

**DRAFT**  
**Planning Board**  
**Minutes of October 7, 2008**

**Members Present: Tom Vannatta, Chair; Travis Dezotell; Deane Geddes; Jim Powell, Ex-Officio; Bill Weiler; Ron Williams; Ken McWilliams**

Mr. Vannatta called the meeting to order at 7:00 p.m.

The Board reviewed the minutes of September 2, 2008 and made corrections.

Mr. Weiler made a motion to accept the minutes of September 2, 2008 as corrected. Mr. Dezotell seconded the motion. All in favor.

Mr. Vannatta informed the Board that Mr. Powell has agreed, with the help of a member from each Board, to organize a volunteer search night in an effort to recruit alternates to the Boards. Mr. Dezotell volunteered to be Mr. Powell's helper from the Planning Board.

Mr. Vannatta informed the Board members of upcoming conferences. Anyone interested in attending should be in touch with the Land Use Coordinator to sign up.

**CASE: 2004-006: Angel Hawk – Reconsideration of Revocation**

*Notice was given that the Newbury Planning Board will hold a public meeting on Tuesday, October 7, 2008 at 7:15 p.m. in the Town Office Building at 937 Route 103, Newbury, N.H. The purpose of the meeting will be for the Planning Board to entertain a motion to reconsider the revocation of Angel Hawk, LLC from the September 16, 2008 Planning Board meeting and if the motion to reconsider passes, the Board will proceed with reconsideration.*

Mr. Vannatta read the above notice and explained that the reason for this hearing is based upon advice from Town Counsel. The Board has included Lot 1 which has a house constructed on it that is near completion, and the Board should consider that among the other third-party owners and not include Lot 1 in the revocation. If the Board excludes Lot 1, there are several processes that are already underway that may be able to be continue such as the sale of Lot 1 with the house, improvements to the road and the purchase of the whole subdivision of Angel Hawk, LLC.

Mr. Weiler made a motion to reconsider the Planning Board's decision of September 16, 2008 to revoke the Angel Hawk subdivision. Mr. Williams seconded the motion. Discussion followed.

Mr. Williams asked if the Board has any kind of formal information or application to prove that the sale of Lot 1 or Angel Hawk is actually pending.

Mr. Vannatta stated that the Board has nothing in writing. He commented that if the Board does not remove Lot 1, then the major element to getting this subdivision back on track will not happen. He reminded the Board that the motion on the floor is to reconsider the decision on September 16, 2008.

Mr. Powell commented that the Board should have a discussion on taking Lot 1 out of the revocation because there has been a lot of work done there. The Board should also look more carefully at the impact on the people who are already own lots in Angel Hawk subdivision. When they bought the lots, they bought them based on the plan that the Board had approved. If the subdivision is revoked, they will suffer. Now that the old developer is moving out, they want to find a new developer to finish the project. It would be easier to find a new developer if there was not a cloud of revocation hanging over the subdivision. If the subdivision is not revoked, that would give everyone a chance to regroup. Staying with the revocation would not be to the benefit of anyone. Mr. Powell stated that it is his opinion that the Board should reconsider its decision.

Mr. Vannatta reminded the Board members that the motion on the table is only to reconsider the Board's decision of September 16, 2008. The details during the discussion of will be considered later.

Mr. Weiler called the question.

VOTE: All in favor. The Board discussed the reconsideration of the Angel Hawk subdivision.

Mr. Vannatta informed the Board that he had asked Mr. McWilliams to draft a new Declaration of Revocation excluding Lot 1 from the revocation. The draft was circulated to the Board members. He informed the Board that he has spoken extensively with Town Counsel and that the Board has free will to do whatever it feels it is justified to do to address the issue for the best interest of the Town and its residents.

Mr. Powell commented that he would like his previous comments to be considered as part of this discussion.

Mr. Weiler commented that based on Counsel's assertion, he feels that the Board should look at releasing Lot 1 and that the Board needs an update on the status of the development. If there is not a developer prepared to take over, then there is not advantage to the Town to revoke the subdivision.

Mr. Vannatta advised the Board that his discussions with Counsel did not go in that direction. There is nothing from keeping the Board at a future time from allowing the subdivision to come back as a whole providing the new developer does what is required for security of the offsite improvements. If that comes to fruition, then the Board could possibly look favorable at reinstating the subdivision.

Mr. Powell commented that if the subdivision plans are revoked, then the subdivision is no longer viable. Finding someone to come in and spend the time and money to prepare to come to the Planning Board for consideration of reinstating the subdivision is not likely. If the revocation is rescinded now, the new developer would have time to get their ducks in a row to be able to resolve the total problem. If we give ourselves and the others involved some time to regroup, we will be in a better place. When considering the risk versus the advantage, certainly the advantage of waiting to revoke outweighs the risks.

Mr. Vannatta opened the meeting to the public.

Derek Lick, Attorney from Sulloway & Hollis was present on behalf of Jamie Gould, potential purchaser/developer of Angel Hawk, LLC and Contractor owed money by Angel Hawk, LLC. Mr. Lick informed the Board that if the subdivision is not revoked this evening, there will be a closing at 9:00 a.m. on October 8, 2008 when Mr. Gould will purchase the entire Angel Hawk, LLC subdivision and sell Lot 1 which will provide the funding for the project. Mr. Lick commented that he views the Town's main concern is the lack of work on Nelson Hill Road which leads into the subdivision. If the subdivision is revoked, none of the lots will be able to be sold which means there will be no money to complete the offsite improvements of Nelson Hill Road.

Mr. Lick explained that Mr. Gould is proposing a covenant on the lots that are still owned by the developer (excluding Lot 1, which would be sold at the time of Mr. Gould's ownership) that would restrict the sale of lots until the Planning Board gives its stamp of approval. The Covenant would allow the subdivision to remain in place, but would preclude additional to be sold and no new people moving in without the road improvements addressed to the Board's satisfaction. There is an Exhibit D in the Newbury Subdivision Regulations that a developer can sign to protect the Town's interests. Mr. Gould is ready to submit to the Planning Board an agreement not to sell a variety of lots. This is a better approach for several reasons.

Mr. Lick explained that revocation is extreme and rare. There is no case history within local realms that can predict what the outcome would be or how the rescinding would happen. Mr. Lick presented an existing plan of the lots owned by Angel Hawk, LLC. The lots owned by the LLC are not contiguous. Therefore, revocation would create randomly scattered pieces of land, which would be difficult to reorganize for a potentially new future developer. Some of the existing third-party owners may choose to litigate, and a new developer would have difficulty getting financing from a bank because of these complications.

Mr. Lick suggested that the Board should decide which lots it wants to require to be bound by Covenant Restrictions and then record the Covenant at the Merrimack County Registry of Deeds. That process would place the restriction on public record and make it legal. It does not allow a new owner to vest any rights of ownership. This Exhibit D is the Town's own form, and therefore the Planning Board should be comfortable with that. Also, assuming Mr. Gould is not held back from acquiring the title of Angel Hawk Subdivision, he will be held to a layout of existing lots with the road layout already established and agreed upon by the Board.

Mr. Lick explained that the sale of Lot 1 will help fund Mr. Gould purchase the remainder of the subdivision. He also asked the Board to consider releasing Lot 11 from restriction of sale since that lot is accessed from Sutton Road. The sale of Lot 11 would provide more funds to be able to accomplish the offsite road improvements in a timelier manner. Also, if the subdivision is revoked, that puts the Home Owner's Association and ownership of the common land in a quagmire.

Mr. Geddes asked Mr. Lick if there is another lot owned by Angel Hawk, LLC that is accessed from Sutton Road.

Mr. Lick stated that there is not another lot accessed by Sutton Road and owned by Angel Hawk, LLC.

Kevin Carr, resident on Nelson Hill Road commented that he is in support of the proposal described by Mr. Lick. He commented that if the Town revokes the subdivision, it could be perceived as waiving its ability to enforce its approved subdivisions. Additionally, there could be nominal litigation by the people who have already purchased lots from Angel Hawk, LLC. There may not be immediate changes if the subdivision plays out the way Mr. Lick described, but at least the Town would still have control and oversight.

Mr. Powell asked Mr. Lick if he proposes any bench marks or timelines for completion.

Mr. Lick pointed out that item #7 of the PROVISIONS in the Covenant Restricting Lot Sales describes the following: *‘Once approved, this subdivision is subject to and benefitted by Section 6.7 FOUR YER EXEMPTION of the Newbury Land Subdivision Control Regulations.*

Mr. Powell asked Mr. Lick if he thought the current real estate market would impact his proposal.

Mr. Lick stated that he cannot determine that, except that there is a buyer already lined up for Lot 1 which will get things moving. If it doesn't happen, Ledyard Bank will foreclose on Angel Hawk, LLC, and it will be very difficult to get a buyer for a revoked subdivision. Mr. Gould is willing to keep the subdivision out of foreclosure. Mr. Lick shared with the Board that the reason Mr. Gould originally hired him was to help him gain restitution from Angel Hawk, LLC for the work he had already done within the subdivision. This is the best scenario possible given difficult circumstances.

Mr. Powell asked Mr. Lick if the funds from the sale of Lot 1 go to the purchase of the subdivision, where will be funds come from to build the offsite improvements of Nelson Hill Road.

Mr. Lick explained that Mr. Gould has his own equipment and the knowledge how to complete the road improvements, so he will not have to hire the work out. He will also be able to work on getting Lot 11 sold and that would allow him to put enough cash on the table to get things moving again. He reiterated that Nelson Hill Road is certainly not going to get improved if the subdivision gets foreclosed upon. Under the conditions of the Covenant Restricting Lot Sales, the road will have to be completed or a letter of credit instated to the Board's satisfaction before any of the remaining six lots could be sold.

Mr. Powell asked if the home owner's association includes the existing property owners, too.

Mr. Lick explained that the home owner's association is not officially established until all 14 lots are sold by the developer. The home owners in association will be responsible for the road maintenance and owners of the common land.

Mr. Powell asked if there is additional work required by the Board other than the offsite improvements to Nelson Hill Road.

Mr. Weiler stated that there are no other additional requirements by the Planning Board. This complication arose because the letter of credit expired and the Town needs surety.

Mr. Powell asked if the Newbury Highway Administrator could monitor the road improvements rather than the Town's engineer.

Mr. Weiler stated that in the past the Board has been told that the Highway Administrator does not have the time to oversee road construction.

Mr. Powell commented that that must have been a miscommunication.

Mr. Williams commented that road construction is much different than road maintenance, and road construction would require an engineer. He explained that there are specific density, culvert and drainage calculations and equipment that is needed that the Town does not have in its possession. There could be five visits from the engineer to see all stages, and each visit could take half of a day. Therefore, it would not be a lot of money to have the Town's engineer oversee the offsite improvements. Mr. Williams also commented that it may be a good idea to let the road rest awhile before the final paving is done. At that time, it would be a good opportunity to consider releasing some of the lots or changing the covenant to a letter of credit.

Mr. Geddes commented that the Board needs to be very careful with this road because in addition to looking out for everyone's best interests, Nelson Hill Road is also the oldest road in Town and there are an additional three to four homes beyond Angel Hawk subdivision. He stated that the whole point of requiring Nelson Hill Road to be upgraded was because of all of the potential new home owners that would be using the road. Now new homeowners will not be coming either because of the revocation of the subdivision or because of a potential covenant restricting lot sales. Therefore, the Board should not ask for the offsite improvements to be completed all at once since the reason behind it no longer exists.

Mr. Carr commented that he agrees with Mr. Geddes. Completion of the offsite improvements is going to be an expensive undertaking.

Mr. Weiler made a motion that the Planning Board rescinds the revocation of Angel Hawk Subdivision on the condition that this plan is carried out in the time frame offered. Mr. Dezotell seconded the motion. Discussion followed.

Mr. Williams asked for clarification of the motion. Discussion followed and Mr. Weiler and Mr. Dezotell recalled their motion and second.

Mr. Williams made a motion to rescind the Planning Board's September 16, 2008 decision of revocation of the Angel Hawk Subdivision subject to receipt of Covenants Restricting Lot Sales on Lots 4, 6,7,8,10 and 12. Mr. Dezotell seconded the motion. Discussion followed.

Mr. Powell suggested that this motion should be reviewed by Town Counsel.

Mr. Dezotell referred to an email from Town Counsel in which Counsel stated he is o.k. with the covenant.

Mr. Williams asked the other Board members how long they thought it would take to receive the covenants and suggested a limit of time. The Board agreed.

Mr. Williams made a motion to amend his prior motion to include: The Covenants are to be received by the Planning Board by October 21, 2008. Mr. Dezotell seconded the amendment. All in favor of amending the motion.

VOTE on the final motion as follows: Mr. Williams made a motion to rescind the Planning Board's September 16, 2008 decision of revocation of the Angel Hawk Subdivision subject to receipt of Covenants Restricting Lot Sales on Lots 4, 6,7,8,10 and 12. The Covenants are to be received by the Planning Board by October 21, 2008. All in favor of the motion as amended.

### **CASE: CODE – 042: Zoning Amendments for Town Meeting 2009**

Mr. McWilliams advised the Board that drafts for zoning amendments to be proposed at the March 2009 Town Meeting need to be prepared by mid December. There are three items that should be addressed: 1. Affordable Workforce Housing; 2. Small Wind Energy; 3. Changes to be consistent with the newly adopted State Comprehensive Shoreland Protection Act.

Mr. Geddes reminded the Board that the Sunapee Area Water Coalition had submitted some suggested changes for consideration.

Mr. Vannatta commented that he would like to have a subcommittee continue to research (*I think Workforce Housing should go here, but I didn't write down which subject you wanted researched and don't remember for sure...sorry*) before the Board continues with discussion on that subject.

Mr. Powell asked why the Town needs to regulate certain situations when the State already has regulations in place. He asked why the Town can't just adopt what the State RSA's have already laid out.

Mr. Weiler commented that the purpose of the State law is to prevent the Town from being overly restrictive.

Mr. Williams explained that the State does not give specific standards. It is more difficult to have to go through the State ordinance. It is easier to work on a local level, and it is easier for the building inspector/code enforcement officer to enforce. The new State law is specific about putting the enforcement under the jurisdiction of the building inspector. Without local regulation, the building inspector has no teeth.

### **Article XXII (Small Wind Energy Systems Ordinance)**

The Board reviewed the September 22, 2008 draft of the Small Wind Energy Systems Ordinance and made changes. Mr. McWilliams explained that having this ordinance in place will allow people to be able to install a SWES without going to the Zoning Board of Adjustment for a height variance.

Mr. Vannatta informed that Board that he has received a letter from the NH Land Surveyor's Association asking for all Planning Boards to be cognizant of the fact that only land surveyors can

determine land boundary lines. Apparently, there have been plans approved by planning boards that were drawn up by engineers. Plans involving boundary lines must be stamped by a land surveyor, not an engineer.

Mr. Dezotell made a motion to adjourn. Mr. Geddes seconded the motion. All in favor. Meeting adjourned at 9:00 p.m.

Respectfully submitted,

Linda Plunkett  
Recording secretary

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