



Meeting Minutes
North Hampton Planning Board
Tuesday, July 2, 2013 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.

Members present: Shep Kroner, Chair; Joseph Arena, Tim Harned, Dan Derby and Phil Wilson, Select Board Representative.

Members absent: Mike Hornsby and Laurel Pohl.

Alternates present: None

Others present: Jennifer Rowden, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Mr. Kroner convened the meeting at 6:32pm and noted for the record that there was a quorum.

I. Old Business

1. **Case #13:02 – Harbor Street Limited Partnership, 7B Emery Lane, Stratham, NH 03885.** The Applicant, Joseph Falzone, Harbor Street Limited Partnership, submits a pre-application Design Review pursuant to Subdivision Regulation VI.A.2. – Design Review Phase, for a proposed 49-unit residential workforce housing subdivision and proposed road totaling 3,200 feet. Property owner: Field of Dreams at Post Road, LLC, 7B Emery Lane, Stratham, NH 03885; Property location: 160-186 Post Road, North Hampton; M/L 018-038-000; Zoning District R-1: High Density and R-2: Medium Density. This Case is continued from the June 4, 2013 meeting.

In attendance for this application:

There was no one in attendance for this application.

Mr. Wilson explained that Case #13:02, was continued to this meeting pending the outcome of a grant from the US Farm and Ranchland Protection Program; receiving it is contingent on the purchase of the property to permanently conserve the property. The Board agreed to continue the Case until the August 6, 2013 meeting pending the outcome of the funding.

Mr. Derby moved and Mr. Wilson seconded the motion to continue Case #13:02 – Harbor Street Limited Partnership, to the August 6, 2013 meeting.

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

II. New Business

1. **Case #13:09 – Steven and Debra Kelleher, 13 Palmer Drive, Kensington, NH 03833 and John and Linda DiMona, 22 Bradley Lane, North Hampton, NH.** The Applicants propose a minor lot line adjustment to rectify a possible encroachment issue, while maintaining the two (2) acre lot requirement for each lot. The Applicants request the following waivers from the Subdivision Regulations: (1) Section VIII.B.15 – Existing and proposed topographic contour boundaries, (2) Section VIII.B.16 - Natural Features and other essential features information required for the plan format, and (3) Section VIII.D.3 – High Intensity Soil Survey (HISS) map. Property owners: Steven & Debra Kelleher; property location: Woodland Road, North Hampton; M/L: 006-142-000; Zoning District: R-2 and Property Owners: John & Linda DiMona, Trustees of the John and Linda DiMona Revocable Trust; property location: 22 Bradley Lane, North Hampton; M/L: 011-006-040; Zoning District: R-2 – Medium Density Residential.

In attendance for this application:

Steven and Debra Kelleher, Owners/Applicants (006-142-000)
John and Linda DiMona, Owners/Applicants (011-006-040)
David Collier, Engineer, Jones and Beach Engineering

Mr. Kroner explained that the lot line adjustment application involves a subdivision the Board approved a couple of years ago for Shane Smith.

Mr. Collier explained that he prepared the proposed lot line relocation plat before the Board. The proposal is to convey .42 acres from lot 6-142 to lot 11-6-40 while maintaining the two acre minimum lot requirement.

The Applicants were before the Board to rectify an encroachment issue. The Shane Smith Subdivision plan, submitted to the Board, and approved at the December 6, 2012 meeting did not show the existing property encroachment from lot 11-6-40 onto lot 6-142. The approval was appealed to Superior Court by Adriana Salomon and it was through the course of that legal action they discovered that lot 11-6-40 encroached onto lot 6-142. The encroachment was added to the final Mylar without the Board's knowledge; it was signed and recorded at the Registry of Deeds on August 23, 2012, Plan number D-37371.

Mr. Kroner said that the Bradley subdivision was approved in the mid 1980s, the house was built and unbeknownst to the home owners of lot 11-6-40 the land encroached onto lot 6-142. Mr. Kroner said that had he known the unique shape of lot 6-142 before they approved the subdivision for Shane Smith a couple years ago, the Board may have voted differently, and stated for the record that in his own perspective it is not the type of lot that the Board would particularly want to be approving in the Town because it is not an organized way to structure lot sizes. He said that he understands the proposed lot line adjustment is proposed to try to rectify a situation, and it shows that efforts were made to maintain the two acre lot requirement.

Mr. Harned said that the boundary line in question was there when the subdivision for Country Club Estates (Bradley Lane) was approved in the mid 1980s and was effectively confirmed when the Shane Smith subdivision was created a couple of years ago; he asked Mr. Collier how the boundary line in question, that goes through the DiMona's garage (lot 11-6-40), could have possibly been overlooked.

Mr. Collier tried to explain to the Board what he thought may have happened when the property was surveyed for the Shane Smith Subdivision. He said that the survey crew discovered several monuments in the field and saw the DiMona's house, so thinking that the monument went further into the field they adjusted their traverse accordingly to locate all the monuments. In the follow up stages in staking the lines, the surveyors determined the boundary, and it was then they found that the house was over the line, and they are now trying to rectify it. He said when the work was originally done the crew could not determine where the boundary actually was.

Mr. Harned and Mr. Wilson both agreed that a boundary is a series of straight lines, and determining it is like connecting the dots; they did not know how they could have overlooked the DiMona's house.

Mr. Collier said that the survey was started in 2010 and the crew felt at that time they were one lot over and they started locating all the monuments along that section and when it was verified they were in the correct location the house was not located there at that time.

Mr. Harned said that the house was cited incorrectly in 1985, and then in 2010 somebody went out to verify the perimeter of the Smith lots and did not correctly verify the boundaries because there was a garage sitting on that boundary that wasn't discovered.

Mr. Collier said that the boundaries are correct and they don't run straight down the boundary line with the traverse so that's why the garage was missed. He said that the lot line adjustment is relocating the boundary line as far back as they could go and also maintain the two acre lot size requirement for lot 6-142.

Mr. Derby commented on the new shape of the property and asked if there was an agreement between the two parties that allows access to the back portion of the property for things like tree removal, pest control, etc.

Mr. Collier said that he knew of no agreement. The strip of land behind the new lot line will be 5-feet wide and approximately 250-feet long, not enough room for a piece of equipment to pass through.

Mr. Derby suggested that there be some kind of agreement between the two parties and future owners to allow access to the back portion of the land. Mr. Collier said that that could be accomplished through a deed, or he can add a note to the plan.

Dr. Arena mentioned "adverse possession" and Mr. Collier said that the parties involved are trying to work it out with a lot adjustment rather than going through the court system.

Mr. Kroner said that when the Shane Smith Subdivision was approved by the Board two years ago the information provided was accurate, and when the Bradley Lane Subdivision was completed it wasn't known then that the house was cited in the wrong location. The parties are before the Board trying to come to an agreement that reduces the time and effort that would be involved in any kind of court action.

Mr. Harned agreed that the house was cited in the wrong location and people do make mistakes, but it's difficult to digest when a second mistake is made on top of the first one, and now the board is looking at making the two acre lot's shape look worse than ever with a 5-feet wide by 250-feet long strip. He said that the Board relies on the experts to present them with information that is correct.

Mr. Wilson said that the Board received a Certificate of Monumentation stating that all the monuments were properly set correctly for the Shane Smith Subdivision. He questioned why the 5-foot strip could not be made wider, because the rear setback is 25-feet. He questioned how an emergency vehicle would be able to get through to the back of the lot. Mr. Collier said that they didn't make the strip wider because they would then need to cross wetlands. He said the back portion of the lot is forest and there would be no need for emergency vehicles to access it.

Mr. Kroner said that there is also a 35-foot piece of ledge that drops off and doesn't believe any vehicle can get back there because of this topographical feature.

Mr. Kroner said that the Planning Board's Long Range Planning Committee should start discussing length and width of lot requirements to avoid these types of misshaped lots.

The Board addressed the waiver requests. Mr. Rowden recommended approval of the requested waivers, VIII.B.15 –Topographical contours; VIII.B.16- Natural features and VIII.D.3-Hight intensity soils map (HISS), due to the lack of any modifications to either parcel other than the lot line adjustment.

Mr. Kroner opened the Public Hearing for all three Waiver requests - VIII.B.15 –Topographical contours; VIII.B.16- Natural features and VIII.D.3-Hight intensity soils map (HISS) at 7:08pm.

Mr. Kroner closed the Public Hearing at 7:09pm without public comment.

Mr. Derby moved and Dr. Arena seconded the motion to grant the waiver requests as written (VIII.B.15, VIII.B.16 and VIII.D.3).

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

Mr. Derby moved and Dr. Arena seconded the motion to accept jurisdiction of the lot line adjustment plan for Case #13:09.

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

Mr. Wilson read the Licensed Surveyor Certification into the record, *I certify that this plat was prepared under my direct supervision, that it is the result of a field survey by this office and has an unadjusted linear error of closure that exceed both the minimum of 1:10,000 as defined in section 503.04 of the New Hampshire code of administrative rules and the minimum of 1:15,000 as defined in section 4.2 of the N.H.L.S.A. ethics and standards. This survey conforms to a category 1 condition 1 survey as defined in section 4.1 of the N.H.L.S.A. ethics and standards.*

Mr. Wilson commented that the plan had Mr. Colliers stamp on the plan underneath the Certification and asked him if he physically went out in the field and verified the plan. Mr. Collier said that he did not, but stands by his seal, and the surveyors in the field were under his direct supervision. He said that he has been on the property and has taken pictures and has everything he needs to prove the boundary depicted on the plan is correct.

Mr. Kroner opened the Public Hearing at 7:17pm.

Craig Salomon, counsel for John and Linda DiMona, said that he spoke to his clients and they said they would be willing to memorialize access to the Kellehers and their successors to get to the North East corner of the lot. He said he shares the concerns with the Board of the survey that was approved for Shane Smith and unfortunately Mr. Smith has conveyed all three lots, and is now living in Maryland. Mr. Salomon said that when the plan was originally submitted by Shane Smith, Ms. Mary Meyers was not shown on the plan as an abutter and that was brought to the attention of the Board and to the Surveyor, but Ms. Meyers was told it didn't matter because it was off site. He said that the plan the Board approved did not show the encroachment, but the plan signed eight months later did show the encroachment and was signed by the Board and recorded at the Registry of Deeds.

Mr. Kroner closed the Public Hearing at 7:22pm.

Mr. Salomon explained that there was some intervening litigation that he was a party to as an individual and once the litigation was resolved the Mylar came in to be signed and showed the encroachment.

The Board asked that the Shane Smith Subdivision plan, and information about it, be provided at the next Work Session so that they could look at it.

Mr. Wilson said that he is embarrassed that he signed the Mylar, and it showed something that was not on the approved Plan. He explained the Planning Board's process to the public:

1. The Board approves or denies a subdivision plan with conditions.

2. Before the final approval, the applicant provides a Mylar which is made of material for recording purposes, but is a copy of the approved plan with added conditions, if any.
3. Once the conditions of approval are met, they are verified by the Planning & Zoning Administrator, who in turn, submits it to the Board for signatures, and then the Administrator takes the Mylar to the Registry of Deeds for recording.

He said that the he suspects all of the conditions of approval were met and the encroachment was added without informing anyone. He said that the Board relies on the experts; the Board agreed.

Mr. Salomon agreed that the Board does have to rely on experts and every surveyor he has worked with over the last forty years has been ethical and accurate and he thinks an honest mistake was made, so the Board should continue to rely on the experts.

Mr. Derby asked if there was legal action the Board could take if a licensed surveyor stamps a plan that was changed without informing the Board.

Mr. Kroner said that there are a lot of unique long lots still prominent in Town and very difficult to survey because there is a lot of conflicting meets and bounds.

Dr. Arena said that the Board assumes the experts that come before the Board are experts, and the Board uses them as the guidelines from which they come to their conclusions.

Mr. Wilson moved and Mr. Derby seconded the motion to approve the lot line adjustment plan, Case #13:09 – Kelleher and DiMona 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 a copy of the Certificate of Monumentation stamped and signed by a NH LLS, certifying that all monuments depicted on the plan have been properly set in accordance with the subdivision regulations.
3. A note shall be added to the plan that states, in approving this application, the Planning Board has noted that under ordinary circumstances this geometry would not be attractive to the Board for approval, however the circumstances dictate that for this particular application it is unavoidable.
4. A note shall be added to the plan that there shall be perpetual right of access for the owners and assigns of Tax Map 6, lot 142 to the North West boundary of the property across Tax Map 11, lot 6-40.

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

2. **Case #13:10 – Russell W. Jeppesen, 31 Welsh Cove Road, Newington, NH 03801, and SAA and Russell S. Jeppesen, 94 Mill Road, North Hampton.** The Applicants propose to reconfigure the previously approved 8-lot subdivision to create 5 residential lots (2 with the existing residences at 80 and 92 Mill Road) with the 6th (14.65 acres) lot to be conveyed to the Town of North Hampton as conservation land. Property owners: Russell Jeppesen, and SAA and Russell S. Jeppesen; property location: Atlantic Avenue and Mill Road; Tax Map 007, lots 2, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6 and Map 006, lot 39; Zoning District: R-1 – High Density Residential.

In attendance for this application:

John Chagnon, Ambit Engineering

Michael Donahue, Donahue, Tucker and Ciandella, Applicants/Owners Counsel

Russell S. Jeppesen, Owner of Tax Map and lot 006-039

Mr. Donahue said he was representing both Russell W. Jeppesen and Russell S. Jeppesen and said that they had a lot of support to pursue this proposal and are both pleased that it can be entertained.

Mr. Chagnon explained that the plan doesn't show each individual line that will be relocated because it would be very complicated and hard to read. It is titled properly as a consolidation of land and lot line relocation. He described the changes to each lot:

- Map 7, lot 2-1 comes off of Mill Road and will gain width at the street and lose area in the back and maintain 2.0078 acres.
- Map 7, lot 2-2 will gain width in frontage and will lose area in the back and maintain 2.464 acres.
- Map 7, lot 2-3 will increase because it will absorb some of the current Map 7, lot 2-4 and go from 2.4454 acres to 4.4706 acres.
- Map 7, lot 2 will have more area and more frontage; it contains one residential unit which won't change.
- Map 7, lot 2-4, formally a buildable lot, will become the 14.65 acre lot to be conveyed to the Town for conservation land and will absorb previously approved lots 7-2-5 and 7-2-6.
- Map 6, lot 39 is an existing residential lot with frontage off of Mill Road and will increase in area from 2.0068 acres to 5.3085 acres and will absorb part of Map 7, lot 2-4.

The basic concept is that 8 lots transferred to 6 lots, with two lots that have structures on them and the 14.65 acre lot is deeded to the Town.

Mr. Chagnon further explained that part of the transaction is to create an easement for the public's benefit that will go from Atlantic Avenue to Mill Road in and along the old road corridor between the stone walls, and there will be a spur off the road that will travel out to Mill Road, which will connect in close proximity to an existing trail linking the conservation areas. The 3 lots that are not built on yet have suitable test pit areas, and sufficient area between setbacks to put a house; they plan to move the driveway location so that lots 1 and 2 will share a driveway and lot 3 will have its own driveway.

Mr. Chagnon realized the Cemetery, on the property conveyed to Black Marble Realty, was not shown on Sheet one and said that he would fix that.

Mr. Wilson referred to RSA 674:39-a. Voluntary Merger and asked if this process was taken under consideration.

Mr. Kroner commented on the new lot configuration of lot 6-39 increasing to 5+ acres and asked if they planned to subdivide it.

Mr. Donahue said that there is a limited building envelope in that area and has always had a restriction on it that there could be no building on the lot along Atlantic Avenue. There are view issues and wetlands and wetland setback issues. It is technically feasible to come up with proposal to subdivide a two-acre lot with the requisite frontage, but not likely to happen because of the current regulations.

Mr. Wilson read part of RSA 674:39-a. Voluntary Merger, *no such merged parcel shall thereafter be separately transferred without subdivision approval*. He said that the applicant plans to convey a large portion to the Town for conservation land and therefore; the Board must treat it as a subdivision, which requires a Public Hearing.

Mr. Donahue agreed with Mr. Wilson, and said that is why they filed the application the way that they did.

Mr. Wilson moved and Mr. Harned seconded the motion to take jurisdiction of the application for Case #13:10 – Russell W. Jeppesen and Russell S. Jeppesen.

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

Mr. Kroner opened the Public Hearing at 8:00pm.

Don Scheulerle, 140 Atlantic Ave - asked if the conservation land will be open to the public, with trails through it, and access to it. He and his wife walk along the Fogg conservation property and hear gunshots and weaponry from hunters and wondered if there would be provisions of firearms discharged on the property; he said the owner said that the land would be "Posted", but he wanted the Planning Board to confirm it.

Mr. Kroner commented that the hunters they hear from the Fogg property are probably hunting on the "twelve shares" property which is not "Posted" and has been hunted on for the past 100 years.

Mr. Scheulerle said that his property abuts map 6, lot 39, and they were assured that the land would never have a house built between their western property line and the pond, and would like to make sure that is still the case.

Mr. Donahue said that the trail will be open to the public, and the firearm issue is part of the conservation easement and will state there is no hunting (including firearms and bows and all weaponry) on the property because of the close proximity of the residences. He further stated that there is a plan on record that states there will be no more building in the area Mr. Scheulerle inquired about, and will add the same notation onto the new plan; they are not saying the parcel could never be subdivided, because it could, but they would not put the home in that area.

Mr. Wilson said that according to the HISS map, the soil types in the area Mr. Scheulerle is referring to, makes it impossible to build on. He said that in the past the Conservation Commission has encouraged Eagle Scout projects on conservation land they've maintained, to put in trails for the public.

Candace Lord, Atlantic Avenue, asked where people would park that wanted to walk the trails.

Mr. Kroner said that the most logical place would be along the Fogg property; there is 200 feet of frontage and no parking prohibition there.

Mr. Wilson said that the Conservation Commission has talked to the Public Works Director about asking permission to increase the area on the Fogg property so that people don't have to park on the road, but didn't know if he was able to reach the owners.

Mr. Donahue said there will be no parking on the proposed conservation land because there is no vehicular access, other than public safety vehicles.

Betty Lessard, Hampton, NH, said that she and her brother, Woody Fogg, own the Fogg property. She said that she spoke with her brother and no one has approached them about the parking. She said that there isn't a problem right now, but there has been parking down the driveway. They did have a chain fence going across, to prohibit it, but someone took it.

John McGonagle, 152 Atlantic Avenue, said that he didn't think the Cemetery was depicted on the proposed plan correctly. He asked what studies have been done on the water going in and out of the pond that is there.

Mr. Kroner said that when the Board approved the original subdivision the lots were so large and the wetland buffers were so wide, the issue never came up. He reminded Mr. McGonagle that the new proposal was a reduction in buildable lots.

Mr. Chagnon commented that he wouldn't expect there to be an impact on the pond with site specific house lots. He will review the proximity of the Cemetery.

Mr. Kroner closed the Public Hearing at 8:25pm.

Mr. Harned started the discussion on the transfer of property to the Town.

Mr. Donahue said the 14.65 acres will be transferred to the Town, together with the easement rights.

Mr. Wilson said that the transaction is going to be a Fee Simple conveyance, so all the rights will be conveyed to the Town. He said there will probably be a conservation easement on the property at the time of the conveyance or shortly after, and asked who would hold the easement.

Mr. Donahue said that because the Town will be the Fee Owner it will hold the conservation easement as well.

Mr. Wilson said that when North Hampton Forever did their land transactions, they never wanted the development rights and the fee interest to be in the hands of the same party.

Mr. Donahue said they negotiated with the Conservation Commission, and then it needs Select Board approval. If the Planning Board or Select Board wants to bring it up to the Conservation Commission, the Applicants would have no problem with a secondary easement holder, such as South East Land Trust.

Mr. Wilson agreed that it is the Conservation Commission's issue. Mr. Harned said that the Board can bring it to the Conservation Commission's attention.

Ms. Rowden suggested the Board add, as a condition of approval, that the conservation land be transferred to meet the Town's satisfaction. She said in case the Conservation Commission decides to transfer the conservation easement over to a second party, it will be done to the Town standards. It ensures all ends are tied.

Mr. Wilson didn't agree with the suggested condition, because there is no way of telling when the judgment would be made that the town has been satisfied. The conveyance could not occur until all the conditions of approval have been met; "catch 22".

Mr. Donahue said that the purchase and sales agreement describes how the Conservation Commission and Select Board have met the requirements and said that he doesn't believe a condition that "open ended" is necessary.

Mr. Wilson moved and Mr. Derby seconded the motion to approve the plan consolidation and lot line relocation plan as presented for Case #13:10 – Russell W. Jeppesen and SSA and Russell S. Jeppesen, 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 a copy of the Certificate of Monumentation, that is accurate and stamped and signed by a NH LLS, certifying that all monuments depicted on the plan have been properly set in accordance with the subdivision regulations.
3. A note shall be added on the plan reiterating that no structures adjacent to the Atlantic Avenue pond shall be built on Tax Map 6, lot 39.
4. The existing Cemetery shall be clearly and accurately delineated on the final Mylar.
5. **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).
6. **Fees.** All fees incurred by the Planning Board, including but not limited to, Consulting, Engineering and Legal fees, have been paid by the Applicant.

399 **The vote was unanimous in favor of the motion (5-0).**

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401 Mr. Kroner called for a recess of the meeting at 8:30pm.

402 Mr. Kroner reconvened the meeting at 8:45pm.

403

404 The Board reviewed the letter the Chair wrote to Band Aid, the owners of Rite Aid, regarding the sight line coming
405 out of the Rite Aid parking lot onto Atlantic Avenue.

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407 The Board made edits to the letter regarding requests for mitigation. Mr. Kroner will change the letter and have
408 Ms. Chase send it out.

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410 The Board authorized the Chair to sign the 2013-2014 RPC Circuit rider contract.

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412 Dr. Arena moved and Mr. Derby seconded the motion to adjourn at 8:50pm.

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

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415 Respectfully submitted,

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417 Wendy V. Chase

418 Recording Secretary

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420 Approved July 16, 2013

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