

**Salisbury Planning Board
Meeting Minutes
Wednesday, June 10, 2015 6:00 p.m.**

In Attendance: PB Members Present: Don Egan (DE), Chairman, Lou Masiello (LM), Brendan Burke (BB), and Helen "Trudi" Holder (TH)

PB Members Absent: Robert Straubel, Berenice McLaughlin

Also Present: Lisa Pearson (LP), Planning Director and Leah Hill (LH), Asst. Planner, Ron Laffely (RL), Gordon Blaney, Marshall Jolotta, Joanne (JD) & Del Dome, Alfred Clausnitzer, Jenna & Jonathan Sweet, Cap (CP) & Jane Purinton, Ronnie Ray Parrott, Brendan Doherty

Time: 6:00 p.m.

6:00PM ZONING WORKSHOP

a. Lafayette Road and Main Street Corridors Zoning Workshop

Chairman Egan called the meeting to order at 6:00pm in the Colchester Room, Salisbury Town Hall with the first item to be discussed as the Lafayette Road and Main Street Corridors Zoning Workshop.

LP provided the background on the process and vision, as well as requested everyone to sign-in in order to be included on the email list to be notified of information.

RL passed out documents focusing on Node D. MA DOT requirements for curbcuts are 24' commercial and 16' residential, believes for this zoning to work, need curbcut size waiver from state for most properties in Node D. Provides an alternative-wants to keep the landscape buffers between properties of 10' each side. Look at each parcel uniquely, ie, for parking, based on need, not square feet. Also questioned 2 parcels in LM zone, should stay as residential.

CP suggested that the proposed zoning encourages the purchasing of multiple lots.

DE if something doesn't work, then it will remain as is. Disagrees with the basic premise that zoning needs to fit what's on the ground.

JD lives in LM-A, this zone won't allow residential, is this taking away our rights?

LP stated that houses are protected and with any zoning changes, existing is protected.

Brenda Chouinard (BC)- residential should be by-right in LM-B, whether attached or detached. Has mobile homes on 2 lots, what happens if she wants to make them single-family homes? Is a mobile home considered a single family house? By-right uses now are changing to not by-right.

LP-Vision for LM-B is not for standalone single-family homes, want to encourage new commercial, housing can be behind.

DE-by allowing a new single family home on a vacant lot then makes an area unattractive for commercial.

LP-if we are to keep all the items from the existing zoning as well, should just keep what we have.

DE-the flipside is that if there is no change, the proposed sewer for this corridor will bring development still, and we are trying to be proactive.

RL asked when the Node D was created and what was the visions?

LM-A because most is in the water-resource district, will have difficulties, so this Node allows for large scale development, near the highway, prime location.

LM-C-consultants believe this will be the hardest of the nodes to develop

Wayne Capolupo (WC) raised some items for review:

- Minimum lot width-provide a range
- Maximum front setback-allow for flexibility
- §300-162.F MRD-suggests changing to non-water & non-wetland
- §300-162.G-density-originally 16/acre, then reduced to 4/acre, proposing 6/acre

WC questions whether the proposal allows a 2-family on a ½ acre with 100' frontage?

LP-duplex/multi-family users are more open to being in closer proximity to businesses.

WC- The 200' setback is in place in Node B for multifamily

BC-Proposed changing that setback in B to 150'

Jonathan Sweet questions if his property is sold, can someone still keep the same rights of auto repair and residential?

Brendan Doherty-proposed the allowance of the renting, leasing of vehicles in the LM district as he believes it to go along well with self-storage facilities

DE-questioned JD what they would be looking for in the LM-A node?

JD-Not aware of vision, so not sure

LP-Before the recession, there was talk of a large scale "Loop" like development. Proximity to highway is a positive for commercial. We can always start small and add more in the future.

DE summarized that from tonight's discussion, what he hears as the biggest problems are single-family homes not by-right in some areas the minimum % lot width and the issues raised with Node D.

RL-§300-165-questions the design guidelines section. Are there existing commercial design guidelines? RL would like to attend the 6/24/15 planning board meeting to discuss the minimum % lot width issue.

Next zoning workshop scheduled for Wednesday, July 15th, location to be determined. Email will be sent to those who have provided their email.

Chairman Egan called the meeting to order at 7:45 p.m. in the Colchester Room, Salisbury Town Hall. **DE** announced, per the Open Meeting Law, that this meeting was being recorded and broadcast live via www.sctvmc.org/index.

1. New Business:

a. Signing of Plans and Permits: N/a

b. Request for Certificate of Completion, 18 Fanaras Drive: LH stated the applicant is looking to continue this item.

TH motioned to table the request for Certificate of Completion, 18 Fanaras Drive until the applicant submits new plans/documentation.

BB Seconds the motion. Vote on motion 4 – 0 unanimous.

Old Business

a. Extension Request SPR-233 Beach Road-233 Beach Road LLC, LH stated the applicant is looking to table this item.

LM motioned to table the request SPR-233 Beach Road-233 Beach Road LLC until the applicant submits new plans/documentation.

BB Seconds-Vote on motion 4 – 0 unanimous.

b. Request for minor modification for SPR-233 Beach Road LLC, LH stated the applicant is looking to table this item.

LM motions to table the request for minor modification for SPR 233 Beach Road LLC until the applicant submits new plans/documentation.

TH Seconds-Vote on motion 4 – 0 unanimous.

7:30 Public Hearing

a. **Cont. Definitive Subdivision – 20 Ferry Road/Douglas Avenue-Elite Builders: DE, LM and TH** read a letter from Kopleman and Paige dated 5/21/15. (see attached).

LH stated the applicant is requesting a continuance until the July 8, 2015. **TH** and **DE** stated they will not be at the July 8th meeting.

LM motions to continue the definitive subdivision – 20 Ferry Road/Douglas Avenue-Elite Builders until the June 24, 2015 meeting at 7:30 pm.

BB Seconds – Vote on motion 4 – 0 unanimous.

a. **Other Business:**

b. **Correspondence:**

a. **Minutes from March 25, 2015, May 13, 2015 and May 27, 2015**

TH motions to accept all minutes 3/25/15, 5/13/15, and 5/27/15.

LM Seconds- vote on motion 4 – 0 unanimous.

c. **Reports of Committees:**

d. **Adjournment:**

BB motions to adjourn at 8:08 pm

TH Seconds – Vote on motion 4 – 0 unanimous.

Chairman

Date



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May 21, 2015

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BY EMAIL

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Lisa Pearson, Town Planner
Salisbury Town Hall
5 Beach Road
Salisbury, MA 01952

Re: **20 Ferry Street – Access over Private Ways (Sycamore Way/Douglas Avenue)**

Dear Ms. Pearson:

I reviewed the letter sent to you by Attorney Paul Gagliardi dated April 24, 2015 on the above referenced matter which was sent on behalf of Elite Builders Realty Trust (the “Developer”). You have requested an opinion as to whether the Developer, the owner of property located on 20 Ferry Road (the “Property”) and the developer of a subdivision thereon known as “The Village At Sycamore Way” (the “Subdivision”), has the right to use Sycamore Way and Douglas Avenue, two private ways, for access from the Property to Ferry Road, a public way, on the theory of easement by estoppel. It is my opinion, based on the reasons set forth below, that the Developer has failed to establish that it has the right to access Sycamore Way and Douglas Avenue to connect the Subdivision to Ferry Road.

A. Background

The Subdivision is shown on a plan entitled “The Village At Sycamore Way in Salisbury, Massachusetts, Essex County, Assessors Map 3, Lot 95,” dated May 14, 2014 (the “Plan”). The Subdivision consists of recorded land (the “Recorded Portion”) and registered land (the “Registered Portion”). According to the Plan, the Recorded Portion abuts Sycamore Way for a distance of 41.75 feet, and the Registered Portion abuts Sycamore Way for a distance of 12.61 feet. The Subdivision has 158.76 of linear frontage on Ferry Road, a public way, which is located to the east of the Subdivision. However, the Developer intends to access the Subdivision by using Sycamore Drive and Douglas Avenue to connect to Ferry Road.

Sycamore Way, which abuts the Subdivision for a total distance of 54.36 feet and is the proposed primary means of access to the Subdivision, runs southerly from the Subdivision and abuts one parcel of land on either side before reaching Douglas Avenue. The parcel lying to the west of Sycamore Way is shown on the Plan as belonging to Sheila Albertelli (the “Albertelli Parcel”), and the parcel to the east is owned by Isa B. Cann (the “Cann Parcel”, hereafter with the Albertelli Parcel, the “Abutting Parcels”). The Abutting Parcels abut and lie northerly of Douglas Avenue. The Subdivision does not abut Douglas Avenue. Access through Sycamore Way is required to reach Douglas Avenue. Access through Douglas Avenue is required to reach Ferry Road.

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As referenced above, the Developer claims that it has an access easement over Sycamore Way and Douglas Avenue. However, both Sheila Albertelli ("Albertelli"), the westerly abutter, and Isa B. Cann ("Cann", hereafter with Albertelli, the "Abutters"), challenge the Developer's claim; both assert, in essence, that the Developer does not have the right to use Sycamore Way because such rights were specifically excluded in the deeds into the Developer's predecessors in title. The Abutters further claim that the Developer does not have the right to use Douglas Avenue. In addition to Attorney Gagliardi's April 24, 2015 letter, I reviewed: i) an opinion letter dated May 14, 2015 of Attorney Sarah Orlov, counsel to Albertelli, along with documents and plans she submitted therewith; ii) an opinion letter dated May 7, 2015 of John Hamilton, Counsel to Cann; and iii) the Plan you provided to us, each used by me to determine the validity of each party's claim and to render this opinion.

In order for the Developer to use Sycamore Way and Douglas Avenue for access for the Subdivision, the Developer must either own the fee in such ways or else have an easement to use Sycamore Way and Douglas Avenue. Easements can be acquired by an express grant from the owner(s) of Sycamore Way and Douglas Avenue. Easements can also arise by implication.

B. Materials Provided by Albertelli

In support of Albertelli's claim, Attorney Orlov provided you, in addition to her May 14, 2015 opinion letter, with title materials she relied upon. The materials consist of (i) the deed dated August 17, 1960 (the "1960 Barton Deed") by which Ralph D. and Villa Barton conveyed the Property subject to the Subvision, to Ledgewood Realty Trust and Joseph L. Edelstein, (ii) a plan entitled "Subdivision Plan of Land in Salisbury," dated August 3, 1960, 24106E, filed with the Land Court (the "1960 Registered Plan"), and (iii) a plan entitled "Plan of Land in Salisbury, Mass as surveyed for Ralph D. Barton dated July 1960 recorded at the Registry (the "1960 Recorded Plan). We have not independently verified the accuracy of the title materials provided by Attorney Orlov.

The 1960 Barton Deed is the source of title to both the Registered Portion and the Recorded Portion of the Subdivision. It describes the Registered Portion as being bounded "by the line of a way, in which no rights are granted, 12.61 feet" and refers to the 1960 Registered Plan (emphasis added). The 1960 Registered Plan shows the Registered Portion as being bounded by an unnamed street for a distance of 12.61 feet. The way referred to in the 1960 Barton Deed and shown on the 1960 Registered Plan is now known as Sycamore Way. Neither document describes or depicts Douglas Avenue. The 1960 Barton Deed describes the bounds of the Recorded Portion, but the description does not describe the relevant part of the Recorded Land as being bounded by a way. The 1960 Deed also refers to the 1960 Recorded Plan, which shows the Recorded Portion but does not show either Sycamore Way or Douglas Avenue.

Attorney Orlov relies on G.L. c. 183, § 58, the so-called "Derelict Fee Statute," in disputing the Developer's claims. The Derelict Fee Statute provides that when a grantor conveys land to a grantee that abuts a way, there is a presumption that the grantor, in addition to conveying

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the fee in the land, also conveys to the grantee the grantor's fee interest to the centerline of the abutting way. However, that presumption can be rebutted if the grantor expressly states his/her intent not to convey the fee in the way. The Derelict Fee Statute codified what was the common law at the time of its adoption, and applies to both recorded and registered land.

According to Attorney Gagliardi's April 24, 2015 letter, the Developer claims to have an implied easement to use Sycamore Way and Douglas Avenue based on a theory of "estoppel", also referred to as an "easement by estoppel." An easement by estoppel may be created in two ways. First, when a grantor conveys land by deed that describes land as being bounded by a way, the grantor, and those claiming under him, cannot deny the existence of the way, and the grantee acquires the rights in the entire length of the way. Under such circumstances, the grantee acquires an easement to use the way that is described in his deed as bounding his land. *Casella v. Sneieron*, 325 Mass. 85, 89 (1949). Second, when a grantor conveys land situated on a way by reference to a recorded plan that shows the way, the grantor, and those claiming under him, cannot deny the existence of the way for the distance as shown on the plan. The grantee acquires an easement to use a way shown on a plan that is referenced in the deed. *Goldstein v. Beal*, 317 Mass. 750, 755 (1945). While easements by estoppel usually arise in recorded land, it is possible for easements to be created by estoppel in registered land. See *Jackson v. Knott*, 418 Mass. 704 (1994). Whether or not an easement has been created by estoppel is a very fact-intensive inquiry.

C. Analysis

It is my opinion, based on the materials provided by Attorney Orlov, that the Developer does not have an easement by estoppel to use either Sycamore Way or Douglas Avenue. As mentioned, for the Developer to have an easement in Sycamore Way or Douglas Avenue, the 1960 Barton Deed must describe the Subdivision as being bounded by such ways or show the Subdivision by reference to plans showing Sycamore Way or Douglas Avenue. Although the 1960 Barton Deed describes the Registered Portion as being bounded by Sycamore Way, which would, under the easement by estoppel theory, convey an implied right to use Sycamore Way, Barton expressly excluded from the conveyance his rights in Sycamore Way ("by the line of a way, in which no rights are granted, 12.61 feet" (emphasis added)). Thus, under the Derelict Fee Statute, when the grantee acquired the Registered Portion, the grantee did not acquire any rights in Sycamore Way. Also, the Recorded Portion of the Subdivision which abuts Sycamore Way for which the Developer relies for primary access is not shown on the 1960 Recorded Plan. Thus, the Developer does not have an easement by estoppel in Sycamore Way. Further, the Developer did not acquire rights in Douglas Avenue because the 1960 Barton Deed does not describe the Recorded Portion as being bounded by Douglas Avenue and the 1960 Recorded Plan does not even show Douglas Avenue. There is no evidence that the Developer acquired any express rights to use Sycamore Way or Douglas Avenue. For the foregoing reasons, it is my opinion that the Developer may not use Sycamore Way or Douglas Avenue as a means of access for the Subdivision.

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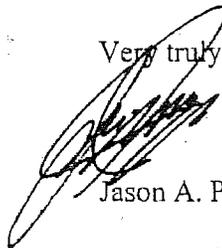
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The Developer has failed to provide the Board with any evidence that it has any pre-existing rights over Sycamore Way or Douglas Avenue. Absent any such pre-existing rights, the Developer must obtain the fee to or an easement in Sycamore Way and Douglas Avenue from the owners of such ways. The materials provided by the Abutters are insufficient for us to determine who owns the fee in Sycamore Way and Douglas Avenue.

It is the Developer's burden to provide sufficient evidence to the Planning Board documenting its private right to use Sycamore Way and Douglas Avenue for access to the Subdivision. In Parker v. Black Brook Realty Corporation, 61 Mass.App.Ct. 308 (2004), the Appeals Court concluded that the general purposes clause in G.L. c. 41, § 81M provides authority for a planning board to consider, even absent express regulation in its subdivision rules and regulations, a developer's legal right to access roads outside a subdivision. The Appeals Court stated in Parker that the abutters' challenge to the developer's rights in the private way outside the subdivision went to the very heart of the proposed development, as, without such rights, the locus would have been left without one of the two means of access upon which the board predicated its approval. "It is well settled that a planning board is entitled to require an applicant for subdivision approval to demonstrate ownership of the subdivided land ... Ownership of access rights on which the proposed subdivision depends is no less consequential." Id. at 311 (emphasis added). Here, the Developer intends to use Sycamore Way and Douglas Avenue as the primary means of access to the Subdivision. Based on my review of the materials provided by Attorney Orlov, it is my opinion that the Developer does not have such access rights.

Please contact me if you have any questions or comments on this matter.

Very truly yours,



Jason A. Panos

Cc: Town Manager