

February 25, 2021

Kerri A. Martinek, Chairman
Northborough Planning Board
63 Main Street
Northborough, MA 01532

RE: Definitive Subdivision Plan
0 Bartlett Street, Marlborough, Massachusetts

Dear Chairperson Martinek and Members of the Board:

I think it might be important to clarify the authority of a Planning Board regarding a Definitive Subdivision Plan. Much of the discussion that the Board has had with the Applicant at the previous two (2) public hearings demonstrates there may be some confusion as to the role of the Planning Board for a subdivision.

The analysis starts with the purpose of the Subdivision Control Law was enunciated in Massachusetts General Laws Chapter 41, Section 81M. The purpose is to:

“protect the safety and convenience of the inhabitants of the City or Town...by regulating the layout and construction of ways and subdivisions providing access to the several lots therein but should not become public ways...”.

Specific guidance as to the discretion and authority of a Planning Board is provided further in Section 81M. The language adopted by the Legislature is clear:

“It is the intent of the Subdivision Control Law that any subdivision plan filed with the Planning Board shall receive the approval of such Board if said plan conforms to the recommendations of Board of Health and to the reasonable rules and regulations of the Planning Board pertaining to subdivisions of land (emphasis added).”

The scope of permissible Planning Board rules and regulations is articulated in Massachusetts General Laws Chapter 41, Section 81Q which creates the authority for such rules and regulations. The authority of the Board to adopt rules and regulations is centered upon the mechanics as to the size, form and contents of plans and “shall set forth the requirements of the Board with respect to location, construction, width and grade of the proposed ways as shown on the plan and the installation of municipal service therein...”

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The above language makes it clear that regulations cannot create a discretionary determination by a Planning Board as to whether the definitive subdivision plan is in the best interest of the neighborhood or may cause adverse impacts through the use of the lots created by such a plan upon that neighborhood. That analysis is limited to the regulatory structure in place as it relates to each of the applicable lots.

There has been extensive discussion during the public hearing process relative to the provisions of Section 10-20-070 of the Subdivision Rules and Regulations in Northborough as it pertains to the Conservation Commission approval. My previous correspondence of February 12, 2021 provided the Board a copy of the Order of Conditions issues for the project previously denied by the Planning Board which showed that the Conservation Commission had approved significantly greater work than proposed by the subdivision plan. There is no rational basis for one to conclude that the present subdivision plan is incapable of ultimate approval by the Conservation Commission. Despite that, the Board, through the Chair, has articulated a requirement that the Applicant provide a determination from the Conservation Commission that the Wetlands Protection Act is not applicable or has filed a Notice of Intent for the definitive plan. For reasons set forth in my previous correspondence, the Applicant is respectfully unwilling to comply with such request.

The authority of the Board, and the Rules and Regulations, to require such referral first to the Conservation Commission is directly contrary to the language of Massachusetts General Laws Chapter 41, Section 81Q. The statute states unambiguously:

“such rules and regulations shall not require referral of a subdivision plan to any other Board or person prior to its submission to the Planning Board.”

The above analysis is equally applicable to the Board’s continued request that the existing 8(M) Permit issued by the Massachusetts Water Resource Authority be updated to make reference to the subdivision plan.

The Applicant recognizes that it is within the authority of the Board to condition approval of the definitive subdivision plan that the approval from both the Conservation Commission and WRA be obtained prior to the construction of a subdivision road. The Applicant has already offered that Condition.

If there remain questions as to the veracity of the information provided in this correspondence, I recommend you provide same to Town Counsel and obtain his thoughts. It is very important for not just the applicant but for the Town of Northborough that the Board recognize and follow

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the appropriate statutory procedure in utilizing its powers and not stray far beyond its jurisdictional base.

I look forward to renewing the discussion regarding the definitive subdivision plan on March 2nd.

Very truly yours,



Mark L. Donahue

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