

Planning Board
February 20, 2007
Approved March 20, 2007

Members Present: William Weiler, Vice-Chair; Al Bachelder; Travis Dezotell, Deane Geddes; David Thayer; Ken McWilliams, Advisor

In the absence of Chairperson Freeman, Mr. Weiler chaired the meeting. He called the meeting to order at 7:00 p.m.

MINUTES

The Board reviewed the minutes of January 16, 2007 and made corrections.

Mr. Bachelder made a motion to accept the minutes of January 16, 2006 as corrected. Mr. Dezotell seconded the motion. All in favor.

CASE: 2006 – 006 – John Feins – Harborview Subdivision in Sutton.

Mr. McWilliams informed the Board that he had a brief conversation with Chairperson Freeman about the Harborview Subdivision. She said that she made an on-site visit to Haynes Road and Baker Hill Road and it appears to her that Baker Hill Road is in as bad a shape as Haynes Road. The Board should voice concern to the Sutton Planning Board about the condition and safety issues of Baker Hill Road as well as Haynes Road, which may help strengthen the Newbury Planning Board's opinion that the Harborview Subdivision is a scattered and premature development.

Mr. Bachelder stated that he is in agreement with Mrs. Freeman's findings as he stated at the beginning of this issue.

Mr. Thayer stated that he agrees with Mrs. Freeman and Mr. Bachelder.

Mr. Geddes stated that he already spoke to this issue about four weeks ago after he and Mr. Williams and Mr. Prussman, Road Agent, visited the site. We indicated that there is no stop sign or streetlight to illuminate the intersection at Baker Hill Road and Haynes Road. Mr. Geddes also voiced concern about the amount of traffic on Baker Hill Road since it seems to be a shortcut for the students in the Blodgett Landing area to get to the High School.

Mr. Weiler asked for a sense of the Board about notifying the Sutton Planning Board that it is the Newbury Planning Board's opinion that the Harborview Development is scattered and premature.

Mr. Bachelder commented that the Board has already given that opinion.

Mr. McWilliams asked the Board if the condition of Baker Hill Road should also be added to the reasons why this development is scattered and premature.

Mr. Bachelder added that there is also a short section of Baker Hill Road near Haynes Road that is also in bad shape. He asked where the Harborview Subdivision stands at this point in time.

Mr. Geddes mentioned that back in November 2006 there was a plot plan that showed King Hill Road as the exit. The last information he knew was that King Hill Road was to be the only exit.

Mr. Weiler commented that the last plat of the subdivision showed a new road plan for an exit on King Hill Road in New London. The Newbury Fire Chief, Henry Thomas, said that he did not foresee a problem getting the fire trucks up and over Baker Hill Road and Haynes Road in the event of an emergency.

Mr. Bachelder stated that he feels the Planning Board should have the opportunity to hear directly from and be able to ask questions of the Newbury Police Chief and the Newbury Fire Chief.

Mr. Weiler commented that he believes the Sutton Planning Board is close to making a decision on the Harborview Subdivision.

Sense of the Board is to notify the Sutton Planning Board that the Newbury Planning Board's opinion is that the Harborview Subdivision is scattered and premature as defined in the RSA's.

CASE: 2006-018 - CONCEPTUAL – Scott Falvey – Southgate Road

Mr. Falvey stated that the last time he was in front of the Planning Board he was asked to try to determine how many lots his 160 acres off Southgate Road can support. After doing the number crunching, he determined that the entire lot could support 49 building lots or 55 cluster units, which would require building 10,000 feet of road.

Mr. Falvey explained that what he would like to propose is 10 building lots with a substantial amount of open space as long as he has the backing of the Planning Board for certain waivers. He stated that he would like to be approved for 10 building lots; he would keep the road elevations and cuts to a minimum; and he would ask for a waiver of the maximum length of access road to be increased from 1,500 ft. to 2,000 ft. This waiver of 500 ft. is would be necessary to obtain the 10 building lots because of the topography and terrain. No trees will need to be cut, and there is proposed to be underground utilities. The granting of 10 building lots with a waiver of 500 ft. for a private road would be a much less burden to the Town in the long run as opposed to 49 building lots serviced by a 10,000 ft. town maintained road.

Additionally, Mr. Falvey asked the Board for a waiver to not be required to upgrade Southgate Road. Southgate Road was originally designed for 30 building lots. The additional 10 building lots would increase the traffic burden on Southgate Road by 4 lots over its design capacity.

Mr. Falvey presented a preliminary plan of a 10-lot subdivision. He stated that he has found some design flaws already, so the plan presented this evening is not a final version, only a conceptual plan.

Mr. Weiler asked Mr. Falvey what he plans to do with the backland.

Mr. Falvey stated that that the backland would be set aside, perhaps used for common area. There is also a 10-acre finger, which will be offered to the abutter for annexation to his own land. Mr. Falvey also stated that there might be some selective cutting on the backland, but definitely not clear-cut.

Mr. Weiler asked Mr. Falvey if he was interested in putting the backland aside in a conservation easement.

Mr. Falvey stated that if he can get backing from the Planning Board on what he wants (10 lots with aforementioned waivers), then he would certainly be interested in looking into a conservation easement. He pointed out to the Board that he is only using about 30 acres of the 160-acre parcel.

Mr. Falvey commented that he is in the mind frame of keeping the road privately maintained by an association. If granted the 10 lots and the two waivers, this will be a win-win situation for both sides.

Mr. Bachelder asked Mr. Falvey what is the ultimate end result of this development. Is there going to be another phase before the Board in a few more years.

Mr. Falvey stated that there would be 10 lots only and forever. He said that he is only trying to break even financially with this project and does not look forward to a long, drawn-out process of 49 building lots and 10,000 ft of road.

Mr. Weiler pointed out that even 55 cluster units would be more work and more expense for the town in the long run.

Mr. Dezotell commented that it would be good to see this development tie into conservation interests.

Mr. Bachelder asked if there was any way of preserving the railroad track.

Mr. Falvey explained that the railroad track in that area is under control of the homeowners of the Southgate subdivision. It is designated as their common area.

Mr. Weiler asked the Board if they were willing to consider this proposal as presented this evening.

Mr. Bachelder stated that he did not want to make a decision at this point, but is willing to look at it. The road waiver brings back the same issues as discussed at prior meetings regarding the safety issue of having such a long dead end road.

Mr. Weiler pointed out that the waiver request for this version is only 500 ft. as opposed to the 4,500 ft. previous request.

Mr. Dezotell commented that, in his opinion, there is no way that a 10,000 ft road is safer than a 2,000 ft. road.

Mr. Weiler commented that the only thing the Board can advise now is for Mr. Falvey to come to the Board with a preliminary application, then both sides can discuss the issues with more detail.

Mr. McWilliams advised the Board that consideration will have to be given to the whole property, including potential annexations, open space, conservation easements, etc.

Mr. Bachelder commented that he is concerned that Mr. Falvey will be in for more building lots later.

Mr. Falvey said that he gives his word that if the Board approves the 10 lots, there will no further subdivision/development proposals in the future on this 160 acre parcel.

CASE: 2007-004: Final Review – DLB Family Limited Partnership, General Partner, Dexter Burley – Annexation/Lot Merger – Mountain Road – Map 33 Lots 595-231 and 562-433.

Notice is hereby given that the Planning Board will receive submission of an application for a Final Hearing for a Subdivision/Annexation from DLB Family Limited Partnership, for property located off Mountain Road, Newbury, NH, Tax Map 33-595-231 and 33-562-433 on Tuesday February 20, 2007 at 7:30 p.m. in the Town Office Building at 937 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing on the application will commence at the same meeting. Copies of the plans are available for public review at the Town Office Building during regular business hours.

Mr. Weiler read the above notice, and the Board reviewed the application for completeness. Included in the application were two requests for waivers. One request was for a waiver for a complete boundary survey of one of the lots due to the size of the lot and the terrain of the backland. The other request was for a waiver from the required scale of 1"=100' due to the size of the lot which would make it impossible to fit the whole lot on one plat.

Representing the applicant was Peirre Bedard, Surveyor and Mike Bascom, Property Manager.

Mr. Bachelder asked if the Merrimack County Registry of Deeds has a requirement of scale for recording plats.

Mr. Bedard stated that the Merrimack County Registry of Deeds does not regulate the scale used on recording plats.

Mr. Bachelder made a motion to waive the scale requirement of 1"=100'. Mr. Geddes seconded the motion. All in favor.

Mr. Dezotell made a motion to waive the requirement of a complete boundary survey of all parcels as per 7.1.5 of the Newbury Subdivision Regulations. Mr. Thayer seconded the motion. All in favor.

Mr. Weiler appointed Mr. Geddes as a voting member.

Mr. Dezotell made a motion to accept the application for annexation/lot merger as complete with approved waivers. Mr. Thayer seconded the motion. All in favor.

Mr. Bedard explained that Mr. Burley's intent is to give 50 acres to one of his children. The existing road frontage on parcel 33-595-231 of 94 +/- acres is only about 75 ft., and the existing road frontage on parcel 33-562-433 of 95.11 +/- acres is approximately 1000 ft. This annexation/lot merger would result in parcel 33-595-231 becoming 139.04 +/- acres with approximately 500 ft. of road frontage and parcel 33-562-433 becoming 50.07 +/- acres with approximately 500 ft. of road frontage. Granting this annexation/merger will make a non-conforming lot conforming. The parcels have approximately 4 miles of hiking trails and a brook that runs through them. It is not the landowner's intent to develop these lots.

Mr. Bachelder asked if there were any steep slopes on either one of the lots.

Mr. Bedard explained that the back land is very steep.

Mr. Bachelder asked Mr. Bedard if there is a buildable area for the 50-acre lot.

Mr. Bedard said that there are buildable areas on each lot as well as some suitable driveway access areas.

Mr. Weiler opened the meeting for public input.

D.W. Goubert, prior owner of the Burley property and abutter, commented that he has looked at the plans and believes that the plans represent Mr. Burley's stated interests.

No further public comment. Mr. Weiler closed the meeting to public input.

Mr. Bachelder made a motion to approve the application for annexation/merger with waivers. Mr. Thayer seconded the motion. All in favor.

The Board signed the mylar.

CASE: 2003-011 – FIELDSTONE RIDGE DEVELOPMENT – Pickman and Sons off Old Sutton Road – Major Subdivision.

Mr. Weiler informed the Board that he received a call from Robert Stewart, Jr., Agent for Pickman & Sons Selectman Powell concerning a disagreement in the road bond amount recommended by Lou Caron. Mr. Caron determined that the road bond amount should be \$2.2 million to satisfy conditions precedent. Mr. Pickman has apparently hired an independent professional estimate firm and they have determined the necessary road bond amount to be \$1.2 million.

Mr. Thayer asked if Mr. Pickman has written documentation to support the findings that \$1.2 million will satisfy the conditions precedent.

Mr. Bachelder commented that surely he must have something in writing in order to present a different figure.

Mr. Geddes asked if this has anything to do with Mr. Pickman doing some of the work himself.

Mr. Weiler said that he did not know, he does not know that much detail surrounding the dispute.

Mr. Bachelder commented that if Mr. Caron determined \$2.2 million, then that must be a true and accurate figure; and unless Mr. Pickman can provide something in writing to prove otherwise, the Board should stand behind Mr. Caron's figure.

Mr. Thayer asked if Mr. Caron knows that Mr. Pickman thinks the conditions precedent of the bond can be satisfied with \$1.2 million.

Mr. Weiler said that he did not know if Mr. Caron is aware of the disputed figure. He read from a letter from Eckman Engineering which reasoned that if the developer should default during the development of the road, the Town could just seed it over and not finish developing the road.

Mr. Bachelder suggested that Mr. Caron and Mr. Pickman should discuss this issue and work out a figure agreeable to both parties. He stated that Mr. Pickman should prove to Mr. Caron that the requirements could be satisfied for \$1.2 million and protect the Town's interests. He warned that the Planning Board should be very careful on what it decides.

CASE: 2006-011 – George McLean, Jr. et al – Annexation – 11 Great Island – Map 05-040-077 - Continuation.

The Board clarified that annexations are not considered new lots; therefore, density calculations are not required.

Present to represent the landowner was Wayne McCutcheon, Surveyor, George, Jeff, and Mark McLean, Landowners. Mr. McCutcheon presented the plan for annexation of 0.16 acres to be annexed from parcel 05-015-047 to parcel 05-040-077. There was a variance granted by the Zoning Board of Adjustment on February 12, 2007 as follows:

The Newbury Zoning Board of Adjustment, at its meeting of February 12, 2007, after a properly noticed hearing, has rendered the decision to grant a Variance as provided for in paragraph 7.3.1 and 15.2 of the Newbury Zoning Ordinance to permit the following: To waive the shore frontage requirement of two hundred (200) feet per dwelling. Newbury Tax Map 05-015-047. Please be advised that any person or part to the action or proceeding of the Zoning Board of Adjustment may ask for a rehearing within thirty (30) days of the date of this notice of decision as per RSA 677.2. Said motion must set forth, in detail, all grounds on which the appeal is based.

Mr. Weiler commented that what the Zoning Board of Adjustment granted is not what the Planning Board initially asked for. However, it appears as though the Zoning Board of Adjustment intended to address the non-conforming lot issue and has therefore rendered an acceptable decision to continue with the subdivision/annexation application.

Mr. McCutcheon explained that the McLeans applied for an area variance as directed. All information presented at the Zoning Board of Adjustment hearing was presented for an area variance. He commented that he is not sure why they worded the decision the way they did.

Mr. McCutcheon informed the Planning Board that Charlie Hirshberg, septic designer, has designed and received approval from D.E.S. for a septic system for the Boat House Lot. Since the subdivision/annexation had not yet been approved, the design was submitted under the pretense of a septic easement from the McLeans to the Boathouse Lot. The McLeans and Davis's are hoping to sell the Boathouse Lot to a third party after approvals have been obtained.

Mr. Weiler noted that according to the plans submitted, the well servicing the Boathouse Lot is right on the shore.

Mr. McCutcheon explained that all of the non-drinking water sources on the Island come from Lake Sunapee.

Mr. Geddes asked if there was any capacity in the existing community system on the Island for the Boathouse Lot to tie in rather than building a new septic system.

Tom Dugdale, Realtor, stated that it is not possible for the Boathouse Lot to tie in to the community system.

Mr. McCutcheon explained that even if there were capacity, it would still be next to impossible to make that happen because of the ledge and the inability to get drilling equipment to the island.

Mr. Weiler asked if Mr. Hirshberg's septic design was approved by D.E. S. with waivers.

Mr. Dugdale said he did not know, none that he knows of.

Mr. Weiler pointed out that 15.2.1 of the zoning ordinance states the following: In addition to the above requirements, a non-conforming lot located in the Shore Land overlay District shall comply with the current regulations of the New Hampshire Water Supply and pollution Control Division of the Department of Environmental Services without waivers as of the date of the application for a building permit.

Mr. McCutcheon stated that he did not know that there were requirements for septic waivers, but it could still be done with an easement if necessary. He said that he did not believe there were waivers granted for this septic approval since none of the reasons for requesting a waiver exist. There are no wells in close proximity, the design meets all of the minimum distance requirements and the soils are Hydric A.

There were no further questions from the Board.

Mr. Weiler opened the hearing to the public. There were no comments from the public. Mr. Weiler closed the hearing to the public.

There were no further questions or comments from the Board.

Mr Thayer made a motion to approve the subdivision/annexation plan for George McLean et al as submitted. Mr. Dezotell seconded the motion. All in favor.

The Board signed the mylar.

CASE: 2007-004 – Final Review – George M. Gordon – Annexation – Lakewood Manor Road and Route 103 – Map 19 Lots 613-412, 590-386, 595-371

Notice is hereby given that the Planning Board will receive submission of an application for a Final Hearing for a Subdivision/Annexation and Lot Merger from George M. Gordon, for property located off Lakewood Manor Road and Route 103, Newbury, NH Tax Map 19-613-412, 19-590-386, and 19-595-371 on Tuesday, February 20, 2007 at 8:30 p.m. in the Town Office Building at 937 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing on the application will commence

at the same meeting. Copies of the plans are available for public review at the Town Office Building during regular business hours.

Mr. Weiler read the above notice, and the Board reviewed the application for completeness.

Present for this hearing was Wayne McCutcheon, Surveyor and George Gordon, Applicant.

Mr. McWilliams pointed out that the table per 7.1.6 of the subdivision regulations was not on the plat. Article 7.1.6 reads as follows: Include a notation which explains the parcels and sizes as they exist and the parcels and sizes which would result with approval of the annexation.

Mr. McCutcheon explained that the reason the parcels are indicated differently than usual is because he was trying to follow the same method as was done in 2003. Since the area is so dense, it is difficult to get all of the information squeezed in and readable. He explained that the intent of this annexation is to make non-conforming lots more conforming, which will also result in three lots of record becoming two lots of record. The before/after dimensions are indicated on the individual lots on the plat.

Mr. McWilliams stated that there needs to be a simple table off to the side which shows the before and after dimensions.

Mr. Weiler commented that the lots also need to be identified by Town tax map and lot number or a parcel letter.

Mr. McCutcheon explained that he would prefer to use parcel letters in order to maintain consistency with the previous plan in 2003.

Mr. Bachelder commented that this application is actually a subdivision/annexation and not a lot merger. He suggested that the Planning Board not accept this application as complete until the before/after table is on the plan as required by 7.1.6 of the subdivision regulations. The Board was in agreement.

Mr. Thayer made a motion to continue this hearing until March 20, 2007 at 8:00 p.m.
Mr. Dezotell seconded the motion. All in favor.

CASE: 2007-003 – Preliminary Review – Mary Webb – Major Subdivision – Newell Road and West Road – Map –36 Lot 658-426.

Notice is hereby given that the Planning Board will receive submission of an application for a Preliminary Hearing for a Major Subdivision from Mary Webb, for property located off Newell Road and West Road, Newbury, NH Ta Map 36-658-426 on Tuesday February 20, 2007, at 9:00 p.m. in the Town Office Building at 927 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing on the

application will commence at the same meeting. Copies of the plans are available for public review at the town Office Building during regular business hours.

Mr. Weiler read the above notice, and the Board reviewed the application for completeness.

Present for this hearing was David Eckman, Engineer.

Within the application is a request for a waiver for a drainage plan map.

Mr. Eckman explained that the fire protection plan is still in progress and will be submitted as soon as it is complete.

Sign-off sheets appeared to be missing from the Police Department, Highway Department and Fire Department.

Mr. Eckman commented that he had discussed the application with the Fire Chief and Road Agent. The Road Agent verbally indicated to Mr. Eckman that the Highway Department sign-off sheet had been submitted to the Planning Board a couple of weeks ago.

Mr. McWilliams advised Mr. Eckman to contact the Fire Chief and remind him to submit the sign-off sheet to the Planning Board.

Mr. Weiler commented that the application is not quite ready to be considered for acceptance since there are missing sign-offs and a missing fire protection plan. He suggested that the Board consider the requested waivers in order to make some progress on the application.

Mr. Weiler advised Mr. Eckman that the plan needs to show how the drainage on the property is going to flow and ensure the Board that no more water is going to leave the property after development.

Mr. Eckman explained that there are no new roads proposed for this subdivision, only driveways. All of the proposed house lots have existing road frontage on existing roads. The developer will not be doing any earth moving on this property prior to sale. Mrs. Webb, the landowner, lives across West Road from this property and has already mandated that the new homes be 200 ft. back from the road in order to maintain privacy for all individuals.

Mr. Dezotell made a motion to grant the request to waive Article 9.10 and 9.11 of the Newbury Subdivision Regulations since the land owner will not be doing any earth moving prior to the sale of lots. Mr. Thayer seconded the motion.

Mr. Bachelder asked Mr. Eckman if there is a way to show where the major flows are and their direction of flow.

Mr. Eckman stated that he could add some flow arrows on the plan in lieu of drainage plans.

Mr. Weiler asked Mr. Eckman if he knows the difference between the minimum and maximum elevations on the entire lot.

Mr. Eckman referred to the plat and identified the two highest peaks. Using those as a point of reference, the elevations went from 1036 ft. down to 1010 ft and then 1040 ft down to 1014 ft. He explained that there is a 'saddle' in the middle the will catch a lot of the drainage coming down from the peaks.

Vote on Mr. Dezotell's motion to waive 9.10 and 9.11: All in Favor.

Mr. Weiler explained that there are three issues remaining in order to consider the application as complete:

1. Fire Protection Plan
2. Sign-off sheets
 - a. Highway Dept
 - b. Fire Dept
 - c. Police Dept
3. A new contour map with flow arrows indicating the directional flow

Mr. Thayer made a motion to continue this preliminary subdivision application by Mary Webb to March 20, 2007 at 8:30 p.m. Mr. Dezotell seconded the motion. All in favor.

CASE: 2007-005 – Final Review – David and Sarah Hemendinger – Annexation/Lot Merger – 43 Gerald Drive and 26 Hilltop Drive – Map 29A Lots 169-465, 191-437, 196-451

Notice is hereby given that the Planning Board will receive submission of an application for a Final Hearing for a Subdivision/Annexation and Lot Merger from David and Sarah Hemendinger, for property located at 43 Gerald Drive and 26 Hilltop Drive, Newbury, NH Tax Map 29A-169-465, 29A-191-437, and 29A-196-451 on Tuesday, February 20, 2007 at 9:15 p.m. in the Town Office Building at 937 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing on the application will commence at the same meeting. Copies of the plans are available for public review at the Town Office Building during regular business hours.

Mr. Weiler read the above public notice, and the Board reviewed the application for completeness.

Mr. Dezotell made a motion to accept the Hemendinger's application for subdivision/annexation and lot merger as complete. Mr. Thayer seconded the motion. All in favor.

Present to discuss the Hemendinger's application was Clayton Platt, Surveyor.

Mr. Platt explained that the Hemendinger's own two properties, one with a house and the other an empty lot. It was discovered that the septic system servicing an abutter, Andrea Kelley, was actually on the empty lot owned by the Hemendinger's. This subdivision/annexation will result in an increase of the Hemendinger's house lot by .21 acres, eliminate the empty lot as a lot of record, increase Ms. Kelley's house lot by .07 acres and locate her septic system on her own property.

There were no further questions from the Board. The meeting was opened to the public for input. There were no members of the public to make comment. The meeting was closed to public input.

Mr. Bachelder made a motion to approve the subdivision/annexation as presented. Mr. Dezotell seconded the motion. All in favor.

CASE: 2007-002 – Final Review – Rheta Heller Revocable Trust – Minor Subdivision – Bartlett and Rollins Road – Map 30 Lot 666-376.

Notice is hereby given that the Planning Board will receive submission of an application for a Final Hearing for a Minor subdivision from Rheta Heller Revocable Trust, for property located on Bartlett Road and Rollins Road, Newbury, NH, Tax Map 30-666-376 on Tuesday, February 20, 2007 at 9:30 p.m. in the Town Office Building at 937 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing on the application will commence at the same meeting. Copies of the plans are available for public review at the Town Office Building during regular business hours.

Mr. Weiler read the above notice, and the Board reviewed the application for completeness.

Present to discuss the Heller's application for subdivision was Allen Wilson, Surveyor and Septic Designer.

Mr. Weiler read a request from Mr. Wilson on behalf of the Hellers for the following waivers:

1. Topography of the entire property.
2. Septic Design on the proposed 6-acre lot.
3. Wetlands delineation of the entire property.
4. Wildlife Biologist study of parcel for the determination of deer wintering areas.
5. Soils mapping of the entire property.

The reasons for the request are as follows:

1. Topography of the proposed 6-acre lot is provided; topography on the entire lot would be very expensive and not be of importance to the proposal.

2. The proposed 6-acre lot has been examined by a Licensed Septic Designer, and no wetlands were found. Delineation of the entire property would be very expensive and not of importance to the proposal.

3. The proposed 6-acre lot has been examined and found to be suitable for onsite sewage disposal, but none is proposed at the present time.

4. A study of deer wintering areas would be cost prohibitive for a single lot subdivision.

5. The soil type for the proposed lot is 55C – Hermon fine sandy loam, (Source NRCS soil mapping NH609). Soil mapping of the entire lot would be cost prohibitive and not of importance to the proposal.

Mr. Bachelder made a motion to grant all five waivers as requested. Mr. Thayer seconded the motion. All in favor.

Mr. Geddes made a motion to accept the application as complete. Mr. Thayer seconded the motion. All in favor.

Mr. Wilson explained that the Hellers' intent is to subdivide 6.21 acres out of the 83.46 acre piece and then sell the 6.21 acres to the abutter. The remaining 77.25 acres is to stay under forest management. Designing the 6.21-acre piece shorter and wider satisfied the form factor.

Mr. McWilliams asked Mr. Wilson if he knew the slope of the 6.21-acre parcel.

Mr. Wilson said approximately 21% slope.

Mr. McWilliams asked Mr. Wilson why there was a stonewall on the northwesterly side of the lot.

Mr. Wilson said he was not sure, but he believes it is the remnant of a paddock or some other historical structure.

Mr. Weiler pointed out a typographical error on a tax map and lot number.

Mr. Wilson said he would correct that number prior to creating the final mylar.

Mr. Weiler opened the meeting for public input. There were no members of the public present. Mr. Weiler closed the meeting to public input.

Mr. Bachelder made a motion to approve the application for subdivision/annexation with the condition that the tax map and lot number be corrected on the final plan and mylar. Mr. Geddes seconded the motion. All in favor.

Mr. Weiler informed Mr. Wilson that if he submits a corrected mylar to the Planning Board soon, the Board could sign it at their next work session meeting.

CASE: 2006-012 – Final Review – Kurt and Janet Dutcher – Lot Line Adjustment – Blye Hill Landing – Map 30 Lot 685-227.

Notice is hereby given that the Planning Board will receive submission of an application for a Final Hearing for a Lot Line Adjustment from Kurt and Janet Dutcher, for property located on Blye Hill Landing, Newbury, NH, Tax Map 30-685-227 on Tuesday, February 20, 2007k at 9:45 p.m. in the Town Office Building at 937 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing on the application will commence at the same meeting. Copies of the plans are available for public review at the Town Office Building during regular business hours.

Mr. Weiler read the above notice, and the Board reviewed the application for completeness.

Present to discuss the Dutcher's application was Allen Wilson, Surveyor and Septic Designer, and Walter and Barbara Greenwood, abutters.

Mr. McWilliams commented that the existing common versus private land should be clearly denoted on the plan.

Mr. Weiler commented that the Board needs to see the 50 ft. setback on the plan, specifically where the expansion for the house and driveway encroaches within the 50 ft. common area setback.

Mr. Wilson stated that there is a letter from the Board members of the Blye Hill Landing Home Owner's Association giving permission for the encroachment into the common area.

Mr. Bachelder commented that he also is having difficulty figuring out where the common area ends and the private building envelope begins. He said we can sit here and talk about it but it isn't clear from looking at the map.

Mr. Wilson tried to clarify that Parcel A is being taken off the 39 acres of common area and Parcel B is being added to the 39 acres of common area in exchange. He stated that he thought it would be redundant to put more labels on the map and create more clutter, but he is willing to do so if required.

Mr. Weiler made a point of order. At this point in time the Board is trying to determine if the application is complete. The reasons behind the application will be discussed later.

Mr. Weiler stated that the 50 ft. setback line and delineation of the common land should be labeled. That would meet the objections of the Board.

Mr. Bachelder added that a notation explaining that Parcel B is in effect becoming common land should also be noted on the plan.

Mr. Thayer made a motion to accept the Dutcher's application for annexation as complete with the condition that the common land and 50 ft. setback area before and after annexation is denoted on the plan. Mr. Bachelder seconded the motion. All in favor.

Mr. Wilson presented the Dutcher's plan. He explained that the Dutcher's own lot C12, and want to build a house on the easterly side of the lot. They would like permission to move the building outside of the building envelope and have received written permission for the Home Owner's Association to exchange land.

Mr. Weiler reviewed the covenants for Blye Hill Landing. He stated that there was nothing in the covenants regarding changing the common land.

Mr. McWilliams commented that Article 12.2.5 of the Zoning Ordinance states the following:

'Open Space or Common Land: A minimum of 40% of a development parcel must be set aside as common land. It shall be permanently protected using a conservation easement as open space or common land for the purposes of recreation, conservation, park or public easement forestry or agriculture...'

Mr. McWilliams stated that nowhere does it say in the ordinance that common area can be used for driveways. That is not the intent for common area. By granting this application, the applicant would be taking all of the common land on that side for private purposes.

Mr. Weiler commented that he does not understand why the applicant sees the need to build the house outside of the building envelope. The topo lines show a constant slope. Therefore, there is no indication of why the applicant needs to encroach on the common area. The Dutchers are asking for a considerable violation of the intent of the cluster development and not giving a good reason. We are relying on the RSA that says that common area in cluster developments is automatically considered as a conservation easement.

Mr. Wilson asked for confirmation from the Board that it is the Board's determination that putting the driveway in the common area is considered a violation.

Mr. McWilliams confirmed Mr. Wilson's interpretation because the proposal does not fit the allowed use of common area per 12.2.5 of the Newbury Zoning Ordinance.

Mr. Weiler commented that it has been a long time since the Board has seen a full plan of the Blye Hill Landing Development. Sometimes there is a crossing of the common land for the driveway, but not along the common land.

Mr. Bachelder commented that it appears to him to be an attempt to enlarge the lot to accommodate the driveway.

Mr. Wilson commented that there would have to be a driveway somewhere to access the house. The property owner is not trying to enlarge the lot. The driveway locations are not specified on any of the lots in Blye Hill Landing. They all cross the common land at some point, although they do not encroach on the 50' setback buffer.

Mr. McWilliams pointed out that the zoning regulations now in effect require a 100 ft. setback buffer.

Mr. Weiler stated that the Dutchers need to justify why the house and the driveway must encroach in the 50' common area buffer.

Mr. Bachelder commented that it seems as though the driveway could come in off North Drive.

Mr. Wilson stated that he does not know why the Dutchers want to make this change. He was asked to draw a plan that shows an exchange of land to accommodate the house and driveway in these locations.

Mr. Weiler opened the hearing to the public.

Mrs. Greenwood noted that this lot was already moved over by the previous owner because of a driveway issue.

Mr. Greenwood stated that their concern is basically what the Board has already discussed. Their understanding was that there is a requirement of a 50 ft. buffer zone. They do not see that there is any reason why the common land should be used for a driveway or a house. It appears from the drawing that there is plenty of room in the building envelope to build the proposed house with driveway access. The further up the lot you go, the better the view. Perhaps that is the motivation for the application. The other point is that when the Dutchers purchased the property, they knew the conditions, and they should not expect changes to be rubber-stamped. He stated that if the Dutchers want to talk about a smaller buffer area instead of wiping it all out, then he would be willing to consider the application. This application just does not fit what the cluster lots were designed for.

Mrs. Greenwood stated that Mrs. Dutcher had called her and asked if they (the Dutchers) could purchase some of their (the Greenwood's) land. Mrs. Dutcher indicated that they wanted to build a house further up the lot in order to obtain a better view.

Mr. Greenwood stated that their house is approximately 200 ft. uphill from the shared lot line with Blye Hill Landing.

There was no further comment from the public. The hearing was closed to the public.

Mr. Geddes commented that he is struggling with the same problems. He stated that the homeowner should not cross certain boundary lines.

Mr. Bachelder commented that this application cannot be held to today's standards of 100 ft., but the Board should still not approve the encroachment on the 50 ft. buffer.

Mr. Thayer commented that he is in agreement with Mr. Bachelder and Mr. Geddes.

Mr. Bachelder made a motion to deny the Dutcher's application for annexation as presented on the basis that there is no hardship with respect to the lay of the land. Mr. Geddes seconded the motion. All in favor to deny.

Mr. Thayer made a motion to adjourn. Mr. Geddes seconded the motion. All in favor. Meeting adjourned at 10:55 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary