

**Planning Board  
Lakeville, Massachusetts  
Minutes of Meeting  
Thursday, May 9, 2019**

On May 9, 2019, the Planning Board held a meeting at the Lakeville Senior Center. The meeting was called to order by Chairman Hoeg at 7:30 p.m. Ms. Murray, recording secretary, was audio recording, and LakeCAM was making a video recording of the meeting.

**Members present:**

Brian Hoeg, Chair; Sylvester Zienkiewicz, Vice-Chair; Peter Conroy, Mark Knox, Barbara Mancovsky

**Old Business-Fuller Shores update**

Mr. Hoeg advised he was going out of order on the agenda to address an issue that had been brought up at a previous meeting. It concerned the water issue at Fuller Shores. He has talked to Mr. Pollucci, and he has received messages from Mr. Lang. He would like to first discuss private ways. A private way is a road that was in effect prior to Zoning. There have been some improvements to the road over time like pavement. There are many of them in Lakeville, and they are all in various states of repair or disrepair.

Mr. Hoeg said where there were roads before the establishment of the Planning Board, there was no authority as to how they were built or maintained. He believed that most of these roads were just dirt paths that went down to shorefront cottages. He explained a private road is a road that is not built up to the Town's standards for the Town to maintain, do any work on it, or accept it. The Town does not have any control over these private roads and most are maintained by private associations. Mr. Hoeg stated they do not like to allow lots to be built on a private road because they don't have any control. They deemed it one of their rules and regulations that any lot that would be built on would have to be over three acres, if it was on a private road.

Mr. Hoeg explained that when properties are sold, the new owners should be aware of this and become part of the association. They should realize that a financial and monetary contribution is required to maintain what is there. He advised that in regards to the subdivision that went on this private road, they tried to keep the effect on the road as minimal as possible. There were rumors of a 40B development on that land, but the proposal that had been brought before the Planning Board was for three house lots. These were on approximately four acre lots. The road was designed with the best practices in mind.

Mr. Hoeg stated that he had gone to the site after their last meeting. He noted the drainage on the road is keeping the water from flowing onto Fuller Shores. Water is coming through the surface of the ground on the house lot on the right hand side of Justine's Way to Fuller Shores. There is also a house lot on the left hand side of Justine's Way and that water is flowing out onto Fuller Shores. He did not believe those examples had anything to do with the subdivision. He is saying those are springs and where they come to the surface of the ground is something that has been on going. You cannot hold someone responsible for a spring that is not on their property, nor expect them to fix the road and the drainage. The water was doing this to this road before the subdivision was built.

Residents disagreed with that statement. Mr. Joe Abbanato of 62 Fuller Shores advised he had been living there since 1999, and there had never been a water problem. As soon as the road went in the following year, his cellar was flooded. This was after it was totally dry for ten years. Mr. Hoeg asked about the pipe that was under Justine's Way. Mr. Abbanato said that it was not enough. Personally, he did not think the pipe was big enough or in the right location. Half of the pipe was filled with rock and gravel. He suggested the Board go and look at the piles of stone that were dumped on the corner that had never been spread or leveled out.

Mr. Bob Poillucci said throughout the permitting of this project, people were already complaining about the water problem on Fuller Shores Road. Approximately seven years ago, he built a house at the bottom of Fuller Shores on the left. That winter Fuller Shores Road had six inches of ice on it with potholes. Now, all of a sudden, somehow he is making water run uphill? Before they started, an engineer came and wanted to talk to Jaimie. He said they had a problem with the road and they wanted to put catch basins in and fix the problems. He had said if they wanted to do that, get it okayed by the Planning Board, but he was not touching the road. It's just not true that this has never happened before.

Mr. Brian Cleary responded what happens now is water has been encountered there that nobody anticipated. The problem is in the winter the water ices up and flows so fast it continually crowns and builds up. A few years ago when his wife broke her wrist, the ambulance did not want to come down the road. He has not seen anything like this in 35 years, and it is on the heels of Justine's Way. Mr. Poillucci asked if he remembered when he built the house how thick the ice was. Mr. Cleary replied that was a few years ago. Mr. Poillucci noted that was before he built the road. Mr. Cleary stated he thought that was the year they had a lot of trouble with their plow guy. He believed that had more to do with the condition of the road for that year. He stated the conditions are much worse since Justine's Way.

Mr. Cleary then stated there is discussion in the Minutes of the Meeting about the water. It was said multiple times there would not be any additional water and if anything, it would be controlled better and slowed down. There would not be a teaspoon more of water on your property. Mr. Abbanato said he thought there should have been more drainage on that side of the property, bigger pipes or swales, whatever was needed to

capture that water and take it under and put it in the ground which is what is proposed. Hopefully, someone has the right plan to take care of this. Was there even an inspection to see if this was done right? Mr. Hoeg responded Mr. Jeremy Peck had gone up there and inspected. The Planning Board is not responsible for water that is under the ground, but their purview is for water that hits the surface of the ground. What they have up there is a spring. This is water that travels under the ground in a layer of gravel until it can come out, which is where it will bubble out. Mr. Abbanato said he had never had that before.

It was asked what year the road was built. Mr. Poillucci replied it was in 2015. Mr. Knox noted that it does say in the Minutes that there has been water in that area all along. Mr. Poillucci stated this gentleman came to him before they were building and wanted to put catch basins at the end of the road. He had said he could work with Jaimie, and they could try to talk. He noted if there was no water there, he wouldn't have wanted to put catch basins. He also stated that if a spring had been hit the water would come up where there is the least resistance, but it didn't come up through the disturbed soil or on the sides of the road where it is all stone and sand, or into his drainage. Instead it was pushed up the hill, underground, then through hard pan, and now it is bubbling out and coming down the street. He was not an engineer but that did not make sense to him. Ms. Mancovsky asked if they, as a community, have had an engineer review this situation. It was replied they had not.

Mr. Zienkiewicz said that he has visited this site, and he can see that there is a small problem. 700-800 feet of road was built but there is a problem in the last 30-40 feet. There is no problem above it, and it is absolutely bone dry. He noted that the last chamber has more water in it than he would expect, but the road is not adding to it. A resident noted the water is coming up through the road. Mr. Zienkiewicz said that he has been walking around there and he saw the lot next door, on both sides, is very wet. It looks like there is a lot of water underneath both houses. One appears to have a small creek running through it which is not on any drawing. The pipe is not filled all the way up.

Mr. Cleary asked what if the pipe was in the wrong place. Mr. Zienkiewicz said he would say if there is water running out of it, then it is not in the wrong place. Mr. Abbanato said it doesn't take all the water. It trickles and the rest gets backed up. It then forces its way through Fuller Shores and is breaking the asphalt. They just had to repave. Mr. Cleary advised where the original Fuller Shores Road was excavated and that whole area filled with water. There has been a lot of water at the top of the hill. The point is that water was found and diverted somehow. That water now needs to be redirected so it will drain down the road and not ice the road up in the wintertime. Mr. Zienkiewicz said it looked like the road was 12 inches thick which would be a proper thickness for a road like this.

Mr. Hoeg asked if it looked like they had altered the grading from existing to post construction. Mr. Zienkiewicz said if they did it was less than a foot. Mr. Cleary said he appreciated the Board's position but the problem is they are faced with tens of thousands

of dollars as an Association that they can't afford and which was not a liability until that road went in. Is it because the road went in they now have to divide up thousands of dollars in costs to fix a problem that is their responsibility because it is a private way? He just did not think this was fair.

Ms. Mancovsky said that she felt when they were having these discussions, they were weighing in on facts they really didn't understand. They don't have an engineering report or an engineer in front of them to explain any of this. She was not comfortable making an assessment of whether there is a spring or if there isn't a spring as she is not a specialist in that field. She asked if it would be wise for the Association to consult with someone who could ascertain if that is what is actually causing it. She would like to have a specialist speak to what is exactly transpiring rather than speculating on what they think is happening.

Mr. Poillucci stated that he was asked to work with them and put catch basins up there. Why would he be asked that unless there was already a problem? Mr. Bissonnette thought it was a sump pump that was going as the stream seemed to run heavy and then get slower, but he did not want to trespass in the yard. He noted they made the basin twice the size they needed to because of the water concern but he was never going to touch that road, and he was not going to own it. Mr. Poillucci then displayed some photos which he said show that the water appears to come from above Justine's Way.

Mr. Lang then said that their Association strongly disagrees with had been said earlier in regards to this problem not being there before. Once Mr. Pollucci did the work that is when this started. How it happened; they did not actually know. He does agree with Ms. Mancovsky that perhaps a professional should take a look at this for a full and better assessment. There are people from the Fire Department who have said this is unsafe to drive in. If they could find a way to go out and hire an engineer as suggested and bring the information back here, what would be the next step?

Ms. Mancovsky replied that when you have a professional opinion now you know with some certainty, and it can be discussed by another engineer. How can they make an assessment without understanding the science behind the problem? Mr. Hoeg advised Mr. Lang to talk to an engineer and let him know when he could next come in. He will talk to the Board's consulting engineer to find out what his thoughts are on this. Ms. Gwen Lang asked if the Association could access the Board's engineer. Mr. Hoeg replied the Planning Board did not have money in its budget. The engineer's fees are normally paid by the developer.

Mr. Abbanato said from the beginning Mr. Poillucci had told them they had nothing to worry about, and he would work with them. Maybe now they could sit down and work something out instead of spending all this money to survey, to evaluate, etc. Mr. Lang said they did have an estimate to take care of the water problem which was \$30,000. Mr. Hoeg said that he would give the Town engineer a copy of the plan and get his opinion if building the road would cause the water to be diverted as it had been stated. Ms. Mancovsky asked if this could have been a pre-existing condition that had somehow

changed. That is why it was important to have professional opinions weigh in on both sides.

Some residents asked if they could get earlier notice of the next meeting, as notice for this had been very brief. Ms. Garbitt, Town Administrator, advised that any resident could go on the Town website and sign up to be emailed the Planning Board agenda when it is posted. Ms. Lang then stated that the Fuller Shores residents were hoping this would be a joint effort between them and Mr. Poillucci, and they could work together. It was disappointing that Mr. Poillucci had walked out and said it was not his problem. Ms. Mancovsky wanted to be very clear that they had not established any responsibility yet, and that was what they needed to determine from the engineer. Mr. Hoeg said they would try to continue this on May 30, 2019.

**Public Hearing-Amend the Zoning By-Law Section 8.7, "Temporary Licenses for Mobile Home Storage Box-Trailers," to designate the Building Commissioner as the licensing authority for such uses and make other administrative changes.**

Mr. Hoeg opened the hearing and read the legal notice into the record. Mr. Conroy explained this would stream line the process. If a resident was displaced by fire, instead of having to wait for the next Selectmen's meeting, this would enable residents to go to the Building Commissioner for an immediate permit.

Mr. Conroy made a motion to recommend approval for this Zoning bylaw amendment. It was seconded by Ms. Mancovsky. The vote was **unanimous for.**

**Public Hearing-Amend the Zoning By-Law Section 6.7, "Site Plan Review," Sub-section 6.7.3, "Procedure-Residential," to increase the threshold of earth disturbance that triggers the need for Site Plan Review.**

Mr. Hoeg opened the hearing and read the legal notice into the record. Ms. Garbitt advised currently the bylaw is 3,000 square feet of land disturbance. They are updating this to 43,500 square feet to be consistent with EPA regulations. Mr. Zienkiewicz said as they start using this process they will find that there will be an additional amount of Site Plan Reviews that will be required. They will now have the opportunity to not prevent building, but to provide input that will address concerns as the one that had just previously been discussed in this meeting.

Mr. Conroy made a motion to recommend approval for this Zoning bylaw amendment. It was seconded by Ms. Mancovsky. The vote was **unanimous for.**

**Public Hearing-Amend the Zoning By-Law Section 2.0, "Definitions," and Section 7.4.6, "Specific Uses by Special Permit," and update regulatory citations, combine reviews into a single "Marijuana Uses" section and designate the Zoning Board of Appeals as the Special Permit Granting Authority.**

Mr. Hoeg opened the hearing and read the legal notice into the record. Mr. Zienkiewicz asked who had drafted this amendment. Ms. Garbitt replied it had been put forth by the Board of Selectmen and drafted by Town Counsel. Ms. Mancovsky asked why the Board of Selectmen wanted to make this change. Ms. Garbitt replied that originally when medical marijuana was approved it fell under the Department of Public Health, and they had the bylaw that regulated its use. When recreational marijuana was approved, it fell under the Cannabis Control Commission. It was advised to the Town that they update the citations to reflect the changes in the law and combine medical marijuana and recreational marijuana into a single marijuana use section.

Mr. Zienkiewicz noted the Special Permit Granting Authority had been switched to the Zoning Board of Appeals (ZBA) but he did not see anyone from that Board in attendance. Ms. Murray said that she had sent a message to Board members, and she had two responses which she read into the record. Mr. Chris Carmichael had sent an email advising he could not attend this hearing, but he had no suggested changes. Mr. Joe Urbanski also sent an email that advised he had no issues with the proposed amendment as it was written. Ms. Garbitt said that presently applicants are going to two Boards. The ZBA handles most Special Permits and the Selectmen thought this would streamline the process to one Board.

Mr. Zienkiewicz stated that right now the Special Permit would go to the ZBA but if a new building was proposed there would be a Site Plan Review for that, and it seems that was not taken from the Planning Board. Town Counsel advised this amendment does not change Site Plan Review. Mr. Zienkiewicz clarified the Planning Board still does Site Plan Review and now the ZBA will do the Special Permit. Mr. Conroy added what if it is not new construction but a remodel of a building with changes to coverage or parking. Will that also go to them? Town Counsel replied yes those changes should trigger their review.

Ms. Mancovsky questioned the history of this. When originally set up it was the responsibility of the Planning Board and not the ZBA. What was the reasoning for that? Mr. Conroy asked if it could become problematic because the ZBA only met once a month. Ms. Garbitt replied the ZBA will meet more if it becomes necessary. Ms. Mancovsky said that she did feel that they would lose some knowledge if this is transferred to the ZBA.

Town Counsel clarified it does now say "shall require Special Permit and Site Plan Approval from the Planning Board." It will be changed to "shall require a Special Permit from the Zoning Board of Appeals." Site Plan Approval is stricken. If the question comes up, the point of this is not to remove these applications from Site Plan Approval. As the Special Permit Granting Authority is changing to a different Board, those words

are taken out. If a project comes in and requires Site Plan Approval, it has to get Site Plan Approval. Taking those words out does not strip the Planning Board of its Site Plan Approval Authority. It is just to make sure it doesn't transfer that authority to the ZBA once they get the Special Permit process. If a project comes in and it triggers Site Plan Review, it will get Site Plan Review. The fact the bylaw is silent somewhere else about it is not going to control it.

Mr. Conroy made a motion to recommend approval for this Zoning bylaw amendment. It was seconded by Mr. Knox.

**VOTE:** Mr. Conroy, Mr. Knox – **AYE**  
Ms. Mancovsky – **NAY**  
Mr. Zienkiewicz, Mr. Hoeg – **ABSTAIN**

Town Counsel advised the motion does pass as the abstentions do not count.

Mr. Knox made a motion, seconded by Mr. Conroy, to close the Public Hearing. The vote was **unanimous for**.

The hearing closed at 8:43.

#### **Meet with Zenith Consulting Engineers regarding ANR submittal for Crooked Lane**

Ms. Mancovsky wanted to ask if this land was still in Chapter 61 and if a decision had been made. Mr. Zienkiewicz advised them the Board of Selectmen decided the Town was not interested in this property. This does not affect the property on the other side of the street all of which is still in 61A. Mr. Conroy asked if the Selectmen had released the land. Mr. Zienkiewicz replied they had. Mr. Conroy asked if the taxes had been squared away. Mr. Hoeg said he believed they vote to release the land which would go into a development situation. As the lots are sold off, the Town would receive its tax money.

Mr. Hoeg said he would entertain a motion. The plan does have adequate frontage and area. Mr. Zienkiewicz made a motion, seconded by Mr. Conroy, to endorse and sign the Form A plan for Crooked Lane. The vote was **unanimous for**.

#### **Meet with Outback Engineering regarding ANR submittal for County Street and South Kingman Street.**

Mr. Jeff Youngquist was present. He described the ANR plan which created two lots. Members briefly discussed the plan. Mr. Conroy then made the motion, seconded by Ms. Mancovsky to approve the ANR plan for County Street and South Kingman Street. The vote was **unanimous for**.

**Review the following petition from the Board of Appeals for:**

1. Huerth – 8 Edgewater Drive

Ms. Mancovsky made a motion, seconded by Mr. Conroy, to make no comment on the Zoning Board of Appeals petition for Huerth –8 Edgewater Drive. The **vote** was **unanimous for**.

**Approve Meeting Minutes**

Mr. Conroy made a motion, seconded by Ms. Mancovsky to approve the Meeting Minutes for December 27, 2018.

**VOTE:** Mr. Conroy, Ms. Mancovsky, Mr. Zienkiewicz, Mr. Hoeg – **AYE**  
Mr. Knox – **ABSTAIN**

Mr. Conroy made a motion, seconded by Ms. Mancovsky to approve the Meeting Minutes for January 10, 2019.

**VOTE:** Mr. Conroy, Ms. Mancovsky, Mr. Zienkiewicz, Mr. Hoeg – **AYE**  
Mr. Knox – **ABSTAIN**

**Old business**

A copy of the April 26, 2019, letter that had been sent to the Board of Selectmen regarding the FY2020 Budget request had been provided for informational purposes only.

A copy of the May 6, 2019, letter from the Fire Chief had been provided that detailed a meeting with the applicants of the funeral home proposal, and how the issue of the request for a second access will be resolved. Mr. Conroy advised with this letter he would make a motion that they now sign the Site Plan. The motion was seconded by Mr. Zienkiewicz. The **vote** was **unanimous for**.

**New business-Discuss membership in the American Planning Association.**

Ms. Murray said this is an organization that she had found on line. She thought it would be a great resource for the Board. They could join as individuals or as a Board. She also felt it would be beneficial for her personally in gaining further knowledge. After discussion, Mr. Hoeg asked Ms. Murray to sign them up for this.



**Next meeting**

The next meeting is scheduled for Thursday, May 30, 2019, at 7:30 p.m. at the Lakeville Senior Center.

**Adjourn**

Mr. Knox made a motion, seconded by Mr. Conroy, to adjourn the meeting.

Meeting adjourned at 9:30.