

**Planning Board**  
**April 17, 2007**  
Approved May 15, 2007

**Members Present: Barbara Freeman, Chair; Bill Weiler, Vice-Chair; Travis Dezotell; Deane Geddes; Jim Powell, Ex-Officio; Ron Williams; Ken McWilliams, Advisor**

Mrs. Freeman called the meeting to order at 7:15 p.m. and recognized Mr. Powell as a voting ex-officio member.

The Board signed the annexation/lot line adjustment for George Gordon.

**MINUTES**

The Board reviewed the minutes of March 20, 2007 and made corrections.

Mr. Weiler made a motion to accept the minutes of March 20, 2007 as corrected. Mr. Dezotell seconded the motion. All in favor. Motion passed.

**CASE: 2006-006: John Feins – Harborview Subdivision in Sutton NH**

Mrs. Freeman informed the Board that she received a message from Deb McGlew-Freeman, Land Use Coordinator for the Sutton Planning Board and did not get a sense that the Sutton Planning Board is going to get any commitment from the developer to upgrade the access roads from Newbury. Mrs. McGlew-Freeman said that the Sutton Planning Board wants to work with Newbury, but they do not feel that there is any specific problem to address.

Mr. Geddes reported that he was informed that the Sutton Planning Board did not vote to grant or deny the subdivision at the last public meeting and turned the project over to their Town Counsel. Mr. Geddes commented that his observation is that different town boards operate differently, and this is probably Sutton's procedure.

Mrs. Freeman commented that she found it odd that the Sutton Planning Board did not see any specific problem to address because Cal Prussman, Newbury Road Agent, was pretty specific about what needed to be done to the access road(s).

Mr. Powell commented that the Minutes of the Sutton Planning Board are available. It is not clear why they deferred voting. They did mention a letter from the Newbury Planning Board and the Newbury Board of Selectmen.

Mrs. Freeman commented that maybe Sutton is nervous about Newbury taking them to court if the issues are not addressed as was mentioned during the public hearing.

**CASE: 2007-010: Conceptual – Jeanne McCaldon – Birch Lane Lodges, LLC – Site Plan Review**

Ms. McCaldon was not present, so the Board reviewed other business during said block of time.

**CASE: ADM1-061 – Masterplan**

Mr. McWilliams informed the Board that he met with Dennis Pavlicek, Town Administrator, to review the status of the sand and gravel pits within the Town of Newbury. There are currently two active gravel pits, the Kinsman Pit and the Willow Pond Pit. The remaining gravel pits as indicated in the 1997 Masterplan are abandoned or reclaimed. The Whitman Pit has been reclaimed and has therefore been deleted from the 2007 Masterplan. The Unger Pit, DeRoche Pit and Davis Pit have been abandoned. On the list that was originally provided, there were two others. Dan Wolf's pit was never opened or started, and Robert Bell's pit was just a small area and was never used for commercial sale. The Bell pit has been reclaimed for use as a fire pond by the subdivision.

Mr. Weiler commented that the Schroeder pit also needs to be identified. There has been no indication from the property owner that they are not finished excavating nor have they submitted a reclamation plan. The site needs to be inspected.

Mr. McWilliams stated that he would follow up on that site.

Mr. Powell updated the board on the status of the Town after the April 15, 2007 storm. There is extensive road damage throughout Town. Winding Brook Road is a single access road and washed out, leaving 14 people stranded in their homes. The road has been roughly restored and is now passable. He commented that the Board of Selectmen are not sure how the Town will handle the costs of repair and are still trying to assess the extent of the damage. The combination of weather and extensive tree cutting results in this type of situation. There is no solution at this point, but it is a growing problem.

Mrs. Freeman commented that one of the things that the Planning Board is trying to work on is a 'Zero Run-Off' standard for subdivisions.

Mr. Powell explained that the Town accepted Winding Brook Road approximately three years ago. It was developed in the late 1980's. A logging operation a couple of years ago of the area above Winding Brook Road exacerbated the storm run-off and carried debris down which plugged a culvert opening.

Mr. Geddes suggested the Board ask the Road Agent how much maintenance does he think was done to Winding Brook Road and how much had to be done to bring it up to Town standards.

**CASE: 2006-018 – Preliminary Review – Briott, LLC (Scott Falvey), Major Subdivision - Wild Acres aka Deer Pines – 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, April 17, 2007 at 7:30 p.m. in the Town Office Building at 937 Route 103 I Newbury NH. If the application is accepted as complete, a public hearing on the application will commence at the same meeting.*

Mrs. Freeman read the above public notice and explained to members of the public the procedures for a public hearing of a preliminary submission for subdivision. She explained that the Board has just received the application and needs to determine if the application is complete. After the application is complete, there will be an opportunity for public comment.

Present to present the preliminary application was Scott Falvey, Owner, and Erin Reardon, Nobis Engineering.

The Board reviewed the application and found the application to be complete with the exception of the Fire Chief's sign-off.

Mr. Williams made a motion to accept the preliminary application for subdivision by Briott as complete. Mr. Dezotell seconded the motion. Discussion followed.

Mr. Falvey addressed the application for subdivision and commented that most of the members are familiar with the original design. He explained that he has struggled for the last three years trying to figure out what to do with this property and has been consulting with Nobis Engineering for the past five or six months regarding what is the best thing to do for all parties involved. They have come up with two scenarios. One scenario is for a 10-lot subdivision if certain waivers are granted, and the second scenario is a 55-lot subdivision if the waivers are not granted in order to financially recover his investment. He further explained that he purchased the abutting property, which would enable an access as required by the subdivision regulations to the 55 lots. He stated that he believes the 55-lot plan would be a waste of land, which would mean 10,000 ft. of paved road. The 10-lot plan with waivers would mean a shorter road, less clearing for road access, less road maintenance, less traffic over Southgate Road, less impact on the infrastructure of the town because there will be less families with children in the schools and less demand on safety and highway services. The 10-lot design will 'allow me to keep my shirt' but certain things need to be negotiated in order to allow the 10-lot design to happen.

1. A waiver for a 2,000 ft. road, which is only 500 ft. longer than the current subdivision regulations allow. The first driveway is about 900 ft. into the project. Providing a waiver is still in the spirit of the regulations.

2. A waiver from making improvements to Southgate Road.

3. A waiver from the requirement to pave the 2,000 ft. of the proposed road.

Mr. Falvey commented that the 10-lot proposal is a viable project, which minimizes impact to all concerned. He stated that he cannot follow through with this minimal 10-lot venture and make the project economically viable if he is has to make required improvements. Everything about this subdivision design follows the spirit of the regulations except the road length. Another option would be to increase the grade so that the slope is not as long, or reduce the radius so that there is not so much of a cut, which would also be less impact on the land. With the 10-lot plan, there will be 55.8 acres conserved as open space, 19 acres of which contains a deer wintering yard. That is equivalent to 35% of the development. This plan also includes one large 60-acre building lot. This means almost 100 acres of the total 160-acre parcel will be undeveloped.

Mrs. Freeman asked Mr. Falvey for an explanation as to why he is proposing a 60-acre lot.

Mr. Falvey explained that he is hoping to market to someone who is interested in privacy and views. The larger lot will make the land more usable for the right person.

Mr. Weiler commented that there are two sizable areas of wetlands toward the back of the 60-acre lot.

Mr. Falvey explained that there is room in the front of the lot for access, which will not impact the wet areas in the back. There is also a hilltop that will be a nice place for a house.

Mr. Weiler asked Mr. Falvey if his intention is for the homeowner to go deep into the lot to build their home.

Mr. Falvey affirmed Mr. Weiler's comment and added that the driveway does not have to lead to the house in a straight line; it can angle up hill in order to cut down on the slope. Some of the slopes do not qualify as steep slopes as defined in the regulations. The slopes were left on the plan in 2 ft. intervals due to a time crunch. He stated that he would rather err on the safe side.

Mrs. Freeman stated that the slopes are hard to decipher because the scale is not appropriate for this size plan. She stated that her sense is that this project is based upon the request for waivers.

Mrs. Freeman read the request for waiver submitted by the applicant for the benefit of the public.

*Nobis Engineering Inc., as the agent for Briott, LLC for the Wild Acres Subdivision, 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 1500 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 8%. 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+ acres deer wintering yard. A conservation easement will be provided for the cul-de-sac to allow residents to access the common land for recreational use.*

Mrs. Freeman entertained questions from the Board.

Mr. Powell asked Mr. Falvey to explain why he proposes 10 lots or 55 lots and does not seem to be considering a number in between.

Mr. Falvey explained that the 10 lots are based on the existing number of lots on Southgate Road. Ten lots makes Southgate Road four lots over capacity but seems to be a good compromise since it would not create too much wear and tear on Southgate Road, especially since there is a request for a waiver from requiring Southgate Road to be upgraded.

Mr. Powell commented that the new road proposed to remain unpaved. He asked if that road would remain private.

Mr. Falvey explained that the proposed road is designed as a private road. There will be typical deed covenants and the 10 home-owners will be responsible for maintenance of the road to that it does not become overgrown. There is a conservation easement being considered for the deer-wintering area.

Mr. Powell asked if there would be open land for public use.

Mr. Falvey explained that the use would be dependent upon whether the open space ends up as a conservation easement or as common land.

Mr. Powell asked if Mr. Falvey has looked at the market and determined what type of homes would be built.

Mr. Falvey commented that he did not plan on building the houses himself. He is only selling the lots. The types of home that will be built are dependent upon the individual homeowners.

Mr. Geddes asked for clarification on the number of actual build-out units.

Mr. Falvey explained that there could be 48 conventional 2-acre building lots or 53 building units if some are cluster units.

Mr. Geddes commented that the 14 acres of steep slopes looks to be more than 14 acres as drawn on the plan.

Ms. Reardon explained that the scale that was used on the overview plat is not properly sized for this sized paper. The scale that was used is at 2 ft. intervals.

Mrs. Freeman asked Ms. Reardon if there is a steep slope analysis of steep slopes for the entire site.

Ms. Reardon explained that there is not an analysis for just steep slopes alone.

Mrs. Freeman commented that there are a lot of wetlands indicated on the plan and asked if Ms. Reardon deducted the wetlands and wetland buffer areas out of the developable areas when calculating the density.

Ms. Reardon said yes.

Mr. Weiler commented that the topography to access the top of the hill on the 60-acre lot has an average grade of 20%.

Mr. Falvey explained that there is a way to access the higher area that does not require traversing a 20% slope. The driveway can angle up which would eliminate a steep climbing driveway.

Mrs. Freeman read the following comments from the sign-off sheets.

Police Dept: No apparent affect on law enforcement services

Highway Dept: Road exceeds maximum length. There needs to be two access points. There are no paving specs. This will exceed the daily threshold for paving Southgate Road for which the developer should be responsible. No guarantee this subdivision will stay private. Once lots are sold, residents can put on a warrant article. No driveways are shown on plan.

Conservation Commission: The Commission would like to see lots 7 and 8 reduced in size and have all the back land put under a conservation easement or common land.

In lieu of a sign-off sheet, Mr. Powell spoke on behalf of the Board of Selectmen.

Mr. Powell stated that he would like to comment on the Road Agent's comments. He stated that in the future, if the landowners petition the town, the road would have to be built according town specifications at the property owner's expense before it could be considered at Town Meeting.

Mr. Falvey commented that the paving requirement is a Planning Board option and may be waived at the Planning Board's discretion.

Mrs. Freeman opened the hearing for public input.

Ken Dustin stated that he has two comments. First, this subdivision attempt has been going on for more than three years. When things start to head in the opposite direction that Mr. Falvey wants, he throws out idle threats. Now he is threatening 55 lots. He was previously denied a 2,500 ft. road and now asking for a 2,000 ft. road when the Planning Board at 1,500 ft has established the limit. Secondly, the deed covenants for Southgate state that the lots within the Southgate development are building lots, not to be used for a right of way. Therefore he cannot use a house lot for an access route.

Mr. Weiler corrected Mr. Dustin and explained that Mr. Falvey previously asked for a 4,500 ft. road.

Deb Sanborn commented that she is concerned that the Town has already regulated that 1,500 ft. is the maximum length for dead end roads which is also longer than what the State of N.H. recommends and should not be extended. She commented that this waiver for a 2,000 ft. road is just the beginning of a list of waivers. Next is that the proposal is just over the house limit, and there will probably be more and more.

Steve Sanborn commented that it is common knowledge that Briott took the Town to Court. The court found that Mr. Falvey was responsible for his own purchase, and it is not the Town's responsibility to make Mr. Falvey's investment profitable. He stated that he is agreement with Deb Sanborn and also feels as threatened tonight.

Mr. Dustin stated that the fact of the matter is that on a private road to have 10 houses be responsible for all the maintenance is a lot to ask. They all come to the Town eventually to ask the Town to take it over.

Mr. Falvey assured the Board and the public that he was not going to come in for more and more waivers. He explained that there are proposed 10 lots only, and only a waiver for the road. He stated that additionally, there are no idle threats being made. If he is required to pave Southgate Road, he needs to put in enough houses to make his money back. Fifty-five lots is a reality. There will still be a lot of woods behind the road, and there will still only be half of what the original Southgate subdivision was planned for. He stated that he is not going to make a lot of money on this project, and he just wants to finish the project and move on.

Mr. Dustin commented that Southgate was proposed to be developed in three phases. In 1994, it was sold at an auction. At that point, the second and third phase was null and void. He stated that Mr. Falvey failed to get permission from the homeowners in Southgate to cross their common land to access this back land, and that it is not the Homeowners of Southgate's problem that Mr. Falvey made a bad investment and expressed regret that he could not go back and correct his own bad choices.

Mr. Dustin pointed out that 1,500 ft. could get six house lots and he does not think that Mr. Falvey will get an argument from anyone on Southgate because that is what he is entitled to.

Mrs. Sanborn asked for clarification from Mr. Falvey regarding the number of requested waivers. If the length of road is the only exception that is going to be asked for, then what about not improving and paving Southgate Road - isn't that another exception to the rule?

Mr. Falvey commented that paving Southgate Road is a Planning Board rule and is up to the discretion of the Planning Board.

Mrs. Sanborn pointed out that the length of road is not the only waiver being requested. The upgrade requirements to Southgate Road are also being requested to be waived.

Mr. Falvey stated that residents of Southgate know some of the historical facts of the Southgate development but not all.

Being no more comments, Mrs. Freeman closed the hearing to the public.

Mr. Powell asked for clarification of the paving issue.

Mr. Weiler explained that on page 66 of the Newbury Subdivision Regulations the Standards for Street design indicate that the paving of a Service Road is optional for the Planning Board to require. If there are 10 more lots using Southgate Road as an access that moves Southgate Road up to a Collector road, which means paving per the



Subdivision Regulations. The paving of Southgate Road would be considered an off-site improvement.

Mr. McWilliams commented that the Planning Board has the ability to require off-site improvements. If the Board thinks that because of this project Southgate Road now needs to be paved, the Board may require the paving of Southgate Road at the developer's expense.

Mr. Geddes asked if the off-site improvements have to be limited to Southgate.

Mr. Weiler explained that the improvements have to be strictly related to the subdivision. If the Board determines that there is only a 10% impact, then the developer only has to make improvements to 10% of the off-site area.

Mrs. Freeman commented that the Court decision stated that Mr. Falvey bought the property with all of its inherent difficulties, and the judge upheld the Town's decision that there needs to be more than one access to address safety issues.

Mr. Falvey commented that he has addressed the safety issues by decreasing the number of proposed building lots.

Mrs. Freeman asked Mr. Falvey if he could create six lots on 1,500 ft of road.

Mr. Falvey stated that he thinks he could, but he would not be able to break even financially. He commented that he would be happy to break even financially, but he does not want to walk away with a loss factor. He said he could possibly just sell it and let a big developer fight the fight and that he would like to finish this. Ten lots will preserve and protect the interests of the Town and allow him to walk away without a loss.

Mrs. Freeman commented that she thinks the Board has heard most of the arguments for and against this waiver request.

Mr. McWilliams commented that another approach would be to develop some cluster units. Then Mr. Falvey could develop 10 units on 1,500 ft. of road.

Mr. Falvey commented that he would rather subdivide into 2-acre lots because people who live in NH like to have their own piece of land to do with what they want. Additionally, cluster units are not as valuable as 2-acre lots.

Mrs. Freeman suggested marketing the properties as a conservation development in which the units are clustered and sold with all of the back land to be promised as preserved and wild.

Mr. Falvey commented that he has done little research of cluster development. There appears to be no history of cluster development in Newbury for areas without lake views.

Sense of the Board was that the Board was not ready to vote on granting or denying the waiver request.

Mr. Powell made a motion to continue this hearing until May 15, 2007 at 8:00 p.m. Mr. Geddes seconded the motion. Discussion continued.

Mr. Powell commented that in his mind, it is not clear on what is the best way to approach this dilemma. There is a definite potential to create many more lots. The Conservation Commission was just involved in an extraordinary effort to protect 800 acres at a cost of \$200,000. Perhaps through negotiations, the Town can get a conservation easement that would protect the back land forever. If we deny the waiver, we give up the opportunity. He stated that he thinks the Board needs to think about it more and ask more questions.

Mr. Weiler commented that there is a law about common land. Common Land is a presumption of an easement and cannot be sold. The relative lot owners can only use common land for private use.

There was no further discussion on Mr. Powell's motion. Vote: Majority in favor. One opposed.

**CASE: 2007-003: Continued 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. Tax Map 36-658-426 on Tuesday February 20, 2007 at 9:00 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 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 public notice. Present to represent Mary Webb, applicant was David Eckman, Engineer.

Mr. Weiler stated that the application has been accepted as complete at the March 20, 2007 hearing.

Mr. Weiler commented that there was an additional submission since the last hearing. A contour map with flow arrows was received as requested. Also since the last hearing, the Board members were supposed to be considering whether or not requiring sprinklers in the individual homes was an acceptable method of fire protection.

David Eckman stated that the contour map with flow arrows has been submitted as requested. He commented that this 6-lot subdivision has a minimum impact to the area neighborhood. The density restrictions allow 8 lots, but only 6 are being requested.

Mrs. Freeman read the comments submitted on the sign-off sheets.

Conservation Commission – No comment

Highway Department – Concerned that all driveways meet ASHTO regulations for line of sight. Would like all trees on Town's side of stonewall removed/stumped entire length of property. Out-cropping of ledge across from Mrs. Webb's removed to increase line of sight of entire project.

Fire Department – We will talk more on a water supply.

Police Department – No West Road in Newbury – It's all Newell Road bordering this property. No Law enforcement issues foreseen.

Board of Selectmen – No comments.

Mrs. Freeman asked the Board what it would like addressed for further hearings.

Mr. Weiler stated fire protection. He commented that Henry Thomas, Fire Chief, provided some material on fire protection. The information showed that the fire protection would be addressed by sprinkler systems. Mr. Weiler stated that he objects to putting the Planning Board in the positions of mandating future homeowners to go to the expense of installing a sprinkler system. They should be putting in a cistern or other fire protection measure. The sprinkler system requirement should be in the building regulations and applied to all new construction or none.

Mr. Powell asked if there was a pond in the area.

Mr. Eckman stated that there are not ponds adequate for fire protection in the area, and creating a pond would require constructing a gravel road, and the pond would have to be maintained in the winter.

Mrs. Freeman commented that it is not apparent to her why the developer cannot provide a cistern.

Mr. Eckman commented that the subdivision is low impact and does not require any earthwork. If a cistern were built, the ground would have to be disturbed and create more impact to the earth.

Mrs. Freeman informed the Board that the National Fire Protection Association Code is now requiring sprinklers in single family and two-family homes.

Mr. Weiler estimated that the cost for a sprinkler system is roughly \$5,000.

Sense of the Board was to find a site solution for fire protection that does not require the homeowner to go to the expense of installing a sprinkler system.

Mr. Eckman commented that addressing fire protection through sprinkler systems would also benefit the aesthetics of the neighborhood. If a cistern is installed, the stonewall along the road will have to be disturbed in order to create an access to the cistern for a fire truck. He asked if the deed covenants and restrictions have to cite the requirement of a sprinkler system.

Mrs. Freeman commented that the sprinkler system requirement is up to the developer. She informed Mr. Eckman that the Planning Board would like to see some other solutions to address fire protection.

Mr. Weiler asked if cistern could be installed in the triangle of land at the junction of Newell Road, West Road and Brown Road. That would eliminate the need to break through the stonewall.

Mr. Powell commented that installing a cistern under that island would be a good solution. However, it needs to be researched. That way, it could be used to service other properties in the area.

Mr. Eckman asked how large the cistern should be.

Mrs. Freeman stated that the fire chief should determine the size of a cistern.

Mrs. Freeman asked if there were any new issues.

Mr. McWilliams suggested that the Planning Board direct Mr. Eckman to return to the Planning Board with what other alternatives for fire protection.

Mr. Williams made a motion to continue this hearing until May 15, 2007 at 7:30 p.m.  
Mr. Weiler seconded the motion. All in favor.

The Board instructed Mr. Eckman that at the May 15, 2007 hearing, he should bring with him alternatives to the sprinkler system for fire protection. He was also informed that the Planning Board has 65 days after the acceptance of the application for final hearing to make a decision to grant or deny this application.

### **Conceptual Simple Subivision - George Carafa – Newell Road – Map 36 Lot 597-418**

Present to represent George Carafa was Jeff Evans, Land Surveyor.

Mr. Evans explained to the Board that this subdivision is on Newell Road at the Newbury/Bradford Town line. Mr. Carafa's deed cites a 30-acre parcel contained in both towns. Mr. Carafa only wants to subdivide the section of land in Newbury.

Mr. McWilliams informed the Board that Patricia MacDonald, Land Use Coordinator contacted him regarding this application. He advised her that Mr. Carafa needs to apply for a minor subdivision and that the Town of Bradford needs to review the application and comment on the adequacy of the lot remaining in their Town.

The Board reviewed the plat and recognized that that Lot 1 in Newbury is proposed to have 300 ft. of road frontage on Newell Road and Lot 2 in Newbury is proposed to have 297.71 ft. of road frontage on Newell Road.

Mr. Weiler suggested that a -Z- line be used across the stonewall crossing on Lot 2 to show that the back land is a part of Lot 2.

Mrs. Freeman asked for a sense of the Board as to whether or not the Board would like to see the remaining land in Bradford delineated on this plan.

Mr. Evans commented that it is not necessary to show the land in Bradford because it sits in another municipality.

Mr. McWilliams asked if all of the land in Bradford and Newbury is under one deed.

Mr. Evans commented that it is described as one parcel in two Towns. Therefore, it is automatically two lots, and the Bradford land does not need to be delineated.

Mr. McWilliams referred to RSA 674:53, which states that the Town line does not automatically constitute a subdivision.

Mr. Weiler commented that the Town line does not automatically create a subdivision especially since one part could be dependent upon the other to meet building lot requirements.

Mrs. Freeman commented that if the plat is not going to show the rest of the land in Bradford, then there should be something in writing that states what the lot was before, is now and what remains in the Town of Bradford.

Mr. Evans commented that the Newbury Planning Board has no jurisdiction in Bradford and cannot require information of Bradford on the Plan.

Mr. Weiler stated that RSA 674:53 creates the jurisdiction, and the Newbury Planning Board will send information to the Town of Bradford and request their input as required by RSA 674:53.

Mrs. Freeman commented that the Newbury Planning Board is not requiring Mr. Evans to do any additional work, so Mr. Evans should be willing to fulfill the request.

Mr. Evans commented that in his opinion, the Newbury Planning Board is stepping over their boundary of authority by requiring delineation of the remaining land in Bradford.

Mr. Powell asked the Board for an explanation as to why the Newbury Planning Board is concerned with what happens in Bradford.

Mr. McWilliams commented that Mr. Evans ought to provide the requested information, because the Newbury Planning Board needs to communicate that information to the Town of Bradford.

Mr. Weiler asked Mr. Evans if the deed describes two tracts.

Mr. Evans stated that the deed describes one parcel in two Towns. There are 9.53 acres in Newbury and the remainder of the 30 acres is in Bradford.

Mrs. Freeman commented that she does not understand why Mr. Evans is objecting to do as the Planning Board has requested.

Mr. Evans commented that he can provide the information requested.

**Conceptual Simple Subdivision – David & Julia Friedline – Simple Subdivision – Old Sutton Road – Map 53 Lot 720-506.**

Present to represent David and Julie Friedline was Jeff Evans, Land Surveyor. He presented a plan and explained that this subdivision is on Old Sutton Road and also involves the Newbury/Bradford Town line. There was previously a lot line adjustment and the lots have road frontage in both Towns. One of the lots is proposed to have road frontage in both Towns in order to comply with 300 ft. of road frontage.

Mrs. Freeman pointed out that there is not enough contiguous road frontage.

Mr. Evans asked if the road frontage crosses the town line, does it satisfy the subdivision requirements.

Mrs. Freeman said yes by the Newbury Planning Board's standards, but No by Mr. Evans' standards of argument in the Carafa application.

Mr. Williams suggested that the proposed lot line be moved in an easterly direction, and then the 200 ft. of contiguous road frontage requirement could be met. He stated that there might need to be a deeded driveway easement from one lot to the other.

Mr. Evans agreed to re-draw the plan and return at a later date.

**Conceptual - Site Plan Review – Mathew McClay – 588 Route 103A.**

Matthew McClay explained to the Board that he has been looking for a home to purchase in the New London area that would provide features conducive to cottage industry use for his landscaping business, Pleasant Acres. He is interested in purchasing the Harwood property on Route 103A but is not sure what the requirements he may or may not need to follow.

Mr. Weiler stated that the only approved commercial use on Route 103A is M&K Lawncare at the old Rainbow Garage site.

Mr. Powell asked if there would be customers or materials on site.

Mr. McClay explained that he would be living in the dwelling on site and that there will be no customers or materials on site. He purchases his materials from other bulk buyers off-site as needed and does not plan to store them on-site. The plan is for the employees to meet there in the morning, pick up the landscaping vehicles and tools, go off-site to a job location to work for the day, and then return at the end of the day to pick switch back into their personal vehicles and go home. Often the employees take the vehicles home with them and go directly to a job site in the morning. Therefore, there would be no additional vehicles on the Route 103A site.

Mr. McWilliams pointed out that in the Zoning Regulations, Cottage Industry is defined on page 4 and cites that contractor's yards are permissible. He suggested that Mr. McClay pick up a copy of the zoning regulations to determine if he can follow the restrictions. The process would be to apply to the Zoning Board of Adjustment for a special exception and then to the Planning Board for a site plan review.

Mrs. Freeman asked Mr. McClay specifically what does he anticipate doing on-site other than meeting at the beginning and the end of the day with his employees.

Mr. McClay stated that there might be a time when a vehicle or equipment may need to be worked on or repaired in the garage.

Mrs. Freeman commented that if Mr. McClay is not going to do any part of the business there, then it might be that he does not need to apply for any approvals at all.

Sense of the Board was that as long as there is no work being conducted on-site, Mr. McClay does not need cottage industry approval.

Mr. Weiler commented that the process of site plan review deals with the impact on the site. Vehicles parked on site for a business do have an impact to some degree.

Mrs. Freeman commented that since Mr. McClay is not having employees working on-site, this would be considered a home occupation.

Mr. Williams made a motion that if Mr. McClay is going to run a business in which the work is done off-site and there are no employees engaged on-site it is not then a cottage

industry and therefore does not require a special exception or site plan review. Mr. Dezotell seconded the motion. Discussion followed.

Mr. McClay stated that he would forego a sign if he does not have to go through special exception and site plan review.

Mr. Geddes advised Mr. McClay that he still has another option open other than running his business as a home occupation. If the business is going to grow, Mr. McClay may want to consider the cottage industry approval for the future. A cottage industry approval would allow an advertising sign and working employees on-site.

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

Mr. McClay asked for clarification on the number of employees allowed on-site as a home occupation.

The Board advised Mr. McClay that as a home occupation, the employees cannot be performing work activities on-site, there can be no signs advertising the business, all equipment and materials must be out of sight or screened, and there can be no customer business.

Mr. Williams advised Mr. McClay that if he obtains a cottage industry approval, he would then be able to purchase his materials in bulk and grow landscaping vegetation for sale to his customers.

### **CASE: 2006-012: Kurt Dutcher – Blye Hill Landing**

Mr. Dutcher presented a plan that proposed a driveway crossing through the 50 ft. common land buffer of the cluster development at Blye Hill Landing. He explained that earlier in the year, he applied for a lot line adjustment and was denied. He made some changes in hopes of approval. Now the proposed driveway is a 10 ft. wide, stone dust drive with a turn-around near the garage.

Mrs. Freeman asked Mr. Dutcher why the garage needs to be on that side of his house.

Mr. Dutcher explained that by putting the garage on that side of the house, the garage then does not interfere with his view of Lake Sunapee.

Mr. Weiler commented that the Planning Board's previous notice of decision is clear. The Planning Board will not permit a driveway in the common area.

Mrs. Freeman suggested that the Planning Board could make a site review.

Mr. Dutcher stated that he cannot fit the house and garage on such a long, thin lot.



Mrs. Freeman suggested that Mr. Dutcher design the garage to be under the house.

Mr. Dutcher stated that he does not want his garage under the house. He commented that there is nothing in the regulations that prohibits a driveway in common land.

Mr. Weiler informed Mr. Dutcher that there is to be no development in common land and a driveway is considered development.

Mr. Dutcher commented that most of the other units in Blye Hill Landing have a garage and a driveway around the back of the house on the uphill side.

Mrs. Freeman pointed out that that doesn't mean Mr. Dutcher has to do the same. She asked what the Blye Hill Landing Home Owner's Association had to say about the common land.

Mr. Weiler stated that the Home Owner's Association said that Mr. Dutcher's proposal is acceptable. He also commented that he thought the Planning Board had discussed this issue thoroughly in the previous hearing.

Mr. Dutcher pointed out that the letter of denial referred to a 'complex driveway system'. That issue was addressed by reducing the driveway size to a 10 ft., stone dust drive, and none of the building is proposed to be in the common area.

Mr. Weiler stated that there is still development in the common area.

Mrs. Freeman asked for a sense of the Board as to whether or not the Board wants to consider this application again, including a site review with another public hearing. Majority of the Board voted not to reconsider.

Mr. Dutcher commented that he does not understand why the Board will not approve his request for the building setback.

Mr. Weiler stated that the request is more than just a building setback issue. The request is infringing upon common land. He commented that other homeowners in Blye Hill Landing have crossed common land with their driveways, but they have taken the shortest route to the garage.

Mr. Powell commented that if the properties of the land create a hardship on the property owner, then there should be mitigation to relieve that hardship.

Mrs. Freeman offered to make a site review as a courtesy to Mr. Dutcher.

Mr. Powell asked the Board what Mr. Dutcher's options.

Mr. Weiler stated that Mr. Dutcher has full development rights. He can build his home, garage and driveway. It just might need to be smaller or in a different layout.

Mr. Weiler made a motion to adjourn. Mr. Dezotell seconded the motion. All in favor.

Meeting adjourned at 10:25 p.m.

Respectfully submitted,

Linda Plunkett