



TOWN OF WESTPORT
856 Main Road
Westport, Massachusetts 02790

Tel. (508) 636-1037
Fax (508) 636-1031

PLANNING BOARD

PLANNING BOARD MEETING MINUTES

March 24, 2015

Chairman James T. Whitin called the meeting to order 6:06 p.m. with Vice-Chairman William Raus, Clerk Elaine Ostroff, Member David Cole and Town Planner James Hartnett in attendance. Member Marc De Rego was absent.

Public Hearing

Old County Estates – Jo-Ann’s Way (14-006C-CD) *Continued from January 13, 2015 & February 10, 2015.*
Definitive Subdivision and Common Driveway Application. Request by applicant to construct a 9 lot subdivision with three lots serviced by a Common Drive Way on land located between 624 & 652 Old County Road Assessor’s Map 34, Lots 48J, 50-51.

Whitin opened the public hearing and read a continuance request dated March 24, 2015, from SITEC Engineering Inc. on behalf of the applicant into the record.

Raus motioned to continue the Public Hearing for Old County Estates – Jo-Ann’s Way (14-006C-CD) Definitive Subdivision and Common Driveway Application to April 7, 2015, at 7:15 p.m. Cole seconded the motion and the vote was unanimous with all in favor.

Public Hearing

Lincoln Heights (14-005C) Definitive Subdivision. *Continued from January 13, 2015, February 10, 2015 & February 24, 2015.* Request by applicant to construct a 4 lot subdivision at the terminus of Lincoln Avenue located at Assessor’s Map 32, Lots 6-16, 28 & 36A.

Whitin opened the public hearing. Whitin noted that this subdivision was originally heard by the Planning Board on January 13, 2015, and that most of the items from Hartnett and Tibbetts have been addressed since then. At the last public hearing, the Board had a number of concerns and requested that Town Counsel offer an opinion on relating to the status of Lincoln Avenue. Hartnett read a legal opinion into the record regarding the two following issues:

1. Does the applicant have the right to use Lincoln Avenue to access the proposed subdivision?
2. Does the Planning Board have the authority to consider the condition of Lincoln Avenue from Reed Road to the proposed subdivision and does the Planning board have the authority to require the developer to bring the existing private way up to current standards?

In summary, the applicant does have the right to use the existing Lincoln Ave. to access the proposed subdivision. Hartnett noted that the road has to be "adequate" and the Planning Board has the right to evaluate the condition of the roadway, but does not have to be brought up to today's standards.

Whitin read a report from Tibbetts dated February 4, 2015, into the record. William Smith, President of Civil Engineering Concepts was present and reviewed a few changes made to the plan since the last meeting. Smith asked the Board to reconsider allowing above ground utilities due to the fact that there are already poles in place and that the gas lines and an infiltration trench are already being put underground on the same side that the utilities would be on. Discussion ensued about the requirement of the underground utilities. Attorney Koldys was present on behalf of the applicant and cited an instance where the Planning Board waived the underground utilities because poles were already in place. Hartnett read the proposed waivers and conditions into the record.

Waivers

1. Section V-E-1 – Waiver of Underground Utilities
2. Section IV – B,6 – Waiver of provision 6” x 6” concrete bounds 4” above grade in lieu of 5” x 5” concrete bounds set to grade.
3. Section V-G-2 – Waiver of provision regarding location of subsurface water storage tanks. See plan for proposed location.
4. Section IV – A,2 – Waiver of 25’ negative grade, see drainage calculations.
5. Waiver of road crown and cross section pitch

Proposed Conditions

1. The following notes should be added to sheet 3 of 6.

“Subject to a Restrictive Covenant (FORM F) dated:_____ to be recorded herewith in the Bristol County Registry of Deeds Book_____, Page _____.”

“Subject to a Restrictive Covenant (FORM F-RRL) dated:_____ to be recorded herewith in the Bristol County Registry of Deeds Book_____, Page _____.”

2. Homeowners Association: As a condition of approval of this subdivision, prior to endorsement of the definitive plan the Applicant shall create and properly fund a Homeowners Association. All purchasers of land within the subdivision shall be required to belong to the Homeowners Association.
 - a. The Homeowners Association shall be responsible for the maintenance, repairs and plowing of the subdivision roadways.
 - b. The Homeowners Association shall maintain permanent ownership of any drainage basins or ponds in the subdivision, including all pipes and other appurtenant devices, and shall have the permanent responsibility of maintaining, repairing and replacing said drainage systems, as necessary.
 - c. The Homeowners Association documents shall be reviewed and approved by the Planning Board, in consultation with Town Counsel (at the expense of the applicant), and the Homeowners Association shall have an initial fund that is deemed satisfactory to the Planning Board, in consultation with the Planning Board’s technical consultant.
3. Road Maintenance and Snow Removal: Applicant shall be responsible for periodic maintenance and snow removal until such time a properly funded Homeowners Association is created and is properly functioning.
4. Fire Protection: Access to/from the fire protection tank must be maintained at all times for Fire Department use in the event of an emergency.
5. Concrete Bounds shall be set at the intersection of Lincoln Avenue and the northerly property line.
6. Roof run-off recharge systems are required for each dwelling and a detail shall be added to the plan.
7. Construction work on the subdivision road and utilities shall only be done between the hours of 7:00 a.m. and 6:00 p.m., Monday - Saturday.
8. Applicant shall provide the Town access to the proposed fire prevention system and storm water management systems, and
9. Applicant shall maintain Lincoln Ave from Reed Road to the proposed subdivision in its current condition and any damage caused by the contractor shall be repaired by the applicant.

Attorney Koldys noted that the client may not be legally able to repair the roadway. Wayne Sunderland was present and noted that an adequate bond should be held to repair any damage made to the existing Lincoln Ave during the construction of the proposed subdivision. Richard Spirlet, Selectman, was present and opined that underground utilities should be required. Chris Gonsalves, Highway Surveyor, questioned if the gas and electric

lines can be placed underground on the same side of the road if they are encased in concrete. Discussion ensued again on the matter of underground utilities. The Board discussed the other proposed waivers briefly. Whitin asked if the vegetation clearing limits would be marked before construction. Whitin addressed the fact that the Planning Board has allowed above ground utilities in the past and stated that the waivers are granted on a case to case basis. Hartnett noted that the decision is ultimately up to the utility company whether it is safe to put the electric and gas lines on the same side of the road.

Raus motioned to accept the waivers 2-5 as read. Ostroff seconded the motion and the vote was three in favor with Cole abstaining due to his absence at the original public hearing.

Raus motioned to approve the proposed conditions 1-9 as read. Ostroff seconded the motion and the vote was three in favor with Cole abstaining due to his absence at the original public hearing.

Whitin discussed the limit of clearing on each of the lots. Whitin questioned how will future lot owners know that there is a lot clearing limit. Hartnett noted this can be included in the conditions of approval or in a deed restriction, noting that even a deed restriction is hard to enforce as time goes by. Smith noted that on the proposed plans, a 35,000 sq.ft. lot clearing limit was used for the drainage calculations. Cole commented that the septic systems do not have any de-nitrification.

Ostroff motioned to approve inclusion of condition #10:

10: Maximum clearing area per lot shall be limited to 35,000 sq. ft.

Raus seconded the motion and the vote was three in favor with Cole abstaining due to his absence at the original public hearing.

Ostroff motioned to close the public hearing for the definitive plan entitled "Proposed Definitive Plan Lincoln Heights" Assessor's Map 32, Lots 6-16, 28 & 36A dated November 6, 2014". Raus seconded the motion and the vote was three in favor with Cole abstaining due to his absence at the original public hearing.

Raus motioned to approve the definitive subdivision plan entitled: "Proposed Definitive Subdivision Plan Lincoln Heights" dated November 6, 2014, subject to waivers and conditions. Ostroff seconded the motion and the vote was three in favor with Cole abstaining due to his absence at the original public hearing.

Public Hearing

Village Farm – Morgan Way- (15-001C-M) Modification to an approved subdivision, 729 Main Road, Assessor's Map 77, Lots 29 & 29C. *Continued from February 24, 2015.* Request by applicant to reduce the buildable lots from 6 to 4, and a fifth parcel would be combined with abutting land at Assessor's Map 77, Lot 29B and would not be considered buildable by itself. The applicant also proposes to modify the finished surface of Morgan Way from bituminous concrete to a graveled road.

Whitin opened the public hearing and read a Tibbetts report dated March 10, 2015, into the record. Design Engineer George Mihov was present and read his response (dated March 20, 2015) to each of the comments from Tibbetts. Hartnett noted that the subsurface water storage tank will no longer be required due to the reduction in number of house lots and due to the fact that this is a modification of a plan. Hartnett then reviewed his comments for the Board. Discussion ensued over drainage on Main Road. Hartnett read the list of waivers and conditions into the record. Whitin noted that Bob Rogers from Tibbetts has to review the final plans.

Cynthia Raposa, was present to express her concerns over family issues that may affect the plan from going forward. She stated that a former trustee had signed off on the agricultural land being put into a deed restriction, which reduces the value of her portion of the land.

Applicants Raymond Raposa Jr. and Jane Wingate were present. Mrs. Wingate stated that her and her ex-husband purchased the land together and then split it up 50% each. Wingate noted that since her husband's death, her and her son Michael Raposa have been the only two paying for the expenses on the land.

David Raposa was present and expressed his concerns about his portion of the land becoming not buildable if Wingate changes the lot lines the way they are proposed.

Raymond Raposa Jr, the legal trustee of the Raymond L Raposa Nominee Trust was present and stated that he would like the Planning Board to move forward with the plan as proposed and prepared by Mihov.

Whitin read a letter from the Law Office of Rochelle Raposa dated March 23, 2015, into the record. The letter stated that Raymond Raposa Jr. is still the legal Trustee of the Raymond L. Raposa Nominee Trust. Cynthia Raposa stated that she spoke to Attorney Rick Desjardins, who wrote the original trust, and then stated that Raymond Raposa Jr. is a beneficiary, and does not have a vote. Whitin noted that the Planning Board has an application in front of them, and it is legally bound to continue to process.

Raus motioned that the Public Hearing for Village Farm– Morgan Way- (15-001C-M) Modification to an approved subdivision 729 Main Road, Assessor's Map 77, Lots 29 & 29C, be continued to Tuesday, April 21, 2015, at 6:15 p.m. to address questions as raised by Tibbetts Engineering Ostroff seconded the motion and the vote was unanimous with all in favor.

Administrative Items.

a. Fees- Hartnett noted that the fees were discussed at the last Planning Board Work Session and he presented a chart with the current fees and a few changes that were then discussed by the members. Changes will be posted on the Planning Board website.

Ostroff motioned to send the Planning Board recommendations for the fee changes to the BOS to adopt the fee changes as shown. Cole seconded the motion and the vote was unanimous with all in favor.

b. Accessory Apartments- Hartnett noted that accessory apartments were discussed at the BOS meeting on February 23, 2015, and then discussed at the last Planning Work Session, with concerns about reducing the size of the accessory apartment in an existing structure from 900 to 600 sq.ft. The new By-Law would allow a detached accessory apartment to remain at 600 sq.ft. Hartnett presented a letter he drafted which summarized the changes for the Board to review.

c. Release of Consultant Review Funds.

Hartnett noted that Distinctive Auto Body was approved on March 10, 2015.

Cole motioned to release the balance and any interest to the applicant for the project known as Distinctive Auto Body. Raus seconded the motion and the vote was unanimous with all in favor.

Town Planner Report.

a. Hartnett briefly reviewed the recent SMAST meeting on March 19, 2015 for the Board.

b. Hartnett discussed the issue with the pavement width that the Selectboard are planning to change at Annual Town Meeting. He quoted MGL Ch. 41, section 81Q and noted that the Town's By-Laws indicate what the pavement width should be. He stated that a consistent standard must be used across the board. Hartnett presented a chart from AASHTO- Geometric Design of Highways and Streets. Discussion ensued. According to Fire Department Lt. Dan Ledoux, the standard for emergency vehicles has gone up from 18 feet to 20 feet. Ostroff questioned if the required pavement width was increased, would the requirement become retroactive to subdivision roads that have already been approved, but have not been built. Hartnett noted that the Planning Board can change the required standards for subdivision roads and that would not impact any previously approved subdivisions. But if Town Meeting approves a required minimum pavement width, and a previously approved road comes before Town Meeting for acceptance, the road would have to meet the new standard. Whitin asked for a listing of subdivision roads that would be impacted if a new standard as such was put into place by Town Meeting.

Any other business that may come before the Board.

1. Highway Surveyor Chris Gonsalves and Andrew Souza from the Highway Department were present to express their concerns on the current width of the roadways. Gonsalves noted that some of the roads are almost impossible to maintain. Souza stated that fixing the problem with "substandard" or narrow roadways now will mean less financial and safety concerns in the future. Whitin responded that the roadways are not "substandard", that they have all been approved by the Planning Board in accordance to Planning Board Rules and Regulations and Subdivision Control Laws. Souza read from the Rules and Regulations for a "Minor Road" stating that it should

have 13' travelled ways with one foot berms on either side, for a total of 26' of pavement. Hartnett noted that the Planning Board has the ability to make waivers on a case to case basis. Raus noted that the Conservation Commission on occasion will request that the road be narrower than the standard to reduce impervious area. Raus also noted that he lives on Charlotte White Road Extension, which was built by the state and is not 26' and is plowed and maintained without any apparent issues.

Whitin noted that with every subdivision that comes before the Board, the Highway Department is asked for their opinion on the roadway standards, and that the HWY Dept. has never opposed any road width before them. Gonsalves agreed, stating that after this snow season it is much more apparent how narrow the roadways actually are. Ostroff mentioned the position of post office boxes and Whitin noted that the Planning Board could have a discussion with the Post Office to see what can be done on that matter. Hartnett will set up a meeting with the Planning Board, Tim King and the Highway Department to discuss the issue of the roadway widths.

2. Cole asked Hartnett if the Planning Board was ever officially asked for an opinion from other Boards, or if the Planning Board could offer comments on plans that do not specifically have to come before the Planning Board for approval. Whitin noted the importance of planning for the future to further mitigate the nitrogen in the environment.

3. Bill Harkens from the Water Resource Committee was present for a brief discussion. The Planning Board will plan a joint meeting with the Water Resource Committee to improve the de-nitrification in the Town. Discussion ensued. Raus suggested forwarding letters to the other Boards to encourage de nitrification. Ostroff stated that the Master Plan Committee would also like to work with the Water Resource Committee. Hartnett will work out a time for a joint meeting.

Correspondence.

a. E-mail from SMAST - Roland Samimy. Whitin read the email into the record. Whitin noted that this could be coordinated with the land use work that SRPEDD is currently working on. Cole noted that several subsets within the area are already being worked on by the WRWA.

b. ESRI –request for authorization to renew the annual fee for two seats of GIS softwear.

Ostroff motioned to accept the quote for \$700. Raus seconded the motion and the vote was unanimous with all in favor. Whitin endorded the quote.

c. Supreme Judicial Court Rules Lots Created under the So-Called "Existing Structures Exemption" of G.L. c.41, §81L Are Not Entitled to G.L. c.40A, §6 Grandfather Protection. Hartnett reviewed for the Board.

d. E-mail from Town Administrator: re. language for road widths by-law change. Whitin noted that there will be a scheduled open meeting on this topic in the future.

Minutes.

March 17, 2015 WS. Cole motioned to accept the minutes as amended. Ostroff seconded the motion and the vote was unanimous with all in favor.

Invoices.

None.

ADJOURNMENT

Members unanimously voted to adjourn at 9:08 p.m.

Respectfully submitted,

Joan Steadman, Recording Clerk