ATTACHMENT 4

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Planning Board

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DECISION
06-06

45 Main Street
Determination of the Status of the Existing Way at 45 Main Street

September 12, 2006

Summary: The existing way at 45 Main Street is a street for purposes of providing access and frontage to lots in accordance with section 1.3.16.4) of the Acton Zoning Bylaw and subject to the modifications, conditions, and limitations set forth herein.

This Decision of the Acton Planning Board (hereinafter the Board) is in response to the petition of Mr. Renwick S. Tweedy, Jr. of 45 Main Street (hereinafter the Applicant), received on April 28, 2006, for a determination of the status of the existing way on or between his property (hereinafter the Way) pursuant to section 1.3.16.4) of the Acton Zoning Bylaw (hereinafter the Bylaw). The Way is located on and between property located at 45 Main Street in Acton shown in the 2006 Town Atlas page I-2, parcels 9, 10, 13 and 17 (hereinafter the Site).

The Board held a public hearing on the matter. The hearing opened on June 13, 2006 and immediately continued without deliberation. The first hearing continuation was June 27, 2006; the second continuation occurred on August 8, 2006. The Applicant presented and the Board deliberated the petition and heard evidence on the hearing continuation dates. Jeramie Vaine and John Boardman of LandTech Consultants, Inc. and Mark Scheier of Scheier & Katin, P.C. assisted the Applicant in the presentation. Board members Gregory E. Niemyski (Chairman), Mr. Michael C. Densen, Mr. William F. King, Ms. Ruth M. Martin, Mr. Edmund R. Starzec, and associate Mr. Alan R. Mertz were present throughout the hearing deliberations. The minutes of the hearing and submissions on which this decision is based upon may be referred to 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 petition cover letter from Project Engineer Jeramie Vaine of LandTech, dated April 26, 2006.

1.2 A cover letter from same as above for revised plan and document submissions, dated August 1, 2006.

1.3 A plan entitled "Road Improvement Plan, 'Main Street', Acton, Massachusetts" dated April 26, 2006 and last revised on July 31, 2006, drawn by LandTech Consultants, Inc. of 484 Groton Road, Westford, MA, consisting of six sheets.

1.4 Development Impact Report, dated April 26, 2006.

1.5 Supplemental Data Report (drainage calculations, etc.), dated April 26, 2006.

1.6 Draft Private Way Covenant and Agreement, dated August 8, 2006.

1.7 "Memorandum in Support of ....." from Mark L. Scheier, Esquire, received July 12, 2005, with attachments (record plan and documents).

1.8 Departmental communication received from:

- Acton Engineering Department, dated 6/6/06, revised 8/4/06.
- Acton Finance Director, dated 5/8/06.
- Acton Fire Chief, dated 6/2/06 and 8/8/06.
- Acton Health Director, dated 5/4/06.
- Acton Planning Department, dated 6/21/06, revised 8/4/06 with attachments.
- Acton Tree Warden & Municipal Properties Dir., dated 5/5/06.
- Acton Water Supply District, dated 5/8/06, with attachment.

1.9 Correspondence received from:

- Mrs. Marianne Varno of 47 Main Street, Acton, with attachments, received 7/22/06.

1.10 Other:

- Hearing/decision extension agreements dated 6/12/06 and 7/27/06.

Exhibits 1.1 through 1.7 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 Applicant asked the Board to determine whether the Way, pursuant to section 1.3.16.4) of the Bylaw, 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". An affirmative determination by the Board would declare the Way a street for the purposes of zoning as it pertains to the proposed use or uses and thus allow the issuance of a building permit(s) on lots that would be created on the Site.

2.2 The documents available to the Board show reasonable evidence that the Way is "a way in existence as of March 9, 1953" within the meaning of section 1.3.16.4) of the Bylaw. The Way is shown as a private way on a plan of record on September 28, 1927 and is referred to in a deed with a record year of 1920.

2.3 The Way as shown on the record plan is located between lots and parcels of land and leading from Main Street (between 43 and 47 Main Street) to Conant Street (south adjacent to 15 Conant Street) for a distance of 1,000± feet. On the ground, the way is improved for driveway purposes from Main Street for a distance of 500± feet. Wetlands occupy most of the remainder of the Way to Conant.

2.4 The Site has currently one single-family dwelling on it. The Applicant proposes two more single-family dwellings on the Site. The Plan suggests a future division of land by ANR endorsement using the Way as street to provide legal frontage. Single-family dwellings are allowed uses in the Residence 2 zoning district where the Site is located.

2.5 The Bylaw states at the end of section 1.3.16 that "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". The documents available to the Board and conditions of use on the ground suggest deeded or apparent rights of use and access to the Way for the Applicant and immediate abutters to the Way at the Main Street side:

- Varno at 47 Main Street, Town Atlas parcels I-2/7 and I-2/8.
- Phillips at 43 Main Street, Town Atlas parcel I-2/12.

2.6 Each of these abutters has a single-family residence on their land. If the Way is determined to be a street, the Varno land has potential for an additional single-family residential lot.

2.7 The Applicant has submitted a Plan to improve the Way. The Plan shows proposed improvements in the location and for a distance more or less equal to the current driveway. The proposed improvements are generally consistent with Acton's design standards for common driveways. The Board's determination on the status of the Way takes these proposed improvements into account.

2.8 The Applicant has agreed verbally at the hearing to contribute $6,525 to the Town to be applied towards the Assabet River Rail Trail. This contribution is in lieu of building a sidewalk on the Way.

2.9 The Board has received comments from various Town departments, which are listed in Exhibit 1.8 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 or necessary by the Board.

3 BOARD ACTION

Therefore, the Board determined at a meeting on September 12, 2006 by a vote of 4 in favor (Niemyski, King, Martin, Starzec) - 0 opposed, that the Way at 45 Main Street is a street within the meaning of section 1.3.16.4) of the Bylaw for a distance of not more than 560 feet from the sideline of Main Street and for access and street frontage for not more than six single-family dwellings on land abutting the Way as set forth in the following:

- On the Site (45 Main Street), being the land owned by the Applicant, three single-family dwellings, one existing and two additional, including all accessory uses allowed under the Bylaw from time to time.
- On the abutting land as presently owned by Varno (47 Main Street) two single-family dwellings, one existing and one additional, including all accessory uses allowed under the Bylaw from time to time.
- On the abutting land as presently owned by Phillips (43 Main Street), one single-family dwelling, currently existing, including all accessory uses allowed under the Bylaw from time to time.

This determination shall not render illegal or non-conforming any of the lawfully erected buildings and structures located at 43 and 47 Main Street with regards to their setbacks from the Way.

Furthermore, this determination is made subject to the following conditions and limitations:

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 Decision. 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 signing of any plan submitted for 'Approval Not Required' endorsement under the Subdivision Control Law and showing lots with frontage on the Way, 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. Information customarily shown on an 'Approval Not Required' plan may be shown on that plan instead.

a. Relocate the two catch basins at the beginning of the Way a few feet east so as to be located outside of the Main Street layout.

b. Specify pipe diameters for the proposed drainage system at and in Main Street.

c. Adjust the depth of the drainpipes at Main Street for a minimum cover of 4 feet, or the minimum required cover according to the pipes' documented manufacturer's specifications.

d. Provide drainage calculations to demonstrate the adequacy of the proposed new catch basins at Main Street; and analyze the existing Main Street drainage system to see if there is sufficient capacity to handle the runoff from the Way based on a 10-year design storm event. If the public drain system should prove inadequate, the Plan shall be revised to increase on-Site retention and/or recharge and to modify Plan details and Operations and Maintenance instructions accordingly.

e. For elevations on the plan reference the NGVD of 1929, note location and elevation of the starting reference benchmark, and show at least one temporary benchmark within the Site on a fixed object that will not be disturbed during construction.

f. On Plan sheet CP-1, change the labels for the gravel driveway shoulders to be consistent with the proposed shoulder treatment in the cross section on sheet DS-1.

g. On Plan sheet EC-1, add a note requiring and specifying adequate provisions for dust control, and correct note 13 to refer to Main Street instead of High Street.

h. Revise note 16 on Plan sheet DS-1 to read: "There shall be a minimum stopping sight distance of 450 feet on Main Street."

i. Add the following notes on Plan sheet DS-1:

- Note requiring that all loam and yielding materials shall be removed from the driveway construction area and replaced with suitable subsurface materials as specified in the Common Drive Cross Section.
- The following note: "Prior to installation of the wearing surface on the driveway, the binder surface shall be swept clean, dried if necessary, patched and treated with an asphalt emulsion or tack coat to ensure a satisfactory bond between the pavement courses.
- Note requiring that the wearing course shall not be applied until all initial construction on lots served by the Way and requiring heavy trucks and equipment is completed.
- Note stating that no paving shall take place after November 15 of any given year.
- Note that the 3-foot wide driveway shoulders as specified in the Common Drive Cross Section shall be cleared of any obstructions, such a trees, shrubs, utility poles and other impediments to vehicular passage.

j. Add curbing for the length of the way that descends towards Main Street.

k. Specify curb and edge-of-pavement radii at the Way's intersection with Main Street and at the emergency vehicle turn-around.

l. Show on the Plan the approximate location of the existing gas main in Main Street and the DIGSAFE number in bold.

m. To minimize clutter, consider combining the Stop sign on the sign post with the street name/private way sign.

n. Show proper monumentation at property corners and lines to easily identify property boundaries in the field.

o. Show an easement for the portion of the Way's pavement located on proposed lot 3.

p. In the Operation and Maintenance plan (Plan sheet SWPPP)

- Add to paragraph 2 the following phrase: ", in accordance with the Private Way Covenant and Agreement of record."
- Add to paragraph 3 instructions on how to inspect the catch basin sumps and how to determine if and when they need to be cleaned out.
- Delete paragraph 4.

q. In the Private Way Covenant and Agreement –

- paragraph 1, first line, consider inserting ", Varno, and their heirs ..." after 'The Owner'.
- end of paragraph 1, add the phrase: ", and by emergency, fire, rescue, and police vehicles."
- add a new paragraph 2d entitled "Operation and Maintenance of the Drainage System" and insert here the paragraphs that constitute the Operation and Maintenance Plan on Plan sheet SWPPP as amended herein (and renumber subsequent paragraphs as needed).
- paragraph 2d (or as renumbered), first line, add 2d in the list of subparagraphs; and insert at the end of the forth sub-paragraph (after 'excavation') the following: "In the event that Phillips, or their heirs, successors, and assigns enter into an agreement to also use the Private Way, they shall be bound by this covenant in the same manner as the Owner, Varno, and their heirs, successors, and assigns."
- paragraph 8, first line, add ", their heirs, successors, and assigns" after Varno.

3.3.2 Prior to the signing of any plan submitted for 'Approval Not Required' endorsement under the Subdivision Control Law and showing lots with frontage on the Way, the Applicant shall:

a. Provide the Board with a performance guarantee in accordance with section 6 of the Acton Subdivision Rules and Regulations.

b. Show on such plan a street name and numbering system that has been approved by the Acton Engineering, Fire, and Police Departments.

3.3.3 Prior to the issuance of a building permit for a new single family dwelling on any lot with frontage on the Way, the Applicant shall contribute to the Town of Acton $6,525.00 for purposes of acquisition, design, and construction of the Assabet River Rail Trail, including amenities, between the Maynard Town line and the South Acton commuter parking lot.

3.3.4 Runoff from new roofs and driveways on the lots with frontage on the Way shall be contained and recharged within the lots or otherwise managed to ensure that no such runoff enters the Way in the direction of Main Street.

3.3.5 The Way shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of any lots with frontage on the Way file a petition with the Town to accept it as a public way.

3.3.6 The Way in its entirety shall be maintained by the owners of lots with frontage on the Way in accordance with the Private Way Covenant and Agreement as amended herein. This shall include the removal of snow and ice. The Applicant and the owners of lots with frontage on the Way shall not petition the Town to provide snow and ice removal services in the Way or to provide any other maintenance and upkeep of the Way.

3.3.7 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 result 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.

3.3.8 The Plan approved hereunder, and any 'Approval Not Required' plan showing lots with frontage on the Way, 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 endorsement of the Plan, the Board will add a Plan note to remind the Registry of Deeds or the Land Court of this legal requirement.

3.3.9 No work on the Site shall begin prior to the endorsement and recording of an 'Approval Not Required' showing lots with frontage on the Way.

3.3.10 All work on the Site shall be conducted in accordance with the terms of this approval, and shall conform with and be limited to the improvements shown on the Plan as approved hereunder.

3.3.11 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.

3.3.12 Upon completion of all work as shown on the Plan as approved hereunder, and before the final release of any performance guarantee, the Applicant shall submit:

a. An as-built plan for the Way, drainage, utilities, and other improvements within or related to the Way, and survey monuments for the lots with frontage on the Way.

b. A certification from a registered professional engineer stating that the project was constructed according to the Plan as conditioned and approved hereunder.

c. A bound certification from a registered land surveyor as set forth on form CB of the Acton Subdivision Rules and Regulations.

3.3.13 This Decision shall be referenced on any plan submitted for 'Approval Not Required' endorsement under the Subdivision Control Law and showing lots with frontage on the Way.

3.3.14 This Decision, 'Approval Not Required' plans with lots having frontage on the Way, the Restrictive Covenant under section 6 of the Subdivision Rules if any, and the Private Way Covenant and Agreement as amended herein 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 determination of the Board and the authority granted to the Applicant under this decision is limited as follows:

3.2.1 This determination that the Way is a street within the meaning of section 1.3.16.4) of the Bylaw applies only to the land and use specified herein. The Way shall not be considered a street under zoning for any other land use or any other parcel of land. Further, this determination is limited only to the portion of the Way specified herein. No determination is made herein with respect to any other portion of the Way.

3.2.2 The validity of this determination shall expire, if no building permit is issued on the Site for an use authorized hereunder within two years from the date of filing this decision with the Town Clerk, or if the improvements on the Way are not completed in accordance with the approved Plan within 3 years from the date of filing this decision 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.

3.2.3 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.

3.4.1 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.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner
for the Town of Acton Planning Board

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 Bowen, Town Clerk Date

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Town Engineer	Municipal Properties Director
Town Clerk	Natural Resources Director	Town Manager
Fire Chief	Police Chief	Acton Water District
Varno & Phillips	Historical Commission	Assistant Assessor

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