

**TOWN OF WEBSTER
PLANNING BOARD
MEETING MINUTES NOVEMBER 19, 2015**

At 7:03 p.m. Chairperson Susan Rauth opened the regularly scheduled Planning Board meeting and took attendance. Members present were Susan Roman, Jere Buckley, Selectman Roger Becker and alternate members Richard Cummings and Paul King. Mr. Cummings was appointed by Chairperson Rauth to be a voting member for the evening due to Member Lynmarie Lehmann's absence. Member Lehmann arrived later during the meeting and acting member Cummings resumed his position as an alternate member. Alternate member Patricia Ilacqua also arrived later during the meeting. Also in attendance were Barbara Corliss, subdivision applicant; her agent, F. Webster Stout, Surveyor; her son Zeb Ordway and his family. Mr. John Kostro, General Manager of the Copart site at 111 Deer Meadow Road arrived later during the meeting. No other members of the public were present.

By consensus, the Board agreed to review the draft minutes from October later in the meeting in order to first review an application for a minor subdivision. The application was for subdividing one parent lot into two lots, submitted by Barbara Marie Morgan Corliss of 253 Deer Meadow Road, Webster, NH, shown on tax map 9 as lot 27. Chairperson Rauth explained the procedure. The Board then proceeded to read and review the application and the plat. Chairperson Rauth stated that all abutters had been noticed (none were in attendance) and all fees had been paid. Chairperson Rauth then invited Mr. Stout to make his presentation on behalf of Ms. Corliss. Mr. Stout reviewed the plats with the Board. Member Roman asked Mr. Stout if this lot was being divided into two to which he answered in the affirmative. She continued, stating that as a minor subdivision there would be no further re-subdivision which was according to the definition of a minor subdivision in the regulations. Member Buckley stated not necessarily. If the lot remaining was less than 10 acres then it would not be able to be subdivided again. He pointed out that in this case, Ms. Corliss' lot would have 50 acres remaining, which *is* potentially sub dividable. Member Roman then referred to the definition of a minor subdivision in the regulations. Member Buckley then read the definition from the Subdivision Regulations on page 5:

“Subdivision, Minor: Shall mean a subdivision of land into not more than three (3) lots with no potential for re-subdivision and that front on an existing street and requires no new streets, utilities, or other municipal improvements.”

After a brief discussion, Alternate Cummings asked Ms. Corliss if she had any intention of subdividing her piece again. She stated that she did not currently have that intention; however, her children/heirs may want to after she has passed on. Ms. Corliss then asked what the difference was between a major and a minor subdivision. Member Roman stated that with a minor subdivision, the regulations allow the combining of the acceptance of the application with the approval. Member Buckley clarified that if the Board proceeded as with a minor subdivision, then they would be excluding the possibility of any future subdivision. After a brief discussion, Ms. Corliss stated she would prefer to not have that door slammed shut. As a result, the review of her application was tabled and will be re-noticed as a Public Hearing for a subdivision of one lot into two lots during the December 17, 2015 Planning Board meeting at 7:00 p.m. at the Town Hall. Member Roman stated the application does not need to be changed and does not need to be resubmitted. The Board will just repost/re-notice it as a regular subdivision public hearing and also waive the fees. The Board had no problems with the waivers requested or the way the plats were drawn. They could see no problem with Mr. Stout setting the markers either. The Board thanked Ms. Corliss and Mr. Stout for their time and apologized for the inconvenience of having to return next month. Ms. Corliss and Mr. Stout were satisfied with the procedure.

The next item on the agenda was continued deliberation and review of the site plan for Copart, Inc. At this time, Chairperson Rauth recognized that Member Lehmann had arrived and therefore Alternate Member Cummings would no longer sit for Member Lehmann. He also recused himself from any votes having to do with Copart. Chairperson Rauth reviewed the three subjects that were discussed with Mr. Kostro at the last meeting; 1) the truck routes-how to better keep the drivers informed and enforce use of the routes; 2) information and directions to the Webster facility for the public who access Copart's website; 3) and other ways that Copart could get the information out to the public. Mr. Kostro then informed the Board that he handed out to his drivers, the Town's "No Through Trucking Ordinance" and the list of roads

they are not allowed to use. He also stated that the Copart IT department will be able to put the driving directions to the Webster facility on their website. He added that the IT department would not be able to put directions in the e-mails that are automatically sent to buyers when they have won a bid on a car. The Board thanked Mr. Kostro for his efforts. At this time Selectman Becker informed the Board that Clothespin Bridge had been redlined by NH DOT and they would be coming back to the Town in approximately a month with possibly a weight reduction. He said that state inspectors said the bridge was in critical condition. Chairperson Rauth told Mr. Kostro the Board will keep him informed.

Discussion followed regarding a draft letter to Copart to wrap up the site plan review and the conditions of same. Chairperson Rauth asked for comments. Member Lehmann stated the transportation portion looked fine. She had questions on numbers 5 and 6 – how often would Copart need to collect the water samples – would it be one sample, or weekly or monthly, etc. Member Roman stated the Board was going to get advice from Sanborn Head regarding the frequency. Member Roman also stated the Board needs to have the number of wells specified, either 3 or 4. Member Lehmann made a motion to have 3 wells; seconded by Member Roman and unanimously approved. Member Lehmann made a motion to have a date certain for the first round of samples and then do it every 3 years. Member Roman suggested asking the environmental consultants for their advice. Motion did not get a second. Member Lehmann suggested Copart maintain a written log of the regular checks for leaks from the vehicles. Selectman Becker had a concern about the truck routes in the event that Clothespin Bridge has to be closed. After a brief discussion the Board decided to add the Pleasant Street route directions as an alternate to the Clothespin Bridge Road route. Member Roman made a motion to remove number 7 regarding requiring drivers to comply with the mud season ordinances; seconded by Member Lehmann and approved with one abstention by Member Buckley, who stated he was “on the fence”. Member Roman stated in the beginning of the letter, it should state “*as a condition of approval*”, not *request*, “*we require the following...*” She also stated that she did not think the deliberation had to stay open until everything was done; could the site plan be approved with conditions subsequent? Member Lehmann agreed with the latter. Member Lehmann suggested installing 3 wells and collect samples annually. Member Roman stated they could say at least annually unless the consultant specifies otherwise. The Board agreed to have May 31, 2016 as the date these tests need to be done by. Member Buckley suggested getting reports of the results from subsequent testing. Member Roman stated she felt the reports should be sent to the Select Board and the Planning Board.

After a brief discussion the Board agreed that the letter will be issued by Town counsel, Bart Mayer, to Copart’s counsel, Barbara Boudreaux. Member Lehmann made a motion to approve the letter setting forth the conditions of approval of the site plan application for Copart as follows: adding an alternate route under number 1 in the event that use of Clothespin Bridge changes; requirements will be given to contractual truckers under number 2; under number 3, maintain a written log to indicate compliance with the Best Management Practices for leaks; number 5, install 3 groundwater monitoring wells sending results to the Town Select Board by May 31, 2016 with monitoring done annually thereafter, and delete number 7. Chairperson Rauth suggested putting a signature line for Copart to acknowledge approval of the conditions. Member Roman stated the Board would want that approval from Copart before February 19, 2016, the end of the extension. She stated the Board would want Copart’s indication of their approval of the conditions returned within 30 days of when the letter goes out and then when that is received, the Board can approve the site plan application. Member Roman seconded Member Lehmann’s motion and was unanimously approved. The Board asked Mr. Kostro if he had questions or comments to which he stated no. The Board then thanked Mr. Kostro for his efforts and the work he had done.

At this time the Board reviewed the draft minutes from the October 15th meeting. Member Buckley read his suggested revision of the 2nd paragraph on page 2 as follows and to make the paragraph the 3rd paragraph on page 1:

“Member Buckley expressed concern that the procedure followed on the Barnard Subdivision seemed inconsistent with Section 5-8 of the Subdivision Regulations, which requires public hearings for all subdivisions. He was referred to RSA 676:4-III, which, in the case of a minor subdivision, gives the Planning Board the authority to

conduct an expedited review not including a public hearing unless requested by the applicant or another interested party. It was suggested that the Subdivision Regulations might require revision to be consistent with the RSA."

Member Buckley made a motion that the preceding paragraph replace the 2nd paragraph on the 2nd page of the October 15th minutes and that replacement paragraph be placed immediately following the paragraph on page 1 discussing the Barnard subdivision; seconded by Member Roman and approved with one abstention – Member Lehmann was not in attendance at the October 15th meeting. After a brief discussion Member Roman made a motion to approve the October 25th work session minutes as written; seconded by Member Buckley and approved with one abstention – Member Lehmann was not in attendance for that work session. Chairperson Rauth reminded the Board of the scheduled work session on the Subdivision Regulations on Sunday, November 22, 2015 at 1:00 p.m. in the Selectmen's conference room.

The next item on the agenda was the continued review of the draft Subdivision Regulations, however, Chairperson Rauth suggested waiting until the work session on November 22nd.

Chairperson Rauth inquired of the Board if there was any other business they wished to talk about. Member Buckley stated he had a couple of subjects. On November 4th Member Buckley had sent an e-mail to the members on the subject of "Driveways and Private Roads". He asked that it be on the agenda for the next meeting. It could also be discussed at the work session as the subject does come under the Subdivision Regulations.

The second subject Member Buckley wanted to discuss was the Phillips/Halloran/Moseley access issue. Member Buckley had sent an email on November 17th to the Board about it. He stated he had hoped to resolve the issue at this meeting but if that was unrealistic he wanted it on the agenda for the next regular meeting. The Board by consensus agreed not to wait until then and began discussion. Member Roman stated it would be a good idea to talk about it for a little while because either the Board will come to an agreement or go to Town counsel to get an opinion. Addressing Member Buckley, Chairperson Rauth noted that there wasn't an application in front of the Board and wondered why Member Buckley was bringing the issue up now. Member Buckley confirmed there was no application. He stated the Board had had two meetings in which it was suggested that the plat approved by the Planning Board in 1999, explicitly showing an easement and explicitly identifying that easement being for the purpose of an access way to a couple of additional lots, might somehow be abrogated or a permit application to build a driveway to those lots for some reason be denied. At this time Member Buckley and the Board looked at the 1999 mylar of plan number 14919. He gave a brief history of the properties involved. Member Roman asked for clarification from Member Buckley what precisely was he asking the Board to do - issue a letter assuring Mr. Phillips of something based on the 1999 Planning Board approval? During the discussion Member Buckley quoted that in the June 2015 meeting minutes (Mr. Phillips had a conceptual discussion with Board at that meeting.), "*Member Roman stated the Planning Board does not approve driveways for three lots.*" Member Buckley stated that in his mind, that statement gives Mr. Phillips ample reason to worry. Member Roman said she made a statement of fact. She also stated there was a legal question here but it was neither for her to give an advisory opinion nor for the Board to give an advisory opinion. If Mr. Phillips applies for a building permit and gets rejected he then would have to go the Zoning Board. Chairman Rauth clarified that Member Roman did not feel it was the Board's place to write an advisory letter to say they agreed with something that Mr. Phillips has not brought before the Board.

Following a lengthy and intense discussion, Member Buckley made a motion that the Board send letters to Mr. Phillips, Ms. Halloran and Ms. Moseley assuring them that the access concept illustrated by the 1999 plat remains valid and that driveway permits via those access ways will be approved so long as the construction standards detail comply with the specifications then in effect. Selectman Becker seconded the motion for the purpose of discussion only. Member Roman stated she would need a legal opinion. Member Lehmann stated she did not think it was right because there was nothing before the Board. Member Buckley stated a Webster resident had come to him with serious concerns. Member Roman stated let him come before the Board. Member Lehmann suggested that person put an application in for what he wants to do. Member Buckley stated the resident was not ready to do that. Member Lehmann stated that if he was not ready to do

that then the Board was not ready to give an answer. Member Lehmann stated the Board does not do declaratory rulings to which Member Roman added that it was not the Board's jurisdiction to do so. Member Buckley stated he would sit tight if the Board wanted to get an opinion from Town counsel, absent that, he would recommend to Mr. Phillips that he take legal action and that Member Buckley would be on his side. Member Lehmann did not feel the Board should go to Town counsel at this point for a legal opinion because there is nothing before the Board from Mr. Phillips. She added that she thought he would be wasting money if he sued the Town over this. Member Buckley countered that he did not suggest that he should sue; he said he would recommend that Mr. Phillips seek legal opinion. After a brief discussion, Chairperson Rauth stated she felt this was very difficult for the Board to deal with because there was not anything in front of the Board and the Board does not typically issue advisory letters or approvals for something that may happen in the future. She thought Member Buckley was asking the Board to do something that was not under the Board's purview. After a brief discussion, Member Roman stated that she thought Member Buckley was going to encourage litigation. Member Buckley stated that he was not going to encourage litigation. He stated if he said that, that was a misstatement. He said he will suggest to Mr. Phillips that he seek his own legal advice on the matter. Member Lehmann made a motion to table any discussions on the issue until the issue comes before the Board. Selectman Becker reminded the Board there was already a motion and a second to that motion on the table. Member Lehmann called for the vote on Member Buckley's motion: Member Roman – No; Selectman Becker – abstain; Member Buckley – Yes; Member Lehmann – No; Chairperson Rauth – No; motion was not approved. Member Buckley stated if Mr. Phillips were to come before the Board with a driveway permit application to build a driveway over the easement, then the Board would have to address it. Member Lehmann agreed with that statement 100%. Chairperson Rauth stated the Board would be glad to act on the issue when they have something in front of them. Member Lehmann added that was the process that anybody had to go through. Discussion continued regarding the plat. Member Roman stated that the easement shown was not a driveway or a road. Member Buckley stated the plat specifies the purpose of the easement. Member Roman stated that was not binding on the Board; that it was a private contract which the Planning Board has nothing to do with. In conclusion, Chairperson Rauth asked Member Buckley if he would agree that if Mr. Phillips came in with an application for a driveway, then the Board would have something to deal with. Member Buckley responded if that would be what it takes for the Board to grapple with the question, maybe that would be the best solution.

At 9:12 p.m. Member Lehmann made a motion to adjourn; seconded by Chairperson Rauth and unanimously approved.

These draft minutes were prepared by Therese E. Larson, Town PB/ZBA Secretary.

Posted November 24, 2015