



BARNSTABLE
TOWN CLERK

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**Town of Barnstable
Planning Board
Minutes
January 14, 2013**

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 in attendance were Art Traczyk, Regulatory Review Planner, JoAnne Buntich, Director Growth Management, and Steve Seymour, Senior Engineer, Growth Management.

Subdivisions:

Whistleberry Subdivision No. 454

Update on status of subdivision and potential transfer of development agreement and release of lots from covenant.

Matt Teague suggests we get an update from the Town Attorney, then review of Steve Seymour's report, and the applicants.

Barnstable Town Attorney Charles McLaughlin in attendance. He gives a history of the subdivision. Dan Hostetter Senior was the original owner/developer of the property. Craig Larson is now interested in pursuing and completing the project. Some corrections are needed, physical items that need to be done to correct the problems. The buyer is prepared to enter into an endorsement of the existing Development Agreement and move forward. This is a very difficult and longstanding issue. The Town Attorney's office suggests considering endorsing releases for the 3 lots that are under covenant. The developer would like them resolved before the purchase/validity of the project. Should it be decided to endorse the releases, the town has reached an agreement with Attorney Jeff Johnson that he will hold them in escrow until the express written approval from Growth Management and the Legal Dept.

Matt Teague asks for input from Steve Seymour regarding the status of completion of the project.

Steve Seymour, Senior Engineer, Growth Management in attendance. The Whistleberry subdivision has two sections, that aren't interconnected, one has 76 lots, Whistleberry and Waters Edge. The other section is Berry Hollow Drive, 4 lots on the end of it. The road itself is unusual, it is no more than 20 ft. wide, the pavement was required to be 13 ft. wide in the Development Agreement. The Applicant would build the pavement, complete the drainage and do final engineering to complete work on this section in Berry Hollow. On the Waters Edge and Whistleberry section there are two main items, drainage at the Waters Edge cul de sac and where Waters Edge

intersects with Whistleberry. Some of the lots have easements on them. Drainage needs to be installed. Some of the Easements have been recorded.

Additional work proposed by the Developer is Whistleberry Rd.; the outlet from the Bog is in bad shape, which would effect the access to homes, the Applicant is proposing to repair that. The other is on Berry Hollow Dr. whereby paving needs to be done along the section which wasn't required previously. He is satisfied that the proposed work would meet the requirements.

Matt Teague asks for comment from the Applicant.

Craig Larson in attendance. Attorney Jeff Johnson in attendance. They are prepared to finish the roads and get the lots released from covenant. They agree with Steve's report and the Town Attorney's comments.

Matt Teague asks if there is any public comment?

Tom McKeown, President of Whistleberry Residents Association in attendance. He states that there are parts that are not included in the report. There are road issues not addressed. There is a drainage issue on Whistleberry Drive not on the list. They have not seen any plans. He refers to item 3 of the Development Agreement "all work shall be completed in conformance with the current Planning Board Subdivision regulations". He says there are no specifics regarding this. Lot 47, had been released and shouldn't have been released. There were many transactions, trading of lots in the past. There were 9 lots under covenant, now down to 4. Lot 47 has been released. He thinks that they have been cut out of this project. There are bad sections of the road that are not mentioned in the report. He makes reference and hands copy of the approved definitive plan to the board's chairman to view (document not kept at this meeting). He makes reference to the regulations of the Planning Board. He would like the Planning Board to take action to make sure the items listed on Steve Seymour's report are completed.

John Slavinsky in attendance, he has lived in Whistleberry since 1986. He directs to the chairman, and asks if the applicant Craig Larson is also a board member for the Zoning Board of Appeals?

Matt Teague replies yes.

John Slavinsky gives a history of the development since he has lived there. He makes reference to easement modifications that have not been applied for and states that he paid for and filed a notice to prevent acquisition of easements. He makes reference to the Planning Board's 1973 rules and regulations. He makes reference to Steve Seymour's report of 2012, regarding the quantities required. He states that they have everything needed to do the work. The problem is marginal equality of the lots, it is a situation of economics. Lots get released as the work gets done, progressively.

Attorney Brian Wall in attendance, in representation of the Whistleberry Association. He refers to the proposal to release the lots/escrow. He states that in delegating a public process to a private process, it would cut his clients out of the process. His clients object to the process that cuts them out of this and allow someone else to take up the proposal.

Jacques Morin in attendance. He would like to see this project done and he is happy if they get a road that is workable and able to be maintained and used by all. The lower section is not in the layout. He asks what would occur to make sure the vehicles could go around the cul de sac at the top? How would they be sure about getting pavement there?

Steve Seymour answers that this is a step in the process, the stage now would be removal of impervious material and to build a 13 ft wide road, with at least 1 area to be wider, 20 ft. This has to be done as to make sure that it does not interfere with the water line or utility poles.

Jacques Morin replies his concern is that if the lots are released and no specifications, the town could lose some leverage. Could the parties come together before the sign off to make sure it works out for all?

Russell Price of 171 Whistleberry Road in attendance. He refers to the cranberry bogs and the natural beauty of the area. He doesn't think some of the construction should happen. There is a proposal to move a road that would cut into his property.

Nancy Mumford of 422 Whistleberry Road in attendance. She explains drainage issues on her lot. Blown out drain on Waters Edge. She would like to see a concrete plan as to how to correct this issue.

Ray Lang states that he has visited the area. He would like to look at a revised plan as to what is there now and what needs to be fixed. Cost analysis should be done.

David Munsell has been out to this location with Ray Lang a little more than a year ago. The lots are tied up and they couldn't be sold, but if nothing is done soon maybe the town should sell the lots and fix the area properly. He would like to see a plan. The Planning Board reviews the plans, but we have not received a plan. He suggests modifying the subdivision. The Planning Board is responsible for reviewing and approving plans.

Felicia Penn states that she assumed things were in process, in regards to Steve Seymour's report. No Information about transfer of the Development Agreement. Did not realize that communication was limited or non-existing. She apologizes for that. She's generally opposed to releasing lots in advance of any work or resolution being done. She would like to get all the information that they can from the responsible parties in order to proceed with any kind of covenant release.

Matt Teague states if this was to go forward, and covenant to be released they would need very clear modification of the Development Agreement, a corresponding set of plans matching the requirements, an as built survey clearly delineating the exact condition of the ground today and the security. Documentation is needed. He is disinclined to vote on any release of covenant at this time. Procedurally this cannot happen the way it stands.

Ray Lang states that the roads are degenerating. We cannot get a subdivision accepted if the roads are not up to standard.

JoAnne Buntich clarifies. This is not a public hearing, this is a lot release/public process. In reply to Mr. Price's comment about his front yard, the road was built outside of the approved layout in two locations, one is on Berry Hollow Road and the other was built on Mr. Slavinsky's property not in the layout where it belongs, so the proposal as discussed would be to move the road back into the layout, it may be that this was not known. Modifying the subdivision is quite difficult, when it is in this state, many parties have to be notified/included in the process. She refers to a meeting that she had with Mr. McKeown previously whereby she had told him that there doesn't look like there is anything for the Planning Board to do right now. So they engaged in a process trying to get the owner, Adam Hostetter, to participate in the process in order to have this problem addressed. The Planning Board has been trying to facilitate things to move forward. The Planning Board approved this Subdivision under the 1973 rules and regulations and pursuant to subsequent Development Agreements, so everything that is incorrect at present may not be covered under those two items. The Planning Board's purview is to get the subdivision up to the standards that

they originally approved and that the Development Agreement requires. The Development Agreement does not include any modifications it would just add a signature to it. There are two signatures on the existing Development Agreement, one is Priscilla Hostetter and Dan Hostetter, now deceased. The Planning Board has looked at the Town's options for taking the lots under covenant and recouping enough money to do what is required in this subdivision. The Town is not a good business entity to buy/sell properties. The Planning Board is frustrated and ready to have this move on as well.

Matt Teague asks Mr. McKeown, in reference to the homeowners association, what is the membership, number of households that are members and who owns maintenance and repair of the road?

Tom McKeown answers that the association dues are \$325.00 per year and they have some reserve funds. 74 members.

Matt Teague asks if the homeowners association has ever mentioned/discussed buying out the lots?

Tom McKeown responds they thought they were making progress with Adam Hostetter, but things did not progress. They have not gotten any specifics from Craig Larson.

Matt Teague explains that it is unfortunate that they are having these issues. This is not a Public Hearing tonight and the Board will not be voting on releasing the lots tonight. The critical areas of concern need appropriate documentation and money to make it happen.

Craig Larson responds that they are not proposing a new subdivision. We are here to sign onto a Development Agreement, providing they get the security back. There is an as built plan on file that has been accepted for the entire Whistleberry and Waters Edge roads. The only as built that wasn't done is on Berry Hollow Road., which he has provided. He is proposing to do the work on Berry Hollow Rd., which is where the majority of the work needs to be done.

Matt Teague states that the as built has a center line which does not meet where the center line of the road of where the subdivision was proposed. He would like a thorough description. He refers to Item 10 and 12 of Steve Seymour's Status Report, that refers to obtaining an easement. Who is that?

Craig Larson states Nancy Mumford.

Matt Teague addresses Nancy Mumford and asks if this is true?

Nancy Mumford states no.

Craig Larson states that he did speak with her and suggested/proposed to her in general that she would need a vegetative swale, which would solve her problem and the drainage issue.

Matt Teague confirms that one of the lots has no covenant on it.

Attorney Johnson states that the value of that specific lot would not be enough money to do this work.

Matt Teague thinks this is a great idea/creative, bold solution. He suggests/requests a detailed proposal regarding the structure of how this would work.

Craig Larson states that he proposes to do the specified list and if finished then they would get the lots. There are a lot of plans for this subdivision already.

Matt Teague would like to see this on the Agenda in February or March. He directs to Mr. McKeown commenting that he has the most vested interest and a creative solution should be looked into and could work.

JoAnne Buntich states that the as built plans are at the Planning Board Office and can be reviewed by anyone, just call before coming in. Some preparation/gathering of information will be needed in order to assist the board for continuation of the decision making process.

Matt Teague states that we are not far from a real solution, however commitment and control is needed to proceed with this issue, finalize, and release the lots.

Tom McKeown points out that there are ongoing issues with Lot 47.

Preliminary Subdivision No. 822

Plan Prepared for William Riley Property at 2519 Main Street (Route 6A), Barnstable

Review of Preliminary Plan for Subdivision No. 822 entitled; "Preliminary Subdivision Plan of Land in Barnstable, MA, 2519 Main Street (Route 6A), Prepared for William Riley". An Application for Tentative Approval of a Preliminary Plan to divide a 9.25 acres parcel into 6 lots has been submitted for consideration to the Planning Board. The subject property is located south of Route 6A just west of the railroad overpass in Barnstable Village. The property is shown on Assessors Map 257 as Parcel 010. The property is zoned Residential F-1 for the first 500 feet fronting Main Street (Route 6A) and the remainder of the lot is Zoned Residence G. (Precinct 1)

- *A Request to Further Extend the Preliminary Plan Decision period through February 4, 2013, was received from Dan Ojala on January 7, 2013. The Extension was necessary to allow sufficient time for Staff review. Staff recommends continuation to January 28, 2013.*

Matt Teague states that the board will accept the Applicant's request for extension to January 28, 2013.

Public Hearings:

7:15 pm Public Hearing

**Third Modification to Regulatory Agreement 2007-02,
89 Lewis Bay LLC - Property at 89 Lewis Bay Road and 42
South St., Hyannis**

89 Lewis Bay, LLC has filed an application to modify and amend the existing Regulatory Agreement No. 2007-02, as modified. The applicant seeks to modify and amend the existing Regulatory Agreement authorizing the rehabilitation and expansion of a structure at 89 Lewis Bay Road with related parking at 42 South Street, Hyannis. The existing Regulatory Agreement granted relief from density, parking, setbacks, building height and lot coverage requirements to allow 42 residential units in $\pm 60,000$ sq.ft and $\pm 20,000$ sq.ft of ground floor space for medical offices and all other uses permitted in the Medical Services District. A modification of the Regulatory Agreement was granted to allow educational uses, including culinary arts, in 8,000 sq.ft of ground floor space. The Applicant presently seeks to modify the Agreement to construct an accessory one-story 12-bay detached garage of $\pm 2,960$ sq.ft. The accessory garage is proposed to be located at the rear west end of the parking lot on 42 South Street. The subject properties are addressed 89 Lewis Bay Road and 42 South Street, Hyannis, MA as shown on Assessor's

Map 327 as Parcels 223 and 241. The property is zoned Hyannis Village Medical Services District and Harbor District. (Precinct 9)

- *At the request of the Applicants Attorney, David Lawler has requested this hearing be continued to January 28, 2013. Staff recommends the continuance.*

Matt Teague entertains a motion to accept the Applicant's extension to January 28, 2013, at 7:15 p.m., so moved by Paul Curley, seconded by Felicia Penn, so voted unanimously.

7:30 pm Public Hearing

**Zoning Amendment 2013-055
Medical Marijuana Treatment Centers**

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 to take comment upon the following proposed amendment to the Code of the Town of Barnstable, Chapter 240, the Zoning Ordinance.

Amendments to Chapter 240 include: Section 240-6 Zoning Map to include a Medical Marijuana Treatment Centers Overlay District; adding to reserved Section 240-30 Medical Marijuana Treatment Centers Overlay District Special Permit; and Section 240-128 Definitions to add definitions pursuant to the Medical Marijuana Treatment Center Overlay District.

- *In addition to this proposed Amendment, Town Council has transmitted a proposed Zoning Amendment Item No. 2013-065 that proposes to establish a temporary moratorium on establishing and permitting of medical marijuana treatment centers and associated activities. This amendment has been noticed for a Planning Board public hearing on January 28, 2013.*
- *Staff is recommending that the Planning Board open tonight's noticed public hearing and continue it to January 28th at 7:30 PM so that both proposals can be discussed at that time and public testimony taken with respect to both proposals.*

Matt Teague entertains a motion to open the public hearing and continue to January 28, 2013, at 7:30 p.m., moved by Ray Lang to open the public hearing, seconded by Paul Curley. Patrick Princi moved that the public hearing be continued to January 28, 2013, seconded by Paul Curley, so voted unanimously.

Discussions:

Amendment to cell tower ordinance to allow antenna co-location

JoAnne Buntich gives an explanation/history of the cell phone ordinance. Elizabeth Jenkins of the Zoning Board of Appeals has presented this proposal.

Ray Lang asks what is the process now?

JoAnne Buntich replies. The applicant puts in an application, which goes to the Zoning Board of Appeals to get a special permit. Because there are so many, these applications have become very routine. The proposal entails that the antenna itself would not increase the height of the tower, the antenna should not stick out any more than necessary in order for it to work, and the applicant must submit a structural analysis prepared and stamped by a structural engineer demonstrating that the panel will not overwhelm

the structure of the tower and that any additional ground mounted equipment be located within an existing shelter or area fully screened.

Matt Teague agrees. He suggests moving this to Town Council.

Correspondence: Correspondence received from Hans Keijser dated December 11, 2012, in response to the Planning Board's questions raised at the Sept. 14, 2012, meeting re the GPOD, Storage of Commercial Fertilizers, Town Council Item No. 2013-001

Matt Teague appreciates the response from Mr. Keiser.

JoAnne Buntich updates that the Planning Board's request/recommendation will be addressed by Town Council.

Cape Cod Commission notice for Minor Modification (Type 1) to Cotuit Landing Redevelopment and Expansion Development of Regional Impact Decision that was approved on January 3, 2013.

Approval of Minutes: Approval of November 26, 2012 and December 10, 2012, Board Meeting Minutes.

Felicia Penn moves to approve the minutes of December 10, 2012, with a minor change, to amend the words "pass of" to "passive" at the bottom of pg. 4.

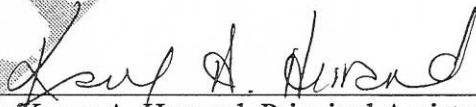
Matt Teague entertains a motion to accept/approve the Minutes of November 26, 2012, and December 10, 2012, as modified, seconded by Ray Lang, so voted unanimously. David Munsell abstains because he was not in attendance for the December 10, 2012, meeting.

Future Meetings: Regularly Scheduled Board Meetings: January 28th, 2013, and February 11, 2013, @ 7:00 p.m.

Matt Teague makes a motion to adjourn, seconded by Ray Lang, so voted unanimously.

The meeting adjourned at 8:33 p.m.

Respectfully Submitted


by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

March 11, 2013

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