

Planning Board
June 19, 2007
Approved July 17, 2007

Members Present: Barbara Freeman, Chair; Bill Weiler, Vice-Chair; Deane Geddes; Tom Vannatta; Ron Williams; Dick Wright, Alternate Ex-Officio; Ken McWilliams, Advisor.

Mrs. Freeman called the meeting to order at 7:00 p.m. and recognized Denise Walter as the new Land Use Board Clerk. Ms. Walter was not present at the meeting but will be taking the place of Patricia MacDonald.

Mr. McWilliams clarified that if Mr. Wright attends a meeting in place of Mr. Powell, he automatically holds the same standing as the ex-officio as a voting member without having to be appointed as a voting member by the Chair.

MINUTES

The Board reviewed the minutes of May 15, 2007 and made corrections.

Mr. Vannatta made a motion to accept the minutes of May 15, 2007 as corrected. Mr. Geddes seconded the motion. All in favor.

CASE: 2007-011: George Carafa – Minor Subdivision off Newell Road – Map 36 Lot 597-418.

The Board signed the mylar for George Carafa's subdivision. Mrs. Freeman indicated that the letter of approval required from the Town of Bradford has not been received. Therefore, the Board will not record the mylar until the letter has been received.

CASE: 2007 – 0010: Conceptual Site Plan Review – Thomas Wirkkala – Pick Up Sticks – Map 019 Lot 403-079 – property owned by Steve Landrigan, State Park Realty at 1094 Route 103.

Mr. Wirkkala explained that he would like to sublet one of the buildings on the State Park Realty property as a retail furniture showroom for the country furniture he builds. The hours of operation will be on Sundays from 10:00 a.m. to 3:00 p.m. or by chance. State Park Realty is not open for customer business on Sundays, so there will be no impact on the traffic patterns. There will be no furniture truck deliveries.

Mrs. Freeman commented that the use is not changing and the ownership is not changing. The traffic flow may change some, but the traffic pattern will not.

Mr. Weiler commented that none of the proposed changes trigger site plan review.

Mr. McWilliams reviewed Article 3.1.3 of the Site Plan Review regulations and advised the Board that this proposal does not trigger the criteria for a site plan review hearing.

Mr. Geddes clarified that the building to be used for Pick-Up-Sticks is the smaller building across the driveway from the State Park Realty office.

There were no further questions from the Board. By vote of the Board, a site plan review hearing is not necessary. 6 – yes, not necessary 0 – no.

CASE: 2007-016: Conceptual – Raymond Schilke – Simple Subdivision – 307 Mountain Road – Map 22 Lot 273-043.

Mr. Schilke explained that he owns approximately 50 acres off Mountain Road with a home and a barn already constructed on it. He would like to subdivide the property into two lots. One lot would contain his home with approximately 5 acres of land and 500 ft. of road frontage and the second lot would contain the barn with the remaining land and approximately 1,200 ft of road frontage. Mr. Schilke explained that he would like to sell his home because it is too big and very difficult for him to get around as he gets older. His plans are to build an apartment in the barn for himself on the ground floor with no stairs and save the remaining land with the barn for his children and grandchildren. The barn currently has its own power but will need a septic and well.

Mrs. Freeman asked Mr. Schilke to explain the ‘area of deed conflict’ noted on the plat.

Mr. Schilke explained that the land at the top of the hill behind his property is owned by a woman who has a right-of-way to cross his property to access her land. When the survey was done, it became evident that there is 5 acres of land between his land and hers that is not shown on either one of their deeds, yet their deeds describe a common lot line.

Mr. Wright commented that it could be the result of old and new declinations.

Mrs. Freeman advised Mr. Schilke that the next step is for him to hire a surveyor to survey the property and prepare a plat as required in the subdivision regulations. The local surveyors are familiar with Newbury’s subdivision application process and can handle the whole process from start to finish. She suggested that the new property line is placed far enough away from the sideline to avoid conflict with the right-of-way area.

Mr. McWilliams suggested that the surveyor should make a notation on the plat regarding the back boundary ‘area of deed conflict’.

Mr. Schilke stated that he would stay in touch with the building inspector regarding the renovation of the barn.

CASE: 2007-015: Final Review – Emily Welsh – Lot Line Adjustment/Annexation – 3 South Road and Morse Lane – Map 43 Lot 592-097 and Map 33 Lots 197-164 and 332-164.

Notice is hereby given that the Planning Board will receive submission of an application for a Final Hearing for a Lot Line Adjustment/Annexation from Emily Welsh for property located at 3 South Road and Morse Lane, Newbury, NH, Tax Map 43-592-097, 33-197-164, and 33-332-164 on Tuesday, June 19, 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.

The Board reviewed the application for completeness.

Emily Welsh presented a plan to make three lots, 127.66 acres and 20.22 acres and 2.77 acres into two lots, 30.66 acres and 119.99 acres and move the dividing lot line. The road frontage of approximately 243 ft. on South Road and approximately 140 ft. on Morse Lane will not be effected by the lot line adjustment. The Shultis Farm will remain on the 30.66-acre parcel.

Mrs. Freeman commented that having a two-page plat is confusing and not easily understood.

Ms. Welsh explained that due to the size of the property, it could not all fit on one page and be drawn to the required scale for recording.

Mr. Williams suggested that the surveyor mark a match-line on each of the pages of the plat so that anyone reading the plat will be able to identify where one page leaves off and the other begins.

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

There were no further questions from the Board. Mrs. Freeman opened the meeting up to the public.

Russell and Nancy Friese , abutters, were present and stated that they have no objections to the subdivision/lot line adjustment but were just curious about the plan.

Helmut Schwarzer, abutter, was also present and stated that he too was just curious. He asked if this subdivision/lot line adjustment would encroach on his property on Morse Lane or if there were any easements required.

Mrs. Freeman explained that the property line between his property and Ms. Welsh's is not going to change. Therefore, there would be no encroachment onto his property. She also commented that there are no easements indicated on the plan.

There were no further questions from the public. Mrs. Freeman closed the meeting to the public.

Mr. Weiler asked how much road frontage is on the Town maintained roads.

Mr. McWilliams stated that it doesn't matter because they are only moving the interior lot line; and, there is no change in the non-conforming frontage.

Mr. Williams made a motion to approve the subdivision/lot line adjustment with the condition that the plat be annotated with a match line. Mr. Geddes seconded the motion. All in favor.

CASE: Code: 2007 – 038 - Shoreland Protection Act

Mrs. Freeman informed the Board that a letter was received from Harry Seidel, resident of Newbury and owner of Alae Design, LLC, asking the Town to consider seeking independence from the State' "Comprehensive Shoreline Protection Act" under Section 483-B:19 since Newbury has its own shoreline protection ordinances. This action would relieve the homeowner from having the burden of applying to the State DES for approval on shoreland projects as well as the Town. The DES is so far backlogged, that the cost in time is actually worse than the cost in money.

Mrs. Freeman explained that there are shoreline regulations that are part of DES approval requirements and then there are our own shoreline protection regulations for Newbury. The State has a provision available that if your Town's regulations are stricter than theirs, the Town can provide its own approval process without sending anyone to the State. The Town would have to go through an approval process with the State where we would send Newbury's regulations to the State for approval. Only the Town of Sunapee has gone through this process. There is a question as to whether Newbury should do that or not because if approved, Newbury would be required to oversee all shoreline regulations and enforcement. There is a question as to whether the Town really wants to shoulder that responsibility.

Mrs. Freeman stated that she suggested to Mr. Seidel that he write a letter and ask the Planning Board to consider this process since it is an undue burden on the property owner.

Mr. Wright commented that he thinks this process should be considered and discussed at a joint board meeting.

Mr. Weiler commented that there are four bills in the legislature that, if passed, will be very strict on the shoreline property owners. He suggested that the Board table this discussion until after the legislature decides what they are going to do and discuss it at the next joint board meeting.

Mrs. Freeman pointed out that the State has shoreline regulations now, but they don't enforce them.

Mr. Geddes pointed out that there is also the work that the Watershed Committee is doing on a model watershed ordinance and the mitigation work that is being done at Chalk Pond. It will all take some time.

Mr. Williams suggested that any changes to our zoning ordinance should wait until all other shoreline regulations are complete.

Mr. Wright commented that new regulations are not going to solve anything if they aren't enforced.

Mr. Weiler stated that one of the bills in the legislature is to increase the staff, which may help the enforcement.

CASE: Adm1 – 068: Visioning Town Center

Mr. Williams commented that the visioning session on Saturday was a good start in the planning process.

CASE: 2007-009: Final Review – Carl & Mary Christiansen – Minor Subdivision – 22 Proctor Road – Map 35 Lot 622-056

Notice is hereby given that the Planning Board will receive submission of an application from Carl and Mary Christiansen for a final hearing for a Minor Subdivision at 22 Proctor Road, Tax Map 35 Lot 662-056, on Tuesday June 19, 2007 at 8:00 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 accepted application will commence at the same meeting. Copies of the plan are available for public review at the Town Office Building during regular business hours.

The Board reviewed the application for completeness.

Mrs. Freeman noted that there are no areas considered to be wetlands or surface water on the density report.

Mr. Christiansen stated that the only easement is the power company easement, which comes across land that he no longer owns.

Mr. McWilliams commented that the locations of buildings and intersections within 200 ft. of the lot lines were not noted on the plat per Article 8.2, which refers to Article 9.4.12.

Show subdivisions, lot lines, existing buildings, and intersecting streets and driveways within 200 feet of the parcel to be subdivided.

Mr. Christiansen stated that there is a house approximately 100 ft. off the easterly side of the proposed Lot 1. That is the closest building or intersection anywhere around the property.

Mr. Williams made a motion to waive the requirement of Article 9.4.12 in the Subdivision Regulations. Mr. Geddes seconded the motion. All in favor.

Mr. Vannatta made a motion to accept the application as complete. Mr. Williams seconded the motion. All in favor.

Mr. Christiansen stated that he would first like to sell the 5-acre parcel and then later sell the 37-acre parcel with the original farmhouse built in 1850 and build a new house for himself on the 11-acre parcel.

Mrs. Freeman commented that the contour lines are only drawn every 20 ft. instead of every 5 ft. as is usually seen.

Mr. McWilliams stated that the contours should be given every 5 ft. on a 15% slope or more; otherwise spot elevations can be used when the slope is less than 1%.

Mr. Williams commented that there is nothing on the plat that indicates a steep slope. The only thing that seems remotely close is at the northern end of Lot 3. He commented that the requirement of contour lines could be waived as required in Article 9.5 of the subdivision regulations.

Mr. Geddes made a motion to waive Article 9.5 and accept the 20 ft. contour lines in lieu of the 5 ft. contour lines. Mr. Williams seconded the motion. All in favor.

Mrs. Freeman asked the Board members if they thought fire protection ought to be addressed since this minor subdivision is in such close proximity to Mary Webb's major subdivision. She commented that the Board should keep in mind that to her knowledge fire protection has not been required of any other minor subdivisions.

Mr. McWilliams commented that Article 10.9 of the subdivision regulations, Fire Protection, specifically refers to all major subdivisions. The Board would be going out on a limb to require fire protection for a minor subdivision. The regulations should be re-written first if that is what the Board wants to require.

Mr. Williams commented that he counted nine corner monuments missing on the plat as required by Article 9.4.4 of the Subdivision Regulations.

Mrs. Freeman opened the meeting to the public.

Marty Newell, abutter, was present and had no questions, just curiosity.

There were no comments from the public. Mrs. Freeman closed the meeting to the public.

Mr. Williams made a motion to approve the subdivision conditional upon the setting of the stone bound monuments at each break in the boundary line and identify them on the recording plat. Mr. Geddes seconded the motion. All in favor.

Mr. Christiansen was advised to return to the Board with a mylar that shows the bounds set at each directional change in the boundary lines and the Board will sign the mylar. Mrs. Freeman advised Mr. Christiansen that he would receive a letter of decision, which he can take to his surveyor so that there is no question of what needs to be done.

Mr. Weiler noted that the setting of the monuments is a condition precedent.

CASE: 2007-003: Final 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 Final Hearing for a Major Subdivision from Mary Webb, for property located off Newell Road and West Road, Newbury, NH Tax Map 36-658-426 on Tuesday, June 19, 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.

Mrs. Freeman read the above notice, and the Board reviewed the application for completeness.

David Eckman, Engineer was present to represent Mary Webb, Applicant. Mr. Eckman presented a written request for a waiver of Article 10.9.1 and other requirements in Article 10.9.2.

Article 10.9.1 – A water supply for fire fighting purposes shall be available to serve the subdivision. A minimum of ten thousand (10,000) gallons of usable water available all seasons of the year shall be provided in a tank, reservoir, pond or cistern.

Article 10.9.2 – This water supply must be connected to a dry hydrant system designed and constructed in accordance with the specifications of the Newbury Fire department. The dry hydrant must be accessible from a pull-off or turn-out at the edge of the roadway.

Mr. Eckman submitted the waiver request to allow the use of proposed residential sprinkler systems in the proposed residences, rather than providing a minimum 10,000 gallon tank, reservoir, pond or cistern as required in Article 10.9.1 and Article 10.9.2. The proposed subdivision although defined as a major subdivision is made up of frontage

lots only. Newbury Fire chief Thomas recommended the requirement of residential sprinkler systems in each of the proposed homes in this subdivision. This position was presented to the Newbury Planning Board by Chief Thomas on Tuesday, May 15, 2007 and a consensus vote supported the requirement. The applicant agrees to require sprinkler systems in all proposed homes.

Mr. Eckman presented a copy the proposed deed covenants. Item #7 states 'All homes within the Mary C. Webb Subdivision shall have residential sprinkler systems installed. There are no exceptions to this requirement as it is required by the Town of Newbury Fire Chief and Planning Board.'

Mr. McWilliams advised the Board that the deed covenants are recorded with the plat so there should be no oversight in the development process. However, to be certain, the deed covenants may be included directly on the recording plat.

Mrs. Freeman pointed out that if the requirement is clear, then the building inspector can enforce the conditions of approval subsequent.

Mr. McWilliams commented that the DES permit was not included in the application.

Mr. Eckman explained to the Board that the subdivision approval has been submitted to DES, but no word has come back yet.

Mr. Wright made a motion to approve the application as complete subject to receiving the subdivision approval from DES. Mr. Williams seconded the motion. All in favor.

Mrs. Freeman opened the meeting to the public.

Marty Newell, abutter, was present for discussion. He informed the Board that he believes due to some property transfers which took place only a year ago, this hearing was the first time he was notified as an abutter for this hearing, and he was never notified of the Carafa hearings.

Mr. McWilliams stated that Mr. Newell should have been notified as an abutter even though the transfers were only one year ago. But, the 30-day appeal period has passed for the Carafa subdivision.

Mr. Newell stated that he is o.k. with both subdivisions and is not going to complain. He did ask if the road names were correct on the final map because the map he was looking at had mislabeled roads.

Mr. Eckman stated to Mr. Newell that those road names have been corrected on the final plat.

Mr. Wright commented that at the last hearing Mrs. Webb stated that there were no immediate plans to sell these lots. He stated that that is a concern because there have

been subdivisions in the past that have sat still for a long time. When development activity finally begins, often times there is a conflict because the subdivision no longer complies with the current regulations. If the subdivision is not vested in some way within four years, the developer will have to re-apply under the current regulations at that time.

Mrs. Freeman commented that there are no new roads to construct, and it will be vacant land until the heirs or assigns of Mary Webb begin the development. If the regulations do not change from the approval date to the time in which the development begins, then the developer does not have to re-apply for subdivision.

Mr. McWilliams stated that the four-year rule per the RSA's requires some kind of activity such as building a driveway or selling a lot in order to be vested in this subdivision. The re-application for subdivision would only happen if there were changes in the zoning regulations that would make them non-conforming. If they no longer conform after four years of non-activity, then the Town could revoke the subdivision approval. The Board needs to put in the public record what needs to be done in order for the subdivision to be considered 'vested' so that they are in compliance forever and exempt from all subsequent changes in regulations. The vesting requirements need to be decided and agreed upon by the Board at the time of approval.

Mrs. Freeman stated that mandating driveways to be cut in without maintenance means potential washouts.

Mr. Wright stated that he would like to see the curb cuts, culverts and driveways installed to satisfy vesting.

Mr. Eckman commented that he would like to discuss the vesting issue with an attorney and Mrs. Webb before he agrees to anything. He stated that the bounds are set, and the lots will have separate deeds and be receiving separate tax bills. That should be vesting enough. The lot owners will be developing their driveways based on the regulations in the future.

Mrs. Freeman advised the Board that in lieu of the vesting issue, the Board needs to proceed with the waiver request.

Mr. Vannatta made a motion to accept the waiver as presented. Mr. Wright seconded the motion. All in favor. 5 – Yes, unanimous.

Mr. McWilliams advised the Board that Article 6.7 of the Newbury Subdivision Regulations addresses the four-year rule which is derived from RSA 674:39.

Article 6.7 – Four-year Exemption: Every plat approved or signed by the Board shall be exempt from all subsequent changes in subdivision regulations and zoning ordinances adopted by any city or town, except those regulations and ordinances which expressly protect public health standards such as water quality and sewage treatment requirements, for a period of 4 years after the date of approval, provided, however, that once substantial completion of the improvements as shown on the plat have occurred in

compliance with the approved plat, or the terms of the said approval, the rights of the owner or his successor in interest shall vest and no subsequent changes in subdivision regulations or zoning ordinances shall operate to affect such improvements. (RSA 674:39)

Mrs. Freeman commented that the only thing that the developer would be able to do at this time in order to vest in the subdivision is the placement of the monuments and maybe develop the shared driveway because the lots will be developed by the individual homeowners.

Mr. Wright commented that he would like to see the curb cuts, culverts and driveway entrances constructed since the Town will be upgrading that road in the near future. That way the driveways can be incorporated in the upgrade of the road.

Mrs. Freeman asked if the driveways have to be built where they are placed on the plat.

Mr. McWilliams commented that the recording plat usually shows the driveway locations.

Mr. Eckman stated that the driveways comply with the regulations now for site and grade, but they could be moved when the time comes that the homeowner applies for a driveway permit, and they will then have to comply with the driveway regulations at that time. The Road Agent has requested that the trees be cleared from the edge of the road up to the stonewall for the length of the development and that a ledge outcropping be removed. He suggested that completion of the Road Agent's requests be considered as satisfying the vesting requirement. However, he stated that he does not agree with the Board and that vesting is required on frontage lots and would like to consult an attorney before he agrees to anything on behalf of Mrs. Webb.

Mrs. Freeman explained that Mr. Eckman is not being asked to agree to anything. The Board is only trying to determine what to advise Mrs. Webb that needs to be done in order to assure that she will not have to re-subdivide after four years.

Mr. Weiler asked how the Board is supposed to find out what the meaning of the work 'improvements' is supposed to mean. There are no improvements to be made with this subdivision.

Mrs. Freeman commented that that is the point that Mr. Eckman is trying to make.

Mrs. Freeman commented that in her opinion there are no improvements pertaining to this subdivision other than locating the monuments.

Mr. Weiler agreed with Mrs. Freeman.

Mr. Williams also agreed with Mrs. Freeman.

Mr. Wright commented that he would like to require driveway cuts given the fact that the Town will be improving that road in the near future.

Mr. Geddes agreed with Mrs. Freeman and suggested that maybe clearing where the septic systems are to be built could be a requirement. He stated that on the contrary, he would be opposed to creating erosion problems just to satisfy a vesting issue.

Mr. Vannatta commented that he likes the idea of seeing driveways cuts, but other than that, he sees no improvements to be made.

Mr. Williams commented that there should be no problems with adding driveways and culverts after the road improvements.

Mr. Williams made a motion to accept the subdivision as platted with the condition that the subdivision approval from form DES be submitted, a note be added on the plat that sprinkler systems are required by the Newbury Fire Chief and the Newbury Planning Board, the stone outcropping between lot 3 and lot 4 be removed to increase the line of site for the entire project and all trees on the Town side of the road shall be removed for the entire length of the property as requested by the Newbury Road Agent. Mr. Geddes seconded the motion. Discussion followed.

Mrs. Freeman informed Mr. Eckman that he should inform Mrs. Webb that it is the Board's opinion that if she wants to create a vested interest in the subdivision and thereby avoid possible re-subdivision in the future, she ought to consider setting the monuments, removing the trees and the ledge outcrop as requested by the Road Agent.

Mr. Williams suggested that the trees and the ledge-outcrop ought to be done prior to the road upgrade. The Board agreed.

Mr. Williams made a motion to amend his motion to include a timeline that the trees and the ledge outcropping need to be removed prior to and in coordination with the road improvements to Newell Road. Mr. Geddes seconded the amendment. All in favor.

Vote on Mr. Williams' motion as amended. All in favor.

Mr. Weiler noted that these are conditions subsequent.

CASE: 2006-018: Preliminary Review – Briott LLC/Owner: Scott Falvey – Major Subdivision – Southgate Road – Map 51 Lots 694-483 & 677-461.

You are hereby notified that the Planning Board will receive submission of an application for a Preliminary Hearing for a Major Subdivision from Briott LLC, for property located off Southgate Road, Newbury, NH Tax Map 051-694-483 and 051-677-461 on Tuesday, June 19, 2007 at 9:30 p.m. in the Newbury Town Office Building at 937 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing

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

Mrs. Freeman read the above public notice and reviewed the application for completeness. She noted that as per the minutes of April 2007, the application was accepted as complete and waiting for a sign-off from the Fire Chief. She explained to the public that this hearing was beginning again because there were a couple of abutters that had not been noticed as required.

Mr. Williams made a motion to accept the preliminary subdivision application as complete. Mr. Vannatta seconded the motion. All in favor.

Mrs. Freeman informed the Board that they are still waiting for the Fire Chief's sign-off. In the meantime, the Board will move ahead and consider the request for waivers. Without the waivers, the application cannot continue.

Mrs. Freeman read the following waiver request from Erin M. Reardon of Nobis Engineering.

Nobis Engineering, Inc., as agent for Briott, LLC for the above-referenced project, requests a waiver for the maximum length of a dead-end street. Per the Newbury Land Subdivision Control Regulations, Section XIII, 13.10.2, the maximum length of a dead-end street shall be 1,500 feet. We request a waiver to allow for a dead-end street that is 1,985 feet due to the constraints of the site. Attached is a copy of the preliminary subdivision plan.

As a result of the wetland crossing and steep slopes at the bottom of the site, 1,000 linear feet of road needs to be constructed before reaching a house lot. The last 1,000 feet of road contains the driveways for the proposed 10 single-family lots. To minimize the required clearing of trees, the road slopes up at the maximum allowed grade of 3%. This grade and the resulting cut does not allow for driveways in the lower portion of the road. Once out of the cut, the road gently rides over existing grade and provides for level building lots with reasonable slopes for driveways. The proposed 10-lot subdivision is well below the 48 lot density allowed per the Density Report.

The cul-de-sac at the end of the road is designed to the town standards. All electric and telecommunication utilities for the proposed subdivision are to be underground which eliminate the danger of electric lines falling across the road and blocking access for emergency vehicles. Additionally, the clearing in the lower 1,000 feet of the subdivision has eliminated trees from along the edge of the right-of-way that could fall and block the road to emergency vehicles.

We request this waiver for a 1,985 foot road as it represents the length of road necessary to achieve 10 lots. We are not requesting a road length to allow full development of the land. The proposed subdivision preserves 35% of the parcel as common land. The proposed 10 lot subdivision has 2.8 acres of right-of-way and 103 acres in the individual lots. The remaining 55.8 acres is to be preserved as common land, including the 19+ acre deer wintering yard. A conservation easement will be provided from the cul-de-sac to allow residents to access the common land for recreational use.

The Board had no questions regarding the waiver request.

Mrs. Freeman reminded the Board that at a previous meeting, the applicant had also mentioned seeking a waiver for paving of the road and for upgrading Southgate Road.

Mr. Weiler made a motion to accept the waiver as requested for the length of road per Article 13.10.2 of the Newbury Subdivision Regulations. Mr. Williams seconded the motion. Discussion followed.

Mr. Wright commented that when the last rain event happened in Newbury, there were several residents on Winding Brook Road that were either stranded in their homes or unable to get to their homes due to the road wash-out on a dead-end road. It created a very serious situation and could have been fatal in the event of an emergency since emergency services would not have been able to reach the land-locked homes.

Mrs. Freeman informed the Board that Paul Groulx, Emergency Management Director, had submitted a memorandum dated April 17, 2007 as follows:

As discussed t his afternoon, I hereby request that the subdivision scheduled for a hearing tonight not be approved without the following condition. An alternate and separate egress or access existing and entering said subdivision be provided due to safety requirements for the land owners, whether it be floods, fire, or a quick exodus from the area. This request is not just for this specific subdivision, but should be applicable to all subdivisions.

Mr. Wright commented that this proposed dead-end road is even longer than Winding Brook Road. Perhaps there could be an agreement that would be acceptable to the developers and the abutters to use the common land for emergency access only.

Mrs. Freeman stated that if the Board is going to grant this waiver, the members need to be clear on what makes this subdivision different from any other situation and what makes it different now than when it was first denied. There are places in Town that have topography issues, so that is no different than other places.

Mr. Weiler commented that when the Board denied the first request for the waiver, the road was proposed to be over 4,000 ft. with more dwelling units. This waiver request results in less disturbance and only 10 lots. He stated that if Mr. Falvey needs to put in two accesses and a longer road, then he would have to create more house lots in order to pay for the road expenses. Granting this waiver would guarantee a minimal amount of development and preservation of the land.

Mr. Geddes commented that he has seen a significant decrease in developed area since the beginning of this application and believes that putting so much land aside for common area and preservation is a good thing.

Mr. Vannatta commented that he agrees with Mr. Geddes, but he is also concerned with the safety issue for the 10 homeowners. He stated that extending the road another 33% of the allowed length is substantial.

Mr. Weiler explained that the Board decided on 1,500 ft. because that is the maximum length of fire hose available at the Newbury Fire Department.

Mr. McWilliams asked Mr. Falvey if he has considered cluster housing as a way to reduce the length of road and keep the number of units.

Ms. Reardon explained that the feasibility of cluster versus conventional housing is very different. Due to the requirement of septic systems and wells, it would still be difficult to fit it all on a 1,500 ft. road. The development would need just about as much land because of the well radius to the septic system.

Mrs. Freeman asked Ms. Reardon if they had considered a shared septic system or even a shared septic field with individual tanks.

Ms. Reardon commented that the DES does not like shared septic systems because it is difficult to hold an individual responsible in the event of a problem.

Mrs. Freeman opened the meeting to the public.

Ken Dustin commented that Mr. Falvey could create six house lots on the allowed 1,500 feet. Even the Superior Court judge said that 1,500 ft. is adequate.

Barry Carmen commented that neither the Road Agent nor the Fire Chief is in favor of this proposed road. The only department head in favor of this road is the Police Chief. It is likely that the Town will be sued as a result of this road. The Court even said that it is not the Town's responsibility to make Mr. Falvey money.

Mary Ann Plass pointed out that there are street design standards in the subdivision regulations that state that 1,500 ft. is the maximum for a dead-end road. She commented that she cannot understand how the Board could grant to waive that restriction and do such an injustice to the neighborhood.

Ken Dustin commented that conservation land is important as well as recreation areas and deer yards. Six lots on 1,500 ft of road will still provide and protect those amenities.

Mrs. Freeman asked Mr. Falvey if he would address the idea of 6 house lots on 1,500 ft. of road.

Mr. Falvey stated that the four extra lots would enable the project to be financially solvent. This development is a business venture.

Mrs. Freeman commented that she has a concern that the only access up into this site is on a considerable slope, and there is another waiver to come for paving. The drainage isn't the only road design issue. The slope will also create a dangerous situation during the winter time and icy road conditions.

Mr. Falvey commented that if the road design and drainage is done correctly, erosion and washouts would not be a problem.

Mr. Weiler pointed out that pavement can sometimes increase the velocity.

Mr. Wright commented that he is concerned about the comment that Mr. Falvey needs these waivers in order to make money. The Board should not be in the business of buying into someone else's business in order for them to make money. If someone makes a bad business decision, they need to suffer their own consequences. He stated that he thinks Mr. Falvey has a right to develop the land and do something with it and make a profit if he can, and he will if he does it right. It is a selling point to have lots of land in your backyard. The more area between neighbors, the better they get along. Mr. Wright expressed concern for the Town having to respond to emergencies on poorly built roads.

Mr. Weiler commented that he could see a hardship with this property because of the lay of the land. The first 700 ft. has to be used up as an access road because of the slope. That makes it unique. Additionally, the shape of the lot is a bottle-neck shape which limits the functionality.

Mrs. Freeman called for a vote on the motion to accept the waiver. 2 – Yes; 3 – No. The waiver was not granted.

Mr. Williams made a motion to adjourn. Mr. Wright seconded the motion. All in favor. Meeting adjourned at 10:15 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary