



**MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Thursday, July 2, 2009
Mary Herbert Conference Room**

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Shep Kroner, Vice Chairman; Joseph Arena, Barbara Kohl, Tom McManus, Laurel Pohl arrived at 8:40pm, and Michael Coutu, Select Board Representative.

Alternates present: David McGilvary

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

Mr. Kroner convened the Meeting at 7:02pm.

Mr. McGilvary was seated for Ms. Pohl.

Mr. Kroner said that there was a request from Caesar Romano to rearrange the agenda. Mr. Kroner said that he would stick to the original order of the Agenda, and the Board agreed.

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 June 4, 2009 meeting.

The Board was in receipt of a letter from Attorney Phoenix on behalf of his clients, James and Karen Confalone, informing the Board that they withdrew their application without prejudice. The letter states that the Applicants understand that they would need to begin anew if they desire a subdivision of their North Hampton property in the future.

09:02 – Peter Horne, Trustee F.S. 123 Nominee Trust, H.T.L.A.E.H., Nominee Trust. The Applicant proposes a 3-lot subdivision. Property owner: F.S. 123 Nominee Trust, H.T.L.A.E.H. Nominee Trust, Peter Horne Trustee, PO Box 1435, North Hampton. Property location: 110 & 112 Mill Road. M/L 006-147-2 and 006-147-3, zoning district R-2. This case is continued from the June 4, 2009 meeting.

In attendance for this application:

Peter Horne, Owner/Applicant
Attorney Bernard Pelech, Wholey & Pelech Law Offices
Adele Fiorillo, NHSC Environmental Consultants
Steve Oles, MSC Engineering

Attorney Pelech explained that Mr. Horne has hired Ms. Adele Fiorillo of NHSC Environmental Consultants to perform an environmental impact study of his property as requested from the Board. He said that the study is close to being completed and asked that if any Member of the Board had additional requests of information to please let Ms. Fiorillo know now so that she may include it in the study.

Ms. Fiorillo said that they are not at the point in the study to draw any conclusion, but wanted to explain to the Board the approach that she was taking on the environmental study she was performing:

- Describe existing and proposed conditions of the site
- Based on Subdivision Regulation XI – Environmental Impact Analysis, they are looking at the soils and have completed a high intensity soils survey. They have determined that there are well drained and moderately well drained soils on the site.
- There are varying depths of bedrock.
- Topography is established for existing conditions; they know where the steep slopes are, based on the topo survey work.
- Completed a vegetation mapping on the site.
- Categorized vegetation based on recognized community types; there are six different vegetation types.
- Looking at the fish and wild life habitat and habitat associated with Mill Pond.
- Separated wetlands and uplands to analyze separately.
- Did complete wetland delineation; there are poorly drained and very poorly drained soils on the site.
- Classified the wetlands and discovered three different wetland areas on the property
- Looked at wetlands in terms of functions and values.
- Relied heavily on the work the engineers did on the site, such as drainage calculations.
- Used the model *Environmental Planning on site wastewater treatment in New Hampshire*. They look at the maximum density on the lots and utilize the HISS Map, and calculations based on slopes, and impervious land area.

Ms. Fiorillo said that they have taken a comprehensive approach but are certainly willing to entertain any input the Board may have.

Ms. Fiorillo explained that they establish a worst case scenario of what they intend to do on the site, and are assessing the entire site.

Ms. Fiorillo said that she knows Dr. Lord very well and that they have a good working relationship. She said that they are pretty well on their way to having an environmental impact study completed and suggested to the Board that it may be more fruitful to have Dr. Lord do a peer review of the completed study instead of having Dr. Lord do his own assessment. She said that her study would be complete in about two weeks.

Mr. McManus asked about herbicides and pesticides. Ms. Fiorillo explained that the State has regulations regarding herbicides, and they would be complying with those. She said that prohibiting pesticides altogether prevents the protection of the forests from invasive species that are destroying the forests.

Mr. Coutu commented that the peer review makes sense. He asked what the resolution would be if Dr. Lord's peer review of the analysis contains matters where there is a difference of opinion. Ms. Fiorillo said that it is usually the reviewer that rules, but it is up to the Board.

Ms. Fiorillo said that the peer review system works well because it enables the Board to hire someone that they have confidence in to be able to move forward and enables the producers of the analysis to ensure that their product is "up to snuff".

Dr. Arena said that the peer reviewer will review the work completed, and if there is anything else he feels he needs to know he will be free to do so. Mr. Pelech agreed.

Dr. Arena said that he is absolutely in favor of the peer review.

Ms. Kohl referred to a letter from Chris Ganotis dated June 11, 2009. She asked Ms. Fiorillo if the lot/record permit search would be conducted as stated in Mr. Ganotis' letter, and mitigation measures to protect Little River. Ms. Fiorillo said that it would be covered.

Mr. Pelech said that he did not get a copy of the letter and asked Ms. Chase to send him a copy.

Mr. Kroner suggested continuing case #09:02 – Peter Horne the August 6, 2009 Meeting. Mr. Kroner said that there are issues brought up from an Abutter that would need to be addressed at the next Meeting. He said that the Abutter is questioning possible commercial activity on the site.

Attorney Pelech informed the Board that an Administrative Appeal has been filed with the ZBA on Mr. Mabey's issuance of a certificate of occupancy for Mr. Horne's three-story garage.

Mr. McManus is looking for information on pesticides and herbicides and fertilizers on the property. He said that Board needs to do its due diligence in doing everything they can to protect Mill Pond.

Dr. Arena Moved and Ms. Kohl seconded the Motion to continue case #09:02 – Peter Horne to the August 6, 2009 Planning Board Meeting.

The vote was unanimous in favor of the Motion (6-0).

09:07 – Gilbert & Diane Gagne, 139 Walnut Ave., North Hampton, NH. The Applicants propose a two-lot subdivision. Property owners: Gilbert & Diane Gagne, Trustees, Gilbert and Diane Gagne Revocable Trust. Property location: 139 Walnut Ave., M/L 019-054, zoning district R-2. This case is continued from the June 4, 2009 meeting.

In attendance for this application:

Gilbert and Diane Gagne, Owner/Applicant

Attorney Eileen Nevins

Thomas Brouillette, Surveyor

The Board was in receipt of copies of ten emails sent to the Planning and Zoning Administrator, from Abutters of Mr. and Mr. Gagne basically requesting that if the Board approved the subdivision they should also include a condition that the newly created lot would need to conform to the Winterberry Homeowners Association Covenants.

Ms. Nevins spoke on behalf of her clients, Mr. & Mrs. Gagnon, and said that the proposed lot, owned by the Gagne's is not part of the Winterberry subdivision. She read from the Declaration of Restrictive Covenants for the North Hampton Winterberry Sub-division. It states that there are 16 residential lots subject to restrictions, she referenced recorded plan D-27724. She said that the Gagne lot is not subject to the restrictive covenants, and that the only restrictions the lot has are described in Mr. & Mrs. Gagne's deed (Book 3518, Page 2998). She read from a portion of the deed *the premises is also conveyed subject to a landscaping easement for the benefit of the Winterberry of North Hampton Homeowners Association, which easement shall include the right to install landscaping, stone walls, lighting, irrigation, signage, identifying the subdivision, and*

to have access to the parcel to maintain all installations and landscaping. By acceptance of this deed, Grantees agree, for themselves and their successors and assigns and successors in title, not to use the parcel hereby conveyed in any manner which would disturb the landscaping or installations placed there by or on behalf of the Association, nor shall Grantees place any structures, except for a driveway, on the parcel. Further, Grantees will not cut any live trees in existence as of the date of the granting of this Deed without approval of Grantors or said Homeowners Association at such time it comes into existence. Attorney Nevins opined that the Board cannot force the new owner to conform to the Winterberry Homeowner Association Covenants.

Mr. Brouillette handed out new plans that included the proposed driveway and additional test pits. He explained that the proposed driveway can be installed between two cedar trees eliminating the need to cut down any trees.

Mr. McManus asked if a 13-foot driveway could fit between the two cedar trees. He explained that the Board created an ad hoc committee to discuss safety issues with the Fire Department regarding driveway access issues with fire trucks with their apparatus being able to get through. He said that in the future it may be a requirement that driveways need to be 13-feet wide by 13-feet high. He added that it is not a requirement at this time.

Mr. West pointed out that the width of the canopy on trees is usually the width of the root system of the trees, and if the driveway is constructed up to the edge the likelihood is that compaction of the root system will take place and would generally lead to the ill health of the tree. He asked if the driveway could be moved to the center between the two trees.

Mr. Brouillette said that driveway is depicted on the plant to be ten-feet. He suggested that a corrugated metal pipe be installed by the edge of the driveway to retain the earth so there would be no fill over the root system of the tree.

Mr. Kroner opened the Public Hearing at 8:07 p.m.

Mr. Paul Quirk, President of the Winterberry Homeowner Association, said that he had a couple of concerns. He questioned the language in the deed regarding the cutting of trees and what areas of trees is the restriction referring to.

Mr. Kroner pointed out that Winterberry Lane is not a private road; it is a road that has been accepted by the Town of North Hampton. He said the owner of the proposed lot has the right to access the lot from Winterberry Lane.

Dr. Arena said that the new proposed lot would be off of Winterberry Lane and suggested that Mr. Gagne sit down with the members of the Winterberry Homeowners Association and come to some sort of agreement.

Mr. Quirk agreed, and asked that the Board make it a requirement of the new lot owner to conform, and be a part of the Winterberry Homeowner Association.

Attorney Nevins said that Mr. Gagne has no intention of extending his right of way to access the new proposed lot. She said that the new lot has the right to be accessed off of Winterberry Lane as long as no trees are cut as stated in the deed restriction. She added that she thinks the abutters

will be pleasantly surprised that the new proposed house is going to conform to the rest of the neighborhood.

Mr. Gagne said that he has no intention of joining the Winterberry Homeowner Association and is not making it a condition for the new owner of the new proposed lot. He said that the new owners would be the ones to decide whether or not they wanted to be a part of the Winterberry Homeowner Association.

Mr. Coutu asked if there was another access way to the new proposed lot other than crossing through Winterberry Lane. Mr. Brouillette said that there was not. The frontage on the new lot is off of Winterberry Lane.

Mr. Kroner closed the Public Hearing at 8:30 p.m.

Mr. Kroner gave the Board the option to move forward or to continue the case and seek a legal opinion regarding the language of the landscape easement.

The Board discussed taking jurisdiction of the Application.

Mr. Coutu Moved and Ms. Kohl seconded the Motion to take jurisdiction of case #09:07 – Gilbert and Diane Gagne.

The vote was unanimous in favor of the Motion (6-0).

Mr. Coutu said that he understands the concerns of the abutters, but it is not the authority of the Planning Board to insist that the new lot conform to the rules and regulations of the Winterberry Homeowner Association.

Mr. Kroner listed some proposed conditions if approved.

- Recordable Mylar
- Certificate of monumentation
- A note added to the plan referencing the deed restriction and the easement
- A note added to the plan stating that best possible practices be used when installing the driveway to protect the trees.
- The section of the driveway within the easement to be made of permeable material.

Mr. Coutu Moved and Mr. McGilvary seconded the Motion to approve case #09:07 – Gilbert and Diane Gagne two-lot subdivision with the following conditions:

- **Recordable Mylar**
- **Certificate of monumentation**
- **A note added to the plan referencing the deed restriction and the easement**
- **A note added to the plan stating that best possible practices be used when installing the driveway to protect the trees.**
- **The section of the driveway within the easement to be made of permeable material.**

The vote was unanimous in favor of the Motion (6-0).

The Board took a five minute recess.

The Board reconvened.

Ms. Pohl joined the Board.

Mr. McGilvary was seated for Mr. Wilson

09:08 – Federated Construction, 535 Boylston Street, Boston, MA. The Applicant, Shawn Smith of Site Enhancement Services, 6001 Nimitz Parkway, South Bend, IN, on behalf of the owner, requests a waiver from Article X, Section 10.F.3.b.3 to allow for Dollar Tree design color for the non-illuminated awnings. Property owner: Federated Companies. Property location: 26 Lafayette Road. M/L 003-101, zoning district I-B/R. This case is continued from the June 4, 2009 meeting.

Mr. Shawn Smith phoned and asked for a continuance because his flight was cancelled, due to inclement weather, and unable to attend the Meeting.

Ms. Kohl Moved and Dr. Arena seconded the Motion to continue case 09:08 – Federated Companies to the August 6, 2009 Meeting.
The vote was unanimous (7-0).

New Business

09:09 – Ruth Donais, Trustee, Ruth Donais Revocable Trust 2004. The Applicant proposes two-lot subdivision. The Applicant requests a waiver to Subdivision Regulation VIII.B.20 Stormwater drainage control plan. Property owner: Ruth Donais, Trustee, Ruth Donais Revocable Trust 2004. Property location: 46 Walnut Avenue. M/L 014-160, zoning district R-2.

In attendance for this application:

Caesar Romano, representing Ruth Donais
Ruth Donais, Owner/Applicant.

Mr. Kroner explained that the lot in question was once two separate lots and was voluntarily merged by the owner for tax purposes in 2007. The Applicant is before the Board to re-subdivide the lots.

Mr. Romano explained that the driveway was relocated from the original area and was approved by the State of New Hampshire DOT. He is expecting the new deed in the mail within the week.

The stormwater control plan waiver request was discussed.

Mr. West said that a stormwater control plan is not usually required for a two-lot sub-division.

Dr. Arena Moved and Ms. Kohl seconded the Motion to grant the waiver request from Sub-division Regulation VIII.B.20 – Stormwater drainage control plan.
The vote was unanimous in favor of the Motion (6-0).

Mr. West said that he had a couple of issues with the plan. He said that the plan should be corrected by changing the zone from R-3 to R-2 and changing the side setbacks from 35-feet to 30-feet. He said that the new number for the driveway permit should be added to the plan. Mr. West said that a granite bound should be placed in front and suggested that the Owner take a good look to make sure there isn't one already there.

Dr. Arena Moved and Mr. Coutu seconded the motion to take jurisdiction of case 09:09 – Ruth Donais.
The vote passed (6 in favor, 0 opposed and 1 abstention). Mr. McManus abstained.

The Board asked for a copy of the deed that stipulates that the driveway is shared.

Dr. Arena Moved and Ms. Pohl seconded the Motion to approve case # 09:09 – Ruth Donais, two lot sub-division with the following conditions:

- **Recordable Mylar**
- **Certificate of monumentation**
- **A granite bound to be set at the front south/east side of the property**
- **The zone district on the plan changed from R-3 to R-2, and the side setbacks changed from 35-feet to 30-feet**
- **A copy of the deed from the State of New Hampshire regarding the driveway cut, and the new driveway permit number to be added to the plan.**
- **A copy of the covenants depicting the language of the shared driveway.**

The vote passed (6 in favor, 0 opposed and 1 abstention). Mr. McManus abstained.

Other Business

GFI update – The status on the bond issue has not changed. The Town is still moving forward on resolving it. Mr. Kroner said that he would add the topic on the next Work Session Agenda.

The Board discussed the Superior Court decision on the Salomon vs. Town of North Hampton Planning Board case. The Superior Court decision to overturn the Planning Board's decision to deny Mr. Salomon's two-lot sub-division was handed down on June 16, 2009. The 30-day appeal period to Supreme Court ends July 16, 2009.

Mr. Kroner asked for Mr. West's advice on the matter.

Ms. Pohl and Ms. Kohl agreed that the Board should discuss possibly appealing the Superior Court ruling to the Supreme Court.

Discussion ensued on which Board makes the ultimate decision on whether or not to appeal to the Supreme Court. If it is the Select Board's decision then the Planning Board would need to take a vote to recommend to the Select Board whether or not to appeal.

The Board raised many questions regarding the signing of the Mylar, and whether or not they could abstain from signing the Mylar, and if they did abstain, would they be held in contempt of Court? The Board decided to hold a special meeting and seek legal advice to these questions. Mr. Kroner said that he would contact everyone and find out the availability of each Member and meet before July 16th.

Mr. Coutu explained to the Board that the Supreme Court will judge whether or not the Superior Court applied the law correctly.

**Mr. Coutu Moved and Dr. Arena seconded the Motion to Adjourn at 9:55 p.m.
The vote was unanimous in favor of the Motion (7-0).**

Respectfully submitted,
Wendy V. Chase

Recording Secretary Minutes approved July 16, 2009