

**Minutes for Tuesday, Aug. 6, 2013 Joint Planning Board Meeting with Towns of
Bridgton & Sweden re: Patriot Way proposed subdivision-*Approved Minutes***

1. Call to Order: The meeting was called to order by Bridgton Planning Board (PB) Chairman Steve Collins at 7:00 PM.

2. Attendees:

Present from the Sweden Planning Board were: Chairman David Johnson, Secretary Laura Chadbourne, Member Gail Bartlett, Member Julie Frum, and Alternate Member Ron Kiesman. Code Enforcement Officer (CEO) Eric Gulbrandsen was also present at the meeting.

Present from the Bridgton Planning Board were: Chairman Steve Collins and Members Brian Thomas, Michel Figoli, Adam Grant, and Dee Miller. Executive Assistant Georgiann Fleck, Director Economic Development Anne Krieg, and Bridgton CEO Rob Baker were also in attendance.

Also in attendance were several members of the public, including:

Agent for the Applicant, George Sawyer

Attorney for the Applicant, Michael Friedman

Abutters Barbara Mitchell, Kevin Taylor, and Annamarie Pond

Attorney for the Abutters, Frank Chowdry

Mr. Greg Jones (operating video camera recording proceedings)

Ms. Gail Geharty, reporter for The Bridgton News

3. New Business – Joint Meeting Sweden/Bridgton Planning Board meeting to discuss Patriot Way proposed Subdivision; applicant is Lance Colwell.

D. Johnson opened this portion of the meeting as agreed previously between the Sweden/Bridgton Chairmen as Sweden's subdivision review process is somewhat more stringent than Bridgton's. Joint meetings were previously advised by the attorney for the Town of Bridgton.

Agenda for the evening was to obtain a presentation from G. Sawyer regarding the subdivision, determine if abutters were notified, and set up a date for a site walk. S. Collins noted that a timetable for subsequent joint meetings could be set up as well.

G. Sawyer stated that all abutters were notified about this meeting and that he'd confirmed the receipt of notifications electronically (so did not have paper receipts).

G. Sawyer presented the proposed subdivision location, land history, and proposed access with site plan drawings on an easel. Total parcel is about 80 acres with 14 lots proposed. Access would be via West View Lane in Sweden, a private road. Lance Colwell (applicant) purchased the land from Ron Leavitt, plus a lot from Rashelle Roy which included a 66' Right of Way (ROW) from West View Lane to the proposed subdivision road. This ROW also connects West View Lane to 5 or 6 land lots still owned by Ron Leavitt.

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The subdivision road itself is straightforward with one portion of the road where the applicant would be looking for a waiver on maximum slope requirements.

E. Gulbrandsen asked whether all abutters were notified about the proposed subdivision.

G. Sawyer stated that all West View Lane abutters were notified in the 2nd round of notifications on July 23rd, when G. Sawyer sent the application package to the Sweden PB.

L. Chadbourne asked: “How can a subdivision be accessed by a **private** road?”

M. Friedman explained that there were various easements given. Ron Leavitt owned lots around West View Lane and those deeds granted easements over West View Lane to the parcel. Under Maine law, even if a parcel is split, existing easements would still apply for the new parcel.

F. Chowdry shared his legal opinion:

- Joint deliberation is required by both towns, and all steps need to be followed.
- Both municipalities must review all considerations regarding access **and** performance factors
- Sometimes, ROWs are straightforward and subdivision roads can become public.
- Sometimes, if title to ROW is clear, as long as the criteria for private ROWs are met, then no issues.
- However, this application presents a challenging proposal, as outlined in his letter dated June 3, 2013. There is an ambiguous source of title, with a possible overburdening of easements.
- ROW would have to be improved, but restrictions in deeds say you can't interfere with access to properties along that road.
- More title work needs to be done to determine: 1) what are rights of this owner to access this subdivision? And 2) applicant should obtain missing deeds to perfect the source of title.
- There are significant doubts on legality of access and means of access. Boards need to understand the source of titles.

D. Johnson commented that Subdivision review is guided by state laws – the same for Bridgton and Sweden. Regarding ambiguity of title, the PBs can look at the information and come up with ideas, but are **not** a law court. D. Johnson noted that there were some troubling issues and that it is difficult to make a decision in a situation like this.

S. Collins read from a letter from late July from town attorney David Kallin. The opinion of attorney is that PB is not a court and does not need to resolve conflicts of deeds and ROWs. Board members need to be satisfied that Rights, Title, and Interest (RTI) is solid. PB would ask that each party present their case and the Boards would determine whether RTI has been demonstrated.

M. Friedman shared his legal opinion:

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- The issue is simple and clear: at the time of the easement granting, Ron Levitt owned lots under the name Kezar Corp. The Mitchells (abutters) signed an easement over their property. The applicant has access.
- The Sweden PB should only be reviewing parts of the subdivision application that affects lots and West View Lane in Sweden.
- M. Friedman noted he had provided excerpts from Maine Superior Court about this and that it made no sense for the two Boards to review everything.

B. Mitchell asked about possible access to the property from the Bridgton side through a logging road that exists. M. Friedman replied that the logging road is on private property and applicant has no legal access through that property.

F. Chowdry stated that there was a question about part of the property in 1974, that there was title conveyed possibly without the right to convey it. He noted that the chain of title is not clear.

D. Johnson: "We can continue the process and move along, but if I were on the other side, I'd get a law court involved."

K. Taylor: noted they are abutters and are very concerned that traffic by their property will become a big issue. They have a 1-year old child and moved to Sweden because of the remoteness.

M. Friedman (to Boards): "Now what? You have an application in front of you."

D. Johnson: "You need to come back to us with a definitive statement regarding RTI."

J. Frum asked M. Friedman: "I didn't see a recommendation on the management of West View Lane in the application. Is there a recommendation or plan in the application for management of the portion of the road in Sweden?" M. Friedman replied that the road had already been approved by the Sweden PB in the past for both the current subdivision and for the land beyond and that there was no intention to improve that road.

E. Gulbrandsen to M. Friedman: "The Sweden ordinance is very clear on definition of 'road' versus 'driveway'. When that subdivision was approved, it was **not** a road; it was a driveway to access 3 lots. It's a big leap of faith to think that it would serve your subdivision."

E. Gulbrandsen also noted that the subdivision site plan did not correctly show the owners for one lot which is currently owned by Craig and Jennifer Smith. The site plan shows it owned by John Bellmar. G. Sawyer noted that they'd used the available tax records in Sweden for Sweden lots and that was the information given.

R. Baker: "What are the Boards looking for? There is an application before the Boards. Are you accepting or denying it?"

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M. Friedman: “Asking abutters to ‘make a deal’ and tabling the application isn’t something you can do without the applicant’s OK.”

D. Miller noted that there are two legal opinions here that differ. Laypeople such as Board members can’t be expected to make a decision based on the information at hand because the opinions are very different.

G. Jones: “The Board is empowered to make a decision here.”

S. Collins: the town attorney’s opinion is that the Board is empowered, but he endorses D. Johnson’s suggestion that the parties come to an amicable agreement. Then, if still at loggerheads, PB can make a decision on the information we have, either “no valid application” or take it on the best information we have. This is still a preliminary application.

A. Grant: “Why not just move forward pending results of the legal outcome?”

L. Chadbourne: “Because there is an issue in my opinion with ‘standing to apply’. I believe given the two lawyers’ disagreement, there’s an issue with the applicant’s standing to apply.”

S. Collins: “I agree with Ms. Chadbourne.”

J. Frum: “There is a process here; just because there are issues doesn’t mean we can’t move forward. We won’t resolve the issue tonight. I suggest to the Sweden PB that we take the next step and schedule a site walk to familiarize ourselves with the property.”

The Boards then discussed possible site walk dates and times. It was decided to hold the site walk on Thursday, August 22nd at 5 PM. The group would meet at the “Y” in the West View Lane road. G. Sawyer offered to guide the site walk and answer questions, and noted it was important the group stay together so everyone heard the same information.

M. Figoli to F. Chowdry: “I have a question – when do you feel a property owner has rights to convey a ROW across the property? What happened in 1974 shouldn’t matter now.”

F. Chowdry noted that the easement already exists but the title comes from two sources. One can’t give another easement on land that doesn’t come from that source of title.

J. Frum stated that according to Sweden’s procedures, the Board can provide information on what the applicants can do to provide information for a preliminary application. Her suggestions:

1. There needs to have something about management of West View Lane in future information submissions.
2. More clarity or information on title/deed issues.

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S. Collins then polled Bridgton PB members on whether they consider the Patriot Way Subdivision application a preliminary or final application. After some discussion, the Bridgton PB agreed that more information from the applicant is needed and therefore consider the existing application preliminary (missing information includes a phosphorous plans, runoff plans, fire protection, financial capability, and proof of notification for Sweden abutters).

L. Chadbourne asked G. Sawyer to provide written proof that all abutters had been notified. G. Sawyer agreed to provide this information.

S. Collins suggested scheduling the next Sweden/Bridgton joint PB meeting. G. Sawyer suggested that the next discussion about the subdivision be tabled until the 2 meetings from now. D. Miller moved to table the application until the October 1, 2013 meeting. B. Thomas seconded the motion. Unanimous agreement to table application until 10/1/13 meeting.

L. Chadbourne noted that the Sweden PB considers this an application for a Major Subdivision, and therefore the application materials are part of a preliminary, not final, plan. A preliminary plan isn't actually required from the applicant for 6 months, not that he has to wait that long.

G. Sawyer stated that for Sweden, this isn't even a subdivision; it's a jurisdiction issue.

D. Miller noted that the portion of the subdivision that's in contention is in Sweden. S. Collins added that Bridgton has a less thorny issue than the Sweden portion.

The joint Sweden/Bridgton PB portion of the meeting was adjourned at 9:00 PM, at which point the Sweden PB members departed the meeting.

4. Announcements:

A. A site walk to include the Sweden and Bridgton Planning Boards in regards to the Patriot Way proposed subdivision will take place on Thursday, August 22, 2013 at 5:00 PM. The Site Walk will commence on West View Road in Sweden to access the proposed subdivision parcel of 78 acres (Bridgton Tax Map 16, Lots 5 and 5F).

B. The next joint Bridgton/Sweden PB meeting to discuss the Patriot Way Subdivision application will take place on October 1, 2013 at 7:00 PM at the Bridgton Town Office.

Respectfully submitted,

Laura Chadbourne
Secretary