



Town of Carlisle

MASSACHUSETTS 01741

Office of

PLANNING BOARD

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MINUTES

July 16, 2001

2001-2002 Board Organization

Public Hearing: Amendment of Common Driveway Special Permit, 299 Bedford Road, Map 22, Parcels 69, 87 & 88, Richard and Nancy Shohet West, applicants

**ANR Plan: 291 River Road and Skelton Road, Map 1, Parcel 1, Mark D. and Rachel W. Elliott, applicants
Request for release from covenant for Maplewood Subdivision, Acton Street, Map 17, Parcel 17A, request of Robert Koning (Executive Session)**

Discussion of strategy with regard to pending litigation, Valchuis et al. v. Planning Board [Berry Corner Lane, Map 7, Parcel 29] (Executive Session)

Review of Earth Tech's inspection of Maplewood Subdivision and High Woods Lane Common Driveway

Chair Abend called the meeting to order at 7:30 p.m. Members Abend, Hara, Holzman, Lane, Reid and Zinicola were present. Planning Administrator George Mansfield and *Mosquito* reporter Susan Yanofsky were also present.

Reid moved and Lane seconded a motion to accept the minutes of 6/25/01 as drafted. The motion carried 6-0. Reid then moved to accept the executive session minutes of 6/25/01, regarding the litigation of the Maplewood Subdivision, as drafted. Hara seconded the motion and it carried 6-0. Reid also moved to accept the executive session minutes of 6/25/01 regarding pending litigation with Valchuis. Lane seconded the motion and it carried 6-0.

The bills were circulated for signature and Holzman questioned the two bills from Earth Tech regarding review of the Maplewood Subdivision and High Woods Lane Common Driveway. He felt that the engineer's review may have been inadequate and therefore should not be paid for until corrected. The Board agreed to set these bills aside for discussion later in the evening.

2001-2002 Board Organization

Hara agreed to serve on the Historical Commission, but noted that the Board should nominate two members to serve on the Historical Commission and the Board of Selectmen will appoint one. Reid offered to serve as an alternate, but asked the PA to advise the Selectmen that Hara should be their first choice. Hara also offered to continue serving as liaison to the Conservation Commission and the Trails Committee. Tom Lane offered to continue serving as the representative to MAPC/Magic. Hara offered to attend meetings if Lane is unable to. Michael Abend will serve as liaison to the Board of Selectmen and the Recreation Commission. Holzman will continue to serve as liaison to the Board of Health and Reid will continue to serve as liaison to the Housing Authority. Zinicola agreed to serve as liaison the Pedestrian/Bicycle Safety Committee and to Town Counsel. Michael Epstein will serve as alternate liaison to both the Board of Selectmen and Town Counsel.

Public Hearing: Amendment of Common Driveway Special Permit, 299 Bedford Road, Map 22, Parcels 69, 87 & 88, Richard and Nancy Shohet West, applicants

Applicant Richard West was present with his attorney Robert Santomena of Drummond and Drummond, and his engineer George Dimakarakos of Stamski and McNary. The following members of the public were also present: Eunice Knight and Edward and Chris Fields of Bedford Road.

Abend explained that Board member Michael Epstein would not be present this evening, bringing the number of members who would be able to vote on the special permit down to six if testimony were taken this evening. Abend also noted that he would not be able to attend the July 30th meeting, which then would bring the number of voting members down to five, the minimum votes necessary for approval. West opted to continue the public hearing without taking testimony, thus also allowing his engineer time to prepare a revised plan to be reviewed by the Board's engineer prior to the next meeting.

Reid moved to continue the public hearing to July 30, 2001 at 7:45 p.m. Hara seconded the motion and it carried 6-0.

ANR Plan: 291 River Road and Skelton Road, Map 1, Parcel 1, Mark D. and Rachel W. Elliott, applicants

Chris McNary of Stamski and McNary was present to represent the applicant. He requested a waiver of the filing fee, explaining that this plan was simply a revision of the plan submitted to the Board and denied at the last meeting. Lane moved and Hara seconded a motion to waive the filing fee. It carried 6-0.

The Board asked McNary why the lots have such unusual access. McNary said that the ANR is for estate planning purposes, but did not know why the lots were configured with such long strips to create frontage. Hara noted that, as the Board requested, a notation had been added referencing the special permit. Reid moved to endorse the plan of land in Carlisle, MA prepared by Stamski and McNary for Elliott, dated 6/18/01, revised 7/11/01, as approval not required. Lane seconded the motion and it carried 5-0-1 with Holzman abstaining.

Request for release from covenant for Maplewood Subdivision, Acton Street, Map 17, Parcel 17A, request of Robert Koning (Executive Session)

Abutters Janet Sacks and Martin Schafer of 337 Acton Street were in attendance.

At 8:15 p.m., Reid moved and Hara seconded a motion to go into executive session to discuss pending litigation regarding the Maplewood Subdivision, and to return to regular session at approximately 8:30 p.m. The Board was polled and unanimously approved the motion. Members of the public were dismissed.

At 8:45 p.m. Hara moved and Lane seconded a motion to return to regular session. The Board was polled and unanimously approved the motion.

Sacks and Schafer returned to the meeting and were told that the issues of concern raised in their July 6, 2001 letter to the Board will be reviewed by the Board's engineer.

Discussion of strategy with regard to pending litigation, Valchuis et al. v. Planning Board [Berry Corner Lane, Map 7, Parcel 29] (Executive Session)

Michael and David Valchuis were in attendance with their attorney Howard Speicher. The Board's attorney, Richard Hucksam was also present.

For the benefit of the newer members of the Board, Speicher reviewed the history of the litigation. He stated that the Valchuis brothers own 13 acres west of Berry Corner Lane. Berry Corner Lane is a gravel and dirt road approved in 1968 as a "small subdivision road." After Valchuis purchased the property, the neighbors granted an easement over Berry Corner Lane to allow the Valchuis access to their property. When the Valchuis then approached the PB with an ANR application, the Board required that the roadway be improved to the standards of a subdivision road before ANR approval is granted. The neighbors, however, did not wish to allow improvements to Berry Corner Lane. The PB, consequently, denied the endorsement of the ANR plan and the Valchuis filed a lawsuit against the Planning Board. During settlement negotiations in 1999, Valchuis and the Board agreed that the roadway should be upgraded to common driveway standards including regrading and regravelling, adding drainage,

and adding an emergency turnaround on the Valchuis' property. The Valchuis agreed to make these improvements and then went to the ConsCom for an order of conditions, which was denied. The Valchuis appealed ConsCom's decision to the DEP and DEP issued an order of conditions, which was then appealed by the neighbors. The Valchuis prevailed and they now have a final order of conditions from the DEP. Speicher explained that the Valchuis would like to move forward now, but will have difficulty fulfilling the Planning Board's requirement for a maintenance agreement. He noted that the Valchuis currently have an agreement with the neighbors that they will pay one-sixth of all maintenance costs, but maintenance requirements are not specified. Speicher noted that they cannot legally bind the other five lot owners to maintain the existing road.

Mansfield asked if the DEP order of conditions now allows them to proceed with the work, or if the easement restricts their right to make the improvements. Speicher said that the abutters might still litigate the Valchuis' right to make improvements to the roadway. Mansfield also asked if the appeal filed in superior court has been settled. Hucksam answered no, but said that this is simply a formality at this point.

At 9:15 p.m. Reid moved to go into executive session until 9:30 p.m. to discuss the pending litigation between Valchuis and the Planning Board. Lane seconded the motion, the Board was polled and unanimously approved the motion. Hucksam remained for the executive session and other members of the public were dismissed.

At 9:50 p.m. Reid moved to return to regular session. Lane seconded the motion, the Board was polled and unanimously approved motion. When the public returned, Abend explained that the Board would like input from Board member Epstein before making a decision at the next meeting on July 30th.

Review of Earth Tech's inspection of Maplewood Subdivision and High Woods Lane Common Driveway

Mansfield noted that the Board received a fax from Earth Tech stating that no report was written for the site inspection on 4/13/01, but that a final inspection letter was written on 6/13/01.

The Board questioned Earth Tech's final report. They also questioned the adequacy of the as-built plan provided by the applicant's engineer noting that grading and landscaping were not included on the plan.

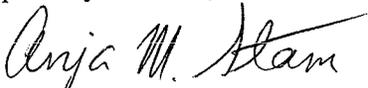
In order to be consistent with the original approval, Abend requested that the cistern be inspected by the Concord Fire Chief rather than the Carlisle Fire Department.

The Board then reviewed Earth Tech's bill dated 6/15/01, for \$644.44 for 6 hours of inspection at Maplewood. The Board agreed not to sign the bill until a more thorough inspection is completed. The PA was directed to draft a letter to Earth Tech requesting the following: 1) Dale MacKinnon should review the approved plan again and verify that it does not match field conditions, 2) MacKinnon should review the as-built plan for adequacy, i.e. grading and landscaping, and 3) MacKinnon should rescind his approval letter dated 6/13/01 and submit an opinion on the as-built plan. Holzman and Abend agreed to review the draft.

Regarding the bill for High Woods Lane, the Board agreed that this inspection was satisfactorily completed and signed the bill for payment.

At 10:26 p.m., Reid moved to adjourn. Lane seconded the motion and it carried 6-0.

Respectfully submitted,



Anja M. Stam
Administrative Assistant