



Town of Barnstable Planning Board

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Board Members

Stephen Helman – Chair Raymond Lang – Vice Chair David Munsell – Clerk Paul R. Curley Mark R. Ferro Holly Brockman Johnson
John Norman – Town Council Liaison

Staff Support

Elizabeth Jenkins, Regulatory Review/Design Planner
Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

Town of Barnstable Planning Board Minutes October 26, 2015

Stephen Helman – Chairman	Present
Raymond Lang – Vice Chairman	Present
David Munsell – Clerk	Present
Paul R. Curley	Present
Mark Ferro	Present
Holly Brockman-Johnson	Present

Also in attendance were JoAnne Miller Buntich, Director, and Karen Herrand, Principal Assistant, Growth Management Dept.

Call to Order: Introduction of Board Members and Staff Members

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.

Approval Not Required Plans: A Plan entitled “Plan of Land in Barnstable Massachusetts as Surveyed and Prepared for the Wingaway Trust and The Windsong Trust I”, last dated October 8, 2015, has been submitted for endorsement as an Approval Not Required Plan. 305 & 315 Baxters Neck Road, Marstons Mills, MA, Map/Parcel 075/009 & 008-001 submitted by Wingaway Trust & Windsong Trust I. The plan is intended to adjust the lot line between two developed lots.

Matt Farrell from JM O'Reilly and Associates in attendance. Brief explanation of what the Approval Not Required (ANR) proposes to do, land swap. There is a lot shape factor for 315 Baxters Neck Rd., it will exceed shape factor of 22. They applied for and got approval for variance from ZBA for this.

Ray Lang asks about the zoning requirement, makes reference to the plan and the notation regarding Zoning Requirements, Exhibit A.

JoAnne Buntich has a question regarding the note on the plan, Exhibit A. The ZBA relief has been granted but the resulting lot does not meet lot shape factor, but this is misleading to state that it does not meet minimum shape factor. Suggests crossing out last sentence of this notation.

Ray Lang asks about Lot A being buildable.

JoAnne Buntich confirms they are both buildable lots.

Motion made by Paul Curley to approve/endorse this ANR, seconded by Mark Ferro, so voted unanimously.

Subdivisions:

Subdivision No. 802 Hamstead Lane – Samantha Drive, Barnstable MA Request for Release of Covenant (Lots 1-6)

Chris Carvill in attendance. He explains that there were two items that needed to be completed.

JoAnne Buntich gives a brief explanation of the Engineers Report, Exhibit B, Roger Parsons report and covenant. There is about \$826 worth of work to be done. Once the Town Engineer has confirmed the work is done and it is completed the Board will sign the Form G/Release of Covenant.

Roger Parsons, Town Engineer in attendance. He states that in light of the small amount of work to be done, The DPW is ready to inspect when work done, particularly the sign, 911 indicator. We are in agreement to facilitate this we could notify when done and then it can be signed off as completed.

Motion made by Paul Curley to authorize the request of release of covenant for lots 1-6 (Form G), subject to certification from the Town Engineer that the final two items of work have been completed , seconded by Mark Ferro, so voted unanimously.

**Discussion Items: Completion for Subdivision No. 454 Whistleberry
Review of Developer progress to date; update for peer review of technical submissions from the Developer's engineer; other correspondence, and possible vote.**

JoAnne Buntich explains/updates the Board. Some last minute items were dropped off at her office, reference to Exhibit C (large scale plans) and Exhibit D, Public Records Request and response.

Reference to Exhibit E, "With Board Votes for Each Item from October 27, 2014 Meeting".

JoAnne Buntich reads this memo into record:

The status of the work items contained in the Development Agreement executed in January 2002 between the Planning Board and the Developer is as follows

Item 1 is COMPLETE – (Water main on Berry Hollow Drive.)

Item 1 is complete and all are in agreement. Attorney Charles McLaughlin interjects that an email came in from the Developer and they are in agreement with Item 1

Item 2 is incomplete – (Pavement not located in Whistleberry Road ROW)

Item 2 – this is incomplete (pavement not located in Whistleberry Rd.). All are in agreement that this is incomplete. Attorney Schulz comments that Item 2 needs some discussion/instruction. Pavement to be relocated, or be moved? It will impact the front yard of an individual's property. Needs clarification. Steve Seymour replies that it is his observation that one or the other would work. Doesn't necessarily need to be relocated. Attorney Schulz asks if this could remain where it is?

Stephen Helman makes a motion to recommend Item 2 per Steve Seymour's memorandum, (Exhibit C, memorandum dated May 14, 2014), seconded by Patrick Princi, so voted unanimously.

Item 3 is incomplete – (Pavement repair on Berry Hollow Drive)

Item 3- this is incomplete. (pavement repair on Berry Hollow Drive). All are in agreement that this is incomplete.

Motion made by Stephen Helman to recommend Item 3 per Steve Seymour's memorandum, (Exhibit C, dated May 14, 2014), seconded by Matt Teague, so voted unanimously.

Item 4 is incomplete - (Improve swale on Berry Hollow Drive)

Item 4 – this is incomplete (improve swale on Berry Hollow Drive). All are in agreement that this is incomplete.

Motion made by Stephen Helman, Item 4, that the Planning Board move to adopt Steve Seymour's recommendation, seconded by Matt Teague, so voted unanimously.

Item 5 is incomplete – (Road bounds on Berry Hollow Drive)

Item 5 - this is incomplete (road bounds on Berry Hollow Drive). All are in agreement that this is incomplete.

Motion made by Stephen Helman, Item 5, moves to adopt Steve Seymour's recommendation, seconded by Matt Teague, so voted unanimously.

Item 6 is incomplete – (As built plans for Berry Hollow Drive)

Motion made by Stephen Helman, Item 6, moves to adopt Steve Seymour's recommendation, seconded by Matt Teague, so voted unanimously.

Item 7 is incomplete – (Legal access to the lots on Berry Hollow Drive)

Item 7, remains incomplete. (legal access to the lots on Berry Hollow Drive). All parties agree. Attorney Charles McLaughlin states that this is not the Town's Legal Dept's responsibility to weigh in on a private property owner's issue. This is between the developer and the homeowner. Jacques Morin makes comment that it is the Town's responsibility to see that the road is put in the proper place. Paul Curley explains once again that the Planning Board is only making record to clarify what Items are complete and incomplete and the agreement of such.

Motion made by Stephen Helman to adopt Steve Seymour's recommendation for Item 7, seconded by Felicia Penn, so voted unanimously.

Item 8 is COMPLETE – (Utility line on Berry Hollow Drive)

Steve Seymour explains Item 8. NSTAR maintains the poles, but not the electrical lines, they may be private and not maintained by NSTAR. He doesn't know what the protocol would be for this as of yet. Charles McLaughlin states that NSTAR insists it needs an easement, which would be either property owner or Homeowner Association's responsibility. This needs to be clarified.

Motion made by Matt Teague that the Board not recommend Item 8 as it is NOT complete, seconded by Patrick Princi, so voted unanimously.

Item 9 is incomplete – (Alleviate puddles in cul-de-sac on Waters Edge)

Motion made by Stephen Helman to adopt Steve Seymour's recommendation for Items, 9, 10, 11, 12, seconded by Matt Teague, so voted unanimously.

Item 10 is incomplete – (Repair drainage on Waters Edge at lot 45)

Motion made by Stephen Helman to adopt Steve Seymour's recommendation for Items, 9, 10, 11, 12, seconded by Matt Teague, so voted unanimously.

Item 11 is incomplete – (Inspect/repair drainage on Waters Edge at lot 37)

Motion made by Stephen Helman to adopt Steve Seymour's recommendation for Items, 9, 10, 11, 12, seconded by Matt Teague, so voted unanimously.

Item 12 is incomplete – (Drainage easement/repair on lot 47)

Motion made by Stephen Helman to adopt Steve Seymour's recommendation for Items, 9, 10, 11, 12, seconded by Matt Teague, so voted unanimously.

Ray Lang confirms the visit was done on October 6, 2015.

JoAnne Buntich makes reference to associated material, Site Visit Minutes, Exhibit F.

Chair Stephen Helman asks about the approved width of Berry Hollow?

Attorney Michael Schulz in attendance: the width set forth in 1995 Development Agreement , Exhibit G.

JoAnne Buntich reads from this document: *The Town of Barnstable acting through the Planning Board as grantors, hereby grants waivers from the following sections of the Subdivision Rules and Regulations of the Town of Barnstable Planning Board for the above referenced subdivision:*

Section 4B.2 Width, Alignment and Grade of Streets to permit the paved way on Berry Hollow Drive to be 11 feet wide and waive the 22 foot width of pavement specified in the Design Standards; and
So it is 11 ft.

Ray Lang comments that he doesn't understand how that could happen.

Chair Stephen Helman asks about the swale, Item 4.

Attorney Michael Schulz states/suggests that this Item is complete. He can provide written information to confirm. There was an initial Development Agreement in 1992, that was never signed. Then a plan to be drawn up regarding what was to happen with that portion at the beginning of Berry Hollow Drive.

JoAnne Buntich interjects that in 1992 the Planning Board voted to modify the Subdivision, specific for Berry Hollow Drive issues. A draft 1992 Development Agreement was the basis for the 1995 Development Agreement. This is how they chose the width and the waivers to grant, sometime between the 1992 filing and the execution of the 1995 Development Agreement, there was some lag time.

Attorney Schulz states and makes reference to letter to Conservation Commission from Planning Board, see Exhibit G, *The Planning Board believes that reconstruction of the road to 11' wide on the hill and grading of the graveled portion next to the cranberry bog is environmentally preferable.* There was an appeal to DEP. Then an Agreement in 1994 (Settlement Agreement of December 1994) Conservation, Developer and DEP.

Ray Lang asks for clarification of what was completed per this agreement on Berry Hollow Drive?

Attorney Schulz states that the road was constructed in accordance with the plan, a certificate of compliance was issued and a site visit made whereby this discharged the obligations of the Developer with respect to this portion. In 2004 there has been some bit pavement on the roadway, he is not sure who has done this, maybe the Town? .

Paul Curley asks if they have to go over all the questions in the draft minutes of the site visit on October 6th? Exhibit F.

Attorney Brian Wall, representing the Whistleberry Residence Association in attendance. He asks if they can hear the counterpoints?

Dave Munsell asks/directs to JoAnne Buntich about when was the first Development Agreement and which Development Agreement is being worked on? Has any Development Agreement been recorded at Registry of Deeds? Suggests the Developer and the Homeowners work this out.

JoAnne Buntich replies January 1995. All have been recorded at Registry of Deeds. They have been working from the 2002 Development Agreement, together with Steve Seymour's memo.

JoAnne Buntich clarifies/confirmes/reiterates that that they are working with the Developer to identify the outstanding work that needs to be done per Steve's memorandum, three lots are under covenant. Once completed the Developer will then apply for a Form M, Form G and Form S.

Chair Stephen Helman acknowledges that a lot of this information was presented late in the week, Staff did not have it timely in order to distribute to members.

He directs to JoAnne Buntich asking if they can look forward to a Town report?

JoAnne Buntich clarifies that they would be looking for a report from the Town Engineer and that report will provide information that/what is done, and compare and then make a decision if this is eligible for completion.

Attorney Schulz refers to his spreadsheet, Exhibit I. This reflects progress currently. A year ago this was set up as the list to work with.

Chair Stephen Helman confirms and asks why so many pending items?

Attorney Schulz explains they have run into some issues, see item 2, Lots 2, 6, and 7, easement. They have obtained an easement to Lot 2 in 1991. Reached out to owners of Lot 6, they have reviewed and signed, obtained an easement from them in June 2015, however the owner of Lot 7 is demanding \$85,000 for an easement, this is unacceptable and why? Attorney Charles Sabbatt is representing this homeowner and we are waiting to clarify why. Areas are staked out and then the stakes are removed. We are being held up by this abutter. Also we are having conservation delays, full notice of intent etc.

Paul Curley states that there are obviously some issues but could we get an indication of what those are and the intentions of what is agreed on.

Attorney Schulz replies they are trying to do this.

Attorney McLaughlin in attendance. He clarifies that they have made good progress identifying the issues that need to be resolved. This is an opportunity to address issues /questions that were raised at the site visit. Confirms that it is important to keep discussions going, not the intention tonight to do any type of vote.

David Munsell asks if we have to revisit the subdivision? Any resolve regarding the poles/electric company? Bog easement?

JoAnne Buntich answers no that has been handled in the Development Agreement, this states the Developer and the Town agree that it will provide safe and vital access to the homes even though road not in the layout. They are trying to gain the easements.

Attorney McLaughlin answers that they have established with NSTAR/Eversource that the lines belong to Eversource, this has been resolved and is their responsibility.

Attorney Schulz replies that they did obtain the easement from the bog owner, Eric Hamblin in June. Also, discussed with Homeowner's Attorney Wall. He never heard back definitively, but this has been recorded.

Ray Lang asks when original plan approved, was there ever any easements along the bog on Berry Hollow Drive? It should have been on the initial plan, refers to Exhibit J, letter dated Sept. 14, 2015, from Brian Cuddy.

Attorney Schulz clarifies this letter and states that he believes there was much more than a nominal fee being requested.

JoAnne Buntich clarifies that the bogs were there before the subdivision. It appears that part of Berry Hollow was built within the layout/1993 letter to ConCom. The Developer is now working with the Conservation Commission to work out the details.

Ray Lang suggests asking the homeowners how the road bounds are working? If they are up?

Attorney Schulz suggests maybe we can use this meeting as a back and forth to the site visit information/minutes.

Paul Curley asks about the maintenance going on in the area, crack filling in the roads, whose been doing this?

Attorney Schulz replies possibly the residents over the years or the Developer.

Tom McKeown, President of Whistleberry Residents Association in attendance. He states that the Town was doing it for a number of years and now the Home Owners Association is doing and also cleaning the storm drains.

Attorney Brian Wall in attendance. He states he submitted a spreadsheet in association with Attorney Schulz's, see Exhibit K.

Chair Stephen Helman states that we have both lists/spreadsheets to review. He respects the two opinions and asks how are the Attorney's working together to get this resolved?

Attorney Schulz will furnish analysis when it is complete. He has been submitting things but he does not have all the documents as of yet. He sees this as being set up for litigation by Attorney Wall.

JoAnne Buntich hands out spreadsheet, Exhibit K (Attorney Brian Wall's spreadsheet) with his comments.

Attorney Wall states that he looked at 1995 agreement. He needs to review the package that he just received tonight. An easement would require a modification to the subdivision.

JoAnne Buntich interjects that she and the Town Attorney have not had any discussions to this effect.

Attorney Schulz comments that we are going backwards now to the 1995 Development Agreement. This is outside of the scope as to what we are here for.

Paul Curley clarifies that we have a Development Agreement and a list of things to be done. Planning Board should not be dealing with any legal issues, we should just proceed with completion of the items that need to be completed for this subdivision. What items can be done without the agreement of the Homeowners Association? We need a schedule of completion.

Attorney Schulz states he agrees. Listing: Item no. 4, the swale on Berry Hollow has been regarded. Item no. 5, they have installed round bounds on Berry Hollow Drive, done in July 2015. Item no. 7, they have obtained the easements and recorded them, complete. Item no. 8 utility lines to be the responsibility of Eversource and maintained by Eversource. Maybe Items 9, 10 and 11 can get done over the next couple of months. Hopes to have pavement complete soon. There is a lot of work here to do, sometimes dates/items are not agreed upon. This should be between the Developer and the Planning Board.

Paul Curley would like the Town to work with the Developer only to get the work done as per the Planning Board's authority.

Ray Lang is disappointed that we are still not done. He requests if two people that reside in this subdivision can be heard; Gary Blazis and Jacques Morin.

Chair Stephen Helman states that he is happy to listen to any comment, reiterates that we need to go by the list/report which clarifies what we need to complete. This cannot be an endless debate.

Gary Blazis, homeowner, 26 year resident of Berry Hollow Drive in attendance. He would like to thank Ray Lang and David Munsell for their many years of service. Refers to the Planning Board's site visit and that the homeowners could not attend. He is dismayed that the Planning Board would not want to hear from the homeowners in the area.

Chair Stephen Helman replies that the Homeowner's Association President was in attendance.

Paul Curley interjects that the Open Meeting Law (OML) does not allow us to do this/back and forth communication because the general public may have an interest and cannot be there. It was determined that Planning Board look at issues on site and then come back with their questions and allow for public comment at that time. The OML controlled this visit, but you do have the opportunity now.

Gary Blazis states the U.S. mail will not come up his street, no newspaper delivery, because the road is dangerous. There are only 4 families on Berry Hollow Drive. They want the road paved. They don't want the road moved, they want a legal road. Give us a legal road we can use. Had a conversation with Rob Gatewood who told him the best solution would be to have the road paved along the bog.

Jacques Morin, homeowner at 104 Berry Hollow Drive in attendance. He states that he has a copy of the 1995 Development Agreement, Exhibit L, reference to paragraph two, item no. 5 and paragraph three, "Section 5H to permit a gravel road surface for the 400 feet of road along the edge of the bog." Also copy of roped off area, picture handed out, Exhibit M.

The Order of Conditions from conservation was based on erroneous information and has long since expired. The work has not been done, there is a breach in this agreement.

Reference is made to January 24, 2002, Development Agreement, paragraph 7, "Establish access to the lots on Berry Hollow Drive for review of the Town Attorney", Exhibit N. This states ON Berry Hollow Drive, which has not happened. The current access is now adjacent to the bog, we won't accept this. We would like to see asphalt here. There has been enough time wasted on the Town's part and the Planning Board, the Developer needs to work with the Homeowners Association to get this done/completed. We have the right to have the access to the road.

Chair Stephen Helman asks Attorney Schulz when will we have a completion date?

Attorney Schulz replies that they are looking at the 2002 Development Agreement and the composite list from a year ago, Exhibit L and Exhibit E. He would need to speak to Town Engineer and his schedule. He really can't give a date certain.

Chair Stephen Helman would like any type of confirmed performance that this is getting done.

Attorney Schulz confirms that he could update the spreadsheet by the next Planning Board meeting.

Ray Lang asks for clarification of the process for the subdivision when all the work is done.

JoAnne Buntich answers that the ultimate result of the process is that the Applicant will apply for a Form M, completion certification which the Planning Board votes on, at the same time most likely apply for a Form G, covenant release for the remaining lots as guided by the Development Agreement. Town Engineer does an inspection report and confirms all. Town Attorney's office working to make sure all legal documents are in place. There will be a staff report and the perspective to state how the items have been satisfied.

David Munsell asks for clarification about the list vs. the Development Agreement and the items to be completed.

Attorney Schulz explains/clarifies that the spreadsheet incorporates/embodies all of the items that are on the check list that need to be completed, Exhibit I.

Attorney McLaughlin clarifies that the Open Meeting Law is not necessarily designed for site views/visits whereby more than 3 members would constitute a quorum, however this visit was advertised as a Public Meeting and we had to meet the requirements of such, no one was barred from this public hearing/site visit.

Several years ago a competent developer was willing to take over this project and bring the subdivision into completion, but after 18 months of trying to proceed and meeting with the Town, walked away and gave up because he was not willing to gamble several hundred thousand dollars of improvements only to end up immersed in litigation with the Homeowners Association. This will not get the project done, not without competent compliance. The only link is with the 2002 Development Agreement, everything else is history.

Chair Stephen Helman confirms that the Board will get an update at the November 9th 2015, meeting from the Developer's Attorney

Attorney Schulz confirms yes.

Correspondence:

(Any Member wishing a copy please contact the office)

Chapter 91 Application – 1001 West Main St., Centerville, Matthew and Sarah Fair – pier.

Chapter 91 Application – 300 Smoke Valley Rd., Marstons Mills, John and Ardell Callas – ramp.

Town Council correspondence from Ann Canedy dated October 5, 2015, regarding Water Resources Advisory (WRAC) Committee and appointment of a Planning Board liaison *(enclosed)*

Chair Stephen Helman clarifies that we are in receipt of correspondence from Ann Canedy regarding a representative from the Planning Board for the Water Advisory.

Motion made by Ray Lang to adjourn, seconded by Mark Ferro, so voted unanimously.

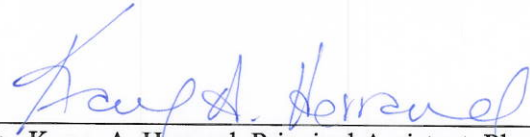
Meeting adjourned at 8:53 p.m.

Matters Not Reasonably Anticipated by the Chair:

Future Meetings:

Regularly Scheduled Meetings: November 9, 2015 and November 23, @ 7:00 PM.

Respectfully Submitted


by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

June 13, 2016

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** - ANR Plan of Land, The Wingaway Trust – 305 & 315 Baxters Neck Rd., Marstons Mills, MA
Map/Par 075/009 & 008-001
- Exhibit B** - Subdivision 802 Hamstead Lane – Request for Lot Releases – Samatha Drive, Barnstable MA
- Exhibit C** – Proposed Roadway Repair Plan for Berry Hollow Drive, dated October 5, 2015 – Whistleberry
Subdivision No. 454
- Exhibit D** – Memorandum re: Public Records Request dated October 26, 2015– Whistleberry Subdivision No. 454
- Exhibit E** – Status of work dated may 14, 2014 “With Board Votes for Each Item from October 27, 2014 Meeting”
Whistleberry Subdivision No. 454
- Exhibit F** – Draft Minutes dated October 6, 2015, Site Visit Whistleberry Subdivision No. 454
- Exhibit G** – Lt. to Conservation Commission from Planning Board dated May 11, 1993 – Whistleberry Subdivision
No. 454
- Exhibit H** – Development Agreement dated January 24, 2002 – Whistleberry Subdivision No. 454
- Exhibit I** – Spreadsheet (Attorney Schulz) – Whistleberry Subdivision No. 454
- Exhibit J** – Lt. from Brian C. Cuddy to Thomas McKeown, dated September 14, 2015 – Whistleberry Subdivision
No. 454
- Exhibit K** – Spreadsheet Response to Developer’s Report (Attorney B. Wall) – Whistleberry Subdivision No. 454
- Exhibit L** – Development Agreement dated January 23, 1995 – Whistleberry Subdivision No. 454
- Exhibit M** – Picture of roped of area on Berry Hollow Drive – Whistleberry Subdivision No. 454