

Town of Barnstable

Planning Board

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Board Members

Matthew Teague – Chair Paul Curley – Vice Chair Stephen Helman – Clerk Patrick Princi Felicia Penn Raymond Lang David Munsell
John Norman – Town Council Liaison

Staff Support

Art Traczyk – Design/Regulatory Review Planner – art.traczyk@town.barnstable.ma.us
Karen Herrand – Principal Assistant – karen.herrand@town.barnstable.ma.us

Town of Barnstable Planning Board Minutes June 23, 2014

Matthew Teague – Chairman	Present
Paul Curley – Vice Chairman	Present
Stephen Helman - Clerk	Present
Felicia Penn	Present
Raymond Lang	Present
David Munsell	Not Present
Patrick Princi	Present

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

Call to Order: Introduction of Board Members – All members present introduce themselves

Notice of Recording: This meeting is being recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. The Chair must inquire whether anyone else is taping this meeting and to please make their presence known.

Subdivision:

7:00 PM Public Hearing

Subdivision No. 823 – Discontinuance part of Holmes Lane/Modification Hyannis Imported Cars Limited Partnership

An application by Hyannis Imported Cars Limited Partnership has been submitted to modify and discontinue a part of Holmes Lane in Hyannis, MA. The part of the Way to be discontinued is a 20-foot wide tee that extends to the east at the end of Holmes Lane. The land area of the tee is to be combined with abutting properties into one single lot.

Holmes Lane is a private road accessed from Mitchell's Way. Holmes Lane was originally created and defined by a 1961 plan entitled; "Subdivision Plan of Land in Hyannis Barnstable Mass. for New England District Church of the Nazarene" recorded at the Barnstable County Registry of Deeds in Plan Book 166 Page 95.

The proposed readjustment for Holmes Lane and reconfiguration of the lots is shown on a plan submitted and entitled "Plan of Land #268 Stevens Street and Modification of Holmes Lane Hyannis (Barnstable), MA prepared for Hyannis Imported Cars LP", dated May 20, 2014. The parcels involved in this reconfiguration are 24 Holmes Lane, 30 Mitchell's Way and 268 Stevens Street, Hyannis, MA. All are shown on Assessors Map 308 as parcels 014, 016 and 017.

Motion entertained by Chair Matt Teague to open the Public Hearing, moved and seconded by Ray Lang, so voted unanimously.

Dan Ojala, Down Cape Engineering, Inc., in attendance. He gives a brief explanation of the application. This is an older plan done by the Board of Surveyors. There is an odd tee that sticks out into the parking lot (Exhibit A, revised plan dated 6-23-2014). He makes reference to the Assessors map (Exhibit B), which shows that the tee doesn't extend past the 268 property. This is just to modify the end of the road.

Ray Lang makes reference/asks about "Barnstable New England District Church of the Nazarene plan (Exhibit C) and asks how this relates and who owns these lots now?

Dan Ojala answers that it now consists of Lot 4 and all other land to the east. He confirms that all these lots are now owned by Hyannis Imported Cars LP. Reference is made to Assessors map (Exhibit B) to show how properties are at present.

Ray Lang clarifies zoning as commercial and where the frontage will be.

Dan Ojala replies that there is frontage on Holmes Lane, and Mitchells. There is a curb cut on Mitchells, and two off of Stevens Street.

Paul Curley makes reference to the waivers being requested (Staff Report, Exhibit D).

Dan Ojala replies that the current rules and regulations for subdivision rules didn't clarify what would be needed for a subdivision modification so he submitted the Waiver Request Form (Exhibit D, part of Staff Report).

Art Traczyk interjects and makes reference (Exhibit D) to Staff Report's information to accept submission as is and to waive to that point as far as application. On older roads the Building Commissioner has the right to review for improvements, (see Staff Report, Exhibit D, pg. 5).

Chair Matt Teague asks for any public comment. None.

Ray Lang asks if this lot will still have access off Holmes Lane and Mitchells Way? Any utilities?

Dan Ojala answers yes, not giving up right. There are no utilities.

Stephen Helman reads the Draft Motion of Findings (Exhibit D, pg. 6, 1-8) into record as follows:

Draft Motion of Findings:

Regarding the application before the Board to discontinue a part of Holmes Lane shown as a 20-foot wide section and modify the 1961 subdivision plan of record the Board finds:

1. The Applicant requesting this discontinuance and modification is Hyannis Imported Cars Limited Partnership, Stuart A. Bornstein and Paul E. Bornstein, Trustees. The applicant seeks to discontinue that part of Holmes Lane that is shown as a 20 ft.-wide way created by a 1961 plan entitled "Subdivision Plan of Land in Hyannis, Barnstable Mass for New England District Church of the Nazarene" (the 1961 Nazarene Plan) signed by the Board of Surveys and recorded at the Barnstable Registry of Deeds in Plan Book 166, page 95.
2. The Applicants own all of the land surrounding the 20-foot wide section of Holmes Lane as evidenced by a 1995 Deed recorded in Book 9907 page 166 that transferred Lots No. 5 and 6 and Parcels "A" and that owned by "Edward C. Williams" as shown on the 1961 Nazarene plan from Stuart Bornstein and Paul Bornstein, Trustees of the Import Cars Real Estate Trust to Hyannis Imported Cars Limited Partnership and a 2000 Deed recorded in Book 13142 page 119 transferring Lot No. 4 of the 1961 Nazarene Plan from Samir Barber and Janie Barber to Hyannis Imported Cars Limited Partnership..
3. A plan for the discontinuance and modification submitted is entitled "Plan of Land #268 Stevens Street and Modification of Holmes Lane Hyannis (Barnstable), MA prepared for Hyannis Imported Cars LP", dated May 20, 2014. The plan purports to discontinue the 20-foot wide roadway section that extends to the east at the end of Holmes Lane and combines that area with five other lots to create a single lot of 65,032 sq.ft. (1.49-acres). The five

lots are shown today as three Assessor's lots addressed 24 Holmes Lane, 30 Mitchell's Way and 268 Stevens Street, Hyannis. All of which are owned by the applicant.

4. The plan as drawn does not comport with the land description on the 1995 and 2000 recorded property deeds. That plan does not show the entire 20-foot wide section of Holmes Lane as created by the 1961 Nazarene Plan, the subdivision plan of record. The applicant has offered to have that plan updated to reflect the 1961 Plan and assure the entire length of the 20-foot wide section is discontinued.
5. Holmes Lane is a private way accessed from Mitchell's Way, a public street. Releases of Easement Rights signed by Dolores Holden owner of Lots 1 & 2 on the Nazarene Plan and by Jose P. & Cacilda G. Santos owner of Lot 3 on the Nazarene Plan have been entered into the file. A consent document from Cape Cod Cooperative Bank (aka The Cooperative Bank of Cape Cod), the mortgage holder for Lot 3, also was submitted concurring with the release of easement rights by the Santos. These two owners along with the applicant represent all parties that own land with rights in Holmes Lane.
6. The 40-foot section of Holmes Lane is improved with a narrow graveled traveled-way that ranges from 16 to 10-feet wide. The traveled-way functions more as a driveway providing access to one house lot - 18 Holmes Lane - and as a back service-access for the applicants' former automobile dealership. The 20-foot section of Holmes Lane is unimproved, void of any utilities and serves no useful purposes.
7. On June 3, 2014, public officials and agencies were notified of the proposed discontinuance of the 20-foot way and transmitted copies of the application and plan for review as required under Section 801-24.E of the Subdivision Regulations. None of the officials or agencies responded with any concerns for discontinuance of the way.
8. A duly noticed public hearing on this discontinuation and modification was held on June 23, 2014. Notice of that hearing sent to all abutters as required under subdivision control. Public testimony was taken and no one spoke in opposition to discontinuing the 20-foot wide section of Holmes Lane.

Amendment to Draft Motion of Findings, No. 4 as follows (Exhibit D):

4. The plan submitted with the application ~~as drawn~~ does not comport with the land description on the 1995 and 2000 recorded property deeds. That plan does not show the entire 20-foot wide section of Holmes Lane as created by the 1961 Nazarene Plan, the subdivision plan of record. The applicant has offered to have that plan updated to reflect the 1961 Plan and assure the entire length of the 20-foot wide section is discontinued. This revised plan dated June 23, 2014, was submitted at the meeting and made part of the record.

Motion entertained by Chair Matt Teague to adopt the Findings as modified, moved by Stephen Helman, seconded by Ray Lang, so voted unanimously.

Paul Curley reads into record the Draft Motion to Grant (Exhibit D, pg. 7), Conditions 1 through 3 as follows:

Draft Motion to Grant:

Based upon the Finding I make a motion to grant the requested discontinuance of the 20-foot wide section of Holmes Lane in Hyannis and to grant the modification to combine that discontinued way with abutting lots owned by the applicant, Hyannis Imported Cars Limited Partnership into a single lot of 1.49-acres subject to all of the following conditions:

1. The plan submitted with the application for the discontinuance of the 20-foot wide section of Holmes Lane entitled "Plan of Land #268 Stevens Street and Modification of Holmes Lane Hyannis (Barnstable), MA prepared for Hyannis Imported Cars LP", dated May 20, 2014, shall be revised to comport and reflect the last recorded deeds for the abutting property. The revised plan for discontinuation shall show the entire length of the 20-foot wide section of Holmes Lane as it was created by the 1961 Nazarene Plan. Thereafter and upon certification of this decision by the Town Clerk the Board will endorse the revised plan to be recorded.
2. Regarding the May 23, 2014, request for waivers from the Subdivision Regulations, Chapter 801 of the Code of the Town of Barnstable the Board grants waivers only to Chapter 801 Article III – Requirements for Submission and Approval of Plans only to the degree it has already been so waived for this hearing & decision. Specifically there is

no waiver granted to Article VI – Design Standards. Any improvements to the 40-foot wide section of Holmes Lane shall be as determined by the Building Commissioner based upon adequacy of access to the 1.49-acre lot created by this plan at the time any permit or licensing to re-use the property is requested or upon an application to site plan review for redevelopment of the 1.49-acre lot created by this plan. The standards for adequacy of access shall be based upon the intended use of Holmes Lane to serve the 1.49-acre lot and all expense for those improvements born by the owner of the lot created by this plan.

3. This Decision Notice as certified by the Town Clerk and the endorsed Subdivision Plan for discontinuance and modification shall be recorded at the Barnstable Registry of Deeds and proof of that recording shall be submitted to the Planning Board's file within 30 days of the endorsement of the Plan.

Amendment to Draft Motion to Grant (Exhibit D, pg. 7 Staff Report) as follows:

1. The plan submitted with the application for the discontinuance of the 20-foot wide section of Holmes Lane entitled "Plan of Land #268 Stevens Street and Modification of Holmes Lane Hyannis (Barnstable), MA prepared for Hyannis Imported Cars LP", dated May 20, 2014, ~~shall~~ has been revised to comport and reflect the last recorded deeds for the abutting property. The revised plan dated June 23, 2014 and submitted tonight for discontinuation ~~shall~~ shows the entire length of the 20-foot wide section of Holmes Lane as it was created by the 1961 Nazarene Plan. ~~Thereafter and~~ Upon certification of this decision by the Town Clerk the Board will endorse the revised plan dated June 23, 2014, to be recorded.

Chair Matt Teague recommends an amendment to paragraph 1 to state that the modified plan requested was submitted and is dated June 23, 2014, moved and seconded by Ray Lang.

Chair Matt Teague entertains a vote on the motion as modified, so voted unanimously.

Discussions: **Whistleberry Subdivision No. 454** – This discussion and potential vote concerning work necessary to comply with the current development agreement is scheduled at the request of Attorney Brian J. Wall representing Whistleberry Residents Association, Inc. and Town Attorney, Charles McLaughlin

Town Attorney Charles McLaughlin in attendance. He gives an explanation and update on the long history of this subdivision and the information needed to complete and finalize it.

Steve Seymour refers to a January 23, 2014, letter to the Homeowners Association, from the contractors hired, Cape & Islands Engineering (Exhibit E) and reviews his May 14, 2014, Memorandum to the Planning Board (Exhibit F). There are two items from the 2002 Development Agreement that are 100% complete (Exhibit G, 2002 Development Agreement), those are Item 1 and Item 8 (Exhibit F). Other items are incomplete. He refers to Attachment A (Exhibit F), which has a graph regarding wear of roads and drainage over time. He refers to pg. 2 (Exhibit F), DPW has done some emergency repairs to catch basin, near lot 2. Item 4 (Exhibit F) has the biggest issue and needs to be reconstructed. Item 9, catch basin in driveways, (3) there is a need for repair work after 33 years.

Attorney Brian Wall representing the Whistleberry Homeowners Association in attendance. The Association's goals regarding this matter are twofold; they would like to see the subdivision finished as it was originally intended and permitted and to protect the remaining security. There are only 3 lots left, and he has just been informed that a lot has just been sold. He refers to the 2002 Development Agreement and the 12 items listed in order for completion (Exhibit G). He quotes from the 2002 Development Agreement, pg. 3 paragraph 4 (Exhibit G). "The Developers shall remain responsible for any other defects in the roads and utilities installed as part of the requirements of the subdivision plan approval that may become evident, until such time as the Planning Board finds that the subdivision is fully complete and has released all securities and the Retainage Funds. In the event of default by the developers, the Planning Board may apply the Retainage funds to the repair of any further defects construction of the roads and utilities that the Board finds have become evident."

They are only in disagreement on 4 items: Reference is made to Steve Seymour's report (Exhibit F), mainly catch basins and pavement in front of lot 17 (Exhibit F, pg. 2, item 3). He refers to his letter of June 20, 2014 (Exhibit H).

A - Catch Basin Near Lot #2. They contend that this is a defect and has been since first installed.

B - Items #2, 3 and 9 on January 23, 2014, Cape & Islands Engineering Report. Item 3 (see Exhibit H and attached photos of road/drainage). They contend that this is defective since the beginning and not do to wear and tear.

Catch basins; refers to Cape & Islands Engineering letter dated January 23, 2014, (Exhibit E), they are defective for various reasons, settling, puddling, defective asphalt, they are not at the low point in the road (see photos attached with Exhibit H).

He refers to correspondence of June 9, 2014 (Exhibit I) and inspection reports that they have not yet been provided with and the 72 hour notice that is suppose to be given to the town. They agree with Steve Seymour's information except for four items.

He refers to correspondence of June 20, 2014, (Exhibit H, pg. 3, The Security) and the discrepancy with lot 47. This lot has now been sold whereby reducing the amount of security.

He refers to correspondence of June 20, 2014, (Exhibit H, pg. 3, statute quoted). They are asking that the Planning Board issue a letter to the Building Dept. to this effect, for non issuance of permits.

Lastly he requests that when the scope of work is finally agreed upon, that the Planning Board set a schedule with certain dates so that the development can be completed.

Attorney McLaughlin refers to his electronic mail correspondence/legal opinion, dated January 29, 2014, handed out to Board tonight (Exhibit J) and states that the Statute referred to by Attorney Wall, in his correspondence of June 20, 2014, (Exhibit H, pg. 3), is strongly disagreed with. They cannot encumber this lot through unilateral action by the Building Dept. The original release issued as an unconditional release from the Registry thirty years ago. He advises the Board not to revisit it as a matter of law.

Felicia Penn clarifies how many lots are in covenant now? Clarifies that lot 47 was released from covenant and has been sitting for 30 years and has just recently been sold?

Attorney McLaughlin states 3 lots are in covenant now. Yes to all her questions regarding lot 47.

Chair Matt Teague confirms that the contractual/legal obligation is between the Town and the Developer?

Attorney McLaughlin replies that is correct.

Attorney Michael Schulz in attendance representing the Developer, the Hostetter family. He refers to his correspondence dated June 23, 2014 (Exhibit K), where they are in agreement with Items No. 1, 3-8, and conditionally to Item No's. 2, 10, 11 and 12. The would like to have an engineer review.

Paul Curley asks how much money the Homeowners Association has spent on maintaining Whistleberry Drive over the last thirty years?

Attorney Schulz responds that he has correspondence from the Homeowner's Association dated January 2013, with information that there is \$140,000 in reserve funds.

Felicia Penn asks if Steve Seymour's memorandum of May 14, 2014, (Exhibit F) should be used as a benchmark moving forward?

Attorney Brian Wall states the Homeowner's Association President, Tom McKeown reported they have spent between \$150 to \$200,000 on maintenance and upkeep. He disputes what they have in reserve. States that the Growth Management Dept. has a memorandum which puts the remaining infrastructure at \$350,000 (Development Agreement).

Attorney McLaughlin replies that the \$350,000 figure came in when a previous developer had looked at this job.

Chair Matt Teague states that we could revisit this on September 22, 2014, whereby we could finalize it.

Felicia Penn comments that we do have ability to hire an impartial third party to review the list and come up with a cost.

JoAnne Buntich comments that the cost is based on prevailing wage. We can work on this going forward.

Attorney Wall asks for a date for finalized information to be in.

Chair Matt Teague replies, he'd like to see it by August 1st, first week in August. This needs to be part of public record by September 1st.

JoAnne Buntich suggests that information be submitted in a timely manner. Staff needs adequate time for review of and distribution of information.

Yannough Road (Route 132) Rezoning – This discussion is scheduled at the request of JoAnne Miller Buntich, Director Growth Management Department

JoAnne Buntich hands out map and makes reference to (Exhibit L).

Felicia Penn would like to move this to the next meeting. Why rezone? What is in this area now?

JoAnne Buntich gives an explanation of the map. The area at present has the old Bank of Cape Cod, and furniture store, to the east is the use from Attucks Lane, hotel, some state property, a lot of the HB zoning here is the road layout.

Chair Matt Teague states that he would like to see something less restrictive. He would like some public comment/view for this.

Nomination and Election of Officers

In accordance with MGL Chapter 41 Section 81A, Municipal Planning and Subdivision Legislation, Planning Board and MGL 40A Section 9, The Zoning Act, Special Permits, Special Permit Granting Authority, notice is hereby given that the Planning Board will consider nominations and election of officers for Chairman, Vice-Chairman and Clerk from its membership

Ray Lang/nominating committee proposes to the Planning Board the following candidates: Paul Curley as Chair, Stephen Helman as Vice Chair, and Felicia Penn as Clerk. The Nominees have all accepted, and he recommends that the Planning Board approve the nominations as requested

Moved by Patrick Princi, seconded by Felicia Penn to approve the nominations, so voted unanimously.

Felicia Penn would like the record to reflect and acknowledge that Matthew Teague did an outstanding job for the several terms that he served as Planning Board Chair. We would like to thank him.

Approval of Minutes: Approval of June 9, 2014, Board Meeting Minutes

Motion made by Ray Lang to approve the June 9, 2014, minutes as submitted, seconded by Paul Curley, so voted unanimously.

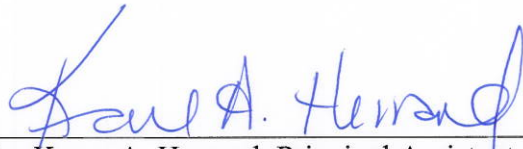
Future Meetings: Regularly Scheduled Meetings: July 14, 2014 and July 28, 2014 @ 7:00 PM.

Distribution of Parking Review Binders – A binder, containing recent parking studies and assessments, was distributed to the Board Member for review in preparation for a discussion on Downtown Parking Solutions scheduled for the July 14, 2014 meeting.

Motion entertained by Chair Matt Teague to adjourn, moved by Ray Lang, seconded by Paul Curley, so voted unanimously.

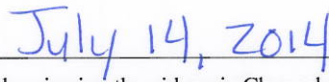
The meeting adjourned at 8:26 p.m.

Respectfully Submitted



by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on



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

List of Exhibit Documents

- Exhibit A** – Plan of Land dated June 23, 2014 (revised) of #268 Stevens Street and Modification – File Sub. No. 823 – Discontinuance part of Holmes Lane/Modification Hyannis Imported Cars Limited Partnership
- Exhibit B** – Copy of Assessors Map/Parcel 308-014, 24 Holmes Lane – File Sub. No. 823 – Discontinuance part of Holmes Lane/Modification Hyannis Imported Cars Limited Partnership
- Exhibit C** – Subdivision Plan of Land dated Dec. 26, 1961, New England District Church of the Nazarene, Plan/Book 166/95 – File Sub. No. 823 - Discontinuance part of Holmes Lane/Modification Hyannis Imported Cars Limited Partnership
- Exhibit D** – Staff Report dated June 16, 2014 – File Sub. No. 823 – Discontinuance part of Holmes Lane/Modification Hyannis Imported Cars Limited Partnership
- Exhibit E** – Cape & Islands Engineering Report, dated January 23, 2014 – File Sub. No. 454, Whistleberry
- Exhibit F** – Memorandum dated May 14, 2014, from Stephen Seymour, Growth Management Dept. – File Sub. No. 454, Whistleberry
- Exhibit G** – Development Agreement (2002) – File Sub. No. 454, Whistleberry
- Exhibit H** – Letter dated June 20, 2014, from Attorney Brian Wall – File Sub. No. 454, Whistleberry
- Exhibit I** – Letter dated June 9, 2014, from Attorney Brian Wall – File Sub. No. 454, Whistleberry
- Exhibit J** – Electronic mail/opinion letter dated January 29, 2014, from Attorney Charles McLaughlin – File Sub. No. 454, Whistleberry
- Exhibit K** – Letter dated June 23, 2014, from Attorney Michael Schulz – File Sub. No. 454, Whistleberry
- Exhibit L** – Iyannough Road (Route 132) proposed HB rezoning map (zoning discussion item/no file number as of this date)