the drains would be cleaned. Cole stated he is amazed that the drains were not cleaned of the debris prior to construction.

Whitin asked for further comments. Hartnett asked if the applicant could respond to the Tibbetts letter dated 1-25-18.

Bob Alves, an abutter from American Legion Highway, said he shared photos of the pipes and silt going into the river because there were not hay bale in place. He said it seems they do not want to take care of the neighbors and the community. There is an issue with many items and he said that he has raised it before and he is raising the issue again.

Antone Vieira of Kelly Avenue was present and he was a former Selectman when this project was approved. He thought they addressed the stormwater runoff. He appreciated Mr. Cole's comments but

he is also very concerned for the water flowing into the Westport River. He is asking the town to do their due diligence.

Whitin explained that the NPDES and NWPPS Permits are not part of the Planning Board process. However, he was on site when the event happened and the Planning Board wants to hold their feet to fire. The Board wants to see the work to clean the pipes done before this weekend as there is more rain expected and no one will be on site to monitor it. Cole stated that the Board would like to keep them on the job until it is fixed and to make sure it does not happen again. He wants to see it done right and working with everyone, especially those on site. Cordeiro agreed. Daylor asked they pick up the elevations to make sure which way the channels are running so they know how to fix the problems. Cordeiro said they will do this and will provide a report to the Planning Board tomorrow. Whitin asked that Cordeiro provide notice to all personnel working for TCB and Delphi about the coming weather. Hartnett said they need to notify Tibbetts if they will be doing work on the culvert.

### **7:15 p.m. Public Hearing**

**HELM REALTY LLC (17-014SPA) Continued from November 14, & December 12, 2017.**

**Request by Applicant to demolish an existing 1,600 s.f storage structure and construct a new 2,100+/- s.f storage building for property located on the north side of State Road between 174 and 236 State Road, Assessor's Map 3, Lot 144F & 144K Westport, MA, pursuant to Westport Zoning By-Law Article 15 for Site Plan approval.**

Request by applicant to withdraw the application.

Cole motioned, at the request of the applicant, to grant a withdrawal of the application for HELM Realty LLC, without prejudice. Seconded by De Rego. The vote was unanimous with four in favor.

### **7:30 p.m. Public Hearing**

**Pursuant to the provisions of MGL ch. 40A § 5 and Article 2.1 of the Westport Zoning Bylaws, the Westport Planning Board will hold a public hearing on Thursday, January 25, 2018, at 7:30 p.m. at the Town Hall Annex, 856 Main Road Westport. The purpose of the hearing is to accept public comments on the following proposed amendments to the Town of Westport Zoning By-laws:**

Whitin read the public hearing notice into the record:

**Item A2. To amend the Town Zoning By-Laws by inserting the following Article 27 and updating the Table of Use Regulations to prohibit Recreational Marijuana:**

#### **ARTICLE 27**

#### **RECREATIONAL MARIJUANA ESTABLISHMENTS**

##### **27.1 PURPOSE**

Consistent with G.L.c 94G sec. 3(a)(2), all types of recreational marijuana establishments as defined in G.L. C. 94G, Section 1, to include marijuana cultivators, independent testing laboratories, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related businesses, shall be prohibited within the Town of Westport.

**Item B1. To amend Article 1, Section 1.1 for the purpose of amending the definition of "Agriculture and Agricultural" by adding the following wording:**

The growing, cultivation, distribution or dispensation of marijuana is not agriculture or an agricultural use or activity, nor is it considered a farm enterprise or farm related experience.

**Item B2. To amend Article 1, Section 1.1 Definitions for the purpose of adding definitions for “Marijuana”, “Marijuana Establishments”, “Marijuana Accessories”, and “Marijuana Products”**

**Item B3. To amend Article 4, by inserting into Use Regulations, Section 4.0.1 Residence/Agriculture Districts, subparagraph B.1 wording to exclude medical and recreational marijuana as a permitted home occupation.**

**Items B4 & B5. To amend the Town Zoning By-Laws by inserting a new Article (Article 27) and updating the Table of Use Regulations:**

To add a new Article (Article 27), Recreational Marijuana Facilities and Uses, which would allow recreational marijuana retail establishments by Special Permit in the Business District and allow recreational marijuana testing laboratories, cultivators and product manufacturers by Special Permit in the Science and Technology Overlay District. Recreational Marijuana uses would also be added to the Table of Use Regulations.

**Item C1. To replace Article 26, Temporary Moratorium of Recreational Marijuana Establishments and Related Uses with a new Temporary Moratorium extending the Moratorium until December 31, 2018.**

Hartnett summarized the options for Westport: Prohibit, regulate, or extend the moratorium. He also went into detail as listed below outlining the business areas in towns.

He noted the timeline:

- 12-5-17 Planning Board submitted proposed by-laws to Board of Selectmen.
- 12-11-17 Board of Selectmen referred changes to Planning Board for public hearing.
- 1-25-18 Planning Board public hearing.
- 2-19-18 Last day to submit Planning Board report.
- The Planning Board report to the Board of Selectmen is advisory in nature.
- On 5-1-18 Annual Town Meeting requires 2/3 vote.

Hartnett noted the portions listed in red are definition additions from the Cannabis Control Commission. Cole asked about making minor amendments on the floor of Town Meeting if anyone of these options is not forwarded. Hartnett stated that all can be put on the warrant and depending which one is passed, the others would be passed over/withdrawn.

Wayne Sunderland of Drift Road rose in opposition of the articles and suggested extending the moratorium to December stating if passed, it will put a new burden on the Police Department.

Jon Alden asked if Medical Marijuana facilities would now automatically become recreational. Hartnett said not automatically, only by licensing by the state and Selectmen can it be regulated. He asked if there are two medical marijuana and two recreational marijuana facilities, would that exempt the two medical facilities from receiving a recreational permit. It would not, said Hartnett. Whitin stated that they need to comply with zoning. Alden was in opposition to recreational marijuana but in favor of medical marijuana and would support a medical marijuana facility.

Sean Reilly of 645 Sanford Road rose in opposition of a prohibition. Prohibition will foster a black market that will exploit the users rather than there being a regulatory entity. He also noted that the value of the industry will rise significantly. He noted in 2016 a majority of voters in Town voted for legalized use. He questioned the actions of the Planning Board and asked them take action.

Antone Vieira rose in opposition. He said as a former farmer and selectman, he sees however, the benefits of a new cash crop. In his experience, he has seen individuals at school getting burnt out from using marijuana. He urged looking at how to get through this process fairly. There is a cost to this. He would like to see some restrictions to some degree. He is not in support of the recreational marijuana sold in this community.

Walter Barnes questioned the infrastructure to handle the retail sales. Marijuana currently is against the federal law. He noted that the Chief of Police stated at a BOS Selectman's office, the police will have a difficult time. No one under 21 is allowed to purchase and sales to anyone from out of state would be subject to legal prosecution. He was opposed to any recreational marijuana because it impares the abilities of the user at the detriment of others.

Avril Andrade thanked the Planning Board and stood in favor of Recreational Marijuana as a farmer and CSA owner. She asked to keep in mind the Westport farmers because the town has the ability to help set a farming structure. She asked the Board to remove the label of "non-agricultural" crop.

Robert Sutcliffe responded to some of the comments by being in favor of recreational marijuana. He stated he is an engineer and smokes marijuana every day and it does not distort his thinking or judgement. He makes products that have helped people with pain. He maintains it's the responsibility of adults to oversee their children. He does not believe the product will invite crime. He noted there are over 90k deaths from alcohol consumption but none known recorded for cannabis use.

Mr. Barnes responded to the previous speaker and noted that there was an individual who died from a self-inflicted gunshot from edible cannabis. He cited another incident with the same outcome from edible cannabis. He said 1 in 9 people who use cannabis become addicted and there can manifestation of suicidal and homicidal behavior,

Avril Andrade looked up on line there have been no deaths reported.

Daylor stated he would only listen to siting discussion; any other discussion is not germane under the Planning Board purview. He said the discussion about a suicide is not germane to looking at the proper locations and if such facilities are legal in this town.

Cole motioned to close the public hearing for the proposed zoning changes, Item(s) (A2, B1-5 and C1). Seconded by De Rego. The vote was unanimous with four in favor.

### **Item A2**

De Rego motioned not to recommend the proposed zoning article, Item A2 (prohibition) and to forward the final language to the Board of Selectmen for inclusion on the 2018 Annual Town Meeting Warrant. Seconded by Cole. The vote was unanimous with four in favor.

### **Item B1**

Cole motioned to recommend the enactment of the proposed zoning article, Item B1, and to forward the final language to the Board of Selectmen for inclusion on the 2018 Annual Town Meeting Warrant. Seconded by Daylor. The vote was unanimous with four in favor.

### **Item B2**

Cole motioned to recommend the enactment of the proposed zoning article, Item B2 as amended, and to forward the final language to the Board of Selectmen for inclusion on the 2018 Annual Town Meeting Warrant. Seconded by De Rego. The vote was unanimous with four in favor.

### **Item B3**

Cole motioned to recommend the enactment of the proposed zoning article, Item B3, and to forward the final language to the Board of Selectmen for inclusion on the 2018 Annual Town Meeting Warrant. Seconded by Daylor. The vote was unanimous with four in favor.

### **Item B4**

Cole motioned to recommend the enactment of the proposed zoning article, Item B4, and to forward the final language to the Board of Selectmen for inclusion on the 2018 Annual Town Meeting Warrant. Seconded by Daylor. The vote was unanimous with four in favor.

### **Item C1**

Daylor motioned to recommend Item C1 for a moratorium to the Board of Selectmen for Annual Town Meeting. Seconded by De Rego with discussion. Cole stated that he was not convinced that there will be any greater clarity at the end of the year. It was clarified that if the other articles passed, this could be passed over. The vote was unanimous with 4 in favor.

### **ADMINISTRATIVE ITEMS.**

- a. ZBA Notice of Public Hearing for Casey-Amaral 581 A, B & C Drift Rd Map 53, Lots 12B & 10J. Noted.
- b. Ch61A release for Paul & Viola Gay – Horseneck Road (38.6 acres) Map 47, Lots 8 & 11. Cole motioned to not take any action of the release. Daylor seconded the motion and the vote was unanimous.
- c. Ch61A release for Pamela Wilkinson et als. – Narrow Ave. (1.38 acres) Map 64, portion of Lot 4. Cole motioned to recommend release from Ch 61A. Seconded by De Rego. The vote was unanimous with four in favor.
- d. Ch61A release for James W. Wood – Main Road (2.48 acres) Map 77, Lot 12C. Steve Sloan was present. A letter was received dated 1-23-18 from the Westport Land Conservation Trust (WLCT) requesting the Town to assign their right of first refusal. The WLCT intends to meet with the Westport Agricultural Land Trust (WATF). Steve Sloan was present from the WLCT - he noted that at a meeting with the WATF, it was voted to make a purchase of this land. The purchase price is \$150K and the cost will be split between the Ag open space and the WLCT. He stated that it would be helpful to have an opinion from town counsel because it is unclear when the request was submitted to the town and when supporting documents were submitted later which were omitted in the original.

Slone stated that the Ch61A law also has a provision that any contiguous land, not subject to Ch61A would also be subject to Rights of First Refusal (ROFR). Any of these transactions would have to be approved by the Finance Committee and the Board of Selectmen.

Cole motioned to recommend the Town exercise its option of right of first refusal by exercise its assignment to Westport Land Conservation Trust. Seconded by De Rego with discussion from

Daylor. Daylor asked if Agricultural Trust Fund funds could acquire this parcel. He asked, keeping in mind this parcel is in a village center, how will this parcel fit in the future? Whitin explained that after much research, the town people want to see this piece remain agriculture and not a box store or development. They want the mix of agriculture and stores as it is now. The vote was unanimous with four in favor.

### **TOWN PLANNER REPORT**

Hartnett described the Green Communities. Whitin suggested the Board send a letter to the BOS that the town take action. This will be placed on the next agenda for action.

### **Matters not reasonably anticipated.**

Whitin read a letter into record from Clean Energy requesting a withdrawal without prejudice. Members discussed briefly. Whitin suggested paying for the ConCom agent's time to review some of the plans in addition to Tibbetts Engineering. This property was unique because they did not have to file an Order of Intent. In the future, how to better protect the town and the neighbors was Whitin's concern.

### **CORRESPONDENCE**

SRPDD MVP Grant.

Cole recommended the contract be forwarded to the BOS for their signature

### **MINUTES.**

January 16, 2018 WS

Cole motioned to approve. Seconded by De Rego. The one was unanimous with 4 in favor.

### **INVOICES.**

Hartnett - Nov/Dec Phone and Dec Mileage \$166.02

Cole motioned to approve. Seconded by De Rego.

### **ADJOURNMENT**

Members unanimously voted to adjourn at 9:50 p.m.

Respectfully submitted,  
Lucy Tabit, Assistant Planner