

Moultonborough Planning Board
P.O. Box 139
Moultonborough, NH 03254

Regular Meeting

August 25, 2010

Minutes

Present: Members: Joanne Coppinger, Natt King, Judy Ryerson, Jane Fairchild, Chris Maroun, Peter Jensen, Ed Charest (Selectmen's Representative): Alternate: Keith Nelson;
Town Planner: Dan Merhalski

Mrs. Coppinger called the regular meeting to order at 7:00 P.M.

I. Pledge of Allegiance

II. Approval of Minutes

Motion: Mr. Charest moved to approve the Planning Board Minutes of August 11, 2010, Seconded by Mr. Maroun, carried unanimously with Mr. King abstaining.

III. New Submissions

1. Morrill Homes of Wolfeboro (152-18)(Severance & Caverly Road)
Subdivision Amendment

This was a request for an amendment to a previously approved fourteen (14) lot subdivision for residential single-family use. The hearing began with the Town Planner reviewing his Project Memo dated August 23rd. He stated one of the issues identified during his review that may be pertinent for Board discussion of the completeness of the application for acceptance was that the Zoning Ordinance has changed and there is a requirement with all new applications that are creating new roads and disturbing 20,000 square feet or more, submit a Stormwater Management Plan which was not submitted with the application. They have received everything else that is necessary, noting there were no requests for waivers. It was the decision of the Board if they wanted to accept the application as complete for discussion purposes or discuss this further.

Mrs. Coppinger noted the Planning Board approved the subdivision on September 12, 2007, and then the applicant then applied for State Subdivision approval. The state required the applicant to make changes to the subdivision. Jennifer Haskell, Esquire stated there was a change to the drainage. Mrs. Coppinger questioned if there was a lot added to the plan. Ms. Haskell commented that after the state changed the drainage system from a detention pond to the rain gardens, the surveyor made the detention pond lot into a lot for building. There is an additional building lot from what was originally approved. Kath Blake noted that there were always 14 lots, one (Lot 12) had a detention pond on it. When the state determined they did not want the detention pond, Lot 12 was still there. Mr. Merhalski stated on the previously approved plan, Lot 12 was listed as being common land and there were no lot calculations submitted for the lot. It was not a building lot before and now is proposed to become one.

Mrs. Coppinger stated the board was considering this application as a new submission. Mr. Merhalski stated it was an amendment to a previously approved subdivision. The only changes were the addition of the new building lot, Lot 12, a change in the drainage to having a level spreader instead of a

detention basin and a request to amend one of the conditions regarding the bonding for sprinklers to be changed. They would like to remove the requirement of bonding for each lot and request a condition that no Certificates of Occupancy be issued until the sprinkler systems have been installed. Those are the three changes asked for to be looked at by the Board, and their only area of purview. The reason the Stormwater Management Plan is required is due to the change in the ordinance going from the old standards, to having a Stormwater requirement when they have a disturbance of this size, which is the area being changed on the plan submitted.

It was noted the original application did not include lot calculations for Lot 12, and would need to be provided if it is to become a building lot, and if the Lot lines have been changed on lots 11 and 13 they will need to provide calculations for those showing the lots are conforming. Ms. Haskell stated they would provide the lot calculations for Lot 12 and 11 & 13 if necessary.

Board Members discussed if this application was an amendment and would fall under the original regulations that were in place at the time of the original approval. Mr. Merhalski disagreed with that as the original approval had certain requirements that have not been met. The applicant could construct the detention pond on Lot 12 under the old standards and would not need to submit a Stormwater Management Plan. However, because it is changing, that is what is triggering it. Mrs. Coppinger noted that they had received their Alteration of Terrain Permit which was reviewed by the State at a level higher than what the Town would review it at. It has had a thorough review, and the Towns ordinance was modeled after the States. Mrs. Coppinger felt that the intent of the ordinance had been met as they met the States criteria.

Mr. Merhalski stated a drainage report has been filed and the applicant needs to file a Stormwater Management Plan which has additional information. The drainage report submitted has one area where it doesn't meet the 50-year storm event. They must also show that there shall be no negative impact to water quality post-development from pre-development or no net negative impact to the groundwater re-charge rate and they must submit an Operation and Maintenance (O&M) Plan for the system. They are very close, about 90% complete.

The Board reviewed the conditions of approval: a bond being in place for each lot to cover sprinkler systems, in the amount of \$6,000 for each lot. The road must be completed or a bond in the amount of 110% for the cost of the road must be in place before September 12, 2009 (request for extension was made). Receipt of an approved state site specific permit. The pins to be set on each lot. Covenants and restrictions to be amended to reflect the common land/triangular piece at the entry. Triangular piece to be dedicated to the association. Detention pond to be continually maintained by the association. Parcel A and Lot 7 not to be further subdivided. Future deeds on all the lots indicate that the installation of fire sprinkler systems be required. And the receipt of all state, federal and local permits. Mr. Merhalski stated the conditions have not been met, which was why the plat has not been signed, so they don't actually have an approval, they have a conditional approval and have been working in good faith towards getting that. The difference the Board was running into was that the State Subdivision Approval, while meeting one of the conditions for state permitting through the Board, does not mean because they made a change to it that they can go ahead and build to the states approval. The Board still needs to have their input into it. As the Zoning Ordinance changed over the course this process, it is an element that the Board must look at, and it is part of their purview.

Ms. Haskell respectfully disagreed with Mr. Merhalski's interpretation. She had spoken with him about this and her interpretation of RSA 674:39 (II), once substantial completion of improvements are done, then the developer's right vests. The substantial improvement is the completion of the road, with the exception of the inch of topcoat. Her experience with this issue is that once the substantial completion

was done the developer is vested and further ordinances don't apply, for the very reason that if they did, then no developer would be able to complete a subdivision. By requiring Mr. Morrill to satisfy the new ordinance, it would be a substantial cost or hardship. They feel it would be a hardship as the new ordinance requires they meet the levels for a 50-year storm event. As opposed to the state standard which is for a 10-year storm event. The drainage application was submitted and approved by the state and put on the plan. Ms. Haskell stated the plan was approved conditionally, every approval is conditional, so the approval vests when the approval is granted, subject to the conditions, one being satisfaction of the state permit, which they have satisfied. It was the state that changed it, which is why the plan has changed. Ms. Haskell felt this was administrative in terms of the change. In discussion the Town Planner referenced the application and the applicability of the new ordinance, he said new applications, and it has been noted by the Board that it's not a new application, that it was an approved subdivision plan that they were seeking an amendment to. Ms. Haskell wants to make certain that the right rules are applied.

The Board discussed this at length, with Mr. King requesting input from Town Counsel if this project is vested or not. The Board discussed requesting clarification from Counsel if this was a new application, therefore subject to the Stormwater Management Plan. Mrs. Coppinger polled the Board and it was a majority vote to request an opinion from counsel. It was the decision of the Board to accept the application as complete conditional upon the request for a waiver of the Stormwater Management Plan, open the public hearing to discuss the bonding issue, the lot size calculations, and continue it contingent upon Counsels review. This way the process can begin. Ms. Haskell respectfully disagreed with the respect to whether or not the application needs to be accepted as complete. She stated that this is not a new submission. Ms. Haskell sees these changes simply as administrative change and not to schedule it for a hearing. It was noted that the Lot lines have been changed. It was noted that the applicant could go back and make Lot 12 common land, and make certain that Lots 11, 12 and 13 are the same as the plan conditionally approved.

Mr. Merhalski stated there were three reasons this was before the board, first was the detention basin and Lot line calculations have been changed, second there was a new building Lot that has been created and third the request for the change of the conditional approval for the bonding of each lot in the amount of \$6,000 for the sprinkler systems. The applicant would still be required to come back before the board even if they put the Lot lines back to what was on the original plan as they would like to change the approval relating to the bonding for the sprinkler systems. After a lengthy discussion it was the decision of the Board to move to accept the application as complete, contingent upon determining whether a Stormwater Management Plan is required by legal counsel.

Motion: Mr. King moved to accept the application of **Morrill Homes of Wolfeboro (152-18)** grant the waiver for purposes of acceptance only contingent upon determination by Town Counsel if a Stormwater Management Plan is required. Seconded by Ms. Fairchild, carried unanimously.

V. Hearings

1. Morrill Homes of Wolfeboro (152-18)(Severance & Caverly Road)
Subdivision Amendment

The Board reviewed each of the conditions of approval in order to see what conditions have been satisfied.

- 1) A bond being in place for each lot to cover sprinkler systems, in the amount of \$6,000 for each lot. Amendment proposed.

MOTION: Mr. King made a motion to eliminate the bonding requirement as written and requiring an approved sprinkler system being in place prior to the issuance of a Certificate of Occupancy and the language to be included in the deeds and on the plan. Seconded by Mr. Jensen, carried unanimously.

2) The road must be completed or a bond in the amount of 110% for the cost of the road must be in place before September 12, 2009 (request for extension was made). *Condition has not been met.* The applicant requested an amendment to allow the top coat to be completed once the development is complete.

MOTION: Mr. King made a motion to amend the condition to read that the road to be complete through binder coarse and bonding in the amount of \$10,000. The finish coarse must be completed before the final Certificate of Occupancy is issued. Seconded by Mr. Charest, carried unanimously.

3) Receipt of an approved state site specific permit. *Condition has been met.*

4) The pins to be set for each lot. *Condition has not been met.*

5) Covenants and restrictions to be amended to reflect the common land/triangular piece at the entry. *Condition has not been met.* Draft has been submitted, but not reviewed by legal counsel.

6) Triangular piece to be dedicated to the association. *Condition has been met.*

7) Detention pond to be continually maintained by the association.

Motion: Mr. King moved to remove the condition regarding the detention pond. Seconded by Ms. Fairchild, carried unanimously.

8) Parcel A and Lot 7 not to be further subdivided. *Condition has been met.*

9) Future deeds on all the lots indicate that the installation of fire sprinkler systems be required. *Condition has been met.* Required to be in the deeds, applicant noted this was already included in the language.

10) Receipt of all state, federal and local permits. *Condition has been met.*

It was the decision of the Board to continue the hearing to allow the applicant time to determine what plan they are proceeding forward with and for the Board obtain a legal opinion from Town Counsel determining if the application as submitted triggers the Stormwater Management Ordinance.

There were no additional questions from the Board at this time. Mrs. Coppinger asked for questions or comments from the public. It was noted there were none.

Motion: Mr. King moved to continue the hearing for **Morrill Homes of Wolfeboro (152-18)** to September 8, 2010. Seconded by Ms. Fairchild, carried unanimously.

IV. Boundary Line Adjustments

1. Continuation of Public Hearing - The Daniel W. Watson Trust & The Eda Ann Watson Trust (247-22 & 254-24)(23 Davis Lane & 29 Long Island Road) Boundary Line Adjustment

Mrs. Coppinger noted a letter date August 19th from David M. Dolan Associates, PC, requesting a Continuance to September 22nd to allow time for an application to be made to the ZBA for the required variance as determined at the meeting on July 28, 2010. It was noted the letter from Mr. Dolan was requesting a continuance for both hearings scheduled this evening (boundary line adjustment and subdivision). Ms. Fairchild amended the motion to include both hearings, seconded by Mr. King.

2. Continuation of Public Hearing - The Daniel W. Watson Trust & The Eda Ann Watson Trust (247-22)(23 Davis Lane) Major 2-Lot Subdivision

Motion: Ms. Fairchild amended the motion to continue the both hearings for **The Daniel W. Watson Trust & The Eda Ann Watson Trust (247-22 & 254)** to September 22, 2010, seconded by Mr. King, carried unanimously.

VI. Informal Discussions

Mrs. Coppinger stepped down from the Board for the informal discussion. Mr. Nelson did not participate in the discussion as a Board Member as he is the owner of the property being discussed.

Randy Hillman, former Sandwich Selectman and Moultonborough Business owner requested to speak to the Board on an informal basis regarding Tax Map 103 Lot 7, the former Blink Bonnie property located at 512 Whittier Highway. Mr. Hillman had interest in purchasing the non-conforming property and stated that he had met with the Code Enforcement Officer (CEO) about what could and couldn't be done with the site. He was told that that a site plan would be required for any changes proposed for the site. Based on information he gathered through research he made an offer on the property. Since that time, the property has been sold and work has commenced on the site. Mr. Hillman stated that there has not been a site plan submitted. Mr. Hillman looked at the site today and saw that the footprint had been expanded. Noting his concerns that the footprint had been enlarged he wanted to know why there had been no notice of a public hearing. There was a building permit issued for interior renovations. Mr. Hillman stated he has approached the Attorney General regarding this and has retained counsel to see if he has been damaged by the Town. Mr. Hillman asked what the Planning Board would do about this, stating that he would like a cease and desist placed on the entire project. Mr. King stated that the Planning Board had no purview on this matter. Mr. Nelson stated that his contractor, Bob Stephens had spoken with the CEO regarding the property. They have removed square footage on the front of the building and added a 6' x 38' footprint to the rear of the building. Mr. Nelson was aware the need to submit a site plan, but was waiting to determine any changes to be made to the building. Mr. Nelson stated he would cease work on the area in question, except for making it weather tight, and make application to the Board for site plan review. Mr. Merhalski stated that he would speak with the CEO and consult with Mr. Charest and the Town Administrator regarding this issue.

Mr. Nelson and Mrs. Coppinger returned to the board at this time.

VII. Unfinished Business

a. Discussion of Revision of Subdivision Regulations

Due to the involved hearings this evening, it was the decision of the Board to continue the discussion of the Subdivision Regulations to their next meeting. Mr. Merhalski noted the Board had directed him to contact LGC and Town Counsel for legal opinions regarding whether an easement constituted frontage per RSA 674:41. He stated that he had not received an opinion from Town Counsel. Mr. Merhalski presented the Board with a written opinion from Attorney Paul Sanderson of LGC, which Board members may review prior to their next regular meeting on September 8th.

b. Discussion of Revision of Site Plan Regulations

Appoint Member to serve on Master Plan Implementation Committee – Mr. Merhalski noted the Master Plan Implementation Committee (MPIC) had been formally established, with membership and

terms, by the Board of Selectmen. The Planning Board needs to appoint a member to this new committee to serve for a term of one (1) year.

Motion: Ms. Fairchild moved to nominate Joanne Coppinger to serve as the Planning Board representative on the Master Plan Implementation Committee, Seconded by Mr. Charest, carried unanimously.

VIII. Other Business/Correspondence

1. Selectmen's Draft Minutes of August 19, 2010 were noted.

IX. Committee Reports

X. Adjournment: Mr. King made the motion to adjourn at 9:26 PM, seconded by Mr. Charest, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant