

ISSADORE

LLC

September 28, 2023

Via Email

Hingham Planning Board
210 Central Street # 10
Hingham, MA 02043

Attn: Emily Wentworth (wentworthe@hingham-ma.gov)
Michael Silveira (silveiram@hingham-ma.gov)

Re: Submission of The Young Family Trust for Subdivision Approval off of Bishop Lane

Dear Members:

I have been retained by Steven Young, Trustee of The Young Family Trust with regard to the above captioned submission for subdivision approval. I have only recently been retained but have had the opportunity to review applicable documents and plans, to speak to my client, the engineer for this project and town personnel, and to review applicable subdivision laws and regulations, including applicable case law. In addition, I attended by Zoom the Planning Board hearing of September 11, 2023.

Given the foregoing, I urge this Board to focus on its obligations when confronted with a request for approval under the Subdivision Control Law (the "SCL"). What I have witnessed is a mistaken belief of the Planning Board that it is being asked to approve or deny the submission as it would if this were a submission for a special permit or other zoning relief. To do so in this manner is to disregard its mission under the SCL. As the Appeals Court has stated:

We have recognized that compared to zoning provisions which are relatively rigid, "[t]he subdivision control process contemplates a 'dialogue between board and developer' and 'exhortative give-and-take,' i.e., a working out of difficulties and solutions less rigid than the zoning process." . . . The subdivision control process has some flexibility and doubtless often involves negotiation between the developer and the town. . . . It is useful in this connection to bear in mind the distinction between zoning, which limits the use of land, and subdivision control, which does not dictate in the same direct fashion how land will be used.

Collings & Others v. Planning Bd. of Stow, 79 Mass.App.Ct. 447, 453-454 (2011)

Indeed, further evidence that the purpose of these hearings is to reach a negotiated approval if suitable ways for access furnished with appropriate utilities can be established is that this Board has the power and express right to grant waivers to the rules and regulations governing compliance. MGL c. 41, Sec. 81R ("planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and

regulations”). If the purpose of the process of review were to find reasons to deny the subdivision submission, than the law would not give the Board the mechanism to grant waivers.

Subdivision of land is a necessity to development of land within the town. Not to be cavalier, but if subdivision were not favored, than we might have as little 10-50 landowners of huge tracts of land as no doubt existed before communities were developed. The actual subdivision or number of lots created is not the paramount concern when reviewing my client’s submission. We have zoning for that purpose. This Board should work with my client to grant this submission because subdivision control does not dictate in the same direct fashion as zoning in how land is used, “but, rather, compels the construction of ways which, among other things, are safe and convenient for travel and make provision for utilities.” Meyer v. Planning Bd. of Westport, 29 Mass App Ct. 167, 170 (1990). “A planning board does not have a roving commission. The only purposes recognized [by § 81M] are to provide suitable ways for access furnished with appropriate municipal utilities, and to secure sanitary conditions.’ ” Sealund Sisters, Inc. v. Planning Bd. of Weymouth, 50 Mass.App.Ct. 346, 351 (2000).

At the September 11, 2023 hearing, members of this Board expressed opinions that had little or nothing to do with the rules and regulations governing the construction of safe ways providing suitable access to the subdivided land and to abutters. Comments were made by Board members that such a development should not be had in a historic area, or that such a development is out of character to the surrounding area or that who is going to step up when infrastructure starts to wear fifty or more years from today. These extrinsic factors stated as a matter of record are impermissible. In Musto v. Planning Bd. of Medfield, 54 Mass. App. Ct. 831 (2002) the Appeals Court held that the Planning Board abused its discretion in denying a subdivision plan where it was evident from the record that it had granted these waivers in the past, that no substantive safety issues existed and that the Board was improperly motivated to reduce the number of lots being created. See Arrigo v. Planning Bd. of Franklin, 12 Mass.App.Ct. 802 , 805(1982) (factors outside rules and regulations governing the SCL such as frontage in controlling density of development or in preserving the character of a neighborhood is more appropriately a concern of zoning).

My client has requested approval with a submission that asks for minimal waivers. Indeed, this submission complies with over 98% of the applicable rules and regulations, and requests waivers that have no substantive effect on safety. The waiver of the requirement that existing Bishop Lane be 40 feet (as now exists) rather than 46 feet is a distinction without substance since as your traffic and civil engineer, as well as my client’s engineer, have stated, all aspects of the paved roadway, sidewalk, etc. that is being provided where Bishop Lane is being extended will be provided within the existing 40 feet right of way. Your traffic engineer opined that a waiver to the four feet of grassy area between the paved roadway and the sidewalk did not impact safety given my client’s agreement to install granite curbing. The same traffic engineer stated that the requested waiver to having a 127 foot radius was not a safety concern so long as an 8 percent slope of roadway was provided, as my client has agreed to do. In addition the Fire Department has no objection¹ and the cul de sac at the end of the roadway allows a ladder truck to make a full 180 degree turn.

¹ In a letter to this Board dated July 17, 2023 Lieutenant DiNapoli of the Hingham Fire Department stated that he has “found the submitted drawings and plans to be satisfactory for the needs of the fire dept. and in compliance with the hydrant by-law. The proposed grade is at 10% which meets the Mass Fire and Life Safety Codes 527 CMR 1.00.’ The Bishop Lane roadway’s current proposed grade is only 8%.

Indeed, while my client under protest has accepted the position of this Board that the subdivision roadway is a Minor Street commencing at the intersection of existing Bishop Lane with South Street, my client maintains that the subdivision roadway commences where the 40 foot Bishop Lane, existing since 1925, is altered to accommodate the frontage of the subdivided land. See Beale v. Planning Bd. of Rockland, 671 N.E.2d 1233, 423 Mass. 690 (Mass. 1996) (proposed subdivision roadway runs roughly eastward from the border between Hingham and Rockland to an existing cul-de-sac at the end of Commerce Road, a private way that is part of a previously approved subdivision)

This is consistent with this Board's subdivision approval for the 11 lot subdivision extending at the end of Lewis Court. The fact that Lewis Court is a public way is a distinction of no merit as the applicant has more ability to alter a private way to create a safe roadway over which it has an ownership interest and easement. Based on the foregoing Bishop Lane is a Limited Residential Street under Planning Board subdivision rule and regulations – not a Minor Street. Accordingly, no waivers would be requested as the requirements are a 40 foot layout, no sidewalk and an 18 foot paved surface that would allow for a center turning radii of better than 150 feet, the stated requirement for this limited residential roadway. Even if this matter were not free from doubt the fact that two interpretations result in requesting waivers to no waivers at all shows that construction under either conclusion results in a suitable safe roadway.²

The public interest in granting these waivers is paramount when one compares the construction of the subdivision roadway to the existing conditions. Bishop Lane today has as much as a winding 18 percent grade with a rocky 8-9 foot paved surface. I drove up the existing roadway in abject fear. One is concerned about driving off the road and realizes that without driving on private property there is no way to turn your vehicle around. This Board should be aware that Mr. Young recently needed emergency services for his mother and the fire truck could not and did not leave South Street. Also, there is only a single fire hydrant located off South Street. This is an unacceptable danger which cries for elimination.

Granting of the minimal waivers requested has no impact on safety but clearly is within the public interest in allowing this subdivision roadway to be built so that residents, guests, delivery service providers, emergency vehicles and others have safe access and egress. This Board has the opportunity to work with my client to improve existing conditions by granting the requested waivers and approving this subdivision submission.

Very truly yours,

Bruce A. Issadore

cc: Steven Young

² In an application before this Board at 213 & 215 Cushing Street the applicant seeks a waiver to allow the design construction of a Minor Street to be in accordance with the requirements for a Limited Residential Street.