

**Planning Board
Lakeville, Massachusetts
Minutes of Meeting
September 24, 2020
Remote meeting**

On September 24, 2020, the Planning Board held a remote meeting. It was called to order by Chairman Knox at 7:00. LakeCam was recording, and it was streaming on Facebook Live.

Members present:

Mark Knox, Chair; Barbara Mancovsky, Vice-Chair; Peter Conroy, Michele MacEachern, Jack Lynch

Also present:

Jamie Bissonnette, engineer from Zenith Consulting Engineers (ZCE); Atty. Robert Mather

Agenda item #1

Mr. Knox read this item into the record. It was an explanation of the Governor's Order Suspending Certain Provisions of the Open Meeting Law related to the 2020 novel Coronavirus outbreak emergency which was why the Board was meeting remotely. Mr. Knox asked if anyone else was recording the meeting. There was no response.

ANR plan – 2 Cranberry Lane – continued

Mr. Bissonnette was present. He stated at the last meeting they presented a Form A plan and discussed the fact that North Precinct Street, the way that was adjacent to their property, was actually an undeveloped way. He asked to share his screen to display the updated plan. He advised the plan now includes North Precinct Street with the decree and number as well as the term undeveloped on it. He believed that was what they needed to do to satisfy the requirements from the last meeting.

Mr. Knox said that was the only thing that was an unknown as he recalled and also wanting the text on the plan. He asked if this was a unique circumstance with that hitting the frontage on lot 2. Technically, some of that frontage on that plan shows off the undeveloped roadway but the reality is their frontage is on the true North Precinct Street. Mr. Bissonnette replied he believed that was the case but he did not analyze the frontage for lot 2 as they weren't taking any off of that area. He said it was unusual to see an undeveloped road like this in Lakeville but it does happen from time to time.

Ms. MacEachern asked in regard to the paper street is that something that should be addressed with the Registry of Deeds. Mr. Bissonnette replied that would be a question for an attorney. It can depend on who has rights to, or who owns the paper streets or undeveloped right of ways. He did not know the process to undo a roadway or if there was an advantage one way or the other. You can file to have roads discontinued if they haven't been built. He believed the abutters on both sides would then own to the center line of the road.

Mr. Lynch asked if they now have two North Precinct Streets. Mr. Bissonnette said he thought they had always had the constructed one and the one that was not developed. The Town and the DPW should be very aware of this situation. Ms. Mancovsky noted that she was very familiar with this neighborhood and street. When you take the right hand turn from North Precinct over to Cranberry Lane it looks to her that the area where she would otherwise be driving on a road is now being positioned as a portion of this lot. The drainage easement goes over that location and that tip of the property does go into the Town accepted North Precinct Street. Are they concerned about that at all in terms of having clean books? The people that buy this house are going to own a property where the parcel goes out into the public way. It was indicated on the plan that instead of taking a hard turn onto Cranberry Lane the road more exists as smoothing over that corner. Mr. Bissonnette replied this plan is the result of a survey and there is a concrete bound right at the corner.

Ms. Mancovsky asked the Board how they could articulate mitigating some risk to the Town as they would not be redrawing roads. Mr. Knox said he felt if a road was going across the lot, banks and attorneys would pick up on that before the transfer of papers. Mr. Bissonnette said he would hope that would be the case. He noted the situation is with this type of a filing, an approval not required, the standards that the plan has is it's on a roadway, has frontage, and area. Whether the Town has gone over and paved on this particular lot should have no bearing as to whether the plan should be endorsed or not endorsed. Although he could not speak to if that had been done, as he did not have the pavement edge on the survey.

Mr. Knox said this is an ANR plan not a subdivision. That roadway line is not something they are concerned with and not part of an ANR approval. The edge of road is not under their purview for an ANR. Mr. Knox asked how much frontage was on the lot. Mr. Bissonnette replied it was over 200 feet. Mr. Knox noted that if a piece of that went missing there would still be ample space to meet the frontage requirements. Mr. Bissonnette agreed. He did understand Ms. Mancovsky's concern but with an ANR plan it just was not relevant.

Mr. Conroy asked if anyone had verified the concrete bound. Mr. Bissonnette said their surveyors had field located all the bounds. He asked if it was verified would it be marked if it was in the roadway. Mr. Bissonnette responded they had not advised him one way or the other. Mr. Conroy said the way this plan was drawn is it puts more emphasis on North Precinct Street, the undeveloped layout than it does the actual public way in that section. He understood about the ANR but personally he did have a problem with how it was drawn. Mr. Bissonnette said that he thought the reason it was cut this way was because on the original decree from 1961 it follows that path all the way up and down, and the other one was put into effect after. They do find that roads sometimes get shifted.

Mr. Bissonnette then shared his screen which displayed the plan from the Registry of Deeds which showed why they did the layout the way they did. The existing gravel way from this 1987 plan shows it coming down and then veering off and North Precinct continued down and undeveloped. It appears that although they had the layout, they might have just improved the existing gravel way around. This plan was endorsed by the Planning Board in 1987 for the subdivision of Cranberry Lane. Ms. Mancovsky then explained what she was seeing on Google Maps which likely made this a non-issue.

Mr. Knox then made a motion, seconded by Mr. Lynch to endorse the amended ANR plan for 2 Cranberry Lane.

Roll Call Vote: Ms. Mancovsky-Aye, Mr. Conroy-Aye, Ms. MacEachern-Aye, Mr. Lynch-Aye, Mr. Knox-Aye

ANR plan – Evergreen Road, Clark Road, and Spruce Street

Mr. Bissonnette and Atty. Robert Mather were present. Mr. Knox advised they had in their packets everything from the Zoning Board of Appeals Decision regarding this. He asked Atty. Mather to give the Board a brief synopsis of this plan. Atty. Mather advised he represents the owners of the properties Lou and Amy Vermette. They own eight lots which had a total of four houses on them. They were all run down cottages. They had a right to tear down and/or rehab the existing dwellings. They didn't want to do that because of the location of where they are. He did not know if they could see the existing houses. Mr. Knox then displayed the plan on his screen. Atty. Mather explained that none of the houses sit on lots that comply with zoning, and none of them meet all of the setback requirements.

Atty. Mather said the proposal is to reconfigure eight lots into four lots and to place the houses in the center of the lots where they will meet all the setback requirements. The lots don't meet the frontage and area which is why they had to go to the Zoning Board. These four dwellings are all pre-existing, non-conforming, and they are proposing to alter that. The bylaw allows that pre-existing, non-conforming uses may continue but any alteration or change can only be done if the Zoning Board makes a finding that the change will not be substantially more detrimental. He believed that they also had in their packet correspondence from the Building Commissioner to Town Counsel. He advised they had then gone to the Zoning Board and all that had to be shown was that the alteration would not be substantially more detrimental. They showed that it was actually significantly less detrimental because the houses were spaced out better, they were on larger lots, and they all would comply with the setback requirements. The Zoning Board then gave them the Special Permit but that was just the first stage of the process.

Atty. Mather said they now need to do a Form A plan. They could not come to the Planning Board first because they would be asking for a division that does not comply with Zoning. The Board would have no choice but to deny. However, the Special Permit allows them to appear before the Board because they now have four lots that have been approved by the Zoning Board for a Special Permit.

Mr. Knox advised they had the finding from the Zoning Board of Appeals in their packet. He then read into the record item l) which found that the proposed changes to the properties and structures were not substantially more detrimental than the existing non-conforming structures or uses and was actually an improvement to the neighborhood and the non-conformities. Item n) found that the advantages of the proposed changes outweigh any detrimental effects and would not be greater than could be expected from development that would occur if the Special Permit were denied. Finally, item o) found that the applicant had no reasonable alternative to accomplish this purpose in a manner more compatible with the character of the immediate neighborhood.

Mr. Knox asked if there were any questions or comments. Ms. Mancovsky said that a portion of these lots is coming from Elm Street, a private way, and she wanted to check on that usage and incorporating that portion of the street with the two parcels on the far-right side. Atty. Mather responded Elm Street which was laid out in the original plan showed a paper street that protruded into what will be the four new lots but it stopped right in the middle. It did not go out to Evergreen Road. Mr. Vermette owns the entire fee interest of Elm Street because he owns land on both sides. That is due to a Massachusetts statute called The Derelict Fee Statute which says that if you own land on a private way you own to the middle of the way, or if you own on both sides you own the entire way. Atty. Mather said that you also have to look at whether or not there are rights to use the way. You can own an entire private way but subject to rights of others to use. As this way doesn't go anywhere but stops in the middle of Mr. Vermette's property, there is no one else that would have a right to use it.

Ms. MacEachern asked if the existing houses were seasonal. Atty. Mather replied the last time they were used, they were used year-round, but they haven't been used for a while. He was not really sure when they were last used. Ms. Mancovsky thought this would be a huge improvement to the area. Atty. Mather agreed and noted there had been no opposition to this at the Zoning Board meeting. Ms. MacEachern noted that they also could have one totally conforming lot.

Atty. Mather said he would like to point out that it had been mentioned the properties had not been used in a few years. If this was a commercial use, there would be an issue as commercial uses that have not been used for two years lose their non-conforming right. Their bylaw specifically deals with residential uses in a different way. It says if they are abandoned, it does not mean that nobody lives in it. It means that you've taken it down and it is no longer used as a house. Even though these houses have not been used for five or even ten years, they still have the same rights as a non-conforming use in accordance with their bylaws.

Mr. Knox then made a motion, seconded by Mr. Conroy, to endorse the ANR plan for Spruce Street, Evergreen Road, and Clark Road

Roll Call Vote: Ms. Mancovsky-Aye, Mr. Conroy-Aye, Ms. MacEachern-Aye, Mr. Lynch-Aye, Mr. Knox-Aye

Master Plan implementation – update on hiring a Planner

Mr. Knox advised earlier in the week he met with Mr. Darling, Selectman LaCamera, and Ms. Candito. They discussed the 43D process but also touched on the Planner position. From that, he explored with Scott Turner from Environmental Partners regarding Planner services for the Planning Board. This was based on the understanding that Freetown uses Environmental Partners a great deal for some capacity for Planning Board services. Mr. Turner advised contracting them for a full time Planner was a unique and non-typical request and difficult to put a budget value on. Mr. Turner explained the services they could provide for Towns are technical review for plans, administrative assistance for such things as drafting a finding, proper forms and timelines for filings, etc. Mr. Knox noted there are also several existing project sites in Town where peer review needs to be closed out. They currently have no one on Board to complete these services.

Mr. Knox advised the conversation has been started. Hopefully, they can come up with some kind of agreement and terms so that they can provide the Board with a lot more help. Mr. Knox said he needed to follow up, but this could get them in the right direction. They will see if they can develop some kind of a budget. Some would fall under peer review but the administrative aspect would fall under the Town Budget. He asked if anybody had any questions or information.

Mr. Conroy asked Mr. Knox if he knew how Freetown paid. Was it hourly or do they buy a bank of time? Mr. Knox replied he thought that with some Towns it had been an annual budget amount. He thought they were under the impression that like with Freetown, a plan would be provided by an applicant or engineer and that would be sent to them for stormwater management review, noise or visual buffer review, depending on what type of plan it is or what oversight is needed. A price would then be developed and nothing would be done until a check was received. The Board would then advise the developer what the peer review cost would be. Mr. Conroy said that seemed fair for both parties.

Mr. Knox then said at their next meeting he would like to review the costs the Board is currently charging for a Site Plan Review. Ms. Mancovsky noted that she had sent a consultant referral form to Ms. Candito and forwarded a copy to him as well in case they needed an alternative resource. Mr. Knox added that as part of their conversation on Monday, they were hoping the Board of Selectmen would put together a Request for Qualifications and put it out to several engineers. They would then have a list of pre-approved options.

Development Opportunities District

Mr. Knox advised he had spoken to Mr. Darling regarding this. They need to be cautious about it and probably have someone review it for their guidance. If they try to eliminate the Development Opportunities District that could harm the Town's opportunity for some business or commercial development which is a huge help for the Town. They do have the ability to deny a project for being too detrimental. That might be a question to ask Town Counsel so they will know all their options.

Ms. Mancovsky noted that the late Mr. Zienkiewicz used to email a group of planner friends about items like this which is something she would try to find. She was interested to see if there had been Court cases challenging a Planning Board's decision that a project was too detrimental as that is fairly subjective. Mr. Knox said that is something that would have to be very carefully called out in a finding of what the detriment is in order for it to hold up in Court. He was also told that the first thing the Courts go to is their own bylaws. Members then discussed cluster zoning and what that definition might be.

43D Committee

Mr. Knox advised they should have in their packets a list of items they would want covered in a peer review. He advised this was a good start, and when they delve into that project this is something that could be passed along to the peer review engineering firm to voice their concerns. Ms. Mancovsky said her thoughts, after speaking with a buyer for a property that abuts the hospital site, are there will be several residential abutters to that development and they will need to have some type of buffer or vegetated border. Ms. MacEachern and Mr. Knox said that a 100-foot buffer was included in the presentation. Ms. Mancovsky said that is something that definitely will need to be in the peer review especially the quality of that buffer. Mr. Knox said that is something that he had stated they would need, and it was considered and talked about at that initial meeting. He didn't think this was the appropriate time to be getting into specifics of the proposed project.

Mr. Knox advised traffic impacts had also been discussed at the presentation. They had a pretty low traffic count because right now they are proposing a warehouse and not distribution. His concern was what if a new company comes in and instead of a warehouse they run distribution out of the facility. They will need to condition this project to protect the Town from a change in occupancy. Mr. Lynch said wouldn't there be a significant amount of truck traffic going into a warehouse. Mr. Knox replied they did have specific traffic counts but that is something they would also have to put to a peer review and have verified.

Mr. Knox said he would like them to take item #6 out of their packet. They should review it over the next couple of weeks and jot down any other items they would want to discuss. He would like to be ready to present to the peer review engineer a list of disciplines they want covered in depth. They also need to consider some of the bonds and sureties they are going to take. Mr. Knox then lost contact with the Board due to technical issues. Ms. Mancovsky read a question that was in the chat regarding the lights and traffic from the facility. Ms. Mancovsky responded those items were still up for discussion. In her opinion, there will need to be some type of intersection at Bridge Street but she would defer to the Chairman. Mr. Knox said it was too early to discuss these concerns as there is not yet even a submitted plan.

Ms. MacEachern said it had been presented that there was a land bank of 155 employee parking and storage to build, if necessary but limit it, if possible. She didn't know if the 556 employee parking spaces that had been represented included the 155 or excluded it. Mr. Knox said that was a great point to consider for the lot coverage. That is something they would need to keep an eye on and understand fully.

SRPEED-Update

Ms. Mancovsky advised they did have a meeting last night. The most meaningful topic covered would be the update to the South Coast Rail. The estimated delivery date is sometime in 2023. That has not changed in about one year. The Route 140 Exchange is being redrawn and the Train Station that is going to be available in Taunton is going to be where the old golf course is. The bid was just approved for the work to start. If anybody has any questions, they can visit the South Coast Rail project to see updated maps. Phase 1 is that temporary location between Taunton and Middleboro with the Lakeville Train Station moving over to Middleboro.

Ms. Mancovsky said another interesting item was a presentation on solar development by the Clean Energy Extension. She would circulate the YouTube link for their review. The Smart Program for the State of Massachusetts has been modified meaning the incentives and rules are changing. This may put a lot of pressure on communities like Lakeville. She noted that they would be proposing a sample bylaw for their consideration, and they may have something for them in the next 30 days or by the end of the year. She advised that there was also going to be some resources for their Fire Department to receive training in avoiding damage from lithium batteries. This is something they need to take advantage of.

Approve meeting minutes

Ms. Mancovsky made a motion, seconded by Mr. Conroy, to approve the Minutes from the February 13, 2020, meeting.

Roll Call Vote: Ms. Mancovsky-Aye, Mr. Conroy-Aye, Mr. Knox-Aye,
Ms. MacEachern-Abstain, Mr. Lynch-Abstain

New Business – Discuss new procedure for signed plans

Ms. Murray said because it was sometimes difficult to get the Board in to sign plans could they make the engineer responsible for that after the mylar was signed. She didn't know how the Board would feel about that. Mr. Knox was fine with it as long as it was legal. Ms. Murray advised it had been done in the past but not as a procedure. She would also like to get a PDF file of the signed plan which could then be saved. In that case if a plan gets lost or damaged, they would still have a record of what had been approved and signed.

New Business – Discuss Site Plan Review application

Ms. Murray advised this had been circulated back in January or February. The second part of it was to be a checklist. She stated that Mr. Zienkiewicz was going to help put that together with her before he had passed. She wanted to make sure they had no problem with the application before she began to work on that second part. Mr. Knox asked that it be forwarded to Mr. Darling for his review and thoughts. He thought he might like to have an additional line item which would

indicate if someone was acting as an agent and somewhere on the application there should be a reference to the plan.

New Business - Additional

Ms. Murray wanted to mention with the upcoming renovation of the office, she would be returning to regular hours. She asked how members would feel about having Monday night available for them to come in and sign plans, if they were not able to make it during the day. Members thought that would work fine. She also asked if she could speak with the Attorney regarding the next step in the subdivision process. The appeal period was coming to an end, and she wanted to make sure that everything was done correctly. Mr. Knox said that would be fine. The final thing was in regards to peer review. Ms. Murray stated that as that would be coming up soon did they want to take a look at the procedure that had previously been established to see if it still works. Mr. Knox said they also need to take a look at how they keep track of the peer review accounts. Ms. Murray replied that was something that Mr. Darling had talked to her about and something that they were still trying to develop.

Next meeting

Mr. Knox advised the next meeting is scheduled for October 8, 2020, at 7:00 p.m.

Adjourn

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

Roll Call Vote: Ms. Mancovsky-Aye, Mr. Conroy-Aye, Ms. MacEachern-Aye, Mr. Lynch-Aye, Mr. Knox-Aye

Meeting adjourned at 8:35.