

Present: William Keller, Jr. (Chairman), Lisa Eggleston, Christopher Morely,  
Michael Hunter, Michael Fee, Eric Poch (Associate), Jody Kablack  
(Planner)

The meeting was called to order at 7:30 p.m.

***Omnipoint Water Resource Special Permit, Sudbury Water District Property, North Road – Continuation of Public Hearing***

The applicant requested a continuance in order to allow time for the Board to review the revised plans.

On motion duly made and seconded, it was unanimously:

VOTED: To continue the public hearing on Omnipoint Water Resource Special Permit application to 10/23/02 at 7:30 p.m. at Town Hall.

***Kayla Court Definitive Subdivision – Public Hearing***

Present: Andrew Donovan; Mark Donohoe, Acton Survey & Engineering

Bill Keller read the hearing notice into the record.

Mark Donohoe gave a brief history of the applicant's situation. Mr. Donovan has lived at the property now before the Board for approximately 17 years. He purchased additional property for frontage on Cutler Farm Road with the understanding he would be able to create 1 or more additional lots. Environmental restrictions came into play after the purchase. He has been before the Conservation Commission in an effort to obtain the necessary environmental approvals necessary for a second lot. His options were either to build a road (requiring redefining the drainage system) or seek a waiver not to construct a roadway, but rather have a driveway service one lot. Mr. Donohoe referred to the Town Engineer's memo with regard to the state mandated guidelines for point discharge where Department of Environmental Protection stormwater guidelines described infiltration trenches as not widely recommended. The applicant will be recharging with 1 catch basin, 1 recharge trench. The Town Engineer has stated this is high maintenance but will be sufficient. The Fire Chief requested an 18' wide access to the property; they are proposing 18' x 50' from Cutler Farm Road to the turn off. They propose to create a 285' long right-of-way for frontage.

Andrew Donovan: Has been before the Board before regarding this application. Development has occurred all around him.

Jody Kablack: Andy Donovan had legal frontage on 2 roads with what he purchased in the 1990's, and at that time, it would have been acceptable. There were changes to the bylaws in 1995, one of which requires a 50' offset from all abutting property. Andrew Donovan has had a number of proposals which he has needed to present to the Conservation Commission. He does have full Conservation approval at this time for one lot. The Planning Board has encouraged the applicant to proceed with waivers due to changes put in place after his purchase. He has met requirements including showing he can build-out a road according to Planning Board standards.

Mr. Donovan stated he has many revised plans in which he has attempted to meet the Board's requests.

Bill Keller: In terms of historic protection, he commended Mr. Donovan to have the foresight to purchase additional frontage and his efforts with the Commission.

The hearing was open to the public.

Steve Shuman: 56 Cutler Farm Road

Mr. Shuman is apprehensive about the Fire Chief's concerns.

Bill Keller: The Board has input (in the file) from the Fire Chief with requirements for the applicant.

Lisa Eggleston: One of the two requirements the Fire Chief had was for an 18' wide driveway accessing the property which the applicant is prepared to do. In addition, the applicant has addressed the issue of a dead end street not exceeding 1200'.

Mike Hunter: Does the 18' access have to be paved?

Jody Kablack: No, but that is their intent.

Russell Clark: 66 Cutler Farm Road

He is concerned with the construction traffic and its impact on safety in particular for the children in the area.

Andy Donovan: Will be happy to restrict construction to certain hours and not on the weekends.

Lisa Eggleston: This is a one lot construction; there is far more invasive construction going on.

Chris Morely: Have all of the Planner's requests been met?

Jody Kablack: The applicant has responded to all my issues.

Lisa Eggleston: What is the plan for drainage?

Mark Donohoe: They will have an open recharge trench.

Jody Kablack: The trench will be along the driveway closest to the property to the North.

Mark Donohoe: They are also proposing gutters leading to the recharge trench.

Lisa Eggleston suggested eliminating the gutters; more efficient.

Jody Kablack: The applicant is contributing \$3,420 to the walkway fund and has been very responsive to plan revisions.

On motion duly made and seconded, it was unanimously:

VOTED: To close the Public Hearing on Kayla Court Definitive Subdivision and to instruct the Town Planner to draft a decision.

***Forestside Estates – Bond Reduction***

The Board is in receipt of a request to reduce the Tri-Partite amount from \$168,000. The Town Engineer has recommended setting the amount at \$111,000.

On motion duly made and seconded, it was unanimously:

VOTED: To reduce the bond amount on Forestside Estates to \$111,000.00.

***Dakin View – Subdivision Progress Discussion***

The Town Planner updated the Board on the status of Dakin View. The developer was required to bring the pipe below surface level on Dakin Road when tying in the water service. They tore up pavement on Dakin road and have not yet repaired it. They are moving very slowly. The Town Engineer would like the Planning Board to consider sending a letter to the developer stating a portion of the bond will be used for repaving to be done by town resources if not corrected immediately. Prior to sending this letter the Town Planner would like the opportunity to speak with Joe Maillet, the developer.

On motion duly made and seconded, it was unanimously:

VOTED: To declare the bond for the Dakin View Subdivision, in an amount not to exceed \$5,000.00, forfeit to the Town of Sudbury for failure to complete the subdivision in accordance with the requirements of the Planning Board approvals, Planning Board rules and regulations and the laws of the Commonwealth of Massachusetts.

Lisa Eggleston: What about the status of the sidewalk?

Jody Kablack: That is a requirement of the decision they cannot go back on. They are constructing it.

Lisa Eggleston: What is the status of the subdivision, is it built-out?

Jody Kablack: There are 14 lots in total; 5 are remaining. Other than the repaving of Dakin Road there are no other problems. The progress so far has been acceptable.

Mike Hunter suggested tracking the progress if the bond is taken.

***Fieldstone Farm Subdivision***

The Board accepted a maintenance bond at its last meeting for Fieldstone Farm. The developer resides in New Hampshire and is difficult to get in contact with. The Town Engineer would like the Board to consider taking a portion of the bond, which is in the amount of \$4,900, for a maintenance punch list. Bill Place was under the assumption he would be installing the infra-red pavement around the water gates and taking the money from the bond.

On motion duly made and seconded, it was unanimously:

VOTED: To release a portion of the bond for Fieldstone Farm Subdivision in the amount of \$1,292.16, for completion of pavement work contracted by the Town.

***25 Union Avenue – Amended Covenant***

Only Flooring is purchasing the property at 25 Union Ave. which has a covenant that must be signed by the Planning Board when there is new ownership.

On motion duly made and seconded, it was unanimously:

VOTED: To approve the signing of the Assignment of Covenant for 25 Union Avenue.

***Olde Woode Subdivision Modification (Antique Circle) - Continuation of Public Hearing***

Bill Keller reviewed correspondence received since the 9/10/02 public hearing.

The applicant, Mr. Rodman reiterated safety issues which were mentioned in the 9/23/02 letter from his attorney, Gerald Cournoyer. He also commented on the position of his driveway if it were to be on Concord Road. It is heavily wooded in that area and would allow poor visibility. They would have to do a lot of clearing; some of the trees would be in the Historic District.

John Lamb from Gerald Cournoyer's office: Referred to the letter from Town Counsel dated 9/25/02 in which it is stated the Planning Board has the power to change a prior decision. The access issue which was imposed originally was to avoid a potentially larger development at the time. They are asking for utility access rather than a detrimental use. They do not believe there is anything preventing this use; it should be approached as a driveway which is what it is, rather than a road. Also, opponents have stated there will be traffic issues with the proposal. In fact, there will be less traffic accessing Concord Road.

Also with respect to safety issues, an additional access onto Concord Road as well as an additional curb cut, would make an already busy road a larger safety concern, especially for children who cut across the bike path.

Another issue was flooding at the intersection of Antique Circle and Concord Road. There is an existing catch basin the applicant can connect to without further impact on the current drainage to Antique Circle.

It is their opinion this proposal:

- Minimizes traffic entering and exiting onto Concord Road
- Allows better visibility
- Does not violate the intention of the original plan
- Does not have an impact on the overall aesthetics of the area

Bill Keller: If the application modification were to be granted, would the applicant surrender the curb cut permit it has on Concord Road?

John Lamb: Yes.

Bill Keller: Do you have 1 or 2 permits?

Mr. Rodman: One permit, but we could put the curb cut in the original spot or outside of the stone wall.

The public hearing was open to the public.

Harvey Markowitz: Disagrees with the curb cut issue; the applicant could put the opening 170' south of Antique Circle where there is an 18' wide entrance that has been there for a long time. In response to their safety remarks, it is a matter of opinion. Antique Circle is a small entrance; waiting to enter and exit is timely. Speaking in terms of numbers, there would be a 50% increase in traffic should it go from 2 to 3 houses utilizing Antique Circle. That is a very large increase in traffic safety. There is no need for the applicant to access Antique Circle other than to appreciate the value of their home. The homeowners on Antique Circle have paid for this private way in the costs of their houses. The Quirks own an antique business which causes traffic pile ups; people drive on lawns and park on Antique Circle. Mr. Quirk has an ulterior motive for approving this application; should lot 4 be permitted access, why couldn't he be as well? The applicant knew the laws; they cut down trees, tore out the stonewall, took away a driveway and now are coming to the Board with concerns of cutting down a tree. They have other options. Antique Circle is one lane; a 50% increase in traffic is serious. To say it is safer is argumentative. He is pleading with the Board to leave the law as it is.

Larry Smith: They would like the opportunity to respond to Attorney Cournoyer's letter as well as Town Counsel. Feels this is a cumbersome process. He and his wife had submitted a letter to the Planning Board (9/10/02) regarding this modification. There was no response; does Town Counsel have a policy on responding?

Bill Keller: Your letter was read by the Board and is part of the public record (file). Town Counsel does not respond to letters to the Board. The Board asked Town Counsel for advice regarding their legal rights and obligation in this matter.

Larry Smith: The theory presented by the applicant's attorney that the original restrictions were in place to prevent further subdivision is not in the file. The letters in the records speak for themselves; they need to respect the decision of the previous Planning Board. There already are 2 cuts; they referenced their driveway permit enabling them to put an additional cut – it already exists. They have already cut trees in this area.

Chris Morely: The house as it is constructed was not shown that way on the plan?

Jody Kablack: It has been shifted about 13'.

John Lamb: Regarding the entry 170' down the road which was referenced; there are septic system regulations and grading issues if a driveway was constructed there. This still would not address other issues. 50% sounds exuberant but it is only one additional home. The comment made earlier that the Rodman's are not under any hardship; hardship is a standard for a variance, not a standard for a subdivision. The implication that the applicant has not reached hardship could also be debated. The level conditions of the property presented the driveway to be at the front of the house – the issue of safety was a condition already there. It was approved as a full street with the condition it would be used as a private way; this was important is it relates to the Rodmans as well.

Bill Keller: The request made to respond to the material presented tonight is acceptable. There will be sufficient time before the next meeting which will be October 23<sup>rd</sup>.

Harvey Markowitz: In response to the septic being an issue at the location 170' south of Antique Circle, it is not. As it stands an extra driveway would circumvent the septic. The house was not built the way the footprint says; it was pre-decided to access Antique Circle.

Bruce Quirk: Met with the prior Planning Board in the original decision. He was present throughout the process. It was a mutual agreement not to have the subdivision built to full size; the Town did not want it for maintenance purposes. They felt it would be better as a private way. The access for the antique shop could have been put on there but it was mutually agreed not to use Antique Circle. Modifications could not be made without the Planning Board's approval. Regarding the deed to the Emmons' - the frontage was on the south side because you can't land lock a road but also because they wouldn't have to build a full road when the time came to develop their land. It was submitted as a fully developed plan which the town accepted – the private road was a mutual agreement.

Faye Markowitz: The Historic District asked the Rodmans to go before them. The Rodmans ignored the request – they violated those laws. When we bought the lot on Antique Circle they said there would never be access from lot 4 – it's a matter of fire safety and children's safety. The Rodman's have not mentioned any of this. On October 4<sup>th</sup>, they are supposed to provide a plan to the Historic District.

Mr. Rodman: Wanted to let the Board know why the house was rotated which was simply because it looked better and it opened up a back yard with a walk-out basement. They were prepared to take the driveway either way. Also several trees were removed, not hundreds.

Lisa Eggleston: Is there a hardship clause in the driveway regulations?

Jody Kablack: There is in terms of submittal requirement. In the regulations it states the Town Engineer may:

- require additional information
- approve with or without conditions
- require plan be signed
- not relieve applicant
- deny

Mr. Smith: Feels the intention of the applicant was obvious. They removed trees on the north side of the stone wall where they wouldn't have had to if they weren't intending on having the driveway access Antique Circle.

Mrs. Quirk: The stone wall was not removed by the Rodmans – the Smith's son removed it and rebuilt another one. She is offended by the acquisitions relative to their business. She feels the Rodmans are well-intentioned people and fully supports their application.

Faye Markowitz: The wall she is referring to is on Antique Circle. The wall the Smith's son did is on Concord Road.

Jody Kablack: Wanted to call attention to the Rodman's driveway permit granted by the Town Engineer. The house is situated parallel to Concord Road, on the south side of Antique Circle. The house was shifted and the driveway was to start at the same point but then swings and crosses the stone wall in 2 places – it is within land owned by the Rodmans. They do have the Town Engineer's approval. The Historic District said the changes in the stone wall will be brought to them.

Harvey Markowitz: The approval for the driveway is parallel to Antique Circle – what about the existing driveway they are using 170' south of that; is this approval a secondary one?

Jody Kablack: They only applied for one driveway. In order to get a building permit, you need a driveway permit.

Faye Markowitz: Is it a Concord Road address on the permit?

Jody Kablack: Yes.

Bill Keller informed the public present when the hearing is reconvened, it will not be permitted to rehash what has already been heard. There will be opportunity between now and then to respond to what was received after office hours today.

Lisa Eggleston: She reviewed the 1987 minutes-

Jody Kablack: Intervened there were additional minutes relative to this subdivision; the ones reviewed were the most relevant.

Lisa Eggleston: It was hard to determine whether the driveway's width throughout was intended to be 16'.

Jody Kablack: In the approved plan, it was 14'.

Bruce Quirk: The final determination was made by the Town Engineer.

Lisa Eggleston: Noticed some disparity in the minutes with regard to the curb cuts.

There was discussion to take access off Antique Circle; Mr. Quirk, you said no?

Bruce Quirk: It was mutual between myself and the Town. There was a potential conflict with the Board of Appeals and the subdivision plan and we did not want it as a full plan.

Jody Kablack: It appears the Planning Board wanted to combine Mr. Quirk's driveway with Antique Circle.

Harvey Markowitz: Town Counsel advised against it.

On motion duly made and seconded, it was unanimously:

VOTED: To continue the Public Hearing on Antique Circle to 10/23/02 at 8:00 p.m. at the Town Hall with the intent to close the hearing that evening.

Associate member Eric Poch suggested the original approval of a 14' driveway could have been the Historic District's opinion. Lisa Eggleston feels the less cuts across the walkway, the better. Adding 2' to either side of the private road would be safer and have less impact.

On motion duly made and seconded, it was unanimously:

VOTED: To instruct the Town Planner to draft a decision document for the 10/23/02 meeting on Antique Circle in anticipation of no new information.

Among items to be included in the decision;

- widening the street 4' from Concord Road to the new driveway (lower section)
- rebuilding the stone wall
- drainage from the Rodman's house will not go onto Antique Circle (roof drains)

*Miscellaneous:*

*Meeting Schedule*

The Board will not meet on 10/9/02. The following meeting dates were scheduled:  
10/23/02      11/6/02      11/20/02      12/4/02      12/11/02 (tentative)

*Executive Order 418, Community Development Plan*

The Board discussed the above referenced Plan as requested by the Selectmen. The Town Planner feels the amount of work that would be required to devise a good plan would not be worth the return. To gather the information necessary would be time consuming and would require hiring a consultant. The Board instructed the Planner to document their discussion and their agreement with the Planner that time and efforts would be more beneficial if directed towards implementing the Master Plan.

*Community Preservation*

The Town Planner will draft a report to review projects and let the community members know this requirement exists. Walkways are eligible under Community Preservation funds and the Board might want to apply to the CPC instead of as a capital planning item. In addition focus should be on the rail trail project as well as CSX/MBTA requests (money for leasing).

There being no further business, the meeting was adjourned at 10:15 p.m.