

TOWN OF WESTPORT
PLANNING BOARD
MINUTES
JUNE 27.2012

Chairman Johnston called the Meeting to Order at 7:03 P. M. with the following members present: Mrs. Evelyn Brant, Mr. Alan Hipps, Mr. Ken White, Ms. MaryLou Fitzgerald. Alternate present, Ms. Cynthia Fairbanks. Guests in attendance, Ms. Nancy Page, Mr. Matthew Foley arrived at 7:12 P. M. Also present, Mr. George Hainer, Building Codes/Zoning Officer and Barbara Breyette, Secretary.

MINUTES: The Minutes of the April 25, 2012 meeting were approved on a motion by Mr. White, second, Mrs. Brant, all in favor, carried.

The Minutes of the Special Meeting of May 9, 2012, were approved on a motion by Mrs. Brant, second, Mr. White, all in favor, carried.

The Regular monthly Meeting of May 23, 2012, was cancelled.

Chairman Johnston -- Next item on the Agenda - **Riverat Gas & Electric - Matthew Foley - Elizabeth Rapalee - Tax Map No. 57.-1-1-12.000 - Subdivision Application** -- George has conferred with both the Town Attorney, Gary Wilson and also an attorney at the Department of State, and there is a consensus that this is a Minor Division. A Minor Division means the "division of a parcel of land, such that no new building lots are created and not adversely affecting the development of the remainder of the parcel, or adjoining property and not in conflict with any provision or portion of the Town Land Use Plan or zoning regulation or policy set forth in these regulations". (page 9, Subdivision Regulations, Draft #2, June 26, 1978). If we deem this a Minor Division, then no further action is required. However, in speaking to our Town Attorney, Gary Wilson recommended that we "condition" this Minor Division Approval on two points: You wrote this George, "receipt of appropriate legal description with courses and distances" - who should receive it?

Mr. Hainer - They should do the description, we should receive a copy of it, the fact that it's been filed -

Mr. Hipps - to the Zoning Officer?

Mr. Hainer - Right.

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Chairman Johnston - And that the deed of conveyance provide no building rights are conveyed with the parcel and that the parcel shall be merged with the adjoining parcel, that's the parcel that Misarski owns.

Mr. Hainer - Right, and the APA permit states that, also.

Chairman Johnston - Ok. Would someone offer a motion to "deem this Minor Division, with the "condition", that appropriate legal description "with courses and distances" be provided to the Code Enforcement Officer and that the deed of conveyance provide that no new building rights conveyed with the parcel, the parcel should be merged with Tax Map Number, 57.1-1-11.000.

Mr. White - I'll so move.

Chairman Johnston - Thank you, Ken.

Mrs. Brant - I'll second it.

Chairman Johnston - Thank you, Evelyn. Any discussion?

Mr. Hipps - I just wonder, we've done this before and we didn't require that legal description. I wonder if, they should have one, I agree with that, just thinking that through for a minute, are we treating them the same as we have the others?

Chairman Johnston - Not really.

Mr. Hipps - Yes.

Chairman Johnston - This is a little detail that maybe we should have been attending to.

Mr. Hipps - Yes, it seems that way.

Ms. Fairbanks - May I ask a question, does that mean if they were to sell, they would have to sell the whole thing?

Chairman Johnston - Yes, the parcel, the 2.2 acre parcel, that Matt is selling to Bruce (Misarski), would be merged into Bruce's lot, so it would become, Bruce's lot, just becomes larger.

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Mr. Hainer - Typically, this would be called a lot-line adjustment, but in our Law we don't have that provision, we have this "minor division". Someday, it will probably change.

Mr. Hipps - But even a lot-line adjustment, we probably should get a legal description, it makes sense.

Mr. Hainer - The attorney suggests a survey, now Bruce may get a survey, in order to do this properly, a map, file a map and everything and merge everything. Like Kevin typically does this, but it's not required.

Chairman Johnston - A survey is not required for a Minor Division and this is kind of a convoluted logical knot here. When there's a subdivision the Real Property law requires that a subdivision map be filed with the County Clerk and it has to be prepared by a surveyor.

Mr. Hainer - Yes.

Chairman Johnston - Because this is not a subdivision, it's a Minor Division, no survey is required. There is no filing requirement, if they did try to file it, the County Clerk would refuse to file it, is that right, George, unless it was prepared by a surveyor?

Mr. Hainer - Right, you can't file a map, you can file the deed, technically, you can't file a deed on a subdivision, unless it's a gift or an inheritance or your not changing the lot in any way. As far as the description, actually saying how many pieces of map here, only shows the area, it doesn't show so many feet. At some point you have to physically define it on the map or be able to.

Chairman Johnston - A meets and bounds description.

Mr. Hipps - Ok, I thought we should go over that.

Mr. Hipps - We didn't vote.

Chairman Johnston - All in favor, please say, aye. Motion carried.

Chairman Johnston - Next item - **Guy Lever Update** - I've been doing some correspondence with Guy Lever, over the past month-and-a-half, and asked Barbara to copy it for

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you, so that you can follow it. It is a little complicated and I'll try to walk you through it.

Mr. Hipps - So, this is in proper,

Chairman Johnston - Sort of proper, not totally proper, but very close to proper order. The first email -

Mr. Foley arrived. Chairman Johnston - Matt, we've deemed your property transfer a Minor Division.

Mr. Foley - What does that mean?

Chairman Johnston - It means that, because it's a Minor Division, you're free to go ahead and do the transaction.

Mr. Foley - Are you going to send me a letter?

Chairman Johnston - Sure.

Mr. Foley left at this time, 7:12 P. M.

Chairman Johnston - (Back to Mr. Lever) - This all got started on May 2nd (2012) where he writes, "Just to let you know we had issues finding an expert, etc, I will now turn my efforts to resolving a Plan with your Planning Board, accordingly. We have found an engineer to provide the expert opinion you had suggested and hope to meet with him in the next few weeks. I will keep you informed once we are ready for a Public Hearing".

Turning the page 2, down to the bottom, Friday, May 4th, I replied, "thanks for the update, just let me know when you are ready to proceed".

Then on May 23rd, at the top part of that page, Mr. Lever, "just wanted to let you know, I met with Mark Buckley, he will be preparing a report for us regarding the proposed building envelope. He may be contacting you to insure the scope of the report is adequate for the Public Hearing. We would potentially like to set up a date in June, for such". I will be away for most of the summer, as of June 28, 2012, but available most of June, except for the 15th, thanks".

Keep turning, and then there's a response on May 24th, I wrote to him, "we had a special Planning Board meeting in May and cancelled the regular meeting for lack of business. The next meeting will be the regular monthly meeting in June. Before the Planning Board schedules a hearing on "reconsideration", it would be a good idea for Mark to

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submit the report to the Planning Board, so they can review it first".

Then on the 25th, Guy writes, "you had agreed on a Public Hearing at the last Planning Board meeting, the only reason we are getting an expert opinion is because you had made that request and we obliged and we are ready for the Public Hearing, please provide a date".

I responded on May 30th, "just to set the record straight, I did not request that you get an expert opinion, this was merely a suggestion, copied below, is exactly what I wrote on October 13' 2011. "I would advise the Planning Board at the June meeting that you would like the Planning Board to schedule a public hearing, per your request that the Planning Board reconsider the subdivision plat, specifically to move the building envelope back from the back of the top of the potentially unsafe slope".

I said, "Barbara needs lead time of approximately four weeks". "I anticipate holding the hearing at the regular July meeting on July 25th".

He responded, but that response is not included, here. "He said, "he was going to be away all summer and that he would get back to us in September, when he wants to have a hearing".

He's continuing with his position that he's going to decide when he wants to have the hearing, and I tried to get the point across that we'll have the hearing at a regular monthly meeting. That doesn't always suit his schedule.

That's the Guy Lever situation.

Chairman Johnston - Did everyone bring their Zoning Law? Just to give a little background, if I've done this already, stop me, so I don't repeat myself. Does everyone realize that the Zoning Law that we're currently working with, is kind of a hybrid? It's a hybrid, in a sense, that there was a pre-existing Village Zoning and then the Village dissolved, and after the Village dissolved under Town Law, the Village Zoning remains in effect for two years and then it ceases to become effective after two years, unless the Town enacts Townwide Zoning. Nobody wanted the Village Zoning to expire, so the Town lit a fire under the Town, to enact Townwide zoning and in order to make things a little simpler for this transition, when the Village dissolved, the zoning was structured in such a way that there were three parts. One part was the former Village zoning requirements, the second part was the Town

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zoning requirements and the third part was some procedures that were common to both, Village and Town.

A lot of time has passed, since the Village dissolved and over the years having in a sense, two different zoning laws, became problematic and a lot of people forgot that there even was a Village or didn't even know there was a Village. When we had the opportunity to get the money from the Department of State, to do this Hamlet Expansion Study, I included some money to update the Zoning Law. The updating was not an updating in a substantive sense, there's no changing of the map, no changing of the district, no changes of the uses that are allowed in the districts. The updating is that the Town and Village sections were merged. What you have in front of you now is no longer structured in three parts, but it's structured more as a conventional zoning law. The attorney who worked on this, Joel Russell, is the attorney who set up the original Town Zoning, and he was very challenged by this assignment and he complained about it, a lot and we told him to just hang in there, he did, he finished the job and what you have is the results of his efforts. Now the reason it says, "second draft", is that he provided George and I something dated the "first draft", and we gave it a fairly cursory review and pointed out some problems that we discovered. He made some changes and that's why we call it the "second draft". But, this really is not all that different from the "first draft" and what I would like to do, is to go through this a little bit at a time. In order to facilitate understanding what the changes are he used a typing technique where some things are underlined and other things are in a gray, kind of a gray typeface, so, George.

Mr. Hainer -- The line on the side.

Chairman Johnston - What does the line on the side mean?

Mr. Hainer - That's all new.

Mr. Hipps - There's a change of some sort.

Chairman Johnston - Yes. So if there's a line on the side, that's new, any change, if it's gray, that means it's been deleted, right?

Mr. Hainer - That's right, yes.

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Chairman Johnston - The section that probably gave him the greatest of difficulty was the definition section, because he was trying to get the definitions that were in use in the Town to be the same and it was very, very challenging. You'll notice when you page through this, that probably the greatest number of underlinings and gray, is in the definition section. This is really where most of the changes were. We did ask him to do something else, as well, and that is in the years since the original zoning was enacted and it was approximately 15 years, right, George? It dates back to 1996.

Mr. Hainer - Right.

Chairman Johnston - There have been some changes in State Law and where ever there was a provision of this zoning that was no longer in accordance with State Law, he updated it so that it is in accordance with State Law. Why don't we tackle this in a few small parts. If I were to ask you to review a number of sections, how many sections would you like to bite off at one time?

Mr. Hipps - Sort of thinking about a whole part, that would be like 30 pages.

Chairman Johnston - You mean all of part one? You think that would be a good amount.

Mr. Hipps - It's like 38 pages, that would be good.

Ms. Fitzgerald - What's your thinking, Bill?

Mr. Hipps - You've been right through it, right?

Chairman Johnston - Yes, I have. I don't recommend it for after dinner reading.

Ms. Fitzgerald - Let's just bite the bullet and do it.

Chairman Johnston - What, part one?

Ms. Fitzgerald - Do more than less.

Chairman Johnston - Ok.

Ms. Fitzgerald - If we can and then if we have to slow down, we'll slow down.

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Chairman Johnston - Ok. Let's make an assignment then, Barbara, could you advise the other Board members who are not here, that we're going to review part one at the July meeting and we'll go through it page-by-page.

Mr. Hipps - And have people mark up their copies before they come with questions.

Chairman Johnston - Yes. You've read through it Evelyn?

Mrs. Brant - Yes.

Chairman Johnston -- What do you think of it, Evelyn?

Mr. Hipps - Is one part doable?

Mrs. Brant - Yes, but there's some questions I have on it.

Ms. Fairbanks - Just the changes or everything from the beginning?

Chairman Johnston - Focus on the changes.

Ms. Fairbanks - I think it's doable.

Mr. Hipps and Chairman Johnston - Good.

Chairman Johnston - Alright, so that will be our goal, then to review the first part and come with your questions and comments and we'll do our best to get through it, at the July meeting.

"Other Business", is there any Other Business?
None voiced.

Mr. White - I move we adjourn.

Mr. Hipps - Second.

Chairman Johnston - Ok, all in favor, carried. Thank you very much.

Meeting adjourned 7:26 P. M.

Respectfully Submitted, Barbara A. Breyette, Secretary