



Town of Carlisle

MASSACHUSETTS 01741

Office of
PLANNING BOARD

MINUTES

February 5, 1979

Present: Raftery, Zielinski, Hannaford, Young, Chaput, Kulmala

Motion was made, seconded and unanimously voted in favor to delay review of the Minutes of the January 22 meeting until the next meeting.

Kay Kulmala reported that we have received notice from the Flood Insurance Administration that they are embarking on final review. There is now a 90-day period for questions from residents to be submitted to the Selectmen and forwarded to FIA.

A memorandum to the Board from Robert Santomenna, representing the Virginia Farme residents, was received. A memorandum of law was received from Mr. Eno on behalf of Munroe Hill Associates. Both memos will be attached to the Minutes.

Charles Brown reported that Munroe Hill Associates had no further discussion with regard to the plan submitted. The survey was completed and is substantially the same as the status seen by Planning Board members one week ago. The plan made at that time follows the same contour as prior plan except it establishes an island to allow the largest possible scope for traffic. The location of the intersection with Westford Road is the same on the east; it widens out more to the west because of the island.

Bob Koning reported that the Fire Department's concerns related to access and provisions for water. The new plan satisfied that Department on both counts. Bob Zielinski reported that Roger Davis felt it was definitely preferable to have the second access and was only concerned with having the private section of that access maintained to allow plowing. Davis was reported as feeling that a covenant covering the maintenance was an excellent way to handle it.

Midge Eliason, Virginia Farme, questioned how the new plan showing road width of 24 feet on both sides of the island and a 20-foot wide island could be accommodated in a 40-foot wide strip. Brown explained that although most of the strip is 40-foot wide, there is frontage of 80-100 feet on Westford Road. Tom Raftery explained that this configuration is referred to as "cocktail glass."

Tony Matias, Virginia Farme, asked if the egress point had been moved east or west from previous plans. Brown said to the west by about 30 feet.

Mr. Santomenna reiterated some points of his memorandum. He said that not only safe access for both private and emergency vehicles must be considered but also how the proposed subdivision affects its neighbors and roads to which it feeds. The Virginia Farme residents are concerned for their safety. The Board, he said, is being asked to make a judgment on a plan which raises some difficult problems. His clients felt that approval should not be granted if the Board does so in the context of taking the lesser of two evils. He asked that the Board reject the plan on grounds that the Board has not been satisfied as to the safety aspects. He reminded the Board that whatever action was taken on the Preliminary Plan was not a final determination.

Dick Coulter, Virginia Farme, gave it as his opinion that establishing this non-acceptable strip as a second access was a bad precedent to the Town.

Vivian Chaput asked if the developers had looked into the possibility of access through the Yntas land. Brown answered that they felt an access road in this location was a long way and dangerous topography; no way was mapped out as it did not seem feasible.

Tom Raftery read a 1/27/79 CVP letter responding to the 1/17/79 plan and the letter of Cambridge Systematics. A vehicle entering and turning east will require a west-bound vehicle to reduce speed. They suggested signs. They felt that the angle at which the proposed access intersects with Westford Road would have little affect on traffic. Regarding the space between the two intersections, they said it is quite common for rural Massachusetts to have intersections with this configuration and they did not see it as particularly dangerous.

Frank Hannaford said he had timed traffic as it rounded the curve and flowed past the site of the proposed access and he also timed himself making a left turn onto Westford Road and he had no problem.

The Board's options were explained. They can approve the plan subject to certain modifications. They can do nothing (There is no default provision and this would not be construed as a vote either in favor or against). They can disapprove, giving specific reasons and there is no appeal.

Kay Kulmala made a motion not to approve the plan at this time on the grounds that without a second access the length of the culdesac would be excessive for safety considerations under Section 4.A.1.a. and the Board is not sure that the second access provided is the best approach. The motion was seconded and defeated by a vote of 4 against, 1 in favor and 1 abstaining.

Rollin Young made a motion that the plan as presented be approved. The motion was seconded. Robert Zielinski offered an amendment to the motion regarding construction and maintenance of the private portion of the second access road. Rollin Young withdrew his motion when Frank Hannaford made the following motion:

To accept the Munroe Hill Associates Preliminary Plan subject to but not limited to the following six inclusions on the Definitive Plan:

1. Private way to the south-west to be built as a second access according to the subdivision rules and regulations with a small island at Westford Road.
2. Elimination of the culdesac at the southwest corner of the subdivision.
3. Construction of at least two, but not limited to two, water holes to be adjacent to the proposed right-of-way and fenced with a 5-foot high chain link fence with gate and padlock, these to be deeded to the Town.
4. That the name Munroe Hill Road be the road from Virginia Farme through the private way to Westford Road, thus eliminating the name Drummer Way.
5. That Nathan Lane have only one termination at the junction of the property lines between Munroe Hill Associate, Yntas and Tully land, this laid out so as to provide future access to both properties. This is to be labeled on the plan as "only to be extended in the future as a through access to existing public ways."
6. That the owners, their heirs or assigns of lots of Munroe Hill Associates covenant to maintain that portion of Munroe Hill Road that is in fact a private way.

The motion was seconded and approved by a vote of 5 in favor, 1 against.

Discussion took place on the Yntas Land plan which had been submitted at the last meeting; concern was Morse Road. Mary Kelly reported that the Benjamin Plan shows Morse Road as an accepted road. She said there was a recent ruling in Superior Court Case No. 326020 that Morse Road was established as and continues to be a county way. This was filed December 21, 1978. She said that the developer proposes to bring it up to the status of a private driveway and have the Town maintain it. Tony Matias, Virginia Farme resident, expressed his opinion that this would adequately safeguard environmental and safety concerns. Pat Cutter said the Selectmen were interested in the responsibilities of the Town to the Road.

Edward Lunn, Sunset Road, pointed out that Morse Road is impassable and at one point a building sits on it. He felt that a developer cannot put a private road over a public road without some Town official action. He also pointed out that Sunset Road is narrow and in a bad state of repair for either heavy construction vehicles or for increased traffic.

Clara and George Stearns own the house which stands in the road. Mr. Stearns offered a letter from the County stating that the County did not own the road but gave the Town \$200 to maintain it as a fire lane. (It was believed that the Town no longer receives this amount.)

Tom Raftery read a letter from Town Counsel Neil Melone regarding the suit brought by Hart against the Town relative to the Town vote to discontinue the road in 1970. (This is the case cited earlier by Kelly.) Melone pointed out that the stipulation in this case has no effect on any future proceedings. It was his opinion that approval of this plan would have to come under the Subdivision Control Law.

Two cases, one in Rowley and one in Nantucket were cited. The Rowley decision said, in part, that the word "way" should be seen in the context of the way on the land. The Nantucket case said access is a practical matter, not a technical or formal matter. In both cases the decision was that the Town Boards involved were not overstepping their authority by denying approval of plans that used access over public ways which were shown on a map but were not practical and existing on the land.

Tom Raftery summarized. The plan as presented, although an excellent use of the land, does not show a practical existing public access. The status of Morse Road is unknown. Is it a county way? Has it been abandoned? What can be done at this point?

One suggestion was that the developer meet with Town Counsel or make a proposal which the Board can consider as regards laying out the road. It was also suggested that if the Town has an obligation with respect to the way, the Town should find out what the limits are.

Bob Zielinski moved that the signing of the plan under Approval Under Subdivision Control Law Not Required be disapproved because the way shown is not adequate for the proposed use. The motion was seconded and unanimously voted in favor. Tom Raftery will inform Town Clerk of this action.

There was brief discussion regarding nominations to the Planning Board to be made at Town Caucus.

Lot Releases for Hemlock Hill Road, approved at the last meeting, were signed.

Meeting adjourned at 10:00 p.m.

Meredith De Long

MEMO TO THE PLANNING BOARD OF THE TOWN OF CARLISLE

Re: Preliminary Plan for Munroe Hill Estates Subdivision

The primary concern of the Subdivision Control Law (Chapter 41 of Massachusetts General Laws) and the principal responsibility of the Planning Board, is the safety of the inhabitants of the Town. The purposes section of the Subdivision Control Law (Section 81-M) puts it this way:

"The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is put in effectThe powers of the Planning Board...shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies ...for coordinating the ways in a subdivision with each other and with public ways in the... town in which it is located and with ways in neighboring subdivisions."

There could be no clearer statement of the Legislature's intent that the safety of the inhabitants of the Town be the uppermost consideration in the regulation of new subdivisions and that the Planning Board need not view a proposed subdivision with blinders as to its effect on its neighbors and the existing road network.

The Carlisle Planning Board, acknowledging its responsibility and pursuant to the legislation charge, has provided in its rules and regulations at Section 4 A la that streets in a subdivision "shall be coordinated with each other and with the existing street system in a manner satisfactory to the Board, with due regard to securing safety and convenience in travel."

It is natural to expect that the property owners living in the vicinity of a proposed new subdivision might feel threatened by the impact of the proposal on the safety of their families. The Virginia Farme residents are acutely concerned about the traffic safety aspects of the Munroe Hill proposal. The prospect of a second access by means of a sub-standard private drive over the "log road" has done little to alleviate their concern. They sought the judgment of respected professionals expert in the area of traffic safety. You have the report of Cambridge Systematics which finds the "log road" deficient as a safe second access by reason of inadequate sight distance, angle of entrance from Westford Road, and proximity to the Virginia Farme junction.

Another element which compounds the doubts about the adequacy of the "log road" as a safe second access is the concern that the Town would have inadequate means of insuring that such access be maintained in good repair and condition

for passage by private vehicles, school busses and emergency vehicles. The Planning Board has grappled with the problem of private road maintenance in the past. Carlisle Pines Drive and Berry Corner Lane are notable examples. The Berry Corner Lane experience caused the Board to delete from its current rules and regulations provisions which had previously permitted private sub-standard roads in new subdivisions.

The Developer has asserted that the Planning Board does not have the power under its present rules and regulations to require a second access. That ignores the requirement of Section 4 A 1a that subdivision streets be coordinated with the existing street system with due regard for safety. All elements bearing on the issue of safety which the Board has considered indicate that there is a compelling need for a second access.

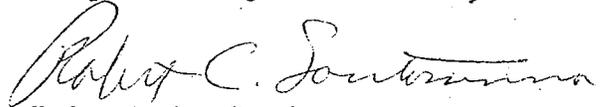
This matter should be viewed in its procedural context. The plan under consideration is a preliminary plan. It is not a definitive plan. Under Section 81S of the Subdivision Control Law, a preliminary plan cannot be recorded and only those provisions of that law which deal expressly with preliminary plans are applicable. Your regulations provide that a preliminary plan need not, and the plan before you does not, show all the information required of a definitive plan. It has not been prepared by a registered surveyor or engineer.

Action on a preliminary plan is not a final determination and accordingly there is no right to appeal from a decision disapproving a preliminary plan. Paul Livoli, Inc. v. Planning Board of Marlborough, 344 Mass. 330, 335 (1964).

Serious doubts have been raised as to the adequacy of the "log road" as a safe second access. It has been characterized as the "lesser of two evils." It is submitted that this plan does not provide a proper basis upon which to make a decision affecting the vital issue of safety. The Board should not feel compelled at this state of the proceedings to settle for "the lesser of two evils."

It is therefore respectfully requested that the Planning Board disapprove the preliminary plan for Munroe Hill Estates.

Respectfully submitted,



Robert C. Santomenna
Attorney for Richard Coulter
and Others, Residents of
Virginia Farms Lane

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January 31, 1979

Thomas J. Raftery, Esquire
Choate, Hall & Stewart
60 State Street
Boston, Mass. 02109

Re: Morse Road

Dear Tom:

Thank you for sending me a print of the plan entitled "Compiled Plan of Land in Carlisle, Mass. for McHugh" by Joseph W. Moore Co., dated December 27, 1978. I understand that Mrs. Mary Kelley presented this plan to the Planning Board at its meeting on January 22, requesting that the Board endorse the plan "Approval Under The Subdivision Control Law Not Required".

To confirm our telephone discussion on Monday evening, January 29, the status of Morse Road was not adjudicated in the proceeding brought by Daniel J. Hart against the Town of Carlisle seeking an assessment of damages allegedly arising from the discontinuance of Morse Road as a public way by its vote in March, 1970. In answer to the Town's interrogatories, the plaintiff stated that he relied upon the layout and acceptance of Morse Road as a county way in 1803 by the Court of General Sessions. Thereupon, the Town moved for summary judgment in its favor on the ground that a town does not have authority under the statutes to discontinue a county way. The Court declined to act upon the motion for summary judgment because all of the owners of lands abutting Morse Road were not before the Court in that proceeding. Instead, the Court accepted a stipulation by the parties for dismissal of the action, the stipulation reading as follows: "It is stipulated that Morse Road was established as, and continues to be, a county way and that the vote of the Town of Carlisle was ineffective to discontinue any part of said county way. The parties, therefore, agree to dismissal of the action with prejudice and without costs." This stipulation is the final entry in Middlesex Superior Court docket no. 326020.

The Moore plan shows 12 lots all having frontage on that portion of Morse Road that extends northerly from the transfer station and is unimproved. It is my opinion that the plan discloses a subdivision as defined by Chapter 41, Section 81L of the General Laws and that approval under the Subdivision Control Law is required.

In our telephone conversation I referred to the decision of the Supreme Judicial Court in Rettig v. Planning Board of Rowley, 332 Mass. 476, 481 (1955). The Court in that case held that regardless of the meaning of "way" in Section 81L, the word should be taken in the sense of a physical way on the ground. The road in question, being a mere cart path, was not in any practical sense a way that was "adequate for access for vehicular traffic" to the lots shown on the plan. The Court did not find it necessary to decide whether a "way" was one in which the members of the public have the right of passage. It held that the planning board did not exceed its authority in determining that the plan required approval.

Similar emphasis upon access as a practical matter was placed on the plan considered by the Court in Gifford v. Planning Board of Nantucket, 1978 Mass. Adv. Sh. 3077, 3080. Holding that the plan disclosed a subdivision, the Court said: "Practical vehicular access to the main or buildable parts of these lots was thus inadequate. There was no more than a purely formal or technical compliance with the frontage requirement."

It seems reasonable to construe the definition of "subdivision" in Chapter 41, Section 81L as requiring access as a practical matter and not merely as a technical or legal matter, wherever the words "public way" or "way" are used in the definition, including that part of the definition that excludes certain divisions of land as not constituting a subdivision within the meaning of the statute. Even though Morse Road may technically continue to be a "public way" since its establishment in 1803, it is not the type of way that was intended to be beyond the reach of the Planning Board's approval. It does not, as a practical matter, afford access for vehicular traffic to the twelve lots shown on the plan. The Board would not secure "safety in the case of fire, flood, panic and other emergencies", as required by Section 81M, if the plan were endorsed "Approval Not Required".

Sincerely yours,

Neil G. Melone

Neil G. Melone

NGM/law