

**Planning Board Minutes**  
**March 23, 2005**

1. The Planning Board meeting was convened at 7:03 p.m. with the following members present: John MacMillan, Chair: Joseph Kalagher: Rich Wright and Associate Member Gary Howland. Absent were Bob Salo and Robert MacLeod.
2. Motion to accept minutes of March 10, 2005 by Rich Wright, seconded by Joe Kalagher. All in favor.
3. Agenda was discussed with the following added: Action Items for Tonight

Planning Board Decisions for March 24, 2005 – List prepared by chair John MacMillan

1. Lot 11 Hay Road – Recommend endorsement (see back up material)
  2. Lakeview Estates – Preliminary Plan Approval.
  3. Lakeside Village Condos – Preliminary Plan Approval.
  4. Design with Nature OSRD – Waiting for review by Attorney.
  5. Steepleview Common Driveway – Agreements need to be revised.
  6. Lot 7&8 Sherbert Road – Agreements need to be revised
4. Reviewed correspondence:

Email from Carol Page 27 Log Cabin Road dated 23March05 – read Higgins-Steele request for onsite visit now they will make appointment.  
Rizzo Assoc: Lakeside Village  
2 bills for Viking Office Supply \$41.47 and \$36.99 signed by Chair John MacMillan  
Building Commissioner Report 1 new dwelling permit  
Letter from Focus Committee: Zoning changes  
No ZBA decisions from Ashburnham  
MRPC : Transportation Program/Minutes/Agenda
5. ANR Keith Honkala – Rindge Turnpike was reviewed and Motion by John MacMillan second by Joe Kalagher, voted 3 yes to approve.
6. Action Items 4,5,6 Our Attorney comments will be followed to applicants so they can act to revise the items referenced.

7. ANR 11 Hay Road – Drawing was reviewed for the additions of the two notes:  
1: Not a building lot.  
2: No determination as to compliance with zoning has been made or intended.

John MacMillan explained the cases that support the reasons we should endorse this ANR.  
(see below)

Lot 11 Hay Road – ANR

Move to endorse the “Approval Not Required” Plan based on the following –

Two cases decided in 1989 are further examples of limits on what a planning board may consider when reviewing an ANR request. The first of those, **Corcoran v. Planning Bd. of Sudbury**, 406 Mass. 248 (1989), bears resemblance to the case before us. The landowner in Corcoran asked for an ANR endorsement to a plan that showed six lots, each with frontage and access to the public way. On three lots, wetlands stood between the public way and the back-land of those lots on which a house might be built. There had been no request to build a driveway on the wetland made to either the local conservation commission or the State Department of Environmental Quality Engineering. The opinion is silent as to whether such a request would likely be granted or denied. "The presence of wetlands on the lots does not raise a question of access from the public way, but rather the extent to which interior wetlands can be used in connection with structures to be built on the lots." Id. at 251. In the absence of "distinct physical impediments to threshold access," the access shown on the plan was not illusory. Ibid. **Long Pond Estates, Ltd. v. Planning Bd. of Sturbridge**, 406 Mass. 253, 254-255 (1989), was the second of that pair of 1989 decisions. There, the planning board withheld ANR endorsement because Champeaux Road, the public way on which three lots of adequate width fronted, was subject to periodic flooding. This was a difficulty on an average of thirty-three and one-half days a year, but when Champeaux Road was flooded, there was alternate access to the three lots in question from ways in a neighboring town. In those circumstances, the court held, the landowner was entitled to a § 81P endorsement. And..

**Gates V. Planning Board of Dighton** 48 Mass App. Ct. 394, 722 N.E.2<sup>nd</sup> 477, -  
Planning Board may refuse to endorse a plan as approval not required despite technical compliance with frontage where access to to lots is nonexistent or illusory because it must cross wetlands.... Planning Board should endorse plan as approval not required where access “could be better but is manageable”

“No determination as to the compliance with the zoning requirements has been made or intended”

The access issue will come up again at the time of the building permit application and the Building Commissioner will need to make a determination as to the adequacy of the access.

Motion by John MacMillan second by Rich Wright – voted 3 yes to endorse

8. Discussion with Focus Committee:

We discussed the total lack of communication between all Town Boards and Committees.

The steps involved in a request of zoning bylaw change to be brought to Town Meeting by anyone other than the Planning Board was explained by John MacMillan

Step 1 is to submit to Board of Selectmen, they have 14 days to review and forward to Planning Board. The Planning Board then reviews and schedules, holds the required Public Hearing for input on the proposed changes. This involves many steps and it was determined that the time for this to happen for this Town Meeting is not there.

The board further said that at this time until a Town Planner is hired and a complete review of our Zoning is completed the board will look at not making any more bandaied type changes similar to what the Focus Committee submitted for our review.

The Board voiced their surprise at the presentation by the Focus Committee at the Selectmen's Meeting on 21 March 2005. A discussion was held as to the duties and responsibilities of the Planning Board set by State and Federal Laws.

The Board will draft a letter to the Selectmen regarding the Communications and Planning issues we feel need to be discussed and fixed.

9. Site Plan Review for Bait and Tackle , Sporting Goods Store.

As the space was used prior as a retail Movie Rental Store the use in not being changed.

Motion by Rich Wright second by Joe Kalagher, vote 3 yes to approve and letter will be sent by John MacMillan to the Town Clerk and Building Commissioner on this decision.

10. Meeting adjourned at 9:37 pm

Joe Kalagher, Acting Secretary