

W. T. PLANNING BOARD MEETING, FEBRUARY 22, 2011, 5:30 P.M.

PRESENT: Ginny Jones, Susan Silva, Leah Smith

ABSENT: Jim Powell, David Douglas, Bea Phear

ALSO PRESENT FOR ALL OR PART OF THE MEETING: Nina Meyer, Cynthia Aguilar, Ashley Hunter, Bill Venno, Ron Rappaport, Simone DeSorcy

OLD BUSINESS

Byways: The Planning Board attended the meeting of the Byways Committee to discuss several issues raised by the Committee in its letter to the Board dated January 2011. Town Counsel Ron Rappaport was in attendance to clarify legal issues prior to the Annual Town Meeting warrant item that would designate three new Special Ways.

Ancient Way: the Byways Committee asked if they could continue to use the term “ancient ways” to refer to old paths and roads in a generic way. Ron said that the term has no legal significance, it merely means “old road.” Many people, unfortunately, erroneously read more into it. The public doesn’t necessarily have rights to use these ways. He said using the term could be a trigger.

Special Ways: does designation of a road as a Special Way give the public the right to use it? No. Zoning cannot give the public rights to use private property - that is done via eminent domain. West Tisbury’s Special Ways Bylaw is geared toward the preservation of the way, guarding its physical attributes as a part of the Town’s character and culture. The Bylaw ensures that the Ways are not blocked, paved or widened, and that existing vegetation not be removed within the Special Way Zone. It regulates against development that would result in direct vehicle access to the Special Way. There is a safety valve to this, however. If a Special Way is the only access a property owner has, by Special Permit the development would be allowed; otherwise, the regulation would result in a taking.

Ron emphasized the difficulty in proving a way is public. Very specific criteria have to be proven. 1. A way is public if it has been laid out and dedicated. 2. A way is public if it was dedicated to the public before 1846 and shown on a map. 3. A way is public if it was used over 20 years through dominion and control of the Town for more than merely neighborhood use; this can vary from road to road, place to place. Dominion and control would include maintenance of the road (plowing, posting a sign, trimming), an Annual Town Meeting warrant appropriating funds for such, etc. There has to be some measure of corporate action by the Town. This is very hard to prove, and there is no sufficient test established by the courts in case law.

Ron outlined the history of the Rogers Path lawsuit. The Town proved to the court that it is a public way; this decision has been appealed. He discussed a similar current suit in Edgartown. He suggested that the Committee and Board not propose any new Special Ways at Town Meeting until these cases are decided.

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Ron cautioned the Committee and Board to be very careful using the term “public” in reference to ways unless the Selectmen have decided it is something the Town is prepared to litigate.

He offered to review the Committee’s pamphlet. He said it is okay to say that Special Ways are protected by regulation, but don’t invite the public on them. He said the Byways Committee is doing a great thing for the Town; the Board agreed.

The meeting was adjourned at 6:35 p.m.

Respectfully submitted,
Simone DeSorcy, administrator

Approved 2/28/11