

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

**Regular Meeting**

**August 22, 2012**

**Minutes**

Present: Members: Tom Howard, Chair; Peter Jensen, Judy Ryerson, Paul Punturieri,  
Josh Bartlett; Russ Wakefield (Selectmen's Representative)  
Alternates: Keith Nelson, Natt King  
Excused: Chris Maroun  
Staff Present: Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

**I. Pledge of Allegiance**

Mr. Howard called the regular meeting to order at 7:00 P.M and appointed Natt King to sit on the board with full voting privileges in place of Chris Maroun.

**II. Approval of Minutes**

**Motion:** Mr. Punturieri moved to approve the Planning Board Minutes of August 8, 2012, as amended, seconded by Mr. Jensen, carried unanimously with Mr. King and Mr. Wakefield abstaining.

**III. New Submissions**

Ms. Ryerson and Mr. Nelson stepped down from the Board for the new submission and hearing for Larry B., Jr. & Catherine A. Davis.

1. Larry B. Jr., & Catherine A. Davis (89-1)(714 Whittier Highway)  
Major Three (3) Lot Subdivision

This was a request for a proposed three lot subdivision of a 39.20 acre parcel into lots of 9.69, 26.30 & 3.21 acres. Mr. Howard questioned two items on the check list that were not checked, one being the flood map, which was included with the application and the other was the Fire Chief receiving the plan for review. Mr. Woodruff stated that there was no Technical Review Committee (TRC) meeting on this application as there are no new infrastructures proposed, or any submission for a driveway permit for long driveways that he may comment on. Mr. Woodruff had spoken with the chief today, and noted that he had not commented on this plan, but in his opinion, in this case the board could move forward.

**Motion:** Mr. King moved to accept the application for **Larry B. Jr., & Catherine A. Davis (89-1)** and to schedule a hearing for this evening to be Hearing #1, seconded by Mr. Jensen, carried unanimously.

**IV. Boundary Line Adjustments**

**V. Hearings**

1. Larry B. Jr., & Catherine A. Davis (89-1)(714 Whittier Highway)  
Major Three (3) Lot Subdivision

Jim Hambrook presented the application for a Three Lot Major Subdivision of a 39.2 acre property that has frontage on Route 25 and Fox Hollow Road. The proposal is to create one lot of 9.69 acres with the existing home and two lots 26.30 & 3.21 acres. Mr. Hambrook stated the small lot (Lot 1.2) will have access off Fox Hollow Road, Lot 1, with the existing home accesses from Route 25, and the large lot (Lot 1.1) has access off Route 25, noting they have received a NH DOT Driveway Permit. Mr. Hambrook stated a wetlands delineation report and a site specific soils map were submitted with the application. Unit Density for each of the lots was provided, 2.07, 2.33 and 1.56 for Lot 1, 1.1 and 1.2 respectfully. Mr. Hambrook stated only a portion of Lots 1 and 1.1 were used in the lot calculations, and the entire lot was used for Lot 1.2. They have received the required state subdivision approval for Lot 1.2. Mr. Hambrook noted that the lot as it stands now owns a portion of Fox Hollow Road. There is a fifty (50) foot right-of-way (ROW) that surrounds Fox Hollow Road, and will be maintained as part of Lot 1.1. Lot 1.1 is also burdened by a ROW, a fifty (50) foot easement depicted on the plan which was granted in 1970. Mr. Hambrook answered any questions from the board.

Mr. Punturieri questioned if the driveway permit had expired? Noting the permit was dated August 17, 2011 and states "Failure to start or complete construction of said facility within one calendar year of the date of this permit shall require application for permit extension of renewal...." Mr. Davis stated that he has acted on the permit as he had brought in fill and started the construction as required.

The Planner reviewed his staff memo and recommendations. He recommended the board approve the subdivision with six conditions. He read each of the conditions, adding a reference to #3 "specifically for Lot 1.2" to recommended condition. It was noted an error in the numbering of the staff recommendations and for discussion purposes this evening they were renumbered conditions 1 – 6.

Mr. Wakefield questioned the need to impose the exaction fee for a lot on a private road for upgrades to the Route 25 / Fox Hollow Road intersection. He asked if this had been done before with the Sabatino subdivision, or would this be setting precedent? It was stated that the precedent was set by the Sabatino subdivision. The formula was determined after lengthy discussions that occurred during multiple hearings for the Sabatino subdivision.

Mr. Wakefield questioned if the board had the right to require anything on a private road, an owner to become a member of the existing road maintenance association? He does not believe so. Mr. Woodruff noted the subdivision regulations were recently amended, and added was a requirement that lots on privately maintained roadways prove to the board that there will be some kind of association that will take up the maintenance of private roads. The board discussed this scenario at length with some feeling there was a difference between existing private roads and roads that are created for new subdivisions. Mr. Wakefield commented that Fox Hollow Road has been there forever and is a mess.

Kath Blake agreed with a comment of Mr. Wakefield that the deeds and the ROW are a mess and questioned why the applicant would not be required to bring the road up to standards on the portion that lies on their lot, and likewise require others to fix where they would be developing to fix the mess. Ms. Blake stated there have been other subdivisions approved on private roads where the applicant was required to bring their roads up to town requirements and questioned why weren't all subdivisions required to do the same?

Keith Nelson commented that he was the head of the Fox Hollow Association and gave a brief history of the association and some who are members of the association, noting in the declaration for Hemlock Harbor, they are required to members of the association. It is a requirement that owner of the Grey Gull subdivision become members of the association as well. In the past the Planning Board has required people to share in the maintenance of the roadway.

Judy Ryerson had a question regarding the "Bickford" ROW which is depicted on Lot 1.1. She commented that everyone who bought from Bickford would have the same access to the ROW. Mr. Hambrook stated he wasn't totally in agreement with that. The easement that is there is not real clear. They have recognized that it is there. There was a lengthy discussion about what is in the deeds and who has access to the ROW and if assigns and heirs had the right to the easement. Mr. Hambrook noted the easement is fifty feet wide to a certain point and that the last 130 +/- feet it is only seventeen feet wide and the practicality of using it for anything more than it is used for now is fairly slim.

Brian Davis, applicant/owner questioned if the \$2200 was a share of the reconstruction of the Fox Hollow Road intersection? Mr. Howard stated yes. He commented that he could exit Lot 1.2 onto the town road and questioned where that would get him. He commented that he owned Fox Hollow Road from the pavement to the Buoniello property and that he and his family have paid taxes on that for years. He doesn't believe that he should be required to pay the \$2200 and become a member of the Fox Hollow Association. Mr. Davis commented that there are only five people who have access to the ROW. Once again there was a discussion regarding who, how many, etc. had rights to the ROW with Mr. Nelson and Mr. Wakefield disagreeing if the rights include assigns and heirs. Mr. Hambrook noted there were two ROW's one being the actual section of Fox Hollow Road and a second through proposed Lot 1.1. Mr. Nelson stated for the record that he did not object to the subdivision based on the easement, but felt he had the responsibility make a correction for the record. Mr. Howard questioned if any of this discussion would have any effect on their decision on the application before the board this evening. There was none.

Kath Blake questioned if they would be required to install a cistern or what fire protection? It was noted this was for two new homes. Mr. Woodruff felt that you would need more than three for a cistern. He noted there was access off Route 25 and also the end of the town maintained portion of Fox Hollow Road. There is no proposed subdivision road. Mr. Davis noted the closest dry hydrant is across from the end of Sheridan road.

Board members discussed at length staff recommendation numbers 3, 4 & 5, regarding NH RSA 674:41, 1. (d) (1) & (2), requiring owners of proposed Lot 1.2 to become a member of the existing road maintenance association and requiring the applicant to pay a fair share traffic impact mitigation of \$2,228.88 for proposed Lot 1.2, to help defray the cost of the Fox Hollow / NH Route 25 intersection improvement project.

Ms. Ryerson spoke to recommendation number 3, noting she always understood that in Moultonborough this was required for class VI roads. Mr. Woodruff thought that misunderstanding may be an error and that he was suggesting that the board does start now for liability purposes. Mr. Howard commented that this does seem consistent with what the Selectmen have been trying to do with regards to making sure that easements are in place for culverts and utilities etc., private road issues need to be addressed.

Mr. Jensen questioned the assessment for the fair share traffic impact mitigation, asking under what circumstances that should be applied. It has not been applied to new subdivisions on other roads since the Sabatino assessment was applied, but there were no current or proposed changes to road intersections at the time when those subdivisions occurred.

Questions were raised as to why the board would start requiring lot owners to become a member of the existing road maintenance association and to require an applicant to pay an exaction fee. Mr. Davis questioned why there wasn't an exaction fee applied to the Roxmont Farm subdivision on Sheridan Road?

Mr. King commented that it appears that while the recommendations of the Planner could be applied by the board, they have not been consistent in applying exaction fees. Mr. Jensen commented that he did not believe that the manner in which it was determining if an applicant was assessed a fee was not fair. Mr. Woodruff clarified that the Capital Planning process is the place that known problems with our

infrastructure are identified. If someone comes in for a subdivision that creates new lots that affects or increases the known problem, which has been identified as a future project that will take care of the identified problem, that is the reason why. It is all about planning in advance.

The board discussed the method in which the dollar amount for the Sabatino subdivision had been calculated. How the fair share amount had been determined. Mr. Woodruff explained the process in which he would use to calculate the fair share amount, which would not have been the same that was used for the Sabatino subdivision, but noted he recommended the same amount as it was for the same project.

Mr. Howard closed the public hearing portion of the hearing at this time.

**Motion:** Mr. King moved to approve the **Larry B. Jr., & Catherine A. Davis (89-1)** three (3) Lot Major Subdivision of an existing 39.20 acres parcel of land into three lots of 9.69 ac., 26.30 ac., and 3.21 ac., with conditions 1, 2, 4 & 6 as recommend by the staff, seconded by Mr. Wakefield.

Board members discussed the recommendations suggested by the Planner, taking up each of the revised numbers 2, 3, 4 & 5 once again. After a lengthy discussion and a few amendments it was suggested for clarity that the board withdraw the motions, with amendments, making a “new” motion.

**Motion:** Mr. King moved to approve the **Larry B. Jr., & Catherine A. Davis (89-1)** three (3) Lot Major Subdivision of an existing 39.20 acres parcel of land into three lots of 9.69 ac., 26.30 ac., and 3.21 ac., with conditions 1, 2, 3 & 6 as recommended by the staff, seconded by Mr. Bartlett.

Mr. Woodruff asked that the wording “specifically for Lot 1.2” be added to condition 3, as it was an oversight that he did not originally include it in his recommendation. Mr. Punturieri also noted the board had previously agreed to strike “(road maintenance association)” in condition 2. Mr. King amended his motion, and Mr. Bartlett amended his second. Mr. Howard called for a vote on the Motion, carried unanimously.

Mr. Howard noted the need for the board to discuss Exaction Fees and NH RSA 674:41 further.

Ms. Ryerson returned to the Board at this time with full voting privileges.

## **VI. Informal Discussions**

1. **Roundabout Now, LLC (103-7)**(512 Whittier Highway) Mr. Howard stated this was an Informal discussion and per NH RSA 676:4 II, the discussion is non-binding in nature and no formal votes will be taken by the board.

Mr. Nelson stated he had a potential tenant for 1/3 +/- of the first floor of the Roundabout Now building for use as a State Licensed child care center. He was here to request board approval for the use for a child care facility. The site plan will essentially stay the same. There will only be one significant change, which will be a grass area fenced for the children to play.

Mr. Woodruff stated the site plan approval requires that Mr. Nelson return to the Planning Board for approval when tenants for the site were determined. It did not require site plan review again, only that he come before board and it would be up to the board whether or not they think Mr. Nelson would need to make a formal submission or not.

Board members questioned what portion of the building the use would be located and if the use was consistent with earlier uses of the building. It was noted that the prior use of the building was a retail

shop and before that a restaurant. Mr. Woodruff noted that the proposed use is an allowed use in the zone. The question was if the child care use for up to six (6) children impacted what was there before and if the request rose to the level for site plan review. Mr. Woodruff went on to state that the condition of the site plan would require Mr. Nelson to come back before the board if and when a new tenant wishes to occupy a portion of the building. At some point this may rise to a point with a combination of, or an individual tenant the board may want to revisit the site plan.

Mr. Wakefield questioned the number of employees and children. Ms. Manning stated just herself and maybe one other employee and six children. If there were two providers she can have twelve full time children and six after school children. He then questioned if the septic system could handle this. Mr. Nelson stated the septic system was designed for retail space on the first floor and two apartments on the second floor. The board discussed the septic and would like to know the Gallons per Day (GPD) for a Day Care Center. Mr. Nelson did not have the answer for the question.

After a brief discussion regarding traffic and septic it was the consensus of the board that no formal site plan review would be required for the requested use. Mr. Nelson is required to come before the board if there are additional tenants or a change in tenants and at that time they can review the required septic. Mr. Woodruff stated that the state will inspect the premises. The state will send a form asking if they are in compliance with all site regulations and zoning ordinance.

Mr. Nelson returned to the Board at this time.

**2. Eric Taussig** stated he had raised his concern with the Board of Selectmen (BoS) in May, after the first truck accident took place on **Ossipee Park Road**. He wrote several letters to the Editor regarding the problems with Ossipee Park Road and the runaway truck. Mr. Taussig gave a brief recap of what had taken place after he noted his concerns and he suggested that there be a construction of a runaway truck ramp. The BoS took no action on this what-so-ever and there has been another accident that has taken place. Mr. Taussig commented when he sat on the PB they had established certain conditions that were required, including a report of the number of trucks. He was not aware that the compliance on the truck reporting has not taken place since early 2010. He believes that there were conditions placed on the original site plan for the bottling plant that have not been done. He was before the PB this evening to find out why they have not ordered a compliance hearing on this matter. Mr. Taussig feels that CG Roxane is out of compliance and should be brought in. Mr. Taussig is uncomfortable with the number of trucks coming down and the condition of the trucks.

Mr. Woodruff noted that he has only been the Planner for the Town since last October and he briefly updated the Board as to what has taken place since began. It was brought to his attention within the first month and a half or so that the bi-monthly truck number reports were not being turned in. Within a few weeks of that being brought to his attention he called CGR and requested them. Around the end of March or April the plant manager came into his office, where he promised he would start sending the bi-monthly reports again. This has come to a head as a result of the accidents, but the reports are now being turned in and are up to date. The reports from February 2010 through June 2012 have been provided, with July and August coming after the end of the month. Therefore they are in compliance with regard to that. The calculations were done to get the average that is required by the PB's condition. According to their numbers they have been in compliance with the 40 or under trucks per day, averaged on a monthly basis. Mr. Woodruff could not speak to whether or not they meet the other conditions or not. Mr. Woodruff read from a memo dated August 22<sup>nd</sup> prepared for the BoS which briefly described the history of the Planning Board Site Plan approval. The memo read as follows:

The Site Plan was approved on January 11, 2006 with conditions. Some of the conditions were precedent to the Chair signing the plan and have been satisfied. On-going conditions required the following: (paraphrased)

1. Bi-monthly truck numbers per day reports submitted to the Development Services (Land Use) Office to include a tally of trucks after 5 PM. The purpose of these data sheets is to determine the daily average of trucks, averaged over a month's time, which leads to the second continuing condition;
2. That the daily truck average not exceed 40 trucks, and if so, the owner shall reapply to the Planning Board for an amendment to their site plan (further site plan review).
3. The hours of truck operation shall be from 6 am to 11 pm with "best efforts" to have all trucks loaded by 10 pm.

There were two other conditions; one concerning a water withdrawal limit in gallons that would trigger further site plan review, and the automatic scheduling of a second review to date certain that could have the effect of further reducing operations and/or capacity of the plant. The applicant brought suit against the Planning Board on these two conditions, and in a negotiated settlement between the parties with stipulations on August 28, 2006, basically both parties agreed to drop the two subject conditions. Further that if number 2. Above is invoked, the Planning Board may only impose new conditions that are reasonable and directly related to the actual increase in impacts associated with the increased trucking (must pass the rational nexus test).

At this time Mr. Howard recused himself from the board at this time. Mr. Jensen took over at this time.

Mr. Woodruff noted that the BoS was holding a Workshop on tomorrow (8/23/12) at 4 pm and one of the agenda items has to do with this issue. The BoS is going to receive a report from the Highway Safety Committee representative. There has been a lot of research work completed on this issue. There are short term and long term strategies that will be presented to the Selectmen.

Mr. Woodruff has begun a dialogue with the Plant Manager and a gentleman from the corporate office, who are willing to do a couple of things as a starting point and discuss other things.

Mr. Bartlett questioned if the board could place restrictions on load limit on the road. Does the Town have the right to say that the trucks are creating a safety problem?

Mr. King asked if there was to be some sort of plan or procedure put in place for staff to maintain conditions of approval.

Several members gave instances of accidents and truck incidents that have occurred in different areas of town, some due to improper signage or faulty equipment. After a lengthy discussion several members and the Planner stated that this matter was now in the hands of the BoS and that the Planning Board was not the proper venue.

Mr. Taussig stated that he very specifically recalled that there were conditions that were attached to the special exception that was granted. He paraphrased that the conditions included that CG Roxane would not create a nuisance, would not create a serious hazard and would not create a hazard to the vehicles, pedestrians and other conditions that were in the special exception. Mr. Taussig's position was that it is up to the PB to enforce the condition of the special exception and the jurisdiction sits with the PB. It does not sit with the Board of Selectmen. He feels with the conditions on the special exception for the PB to go forward and to call CG Roxane in here, and if they don't it, the PB can suspend their special exception and suspend their right to operate. It was noted that the language Mr. Taussig spoke of ... would not create a nuisance, would not create a serious hazard and would not create a hazard to the vehicles, pedestrians... are criteria that the ZBA reviews for the granting of any special exception, not conditions placed on the special exception. The board reviewed the criteria and members had to make the determination in their review that it would not create a hazard. This was not a condition.

Ms. Ashjian refreshed the board's memory that in February 2010, the PB did discuss a letter she wrote to them, stating that CG Roxane was out of compliance with the trucking data. At that time they had just reviewed application for the warehouse facility. At that time she reminded the board that they

were approving something in which the applicant was out of compliance with their existing operation. The former Planner looked into this and they did produce information on the truck log through 2010. Due to the turnover in staff, this appears to have been lost again. Ms. Ashjian noted the board should be certain that they are on top of the facts when discussing these matters. One example with regards to the now lapsed downhill approval for the warehouse, there was never any intention of using shuttle trucks. The approved ZBA special exception was not to have the loading facility at the base of the hill. It was only for the 2 or 3 days where the weather prevented the trucks from going up to the top facility. It was always going to be the case that all of the trucks, with the exception of 2 or 3 days, would be going up and coming down fully loaded. The downhill facility was not a solution to the trucks on the hill.

Some board members offered their opinions as to how to correct this issue, with some feeling that it is the BoS that is burdened with finding a solution, unless they break one of the PB's conditions.

Mr. Jensen asked that Mr. Woodruff review the ZBA approval for the special exception and see if there were any conditions placed on the special exception. He noted that any specific conditions placed the ZBA are enforceable by the BoS through their designee, the Code Enforcement Officer. Zoning decisions are not enforceable by the Planning Board. Therefore Mr. Taussig was before the wrong board.

Ms. Ashjian spoke to the ZBA criteria, one of which was that related traffic not create a hazard to other vehicles or pedestrians and roadways required would be capable of handling the associated traffic. She believes these are two issues that are in question now and should be examined more closely by the Highway Safety Committee. She noted that there were a number of citizens who raised those issues at the time of the special exception and subsequent hearings by the PB. They had requested more studies.

Ms. Ryerson commented that they had not established a real correlation between the numbers of trucks going up and down with the kinds of accidents that occur. It only takes one poorly maintained truck going up and down the hill to cause a problem.

Mr. Howard returned to the board at this time with full voting privileges.

## **VII. Unfinished Business**

### **VII. Other Business/Correspondence**

1. Housekeeping of Zoning Ordinance – Due to time, not taken up this evening.
2. Mr. Woodruff noted LGC's 2012 Municipal Law Lecture Series for September 12, 19 & 26. Two of the lectures are on PB evenings. He sees a lot of value in Lecture 3 on the 19<sup>th</sup>, in Laconia, Innovative Land Use Controls: Reexamining Your Zoning Ordinance, which is something the board is doing at this time. He recommended Board members attend the Lecture on September 19<sup>th</sup>.
3. Selectmen's Draft Minutes of August 2, 2012 were noted.

## **IX. Committee Reports**

- X. Adjournment:** Mr. King made the motion to adjourn at 9:53 PM, seconded by Mr. Bartlett, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant