



TOWN OF WESTPORT
856 Main Road
Westport, Massachusetts 02790

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

PLANNING BOARD

PLANNING BOARD MEETING MINUTES

February 20, 2018

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

Discussion with Phil Weinberg regarding a) Water Management Plan Loan-Town Meeting Warrant Outreach Strategy and b) Denitrification Regulation-Update and Next Steps.

- a. Phil Weinberg discussed with the Board the next steps with regards to the water management plan loan. He suggested identifying forums where these issues can be discussed. He suggested the Water Resource Committee send a letter to the editor. He would like to try to identify a team and is concerned that once approval happens in May there is a short time to the end of this fiscal year to spend the money. He wants to prepare an RFP/RFQ so it can be issued after Town Meeting. Whitin thought that because it's engineering, an RFP may not be required but thought it should be done anyway. They discussed who would be qualified to perform the work and how they will need to specify what work is needed. There's a \$15K commitment from CPC which will not be available until Town Meeting authorizes the money. Daylor will help to work on the scope of work. Weinberg will meet again with the rest of the Water Resource Management Committee next week and they will start the process and or break out the tasks.
- b. With regards to the de-nitrification regulation, Weinberg stated that at the last meeting of the Water Resource Management Committee, there were several ideas of what should trigger the denitrification zones. The possible trigger issues were regarding new construction, repairs, transfers and upgrading cesspools. He noted that he met with Hartnett and Chris Capone, the Conservation Commission agent, to look over what constitutes the zone. He provided the summary that identifies three components: producing a map that will identify the resource area at the parcel level; ways in which the map could be refined by looking at bordering vegetative wetlands and perennial streams (these may already have been delineated by ConCom); and lastly what is the right of a third party believing the map is not adequate who requests a delineation. He also noted that he is working on a by-law that would address any "wetland resource area". Rather than making it a requirement, he is suggesting that the proponent opt to install a de-nitrification system if it falls 300 feet from a river resource area (currently at 200 ft) - as an exception to the exclusion, rather than a mandate. Daylor stated that part of the steps needed to be taken to reduce nitrogen in the river requires anyone in a zone to install a de-nitrification system and those outside would need to comply with Title-V with respect to new construction. Many repairs/older homes would not be able to comply, and this is where there would be a lot of hardship cases.

Approval Not Required (ANR) Pavilion Realty Trust (18-005A) Request by applicant for endorsement of a 2-lot plan of land located at 21 Cook Lane Assessors' Map 87 Lot 39M.

Sean Leach from SITEC Inc. was present. The purpose of this plan is to create Lot 2 from Assessor Map 87 Lot 39M with frontage on Cook Lane.

| | Frontage | Area | Uplands |
|-------|------------|--------------|---------------|
| Lot 1 | 189.71 ft. | 227,909 s.f. | > 30,000 s.f. |
| Lot 2 | 150 ft. | 196,301 s.f. | > 30,000 s.f. |

Leach noted plans filed and recorded showing Cook Lane as a way. The final plan being endorsed by the Planning Board previously and contains width, depth and frontage.

Whitin asked about the width of the existing road. The travelled way is 10-12 feet wide and it is paved approximately 800 feet commencing at River Road. In 1991 an easement plan was created to use a 40 foot way on the western portion of Cook Lane and the travelled graveled way is within the easement traversing one lot to the north. Whitin asked if there was language for the easement. Leach stated that for all lots west of the easement the information is found on the deeds.

Hartnett stated that there are three standards that must be met in order for lots shown on a plan for an ANR endorsement.

- a. The lots shown on such plan must front on one of the three types of ways specified in Chapter 41, Section 81L, MGL. The lots front on a way shown on a plan approved and endorsed in accordance with the subdivision control law. The Cook Lane plan is dated December 1972, endorsed by the Planning Board on January 17, 1973 and recorded in Book 89-104.
- b. The lots shown on plan must meet the minimum frontage requirements as specified in Chapter 41, Section 81L. The lots shown on the proposed plan meet this requirement Lot 1 has 189.71' of frontage and Lot 2 has 150' of frontage.
- c. The Planning Board must make a determination that vital access to the lots exist:
 - 1) Adequacy of the way. According to the ANR Handbook, the courts found that to be entitled to the ANR endorsement, the way must be built, or other assurance exists that the way will be constructed in accordance with Town standards. It is clear that Cook Lane is not built to Town standards:
 First 725'+/- is paved between two stone walls with a travelled width of 12'-14'
 Next 200'+/- is a gravel way and it is located outside the layout lines of the approved way.
 Last 600'+/- is a gravel way 10'-12' wide.
 A minimum of 200' of the approved way is not accessible and not built, the remainder of the way is not built in accordance with Town Standards. The travelled way leaves the layout over the easement and the Board needs to determine if this provides access. There is approximately 200 feet that is not built.
 - 2) Adequacy of access from the way to the buildable portion of the lot. It appears that both lots meet this requirement.

Hartnett noted that the Fire department requires a minimum of a 20 foot width and this plan does not meet that requirement.

Whitin asked if the cul-de-sac was part of the lot or the roadway and Leach confirmed that it was.

Attorney Brian Corey was present representing the applicant. There was discussion on the status of Cook Lane prior to subdivision control where it existed as just a driveway. Whitin noted that the existing road has no storm water measures and storm water sheds onto River Road.

Corey stated that his client's portion of Cook's Lane does not impact drainage Whitin is referring to, as it is drains west. The shedding of water to River Road is coming from the easterly lots where Cook lane was paved without permission from the Planning Board. The proposed lots will never impact the easterly portion of Cook Lane, said Corey. Discussion ensued and Corey noted that the recorded 1972 plan clearly shows the road to the far west parcel in place.

Whitin allowed public input.

Lucy Chace a resident of the Lane rose in opposition of the proposed plan. She felt the lane should remain as it is and did not agree with any upgrades because it's been in this quaint state of a country lane. She stated that the abutters have an agreement with the Metcalf Trust to never use the approved way but rather use the travelled way. Whitin asked if there was language in the Metcalf easement that would prevent Carvalho from improving the road. Corey is unaware of any language or pre-condition preventing the applicant, Mrs. Carvalho from upgrading the road, but it is not her desire; Her intention is not to disturb the roadway and there will be no negative water impact on River Road. Chace stated that there is no copy of the deed to verify what Corey is stating. She said that the prior owner, Reverend Lawrence had no intention of ever subdividing the land further. Corey stated that he appreciates Ms. Chaces' desire to preserve her home's abutment to the laneway, and preserve her right to construct her homes as her land has been recently subdivided and abuts the roadway. Mrs. Carvalho's deed stated that she has the right to use the way or otherwise. Corey stated they have met with many of the neighbors to discuss the water issues on the lower east side of the road. Chace's main concern was changing the lane. Corey stated that Chace's objection is not relevant.

Laura Bennett at 345 River Road at the corner of Cook Lane. She said they are concerned at the widening of the road and is not clear how this ANR lot will affect her property because they can only access their property from Cook Lane.

Attorney Corey stated that none of the drainage being discussed will reach River Road and he feels that the other abutter's actions have already exacerbated the drainage due to the paving that was put in place without approval of the Planning Board. He feels that Bennett should take the issue up with those who performed the work. The sheet-flow breaks to the west and will not impact the lower east portion of Cook Lane further. His client was not an owner of the land at the time the portion of the lane was paved nor is her property an abutter to the paved area of Cook Lane. Leach stated they are leaving the road's character alone.

Hartnett was asked to provide input, and he reiterated the Board needs to make a determination if the road provides adequate access, a portion of the travelled way is outside of the road layout. adequate access. He showed a few photos that indicate the narrowness of the road.

Daylor stated that he is mindful of preserving the character of lanes in Westport but it appears that this division of a lot on a subdivision plan complies with zoning. In his opinion he does not know if the lot is a party to the agreement as Ms. Chace described and if they have rights for the travelled way. Before he approves the ANR he wants to be clear if there is an agreement and they have the right to use the easement in place. Corey would provide the reference. Whitin asked if the existence of the

easement is sufficient for the road not in the road right of way in terms of ANR and adequacy of a way. Whitin stated that how this is portrayed does not look like they can have an ANR endorsement based on what he sees in the ANR Handbook. DeRego noted the roadway width being narrower than what the Fire Department requires as minimum.

Discussion ensued on the time in which the Board needs to take action. The submission was made on February 6 and the Board has 21 days to make a determination.

Daylor motioned to not endorse of the plan. Seconded by DeRego.
There was further discussion. There was no vote

Corey requested they continue to March 6, 2018 and would execute an extension to March 6 on behalf of the Applicant.

Daylor motioned to continue to March 6, 2018. Seconded by DeRego. The vote was unanimous with all three in favor.

Pre-Application Consultation (18-001PAC) Request by applicant to discuss an ANR plan for Map 57, Lot 46A owned by Thomas Winner proposing 2 lots on 4.01 acres of existing vacant residential land.

Attorney Michael Kelley and Greg Nicholas of South Coast Engineering were present for the owner. Nicholas stated that there is an existing 40 foot right of way however the abutter has a 20 foot easement over that property created prior to subdivision control law. The 40 foot right of way was created after subdivision control law. The request is if the existing way can be considered a way. After some discussion, Whitin stated that Board would rather see a subdivision plan with at 40 foot right of way and a 20 foot travelled graveled way. The existing travelled way is 12-14 feet. Whitin asked that there also be a turn-around included.

Lawton Trust/Hickory Lane. Request by Attorney Corey to discuss improper and unpermitted construction of permanent structures within the layout of Hickory Lane.

Hickory Lane was approved with a hammerhead turnaround at the end of the road. A property owner at the turnaround has constructed walls within the layout making it look like his own property and driveway rather than a turn-around. This has caused a problem for the homeowner to the north because drivers are now using her driveway to turnaround. This subdivision has not been released by the Planning Board and parts of the development are still being constructed.

Brian Corey was present for his clients the Oliveiras of Lot 17AA. He noted that the abutter, Morais Lot 17Z, has constructed two 7-foot x 15-foot long brick structures in the hammerhead turnaround portion of the roadway. The two properties share a drainage easement. There is no place to turn at the end of the roadway now that he has built these structures in the turn-around in layout of the road. Emergency vehicles and visitors are not able to use the road. The abutter, Morais has brought in loam and landscaped the drainage easement and now storm water is shedding onto the Oliveira's property. The easement itself has been filled to the point that it now ponds. De Rego stated that he went to the site and observed the turnaround and it looks like the Morais' driveway with the brick structures.

Whitin asked that the developer be instructed to come to the next meeting on March 6, 2018.

Members discussed sending a note to the Building Inspector informing him of the issue and to keep this in mind relative to issuance of any more permits for the subdivision.

ADMINISTRATIVE ITEMS

- a. **Wildberry Way – request for a non-binding recommendation for road acceptance (3/5/18 hearing with BOS).** A request has been made to the Board of Selectmen to accept the layout of Wildberry Way. The Board of Selectmen referred the request to the Planning Board and the Board has 45 days to prepare a non-binding recommendation and report. Tibbetts report dated May 4, 2011, states “TEC suggests that the Planning Board consider this project for completion and acceptance. On May 10, 2011, the Planning Board voted a “Certificate of Full Completion and Full Release of Municipal Interest in Subdivision Performance Security”.

Daylor motioned to recommend to the Board of Selectmen that this street could be accepted at Annual Town Meeting because the roadway satisfies the requirements under roadway construction standards as stipulated in the Planning Board’s Rules and Regulations for Subdivision Control. Seconded by De Rego. The vote was unanimous with all in favor.

- b. **Solar and Open Space Residential Development (OSRD) Revisions discussion.**

OSRD:

Whitin feels that this by-law needs to be looked at to make it work. Hartnett stated that OSRD are subdivisions that work better when there are infrastructure services such as sewer and water.

SOLAR:

Whitin stated that it would be good to take a look at the Solar By-law to provide better protection for residents.

He also noted that there is a mechanism in place for tree removal that other towns utilize and he would like to also include this. He said that there is no reason to just clear cut, but there also may be reasons to do so. Topic to be discussed further.

TOWN PLANNER REPORT

- a. Hartnett met with George Block from Tibbetts Engineering regarding some of the recent invoices. He agreed that there are a couple of inconsistencies that he will be looking into. Block noted that with the new ownership of Tibbetts by SW Cole, there is a different process for billing.
- b. Drainage issue at the elementary school. The abutter to the east is concerned about two drainage pipes directed towards their property. The school building committee asked Hartnett to meet with the abutters and see if their concerns could be addressed. Tim King also asked Hartnett to look into it, see attached memo with findings.
- c. Hartnett spoke with Bill Napolitano regarding the MVP Grant. The work on this grant must be completed prior to mid-June of 2018. The Town must establish a core group to work on the grant, this has been put on the Planning Board work session agenda for next week. Hartnett asked members consider who they would like to be included in the core group. A public hearing should be scheduled for March.
- d. Seaport Economic Development Grant. Hartnett met with the Landing Commission on February 5, 2018 to review the latest design for the Town Landing property. They had a number of questions

and comments and those are being addressed by SITEC. Finalized design is expected within the next 4-6 weeks. The previously approved site plan may come back to the Planning Board for an amendment.

- e. The District Local Technical Assistance (DLTA) Grant was submitted to SRPEDD last week. Hartnett spoke with Grant King from SRPEDD who did a quick review of the grant and thought it would be a good fit for the program.
- f. Hartnett met with Phil Weinberg, Bob Daylor and Chris Capone (ConCom Agent) to discuss some mapping methods relating to denitrification. There was general agreement that it would be in the best interest of everyone if a map could be developed that clearly identifies the areas where denitrification would be required. Hartnett has a call into SRPEDD to see if they could help create such a map showing a 200 foot denitrification zone from wetlands identified in the State GIS layer and also a 400 foot zone from streams and rivers.
- g. Hartnett is still working with Jerry Coutinho on the Zoning Board of Appeals until the administrative position can be filled.

MATTERS NOT REASONABLY ANTICIPATED

None.

CORRESPONDENCE

- a. Letter from Paul Gay requesting land to remain in 61B forestry. Noted; no action required.
- b. Division of Ecological Restoration – Culvert Grants. Noted; for further discussion at the next work session.
- c. Tibbetts – Blossom Road Existing Conditions report 2-13-18. This was a result of the partial release given for a temporary certificate of occupancy.
- d. South Coast Rail Draft supplemental Impact report 2-2-18. Noted.
- e. CPTC Workshop March 17, 2018 (registration deadline 3-14). Noted.
- f. Noquochoke correspondence. Noted.

MINUTES

February 6, 2018.

Daylor motioned to accept as written. Seconded by De Rego. The vote was unanimous with all in favor.

INVOICES

South Coast Media - recreational Marijuana zoning public hearing ad: \$464.60.
Quill Office Supplies for a postage scale - \$37.71.

ADJOURNMENT

Members unanimously adjourned at 8:45 pm

Respectfully submitted,
Lucy Tabit, Assistant Planner