



# Town of Carlisle

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Office of

PLANNING BOARD

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DRAFT

**MINUTES**

**July 1, 1996**

- ANR PLANS:** Berry Corner Lane  
Maple Street
- DISCUSSION:** CCF grant application, Malcolm Meadows accessible trail  
Chap. 61 land on Cross Street (Fielding), request for  
recommendation on Town's right of first refusal  
*Study Plan Implementation Steering Committee*

Acting Chair Duscha called the meeting to order at 7:25 p.m. Colman, Duscha, Epstein, Hengeveld, LaLiberte and Yanofsky were present. Tice was absent. Also present was Planning Administrator Mansfield.

MINUTES: The minutes of the meeting of June 10, 1996 were approved as amended with typographical corrections 6-0 on a motion by Colman, seconded by Hengeveld. Colman asked that his words, "inexperience in," in the third paragraph on page 2 be replaced with "discomfort with." Duscha suggested that "local conservation acquisition fund," in the fifth paragraph on page 5 be amended to "Town conservation..." She also asked that the location of the drainage problems cited in the Ice Pond inspection discussion on page 7 be precisely identified by station number. Finally, she questioned the use of the term, "and/or access," in the discussion of the Evans' building rights on page 8, but other members of the Board agreed that this term was accurate and no amendment was made.

## ANR Plan - Maple Street (Adrian)

Mansfield described the plan and explained that it will create three building lots from two, each with adequate frontage and area. Two lots are already developed with single family houses. The potential site of a house on the new lot can only be reached by crossing a wetland/flood hazard district, but case law has held that this is not a reason to deny the endorsement of an ANR due to a lack of "practical access." Colman agreed,

noting the lot may be unbuildable, but not for zoning reasons. Duscha recalled that the applicant had previously submitted another ANR plan. Hengeveld asked if a fourth buildable lot could also be created from the applicant's land, and Mansfield replied that he believed it could be. **Yanofsky moved that the ANR be endorsed as submitted,** Epstein seconded the motion, and it was **approved 6-0.**

### ANR Plan - Berry Corner Lane (Valchuis)

Michael Valchuis was present with his attorney, Julian D'Agostine of <sup>Davis, Malm and</sup> D'Agostine, Malm and ~~Malm~~ Also present were Michael Kelley, Dick and Judith Wells, Jack Schultz and Keith Therrien of Berry Corner Lane, and <sup>Frank Rigg</sup> of South Street. Mr. D'Agostine addressed the June 28, 1996 letter of Town Counsel Elizabeth Lane to the Board on this matter in which she concluded that "ANR endorsement may not be lawfully granted." In the cases she cited, D'Agostine argued, particularly the Hamilton case, the plan in question had an explicit endorsement that restricted the creation of additional lots, and the court went on to say that where no such explicit endorsement is present, there is no restriction. LaLiberte questioned whether the court also said that the planning board, in that case, should not have endorsed the plan. Reviewing a copy of the Hamilton decision given to him by D'Agostine, LaLiberte added that the court said the applicant should have submitted a definitive subdivision plan. D'Agostine, also referring to the decision, noted that it stated that a board must note the limitation of the number of lots on the approved plan. Otherwise, under Ch. 41, Sec. 81-O, he said, additional lots can be created.

Epstein asked whether the restriction on the number of lots in the Berry Corner Lane subdivision was contained in the Zoning Bylaw. Colman replied that it was, and the Board was adhering to that bylaw in its approval. But D'Agostine corrected them that the "Small Subdivision" provision was in the Rules and Regs., not in the bylaw. Whether that would make a difference in the final analysis, however, he admitted, has not yet been decided by a court. He requested that the Board consult with Town Counsel again before coming to a conclusion.

LaLiberte asked what, in fact, was on the Berry Corner lane subdivision plan regarding a limitation on the number of lots. Mansfield replied that the plan is not in the Board's files, but that a copy of the plan provided by abutters shows no explicit limitation. Colman asked for a copy of the recorded plan. Epstein suggested that the matter be referred back to Town Counsel.

LaLiberte noted that in the Hamilton decision, the court argues that since an ANR does not have the same notice requirements as a definitive subdivision plan, the latter is necessary. He asked D'Agostine if his client would submit a request to amend the subdivision. D'Agostine replied that he would not do so unless it were required by law, since he did not wish to expose his client to other issues. One such issue, he suggested, would be safety. Another, his client's right to use the road, has already been resolved in

an agreement signed by all abutters on May 8, 1996, and held in escrow in the offices of attorney Louis Eno. He offered to provide documentation of this agreement.

D'Agostine also noted that, in the bylaw, common driveways in Carlisle can serve up to six lots. He argued that this situation is physically analogous to a common drive. But Colman and Duscha both replied that there is no evidence that Berry Corner Lane meets the standards for a common drive. Yanofsky asked if the key issue is whether or not there is a recorded restriction on the number of lots, and suggested that this be determined before proceeding to a vote. Colman replied that the issue was not that clear, and that D'Agostine himself had requested that the Board raise the question again with Town Counsel whether a recorded restriction is essential.

Duscha then provided the opportunity for abutters present to speak briefly, explaining that this was not a public hearing. Richard Wells, noting that they had not had the opportunity to read Town Counsel's opinion, made several points. The agreement on access was based, he said, on the threat of D'Agostine to go to Land Court. They signed it relying on the Small Subdivision regulation which set a limit of five houses. Previously, he said, they had reached a negotiated settlement with the Fenn School to limit the develop their lot with only one house (the fifth), based on the Small Subdivision regs. The Valchuis property, he added, has not been taxed as a buildable lot.

Following these comments, Duscha suggested that the item be held for further discussion at 7:30 p.m. at the next meeting, August 5, 1996. Epstein asked the P.A. to notify Lane about the issues that have arisen in this discussion, and to seek further clarification. D'Agostine reported that he would be talking directly to Lane, with whom he has worked frequently. Epstein expressed concern about the fees incurred by this discussion between opposing attorneys, and asked Mansfield to request an estimate of additional fees necessary to research this situation. If extensive work is necessary, he said, it should be authorized by the Board before proceeding.

Mansfield noted that the extension of time for the Board to endorse the ANR expires on July 15. D'Agostine offered to further extend that time, and Colman moved that it be extended to August 5, 1996, with LaLiberte seconding the motion. The motion was approved 6-0.

Epstein agreed to consult jointly with the P.A. and Town Counsel, and D'Agostine promised to submit a copy of the recorded subdivision plan.

### **Ice Pond subdivision inspection**

Mansfield reported that Hebb's promise, in his letter of June 12, that the road would be paved by the end of June, has not been carried out. He said he visited the site today, and there are no signs of any recent or pending construction. He added that the Board last

September gave Hebb until October 1, 1996 to complete the subdivision. He asked whether the Board wished him to make a follow-up contact with Hebb.

Duscha suggested that this could wait until the next meeting. Even if the work could not be completed this season, she said, extensive damage will not occur in just one more winter. Colman asked how much time the P.A. spent on this inspection. Mansfield replied that it only took about 15 minutes, but that additional time had been spent on the telephone, documenting the history of the project, and preparing letters. Colman asked that this time be documented and charged against the bond. He also asked that information be sought from LandTech regarding how long paving could be postponed without incurring problems.

Duscha again suggested that these questions can wait, but Epstein said that there would be no detriment to asking Hebb why the work hasn't been done, and the Board instructed the P.A. to forward this explicit question to Hebb.

#### **Appointment of MAPC (MAGIC) representative**

This aspect of Board organization and roles was carried over from the June 10 meeting. Duscha, the current MAGIC rep., suggested that Phyllis Hughes might be an desirable appointment. Colman agreed to call her and ascertain her willingness to serve.

#### **Establishment of a Rules of Board Procedure subcommittee** (not discussed)

#### **Request of letter of support for application by Carlisle Conservation Foundation for grant to develop a handicapped-accessible trail on Malcolm Meadows open space**

Eunice Knight presented this request. She showed the Board pictures of the site and described its location, but did not present a plan showing the layout of the trail. She explained that the trail will be built of hard-packed stone dust in the form of a double loop in the area along Stearns St. just to the west of the housing units. She said that the Trustees of Reservations have estimated that the project will cost \$15,000. The grant application to the Mass. Dept. of Environmental Management is for 1/2 of that cost; the CCF will fund the remainder.

Hengeveld inquired about the responsibility for trail maintenance. Knight replied that the Trustees of Reservations have agreed to assume that task. Yanofsky asked if the trail would be extended in the future. Knight said it would, but the location was not yet determined and the handicapped accessibility would not be maintained through the wetland area. Hengeveld asked how wide the trail would be, but there was not a clear answer. Knight explained that she hoped not to have to use full State accessibility standards, because this might raise the cost to a level that would render the project

infeasible. Colman questioned further whether State requirements would apply, but Knight only could state that so far, CCF doesn't believe that the project will have to meet these standards.

Epstein reminded the members that in the Malcolm Meadows special permit the Board reserved the right to approve the initial layout of trails in the open space, and asked whether the letter requested by CCF was exercising that right. Duscha replied that this project does not yet appear to be at the "layout" stage; rather it is at the "concept" stage. With that understanding, Yanofsky **moved that the Board support the concept of an handicapped-accessible trail on the Malcolm Meadows land**, noting that such a trail would be a public benefit. Hengeveld seconded the motion, and it was **approved 6-0**. The P.A. was asked to send a letter indicating this support.

#### **Request for recommendation regarding Town acquisition of Chap. 61 property on Cross Street (Fielding)**

Mansfield explained that the Board of Selectmen have asked the Planning Board for their recommendations regarding the Town's right of first refusal regarding the Fieldings' proposal to withdraw their land on Cross St. from Chapter 61, forestry use, in order to develop three lots served by a common driveway as approved by the Board in April. He was asked whether a purchase and sale agreement was necessary to trigger this option, but he replied that it was not since this was a proposed conversion of use, not a sale, although both methods are controlled similarly by Chap. 61, Sec. 8.

Duscha suggested that this property, for which the Board had denied a Conservation Cluster special permit, was not high on the open space preservation list. Yanofsky noted, however, that in the course of that special permit hearing the Board had found some merit in preserving an historic marker, that there was an existing trail on the land and a vista along Cross St., and that very little protected open space exists in this area of the town. She suggested sending the Selectmen a copy of the Board's findings from that decision. Alternatively, Duscha suggested, a letter to the Selectmen should begin, "Several Board members are of the opinion that..." But Yanofsky replied that the Board should decide now whether the four findings she had mentioned are worth bringing to the Selectmen's attention. Epstein added that the Historic Commission and Trails Committee's opinions should also be sought by the Selectmen. Hengeveld suggested that if letters from these bodies are in the files, they should speak for themselves.

Yanofsky restated her suggestion: although she did not feel comfortable making a recommendation to the Selectmen, she wanted the Board to convey information to them. This might include, she said, the finding that although the land was not found significant enough as open space to justify the approval of a cluster permit and a bonus lot, if the Town wishes to buy a portion of it for preservation, that should be considered. Colman agreed that this might be a valid response. Both he and the P.A. suggested that the abutters' opinion on the Town's option and their position on the cluster permit might be

very different. Consequently, Yanofsky suggested that the Board advise the Selectmen to re-notify the abutters and seek public input.

Duscha concluded that she was comfortable pointing to the attributes of the land, but not in suggesting its purchase. LaLiberte agreed, noting that acquisition required setting priorities and the Board is not being asked to weigh those alternatives. Yanofsky also agreed with Duscha, observing that we don't know what funds are available for land acquisition. Nevertheless, she said, the Selectmen should be urged to negotiate and get something out of this opportunity, perhaps a conservation restriction on a portion of the land. Hengeveld disagreed, saying that funds should be saved for something the town really wants and not spent on this land.

Epstein summarized, suggesting that information from the special permit hearing be transmitted to the Selectmen, and that they be urged to get more public input. An informational letter should be sent, he said, but no recommendation should be made on the option to purchase. The members were in general agreement, and Epstein and Yanofsky agreed to review a letter to be drafted by the P.A.

### **Report of the Study Plan Implementation Steering Committee**

LaLiberte asked for any additional comments on the draft scoping letter to boards and committees, which he would like to go out next week. He said he believes the major work is within subcommittee "C," the drafting and/or amendment of legal tools for open space protection. He noted that Epstein had prioritized this work in a memo dated July 1. He reiterated that the Steering Committee is looking for flexibility in all aspects of the subdivision and development of land, not just the revision of the Conservation Cluster bylaw. But Yanofsky pointed out that Vivian Chaput and George Foote were very clear that their goal was to revise the current bylaw. She added, however, that the underlying problem is that the town does not have an open space bylaw, per se, what EOCD calls "flexible zoning."

Colman stated that, in his opinion, Chaput and Foote's interpretation of the proposed bylaw revisions is wrong and does not satisfy the Town's needs. Duscha asked whether members thought the present Conservation Cluster bylaw accomplishes what was originally intended. Colman replied yes, while Yanofsky said no. She added that there are two problems: we have to fix what we have as well as develop new tools. But Colman reiterated that he does not believe the present tool is broken, and added that former Board member Ken Ernstoff agrees with that assessment. Yanofsky then asked the other members, can we do both tasks, or are we more invested in one approach over another?

LaLiberte framed the question from another perspective, who is going to be participating in the drafting and what is going to be drafted? Epstein stressed that the townspeople's objective is to preserve open space in general and to preserve significant pieces of land as

well. LaLiberte responded, do we move forward on a dual track now, or is the establishment of flexible zoning more important? Epstein concluded that the dual tasks go hand-in-hand. It could be, he said, that the current Conservation Cluster bylaw doesn't need many modifications beyond the clarification of its objectives

Yanofsky suggested that an outside assessment of what would be the most productive role of the Planning Board, given the agreed-upon goals and objectives, should be pursued by retaining someone such as the M.I.T consultant she had suggested previously. LaLiberte, however, questioned whether that would be necessary. Isn't it agreed, he asked, that what is needed is more flexibility to deal with the subdivision of land? If so, why is a consultant necessary? Yanofsky replied that no other town has implemented flexible zoning without the assistance of a consultant. Epstein observed that the issue is one of timing and cost; the funds for a full consultant-produced product are not in the current budget. He said he would, however, be in favor of bringing someone in to provide initial guidance.

Yanofsky then described the work she had discussed with the M.I.T planner (Terry Szold). She said she would talk with the board about its options at one meeting for \$270.00, or would do that in addition to an advance review of the bylaws for \$500.00. The contractor's first question, however, was, is the Board committed to a consistent set of goals? Yanofsky explained further that Szold has worked with the town of Georgetown on a similar project. The methodology was her suggestion when Yanofsky had originally proposed that she provide an overview of growth control mechanisms. Epstein questioned whether it had not already been decided that the goal was to create a bylaw that will accomplish open space preservation. If so, we should buy the services of someone who will help to do that, he suggested. But Yanofsky replied that we can't get a work product such as that for this kind of money. She said that Weston engaged Phil Herr, who spent 18 months to put together a bylaw. She added that the Weston Planning Administrator and a planning board member have offered to meet with this Board and describe their experience.

LaLiberte returned to his question seeking volunteers to redraft the bylaws. Referring to Epstein's memo of 7/1/96 outlining the priorities for his subcommittee, he tried to seek consensus. Yanofsky expressed her disagreement with the fourth priority, obtaining information on demolition delay procedures. Epstein replied that priorities 3 - 5 were just items for exploration and scoping. Duscha noted that she would be more interested in pursuing flexible zoning than tweaking the Conservation Cluster bylaw.

LaLiberte then agreed to try to bring in a consultant to give the Board initial direction both on drafting a flexible zoning bylaw, and revising the Conservation Cluster bylaw. Duscha, Yanofsky, LaLiberte and Colman all expressed interest in being a part of the drafting task LaLiberte had described. But Yanofsky asked what he meant by drafting, underscoring the importance of first making key policy decisions. Epstein agreed that certain key issues needed to be discussed first, expand the list he had provided.

Mansfield then distributed and discussed a draft list of policy issues to be addressed in formulating a residential open space preservation bylaw.

At this point, the discussion was tabled to deal with other business. When discussion resumed, Yanofsky pointed out that in drafting the SROSC bylaw, the former P.A. had reviewed other towns' bylaws and developed a matrix summarizing their main features, number of times used, size of developments, etc. She suggested that this might be useful in this case, and that she and Duscha could work with the P.A. to complete such an analysis.

LaLiberte then suggested that the P.A. contact Szold and offer a contract similar to the one Yanofsky had informally discussed with her. But Yanofsky said she would be more comfortable if LaLiberte himself, and Epstein, made that approach. She asked the Board to give these two members authority to hire Szold, and the members concurred.

### **Other Business**

Yanofsky raised questions about the member's satisfaction Kopelman and Paige's service as counsel to the Board. She was, herself, uncomfortable with the Berry Corner Lane opinion. Colman observed that, in that instance, D'Agostine is very good at what he does and is in regular contact with Lane. But in the long term, he said, we should let Kopelman and Paige know we are dissatisfied with the service provided. Epstein added that he, too, had a low level of confidence in this firm as legal counsel. Colman suggested that a strong phone call might suffice. He added that he would be speaking to the Selectmen the next night and would raise the issue, also asking them about their level of satisfaction with Town Counsel's service. The members agreed that this should be an agenda item for discussion at the August 5 meeting.

The Board asked Mansfield to send a letter to Selectman Chaput recommending that the Town prepare a Community Action Statement for submission to EOCD prior to the beginning of the next fiscal year.

It was determined that Colman would chair the August 5 meeting.

The meeting was adjourned at 10:45 p.m.

Respectfully submitted,

George E. Mansfield  
Planning Administrator