

**W. T. PLANNING BOARD MEETING, JULY 16, 2007, 7:30 P.M.**

**PRESENT:** David Douglas, Ginny Jones, Susan Silva, Mark Yale, Erik Hammarlund

**ABSENT:** Leah Smith

**ALSO PRESENT FOR ALL OR PART OF THE MEETING:** George Sourati, Chuck Gilstad, James and Victoria Nelson, John Amabile, Kathy Harris, Robert Harris, Gayle Mone, Susan Vaughn (MV Times), Dyan Redich, Kurt Freund, Joyce Currier, Dena Ferry, Tom Vogl, Simone DeSorcy

**MINUTES**

Minutes of the July 2, 2007 meeting were approved as written.

**CORRESPONDENCE**

**In:** Zoning Inspector and Health Agent, request to be on agenda

**Out:** Building Inspector re. Kenney Site Plan Approval, M26, L12.4

**NEW BUSINESS**

**Sourati Engineering for Estate of Eleanor Norton Bennett, M11, L82.1, Form A:**

George Sourati and Chuck Gilstad presented a Form A plan to divide the majority of this lot into three lots (an 8-acre portion of the lot is not included in the plan as it has problematic title). All three lots have frontage on State Road; they are 3-acres, 8-acres, and 14.5-acres, respectively.

Abutter and Bennett relative Mike Lynch asked whether the property would be further subdivided; George Sourati said it would not. David noted that MVC checklist item #3.204 requires that this division be referred to the MVC unless deed restrictions against further subdivision are in place. George Sourati said the Land Bank was interested in purchasing the 14.5-acre lot, and perhaps a conservation restriction on the 8-acre lot. Susan noted that the Board had no choice but to send it to the MVC without a written restriction against further division. David said it should be simple to write up the restriction and reference it by a note on the plan.

There was a discussion whether the three lots would need a special permit for accesses less than 1,000 feet from each other. Board members said they would not, as this bylaw only applies to accesses to the same lot. George Sourati said the Land Bank was adamant that there only be one shared curb cut for the three lots, with easements created so that each lot can be reached. David said this was a good solution.

Sourati Engineering will return with a plan noting a deed restriction against further division.

**Rooster Noise Complaint:** David said that the Zoning Inspector and Board of Health Agent had received a complaint from Robert and Kathy Harris who live in the Longview subdivision stating that their neighbors' poultry constitute a noise nuisance. The complaint states that this is a violation of zoning bylaws, enforceable by the Zoning Inspector, and the State Department of Environmental Protection Noise Regulations, enforceable by the Board of Health.

David explained that the Building Inspector, Ernie Mendenhall, and the Health Agent, John Powers, had made an appointment on the Planning Board agenda to discuss the complaint; they, in turn, invited the filers of the complaint to attend the meeting.

David said that he did not see this noise complaint as a Planning Board issue; he said that the intent for the Rural District is still to allow agricultural uses. Ginny agreed. Mark said that agriculture is a permitted use in the district. He asked whether the town has a noise bylaw; Ernie Mendenhall said the town bylaw covers loud parties. John Powers said that the State law re. barking dogs puts it under the Selectmen's jurisdiction to enforce. David said perhaps rooster noise should also be handled by the Selectmen.

Mark asked whether agricultural uses could exist without impinging on neighbors. David said if not done well, agriculture can be impinging.

Ernie Mendenhall quoted Section 3.2-1 of the zoning bylaw, Prohibited Uses in All Districts: "Any building or structure or any use of any building, structure or premises which is injurious, obnoxious offensive, dangerous or a nuisance to the community or to the neighborhood through noise vibration...or other objectionable feature detrimental to the community or neighborhood health, safety, convenience, or welfare." He also quoted Section 8.5-2A, Non-Residential Uses in the RU and VR Districts: "There shall be no evidence of the use through persistent or excessive sound, vibration or odor at the boundaries of the premises."

Ginny noted that there are many uses in residential neighborhoods, such as barking dogs, all-terrain vehicles and lawn mowers, that are noisy and bothersome.

Tom Vogl said there is a big difference between a barking dog and a crowing rooster. A rooster cannot be trained not to crow. If the town allows agriculture, sheep are going to "bah", roosters are going to crow, etc. Susan noted that roosters will often crow at strangers.

David said the birds should be controlled on the owners' property, and not allowed to wander onto neighboring properties. Ginny said that in the last two days she had made two visits to the neighborhood, and didn't hear any rooster sounds at all. She did smell food cooking on the barbecue; while she liked the smell, a vegetarian might find it offensive. She agreed with David that crowing roosters is not a Planning Board issue. She said that she doesn't like a lot of things that go on in her neighborhood either, but we've all got to live and get along.

John Amabile, attorney for the Harrises, put forth his interpretation of the zoning bylaw and gave a lengthy presentation of the filed written complaint, including the noise study. He said the noise of crowing roosters from the Harrises' deck is as loud as a fire engine siren passing by. Susan said she did not feel they could be as loud as a fire engine siren.

Ginny read aloud the definition of agriculture contained in the zoning bylaw: “The use of land for raising crops or livestock, including...animal and poultry husbandry....Agricultural activities on residential parcels five acres or less shall be deemed to be a residential accessory use.”

Ginny asked whether the subdivision had any private covenants. Robert Harris said they expired in 2001. Mark said that the covenants in his subdivision had expired, and learned that the only way to recreate a homeowners association in order to enforce the rules is to re-do every deed.

Susan asked how many people in the audience lived in the neighborhood. Eight people raised their hands. Resident Jim Nelson said that he and his wife had lived in the neighborhood for 30 years, and this was the first time there had been any trouble. He said the loud birds interfere with his grandchildren’s sleep. Robert Harris said there are no farms in this subdivision. The neighbors’ roosters and guinea hens are pets. Resident Dina Ferry said that she had received complaints about the roosters from her renters. She stated that she lived in the subdivision first, before the rooster owners. Susan asked whether the neighborhood had approached the rooster owners to solve the problem. Dina Ferry said that they had tried to do so at the annual road association meeting, but the officers wouldn’t allow it on the agenda as it is not a homeowners’ association.

Dyan Redick identified herself and Kurt Freund as the owners of the birds. She gave a lengthy verbal presentation of the letter she had previously submitted to the Selectmen, Board of Health, and Animal Control Officer. She said they had been treated badly by the Harrises from the start, and disputed the noise study results. Robert Harris disputed Dyan Redick’s remarks. He said he has no issues with agriculture in an appropriate place, but his subdivision is not an appropriate place.

Kurt Freund continued to present points contained in the letter submitted to the Selectmen. He said that neighbors wanted him to contain the birds in an existing shed. He said he wanted to be in compliance with all rules and laws. Susan asked whether the birds were fenced in or free-range; he said they were free-range, because he had been told it was alright by town officials. Dyan Redick said the chickens stay primarily on their lot, but the guineas do roam but they eat ticks so most of the neighbors like that. Susan said that good fences make good neighbors, and that perhaps having less than three roosters would be neighborly, although agriculture/chickens are allowed in town.

Mark said he could see there was a problem, but wondered how to solve it – a bylaw change or enforcement? Ginny said that no town official would have said that it’s okay for birds to free-range onto neighbors’ properties. She said she thought the chicken owners could be better neighbors, but did not want to see agriculture disallowed in West Tisbury.

Dyan Redick said it is a slippery slope: if she gets rid of her roosters, what will the neighborhood force her to do next. David said that if they get together with the neighbors and offer to get rid of the roosters, he felt the issue would be resolved. Susan agreed. Robert Harris said that another problem is the unobstructed view he has of the pen due to the bog between their properties.

Tom Vogl asked whether the State law regarding noise referred to man-made noise or natural noise. He asked that the Board of Health make certain that the law is applicable to roosters. Robert Harris said it is being investigated whether animal noise is included in the State environmental law. He said there is no reference that animal noise is excluded. John Powers said that in the past the State Department of Environmental Protection (DEP) had only come to West Tisbury to review industrial noise complaints, not agriculture. He said he had spoken with an official from DEP, and gave him the background on the rooster complaint, and asked whether the law had ever been interpreted to include animal noise. The official said he would not expend State funds to look into this complaint. John Powers said he had also consulted Town Counsel.

John Powers said that all animals in Town need to be controlled on the owner's property, per Town bylaw. If walked off the property they must be leashed.

#### **OLD BUSINESS**

**Zoning Bylaw Violations:** Ginny said that the Board needed to again address the issue of illegal second driveways and also illegal signs, especially those of construction/contracting companies. She said we need to ask again for enforcement. Several weeks ago the Board asked the Building Inspector to look in to the illegal second driveway created at the Fitzpatrick house across from the gas station. Now extensive landscaping/stonewall building has taken place which clearly shows two driveways. This requires a special permit from the Planning Board. Ernie Mendenhall said that this application had been somewhat confusing, and that it had gone before the Historic Commission and the ZBA. One of those boards should have referred it to the Planning Board. He said the entrance to the back of the property from the Grange Hall lot is temporary. David asked Ernie whether he would be sending the Fitzpatricks to the Planning Board for a Special Permit; Ernie said he would.

The meeting was adjourned at 9:55 p.m.

Respectfully submitted,  
Simone DeSorcy, assistant

**Approved 7/30/07**