

Minutes

Planning Board Meeting

July 10, 2012

Members of the Planning Board in attendance were Paul Eaton, Terry Hyland, Lynn Sweet, Mark Whitcher, and Donald Coker, Alternate member. Paul Eaton agreed to serve as Acting Chairman. The Acting Chairman called the public meeting to order at 7:45PM and announced the members present. The closing date for applications to appear on the agenda for the August 2012 regular meeting is 5 p.m., Tuesday, July 17, 2012. The Acting Chairman reminded the audience that the Board has a policy setting time limits for meetings and that the Board will not consider any new business after 10:30 PM. It was agreed to postpone consideration of the minutes until after the formal business. Paul Eaton then suggested that the Board address the June minutes. Board members briefly reviewed the minutes from last month. Donald Coker then made a motion, seconded by Lynn Sweet, to accept the minutes as presented. There was no further discussion and the minutes were accepted by unanimous vote of the members present.

The first item of continuing business was the application of JANET CHASSE PREVATT AND TERRY PREVATT for 3-lot, revised to 2-lot, subdivision of their property located at 79 Ridge Farm Road (Tax Map 15, Lot 22). Janet Prevatt was present. There were no abutters present. Chris Berry of Berry Surveying submitted deed information and an old plan of lots owned by Harold Preston in the Ridge Farm Road area. He said that the Board had wanted two things; the first being an ownership schedule for Ridge Farm Road. Over the past few months they have researched the deeds and found that the land under the ROW is owned in fee by different people and that rights to use the ROW are owned by different people. The question is who has the ability to upgrade and maintain the road. Chris Berry then explained the history in the deeds review and noted the familiar names in the chain of ownership. The lot now owned by the Tapleys is different because Harold Preston retained only a ROW over the lot when he sold this piece of land. Many of the other lots were deeded to the edge of the ROW. Each section is 50 feet wide, he noted, and they feel that rights can be transferred and the ROW upgraded, so Mrs. Prevatt would have the ability to upgrade as needed. Clearing title would be more complicated, since the Tapleys own their section of the road. Other sections could be cleared through the quiet title process, they believe.

Paul Eaton asked about their plans for clearing up the fee title. Mr. Berry said that they have no plan; they just wanted to prove that they have the right to pass and the right to upgrade the property. Donald Coker asked if it was normal for surveyors to be doing this work, rather than attorneys. Mr. Berry explained that title work is necessary for surveying, and said that he had told Mrs. Prevatt that a title examination would be required before a sale. Paul Eaton then asked if this was then a ROW, not a private road. Mr. Berry confirmed that this was the case. Atty. Shulte, present for the Whitcher discussion, noted that title insurance only requires a deeded ROW. Paul Eaton then turned to Lynn Sweet and asked for a review of the Selectmen's concerns. She said that these are new lots, and the road needs to be brought up to town road specifications if it is substandard, because you need a road that potentially could be taken over by the town. Paul Eaton noted other problem roads such as Webber Road and Ms. Sweet agreed that these were the reasons for the Selectmen's concern. Chris Berry said that the Board had seemed to indicate at the last meeting that they would work with the applicant. We know that we need to upgrade by the lots, he noted, and the Board was going to consider the safety value of entering and exiting the roadway, and he noted that there is one section that is steep and needs work that was indicated by Terry Hyland. Paul Eaton noted that straightening out the ownership was also part of the Board's request. Getting it together and making it happen would be to people's benefit, he noted. There was concern about setting the precedent of creating a lot off a ROW, and who could legally increase the use of that part of the ROW crossing the Tapley property. Mr. Berry noted that Harold Preston had done this. If not a private road, it was noted that RSA 674: 41 would apply, which restricts development of land lacking road frontage. The statute was briefly noted. Mr. Berry also noted that perhaps not all Ridge Farm Road residents would want to participate in a road association. Laying out a street plat was discussed. Board members agreed that the road situation needs to be organized and cleaner. Paul Eaton also suggested that there should be an earnest discussion of the cost of road upgrades with Mrs. Prevatt, noting concern for the point of diminishing returns. Chris Berry agreed that they had been talking about what would be feasible. Lynn Sweet suggested that the situation could be run by the Town's attorney, but it was noted that costs would need to be borne by the applicant. By verbal agreement with the applicant, further discussion was continued to the next regular meeting.

The next item of continuing business was the application of MARK and JUDITH WHITCHER for the 9-lot subdivision of their property located on Province Road and Wild Goose Pond Road (Tax Map 1, Lots 14 and 14A). Mark Whitcher recused himself from the Board as the owner of the property. Judith Whitcher was also present. Chris Berry of Berry Surveying and

Engineering presented the plans. Rick Ferreira, an abutter, was present. Atty. Shulte was present representing the applicant. Scott Whitehouse, Deputy Fire Chief, was also present at the request of the Selectmen. Mr. Ferreira asked to record the meeting. Mr. Whitcher asked if Mr. Ferreira had provided copies of the audio files, and asked if he could be provided with a copy. Mr. Ferreira indicated that he had submitted the audio recording from the first meeting and would need his USB drive returned in order to provide the next files, which proved to be too large to email. Donald Coker noted that there are only four members of the Board present this evening, and said that in his experience, in this situation, the applicant would be offered the opportunity to delay to next month to avoid a tie vote, since a tie vote would fail. Atty. Shulte said that in the case of a tie, they would have to return the next month. In any event, he said, they need to proceed with the discussion tonight. Paul Eaton then turned to Lynn Sweet and asked if she had given any thought to recusing herself, since she has listed for sale the Whitcher's home on Bow Lake. Ms. Sweet said that she feels that she can serve because she expects no financial gains from this project. She noted that in a small town people often have many ties. Mr. Eaton asked if it would be a conflict if Mrs. Sweet marketed any of these properties in the future. She replied that she has no plans to market these lots. She noted that she also has a professional relationship with Chris Berry, and asked if she should then recuse herself from all dealings with surveyors, noting that the overlapping ties are part of the local picture and professional responsibilities. But, she noted, she will not market these properties. Paul Eaton asked if any Board member wanted to make a non-binding advisory motion on the question. There was no interest. Rick Ferreira noted that he was unaware of the listing, and said that he heard Ms. Sweet's point, but that the connection still concerned him. Ms. Sweet noted that the listing was as recent as a week. She noted that she could step off, although does not feel it necessary, but that she would still speak on behalf of the Selectmen. After a brief discussion of the criteria for recusal, discussion moved forward on the project.

Atty. Shulte presented. At the last meeting there were three major concerns, he said; those are addressed in the materials provided. 1) drainage—the plans show two drainage easements and draft easement language. Initial construction would be done by the applicant and the Town would have the right to reconstruct and maintain. Easements would be recorded. 2) waivers—the Auger case was brought up, he said, and he is familiar with the requirements. They want two waivers—no turn-around and no pavement. He said that the current legal requirements after the Auger case say that waivers should, in his words, not undermine the general purpose of the ordinance. He said that you have a letter from the Fire Chief that says that you don't need a turn-around. The reason for a hammerhead is a turn-around for safety vehicles, he said. In this case the houses will be within 100 to 200 feet from the Province Road. It would be a hardship for the developer to build a turn-around—it would be unnecessary expense. He said he knows that the Selectmen want the roads paved, but given the rural character of the area and scenic values, they feel that adding impervious surface seems inappropriate.

Paul Eaton then gave Scott Whitehouse the floor. Mr. Whitehouse has submitted a letter regarding the access to the lots. Mr. Whitehouse said that from what he saw on the plans, a cul-de-sac was not required; the only requirement that he saw was to maintain the driveway width at 12 feet. The Fire Department requires a driveway width of 12 feet, he noted. The Fire Department is not requiring a turn-around. Donald Coker asked if, from the perspective of public safety, it mattered if the access was a private road or a driveway. Mr. Whitehouse said that it did not. Paul Eaton then read into the record a letter dated today and submitted this evening from Greg Messenger. The letter stated that Mr. Messenger was approving the Province Road drainage design. Atty. Shulte noted that the drainage plan would not work with a hammerhead turnaround. Donald Coker noted that the proposed private road does not exist at this moment, and is not to town standards. After some discussion of wording, it was agreed to add the word "proposed" before "private road design". Lynn Sweet noted that she had had Scott Whitehouse attend in order to address the issues raised by his letter, which uses the word *driveway* rather than addressing private roads. Paul Eaton then addressed Chris Berry, and advised that the Board had requested last month to see plans that included a turn-around so that they could see what they would be waiving. Mr. Eaton had previously said that it does not need to be engineered, he noted, but the Board does want to see what it looks like. The Board's request has not been satisfied, he advised. Atty. Shulte said that there was also discussion of the Fire Department. Atty. Shulte said that the Fire Department is the only entity that is concerned about a turn-around, and since the Fire Department did not require the turn-around, the applicants felt they didn't need to provide the plans. Mr. Eaton noted that the Board, not the Fire Department, votes on the waiver, and if the Board makes a request, it should be followed through. Lynn Sweet noted that there were multiple conversations last month, and then said that Greg Messenger and Steve Leighton were in agreement about the drainage and no hammerheads, so she said that she would take the blame for contacting the Fire Department. Donald Coker said that the applicants disagree with the Board on what was requested and that the applicants are asking for waivers. It would be up to the Board, he suggested, when they vote, because the lack of information could influence the vote. It would be incumbent on the Board to respond to the applicants' decision to substitute their own waiver request for the Board's request for information. Atty. Shulte said that a similar sized project a few months ago had failed to submit the full plans. Lynn Sweet said that the Board was aware of this. Paul Eaton said that he wanted the record to show what was requested and provided and the Board's intent. Mr. Eaton also said that he wants the record to show that the Scribner plan, referred to by

the applicants as precedent for their private road design and on the table this evening, was originally submitted showing a hammerhead turn-around. Paul Eaton asked Mr. Whitehouse to clarify his letter to show that he was referring to the private roads shown on the plan. Mr. Whitehouse made the edits to the letter and initialed the changes. Atty. Shulte again noted that the drainage plan is designed to work only without a hammerhead. Rick Ferreira noted that the Building Regulations already require a 12 foot travel way for a driveway.

Returning to the drainage issue, Atty. Shulte said that a hammerhead would add unnecessary compacted space and would interfere with the drainage they have been asked to provide, and said that the hammerhead is not needed for public safety. Paul Eaton asked for a moment to read the proposed easement. Chris Berry then presented the proposal, showing the proposed drainage structures on the easel. He said that Greg Messenger wants the water out of the swales, so he prefers to have the water flow off onto the lots rather than stay in the swales by culverting under the access points. In order to do this, the Town needs permission to run the water off onto the lots. Mr. Eaton asked which lots have flowage easements. The intent is Lot 14-7 they said. Atty. Shulte said that there is a difference between where the flowage goes and where the Town will maintain the drainage structures. Rick Ferreira asked if there should be concern about the sheet flow heading to Lot 14-8, and asked whether it could impact the vernal pool on his side of the boundary. Chris Berry suggested that based on topography, it would not. Atty. Shulte addressed the request for the waiver for pavement, saying that there are many driveways and roads that are dirt in this area, and that it would be an unnecessary expense and hardship to pave the private roads. Keeping them dirt would be more in keeping with the area, he said. Lynn Sweet advised that the Selectmen must be consistent with their advice, and that they would request that all roads be built to town standards. Atty. Shulte said that it would make sense to pave an apron, but not to add a chunk of pavement beyond, especially given the concerns that will be addressed next regarding sight distance and the cutting of trees. Pavement makes sense for high volume, he said, but would not be needed here. It is not necessary to the integrity of the road and requiring the pavement is a hardship for the developer, he said. Mark Whitcher then addressed the Board, noting the many dirt roads in the area, noting that the Board wants rural character, and that pavement just encourages spin outs. Asking the Board to waive the guidelines is just common sense, he suggested. Terry Hyland noted that the Board has waived pavement requirements on the upgrades of Class VI roads in several areas in Crown Point, such as Roberts Road or his own subdivision off First Crown Point Road and Isaac Berry Road. Lynn Sweet said again that new private roads need to be ready for the Town to take them over if asked. Donald Coker noted that it is in the interests of the Town as a taxpayer to have them built to standards. There was a discussion about the balance between rural character and having roads ready to be taken over by the town. Lynn Sweet again noted that the Selectmen are concerned with consistency. It was noted that Herb Scribner had paved Mackenzie Lane. Paul Eaton noted that Province Road is already paved, so you are not losing a lot of character. These private roads are being built for frontage to increase the number of lots, he said, so he does not see a hardship because they are gaining another lot to sell. Without the roads, there would be one less lot, and Scribner's road was also required to be paved. Mr. Eaton noted that he is on board with waiving the requirement for the cul-de-sac; it does seem unnecessary and a hardship, but the pavement, he feels, does not meet the hardship standard. Mark Whitcher said that Scribner was required to pave because it was the center of town, and said that he felt that the Board was losing sight of the issue—this is a shared driveway. Mr. Eaton replied that no, this is a road, and is needed for frontage.

Discussion turned to the function of the private roads. Donald Coker noted that he had calculated that there is 1581.90 feet of frontage along Province Road without the new private roads, so without the roads you would have 8 lots, maybe only 7 lots. This calculation was confirmed by Paul Eaton and Rick Ferreira. Mr. Ferreira noted that they are gaining a lot, and said that he fails to see how requiring pavement makes it ugly. Lynn Sweet said that if the Board was not going to allow the private roads, they should have said so before now and asked the Board to focus on the plan in front of them. Donald Coker replied that the whole application hinges on the private roads. Paul Eaton asked the public not to speak at this time. Donald Coker then addressed the Board, saying that the lots are actually 150 feet in width, not 200 feet. He said that he feels that he cannot support the application as configured, and said that he would like to explain why. He said that the Master Plan talks about keeping rural character, and that the 200 foot frontage requirement supports rural character. Rural character is diminished by acceptance of this application with the private roads, and because it hinges on the private roads; you need to look at the private roads. What is a private road, he asked. Serving 6, 7, 8 lots; running into the interior of a property; that seems like a private road. The reason these private roads are there is to gain frontage. He said that he had studied the Scribner file and feels that there is no parallel. He said that he feels that if the Board approves this plan, it will be the last 200 foot frontage plan that the Board will see. You will set a precedent, he said, and the next application you will have private roads all over. You would effectively destroy the frontage requirement, he said. Finally, he noted that the Master Plan includes concerns over enforcement, and he noted that the applicant is a member of the Board. The Board needs to apply the regulations evenly, he said. He noted that he feels strongly about this. Mr. Eaton said that it was obvious that the roads were designed to create more frontage, but said that it is allowed to have frontage on private roads. Mr. Coker said that the Board is not

obligated to approve the proposal. Mr. Eaton said that he felt that it is allowed and so the proposal is approvable, and said that it would be a discussion for another day to see if the Board wants to change the regulations. Lynn Sweet said that the applicants have met everything in our zoning. Paul Eaton noted that waivers are another matter. Atty. Shulte asked Mr. Coker to state that his vote would be based on the Master Plan, noting that the language is vague. Paul Eaton noted that the Board would have preferred that the applicant/surveyor be more creative with frontage, but that they were not interested. Mr. Eaton admitted that the only land in this parcel that can be developed is along the Province Road frontage. He said that it is unfortunate that along a historical scenic road, you would be developing a house every 200 feet. Atty. Shulte noted the rules. Mr. Coker suggested that he believes that the roads do not have to be accepted, and noted his planning experience in Portsmouth.

Atty. Shulte then said that the last issue is sight distances. They have drafted an easement to be recorded addressing vegetation and stone walls. To get sight distance you might have to remove a portion of the stone wall, he said. Atty. Shulte noted that during the site review, Mr. Moreno had asked if you really need the full sight distance. If the Board is okay with less sight distance, he noted, you do not have to worry about removing the stone walls. Chris Berry said that ASHTO standards would require a bit less sight distance than the Road Agent would like here. They are committed to building the drainage structures before the plans are signed, but for sight distance, they want it to be a function of the occupancy permit. Paul Eaton noted that he did not like to see the disturbance for sight distance, and felt that the neighbors would also be concerned. Terry Hyland agreed that the stone walls were important. Lynn Sweet and Chris Berry agreed that if you went to 250 feet of required sight distance rather than 300, it swings the line of sight and would probably eliminate the need to remove the walls. Atty. Shulte suggested that if the Board agrees, they should make the change a condition of approval so homeowners have something to go back to when they are working on sight line. Board members discussed whether the regulations require 300 feet or whether it is just recommended. Atty. Shulte noted that it is just an issue for two or three lots, and said that the Board could allow those lots to meet the lower 250 foot standard. Terry Hyland said that he feels that people would prefer saving the stone walls to strict regulations and there was general agreement. Paul Eaton asked if the Board would like to vote on the issue. Atty. Shulte suggested that it could be made a condition of approval so that it would be in the record. Chris Berry agreed to put the revised information on the plans. Mr. Eaton then suggested that the Board had worked through the sight easement and the drainage easement. He asked if the public hearing was still open. It was agreed that it had been continued forward from the previous month. He then closed the public hearing.

Lynn Sweet then made a motion to accept the waiver request and that there be no requirement for a hammerhead turn-around for the proposed private roads. Donald Coker said that he felt that the Board should approve or deny the application before addressing the waivers, but Board members and Atty. Shulte agreed that the application could not be approved without the waivers. Terry Hyland seconded the motion. There was no further discussion and the vote was unanimous in the affirmative. The Acting Chairman then asked for a motion on the request for a waiver to the requirement for pavement. Terry Hyland made a motion to approve a waiver to the requirement for pavement. Donald Coker seconded the motion. There were three nay votes and one aye vote from Terry Hyland and the motion failed. Lynn Sweet noted that road names would be needed for the private roads. Mark Whitcher said that he wants them named as Fire Roads. Paul Eaton advised that acceptable road names could be a condition of approval. He noted other conditions of approval: posting a financial guarantee for the construction and inspection of the road and drainage structures; pavement; revising the plans regarding sight distance and adding a note to the plan regarding sight distance. Rick Ferreira noted that the proposed driveway to Lot 14-9 is more than 400 feet in length and Building Regulations require a turn-out. Board members agreed, and Mr. Eaton added the turn-out to the list of conditions of approval. The question of whether a financial guarantee should be posted for the shared driveways was also raised, as the Board has required this on other occasions. After discussion, it was agreed that only the first 25 feet of the shared driveways would be required to be built or bonded. Lynn Sweet then made a motion to approve the plans for 9-lot subdivision as submitted for this meeting with the changes and conditions noted above (acceptable road names; posting a financial guarantee for construction of the private roads and drainage; adding pavement to the road construction plans; revising the plans to show a requirement for 250 feet of sight distance as needed to preserve stone walls; add a turn-out to the driveway to Lot 14-9; and building or bonding the first 25 feet of the two shared driveways). Terry Hyland seconded the motion. There was no further discussion and the Acting Chairman called the vote. The vote was three ayes and one nay vote from Donald Coker. The motion passed by majority vote. Final copies of the plan should be delivered to the office for signature once all conditions have been met.

Mark Whitcher returned to the Board. It was agreed to schedule a work session in August for review of the draft stormwater regulations, once the Planning Board agenda for next month has been finalized. There being no further business before the Board, a motion to adjourn was made and seconded. There was no further discussion and the vote was unanimous in the affirmative. The meeting adjourned at 10:40 PM.