

SCITUATE PLANNING BOARD MINUTES April 23, 2020

Members Present: Ann Burbine, Chairman; Stephen Pritchard, Vice Chairman; Patricia Lambert, Clerk; Benjamin Bornstein, William Limbacher and alternate member Rebecca Lewis.

Mr. Pritchard and Ms. Lewis were late to meeting due to technical difficulties with FreeConferencecall portal for virtual meetings held during COVID-19 Pandemic safety measures.

Others Present: Karen Joseph, Town Planner; Shari Young, Planning Administrative Assistant.

Members absent:

See Sign-in List for names of others present at this meeting.

Location of meeting: Selectmen's Hearing Room, Town Hall, 600 C J Cushing Highway, Scituate.

Chairman Burbine called the meeting to order at 7:00 P.M. The meeting was conducted in compliance with the Governor's executive order modifying the Open Meeting Law regulations for remote participation during the COVID-19 health pandemic. The meeting was being recorded for airing on local cable television.

Documents

- 4/23/20 Planning Board Agenda

ACCEPTANCE OF AGENDA: Chairman Burbine indicated there was a posted agenda. Ms. Lambert seconded the motion for the posted agenda and the vote was unanimously in favor.

Roll Call to call the meeting to order:

A roll call vote was taken to open the meeting.

Ms. Burbine - yes

Mr. Pritchard – joined the call late at approximately 7:33 PM

Ms. Lambert – yes

Mr. Limbacher - yes

Mr. Bornstein – yes

Ms. Lewis – joined the call late at approximately 7:06 PM

**Continued - Public Hearing – Stormwater and Site Plan Administrative Review Common Driveway - 16, 18-20 Mann Hill Road
Assessor's Map/Block/Lot 27-7-9
Applicant/Owner: Estate of Patsy Jo Terrell**

Documents

- Doc DRAFT Motion

Ms. Joseph indicated that the Board has received a continuance from the applicant.

Motion:

Ms. Burbine moved to accept the applicant's request to continue the public hearing for the Stormwater Permit and Common Driveway Site Plan Review for 16, 18 and 20 Mann Hill Road until May 28, 2020 at 7:00 pm and to continue the time for action for filing with the Town Clerk until July 30, 2020.

Mr. Limbacher seconded the motion; the vote was unanimously in favor.

Ms. Burbine - yes

Mr. Limbacher - yes

Ms. Lambert - yes

Mr. Bornstein - yes

Curtis Estates – Lot Releases

Documents

- Email to Karen Joseph from Paul Sheerin dated 4.6.20 with request for lot release
- Doc DRAFT Motion Form Lot Releases 1, 11, 15

Attendees via remote access: Jeff De Lisi, Attorney; Paul Sheerin, Manager 90 Ann Vinal LLC; Don Gillespie, Manager 90 Ann Vinal LLC; Paul Mirabito, Ross Engineering

Ms. Joseph indicated that the applicant would like to have the remaining three lots released.

There was discussion regarding which lots 1, 11, 15 or 1, 12, 15. It was determined that the correct lots to be released are 1, 12 and 15; Lot 11 had previously been released.

Ms. Burbine indicated that there are some issues with Curtis Estates that need to be addressed. She indicated that some of the abutters on Townsend Road have concerns on water and issues they would like addressed and answered.

Public Comment:

Mr. Mike Toomey, resident at 84 Townsend Road, indicated that Townsend Road has major stormwater issues that did not exist before the development of this project. They have been talking about and sharing videos with the Planning Board to show the runoff from the project days and days after a rainfall. He said there are current and former Townsend Road homeowner's that can attest to the fact they have never seen this activity and these kinds of the issues in the past and it is homeowner's from both sides of the street. He indicated that he requested documents from the Planning Board and have sent them to an independent engineer for review. He is requesting that the Board not approve the release of the lots. He opined the Board should not approve the release until all the issues have been resolved. He said that the goal is to partner with the Developer's to resolve the issues; open to different drainage solutions; if the Developers are not open to that they Toomey's request that they have time to go through the documents and confer with their legal counsel.

Mr. Phillip Cahalin, resident at 80 Townsend Road, said he is at his mother's house, but he grew up there and he concurred with everything that Mr. Toomey noted. He said there has been some

flooding in the past, but it was seasonal and lasted only a couple of weeks and now it is chronic. He indicated there is an artisan well that is on one side of the property that has never been there before and the degree of degradation of the property is dramatic and the driveway is flooded continuously; he opined there is no question that the flooding has increased. He agrees with Mr. Toomey that maybe there is some kind of agreement that could be reached and they could meet with the Engineers and review the site. He indicated they are asking for more time, but are also asking to discuss and come up with a solution to alleviate the problem.

Ms. Burbine asked where the white PVC pipe comes from that is to the left of the driveway. Mr. Cahalin said to the best knowledge of his knowledge it was put in by Bill Morse a few years ago.

Ms. Kathleen Toomey, resident at 84 Townsend Road said that she has spoken with the person living at 80 Townsend Road and the pipe was put in by Morse Landscaping about a year ago to help alleviate the flooding. She said there is a catch basin at the top that feeds into the pipe to help with the backyard.

Mr. De Lisi indicated that since the last meeting there have been a few tasks which have been completed per the Board's request; the Board of Health has signed off on the septic system and signage along the open space has been placed. He understands that Townsend Road has had drainage issues in the past and the people speaking this evening are indicating that the issues appear to be worse; he said maybe whatever is happening with the PVC pipe could be contributing, but he does not know. He said the applicant is obligated to do the work that is required in the approved plan and they believe that work is being completed. He asked that the Board consider releasing 2 of the 3 lots being requested and hold lot 12.

Mr. Limbacher had a couple of concerns: #1 the signs in the 20 foot buffer have been placed , but a lot of the area has been cleared; #2 there is a history of water on Townsend and indicated that his brother-in-law lived at 74 Townsend and he had to put a French drain in on his lot; but he opined it needs to be determined if it is ground water or surface water before moving farther along with the subdivision.

Ms. Lambert asked if the stonewall that had been removed by one of the abutters had been replaced. Mr. Gillespie indicated that when the signs were set a couple of weeks ago the opening had not yet been replaced. Ms. Lambert indicated the Board had requested the wall be replaced over a year ago. Mr. Gillespie commented on the clearing mentioned and said they have not done any work outside of the no work zone; the clearing was doing by an abutter. Ms. Joseph agreed with Mr. Gillespie that one of the abutters, Mr. Gates did clear some of the conservation area. The area has not been replanted, but the Conservation Commission is working with the abutter for restitution. She indicated the Planning Boards plans do call for about 10 pines to be planted in the area by Lot 7.

Ms. Lambert said she is concerned about the water; there is water there and we need to find out where it is coming from and remedy it.

Mr. Bornstein asked for a description of what operation and maintenance activities have taken place since the last round of lot releases. Mr. Sheerin indicated they have had the contractor dismantle the drain down trenches in basin 4 and basin 1 and had them rebuilt, they have also been mowed so they are ready for the spring and growth. He said those were the only items that needed to be addressed, there are silt bags in the catch basins to keep silt out and as far as they know the basins are operating.

Mr. Mirabito said he has not looked to see if they are operating, Mr. Greg Tansey from his office has been submitting SWPPP reports and he has been checking on the basins and has indicated that he has not seen any adverse issues with them.

Ms. Joseph asked if they are draining within 72 hrs. Mr. Mirabito indicated yes. She noted there is standing water in the basin closest to the street in front of the septic system today. Mr. Sheerin said he does not know how long it has been there and he cannot address this.

Ms. Lewis indicated she has to recuse herself.

Ms. Burbine opined we need to figure out where the water is coming from at the end of Townsend Road; we need to work together to come together to come to a reasonable conclusion. She said it is like the chicken and the egg, which came first, we don't know. She opined from walking the back of the property the water is coming from the left and not the detention basins, but we need a plan or something to show that. She is willing to walk the property with whomever to figure out where all the water is coming from.

Mr. Sheerin said they have spent an inordinate amount to engineer the stormwater plan and to have had the Town's Engineer review the plan. He said that both the Engineers are saying they as the Developers are not causing any additional runoff to adjacent properties. He argued that is the dilemma. He opined the solution is for the people on Townsend Road to get an engineer to look at the project and tell them what they are doing wrong; nothing will change until that happens. The engineers are telling them they are not contributing to the issues. He said there are 2 houses built on Townsend Road that were built in the 60's that were built in the wetlands, they are going to be wet lots. He said they are happy to work with the neighbors, but a decision needs to be provided by the engineers.

Ms. Joseph informed the Board that there was public records request for tall the drainage calculations and operations and maintenance plan and that information has been supplied. She asked if there is definitive proof that the basin is 2' above the estimated seasonal high ground water and if the permeability of the basin as constructed is the same that was assumed in the drainage calculations.

Mr. Mirabito indicated to the best of their knowledge the basins were constructed properly. Ms. Joseph asked if it has been verified that nothing happened during construction to change the permeability of the soil that might give solid proof. Mr. Mirabito indicated they do not know of anything that would have changed the permeability. He said the basins have been maintained and they will need to continue to maintain them. He indicated they did an interim as-built on the basins and they do meet the requirements that were in the stormwater management plan and the subdivision control plans.

Mr. De Lisi said what is being requested is a verification of the permeability. He asked Mr. Mirabito if that is something, they could go out and do to provide to the Board; what would the process be. Mr. Mirabito opined it would be to measure the thickness of the layer of sand that was poured on the bottom of the basin. It was designed to 2' above seasonal high ground water which was established with soil evaluations and was then reviewed by the Town's peer review engineer. Mr. De Lisi said that was verified then. Ms. Joseph asked if it was verified that nothing got clogged up during construction. Mr. Mirabito said they do not know of anything that got clogged up during construction, they do know that because the hydro seed did not take there was some leaf litter in the

basins and some reeds growing that have been removed. He indicated that recently the filter cloth and stone had been replaced again which is part of the maintenance plan so there is no clogging. It was confirmed all this was done by hand.

At this point Mr. Pritchard had joined the meeting.

Ms. Toomey said that their biggest concern is that everything that is built is built to plan and the builders can say that it is, but that is not sufficient; something isn't working. She indicated she has endless videos and offered them to the Planning Board and the builders to view and maybe offer some insight as to where the water is coming from.

Ms. Burbine indicated she is aware of the situation she has been there and she has also taken videos.

Mr. Pritchard said there does seem to be an existing problem and it may have addressed on a piece of paper, but it is not working in the field and the Board should understand why.

Mr. Sheerin and Ms. Toomey had a discussion about where her house is located on Townsend. She indicated that her house is the last house on Townsend and it is likely that the pitch of the land, the tie in to the Curtis Estates and the Cahalin property all culminates at the location where the drain is at the end of the street. Mr. Sheerin opined that her house and the house above her are actually in the wetlands. Mr. Sheerin said that they are downgrade of their system and he does not know of any way to solve this without having a third engineer review. Ms. Burbine did not allow the conversation to continue as it was going in circles; what is happening out there needs to be resolved.

Ms. Burbine brought the conversation back to the purpose of the meeting; lot releases.

Mr. Limbacher asked for clarification on the discussion regarding a third party engineer. Mr. Toomey indicated he had passed information to an engineer with whom he has a relationship with. Mr. Limbacher asked for more clarification as to what has happened with the basin since last fall with cleaning, etc. Mr. Mirabito said the maintenance has been done in order to keep them operating as they were designed; it is continued maintenance. Mr. Limbacher said it is very simple; this is what happened in basin 1 and this what happened in basin 2, etc. Mr. De Lisi indicated the applicant could get that information to the Board.

Ms. Joseph asked if the basins had been inspected when they were built and cleaned. Mr. Mirabito nor Mr. Tansey were on site when the work was being done. Mr. Mirabito said SLT constructed the basins, Ross engineering staked out the work, but they do go out and survey to check the lines and grading when SLT professionals are done; at that time, everything was correct and submitted the interim as-builts.

Ms. Joseph asked Mr. Mirabito if there were inspections done by his firm this spring and last fall when the maintenance work on the basins was done. Mr. Mirabito said they were not out there when the maintenance work was done and normally they would not be because the Homeowner's Association will be responsible.

Mr. Limbacher opined to hold on to the lots.

Ms. Lambert did not want to release any other lots.

Mr. Bornstein asked what the urgency to release the lots is, i.e. are they sold. Mr. Sheerin indicated that Lot 1 has been sold and they have spent a lot of money to post a \$250,000 bond that the town has asked for to make sure that everything is done. He opined the Board is holding up a million dollars' worth of real estate and he is not sure why. Mr. De Lisi said they would ask the Board to release 2 lots, 1 and 15. He said that an analysis would show that the work needed for the basins would not exceed the value of more than one lot and would the Board consider releasing 2 out of the 3 lots as the applicant continues to work on the issues. Mr. Mirabito indicated that lots 1 and 15 do not shed any water in the basins in questions; they are located toward the front of the property. Both lots would go into basin 2, but he was not sure about lot 12.

Mr. Bornstein was amenable to releasing lot 1.

Mr. Limbacher opined that by not giving lot 1 it would be leverage to make sure they applicant comes back and does things correctly to address the issues.

Mr. De Lisi opined that what is happening on Townsend Road is speculative and it is not clear it is incumbent on the applicant to do all the exploratory work of what is happening there if the engineers are in agreement.

Mr. Cahalin said they know they are downstream and that there are wetlands, but water has dramatically increased since they began construction. He asked if the engineers are saying it is not possible that water has increased, not that they have built what was designed.

Motion:

Ms. Burbine moved to accept Paul Sheerin and Don Gillespie's request, as Managers of 90 Ann Vinal LLC, to release Lot 1 of Curtis Estates Flexible Open Space Development approved by the Board on 2/8/2018 and endorsed on 4/12/2018 from the covenant dated 4/10/2018 and recorded 5/15/2018 in the Plymouth County Registry of Deeds in Book 49800 Page 91 as a bond has been provided in the amount of \$250,000.000. Proof of the recorded lot releases must be furnished to the Town Planner prior to application for any additional building permits.

Mr. Bornstein seconded the motion for discussion; a roll call vote was taken.

Ms. Burbine – no

Mr. Pritchard – no

Mr. Limbacher – no

Mr. Bornstein – yes

Ms. Lambert – no

The motion failed; the vote was 4 to 1.

Mr. Limbacher opined the Board cannot just keep saying no every time the applicant comes for lot releases. The applicant needs to provide certification that the basins were built correctly, that they were maintained correctly, review the calculations from when it was designed and verify they were built and maintained accordingly and then come back to the Board. Mr. Pritchard added that a solution is needed to resolve the issues.

Mr. De Lisi opined that he, the Developer and Mr. Mirabito need to have a discussion and if needed there should then be further discussion with the applicant's engineer and the Town's Consulting Engineer to understand the issues and come to some resolution. He is unclear as to what is contributing, if anything to the issues on Townsend Road that is attributable to the work being done at Curtis Estates. If built the way it was designed who has the action item to do what and that is unclear.

Ms. Joseph said the calculations are done for pre and post development, part of solution is to determine what can be done in the interim. She indicated the applicants had said they would be doing landscaping this week, seeding the septic system and some of the lots and that would help with some of the water. The work has taken place yet.

It was agreed upon that the discussion would continue off-line and Mr. De Lisi would coordinate with Ms. Joseph to do so. Ms. Burbine would like to be part of the discussion and Mr. Limbacher could join as well. Ms. Burbine said this needs to be resolved.

Mr. De Lisi asked if the abutters could provide the name of the engineer, they are hiring. Ms. Toomey was not at liberty to share the information at this time.

Form A – ANR Plan – 190 Glades Road
Scituate Assessor's Map/Block/Lot 05-04-03
Applicant: Jeff Burek
Owner: 190 Glade LLC

Documents

- PDF 190 Glades ANR Plan_03.11.20
- PDF 190 Glades Form Application
- PDF 190 glades LLC Bk 43748 Pg 125
- PDF 190 Glades Signed App_03.11.20
- Doc Draft Motion Form A 190 Glades Road
- Doc Transmittal 190 Glades Road

Ms. Joseph indicated it is just a change in lot line; adding land from one lot to another, it does not change access and frontage and the plan should be endorsed.

Motion:

Ms. Burbine moved to endorse as approval under the Subdivision Control Law Not Required a Plan of Land in Scituate, Massachusetts Showing a Division of Assessor's Parcel 05-04-03 190 Glades Road prepared by Cavanaro Consulting, Inc. for applicant Jeff Burek and owner 190 Glades LLC dated March 4, 2020 as the division of the tract of land shown on the accompanying plan is not a subdivision because it shows a proposed conveyance or change in lot line which does not alter the existing frontage as required under the Scituate Zoning Bylaw. In addition, the following note shall be added to the plan "Planning Board endorsement of this plan is not a determination as to conformance with zoning regulations."

Mr. Limbacher seconded the motion; the vote was unanimously in favor. A roll call vote was taken.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert - yes
Mr. Bornstein - yes
Mr. Limbacher - yes

**Form A – ANR Plan – 44 Captain Peirce Road
Scituate Assessor's Map/Block/Lot 27-3-16
Applicant/Owner: 44 CP Realty Trust**

Documents

- PDF ANR Redivision
- PDF ANR Waiver Scituate Planning Board
- PDF Application
- PDF Deed
- Doc Draft Motion Form A 44 Captain Peirce
- Doc Transmittal 44 Captain Peirce Lot 2A & 3A

Ms. Joseph indicated the plan is shifting the lot line; Lot 2 & 3 have access and frontage on Captain Peirce Rad so the plan should be endorsed.

Motion:

Ms. Burbine moved to endorse as Approval Not Required a Plan of Land in the Town of Scituate, MA 44 Captain Peirce Road Lots 2A & 3A prepared by Morse Engineering Co., Inc. for applicant/owner 44 CP Realty Trust dated March 17, 2020 as the division of land shown on the accompanying plan is not a subdivision because it shows every lot on the plan has frontage of at least the distance presently required under the Scituate Zoning Bylaw on the public way of Captain Peirce Road.

Mr. Pritchard seconded the motion; the vote was unanimously in favor. A roll call vote was taken.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert - yes
Mr. Bornstein - yes
Mr. Limbacher - yes

Minutes

Documents

- Meeting minutes 4.9.20

Ms. Burbine moved to approve the meeting minutes for April 9, 2020.

Ms. Lambert seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert - yes
Mr. Bornstein - yes
Mr. Limbacher - yes

Accounting
Documents

PO #1907489(\$917.14), PO #2008788(\$875.00), PO #2008753 (\$1,440.0)

Ms. Burbine moved to approve the requisition of \$917.14 to Harriman Associates for consulting services for the Master Plan, for \$875.00 to Chessia Consulting LLC for peer review services for 0 Country Way and 0 Rear Country Way, for \$1,440.00 to Merrill Corp for Stormwater Peer review services for 273 First Parish Road.

Mr. Pritchard seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert - yes
Mr. Bornstein - yes
Mr. Limbacher - yes

Liaison Reports:

Master Plan – Mr. Bornstein:

- Process on hold for the time being
- Advisory meeting scheduled for next week will be postponed and rescheduled
- Next meeting will determine how to go forward
 - One more public workshop to be scheduled in the future
- Consultant is working on a draft of the actual document

Planning and Development – reported by Ms. Joseph:

- Public Hearings – Board would like to consider video conference for next meeting
 - Next meeting is May 14th
 - Continue to proceed with CJC Highway project and Country Way

Documents

- Email to the Board from Shari Young dated 4.16.20 with agenda for 4.23.20
- Email to the Board from Karen Joseph dated 4.17.20 with meeting materials for 190 Glades Rd., 44 Captain Peirce Rd, Curtis Estates and meeting minutes from 4.9.20.

These items were distributed to the Board electronically.

Ms. Burbine moved to adjourn the meeting at 8:13 p.m. Ms. Lewis seconded the motion; the vote was unanimously in favor.

Ms. Burbine - yes

Mr. Pritchard – yes

Mr. Limbacher - yes

Ms. Lambert – yes

Mr. Bornstein – yes

Respectfully submitted,

Shari Young

Planning Board Administrative Assistant

Ann Burbine, Chair

Date Approved: May 14, 2020