

Moving Between the Lakes Road -- Approvals needed [IMAN-ACTIVE.FID2821443]

From Andres, Charles R.  
Date Thu 11/7/2024 4:06 PM  
To Abby Conroy

1 attachments (2 MB)  
townroadlistpdf.pdf;

Abby:

I am getting back to you regarding the question you raised about the local approvals need to authorize the relocation of Between the Lakes Road on the parcel located at 280 Between The Lakes Road as proposed in Inland Wetlands application #2024-IW-040. As depicted on the drawings in that application, the applicant, Great Falls Construction, is proposing to relocate Between-the Lakes Road from its present location on the eastern border of the property near Lake Washing (East Twin Lake) to a location some 30 + feet westerly (away from the Lake), and remove the existing portion of the road located near the Lake. I note that the proposal is not simply an improvement of the road, but changes the boundaries of the road by closing and removing a section of the existing road close to the Lake and creating a new section of roadway in its place further from the Lake. The applicant also proposed to relocate a portion of the open space on this lot – open space that was approved as part of subdivision that included this property.

I am presuming that Between the Lakes Road is a public (Town) road, not a private road. I am basing this based on the following facts: (1) although the road is mostly unimproved, the town currently maintains it; (2) you have identified a map from 1899 showing the road (thus showing that the road had existed at least 125 years); (3) Between The Lakes Road is listed as a locally maintained Town Road as of December 31, 2023 on the Town Road List compiled by the State of Connecticut Department of Transportation, with most of the road characterized as unimproved. See attached exhibit; (4) The maps you identify in your email below (198,368,442,455,638,639,640,739) depict a road that appears to be Between The Lakes Road as a “Town Road” (although the maps do not state the name of the road). If the applicant believes that Between the Lakes is a private road, please request the applicant to provide relevant information to support this conclusion.

Assuming that Between the Lakes Road is a public road, here is my understanding of the approvals needed to relocate the road as depicted in the drawings submitted to the Inland Wetland Commission:

- **Inland Wetlands Commission**

- **Regulated Activities Permit.** The application (which includes installation of drainage improvements as well as relocating a portion of the Road) proposes work constituting a “regulated activity” as defined by the Inland Wetlands and Watercourses Regulations. Accordingly, the applicant has (properly) applied for an application for a Regulated Activities Permit for this activity.
- **Subdivision Referral.** As noted below, the applicant will be required to file to a resubdivision application with the Planning & Zoning Commission. CGS Sec. 8-26(e) provides that on or before the date that any subdivision or resubdivision application is filed with the Planning & Zoning Commission, the applicant shall file an application with the Inland Wetlands Commission, which should submit a report to the Planning & Zoning Commission with its decision. Here, it is recommended that the applicant either file a separate application with the Inland Wetlands Commission in connection with its resubdivision application, or amend its pending application for a regulated activities permit and request the Inland Wetlands Commission to issue a report to the Planning & Zoning Commission in connection with the proposed regulated activities associated with the resubdivision application.

- **Planning & Zoning Commission**

- **Resubdivision application.** The property at issue (280 Between the Lakes Road) is a lot in a two-lot subdivision previously approved by the Planning & Zoning Commission. CGS Sec. 8-18 defines “resubdivision” as follows:

“resubdivision” means a change in a map of an approved or recorded subdivision or resubdivision if such change (a) affects any street layout shown on such map, (b) affects any area reserved thereon for public use or (c) diminishes the size of any lot shown thereon and creates an additional building lot, if any of the lots shown thereon have been conveyed after the approval or recording of such map;

Here, the relocation proposal appears to both affect a street layout shown on the approved subdivision map (subsection (a) above) and affects an area reserved for public use, assuming the open space in the approved subdivision was reserved for public use (subsection (b) above). Accordingly, a resubdivision application appears to be required.

In terms of what standards the Commission should apply when evaluating the application, the standards are those set forth in the subdivision regulations. I do not believe that the regulations contain standards for relocating a road as opposed to creating a new portion of a road; and since the new portion of the road is entirely new at a new location, I believe the standards for new roads would apply with respect to the newly located portion of Between the Lakes Road. I note, however, that the subdivision regulations allow the Commission to waive any requirement of the regulations by a vote of four persons. See Sec. 3.5 of Subdivision Regulations.

- **CGS Sec. 13a-71.** Even if the proposed road relocation and alteration of open space did not qualify as a resubdivision, the new realignment of Between the Lakes Road would require approval by the Planning & Zoning Commission under CGS Sec. 13a-71, which requires that any highway layout less than fifty feet to be approved by the Planning Commission. See copy of statute below. I note that the review under Sec. 13a-71 would be typically encompassed by review of a subdivision or resubdivision application, and I do not believe this statute imposes any obligations in addition to that imposed by the subdivision regulations. I mention this point only to highlight that the obligation of the P&Z to review the new road layout derives both from the subdivision statutes and Section CGS Sec. 13a-71.
- **Site Plan for activities in Lake Overlay Zone.** The road relocation appears to propose land disturbance of 500 square feet or more within 75 feet of the ordinary high water mark line of the Lake. Assuming this is true, Section 404.5 of the Zoning Regulations (concerning the Lake Protection Overlay District) would require the filing of a site plan application with the Commission.
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- **8-24 Referrals.** Insofar as the proposal involves the statutory discontinuance of the existing portion of Between the Lakes Road, and the acceptance by the Town of the newly located portion of Between the Lakes Road, an 8-24 review request should be sent to the Planning & Zoning Commission for both of these actions.

- **Board of Selectman**

- **Approval of road construction process.** The Town Road Ordinance (Ordinance # 73 ) “ establishes the requirements for construction methods and materials and procedures for acceptance by the Town of streets in subdivisions approved by the Salisbury Planning and Zoning Commission in accordance with the Salisbury Subdivision Regulations”. The Ordinance is administered by the Board of Selectmen, and requires the developer to obtain a Road Construction Permit and provide plans, insurance, a performance guarantee, drainage easements, and as-builts. Accordingly, the applicant would need to obtain a Road Construction Permit from Board of Selectman approval prior to initiating any work on this proposal.
- **Acceptance of new road location as a Town Road.** The Town Road Ordinance also describes the process for the developer to obtain the Town acceptance of the road. This process cannot take place until one year after the release of the performance guarantee. As part of the acceptance process, the applicant must provide a warranty deed to the Town. An 8-24 review should be requested from the Planning & Zoning Commission, and the road acceptance must be approved by Town Meeting. The Ordinance provides that the design must comply with standards in the subdivision regulations and other standards regarding, staking, erosion control, top soil, subgrade, underground utilities, subbase and base, surface and binding course, monuments, and street drainage.
- **Discontinuance of old Section of Between the Lakes Road.** A town road remains a public highway unless it is either deemed “abandoned” (a common law doctrine) or is statutorily discontinued (see CGS Sec. 13a-49). As noted above, the applicant is proposing to relocate the boundaries of a portion of the road, and to remove portions of the existing road – and presumably wishes to use the exiting road area for other purposes. Accordingly, I assume that the applicant desires that the current location of the road be either abandoned or discontinued. Because the timeframe to establish that a road has been abandoned is non-specific, the most efficient way to remove the roadway status of the current location of the road would be through the statutory discontinuance process. This procedure for discontinuance is spelled out in CGS Sec. 13a-49, and allows the Board of Selectmen to discontinue any part of a public highway, subject to Town meeting approval. An 8-24 referral from P&Z would also be required. The statute also spells out the notices that must be provided to property owners abutting the road.

- **Town Meeting**

- **Acceptance of new portion of Between the Lakes Road.** The new portion of Between the Lakes Road must be accepted by the Town to be established as a Town Road. The procedure for acceptance is spelled out in the Town Road Ordinance, and includes an 8-24 referral to Planning and Zoning, action by the Board of Selectmen, and approval at a Town meeting. See Town Ordinance. See also CGS Sec. 13a-48.

- o **Discontinuance of old Section of Between the Lakes Road.** As noted above, Town meeting approval is also required in order to discontinue part of an existing town road.

Let me know if you have any questions.

Chuck

**Sec. 13a-71. Layout by individuals.** (a) No person, company or corporation, except the state or municipal corporations, shall lay out any highway in this state less than fifty feet in width unless with the prior written approval of a majority of the selectmen of the town, or of the burgesses of the borough, or of the common council of the city, wherein such highway is located, except that, where there exists a planning commission in such town, borough or city operating under the general statutes or special act, which commission has adopted subdivision regulations, such written approval shall be obtained from such planning commission.

(b) No highway except a state highway shall be opened to the public until the grade, layout, location, width and improvements of such highway have received the written approval of the majority of the selectmen of the town or of the common council of the city or of the warden and burgesses of the borough wherein such highway is located, except that, where there exists a planning commission in such town, city or borough operating under the general statutes or special act, which commission has adopted subdivision regulations, such approval shall be obtained from such planning commission, nor until such approval has been filed in the office of the clerk of such town, city or borough, as the case may be. No such clerk shall receive or place on file any map of any such new highway or highways, or any map of land showing such new highways, until he has received a certificate, signed by a majority of the selectmen of the town or of the planning commission, or, if such layout is within a city or borough, a certificate signed by the mayor of such city or the warden of such borough or by a majority of the planning commission, as the case may be, that such new layout has been approved by such selectmen or common council or warden and burgesses or planning commission as herein provided.

(c) If any highway has been laid out in violation of the provisions of this section, such highway shall be immediately closed by the first selectman of the town or, in the case of a city or borough, by the officer having charge of the highways in such city or borough, and shall be kept closed until such time as the grade, layout, location, width and improvement of such highway have received the approval herein provided for. The first selectman of a town, or officer having in charge the highways in a city or borough, who fails to comply with the requirements of this section concerning the closing of such new highways as have not been approved as herein provided shall be fined not more than twenty-five dollars.

(1949 Rev., S. 2141; 1958 Rev., S. 13-25; 1959, P.A. 329; 1963, P.A. 226, S. 71.)

## Charles R. Andres

Partner

**BARCLAY DAMON** <sup>LLP</sup>

545 Long Wharf Drive • Ninth Floor • New Haven, CT 06511  
D: (203) 672-2657 • F: (203) 654-3256 • E: CAndres@barclaydamon.com

[www.barclaydamon.com](http://www.barclaydamon.com) • [vCard](#) • [Profile](#)

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