

**TOWN OF WEBSTER
PLANNING BOARD
MEETING MINUTES FEBRUARY 18, 2016**

At 7:00 p.m. Chairperson Susan Rauth opened the regularly scheduled Planning Board meeting and took attendance. Members present were Jere Buckley, Susan Roman and Lynmarie Lehmann (arrived a few minutes after the meeting was called to order); Alternates present were Patricia Ilacqua, Paul King and Nanci Schofield. Also in attendance were Mr. Braco Djulabic, property owner of vacant lot 10-1-117AB on Brookfield Circle, a private road in the Pillsbury Lake District of Webster and Mr. Hank Amsden, N.H. Licensed Land Surveyor working for Mr. Djulabic. Members of the public present were Mike Schofield and Scott Koblich.

By consensus, the Board deferred review of the draft minutes of January 21, 2016 in order to address agenda item #5 re: discussion about the Driveway Construction Application process for a property owner in attendance. Chairperson Rauth introduced Mr. Hank Amsden, N.H. Licensed Land Surveyor, and his client, Mr. Braco Djulabic, owner of vacant lot 10-1-117AB on Brookfield Circle which is a private road in the Pillsbury Lake District. At this time Chairperson Rauth invited Mr. Amsden and Mr. Djulabic to present their maps and documents at the conference table. Alternate Schofield also recused herself for this agenda item due to a conflict of interest as she is an abutter to Mr. Djulabic and wanted her comments and questions to be heard as a resident. A 50 minute discussion ensued. The results of the discussion were that Brookfield Circle, a private road with a cul de sac, was determined to be a "paper road", i.e., it was shown on the original subdivision plan #2023 recorded September 22, 1965 for the Pillsbury Lake District but the road was never constructed and was never accepted by the Town of Webster. Hence, the road is private not public. Mr. Djulabic's dilemma was how to access his lot which is at the end of the private road cul de sac. The major question was did the Planning Board have jurisdiction over requiring the property owner to apply for a driveway permit off of a private road. Member Roman stated that Mr. Djulabic must find out if he has an easement for a right to pass in order to access his lot. Member Lehmann suggested Mr. Djulabic look at the case of Duchesnaye v. Silva, 118 N.H. 728 (1978). Member Lehmann read some excerpts regarding that case from the book *A Hard Road to Travel; New Hampshire Law of Local Highways, Streets, and Trails*, published in 2015 by the New Hampshire Municipal Association, specifically page 44:

"What If a 'Paper Street' Is Never Accepted? If subdivision lots fronting a paper street that never gets accepted are sold, those lots often have no other access. Since it is well settled that abutters are presumed to own title to the center of a street or way (see Chapter 1), the owners of front lots sometimes claim possession of the paper street and try to block access to the back lot owners. That is what happened in Duchesnaye v. Silva, 118 N.H. 728 (1978). But the Court held that, although the front lot owners did own the "soil" to the center of the platted streets abutting their lots, every back lot owner nevertheless had an implied easement of access over those paper streets. These implied easements are not just a personal right to pass over them, but also the right to develop them from end to end for public access to the owner's property.

These situations are private property rights disputes, which municipal officials have no jurisdiction to settle. Therefore, the municipality should try its best to stay out of these disputes."

Member Roman also suggested reading **RSA 674:41. Erection of Buildings on Streets; Appeals**. She stated that Mr. Djulabic would have to work out access with his neighbors. Member Lehmann reiterated that at this point it was known that Mr. Djulabic's abutters own to the middle of the 'paper street' and that if he wants to cut trees to access his property, he will have to work this out with his abutters. Member Roman suggested Mr. Djulabic seek legal advice.

Member Roman added that Mr. Djulabic needs to settle whether he has the access that the Duchesnaye v. Silva case suggests. She stated the Planning Board will figure out if they have jurisdiction to tell Mr. Djulabic what he needs to do with the road. She stated the Board would respond in a letter to Mr. Djulabic and copy Mr. Amsden.

The Board thanked Mr. Djulabic and Mr. Amsden for coming.

Member Roman suggested tabling the discussion regarding settling the jurisdiction issue and the Board's response to Mr. Djulabic until the end of the meeting in order to proceed with item #6 on the agenda regarding the site plan review for Copart, Inc. The Board agreed.

At this time Alternate Schofield returned to the table.

Chairperson Rauth and the Board discussed Copart's response to the Planning Board's letter regarding their conditions for Site Plan approval. She summarized Copart's responses as follows:

- Items #1 and #2: regarding the truck route study. The Board required the Copart drivers and the contracted drivers to use route C (Clothespin Bridge Road) and route A (Corn Hill Road). Copart provides handouts to all customers picking up vehicles informing them of those routes and the routes are featured on Copart's website for the Webster, NH yard.

At this time Mr. Kostro stated he wasn't sure if Copart changed the routes to route D due to the weight 17,000 ton weight limit posting for Clothespin Bridge, but he did change it on the website.

Chairperson Rauth continued her summarization:

- Items #3 and #4: Spill clean-ups are now logged and kept on site at each facility. Copart submitted a sample log sheet. Completed logs are available for the Planning Board to review. Spill/drip pans are already used as part of Copart's standard practice. Also included was Copart's FM186 Spill Cleanup Manual.
- "Item #5: *Copart does not believe it is necessary at this time to install three groundwater monitoring wells due to the weather conditions at the yard and due to Sanborn Head's assessment that "the relative risk associated with groundwater contamination at the site appears to be low."* (This particular statement is a direct quote from Copart's response letter.)

Member Buckley addressed Mr. Kostro. He could not understand why wells could not be drilled under the present weather circumstances. Mr. Kostro stated he only knew that Copart had responded but did not have a copy of the letter. He could not answer Member Buckley's inquiry.

Chairperson Rauth continued:

- "Item # 6: *"Copart will agree to the collection of a water quality sample from the "dug" overburden water supply well in the northwestern portion of the site as set forth in Item #6 one the weather permits access to the well."*

- “Item # 7: Copart will agree to an extension of the site plan review period until July 1, 2016.”

A brief discussion ensued regarding the ambiguity of Copart’s statement of Item #5. Member Lehmann asked to have Item #5 read again.

Member Roman stated that her opinion was that the Board ought to go ahead and allow for the water sample testing from the existing well. And as to whether or not the Board should press the issue on the monitoring wells, Member Roman stated she would like to have some advice from Town Counsel. Member Lehmann thought that bullet three; Item #5 was unclear as to what was meant. Member Lehmann suggested the Board could seek clarification of that statement from Mr. Kostro. After a brief discussion, Member Roman stated that as far as procedurally, she would not approve the site plan, but she would continue it. Chairperson Rauth agreed regarding the ambiguity of Item #5. After a lengthy discussion the Board agreed to do a follow-up letter to Copart. Member Roman suggested to say the response to the other requirements seem to be satisfactory although the Board has not taken a final vote on that but we need to know when you will complete the well installations. We would also like to have the water sample testing done forthwith. We don’t feel any weather would prevent that. Member Roman added that she would like results of the water test before the final decision because if there really is contamination the Board has to know. Member Lehmann suggested a deadline of April 1st for the water quality sample test result; and the Board would like to know when Copart intends to put in the other three wells. Chairperson Rauth will draft a letter. At this time the Board thanked Mr. Kostro for coming. Deliberation on the site plan approval application for Copart, Inc. will be continued until the March 17, 2016 Planning Board meeting at 7:00 pm at the Webster Town Hall.

At this time, the Board tabled its review of the draft minutes from January 21, 2016 until the March 17, 2016 meeting in order to deliberate as to whether or not they have jurisdiction in the matter of Mr. Djulabic’s driveway permit application on Brookfield Circle, a private road. The Board spent a great deal of time deliberating, discussing and researching. Their sources of references were the Internet, New Hampshire Planning and Land Use Regulation 2015-2016 Edition (current state laws, i.e., RSA’s pertaining to planning and zoning), the Town’s current Subdivision Regulations and Driveway Regulations. Member Lehmann accessed the previously mentioned case Duchesnaye v. Silva via the Internet. Member Lehmann moved that the Board has no jurisdiction to entertain an application for a driveway permit on Brookfield Circle because it can be construed as a private road and the Board’s current Driveway Regulations do not apply to private roads; seconded by Member Roman. After a brief discussion, Chairperson Rauth called for the vote; in favor: Members Lehmann and Roman; not in favor: Member Buckley; abstained: Chairperson Rauth; motion passed 2-1 with 1 abstention. Member Roman asked that the record show that Alternate Member Nanci Schofield did not vote and did not participate in the discussions as an alternate member of the Planning Board during the discussions regarding Mr. Djulabic. Member Lehmann stated the members were not influenced by the questions Mrs. Schofield asked as a resident. Member Lehmann will draft the letter to Mr. Djulabic.

At 9:30 p.m. Member Lehmann made a motion to adjourn; seconded by Member Roman and approved unanimously.

These minutes were approved as written at the Planning Board meeting of March 17, 2016.

Susan Rauth, Chairperson