



Meeting Minutes
North Hampton Planning Board
Monday, November 5, 2012 at 6:30pm
Town Hall, 231 Atlantic Avenue

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription. Due to the Presidential Election on November 6, 2012, the Meeting date was changed to Monday, November 5, 2012.

Members present: Shep Kroner, Chair; Laurel Pohl, Vice Chair, Joseph Arena, Tim Harned, and Phil Wilson, Select Board Representative.

Members absent: Barbara Kohl and Mike Hornsby.

Alternates present: Nancy Monaghan

Others present: Wendy Chase, Recording Secretary

Mr. Kroner convened the meeting at 6:30pm and noted for the record that there was a quorum.

Mr. Kroner seated Ms. Monaghan for Ms Kohl.

I. Unfinished Business

Case #12:10 – Golden Ks LLC, 63 Atlantic Avenue, North Hampton, NH. The Applicant proposes a 2-lot subdivision by subdividing one (1) residential house lot off from the parent parcel (005-038), which will front onto Chapel Road, leaving the commercial property with a single residence on Atlantic Avenue. The Applicant also proposes a minor lot line adjustment to merge adjacent lot, identified as Tax Map 5, Lot 39, with the newly created residential house lot. The Applicant requests the following waiver from the Subdivision Regulations: Section IX D.2 – Monumentation Requirement. Property owner: Golden Ks LLC, Guy Marshall, 63 Atlantic Avenue, North Hampton, NH: Property location: 63 Atlantic Avenue and Chapel Road; Tax Map & Lots 005-038 and 005-039; Zoning district: R-2. This Case has been continued from the October 2, 2012 meeting.

In attendance for this application:

Guy Marshall, Owner/Applicant
Timothy Phoenix, Applicant's Counsel
Eric Weinrieb, Applicant's Engineer
Mark West, West Environmental

Mr. Kroner gave a brief synopsis of outstanding concerns the Board had from the last meeting:

- Drainage issues regarding the driveway. He commented that the Town's Engineer mentioned the need of a conditional use permit, but Mr. Kroner did not agree because the Ordinance

states clearly that a conditional use permit is needed if fill is in excess of 3,000 square feet and the project proposes less than that.

- Discussion with the Road Agent regarding the original installation of the culvert and the pipes in the northeast corner of the lot, and the potential impact downstream.
- Discussion on the location of proposed driveway, debate on whether it should be moved out of the wetland area, and the best location for sight distance.
- Waiver request for Monumentation - the Board needs to determine whether to grant it, or not.
- Mr. Harned added that there was also discussion on whether the 100-foot wetland setback was properly delineated on the northwest corner of the lot because it was not delineated on the adjacent property.
- The Board received the drainage analysis and the engineering review of the drainage analysis from the Town's Engineer, Steve Keach.

Mr. Weinrieb addressed the issues:

- Mr. West delineated the additional wetlands boundary and it was added to the plan. He said that it did not impact the project, but they did change the building envelope slightly as depicted on the updated plan.
- The Applicant also applied for, and received, a driveway permit from the Town. He said that there will be a small wetlands crossing for the driveway and the total impact of surface area within the wetland buffer will be 2,800 square-feet, and agrees that since it is under 3,000 square-feet, a conditional use permit is not required. He said the proposed location is the best for sight distance.
- They will add the actual square footage to the lots and the street address on each lot, although it is shown in the title block.
- The Variance approved by the ZBA to Article V, Section 501.2 on August 28, 2012 was added to the plan.
- The Applicant agrees with Keach and Nordstrom that the monuments will be set, the plantings planted, and the final plan stamped by all the Professionals associated with it prior to receiving a certificate of occupancy.
- Mr. Weinrieb finished the drainage analysis and submitted it to the Town's Engineer, KNA and they concurred with the findings and stated in their review that they take no exception offered in the analysis regarding stormwater management.

Mr. Kroner asked that the two letters from Abutters received on October 25, 2012 and November 2, 2012 be submitted into the record.

Mr. Weinrieb addressed the Abutter's letters that indicated they had concerns over the drainage design. Mr. Weinrieb said that they have a sound design that is supported by the Town's Engineer.

Dr. Arena said that the drainage issues on the northeast corner are no concern of the Planning Board; it's the responsibility of the Town. He said that there needs to be an adequate culvert under the proposed driveway to mitigate the sheet flow of water caused by heavy rains.

Mr. Marshall explained that he spoke to Joanne Lamprey and she said her father installed a galvanized steel pipe that rotted out and the contractor, Mr. Robbins, replaced it with a solid plastic pipe; that pipe

was improperly installed and “floated up” a few years later. Mr. Robbins, in coordination with the Town, replaced the plastic pipe. He remarked that the pipe has no bearings on his proposal.

Mr. Kroner opened the Public Hearing on the Drainage Study at 6:55 pm.

Alan Williams, 38 Chapel Road, North Hampton said that the black pipe Mr. Marshall is referring to is at least 40 feet into his back yard. He said there was never an easement drawn up or permission given to Joanne Lamprey to put it in. He doesn’t want anything done that would increase the flow of water onto his property.

Jake Parker, representing Mr. and Mrs. Williams, 38 Chapel Road, North Hampton asked to address the driveway permit. He said that the approved driveway permit was based on the original three (3) lot subdivision and now that the proposal has changed to a two (2) lot subdivision there is a way to access the lot and meet the 200-foot sight distance without impacting the wetlands. Mr. Parker repeated what he said at the last meeting that NH DES permits were never pulled when the pipe or the culvert was installed. He said that fixing the pipe requires DES approval, and if the Board approves the plan, they should require that the proper NH DES permits are pulled for the original pipe, as well as, any improvements to it. Mr. Parker said that he did not review the Drainage Analysis. Mr. Kroner said that it was available at the Town Office for review.

Mr. Kroner closed the Public Hearing at 7:05 pm.

Mr. Weinrieb pointed out that the NH DES would not have issued the Applicant a permit with a known violation; the pipe was installed a long time ago. He said the Applicant is willing to remove the pipe if that’s what the Abutters want, but if they did, they would not be able to access the shed on their own property. He said they intend to go back to the State with an updated plan for a two (2) lot subdivision versus the initial three (3) lot subdivision that the wetlands permit was based on.

John Hubbard, Director of Public Works said that there is a 15-inch concrete culvert under Chapel Road that takes the water from the north side up into the woods; it is a crucial culvert for Chapel Road. He reviewed the NH DES Dredge and Fill application dated 9/18/1998 that was for the maintenance of the drainage ditches and pond and concluded that the owner applied for it to maintain field productivity. The pipe lies in the drainage ditch and directs water down to the natural drainage swale. The catch basin is in the town’s right of way and is close to the outlet of the culvert; the structure works, but will never be able to handle extremely high storm water events. It was mentioned that the water went over Chapel Road during the 2006 Mother Day Storm event. Mr. Hubbard doesn’t know how long the pipe has been there and it would be to no one’s advantage to remove it; if removed it could cause ponding on the Abutter’s property during heavy rains. He said it is the Town’s responsibility to make sure the culvert is clear at all times. He said that Mr. Parker suggested moving the culvert down, and Mr. Marshall was agreeable to that idea. Mr. Hubbard said that he thought it was a good suggestion.

Dr. Arena said that the Planning Board should only be concerned with the drainage issues in the area of the proposal. The pipes put in years ago on the William’s property are not the Planning Board’s concern; the water issues and maintenance of the ditches along Chapel Road are the responsibility of the Town.

Mr. Wilson said that the culvert under Chapel Road is not adequate to alleviate water build up during heavy rains. The drainage issue on the northeast part of the property doesn’t appear to affect the

building envelope, or whether or not it is a buildable lot, but after reviewing the HISS map and the soils that show the area having poorly drained and moderately poorly drained soils, he is concerned that the building envelope is not adequate to support a building.

Mr. Weinrieb said that the soils are adequate in the building envelope and exceeds all town requirements.

Mr. Williams commented from the audience. He said he has lived at 38 Chapel Road for 10 years and the water has gone over Chapel Road twice within that time period. He said that the purpose of the installation of the pipe is to push the water onto his lot.

Mr. Kroner said that the water would still go onto the William's property even if there were no Road, or culvert, or pipe.

Mr. Wilson said that the pipe was put in to bypass water flowing on the Lamprey property and if there were no pipe there the water would sit on the property and some of it would infiltrate, some would evaporate, and the rest would run off naturally. The Planning Board cannot approve a plan that would increase the volume or velocity of water runoff onto abutting properties; if the pipe was put in without approvals or proper permits, it is incumbent upon the Planning Board to do something about it, if not, the Board should move on.

Dr. Arena said that the Lamprey's once used the property for haying for their oxen; the pipe was put in place to drain water off of their property to make the land more productive; it does not change the picture of the sheet flow of water over Chapel Road; the water is impeded by other obstacles.

Mr. Parker asked to speak about the runoff of water from a house, roof, and driveway, and the impact it would cause.

Mr. Kroner explained that the Public Hearing has been closed and that there has been a lot of discussion on the drainage and the pipe. He said the Board Members understand the issues at hand. He said the Board has scientific evidence; drainage calculations in a drainage study submitted by the Applicant's Engineer, that has been reviewed by the Town's Engineer stating that there is no impact.

The Board addressed the Waiver Request from Section IX.D.2 – Monumentation of the subdivision regulations.

Mr. Kroner opened the Public Hearing at 7:35pm.

Mr. Kroner closed the Public Hearing at 7:36pm without public comment.

Mr. Wilson said that when the Board has the opportunity to bring things up to town standards it ought to do so. He said that he is not in favor of the waiver request.

The Board agreed.

Dr. Arena moved and Ms. Pohl seconded the motion to deny the waiver request to Section IX.D.2 of the Subdivision Regulations.

Mr. Weinrieb said that the Applicant had no problem replacing the iron pins with granite monuments. He said it would be an added cost of \$200.00, so on behalf of his Client, Mr. Marshall, he withdrew the waiver request.

Ms. Pohl withdrew her second to the motion and Dr. Arena withdrew his motion.

The Board addressed the minor lot line adjustment. It was noted that the Zoning Board Variance approval included a condition that lots identified as Tax Map 005, Lots 038 and 039 shall be combined.

Mr. Wilson moved and Ms. Pohl seconded the motion to approve the Applicant's request to abandon the lot line between Tax Map 005, Lots 038 and 039.

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

Mr. Wilson commented on the fact that the Town's RPC Circuit Rider, Brian Groth, stated, in his earlier review, that the drainage issue is a civil matter between the Applicant and the Abutter, and concluded that there was nothing the Board could do to remedy it.

Mr. Wilson moved to approve the subdivision application.

Mr. Wilson said that since he was not at the last meeting, another Board Member should make the motion. He withdrew his motion.

Mr. Weinrieb said that they have a dredge and fill permit but will go back to NH DES with the most current subdivision plan (2-lot subdivision). He said that the Applicant is willing to put in a 20-foot easement on each side of the culvert, so if the town wanted to maintain it they would have the right to do so.

It was a consensus of the Board that Town would not be responsible in maintaining anything except the culvert under Chapel Road. Mr. Hubbard agreed that that pipe going under Chapel Road is all that the Town is responsible for maintaining. He said the problem could be solved by removing the culvert and pipe and re-establishing the swales, but then the swales would have to be maintained.

After extensive discussion on the pipe, culvert and Town vs. Applicant responsibilities, Mr. Kroner offered a list of Conditions of Approval.

The Board discussed the functionality of the culvert. Mr. Wilson suggested adding a condition that the Applicant shall submit to the Board, at his expense, a letter that affirms that the problem with the cleaning and maintenance of the Town's culvert under Chapel Road has been remedied at the satisfaction of the Town's Director of Public Works, John Hubbard, and the Town's Engineer and Applicant's Engineer.

Dr. Arena commented that an Engineer may determine that there is no need for a catch basin. The Board agreed that that could be the case.

Mr. Harned suggested the following condition: The landowner is accepting responsibility for the catch basin and the exit pipe, and any corrections made to remedy the situation, will be submitted by the Engineer and approved by the North Hampton Director of Public Works, the Town's Engineer, and will have all the proper permits from any governing agencies that are required. Per Mr. Wilson's

suggestion, Mr. Harned added, that the Board receives a letter from the Engineer affirming that solutions to the problems have been met.

Mr. Williams spoke from the audience and asked what recourse he has if the volume of water is increased on his property due to the plan the Engineers come up with.

Mr. Kroner said that it would be a civil matter that the Planning Board cannot get involved in.

Mr. Phoenix said that it would not be fair to impose a condition that would make the applicant responsible for everything private or not, even for a catch basin or culvert that he didn't put in.

Mr. Harned said that whatever is set up there has to be easily maintained and that the water flows through it. Once the water comes out of the culvert on the south side of the road it becomes the landowner's responsibility to provide the mechanism to enable that water to move on.

Ms. Pohl suggested adding "downstream of the culvert" to Mr. Harned's suggested condition.

Mr. Wilson moved and Ms. Pohl seconded the motion to approve the two (2) lot subdivision; Case #12:10 – Golden K's LLC, with the following Conditions:

1. **Recordable Mylar.** Applicant shall submit a recordable Mylar of the approved plan with signatures and seals affixed of all licensed professionals whose names appear on the plan.
2. **Certificate of Monumentation.** Applicant shall provide the Board with a Certificate of Monumentation, stamped and signed by a NH LLS, certifying that all monuments depicted on the plan have been properly set.
3. **State Permits.** Applicant shall submit evidence of receipt of all required federal, state, and local permits, including but not limited to, approval for subdivision, and shall note their numbers, as appropriate, on the plan.
4. **L-CHIP Fee.** Applicant shall submit a check made payable to the Rockingham County Registry of Deeds for \$25.00. (This mandatory State Fee is to fund The Land and Community Heritage Investment Program).
5. **Fees.** All fees incurred by the Planning Board, including but not limited to, Consulting, Engineering and Legal fees, have been paid by the Applicant.
6. A note shall be added to the plan that notes the square footage of each lot.
7. It shall be specified on the final plan the future addresses of lot 005-039.
8. The final plan shall be stamped by the Certified Wetland Scientist and Certified Soils Scientist.
9. No Occupancy Permit will be granted until evergreen plantings and loam and seed is installed over existing gravel driveway as depicted on Sheet C-1 of the project plans.
10. A final Dredge and Fill Permit from NH DES shall be submitted to the Town and the permit number shall be noted on the final plan.
11. All monuments shall be set and noted on the plan in accordance with the requirements of Section IX.D of the Subdivision Regulations.

12. The Applicant shall submit to the Board, at his expense, a letter from the Applicant's Engineer that affirms the functionality of the catch basin, which captures the stream flow from a town owned culvert under Chapel Road, and that any issues with the functionality of the catch basin be remedied to the satisfaction of the Town's Director of Public Works, John Hubbard, and the Town's Engineer.

Ms. Monaghan remarked that it is the Planning Board's responsibility to make sure that the plan, and conditions approved, does not exacerbate the water issue on the abutting property.

Mr. Kroner said that the condition is establishing the fact that it can't exacerbate the water issue, and if the new proposal does, the Director of Public Works and the Engineers won't approve it, and the condition won't be met and a building permit could not be issued.

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

Mr. Kroner called for a five minute recess at 8:15pm.

Mr. Kroner reconvened the meeting at 8:25pm.

II. New Business

There was no "New Business" before the Board.

III. Other Business

Thera Research, PO Box 890, North Hampton, NH, through its Attorney, Peter Loughlin, request a two-year extension on the Conditional Use Permit to install a Distributive Antenna System (DAS) and use the "Rowell" building as its hotel; approved by the Planning Board on November 7, 2005; PB Case #05:19, and to update the Board on the developments in the telecommunications industry over the past year.

In attendance for this application:

Denis Kokernak, Owner Thera Research, Inc.

Attorney Peter Loughlin, Applicant's Counsel

David Maxson, Isotrope, LLC, Applicants Consultant

Mr. Maxson, contracted by Thera Research LLC, commented on the report that was provided to the Board regarding the wireless industry, and welcomed any questions the members had on it. There were no questions regarding the report.

Mr. Maxson reported "late breaking" news affecting this area. He said that the Town of Hampton approved an application from Verizon to install antennas on top of a condominium that will be "turned on" in a month or so. He submitted a picture of the building with the antennas into the record. The wireless coverage will be improved in the North Hampton area once the antenna's are "turned on". He said other carriers may become interested as well, extending coverage up the Coast along Route 1A. He said there has been steady progress throughout the year and wireless carriers continue to do what they do, and Thera Research is always when they are ready to address the lack of coverage.

Mr. Kroner inquired, that with all the changes in technology, should the Planning Board be considering changes to the Wireless Telecommunication Facilities Zoning Ordinance?

Mr. Maxson said that the roof top antennas get rid of half the loss of coverage. He said, fundamentally, what is structured in the Ordinance is right on the mark.

Mr. Kroner opened the Public Hearing at 8:58pm.

Mr. Kroner closed the Public Hearing at 8:59pm without public comment.

**Dr. Arena moved and Mr. Wilson seconded the motion to approve the request of a two-year extension, to November 2009, for the Conditional Use Permit approved by the Board on November 7, 2005, for the installation of a Distributive Antenna System (DAS) and use of the "Rowell" building as its hotel.
The vote was unanimous in favor of the motion (6-0).**

Mr. Kroner informed the Board that he sent a sample sign ordinance to the members to show them the contrast between it and the North Hampton Sign Ordinance; he did not intend that it be considered to replace the North Hampton Sign Ordinance; it was for informational purposes only. The Board will consider amendments to the Sign Ordinance at the November Work Session.

The meeting adjourned at 9:10pm.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved 11/27/2012