

**Official  
As of 06/07/11**

**HOOKSETT PLANNING BOARD  
MEETING MINUTES  
HOOKSETT MUNICIPAL BUILDING  
Monday, May 16, 2011**

**CALLED TO ORDER**

Chair J. Gryval called the meeting to order at 6:00pm

**ATTENDANCE – PLANNING BOARD**

Chair J. Gryval, Vice-Chair Robert Duhaime (arrived 6:05pm), D. Marshall, M. Cannata, J. Mudge, F. Kotowski, Town Council Rep. N. VanScoy, D. Urquhart, and Y. Nahikian (arrived 6:05pm).

Excused: Town Administrator, C. Granfield, and B. Perry.

Absent: T. Walsh

**REPRESENTING TOWN OF HOOKSETT**

Town Planner, Jo Ann Duffy and Dan Tatem, Stantec.

**APPROVAL OF MINUTES OF 04/21/11 (public) & 05/02/11 (public & non-public)**

*M. Cannata motioned to approve the minutes of 04/21/11. Seconded by J. Mudge. Vote 6 in favor. D. Marshall, D. Urquhart, and Y. Nahikian abstain. Motion carried.*

*D. Marshall motioned to approve the public minutes of 05/02/11. Seconded by F. Kotowski. Vote 8 in favor. Y. Nahikian abstains. Motion carried.*

*D. Marshall motioned to approve the non-public minutes of 05/02/11. Seconded by J. Mudge. Vote 8 in favor. Y. Nahikian abstains. Motion carried.*

**WAIVER REQUEST**

1. **MANCHESTER SAND, GRAVEL, & CEMENT (MS&G) – HEAD'S POND (plan #07-05 & 07-42)**  
**Peter Holden, Holden Engineering**  
**Map 3, Lots 1 through 11, 17, 19 through 24, 26 AND Map 14, Lots 2 through 5**
  - Waiver request to Zoning Ordinance Articles 18 & 18A wetland setbacks **AND** Development Regulations section IV-10 item 44 on displaying the wetland setback requirements on the proposed non-developed out-parcels of the project.

➤ Review of Development Agreement

David Campbell, Attorney for MS&G here tonight with Ron Corriveau, MS&G Project Mgr., and Bernie of Holden Engineering.

D. Campbell: This is the 20<sup>th</sup> and last waiver request for the Head's Pond project. We are requesting to waive the displaying of the wetland setbacks on the plans, because it is in conservation use. There are a lot of land donations with this project.

J. Duffy: We have no problems with this waiver.

**Open public hearing**

No comments.

**Close public hearing**

*Robert Duhaime motioned to grant the waiver request for displaying the wetland setbacks on the plan as detailed above. Seconded by F. Kotowski.  
Vote unanimously in favor.*

***WAIVER ABOVE PER RSA 674:36 (II)***

D. Campbell: The Development Agreement I am distributing to you tonight is stripped down and not as cumbersome. All things are contained in the plans and are triggered from the plans. Referred to plan; Town parkland (yellow), pink, and marsh areas are all within the wetlands permit (to expire 2013). We have ½ acre of dredge and fills and we plan to do this before 2013. For vesting there will be land donations, improvements on Rte 3 widening of highway (a little less than one mile), and conduit (but no-signalization in this phase). The specs for the Town gazebo, lighting, and benches are all spelled out in the plans, so there is no need to repeat it in the Development Agreement. The Town legal staff needs to review and approve of the formatting of this agreement. The other item is the school land.

F. Kotowski: The trail you graciously donated to the Town, we would like to move further South beyond where it stops now. Is there any consideration to extend that trail?

D. Campbell: We deeded you the railroad bed, but the trail doesn't follow the bed. We are committed to working with you on this trail.

Robert Duhaime: For signalization the State and the Town are in your agreement.

D. Campbell: For the traffic signal on Hooksett Rd., we discussed having a drop dead date before with Dale and this Board. We agreed that before each phase, a traffic count will be completed and if that count triggers a signal then we will install it within a certain date. I talked with Dr. Littlefield (SAU Superintendent) today and he said they still want the land. I will get an updated letter from the School Board and determine how it gets

transmitted to the State. There are 80 acres for a school site with 25 acres in surrounding conservation locked land). The roadway cannot be changed without Fish & Game and DES approvals.

J. Duffy: Have you been in discussion with Greenview Management (University Heights)? They didn't know you would be using their roadway. People buying homes up there should be aware of a potential school site.

Robert Duhaime: For the Fish & Game easement approval for the roadway, the Conservation Commission does not have a problem with the roadway.

J. Duffy: The conservation land is owned by Greenview Management with an easement to the Conservation Commission. The Greenview Management roadways would be used to access a potential school site.

D. Campbell: We will talk to Greenview Management. We have no substantial issues left on this project. The phasing plan will be done one more item, and we are meeting with the Sewer Commission.

***D. Marshall motioned to extend the 65-day deadline 60 days to July 8, 2011. Seconded by F. Kotowski.  
Vote unanimously in favor.***

***NO DATE CERTAIN FOR PUBLIC HEARING; ABUTTERS WILL BE NOTIFIED.***

### **PUBLIC HEARING**

- 2. HEFFRON ASPHALT CORP. (#11-02)  
Hackett Hill Rd., Map 13, Lots 57 & 58  
Lot line adjustment.**

J. Duffy: This application was found complete on 5/2/11. We are waiting for the written easement for the 50' ROW for Town Attorney review and a note #11 added to the plans to reflect this easement. Staff is recommending conditional approval for the written easement.

Gardner Kellogg, Surveyor: This is a lot line adjustment for Map 13, Lot 57 to increase lot size from .07 acres to 3.27 acres and for Map 13, Lot 58 to decrease from 6.21 acres to 3.01 acres. There is a 50 ft wide limited access easement to the rear of the property. There is 25 ft either side of line that would divide these parcels. This is just an interior lot line adjustment.

Robert Duhaime: I was at the 5/10/11 ZBA meeting. The ZBA wants to know the status of the gravel pit and whether it will be reclaimed. I thought this Board would have received the ZBA letter by now.

**Open public hearing**

Sharron Champagne, 337 Hackett Hill Rd.: Why do they need this adjustment? Are they putting in a road?

G. Kellogg: The lot line adjustment is to make these two lots more saleable.

S. Champagne: Do they plan to sell the land?

J. Gryval: That has nothing to do with the lot line adjustment tonight.

Robert Duhaime: If selling lots, they will be reclaimed?

G. Kellogg: I don't believe they will use this area for gravel.

J. Duffy: This pit was mined previous by Thibeault Corp. 6-7 yrs ago. The pit permit and bond have expired. Recently Heffron was looking to sell the parcel and told potential buyer it was a gravel pit. I don't know what happened at the 5/10/11 ZBA meeting. A condition of approval is that the bounds be set in 90 days from approval.

Hollis Cate, 67 Hackett Hill Rd: What are your plans?

G. Kellogg: The lot line adjustment is to make these two lots more saleable.

H. Cate: He abuts my property. What will be the easement?

G. Kellogg: Showed Mr. Cate abutter easement.

**Closed public hearing**

Robert Duhaime: Before this Board makes a decision on this application, I would like to clarify with the ZBA what they are looking for on the reclamation.

J. Gryval: We will continue this application.

*CONTINUED JUNE 6, 2011*

**PUBLIC HEARING FOR THE RECONSIDERATION OF THE 4/4/11  
PLANNING BOARD DENIAL OF WAIVER REQUEST TO ELIMINATE  
SPRINKLER SYSTEM**

3. **DONALD WINTERTON (#10-02)**  
**10 Prescott Heights, Map 48, Lot 19-4**  
Waiver request to Development Regulations section 11.12.1 (Street System – Roadway Requirements) sprinkler system requirement for single family homes.

J. Gryval: Doug Urquhart is a new member to this Board as acting DPW Director. We would like Mr. Winterton to provide an overview of his request.

Donald Winterton: I am building my home at 10 Prescott Heights Road. I thank you for the vote at the last meeting (5/2/11) for this reconsideration hearing tonight. Since then I have not done anything to my home. On March 7<sup>th</sup> I was before this Board and discussed fairness. The Bieliznas requested a 6-lot subdivision and were approved for that by this Board on May 17, 2010. In every discussion it is a 6-lot subdivision. On the site plan note #16 "Proposed houses constructed on these lots shall have an approved residential sprinkler system according to NFPA 13D and all local fire rules and regulations." After I bought two of the lots, the applicants (Bieliznas) applied for a building permit and the Building Dept. checked "new construction"; they did not check "replacement". Under the regulations of the Town of Hooksett lots including the parent lot are part of the subdivision. On January 26, 2011 a Certificate of Occupancy was issued to the Bieliznas and did not require a sprinkler system. I approached the CEO about this and explained that my home is 75 ft from the road and yet the applicant's (Bieliznas) home is 400 ft from the road and wasn't required to have a sprinkler system. The CEO made a few expletives. I then received a letter from the Town (CEO). CEO or parties he consulted with do not have the authority to waive the sprinkler system requirement in the Development Regulations. Per State law only this Board can grant waivers to requirements in the regulations. I had a meeting with Jo Ann Duffy, Peter Rowell, and Deputy Fire Chief Hoisington and I was told the Bielizna's lot was grandfathered. I instinctively felt that (someone else in the subdivision didn't have to have a sprinkler system) was wrong. I refer you to the Planning Board minutes of 3/7/11 "J. Duffy: The CEO, Deputy Fire Chief, and myself met with Mr. Winterton. There was a house on the parent lot and then they subdivided into 5 additional lots – parent lot is not part of the proposed subdivision. There was no note on the plan that the existing house would be demolished and a new home would be built. Even if there was a note to demolish, CEO & Fire interpreted the parent lot as grandfathered. Fire stated in writing they are not in favor of waiving the sprinkler system requirement as it is a "safety issue". The Town of Hooksett just approved a larger tanker truck. With a sprinkler system I would need a 350 gallon water tank in my basement. If this is a safety issue then every home should have a sprinkler system. Even if I had a hydrant on my lot, I couldn't use it until the Fire Dept. showed up. When I was denied the waiver request for the sprinkler system in my home on April 4, 2011, I went to the Town Council and said I wasn't being treated fairly by the Planning Board. Also I had a meeting in March with the Town Council and scheduled to meet the next day (Thursday) with Carol. She cancelled this meeting due to sewer discs going down the river. Then the Monday meeting with her got rescheduled and so on . . . Carol did not meet with me until 7 days from that date. Concord was voting on bills HB 109, SB91 (sponsored by Senator Boutin) and I spoke before them. I spoke with the County Municipal Government and Senator Barnes and the outcome is they can 1) throw bill away or, 2) approve with amendments.

J. Duffy: The Board has the language of the amendments from "enforce" to "require".

D. Winterton: I approached an attorney (W. John Deachman) who wrote a long letter to the Town dated April 19, 2011 indicating my rights under the equal protection act are being

wronged. I paid \$1,000 to get a lawyer to write why I felt wronged. The role of the Planning Board is to assure the equitable “uniform” handling of items before them. I have a long list of meeting minutes where testimony has been given that doesn’t back legislation. I refer you to the minutes of 4/21/11 “D. Tatem: In the regulations if you knock down an old house and build a new one in place of it, then no fire sprinkler system is needed.” and “Robert Duhaime: The lot with an existing home is grandfathered.” but nowhere is this found in the regulations. This Board will have to convince a judge at the Merrimack Superior Court that the Bielizna lot is not part of the subdivision.

J. Duffy: Did you file an appeal with the superior court?

D. Winterton: No, however I will have 30 days from tonight’s decision.

J. Gryval: We have to go with what is in affect right now for fire safety and other dangers.

D. Winterton: I would remind this Board that under RSA 674:36 Subdivision Regulations this body can provide (n) “include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that: (1) strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or (2) specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.”

J. Gryval: You are asking us to do away with the ordinance and just throw it out.

D. Winterton: I discovered an error by an employee of the Town of Hooksett. No one had the ability to man up and see how we can fix it. Instead there has been 4 months with incorrect data sent back to me to cover a mistake of an employee.

J. Gryval: If an error was made by one employee, shouldn’t you talk with that person?

D. Winterton: That is what I did, but this Board is the only one who can waive the sprinkler system regulation.

N. VanScoy: If it was an employee error or whether this individual has been treated fairly . . . this Board’s role is not to fix an error.

D. Winterton: Are we saying an error was made?

J. Gryval: I said there may have been an error.

N. VanScoy: The decision is whether based on approved plans a sprinkler system is needed at this location. I have not seen hardship proven to me. This Board should not determine fairness, but determine that the regulations are followed. If I am interpreting this incorrectly, I would ask the seniors on this Board to tell me.

D. Urquhart: I would say this is discrimination to this individual.

J. Gryval: Regulations say “shall” have it (sprinkler system). We can waive a portion of a regulation, but cannot throw the whole thing out.

D. Urquhart: Explain the Board’s waiver process?

D. Marshall: If we grant the waiver he is asking for it is for one person (lot), however that could set a precedent for the remaining lots in the subdivision and that is a dangerous area to be in.

D. Winterton: This may be a moot point come July 1<sup>st</sup>. You can grant me a waiver and see what happens July 1<sup>st</sup>.

Robert Duhaime: “Don’t be reactive, be proactive.” You bought a house lot and on the plans it states sprinkler system needed. In the meantime someone (Bieliznas) who sold their lots, now builds a new home on the parent lot. It is clear cut when you bought the lot, you knew a sprinkler system was needed.

D. Winterton: And then the slippery slope started and I asked to be treated fairly.

Y. Nahikian: What is your hardship for the installation of a sprinkler system?

D. Winterton: \$5,000. I am on an existing road. When the law changes, I will be the only house within 5 or 6 square miles required to have a sprinkler system.

J. Gryval: 11.12.1 falls under Street System – Roadway Requirements under our regulations.

D. Winterton: Why can’t I be treated any differently than the other people in this subdivision?

J. Duffy: This Board has the authority to grant waivers in special situations when warranted. In this case if you grant Mr. Winterton’s request, the only thing is to waive but you can’t modify it. You would also have to waive the other 4 lots in this subdivision. The “old beanery” was a case in Hooksett that went to the Supreme Court. The Town won that case; bottom line you can’t go by Town employees because they could be wrong. An individual has to do their own homework. Mr. Winterton believes he was being wronged because the Bieliznas did not need a sprinkler system. CEO thought if the sprinkler requirement was not on the conditions of approval then it is not needed. However the sprinkler system is a requirement.

D. Winterton: Under the RSA this body, at the request or agreement of the applicant or successor, can remove item #16 on a public roadway.

Robert Duhaime: If you had municipal water, we wouldn’t be here tonight.

D. Winterton: There are 6 lots with one new house built on the first lot with no sprinkler system. They (Bieliznas) built their house, then tore down their old house and the building permit stated “new construction”.

Robert Duhaime: I am sitting here tonight patiently listening to you. The fact you don't feel our ordinances are perfect, I would love to make everybody happy who comes to this Board. This is the one time authority does not work in your favor. Did the Bieliznas find a loop hole or did CEO make an error I can't answer that. I don't think you have been slighted.

**Open public hearing**

No comments.

**Close public hearing**

*D. Urquhart motioned to grant the waiver request to eliminate sprinkler system per Development Regulations section 11.12.1 (Street System – Roadway Requirements) sprinkler system requirement for single family homes. Seconded by D. Marshall. Vote D. Urquhart in favor, 7 opposed. Motion not carried.*

*N. VanScoy motioned to deny the waiver request to eliminate sprinkler system per Development Regulations section 11.12.1 (Street System – Roadway Requirements) sprinkler system requirement for single family homes due to:*

- *Set precedent for the remaining lots in this subdivision*

*Seconded by D. Marshall.*

*Vote 7 in favor; D. Urquhart opposed. Motion carried.*

*N. VanScoy motioned to amend the denial to the waiver request to eliminate sprinkler system per Development Regulations section 11.12.1 (Street System – Roadway Requirements) sprinkler system requirement for single family homes due to:*

- *Set precedent for the remaining lots in this subdivision*
- *No justification for this waiver request*

*Seconded by D. Marshall.*

*Vote 7 in favor; D. Urquhart opposed. Motion carried.*

**WAIVER ABOVE PER RSA 674:36 (II)**

**OTHER BUSINESS**

**4. WALMART SEWER PROJECT UPDATE**



J. Duffy: Wal-Mart received prior approval for a treatment facility, but they didn't build it. Now they want to run sewer lines down to Kimball Dr. where they would build a pump station, then lines across the river to Martin's Ferry Rd, and finally lines to the Egawes Dr. sewer plant. They have been in 2 yrs of negotiations for a pump station. They will need to come back to the Board for this modification to their site plan.

D. Marshall: Are they paying the full tab and other lots nearby could hook-up to these sewer lines?

J. Duffy: I spoke with Sid Baines today. We are discussing having another TIFT district from Exit 10 to Tri-town ice arena. I will have more information in the next few months. We are hoping to encumber monies. This is just Wal-Mart sewer lines. Lowes is OK with their septic. We tried to get Wal-Mart to expand their pipes for future lots, but then it won't meet up with the existing pipe.

Alden Beauchemin: If Wal-Mart expanded their lines then they would have to make additional upgrades from Martin's Ferry to the Sewer treatment plant on Egawes Dr.

## **5. COAKER AVENUE SUBDIVISION**

J. Duffy: There have been two public hearings with the Town Council on readdressing the Coaker Avenue lots. I received an e-mail from Peter Rowell 5/12/11; read into the minutes "There is a lot of rumors floating around about the approval of Mr. Kenney's 3 lot subdivision on Coaker Av. People on the Av. feel that there was a variance granted. Some also feel that there was some type of favoritism in the granting of the subdivision. Could you please research and write a memo to the Council in regards to the subdivision and how it came about. Please clearly state that there was no variances need nor granted for that subdivision and why one of the houses did not front on Alice Av. I could do it but I think that it would be best coming from you." I had a discussion with one of the abutters who said the Planning Board was paid off. I don't want to get involved in this whole thing. My department does not do street numbering. This neighborhood was rezoned in 2004 to UDR to allow smaller sized parcels. That UDR zoning allowed this lot to be subdivided.

D. Marshall: The Kenney subdivision has all legitimate lot sizes with frontage on Coaker.

J. Duffy: I don't know if there are addresses available on Alice.

N. VanScoy: What occurred to allow the Kenney subdivision? No previous variance or waiver for a lot line adjustment. There is a similar home on Beauchesne and Main St. (house frontage on one street and address on the other).

D. Marshall: The Kenney subdivision is legal. Jo Ann I would say send a letter to the Council that this subdivision was approved by this Board using UDR zoning regulations and is a legitimate subdivision. Is there a number available on Alice?

J. Duffy: Peter has not determined that.

D. Marshall: If E911 has said the driveway and entrance are on Coaker, then that is where it belongs.

J. Duffy: E911 suggested the whole Town be done properly for addressing, but no one wants to bite the bullet to pay for it.

N. VanScoy: This Board does not make street numbering decisions. It is up to the Council to decide on the street numbers.

## **6. NEW CHAPTER MASTER PLAN**

J. Duffy: Craig Ahlquist is the new chairman of the EDC. I had a meeting with Bill Sirak and others for a possible opportunity for Exit 10 & 11 to have a mini master plan or at least a new chapter of the master plan. The information would be for the potential build out, transportation, utilities, etc. in that area. I have a meeting this week with Jack Munn at SNHPC to review monies for this coming year.

## **7. NON-PUBLIC SESSION PER RSA 91-A:3 II (c)**

### **Enter non-public session - RSA 91A:3 II (c) at 7:30pm**

*N. VanScoy motioned to enter non-public session per RSA 91A:3 II (c). Seconded by D. Marshall.*

#### **Roll call**

**N. VanScoy – yes**

**M. Cannata – yes**

**Y. Nahikian - alternative non-voting member tonight**

**J. Mudge - yes**

**J. Gryval – yes**

**Robert Duhaime – yes**

**D. Marshall – yes**

**D. Urquhart – yes**

**F. Kotowski – yes**

### **Exit non-public session - RSA 91A:3 II (c) at 8:15pm**

*F. Kotowski motioned to exit non-public session per RSA 91A:3 II (c). Seconded by Robert Duhaime.*

#### **Roll call**

**N. VanScoy – yes**

**M. Cannata – yes**

**Y. Nahikian - alternative non-voting member tonight**

**J. Mudge - yes**

**J. Gryval – yes**

**Robert Duhaime – yes**

**D. Marshall – yes**  
**D. Urquhart – yes**  
**F. Kotowski – yes**

*N. VanScoy motioned to seal the minutes of the non-public session. Seconded by Robert Duhaime.  
Vote unanimously in favor.*

**SNHPC UPDATE**

Robert Duhaime: We need a listing of all Town owned lands with conservation easements. I went to a recent SNHPC meeting and they discussed pre-certifying lots for economic development so when an applicant comes before the Planning Board it is a smoother and quicker process.

*D. Marshall motioned to adjourn at 8:25pm. Seconded by J. Mudge.  
Vote unanimously in favor.*

**ADJOURNMENT**

Chair J. Gryval declared the meeting adjourned at 8:25pm.

Respectfully submitted,

Donna J. Fitzpatrick,  
Planning Coordinator