

TOWN OF STOW  
PLANNING BOARD

Minutes of the June 26, 2018 Planning Board Meeting

Planning Board Members Present: Lori Clark, Margaret Costello, Len Golder, John Colonna-Romano, Karen Kelleher

Absent: Megan Birch-McMichael (Voting Associate Member), Mark Jones (Associate Member)

Lori Clark called the meeting to order at 7:00pm.

**Discussion of Meeting Minutes**

**Minutes of June 19, 2018**

*Margaret Costello moved to approve the minutes as amended.*

*John Colonna-Romano seconded.*

**VOTED: 5-0 Unanimously in favor (Lori Clark, Margaret Costello, Len Golder, John Colonna- Romano, Karen Kelleher-Yea).**

**Public Input**

None.

**Member Updates**

John Colonna- Romano noted that the Attorney General said that towns may extend existing Recreational Marijuana Moratoria, and asked if an extension should be considered at the upcoming Special Town Meeting. Jesse Steadman noted that there is momentum to come to a decision around commercial Recreational Marijuana, and that the Recreational Marijuana forum is scheduled for later in the week and nearly 200 survey responses have been received.

Margaret Costello stated that she appreciates the recent work done at the Pine Bluff Town Beach area, and that she is excited about the construction of the Town Center Park, especially given its benefits to nearby residents such as those at Meetinghouse.

**Planner's Report**

*Upcoming Meetings*

June 27- Recreational Marijuana Public Forum

June 28- Local Business and Job Fair, hosted by the Economic Development and Industrial Commission

July 10 – Public Hearings for an Accessory Apartment Special Permit and an Erosion Control Special Permit

August 7- Listening Session for the Municipal Vulnerability Preparedness Program and a Public Hearing for the Modification of the Springbrook Farm Subdivision

### *Gleasondale Bridge*

Jesse Steadman said that MassDOT's project team has scheduled an open meeting for June 28<sup>th</sup> to review the structure of the bridge ahead of the Bridge Type Selection Worksheet filing. Jesse Steadman said that the potential options for the redesign and the timeline going forward will be discussed.

### *Kane Land*

Jesse Steadman said that members of the Conservation Commission and a Gleasondale resident met at the Kane Land to discuss trail development. Jesse Steadman said that the Conservation Commission members agreed that the area previously thought to be a wetland is in fact more of a low depression. Gleasondale residents will apply for a Request for Determination of Applicability through the Conservation Commission for the construction of trails, though the plans likely will not require a boardwalk.

### *Massachusetts Downtown Initiative Grant*

Jesse Steadman said that he spoke with Peg Barringer of FinePoint Associates, the Town's consultant for the Business District Assessment and Market Analysis of Lower Village. Jesse Steadman said that they reviewed the scope of work for the project and discussed how the study will design trade areas. Jesse Steadman said that FinePoint Associates will complete the study and forward their recommendations to the Lower Village Revitalization Subcommittee, which will then provide recommendations to be included in the final report. Jesse Steadman said that the Planning Department is still collecting letters of interest for the subcommittee, and that members should be appointed in early July.

### *Lower Village Improvement Project*

Jesse Steadman said that the next two weeks of work will be on the north side of Great Road, where the trunk line for the drainage will be installed. Jesse Steadman noted that the rains earlier in the week brought some water backups to Lower Village, though the area is draining normally now. Jesse Steadman said that he would bring an invoicing update for the Board at a future meeting.

### **Endorsement of Arbor Glen Minor Modification Decision**

The Planning Board reviewed and endorsed the decision for the Arbor Glen Minor Modification, as discussed at their meeting of June 19, 2018.

### **Public Hearing**

#### **Special Permit and Site Plan Approval for Screened Storage, Athens Lane**

#### *Applicants Present:*

Frank French

Frank French, Jr.

Michael French

Tim Shannon

Lori Clark stated that the Public Hearing is a continuation from February 20, 2018. Jesse Steadman said that since the last Public Hearing, the applicant discussed their next steps with staff. Jesse Steadman said that rather than continuing the discussion around site planning, the applicant would rather address the issue of legal access and frontage. Jesse Steadman noted that Town Counsel provided a response to a legal memorandum from the owner's lawyer.

Michael French stated that the current owner's attorney put together a legal opinion regarding frontage and access, and asked that the Planning Board provide their opinion on Town Counsel's comments.

Lori Clark stated that the memorandum from Town Counsel addresses legal access and said that her interpretation is that there is sufficient proof of legal access. The Planning Board stated their agreement that there is enough information provided regarding access.

Lori Clark said that Town Counsel raises the issue of whether Athens Lane may be considered a street. Lori Clark read from Town Counsel's memorandum regarding the issue of frontage, quoting that the applicant's "argument is that because there exists evidence that Athens Lane preexisted the adoption of the subdivision Control Law in Stow, the Lane automatically conforms to the zoning Bylaw's definition of a 'street'. This claim is in direct contradiction with both the statutory definition of 'subdivision' . . . and the Zoning Bylaw's definition of 'street'. In both instances, a way that predates the adoption of the Subdivision Control Law must be found by the Planning Board to be of 'sufficient width, suitable grades and adequate construction' to satisfy the definition of adequacy of frontage".

Karen Kelleher stated that she agrees with Town Counsel, as there needs to be legal frontage in order for the Board to consider the proposal. Karen Kelleher suggested that the applicant may have to provide the Board with a subdivision plan to get the needed frontage.

John Colonna-Romano stated his agreement with Town Counsel.

Len Golder stated his agreement with Town Counsel, adding that it is the applicants' burden to provide proof, and he does not feel sufficient evidence has been provided. Len Golder said that he feels that no evidence has been presented towards adverse possession.

Karen Kelleher said that Town Counsel referred to Athens Lane in the memorandum, though Athens Lane does not extend to the property line. Karen Kelleher noted that the owner's attorney referred to Goshen Lane as well.

Lori Clark noted that members are in agreement with Town Counsel, and said that the applicant may be able to create a subdivision road to get the required frontage.

Jesse Steadman recalled the requirement of "sufficient width, suitable grades and adequate construction", noting the gap between Athens Lane and the parcel. Karen Kelleher said that

absent having a subdivision plan with the road laid out, it is difficult to determine the width and construction of the roadway. Karen Kelleher said that with the information provided, Athens Lane is really a right of way or a driveway rather than a street. Jesse Steadman noted the similarities between this discussion and the Planning Board's discussion regarding an Approval Not Required plan on Hallock Point Road. Jesse Steadman said that with that application, Town Counsel recommended the Board look to Subdivision Rules and Regulations and consider whether drainage on the road would need to be updated.

Frank French asked which Town official would rule on whether or not the road is adequate. Lori Clark said that it would be the Planning Board's decision. Frank French asked if the applicants could receive a decision regarding the adequacy of the road. Lori Clark clarified that the Board cannot write a full decision based on what is currently proposed, as the plan details haven't been provided. Lori Clark said that in order to deem Athens Lane a road, the use would need to be considered. Michael French asked if Athens Lane would need to be determined to be a road only if a building is proposed or if only storage is proposed. Karen Kelleher clarified that for a Special Permit the Board needs to ensure the lot complied with zoning, which considers frontage.

Robert Dionisi, attorney for the owner of the parcel, said that he feels a Special Permit differs from a Subdivision and that there is legal access to the 65 acre parcel. Robert Dionisi said that he feels Athens Lane is a way in existence prior to adoption of the Subdivision Control Law and that a plan of land from 1972 shows Athens Lane leading from a public way all the way to the parcel with 16 feet of frontage. Robert Dionisi said that he believes the Town considers Athens Lane a street if it meets the Planning Board requirements for width, elevation, and grade. Robert Dionisi said that he feels Athens Lane is not a public way, as there is not general use by the public, though for over 55 years the owner used the road adversely, notoriously, and continuously. Robert Dionisi said that he feels the Board should consider whether the access meets the grade, elevation and width standards or if it needs to be updated. Robert Dionisi said that if the road is determined to need updating, the Special Permit proceedings should continue.

Len Golder asked for documentation of ongoing use of Athens Lane. Robert Dionisi said that he had previously provided documentation to the Building Commissioner such as affidavits and voting records when the Davis family lived at the parcel. Robert Dionisi said that photos show equipment and former employees on site. Robert Dionisi said that there was uninterrupted use of the road up until the owner's death. Len Golder asked about the use of the road after the owner's death. Robert Dionisi said that because the land is for sale, there has been access from realtors and prospective buyers. Karen Kelleher said that the Board will need to determine whether Athens Lane is a street and then whether there is adequate access and frontage to the lot. Len Golder said that he would like Robert Dionisi to provide the evidence described earlier to the Board.

Joan Duchi, of 209 Hudson Road, disputed the reasoning for this use of Athens Lane. Lori Clark noted that Town Counsel isn't linking specific activity with deeming Athens Lane as a road, though it may be tied to the conversation around sufficient width.

Karen Kelleher asked if the applicant is opposed to submitting a subdivision plan. Michael French said that they are not outright opposed. Lori Clark clarified that the strictest way to gain legal frontage is to create a subdivision road to ensure it meets construction standards, though this is unrelated to housing.

Frank French said that he previously met with the Fire Chief to discuss the width of the road and public safety. Frank French said that he feels the Chief thought that a 16 foot width was sufficient. Jesse Steadman noted that there are new National Fire Protection Association (NFPA) standards which refer to 20 feet of access when there is a building to protect, though the Chief may be more lenient without buildings to protect. Jesse Steadman said that the Planning Department does not have correspondence with the Chief regarding his views on the width of the road.

Frank French noted that Athens Lane has previously been used by heavy equipment, and asked how that will be taken into consideration. Lori Clark said that historical uses wouldn't be considered, as when a new use is introduced, the access would need to be brought up to current standards.

Michael French asked if the Town's consulting engineer would be able to weigh in on the plan provided by Robert Dionisi. Jesse Steadman said that there are a few plans that the Board has previously seen, and suggested that the consulting engineer may point out that the plans do not include profiles and grades. Jesse Steadman said that because of this, the consulting engineer's advice would likely be more general or a site visit would need to be held. The Planning Board discussed the type of information that the consulting engineer would need in order to help make a determination of the adequacy of Athens Lane.

#### *Public Comment*

Ken Duchi, of 209 Hudson Road, said that he feels Athens Lane was illegally widened and that the culvert was illegally installed. Ken Duchi said that he believes there was never a legal habitation on the parcel, and expressed concern about the septic system. Lori Clark clarified that all buildings on the property were never permitted and considered not up to code and illegally constructed.

Keith Curran, of 217 Hudson Road, agreed with the aforementioned NFPA requirements of 20 feet of access, and noted that the road narrows to about 13 to 15 feet at the culvert crossing, which he feels is an inadequate width. Keith Curran asked if the applicants are planning to use any existing structures on site. Keith Curran said that his primary concern is around safe site distances at the intersection with Hudson Road. Keith Curran said that it may be unsafe to have only one egress for the use, and suggested that Athens Lane may need to be widened to a two lane access. Keith Curran said that with the number of trucks driving over Athens Lane and with a new use coming in, it may be time to have a structural assessment of the culvert. Keith Curran also noted that wetlands abut the area, so those impacts should be considered as well.

Gordon Schaubhut, of 27 Heather Lane, expressed his concern for safety at the intersection with Hudson Road. Gordon Schaubhut said that with large trucks pulling onto Hudson Road, Athens Lane should be two lanes.

Ken Duchi asked if the road will be paved as part of the proposed plan. Lori Clark said that the currently proposed site plan does not show a paved road.

The Planning Board discussed next steps, and agreed to request the additional information on Athens Lane that was previously submitted to the Building Commissioner, to be viewed by Town Counsel and by the consulting engineer. The Board agreed to ask the consulting engineer to detail what additional information would be needed regarding Athens Lane to assist the Board in making a determination. Robert Dionisi noted that the information provided to the Building Commissioner was intended to provide evidence that the 65 acres was used as a residence.

Ernie Dodd suggested that it may be helpful for members of the Planning Board to schedule a site walk with the applicants.

*Karen Kelleher moved to continue the Public Hearing to August 21, 2018 at 7:30pm at Town Hall.*

*John Colonna-Romano Seconded.*

**VOTED: 5-0 Unanimously in favor (Lori Clark, Margaret Costello, Len Golder, Karen Kelleher, John Colonna-Romano- Yea).**

### **Recreational Marijuana**

Jesse Steadman said that the revised survey on Recreational Marijuana was posted online and that over 150 responses have been received so far. Jesse Steadman said that the Recreational Marijuana forum is scheduled for tomorrow. Jesse Steadman said that representatives from the Board of Health and Public Safety will attend and speak to any related questions. Jesse Steadman said that the presentation focuses on land use and regulation options, as the Town cannot further limit or prohibit personal use of marijuana.

### **Jillian's Lane Long Term Stabilization**

Jesse Steadman provided a brief update on Jillian's Lane, saying that the Cease and Desist was lifted yesterday after recent inspections showed that the site was well stabilized and the Notice of Intent was filed with the Conservation Commission to install the detention basin to the original specifications.

### **Meeting Adjourned.**

Respectfully Submitted,  
Valerie Oorthuys