

**THE PLANNING BOARD**  
**Town of Frankestown**  
**Frankestown, NH 03043**

March 23, 2010

**MINUTES**

Planning Board Members Present: Bob Lindgren (Chairman), Sarah Pyle, Mike Tartalis, Linda Kunhardt, Ben Watson.

Members of the Public: Sydney Anne Rainey, Jed Callen, Esq., Skip Tenney, BJ Carbee.

Ben Watson is taking the minutes in the absence of Minutes Clerk Melissa Stewart.

Chairman Lindgren calls the meeting to order at 7 pm.

**Case No. 10-C-1 (Rainey consolidation, cont.)**

This application for consolidation of lots 3-89 and 3-104 was continued from the meeting of March 16, 2010, in order to get the written opinion of Town Counsel, Barton L. Mayer (Upton & Sanders) concerning the advisability of consolidating two lots that are separated by a road.

Pyle contacted Mayer, and reads his opinion, in which he discusses the case cited by Jed Callen (*Keene v. Meredith*), which is not directly relevant to this case (as Callen admits), but touches upon similar issues.

Mayer's opinion is that the general policy of the Planning Board, i.e., not approving merger of lots that are separated by a road reflects the general principles of the Frankestown Zoning Ordinance, in the sense that merging lots across the road could potentially create an unusually shaped, or less compact, coordinated, or useful lot of record. He believes that, in general, merging lots across a road is not sound land use policy, and he cites the Superior Court case, *Harrington v. Town of Frankestown*, as precedent.

Having said this, Mayer also states that, as always, his own opinion is not binding on the Planning Board, and the Board can rule as it sees fit.

Pyle states that she has looked through approximately one-quarter of town tax records (owners A-C) as a research sample, to determine how many lots this kind of consolidation might potentially affect. She found 13 owners with two lots under common ownership separated by a town road. Of these 13 instances, three represent a similar kind of land use as the Rainey lots (house on one side of the road, barn or other structure on the other side). She argues that the concept of "use connectivity" suggested by Watson might be one way for the Board to consider these lots as good candidates for consolidation.

Watson states that he is not opposed to granting the Rainey consolidation, but he believes the Board needs to discuss adding more information to the Subdivision regulations this year, to clarify any

criteria that the Board feels are important regarding voluntary merger of lots, and specifically addressing lots separated by a road. He recommends that the Board explicitly include language stating that, when a nonconforming lot(s) are separated by a road and are consolidated, they cannot later be subdivided using the argument that the road creates a "natural subdivision." However, Watson admits that this would not apply to the Rainey consolidation, since it involves two large lots, both of which would be capable of future subdivision.

Pyle moves to approve the consolidation, for the following reasons:

1. Each of the two lots is connected by historic use (barn/house) and pertains to the other lot.
2. The consolidation would have the effect of conserving open space, at least on a temporary basis.
3. The consolidation will not create a nonconforming or less conforming lot.
4. The consolidation does not violate the letter or spirit of the Zoning Ordinance or subdivision regulations.

Kunhardt seconds. All in favor (5-0).

Watson asks Callen to retype the final Affidavit of Consolidation in a form acceptable to the Hillsborough County Registry of Deeds, and submit notarized copies signed by the applicant to the Planning Board for signature and recording.

#### **Minutes Review**

The Board defers consideration of the minutes for March 16 until the next meeting.

#### **Announcements & Communications**

The public hearing for Cases No. 09-SP-2 and 09-SP-3 (New Cingular Wireless) is continued until April 20, 2010 at 7 p.m.

Lindgren reads a letter from Brewster and Elizabeth Ames of Candlewood Hill Road, opposing the location of a wireless communications facility on Dennison Pond Road.

Pyle moves to adjourn. Kunhardt seconds. All in favor.

The meeting is adjourned at 7:45 pm.

*Respectfully submitted,*

*Benjamin A. Watson, Secretary  
March 25, 2010*