



Town of Carlisle

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PLANNING BOARD

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**872 WESTFORD ST.
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**MINUTES 7/24/95
MEETING
PUBLIC HEARING ON SPECIAL PERMIT FOR COMMON DRIVE
FOR BISHOP ON RUTLAND**

Chair Colman opened the meeting at 7:25; present were members Yanofsky, Duscha, LaLiberte, and Hengeveld. On a motion by Yanofsky, seconded by Hengeveld, the minutes of the Study Plan subcommittee meetings of 6/12 and 7/17/95, as presented, and the minutes of the 7/10/95 board meeting, as amended, were approved by unanimous vote. There were no bills to be considered.

FinCom meeting Yanofsky reported that her meeting with FinCom regarding use of the board's technical and legal budgets went well. The FinCom was willing to allow the board to transfer the \$1300 in bills charged in 1994-95 fiscal year under the 53000 category of the general budget (01775) to the technical and legal budget (line item 01774). This allows the board to finish the year without exceeding its general budget. The 01774 item at the end of the fiscal year shows a \$6,500 balance. Yanofsky reported further that Town Clerk Andreassen and Selectman Michael Fitzgerald, formerly a FinCom member, were present and could remember the genesis of the separate line item. Traditionally, the board has used both categories, but with the institution by the state of the 53G accounts, which are required to be reimbursable and which fall outside the budget, it has been assumed the board could begin to close or reduce the 01774 line item, although not all the expenses charged to this account would be reimbursable. The FinCom cautioned Yanofsky that the board should be sure it has enough funds for legal and technical expenses which might not be reimbursable (P.A.'s note: such as general advice/review of bylaws, regs; defense in lawsuits). Yanofsky replied that the board would consider this carefully in preparing its 1996-1997 budget. Colman added that one reason the separate line item had been established was that the board members at that time wished to contract their own legal services, rather than use the firm hired by the Selectmen.

Study Plan subcommittee: conservation cluster bylaw review Duscha reported that at recent meetings of the subcommittee, attendees Chaput, Colman, Duscha and had discussed the issue of whether the cluster bylaw purpose section should be made more broad so that cluster would be a more attractive option to developers. Chaput felt that

because of standard subdivision and ANR lot development, the amount of undeveloped land which can be viewed from roads is in severe decline, and because the passage of the Study Plan indicates the townspeople's strong interest in the preservation of at least the appearance of rurality, perhaps it is time to reword the purpose section of cluster. Colman pointed out that the four existing clusters (Ice Pond, Ember Lane, Workum, and Clark Farm) have very significant benefits to the town in addition to the 30% open space.

Appropriately, the financial benefits to the developer of lower road costs and an extra lot are considerable. Would a less significant benefit, such as the stone cairn marking the corners of Acton/Concord/Billerica before Carlisle was founded, be enough? Colman also reported that Chaput had suggested that the benefit to a developer of a 10 acre parcel (the minimum under the bylaw) should be proportionately less than the benefit to a developer who has a 100 acre parcel, which provides 30 acres of open space; for example, granting of an extra lot per 10 or 20 acres of parcel. This would give motivation to the larger tract owner. Duscha commented that in many other towns, an extra lot is not granted; the benefit to the developer is reduced lot size with no increase in overall density. Carlisle, on the other hand, has a long standing commitment to maintaining the basic 2 acre lot minimum.

Yanofsky, on reviewing the wording of the bylaw's purposes, felt they are broad enough to include many less spectacular benefits and parcels. She felt, however, the geometry of the requirements might still be a problem; she suggested the board try to apply the bylaw to various parcels. She also felt that the cost/benefit analysis of development versus non-development ought to be considered, not just the \$150,000 value of the lot being given to the developer. For example, what is the cost to the town of: purchasing and maintaining land? providing school and other town services? taxes lost?

Finally, Duscha raised the possibility of two forms of cluster being available: one which offers only reduced frontage and common drive for less significant parcels and town benefits, and one which offers extra lots for very significant parcels and town benefits. Hengeveld mentioned the SROSC bylaw has an intentionally looser purpose section which should be reviewed for cluster.

Public Hearing: special permit application for common drive for Bishop at 180 Rutland St. Colman opened the hearing at 8:00 PM and read the notice of public hearing as published in the *Lowell Sun* on July 7 and July 14, the *Concord Journal* on July 13, mailed by certified mail to parties in interest, for which the board holds the receipts for mailing and delivery, and posted at town hall on July 13, 1995. He then explained to the applicant, Les Bishop, that five board members were present, that members who vote on a special permit must attend all sessions of the hearing, and that a positive vote of five members is needed in Carlisle to grant the special permit. He asked Bishop if, given those conditions, he wished to make his presentation and to have the board take comments, or whether he wished to do neither of those things, and to continue the hearing to a later date. Bishop chose to go ahead with the hearing. He showed the board and public who were present a layout of the common drive as proposed, explaining that the plan includes 4 lots to be accessed only by a shared common driveway. Of these lots, three currently exist and one is being created by ANR; all are reduced frontage (pork chop) lots; there are no more than two consecutive pork chop frontages. Were the permit not granted, each lot

would be accessed by a separate driveway, requiring at least two additional wetland crossings, as the buildable land is beyond the wetland. The grade of the drive does not exceed 8%. In laying out the lot lines, Bishop has made one lot, owned by Morses, conforming as to sideline setback. In laying out the common driveway, he has shifted away from an existing path which would most likely be used for a private drive so that the use of the common drive will not cause headlights to shine in the windows of the neighbor across the street.

Rangeway Road, which he believes the town abandoned, is not used, he said, in any lot layouts.

Colman informed those present that wetland issues, while of concern to the board, are governed by ConsCom, which will review this plan at a public meeting. Bishop commented that former ConsCom administrator Chisholm had reviewed the flagging done by his consultants.

Colman then opened the hearing to comment and question by board members. Duscha asked if the steep and narrow curve near the end of the drive can be widened. It reads at 40' radius, and the fire chief needs 50' to get his emergency vehicles in. Bishop agreed to revise the plan, but added that two private drives intersect the curve, so that when they are constructed, the curve will also be wider.

Colman asked whether in light of the 8% grade at the curve referred to earlier, there will be reduced visibility on the curve for walkers and drivers. Bishop replied that the curve is bordered by large trees, which allow a view across the curve.

Yanofsky asked whether there was a better place to cross the wetland. Bishop replied that Chisholm had reviewed the first crossing he had proposed, and that she felt it impacted a more valuable wetland. Therefore he had relocated the crossing to an area preferable to her.

The Planner Assistant commented that she had reviewed the homeowners' maintenance agreement, which had been based on one accepted by the board at an earlier date.

However, she reminded Bishop, the regs had changed since that date, and there are issues specific to this proposal which need to be called out. First, the regs now require that common drives be named, and that signs bearing the name be placed at the intersection with the road. The maintenance agreement must require the placement and upkeep of those signs. Second, the prohibition against private drives being installed or used on the four lots must be included in the agreement. Last, there should be a requirement that all turnouts be kept free of snow, mulch, gravel or other stockpiles of materials so that they may be used for their public safety purpose. Bishop agreed to make these changes.

Colman then opened the hearing to public comment. Tim Morse, whose standard lot is bracketed by the reduced frontage lots of the proposal, commented that he and his wife had lived there for many years aware that some day the land would be developed; this proposal, he felt, is a very good one in that it causes minimal impact on the neighborhood. Bishop, he said, has been thoughtful and considerate in his approach to the abutters.

Chip Sullivan asked if waivers for frontage were being proposed. Colman explained that the planning board cannot grant waivers for frontage, and that lots proposed for a common drive special permit must be able to be developed as individual lots from a zoning perspective. Sullivan asked if reduced road widths were being proposed. Hengeveld explained that the board has standards for common driveways, which this plan meets.

Bishop added that his plan widens the required 12' paved way to 16' at the curve and at the intersection with Rutland St.; two 2' shoulders are shown throughout.

The board confirmed that Rutland is a Scenic Road. Bishop commented that there are no trees greater than 6" in diameter or stone walls in the ROW which abuts this common drive. There are, he said, interior stone walls which will be used for landscaping purposes. Mr. Blanchard commented that as the frontages of two lots do not meet the street at a 90 degree angle, they cannot be 40' frontages as required, although the shortfall, he guessed, would be inches. Bishop explained that they had added perpendicular portions to the frontages to account for those inches. The Planner Assistant asked Bishop if he was aware of the zoning bylaw definition of frontage, reminding him that even if the board were to grant a special permit, the Building Commissioner could not grant building permits if the frontage or other zoning requirements are not met.

Mr. Howe asked whether his client's (Brown's) land abuts this parcel. Bishop replied that it does for a few feet. As Brown's land has no access, Howe was looking for a possible access for Brown. Bishop explained that the drive would have to be much greater in length than the 1000' allowed by the board's regs, and would have an additional wetland crossing.

Sullivan asked the status of Rangeway Road. Bishop replied that he believes it is an abandoned county road. Blanchard commented he thinks it is an abandoned town road. The Planner Assistant mentioned that no one pays taxes on it. Sullivan asked if any interior stone walls can be saved. Hengeveld replied the special permit gives the board the option to request that.

Chris Puffer, who arrived late, asked why the permit was being sought. Bishop reiterated his proposal.

Duscha asked if the existing crossing might be utilized for the common drive. Bishop replied that the land is steep and ledgy there, and the necessary construction would cause erosion, steep grades, and greater general impact at a very sensitive area.

Bishop commented that the area where the common drive approaches Rutland was cleared of large trees several years ago.

Mr. Holleman asked what the next step in the process is. Colman explained that the board would continue the hearing to review the LandTech report, to get the Fire Chief's comments on the safety aspects, and to allow board members to walk the site. Yanofsky reported that she and Hengeveld had walked the site with Bishop on July 21st at 1:30 PM. Hengeveld commented that based on the walk she feels it is a good use of the land. A site walk was scheduled for Saturday the 29th at 8AM.; drivers may park in the Morse driveway at 148 Rutland.

Yanofsky moved, and LaLiberte seconded, that the hearing be continued until August 14 at 7:30 PM at the Carlisle Education Center. All voted in favor.

ANR: 180 Rutland for Bishop Yanofsky moved and Hengeveld seconded that based on the representation of adequate frontage and area, and on visual inspection for access that is real and usable, the board vote to approve this ANR. All voted in favor.

Board appointment LaLiberte moved, and Yanofsky seconded, that the board vote to nominate Michael Epstein as a member to serve until the spring election of 1996, and that

the board attend a joint meeting with the Selectmen on 8/8 at 7:30 for that purpose. All voted in favor. Teresa DeBenedictis, new town administrator, will post the joint meeting.

ANR: 321 and 371 Rutland for Bishop Duscha moved and Hengeveld seconded that the board vote to approve this ANR based on the representation of adequate frontage and acreage and on the fact that visual inspection showed real access. All voted in favor.

Discussion with Brian Hebb re Ice Pond subdivision and special permit compliance issues Present were Hebb, Andrea and Rudy Bunde, Cheryl Finn, Robert West, Carl Hanscom, and Chris Puffer. LaLiberte recused himself. Hebb showed the board a certified survey plan of the common drive by Ross Associates. The plan shows, he said, that the common drive was built according to approved plans, and that there is no overlap between the paved way and the trail easement except for a very narrow 93' long segment 90 degrees off the Bloomfield's garage. Also shown is that the paved way and 10' of the trail easement are within the 30' wide common drive easement. Yanofsky thanked Hebb for coming in to assist the board, and suggested that the Building Commissioner should be notified that the certified plan shows the common drive easement and the pavement and the trail have been built substantially to approved plan. Duscha asked if Hebb had any ideas of how the board might resolve the issue of having granted a conservation cluster in return for a benefit to the town which appears to be unusable, namely, the trail. Hebb replied that he felt this is between the board which granted the cluster and Charles Boiteau, the original developer; he predicted there is little which can be done to help the situation. Duscha moved and Hengeveld seconded that the building commissioner be informed that the board has been shown a certified plan which indicates the driveway paving is within the common drive easement, and that it has therefore been built, in its horizontal layout, according to the approved plan. Colman, Yanofsky, Hengeveld and Duscha voted in favor. LaLiberte, having recused himself, did not vote.

Hebb agreed to drop off a copy of the plan to the board's town hall box this week. Duscha then asked Hebb what his plans are for completing the road. Hebb explained that he had graded the sidewalk and installed the subbase, and that LandTech had inspected and approved the work that day (the 24th of July). The board, having only received the inspection report as the meeting began, took time to review it. Hebb continued that he planned to pave the walk in two and 1/2 weeks. He plans, he said, to do both courses of paving consecutively, and asked the board if they objected to that. If he does not do it that way, he said, he will need to lay a binder before he adds the wearing course. No one objected. He plans to lay the top course of road paving after the two remaining spec houses are built on lots 2 and 7, and the two custom houses which are under construction on lots 5 and 6 are completed. He cannot account for the house under construction on lot 4, which is being built by Boiteau. This would mean a date sometime late next spring. Colman pointed out that Hebb's attorney, Paul Alphen, in his letter to the board also received that day, implied that the road would be accepted by town meeting. Colman wished the homeowners present to know that construction in compliance with the planning board's regs and the approved plan does not bind town meeting to accept a road. Hebb indicated that he understands that as well.

The board briefly reviewed the estimate of completion costs and the review of the condition of the completed ways and services as reported by LandTech. The report, although dealing only with construction costs and not therefore reflecting the approximately \$6000 in legal and engineering fees owed the board by Hebb, was reassuring to the board in that it indicates the board holds an adequate amount of money to cover completion. Hebb asked the board to rescind the letters it had sent to the Building Commissioner on June 29 and 30, telling him the subdivision approval had expired and asking him not to grant any further occupancy or building permits until the safety concerns of the planning board were satisfied. The Planner Assistant asked Hebb if he had prepared the written schedule which he had promised her. He had not, and Yanofsky said she was reluctant to take any further action until the board had that schedule. Hebb wrote one at that time, which board members reviewed individually. While others were reviewing the schedule, Duscha raised the issue of the tree buffer replanting. Even though she knew the land is Boiteau's, she said, Hebb had signed an agreement with the board to replace the trees. She asked Hebb to try to work it out with Boiteau. Andrea Bunde asked whether the board had received her letter; they responded that they had. Her home has been sold, she said, and she is scheduled to move into Ice Pond in two or three weeks.

The board asked Bayne to research whether an extension of the subdivision approval is required at this point, and whether, if it is, a public hearing should be scheduled.

As board members finished reviewing Hebb's time line, Colman asked if members feel it meets their safety concerns. Hengeveld moved that the planning board advise the Building Commissioner by letter that Hebb has met with the board and has provided a timeline for completion of the ways and services which satisfies the board's concerns for public safety at Ice Pond subdivision, and that Hebb be copied. Colman offered a friendly amendment that if the Commissioner requires additional wording, the P.A. should draft that wording and review it with Colman. Hengeveld accepted the amendment. Yanofsky seconded the motion. Yanofsky, Colman and Hengeveld voted in favor. LaLiberte had recused himself so he did not vote. Duscha abstained.

Hebb requested that, if the planning board feels it is necessary to extend the subdivision approval, the appropriate steps be initiated and he be notified. The P.A. was instructed to determine the best course to take, and, if a hearing is advisable, to advertise it for the Aug. 14 meeting if that is possible. The board indicated its willingness to schedule a meeting sooner than that if necessary.

LaLiberte reported that he will not attend the Aug. 28 meeting.

The meeting was adjourned at 10:30.

Submitted by Sandy Bayne, Planner Assistant