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Planning Department

**MEMORANDUM**

**To:** Planning Board **Date:** June 21, 2006  
**From:** Roland Bartl, AICP, Town Planner *R. B.*  
**Subject:** Request for Street Determination – 45 Main Street (Renwick S. Tweedy)

**Regulatory/Legal Background:**

The State Subdivision Control Law (MGL ch. 41, s. 81-L) defines what division of land does not constitute a subdivision and therefore would be a division of land by the simpler "Approval Not Required" (ANR) method. Anything that does not fit into a category eligible for ANR approval is then a subdivision and must go through the subdivision approval process.

The Acton Zoning Bylaw borrows and slightly modifies the s. 81-L definition in its definition of what a street is (section 1.3.16):

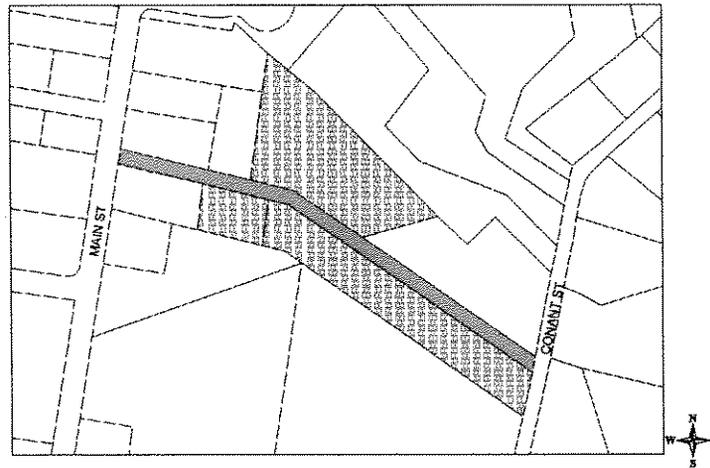
"A STREET shall be 1) an improved public way laid out by the Town of Acton, or the Middlesex County Commissioners, or the Commonwealth of Massachusetts; or 2) a way which the Acton Town Clerk certifies is maintained by public authority and used as a public way; or 3) a public or private way, improved in accordance with a plan approved and endorsed by the Planning Board under the Acton subdivision rules and regulations and the subdivision control law; or 4) a way in existence as of March 9, 1953 having in the opinion of the Planning Board sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of 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. A public or private way shall not be deemed to be a STREET as to any LOT of land that does not have rights of ACCESS to and passage over said way."

For a parcel of land to be or become a buildable lot a certain minimum area and length of frontage along a street is required. In the zoning district where the subject property is located (R-2) the minimum frontage on a street is 150 feet and the minimum lot area is 20,000 square feet, 100 feet and 40,000 sq. ft. for so-called frontage exception lots, or 50 feet and 80,000 sq. ft. for so-called hammerhead lots.

The applicant seeks a determination under sub-section 4) above (underlined). The sentence following the underlined sentence will also be relevant.

**Locus:**

Following is an excerpt of the Town's parcel map which shows the Tweedy property (light gray) and the private way (dark gray), for which the street determination is sought, between Main and Conant Streets in South Acton. Not shown are extensive wetlands towards the Conant Street side. Tweedy has a house on the north side of the private way.



### **Recent History and Process:**

In the middle of 2005 or so, the Planning Department received an application from Mr. Tweedy for a 3-lot ANR plan endorsement on his property with proposed frontage on the private way. We immediately advised the applicant that the land is not eligible for ANR endorsement with an affirmative determination by the Planning Board under section 1.3.16.4) of the zoning bylaw that the private way is a street for purposes of the proposed use(s), i.e. providing access and frontage to the proposed lots. The ANR application was then put on hold and the filing fee recently returned.

There is no law that prescribes the method or process by which the Planning Board is to make such a determination. Based on prior established practice, we advised the applicant that the process to follow would be that of an application for subdivision approval, including time frames, abutters' notifications, public hearing, and filing fees. The applicant filed the request for a determination in late April. The application material is enclosed.

Should the Planning Board determine that the private way is a street for the proposed use(s), the ANR plan could then be re-filed and would be eligible for endorsement subject to the usual criteria for such plans. The Planning Board could also attach appropriate conditions to its affirmative determination and the ANR endorsement.

### **Other Departmental Comments:**

Other departmental comments are attached; please review them. The following may alter, clarify, or expand upon some of these comments.

### **Planning Department Comments (after review of application and consult with Town Counsel):**

The private way is eligible for consideration under section 1.3.16. In other words, the applicant has provided sufficient documentation that shows the way's existence as of March 9, 1953. The first plan of record apparently dates to 1927. That leaves two areas for deliberation: (a) Whether the way has "sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of 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"; and whether Tweedy and others have the right to access or use the way. I also have some comments on the ANR division shown on the plans, although that would be a subsequent step.

1. The existing condition of the way is marginal to poor. The applicant proposes certain improvements shown on the plan. This is appropriate in light of the proposed use(s). The Planning Board's determination of adequacy should be based on the way as proposed, not as in existence at this time. Please see the Engineering Department's memo on the subject for detailed review comments on the proposed improvements, and the Tree Wardens remark on sight distance at Main Street. I think there is a need to modify and clarify these comments a bit:
  - a. I don't see any suggestion in the record that the applicant seeks acceptance of the way as a public way. This would be inappropriate in any case as the proper vehicle for that end result would be the subdivision route. So, any comments related to compliance with the rules for public way subdivision streets should be read with that in mind.
  - b. I might suggest that the proposed improvements are overdone. The Town's common driveway standards (zoning bylaw section 3.8.1.5) would seem rather adequate for this application: +/-12' pavement width, grade standards more forgiving (5% within intersection), etc. This would reduce cost, environmental disturbances, runoff, detention/retention volumes, etc.
  - c. Whatever drainage facilities, as proposed or as modified for reduced pavement area, they should perhaps be included within one or more easements to delineate legally the areas for joint maintenance.
  - d. Since, if determined a street, it is going to remain a private, the applicant should submit for approval by the Board a maintenance agreement and covenant, as is customary for common driveways and residential compounds approved by the Planning Board. This should define and assign the maintenance responsibilities for the way and drainage facilities among the lots, and covenant to the Town that the lot owners will not petition for public way acceptance or maintenance or snow plowing by the Town.
  - e. The sight distance on Main Street appears to be a considerable traffic safety problem - 450 feet should be the minimum target on an arterial street such as Main Street (as per common driveway standards, section 3.8.1.5). The applicants engineer should identify what action is necessary to achieve it.
  - f. As is required and customary for subdivisions and common driveways, the Board may wish to consider a sidewalk requirement in this case. Rather than requiring a sidewalk along the proposed improved way (or offering an alternative along Main Street, where a continuous sidewalk already exists on the opposite side) the Board might consider offering as an alternative a contribution to the nearby planned Assabet River Rail Trail for acquisition, design, construction, and amenities. The standard contribution rate would \$15/foot of proposed road, totaling in this case \$6,525 for the 435-foot long proposed road shown on the plan.
2. The old deeds presented in the application refer to the "private way used in common with others". Therefore, we must assume that Tweedy is not the only party entitled to use the private way. Customarily, all direct abutters to a private way such as this one do have rights to use it. If it were the Tweedy's sole and exclusive property one might ask whether the way is in fact not simply a part of the Tweedy's lot, rather than a way that might qualify for street determination. Other abutters to the way are Varno, Phillips, and Fiske/Grosaw. While it may not be practical to use the rest of the way to Conant Street due to extensive wetlands, Tweedy may not have the right to abandon the way without consent of these abutters and anyone else on record who may have rights to use it. While the Planning Board is not the deciding authority to allow the abandonment or enforce the other parties' consent, it is an issue that Mr. Tweedy should address rather sooner than later.
3. Among the other parties, Ms. Varno (owning two parcels on the private way) has visited this office on several occasions with interest to also develop her property and with questions on

how the Tweedy's activity might affect her. My advice has been that she should perhaps coordinate her thoughts and efforts with the Tweedy's. But it appears from the application that, whatever the reason, this has not occurred. In any case, when considering the adequacy of the way to serve as a street, the Board may wish to consider an allowance for the Varno property, and perhaps also Phillips should they decide to access their land via the improved way.

4. The two abutting lots on Main Street (#43 Phillips and #47 Varno) have houses on the lots which may not meet the 30-foot setback requirement to a street on the side of the private way. Town Counsel advises that due to the long existence in the record of the way as private way the setbacks, if insufficient would be considered pre-existing nonconforming regardless of the outcome of this petition before the Board.
5. Although the plan approval (ANR) is not presently part of the request before the Board, the lots have been shown for informational purposes as staff had requested. We note that proposed lot 1 would have insufficient frontage for its area. Also, it appears that lot 2 would have insufficient frontage if the private right of way cannot be abandoned.
6. I want to draw attention to the Health Department comment, which suggests that the recent creation of public wells in Maynard has an impact on land in Acton. It is unclear however, if the septic disposal limits apply to each lot individually or can be averaged out over the entire development area.
7. Finally, the easterly Varno parcel appears to be shown incorrectly. Our records indicate that its northerly portion is a separate parcel owned by Patton of 51 Main Street.

cc: Applicant  
Mark Scheier, Esq., Scheier & Katin P.C.  
Jeramie Vaine, Landtech Consultants, Inc.  
Engineering Department  
Building Department  
Town Manager

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