

Town of Winchendon

Department of Planning and Development

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Winchendon, MA 01475

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To: Keith Hickey, Town Manager
From: Tracy Murphy, Director of Planning & Development
Date: September 9, 2020
Re: Mellen Road

I write this memo in an effort to clarify claims made in recent meetings concerning the application and interpretation of Mass Gen Law Chapter 41 Sec, 81K-81GG known as the "Sub-division Control Law" in relation to Mellen Road.

1. A claim was made that Approval Not Required (ANR) are not part of the Sub-division Control laws. Section 81P of the Sub-Division Control law pertains to ANR plans.
2. A claim was made that it is illegal for the Planning Board to endorse an ANR unless the frontage is on a public way. The Planning Board has the ability to endorse a plan depicting ANR lots when frontage is on one of the 3 following ways:

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. (sec 81L)

The law does not specify that the way in existence (c) has to be a public way. Furthermore, the Planning Board performed due diligence in that minimum frontage and vital access for each ANR lot was considered individually as evidence by more than 15 separate ANR plans approved by the Board. In doing so, it is my opinion that the Planning Board met their charge as outlined in MGL c 41 sec 81M.

3. In March of 1989, The Winchendon Planning Board and DPW entered into an agreement with the developer that they would endorse ANR plans on the discontinued portion in increments as the road was brought up to a standard that met adequacy as outlined in MGL Ch. 41 sec 81R. (see above) However, I can find no record that within this agreement, the Planning Board, BOS nor the voters of Winchendon reconsidered or intended to reconsider the status of the road. Initial Building permits support this as it was annotated on many permits that the road was not public and was not maintained by the town.

In July of the same year (1989) plans were submitted to the Planning Board that omitted the notes regarding the portion of Mellen Road being discontinued and subsequent plans depict those same portions of Mellen Road as "Public." The town has reached out to the preparer of those plans for documentation that supports the change in notation. This change in notation has caused tremendous discourse as property owners claim that the road is public and the town does not have any documentation other than the aforementioned plans that support their claim. Actions and agreements made by the Planning Board and the DPW in themselves cannot not make a way public.

4. The following terms have been used interchangeably with a suggestion that they have different meanings or connotation: Town Road, Public Way

"Public ways" as a generic term includes state highways, county highways, town ways and statutory private ways. I can find no evidence to support that there is a difference in meaning between the terms within the context they were used.