

# LYNNFIELD PLANNING BOARD MEETING – NOVEMBER 30, 2022

## **1. 7:04pm - Call to Order**

Chair Brian Charville called the special meeting to order at 7:04pm and identified the full Planning Board (PB) members in attendance, including himself, Vice Chair Kate Flaws, Clerk Edward Champy, and members Amy MacNulty and Page Wilkins. He noted staff members in attendance; Director Emilie Cademartori and Administrative Assistant Sondria Berman, and stated the meeting was being recorded by audio.

## **2. 7:05pm – ZBA Case #22-12 49 Homestead Road- Special Permit §9.2.5 for Residential Addition within 50ft of Wetland Buffer**

Applicant Dennis Labkovich presented the site plan and photos depicting the proposed addition for his home at 49 Homestead Road. He explained the addition falls within the 50ft. buffer zone to a wetland, and therefore triggers the Zoning Board of Appeals (ZBA) special permit approval.

Ms. Wilkins inquired if the ZBA approved the prior variance for the project; Mr. Labkovich explained the ZBA will review both the variance and the special permit together, after they receive recommendations from the Board of Health, PB, and Conservation Commission.

Clerk Champy inquired about Conservation Commission's decision; Director Cademartori explained Mr. Labkovich was issued an approval from the Conservation Commission, with a standard order of conditions that included erosion control, limit of work, and stabilization of soils upon completion.

Chair Charville asked if there had been any feedback received from the Board of Health; Director Cademartori stated that Mr. Labkovich's project is slated to be reviewed at the Board of Health's upcoming meeting the following week.

Ms. MacNulty inquired about the septic location at 49 Homestead; Director Cademartori stated the septic had recently been replaced and relocated to the front yard of the property prior to Mr. Labkovich's purchase of the property.

*Chair Charville requested a motion that the PB not oppose the ZBA §9.2.5 special permit application for 49 Homestead Road for residential construction within 50ft. buffer to a bordering vegetated wetland; Clerk Champy motioned in favor and Ms. Wilkins seconded the motion. The motion carried 5-0.*

## **3. 7:10pm – Tuttle Lane Definitive Subdivision – Request for Extension**

Attorney Jesse Schomer, on behalf of Tuttle Lane developer Michael Hannon, requested a two-year extension for the Tuttle Lane Definitive Subdivision project. He noted that the initial approval of the Tuttle Lane subdivision, issued by the PB in August of 2019, was granted an extension during the COVID state of emergency through December of 2022. Siting continued progress with construction

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and successful home sales over the past two years, he requested the PB approve the extension of the subdivision-completion deadline through December 31, 2024.

Ms. MacNulty asked the applicant if the Tuttle Lane subdivision would be completed in two years; Mr. Schomer stated that the developer anticipates a completion date of September 2024, but requested a full two-year extension to allow for any unforeseen delays. Mr. Hannon stated that supply chain issues and other delays experienced during the COVID pandemic are not expected to continue moving forward. Mr. Hannon noted that the most recent home built at Tuttle Lane was completed in nine months, and believes this accelerated pace will enable the development to be completed within the two-year extension.

Clerk Champy expressed satisfaction with the pace, reporting and updates provided from the Tuttle Lane development team.

Director Cademartori stated the developer's request included a written narrative as required by regulations, as well as the extension fee payment, citing no outstanding items required for extension approval by the PB.

*Chair Charville requested a motion that the PB approve the applicant's request for a two-year extension of the completion deadline for the Tuttle Lane Definitive Subdivision through December 31, 2024; Vice Chair Flaws motioned in favor and Clerk Champy seconded the motion. The motion carried 5-0.*

### **4. 7:15 pm Violet Circle- Covenant Release**

Chair Charville explained Violet Circle was a previously approved subdivision that was delayed due to legal matters. Atty. Jay Kimball spoke on behalf of the applicant, stating that the PB previously signed a Form G release of covenant document in 2021 which was submitted to the Land Court but ultimately needed to be re-signed per the Land Court's conditional approval to make necessary corrections to the date and lot numbers on Form G.

Vice Chair Flaws noted that Violet Circle has a large amount of equipment and materials on the property; Director Cademartori noted that the contractor communicated he anticipated beginning work soon. She added that once construction activity resumes, the Town will resume its inspections and site visits.

Atty. Kimball requested PB members attest that their signature was completed on the Form G covenant release as an act of their own free will; all consented.

### **5. 7:18pm Continued Public Hearing – 109 Lowell Street (Vallis Way) Proposed Definitive Subdivision Plan**

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*Chair Charville requested a motion to re-open the public hearing on Vallis Way (109 Lowell Street); Clerk Champy motioned in favor and Ms. MacNulty seconded the motion. The motion carried 5-0.*

Atty. Kimball stated that the PB was in receipt of the drafted HOA agreement and definitive plan. He noted Bill Jones of Linden Engineering provided a memo, and requested for the PB to review all items to take action on subdivision approval.

Chair Charville asked for comment regarding Bill Jones' memo which recommended the 20-foot slope easement run the entire distance from Lowell Street to the end of the cul-de-sac; Peter Ogren of Hayes Engineering stated that there exists a private agreement between the applicant and Ms. Vallis regarding a private screen of trees to be planted on her lot which could inhibit the 20 ft. slope easement.

Chair Charville suggested the PB review, in order, each of the easement decisions/plans, the overall PB decision, and the HOA agreement.

Mr. Ogren stated that the most up to date plan involves a 20ft tree planting easement around the entire cul-de-sac. Mr. Ogren stated that he did not extend the 20ft tree planting easement along the side of Ms. Vallis property and Lot 5 given Ms. Vallis's private agreement for landscaping with the developer and the number of existing trees on Lot 5. Atty. Doyle stated that the plans for Ms. Vallis's lot involve a 7-ft tall tree screen for her property; Mr. Ogren stated this may not be the exact species or design the town would prefer and that the infiltration system would need to be placed a distance away from the trees.

Vice Chair Flaws commented that there needs to be a clear line of sight for those entering and exiting Vallis Way from Lowell Street as it relates to street tree plantings on Lot 5 and Ms. Vallis' property.

Vice Chair Flaws inquired about the easements on Lot 5; Atty. Doyle stipulated that Lot 5 has three separate easements that include a drainage easement, retaining wall easement, and slope easement for construction, stormwater, and/or other maintenance.

Ms. MacNulty confirmed Lot 5 is not within the HOA agreement; Atty. Kimball confirmed Lot 5 remains under Ms. Vallis's ownership and is not a part of the HOA. Ms. Wilkins inquired what entity would be responsible for maintaining Lot 5 should vegetation overgrowth/encroachment occur, citing homeowners would inevitably need to address such issues.

Director Cademartori inquired about the three street trees noted on the plan in the right-of-way (ROW) for Lot 5; Mr. Ogren stated they were outdated details from a previous iteration of the definitive plan wherein Lot 5 was still being considered a buildable lot.

Chair Charville requested the PB review the slope and street tree easement for Vallis Way; Atty. Kimball stated these easements were listed instead of the deed of conveyance. Director Cademartori explained that typically, easements for subdivisions are stipulated on the deed of conveyance to the

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developer and referenced on the respective deed(s) and definitive plan. She noted that because not all the lots will be conveyed to the developer and instead some are to be retained by Ms. Vallis, separate easement documents were created for the Lot 5 & 6.

Ms. Wilkins inquired about stormwater maintenance and whether or not the requirements are included on the deed; Director Cademartori stated that stormwater details are included in the HOA and also referenced in the PB decision. She noted the decision does not specifically address drainage for the entire street but only the individual lots, but that this could be added if desired.

Chair Charville confirmed that the separate drainage, slope and tree easement documents refer only to Lots 5 and 6, both owned by Ms. Vallis; Atty. Kimball affirmed this is correct. Chair Charville asked for comment from the PB regarding the easement documents; Ms. Wilkins referenced a few typographic errors. Chair Charville questioned if the definition of “grantee” should be modified; Atty. Kimball stated the grantee definition includes multiple parties, including the Town, should there be a need for the Town construct or repair the retaining wall, but does not mandate this occur. He added that because the Town is not a signatory on the document, enforceability is limited and remains at the discretion of the Town.

Chair Charville asked for PB comments on the narrative for the no-disturb easement; Ms. MacNulty inquired if abutters are notified; Atty. Kimball stated abutters are not required to be informed of specific easements – rather, abutters are notified regarding the Vallis Way public hearing which includes information on easements and other matters pertaining to Vallis Way.

Chair Charville asked for PB comments on the supplementary land use restrictive covenant for Lot 5; Vice Chair Flaws stated it was well-written.

Chair Charville asked for PB comment on the draft PB draft decision (DD) for Vallis Way. Director Cademartori noted that she included both the old and new section numbers for the Lynnfield Subdivision Rules and Regulations, as requested, in the DD.

Chair Charville asked about snow and trash removal stipulated in item #15 of the DD; Director Cademartori stated the original language in the DD assumed a shorter street length; and questioned if homeowners will be able and/or comfortable transporting trash to the edge of Vallis Way/Lowell Street versus securing private contract(s) for service for snow and trash removal. She noted that homeowners on Sagamore Place have private contracts with trash and snow removal companies for their lots. She recommended each homeowner seek private trash and snow removal contracts once a certificate of occupancy is granted.

Chair Charville asked if the DD should be amended to read: “The owner/developer shall be responsible for ensuring that any and all trash rubbish and/or recycling to be collected from the subdivision lots shall be collected at least weekly by a private hauler contracted for/by the owner/developer.”

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Clerk Champy asked if the responsible party should instead be the HOA and not the developer/owner per se; Director Cademartori noted that the HOA may not yet be funded and/or exist at the time a COC is granted. Clerk Champy stated once a lot is conveyed, the HOA should automatically be in place. He added that as lots are conveyed from the developer to a new homeowner/owner, that the percentage of funding for the HOA changes according to the number of HOA members.

Vice Chair Flaws asked Mr. Champy if he would remove the existing language in the DD for trash and snow removal and instead include it in the HOA; Clerk Champy suggested the PB could either remove the existing language in the DD and include the HOA as the responsible party within the HOA agreement or revise the DD to name the HOA as the responsible party.

Director Cademartori stated there are two segments of time to consider for trash and snow removal: during construction and post-construction. She noted during construction, when trash and snow removal issues arise, the PB decision serves as an authoritative reference for procedure, expectations and responsibility. Vice Chair Flaws concurred and recommended the language be incorporated into both the DD and the HOA; Clerk Champy noted that by making the HOA the responsible party it takes the sole burden off the developer as lots are sold to homeowners.

Chair Charville noted he would amend the PB decision to make the HOA the responsible party, and to include the qualifier term “household” before “trash, snow, and/or recycling,” to read, “The HOA shall be responsible for ensuring that any and all household trash, rubbish and/or recycling to be collected from the subdivision lots shall be collected at least weekly by a private hauler contracted for/by the HOA.”

Mr. Ogren requested the PB decision stipulate the HOA be responsible until such as time as the road is accepted as a public way, and becomes eligible for town-funded trash, snow and recycling removal.

Chair Charville suggested adding the following prepositional phrase to address Mr. Ogren’s concern: “Until such time as the street is accepted by the Town of Lynnfield as a public way.” Director Cademartori noted that this preposition and sentence should be the first sentence under item #15 of the DD. Chair Charville further specified “snow and ice treatment and removal,” for the final item #15 to read: *“Until such time as the road is accepted as public way by the Town of Lynnfield, the HOA shall be responsible for ensuring that any and all household trash, rubbish and/or recycling to be collected from the subdivision lots shall be collected at least weekly by a private hauler contracted for/by the HOA. Additionally, the HOA shall be responsible for snow and ice treatment and removal within the subdivision.”*

Chair Charville asked to review roof infiltration under §17 Engineering subsections D and E of the DD; Director Cademartori stated that she would add a definition reference from the state stormwater regulations for subdivisions. The PB members discussed the importance of following permit

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procedures across all departments in Town, and to ensure systems and work are installed and inspected prior to certificates of compliance and/or occupancy are granted.

Director Cademartori noted that item #3 in the DD named the HOA as the responsible party for “perpetual care, maintenance and or replacement of said trees” after street acceptance by the Town.

Chair Charville asked for further comment regarding the DD; Mr. Ogren raised questions and concerns regarding item #11 and specifically what, if any, trees needed to be flagged within the Limits of Work, given that it is the planned construction area. Director Cademartori stated that item #11 is standard subdivision language included should any special trees be slated for protection within the Limits of Work. Director Cademartori stated that trees within the Limits of Work are not protected under the Tree Preservation Bylaw- only trees within the setbacks. Mr. Ogren stated that the Tree Preservation Bylaw can’t take effect until the setbacks are established for each of the lots to determine the tree yard; he asked how mitigation would be determined given that the installation of the roadway would need to happen before lots and setbacks could stake in the field.

Director Cademartori stated the necessary creation of the roadway (to establish lots) requires work within the existing tree yard. She noted that mitigation costs are expected to be significant given the density of trees, and suggested both pre-planning and Tree Preservation Bylaw (TPB) applications be completed prior to the start of construction for the roadway. Clerk Champy suggested trees in the roadway itself should not be subject to mitigation; Director Cademartori stated the concern comes from the 20-ft slope easement to create the roadway, which becomes part of the front yard setbacks of each of the new lots and therefore subject to the TPB. She stated while mitigation costs could be negotiated, any discussions would require the trees in these easements to be flagged and documented so that calculations could be completed.

Vice Chair Flaws voiced support for waiving mitigation costs for trees removed both in the right-of-way and in the 20-ft. slope easement necessary to establish the roadway; Director Cademartori noted that in waiving the mitigation for the 20-ft slope easement, it waives any mitigation for tree removals in the front tree yard which would otherwise be subject to the TPB. Clerk Champy stated that it seems inevitable that trees will be impacted in the 20ft slope easement to create the roadway; he suggested staking the lots and the 20ft slope easement area to allow the tree warden and developer to review what trees could potentially be protected and/or saved.

Chair Charville suggested that the PB approve TPB applications on a lot-by-lot basis, deciding on possible waivers and/or reduced mitigation costs after the roadway has been established; Ms. Wilkins concurred.

Clerk Champy stated that the challenge with the TPB is the requirement that tree removals be planned ahead of time, so that developers are not having to conduct a series of tree removal projects. He noted that for the TPB and the economics of tree removal to function well, lot lines and setbacks must be

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staked and trees flagged prior to the start of any construction. Director Cademartori concurred, and noted that its possible not every tree in the 20-ft slope easement will need to be removed and/or mitigated.

Director Cademartori stated that the process would begin with a tree plan in place for the entire parcel; and from there, surveyors could stake the respective lots and setbacks accordingly for the construction of the roadway, allowing surveyors to also measure and flag trees within the tree yard and easements. She added the TPB stipulates the PB has the discretion to issue waivers and/or mitigation reductions on a case-by-case basis.

Mr. Ogren suggested the PB issue a mitigation waiver for the first 10 ft of the slope easement, understanding that it is all but guaranteed trees within 10 ft of the roadway construction will require removal, but allow the remaining 10ft (outside) slope easement to be flagged and mitigated according to the TPB. Mr. Ogren he would also consider the alternate option to simply stake the lots and setbacks and flag each tree in the tree yard. The PB discussed grading needed on each of the lots, and that tree removals may not be necessary within all the 20-ft slope easement if the land is mostly at grade.

Clerk Champy recommended staking the center of the roadway, out to the 20ft easement limit of work, to allow for trees to be flagged and determined as necessary for removal or retention. Mr. Ogren expressed concern over the projected mitigation costs given the tree density of the parcel; Clerk Champy stated the intent of the TPB is not to inhibit developers but rather to encourage thoughtful development practices with regards to tree preservation.

Director Cademartori encouraged Mr. Ogren to begin by working off of the already created Tree Plan for Vallis Way, and mark the trees anticipated to be removed based on the roadway construction.

Chair Charville noted that the subdivision approval process incorporated a review of significant trees, which resulted in the conservation protections on Lot 5.

Ms. Wilkins asked if TPB permits would be issued by lot; Director Cademartori said the TPB permit would be a two-step process with the first permit addressing tree removal for the construction of the roadway and its respective easements, and the second permit to address specific tree removals for each of the lots. Mr. Ogren stated he would review the existing Tree Plan for Vallis Way, note measurements and tree locations and discuss the first phase of mitigation.

Chair Charville stated that he made an adjustment to the DD on Section 18 Item D, to add the following language: *“The Record Owner shall execute and record a Grant of Drainage, Infiltration System and Temporary Grading and Sloping Easement, and Public Shade Tree Easement; a Grant of Retaining Wall Easement; and a Supplementary Land Use Restrictive Covenant, Easement and Agreement, as proffered to the Planning Board in November 2022.”*

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Vice Chair Flaws asked if the PB wanted to consider waiving the requirement for sidewalks on both sides; Director Cademartori stated that the need for sidewalks on both sides was originally kept when Lot 5 was still deemed a developable lot. She noted that with conservation restriction on Lot 5, the need for a sidewalk in front of Lot 5 may not be necessary.

Chair Charville suggested including in the DD that no sidewalks be required on Lot 5 and to revise the definitive plans to reflect this change; Director Cademartori noted that in doing so, the retaining wall in front of Lot 5 no longer needs to be placed at the limit of the right of way to allow for the sidewalk, but instead could be placed at an appropriate distance closer to the roadway itself. Chair Charville stated that the retaining wall is subject to PB review and approval, in which case the placement could be addressed at a later date. Director Cademartori noted that roughly 10 additional feet of the hill and trees would be saved with the omission of the sidewalk requirement on Lot 5.

Mr. Ogren confirmed the maintenance of the retaining wall is the responsibility of the HOA even if it is in the ROW.

Chair Charville included a design waiver reference §8.2B.11 for the sidewalk removal on Lot 5.

***Chair Charville requested a motion that the PB waive the requirements of section now known as §10.2B.11 such that no sidewalks shall be required to be built on Lot 5 because that lot will remain undeveloped; Clerk Champy motioned in favor and Ms. Wilkins seconded the motion.***

Atty. Kimball suggested revising the motion's language to reference the sidewalk existing in the ROW, and not within Lot 5.

***Chair Charville amended the motion to request that the PB waive the requirements of § 8.2B.11 (now known as § 10.2B.11) such that no sidewalks shall be required to be built in the right-of-way adjacent to Lot 5 because the lot will remain undeveloped. The motion carried 5-0.***

Clerk Champy recommended to Mr. Ogren that the Definitive Plan be amended to remove the sidewalk in the right-of-way adjacent to Lot 5 and to make note that the Town Engineer and PB would oversee the retaining wall location entering into Lot 4.

Chair Charville amended the DD to stipulate: *“No sidewalks shall be required to be built in the right-of-way adjacent to Lot 5” and “Prior to the PB signing the definitive plan after the 20-day appeal period, the definitive plan shall be revised to remove any depiction of a sidewalk adjacent to Lot 5.”*

Atty. Kimball requested the PB to mention in the DD the previously approved waiver for the Form G requirement; Chair Charville included an additional section in the DD to state: *“The Planning Board shall allow the conveyance of, altogether, Lots 1 through 4 and the future roadway area, notwithstanding the requirements of Form G, provided that the same area shall remain subject to the*

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*terms of the Form G covenant despite the fact that they have been conveyed. In the judgment of the Planning Board the granting of the above waivers is in the public interest and not inconsistent with the Massachusetts subdivision control law (M.G.L. c. 41, §§ 81K et seq.). The Planning Board also finds that each waiver is consistent with each of the purposes set forth in the Purpose Statement of the Subdivision Rules and Regulations adopted by the Lynnfield Planning Board, and is in the public interest. The Planning Board further states that its vote to approve the above-referenced Definitive Plan is subject to the conditions as set forth below.”*

Chair Charville removed item #7 from the DD and included the language in General Conditions § 18A: *“No sidewalk shall be required to be built in the right of way along the frontage of Lot 5; prior to the Planning Board signing the definitive plan after the 20-day appeal period, the definitive plan shall be revised to remove any depiction of a sidewalk adjacent to Lot 5.”*

Mr. Ogren recommended the PB stipulate under General Conditions Item G the date during which the subdivision application was made; Chair Charville amended item G to read *“All Rules and Regulations of the Planning Board in effect as of April 12, 2021, are incorporated herein by reference and are retained as part of this Decision, except as expressly waived herein.”*

***Chair Charville requested a motion to approve the PB DD with respect to the proposed subdivision Definitive Plan for Vallis Way (formerly 109 Lowell Street), as revised; Vice Chair Flaws motioned in favor and Ms. MacNulty seconded the motion.***

Director Cademartori asked Mr. Ogren to confirm the final definitive plan date as November 15, 2022; Mr. Ogren stated that the final definitive plan date is November 15<sup>th</sup> as of the PB decision, subject to the revisions stipulated in the PB decision to be completed before the plan is signed to become the plan of record.

***The Board voted unanimously in favor of the motion. The motion carried.***

Chair Charville asked the PB to review the HOA Draft Agreement dated November 16<sup>th</sup>, 2022. He confirmed review and approval of the HOA agreement by Mr. Jones of Linden Engineering, town counsel, and Planning Director Emilie Cademartori. Director Cademartori advised the PB that the PB decision stipulates the HOA agreement must be submitted to the PB for final approval, so the need to vote and accept the HOA Agreement draft is not a required vote at the current time. Vice Chair Flaws noted that the HOA responsibility to handle trash, snow and ice removal revisions need to be adopted

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into the HOA Agreement. Director Cademartori also noted the HOA agreement needs to be revised to state the retaining wall exists on Lots 4 and 5.

*Chair Charville requested a motion to close the public hearing on Vallis Way; Ms. MacNulty motioned in favor and Clerk Champy seconded the motion. The motion carried 5-0 in favor.*

### Administrative Matters

#### 6. 8:48pm Approval of Minutes

*Chair Charville requested a motion to approve the November 2, 2022 minutes as written; Vice Chair Flaws motioned in favor and Ms. MacNulty seconded the motion. The motion carried 5-0.*

#### 7. Discussion Regarding December 14, 2022 PB Meeting

The PB discussed upcoming mini master plan agenda item for the December 14<sup>th</sup> 2022 meeting; Director Cademartori noted that in addition to the mini master plan discussion, the PB agenda is expected to have a bond reduction request from Sagamore Place provided documentation can be compiled ahead of the meeting. The PB requested the Select Board be notified of the meeting on the 14<sup>th</sup>, should they desire to attend to discuss the mini master plan.

The PB discussed potential future capital projects/development in Lynnfield, specifically the potential new town library on the Reedy Meadow Golf Course and the discussion about a possible recreational center adjacent to the library. Director Cademartori shared that discussions about developing a recreational center have occurred over the past few years, but more information needs to be gathered to determine if an additional space is necessary for the recreation commission or if the new library/existing school areas will be sufficient for the recreational programs. The PB discussed existing public buildings that could be expanded to accommodate more flexible space for programs like Lynnfield Recreation; Ms. MacNulty suggested a survey would be helpful to gather public interest and opinion on what spaces, if any, are needed.

#### 8. 9:09pm– Adjournment

*Chair Charville requested a motion to adjourn. Vice Chair Flaws motioned in favor and Ms. MacNulty seconded the motion. The motion carried 5-0.*

Respectfully submitted,  
Sondria Berman