



BARNSTABLE  
TOWN CLERK

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**Town of Barnstable  
Planning Board  
Minutes  
September 10, 2012**

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:**

**High Noon & Judith Eve** - Plans entitled “Plan of Land in Centerville, (Barnstable) MA on High Noon Drive Prepared for Estates of David and Joanne Goldman” and “Plan of Land in Centerville, (Barnstable) MA on Judith Eve Lane Prepared for Estates of David and Joanne Goldman”, dated August 8, 2012, as drawn by Down Cape Engineering Inc., has been submitted for endorsement as an Approval Not Required Plans. The plans submitted propose to combine undersized lots that were created by Subdivision 405 “Goldman” to establish developable 1-acre lots.

**Subdivision:** **Subdivision No. 405, Goldman - High Noon & Judith Eve Lot Release Request**

A letter dated August 23, 2012, from Daniel A. Ojala, requesting the release of the remaining thirteen lots under covenant. The thirteen lots are numbered Lot No's. 1 to 7, 9 to 11 and 15 to 17.

Dan Ojala of Down Cape Engineering Inc. in attendance. He explains that there are two ANR plans here that they are requesting approval for. Lots A1, 2, and 3 are the High Noon Subdivision and A4 is the Judith Eve Subdivision. The Judith Eve lots have been merged together and now meet all the requirements. The High Noon lots, A1, 2 and 3 have been combined into lots that would meet the current zoning. They also have been run through the Conservation Dept. and they all have adequate upland, frontage and shape. The Lot Release is for the underlying lots and the recommendation report from Steve Seymour is for a security of \$5,000 for one year to make sure the grass comes in etc. There will be much better access now that the requirements have been met.

Matt Teague entertains a motion to endorse these ANR plans, moved by Paul Curley, seconded by Patrick Princi, so voted unanimously.

Matt Teague asks staff how the release of the subdivision process works regarding the \$5,000 deposit. Does the board make a recommendation, per the report from Steve Seymour, to release subject to the \$5,000 withholding?

Art Traczyk answers yes, that is correct.

Moved by Felicia Penn and seconded, so voted unanimously to release the remaining thirteen lots under covenant. The thirteen lots are numbered Lot No's. 1 to 7, 9 to 11 and 15 to 17, subject to the holding of \$5,000 recommended by the Town's Engineer.

**Subdivision:**

**Subdivision No. 792, Hallett Woods  
Lot Release Request**

William Charles Hallett has requested the release of Lot No's. 2 & 4 from the covenant recorded March 18, 2002, in Book 15017, page 282 and the "full release" of Lot No. 3 from the restriction imposed when it was released from the Covenant on March 12, 2010, and recorded in Book 24425 page 291. The request represents the release of all remaining lots in the subdivision.

Mr. William Hallett in attendance.

Felicia Penn asks Mr. Hallett if he is aware of the report from Steve Seymour and the release of the lot regarding the security/bond request?

Mr. Hallett responds that he is aware and has provided a \$5,000 bond.

Art Traczyk confirms that we do have the security bond.

Matt Teague entertains a motion to release the remaining lots of subdivision No. 792 subject to security of \$5,000, so moved by Ray Lang, seconded, so voted unanimously.

**7:00 pm      Public Hearing**

**Proposed Zoning Amendment  
Groundwater Protection Overlay Districts**

The Planning Board of the Town of Barnstable, acting under Chapter 40A, Section 5 of the General Laws of the Commonwealth of Massachusetts, will hold a public hearing on Monday, September 10, 2012, at 7:00 p.m. in the Hearing Room of the Barnstable Town Hall, 367 Main Street, Hyannis, MA. The purpose of this hearing is to take comment upon a proposed amendment to the Code of the Town of Barnstable, Chapter 240, The Zoning Ordinance, Article III, District Regulations, Section 240-35, Groundwater Protection Overlay Districts.

The proposed amendment is to add a new subsection (v) to paragraph F, subsection (2) Prohibited Uses to read;

“(v) Storage of commercial fertilizers, as defined in MGL c 128 section 64, unless such storage is within a structure designed and engineered to prevent escape or transport of commercial fertilizers to the groundwater under any circumstances.”



This amendment was referred to the Planning Board for a public hearing by Town Council Item No. 2013-001 on July 12, 2012.

Ray Lang asks if this would involve hardware stores in the groundwater overlay districts as well and their storage of commercial fertilizers?

Matt Teague directs to Staff, Art Traczyk if there is a volume threshold for this, if there is a minimum or maximum amount?

Art Traczyk states that he thinks there is and that it may be in bulk.

Matt Teague asks for any public comment.

Deb Krau, chairman of the Hyannis Water Board in attendance. This proposal is a water quality issue. She states that the current zoning is not in sync with the DEP regulations under 310 CMR 22.21. This is the one piece needed to bring it into the Town's zoning to bring in line with the DEP, which is very important for new wells and extremely important to Hyannis where many of our wells are challenged due to the large amount of commercial businesses in the area. She is concerned with protecting the water.

Ray Lang asks if she can address his question regarding storage of fertilizers and overlay district compliance with fertilizers and how this would be implemented?

Deb Krau replies that it is her understanding that this is designed for commercial storage and that this would be a zoning enforcement issue.

Felicia Penn asks if this zoning ordinance is being amended for the entire town?

Deb Krau states yes, it would be for the entire town because it's the ground overlay district.

Matt Teague confirms, so currently the town is not in concert with the DEP regulations? What is the impact currently? Would we be in compliance if we allow this amendment? Two issues, businesses need to know about this before proceeding and is it going to prohibit a current use? He's questioning the compliance.

Deb Krau states that is correct, at any point the DEP could require the town to become in compliance if new well requests were made. It specifically would be prohibited if it is not appropriately contained.

Matt Teague suggests that this be continued to another meeting, this could have a potential major impact on the town. He would like people to be aware and able to make changes before it becomes a requirement. He would like to hear from anyone who may have an issue with it or support it?

Deb Krau asks why wouldn't we want to bring our zoning in line with the DEP regulations?

Matt Teague answers, he is not saying that we are not going to, he wants to give everyone a full opportunity to understand what is being recommended to the Town Council. He would like to leave this open for one more Public Hearing.

Patrick Princi asks what did the Town Council do when they took up the matter to bring to the Planning Board? There really hasn't been anything done through any other enforcement agencies to notify anyone. Once it is completed and approved by us wouldn't there then be notifications and enforcement of?

Art Traczyk states that this would be a zoning addition that would be amended in 2012, if it is passed. Those at present would not be affected by this. There is grandfathered protection. It would only affect somebody new who comes in and starts to expand their use.

Deb Krau states that the grandfathering issue is a challenge they hear continually and it prevents them from doing anything, so they would like to have the zoning in place as soon as possible.

Felicia Penn asks if this pertains to hazardous materials as well or is it just singling out fertilizers?

Deb Krau answers that hazardous materials are already in there and that this is the only piece missing. She states that once the fertilizer gets in the ground then it's in the water.

Matt Teague asks/confirms that because the uses are grandfathered, unless it's a new or change of use, then there is no enforceability right for the existing use?

Deb Krau answers that unfortunately that is correct, but that doesn't mean we need anymore.

Ray Lang thinks that whatever recommendation the Planning Board gives to Town Council this particular fact should be presented to be made part of their decision.

Matt Teague would like to clarify the 310 CMR issue, that this is specifically for storage of commercial fertilizers, not application, correct?

Deb Krau answers, yes, that is correct. The risk would be much greater if it were to be an application spill of large quantity.

Patrick Princi thinks this should move forward, sooner than later, since the existing businesses won't be affected and in the future it can be moved quickly to protect our groundwater.

Patrick Princi moves for adoption of the Zoning Amendment, 2013-001 Amend Zoning Ordinance Ground Water Protection Overlay Districts, § 240-35, seconded by Steven Helman.

Hans Keijser from the DPW, Water Supply Division in attendance. He states that they are definitely in support of this zoning amendment. He has had conversations with Chris Wiseman of Cotuit Water, John Erickson of Barnstable Water, Craig Crocker of COMM and Tom Cambrareri of the Cape Cod Commission and they are all in support of this zoning amendment as well.

Matt Teague asks how many incidences of stored commercial fertilizers in the quantities listed have affected the groundwater in the Town of Barnstable?

Hans Keijser answers that he does not have that information, the Board of Health would have that.

Jim Kinsella of the Barnstable Enterprise in attendance. He asks/directs to Mr. Keijser and Ms. Krau where this proposal originated?



Deb Krau answers that the Hyannis Water Dept. contracted with a consulting firm, Environmental Partners, to do a water quality study and there were some recommendations that came out of the study. Specifically they had asked them to check all of the town regulations, particularly zoning to make sure they were in sync with the DEP and State requirements and this was the one change that was found to be necessary to bring the town into compliance.

Jim Kinsella asks if the Hyannis Water Board has considered approaching the Board of Health for more protection/constraints as to the storage of commercial fertilizers in the town?

Deb Krau answers what would we say? There is nothing currently in the Town's regulations, we need something in the zoning. There is nothing to support asking the Board of Health or anybody else.

Matt Teague would like to hear from the Board of Health about the tracking of this use and what the concerns are. He doesn't want the grandfathered people to not know that this has changed and that they may be precluded. We are being asked to comply with a state regulation and trying to support it through zoning. We don't know what the current state of storage of commercial fertilizers is. His fear is that this is not enforceable.

Hans Keijser replies that the real issue is not the quantity of fertilizer, but it is the care of. The zoning ordinance regulates how you store it. It should be stored inside, not outside, not opened to the elements.

David Munsell asks if there are any standards for the design for the storage and properly designed structure?

Hans Keijser replies that he would refer that to the Building Dept., he would think a shed, garage, a structure that keeps it out of the weather, a common sense approach.

Matt Teague would like to suggest that a comment be heard from the Board of Health, and to leave this matter open for another hearing to allow some commentary from people in the business of storing commercial fertilizers.

Matt Teague states there is a motion on the table and a second. He puts it to a vote. Board Members Stephen Helman, David Munsell, Paul Curley and Patrick Princi voted in favor. Board Members Raymond Lang, Felicia Penn and Matthew Teague were opposed. The vote to favorably recommend adoption was 4 to 3. It will be recommended to Town Council.

**7:10 pm**

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

The petitioners, Cotuit Solar LLC, and John T. Peck, are seeking a special permit pursuant to Section 240-44.1 Land Based Wind Energy Conversion Facilities. The petitioners seek 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 Boatyard". 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, May 14, July 23, August 13, and to September 10, 2012 – continued for further review.*

Attorney Caroline Schmittiel in attendance. They are not ready to proceed at this time, they have not spoken to the consultant, Paul Bergman as of yet. She does not think they will be ready on Sept. 24, 2012. They would like to continue to October 22, 2012.

Felicia Penn states that she will not be able to be in attendance for this meeting on October 22, 2012.

Ray Lang asks if there is a date when the consultant's report will be available for the Board to review?

Art Traczyk answers no and that he does not think they will be ready by October 22, 2012. November 26, 2012, is the next meeting after that.

Matt Teague suggests that it be put on for October 22, 2012, and that if it cannot go forward we will continue to November 26, 2012, at that time.

Ray Lang moves to continue this Public Hearing to October 22, 2012, at 7:00 p.m., seconded by Paul Curley, so voted unanimously.

Matt Teague notes that there are two emails in opposition, received by the Planning Board and are available to be reviewed at the office.

**7:15 pm      Public Hearing – Continued Subdivision No. 821 - Francis Lahey and Sheila R. Lahey  
Discontinue an Unnamed Way and Adjust Alignment of  
Laurel and Circuit Avenues, Craigville (Barnstable), MA**

Continuation of the 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.

Opened August 13, 2012, and continued to September 10, 2012. Continued for *Board of Health Recommendation and decision*

Attorney Brian Wall in attendance for the applicants, the Lahey's. Michael Pimmental of JC Engineering, Inc. also in attendance. Attorney Wall gives the history of the last meeting and the need for additional information, which were the need for the Board of Health to review the plan and their response has been received. Jim Lane, the President of the CCMA had asked for a description of the square footage of the



land which is proposed to be swapped. They have given him a letter to that effect. There is some discrepancy regarding the square footage, however, they have discussed it and the association is still in favor of the application and they will be working out the details. Lastly, the original mylar plan had a scribner's error, which has been corrected.

Ray Lang asks if the square footage letter was incorrect or needed to be corrected, received from Attorney Wall?

Attorney Wall answers, that this letter was the letter he had sent to Mr. Lane and he explained that the plan requires some interpretation as to who owns part of the way. He makes reference to the Derelict Fee Statute, Chapter 183, section 58. He explains that there is a legality discrepancy regarding 500 square feet. They are working on the details of this discrepancy which is a matter of interpretation. In order to implement the plan they have to have a deed from CCMA and they will work out the math and come to an agreement.

Ray Lang asks if this information has to be filed with the registry as well?

Attorney Wall answers no. What happens is that the Mylar plan will get recorded at the registry of deeds, then to implement what the plan shows there has to be several deeds that are swapped between the interested parties that in turn get recorded after the fact and refer to the plan. There will be some consideration back and forth based upon the square footage.

Ray Lang asks if this is a variable width way? Is it 20 feet all the way from beginning to end?

Attorney Wall refers this question to Mr. Pimmental.

Mr. Pimmental answers that there is no variation in the way, and the width is 25 feet.

Matt Teague asks about the error on the plan. He's concerned that the information/description on the deed will not be the same as what is shown on the plan. Will another plan have to be done?

Attorney Wall answers no, the error that was on the plan was a scrivener's error, which was an incorrect dimension that has been corrected.

Matt Teague wants to make sure that down the road in review of this title will the plan match with the outcome/results of the 500 foot discrepancy that they are working on?

Attorney Wall answers that they will match. Everyone is in agreement about the dimensions on the plan. The calculations that are in slight disagreement don't have anything to do with the dimensions they are more of a conceptual thought as to which abutter will acquire this particular part.

Jim Lane, President of the CCMA in attendance. He states that he does endorse this plan 110%, he urges the board to approve this plan and that they will work out the discrepancy with the deed themselves.

Art Traczyk asks Attorney Wall if the abutting neighbors, the Goodings, are involved with any of this land swap?

Mr. Pimmental interjects, that the Goodings own 145 Ocean Avenue.



Attorney Wall states yes, the Goodings will be selling two small strips of land as well and they also endorse the project. They have submitted a letter recommending approval.

Art Traczyk states that the Goodings actually do own part of the rights of the way. They were not cited as part of the application.

Attorney Wall states that they were notified.

Felicia Penn asks if they can be added to part of the Findings?

Art Traczyk states that he thinks they should at least be acknowledged. Apparently they have part of the right of the 25 foot way? He thinks they should be added into the Findings.

Attorney Wall states yes, as abutters it is believed that they do own part of the way.

Art Traczyk states that the Goodings own part of the property and they should have been part of the application.

Matt Teague suggests that paragraph one be modified to add the Goodings and to re publicize.

Art Traczyk thinks that the letter from the Goodings may be sufficient for their representation before the board.

Attorney Wall replies that the Goodings have been on board with this modification from the beginning. The former ANR application they were in favor of and had wrote a letter for as well.

Art Traczyk reads the letter from the Goodings into record "Dear Mr. Traczyk, this confirms that we agree to the subdivision modification proposed by Francis Lahey and Sheila R. Lahey. In addition, we agree to the discontinuance of the unnamed 25 foot wide way shown on the plan and the reconfiguration of Circuit Avenue. Signed by Peter J. and Myra E. Gooding, dated June 20, 2012".

Attorney Wall states that they have agreed to each component of what the application is and they are the only other interested parties.

Matt Teague agrees. This letter is very clear and could be referenced in the decision.

Ray Lang asks about the plans submitted and questions the total/true owners of 151 and 153 Ocean Ave. He asks if there are any other owners?

Attorney Wall answers that his clients, the Laheys are the only owners of 151 and 153 Ocean St. He does not know if the town has determined the addresses any differently, because their house is not on all of their property and this is what they are trying to correct.

Felicia Penn recommends that Draft Finding No.1 be amended to read as follows: The Application was submitted by Francis & Sheila R. Lahey as owners of 151 & 153 Ocean Avenue. A May 25, 2012, letter signed by James A. Lane, President of the Christian Camp Meeting Association, owner of the Ways within the subdivision and 10 Laurel Avenue, was submitted with the Application stating that the Association assents to the discontinuation of the unnamed Way and to the reconfiguration of Circuit



Avenue as per the plan submitted. A letter dated June 20, 2012, from abutting property owners to the unnamed Way, Peter J. Gooding and Myra E. Gooding was submitted confirming that they are in agreement with proposed modification submitted by the Laheys.

Motion moved by Paul Curley to accept the Subdivision No. 821 Decision as modified, seconded, so voted unanimously.

Felicia Penn makes a recommendation to incorporate the findings as amended and listed in August 28, 2012, memo from Art Traczyk and in addition she makes a motion to approve the application and endorse the subdivision plan, seconded by Paul Curley, so voted unanimously.

#### **Discussions:**

##### **▪ Annual Nomination and Election of Board Officers**

Ray Lang states that the nominating committee met and they have renominated Matt Teague for Chair and Paul Curley for Vice Chair and Patrick Princi for Clerk. There were no objections.

Ray Lang moved that the Clerk record the election of Matt Teague as Chair, Paul Curley as Vice Chair and Patrick Princi as Clerk, moved by Patrick Princi, seconded by Felicia Penn, so voted unanimously.

**Correspondence:** The following correspondence and items were received at the Planning Board's Office

- Cape Cod Commission notice dated August 10, 2012, for Minor Modification to the Development of Regional Impact Decision for the Cotuit Landing Redevelopment and Expansion project.

**Approval of Minutes:** Approval of August 13, 2012, Board Meeting Minutes.


Felicia Penn found a few minor spelling errors that she pointed out to the author, she moved that they be accepted as distributed, seconded, so voted unanimously to approve the Board Meeting Minutes of August 13, 2012.

**Future Meetings:** Regularly Scheduled Board Meetings: September 24 and October 22, 2012 @ 7:00 p.m.

Ray Lang moved to adjourn, so voted unanimously.

**The meeting adjourned at 7:57 p.m.**

Respectfully Submitted

  
by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

October 22, 2012

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