

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

Regular Meeting

February 13, 2013

Minutes

Present: Members: Tom Howard, Chair; Peter Jensen, Paul Punturieri,
Josh Bartlett; Russ Wakefield (Selectmen's Representative)
Alternates: Natt King, Bob Goffredo
Excused: Members: Judy Ryerson, Chris Maroun; Alternate: Keith Nelson
Staff Present: Town Planner, Bruce W. Woodruff; Recording Secretary, Alison Kepple

I. Pledge of Allegiance

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

II. Approval of Minutes

Mr. Howard asked the board if there were any corrections, additions or deletions. Mr. Punturieri noted that on page 2, second paragraph, and third line up that the word, contactors should be contractors. Page 3, second paragraph, third line where it says the impact on private people's property rights, it should be, people's private property rights. In the next paragraph, third line from the bottom, add the word "as" after up. Also says that the next line add the word written between hour and notice. Mr. Howard added a couple changes as well; the first being on page 2, first paragraph, just for clarification at the end of the first sentence should be, "and to outline the options the board had for acting on the proposed amendment from moving it forward as is", to moving it forward with deletions or not forwarding. There were actually three options there. In the second paragraph, in the fourth line, references the Shoreland Advisory Board, that should be Committee not Board and would like to add the words and the members of the Shoreland Advisory Committee because we did not actually address the committee as a whole. Two lines down from that it should read "Howard noted that there is a legislative initiative to amend Chapter 483-B". Page 3, in the paragraph that begins with "Mr. Austin had several questions", in the third line down it says Mr. Howard stated that it was an average of the tie course and actual shore frontage. This was in reference to Mr. Austin's question about how the shoreland is measured and that would be how it was measured in Moultonborough so we should add that to the end of that sentence, Mr. Howard stated that it was an average of the tie course and actual shore frontage in Moultonborough presently and actual lineal distance per the shoreland water quality protection act. Third paragraph up from the bottom of page 3, that sentence should be changed to Mr. Howard commented that there needs to be things to balance, one was private property rights, local land use regulations and that it is the State's responsibility to hold the public waters in public trust. With no other changes, the Chair called for a motion.

Motion: Mr. Punturieri moved to approve the Planning Board Minutes for the Regular Meeting held on January 23 2013, as amended, seconded by Mr. King, carried unanimously.

III. New Submissions

1. Cynthia Woodman Carver (86-2) (233 & 235 Sibley Road) Major Two Lot Subdivision

This was a request for a proposed two lot subdivision of existing 53.99 acre parcel and land into two lots; one lot containing 1.12 acres and one lot with 52.87 acres.

The Chair stated that everything seemed to be in order with the application and asked if the board had any questions. There were no questions from the board. The Chair confirmed with the Town Planner, Mr. Woodruff that everything is in order for the application. Mr. Woodruff stated that yes, there are no zoning issues with the application. There were five subdivision regulation issues at the time he reviewed the plan but stated that Dan Ellis has amended the plan to take care of some of them and that Mr. Ellis would elaborate. Mr. Howard called for a motion relative to the application of Cynthia Woodman Carver (86-2) (233 & 235 Sibley Road), for a major two lot subdivision that the planning board grant the waivers as requested in the letter from Ames Associates dated January 8, 2013 for the purpose of accepting the application as complete, and schedule same for Public Hearing #1 this evening.

Motion: Mr. King moved to accept the application of **Cynthia Woodman Carver (86-2)**, grant the waivers for the purposes of acceptance only and to schedule a hearing for this evening to be Hearing #1, seconded by Mr. Jenson, carried unanimously.

IV. Boundary Line Adjustments

V. Hearings

1. Cynthia Woodman Carver (86-2) (233 & 235 Sibley Road) Major Two Lot Subdivision

Mr. Dan Ellis with Ames Associates is representing Cynthia Carver.

Mr. Ellis stated that the site is at 233-235 Sibley Road near the intersection of Red Hill Road. He stated that it's an existing 53.99 acre parcel that has two dwellings on it currently. There is a house and barn and shed and there is another dwelling fairly close to the other dwelling. The proposal is to separate off the dwelling at 233 Sibley Road into its own 1.12 acre lot. The purpose is so that the dwelling can be mortgaged separately and sold separately if need be. A soil survey was completed for the proposed lot and it meets the minimum lot sizing requirements of the onsite soil types and slopes. The remaining land with the house and barn would be 52.87 acres on the overall property schematic which he did include just for informational purposes. It shows that the 52.87 acres does go down to Wakonda Pond. The dwelling on 233 Sibley Road is served by a state approved septic system which was installed in 2007. They do have state subdivision approval for the 1.12 acre lot and Mr. Ellis has made revisions to the plat in accordance with the staff memo of February 5, 2013. He's added a note indicating that no portion of this proposed lot falls in any flood zone. There are portions of Wakonda Pond Shore frontage that are indicated as a Flood Zone A FEMA mapping which means they may flood but there's no extensive study that's been completed. Another comment was adding the reference to the woods road easement which is quite a ways away from the site but it is on the remaining land so they did add that reference to the plan. He added the setback lines to the plat which will be recorded. The fourth item was to submit an electronic format file. Mr. Ellis believes that he has addressed all the staff memo items.

Mr. Ellis asked if there were any other questions. Mr. Howard asked Mr. Ellis to speak to the waiver request. Mr. Ellis stated that the waiver request is for the remaining 52.87 acres with quite an extensive wetlands that he did show on the overall property schematic but that's shown based on USGS

Mapping rather than spend an exorbitant amount of money to delineate the wetlands survey and also survey the entire 53 acres for topography they are requesting a waiver of wetlands and topo.

Mr. Howard mentioned that the waiver includes the boundaries on the actual plat, making it three waivers requested.

Mr. Howard asked if Mr. Ellis added the intent plan note. Bruce stated that it is under Misc. Issues and that he didn't press Mr. Ellis on it as a condition of approval. Mr. Ellis stated that he would add that.

Mr. Howard asked if there were questions from the board.

Mr. Jensen wants to verify that there are no wetlands on the smaller parcel being created. Mr. Ellis stated that that is correct.

Mr. King wanted to verify that there are no additional driveways being added. Mr. Ellis stated that was corrected, no additional driveways on either parcel at this time. He also stated that there is no construction proposed on this project.

Mr. Howard asked if any members of the public had any questions. There were none.

Mr. Punturieri asked about the email from Heritage Chair, Cristina Ashjian and her concern about the Sibley Fountain and the historic barn. Mr. Woodruff stated that it was his belief that this would not have any effect on either one and he stated that he wasn't even aware that there was a fountain there. It is Mr. Woodruff's estimation that neither of these concerns is affected by the creation of this new lot.

Mr. Bartlett stated that he was unaware that the Heritage Commission had any purvey over subdivisions. He stated that if they do, he should be corrected.

Mr. Woodruff stated that he believes it is in the Charge to take a look at all development proposals and comment on whether there are any historic resources, natural resources involved just to let the Planning Board know.

Mr. Wakefield asked if this was a Charge that the Planning Board gave them or a Charge that they developed themselves.

Mr. Woodruff stated that he believes it's in the Statue. Mr. Woodruff said he would provide the citation for the board.

Mr. Howard asked if there was anything further from the public before he closes the Public Hearing. There being none, Mr. Howard closed the Public Hearing and entertained a motion, and to remember to include the addition of the intent of plan note in that motion.

Motion: Mr. King moved to approved the Cynthia Woodman Carver (86-2) (233 & 235 Sibley Road) Major Subdivision of an existing 53.99 acre parcel of land into two lots; One lot containing 1.12 acres and one lot with 52.87 acres located entirely in the Residential/Agricultural zone, with waivers for not depicting; a. all parcel boundaries, b. wetland areas on the entire parcel, c. and topo from the surveyor on the entire parcel, with the following conditions: 1) Add an intent of plan note explaining what is being done; 2) That the final plat be submitted to the Development Services Office in electronic format to include both a pdf and an approved cadd file format, seconded by Mr. Jensen, carried unanimously.

VI. Informal Discussions

Mr. Howard stated that there is a request for an informal discussion.

Mr. Doug Whitley of 18 Westwood Shores Road introduced himself and he stated that he and his wife Laurie were looking to expand a non-conforming structure over on Kanasatka. His first question was that he understands that the board voted to change the ordinance on the upcoming ballot and one in particular affects what they are planning to do. His understanding is that that ordinance is in affect now before the vote. He asked if that was correct.

Mr. Woodruff stated that was correct.

Mr. Whitley asked if that was in affect if it passes Town meeting going forward. If it fails at Town meeting does it fall back to what was existing before the vote, the old ordinance?

Mr. Woodruff stated that was correct.

There was confusion as to what is right. Mr. Jensen stated that anything that is currently in effect now will stay in effect beyond the vote unless the vote changes something.

Mr. Woodruff stated that once you posted your changes they are enforced until Town meeting either approves them or disapproves them.

Mr. Howard said, meaning that it couldn't be approved under the existing ordinance. He stated that he thinks Mr. Whitley's question is, does he have a window of opportunity based solely on the Planning Board's vote and the answer to that is no, he doesn't.

Mr. Whitley stated that his problem is that he and his wife went before the Zoning Board to get a variance and they were turned down, which he's okay with. They left that meeting planning to the existing ordinance and then he found out last week that the Planning Board voted to change the ordinance which directly impacts what they are trying to do and they were following what Zoning told them that they needed to do to get a building permit. Mr. Whitley was under the assumption that he had until March to get the building permit. When he met with Mr. Woodruff last week he was informed that now that ordinance is in affect now so that all the planning that he has been doing for the last few months, he doesn't conform now to the new ordinance. He conforms to the old one. His question is whether he can get it done before the vote or not. He's looking to reconfirm with the board what Mr. Woodruff has told him. Mr. Howard stated that once the Planning Board votes favorably to forward that proposal to town meeting that you can no longer get approval based on the current language. It's a freeze.

Mr. Bartlett stated that he thought was a specific law in this country that you cannot make ex-post facto laws. Mr. Bartlett stated that this has not been voted on, it is not a law, and it's not an ordinance yet and the board is saying we have to comply with it because somewhere along the line we said that we're going to recommend it to the Town that it is automatically a law?

Mr. Howard stated that it's not the law but it puts on hold any new applications seeking approval under the current law until the Town votes one way or the other.

Mr. Woodruff said that in effect what you're telling people once you post all the zoning changes that you made, you are telling people that they have one or two things they can do; they can either hold off until after town meeting determines whether it will be approved or not, or that they can take a chance and move forward with what's been posted. That's what the law says and that it is best for the Code Enforcement Officer to never approve a permit on the old language.

Mr. Whitley said that the other problem they have is that they went thru this process and they've used Ames Associates who works with the Town a lot, the architect meet with the Code Officer, to make sure that they understood everything and no one said anything changes were coming. Mr. Whitley stated that he has spent a considerable amount of money moving towards something that now has changed and it seems like some rights have been taken from him in developing his property. The project that he is proposing is not feasible under the proposed ordinance. His plan that he was doing there was not restriction as long as he stayed within the existing footprint and he could expand in the area that was not outside the 50' set back.

Mr. Woodruff said that there are three things he wants to say about this subject. 1) that this issue is one in a thousand that Mr. Whitley has been caught in this process. These changes have been out there, they've been in the newspapers, on the web, posted in the library. 2) that he had met with the Whitley's a couple of times and he doesn't want the board to get the idea that we are not helping the Whitley's get to a reasonable place where they want to go and if it means going back to the Zoning Board, that we will assist them in crafting the best application that they can bring to the board. 3) Mr. Woodruff stated that he would go to Town Counsel and layout the time line for this to see if being caught in this strange circumstance if there is some vesting even though not official application for a building permit has come in.

Mr. Woodruff read into the record from the New Hampshire Practice Series-Land Use Planning & Zoning (2nd Ed.) about the issuance of building permits while an ordinance amendment is pending.

Mr. King would like the staff to find out from Legal Counsel if in fact there is some sort of vesting here.

Mr. Jensen stated that RSA 676:12 says what it does is establish a 120 day restriction. He asked what could we do in the future if was wanted to avoid this kind of problem would be to make an effective date to be 120 days after Town Meeting.

Mr. Woodruff stated that he will go back thru the Zoning Board tapes to see if he said anything in the hearing for the variance request that might have lead the Zoning Board to know that that amendment was coming that would change this or allow Mr. Whitley to go up that path. He will go to Town Counsel in the morning and lay out the time line. Mr. Woodruff will let Mr. Whitley know what he finds out in the following week.

VII. Unfinished Business

VIII. Other Business/Correspondence

1. Voluntary Merger – Moultonboro Airbase, LLC (18-18 & 23-21) (39 Airport Road)

Mr. Howard asked if anyone had any questions.

Mr. Woodruff stated that he'd like to report that the information on the form is correct and what the board would be approving is to authorize the Chairman to sign.

Mr. Howard asked again if there were any questions. Hearing none the chair entertain a motion to authorize the chair to sign the application for a notice of voluntary merger from the Moultonboro Airbase, LLC and forward same to the Selectman and the Tax Collector and to record this notice once approved into the Carroll County Registry of Deeds.

Motion: Mr. King so moved, seconded by Mr. Punturieri, carried unanimously.

2. Discussion on Draft 2013 Work Plan

Mr. Woodruff brought the board up to date on where they are and where they need to go. He believes that the way it was left the last time was that the board was going to take a look at the Master Plan Implementation Status Matrix. Take a look at all but the long term tasks to be done as part of the 2008 Master Plan. Take a look to see where we were with regard to implementation and then see ones the jump out at you that need to be done still.

Mr. Howard stated that he thinks that items 4 & 5 really look to be a part of the Master Plan process at this point. Item 3 however, he believes that the Board needs to get going on that one. He stated that item 1 sits alone by itself and can be fit in wherever, whenever independent of the Master Planning process. Mr. Howard believes this matrix can be boiled down to 3 items. The 3rd one being the Master Plan.

Mr. Howard asked for other input.

Mr. Punturieri suggested that they prioritize these into categories and pull from that each of those categories what are the 2 or 3 important things that the board wants to accomplish in the next year or 2 years. He feels that should be along with the Master Plan Survey & Speak Out for where we are going next.

There was a lengthy discussion on what needs to be done.

Mr. Punturieri stated that the board should do a couple of things. 1) To pull out things that are started or where about to start. 2) To put together something that summarizes what's been done over the past 5 years. What's been implemented and what's been attempted, completed.

Mr. Bartlett thought this was a good idea and that we should pull out what ever has been rejected.

Mr. Punturieri suggests sorting the matrix and to take out the ones that are not started or have already failed and just look at things that are still possible. Real goals, once you whittle the list down, there aren't many.

Mr. Howard stated that this could be an introduction of the fact that we are about to undertake this as a priority in our work plan this year.

Mr. Punturieri volunteered to write up a paragraph with bullets on where we are and what we did. The Chair indicated that this was a good idea, and for Mr. Punturieri to proceed.

There was a lengthy discussion on where to go now.

Mr. Howard stated that he feels if it is not done now in the matrix it's for the next Master Plan. It's not stuff they have to get done before the next Master Plan. Mr. Howard feels that it is time to start on the new plan.

Mr. Woodruff stated that he thought that was the Implementation Committee's recommendation to the Board.

Mr. Howard ask the board if they agreed that we need to just reverse the numbering on the matrix to get to the priority rating because if our Zoning issue is approved relative to our table of uses we do have to provide these criteria so that would be a priority to him and then the Master Plan is a priority but

it's a huge project so it will be spread out over the course of the year. Then modify the site review regulations for a specific item can be fit in when they see a chance to fit it in.

Mr. Woodruff said that the other one that is important in the amend site review regulations task is the two sections that need to be added (they'd already been reviewed and approved) but put on hold until after Town Meeting, which then would allow you to add them because once you change the Zoning Ordinance then you can add those 2 sections.

Mr. Woodruff's suggestion to the boards would be that he would come back and give the board Some "x's" and they would be: Modify Site Review Regulations – he would "x" out April & May. Under Develop specific criteria he would also do April & May. For the new Master Plan Development steps he would "x" from June to February.

Mr. Bartlett asked if that includes what's in items 4 & 5.

Mr. Woodruff stated that it does. He stated that it's whatever the board hears from citizens or surveys. He feels the key task for the Planning Board is not to have a discourse with folks that come in, it's just to listen to them. To write down the important points and cypher out how many times you hear that one thing that people say. We need to listen to what the citizens have to say. These things have to be framed to a certain degree, you have to tell people that we are coming in to talk about land use and that means a, b, and c. Talk about Vision and what do they want to see in Moultonborough in 20 years and let them tell you.

Mr. Jensen stated that we at least have to set a bench mark for the volume of involvement, we have to be able to measure it somehow or we could be moving ahead thinking that we've got something relevant to bring forward to the town and we actually have fewer people involved in our process. How are we going to measure the effectiveness of the listening process?

Mr. Punturieri asked how do you engage the public first of all? He suggested that it might be beneficial for the board to go to the public in Suissevale and places like that.

Nancy Wright stated that she believes part of the problem is that it's always the usual suspects that show up for these meetings. She feels if the meetings are broadcast people will watch them. She gave an example that the elderly population won't come out to these meetings, but they could watch them if they were broadcast. People who go away for the winter, she thinks it's evident that people do watch these meetings. She thinks if the town where to start broadcasting that that will sort of draw people in. She stated that the Zoning Board is taped but not broadcast and if it had been Mr. Whitley would have been aware of the upcoming proposed ordinance.

Mr. Howard asked if there was any further business.

Mr. Woodruff just asked that the board keep an open mind on what his intentions are with regard to the Master Plan process and how he may shake up how things are done to increase participation and interest. He's worked on Master Plans in 2 other communities with innovative approaches which include going to concentrations of populations which is just one of his tactics that will hopefully bring us up to the 22-23% participation rate.

IX. Committee Reports: None.

X. Adjournment: Mr. Punturieri made the motion to adjourn at 8:37PM, seconded by Mr. King, carried unanimously.

Respectfully Submitted,
Alison G. Kepple
Office Secretary