

Minutes of the Antrim Planning Board Meeting February 22, 1990

Present: David Essex, Acting Chairman; Nancy Timko; Barbara Elia; Edwin Rowehl, ex officio; Rod Zwirner arrived late.

David Essex, Acting Chairman, opened the meeting at 7:30 p.m. He introduced the Board, and opened the public hearing for David Cutter who proposes the subdivision of a parcel of approximately twenty five acres into two lots. Essex introduced Harry Page who presented the proposal for Cutter. Page indicated the location of the property on the plan and showed how the house would be separated with 90,000 square feet. Page called attention to the fact that Whiton Road has been indicated as a class five road on the State of New Hampshire Inventory of Roads. Mr. Page maintained that since the Town has been receiving TRA for this road, it should, therefore, be considered a class V road. He argued that subdivisions on Class VI roads are allowed under 4.05(e) of the Antrim Subdivision Regulations, and he read the article in question. He indicated that the Applicant does not have any plans for this lot at this time. He also stated that the Applicant is not asking the Town to upgrade the road. Mr. Harris, an abutter, asked questions and determined that this proposal will not encroach on his property. It was determined that the right of way is very close to the house owned by Forest and Ruth Hussey. Ed Rowehl referred to RSA 229:5 VII, which pertains to the designation of a Class VI Highway. Rowehl expressed the opinion that this road has not been maintained for approximately sixty years, and he cited the five year rule. He also made reference to a court case involving the Town of Ossipee on this subject. Rowehl also referred to RSA 674:41, and he noted the need to comply with this law. Rowehl informed the hearing that the Department of Transportation had been notified of the error on their map last year and that a Mr. Whalen and his crew had expressed the opinion that inasmuch as, it could not traveled over, it therefore, is a Class VI Road. It was established that from Congreve Road north Whiton Road is Class V, south it is Class VI. Attorney Lloyd Henderson, representing the Applicant, stated that as of November 1989 it was determined to be Class V, and he read the State regulation as it pertains to the determination of the amount received by the Town under Town Road Aid. Page argued that the Town had this road on it's list and could be considered to be defrauding the State. He agreed that the Board could call it a class VI and he could subdivide on that basis. Bill Harris, an abutter, had no opposition to the proposal if it is subdivided on the condition that Whiton Road is Class VI. If the Town had any responsibility to upgrade the road, he would be totally opposed, and expressed the opinion that the Town is not liable for the old road. Attorney Lloyd Henderson made further arguments as to the status of Whiton Road and agreed that the applicant will concede that it is Class VI for the purposes of subdivision, 4.05 of the Antrim Subdivision Regulations, but it is indicated on the map as a Class V Road. It is also shown elsewhere as a Class V Road. Henderson addressed the Glick vs Town of Ossipee case. He commented that

the Board will have to deal with the fact that it is shown as Class V on all Town maps. Page agreed that the developer will concede that it is not a Class V road for the purpose of subdivision, and stated that the only intention is to separate back lot from the front lot. Page argued that there is nothing on the record to show that it is not a Class V road, and stated that all roads that are VI should be so indicated. Henderson pointed out that the Board should be aware that, should the subdivision be approved as proposed, it does not mean that a Building Permit will be issued, and he asked Selectman, Ed Rowehl about the Selectmen's minutes as they apply to the designation of Whiton Road as Class VI. Henderson argued that the Town should be voting roads at every Town Meeting stating that they should be posted and voted at Town Meeting to protect the land owner. Henderson presented a copy of a portion of a statement by Bernie Waugh, NHMA Legal Counsel, taken from a handout entitled "A Hard Road to Travel" which was distributed at a workshop on Class VI Roads, June 19, 1987. Page stated that the Applicant does not want to access the whole road. He only wants to have access to his property. Rowehl pointed out that the Board would have to determine whether this proposal meets the requirements of the subdivision regulations. The proximity of the Forest Hussey property to the right of way was questioned. Page made further arguments on the manner in which this property is assessed. The Board discussed the Subdivision Regulations as they apply to conditional approval. Mr. Harris again stated that he has no opposition to the proposal as long as Whiton Road is considered to be a Class VI Road. Page reiterated that the Applicant does not want this subdivision to be of any cost to the Town. Henderson pointed out that the Town's proposed definition of frontage does not require frontage on a Class V Road. Nancy Timko moved to accept the completed Application. Ed Rowehl second. Application accepted unanimously.

Acting Chairman, David Essex opened the public hearing on the Subdivision. Page again expressed the Applicant's position that the proposal will not cost the Town any money as they, the subdivider, will have to upgrade the road. Page stated that their intention is to build a road into the property, as they do not want to improve the road for the abutters. He mentioned plans for a Cluster development. The Chair closed the Public Hearing and the Board went into deliberations. Rowehl suggested that no decision be made tonight as there are things that need research. David Essex pointed out that the lot is grandfathered with frontage on Route 31 and frontage on a Class VI Road. It was suggested that the Board could vote to continue the hearing on the basis of, the inspection of the intersection at Davison Drive, the subdivision is on a Class VI Road, the ramifications of the five year maintenance rule and the Supreme Court decision in the Glick vs the Town of Ossipee case. In answer to a question about the options the Applicant had if the Application was denied. Henderson observed that the Applicant must go to court to get the decision overturned. It was observed that there is no other access to the proposed lot. Page requested that the

Board consider this subdivision tonight. Ed Rowehl moved to continue this hearing until March 8. Barbara Elia second. In the discussion David Essex observed that between now and then a little of the thought process could be lost. It was suggested that the Board will look at the intersection of Whiton Road and Davision Drive and consider the status of the Road. So moved unanimous. The Board discussed roads, the status of same, etc. It was suggested that the Board express the need for a review of the roads to the Chair. Ed Rowehl moved to continue this discussion on March 8. Second Rod Zwirner. So moved.

The Chair addressed the correspondence and the minutes of February 15, 1990. Rod Zwirner moved to accept the minutes as printed. Ed Rowehl second. So moved.

Motion to adjourn.

Respectfully submitted,  
Barbara Elia