

PLANNING BOARD  
**TOWN OF NORWELL**

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2015 JUL 23 AM 9:09

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**Norwell Planning Board Meeting Minutes  
March 25, 2015**

The meeting was called to order at approximately 7:00 p.m. Present were Board Members Darryl Mayers, Ken Cadman and Brad Washburn. Patrick Campbell and Peggy Etzel were absent. The meeting was held in the Planning Office.

**Draft Agenda**

*Member Cadman moved that the Board approve the draft agenda. The motion was approved by a vote of 3-0.*

**Zoning Articles**

The ZBA is not comfortable with the proposed creation of a use table and what they view as changes to the existing uses allowed. The Board discussed rescinding the proposed by-law and working with members of ZBA over the next year to address concerns.

*Member Cadman moved that the Board rescind the proposed use table from the warrant. The motion was approved by a vote of 3-0.*

**Selectmen**

The Board met with the Selectmen and Pathways Committee to review the proposed zoning articles, Complete Streets Policy and Main Street pedestrian improvements. The Planning Board and Pathways Committee did not officially comment on the Main Street project.

**8:00 Public Hearing: White Barn Lane**

White Barn Lane, LLC is a development company that is proposing to construct an affordable housing development under MGL40B. Since the ZBA determination in May 2008 there has been ongoing litigation between the Town, White Barn Lane, LLC and residents of the White Barn Lane Subdivision.

This comprehensive permit would require changes to the existing White Barn Lane roadway that was approved under the Subdivision Control Law by the Planning Board in March 1993. As White Barn Lane was approved as a subdivision, in April 2013 the Superior Court ordered that the developer, White Barn Lane, LLC, file with the Norwell Planning Board a request for determination of two issues: (1) whether the enlargement of the roadway constitutes a modification of the subdivision covenant and (2) whether that can be done

without the consent of purchasers of land within the subdivision. This public hearing is for the Board to address these two questions.

Warren Baker and Kevin Freitag, attorneys representing White Barn Lane, LLC, made the argument to the Planning Board that the consent of the abutting homeowners is not required for the following reasons: (1) the width of the right of way is currently 50 feet and they are not proposing to alter the location or width of that right of way, (2) the paving and widening of the roadway to 22 feet from the existing 12 foot wide gravel road, drainage improvements and removal of the cul-de-sac all takes place within the existing right of way, (3) MGL81W is not at issue because the proposal is not a subdivision modification as the "location and width of ways" discussed in MGL81O refers to the layout of the right of way, (4) the ZBA as the comprehensive permit granting authority under MGL40B has the ability to make subdivision plan determinations and has already approved the proposed changes to the roadway, (5) The case Patelle v. the Planning Board of Woburn determined that abutter consent was required under MGL81W to protect lot "marketability" which refers to the title of the property and since the lots lines would not be affected and access would still be provided, marketability would not be affected. Relocation of open space, changing width of streets, traffic signals and transformation of a cul-de-sac to a through street does also was determined to not affect "marketability".

Brad McKenzie, Engineer representing White Barn Lane, LLC, stated that the new plan would improve the drainage and make the roadway easier to navigate.

John Witten, attorney representing the residents of White Barn Lane made the argument to the Planning Board that the consent of the abutting homeowners is required for the following reasons: (1) the original subdivision covenant from 1993 give the abutters rights over the subdivision, (2) abutters on private ways have rights within the way, (3) the residents own 50% of the roadway, (4) the "marketability" of the title would be affected by the relocation of driveways, having access denied during construction, impeding drainage and the creation of a through street, (5) the ZBA and HAC has no authority to modify subdivision approvals under state Subdivision Control Law, (6) Matthews v. Planning Board of Brewster required a subdivision modification and abutter consent when an applicant for a new subdivision sought to access roads in an adjoining subdivision.

The Board requested that town counsel appear at a subsequent hearing to provide his opinion of the issues. In addition, there were questions regarding how the drainage will affect other abutters to the roadway that are not a part of the subdivision and how the proposed retaining wall would affect the safety and functionality of the roadway and drainage.

*Member Cadman moved to continue the public hearing until 4/8 at 8:00. The motion was approved by a vote of 3-0.*

### **Bay Path Lane Endorsement**

The Board discussed a request from the applicant to allow foundation permits to be granted prior to lot release. Language was included in the Covenant to provide for this to occur.

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The Board determined that, though it may be acceptable with this project and developer, a precedent would be created that could lead to issues with other projects in the future. The applicant also requested that trees could be cut (no grubbing) prior to the pre-construction hearing.

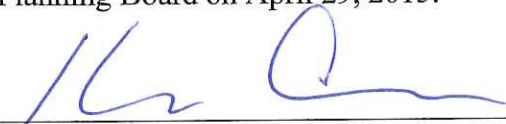
*Member Mayers moved to approve the Covenant with the removal of the foundation permit language. The motion was approved by a vote of 3-0.*

*Member Washburn moved to endorse the Bay Path Lane plan set and to allow the cutting of a select area of trees prior to the pre-construction meeting. The motion was approved by a vote of 3-0.*

**ADJOURNMENT**

*At 9:45 p.m., Member Mayers moved that the Board adjourn. The motion was approved by a vote of 3-0.*

I certify that the above minutes were reviewed and approved by the majority vote by the Planning Board on April 29, 2015.

  
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**Ken Cadman, Clerk**

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