**HARWICH PLANNING BOARD**

**TUESDAY June 22, 2021**

**MEETING MINUTES**

**Griffin Meeting Room, Town Hall, 732 Main Street**

**BOARD MEMBERS PRESENT:** Duncan Berry (Chair); Craig Chadwick; David Harris; Mary Maslowski; Joe McParland; William Stoltz; Arthur Rouse (alternate)

**BOARD MEMBERS ABSENT:** Allan Peterson

**CALL TO ORDER**: Mr. Berry called the meeting to order at 6:33PM. He asked that anyone in the public who wished to record the meeting let him know as Chair. No attendees indicated that they planned to record the meeting.

**PUBLIC HEARING: PB2021-10 Eastward MBT LLC, Modification of OSRD Use Sp. Permit**

Mr. Berry opened the hearing by reading the notice. Applicant requested to continue the case to July 13th, 2021. He also noted that the applicant waived the required time for the Board to open the hearing.

Ms. Maslowski moved to continue the public hearing for PB2021-10. Seconded by Mr. Chadwick. Vote: 6-0 (Mr. Rouse, as alternate, abstained)

The Case is continued to the Board meeting of July 13th, 2021

**PUBLIC MEETING*:* PB2021-12 Christopher Wise (Applicant), ANR Plan**

Mr. Berry opened by reading the notice for the matter. He asked the applicant to present the request.

Attorney Andrew Singer, counsel for the owner and applicant, referred to the Approval Not Required Plan and ANR application package submitted, including his legal memorandum. (The plan was displayed with a screen and projector). He discussed the proposed land division as depicted on the ANR plan. He discussed the basis for and evidence provided in the application supporting the status of Hall’s Path between Route 137 and Pleasant Bay Road as a public/ town way*.* He discussed the standards and requirements under the Harwich Code and State law for allowing an ANR land division off a public way. He discussed the history of titles, road layouts and improvements, developments and other ANR plans off Hall’s Path. He discussed the recent improvements and clearing in the section of Hall’s Path that is the subject of the ANR plan. He discussed the gate the town installed on Hall’s Path. He concluded that the ANR plan warrants endorsement, with Hall’s Path as a public way having the required existing frontage that provides safe and adequate access to the proposed lots. He said that as such, the proposal is not a defined a ‘subdivision’ under the law, and thus does not require subdivision approval. He requested endorsement of his clients’ ANR plan.

Mr. Berry asked for comments from Town staff.

Jon Idman (Town Planning Director) referred to his written staff report prepared for the matter. He discussed the proposed ANR, and legal standards for endorsement under the Harwich Code and State law. He said one of the principal things for the Board to consider was what type of road Hall’s Path is between Rte. 137 and Pleasant Bay Road, especially because if it is a public way, a different standard for endorsement applies and the plan would warrant endorsement if the way is passable and not illusory, i.e. “paper way” or not actually on the ground. If the way is private, even if ‘ancient’ or predating the adoption of the subdivision control law in the town, more rigorous standards apply to determine whether the way provides safe and adequate access. Also, with such a private way, the Board can consider the road construction standards set out in the town’s subdivision rules and regulations, Table 1, in determining adequacy. He said that the evidence provided by the applicant gives the board discretion in its determination; he did say that it was clear from the submission that Hall’s Path existed at the time subdivision control became effective in the town in 1949.

Mr. Berry said he would allow public comments even though the proceeding was not a public hearing, however, asked they remain under 5 minutes and focus on the issues at hand.

Sandy McLardy, Pleasant Bay Rd, East Harwich, stated that the ANR plan should not be endorsed based on case law in the Commonwealth he thought was analogous, cited access problems and problems with the road condition, and stated the applicant cleared trees and did road work without rights, permits or approvals. He opposes the plan.

Don Howell, announced that he is a Selectman and Selectman’s Liaison to the Planning Board, and stated the Board of Selectman recently formed a subcommittee to investigate the clearing associated with this ANR plan on Hall’s Path. He said the selectmen consider this clearing and road work to be an egregious act.

Clara McLardy, Pleasant Bay Rd, East Harwich, stated the town installed the gate in Hall’s Path to stop more work from being done that she thinks was unauthorized. She referred to opinions from Police, Fire Department and DPW about the claimed substandard nature of the way for access. She opposes the plan.

Eleanor Smith, 1360 Halls Path stated her house was one of the first houses built off Hall’s Path and is the first house located after the charter school coming from Rte. 137. She said that she believes the road is public, and that the letter from former Town Engineer M. Moran from the 1980’s included in the application referring to Hall’s Way as a public way was written for her family when it built their house. She said that Hall’s Path is very narrow and always has been, grown in with vegetation, and that when her family built Hall’s Path it may have only been cleared to several feet wide. She said it is not adequate access for a lot of development.

Sarah Turano-Flores, Attorney representing The Cape Cod Lighthouse Charter School, referred to the letter she submitted to the Board on the matter. She asked whether the Board could continue the matter until its next meeting so that the school could better review and comment on the proposed plan. Ms. Flores discussed why she thinks the road is private, how the Hall’s Path access on the school’s property narrows, how trees were cleared on the school’s property without permission and the school and applicant are currently discussing a resolution, and the standards for the board to consider for the endorsement in the case of a private vs. public way.

Bud Escher, 1378 Halls Path, talked about how impassable the road was prior to the clearing. How the clearing took place without permission or authorization. Mr. Escher also stated the gate was put up in part because of the school for safety reasons, and noted the property damage he said that occurred during the clearing.

Don Howell, spoke again to clarify the gate was put up by the Selectman to prohibit construction vehicles access over and to that area of Halls Path.

Peter Banziger, 1380 Halls Path, lives across from proposed Lot 4, and had questions regarding the possible future division of Lot 5, which is labelled ‘unbuildable’ on the ANR plan.

Mr. Idman replied if Lot 5 is divided in the future, it will have to go through the full subdivision process, not an ANR.

Mr. Banziger asked about the sewage plan for the proposed lots.

Mr. Idman responded that is not within the Board’s purview as part of an ANR request.

Attorney Singer responded to the Board regarding the public comments, noting among other things that Hall’s Path is a variable width road, and that it has been widened over the years in the same manner that the applicant has and proposes to do. He said that the evidence is overwhelmingly in support of Hall’s Path being a public way.

The Board discussed the regulations and law relevant to the case with Mr. Idman, specifically what to consider in determining whether a road is private and public. They discussed subdivision review vs. ANR review. They also discussed that it is the existing conditions of the way that is before the Board for review. The Selectmen have an ongoing investigation about matters that are not within the Pl Board’s purview. Discussion ensued regarding the possibility of continuing the case and asking the applicant to waive the 21 day review period under the law. Without the applicant’s consent, it could lead to constructive endorsement if the Board fails to act in the 21 day period.

Atty. Singer stated that a public way may just be an easement with a property owner still owning the fee underneath the way. He also discussed the ability to widen he way by clearing on one’s own property. He said that access is available from both Rte. 137 and Pleasant Bay Road. He said title information has been provided with the application, though the Board has limited authority to deal with title and ownership.

Mr. McLardy said that there is not adequate access to the land proposed for the ANR division because it is Hall’s Path narrows to only about 10 feet wide from both Rte. 137 and Pleasant Bay Road access points.

Ms. McLardy said that the Board should consider how the subject portion of Hall’s Path became cleared.

Mr. Berry mentioned the Selectmen’s concern over Hall’s Path.

Mr. Chadwick mentioned that the Pl Board has limited purview under an ANR endorsement request and should only be discussing matters relevant to the requested endorsement.

The members discussed requesting a continuance.

Mr. Idman reminded the Board that an ANR was a kind of exception to the subdivision control law. Even if the Board decided not to endorse the current plan and require subdivision review and approval for the division, the Board’s jurisdiction is limited to access issues. He said the Board needs to analyze alternatively, and according to separate standards for endorsement, whether Hall’s Path is public or a private way predating subdivision control (there is no evidence that the section at issue is a subdivision road).

The Board discussed the language of GL Ch 41 Section 81L.

Mr. Singer suggested that the Board focus on the threshold question about whether Hall’s Path is considered a public way.

Ms. Maslowski asked whether the applicant would waive the 21 day period and allow the board to continue the case to July 13, 2021.

Mr. Singer suggested a 10 minute recess, during which he could confer with his clients.

Ms. Maslowski motioned for a 10 minute recess. Seconded by Mr. McParland

Voted: 7-0 in favor. 10 Minute recess began at 8:10PM.

Mr. Berry called the meeting back into session at 8:20PM.

Attorney Singer stated his client does not want to continue the case and respectfully will not waive the 21 day period. The applicants say that they have been working with the town and its staff for a month or two on the matter already. He said that his clients do not believe that the ANR Plan shows a subdivision, whether Hall’s Path is public or private, but to the extent the Board decides not to endorse, he says the Board needs to provide a reason why the Board feels the ANR plan shows a subdivision.

Don Howell said that he is appearing on behalf of the Selectboard, not just on his own. He said that the 2000 letter from the town clerk did not state that Hall’s Path was maintained or travelled as a town way.

Attorney Singer stated that the type of way in 81L listed as a way certified and maintained by the town clerk as a public way is different than a public way. He said the applicant is not maintaining that Hall’s Path is the former, and so agrees with Mr. Howell and believes the letter from the Town Clerk is consistent with the applicants’ position.

Attorney Flores stated due to the property lines of the school, the access to the land (on the school site) proposed for the division is only 8 ft. wide; she said the area cleared without permission on the school property to widen Hall’s Path cannot be considered for wider access.

Mr. Idman stated that if the Board does not feel that Hall’s Path is a public way but instead is a way that predated adoption of subdivision control in the town, the burden is higher to endorse the plan. The Board needs to look in more detail at the road condition if Hall’s Path is not a public way, and can look at the town’s road construction standards in Table 1 as stated in the town’s subdivision regulations Code Section 400-9.

The Board discussed and most members felt that there was not enough evidence to support that Hall’s Path is a public way. The agreed that it predated adoption of subdivision control in the town. They asked Mr. Idman to read Table 1 to consider in determining whether Hall’s Path is of sufficient width, grade and construction for access to the proposed lots; the Table includes reference to the specific standards for improved road width, paving, layout, etc.

Mr. Berry confirmed that the members have been to the site to view the subject section of Hall’s Path.

Ms. Maslowski moved not to endorse the ANR plan as presented based on the following reasons:

1. The ANR plan depicts a subdivision under Chapter 41, section 81L and chapter 400 Section 9 of the Harwich code.
2. There is not sufficient evidence that Hall’s Path is a public way, including no judicial declaration of prescriptive public use;
3. Hall’s Path does not provide sufficient width, grade and construction for safe and adequate access and travel as specified under Table 1 to Chapter 400 of the Harwich Code.

Seconded by Mr. McParland. The Motion carried. Voted (5-1): 5 in favor, (Duncan Berry, Chair; David Harris; Mary Maslowski; Joe McParland; William Stoltz), 1 opposed (Craig Chadwick). Arthur Rouse (alternate) abstained.

The ANR is not endorsed by the Board.

**PB2021-13 Harwich Affordable Housing Trust, applicant, ANR Plan**

Mr. Berry opened by reading the notice for the matter. The plan was displayed on the screen. Thomas Stello, P.L.S., representativepresented the plan. Mr. Idman then discussed the request and his staff report. Pleasant Lake Avenue and “Bassett’s Lane” are both public ways by layout. All the building lots affected by the plan have the required lineal frontage under applicable zoning, and the ways exist on the ground and are passable.

Don Howell, Chair of the Town’s Affordable Housing Trust, the prospective purchaser, stated it’s reasonable to infer because of who is buying it, that it will not be developed under CH. 40A and that this plan is only to perfect incorrect lot lines.

Ms. Maslowski moved to endorse the ANR Plan as not depicting a subdivision and not requiring subdivision approval. Seconded by Mr. McParland. The Motion carried. Voted: (6-0); 6 in favor, none opposed (Duncan Berry, Chair; Craig Chadwick; David Harris; Mary Maslowski; Joe McParland; William Stoltz). Arthur Rouse (alternate) abstained.

The ANR is endorsed by the Board.

**APPROVAL OF PRIOR MEETING MINUTES**

Mrs. Maslowskimoved to approve the draft meeting minutes as written for May 25th, 2021. Seconded by Mr. Stoltz. The motion carried. Voted 7-0. The minutes are approved unanimously.

**OTHER BUSINESS**

The Board and Mr. Idman discussed language revisions for the 2021 Planning Board schedule to accommodate general planning discussions the first meeting of the month. There was a request from Mr. Chadwick to salute the flag at the beginning of every meeting. The Board agreed. The Board also discussed potentially modifying regulations for subdivision.

**ADJOURNMENT**

Mr. Berry made the motion to adjourn at 8:45PM. Seconded by Mr. Stoltz. Voted 7-0; the motion carried unanimously.

**MATERIALS USED AT THE MEETING**

* Planning Board Meeting Agenda for 6/22/21
* Staff Reports for matters PB2021-12&13
* ANR Plans for matters PB2021-12&13

Adopted: July 13, 2021