

# DRAFT

## TOWN OF WEBSTER PLANNING BOARD MEETING MINUTES DECEMBER 15, 2016

At 7:00 pm Chairperson Susan Rauth opened the regularly scheduled Planning Board meeting and took attendance; members present were Vice Chair, Sue Roman (arrived at 7:08 pm), Jere Buckley, Lynmarie Lehmann, and alternate members Paul King and Tricia Ilacqua (Tricia was appointed as a voting member until the arrival of Vice Chair Roman).

The first order of business was to review the minutes from the November 17<sup>th</sup> meeting. Member Buckley asked for clarification of the statement "...and the construction of ADU's would be administered by right, therefore the Town would not have much overseeing of the new law." Chairperson Rauth stated that if the Town does not adopt this law or the changes that enact it, then whatever the Town has in the Zoning Ordinance would be eliminated and therefore there would be no requirement for a special exception. After a brief discussion the Board amended the November 17<sup>th</sup> minutes on page 1 as follows:

- ***Amend this section:*** Chairperson Rauth stated that the Town of Webster administers this regulation through special exception under the Zoning Board of Adjustment. She stated the Planning Board will regulate ADU's the same way. She also stated that if the updated regulation does not pass at Town Meeting in March 2017, then the special exception procedure would go away and the construction of ADU's would be administered by right, therefore the Town would not have much overseeing of the new law.
- ***To read as follows:*** Chairperson Rauth stated that the Town of Webster **will** administer this regulation through special exception, **as is currently done with accessory apartments**. She stated the **Zoning Board of Adjustment** will regulate ADU's the same way. She also stated that if the updated regulation does not pass at Town Meeting in March 2017, then the special exception procedure would **be eliminated, allowing** construction of ADU's **by right, without limits or conditions**.

Member Lehmann pointed out on page 1 that the word 'accepts' in the fourth paragraph, second line should be changed to **accept**. Member Buckley moved that the November 17, 2016 be approved with the amendments as discussed; motion seconded by Member Roman and approved unanimously.

Chairperson Rauth stated the minutes from the December 4, 2016 work session were in process. She stated that at that work session, the Planning Board decided not to bring forward the zoning ordinance changes for 'building' and 'structure' as they had previously discussed.

The next order of business was a Conceptual Consultation with Mr. Tom Mullins regarding a lot line adjustment. Prior to the meeting, Mr. Mullins withdrew his request and will reschedule at another time.

The next order of business was the review of *Driveway Application for Construction #16-10* from Mr. Edward Lawrence, owner of 107 New Hampshire Drive. Mr. Lawrence was invited to attend, but did not. Each Board member had a copy of the application with Mr. Lawrence's drawing and a copy of the plot plan. Chairperson

Rauth explained to the Board that because this application was a little more complicated than others, Member Buckley brought it to the Board. After a discussion, the Board agreed on a response to Mr. Lawrence's proposal and Member Buckley will write a letter to him.

The next order of business was the final review of the warrant article for ADU's (Accessory Dwelling Units). Chairperson Rauth presented the Board with a handout titled "Explanation of Updated Law, Accessory Dwelling Units". After a brief discussion, Chairperson Rauth stated she would rewrite the explanation with changes that were suggested.

The next order of business was discussion about updating the 2005 Master Plan. Chairperson Rauth handed out copies of the same to each member. She stated because the Master Plan is already in place, it won't be as difficult to update compared to starting from scratch. The document already meets the requirements as far as the format and chapters. Chairperson Rauth stated she would like to start working on this in the spring and get the survey out to households in the summer. She informed the Board that Mike Tardiff, Executive Director of Central NH Regional Planning Commission, would be attending the Board meeting on February 16, 2017 to discuss the Master Plan. She asked that the members look over the plan to be ready to discuss it in February.

Chairperson Rauth stated the Board was also considering working on the Capital Improvements Program (C.I.P.) this coming year. She passed out a handout on C.I.P.'s from CNHRPC. She informed the Board that Roger Becker has volunteered to be in charge of that project.

The next order of business was the continued discussion regarding driveways and private roads. Chairperson Rauth explained that after the last Planning Board meeting of November 17<sup>th</sup>, Member Buckley "had sent out an e-mail with four attachments culminating in a draft letter he proposed to our attorney to ask some questions to clarify about driveways, subdivisions, private roads." Chairperson Rauth said, "In reviewing some of the things you wrote, Jere, and some of the things we've talked about, I kind of came to the conclusion that we might not have a real statutory authority to regulate the interior of driveways except where they meet the road." Member Buckley said, "If that's true, then we have to eviscerate our current Driveway Regulations." Chairperson Rauth said, "Correct, that's one option." Member Buckley said, "I can live with that if that's the answer." Chairperson Rauth said, "I certainly wouldn't take them any farther. But I didn't know how everybody else felt about it." Member Buckley asked, "Do you or any of our in-house legal expertise feel that my argument to the contrary is invalid, and if so, why." Member Lehmann said, "The statutes that you cite at the bottom of your letter - I think that you're just taking a stab at those arguments." Member Buckley said, "Practicing law without a license?" Member Lehmann said, chuckling, "Kind of. I didn't find them persuasive and I don't know that a court would either. And I say that because when I look at (RSA)236:13 which gives us the authority, I just don't see that it goes beyond that meeting with the town road because, at least it's my position, that our role is to look at the public and public safety in that regard. And doing something up along the driveway and up towards the house, I think we're just getting too bogged down in something that we don't have the authority to do." Member Roman said, "I would like to just add that on a reading of (RSA) 236, I concur. I feel that that grant of authority to the commissioner itself, there's a modification," Member Roman read from the statute (RSA) 236:13:I, "It shall be unlawful to construct, or alter in any way that substantially affects the size or grade of, any driveway, entrance, exit or approach..." Member Buckley said, "Notice the comma after 'driveway'." Member Roman continued, "... within the limits of the right-of-way of any class I or class III highway or the state-maintained portion..." Member Buckley said, "We don't have any class I or class III." Member Roman said, "That's not us, that's the grant to the commissioner. And then it goes on and the same powers are granted to us." Member Buckley said, "Okay." Member Roman said, "So the key point is the grant of power - we

don't get any more than the commissioner gets – and the commissioner gets what I just read you. Modified by within – I believe that's the better reading of Roman numeral one within the limits of the right-of-way of any class I or class III highway. In other words, it shall be unlawful to construct or alter the size or grade of any driveway, etc., within the limits of the right-of-way of any class I or III road without the permit. So my opinion is that is talking about only as this driveway affects the public road." Member Buckley asked, "Has anybody here actually read the argument that I put together?" Member Roman said, "Yes, I've read your argument. I'm just talking about the driveway now and the interior driveways." Member Buckley asked, "Can you tell me where I went wrong?" Member Roman said, "We have to take it issue by issue. Are you referring to the subdivision argument that everything is a subdivision already?" Member Buckley said, "In part, that was one of my points here." Member Roman said, "On that I would refer you to a case, *Lemm Development Corp. v. Bartlett*, 133 N.H. 618. This section grants the town planning board the power to regulate the act of subdividing but not the land that has been subdivided. So I think that case, it does go to your argument about the fact that everything is already subdivided so we can regulate any road within the subdivision within any lot. At least that's how I read your argument." Member Buckley said, "Okay." Member Roman said, "I think that's the case that could bear on your argument about that it's all been subdivided, essentially, King George's land got subdivided and it's already subdivided and therefore we have jurisdiction over it. I don't feel supportive of the argument that everything is subdivided already and therefore we can go in and regulate any roads within any lot." Member Buckley asked, "Do I deduce from what you're saying that you and the rest of the Board see no point in going to Bart with a request for a reading on my arguments?" Member Roman said, "I see a point. I want to get an answer on the driveway and the interiors of the driveways. I don't see driveways and roads as the same thing. You conflate the terms and I don't." Member Buckley said, "Yes I do." Chairperson Rauth said, "That's what I was going to say, that part of the argument here, that I'm not sure I agree with, is saying 'all other ways'. In other words, we can regulate the streets within a subdivision and that definition (of 'street') in (RSA) 672:13 ends with 'and other ways', and you say that must encompass driveways and private roads. And I'm not sure that that's what that is intended to do, Jere." Member Lehmann said, "And I agree, that in the way that I view the law is that a driveway is not a public way. It is not open to anybody to go on." Member Buckley said, "It's a vehicular access way on private property." Member Lehmann said, "A road is a public way." Member Buckley said, "Except for a private road." Member Lehmann said, "We don't have too many of those, though." Member Buckley said, "We have some." Member Lehmann said, "We have some, but...." Member Buckley asked, "Do we want to discourage them?" Member Lehmann said, "Yes!" Member Buckley asked, "Why?" Member Lehmann said, "Because, I think, if you are doing a new subdivision then we get to regulate those roads." Member Buckley asked, "Those private roads?" Member Lehmann said, "Those roads that we want the town to accept. Because in my mind, based on the opinion of the Department of Transportation – it was a 2005 case that I did – the whole premise of driveways and the regulation of driveways was to protect the traveling public from those points of conflict that come out on to a public road. The idea of limiting the number of driveways to any subdivision that you can't have, even if you had seventeen hundred feet of frontage, you're only going to get three driveways because then you have the interior roads that you then can regulate with Stop signs. I think that's what the law contemplates. That driveways are for private use and you can regulate at that point where it meets with the public." Chairperson Rauth said, "And that's the public safety part of it." Member Buckley asked, "Do you agree that a road within a subdivision is a private road unless and until it gets accepted by the town?" Member Lehmann said, "There's only so many ways that the town can accept roads. So 'yes', to the degree that whoever owns that subdivision, whoever is the builder of that subdivision, it stays theirs until the town accepts it." Member Buckley asked, "But can we regulate it at that point?" Member Lehmann said, "We regulate the subdivision." Member Roman said, "That's the only authority we've been given is to regulate the act of subdividing." Member Lehmann said, "And we are regulating in that act of

subdividing, we can require certain restrictions and certain items to be met for the safety of those roads that are in there.” Member Buckley said, “I guess I’m not quite sure where the RSA provisions are that give us that authority but, they may be there.” Member Roman said, “Subdivision regulations’ grant of authority is (RSA) 674:35 and then (RSA) 674:36 provides for laying out of the roads in approving a subdivision.” Chairperson Rauth said, “And remember, this is new, this is about new subdivisions. It’s not about going backwards.” Member Roman said, “Think about (RSA) 674:41, that says you can’t build unless it’s a Class VI road or better. So you have to read that in conjunction with the subdivision regulations; that provides that you can’t build on a private road unless under certain circumstances. So if your theory was correct, and that we could regulate anything that was subdivided already, then that statute wouldn’t be valid.” Member Lehmann said, “It would be superfluous.” Member Roman said, “So you have to read statutes ... so that they’re consistent. That’s how a court would look at it, is to read them so they’re consistent. So your interpretation would make that statute superfluous.” Member Buckley asked, “Are we going to wash our hands of any life safety considerations interior to the lot and leave that in the hands of the Fire Marshall and his delegate, Emmett Bean?” Member Roman said, “The question is whether it’s in our hands in the first place.” Member Buckley said, “I can agree with that.” Member Lehmann said, “And we’ve had inconsistent...” Member Roman said, “advice on that. And I think that ought to be clarified whether we have any responsibility. I don’t think we do. But I’d like to clarify that as part of the question about driveways - interiors of driveways.” Member Lehmann said, “I bought it when we changed the regulations the first time. I think because the advice that we were given saying that and where we had seen other towns that had also extensive regulations for driveways... that that included life safety. I don’t think I liked it when we did it. ‘You shouldn’t be telling me what to do.’ If I don’t care that the fire truck gets there, it’s my own damn fault. It’s my fault, so what. And if they do come and get stuck and I want them there then I guess I’m going to have pay for them.” Member Buckley said, “What about the UPS driver who rolls over and files a lawsuit against the town for allowing that to happen?” Member Roman said, “In (RSA) 674:41 building on a private road; first of all there is nothing in there that says we can impose conditions about the road. What it says is that we have to get a release of liability and it has to be recorded. And the reason for that is that we are not regulating the road. We are saying you can build there, we are not responsible for the road and if you go ahead and set conditions, there are questions about what you’ve done to that waiver or release of liability; if you go ahead and try to regulate and try to specify the road.” Member Lehmann said, “You’ve waived the release.” Member Buckley said, “I’m clearly outnumbered, I have to give up.” Member Roman said, “I’m sorry that you feel, I’m just trying to tell you what I see from a legal point of view because of my training and years and I think Lynmarie is saying the same thing, but I don’t want to disrespect the fact of your views but I can’t support the letter as it’s written. I can support some inquiries that I think we need to have a definitive answer on, like the interior of driveways. I’d like to have a definitive answer as to whether we have any responsibility under the life safety code.” Member Lehmann said, “I don’t think we will ever get a definitive answer no matter which attorney we go to.” Member Roman said, “Attorney Christine Fillmore who updated the Hard Road to Travel would.” Member Roman said, “I would like to put the questions to Attorney Christine Fillmore. That’s my view. I would like to ask the Select Board if we could retain her for that purpose and to be our lawyer in the instance of a challenge on driveway regulations.” Chairperson Rauth asked, “So it would be specifically the interior of driveway question?” Member Roman asked Member Buckley, “Is there something in your proposal that we have not discussed yet?” Member Buckley said, “Well, I’ve generated a number of documents with a lot of details and we’ve discussed them in broad brushes and I think the message is pretty clear that we don’t want to go through them on a step by step basis.” Member Roman said, “I don’t want to cut you short. I’m thinking that I hit the lynchpins of your theory, but if I haven’t, then tell me what other bases for your theory you have and I’ll try to address them. I don’t want you to go away feeling like we didn’t try to answer or address it.” Member Buckley said, “I think it’s pointless because you’ve already made clear

what your position is. I don't want to waste the Board's time any more than we already are." Member Roman said, "If you feel like you've been heard and..." Member Buckley said, "I've put a lot of time into this documentation (Member Roman agreed). If you've all read it and given it careful consideration, that's all I can ask." Member Roman said, "I really have, I really have read it." Member Buckley said, "Then I can't complain. Up until this point, I was feeling like nobody was paying any attention." Member Roman said, "No. But if an attorney came back to me and said we had the right to regulate the interior driveways then I would have to throw everything else I said out. That's how I feel about it. If that isn't really, truly private then private roads aren't either. And then we'd have to go through existing in future. But I'm thinking, under your theory, you know what Rolfe Road looks like? (Member Buckley said, "Sure") Under what I think you're proposing, we would have the right to go to the people on Rolfe Road or if somebody built something there, we'd have the right to say, 'Okay, you have to widen that road.'" Member Buckley said, "Your grandfathering e-mail comes into play." Member Roman said, "Well, you said every road is subject to our regulation for life safety. That was your proposal, right? Every road...and you came at it from different ways; everything is already subdivided." Member Buckley said, "Maybe I should have said every new road." Chairperson Rauth said, "That was interesting about that article to me...I think Lynn you brought it to my attention, that article about 'grandfathering' and I sent it around today and I'm glad you got a chance to read it because it makes it real clear distinction for existing and pre-existing property. You don't go backwards and put the new regulations on it." Member Roman said, "But you were proposing that." Member Buckley said, "I didn't think I was." Member Roman asked to see Member Buckley's letter to Bart in order to show him that he was doing just that. Member Roman quoted from Member Buckley's proposed letter to Bart (page 2 the third bullet down) the following: "RSA 672:14 defines 'subdivision' as 'the division of the lot, tract,...'. It does not say 'new division' or 'proposed division'. It thus applies to all divisions, including those that are pre-existing." Member Roman continued, "Rolfe Road is in an existing subdivision on a private road. (Member Buckley agreed.) So you say we have authority to regulate that. That's your argument." Member Buckley said, "That's certainly not the sense in which I intended that statement." Member Roman said, "But that's what it says, Jere. Please say what you intended." Member Buckley said, "It's talking about the subdivision itself; it's not talking about roads or driveways or private roads thereon." Member Roman said, "But you're proposing that we have jurisdiction to regulate any private road no matter when created." Member Buckley said, "If that's what this says, that's not what I intended." Member Roman said, "I don't know how to read it otherwise." Chairperson Rauth said, "This was the argument that was leading about subdivision process that began in 1734, so that thus all Webster lots are part of a subdivision." Member Roman asked, "Where was that argument going, what was it in support of? That everything is now, the whole town, is a subdivision." Member Buckley said, "We have to back up to RSA 674:35 in which we have streets which we have authority to 'approve or disapprove plans showing the extent to which and the manner in which streets within subdivisions can be graded and improved...'" Members Lehmann and Roman both agreed with the reading of the law. Member Roman said, "And then you say, existing subdivisions; everything, whether it's pre-existing or new, that we have that authority. You start calling everything a subdivision. So whatever authority was granted us to regulate subdivisions, it applies to the pre-existing ones." Member Buckley said, "Maybe my mistake is not making clear that I'm talking about new streets." Member Lehmann said, "I agree with you there. If you're talking about new in a subdivision that comes before us today, we have all the authority in the world to regulate what gets built on the streets." Member Buckley asked, "How about somebody who comes to us with a driveway application? Can we limit what he has interior to his lot?" Member Roman said, "It's not a subdivision, so don't think about the subdivision. It's an entirely different grant of power. It's (RSA) 236 now." Member Buckley said, "Then you're challenging my contention that every lot in Webster is a lot within a subdivision." Members Lehmann and Roman both said, "Yes." Member Buckley said, "Okay." Member Roman said, "Certainly it is not and it

is not a lot within a subdivision.” Member Buckley said, “RSA 672:14 defines ‘subdivision’ as the division of the lot, tract, or parcel of land into 2 or more lots, plats, sites, or other divisions of land. It does not say new division or proposed division.” Member Roman said, “Now I refer you to the case that I quoted to you.” Member Lehmann said, “But we only started regulating subdivisions in Webster in the 1970’s. Member Roman said, “In ’71 if a subdivision went in afterwards, whatever we did in that subdivision in ’71, we don’t still have authority to back in there and tell them to change the roads.” Member Lehmann said, “Right. Because our authority ended after we accepted. We gave them the authority to do what they wanted to do.” Member Roman said, “That’s right.” Member Buckley said, “All of that became grandfathered.” Member Lehmann said, “Right.” Member Roman said, “They were entitled to that result and to be settled in that result.” Member Buckley said, “Yes.” Member Roman said, “And this case that I referred you to, says it’s the act of subdividing; it’s during that act which our powers are active. So what you have written there, whether you intend it or not, when you talk about everything being a subdivision and then going back and saying ‘well, we can do the roads’, it certainly sounds and stacks up as though you’re saying that everything’s a subdivision and we can regulate any road in it. Maybe you didn’t intend that...” Member Buckley said, “Sounds like I should have been more careful and used the word ‘new’.” Member Roman said, “Yes.” Member Lehmann said, “If that is what your intent is then I am with you on that. But I am not with you if we’re talking about anything that exists today, right now.” Member Buckley said, “That certainly was not my intent.” Member Roman said, “Okay. A lot of your arguments are unnecessary; all you needed was the subdivision regs. and the grant of power for subdivision. But private roads – I don’t know where you were going with that...” Member Buckley said, “I don’t understand a legal distinction between a driveway serving a single residence, a shared driveway and a private road with three or more residences or dwellings.” Member Roman said, “I think that a subdivision is into two or more lots and that’s where we’re given authority. We’re not given authority to one lot; we’re given authority for subdivisions, two or more lots.” Member Lehmann said, “And you may share your driveway on those two lots.” Member Buckley said, “And can’t enforce life safety codes internal to a driveway serving a single residence?” Member Roman said, “I don’t believe that we can but I’ll ask the question.” Member Buckley said, “Okay”. Member Roman said, “But...regarding the argument of conflating or saying they’re the same thing, a road to three houses and a driveway to one house is the same thing, it’s not, under the law; one’s a subdivision.” Member Buckley said, “I’ve had attorneys tell me otherwise, granted not land use attorneys not even Webster attorneys.”

At this time, Chairperson Rauth passed out a handout that Mrs. Larson received at the NHMA conference in November written by Attorney Christine Fillmore titled “A Road by Any Other Name”. Chairperson Rauth read number the following from the handout:

*“Private Roads – Simply DO NOT EXIST so far as NH road law is concerned, except in a very few situations (designating a private road as an emergency lane, accepting the dedication of a private road to turn it into a public road, or a road that was designated but not yet accepted). Assume that the municipality has no regulatory authority over a private road, and that it can’t maintain them.”*

A brief discussion followed. Member Roman said, “I want Jere to understand the difference that there is a legal distinction between a road and a driveway.” Member Lehmann said, “And I may give you on my driveway a right-of-way, which is an easement over my property. But that’s still my property and just because I’m doing that doesn’t mean now the Town of Webster can come in and regulate how big it is, except to the extent that I say ‘Alright, it’s really a public way.’ Then we might have a different issue.” Chairperson Rauth thanked Mrs.

Larson for the handout which she felt would be very helpful to the Board. Chairperson Rauth then said, "In conclusion, do we think we want to talk to Ms. Fillmore about driveways?" Member Roman said, "I do think we have to change our regulations if it's true that we don't have that. I think that they ought to be changed. I don't think we should be exercising the power. I realize there are other towns and cities that do that. That won't be a legal defense if we're sued. So, I just want to hear what others have to say." After a brief discussion about regulating life safety for driveways, Member Lehmann said, "Why would we be concerned? If you decide you want to live seventeen miles out in the wood and I can't get there to save you quick enough, that's my choice." Member Roman said, "The problem is that we are going to send a fire truck down there and then the fire truck has damage." Member Lehmann said, "And then we're going to bill for that service." Member Buckley asked, "you may not care about the stupid guy who puts in a conspicuously dangerous situation, but do you care about the future buyers?" Member Lehmann said, "No, because I do my due diligence. Then they have a private right of action against the previous owner." Chairperson Rauth said, "My feeling is that if the Planning Board can, as a body, agree on definitions and policies in this area that we've been talking about for months, if we all agree wholeheartedly, then we will have the same definition and use a similar approach when we look at things, then I would like to do it that way and move forward. But if somebody feels that we still want to get this question resolved before we go to the trouble of changing the Driveway Regulations, as an example, then I would be for asking the question. I'm hopeful that we would get an answer that it's worth asking." Member Roman said, "There's only one attorney that I would go to for that." Chairperson Rauth, referring to Attorney Fillmore, said, "She does seem to be considered to be an authority in the State on roads." Member Roman said, "I can go either way on it really." After a brief discussion, Member Roman said, "Before we hire somebody let's just do some research on the life safety code and see if we have any authority. We can probably find out ourselves. What would make sense to you? I'm only thinking the Select Board has been exercised about this life safety question before and I'd like to have an answer for it definitively. If there's some grant of power that I'm not aware of, I'd like to know. Because the power can come various ways as we've seen." Member Lehmann said, "If a town adopts a regulation that says we want houses to all have such and such a timber, such and such fire sprinklers in every room, they can do that. So why couldn't a town adopt an ordinance that says 'we want you to have a turnaround that allows a fire truck to turnaround'?" Member Roman said, "They could maybe, but that's not our jurisdiction to impose it as part of a driveway regulation. That's what I would argue. If the Select Board wants to pass an ordinance they would enforce it. I was asking if there's some grant of power to the Planning Board. I don't know of any, but I haven't researched it." Chairperson Rauth said, "I believe it comes from the State Fire Marshall's office and comes to our town through the Fire Chief, the regulatory authority." Member Lehmann said, "The way we got here before was well, you folks are regulating driveways and because you're regulating driveways and I as the Fire Chief get to regulate those other things, let me get involved in that process with you. That's how we got where we are today." Chairperson Rauth said, "That's true. Emmett worked on the regulations with Jere." Member Buckley said, "It's even worse than that. I would argue that it was essentially voluntary on our part. We recognized that the Fire Chief had the job obligation and we said, as long as we're doing driveways anyway, why don't we help you with that so you won't have to set up an independent enforcement mechanism." Chairperson Rauth said, "We wholeheartedly embraced that idea, all of us." Members Roman and Lehmann were in total agreement. Member Roman said, "And that may be beyond our powers. That may not be within our purview." After a brief discussion, Member Lehmann asked Member Buckley, "And your position is that we should be regulating the interior?" Member Buckley said, "It's my moral/ethical conviction that's something we should be doing. Yes." Member Roman said, "Well, we can't do it unless we have the power to do it." Member Buckley said, "I understand." Member Roman said, "And that's the legal question." Member Buckley said, "I also confess to being strongly influenced by the seemingly sweeping blanket statements in A Hard Road

to Travel. It's says that the Planning Board does have that authority." Member Roman said, "I don't get that statement. I can tell you that Christine does not feel that way because I spoke with her at length about it." Chairperson Rauth said, "I think it might be a good idea for us to try to speak with her about this or write a letter and try and see because I think she might give us a more definitive answer than we've gotten." After a brief discussion, Chairperson Rauth said she would be glad to take the question to the Select Board about contacting Attorney Fillmore. Members Buckley and Roman were okay with that. Member Lehmann said, "I already think that the Planning Board does not have the authority and I can make an argument based on statutes why we don't." Member Roman said, "I can make the same argument and I think the same thing. I just want everybody to be happy with that conclusion and feel confident. If people can stand going forward on that, then we don't have to ask it. I'm in the same boat based on everything I've read." Member Lehmann said, "And the way we got to where we are from before was we just sort of just said 'Alright, you Fire Chief, you're part of this process.'" After a brief discussion about the national standards for life safety, the question raised by Member Roman was how did the Planning Board determine that they had the authority to put those safety codes in the Driveway Regulations? Member Roman said, "The other part of my question is does the code itself talk about driveways?" Chairperson Rauth and Member Buckley both believe it does. Member Roman said, "If it's not in the statutes, then I know we don't have the authority." After a brief discussion, Member Roman said, "If the Fire Marshall has authority to regulate driveways under the life safety code, the Town should still promulgate that, it's just that's not enforced under our auspices. So we don't approve a driveway or disapprove a driveway based on the Fire Marshall. It's the Fire Marshall that sets the standards not us except for the intersection with the road." Member Buckley said, "That's presumably the reason why the Fire Chief signs the driveway permits, representing the Fire Marshall." After a brief discussion regarding the role of the life safety codes in the Driveway Regulations and whether or not to delete them or not, the Board agreed that question would not be resolved at this meeting. Chairperson Rauth asked the Board members to think about that for the next month. Although it's not an emergency, Chairperson Rauth said they need to make a decision about what they are going to do to the Driveway Regulations. She reminded the Board that she would talk to the Select Board about writing to another attorney. Member Roman made the Board aware they had not taken a vote to proceed on that but if Chairperson Rauth wanted to ask the Select Board theoretically, that would be fine. Member Lehmann said to Member Buckley, "We have just come from a different philosophical place on it." Member Buckley said, "I understand that completely. I do feel a little discouraged and frustrated about all the work that I put into this may be going down the drain." After a brief discussion, Chairperson Rauth said to Member Buckley, "I'd like to just say, Jere, that I'm sorry that it did take so long to address this. Speaking for myself that elements of this that related to Brookfield Circle and it was difficult, honestly, to have some of these discussions in this room even with somebody being recused from the meeting. So I do think that in some regards it's sort of circumstantial that we've kind of been avoiding it." Member Roman said, "Brookfield Circle took a lot of energy to figure it all out." A brief discussion followed. Member Lehmann said, "There is no doubt in my mind that we did do the right thing with Brookfield Circle." Member Buckley was in total agreement.

Member Lehmann made a motion to adjourn; seconded by Member Roman. Before the vote, Member Buckley asked the Board if the walking of the bounds for his wife's Lot Line Adjustment application could be done ahead of the Planning Board meeting on January 19, 2017, when the application is scheduled to be reviewed. He was concerned that if they waited until after that meeting, there may be too much snow to accommodate the walk. The Board agreed that Member Lehmann and Alternate Member King would meet at Member Buckley's home at 10:00 am on Sunday, December 18, 2016, to walk the bounds.

Meeting adjourned at 9:25 p.m.

These draft minutes were prepared by Therese E. Larson, Land Use Coordinator.