

Town of Holland
Planning Board
6 July 2021 at 6PM
Community Room

Members Present: James Whalen, Peter Frei, Dori Ference, Charles Furst

Others: Albert and Joan West, James LaMountain, Kristen and Brian Johnson, Felicia Witt.

Meeting call to order at 6:21PM

Reorganization of the Board

1) Secretary

Discussion about other members taking up tasks to help the Secretary not be overwhelmed with other duties that need to be done. Chuck will take over checking mail, Peter will check e-mail, each member will take up Special Permit Applications on a rotating basis. Kyle moved for James to be Secretary, 2nd by Dori. AIF

Old Business

1) Payroll Vouchers

Dori and Peter signed their vouchers, gave to James to deliver to the Treasurer.

Public Hearing 6:30PM

1) 166A Stafford RD

- a. Accessory Dwelling Unit
- b. Review that Abutter's notices went out, hearing published in Southbridge Evening News 2 times prior to start of hearing.

Kristen and Brian Johnson were the only abutter's present. Question was asked by the abutter's if Peter would recuse himself, Peter replied he would not and gave additional response to that as well.

James presented on the Town's current definition of "Frontage" for everyone to understand as that seemed to be the main issue of concern. Peter and Mr. West also discussed previous legal issues and court cases that have come up previously before this Special Permit application.

Peter presented, and asked to be part of the record (granted), his information and research into frontage requirements. Peter made the argument that the current common driveway on the property subverts the subdivision bylaw (2006).

Kyle asked about the lots abutting the driveway, if there was a right of use to the abutting lots to have an easement or other access to that driveway. According to Mr. West's deed the lots do have that access.

Brian Johnson spoke on the history of these lots, seems there is also interest here in the past on "cluster zoning" type of planning.

Dori moved to continue the Public Hearing to July 13, 2021 at 6:00PM, James 2nd. AIF (Note: Due to a scheduling issue, those who post agendas were not available before the 13th, this hearing was continued to July 20, 2021 at 6:30PM).

Peter moved his memorandum, as part of his prior presentation during the hearing, be reviewed by Town Counsel for an opinion. No 2nd, motion declared dead by the Chair.

New Business

1) Planning Board Appointment to Pioneer Valley Planning Commission

Dori spoke about the PVPC arrangement with the Town and how that works and what the benefits are. James spoke to his experience as well.

**James moved that Dori be appointed as Town Commissioner to the PVPC, 2nd by Peter. AIF
Peter moved that James be appointed Alternate Commissions to the PVPC, 2nd by Dori. AIF**

Correspondence

Mail, Expenditure report

1) Reimbursement for James

a. Planning Board Revolving Account: Voucher for Abutter's notices

Kyle signed the voucher with no objections.

James moved to adjourn at 7:36PM, 2nd by Dori. AIF.

MEMORANDUM

in regards to Albert West Jr.'s application for a special permit to build an accessory dwelling unit on his parcel, assessor's map 20/ A/ 2/ /, ANR plan, book of plans 341, page 61, lot 20.

Role of the Planning Board as special permit granting authority:

To inquire whether lot 20 has the required 200' frontage and the 2 acres in size.

Under Section 5.0 DIMENSIONAL and DENSITY REQUIREMENTS, Table 2, District Residential, the Minimum Dimension are, 2 acres in size, and 200 linear feet of frontage.

The lot has not one foot of frontage.

The Inquiry stops here. Al West Jr.'s application therefor does not meet the legal requirements set out in Massachusetts General law ("MGL") and the Zoning-by-laws of the Town of Holland and shall be denied.

Discussion:

Albert West Jr's parcel was created by a so called, Approval Not Required ("ANR") plan which was endorsed by the Planning Board on March 7, 2006, and registered at the Registry of Deeds on May 11, 2006 in Book of Plans 341, Page 61. A copy of said ANR plan is attached to this memorandum.

Said ANR plan was created to fraudulently circumvent the Subdivision Control Law. An ANR plan is a further division of already subdivided land along a statutory way pursuant to MGL chapter 41, s.81L. Section 81L offers definitions for subdivision control law under Secs 81K to 81GG.

Instead of submitting a plan for a subdivision which would have proposed the creation of a way or ways to serve lot 20 and others and create the legally required frontage, the previous owner submitted an ANR plan falsely claiming that the common drive way shown on the ANR would provide the statutory required frontage. Under par.12, of section 81L, the definition of a subdivision also offers a description of what does not constitute a Subdivision:

... provided, however, that the division of a tract of land into two or more lots **shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies,** having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. (Emphasis added by the writer).

Subdivisions create roads which provide frontage. Once you have roads providing frontage, you can further divide such subdivided land utilizing the ANR procedure. Creating a Subdivision is expensive as building roads in compliance with the Subdivision Control Law MGL, c.41, secs 81K to 81GG, is a costly undertaking^{1/}. As far as the writer knows, there has not been one single subdivision created in the Town of Holland since the adoption of the first Zoning Bylaw in 1973.

How did the previous owner get away with submitting an ANR plan instead of a Subdivision plan? At the same meeting with the Planning Board during which the Planning Board endorsed the ANR plan, the previous owner first requested the approval of their special permit application for a common driveway. Once said special permit for the common driveway was approved, said common driveway then “provided” the needed frontage!

A common driveway can not provide the needed legal frontage; MGL c.41, s.81L, is very specific about which ways can provide legal frontage, “**(a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, ...**”

The purpose of a common driveway:

Common Driveways reduce the number of curb-cuts, or eliminate dangerous curb-cuts which are to close to a busy intersection. Common driveways are not statutory ways able to provide frontage; the Zoning Bylaws of the Town of Holland are consistent with this fact:

Section 6.10.2 DEFINITION of COMMON DRIVEWAY - Vehicular access, **which is not a street, but extending from a street**, serving as a common vehicular access to more than one (1) but not more than three (3) residential, industrial or commercial lots in any district built in accordance with standards set forth in this bylaw and allowed by Special Permit. The driveway will lie entirely within the lots being served.

Said driveway shown on said ANR does not “extend from a street,” as required; said driveway connects to another driveway, the driveway serving the residence shown on page 87 in book of plans 180. Said residence belonged to the Beane’s at the time said ANR and Special Permit for the common driveway was granted. According to the minutes to the public hearing held on March 7, 2006, “Ann Beane expressed concern over the heavy equipment that might use **her driveway** (the right of way) and damage it.” A copy of said minutes is attached to this memorandum.

Section 6.10.4 SCOPE - Common driveways may be allowed by Special Permit and Plan Approval by the Planning Board for residential and commercial uses. Where the proposed development constitutes a subdivision under the Subdivision Control Law, MGL, Chapter 41, s.81-k et seq, this Bylaw shall not apply. All lots associated with the use of a common driveway must provide off-street parking in accordance with Town of Holland criteria. **A common driveway shall not become a public way.** The Town of Holland shall not be

1 To construct and build a road costs between \$500 and \$800 per linear foot. A 200’ road cost at least \$100,000.

required to provide construction, reconstruction, maintenance, snowplowing, school bus pick-up or police patrols along a common driveway, unless by contract duly entered into by the Town and all landowners served by the common driveway.

Section 6.10.5 COMMON DRIVEWAY STANDARDS

(c) 5. The common driveway shall access the property **over the frontage** of at least one of the lots being served by the driveway.

(c) 11. **All lots to be served by a common driveway must meet the requirements of a lot as defined in the bylaws.** All dimensional requirements, as defined in the Zoning Ordinance, for lots served by a common driveway, including but not limited to, setback and dimension of front, side and rear yards, **as measured in relation to the street serving as the legal frontage for the lots,** shall be the same as would be required for those lots had they not shared a common driveway.

Section 8.0.2 SPECIAL PERMITS – USES REQUIRING SPECIAL PERMITS

- Certain uses, structures, or conditions are designated within Section IV, Use Regulation, of the Holland Zoning Bylaw as requiring a special permit. **A Special Permit** shall be granted only after written application to, and a hearing by, the Special Permit Granting Authority and **shall be subject to the provisions of Chapter 40A of the Massachusetts General Laws and this bylaw.**

MGL, c.40A, s.7, provides in part: “**The inspector of buildings,** building commissioner or local inspector, or if there are none, in a town, the board of selectmen, or person or board designated by local ordinance or by-law, shall be charged with the enforcement of the zoning ordinance or by-law and **shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of any zoning ordinance or by-law;**

Albert West Jr.’s property is also not grandfathered under MGL, c.40A, s.6. A property can only be grandfathered in the event the property was at one point in time conforming with the law. Albert West Jr.’s property was never conforming and does not qualify as a pre-existing non-conforming lot. Furthermore, in order to be sheltered under the Grandfather Clause, a pre-existing non-conforming parcel needs to have at least 50’ of frontage according to MGL, c.40A, s.6.

In case all the legal requirements would be met by Albert West Jr.’s application, the members of the Planning Board would still have discretion whether to grant the special permit or not. At this time it would be prudent if the writer would recuse himself, and he would. But in the writer’s opinion, Albert West Jr.’s application fails to meet the legal requirements for lack of frontage.

July 6, 2021,

/s/ Peter Frei

Peter Frei, member of the Planning Board of the Town of Holland

RESERVED FOR USE BY THE REGISTRY OF DEEDS

THE CERTIFICATIONS SHOWN HEREON ARE INTENDED TO MEET REGISTRY OF DEEDS REQUIREMENTS AND ARE NOT A CERTIFICATION TO TITLE OR OWNERSHIP OF THE PROPERTY SHOWN.

DISTRICT DIMENSIONAL REGULATIONS

| | |
|--------------------------|--------------|
| District: | AGRICULTURAL |
| Min. Lot Size: | 3 AC. |
| Min. Frontage: | 300' |
| Min. Front Yard Depth: | 40' |
| Min. Side Yard Depth: | 40' |
| Min. Rear Yard Depth: | 40' |
| Max. Height of Bldg: | 35' |
| Max. Bldg. Lot Coverage: | 20% |

I HEREBY CERTIFY THAT THIS IS A TRUE PLAN BASED ON FIELD SURVEYS AND THE LATEST DEEDS AND PLANS OF RECORD AND THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS.

Hampden County Registry of Deeds
 Parcel 5740 264 33 p a
 Recorded in Book 211 p 61
 of Mass
 Date: 3/7/06
 Attest: *Harold A. Dale*



DAVID E. TEACHOUT
 3.7.06 P.L.S. #32659
 DATE REG. #

PARCEL DESCRIPTIONS

Parcel name: LOT #20
 Line Course: N 33-08-43 W Length: 198.87
 Line Course: N 14-36-52 W Length: 100.13
 Line Course: S 70-15-31 W Length: 156.67
 Line Course: S 64-19-48 W Length: 871.00
 Line Course: N 31-53-51 E Length: 298.02
 Line Course: N 13-52-51 E Length: 297.00
 Line Course: N 09-52-51 E Length: 161.32
 Line Course: N 80-03-56 E Length: 611.13
 Line Course: N 13-04-56 E Length: 59.55
 Line Course: S 77-04-04 E Length: 143.20
 Line Course: S 02-42-55 E Length: 746.90
 Line Course: S 04-47-50 E Length: 41.50
 Perimeter: 3714.83 Area: 450,259 sq. ft. 10.34 acres

Parcel name: LOT #21
 Curve Length: 309.89 Radius: 65.00
 Delta: 273-09-40 Tangent: 61.51
 Chord: 86.35 Course: S 70-26-38 E
 Course In: S 72-23-08 W Course Out: S 17-46-32 E
 Line Course: S 91-57-04 W Length: 535.52
 Line Course: S 72-02-17 W Length: 656.25
 Line Course: N 28-52-51 E Length: 229.17
 Line Course: N 31-52-51 E Length: 117.48
 Line Course: N 64-19-48 E Length: 871.00
 Line Course: N 29-15-31 E Length: 156.67
 Line Course: S 14-36-52 E Length: 75.00
 Perimeter: 2900.98 Area: 239,479 sq. ft. 5.50 acres

Parcel name: LOT #22
 Curve Length: 39.09 Radius: 30.00
 Delta: 74-39-49 Tangent: 22.88
 Chord: 36.39 Course: S 70-26-38 E
 Course In: S 17-46-32 E Course Out: N 56-53-17 E
 Line Course: S 33-06-43 E Length: 223.83
 Line Course: S 33-11-55 E Length: 46.37
 Line Course: S 04-47-50 E Length: 355.89
 Line Course: S 87-16-48 W Length: 104.45
 Line Course: S 87-45-33 W Length: 193.10
 Line Course: N 50-44-52 W Length: 13.38
 Line Course: S 61-14-12 W Length: 18.41
 Line Course: S 87-12-17 W Length: 155.16
 Line Course: S 86-48-40 W Length: 272.00
 Line Course: S 87-19-07 W Length: 187.14
 Line Course: N 89-23-44 W Length: 291.21
 Line Course: N 29-55-51 E Length: 123.90
 Line Course: N 72-02-17 E Length: 656.25
 Line Course: N 51-57-04 E Length: 535.52
 Perimeter: 3305.91 Area: 415,186 sq. ft. 9.53 acres

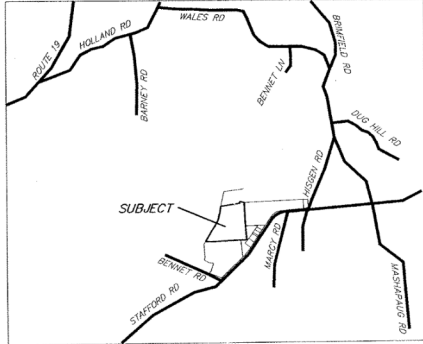
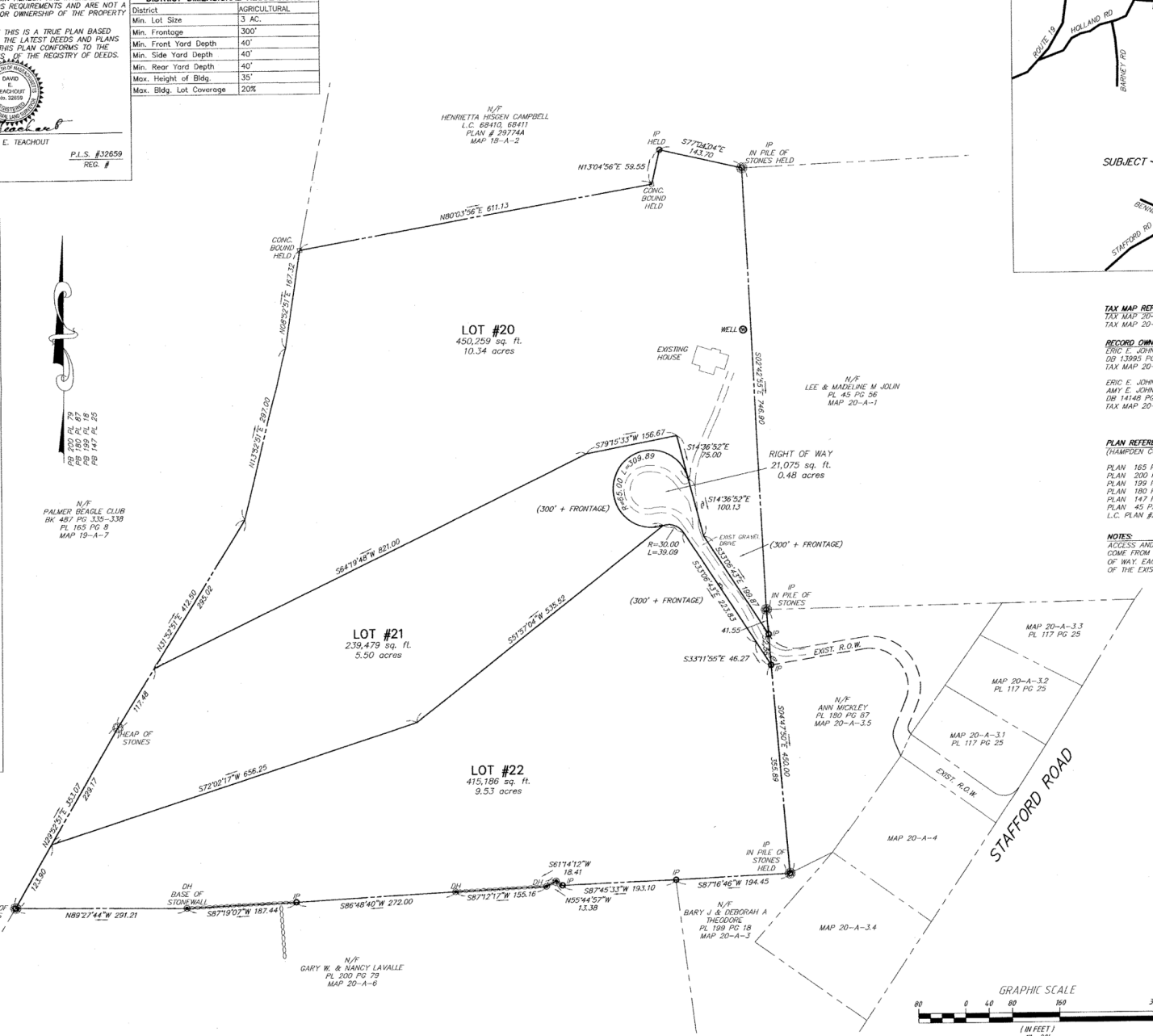
Parcel name: RIGHT OF WAY
 Line Course: N 33-11-55 W Length: 46.37
 Line Course: N 33-06-43 W Length: 223.83
 Curve Length: 39.09 Radius: 30.00
 Delta: 74-39-49 Tangent: 22.88
 Chord: 36.39 Course: N 70-26-38 W
 Course In: S 56-53-17 W Course Out: N 17-46-32 E
 Line Course: S 14-36-52 E Length: 100.13
 Delta: 273-09-40 Tangent: 61.51
 Chord: 86.35 Course: N 28-48-18 E
 Course In: N 17-46-32 W Course Out: N 75-23-08 E
 Line Course: S 14-36-52 E Length: 100.13
 Line Course: S 33-06-43 E Length: 199.97
 Line Course: S 04-47-50 E Length: 52.56
 Perimeter: 971.65 Area: 21,075 sq. ft. 0.48 acres



LEGEND

- UTILITY POLE
- ▭ STONE WALL
- IP IRON PIPE
- FND FOUND
- WCH WORCESTER COUNTY HIGHWAY
- BND BOUND
- EXISTING CONTOUR
- BOUND SYMBOL
- TREE LINE
- DI DROP INLET
- CB CATCH BASIN
- UP UTILITY POLE

STA 152+40.27 HIGHWAY LAYOUT STATION



TAX MAP REFERENCES:
 TAX MAP 20-A-2
 TAX MAP 20-A-5

RECORD OWNERS:
 ERIC E. JOHNSON
 DE 1395 PG 74
 TAX MAP 20-A-5
 ERIC E. JOHNSON
 AMY E. JOHNSON
 DE 1448 PG 405
 TAX MAP 20-A-2

PLAN REFERENCES:
 (HAMPDEN COUNTY REGISTRY OF DEEDS)
 PLAN 165 PAGE 8
 PLAN 200 PAGE 79
 PLAN 199 PAGE 18
 PLAN 180 PAGE 87
 PLAN 147 PAGE 25
 PLAN 45 PAGE 56
 L.C. PLAN #29774A

NOTES:
 ACCESS AND UTILITY'S TO LOTS 20,21,22 IS TO COME FROM THE PROPOSED 11.24' SOFT RIGHT OF WAY. EACH LOT HAS 300' OF FRONTAGE OFF OF THE EXISTING GRAVEL DRIVE.

PLANNING BOARD APPROVAL UNDER THE SUBDIVISION CONTROL LAW IS NOT REQUIRED.
 HOLLAND PLANNING BOARD

Eric E. Johnson
Carl Johnson
Eric E. Johnson
Carl Johnson

DATE: 3/7/06

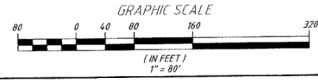
ANR PLAN OF LAND

OWNED BY
ERIC E. JOHNSON

PREPARED FOR
ERIC E. JOHNSON
CARL JOHNSON

LOCATED AT
 OFF STAFFORD ROAD
 HOLLAND, MA 01521
 HAMPDEN COUNTY

SCALE 1"=80' MARCH 3, 2006
 PREPARED BY



Bertin Engineering Associates, Inc.
 38 Elm Street Southbridge, MA 01550
 (508) 766-0186 fax (508) 765-0193
 www.bertinengineering.com

V632-(3-7-05)

Holland Planning Board
Minutes Special Permit Public Hearing
March 7, 2006

Present: Deb Benveniste, Lynn Arnold, Joanne May, Christine MCCooe; Steve Ross, Eric Johnson, Carl Johnson, Brian Johnson, Mrs Ann (Mickley) Beane (property abutter), and Fernando Martins-representing Palmer Beagle Club (abutter)
Earl Johnson recused himself to avoid possible conflict of interest.

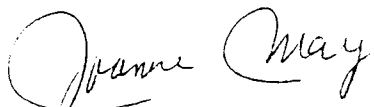
The Public hearing was opened at 8:00. Eric Johnson requested a special permit to put a common driveway through his property on Stafford Rd. (DP 13995 pg 74, Tax Map 20-A-2 and 20-A-5- which is currently owned by Eric E Johnson and Amy E. Johnson). Mr Johnson presented the proper documentation describing the common driveway through his property. Referring to Zoning Bylaws for Common driveways (Sec 7.85), he addressed the sections specific to standards of construction (sec7.85.2) and alignment (Sec 7.85.3)

There is an existing , deeded , right of way to the property. Ann Beane expressed concern over the heavy equipment that might use her driveway (the right of way) and damage it. She was assured the Right of Way would be returned to its current condition by the Johnsons if that happened. She expressed satisfaction. Fernando Martins representing the Palmer Beagle Club spoke . He objected to the land having additional houses built on it. His concern was that the beagle Club wants all the land abutting theirs to remain natural and that the common driveway might mean six (6) more houses. The club runs their beagles 24 hours a day and more houses might mean that those people would complain about the barking noise from the dogs. It was mentioned that Holland currently has a law against dogs barking at any time of day.

It was moved and approved all in favor to grant the special permit with the condition that any new deeds for the property specify that no more than three houses can be built on what is currently Mr Johnson's property. After acceptance of the ANR concurrently presented, no further subdividing can occur. Also, Mr Johnson agreed to conform to the Zoning bylaws that address the sections specific to standards of construction (sec7.85.2) and alignment (Sec 7.85.3).

The Special Permit hearing was closed at 8:35pm.

Respectfully submitted,



Joanne May

CC: Conservation Committee

Selectmen ✓ Zoning Board Board of Health