

**TOWN OF WEBSTER
PLANNING BOARD
MEETING MINUTES APRIL 19, 2018**

At 6:32 pm Chairperson Rauth convened the regularly scheduled meeting for the Planning Board and took attendance. Members present were Vice Chair Susan Roman and Paul King. Alternate members present were Craig Fournier and Kathy Bacon. Craig Fournier was appointed by Chairperson Rauth to be an Acting Member due to the absence of Member Lynmarie Lehmann.

Members of the public in attendance were: Hank Amsden, Surveyor and agent for Steven McCormack (not present), Jeff Evans, Daniel and Julie Nudd, and Mark Kimball.

The first order of business was to nominate and vote for a Chairperson and Vice Chairperson for the Planning Board. Member King nominated Susan Rauth to continue as Chairperson; seconded by Acting Member Fournier and approved unanimously. Member King nominated Susan Roman to continue as the Vice Chair. Member Roman stated she would not be running for the position at this time. She stated she would like to see someone else get the experience. Due to indecision at this time, the nomination for Vice Chair was tabled until the next Planning Board meeting of May 17, 2018.

Chairperson Rauth deferred review of the draft minutes until later in the meeting.

The next order of business was the **continued deliberation of PB Case No. 18-02 from March 15, 2018: Minor Subdivision Application from Steven McCormack, 234 Battle Street, Webster, NH. His proposal was to subdivide lot 7-9 into two lots: 7-9-1 = 2.01 acres and lot 7-9-2 = 3.36 acres with no further subdivision of qualifying lots permitted.**

Chairperson Rauth stated that at the last Planning Board meeting of March 15, 2018, the Board had voted to table this issue until the Board had clarification from the town attorney regarding the use of a discontinued road. Chairperson Rauth stated that the town attorney had written a letter of advice to the Planning Board. She asked Member Roman to take the lead as Member Roman chaired the March 15th meeting due to the absence of Chairperson Rauth. Member Roman invited Mr. Amsden to the table. She stated the Board received advice from counsel on several grounds including that *access* and *frontage* both have to be satisfied by one street and that street has to be a Class V or better per state statute. Member Roman stated the Board had been advised that they could approve the minor subdivision conditioned upon there being two driveways that have access from Battle Street. Mr. Amsden stated the applicant would have to apply for driveway permits from the NH Department of Transportation because Battle Street is a state highway route 127. Member Roman agreed and stated the applicant would also have to apply to the Planning Board for a Driveway Permit for Construction. After a brief discussion regarding a small wetland area that may be impacted by the proposed driveways, Member Roman stated that the driveways should be drawn on the plat. She stated the Board's final approval would be subject to getting all the approved driveway permits from the Town of Webster and the State of NH. Mr. Amsden stated he hoped the Board would approve their driveway permit if the State approved its permits. After a brief discussion, Member Roman suggested the applicant first apply to the State for their driveway permits and then come to the Planning Board with conceptual plans for the driveways. She stated that she could not guarantee the Board would approve anything. Acting Member Fournier stated the Planning Board was concerned about the line of sight. Member King added that the corner where the property is located was a very busy part of Battle Street. Member Roman stated the line of sight was only one of a number of important requirements addressed by the current Driveway Regulations. She asked Mr. Amsden to please read the regulations and come back to the Planning Board with as complete a conceptual as he can do. Member Roman made a motion to approve the minor subdivision conditionally upon approved driveway permits and applications from both the state and the town in accordance with the town's regulations. She stated the Planning Board would review those as a matter of final approval. Acting Member Fournier asked if her motion was for continuing or to accept. Member Roman stated the time period following acceptance of a completed application was 60 days per the statute. She noted that the current Subdivision Regulations incorrectly have 90 days. The 65-day timeframe for this application ends May 18th, the day after the next Planning Board meeting of May 17, 2018. If a final approval is not decided by then, Member Roman

told Mr. Amsden, the Planning Board may need the applicant's consent for an extension. After a brief discussion, Member Roman withdrew her motion and stated the Planning Board should just continue this until the next meeting with the understanding that Mr. Amsden will submit a final plat with the driveways shown. Mr. Amsden asked Member Roman what other conditions would apply so he can inform Mr. McCormack. Member Roman stated the Planning Board has always approved conditionally on getting outside agency permits, such as septic or wetlands; receipt of the Mylars; walking the bounds, etc. She stated that because there is a wetland, Mr. Amsden will need to check with DES regarding the placement of the driveways. The Planning Board will continue the deliberation until Mr. Amsden can come back with those items. At this time, Member Roman made a motion to continue this matter until the next meeting on May 17, 2018 at 6:30 pm in the Town Hall at 945 Battle Street; seconded by Member King and approved unanimously.

Mr. Amsden then asked the Planning Board about setting the bounds. He asked if the Planning Board was okay with re-roads and sakrete (a type of concrete). After a brief discussion it was determined that Mr. Amsden would have to use granite monuments flush with grade with a magnetic pin as required by the Subdivision Regulations.

The next order of business was a conceptual discussion with Mr. Jeff Evans, 1532 Battle Street regarding a proposed minor subdivision of his lot 3-46-1. Mr. Evans presented the Planning Board with Google maps of his property. He explained he and his wife were thinking of subdividing their current lot of 8.81 acres into two lots – one a little more than 2 acres and the remainder with their current house. He stated their house was too large for them and getting older it will be harder to take care of. They would like to build a smaller house on the 2 acre lot. After a brief discussion, Member Roman stated she had done some research that although Mr. Evans' lot had been the result of a previous minor subdivision approved in 1986, the subdivision regulations that were thought to be in place at the time, did not have a definition of *minor subdivision* and there was not requirement for no further subdividing. Further, there wasn't any notation on the 1986 plat stating no further subdivision. Member Roman stated had there been notations and had the original subdivision been bound by the original regulations then she would have said there was a problem. Member Roman concluded there was no problem. There were no other questions from Mr. Evans or the Planning Board. Mr. Evans thanked the Planning Board for their time.

At this time Chairperson Rauth recognized Mr. Mark Kimball, of Mutton Road. Mr. Kimball stated he had a lot of questions about the last meeting of March 15, 2018. Chairperson Rauth asked if Mr. Kimball had received her email she had sent the day before. He acknowledged that he had. She then stated that in this matter the Planning Board was not in a position to resolve private property disputes; it was beyond the realm of what the Planning Board does. Mr. Kimball acknowledged her statement. She stated because the subdivision was approved at the last meeting and the 30 days in which to appeal had past, then the Planning Board did not have jurisdiction. Mr. Kimball questioned as to whether or not the subdivision had been approved. Chairperson Rauth stated the subdivision had been approved based on administrative conditions. She then read from the March 15th minutes the following:

"...made a motion to approve the plan as laid out conditioned upon receiving all permits from DES, DOT, the town and conditioned upon changing the plan to include the language that the land shall not be further subdivided, the submission of two sets of Mylars and walking the bounds before final approval."

Chairperson Rauth stated those things were considered to be administrative conditions and the public hearing had not been continued. She stated that the Planning Board recommended to Mr. Kimball that he and the other party try to come to an agreement and then with the consent of both parties, the Planning Board could schedule a re-hearing of the application. Mr. Kimball stated that in the email he had sent to Chairperson Rauth he had stated he had met with the other party twice and at this point there did not seem to be a consensus. Mr. Kimball stated that he appreciated that this was an issue between two landowners. He stated his questions were regarding the lines on the tax maps the other party had which showed a totally different distance than the 1977 survey that he had. He did not understand why the Planning Board did not look at the lot lines. Member Roman stated that the applicant had brought a survey to the Planning Board, not just a

tax map. Mr. Kimball stated the other party surveyed it on their own, but he went to the Merrimack County Registry of Deeds and his survey had the actual distances. He stated the actual distance was 33 feet different from the Merrimack County Registry of Deeds copy.

Chairperson Rauth stated the applicant brought in a survey done by a certified surveyor. She stated the Planning Board relies on the information that is provided by the applicant to be true and correct. Mr. Kimball stated he understood that but he thought the Planning Board could check the information that was at the registry of deeds.

At this time Member Roman stated the Planning Board was allowed to consider a surveyed plat to be expert testimony and the issue was whether someone else had countervailing expert testimony. Member Roman stated that she could not give Mr. Kimball legal advice. She stated that whatever he had, he would have to figure out if it would have been relevant and whether it was still relevant. She stated that the Planning Board no longer had jurisdiction. Mr. Kimball stated he had sent the Planning Board emails and asked for a meeting all before the 30 days was up. He stated he had spoken to a lawyer who advised him to keep him informed. Member Roman stated Mr. Kimball may well have valid arguments. She stated the Planning Board was just not in the position to validate them because there was no hearing going on and the other party was not in attendance. After a brief discussion, Chairperson Rauth stated that in the letter the Planning Board sent to Mr. Kimball, the Planning Board did say that if both parties came to an agreement and consented, then they could apply to the Planning Board to rehear the application.

At this time, Member Roman stated that Mr. Kimball would have to get legal advice. She stated that the issue was not only beyond the Planning Board's jurisdiction, but the Planning Board cannot give legal advice. She added that Mr. Kimball does have rights and remedies. Mr. Kimball then questioned section 10.7 Public Hearings of the Webster Planning Board's Rules of Procedures which states:

"A public hearing that has been closed may be re-opened at the discretion of the chairman or by majority of the Board if additional information warranting further opportunity for public comment comes to light."

Chairperson Rauth explained to Mr. Kimball that during a public hearing, the hearing can be closed and then at **the same hearing**, can be re-opened. Mr. Kimball stated he did not read it that way and he had further comments to make. Member Roman stated, that as a general matter, the Planning Board will ask the town attorney about that, but the Planning Board does not think that is what it means. She stated that the problem was that the statute says the Planning Board has no jurisdiction and if the Planning Board has no jurisdiction then the Planning Board could not really take any kind of testimony now because it's unfair to the other party. Mr. Kimball stated he understood that, but he stated that he gave testimony before the end of the thirty days.

At this time Daniel Nudd, resident of Mutton Road, asked about legal notification of abutters. Mr. Kimball stated he, himself, did not receive a registered letter and he is an owner on the deed. Member Roman stated she was sure Mr. Kimball's attorney would have something to say about that. Mr. Kimball then referred to section 11.4 Subdivision Applications and Approvals of the Webster Planning Board's Rules of Procedures, in particular the setting of boundary markers. He stated he understood the minimum acreage for an approved building lot was 5 acres, however, if that boundary is incorrect then what the Planning Board approved may end up being less than 5 acres. Mr. Kimball asked the Planning Board how would they know that the bounds were correct when walking them. Member Roman answered because the Planning Board would rely on the survey from the applicant. Mr. Kimball did not understand how the Planning Board would resolve the issue of a boundary marker set by the other party 30 feet in on his land. Member Roman stated that if Mr. Kimball has a boundary line dispute that's what Mr. Kimball needs his attorney to look at. She added that as far as the Planning Board is concerned, if the Planning Board failed in their procedure in any way, there are rights and remedies. The Planning Board cannot give legal advice. Member Roman stated that normally when the Planning Board has a survey and there is not countervailing expert testimony from somebody who is entitled to be heard,

then the Planning Board is entitled to rely on that survey; the Planning Board does not have liability for that because that is expert testimony. Mr. Kimball stated he was satisfied with what he heard and he thanked the Planning Board for listening. Chairperson Rauth told Mr. Kimball the Planning Board appreciated him coming in.

The next order of business was to review the March 15th draft minutes. Member Roman asked to table that until the next meeting which the Planning Board agreed to.

Before leaving, Mr. Kimball asked the Planning Board how could he know how far along the Planning Board would be with the subdivision. Member Roman stated that Mr. Kimball should operate with the knowledge that the subdivision had been approved, subject to administrative tasks that are not substantive issues, i.e., receipt of Mylars, walking the bounds, permits from DES, and any septic permits. She stated that as to the Planning Board's actions, the Mylar will be recorded at the registry of deeds once those conditions are met. Member Roman added that in terms of Mr. Kimball's rights about intervening in the hearing or rehearing has nothing to do with those administrative actions; in other words they will take place and it is not to the Planning Board that Mr. Kimball comes if he has a grievance. She stated she was acting for the town and cannot give legal advice. Mr. Kimball was concerned about when the Planning Board would be walking the bounds. Member Roman stated that did not matter for Mr. Kimball. She added, legally the subdivision was approved and it will be recorded as soon as those things come in. Member Roman stated that just because a subdivision had been approved, that does not take Mr. Kimball's property rights away. After a brief discussion, Member Roman stated that if something was made wrong, it will have to be made right. The Planning Board thanked Mr. Kimball for coming and he thanked them for their time.

At this time, Chairperson Rauth informed the Board that at the next meeting on May 17th at 6:30 pm at Town Hall, there will be a public hearing to allow public comment about UNITIL trimming trees on a scenic road, Mutton Road. She stated that the residents on Mutton Road will be notified by UNITIL. Per RSA 231:158 trimming is not allowed without written consent from the Planning Board and a public hearing.

The next order of business was an update of the Master Plan. Chairperson Rauth explained that the chapters would be updated by each department. Conservation Commission has already started. She stated that the Library Trustees have been working on updating their section. Chairperson Rauth stated she spoke with Leslie Palmer and she will be working on updating Town Hall facilities and services. She informed the Planning Board there were volunteers and Jere Buckley will be helping with the historic and cultural resources. The transportation chapter has been done by CNHRPC. She stated that there will be new sections for the updated Hazard Mitigation Plan and the new Energy Plan about the solar panels. Alternate Member Bacon will be helping with updating some of the tables for chapters 2 and 6. Chairperson Rauth discussed the Master Plan Survey results and stated they would be put on the website without the comments because it would be cleaner and easier to categorize them. She plans on having a Focus Group meeting to discuss the future of land use in the town sometime in May or June.

The next order of business was the Annual Traffic Count from CNHRPC. Acting Member Fournier recommended White Plains Road over Knights Meadow Marsh and Clothespin Bridge Road. After a brief discussion, Chairperson Rauth will make a suggestion to include those roads and coordinate with the Police Department and their ideas.

At this time, Member Roman commented that in relation to the approval of the Shaker Heights Land Trust subdivision, the Planning Board had potential legal issues that may lead to litigation and the Planning Board needs to consult with counsel. She informed the Planning Board there had been a consult with counsel before this meeting regarding Mr. Kimball. She stated there were also other issues, one that had been raised earlier in the meeting was about the change in the boundary line which may cause the subdivision not being able to meet the zoning requirements. She stated she did not know what would happen in that case but the Planning Board needs to know, therefore, she needed the Planning Board to approve consulting with counsel and get whatever approval needed from the Select Board and to also ratify the consult that had already taken place. She added that the Planning Board also needs advice as to whether there was a deficiency in

their procedure and what liability, if any, there is for the Planning Board and what may happen as a result. Member Roman added there are other issues related to Mr. Kimball wanting to re-open the matter. After a brief discussion, Chairperson Rauth pointed out to the Planning Board members that the Planning Board does not get involved in trying to resolve personal property disputes. Member Roman added that not only does the Planning Board not get involved in property disputes, generally if someone presents the Planning Board with a survey, that is considered expert testimony. She stated but it could be the case that someone shows up, who has the right to speak, that has countervailing testimony that is equally expert and the Planning Board would be entitled to say they have to table this until the boundary dispute or property dispute is settled. After a brief discussion, Member Roman stated that it was very important the members of the Planning Board know how to deal with the situation if somebody claims there has been a deficiency. She stated the Planning Board has to have good procedures in place so that no one is misled about their rights. Those procedures should flow automatically so that no one is giving any advice personally to anybody; they have their rights under the law. She reiterated that it is not for the Planning Board to give legal advice.

Chairperson Rauth stated that one idea about the procedures was to present a scenario with a subdivision application and follow the flow from start to finish which would help the new Planning Board members and it would be a good review for everyone.

After a brief discussion, Acting Member Fournier and Member Roman made a motion for the Planning Board to consult the town attorney regarding any issues arising with respect to the Shaker Heights Land Trust subdivision approval; seconded by Member King and approved unanimously.

8:06 pm Member Roman made a motion to adjourn; seconded by Member King and approved unanimously.

These minutes were approved as written at the Planning Board meeting of June 22, 2018.

Respectfully,

Susan Rauth, Chairperson