

## Planning Board Minutes, 05/24/2016

### Lenox Planning Board May 24, 2016 Minutes

#### Members in Attendance

Pamela Kueber (PK); Kameron Spaulding (KS), *Chair*; Kate McNulty-Vaughan (KMV)

#### Members Absent with Notification

Tom Delasco (TD)  
Ken Fowler (KF), BoS liaison

#### Staff in Attendance

Gwen Miller (GM), Town Planner

#### Guests

Robert Akroyd, landscape architect for Macalin Realty Trust; Mitch Greenwald, attorney for Macalin Realty Trust; Deborah Rimmner, prospective Planning Board member

KS called the meeting to order at 6:03 pm and noted that the meeting is being recorded.

#### Approval of Minutes

**February 9, 2016** (All Boards meeting). KS invoked the rule of necessity for approval of these minutes (a quorum of the members present at the February 9, 2016, meeting was not possible since the PB has undergone a substantial change in membership due to town elections). With minor alterations, KMV moved and KS seconded a motion to approve. The minutes were approved by a 2-0 vote with one abstention (PK).

**May 3, 2016.** With minor alterations, KMV moved and KS seconded a motion to approve. The minutes were approved by a 2-0 vote with one abstention (PK).

#### Macalin Realty Trust, Chestnut Lane

Rob Akroyd of Greylock Design Associates and Mitch Greenwald, attorney, represented Macalin.

Macalin Realty Trust is seeking permission to complete construction of or reconstruct the road on Chestnut Lane so a single-family home can be constructed on Chestnut Lane.

#### Background

Chestnut Lane is a subdivision street (part of the Sullivan subdivision, off Birchwood Lane and near Martha Lane) constructed before restrictions were made on subdivisions in Lenox. There are two existing houses on Chestnut Lane. Macalin owns six properties in this subdivision and is seeking to develop one or two lots on Chestnut Lane.

Representatives from Macalin had come before the PB on August 13, 2013, seeking permission to allow them to continue to develop these properties. At that time, there was concern among PB members about whether a “way in existence” was present (meaning that Chestnut Lane was already constructed prior to the imposition of restrictions on subdivisions). Because the road was split – macadam on both ends but a culvert and stream in the middle – the PB said Macalin first needed to obtain permission from the Conservation Commission for the road. In addition, Macalin was dealing with current abutters in land court. The issue has been resolved with abutters by way of recorded easement; Macalin does have the right to improve Chestnut Lane.

Macalin received permission from the Conservation Commission to reconstruct/improve Chestnut Lane and also to construct a footprint of a house. This will be one single-family home with a septic system to accommodate three bedrooms. If the new owner wished to expand, he or she would need to go back to the Conservation Commission for further permission/amendment.

In addition, Macalin has decided to consolidate its six parcels down to two – one of 1.3 acres, on which a house already has been built; the other 2.7 acres will be a new building lot. Through a Notice of Intent process with the Lenox Conservation Commission, Macalin has determined that the other lots would be very difficult to develop in the future.

#### Discussion

KMV suggested another site visit by PB members. Mr. Akroyd said he had hoped to move forward more quickly to capitalize on the peak season for home sales. KMV suggested as an alternative that PB members informally do a drive-by of the area on their own.

KMV said she feels Macalin has met the three standards for an ANR: frontage on one of three types of ways, vital access, and compliance with the minimum frontage required by the Zoning Bylaw. She asked whether Macalin was seeking an ANR at this meeting, and raised the question about what the law allows. GM said the law states the road has to be constructed already or “certain to be constructed” with some security that that would be the case.

Mr. Greenwald spoke about the status of the road. He said there is something on the ground there that indicates the presence of a road. During the land court proceedings with abutters, there was testimony from people who live there that they had used it as a road or a cut-through. GM asked that the applicant state for the record that the way had been constructed prior to the adoption of the Subdivision Control Act. Mr. Greenwald confirmed this.

In response to a question from KS, Mr. Akroyd said he would consider changing the name of one side of the road that is Chestnut Lane to eliminate confusion in an emergency (fire, police, etc.) since Chestnut Lane is not a through road (the stream bisects it).

KMV asked if the PB could consider the existing condition of Chestnut Lane to be in suitable to provide vital access. GM noted Bobrowski states in the *Handbook of Massachusetts Land Use and Planning Law* that ways must be either actually laid out and constructed on the ground or certain be constructed because adequate security exists under M.G.L. ch. 41 §81U. Two of the four options in the statute are the posting of a bond or recording of covenant. Mr. Greenwald and Mr. Akroyd agreed to the covenant and asked if the PB could expedite its approval so an ANR could be issued as quickly as possible. This seemed a reasonable next step to PB members. Although there was no vote, there was consensus that the PB was willing to take up the covenant matter quickly with an eye toward signing it along with the ANR at the next meeting. Mr. Greenwald will send the covenant language to GM ahead of time for her review.

## **New and Prospective Members**

KS introduced Pam Kueber as a new member and Deborah Rimmmler as a prospective member.

PK said she and her family have lived in Lenox for 15 years. She works from home as a blogger. Her previous career was in corporate communications. She previously has served on the ZBA, with the streetlight project, and was a member of the strategic planning committee for the School Committee. Ms. Rimmmler said she and her family have lived in Lenox for five years. She is an attorney and runs the legal department for an international energy consulting company.

## **Local Tax Incentive Policy Input**

The BoS is seeking input from several town committees regarding the review and execution of TIF (Tax Increment Financing) or STA (Special Tax Assessments) proposals in Lenox. The final decision whether to adopt such a policy rests with the BoS.

GM said some members of the ZBA think the town should not give tax incentives to building projects, such as hotels, already under construction; at the very least, the ZBA would want to know ahead of time that a company will be requesting a tax incentive.

KS disagreed, saying that that knowledge could then become a factor in the ZBA decision. If prior knowledge were required, it would be as if the ZBA were setting tax policy.

KMV said her concern is that the policy could be applied broadly. She would prefer that incentives be restricted to those companies that, for example, build on a site that the town wants to see developed. We should decide the priorities then apply tax incentives to companies whose projects are in keeping with our priorities – be proactive rather than reactive. The same should be true of the proposed jobs/salary metrics. The town says it wants to attract higher-paying jobs suitable for young professionals, so the people who hold them can actually afford to live in Lenox. Hotels and motels might create many jobs but they are not, by and large, high-paying jobs. We should apply tax incentives to those projects that are in synch with what the town says it wants and needs.

GM noted that an applicant needs to get certified at the state level (through the economic development incentive program, or EDIP) and the applicant could get all tax forgiven for the first two years. But in Lenox, it's subject to Town Meeting approval as well. She added that, if Lenox adopts a TIF/STA policy, the town will need to be sure that a staff person monitors this to ensure that the applicant is meeting all the requirements of staffing, jobs, etc., as well as monitoring the tax issues.

KS said he could be convinced that it is a good idea, subject to the resolution of many details. He is in favor of job creation at higher income levels and a metric should be developed to reflect this. But the bigger picture is why is the town considering this to begin with – to encourage job growth, bolster the largest part of our economy (hotels/motels) or generate more income in rooms/meals taxes than the tax incentive would be? He added that the two hotel/motel projects in process now will be done before we ever decide this policy. He looks at the broader idea and sees some good in it. He would be in favor of a tax policy tied to decent salaries – 10 jobs at \$55,000 is a different proposition than 10 jobs at \$11 an hour.

KMV said there's a difference between job growth and economic development. She is more in favor of economic development (there is more benefit to the town, long-term, than the tax revenue benefit).

PK believes there is no need to incentivize a hotel/motel project – these companies will build here anyway because it's a good investment for them. She also said the town needs to be clear on what it wants to accomplish and what problems it is trying to solve – jobs, revenue, economic diversification, or something else? Whatever the TIF/STA policy is, it will be better if it is narrow and targeted to the outcomes the town wants to see. And any decisions need to be based on data. For example, her web research found that the real income generators are small businesses,

particularly those with growth potential. She said she agrees with KS that the town needs to incentivize the kind of jobs where the people who fill those jobs can actually afford to live in Lenox.

She is not in favor of creating yet another committee (the proposed Tax Incentive Review Committee). The town has enough trouble as it is recruiting volunteers for existing committees. Yet there needs to be oversight of TIF/STA decisions so the town will know definitively whether tax incentives decisions have been a “win” for the town.

Following a brief discussion of the future financial status of the town, PK said if Lenox is seen as a town that is financially solid and well managed, and we market ourselves as such, companies will come here. Whatever taxes these companies pay can be plowed back into infrastructure, etc., so that the town remains viable and economically competitive.

GM said this discussion is really a side issue to the zoning bylaw. The PB needs to look at what is in our control and build the bylaw to accomplish things like economic development.

KMV said the PB should continue this conversation. The PB should review the industrial zone – what are its assets; what are the barriers? What is there and what is missing? She also recommended that other PB members look at master plan.

### **Town Meeting: Debrief and Look Ahead**

GM said the list was prepared so the PB can prioritize what issues the PB wants to focus on for the special Town Meeting in the fall and which can wait for next May.

KS noted that the PB’s presentation and recommendations made at the May 5, 2016, annual Town went well and were approved. The town is now awaiting approval from the MA Attorney General’s Office.

KS floated the idea of combining the Lenox Dale commercial and industrial districts into one. In terms of prioritizing, he believes the industrial district is the broadest topic. Perhaps this discussion could be combined with future TIF/STA discussions.

GM suggested that the PB conduct “visioning workshops” and explore additional ways to solicit input from Lenox Dale residents.

### **Other Committees/ BRPC Updates**

There were no reports. KS explained that all PB members serve on other committees: Land Management Committee (KS is delegate), Affordable Housing Committee (KMV is delegate), Historic District Commission (Mark Smith), Berkshire Regional Planning Council (Mark Smith and TD), and Community Preservation Committee (TD). Assignments general are made based on PB member interest and scheduling.

### **Old Business**

None

### **New Business**

None

### **Correspondence**

KS explained that a file is kept of correspondence received. Most is from abutting communities about upcoming meetings or actions taken. PB members are welcome to come to Gwen’s office any time to review the correspondence.

KS entertained a motion to adjourn. PM moved; KMV seconded. The meeting was adjourned at 8:15 pm.

Submitted by  
Alison Sneider