



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Thursday, February 5, 2009
Mary Herbert Conference Room
DraftDraft Draft Draft

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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, [Laurel Pohl](#), Barbara Kohl, Tom McManus, Craig Salomon, Select Board Representative and Emily Creighton, Select Board's Alternate Representative.

Others present: Wendy Chase, Recording Secretary.

Alternates present: None

Mr. Wilson convened the meeting at 7:05pm, and noted for the record that there was a quorum and the agenda was properly posted.

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. Continued from the January 8, 2009 Meeting

The Board was in receipt of a letter from James Verra requesting a continuance for the Confalone case to the March 5, 2009 meeting.

Mr. Kroner Moved and Dr. Arena seconded the Motion to approve Mr. Verra's request to continue the Confalone case #08:14 to the March 5, 2009 meeting.

Dr. Arena commented that there have been a lot of continuances granted for the Confalone case and if the Applicants request another continuance he would be inclined to vote against the request.

Mr. Salomon agreed with Dr. Arena and said that when a case has been continued several times the abutters that were notified of the initial meeting tend to lose track. He suggested that the applicant re-notify the abutters if the continuation is granted.

Dr. Arena made a friendly amendment to grant the continuance conditioned upon the applicant agreeing to notify the abutters at their expense prior to the next meeting. Mr. Kroner accepted the friendly amendment.

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Mr. Wilson explained that the Applicants were directed by the Board to obtain a drainage study, and that is the reason for the requested continuance initially.

Mr. Salomon commented on two concerns, (1) if the lots are treated as one lot it would create a buffer issue as to where the construction in Rye would go, and (2) whether or not the septic loading soils were based on Rye and not North Hampton soil.

Ms. Kohl asked if it could be because of the weather that they are unable to get the drainage study done.

Mr. Wilson said that he doubted that they didn't already have data on the topography, soils and vegetation due to the extensive work already done on the Confalone's lots.

The vote was unanimous in favor of the amended Motion (7-0).

New Business

09:01 – Federated Companies, LLC, 535 Boylston Street, Suite 203, Boston, MA 02116. The Applicant, Andrew Hobbs, Hobbs Sign Service, 40 Lowell Road, Salem, NH, on behalf of Federated Companies, requests approval of a Conditional Use Sign Application for the "Dollar Tree" Store with the following waiver: Article V, Section 506.6.K to allow a wall sign 88.48 square-feet in size. Property Owner: Federated Companies, LLC. Property location: 26 Lafayette Road, North Hampton, Map and Lot 003-101, zoning district I-B/R.

In attendance for this application:

Andrew Hobbs, Hobbs Signs

Mr. Wilson commented on the fact that there was no authorization letter from the owners to allow Mr. Hobbs to represent them.

Ms. Chase explained that Mr. Hobbs was aware of the fact he needed an authorization letter to present the case. He said that he was unable to get one before the meeting.

The Board said that they would continue the case to the February 17, 2009 Work Session meeting.

Mr. Kroner asked Mr. Hobbs to bring in a picture of the proposed sign that would meet the sign regulation to compare it to the actual proposed sign so that the Board would be able to see the contrast.

Mr. Wilson said that it may be helpful if the applicant presented data that would demonstrate that letters need to be a certain size to be seen at certain distances.

**Mr. Salomon Moved and Mr. McManus seconded the Motion to continue case 09:01 to the February 17, 2009 Work Session meeting.
The vote was unanimous in favor of the Motion (7-0).**

Mr. Salomon requested that because he was going to recuse himself from the Skowronski case if the Board would allow all other business to be addressed first.

The Applicant agreed to grant the request as well as the Board.

Other Business

*Discussion on Greystone Village re: Town Counsel Matt Serge's email regarding the self-calling letter of credit and comments pertaining to the future of the project.

In attendance for this discussion:

Attorney John Allen, Law Offices of John L. Allen & Associates, P.C.
Steve Duncanson, Project Manager

Mr. Wilson gave a brief history:

- The Town was in receipt of surety in the form of a self-calling letter of credit for the Greystone Village project.
- The self-calling letter of credit expired without the Town's being informed by the bank.
- The Town's Attorney Matt Serge has given the opinion that a self-calling letter of credit does mean that the bank is supposed to notify the Town, and the Town is not obligated to notify the bank, it was the bank's obligation to send a check to the Town and it failed to do so.
- As aBecause of the lack of any surety the Board has decided not to authorize the issuance of any building permits and occupancy permits until the surety issue is resolved.

Attorney Allen said ~~that~~ suggested that he work with the Town's Counsel to identify items that the Board thought were outstanding, and to put a number to those improvements that needed to be completed according to the original conditions of approval. He said that he and Attorney Serge are working together to try and get the bank to take a more reasonable position on the letter of credit and see if they would honor the original letter of credit, and if not to at least come up with alternative methods for security matters.

Mr. Wilson said that the Board's normal practice for securing surety is for the applicant to provide a list of items for which surety should be posted, and then the Town's engineer reviews it, and the two parties come to an agreement on the amount. Mr. Wilson suggested that the engineer for GFI speak directly to the Town's engineer, Jeff Clifford from Altus Engineering. Mr. Clifford has suggested that the Board request surety from GFI that would put the development in a permanently livable condition for the occupants

of the existing homes in perpetuity. Mr. Wilson said that the NH DES requires that the large detention pond located at the south/easterly corner of the property be completed in phase I as recommended by Mr. Clifford.

Mr. Allen said that due to the current market, he doubts that there will be further development beyond phase I at this point.

Mr. Wilson commented that the detention ponds that were to be built as part of phase I were temporary ponds while the project was being built, and opined that they were not designed to be the only and permanent drainage ponds.

Mr. Wilson said that if GFI can prove that the current drainage in the first phase, if made permanent, is adequate for the development, if it remains in the current state in perpetuity, and the Town's engineer agrees, then there is a possibility that the large detention pond does not have to be included when determining the surety amount.

Mr. Salomon said that it's a good idea to have GFI's engineer contact Jeff Clifford, and commented that the Town does not have a deposit for engineering fees from GFI and that such a deposit should be made a requirement. He said that the construction of the large detention pond is part of the overall mitigation, and if the engineers for both parties agree that it does not have to be built, Mr. Salomon suggested that the Board seek an opinion from NH DES before making a final decision.

Mr. John Chagnon was the engineer on the Greystone Village project initially. He commented on the drainage pond. The Town's engineer has repeatedly suggested that the large detention pond be completed in the beginning phases of the project. The developer re-phased the development (approved by the Planning Board) and they included the large detention pond in phase I. Mr. Chagnon explained that NH DES never made that a part of the wetlands permit. He said that the first phase only used 3,000-feet of fill and it was the last phase that would demand the use of the large detention pond when completed.

Dr. Arena said that the Board should only be concerned with setting up a bond to complete phase I in its entirety and forget about the other phases. He said that it was up to the engineers to decide on an amount sufficient to completing-complete phase I only.

Mr. Salomon commented on the issue of the occupancy permit that the Planning Board has requested not to be issued until the surety has been put into place. He said that he continues to take that position. Mr. Wilson agreed with him. Dr. Arena also agrees but commented on the fact that the people who purchased the unit are being punished, and that he is in favor of issuing this last occupancy permit for the couple left "hanging".

Mr. Wilson commented on the fact that the Planning Board has no leverage over GFI regarding the surety if they issue any occupancy permits.

Attorney Allen explained that there is one vacant unit under agreement and one vacant model unit that they would like to sell. He said that he was directed by Steve Goodman to find out what they need to do to continue with phase I.

Mr. Salomon suggested that Attorney Allen continue dialogue with Attorney Serge.

Mr. Wilson suggested that the issue be continued to the February 17, 2009 Work Session and suggested that they come back with a plan from the engineers with an agreed upon surety amount.

Mr. Wilson said that Mr. Goodman has been asked by the Planning Board on numerous occasions to attend a meeting so that they could address the issues with him personally and that he has never come before the Board.

Ms. Chase reminded the Board that there is an outstanding engineering invoice due from GFI from Altus Engineering. Mr. Wilson suggested that Ms. Chase contact Altus and to get an estimate on future engineering services for that project so that the Town can set up a surety account, before the Board even considers releasing the occupancy permit.

Mr. Wilson addressed the letter from Mr. Saunders regarding the culvert on Mill Road that should have been upgraded when the Squier Drive Subdivision was being built. Mr. Wilson said that it was more of an issue for the Select Board. Mr. Salomon said that he would put it on the next Select Board's agenda, and he will also speak to the Building Inspector, Richard Mabey about it.

New Business

08:15 – Richard Skowronski and Leila Hanna, 142 Mill Road, North Hampton. The Applicants propose a five lot (three new lots and two existing approved lots) Conservation Subdivision under Section 417 of the North Hampton Zoning Ordinances. The Applicants request the following waivers: (1) Section 417.F.1 – Road Frontage and minimum lot width, (2) Subdivision Regulation Section VIII.B.15 – Topography Documentation, (3) Subdivision Regulation Section IX.A.2 – Underground Utilities, (4) Subdivision Regulation VIII.B.16 – Identification of natural features, (5) Subdivision Regulation VIII.B.20 – Stormwater calculations & drainage control. The Applicants request a Conditional Use Permit under Article IV, Section 409.10 for the purpose of relocating a Private Road/Driveway within the 100-foot wetlands buffer zone. Property owners: Richard Skowronski and Leila Hanna. Property location: 142 Mill Road. Tax Map & Lots 012-47, 48-2, 63, 64, 65, 67, 68, 69, 70, 71, 73, 74, 76, 77, and 78. Zoning district R-2.

In attendance for this application:

Attorney Robert Field, Jr., Counsel for the Applicants
Richard Skowronski and Leila Hanna, Owner/Applicants
John Chagnon, Ambit Engineering

Mr. Salomon recused himself.
Ms. Creighton was seated for Mr. Salomon.

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

Mr. Field said that he and the Applicants met with the Planning Board's Application Review Committee (ARC) on February 3, 2009 and will be meeting with the Conservation Commission on Wednesday, February 11, 2009 regarding this case. He informed the Board that his clients submitted a first draft of an agreement with the Select Board and in the agreement the Applicants have made clear that there would be no liability befalling to the Town for the responsibility of maintenance for the proposed "private" road nor will there be any obligation to enter the subdivision with school buses to pick up children. The plan is to include a school bus shelter located at the beginning entrance of the "private" road.

Mr. Field explained for public benefit that the proposal is approximately a 70-acre parcel where approximately 40-acres will be put into a permanent conservation easement. He said that a yield study was done resulting in the possibility of 24 to 25 developable house lots, and the proposal is for three additional lots.

Mr. Field said that the conservation land will not be open to the public, and that the Applicants are not asking for compensation for the conservation land.

Mr. Wilson said there are five waiver requests that the Board needs to deal with. He also mentioned that the easement is in draft form and needs to be reviewed by Town Counsel.

Mr. Field said that there is a limit as to how much people can pay for a proposal especially when they are limiting the number of lots made available. He said that his clients would appreciate any acceleration in the process, and hopes that the final review would be no later than the March meeting.

Mr. Chagnon said that a yield plan was submitted and went over the different scenarios shown on different plans. The plans showed a potential of 24 to 25 developable lots. Mr. Chagnon said that all of the lots have at least a ½ acre of uplands, as required by the Conservation Subdivision Design Ordinance.

Mr. Chagnon discussed the requested waivers:

Request for waiver to Section 417.F.1 of the Conservation Subdivision Ordinance – Road Frontage and minimum lot width:

Mr. Chagnon explained that under the Conservation Subdivision Ordinance the Board is allowed to waive requirements even though they are requirements under the Zoning Ordinance. He said that the request is to waive the 100-foot frontage requirement and the

width requirement for lots 1 and 2 to allow 40-feet of frontage and maximize the amount of acreage in the conservation land and to the frontage requirement for lot 3.

Mr. Wilson opened the public hearing at 8:22pm.

Mr. Wilson closed the public hearing at 8:23pm without public comment.

Mr. Kroner commented that given the attempt to conserve as much land as proposed, it makes sense to grant the waiver.

Dr. Arena Moved and Mr. McManus seconded the Motion to grant the waiver request to Section 417.f.1 of the Conservation Subdivision Ordinance – Road Frontage and minimum lot width.

The vote was unanimous in favor of the Motion (7-0).

Request for waiver to Section VIII.B.15 of the subdivision regulations – topography:

Mr. Chagnon asked that the Board accept the plans as they are now because it is hard to provide a topography boundary plan during the winter months. He said that the State requires a complete topography plan of the entire site before issuing State Subdivision approval, so the plan will be done eventually.

Mr. McManus commented that the maps consist of a lot of information as it is.

Mr. Wilson opened the public hearing at 8:30pm.

Mr. Saunders asked why the driveways don't go over the ownership of each lot.

Mr. Wilson explained that the wetlands are shaped like an hour glass, and it brings the driveway in the thin part of the hour glass, and the driveways would be crossing a wetland and disturbing it.

Mr. Field explained that the conservation easement will reserve the right to construct the driveway in the conservation land.

Mr. Wilson closed the public hearing at 8:32pm.

Dr. Arena Moved and Mr. Kroner seconded the Motion to approve the waiver request from Section VIII.B.15 – Topography contour plan.

The vote was unanimous in favor of the Motion (7-0).

Waiver request for Section IX.A.2 of the subdivision regulations – underground utilities:

Mr. Chagnon explained that the utility poles already exist and it would not be cost effective to put the utilities underground.

Mr. Wilson commented that a dug trench becomes a drainage ditch that would negatively affect the wetlands. He said that it would protect the wetlands not to require underground utilities.

Mr. Wilson opened the public hearing at 8:41pm.

Mr. Wilson closed the public hearing at 8:42pm without public comment.

Dr. Arena Moved and Ms. Pohl seconded the Motion to grant the waiver request to Section ~~VIII.B.15IX.A.2 – Topography contour plan, underground utilities~~
The vote was unanimous in favor of the Motion 7-0.

Waiver request from Section VIII.B.20 of the subdivision regulations – Stormwater calculations and drainage control plan:

Mr. Chagnon mentioned the burden of the cost relative to the number of lots created, and more importantly the large amount of conservation land is not going to have any change in topography except for the driveways.

Mr. Field said that the private road will not be paved, but will be maintained to a good standard for the access of emergency vehicles.

Mr. Wilson opened the public hearing at 8:47pm.

Ms. Kohl said that she is completely uncomfortable about not having a drainage study done even for a minor project.

Mrs. Saunders asked if there will be a culvert constructed under the existing driveway. She said that she has witnessed the driveway completely under water in the past.

Mr. Field said that the current driveway is not satisfactory to the Skowronskis, and they want to improve it. He said that it is an issue that will be addressed.

Mr. Skowronski said that he regularly maintains the culvert by removing the growth of vegetation around the culvert.

Ms. Creighton said that the Public Works Director is assessing all the town roads, so he will be looking at that section.

Mr. Wilson said that there will be a homeowner's association that will have responsibility in perpetuity for maintenance of the "private" road, and the maintenance of the culverts should be "spelled out" in the homeowner's association.

Mr. Field said that the homeowner's association has not been formed as of yet because there is only one home-owner currently. He said as soon as there are neighbors they will be able to form an association, and they have already reserved a name for it.

Mr. Wilson said there needs to be a condition that the “private” road will be maintained, for the Select Board, the Police Department and the Fire Department for emergency access.

Dr. Arena said that he lives on a “private” road and it is the responsibility of the homeowner’s association to maintain it; the Town has nothing to do with it.

Mr. Wilson closed the public hearing at 9:00pm.

**Dr. Arena Moved and Ms. Pohl seconded the Motion to grant the waiver to Section VIII.B.20 as requested.
The vote passed (6-1-0). Ms. Kohl voted against.**

Waiver request to Section VIII.B.16 of the subdivision regulations – Identification of natural features.

Mr. Chagnon said that the regulation was discussed at the ARC meeting.

Mr. Wilson said that the Planning Board needed to determine if the plan included enough natural features such as the wetlands, the ledge out croppings, and any other natural features.

Mr. Skowronski said that there is a plan for lot 12-48-2 that shows the topography. The Board reviewed it.

Mr. Wilson opened the public hearing at 9:06pm.

Tamara Le asked for more information about the proposed conservation land not being opened to the general public.

Mr. Wilson said that it is a reasonable misconception that all conservation land is opened to the public. He explained that if the Town were using public funds, it would be a reasonable request to allow access for the general public. He said the public benefit is manifold; consider the preservation of wildlife habitat, protection of water resources, and aesthetic values but beyond that it has a monetary value to the Town because large blocks of conservation land don’t require town services or school services. He said that in the Skowronski case there is no outlay of public funds so it is reasonable for them to stipulate that public access is not allowed.

Mrs. Saunders asked if there will there a sign put up indicating it is a “private” road and if there will be “no trespassing” signs put up.

Mr. Skowronski said that there will be a “private” road sign put in place.

Mr. Wilson closed the public hearing at 9:20pm.

Dr. Arena Moved and Ms. Creighton seconded the Motion to grant the waiver to Section VIII.B.16 of the subdivision regulations.

The vote was unanimous in favor of the Motion (7-0).

Mr. Chagnon explained that the lots need to be merged prior to the subdivision.

Mr. Field said that the lots are not all merged because not all of the lots are in the same name, and they have to be before they can be merged. He further stated that the Applicants intend to do that.

Mr. Wilson said that the lots must be merged before the Board can approve the subdivision plan.

Mr. Chagnon said that Mr. Verra provided a proposed plan that showed how the lots would look when consolidated.

Mr. Chagnon said that two conditional use permits have been submitted. He said that the applicants still need to obtain the permit from the wetlands board for the wetlands crossing for the driveway, and state approval for the lots that are on septic.

Mr. Field submitted the draft easement document and Mr. Wilson said that it will be forwarded to the Town's Attorney for review. Mr. Field will also submit the homeowner's association documentation for the Town's Attorney to review. He said that Town Counsel is currently reviewing the document/agreement between the landowners and the Town.

Mr. Field went over the key points of the Conservation Easement.

Mr. Kroner Moved and Ms. Kohl seconded the Motion to accept jurisdiction of case #08:15.

The vote was unanimous in favor of the Motion. (7-0).

Dr. Arena Moved and Ms. Pohl seconded the Motion to continue case #08:15 to the February 17, 2009 Work Session meeting.

The vote was unanimous in favor of the Motion (7-0).

The meeting adjourned at 10:05pm.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved February 17, 2009

