**Town of Weston**

**Planning Commission**

**Minutes of Meeting and Hearing**

**September 13, 2022**

**Present:** Deborah Granquist (Acting Chair), Anne Fujii, Laura Katz, Tom Foster**,** Jeff Lennox

**Public:** Will Goodwin, Zoning Administrator (ZA)

 Chris Lindgren, Applicant

 Jeff White, Project Attorney

 Jessica Rizio, Weston Town Engineer

 Frank Parent, Project Engineer

 Ryan Hart, Weston Fire Department Chief

H**earing**: **Chris Lindgren Subdivision Final Plat Review (continuation)**

The hearing was held at the Weston Town Office with Mr. Parent, Mr. White and Ms. Rizio attending remotely on Zoom. Deborah Granquist, Chair, called the hearing to order at 5:02 PM, noting that this was a recessed hearing from the previous August 15, 2022 hearing.

Ms. Granquist noted that the Agenda for this meeting included the approval of minutes from the three previous hearings. *Motion by Tom Foster and seconded by Laura Katz to approve the minutes of June 7, 2022, July 5, 2022 and August 15, 2022. Motion carried unanimously*.

Ms. Granquist noted that since this is a recessed hearing, everyone continues to be under the oath taken at the previous hearing. Since Mr. Parent was not present at the previous hearing, he took the oath.

As the minutes of the August 15, 2022 hearing indicate, the PC requested various documents and information from Mr. Lindgren. The only item that Mr. Lindgren brought with him was his list of waivers (copy is attached to the minutes). The Zoning Administrator said that Mr. Lindgren also submitted an email referencing an email from ANR.

Ms. Granquist noted that 2 hours have been allocated to the hearing. The purpose of the hearing is to get an update from Mr. Lindgren telling the PC why the subdivision meets the requirements of the Subdivision Regulations and to also allow Mr. Lindgren the opportunity to respond to the issues raised in the minutes of the 8/15/22 hearing. Ms. Granquist asked Mr. Lindgren provide the PC with any information he thinks we need in response to the issues raised in the minutes of the previous hearings. This is information that the PC needs in order to make a decision.

Mr. Lindgren began by saying that he doesn’t know where we are so he plans to turn this over to the professionals to help the PC to make a decision. But he had some materials to give to the PC: letter from Don Stein surveyor, list of waiver requests. He said he is confused as to where we are in process and that he belives that he has already told the PC why the project meets the subdivision regulations.

**Survey** -- His surveyor is working on the survey, which should be done soon.

**Waivers** – Mr. Lindgren read his list of twelve requested waivers including reasons for each waiver. Ms. Granquist reminded him that the waiver requests must comply with Section 140 of the Subdivision Regulations. A few of Mr. Lindgren’s waiver requests drew comments from the PC as follows:

1. **Waiver of Performance Bond**. Requested because many of the improvements have been completed and the remaining will be completed upon approval or contingent approval of the subdivision.[[1]](#footnote-1) Mr. Lindgren stated that the private road is complete except for 6” of crushed stone. When Ms. Granquist asked when these improvements will be completed, he responded that it will be when the PC tells him that “we are headed for an approval of his project”. He does not want to spend money for survey, road, community septic system, etc. without knowing that the subdivision will be approved. This creates an economic hardship for him. Ms. Granquist made it clear that economic hardship was not a good reason for granting a waiver. Mr. Parent asked whether it is a condition of Weston’s subdivision regulations that improvements be completed before permit approval. Ms. Granquist said yes, the applicant either has to complete the improvements prior to final plat approval or post a performance bond to guarantee completion. Mr. Parent added that knowing when the improvements might be complete is difficult to calculate, but it probably would be safe to say that they could be completed within 2 years of PC approval of the subdivision.
2. **Waiver of installation of storm drains.** Requested because this is an antiquated requirement and is met by our storm water plan. Current idea is to keep storm water run-off on the property.
3. **Waiver of installation of fire hydrants.** Requested because Mr. Hart, Weston Fire chief, has said that they are not necessary. Mr. Hart spoke to this and said that because there is no good water source on the property and because the parcel was close to the West River, which could be used as a water source, he did not see the need for a fire pond and hydrants. He explained that the Fire Department would shuttle water. Mr. Hart said he would be willing to write a letter confirming this. Concern was raised about the ability of a fire truck to get up the steep narrow driveways and turn around.
4. **Waiver of private access road to meet A76 standards**. Request that the private access road be 20’ wide instead of the required 22’, because he believes that some small development roads in Weston are maintained to 20’. It also would be less impervious surfaces (approximately 1200 SF). Mr. Hart said he would prefer 22’ width but if the precedent has been set at 20’ he could go with that. Mr. Lindgren said that the Town maintains Maple Hill Road to 20’ not 22’. Mr. Foster posited that even though the Town may be maintaining to 20’ now, they may want 22’ in the future. Mr. Hart left the hearing to answer an emergency call.
5. **Waiver of requirement that driveway grade shall not exceed 10%.** Mr. Lindgren requests grade of up 12% and 15% for short runs (less than 100’) because this meets the state construction standard B51 for driveways. There was some confusion as to whether B51 or B71 applies here. Applicant to provide the correct reference. Mr. Lindgren reminded the PC that all driveways are constructed by future lot owners not by him.[[2]](#footnote-2)

**Inspection fee.** The Zoning Administrator asked if Mr. Lindgren would like a waiver of the Inspection fee, since it was not listed on the Waiver List. Mr. Lindgren said if it is typically waived, then he wants a waiver.

**Construction Inspection.** The Zoning Administrator asked if Mr. Lindgren would like a waiver of inspection during construction process, which the ZA doesn’t think ever has been done. Mr. Lindgren said he doesn’t think the Town Engineer needs to inspect the community septic since he would have Frank Parent inspect and sign off on it. With respect to the road, he did not know how an inspection would be done. He did ask for a waiver from a double inspection of the community septic system. Mr. Lindgren asked Ms. Rizio what she thought about the inspections. She mentioned that whoever does the septic inspection has to issue an installation certification and the town could get a copy of it. She said she has done road installation inspections for Winhall and Londonderry to make sure that the materials are ok and the slopes on the sides are not too steep etc. Inspection is to make sure that the applicant does what he says he is going to do in the plans.

Ms. Granquist asked Mr. Lindgren if he has anything else to present. He said he is done.

Mr. Parent spoke next:

1. **Amended Wastewater permit.** Mr. Parent said that the amended permit has not yet been applied for and that he will file after the updated survey is done.
2. **Final Plat**. Will be filed by surveyor.
3. **Roads v**. **driveways.** Mr. Parent explained which are roads and which are driveways.
	1. The one road will meet A76 standards, although a waiver has been requested to have the road be 20’ not 22’ .
	2. Width of all driveways, including the one labeled existing work road, is 10’ with 1’ shoulder on either side. Asked if the driveways will meet B71, he said there is no standard for a driveway, and that actually B71 is not for driveways but for the area where the road meets Route 100.
	3. He said that the portion of the driveway (work road) to lots 5 & 6 that already exists will be reconstructed to Vtrans standard except the width will be only 10’.
	4. All driveways, except the one labeled existing work road, are to be constructed using the permeable system as part of the storm water permit exemption.
	5. Ms. Granquist asked about the waiver request that he made earlier in which he said that the driveways would be subject to the grades in B71. Mr. Lindgren said that when he asked for the waiver he was specifically referring to the work road (driveway).
	6. Ms. Granquist said that one of the elements of subdivision approval is for the PC to make sure that the public health and safety of the community is protected. Mr. Lindgren has mentioned that there are no standards for driveway construction in Weston. He wants to leave it up to the future lot owners to build the kind of driveway that they want. Ms. Granquist said that is exactly what she is concerned about – that there are no driveway standards and that Mr. Lindgren is leaving the construction of these driveways up to the whim of the future lot owners who may or may not know anything about constructing driveways. Ms. Granquist said that she personally does not think that this is protecting the public very well.

Ms. Fujii said that she thought that Mr. Lindgren was actually requiring that the future lot owners do have a construction standard – to use the specific permeable surface system (Geo-pavers) -- so that the subdivision does not have to apply for a storm water permit. She is concerned about calling “roads” “driveways” to avoid getting a storm water permit. The storm water exemption relies on using the permeable surface system (geo-pavers) without any enforcement mechanism -- if one of more lot owners do not use the system or do not keep up with adequate maintenance.

Mr. Lennox asked what does it mean that the homeowners are “doing” the driveway. Is it the path of the driveway or how it is constructed? Mr. Lindgren attempted to clarify the situation. He clarified that the grade waivers refer only to the section of the driveway called work road, which is impervious. Otherwise the driveways (which are to be pervious) are subject to the 10% grade limitation.

Mr. Parent added that the permeable driveway surfaces are shown at 10’ but in actuality, it would be better to be a little wider than 10’ for storm water infiltration. And if the future lot owners built the permeable driveways in excess of 10’ there would be no impact on health and safety.

Mr. Lindgren said that Mr. Hart wants to have “pull-offs” off of the driveways and wants adequate turn around at every house, all of which must be permeable so as not to affect the storm water exemption. Mr. Hart said that this should be written into the deeds.

Ms. Katz asked if the deeds would contain language requiring restrictions for the permeable surfaces, pull-offs, etc., noting that each lot may have different requirements. Mr. White said that the general requirement would be that the deeds will require permeable driveways (individual and shared), septic system maintenance etc. For example, the deed for a lot would refer to the wastewater permit but not the specific requirements of the permit and would refer to the Subdivision permit but not the specific requirements/conditions of the permit. It would be up to the future lot owners to look these up.

Mr. Parent said that presumably the deed would reference the granted permit but not the actual conditions and would not contain the restrictions. In other words, a future lot owner would have look at the underlying permit to understand what the deed restrictions are.

Mr. Parent then talked about the ability of the future lot owners to shift the location of their driveway if there is a beautiful specimen tree that they don’t want to cut down. He also suggested that there be a schematic showing pull-offs. Ms. Rizio agreed that there should be a schematic so that the Town engineer can inspect the locations and construction. She then asked about what kind of a building permit does the town have and whether it should require a future lot owner to construct his/her individual driveway to comply with the pull-off schematic. The Zoning Administrator said that he could put something in the file that explained all the restrictions that a future lot owner had to comply with (presumably in case he is no longer ZA).

Mr. Parent explained the differences between the “road” and the different “driveways”. The existing unnamed road on Mr. Lindgren’s adjacent property is being constructed by Mr. Lindgren to A76 standards.[[3]](#footnote-3) All driveways are to be constructed by future lot owners. The portion of the driveway that leads to lots 5 & 6 that is impermeable will not be able to be relocated. However, the location of the remaining permeable surface driveways – proposed driveways to be built with geo-pavers -- can be tweaked. Mr. Lindgren said that proposed driveways have to be built within the granted right of way but could shift within the ROW. Ms. Granquist noted that the ROW language needs to spell this out.

Ms. Katz asked whether the proposed deeds are complete. This led to discussion about process and whether there will be back and forth negotiations. Mr. Lindgren said it seems to be onerous asking the applicant to do a lot of work without knowing that they are going to get approved.[[4]](#footnote-4) Mr. White says that not allowing for negotiation seems unique, and that most of the towns that he appears before allow for “give and take”, where the PC makes comments to the applicant and the applicant goes back and changes stuff. Mr. White said that the PC should be more than “judge and jury.” And that if the PC does not do give and take, he thinks it is not functioning appropriately as a board. Ms. Granquist thanked him for his opinion and said that the PC will talk to counsel about how to handle this.

Mr. Lennox said that he believes that the hearings have been “give and take” and that the PC does give feedback. But he said there is a difference between providing feedback and dealing with an incomplete submission. When Mr. Lindgren brings us something the PC does tell him what we think. Ms. Granquist interjected that the minutes of the last two meetings reflect the feedback that we have been giving to Mr. Lindgren. Mr. Parent says what he wants to avoid is that if Mr. Lindgren has given the PC everything that the PC has asked for, he doesn’t want the PC to deny the application, if there was something that the applicant could have addressed. Mr. Parent said they are trying to address all of the PC concerns – they just want to know what they are. Ms. Granquist suggested they look at the August 15 meeting minutes which list a lot of our questions. Mr. Parent responded that Mr. Lindgren has submitted a lot of things with a lot of information that answer our questions and we are happy to “step through them.” Ms. Granquist said that that is exactly what she is trying to do tonight – by giving Mr. Lindgren the opportunity to respond to the questions posed by the August 15 minutes. Mr. Parent responded that the chair had not made that clear.

Mr. Parent asked if he could continue to present his responses. Ms. Granquist said of course. Mr. Parent said he believes that he has answered all our questions on roads v. driveways and that he might do a memo explaining the differences between the two. Ms. Granquist noted that there is concern about the width of the driveways. Mr. Lindgren said that he has talked to Mr. Hart who is not concerned with the proposed width. Ms. Granquist said great, but we need something in writing from Mr. Hart. Ms. Fujii asked whether the turn-offs will be on the Final Plat.

Mr. Hart returned to the meeting. Ms. Granquist asked him if we could talk about width of the driveways in the subdivision. She reiterated that our Subdivision regulations do not specifically require roads in a subdivision and do not have standards for driveways. The regulations do state that each lot should have adequate access to a road which Mr. Lindgren seems to be interpreting as being provided by a very long driveway built by the homeowner from the access road. She asked Mr. Hart what the Fire Department thinks about 10’ wide driveways (instead of an A76 standard road). She explained that the PC concern is safety, access and egress of emergency vehicles, UPS, moving vans, general traffic, etc.

Mr. Hart said it is necessary that there be accessible room at the entrance to each driveway, which means that the entrance needs to be wider than 10’ with a circle entrance. But he is conflicted about whether 10’ is wide enough. He doesn’t want to ask for too much road width but he is concerned since the driveway is so long and he is having difficulty visualizing how the FD will be able to shuttle water up to those top lots. He thinks that the pull-out approach might work. The ZA said there are some codes that require pull outs every 500’[[5]](#footnote-5). Ms. Fujii asked if pull-offs were satisfactory to allow trucks to pass. Mr. Hart noted that many difficult situations exist in Vermont but he is looking for a balance that does not overburden the developer but allows for the PC to meet its responsibilities. Ms. Granquist said that she understands that there may be lots of places in Vermont where passage on narrow roads is difficult. But she said she wanted to distinguish between existing “bad” conditions v. the opportunity to build it the right way. She pondered whether the PC would be abdicating its responsibility to the public safety and community by approving such a narrow road.

Mr. Lennox noted that there are probably lots of long driveways in VT. Are we saying that we won’t allow narrow driveways in the future. Ms. Granquist said no. The PC doesn’t have jurisdiction over a person building a driveway on an existing lot. It is because this is a subdivision and it is our responsibility to protect the public and to allow for adequate and safe ingress and egress. Mr. Hart gave an example, what if Lot 5 is coming out to go get groceries and lot 6 is coming in, who has to back out? Mr. Lennox said isn’t this where pull-outs work – as long as there is adequate site distance? Mr. Hart said he wants to make sure that there are enough pull outs. And if we have to build a lot of pull outs, maybe it is better to widen the road. He doesn’t want Mr. Lindgren to incur too much expense. Ms. Granquist noted that Mr. Lindgren is not building the driveways – the future lot owners are, so Mr. Lindgren is not incurring the expense. Mr. Hart said that maybe two pull outs on one side and one on the other and adjacent to each driveway – sort of like a small circle at the end of each driveway – would be sufficient. Mr. Lindgren said that it would be helpful to have Mr. Hart come look at the situation and Mr. Hart agreed. Ms. Katz reminds us that the deeds need to reflect all of this. Mr. Hart said no need for cul de sac or hammerhead.

Mr. Foster commented that the best zoning decisions are usually those where neither party is entirely happy. Mr. Foster questioned whether we have asked other subdividers to prepare deed language. Ms. Granquist said we have (it is also a requirement of our subdivision regulations).

Ms Granquist turned the hearing back to Mr. Parent who said that he had gotten confirmation from state that the 1 acre storm water exemption applied to the project. Ms. Granquist said that the letter from ANR did confirm that it applied -- as long as 3 conditions were met. She asked Mr. Parent to please explain the 3 conditions. Mr. Parent responded:

1. Complete applications have been submitted prior to July 1, 2022. Mr. Parent said that all local state and federal applications have been submitted. The only thing that has not been submitted is the construction general application. Ms. Granquist asked exactly what applications have ben submitted. Response – subdivision application and waste water application. Ms. Granquist asked about the amendment to the waste water permit which would be filed after July 1, 2022. Mr. Parent explained that circumstance was covered in #2.
2. As long as an amendment that is filed does not adversely affect water quality. Mr. Parent said that the proposed amendment would not affect water quality.
3. Substantial construction must be complete by July 1, 2024. Substantial construction is not defined, yet Mr. Parent thinks it would be interpreted to be the improvements of the road and the community septic system. He agreed to sign letter stating that the 3 requirements have been met.

**Homeowners association.** Mr. Lindgren is proposing two separate HOA – one for the Road and one for the community septic system. Ms. Granquist asked about driveways? Mr. Lindgren said they are responsibility of the lot owners. Ms. Granquist said they should be covered by the HOA. Mr. Lindgren asked what do we want? Ms. Granquist said that each future lot owner would be required to build their house in accordance with the storm water plan/exemption plans and if they don’t, the HOA would apply for a storm water permit. Mr. White responded saying that he does not think that is part of the process here. It is way over and above what the purpose of the HOA would be. Ms. Granquist responded that he has heard her thoughts. She asked what happens when lot owner does not comply with plans for storm water exemption. What is the remedy? Mr. White responded that he assumes the Weston ZBA would have an application for that property and the ZBA would be conducting the review of the application for the individual lot and if that individual oversteps, then that individual is in violation.[[6]](#footnote-6) It would be that individual’s problem not the HOA. Mr. White said it should not be the HOA responsibility to enforce but it would fall to the town (ZA) to enforce. Ms. Granquist asked whether that is the appropriate job of the ZA to enforce the storm water exemption and said we would talk to counsel.

Mr. Lindgren said that the road HOA would be responsible for ensuring maintenance of the road etc and the storm water system that is associated with the road will be maintained by the road HOA – which applies only to the access road. Then he said that actually there is not storm water system associated with the access road.

Ms. Granquist again expressed concern that there is no oversight of the driveways. Mr. Lennox asked if the road HOA would cover the extension of the road. i.e., the existing work road? Mr. Lindgren said he doesn’t know the answer to that question and that is something that he will have to think about. Mr. Lennox asked if Mr. Lindgren was building the existing work road and Mr. Lindgren said no – it is the responsibility of the future lot owners (lot 5 and 6) to build the existing work road. He thinks that maybe the owners of lots 5 and 6 will be required to maintain the storm water system on the existing work road, just like it is the responsibility of the owners of lots 2, 3, 5 and 6 to maintain the geo paver system.

Ms. Fujii asked what the enforcement mechanism over the geopavers construction and maintenance would be. Mr. Parent said Weston’s zoning would be the enforcement mechanism. What do we do with any other project that says that it will build in a certain way and then does not. That is the Town’s responsilibity. If the Town issues the permit, the Town is the enforcement agency. The ZA has to come out and find the infraction and then call ANR. These are established mechanisms. He has never seen in any other town where the HOA also becomes the enforcement body. Ms. Granquist said that is the role of a HOA. Mr. Parent said it is not. HOA is about maintenance of shared facilities – not about enforcement of someone who may or may not violate a permit condition. He said that the PC cannot force the HOA to apply for a storm water permit if 1 person violates the permit. It is only about shared maintenance.

Ms. Fujii said since it is up to the lot owners to maintain the Geo-pavers, what happens if they do not. She asked how would the ZA even know if the Geopavers are being adequately maintained? Mr. Parent said that that is an enforcement issue – look at Weston’s zoning regulations. Ms. Rizio explained that there is cover for the town since the regulations specifically allow for the Town to inspect the construction of the road and community septic to ensure that the improvements are adequately constructed. But there is no such provision for driveways and since this project has a lot more driveway than road, and there is no mechanism to ensure to the Town that the driveways have been adequately installed.

The ZA asked whether we can we make it a condition of our building permit? Ms. Rizio asked whether driveways are even covered in our building permits. The ZA asked whether the subdivision permit could say that driveways have to be inspected before a lot owner can occupy?

Mr. Hart jumped back in and said that this scenario goes back to his concern about these long shared driveways. If he pulls up with a fire truck, and the driveway to lot 6 is not passable and he decides not to go ahead because of safety of his fire department, who is at fault? There needs to be an agreement between lot 5 and 6 that they are responsible for the appropriate construction and maintenance of the driveway. There needs to be some sort of contract.

Mr. Lindgren suggests that the contract can be written into the deed. He has a shared driveway and if he makes some improvement to the driveway, then he has to go to the neighbor and see if the neighbor will contribute to the expense. If not, he has to pay it. If they refuse to pay, he has legal recourse from the deed to go after the neighbor for his share. He can take his neighbor to court to enforce because it is written into the deed. Mr. Hart asked about lot 4 and what is its responsibility. No answer.

Ms. Granquist said she is concerned that Mr. Lindgren has relied on a storm water exemption in lieu of filing for a permit. Abutting neighbors have already expressed concern about storm water run-off. She asked how does the PC protect the neighbors and the town from storm water run-off without some responsibility assigned. Mr. Lindgren said we have submitted a storm water plan and the Town engineer should tell the PC whether this is adequate. Ms. Granquist said it may be adequate but it is adequate only if it is complied with. Mr. White said that would be true about any permit. If he has a permit to build a house and doesn’t comply with the bathroom requirement, then who says he has not complied. That is not the job of a HOA. It is incumbent on the town or the state. You can’t put it on to the individual owner or the HOA. Mr. White says we have a storm water exemption. Ms. Granquist says what happens if you violate your exemption? Mr. White says maybe a neighbor sees it and reports it, or maybe ANR finally finds out about it. Ms. Granquist said that Mr. Lindgren’s proposal is to put the burden on the future lot owners. Mr. White said that no, the proposal is that if there is a permit or in this case an exemption, and if someone violates it, it is not a problem until it is discovered.

Ms. Granquist said that we have to stop the hearing because there is a SB meeting. There still are outstanding issues and I hope we have made it clear where we stand on these issues. If you want to regroup and come back to us with ideas on how to do this, we are willing to keep going. We suggest recessing for a month, which would allow the Planning Commission time to meet with counsel and our engineer to go over some of these issues which Messrs. Parent and White think we are overreaching on.

Mr. Lindgren said that he no longer needs a waiver for a driveway to access 3 lots because he will not be using it to get to his sugar trees.

Ms. Granquist then called for a motion to recess the hearing to a date certain. The following motion was made by Ann Fujii and seconded by Tom Foster:

*To recess the hearing until October 4, 2022 at 5 PM. The motion passed unanimously.*

The hearing was closed at 7:05 PM

Minutes taken by

Deborah Granquist

1. It appears that to date the only “completed” improvement is the road which is only partially completed. [↑](#footnote-ref-1)
2. It is important to note that there are 3 types of driveways: 1) driveways to each individual lot; 2) the driveway that is called the existing work road and provides partial access to Lots 5 & 6; and 3) the shared driveways 2 & 3 and 5 & 6. [↑](#footnote-ref-2)
3. Mr. Lindgren has asked for a waiver from A76 standards for the width of this road. [↑](#footnote-ref-3)
4. It should be noted that deed language is a requirement of Weston’s subdivision regulations. [↑](#footnote-ref-4)
5. The ZA did not cite which codes he was referring to. [↑](#footnote-ref-5)
6. Weston does not have a ZBA and even if it did, it would not review applications for single family homes unless in a flood hazard areas. [↑](#footnote-ref-6)