



BOARD OF APPEALS

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**March 22, 2016
Minutes**

FINAL COPY

**7:00pm
Upper Meeting Room
270 Quaker Meetinghouse Road**

Present: James Killion, Chair, Christopher Neeven, Erik VanBuskirk and David Schrader
Absent: Robert Jensen
Also Present: Josh Peters, Asst. Town Planner, Paul Spiro, Building Inspector and Sam Jensen, Asst. Town Engineer

Approval of Minutes

Mr. Schrader moved to accept the minutes of the meeting held March 8, 2016 as written. Mr. Neeven seconded. The vote was unanimous.

Appeal the Decision of the Building Inspector #16-02

10 Captain Paine Road

Trautner Realty Trust

Mr. Killion read the Public Hearing notice into the record. He read the following comment letters into the record:

- Sam Jensen, Asst. Town Engineer, letter dated March 17, 2016
- David J. DeConto, Asst. Director, Dept. of Natural Resources, letter dated February 23, 2016

Atty. Christopher McAuliffe was present for the applicant. Captain Paine Road was established as an approved way under Subdivision Rules and Regulations. He told the Board that this was a public street, not private, under the definition at the time of lot creation in 1956. It was not under a covenant; there are fourteen dwellings with building permits on the street. The last one was issued in 1992 for #14 Captain Paine Road.

Mr. Spiro addressed the Board at the request of Mr. Killion. When the subdivision was approved in 1955, the applicable standard for roads was met – 20' width or something else. This road has never been accepted by the Town of Sandwich. All streets in Sandwich must meet the current standards in order to receive a building permit. The lot does exist, but the road does not meet current standards of 20' width. The maintenance of Captain Paine has been left to the Homeowners Association, and it is now in disrepair and does not meet the Town standard for plowing. Jordan May, 3 Captain Paine, spoke to the Homeowners Association and its history.

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Mr. Sam Jensen then addressed the Board. He reminded the Board that there is more to the process of issuing building permits – the physical aspects of the plan must be done after approval is given and the road must qualify under Town standards. Mr. Killion asked if road standards were ever met before the issuance of building permits. Mr. Jensen said that roads can degrade over time, especially gravel roads. He recommended that Captain Paine Road be improved to at least minimum road construction standards and completed from Hammond Road up to the lot and across the lot frontage. In some places the road is as narrow as 11 ft with the section of the road in front of the subject lot being 12.5' wide.

Atty. McAuliffe addressed the Board. He told the Board that the decision of the Building Inspector was based on the Protective Zoning By-Laws for this pre-existing, non-conforming lot. The Planning Board held a meeting and approved a way on a plan. He maintains that the definitions of public and private streets have nothing to do with maintenance, upkeep or anything of that nature. While this is not a street within the town, it is for subdivision control and the zoning by-laws by definition. He commented that Mr. Spiro is using the public street definition on a private street. It was stated that there are no public streets in Scorton Shores.

Mr. Killion said that the subdivision was approved in 1956 with a 20' wide roadway; it is the Building Inspector's position that the road does not now meet the standard that was in place in 1956. It is Atty. McAuliffe's opinion that there is no requirement under the zoning by-laws for maintenance of the road. Mr. Killion said the issue is access. Atty. McAuliffe feels that currently there is construction going on and existing structures so the applicant should be able to also build. Mr. Spiro told the Board that if there is an existing structure, work can be done. There must be frontage on a street as defined in the Town by-law to issue a building permit. The lot at 10 Captain Paine Road has sufficient linear frontage for the lot, but not sufficient frontage on the street until it is brought up to standards. Mr. Schrader asked about the Town regulations for maintenance of the road.

Mr. Jensen commented on the definition of a public street. The way is established by subdivision plan and approval; there is a presumption of standard and the maintenance of that standard unless a lesser standard applies.

Mr. Killion opened the meeting for public comment. There was none.

The Board asked Mr. Spiro to contact Town Counsel to see if a building permit can be issued. He agreed to do so.

Mr. Schrader motioned that the Public Hearing for Appeal the Decision of the Building Inspector #16-02, 10 Captain Paine Road, be continued to the meeting of April 12, 2016 at 7pm. Mr. VanBuskirk seconded. The vote was unanimous.

Special Permit Amendment #16-03

290 Route 130

Tsakalos Realty Trust

Mr. Killion read the Public Hearing Notice into the record. He also read the following comment letters into the record:

- Sandwich Water District, Daniel H. Mahoney, Superintendent, letter dated March 21, 2016
- J. J. Burke, Deputy Fire Chief, Sandwich Fire Department, letter dated March 11, 2016
- David J. DeConto, Asst. Director of Natural Resources, letter dated March 2, 2016

Atty. Christopher Kirrane and Thomas Tsakalos were present for the hearing. Atty. Kirrane presented the application to the Board. Tsakalos Realty Trust proposed modifying Special Permit #87-08 by conveying approximately 600 sq. ft. of land area to two adjoining lots at Tradewinds Plaza. The lots are at 286 and 257 Cotuit Road. There were no questions or comments from Board members. Mr. Killion opened the hearing for public comment. There was none.

Mr. VanBuskirk motioned to close the Public Hearing for Special Permit Amendment #16-03. Mr. Schrader seconded. The vote was unanimous.

Deliberation

Special Permit Amendment #16-03

290 Route 130

Tsakalos Realty Trust

The Board reviewed and discussed 290 Route 130, Special Permit Amendment #16-02. The Board voted to grant the Special Permit Amendment. The decision, and findings are on file in the Planning and Development office.

Mr. Neeven moved to adjourn the meeting. Mr. Schrader seconded. The vote was unanimous. The meeting adjourned at 7:52pm.

Respectfully submitted,

Marilyn K. Bassett