

**TOWN OF WEBSTER  
PLANNING BOARD  
MEETING MINUTES SEPTEMBER 15, 2011**

Present: Members Tom Mullins (Secretary), Jere Buckley, Richard Doucette, and selectman member George Hashem; alternates, Sue Rauth, Sue Roman, Mason Donovan and Mark Lorden. (Mr. Donovan and Mr. Lorden arrived after the meeting convened.) Agents for the applicant, Mr. Joshua Hufnagel: Mr. Arthur Siciliano, Land Surveyor; and Mr. Paul Morin and Ms. Tricia Newhall-Grahame, consultants from The Abacus Group.

For the record, Mr. Buckley deduced that Mr. Mullins was appointed by Chairman Cliff Broker to be acting Chair. Mr. Mullins answered in the affirmative. Then, acting on behalf of Chairman Clifford Broker, Mr. Mullins convened the meeting at 7:03 p.m. Mr. Mullins appointed alternate Sue Rauth to sit as a voting member of the Board due to the absence of Clifford Broker.

The first item on the agenda was to review the minutes from the Planning Board meeting of August 18, 2011. Mr. Buckley stated he had a couple of minor inputs and one consequential input. Mr. Buckley stated that in the first line of the list of members present, the placement of the comma should be after his name and delete the comma after the word "member". Otherwise, it would be perceived grammatically that Mr. Buckley was the selectman member. The second correction to be made was on page 3, the second line had Mr. Spangenberg's name spelled incorrectly. The "g" was missing after the first "n" of his name. Mr. Buckley continued with the consequential input to be addressed with regards to the proposed construction of the DSL Utility Cabinet. At the August 18, 2011 meeting, Mr. Buckley made a specific point of asking the applicant if there would be any breach in the stone wall. The applicant assured us that there would not be any breach in the stone wall. That question and answer did not make it into the minutes. Mr. Buckley believed that should be made a matter of public record. He suggested going to the end of the sentence on page 3 which begins with the words "Mr. Spangenberg ..." and ends with "...behind a stone wall." and then insert a new sentence reading as follows: "In response to a question from Mr. Buckley, Mr. Spangenberg assured the Board that installation of the proposed utility cabinet would not require the creation of an opening in the existing roadside stone wall." Mr. Doucette made a motion to accept the minutes of August 18<sup>th</sup> with corrections. The motion was seconded by Mr. Hashem and unanimously approved.

The next item on the agenda was the consideration for approval of the Phyllis Roby Revocable Trust Subdivision Application for the property on Dustin Road, Map 7 lot 60. This item had been continued from the previous Planning Board meeting of August 18, 2011 at the request of the applicant. Mr. Siciliano introduced Mr. Morin and Ms. Newhall-Grahame from The Abacus Group. They were there as mediaries to speak to the Board on behalf of the applicant regarding Fire/Life Safety Codes concerning cisterns and sprinkler suppression systems. Mr. Morin stated they had a very good meeting with

Deputy Fire Chief Pouliot. Ms. Newhall-Grahame had been working with the Fire Marshall, Mr. Degnen, for close to ten years regarding Life/Safety issues. Mr. Morin stated that it was apparent to him that the applicant would like to meet each of the Life/Safety requirements under the code and what is good practice, by installing automatic fire suppression systems in each of the homes to be built. Or, at least, requiring that whoever purchases these lots, installs such systems. Mr. Mullins stated that the question he had was regarding enforcement. Mr. Morin stated that they worked closely with the Local Government Center regarding the language of the law that passed. Mr. Morin had spoken with an attorney at the Local Government Center on September 15<sup>th</sup>. The result of that conversation for both parties was the law **HB 109**, which adds a new paragraph to **RSA 674:36 Subdivision Regulations**, that was passed July 1, 2011, was clear that you cannot require a fire sprinkler system as a condition of approval. The law's plain language says that. Consequently, if Mr. Siciliano was to put a note on the plan saying you can't have this subdivision unless a fire sprinkler is installed, that would be in violation of the law. The intent of the law is that the requirement can't be put on an unwilling applicant because there may be other solutions such as fire ponds and cisterns. But the law certainly wasn't intended to take away the ability of an applicant to elect to do that. Mr. Morin stated that the LGC understands that as well. Mr. Morin had e-mailed a note for the subdivision plan to Therese Larson and Adam Pouliot the day before this meeting, which says the following:

“As a condition of approval, the Town of Webster planning board and Fire Life/Safety Code Officer require the installation of an approved fire pond or cistern. The applicant has elected to voluntarily and irrevocably substitute the installation of the fire pond or cistern with the installation of a fire suppression sprinkler system in each home to be built. The applicant's offer of sprinkler systems is made in consideration for the life/safety requirements of NFPA 1 and subdivision approval and such requirement shall remain enforceable by the Town of Webster or its agents in perpetuity.”

Mr. Morin stated that the Planning Board has required the cistern or the fire pond per the NFPA Fire Code. The Board would be accepting the substitute of the sprinkler systems. Per Mr. Morin, Fire Marshall Degnen would prefer to see the sprinklers. Mr. Morin stated that it seemed like all parties want the sprinklers but are having trouble with the language. So Mr. Morin and Ms. Newhall-Grahame tried to craft the best language possible with the assistance of an attorney at LGC and two other attorneys. Mr. Morin continued by stating the language is a way to satisfy the law and allow the subdivision without requiring the sprinklers i.e., simply accepting the willing offer. At this time, Mr. Mullins addressed Mr. Morin. Mr. Mullins stated that Mr. Morin referred to “require” which the Board is not allowed to do. And the enforcement mechanism gets to be the problem. If this doesn't happen, after the lots are sold and these folks are down the road and the people say we don't know about this. There's no record of anyone successfully enforcing this because it's new. Mr. Morin stated that any note on any plat that is recorded has to be adhered to. The state fire code has to be adhered to regardless. So the

Deputy Fire Chief is well within his authority if there is no cistern or fire pond and there is a note saying there has to be, he is within his authority to accept the fire sprinkler, as the authority having jurisdiction, in its place. No town board is requiring sprinklers; you are actually requiring the fire pond or cistern. Mr. Hashem asked who is going to do that and does one put a cistern on each lot? Which would mean the new owners would have to do the sprinkler. Mr. Morin stated that the new owner would have to do the sprinkler as they would be buying the lot with full knowledge that the sprinkler is required because when it is platted there is going to be a title search when that deed is created. That deed is going to reflect that requirement. Mr. Morin stated that would not be enforceable by the Town, but the new owner could not say they didn't know. Mr. Mullins asked Mr. Morin, by whom is it enforceable? Mr. Morin indicated that Mr. Pouliot, Town of Webster's Deputy Fire Chief or whoever the Town has issuing building permits, doing inspections and issuing certificates of occupancy is completely in their right to say, "I'm sorry but you do not meet the requirements and you knew you had to do a sprinkler or there had to be a cistern or a fire pond. There are none of those things; you don't get your building permit." Ms. Roman asked that she would like to hear Adam's position. Mr. Pouliot stated that he felt pretty good when he spoke with Mr. Morin the other day. But when he ran all the information by the attorneys, they said it's not airtight; it doesn't work. Mr. Pouliot continued by stating it's not a question of which system is better; it's a question of which one we can enforce. Now, what we can enforce is what's in the State Fire Code. At this time Ms. Newhall-Grahame stated that what Mr. Pouliot was referring to was the first version prior to speaking with LGC. After speaking with LGC, Mr. Morin and Ms. Newhall-Grahame came up with additional language that they felt would be within the rights for you to enforce; within their rights to accept and within the Board's right to have in verbiage without it coming across as a requirement. This second version was e-mailed to Therese Larson and Adam Pouliot. Mr. Pouliot did not have a chance to read his mail that day. Mr. Mullins stated the Board could require cisterns on the plan, but the applicant would like to do something else. Mr. Siciliano inquired if it would be a cistern for each house. Mr. Mullins said, "No" and Mr. Pouliot said there would be one single cistern for the entire subdivision. Mr. Mullins' question and concern is how do we enforce this? And, if the Board approves the subdivision what guarantees that the restrictions would be on the deed? Ms. Roman stated we do not have an enforcement mechanism. Thus, the issue is that the enforcement mechanism lies with the State Fire Marshall and Adam as his designee. She stated that she did not think the Planning Board had the decision to make. Mr. Mullins stated the applicant's position then reverts to where they were a few months ago. Mr. Pouliot added that he had spoken with Mr. Morin, Ms. Newhall-Grahame, the State Fire Marshall and LGC attorneys and the only thing everyone can agree on is that the state fire code is enforceable. Ms. Roman's issue is "How can I overrule the Fire Marshall?" Mr. Morin replied that the Fire Marshall has no jurisdiction over the Planning Board's ability to decide that which is within its authority. The Fire Marshall can have an opinion. Ms. Roman stated that the problem is the authority issue, i.e., who has the right to say what complying with the Life/Safety Code is. Discussion continued between the Board and Mr. Morin regarding the language of the legislation and the issues of jurisdiction, authority and enforcement. Mr. Morin suggested that the Board rely on the Town's attorney's advice and hope that the application can stay open long enough for the new language to be looked at and

discussed. Mr. Mullins stated there were two options: the cisterns about which there is no doubt as to enforceability; the current proposal would be treading new legal territory which no one has ever attempted before. Mr. Buckley posed a hypothetical situation for Mr. Pouliot; Mr. Buckley has built a house and Mr. Pouliot goes out for a post construction inspection and discovers there is no sprinkler system. What actions would Mr. Pouliot take? Mr. Pouliot responded by stating he could give out a Cease and Desist Order, however, there is no guarantee the homeowner would follow the order. The homeowner could argue that the original owners of the lot agreed to sprinkler systems, but he/she did not and will not put one in. Mr. Pouliot stated they could challenge us in court. Ms. Newhall-Grahame stated that their revised language addressed that very situation. The owner would have to adhere to the requirement of a cistern or a fire pond. Mr. Mullins stated that the cistern or fire pond would be for all six lots in the subdivision, not one on each lot. The Town could not go to one owner and require them to put in a fire pond for all six lots, just because that owner does not want a sprinkler. Ms. Roman stated she did not know what else could be done because the Fire Marshall is requiring a cistern or fire pond. Ms. Roman then referred to **RSA 674:51 Power to Amend State Building Code and Establish Enforcement Procedures**. This RSA directs what the Town can do to establish a local enforcement agency for the fire code and to adopt the ordinance. The RSA also says the Town has to have a Board of Appeals. Ms. Roman stated the Town would have to have a whole structure for enforcement. She continued by stating that in lieu of that, if the Town does not choose to adopt the ordinance and an enforcement mechanism, then the Fire Marshall enforces it. This means the Fire Marshall also interprets the law. Unless the Fire Marshall approves the proposed language on the plat, Ms. Roman stated she didn't know what else the Board could do. Mr. Pouliot stated that the Town would never go wrong by enforcing the State Fire Code. Ms. Roman stated she had reviewed the statutes and she did not see where the Planning Board had any authority over the Fire Marshall. Mr. Mullins then stated that enforcement with no track record in the courts is at best problematic. At this point, Mr. Morin asked if the Board would entertain a motion to continue for thirty days because Ms. Newhall-Grahame knows the Fire Marshall's intent and they may be able to get it in writing as to what his preferences are. And it would give the Town's attorney time to look at the new legislation, **SB 91**, which the Governor vetoed on July 13 and the House and Senate will consider an override sometime in September or October. Ms. Roman agreed with Mr. Morin's request to grant another thirty day continuation. Mr. Pouliot then stated that another option would be to approve the application and then the applicant could deal directly with the Fire Marshall's Office and go through the appeals process. Mr. Donovan stated that he thought that was the best possible path and regardless of what the Fire Marshall's opinion is it's not the code. Mr. Pouliot stated the question is not which fire suppression system is better; the question is which one can the Town enforce? Mr. Donovan said there could be a new Fire Marshall tomorrow and he/she could have a different opinion; the Fire Code is the code. Mr. Mullins stated he would like to approve the application and let the applicant go through the appeal process. At this time, Ms. Roman asked to see the plat. Ms. Newhall-Grahame asked for the thirty day continuation due to the fact that Mr. Pouliot had not read his e-mail with the second version of their verbiage. Mr. Hashem stated that he saw no harm in letting the applicant have the thirty days. Mr. Mullins asked Mr. Pouliot if he would be contacting Mr. Degnen, the Fire

Marshall and Mr. Pouliot answered in the affirmative. At this time, Ms. Roman stated for the record that the applicant was requesting a thirty day continuation until the next Planning Board meeting of October 20, 2011. Mr. Pouliot stated he would send the revised verbiage to Mr. Degnen for his opinion, and then on to the Town's attorney for his opinion. Mr. Morin stated that their position is not that the Planning Board has the authority, jurisdiction or the ability to override anything that had to do with the fire code. That authority lies with Mr. Pouliot and Fire Marshall Degnen. Their position is to craft language that all parties are comfortable with regarding enforcement and compliance with the Planning Board's regulations and the Fire/Life Safety Code of the Fire Marshall's Office. After much discussion, Mr. Mullins asked Mr. Pouliot to contact Mr. Degnen. Because sprinkler suppression system is part of the new legislation and not part of the fire code, the Fire Marshall can have an opinion but cannot enforce. Mr. Doucette made motion to continue the application until the next Planning Board meeting of October 20, 2011. Motion was seconded by Ms. Rauth and passed unanimously.

At 8:13 p.m. Mr. Hasham made a motion to adjourn which was seconded by Mr. Doucette.

Approved by the Webster Planning Board October 20, 2011.

Attest,

Thomas Mullins  
Secretary