



# Town of Carlisle

MASSACHUSETTS 01741

Office of  
PLANNING BOARD

## MINUTES

Meeting - June 28, 1976

**MEMBERS PRESENT:** Pugmire, Hannaford, Bridges, Kulmala, and Cutter  
Guests - Griecci, St. Amour

The minutes of the June 14, 1976 meeting were approved. Bills were signed.

Mr. Pugmire stated that a letter was received from Town Counsel concerning Berry Corner Lane which is a private way. Fenn School will submit a plan for their two pork chop lots under Subdivision Control Law Not Required in the near future. The road was built as a small subdivision and four lots have been built on. In 1974, Mr. Santomena expressed his opinion that Fenn School did not have legal frontage on the private way. Town Counsel, however, disagrees and recommends the Board sign the plan if submitted but require the applicant to add a note saying "Berry Corner Lane is shown on plan approved by Carlisle Planning Board June 26, 1968 and recorded in Plan Book 107, Plan 75. For ownership of fee, refer to Book , Page ." It was suggested that the Planning Board ask Fenn School to work out an agreement with the four home owners that would be acceptable to the Planning Board.

Mr. Pugmire stated that the Board received a letter from Town Counsel concerning plan of Hemlock Hill Estates. The plan filed in 1969 was definitive and was approved. Mr. Pugmire advised Mr. St. Amour and Mr. Griecci that they could request to be permitted to build the subdivision under the 1969 Rules and Regulations and Town By-Laws and submit it to the Town for acceptance at Town Meeting. The Planning Board would have to state at Town Meeting that it agrees with the 1969 Rules and Regulations, but the Town would have the choice as to

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whether the road was accepted. Mr. Pugmire stated that the Planning Board has the authority to review all plans and rescind their approval. The Board recognizes that by using a 50 foot right of way Mr. Griecci would lose some lots and engineering costs would be increased. Mr. Pugmire asked if Mr. St. Amour and Mr. Griecci would agree to constrain themselves to all Rules and Regulations of 1974 if the Board would give approval of a 40 foot right of way. Mr. St. Amour replied that Mr. Griecci does have an approved subdivision and will apply for necessary permits and begin developing but they would like to accommodate the Board. Mr. Pugmire said the Board would like to live within the 1974 Rules and Regulations with the exception of the 40 foot right of way.

It was felt the foot path requirement could be some problem with a 40 foot right of way. It was suggested it be put outside the 40 foot right of way with easements from each property owner. The pavement must be 24 feet wide leaving 16 feet within the right of way. Approximately 5 feet would be needed for a bike path. By constructing the road 3 feet off-center, Mr. Griecci would have 11 feet in which to build a bike path.

There was concern about the drainage. Mr. Pugmire again stated that the Board would support them at Town Meeting with a 40 foot right of way if they will conform to the Rules and Regulations of 1974.

They were reminded the Town would send an engineer to inspect their work and they would be billed. If the Town engineer does not feel their engineering is adequate, new engineering will be designed. Mr. St. Amour repeated that they would go along with anything the Board would like done. He would like the Board to tell him what he must do to be sure the Building Inspector does not disapprove.

Mr. Pugmire would like a statement from Mr. St. Amour and Mr. Griecci saying they would agree to abide by the 1974 Rules and Regulations with the exception of the right of way. He asked that a letter be written agreeing to abide by the

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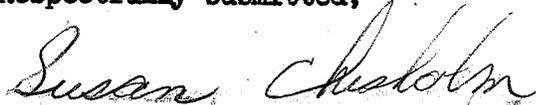
1974 Rules and Regulations with the exception of the right of way. Mr. Griecci stated he would first like to talk with Mike Holland regarding grades and agreed to write a letter after talking with Mr. Holland. Mr. Hannaford suggested that if after talking to Mr. Holland there were any problems, they come back to the Planning Board. Mr. St. Amour and Mr. Griecci will come to the next Planning Board meeting.

Mr. Hannaford will talk to Mrs. Penhune so that she will not sign Health Permits within the next two weeks.

It was suggested the July 26 and August 23 meetings be cancelled. This will be decided at the next meeting.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

  
Susan Chisholm  
Secretary

**JOHNSON, CLAPP, STONE & JONES**

**COUNSELLORS AT LAW**

**1430 BOSTON COMPANY BUILDING**

**ONE BOSTON PLACE**

**BOSTON, MASSACHUSETTS 02108**

**TELEPHONE  
AREA CODE 617  
523-1930**

**FRANK B. FREDERICK  
KENNETH W. THOMSON  
FINLEY H. PERRY  
ARTHUR L. BARTLETT  
NEIL G. MELONE  
DAVID W. LEWIS, JR.  
RICHARD T. HILDRETH  
GEORGE E. RICHARDSON**

June 15, 1976

Mr. T. Kent Pugmire, Chairman  
Carlisle Planning Board  
87 Wolf Rock Road  
Carlisle, Mass. 01741

Re: Berry Corner Lane

Dear Kent:

I report the substance of a conference that I had several weeks ago with counsel for Fenn School, Richmond T. Edes, who had called me at the suggestion of Frank Hannaford. The Berry Corner Lane problem has surfaced again because of the continuing desire of Fenn School to sell its two pork-chop lots located across the road from four families (including the Nestors and the Wells) who are determined that "they shall not pass."

My file included a letter that I had written to Mrs. Paul G. Counihan on February 13, 1974 (copies to Nancy Penhune and Bob Santomena). In that letter I had taken the position that the Planning Board could not withhold from a plan showing the two pork-chop lots its endorsement to the effect that approval under the Subdivision Control Law was not required. It was my opinion that the plan did not show a subdivision as defined by the statute and that this determination marked the limit of the inquiry of the Planning Board. If the plan did not show a subdivision, the question of access to Berry Corner Road was not an issue before the Board but was a private vendetta between Fenn School and the other four abutters.

I told Richmond Edes (and F. Davie Edes, who joined our conference at a later point) that my opinion remained unchanged, with all deference to a contrary opinion expressed by Bob Santomena in a memorandum that he had written on February 20, 1974 to the Planning Board. It was Bob's opinion that, without legal access to Berry Corner Road (which Mrs. Counihan had not been able to establish to the satisfaction of the Planning Board), the Fenn lots were merely bounded by the line of a private way and did not have frontage on the way within the meaning of the Subdivision Control Law.

I told the Messrs. Edes that I was still of the opinion that the plan did not show a subdivision as defined in Section 81L of Chapter 41 because the lots owned by Fenn School had frontage on "a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law." A plan showing Berry Corner Lane was approved by the Planning Board on June 26, 1968.\* For this reason I believed that the Planning Board had no alternative, if the plan were submitted formally, to endorsing the plan with the magic words "Approval Not Required". I added that if the Planning Board were to ask for my present opinion I would submit it in the same words.

Recognizing that the Board may still adhere to its differing opinion, I suggested that Mr. Richmond Edes be prepared to demonstrate to your satisfaction that the Fenn lots do, indeed, have legal access to Berry Corner Road, whether it be through the survival of rights in an ancient way or because an easement by implication or by estoppel has been created, and that the four landowners in question have no right to obstruct it even though they own the fee in Berry Corner Lane. This argument must be presented to the Superior Court in the entirely likely event that the case goes that far, although it is my opinion that it is not a proper argument for consideration by the Planning Board.

The legal questions before the Planning Board, as I see them, include the following:

(1) The status of the submission of the plan. I understand from Ellie Cochran that Mrs. Counihan did not submit her plan formally to the Board in 1974 but merely discussed the problems without a formal submission. If Mr. Edes were now to make a formal submission of the plan, requesting an endorsement to the effect that approval is not required, the 14-day clock would start running at that point.

(2) The action or non-action of the Planning Board as an "appealable order".

(a) If the Board declines to endorse the plan, it must be on the ground that the plan shows a subdivision. Mr. Edes may then submit the plan for approval as a preliminary plan, or he may appeal to the Superior Court from the Board's determination. (Chapter 41, § 81P).

(b) If the Board endorses the plan "Approval Not Required", or allows 14 days to elapse without taking

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\*This was not a case of a plan being endorsed "Approval Not Required". The importance of the distinction was pointed out by the Supreme Judicial Court in Goldman v. Planning Board of Burlington, 347 Mass. 320, 324 (1964).

action after the formal submission of the plan, an appeal may be taken within 20 days to the Superior Court by "any aggrieved person" (e. g., another abutter on Berry Corner Lane) or by "any municipal officer or board". (Chapter 41, § 81BB). In Bloom v. Planning Board of Brookline, 346 Mass. 278, 283 (1963), the Court assumed that a bill in equity to correct or expunge an endorsement on a recorded plan "could be maintained in some circumstances" under § 81Y.

These matters of procedure seem less important than the substantive question:

(3) Does the plan show a subdivision? For the reasons that have been stated, it is my opinion that it does not. I reach this conclusion by a literal reading of the words of the statute. A contrary conclusion, best stated by Bob Santomenna, must be reached by importing into the literal words a sort of "spirit of the law". To this contention there are at least two answers:

(a) The spirit of the Subdivision Control Law is found in Section 81M of Chapter 41, which sets forth as one of its principal purposes "the provision of adequate access to all of the lots in a subdivision ...". See: Stoneham v. Savelo, 341 Mass. 456, 458 (1960); Rettig v. Planning Board of Rowley, 332 Mass. 476, 480 (1955). To argue in the present case that the Fenn School lots must have adequate access to Berry Corner Road is to assume the result, i. e., that the plan showing the two lots shows a subdivision.

(b) A literal construction of the Subdivision Control Law is required by the well settled rule that statutes in derogation of the Common Law are to be strictly construed. See: Corcoran v. S. S. Kresge Co., 313 Mass. 299, 303 (1943) (building ordinance). It has been the practice of the Massachusetts Supreme Judicial Court to construe the Subdivision Control Law strictly. See: Castle Estates, Inc. v. Park & Planning Board of Medfield, 344 Mass. 329, 333-334 (1962) (power of a planning board to impose conditions, not provided for in rules and regulations, relating to water supply and drainage); Daley Construction Co., Inc. v. Planning Board of Randolph, 340 Mass. 149, 155 (1959) (disapproval of subdivision plan on ground of inadequacy of town's water supply).

Mr. T. Kent Pugmire, Chairman  
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Recommendation

I recommend:

(1) That the Planning Board sign the plan's endorsement "Approval under the Subdivision Control Law not Required" when and if it is submitted formally.

(2) That the Board require the applicant to add a note to its plan (linen) reading substantially as follows:  
"NOTE: BERRY CORNER LANE IS SHOWN ON PLAN APPROVED BY CARLISLE PLANNING BOARD JUNE 26, 1968 AND RECORDED IN PLAN BOOK 107, PLAN 75. FOR OWNERSHIP OF FEE, REFER TO BOOK PAGE .". The applicant should be able to supply the latter title reference.

Sincerely yours,

*Neil Melone*

Neil G. Melone

NGM/kab

cc: Mr. Frank E. Hannaford  
Mr. Theodore L. Semrad  
Mrs. John P. Penhune  
Mr. Alford S. Peckham  
Mrs. Richard E. Wanberg