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**Planning Board**

# DECISION
08-03

**Barbara's Way (Dakota Drive)**
Definitive Subdivision *(Residential Compound)*
April, 22, 2008

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of 26 Agawam LLC, of 31 Burgess Road, Townsend, MA 01469 (hereinafter the Applicant) for property at 24 and 26 Agawam Road in Acton, Massachusetts shown on the 2007 Acton Town Atlas map E-2 as parcel 183 and 196 (hereinafter the Site). The owner of the property is the Applicant and Thomas E. and Barbara L. Geagan of 24 Agawam Road, Acton.

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Barbara's Way", filed with the Acton Planning Department on January 23, 2008, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules). The Applicant presented the subdivision proposal to the Board at a public hearing on February 26, 2008 and at a continued hearing session on March 11, 2008. Thomas E. Geagan represented the Applicant. Susan C. Sullivan, P.E. of Places Site Consultants, Inc. assisted the Applicant with the presentation.

Gregory E. Niemyski (Chairman), Christopher R. Schaffner (Vice Chairman), Michael C. Densen, Alan R. Mertz, Bruce Reichlen, and associate members Ryan J. Bettez and Roland A. Bourdon, III were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be viewed in the Planning Department or the Town Clerk's office at the Acton Town Hall.

## 1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1.1 A plan entitled "Definitive Subdivision Plan, Barbara's Way, 24 & 26 Agawam Road, Acton, MA", 5 sheets, dated January 2008 and last revised on 2/25/08, drawn by Places Site Consultants, Inc. of 510 King Street, Suite 9, Littleton, MA 01464.

1.2 Supplemental items and documentation required by the Rules consisting of:

- A completed Application for Approval of a Definitive Plan, form DP, dated 01/23/08.
- Filing fee.
- A completed Development Impact Report, form DIR.
- Designer's Certificate.
- Certified abutters list.
- Legal Notice of Public Hearing.
- A letter authorizing Town entry into the Site to inspect & complete the street.
- Authorization for Thomas E. Geagan to act as agent for the Applicant.
- Copies of the deeds and record plans.
- A list of mortgage holders.
- A draft restrictive covenant.
- A draft Declaration of Common Driveway and Utility Easement.
- Drainage and water balance calculations with storm water summary, pre- and post-development drainage plans and a draft drainage system O & M plan.

1.3 Additional information submitted by the Applicant:

- Application cover letters from Place Site Consultants, Inc., dated 1/23/08 & 3/04/08.

1.4 Interdepartmental communication received from:

- Acton Building Commissioner, dated 2/4/08.
- Acton Engineering Department, dated 2/19/08, revised 3/5/08.
- Acton Health Department, dated 1/30/08.
- Acton Planning Department, dated 2/20/08, revised 3/7/08.
- Acton Tree Warden & Municipal Properties Dir., dated 2/5/08.
- Acton Sidewalk Committee, dated 2/15/08.

1.5 Correspondence received from:

- Various e-mails and correspondences from abutters and nearby residents – some without source identification, various dates in February 2008.

1.6 Other:

- Public hearing sign-in sheets.
- Hearing continuation agreement, dated 2/26/08.

Exhibits 1.1 through 1.3 are referred to herein as the Plan.

## 2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

2.1 The proposed subdivision is located within the Residence 2 (R-2) zoning district and the Groundwater Protection Overlay District Zones 3 and 4.

2.2 The Plan shows the proposed division of two lots on approximately 2.34 acres into four residential lots, a +/-270-foot long subdivision street, Dakota Drive, which intersects with Agawam Road across from Seneca Road.

2.3 The proposed singe-family residential uses are allowed on the Site under the Acton Zoning Bylaw (hereinafter the Bylaw), including all overlay district requirements.

2.4 The proposed lots comply with the area and frontage requirements of the Bylaw, including all overlay district requirements.

2.5 The Plan shows limits of clearing and grading on lots. They are shown for illustrative purposes only. Actual limits of clearing and grading work on lots may vary.

2.6 The Plan shows typical house and driveway locations on lots for illustrative purposes only. Actual driveway locations may vary, except for specific requirements of this Decision and where compliance with section 8.1.18 of the Rules is required. House locations may shift within the parameters of setbacks required under the Bylaw.

2.7 The design of the proposed subdivision street is intended for approval under Section 10 of the Rules - Optional Residential Compound, which implies certain waivers from the Rules. The subdivision is eligible for consideration as a Residential Compound. The Applicant has demonstrated with a "proof plan" that he could build a subdivision street under the otherwise applicable requirements of the Rules. A Residential Compound is less intrusive to the neighborhood, preserves more of the natural features of the Site, and helps preserve the present character of the neighborhood. The Plan, as modified herein, accomplishes these purposes of the Rules' Residential Compounds option.

2.8 Ways in Residential Compound subdivisions can be built to lesser design and construction standards than other streets in Acton. They are intended to remain private ways. This requires a legal framework for the maintenance and ownership of the private way. Furthermore, the Board needs assurances that the Town will not be asked to plow, maintain, or accept the private way in the future.

2.9 The Applicant agreed in writing to make a contribution to the Town's sidewalk fund in lieu of constructing sidewalks on the Site, and stated at the hearing that the contribution is unlimited as to the location of its use in Acton.

2.10 The proposed development will cause the destruction of several public shade trees.

2.11 The Board solicited comments from various Town departments. Comments received are listed in Exhibit 1.4 above. The Board considered these comments in its deliberations and made them available to the Applicant. They are restated herein as required plan modifications or conditions as deemed appropriate by the Board.

2.12 At the time of issuance of this decision, current fiscal year taxes in the amount of $2,944.12 have not been paid for parcel E-2/196 (26 Agawam Rd.). Under

Massachusetts Law property taxes on the land, including interest and penalties, must be paid prior to recording of a definitive plan.

## 3 BOARD ACTION

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted on April 22, 2008 ***[include vote count here]*** to APPROVE the definitive subdivision.

### 3.1 WAIVERS

Waivers from the Rules are granted to allow the recording and construction of the subdivision as a Residential Compound under Section 10 of the Rules as shown on the Plan and as further modified in this Decision. The requirement for sidewalks is also waived in light of the Applicants agreement to make a sidewalk fund contribution.

### 3.2 PLAN MODIFICATIONS

The Plan shall be revised prior to its endorsement to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Board or its designee. Where approvals are required from persons or agencies other than the Board, the Applicant shall be responsible for providing evidence of such approvals to the Board or its designee.

3.2.1 Change the street addresses for lot 2 to #3 Dakota Dr. and for Lot 3 to #4 Dakota Dr.

3.2.2 Apply to the Tree Warden for a tree removal hearing for the public shade trees (17"dbh white pine, 14"dbh white oak, and 7"dbh and 4"dbh red maples) located in the public way at the proposed street location. Amend the Plan to show how these trees will be preserved in accordance with the instructions of the Tree Warden, or, if the Tree Warden determines that they cannot be preserved, to specify their removal and show replacement plantings on Site as the Tree Warden may directed under the Town's "Policy on the Removal of Non-Hazardous Public Shade Trees ... January 22, 1991".

3.2.3 On Plan sheet 5, Construction Details, expand the Recharge Wick Detail to show specifications for soil layers, side slopes, and surface treatment of the infiltration basin.

3.2.4 Modify the drainage system design to include a clay-lined retention basin - possibly pond #1 with adjustments to pond #2 as needed to ensure sufficient capacity. In redesigning, consider winter conditions when snow banks tend to block run-off into the ponds. Also, use deep leaching galleys in the infiltration pond to enhance infiltration during heavy frost conditions.

3.2.5 Double-check the elevations at the driveway apron to ensure that run-off from Agawam Road is contained within Agawam Road. Add a Plan note to require field checking and adjustments as needed to accomplish this objective.

3.2.6 Add a plan note to specify that all permanent boundary and survey monuments shall be installed after completion of all heavy site work.

3.2.7 Add State Plane Coordinates to the Plan.

3.2.8 Change the draft "Declaration of Common Driveway and Utility Easement" as follows:

a) Change the title to include the word 'Covenant'.

b) In the top paragraph, change and correct: '26 Agawam, LLC' to #26 Agawam Road.

c) In the top paragraph change the Plan title reference and dates to that shown on the Plan as approved hereunder (the street name Dakota Drive may added).

d) In the top paragraph, delete the reference to a certain Plan No. 481, which appears nowhere else in the application, or explain that Plan's relevance for this document.

e) Allow for future owners of lots 1 and 4 at their choosing to access Dakota Drive and to join in the maintenance responsibilities.

f) Modify the drainage system operation & maintenance plan, to be attached to this document, in accordance with Planning and Engineering Department instructions after completion of the drainage system design in accordance with this decision.

3.2.9 Show water supply lines and installations in compliance with Acton Water District (AWD) regulations, and provide AWD approval statement.

3.2.10 Show fire hydrants and fire alarm call boxes, if required, in compliance with Acton Fire Department (AFD) specifications and provide AFD approval statement.

3.2.11 Add a Plan note stating that houses and driveways are shown for illustrative purposes only, and that driveway locations, except as necessary to comply with section 8.1.18 of the Rules, and house locations may vary from what is shown on the Plan.

3.2.12 Add a Plan note stating that any limits of clearing on lots as shown are not required under the subdivision approval; that any tree plantings or landscaping on lots as shown are not required under the subdivision approval except to the extent that such planting and landscaping is required under the Rules; and that grading on lots as shown may vary excepts as necessary to comply with the approved street design and related drainage system. If such limits of clearing and landscaping are required by another entity having jurisdiction, such as the Tree Warden, the note shall clarify that fact.

3.2.13 Unless directed otherwise by this decision, the definitive plan shall be modified to comply with all requirements of the Rules, and shall address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

## 3.3 CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. Failure to adhere to the following conditions shall be reason to rescind this subdivision approval pursuant to MGL Ch.41, S.81-W. The Town of Acton may elect to enforce compliance with this decision using any and all powers available to it under the law.

3.3.1 Prior to Plan endorsement, the Applicant shall make a contribution to the Town's general sidewalk fund in the amount of $14,535.00.

3.3.2 Barbara's Way (Dakota Drive) shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 1-4 file a petition with the Town to accept it as a public way.

3.3.3 Barbara's Way (Dakota Drive) in its entirety shall be maintained by the owners of lots1 & 2 (with 3 & 4 added at their option), collectively the Lots, in accordance with the

private way declaration and covenant approved hereunder. This shall include the removal of snow and ice. The Applicant and the owners of the Lots shall not petition the Town to provide snow and ice removal services in Barbara's Way (Dakota Drive) or to provide any other maintenance and upkeep of the same.

3.3.4 Barbara's Way (Dakota Drive) shall not serve more that four residential lots.

3.3.5 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that results in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Board may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

3.3.6 As required under Massachusetts General Laws, Ch. 60, S. 23, the Plan approved hereunder shall not be recorded with the Middlesex South District Registry of Deeds or the Land Court unless it is accompanied by a municipal lien certificate, indicating that all taxes, assessments, and charges then assessed against the land shown on the Plan have been paid in full. If not paid at the time of Plan endorsement, the Board will add a Plan note to remind the Registry of Deeds or the Land Court of this legal requirement.

3.3.7 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.

3.3.8 No work on the Site shall begin prior to the endorsement and recording of the Plan.

3.3.9 All work on the Site shall be conducted in accordance with the Rules, except as waived, and the terms of this approval, and shall conform with and be limited to the improvements shown on the endorsed Plan.

3.3.10 Upon completion of all work as shown on the Plan, and before the final release of any performance guarantee, the Applicant shall submit an as-built plan showing the road pavement, drainage, utilities, and other improvements within or related to the street, and survey monuments for the entire Subdivision; a surveyor's bound certification; and a certification from a registered engineer that the work has been completed according to the approved Plan.

3.3.11 This Decision, the endorsed Record Plan, the Restrictive Covenant if any, and the Common Driveway Declaration and Covenant shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

## 3.4 LIMITATIONS

The authority granted to the Applicant under this approval is limited as follows:

3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Rules and other applicable laws and regulations.

3.4.2 This subdivision approval applies only to the Site identified in this decision and to the activity as shown on the Plan.

3.4.3 Other approvals or permits required by law and other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

3.4.4 This subdivision approval shall expire if not endorsed on the Plan within one year from the date that this decision has been filed with the Town Clerk. It shall also expire, if street construction and installation of services is not completed within 8 years from the date that this decision has been filed with the Town Clerk. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to this decision and to require any appropriate modifications of the Plan.

3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

## 4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 41, S. 81-BB and shall be filed within 20 days after the date of filing this Decision with the Town Clerk.

## 5 CERTIFICATE OF ACTION

This document stating the Decision of the Board shall serve as the Certificate of the Board's Action to be filed with the Town Clerk pursuant to MGL, Ch. 41, S. 81-U.

Signed on behalf of the Acton Planning Board

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Roland Bartl, AICP, Planning Director

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

_____

Eva Taylor, Town Clerk Date

Copies furnished:

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| Applicant - | Building Commissioner | Health Director |
| certified mail # | Engineering Administrator | Municipal Properties Director |
| Town Clerk | Conservation Administrator | Town Manager |
| Fire Chief | Police Chief | Acton Water District |
| Owner | Historical Commission | Assistant Assessor |
| MAGIC (DRI only) | Historic District Commission | |

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