

TOWN OF NORWELL  
AUG 14 2008  
TOWN CLERK  
PATRICIA M. ANDERSON

**Norwell Planning Board Meeting Minutes  
July 23, 2008**

The meeting was called to order at approximately 7:00 P.M. Present were Board Members Karen A. Joseph, Michael J. Tobin, Sally I. Turner, Charles Markham and Town Planner Todd Thomas. Member Joseph was acting Chair for the meeting.

**DISCUSSION: Draft Agenda**

The Town Planner asked the Board to add discussions on the Pathway Committee and the redesign of Town Hall to the agenda. Member Turner moved that the Board accept the amended agenda as presented. The motion was approved 4-0.

**DISCUSSION: July 9, 2008 Meeting Minutes**

Member Turner moved to accept the July 9, 2008 meeting minutes as presented. The motion was approved 4-0.

**DISCUSSION: Bills.**

|  |                |
|--|----------------|
| Monadnock Spring Water (Inv. # 507570)                   | \$10.00        |
| <u>Bond Printing Co. (TT-business cards, Inv.#12528)</u> | <u>\$59.80</u> |
| TOTAL = \$69.80  |                |

Member Turner moved that the bills be paid and that the payment vouchers be signed. The motion was approved 4-0.

**DISCUSSION: ANR Plan for Harbor Lane (Donahue).**

The subject of the discussion is a submitted ANR "Plan of Land Main Street, Harbor Lane and Kings Landing Way, Norwell, Massachusetts", showing the division of the Donahues' property into 5 lots, with Lots 1 and 2 fronting on Main Street and Kings Landing Way and Lots 3, 4 and 5 fronting on Harbor Lane (a private subdivision road). Attorney Roger Hughes, representing the applicant, stated that Land Court Title Examiner, Attorney David Webster, has given two written opinions, dated February 22, 2007 and June 23, 2008, stating the applicant has the right to use Harbor Lane as frontage for their ANR lots via an easement granted in 1961. Attorney Hughes said that the submitted ANR plan meets the Planning Board's requirements and the plan should be endorsed. Member Joseph responded that the presence of Town Counsel was requested because Bill Murphy came into the Planning Office and threatened to sue the Planning Board if the ANR was endorsed, as he indicated that he is the owner of Harbor Lane and he filed a letter stating as such with the Town Clerk earlier in the day. Member Joseph also stated that Town Counsel was present to consider new information submitted by Member Turner regarding the ownership of Harbor Lane.

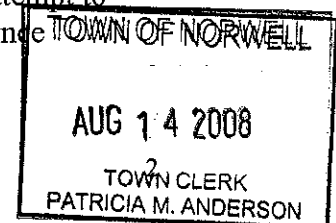
Member Turner said that she reviewed the opinions from Attorney Webster and the letter from Mr. Murphy, and found them to be at odds with each other regarding rights of access to the Donahue's land from Harbor Lane. In an effort to clarify the issue, she went to Land Court to obtain copies of deeds and plans pertaining to the history of Mr. Donahue's land and Harbor Lane dating from the early 1960's. She gave the Board members and Town Counsel packets of copies of these documents. She stated that it is

her understanding that prior to endorsing an ANR plan, the Planning Board must be satisfied that all lots created by the plan have, at a minimum, frontage on and access from one of the three kinds of qualifying ways, as outlined in the Subdivision Control Law. Since she is in doubt that the proposed lots can be accessed over Harbor Lane at the present time, she could not vote to approve that plan. Town Counsel Robert W. Galvin Jr. said that he reviewed Attorney Webster's certification, found it acceptable, and counseled that the Board should not attempt to adjudicate the issue of rights in Harbor Lane, which is an issue beyond the scope of the Planning Board's authority. Member Tobin agreed and said that the Board's focus should be on the applicability of the plan to its rules and regulations, not on ownership issues.

Member Joseph said that before a discussion on Harbor Lane takes place, the Board should vote to accept the filing of the ANR plan as of the date the Board first convened after the plan was submitted to the Planning Office. Upon a motion made by Member Markham, the ANR "Plan of Land Main Street, Harbor Lane and Kings Landing Way, Norwell, Massachusetts" dated April 1, 2008 was accepted for filing as of July 9, 2008. A vote of 4-0 affirmed the motion.

Member Markham spoke about the ownership of Harbor Lane and while he agreed with Town Counsel that the Planning Board should not adjudicate property rights, he said that the applicant must document that their frontage access is not illusory. Member Markham stated a hypothetical situation in which an ANR submission was based on a private road, where the applicant clearly had no right to access, and where this lack of access was not under debate. In such an instance, Member Markham opined that the Board should not endorse that plan because it is appropriate for the Planning Board to take notice of property rights. In regards to the current submittal, Member Markham noted a letter, dated July 23, 2008, received by the Planning Board from the Trustee of Harbor Lane Realty Trust, the owner of the road. In this letter, the trustee informed the Planning Board, "under no circumstances do the Donahues' have rights on this road". Member Markham noted that this was a highly unusual situation where the actual road itself was being called in to question. While not wanting to adjudicate property rights, Member Markham felt that the applicant should at least address these issues in a responsive manner "rather than having the two attorneys talk past one another" so that a colorable claim could at least be made that the applicant has access to the road.

Member Joseph took comments from the general public. Greg Webb of 63 Harbor Lane said that Bill Murphy of Harbor Lane Realty Trust owns Harbor Lane and that there has been talk about the development of the Donahues' land for years. James Kelliher of 79 Harbor Lane said that he did not think the Planning Board should approve the lots solely on the basis of Attorney Webster's certification that the Donahue's retained the right to use Harbor Lane. He added that various other lawyers have reviewed this situation with mixed findings over the years. Mr. Kelliher also commented that he was granted an easement to Harbor Lane by Bill Murphy and that it was not fair to the homeowners' association to be put in a situation to have to sue their neighbors over a decision of the Planning Board. Town Counsel Galvin replied that the neighbor should not attempt to construe any endorsement as having a bearing on the legal rights of anyone since



Planning Board's decision does not adjudicate these disputed property rights and that a potential endorsement, or refusal to endorse the plan, does not substantiate the applicant's claim to Harbor Lane.

The Board discussed the merits of the ANR Plan and made specific findings. Member Tobin moved to endorse the ANR Plan as approval not required under the Subdivision Control Law because the ANR "Plan of Land Main Street, Harbor Lane and Kings Landing Way, Norwell, Massachusetts" was substantially compliant with its Rules and Regulations. The motion failed to carry by a vote of 2-2.

**Scenic Road Hearing: Stone Wall at Block 71, Lot 22 on River Street / King.**

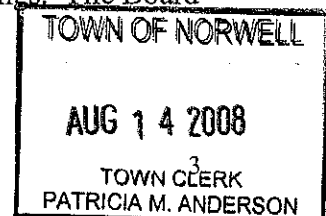
At 7:55 Member Turner read the public hearing notice. The Town Planner explained the proposed work and compensatory actions relating to the request to breach the stone wall at Block 71, Lot 22, River Street. The applicant, James R. King Jr., clarified that the proposed breach in the stone wall would be 19 feet wide, for a 17 foot wide driveway, with tapered ends to the stone wall terminated by fence posts, with the fencing continuing into the lot along the driveway. Mr. King added that he would install a light and light post along the side of the driveway in conjunction with the stone wall work. Abutter David McPherson of 221 River Street said he was concerned about potential runoff from the property. The Town Planner explained that runoff due to the development of the lot was not before the Board, just the request for work to breach a stone wall in the Town's right of way. Member Tobin asked the applicant if the existing private road on the edge of the property already allowed access to the lot. The applicant said that they could access the lot by the existing way, but it was very narrow and not in a preferable location. Member Turner agreed with the applicant and since the width of the private road was said to be no greater than 9 feet. Upon a motion made by Member Tobin, the applicant's proposed stone wall work for Block 71, Lot 22, River Street was approved as proposed at the hearing. A 4-0 vote affirmed the motion.

**Scenic Road Hearing (cont.): Tree at 195 Cross Street / Watson.**

At 8:08 Member Turner read the public hearing notice. The Town Planner explained the revisions to the proposed work and related compensatory actions for the applicant's request to remove a horse chestnut tree at 195 Cross Street. Upon Member Joseph's question, the applicant, Richard Watson, confirmed that the proposed fieldstone wall was not within the right of way. Member Joseph confirmed that a total of six trees were being proposed to compensate for the removal of the 24" horse chestnut tree on the westernmost side of the driveway. Mr. Watson confirmed that the six replacement trees would all be at least three inches in caliper. Upon a motion made by Member Turner, the Planning Board agreed to the removal of the single westernmost horse chestnut tree, provided that the proposed fieldstone wall is not built within the right of way and the proposed six replacement trees, none to be less than three inches in caliper, are planted as agreed upon. A 4-0 vote affirmed the motion.

**DISCUSSION: Draft Letters for July 9<sup>th</sup> Scenic Road Approvals.**

The Board reviewed the draft letters for the July 9, 2008 scenic road hearings. The Board found the documents to be acceptable.



**DISCUSSION: Norwell Commons Draft Comment Letter.**

The Board discussed the draft Norwell Commons at South Street Planning Board comment letter. Member Turner added that the emergency access should be paved. Member Tobin and Member Joseph directed two other changes. Upon a motion made by Member Turner, the Board authorized the release of the as to be revised Norwell Commons Planning Board comment letter. A 4-0 vote affirmed the motion.

**DISCUSSION: Simon Hill Village Draft Comment Letter.**

The Town Planner informed the Board that the draft comment letter on Simon Hill Village should be available for the August 13<sup>th</sup> meeting.

**DISCUSSION: Feedback for Board of Appeals Rules & Regs Update.**

Member Joseph commented that the Board of Appeals approved their new rules and regulations at their July 22<sup>nd</sup> meeting. She added that John Chessia had reviewed the changes and she was therefore comfortable with said changes.

**DISCUSSION: Planning Board Reorganization & Joint Meeting w/ BOS.**

The Planning Board discussed reorganizing in the wake of Member Graham's resignation. Member Markham nominated Member Joseph as Chair. Member Turner made the motion and it was affirmed by a vote of 4-0. Member Joseph nominated Member Tobin as Vice-Chair. Member Turner made the motion and it was affirmed by a vote of 4-0. Member Joseph nominated Member Turner as Clerk. Member Markham made the motion and it was affirmed by a vote of 4-0. Member Joseph nominated Member Markham as alternate Clerk. Member Turner made the motion and it was affirmed by a vote of 4-0.

The Town Planner was instructed to deliver the draft notice regarding Member Graham's resignation to the Selectmen on Thursday morning. He was also instructed to hold off on sending the Board's revised signatures to the Registry and Land Court until the full Board could discuss reorganizing at the August 13<sup>th</sup> meeting.

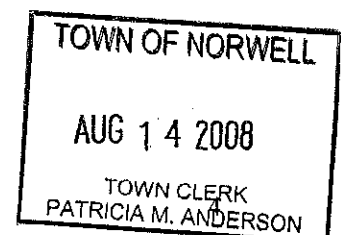
**DISCUSSION: Town Hall Building Design.**

The Board instructed the Town Planner that he was free to draft a letter to the PBMC about the potential redesign of Town Hall.

**DISCUSSION: Town Planner Pathway Committee Work & Grant Applications.**

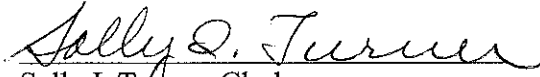
The Town Planner asked the Planning Board about the use of his time for Pathway Committee grant applications. Member Markham replied that the contracted grant consultant, not the Town Planner, should find and apply for any grants, utilizing up to the \$25,000 allotted for such by Town Meeting. Member Turner noted that the CPC would also be considering this request at their meeting on July 24<sup>th</sup>. Upon a motion made by Member Markham, the Pathway Committee was authorized to engage Wendy Garpow to scan and apply for available grants. A 4-0 vote affirmed the motion.

**ADJOURNMENT**



At 9:55 P.M. Member Turner moved that the Board convene in Executive Session and adjourn therefrom. A 4-0 affirmed the motion as follows: Karen A. Joseph – Aye, Charles Markham – Aye, Michael J. Tobin – Aye, Sally Turner – Aye.

I certify that the above minutes were reviewed and approved by majority vote by the Planning Board on August 13, 2008.

  
Sally I. Turner, Clerk

