

# **LYNNFIELD PLANNING BOARD MEETING January 26, 2022**

## **1. Call to Order**

Chair Brian Charville called the regular, monthly meeting to order at 7:00pm and said the complete Planning Board (PB) was in attendance, including himself, Vice Chair Kate Flaws, Clerk Ed Champy, and members Amy MacNulty and Page Wilkins; he added that Planning and Conservation Director Emilie Cademartori and Planning Assistant Jennifer Welter were present and that the meeting was being recorded.

## **2. Public Hearing, Scenic Road Bylaw – 169 Essex Street**

Ms. Flaws motioned to open the Public Hearing (PH) and Mr. Champy seconded the motion, which carried 5 – 0. Homeowner Andrew Philbin was present to discuss the columns and stonewall in front of his house. He explained that he called the Building Department to let them know he would be building the columns and made a second call to the Town to alert them to existing damage to the sidewalk. A representative from the DPW did visit the property and said that the sidewalk repair would be “put on the list” for the spring. Mr. Philbin indicated that he believed that the representative was aware of the column work that was going to be done. He also explained that the columns were installed for his wife’s safety purposes. The hired mason used the stone that matched that of the house, which Mr. Philbin said would not have been used had he known more about the spirit of the Scenic Road Bylaw. He also met with Ms. Cademartori and suggested that a notice be sent informing homeowners of this Bylaw, and again remarked that he would not have proceeded as he had, had he been aware of the Bylaw. Chair Charville asked if any stone in the stone wall was touched, to which Mr. Philbin said no.

Chair Charville said that an aerial shows that the columns are in the Right of Way (ROW). Ms. MacNulty asked if the work was complete, to which Mr. Philbin said yes. Chair Charville asked for any abutter comments. Tree Committee Chair Jane Bandini commented that notices had been sent to everyone in the town when the Bylaw was adopted. She reiterated that the columns were in fact in the ROW. Chair Charville questioned the board’s jurisdiction over the ROW per his “read” of the Bylaw. Ms. MacNulty asked if the Bylaw speaks to the “design” or look of any construction in this specific area, to which Chair Charville said no. Ms. Flaws asked if the Bylaw places the onus on the homeowner to come before the Planning Board in advance of any construction in this ROW. Chair Charville reiterated that the Bylaw speaks to curb cut, tree or wall only.

Mr. Philbin said that he likes the existing stone wall and elected not to touch it. Ms. Wilkins commented that “the public ROW along this road shall not be altered, improved or reconstructed without approval” and the way it is written means that the homeowner is meant to

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come before the Town with an application prior to any work. However, the Planning Board is also able to consider mitigation or special circumstances. Mrs. MacNulty asked about any suggestions for the homeowner regarding mitigation. Ms. Wilkins suggested the possibility of moving the columns off the ROW. Ms. Flaws said that she would vote to find that there was no violation, to which Mr. Champy seconded. The motion carried 4-1, with Ms. Wilkins opposed.

Ms. MacNulty asked about notification of the Bylaw for residents, to which Ms. Cademartori said that the notice was originally sent to all homeowners. She added that there appears to be some missing clarity in the Bylaw language, and it is not written in a way that is easy to administer. Mr. Champy added that it is “tricky” for a homeowner to know the boundaries of the ROW, and the flaw in this situation is that nothing triggered this Bylaw, although the Town seemed to be aware of the project before and during construction. He added that the Town needs to treat the Bylaw’s illness, not the symptoms. Ms. MacNulty added that the Town needs to do a better job of informing the public, and that the tax bill mailing is not always the best way. Ms. Cademartori remarked that a new project to be launched in February will provide a notice to all incoming residents for properties that are subject to any Bylaws, inclusive of the Scenic Road Bylaw. Ms. Flaws motioned to close the public hearing and Ms. MacNulty seconded the motion, which carried 5 – 0.

### **3. ANR Plan – 1287 Main Street Assessor’s Map 13 Parcel 855**

Susan Murphy, Esq. with Dain Torpy of Boston, was present to speak on behalf of property owner Sagamore Spring Real Estate Trust. She explained that the east side of the golf course is proposed to be divided into 2 lots of 36 and 70 acres, both with an excess of frontage. She added that she believes the project is in proper form for the Board’s endorsement.

Ms. Cademartori added that one element she believed is deficient is the missing topography for the first 20’ of depth from each frontage. Ms. Flaws asked if any plans for development could be shared with the Board, to which Atty. Murphy said that development possibilities are being discussed, but no information is definitive at this time. The focus currently is just on the driving range parcel (36 acres). She assured the Board that plans would proceed with full transparency. Mr. Champy motioned to endorse the plan and Ms. Wilkins seconded the motion, which carried 5 – 0.

### **4. Sagamore Place Definitive Subdivision – Request for Extension**

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Developer Angus Bruce was not in attendance, as was previously expected. Mr. Champy recused himself from the discussion, as he indicated that he has business dealings with developer David Deloury, Manager of Hannah's View Estates, LLC (HVE) in attendance.

Attorney Robert Lavoie speaking on behalf of HVE provided a brief history of the project and recent activities. He has submitted a request for an extension to complete the remaining work, which is well covered by bond funds. He said that all work could be completed by May, and optimally the project could come before Fall Town Meeting, or possibly Spring 2023 Town Meeting for street acceptance. The timeframe for completion of the subdivision is scheduled to end on February 6, 2022, hence HVE's request that the Board grant an extension.

Chair Charville asked Ms. Cademartori how much time should be granted, to which she responded that there is a one-year contingency after the project is considered complete before it can come to Town Meeting. The time to complete is the physical work, and then there is the one-year contingency which can happen outside of that. Chair Charville asked for any abutter comments.

Ms. Cademartori added that the Town Engineer conducted a full site visit the Friday prior but did not have Atty. Lavoie's memo of this afternoon available to him. He and the Town's outside engineer are in general agreement as to the scope of the work remaining. However, there is about \$15K worth of additional work that remains, bringing the estimate to approximately \$75K, still well within the bond held by the Planning Board (which totals \$167,732). Ms. Cademartori will have the Town Engineer formalize a memo reflecting these adjustments.

Atty. Norm Orban, representing homeowner Jill Larsen at 5 Sagamore Place, spoke to the problems in her home – draining issues, property erosion, safety issues, standing water, etc. Chair Charville remarked that the Board takes whatever the most robust action it can in such a situation and asked if the Board believed the Town could complete the work any faster than the developer. Atty Orban added that project quality is more of an issue than speed, and that homeowners would feel more comfortable with the Town taking over the project. Ms. Wilkins asked if there is currently standing water, to which Atty. Orban said yes. Chair Charville expressed concern about establishing unrealistic expectations at this time for completion of the remaining street work.

Homeowner Dr. Peter Prokopis, 6 Sagamore Place, asked who was holding the permit to which Ms. Cademartori explained that the permits were originally granted to a developer prior to Mr. Bruce purchasing the property. Mr. Bruce now holds the permits under the name – Brookstone Development. Now that the property has been purchased by HVE, she recommends that all

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permits be transferred if an extension is granted. Dr. Prokopis then explained the problems with their purchase of the property and the subdivision construction activities. He summarized these problems as “an absolute nightmare” and that Angus Bruce “is not competent”, and that he and his wife Claudine have sued him over ensuing financial losses and emotional problems. He concluded by asking the Town to take over the project. Chair Charville asked Dr. Prokopis if in the event that Mr. Deloury became involved, Dr. Prokopis would find this to be a more comfortable solution, to which Dr. Prokopis said that he was not prepared to discuss any concerns with Mr. Deloury, as he had come prepared to only address concerns about Angus Bruce, who was named on the meeting agenda. He added that, in general, he would feel much more comfortable if the Town took over the project.

Ms. Flaws asked how the Town would be involved while addressing these problems. Ms. Cademartori said that in terms of site visits and inspections, the Town had engaged consultant GeoSyntec to conduct site visits and identify insufficient elements. Some elements are not seasonally possible to remedy due to snow and cold temperatures. For example, the sediment forebay is scheduled to be cleaned at the end of active construction. Final pavement will require additional survey work and final adjustments to correct puddling. Ms. MacNulty asked Ms. Cademartori if Deloury can competently address the problems. Ms. Cademartori indicated that Deloury has been very responsive, and suggested that a tight timeline with benchmarks would be appropriate. She has also instructed the Building Inspector to deny the issuance of another Certificate of Occupancy until outstanding issues are addressed. She added that temporary solar streetlights were installed just today.

Mr. Lavoie explained that Angus Bruce has never had and does not now have any involvement with HVE, save early involvement as a consultant. HVE is responsible for the roadway. He believes that Deloury is fully reputable and responsible. There is also no disagreement with the Town, and the bond can more than cover the costs. HVE holds the bond, not Brookstone Development. Director Cademartori concurred that Mr. Deloury has done everything the Town has asked him to do.

Ms. MacNulty then asked about liability issues regarding the homeowners and Angus Bruce, to which Atty. Lavoie summarized the problems for each of the homeowners. She then asked if Angus Bruce does not do well, will the homes’ problems negatively affect the infrastructure which would impact what the Town is liable for? Ms. Cademartori answered that the only real concerns are grading and the direction of the water flow, for which the final as-builts will confirm compliance.

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Claudine Prokopis then spoke to problems with their home construction, saying that the situation has been a “disaster”. She concluded by requesting the Town take over the project. Atty. Orban questioned the history of the lines of connection between Angus Bruce and Deloury.

Ms. Wilkins asked Atty. Lavoie about the extension application’s missing affirmation of compliance with section 6.10 – the health and safety requirements pending street acceptance, to which Atty. Lavoie explained it was due to a lack of time. Ms. Wilkins expressed frustration with Atty. Lavoie’s deliverance of the memo just that afternoon. (Chair Charville directed Mr. Deloury, who was sitting in the audience, to stop gesturing and attempting to speak over Ms. Wilkins.) Chair Charville asked if there was a motion to deny HVE’s extension request and draw on the bond. Ms. Wilkins made the motion which was seconded by Chair Charville, who then asked for any debate on the motion.

Ms. Wilkins asked how the Town would be involved should it take over the project. Ms. Cademartori said that the Town would pull the bond, and any outstanding work would be completed by the Town’s vendors. The timeline would be unknown, as the work would be subject to seasonal constraints. The Town would be responsible for the Right of Way and the drainage infrastructure. Regarding work on the individual lots that are no longer owned by HVE, the Town may not have any right to do anything on these lots. However, this issue will require further investigation.

Ms. MacNulty asked if the Board had the authority to commit the Town’s resources to take over the project. Chair Charville said that is why a bond exists. Ms. Flaws asked if there is an HOA already established. Atty. Lavoie said that he is not aware of an existing HOA and is not sure that any monies have been collected to this point. Ms. Flaws also asked if the Board could pursue any relief if the HOA procedures have not been put in place. Ms. Cademartori said that a possibility would be the Town taking HOA monies from the bond funds. Dr. Prokopis stated that there is no HOA in place.

Ms. Wilkins asked if the Board had the authority to pull the bond. Chair Charville remarked that this would be a Draconian move which could significantly mar Deloury’s business reputation. He suggested that the Board consult Town Counsel. Atty. Lavoie suggested being granted a brief 30-day extension so that Town Counsel can be consulted, and other open questions be resolved. Ms. MacNulty asked if a brief 2-week extension was granted, what would be known then that the Board doesn’t already know.

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Ms. Cademartori said that the brief extension would allow time to properly assess the project. Ms. Wilkins stressed the importance of very clear benchmarks. Chair Charville said that it would be important to act now to be ready for the Planning Board's scheduled February 16 meeting, including time to get some of the work done at this time. Also, in fairness to HVE, it would be a good idea to reduce the bond to an amount more in line with the true cost of the remaining street construction. Deloury stated that he is willing to do whatever it takes to put the project right.

Ms. Wilkins remarked to Dr. Prokopolis that she did not wish to make any situation worse for him and other homeowners. Ms. Flaws withdrew the motion to deny an extension. Director Cademartori noted that deliverables will largely be shown on paper in preparation for the February meeting and will largely consist of a better accounting of what can be done, what still needs to be done and the relevant costs. Chair Charville asked if the developer would request an extension until February 16, 2022, to which Atty. Lavoie said yes. Ms. Wilkins motioned to continue the discussion and grant an extension to February 16, 2022, and Ms. MacNulty seconded the motion, which carried 4-0 (Mr. Champy had earlier recused himself, and therefore did not vote). Ms. Wilkins asked Deloury to share the DPW snow plowing information with Ms. Larson's attorney.

### **5. Community Vision / Master Plan Grant Application Update**

Ms. Cademartori reported that she was encouraged by Town Administrator Dolan to make the Master Plan more of an impactful product, with more significant community engagement and that he indicated that he would favor a larger cash match than originally developed in 2020. A call with MAPC suggested that a more robust project would cost in the neighborhood of \$40-45K, for which Ms. Cademartori will put in a \$10,000 cash match capital request. The capital can't be committed until Town Meeting, which is difficult if a cash match must be committed with the grant application beforehand. The grant application should be prepared and submitted in the next week or two.

### **6. Ch. 61 – Richardson Green Update**

Ms. Cademartori informed the Board that the official intent to purchase by Greenbelt has been recorded at the Registry. Greenbelt and Richardson Green are in final negotiations for the P&S. The State's approval of the conservation restriction (CR) has been delayed, and if the State does not approve the CR by February 28, the P&S has an automatic extension until May. The one person in the State who reviews the CR has retired after only reviewing the first draft. Ms. Flaws asked for his name so that she can make further inquiries. Greenbelt has also inquired of

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the Town what permits would be needed to begin work on the small parking area at Richardson Green.

### **7. FY 2023 Budget & Initiatives**

Ms. Cademartori summarized the budget, and department accomplishments and priorities for the upcoming fiscal year, as required by the FinCom. Ms. Wilkins remarked that there are a great deal of accomplishments to be proud of. Chair Charville remarked that John Tomasz is incentivizing residents to do more composting with the announcement of a free tree drawing. Director Cademartori added that the initiative for caretaking of Beaverdam Brook is a priority as it has fallen into disarray. Ms. Wilkins asked about the pocket park initiative on Walnut Street, to which Ms. Cademartori explained that a small park could be constructed in partnership with the Historical Commission (historical site of Gerry's Cider Mill). Ms. MacNulty said that she hopes to see even more collaborative efforts and relationship strengthening with groups such as Greenbelt and Ipswich River Watershed Association, etc.

### **8. Approval of Minutes – December 15, 2021**

Mr. Champy motioned to approve the December 15, 2021, meeting minutes as corrected, and Ms. Flaws seconded the motion, which carried 5 – 0.

### **9. Administrative Matters/Topics for Next Meeting**

Ms. Cademartori noted that the Lynnfield Center Water District letter was received saying that the Vallis Way subdivision could not be recommended at this point, without a guarantee of providing water. More homework needs to be done before the LCWD will support the project. The LCWD letter needs to be posted to the webpage.

Ms. Flaws asked if new Bylaw work would be taken up this year to which Ms. Flaws indicated that solar and green initiatives, as well as the Master Plan should be taken up. Chairman Charville suggested Scenic Road Bylaw language discussion be included. He asked if another Town's Bylaw model was used to formulate Lynnfield's version, to which Jane Bandini replied "not really" and unfortunately, she believed that there was very little legal input from the then Planning Board, and that it was written broadly enough so that the Board could interpret it as it saw fit. Ms. Bandini also suggested that this would be an opportunity to put in the remaining 3 streets that were considered in 2015 but dropped from the original list of 8. These dropped streets were Pillings Pond Road, Salem Street and Walnut Street.

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Ms. Cademartori asked for some guidance on how to proceed with Sagamore Place. She suggested that the Board tie performance to a date certain before any action is taken. Mr. Champy said that the bond agency could challenge the bond balance as it stands now. Ms. Cademartori will speak with Town Counsel and the Town Engineer about the process of pulling a bond and taking over a project in preparation for any February meeting discussions. Ms. MacNulty suggested that this issue be routinely added to the agendas going forward in order to dutifully follow the project.

Topics for next meeting:

- Vallis Way project update / continued public hearing on definitive plan
- Master Plan grant update
- Scenic Road Bylaw – language discussion
- Solar Bylaw
- Sagamore Place – update / request for extension of completion deadline

Ms. Wilkins motioned to adjourn the meeting and Mr. Champy seconded the motion, which carried 5 – 0 at 9:41 PM.

Respectfully submitted,

Jennifer Welter