

**TOWN OF WEBSTER
PLANNING BOARD
MEETING MINUTES JUNE 21, 2018**

At 6:30 pm Chairperson Rauth convened the regularly scheduled meeting for the Planning Board and took attendance. Members present were, Paul King, Select Board Member Nanci Schofield, Lynmarie Lehmann and Alternate Member Kathy Bacon. Chairperson Rauth appointed Ms. Bacon as a voting member for this meeting due to the absence of Member Susan Roman.

Members of the public in attendance were: Pete Duval, realtor; Joe Wichert, Surveyor and Agent for Dan Remillard; Dan Remillard, applicant for 3-lot subdivision on Long Street; David LeFevre, attorney for Steve McCormack and Deborah DeCato; Deborah DeCato, resident; Steve McCormack, applicant for 2-lot subdivision on Battle Street; Josh Taylor, applicant for site plan review of relocated *Cloverdale Feed and Farm Supply* store to 12 Roby Road; Tom & Dianne Davenport, abutters to 12 Roby Road; Richard George, abutter to 12 Roby Road; and Louis Gangi, proprietor of *Cloverdale Feed and Farm Supply*.

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

The next order of business was the boundary marker waiver request for PB Case No. 18-03/Shaker Heights Minor Subdivision on Long Street, lot 3-27. At this time Mr. Joe Wichert, surveyor and agent for Shaker Heights Land Trust owner, Dan Remillard, explained to the Board that when his crew went out to set the southeast lot corner, the location was in the middle of a trail under the power lines. He presented a photo of the area. He stated that if the marker was left up 6 inches above the ground as required, he was afraid someone would get hurt or the bound could get broken or removed. Mr. Wichert explained that he then had the bounds set flush to prevent them from being disturbed later. He stated that the Town's ordinance stated such a bound could be set flush. He thought the Board would make a decision for approval or not during the walking of the bounds. However, upon speaking with Mrs. Larson, she informed him he had to ask for a waiver, which according to RSA 674:36II (n) Regulation of Subdivision of Land: "*The basis for any waiver granted by the planning board shall be recorded in the minutes of the board.*" Mr. Wichert then handed a written request for the waiver to Chairperson Rauth. Chairperson Rauth confirmed with Mrs. Larson that all the other conditions had been met regarding the subdivision approval. Mrs. Larson answered in the affirmative. Mr. Wichert presented the Board with the required final paper plats and two sets of Mylars. Member King asked if the flush boundary marker was magnetic. Mr. Wichert stated the bound comes with a magnetic chip in the drill hole and his office also puts an aluminum disk.

Member Lehmann inquired about the trail Mr. Wichert had referred to. Mr. Wichert pointed out the location on the paper plat. Member Lehmann stated that trail was an easement for the transmission lines. She stated she felt it was misleading calling it a trail on the plan. After a brief discussion, Mr. Wichert stated that if the Board was not comfortable having the bound set flush, he could have it raised up the six inches. Member Lehmann stated that given that it does appear to be an easement for the transmission lines, had the easement holder been notified? Mr. Weichert stated he would not typically notice an easement holder as a function of a subdivision.

Having no further comments or questions, Chairperson Rauth asked the Board members for their opinions. Member King stated that aside from the easement question, he did not have a problem with it. Member Lehmann stated she did not have a problem with the request for the waiver; she was concerned about the easement question.

At this time, Member Lynmarie Lehmann was sworn in as a Planning Board member by Select Board Member Schofield for a three year term ending March 31, 2021.

Select Board Member Schofield made a motion to approve the boundary marker waiver request for Planning Board case no. 18-02 for Shaker Heights' minor subdivision on Long Street, lot 3-27; seconded by Chairperson Rauth and approved unanimously.

6:45 pm: 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 gave a brief summary of the history of the deliberation. At the April Planning Board meeting, the Board informed the applicants' surveyor, Mr. Hank Amsden, that Town Counsel Bart Mayer, had advised the Board that frontage and access had to be satisfied according to the current zoning regulations, i.e., the lots had to have frontage and access to a Class V or better road – not a discontinued road. Driveways would have to be constructed giving access to Battle Street. Chairperson Rauth stated that at the May Planning Board meeting a shared driveway was suggested as an option.

At this time Chairperson Rauth recognized Attorney David LeFevre, who represented Mr. McCormack, the applicant due to Hank Amsden not being able to attend this meeting. Attorney LeFevre informed the Board that he did have a conversation with Attorney Bart Mayer, Town Counsel for Webster. After a brief discussion, Attorney LeFevre presented a different view of looking at the subdivision. He stated this was a situation where a new home is not being built; each proposed lot already had a single family dwelling. Attorney LeFevre presented a revised plot plan to the Board showing Mr. McCormack's residence as lot 7-9-1-2, the new lot and Ms. DeCato's residence as 7-9-1, the parent lot, reversed from the original proposal. Attorney Mayer had stated to Attorney LeFevre that the subdivision was creating a new lot and the new lot had to comply. Attorney LeFevre asked Attorney Mayer which lot would be the new lot? Per Attorney LeFevre, Attorney Mayer stated, "you choose". Attorney LeFevre pointed out on the plat that Mr. McCormack's lot already had a driveway on Route 127/Battle Street. A discussion ensued regarding the Town's Driveway Regulations specifically the definitions of driveways, shared driveways and private roads. Attorney LeFevre then read the definition of the private road: "A privately owned vehicular access way originating at a street and serving three or more dwellings or a number of dwellings plus a number of lots without dwellings totaling three or more." He stated the discontinued road provided access for three properties including the proposed second lot of the subdivision. Attorney LeFevre stated he thought that this circumstance met the Town's definition of private road because it's not a public road and under the regulations it says when dealing with a private road, the Planning Board will consider it in conjunction with the subdivision proposal or otherwise on a site specific basis. Member Lehmann asked if access points A and B to Battle Street shown on the plat had been permitted. Attorney LeFevre stated he was not aware of anything that suggested that either of those access points were illegal. If the Town wanted to take the position that those access points were illegal, the Town would have the burden of proving it in court. Member Lehmann stated she was concerned that access B did not have a safe sight distance. She felt if the Board allowed that access to remain then the Town could be culpable if an accident occurs. Attorney LeFevre stated there was nothing that would make the Town responsible when the Board was not approving this point of access. This point of access is pre-existing. He stated the property owners weren't asking for anything new beyond the ability to continue to use it. This property is unique because it already has two homes so the subdivision will not be creating building lots. In this situation choosing the front lot as the new lot which has access on Battle satisfies the criteria. Member King asked "What about the second lot?" Attorney LeFevre stated the second lot does not have to satisfy the criteria because the second one is the existing parent lot; the criteria of the ordinance only pertain to the new lot.

Member Bacon stated it was a different way of looking at it. Member Lehmann stated her concern was whether a discontinued road was a private road. A brief discussion ensued regarding the continued use of the discontinued road by other property owners which Attorney LeFevre stated they had every right to do. Attorney LeFevre stated the Town could not eliminate the access for those property owners. Member King asked about emergency equipment being able to use the discontinued road. Attorney LeFevre stated the situation would be the same as it is currently. Member King stated he could not in good conscience approve something that would continue to have a problem for emergency vehicle access. Attorney LeFevre stated that there was an outlet for that statutorily; a Notice of Limits of Responsibility would be signed by the property owners and recorded at the registry of deeds releasing the Town of municipal responsibility. Member

King was concerned about the danger of not having 400 feet for the line of sight. After a brief discussion, Chairperson Rauth asked how the Board felt about calling the discontinued road a private road. Acting Member Bacon stated if the only definition of a private road is access for three or more lots, then it is a private road. Attorney LeFevre informed the Board that once a road is discontinued it is no longer a public highway so the power to turn it into a public road by the public does not exist unless the Town takes it over by eminent domain or someone applies for a subdivision. Member Lehmann stated the Board could ask Town Counsel to continue to look at this. At this time Chairperson Rauth stated the Board originally sought Town Counsel's opinion because of the complexity of the situation. After a brief discussion, Member Lehmann read a section of Attorney Mayer's letter: "In Russell Forest Management, LLC v. Town of Henniker, 162 N.H. 141 (2011), the Supreme Court made it clear that a discontinued highway does not satisfy any of the enumerated criteria as set forth in RSA 674:41, I(a) – (e). Rather, it is a private right-of-way." Attorney LeFevre stated that RSA 674:41 addressed building permits. Member Lehmann stated it was also about developing new plots which was what this subdivision was about. Member Lehmann then made the motion that the Planning Board accept and approve the subdivision using 7-9-1-2 as the new lot; seconded by Select Board Member Schofield; motion passed 3 to 2 in favor: Chairperson Rauth – in favor; Select Board Member Schofield – in favor; Acting Member Bacon – in favor; Member King – opposed and Member Lehmann – opposed.

7:43 pm Chairperson Rauth opened the public hearing for Planning Board case no. 18-04 for the Site Plan Review for Joshua Taylor's commercial business at 12 Roby Road, lot 4-24, due to additional supplemental information that had been submitted.

Mr. Taylor presented a site plan done by Alden Beauchemin, N. H. Certified Wetland Scientist, showing where the wetlands are on lot 4-24. The wetlands are not anywhere near the septic area or the parking area. After a brief discussion, Mr. Taylor stated because of the proposed location of the septic leach field, the driveway would have to be slightly relocated. Member Lehmann asked why the gravel parking area was so extensive. Mr. Taylor explained that at the ZBA Special Exception public hearing the ZBA asked that the area be large enough for vehicles to turnaround rather than back out onto Roby Road. Mr. Taylor stated that because of the backlog at DES, his septic design was delayed. He then proceeded to discuss the signage and lighting. The large 2 foot by 16 foot sign will be permanently placed in front of the gravel parking area and will be lit from the ground up. The current sign at 299 Battle Street on the side of the road will be brought down to 12 Roby Road which is 4 feet by 8 feet and will be one foot above the ground. Mr. Taylor stated the only other lighting would be at the front entrance of the house and a light over the garage. Member King informed Mr. Taylor he would have to submit a revised Driveway Permit for Construction application which Mr. Taylor was aware of. Chairperson Rauth stated the large sign across the front of the property did not fit in with the character of Town. She asked if it was possible not to use that large sign. Mr. Louis Gangi, proprietor of the store, stated initially he wanted to put that sign on the roof of the building and due to comments by Select Board Member Schadler at the public hearing, he said he would reconsider putting it on the roof and make it smaller, which he has done. Mr. Gangi stated the sign is low and it can barely be seen. Chairperson Rauth directed Mr. Taylor to make sure the site plan had all the elements on it that it's supposed to have. She referred to the Site Plan checklist. It was found that all pertinent elements that applied to this site plan were on the plan.

At this time Chairperson Rauth asked if any abutters would like to comment. Mr. Tom Davenport, abutter, asked if there were going to be any additional material changes such as new buildings/structures. Mr. Taylor stated there would be no other material changes to the place at all other than the septic construction and a shifting of the driveway due to the septic location. There were no other comments or questions from abutters. Member King reiterated the importance of a scaled drawing for the revised driveway permit.

8:12 pm Chairperson Rauth closed the public hearing and opened it up for Board deliberation. Chairperson Rauth stated that as far as the outside lighting goes, it would be evaluated after it was put in place. Select Board Member Schofield asked about the hours of the lighting – would the lights just be on during the hours of operation or would they be on when the store is closed. Member Lehmann pointed out that the lighting hours were indicated on the site plan that

Mr. Taylor had presented to the Board; the light on the sign on Battle Street will go off at 10 pm; the other one in front of the store front will be shut off at 9 pm. After a lengthy discussion, Chairperson Rauth asked the Board if they would recommend the lighting go off earlier than 10 pm. Mr. Gangi stated that part of advertising was signage and signage attracts business and just because the store would be closed, would not mean he did not want to attract customers as they go by. He asked the Board if 9 pm would be alright. Member Lehmann did not agree. She stated local traffic was what was on route 127 at that time of the day/night. She stated that if his objective was to attract others, she did not think that lighting was necessary to do that given the local nature of that road. Mr. Gangi disagreed completely. Chairperson Rauth stated her concern was for the residents; she thought 10 pm was a little late. Select Board Member Schofield added that she could understand the sign on Battle Street being lit a bit longer than the large sign on the property. Member Lehmann stated that light pollution after 9 pm was not acceptable. Acting Member Bacon suggested 9 pm for lights out. Member Lehmann agreed. Select Board Member Schofield then suggested shutting the lights off one hour after closing. Mr. Gangi did not have an issue with the 9 pm time, but did not agree with one hour after closing. Select Board Member Schofield stated that if the lights were on after closing, people driving by might think the store was open and drive up Roby Road. After a brief discussion, the Board agreed the sign on Battle Street could remain lit until 9 pm and the lighting for the large sign at the store front would have to be shut off one hour after closing.

Chairperson Rauth stated the last condition was the Life Safety inspection. Mrs. Larson informed the Board that Mr. Baye, Life Safety Code Enforcement Officer, did the inspection and approved Mr. Gangi to be able to reside in the building. A written inspection form has been placed in the file.

At this time, Member Lehmann stated that the Site Plan Review Application had been approved conditioned upon the following and made a motion that those conditions be: 1) the sign on Route 127 may remain lit until 9 pm and any other signs that have been approved near the retail location go off one hour after closing. All other lighting is appropriate for the residential area; 2) receipt and approval of driveway permit. This motion was seconded by Select Board Member Schofield and Acting Member Bacon and was approved unanimously.

8:28 pm Chairperson Rauth closed the public hearing.

At this time Mr. Gangi stated he had an issue with the proceedings. He stated the Board discussed the hours of the lighting of signs but the Board did not open it up for discussion but still voted.

8:29 pm Chairperson Rauth opened the public hearing back up for discussion.

Mr. Gangi stated he could understand the 9 pm time for the sign on Battle Street. He did not understand the condition of one hour after closing for the sign at the storefront. He asked the Board what was the difference between that sign and the sign on Route 127. Select Board Member Schofield reiterated that if the sign near the store was lit, it would indicate that the store was open and would draw unnecessary traffic on to Roby Road. Mr. Gangi stated he has always put out an Open or Closed sign on the sign on Battle Street. He stated the lighting would not be industrial lighting. After a brief discussion, Chairperson Rauth asked the Board if there had been anything just said that would make it change its mind on the motion that was just passed; there were no changes – the motion stood.

The next order of business was review of the three sets of draft minutes. Member Lehmann made a motion to accept the following minutes as written: the Planning Board section of the Joint Meeting public hearing on April 10, 2018; the regular meetings April 19, 2018 and May 17, 2018; seconded by Select Board Member Schofield approved unanimously.

The next order of business was discussion regarding the Scenic Roads Subcommittee. Chairperson Rauth stated that the Select Board asked the Planning Board to look at the issue of regulations for scenic roads concerning the state statute and to consider whether or not Webster wants to augment the regulations. She stated the committee was put together with people from the Planning Board, Zoning Board and Conservation Commission with input from the Road Agent. She

stated the subcommittee had met once to talk about the objectives and would be meeting again on Tuesday, June 26, 2018 at 6:30 pm.

The next order of business was an update of the Master Plan. Chairperson Rauth informed the Board that 17 -18 people had attended the two meetings that had been held so far and people are working on parts of the report.

8:47 pm Member Lehmann made a motion to adjourn; seconded by Select Board Member Schofield and approved unanimously.

These minutes were approved as written at the July 21, 2018 Planning Board meeting.

Respectfully,

Susan Rauth, Chairperson