



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Thursday, January 8, 2009
Mary Herbert Conference Room
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These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Phil Wilson, Chairman; Shep Kroner, Vice Chairman; Joseph Arena, Barbara Kohl, Tom McManus and Emily Creighton, Selectmen's Alternate Representative.

Others present: David West, RPC Circuit Rider and Wendy Chase, Recording Secretary.

Alternates present: None

Mr. Wilson convened the meeting at 7:04pm.

I. Old Business

08:14 – James G. and Karen S. Confalone, PO Box 415, Rye Beach, NH 03871. The applicants propose a 3-lot subdivision on contiguous land located in Rye, NH and North Hampton, NH. Property owners: James and Karen Confalone. Property location: 41 Causeway Road, Rye Beach, NH, M/Lots 005-012, 013, 014, zoning district R-2. This case is continued from the November 6, 2008 meeting.

The Applicant requested a continuance to the February 5, 2009 meeting. The Board granted the request.

08:15 – Richard Skowronski and Leila Hanna, 142 Mill Road, North Hampton. Preliminary Consultation for a proposed Conservation Subdivision under Section 417 of the North Hampton Zoning Ordinances. Property owners: Richard Skowronski and Leila Hanna. Property location: 142 Mill Road. Tax Map & Lots 012-47, 48-2, 63, 65, 67, 68, 69, 70, 71, 73, 74, 76, 77, and 78. Zoning district R-2. This case is continued from the December 16, 2008 Work Session meeting.

In attendance for this application:

Attorney Robert Field Jr., Representing the Applicants
Richard Skowronski, Applicant/Owner
Leila Hanna, Applicant/Owner

Mr. Field disclosed for the record that he is a member of the North Hampton ZBA and a member of North Hampton Forever.

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The Board was in receipt of a revised plan of the proposed Conservation Subdivision submitted by Mr. Skowronski, dated January 5, 2009, and in receipt of correspondence submitted by Mr. Field, dated December 17, 2008 that referred to the RSA 674:41 and related materials. (the correspondence sent from Mr. Field mistakenly referred to RSA 647:41). He explained that RSA 674:41.I.(d) "private road" is the preferred and more correct choice to follow even though he is not waiving his client's right to seek future relief as provided by Sub-Paragraph I (b) of RSA 674:41.

Mr. Field discussed the road frontage issue with the Board. The revised plan showed the driveways coming off of the proposed "private road" onto lots 1, 2 & 3. A "turn out" area was added for additional safety reasons. The Applicants will work together throughout the project with the Fire Department and Police Department concerning emergency access to the proposed lots.

Mr. Field stated that it is a five lot subdivision with two lots already approved. The "private road" would service five lots, and the proposed conservation area encompasses the wetlands; an important recharging collection area for Little River.

Mr. Field commented that the proposed site could potentially be developed with twenty lots with a standard subdivision proposal; whereas his clients wish only to add three additional lots with their Conservation Subdivision Design proposal including preserving 41.5 acres of conservation land. Mr. Field referred to RSA 674:41.I.(d) for exceptions to the minimum frontage the Planning Board can assess and make recommendations to the Select Board for it to grant a waiver on the basis that it would be a "private street" that would not have any of the benefits or Municipal services, but would allow for the development of the three additional lots. We asked that the Board continue to endorse the concept of the "private street" with the proposed driveways off of it to the Select Board. He further explained that the applicants intend to proceed with a formal application after receiving a favorable vote by the Select Board regarding the "private street".

Ms. Creighton commented that she did a site walk on some of the subject property a couple of years ago with the Planning Board.

Ms. Creighton asked if the horses housed on the land would affect the water shed by polluting it. Mr. Field said that that would be addressed during the formal application process.

Mr. Wilson said that commercial animal husbandry is prohibited throughout North Hampton, including horse breeding stables housing more than 20 horses.

Ms. Hanna confirmed that she does not intend to have 20 horses or more.

Mr. Wilson explained to Ms. Creighton the "private road" issue. He said that when developing only five house lots it would not be cost effective to put in a road conforming to the Town's standards. The Local Government Center (LGC) steered the Board toward

RSA 674:41, which gives the applicant the choice to either go forward with the application with the Planning Board or to pursue receiving approval from the Select Board to accept the current shared driveway as a “private road”. Mr. Wilson said that the Conservation Subdivision Ordinance was written to require frontage on a road for each building lot. He said that the question that came before the Planning Board was whether or not the Board has the authority to waive the minimum frontage requirement by eliminating it completely. The Board suggested that the Applicants add frontage along the road being proposed. The Applicants revised the map to include frontage on each of the proposed lots.

Mr. Kroner referred to Section F of the Ordinance – Flexibility, and said that it’s suggested by some of the Board members, and the Applicants that the Planning Board has the authority to waive the minimum requirements, such as frontage, and lot width, and questioned if the Board has determined that it can waive specific minimum requirements under the flexibility section.

Mr. Wilson read Section F.3: *Upon written request by the applicant, the Planning Board may grant a waiver of one or more of the provisions of this Article as it deems appropriate, providing the Planning Board first shall determine the following:*

- a). The waiver is related to unique physical conditions peculiar to the proposed subdivision*
- b). Granting the waiver will not be contrary to the purposes and objectives of this Article; and*
- c). Granting the waiver will not adversely affect the public good.*

Mr. Kroner said that he is in favor of the Skowronski’s plan and is agreeable in approving the necessary waivers for this particular plan, but is just concerned about the Planning Board setting a precedent of allowing minimal or no frontage for the lots on a Conservation Subdivision; he said that he was thinking about future applications.

Mr. Field noted for the record that the shared driveway supports two approved lots and has been approved by the Planning Board, and that the proposal is to add three more lots to it, including 42 acres of conservation land at no cost to the Town.

Dr. Arena said that after doing some research he said the proposal is much simpler than what the Board thinks it is. He referred to RSA 674:21-a – Development Restrictions Enforceable under the “village plan alternative” and opined that the proposal before the Board fits perfectly into that, he also referred to RSA 674:41.I.(d) – “private roads” and commented that by meeting the conditions pursuant to this RSA would also make it a much simpler solution to the proposal.-

Mr. Wilson said that the way he understands the procedure to be is that the Planning Board first needs to accept the plan that depicts the “private road”, and after review and comment the Planning Board would recommend to the Select Board to accept the shared driveway as a “private road”, which the Planning Board would stipulate as a condition of approval. Under RSA 674:41.I.(d) (1) *the local governing body* (Select Board) *after*

review and comment by the Planning Board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof. It was determined by the Planning Board that the Select Board would be authorizing the issuance of building permits for four lots, the previously approved building lot and the three proposed lots in the Conservation Subdivision plan.

Mr. Wilson suggested that the Select Board receive a copy of the proposed plan to review prior to their meeting.

Mr. Wilson suggested a Motion be made by a member of the Board to authorize the Chair to go to the Select Board with the most current conceptual drawing of the proposed subdivision and seek a statement from the Select Board saying that they would be prepared to issue building permits for this proposed Conservation Subdivision if and when the Planning Board approves it.

Mr. West said that he is worried that the Planning Board would be making a definitive statement about the plan where it has not been publicly noticed.

Mr. Wilson said he didn't think the Board could take jurisdiction of the plan until the Board has the aforementioned statement from the Select Board.

Mr. Field said that if the Select Board did not accept the drive as a "private road" his clients have reserved the right to proceed with the Planning Board under RSA 674:41.I.(b).

Mr. Field said that the Applicants wish to receive the endorsement from the Planning Board and the Select Board under RSA 674:41.I.(d) "private road" because it may not be the only way to go, but is the better way to go.

Mr. Wilson suggested that a definitive judgment be made by March because there may be new Planning Board members, and a new member to the Select Board that would need to be educated on the proposal.

Meeting dates were discussed. It was determined that the Select Board's next meeting is scheduled for January 14th at 7:00pm, and Ms. Creighton suggested someone from the Board contact Mr. Fournier so that the proposal can be added to the agenda. The last Planning Board meeting before the Town Election is March 5th and the Town Election is on March 10th.

Mr. McManus spoke of the landlocked lot in the middle of the proposal owned by Carol Parkhurst. He commented on the fact that the lot would become encapsulated by conservation land if the proposal were approved, and would affect the potential of the lot forever. He said that currently it is surrounded by privately owned land, owned by the Skowronskis, and not held in perpetuity by conditions of an easement.

Mr. Wilson explained that the current owner's, of lot 72, situation is not diminished by the proposal. He said that they currently have the right to access the lot for wood cutting, and if the Conservation Subdivision is approved it will not change that. Mr. Field added that the Skowronskis have the right to put their property into conservation land at any time.

Mr. Wilson explained that the purpose of the Preliminary Consultation is to give the Applicant some assurance that submitting a formal plan is worth doing, and it gives the Board a sense of the situation.

Dr. Arena Moved to advise the Applicants to proceed with the Conservation Subdivision formal application.

Dr. Arena withdrew his Motion.

Mr. Kroner Moved that the Board is satisfied with the information that has been provided by the Applicants during the Preliminary Phase and the Design Review process, and believes that the Applicants can move forward with a formal Application based on the design plan before the Board.

Mr. Wilson commented on the fact that the design review process requires public notification, and since a design review was not completed it should not be made as part of the Motion.

Ms. Kohl Moved and Mr. McManus seconded the Motion that having completed the Preliminary Consultation, the Planning Board encourages the Applicants to pursue the process because the Board believes that the conceptual material reviewed by the Board meets the Conservation Subdivision Ordinance, and the Board will take upon itself to secure the opinion of the Select Board with respect to the aspect of the conceptual plan that requires a "private road".

Mr. Field suggested that the Motion read *approval* from the Select Board rather than an *opinion*.

Ms. Creighton said that she would have to abstain from the vote if the Motion were changed to Select Board *approval*.

Mr. Wilson suggested splitting the Motion into two parts.

Ms. Kohl Moved and Mr. McManus seconded the Motion that having completed the Preliminary Consultation, the Planning Board encourages the Applicants to pursue the process because the Planning Board believes that the conceptual material reviewed by the Board meets the Conservation Subdivision Ordinance. The vote was unanimous in favor of the Motion (6-0).

Mr. Field suggested that the RSAs be referenced in the Motion.

Mr. Wilson offered the following Resolution:

**Whereas, the Planning Board has, under Section 417 – Conservation Subdivision Design of the Zoning Ordinance, encouraged an Applicant to pursue an application for a subdivision, and
Whereas, the proposed subdivision requires a private road,
Whereas, RSA 674:41.I.(d).(1) requires the Select Board authorize the issuance of building permits on said private road,
Now therefore, the Planning Board authorizes the Chair to approach the Select Board in order to secure the Select Board’s authorization before the issuance of said building permits.**

**Mr. McManus Moved and Ms. Kohl seconded the Motion to approve Mr. Wilson’s Resolution.
The vote passed (5 in favor, 0 opposed and 1 abstention). Ms. Creighton abstained.**

Mr. Wilson directed Ms. Chase to type up the Resolution, and submit it to Mr. Fournier with a request to be placed on the Select Board’s January 14, 2009 agenda, and to include a copy of the Local Government Center’s legal opinion pertaining to RSA 674:41.

Mr. Field said that after they meet with the Select Board they will try to get a conceptual design for the February 5th Planning Board meeting. Mr. Kroner agreed to add it to the February 17th Work Session agenda if needed.

Mr. Field will meet with Ms. Chase to go over application and notification deadline dates.

New Business

There was no new business to come before the Board.

Mr. McManus left the meeting at 8:50pm.

Other Business

1. Any other business that may come before the Board

Mr. Duncanson, Project Manager for Greystone Village Development, was present to discuss an occupancy permit for one of the homes recently sold by GFI.

Mr. Duncanson was aware that the Chair intended on ruling that Mr. Duncanson not be allowed to address the Planning Board this evening under "other business". He requested that the Planning Board overturn the Chair's ruling and allow him to address the Board.

Mr. Wilson explained to the Board that the issue at hand was that Mr. Duncanson requested to appear on this agenda under "other business" because GFI would like to have permission to secure an occupancy permit for one of the units in Greystone Village, and Mr. Wilson said that he officially rules against the request for two reasons: (1) several residents of Greystone Village have taken an interest in this issue, and because it did not appear on the agenda, they were not notified in any way, and (2) The Town is in a legal dispute with GFI because the Town accepted a self-calling letter of credit that expired, and the Town is in a legal dispute with GFI over that issue.

Dr. Arena Moved and Ms. Kohl seconded the Motion not grant Mr. Duncanson's request to overturn the Chair's ruling.

Dr. Arena said that the resident's of Greystone Village should have been given the opportunity to be present during any discussions concerning Greystone Village Development.

The vote was unanimous in favor of the Motion (5-0).

Mr. Duncanson said that GFI was not notified that they were placed on the December 4, 2008 Planning Board Agenda.

Mr. Kroner referred to the previous month's minutes.

The November 6, 2008 meeting minutes state that Mr. Duncanson was present and he asked *if he would be able to receive building permits for lots 1 and 16.*

The Board concluded that he would first need to meet with the Building Inspector to come up with a surety amount and to produce proof that a bank is willing to post the agreed upon amount before anymore building permits or occupancy permits were issued.

Mr. Duncanson was asked to meet with the Board at their Work Session meeting on November 18, 2008. There was no one in attendance from GFI.

Mr. Wilson reminded Mr. Duncanson that he submitted to the Board a proposal for new surety at a level of \$130,000. He explained that the request for the new surety amount led the Board to investigate the initial self-calling letter of credit, and it was discovered that it had expired. The Town called in the letter of credit and was denied by the bank, and the Town is now in a legal dispute over it with them. Mr. Wilson opined that it is inappropriate for the Board to discuss any of these matters with Mr. Duncanson until the legal dispute is settled.

Mr. Wilson said that the issue at hand is for the management of Greystone Village to either provide the funds from the letter of credit or initiate some effort to resolve the legal dispute.

Mr. Wilson said that he does not believe that the Board can authorize any further action in the Greystone Development until the Town has the surety in the amount necessary to provide funds for the Town to complete the project, at least to a point where the people who have already purchased a home there will feel that it is a development where they want to live in perpetuity. He said that the Board is concerned if the project will ever be completed. Mr. Wilson said that he does not see the Board authorizing any further action unless GFI comes in and demonstrates how they will alleviate these issues.

Mr. Duncanson said that he was not aware that the proposed surety amount of \$130,000 was not acceptable by the Town. He said that he met with the Building Inspector regarding the surety amount, and Altus Engineering was contacted. Mr. Duncanson said that he did receive the report from Altus Engineering, dated November 19, 2008.

Mr. Wilson asked if a proposal was made for surety to the Town in excess of \$130,000 and Mr. Duncanson said to his knowledge there has not.

Mr. Wilson said that he did meet with, and get an opinion from, Mr. Mabey, and it was confirmed by Altus Engineering that \$130,000 was not enough money to complete the aspects of the approved site plan and subdivision plan that are necessary to bring construction in there to a level where people can reside there in perpetuity if nothing else happens with respect to more residents. He informed Mr. Duncanson that the Town needs a proposal from GFI. Mr. Wilson suggested that Mr. Duncanson review the November 19th letter from Altus Engineering very carefully, and any proposal submitted should comply with it or should explain very clearly why it isn't necessary, and that includes the completion of the large detention pond on the south/easterly corner of the site, and the completion of the road system in phase I.

Mr. Duncanson said that he was under the impression, at the November 6th Planning Board Meeting, that the Board would grant GFI the occupancy permit, and he met with Mr. Mabey later that week who was willing to give the occupancy permit so GFI decided to list the property and sell it so that the funds could be raised enabling them to continue the project.

Mr. Wilson quoted from the November 6th meeting where it was stated that no more building permits and occupancy permits would be issued until an agreeable amount of surety was posted.

Mr. Duncanson said that GFI's Attorney has sent Mr. Wilson an email requesting some information and it was not responded to.

Mr. Wilson clearly stated that he would not reply to GFI's Attorney, and suggested that if GFI's Attorney wants something from the Town of North Hampton then they need to contact the Town of North Hampton's Attorney.

Mr. Wilson said that currently the Town is in a situation where there is no surety, and the Board is authorizing the Building Inspector to do nothing until the surety issue is resolved.

Mr. Wilson said that if this issue is not resolved soon, he would encourage the Board to initiate reconsideration of the site plan approval for the project, and consider rescinding it.

Mr. Wilson said that the Board wants the project to succeed, but the Town needs a good faith effort from GFI. Mr. Wilson opined that Mr. Goodman and his Attorney should come before the Board to resolve these issues.

Dr. Arena commented that as a condition of approval the original developer was supposed to receive Planning Board approval if they were to convey or sell the development to another agency, and they did not when they sold the development to GFI.

Mr. Wilson added that that in itself is grounds to rescind the approval.

Minutes

November 6, 2008 – Mr. Wilson Moved and Dr. Arena seconded the Motion to approve the Meeting Minutes of November 6, 2008. The vote passed (4 in favor, 0 opposed and 1 abstention). Ms. Creighton abstained.

November 18, 2008 – Mr. Wilson Moved and Dr. Arena seconded the Motion to table the November 18, 2008 minutes to the January 20, 2009 Work Session meeting.

Ms. Creighton left the meeting at 9:05pm.

The vote was unanimous in favor of the Motion (4-0).

December 4, 2008 – Mr. Wilson Moved and Dr. Arena seconded the Motion to approve the December 4, 2008 Meeting Minutes as amended. The vote was unanimous in favor of the Motion (4-0).

Dr. Arena Moved and Ms. Kohl seconded the Motion to adjourn at 9:12pm. The vote was unanimous in favor of the Motion (4-0).

Respectfully submitted,

Wendy V. Chase

Recording Secretary

| Approved January 20, 2009

