

**MINUTES**  
**MARLBOROUGH PLANNING BOARD**  
**MARLBOROUGH, MA 01752**

1A

**Call to Order**

**June 27, 2022**

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3rd Floor City Hall, 140 Main Street, Marlborough, MA. Members present: Barbara Fenby, Sean Fay, Phil Hodge, George LaVenture, Chris Russ, Matthew Elder and William Fowler. Meeting support provided by City Engineer, Thomas DiPersio.

**1. Draft Meeting Minutes**

A. June 6, 2022

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the June 6, 2022, meeting minutes. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 7-0.

**2. Chair's Business**

A. Employee Appreciation BBQ

Dr. Fenby encouraged the Board members to attend.

**3. Approval Not Required**

A. Hager Street Parmenter Road, Boston Post Road

Map 62, Parcel 27 (0 Boston Post Road East), Marlborough MA 01752

Owner of Land: South Coast Advisors, LLC (119 Parmenter Road, Framingham, MA 01701)

Name of Surveyor: Engineering Design Consultants, Inc. (32 Turnpike Road, Southboro, MA 01772)

Deed Reference: Book: 68015 Page: 229

i. Form A

ii. ANR, Plan of Land Dated: 6/3/22

Zachary Bemis, Engineering Design Consultants (32 Turnpike Road, Southboro, MA 01772) went over the ANR Plan. Mr. Bemis explained the purpose of this plan is to create two lots. One lot with frontage on Hager Street in Marlborough and frontage on Parmenter Road in Framingham and one lot with frontage on Boston Post Road East in Marlborough and Framingham.

On a motion by Mr. Fay, second by Mr. LaVenture the Board voted to refer the Hager Street, Parmenter Road and Boston Post Road, ANR Plan to Engineering for review. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 7-0.

B. 351 Concord Road, Map 46, Parcel 36, Marlborough MA 01752

Owner of Land: 351 Concord Road Nominee Trust (Concord Road, Marlborough, MA 01752)

Name of Surveyor: Robert Parente (328 Desimone Drive, Marlborough, MA 01752)

Deed Reference: Book: 51973 Page: 488

i. Form A

ii. ANR, Plan of Land Dated: 6/14/22

Robert Parente (328 Desimone Drive, Marlborough, MA 01752) went over the ANR Plan. Mr. Parente explained the purpose of this plan is to create two lots and one parcel. Lot 1, a new building lot, Lot 2 for the existing home and Parcel A, which is not to be considered an independent building lot because its frontage is on Hemenway Street which is not constructed to Subdivision Standards.

On a motion by Mr. Russ, second by Mr. LaVenture the Board voted to refer 351 Concord Road, ANR Plan to Engineering for review. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 7-0.

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**4. Public Hearings (None)**

**5. Subdivision Progress Reports**

**A. 342 Sudbury Street Update**

Mr. LaVenture read the June 7, 2022, correspondence from Neal Vigeant and Kevin O'Malley into the record. On a motion by Mr. Russ, seconded by Mr. Fay, the Board voted to accept and file the correspondence. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 7-0.

Mr. DiPersio confirmed the sewer stub was installed on the property as indicated in the correspondence.

**6. Preliminary/Open Space/Limited Development Subdivision**

**A. Beauchemin Estates, Preliminary Open Space Concept Plan**

689 Pleasant Street, Marlborough, MA 01752

Owner of Land: Joyce Beauchemin Realty Trust, Timothy L. Beauchemin, Trustee  
(P.O. Box 1067, Townsend, MA 01469)

Name of Engineer: Daniel Koravos, P.E. (59 Granite Lane, Chester, NH 03036)

Deed Reference: Book: 45210 Page: 560

**i. Correspondence from Assistant City Solicitor, Jeremy McManus**

Mr. LaVenture read the June 23, 2022, correspondence from Mr. McManus into the record.

On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence.

Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 7-0.

**ii. Final Draft – Certificate of Vote, Open Space Development Special Permit**

Mr. Russ and Mr. DiPersio discussed the Conservation Commissions previous review of the Beauchemin Estates Open Space Concept Plan.

The Board determined they would prepare the language for the vote on the special permit and would vote at the July 25, 2022, meeting.

**7. Definitive Subdivision**

**A. Colchester Drive, Definitive Subdivision Plan**

Map 44, Parcel 148 (0 Stevens Street), Marlborough, MA 01752

Owner of Land: James & Rebecca Chaousis (283 Bolton Street, Marlborough, MA 01752)

Name of Applicant: Charles Bourque (P.O. Box 642, Weston, MA 02493)

Name of Engineer: Jason Lavoie, WSP, (100 Summer Street, 13<sup>th</sup> Floor, Boston, MA 02110)

Deed Reference: Book: 9742 Page: 148

**i. Correspondence from Jason Lavoie**

Mr. LaVenture read the June 23, 2022, correspondence from Jason Lavoie into the record.

On a motion by Mr. Russ, seconded by Mr. LaVenture the Board voted to accept and file the correspondence.

Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 7-0.

The Board discussed the timeline for the Colchester Drive approval and determined it would be best to suggest that the engineer put in a request for extension on the approval.

**8. Signs (None)**

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**9. Correspondence (None)**

**10. Unfinished Business**

**A. Working Group**

**i. Map of “private ways” and unaccepted roads within the City**

The Board reviewed the map printouts and Mr. DiPersio explained these roads likely were not accepted as public ways because of various missing items, including acceptance plans, deed information, easement information, and/or sign offs. The City can do a taking, or create a home rule petition to accept these roads as public ways. The previous City Solicitor Donald Rider had drafted a home rule petition. This rule would require the City to go to the State Legislator to get permission to follow this procedure. Once given permission the Board would hold a public hearing for each case, and it would allow the City to accept the street as a public way no matter what was missing from our file. If a developer is still around, the City could pursue them to finish the project and provide all necessary documentation for the acceptance process. If these roads are accepted as public ways, it would benefit the City because Chapter 90 allocation for the roadway repair funding is based on public roadway miles within the City.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to invite City Solicitor Jason Grossfield to the July 25, 2022, meeting for a discussion regarding the private ways and unaccepted roads within the City. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 7-0.

Mr. LaVenture discussed an email correspondence he sent to City Solicitor Jason Grossfield, regarding a May 1, 2014, correspondence written by the City’s previous Solicitor Donald Rider regarding the question: does the clock start if a plan is presented to the Board and the Board deems that it is not complete or needs to be sent back for changes? – See attached. The Board determined they would discuss this question with Mr. Grossfield at the July 25, 2022, meeting.

**ii. Subdivision Plan Checklist**

Mr. LaVenture and Mr. DiPersio went over the checklist and explained this is an internal engineering checklist for their review process.

**iii. Form B – Subdivision Status Data Form Sample**

Mr. LaVenture explained this is an example of a cover sheet the workgroup would like to create to help keep track of the progress of a submission.

**iv. Formatted Subdivision Rules and Regulations**

The Board determined a clean copy of the formatted Rules and Regulations can be provided to the City Clerk.

**11. Calendar Updates**

- A. Colchester Drive, Definitive Subdivision Plan, 135 days is Sunday July 24, 2022. One day extension granted, vote by **July 25, 2022**, meeting.
- B. Beauchemin Estates, Preliminary Open Space Concept Plan, 90 Days is August 7, 2022, vote on Special Permit by **July 25, 2022**, meeting.

**12. Public Notices of other Cities & Towns (None)**

Mr. Fay and Mr. Elder determined they would prepare the language for the vote on the special permit for Beauchemin Estates, 689 Pleasant Street.

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On a motion by Mr. Fowler, seconded by Mr. Elder, the Board voted to adjourn the meeting. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'G. LaVenture', written over the printed name.

George LaVenture/Clerk

/kmm

## George LaVenture

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**From:** Jason Grossfield <jgrossfield@marlborough-ma.gov>  
**Sent:** Monday, June 13, 2022 9:37 AM  
**To:** George LaVenture  
**Cc:** sohohinny; Jeremy McManus  
**Subject:** RE: MPB - Plan Submission Date

Thanks George, we will review.

-Jason

Jason D. Grossfield  
City Solicitor  
City of Marlborough  
City Hall, 4th Floor  
140 Main Street  
Marlborough, MA 01752  
T: (508) 460-3771  
F: (508) 460-3698  
[jgrossfield@marlborough-ma.gov](mailto:jgrossfield@marlborough-ma.gov)

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**From:** George LaVenture <GLaVenture@trinity-inc.net>  
**Sent:** Friday, June 10, 2022 4:54 PM  
**To:** Jason Grossfield <jgrossfield@marlborough-ma.gov>  
**Cc:** sohohinny <sohohinny@aol.com>; Jeremy McManus <jmcmamus@marlborough-ma.gov>  
**Subject:** RE: MPB - Plan Submission Date

Purely hypothetical. Just trying to understand if any plan presentation to the Board starts the clock and what leeway the Board has if it deems a presentation incomplete to not have the clock start.

For subdivision plans sent by registered/certified mail I guess the clock always starts on receipt. I don't believe we have received any plans this way however.



George LaVenture



*City of Marlborough*  
**Legal Department**

140 MAIN STREET  
MARLBOROUGH, MASSACHUSETTS 01752  
TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610  
LEGAL@MARLBOROUGH-MA.GOV

DONALD V. RIDER, JR.  
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN  
ASSISTANT CITY SOLICITOR

ELLEN M. STAVROPOULOS  
PARALEGAL

May 1, 2014

Marlborough Planning Board  
Chairwoman Barbara Fenby  
140 Main Street  
Marlborough, MA 01752

Re: The Process of a Plan's Submission to the Planning Board and Subsequent Notice to the City Clerk

Dear Dr. Fenby:

In supplementation of Legal's letter to the Planning Board ("the Board") dated December 16, 2013, this letter offers further clarification as to 1) the process for a plan's submission to the Board, whether a subdivision plan or an ANR plan; and 2) the subsequent notice to be filed with the City Clerk regarding that submission.

**1. Submission Of A Plan To The Board.**

Mass. Gen. Laws c. 41, § 81O governs the submission of a subdivision plan. As for submission of ANR plans, a planning board's regulation, if it is consistent with § 81O, "controls the determination of the submission date of an ANR plan."<sup>1</sup>

The relevant portion of § 81O provides as follows:

A plan shall be submitted under this section when delivered at a meeting of the board or when sent by registered mail to the planning board. If so mailed, the date of receipt shall be the date of submission of the plan.

Thus, under § 81O, the date of a plan's submission is either 1) the date when it is delivered at a meeting of the Board, or 2) the date when it is received by the Board by registered mail.<sup>2</sup>

In contrast, for ANR plans under Section II.B.1, and for preliminary plans under Section III.A.1, the Board's Rules and Regulations provide that, "[f]or the purpose of establishing the official submission date, said submission shall be made to the Planning Board at a regularly scheduled meeting of the Planning Board." In other words, there is no opportunity under the

<sup>1</sup> Peters v. Labonte, 2012 WL 273714 (Land Ct. 2012), at \* 5 (citing Maini v. Whitney, 7 LCR 263, 264 (1999)(Land Court)).

<sup>2</sup> "'Registered mail', when used with reference to the sending of notice or of any article having no intrinsic value shall include certified mail." Mass. Gen. Laws c. 4, § 7, cl. Forty-fourth.

However, § 81T “lacks precision as to the timing of the filing of the notice.”<sup>10</sup> So § 81T has been judicially interpreted as requiring that notice to the City Clerk must be filed “simultaneously with or, at least, very promptly after submission to the [planning] board,”<sup>11</sup> but in any event “after submission to the Planning Board, since the required notice must include the date of submission.”<sup>12</sup>

Note that this § 81T filing requirement is crucial in circumstances where a board may have failed to timely act on a plan, otherwise resulting in a constructive grant (for a subdivision plan) or a constructive endorsement (for an ANR plan). Thus, if the plan’s proponent has itself failed to file such a § 81T notice with the city or town clerk, that failure is fatal to the proponent’s claim of the constructive grant or constructive endorsement.<sup>13</sup> Section 81T’s filing requirement serves the statutory purposes of providing aggrieved persons with “the definitive date from which an appeal is measured,” while at the same time “limiting the period during which an appeal may be taken” and precluding an “indefinite protraction of the appeal process.”<sup>14</sup>

Thank you for your attention to this matter.

Very truly yours,

/s/ Donald V. Rider, Jr.  
Donald V. Rider, Jr.  
City Solicitor

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<sup>10</sup> Korkuch v. Planning Board of Eastham, 26 Mass. App. Ct. 307, 308 (1988).

<sup>11</sup> Korkuch, 26 Mass. App. Ct. at 309.

<sup>12</sup> Peters, 2012 WL 273714 at \* 6 (emphasis in original).

<sup>13</sup> Korkuch, 26 Mass. App. Ct. at 309 (discussing ANR plan); Peters, 2012 WL 273714 at \*4 (discussing ANR plan).

<sup>14</sup> Korkuch, 26 Mass. App. Ct. at 309 (citations omitted).