

2 **NEW BUSINESS**

4 **Request to Amend Recorded Plan – Bowyer Minor Subdivision, Plat 2 – Lot 1C, Jacobson Trail. David Bowyer, applicant.**

6 *Mr. DiOrio recuses and Mr. Walker assumes the Chair.*

8 David Bowyer, the applicant, was present.

10 Mr. Bowyer said the land was subdivided five years ago. He wants to turn it back to the original one lot and put the parcel in the farm, forest and open space program.

12 Mr. Walker said the question is regarding the road with designated house numbers. Mr. Lamphere’s memo indicated that the Solicitor should look into this issue as to whether the Board can properly re-combine these lots.

16 Mr. Levesque said his initial impression is that the applicant is before the Board for very specific relief; undoing a residential compound. What appears to be a roadblock here is whether or not this is a private road, an easement, or a right-of-way that separates the two lots. It is the applicant’s burden to tell the Board what the situation is. Mr. Ward, Town Zoning Official, has informed the applicant that the road is currently listed as a private road.

24 Mr. Bowyer brought his deed and minutes from the Planning Board meetings of when the compound was before the Board. The deed says the lots are on a private right-of-way.

28 Mr. Buford suggested looking into other property on Jacobson Trail.

30 Mr. Levesque said there are existing homes on the road and that the town has it listed as a private road.

32 Mr. Cox commented that Lot 12 is on both sides of the trail.

34 Mr. Walker said Lot 1D is also on both sides of the trail.

36 Mr. Lamphere said that is a residential compound done in phases; phase one was the creation of Lot 1D.

40 Mr. Walker asked why we would particularly care if a single parcel is divided by a road.

42 Mr. Levesque responded, does that prevent a merger from occurring?

44 Mr. Walker then asked if there is a legal reason why the parcel can’t be merged because there is a road.

46 Mr. Escher said the lots were one before the subdivision and asked how long ago that was.

48 Mr. Bowyer responded, the subdivision was five years ago.

2 Mr. Walker said there is no mention in his notes of a road or street; it is all in terms of a
4 private right-of-way. It may have been designated as a road since becoming a compound.
6 He suggested the Board get further advice from the Solicitor as to the legality of the
8 request and continue the application to the April 1 meeting.

10 Mr. Levesque said he will be in contact with Mr. Lamphere and will contact Mr. Bowyer
12 if they need more information.

14 *Mr. DiOrio returns and resumes Chair.*

16 **Pre-application – 2 Lot Minor Subdivision (no street creation), Mann Subdivision,
18 Plat 1 – Lot 10, Chase Hill Road at Narragansett Way. Richard Mann, applicant.**

20 Mr. DiOrio said the applicant for the next application is not yet present so we will move
22 on to the Planner's Report until they arrive.

24 **PLANNER'S REPORT**

26 **Administrative Business**

28 ☞ Mr. Lamphere said that he has spoken to Krista Moravec, consultant with the
30 Maguire Group for the update of the Comprehensive Plan, regarding a date to meet
32 with the Planning Board. The date was tentatively set as March 25 at 7:00 P.M., with
34 a location to be decided.

36 ☞ Mr. Lamphere said he attended the Affordable Housing Partnership last night who
38 moved to direct him to present to the Town Council, an ordinance establishing an
40 affordable housing trust fund. He had heard that the Inclusionary Zoning Ordinance
42 has been given to the solicitors.

44 Mr. Levesque asked who was working on that ordinance.

46 Mr. Lamphere said a month ago he and the partnership talked about this issue. Mimi
48 Johnson said she brought it to the attention of Sylvia Thompson. Ms. Thompson left
50 a message saying that she gave the ordinance, or will, to Solicitor Buckley. Mr.
52 Lamphere said he believes that Inclusionary Zoning should be done in tandem with
the Affordable Housing Trust Fund. The fees generated out of the fee-in-lieu of in
inclusionary would be deposited in the trust. The partnership has directed Mr.
Lamphere to include the trust fund in the block grant application for at least two
hundred thousand dollars (\$200,000). That money would then be deposited in the
trust fund to acquire land or other things that are listed in the ordinance. Mr.
Lamphere said we can apply for \$400,000 in block grant money this year, up from
\$250,000 last year. Unemployment in this area rose to justify that increase. A good
portion of the money requested is taken up by agencies, revitalization and town-wide
housing rehabilitation.

☞ Mr. Lamphere mentioned that a comprehensive permit is coming our way. We did
pass a Comprehensive Permit Ordinance in November, 2003. Changes in state law
in 2004 made that moot. At this point we will fall back on the state law that tells us
what the applicant will have to provide as part of an application package.

☞ Mr. Lamphere said there is a list of items that are in the pipeline that he believes can
be moved forward by getting representatives of boards and commissions to shepherd

2 them through. If there is a particular ordinance that has been worked on, is in limbo
3 right now, and a board member is concerned with it, it is best for a board,
4 commission or community member to push it forward. He will bring the list of
5 outstanding issues to next month's meeting to focus our resources on what the town
6 really wants to get done.

8 Mr. DiOrio said when we start a new task, it should be in that light, if it is worthy of
9 our efforts.

10 **Return to New Business – Mann Subdivision**

12 Terry Rhodes of A.R.M. Engineering represented the applicant. Mr. Mann was also
13 present.

14 Mr. Rhodes said the parcel is 12 ½ acres off a private road off Chase Hill Road. It is pre-
15 developed land first deeded in the 1940's. Mr. Mann purchased the land with a house
16 and wants to create another lot as a residential compound. They are before the Board
17 concerning the fifty (50) foot right-of-way requirement for access on to Chase Hill Road;
18 they would be gaining that through a private road. He said there is no designation for the
19 width of the road on Chase Hill Road. There is 140 feet on Chase Hill Road owned by
20 Narragansett Electric, now National Grid. They would like to use Narragansett Way as
21 their access right-of-way and cut one driveway on the existing driftway to enter this five
22 (5) acre lot they are creating. The applicant owns a right-of-way to Chase Hill Road.
23 There is a court case where he also gained access along Narragansett Way to Chase Hill
24 Road. Wetlands have been flagged. There would be 640 feet along the road
25 [Narragansett Way] and 394 feet to the first right-of-way.

28 Mr. DiOrio asked if the site has fifty feet of frontage on Chase Hill Road.

30 Mr. Rhodes responded that it does through the right-of-way. He believes that the
31 regulations read that he needs fifty foot access to Chase Hill Road.

32 Mr. Levesque read from the regulations stating that each will have access to a public
33 street or a private street by a legal right-of-way so that all lots in a residential compound
34 will have access to a public street. A private right-of-way must have a minimum of fifty
35 feet of frontage on a public dedicated road.

38 Mr. Walker asked the width of Narragansett Way.

40 Mr. Rhodes responded, 147 feet. The court decision gave the use of the right-of-way but
41 with no dimensions. There are no deeds to Narragansett Way when it was done by a
42 court case; width was never in the court case just the right to use the road.

44 Mr. DiOrio asked if there at least fifty feet on Chase Hill Road.

46 Mr. Rhodes said the utilities on the west side of the road are part of the right-of-way. The
47 utilities serve Mann, Lanphear and Narragansett Utilities.

48 Mr. Walker said the regulations say each building lot shall have frontage on a public
49 street or frontage on a private street by a legal right. A private right-of-way shall show
50 on the final plan, in its entirety, the run along a private street with the building lots in a

2 residential compound. The private right-of-way must have at a minimum of fifty feet of
4 frontage on a public dedicated roadway. Do we have that?

6 Mr. Levesque asked if Mr. Rhodes was saying that the private right-of-way that is off of
8 Chase Hill Road has fifty feet of frontage that the applicant is entitled to.

10 Mr. Rhodes, yes.

12 Mr. Levesque asked Mr. Rhodes to indicate where it says fifty feet.

14 Mr. Rhodes responded that it doesn't say anything; he just explained why he thinks it is
16 fifty feet. There is 147.43 feet of frontage on Chase Hill Road, in the center of which is
18 Narragansett Way. Because of any setbacks for any zone in this town, that can not be
20 used for anything other than a right-of-way. The telephone poles, which are usually
22 placed in the public right-of-way, to the west side of that road is more than fifty feet.

24 Mr. DiOrio asked if Narragansett Way goes beyond the 147 feet and extends to the
26 property line shown.

28 Mr. Rhodes responded, no and indicated where he considered the right-of-way to be
30 located and the point where Mr. Mann has a right to put a driveway through.

32 Mr. Mann said Narragansett Way is a two lane road. It has a boat ramp at the end. Fire
34 trucks use it to get to the river to fill up.

36 Mr. Rhodes said the people who owned the property and Narragansett Electric did not
38 designate where the land is. As he understands it, according to survey law, if the grantor
40 did not designate where that access was, how wide it is and the exact, specific
42 locations of it, then the grantee can designate that. If the owner of that right-of-way made
44 no attempt to ever clear that up, then they can designate wherever it is and basically do
46 whatever they would like to do within reason.

48 Mr. Walker asked where it is established that the road frontage on Chase Hill Road is
50 fifty feet.

52 Mr. Rhodes responded only by occupation; it is paved thirty feet. It is not paved to the
highway line at that point. The fact that there are telephone poles shows him that
Narragansett Electric allowed them to use those and by occupying and using them, they
have in fact created a roadway of more than fifty feet.

Mr. Buford said the road goes back one-quarter mile and asked if Mr. Rhodes was
representing that as frontage.

Mr. Rhodes responded that they have indicated they have the right to use that road.

Mr. Mann said the intent of the fifty foot right-of-way is to provide for emergency
vehicles and a buffer for the neighbors.

Mr. DiOrio said the intention in the mid-80's may have been different. The issue is a
clause that states you will provide entrance. If the Board is okay with occupation, that
would seem to open the door. However, if the Board is not comfortable with that...

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Mr. Rhodes interjected, that is why they are here. If it requires that they get something in writing from Narragansett Electric, which is what they will try to do. They could apply to the Zoning Board for variance for just what it is. He can prove that it is not an access problem.

Ms. Capalbo said Narragansett Grid was present at the last Council meeting regarding enlarging a small substation. If the same, they might be enlarging the road.

Mr. Lamphere said that is not the location.

Mr. Walker said the 1951 deed, which was referred to in the court case, refers to a 70 acre parcel with a certain piece of land approximately twenty feet in width, running in a southerly direction from Chase Hill Road, subject to a right-of-way reserved by the grantor for benefit of all portions of that property; a common passage way or right-of-way to and from Chase Hill Road, with a width of twenty feet, is to be kept open for the common benefit of the owners.

Mr. Rhodes said that is the original right-of-way, to Narragansett [Electric] and to the applicant's property. It is not Narragansett Way; it is the original right-of-way with the road still there but which they do not currently use.

Mr. Mann said that cuts through his yard. They used to use his yard to get to the other property.

Mr. Rhodes said there was no problem at that point. Then Narragansett, to get within 180 feet of Chase Hill Road on the 70 acres, used as their access point, the original 20 foot right-of-way. Narragansett then bought the 180 foot strip and installed the road [Narragansett Way] through the middle of it, from the fork to Chase Hill Road.

Mr. Walker said that from reading the deeds and the Supreme Court opinion, he does not see where it is documented they have the right to use Narragansett Way. The deeds refer to a 20 foot wide right-of-way.

Mr. DiOrio said the Board is not in the position to interpret deeds. He suggested the applicant return to the Board with a solution.

Mr. Mann asked, to get one more lot, does he have to show he has a right-of-way along Narragansett Way.

Mr. DiOrio replied that he needs the mechanism by which the Board allows the applicant to create the lot or lots. The applicant is allowed the number of lots the regulations allow.

Mr. Mann said he has legal access to his yard now with the right-of-ways.

Mr. DiOrio said there is a different set of criteria to do a family compound.

Mr. Levesque said it seems they are lacking that definition, the proof of the fifty feet on Chase Hill Road. What the applicant has given the Board does not give the answer.

Hopkinton Planning Board Meeting – March 4, 2009

2 Mr. Walker added, the ordinance requires that you have access by a private road or right-
4 of-way that is fifty feet wide. The only information that has been provided is the
description of a right-of-way of twenty feet.

6 Mr. DiOrio said the width is important but it also has to be clear that the applicant has the
8 right to use it. If that information was before the Board, the rest of the application could
be reviewed.

10 Mr. Rhodes said it is perfectly clear what the Board is asking and does believe it is to his
12 client's benefit to get this straightened out.

14 Mr. Walker said if he were building a house there, he would want something from
Narragansett Electric saying he has full legal right to use the drive.

16 Mr. Lamphere asked if Mr. Rhodes was asserting that Narragansett Way has a right-of-
18 way associated with it of fifty feet because of the telephone pole placement.

20 Mr. Rhodes responded, right.

22 Mr. Lamphere asked if Mr. Rhodes was saying Narragansett Way has a right-of-way of
fifty feet associated with it, extending from Chase Hill Road down to the river.

24 Mr. Rhodes said his view is the telephone poles are there and they can use the poles. The
26 distance between the telephone poles and the road is 25 feet. The road itself is another 25
28 feet. The land between the telephone poles and the road is useless for anything else.
They [Narragansett Electric] never planned for this land to be used for anything other
than access.

30 **CORRESPONDENCE AND UPDATES:** None

32 **PUBLIC COMMENT:** None

34 **DATE OF NEXT MEETING:** April 1, 2009

36 **ADJOURNMENT:**

38 MR. WALKER MOVED TO ADJOURN THE MEETING.

MR. COX SECONDED THE MOTION. ALL APPROVE.

The meeting adjourned at 8:28 P.M.

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Attest: _____

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Lynda St. Amour
Planning Board Clerk

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48 Approved: _____