



Town of Carlisle

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PLANNING BOARD

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MINUTES
DECEMBER 18, 1995

PUBLIC HEARING: Pine Meadow Definitive Subdivision
CONT. PUBLIC HEARING: Laurajon Rd. Definitive Subdivision
CONT. PUBLIC HEARING: Lowell Rd. Special Permit for Common Drive
CONT. PUBLIC HEARING: Baldwin Rd. Special Permit for Common Drive

Chair Colman convened the meeting at 7:24 p.m. Present were Colman, Duscha, Hengeveld, LaLiberte, Tice and Yanofsky. Epstein was absent.

The Board members agreed to allow the meeting to be audiotaped by the Planning Administrator to aid in the production of accurate minutes. The tapes will be erased after the minutes are approved.

MINUTES: The minutes of the meetings of November 27, 1995, and December 4, 1995, were approved as amended 6-0 on a motion by Duscha, seconded by Hengeveld. The amendments are as follows:

November 27:

- p. 2 Re: Evans, paragraph 1 - Add: "Flannery did not go on the site walk itself."; and "Sweet" should be "Swett"; paragraph 4 - Replace "Yanofsky asked if..." with "Yanofsky asked Board members whether..."
- p. 4 Re: Motion to continue the hearing on Cross St.: Duscha voted in favor; Hengeveld voted against the motion.

December 4:

- p. 2 Re: Straw vote to grant waiver to allow a 1:1 slope in Laurajon Rd. petition: 4 of 7 members were willing to agree to waiver if sufficient safety could be provided via a guard rail, Epstein, Duscha and Hengeveld were opposed to the waiver.
- p. 5 Re: Cross St., paragraph 1 - "Gregor Miskolczy" should be "Gabor Miskolczy."
- p. 7 Re: Cross St. motion to continue hearing: "The Board agreed to continue the joint hearing until January 8, 1996 at 7:30 p.m."

PUBLIC HEARING: Pine Meadow Definitive Subdivision

Colman opened the hearing at 7:37 p.m. and read the public notice that had been published in the Carlisle Mosquito on December 1 and December 8, 1995, and posted at Town Hall on December 12, 1995. The Planning Administrator (P.A.) noted that return receipts had been received from all abutters to whom notice had been sent, except for one party (Storrs) whose address had changed but who had called and acknowledged the hearing.

Joseph March of Stanski & McNary, Inc., engineers, presented the petition on behalf of the applicant, Costello Realty Trust. He described the features of the 34 acre parcel as it exists, and then the proposed 15 lot subdivision of the land. He explained that in the plan the central area shows isolated land subject to flooding, not bordering vegetated wetlands. He also explained that the center of the parcel was an area previously used for gravel excavation and does not contain mature trees. The mature forests around the edge of the parcel are also within wetland areas. The houses shown on the plan are approximate and for descriptive purposes only, and are not before the Board for approval. March described the drainage system, pointing out that the catch basins would direct the flow into two existing isolated areas subject to flooding and one new leaching area. He said that the site had been tested for septic disposal, and was found to contain sand throughout the site, indicative of its former use as a gravel source.

Noting that the proposed roadway is 2,500 ft. long and has two intersections with Maple St., Colman asked whether a shorter cul-de-sac had been considered. March replied that the alternative had been explored, but that such a roadway would exceed the maximum dead end length set in the Board's regulations, and/or would not accommodate 15 lots. Tice asked what length had been considered, but March couldn't recall.

Colman opened the hearing to the public for questions and comments. Kathleen Coyle of 125 Maple St. asked to be shown the location of the vernal pool on the site. March replied that no certified vernal pools exist. He explained that the wet area near Maple St. is not a vernal pool, and no wetlands are proposed to be filled in this project. J. Heard, 232 Maple St., asked about the type of houses proposed and whether Mr. Costello was proposing to be the builder. Costello replied that he was, and that they would be traditional colonial styles, similar to Tall Pines, of 2,800 to 3,800 sq. ft.

Duscha asked again why a dead end street would not be preferable to this plan, perhaps in conjunction with a conservation cluster so that the open meadow could be preserved. She also asked whether trails on the site would be preserved. March replied that trails on the site are old gravel haul roads internal to the site itself and do not connect to any off-site trails. The only trail that left the site has been blocked off by the house built recently at 94 Brook St.

J. Heard commented that this subdivision is inconsistent with present development patterns in Carlisle and does not preserve the rural character of the town in accordance with the Master Plan, particularly with regard to the view from Maple St. March replied that the plan fully conforms to Carlisle's zoning by-law and subdivision rules and regulations, and added that the houses will not necessarily be where they are shown on the plan. Colman noted, however, that in any case there will be 3 houses in the open field and 2 houses near the road, all clearly visible from Maple St., and this is not consistent with the present rural character of the street. March replied that only two

houses would necessarily be in the field; the third could be within the tree line.

Tony Mariano, 48 Page Brook Rd., asked whether the petitioners were aware that this land is unique as the only outwash plain in town, the most permeable large area bordering wetlands. It is possible, he said, that leaching material could get into these wetlands with ease. March responded that he is aware of the glacial gravel present, and that all Board of Health regulations will be addressed in the design of the individual sewage disposal systems. Colman observed that the wetlands issues should be brought to the attention of the Conservation Commission during their hearing process; they cannot be addressed by the Planning Board. March stated his intent to file with the Conservation Commission for an Order of Conditions.

Yanofsky asked whether a trip generation estimate had been prepared for this development. March replied that no traffic analysis is required for this application, but offered to provide the information. She followed with a question about the sight distance at the two proposed intersections on Maple St. March replied that the minimum sight distance was 241 ft., which is sufficient for the 20 m.p.h. posted speed limit. Finally, Yanofsky noted that Maple St. is a scenic road and asked whether any trees or stone walls will be affected. March replied that there are no walls, but he was not sure whether any trees would have to be removed for the more southerly entrance to the new roadway. Colman reminded him that if there were trees to be removed, a separate hearing before the Planning Board is required to comply with State statutes and Carlisle policy.

Yanofsky expressed disappointment that this plan doesn't reflect Carlisle's Master Plan values. She also asked how the applicant would respond to the provision of Chap. 41 and the regulations concerning the set-aside of a lot for open space at the request of the Planning Board. March reiterated that the plan fully complies with the regulations and that if the Board's intentions are different, the regs. should reflect that intent. He noted that open space development options require a special permit, and that consensus on such permits is often difficult to get. As far as the set-aside is concerned, March observed that holding one lot out of development for a maximum of 3 years is a right of the Board, and they would offer any lot for this purpose. The Town, he said, also has the option to buy any such lot to keep it open perpetually.

Alternatively, Yanofsky asked, had a cluster plan been considered? Costello answered that, in his opinion, the cluster by-law is very punitive. He said that one is required to have the same large lot size as in a subdivision even though additional land is being kept open. He added that homes served by common driveways are not preferred by buyers and so are less marketable than those fronting on public ways. Colman warned that the Town has the option not to accept a subdivision road, so that it too may never become a public way.

Mike Saylor, 318 Maple St. asked whether the field was in agricultural use and if so, must the Town be offered an option to buy it? March replied that the Town was offered that option last January, and refused it. Board members expressed surprise at this, but Colman reminded them that the Selectmen, not the Planning Board, are given this opportunity.

Vivian Chaput, 49 Milne Cove Lane, asked whether the petitioner needed a quick decision on this subdivision plan, based on his planned construction schedule. If not, she explained, she is currently working on revisions to the Conservation Cluster by-law, and if those changes are adopted by the Town a revised bylaw might allow a modified plan that would preserve the open meadow. Costello replied that he does not plan to start construction until the summer of 1996, after Town Meeting. However, he added, he wants to move forward with the current petition in the subdivision approval process.

Kathleen Coyle asked if there could be any guarantee that lot owners will not subsequently remove trees. March responded that all work within 100 ft. of a wetland requires a filing with the Conservation Commission. Colman added that, apart from this, lot owners have the right to remove any and all trees.

Tom O'Rourke, 342 Maple St., observed that he had been farming the field on this parcel for years, but the proposed development is acceptable to him.

J. Heard asked for a copy of the Master Plan. (It has been provided.) Luisa Heard, 232 Maple St., asked for an explanation of the scenic road statute, and Colman explained it only protected trees and stone walls within the existing right-of-way.

Mary Storrs, 94 Brook St., asked if the parcel is more than 30 acres, could more than 15 houses be built? March replied that their analysis has resulted in a maximum proposal of 15 lots on 34 acres.

Jeannie Leib, 288 Maple St., asked if the topography of the site would be levelled. March replied that this would be up to individual lot owners, but Costello added that they would endeavor to save as many of the natural features as possible.

Dave Canavan, 391 Maple St., asked whether consideration was given to an entrance to the site from other than Maple St., since 15 homes would put a lot of traffic on this narrow street. March replied that this was infeasible because major wetlands intervene.

Michael Abend, 119 Maple St., questioned whether the Town required the proposed sidewalk and noted that it doesn't connect to any other pedestrian facility. March said that they would be open to the elimination of the sidewalk from the plan. Tice asked if its removal would reduce the amount of land clearing necessary. March said that was possible, however, the regs. require that vegetation be removed in the full 50 ft., right-of-way in any case.

Finally, March made reference to the suggestions in the LandTech review, dated November 21, 1995, and indicated that they could comply with most of the requests. He submitted a letter of response, dated December 15, 1995, which he also is forwarding to LandTech, along with plans showing the engineering revisions.

Colman announced that the hearing would be continued to January 8, 1996 at 8:00 p.m., and Board members agreed that at that meeting a site walk would be scheduled.

CONT. PUBLIC HEARING: Laurajon Rd. Definitive Subdivision

Colman reopened the hearing at 8:23 p.m. and the P.A. explained that the requested revisions to this plan had not been received, and since the time for action on this application, as extended, expires on December 31, 1995, the Board needs to act both on a request for an extension of time and a continuation of the hearing. However, he pointed out that the written request before the Board from the petitioner's representative, Russell Wilson, asked for "a continuation of the public hearing until February 15, 1996," rather than an extension of time until that date. That was not what he had discussed with Wilson, and is not a legally sufficient request upon which the Board can act. Colman concluded that the Board could either grant an extension contingent upon receiving a proper request, or vote to deny the application, forcing the petitioner to begin the process anew.

Yanofsky favored the latter approach, claiming that the Board has spent too much time dealing with errors associated with this petition. LaLiberte said that he shared Yanofsky's frustration and is concerned that in the dealing with process problems the Board will miss substantive issues. However, he suggested that the time be extended with a condition that prior to the next scheduled continued hearing, all documentation associated with this petition be in hand. Colman added that this should be received at least one week in advance of the meeting and dates and schedules to provide sufficient lead time were discussed. Tice stated that unless these conditions of submission were met, the Board should indicate it would deny the petition, but LaLiberte explained that such a decision has to be a subsequent determination of the Board and cannot be spelled out in advance.

Yanofsky suggested that the applicant be sent a letter formally requesting adequate time for Board members to make informed and considered decisions regarding changes to the subdivision plans. Colman proposed that the deadline of February 5 be set in that letter, presuming that the hearing would be continued to February 12 and an extension of time granted to February 15.

Yanofsky asked if the applicant has ever proposed how he would indemnify the Board for the construction of this subdivision, by bond or otherwise. The P.A. did not know, and it was not clear whether the applicant has ever made such a proposal.

Duscha explained that she was not able to attend the last meeting of the Conservation Commission, but would like to know what was discussed there with regard to this project. Several members of the Board did not think that was relevant, however, Colman requested a copy of the Cons. Comm. minutes of December 14, which the P.A. will supply.

LaLiberte then moved that upon submission by the applicant of a written request to extend the time for action on the Laurajon Rd. definitive subdivision plan, the time be extended until February 15, 1996, and that the applicant be informed to provide all necessary information in final form one week before the next continued hearing. Yanofsky seconded the motion and it carried 5-0-1, Duscha abstaining.

LaLiberte then made a motion to continue the hearing to February 12 @ 7:30 p.m., but Duscha and others raised logistical questions about what would happen if Wilson failed to provide the written request before December 31. The P.A. explained that, in such a case, the plan would be approved constructively. He suggested a contingent special meeting should be considered to deal with this eventuality. After some discussion, LaLiberte withdrew the motion he had made to continue the hearing and instead moved reconsideration his earlier motion, which was approved 6-0. Then he offered an amended motion, again seconded by Yanofsky, that would require the written request to be received by the Planning Administrator no later than 2:00 p.m., December 19, 1995. This motion was approved 6-0.

Duscha then offered, and Tice seconded, a motion to continue the public hearing until the next meeting of the Planning Board, whether regular or special. If a special meeting were called, it would be scheduled for 8:30 p.m., December 21, 1995, and the hearing would continue at that time. If not, the hearing would be continued to 7:25 p.m., at the regular meeting of January 8, 1996. It was further agreed that, if the continuance was to the next regular meeting, no testimony would be taken at that time and the hearing would then be continued again until February 12. This motion was approved 6-0.

CONT. PUBLIC HEARING: Lowell Rd. Special Permit for Common Drive

Colman reopened this hearing at 9:08 p.m. Robin Shield, the petitioner, submitted a letter to the Board from Stanski and McNary detailing the minor amendments to the plans suggested by LandTech in their letter of November 30 and agreed to at the hearing of December 4. She reviewed each of these amendments with the Board, referencing the amended plans. She noted that there will be no island in the driveway.

Shield also explained that she never got acknowledgment from Marianne Kazulis that notice of the hearing had been received, the only outstanding abutter who had not so responded. LaLiberte and Colman agreed that, although return receipts were not originally sent, this was not sufficient to make the notice invalid. However, Duscha said she was still uncomfortable.

Shield proposed the name "Rose Drive" for the common drive, explaining that Elmon B. Rose, a former owner of the property, had a hoop mill there beginning in 1886 and also built the barn. Duscha thought "Hoop Mill Drive" might be a preferable name for the access drive. But Shield submitted letters from the Fire and Police Chiefs and from the Town Clerk approving the name "Rose Drive."

Regarding the request to grant a trail easement across the rear portion of the property, Shield explained that she believes the State would like to buy a portion of that land to add to the State Park specifically to establish such a trail. She wants to keep that option open, and since a trail easement might negate the State's need for the land, she does not want to offer such an easement.

Hengeveld moved and Duscha seconded the motion to close the public hearing, no other parties of interest being present. The motion was approved 6-0.

Yanofsky moved and LaLiberte seconded a motion to approve a special permit for a common driveway, as submitted and subsequently amended by the petitioner, at 886 Lowell Rd. She noted that said permit will be valid for up to two years, or until exercised, whichever is sooner, finding that the petition meets the requirements of Sec. 7.2.1. of the Zoning By-Law, that all lots served by the driveway are provided with safe and convenient access, and that the plan provides preservation of the natural environment, maintenance of neighborhood character, and adequate access for emergency vehicles.

THE MOTION WAS APPROVED BY A VOTE OF 6-0, Colman, Duscha, Hengeveld, LaLiberte, Tice and Yanofsky voting in favor.

Board members agreed to sign the plans at the meeting of January 8, 1996, after having had an opportunity to review them in greater detail.

CONT. PUBLIC HEARING: Baldwin Rd. Special Permit for Common Drive

Colman reopened this hearing at 9:30 p.m. He transmitted Epstein's comments regarding the revised maintenance agreement for Evans' common driveway, noting especially that requiring the Board to declare a change to be significant within 30 days could pose a problem, since that time could easily pass, especially in the summer, without a Board meeting. He suggested the procedure be the opposite, that the Board should have the responsibility to actively declare a change to be insignificant, and the onus should be on the petitioner to prove that said change is insignificant. Valerie Swett, Evans' attorney, disagreed. But LaLiberte said that he, too, was uncomfortable with the draft agreement in its current form. He said that it places a requirement on the Planning Board that is not required by law, and that the Board should not be required to determine significance or insignificance. Swett replied that, absent such a provision, she would be concerned that the Land Court may initiate a change such as a change in the lot numbers, a real change (not a typographical correction) but

an insignificant one, for which there should be a provision. But LaLiberte said that he would not approve this common drive petition with the present language in paragraph 9 of the agreement.

Swett asked for a model of an acceptable maintenance agreement. She said that guidelines are not stated clearly in the rules. She added that it is not without precedent that a failure to respond to changes within a certain time period constitutes approval of those changes. Nevertheless, LaLiberte said that he is concerned that future boards could find something insignificant that was intrinsically significant, and he does not want to open up that opportunity. Swett suggested that a notice of an insignificant change could establish a 30 or 45 day period for action within the notice itself, but LaLiberte responded that he sees no need for the language in paragraph 9(d) and would propose it be eliminated altogether.

Colman noted that Epstein also is seeking an indemnification clause for the Town within the agreement. Swett asked if a model for this clause is available. Yanofsky pointed out that such a model is within the Shield common driveway agreement just approved.

Duscha expressed concern that former paragraph 9(c) has been deleted, when Kopelman & Paige wanted it clarified. She asked if it is clarified elsewhere. Swett explained that if a change is proposed that is significant, it would have to go through a new special permit process and the requirements of the old 9(c) are included in that process. However, she would have no problem restoring the language to the document. But LaLiberte stated he does not think that language is necessary, and Tice and Yanofsky agreed.

Moving beyond the maintenance agreement, March explained and illustrated on the plan how the limit of the common drive easement had been reduced about 300 ft. to serve only Lot 3, and not Parcel A. An access easement to Parcel A would remain, however, and Yanofsky asked what legal standing that easement would have. March replied that it simply allows passage. He also submitted an ANR plan for these lots, not yet filed with the Town Clerk, which would be done the next day. The ANR creates three new building lots, Lots 3, 4, and 5 and the remaining Parcel C, from two existing lots. He noted that the existing right of way to Flannery's land is also shown on the plan. Mary Deacon, also an owner of abutting land, expressed her concern about these plans. The ANR will be presented to the Board for endorsement at the January 8 meeting.

Swett, having discussed the Board's proposed amendments to the maintenance agreement with her clients, expressed their willingness to take paragraph 9(d) and all references to it out of the document and add an indemnity agreement similar to the one in Shield's agreement.

Duscha asked whether the name of the common driveway had been approved. Scott Evans replied that it is proposed to be called "White Tail Run." This name was originally submitted to Fire, Police and the Town Clerk, but there has been no response. Colman asked Evans to seek those

responses, noting that Shield had produced letters of approval from each party.

Hengeveld asked about the Chapter 61A status of the land, but Colman responded that this was not relevant to the Board. He then opened the hearing up to comments from the public.

Jay Luby, 54 Prospect St., said he agreed with LaLiberte's position on changes to the maintenance agreement. If the Board is put into a proactive position, he said, it could open up the Town to liability. Further, he asked if the common driveway would end at Lot 3, and was told it would; and whether it incorporates a trail easement, which it does not. Evans stated that they were willing to consider a trail easement at a future time, but the common driveway is not the best place for it. Luby encouraged them to include it now.

Yanofsky said she wants to hear from the Fire Chief regarding this proposal, stating that in her opinion the spirit of subdivision regulations should apply, in terms of the length of the dead end street, the number of houses, and other safety issues. Colman agreed to call the Chief.

Colman suggested keeping the hearing open for the Chief's response and a draft of the revised maintenance agreement. LaLiberte had earlier agreed that it was not necessary to seek a further review of the agreement by Town Counsel, as long as the changes were just as Swett had proposed.

Swett asked for a copy of Town Counsel's opinion of December 6 on whether dead end street regulations apply to ANR plans. Duscha released a copy to her.

Colman announced that the hearing would be continued to January 8, 1996, @ 8:45 p.m.

New Business

ANR Andrea Urban - North Rd., @ Pine Brook Rd.

Mansfield noted that the ANR met all requirements for frontage and area, and simply adjusted the lot lines between two lots without changing either of the above characteristics.

Yanofsky moved and Hengeveld seconded the endorsement of the ANR, with added language that said endorsement does not affect the status of the property under Chapter 61B. LaLiberte added the finding that the endorsement cannot be construed as notice to the Town of a change in status of the property under 61B. He also asked that this portion of the minutes be sent to both the Assessors and the Selectmen. The motion was approved by a vote of 5-0-1, Duscha abstaining.

Bills

Current invoices were circulated and signed by Board members.

Yanofsky moved and Tice seconded that the Planning Administrator's time sheet need only be approved by one signature: that of the Chair; or alternatively, that of the Treasurer of the Board. The motion was approved 6-0.

Old Business

Tall Pines

Mansfield reported that Costello has submitted three revised conservation restrictions, which he sent to Town Counsel Betsy Lane for review last week. Since she has not yet responded, the Board can take no action. Had she been able to provide a quick response, the Selectmen would have been ready to sign the documents at their meeting tomorrow night. Colman, noting that there have been earlier questions submitted to Counsel on this issue that have not yet been resolved, committed to contact Lane and try to expedite the process.

Computer and office equipment

LaLiberte confirmed that he will provide for the P.A.'s use an IBM 386 c.p.u. with Windows 3.1, but that he has to reinstall the hard drive first. To complete this system, Colman has a monitor that he will make available, and a keyboard is already in the office. Mansfield asked about a printer and a modem. LaLiberte said he would check on getting an external modem, and Hengeveld said she might have a dot matrix printer available, but Colman offered to take responsibility for working with Mansfield to pull the system together as soon as possible.

Yanofsky suggested that the Board consider subscribing to NYNEX voice mail, since there had been problems with the answering machine, but Mansfield reported that the answering machine, a high-end model that is only seven months old, seems to be working properly now. However, he noted, voice mail would allow callers to leave messages when the phone is busy, which is not now an option. No immediate action was decided upon.

The meeting was adjourned at 10:20 p.m.

Respectfully submitted,

George Mansfield
Planning Administrator