

## SCITUATE PLANNING BOARD MINUTES December 19, 2013

Members Present: Stephen Pritchard, Vice Chairman; Richard Taylor, Clerk; Robert Vogel and Robert Greene, Alternate Member.

Members Absent: William Limbacher, Chairman and Eric Mercer.

Others Present: Ms. Laura Harbottle, Town Planner.

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

Location of meeting: Selectmen's Hearing Room, Town Hall.

Vice Chairman Pritchard called the meeting to order at 7:30 P.M. The meeting was being audio recorded. The meeting was being recorded for airing on the local cable television station.

### Documents

- 12/19/13 Planning Board Agenda

ACCEPTANCE OF AGENDA: Mr. Taylor moved to accept the agenda. Mr. Vogel seconded the motion and the vote was unanimous in favor.

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### **Discussion – Potential Two Lot Subdivision of Land, 55 Col. Mansfield Drive Assessor's Map/Block/Lot: 30/1/10R Owner: Richard and Helen Hoffman**

### Documents

- Plan of House Lots for 55 Col. Mansfield Dr. Sketch 1 by Ross Engineering 12/6/13
- Plan of House Lots for 55 Col. Mansfield Dr. Sketch 2 by Ross Engineering 12/6/13
- Overview Plan for 55 Col. Mansfield Dr. by Ross Engineering 12/6/13
- Assessor's Field Card
- 8/3/71 ANR Plan for 5.4 acres at end of Col. Mansfield Dr.
- 6/7/71 Letter from Planning Board to ZBA
- ZBA frontage decision 8-30-71
- Staff report dated 12/13/13 for 55 Col Mansfield Drive
- Photograph of entrance for Col Mansfield Drive

Bill Ohrenberger, Paul Mirabito, Rich Hoffman and Craig Hoffman were present for the owners. Mr. Ohrenberger said that Mr. Hoffman's son would like to build a house next to his parents. He indicated that the site has potential for a large development, but if they can receive waivers, they would just like to do two lots. Mr. Pritchard confirmed that this was just an informal discussion. Mr. Mirabito explained the development proposal. He said that Mr. Hoffman owns a 5.4 acre lot at the end of Col. Mansfield Drive with a single family house on the site. He would like to create a second lot and ask for a waiver of the layout of the cul-de-sac which is needed for frontage and construct a hammerhead turnaround. He said additional waivers for pavement and stormwater will also be needed. Mr. Mirabito said the existing storm drainage system at the end of Col. Mansfield can handle the additional pavement. He said that perc test were done three years ago and still should be valid.

Mr. Mirabito indicated that the site could potentially be developed into four lots with adequate frontage on a cul-de-sac. He also said that on the larger scale, there is considerable vacant land that connects to Clapp Road and a road could be extended through the site to there. He indicated that the owners prefer two lots. Mr. Mirabito said that stormwater will be handled under the stormwater bylaw. Mr. Ohrenberger said that the owner would be willing to grant a covenant for just the two lots. Mr. Taylor asked if there would be a full cul-de-sac for the four lots and if the stone pillars at the end of the existing driveway would remain. Mr. Hoffman said that the property is surrounded by stone walls and the pillars could be moved if fire access was a concern. Mr. Ohrenberger said that they would like to minimize pavement, but there will be adequate provisions for emergency access.

Mr. Vogel surmised that the hammerhead would be similar to 305 Country Way and asked about the frontage. Mr. Ohrenberger said there is 50 feet of frontage now and that there was a ZBA decision from 1972 that allowed the house and they will construct the hammerhead previously required. He indicated he spoke with Neil Duggan who indicated the 1972 ZBA decision was superfluous. Mr. Vogel agreed that emergency access would be an improvement. Mr. Ohrenberger said that the hammerhead will not be intended to be public. Ms. Harbottle indicated that the Board didn't need to make any decision until other departments such as DPW and Fire saw the plans. Mr. Vogel asked about depth to groundwater and said there could be a lot of fill brought to the site to build the house site up. Mr. Mirabito said the groundwater is between 24" and 38" below grade and the septic system would be located to the rear of the new house. Mr. Vogel said he would like to see much of the existing vegetation remain and didn't see a problem with the proposal. Mr. Taylor indicated that two lots are preferable for a variety of reasons including density. Mr. Ohrenberger said that two lots are desired, but if a lot needs to be sold to install infrastructure, then that will happen.

Ms. Harbottle said that the regulations call for underground utilities and there are currently electric wires across the existing driveway. She said she recommends new utilities be located underground. Mr. Ohrenberger said they will probably seek a waiver on that issue. Mr. Hoffman said that there is a pole hallway up his driveway that the electricity could be tapped from and it could go underground from there. Mr. Vogel asked about water and hydrant locations. Mr. Hoffman said there was a hydrant about 100 feet down on Col. Mansfield Drive. Mr. Pritchard said that the Board would need input from DPW and the Fire Department, but indicated that two lots are preferable with a private hammerhead and reduced pavement. He said that he didn't think traffic counts were necessary. Mr. Taylor said that the proposal seems within reason, but he would like the utilities underground. Mr. Ohrenberger thanked the Board for their time and input.

**Form A – 179 Edward Foster Road**

**Assessor's Map/Block/Lot: 51/3/23 and 23A**

**Applicant/Owner: Susan M Whitney TRS and Ryan D Whitney**

**Documents**

- Application and Plan of Land in Scituate, MA 179 Edward Foster Road by Ross Engineering Co., Inc. dated 12/10/13.

Mr. Mirabito said the property is owned by Ryan Whitney and his mother is present tonight. He said they would like to divide Lot B with 100 feet of frontage on Edward Foster Road. It will have beach access to first cliff. He said the second lot, Lot A, would combine Lot A and Parcel 6 which would have beach access as well. Mr. Vogel inquired as to easements. Mr. Mirabito said that there are access and utility easements for the home in back formerly owned by Joseph Rulon. He said the easements will remain. Mr. Ohrenberger said there are parcel numbers and lot numbers here as the

land is both registered and unregistered land. Mr. Vogel asked if 50' of frontage is acceptable. Mr. Ohrenberger said they will go to the ZBA for a 50' frontage lot special permit. Ms. Harbottle indicated that the Planning Board can hold the plan until the special permit is received. She indicated that the new 50 foot frontage lot will have the existing house on it and there is no solid precedent from the ZBA to allow it. She said they have allowed some and denied others and zoning compliance needs to happen first.

Mr. Taylor moved to endorse as approval under the Subdivision Control Law Not Required a plan of land in the Town of Scituate, MA located at 179 Edward Foster Road prepared by Ross Engineering Co. Inc. for Susan M. Whitney, Trs. and Ryan D. Whitney dated December 10, 2013 as the division of the tract of land shown is not a subdivision because every lot shown on the plan will have the frontage of at least the distance presently required by the Scituate Zoning bylaw when a 50 foot frontage Special Permit is approved by the Scituate Zoning Board of Appeals for Lot A. The Planning Board will hold the plan in escrow until the ZBA Special Permit is approved and recorded at the Registry of Deeds and proof of recording furnished to the Town Planner. Mr. Vogel seconded the motion. Motion was unanimously approved. Mr. Ohrenberger thanked the Board for endorsing the plan so that the time could start ticking.

**Form A – 36 Tichnor Place**

**Assessor's Map/Block/Lot: 45-2-21**

**Applicant/Owner: Deborah Emmett Pike**

**Documents**

- Application and Plan of Land in Scituate, MA 135 Old Oaken Bucket Road by Ross Engineering Co., Inc. dated 10/11/13.
- Comment from Water Division dated 12/2/13.

Mr. Mirabito said that more land area was needed for the house lot previously approved by the Board as the existing cess pool has to be replaced with a septic system. He indicated it was just moving land from one lot to another.

Mr. Taylor moved to endorse, as approval under the Subdivision Control Law not required a Plan of Land in the Town of Scituate, MA stamped by Paul J. Mirabito, Professional Land Surveyor of Ross Engineering Co., Inc. for applicant Steven W. Emmett and Deborah Emmett Pike dated December 9, 2013 as the division of land is not a subdivision because as the division of the tract of land shown is not a subdivision because it shows a change in a lot line which does not alter the existing frontage. Mr. Vogel seconded the motion. Motion was unanimously approved.

**Zoning Workshop- Medical Marijuana**

**Documents**

- Proposed zoning regulation of Registered Marijuana Dispensaries draft 11/22/13
- Proposed zoning regulation of Registered Marijuana Dispensaries draft 12/16/13
- Proposed zoning regulation of Registered Marijuana Dispensaries draft 12/19/13

Jennifer Sullivan, Director of Public Health and Laura Minier, Manager of Social Services were present. Ms. Harbottle identified the three major concern areas of the bylaw – medical, security and social. She said Massachusetts was the 18<sup>th</sup> state to approve medical use of marijuana and

regulations at 105 CMR 725 were approved on May 18, 2013. She said that the state has more than 100 applications for 35 facilities under Phase I and there will be no more than 5 in each county. Ms. Sullivan indicated that one is proposed in Norwell in the industrial park. Ms. Harbottle said that the manufacturing component is an industrial use which Scituate allows in the commercial zone. She said it would not be appropriate for the downtown area. She said that climate controlled steel buildings with potential activity 24/7 will likely be the norm. She said that the facilities will have much security as they are cash businesses and the users must have a physician letter from a bonafide physician relationship along with a debilitating condition. She indicated that social concerns include influence on children and potential privacy issues for clients. She indicated that a location in the commercial district would minimize the above concerns.

Mr. Taylor added that the Town passed a one year moratorium and has until May 1, 2014 to come up with a regulatory bylaw or a dispensary could be located anywhere in Scituate that meets the state regulations. Ms. Harbottle indicated that Town Counsel reviewed the bylaw and provided changes to the agricultural exemption and substance definitions. She also indicated that she added criteria for review to be by special permit so there will be findings that state laws are met and impacts are minimized. After a brief discussion, the Board concurred that they desired the Planning Board to be the special permit granting authority. Ms. Sullivan indicated that the state regulations will govern the signage which will be minimal.

The Board discussed licensing requirements. Ms. Sullivan indicated that a dispensary won't be given a license by the state without the knowledge of the specific site. Ms. Harbottle said the state could issue a license contingent upon town approval, but there would have been substantial discussions with the Town prior to that point as a fair amount of time and money would be spent obtaining a license. Ms. Sullivan indicated that in Norwell, two applications were received for Phase I permitting, but only one application has made it to the Phase II round.

Ms. Harbottle asked the attendees for their concerns regarding the public health/debilitating condition requirements. Ms. Sullivan indicated that the local Board of Health will have no role as the state regulations will govern even in hardship growing claims. Ms. Minier said there are two additional social concerns including poly-substance abuse and mental illness. She indicated there could be concerns about what marijuana would do for recovery persons with glaucoma or cancer and would people with mental illness possibly be pushed toward psychotic episodes by medical marijuana use. Ms. Sullivan indicated there are a number of privacy rules and a bonafide physician relationship is required. The Board indicated they hoped the medical profession carefully coordinates care of its patients. Ms. Sullivan indicated that there are requirements for pharmaceutical cross checking that have been strengthened since the compound pharmacy issues.

The Board indicated that they will let the Townspeople know that the bylaw is a proactive approach for locating a newly approved state use and finding the best place in Town for it to be possibly located. They indicated that they will indicate to the Townspeople that an outright ban is illegal and no action could lead to a dispensary possibly locating in a location that may not be fully desirable to the Town.

## **Minutes**

Mr. Taylor moved to approve the 11/26/13 and 12/5/13 meeting minutes. Mr. Vogel seconded the motion. Motion was unanimously approved.

## **Accounting**

### **Documents**

- PO # 1403642(\$225.12), PO # 1403659(\$1,493.25), PO # 1403759(\$125.00)

Mr. Pritchard moved to approve the requisition of \$ 225.12 to Gatehouse Media MA for legal advertising in the Scituate Mariner for 50 Country Way and 40 Curtis Street, for \$1,493.25 to Beals and Thomas for construction observation on Deer Common and for \$125.00 to Ockers Company for a typewriter maintenance contract.

## **Town Planner Report**

Ms. Harbottle indicated that she has met with the Town Administrator on the Planning Board Budget request and a few changes were made. She said that if the Board has no comments, the budget will go into the warrant as amended by the Town Administrator. She said as part of the budget, she did a benchmark comparison of other towns. She said Scituate is providing more services for less money. She also indicated that she is looking into obtaining a professional illustration for Town meeting on the Village Business Overlay District. Ms. Harbottle said that the Town Planners from Marshfield, Duxbury and herself were presented with an award for a Sea Level Rise Project in which they collaborated upon. She indicated that the Environmental Notification Form was received for 214 Clapp Road and the Conservation Restriction was received for 305 Country Way. She said that the consulting engineer RFP responses were due on 12/20/13 and that interviews would need to be scheduled in the new year. Ms. Harbottle said that she received a letter of interest from a prospective applicant for the Design Review Committee. She said that the Planning Board will be receiving an application for a 97 lot subdivision at the Proving Grounds in the future.

## **Sign Final Release for obligations of US Fidelity and Guarantee Co. and Lumbermans Mutual Casualty Company under Performance Bond for completion of Walnut Tree Hill Subdivision**

### **Documents**

- 11-8-13 Chessia Consulting Review update
- 11-18-13 Final Release
- Letter dated 11/22/13 from Murphy, Hesse, Toomey & Lehane, LLP
- Letter dated 12/19/13 from Murphy, Hesse, Toomey & Lehane, LLP

Jonathan Hahn from Vertex Construction was present on behalf of Travelers. He said he submitted the documentation to Ms. Harbottle for signing the final release of the performance bond for Walnut Tree Hill Subdivision. Ms. Harbottle summarized that there were a couple of major areas that did not meet the subdivision regulations. One was the failure of the pavement in Garrison Drive due to groundwater and the other was severe erosion of the water line easement of off Old Oaken Bucket Road. She said these two main areas along with several other areas that were previously identified as not meeting subdivision standards have been completed and the town's consulting engineer, John Chessia, has inspected and signed off on the work. She said all of the work agreed upon to be completed has been done and the Board can sign the document. Ms. Harbottle indicated that all of the work on the punch list has been completed to subdivision standards in response to questions from Mr. Vogel. She indicated that the detention basins were not part of the agreement as some homeowners had done work in the easements.

Greg Lengen of 36 Walnut Hill Drive said he understood the \$800 work is complete, but expressed concern about the remaining work to be done for street acceptance and inquired if the Board had received an estimate for the work. Ms. Harbottle indicated that she forwarded Mr. Lengen's email to Kevin Cafferty who is on the Street Acceptance Committee and indicated that what needs to be done for street acceptance is different from the bond work. Mr. Pritchard said that he understood the issue to be whether the performance bond was for the street to be completed to the subdivision standards or whether the street was to be completed for street acceptance under the performance bond. Mr. Lengen said it is important to know this as there is still work to be done for street acceptance. Mr. Hahn said that street acceptance was not part of the agreement for work under the bond and if the standard changed that was not part of the contract. Mr. Lengen said that Modern Continental told buyers that even if they went bankrupt, the bond would guarantee the roads be completed for acceptance. Mr. Pritchard indicated that if the road was built to subdivision standards it could be accepted, but there is no way a bond can guarantee a vote by Town Meeting on street acceptance.

Mr. Lengen said that the Street Acceptance Committee said there were a wide variety of things that still needed to be done. He indicated that they were saying some manholes may not be in the correct locations and that needs to be reviewed by an engineer. Mr. Lengen said that these items should be reviewed and corrected under the bond funds. He said if the bond is released there is no recourse for the 60 residents who have been waiting for 10 years to have the roads accepted. Mr. Hahn said that the Town's engineer did look at the project and indicated it is up to Town standards. He said the bond work is a separate issue from street acceptance. Mr. Lengen said that the Street Acceptance Committee said there was no chance for their recommending for acceptance without additional work. He said that he was under the impression the road would meet the standard with the work done under the bond.

Ms. Harbottle said she recalled that the Board was asked to determine if the performance bond guarantees the work completed would guarantee street acceptance. She indicated she received a letter from Town Counsel who said there was no guarantee the roads would ever be accepted. Ms. Harbottle concluded that would be an issue between the residents and the successors of Modern Continental. Mr. Lengen said that street acceptance criteria had not been met and he would like the rest of the work needed for acceptance to come out of the bond funds. Mr. Hahn reaffirmed his position that the tripartite agreement which the Town signed was to bring the subdivision to completion to subdivision standards. He said maintenance is separate distinct issue and was not part of the tripartite agreement. He said that work is completed and the bond should be released.

Mr. Pritchard reiterated that there is no guarantee of street acceptance as Town Meeting votes on the issue. Mr. Hahn indicated that Mr. Cafferty, Mr. Chessia and Ms. Harbottle met before the Tripartite Agreement was put together and agreed upon the scope of services. Ms. Harbottle said a lot of work went into putting the Tripartite Agreement together and it took a long time for Travelers to agree upon the scope. Ms. Harbottle confirmed Mr. Chessia has signed off on the work, but Mr. Cafferty did not as the street will need regrinding and repaving. Mr. Lengen said that when he started working on street acceptance in 2006 the pavement was okay. He said he would like a meeting with the engineers to confer upon the standards for acceptance. Mr. Pritchard said he was willing be in attendance at a meeting. Ms. Harbottle indicated that she has heard an estimate of about \$300,000 for regrinding and paving, but was unaware that additional work was required. Mr. Hahn indicated he would like to attend the meeting as well and was disappointed that the town has not sat down with the two engineers. He said that the scope of work has been completed since June and it is unfair to hold up payment under the contract. Ms. Harbottle said she could not guarantee a meeting would

take place, but would try to arrange it and further discussion would not occur until January 9, 2014 at the earliest.

**Form A – Surfside Road - West**

**Assessor's Map/Block/Lot: 15/3/9-A-R**

**Applicant: Stephen F. Corsaro, Esq.**

**Owner: Robert F. Cotter, Trustee, Surfside Road Realty Trust**

**Documents**

- Application and Plan of Land in Scituate, MA showing a subdivision of Lot 3 on Land Court Plan 25103B Surfside Road, Scituate MA by Cavanaro Consulting dated 11/15/13.

Brendan Sullivan and Steve Corsaro were present. Mr. Corsaro said that there are two vacant lots that land is being taken from one and given to the other to make the second lot conforming to frontage. He said there will be two buildable lots. He said sewer is available to Lot 4 and they will pursue a sewer connection for Lot 5 when they have the proper frontage.

Mr. Taylor moved to endorse as approval under the Subdivision Control Law not required a Plan of Land being a subdivision of Lot 3 as shown on Land Court Plan 25103B Surfside Road, Scituate, MA stamped by Brendan P. Sullivan, Professional Land Surveyor of Cavanaro Consulting for applicant Stephen F. Corsaro, Esq. and owner Robert F. Cotter, Trustee dated November 15, 2013 as the division of land is not a subdivision because every lot shown on the plan has access and frontage as required by the Scituate Zoning Bylaw on the public way of Surfside Road. Mr. Vogel seconded the motion. Motion was unanimously approved.

**Old Business and New Business**

**Documents**

- Town Planner Staff Report dated 12/16/13 for 12/19/13 for three Form A Plans
- FY 15 Planning Board Budget

These items were distributed to the Board electronically.

Mr. Vogel moved to adjourn the meeting at 10:02 p.m. Mr. Greene seconded the motion. Motion was unanimously approved.

Respectfully submitted,

Karen Joseph  
Planning Board Secretary

Richard Taylor, Clerk

1/9/14  
Date Approved