

W. T. PLANNING BOARD MEETING, JUNE 22, 2009, 7:30 P.M.

PRESENT: David Douglas, Leah Smith, Ginny Jones, Susan Silva, Eileen Maley, Jim Powell

ALSO PRESENT FOR ALL OR PART OF THE MEETING: Bart Smith, Reid Silva, Kris Lukowitz, Clark Meyers, Bill Graham, Alice Graham, Sander Rikleen, Richard Gallogly, Simone DeSorcy

MINUTES

Minutes of the June 1, 2009 meeting were approved as written.

CORRESPONDENCE

In: Edwards Angell Palmer & Dodge re. Harrowby Property Co. (2 letters)
Rackemann Sawyer & Brewster re. Harrowby Property Co.
Caroline Delgado re. Harrowby Property Co.;
Building Inspector to Jarrells re. wind turbine;
RRK to Chilmark re. Telecommunications Act

Out: NSTAR re. address correction

OLD BUSINESS

Continued Public Hearing, Harrowby Property Co. Form C: David reopened the continued public hearing. Jim Powell recused himself as he is a direct abutter. Reid Silva read a letter requesting specific waivers from the Rules and Regulations, and recapped the proposed amendment to the subdivision plan. Leah asked what the distance was between the different houses owned by the Levey family. Reid said 200 to 300 feet. Leah said she was curious why the Leveys would need a new road since the houses are so close and they could have paths between them. Reid said the purpose of this proposal is to separate traffic going to the three Ziff properties from that going to the two Harrowby properties for safety, liability, and privacy. He said there are footpaths between houses but they go over wetlands. Leah questioned the need to drive, vs. walk, among the properties.

Ginny noted that three different Ziff families own properties. Reid Silva said that the lots could in the future sell to three separate people, but the intention now is to keep them all Ziff properties. Ginny said the Board had been told that a road association would be created. The conditions of approval for the original Irvine subdivision required a road association. Bart Smith said the association is in effect for just the Irvine properties.

Susan said the applicant had stated that Natural Heritage had approved the project. Richard Gallogly, attorney for Levey, produced the approval letter; Susan read it into the record. Susan asked whether Sheriffs Meadow Foundation, which owns the lot adjacent to the proposed new road, had been contacted. Leah said she had spoken with them; they have no problem as long as the construction doesn't encroach upon Sheriffs Meadow land. Bart Smith said that a silt fence, similar to those required by the Conservation Commission, would be placed to keep people and equipment off the abutting lot.

Susan said that in his letter, Mr. Levey talks about the near-accident between his golf cart and an on-coming dump truck. She said that due to the ongoing projects and maintenance on the Levey property, moving the road will not make his property any safer. She said the safety issue does not totally fly with her. She said it is unnecessary to move the road for the sole purpose of using golf carts. She said the road is very narrow and overburdened due to the continuous construction projects on the properties. She said she is not willing to vote to disturb more land for something non-essential. She said she was not pleased to be confronted by letters from opposing lawyers. She said the Board was likely to get sued whether they vote yeah or nay. She said she didn't appreciate this situation.

Leah said that all the Board members expressed concern over the lack of a road association and cooperation along the entire length of the road. It behooves all of us to be good neighbors.

Ginny read a prepared statement. She said that the Board has routinely required road associations in subdivisions for the past 23 years, including within the Irvine subdivision. Road associations can help solved issues arising from shared use. She said that Mr. Levey's letter referenced the need to create an association for the entire length of the road. She touched upon the extensive, continuing amount of new construction and renovations on the large properties which this road accesses. She said that Mr. Levey proposes to create a dual driveway for his own houses. She said that she has carefully read the letters from both Mr. Levey's and William Graham's attorneys, and that it appears that no matter the vote, the decision will be subject to litigation. She said she did not believe the proposal would improve safety, but would actually encourage drivers to be less careful because the moderating influence provided by a nearby and vigilant land owner would be removed. She said she strongly objects to moving the road and creating two roads simply for convenience, as the new road will destroy more habitat, impinge on the Sheriff's Meadow property (which was conserved to protect certain rare and endangered species).

Richard Gallogly, attorney for Mr. Levey, said that the Board's role is to make a decision under the Subdivision Control Law. David said he agreed. Richard Gallogly said that a road association is a good idea, but you can't control property that you don't own. Other concerns cited to not apply to the subdivision control law, including whether a proposal is just for convenience. David said he tended to believe the Subdivision Control Law is the most important guide; this is not an emotional issue.

Bill Graham presented a letter from neighbor Caroline Delgado in opposition to the project. Bill Graham said that this proposal is the straw that broke the camel's back. For the last 50 years the road has served 11 families, and it was a pleasant road to walk and bike on. Then the Roberts and Ziffs began to build, and the Leveys began to renovate, and the road became a construction access for those three families; hundreds of truck trips a day, giant equipment, full grown trees and boulders being brought in. The dust is

horrendous. There is no more walking or biking. The noise is inescapable. Mr. Levey now wants to bring in even more equipment to cut trees and build a new road for the Ziffs. Mr. Levey said the road is unsafe due to the Ziff construction traffic. Why not make Mr. Ziff's traffic safer and share the road? Do the rest of the residents on the road not count? What they're saying is that the Ziff traffic is so unsafe that he needs his own road. He urged the Board to deny the proposal. He said that 3 years ago he wrote to the Ziffs asking them to have the litter on the side of the road from the construction workers picked up; he never heard back.

Ginny asked whether other residents contribute to the expense of maintaining the road; Bill Graham said they did not. Ginny asked if any of the other residents had ever volunteered to assist with road expenses. Bill Graham said that they had not.

Sander Rikleen, attorney for Mr. Graham, said that the Board must decide whether the proposal meets the Subdivision Control Law and the Rules and Regulations Governing the Subdivision of Land. He said that Section 4.5-5 of the Rules and Regulations requires adequate protection to the health, safety, convenience and general welfare of the present and future inhabitants of the Town or of prospective purchasers of land within the subdivision. He argued that these protections are not met by the proposal. A decision should not be made based on whether it will be appealed. He urged the Board not to grant the proposed waivers and to turn down the project.

David said that the Board normally grants waivers to some sections of the Rules and Regulations when they don't have bearing on a particular proposal.

Ginny noted that an entomologist did a report on the project, but that the Sheriffs Meadow conservation restriction also accounts for plants and birds, not just bugs. Leah said she assumed due diligence was done if Natural Heritage approved the project. She said that the Board has a duty to the community as a whole, and that impacts to neighbors impacts a decision. Richard Gallogly said there is case law to the contrary.

Board members reviewed each waiver requested from the Rules and Regulations. Some of the materials existed as part of the original application; the Assessors office had supplied the abutters list; and other requirements, such as an environmental impact report, did not, in the opinion of Board members, apply. Susan made a motion to waive the requested sections. The motion passed unanimously. Ginny made a motion to deny the application per Section 4.5-5 of the Rules and Regulations, as in the judgment of the Planning Board, the subdivision amendment does not give adequate protection to the health, safety, convenience and general welfare of the present and future inhabitants of the Town or of prospective purchasers of land within the subdivision; Leah seconded the motion. Ginny, Susan and Leah voted in favor; David abstained.

Feinberg Residence, Site Plan Review: The Board unanimously approved the site plan.

Peter Williams, LI District: Jim reported that the MVC will soon hear the Williams proposal. Ginny said that many commissioners had asked why the original form A creating the lots had not been referred. Susan said it was a routine Form A, and the road was made adequate.

NEW BUSINESS

Micheels Form A, M14 L17: Reid Silva presented a plan to divide this 13.5-acre lot into two lots. The vacant lot has access off School House Lane. The second lot contains the existing structures. It was agreed that the roads are adequate. Susan made a motion to endorse and sign the plan, Leah seconded the motion. The motion passed unanimously.

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,
Simone DeSorcy, administrator