



**Stratham Planning Board
Meeting Minutes
March 07, 2012
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Martin Wool, Chairman
Mike Houghton, Vice Chairman
Robert Baskerville, Member
Bruno Federico, Selectmen's Representative
Tom House, Alternate
Mary Jane Werner, Alternate
Jameson Paine, Alternate

Members Absent: Jeff Hyland, Secretary

Staff Present: Lincoln Daley, Town Planner

1. Call to Order/Roll Call.

The Chairman opened the meeting and took roll call.

2. Review/Approval of Meeting Minutes.

February 15, 2012 - Mr. Baskerville made a motion to approve the February 15, 2012 minutes. The motion was seconded by Mr. Houghton and pass. The motion was passed unanimously.

The Chairman asked Ms. Werner if she would be willing to be a full voting member as Mr. Hyland was absent. Ms. Werner agreed.

3. Public Hearing(s).

- a. Areta Caley (on behalf of Margret Barker Trust), 70 Winnicutt Road, Tax Map 14 Lot 61. Subdivision Application to create 3 total lots.

The Chairman requested that the Applicant provide a quick over view of her subdivision application. Mr. Daley reminded the Board members that they needed to determine whether or not the application is complete. Mr. Federico made a motion that the Board accept the plan as detailed by the Planner to be as complete for acceptance. The motion was seconded by Mr. Baskerville. The motion was and passed unanimously.

1 Mr. Dave Emanuel, Emanuel Engineering, introduced himself, Mr. John Ratigan,
2 attorney for the Applicant, and the Applicant, Areta Caley. Mr. Emanuel started by
3 explaining that the main dispute was whether or not the Applicant could have frontage on
4 Spring Creek Lane, a private road. Mr. Emanuel said that the Applicants had tried
5 working with the Homeowners' Association to provide access from the private road, but
6 the abutters expressed many concerns and did not grant access from the proposed lots to
7 the private road. He added that there was a difference in legal opinion as to whether it is
8 permissible for the Planning Board to grant that access. Mr. Emanuel stated that even
9 though they may not be permitted to use the access off of Spring Creek as a right-of-way,
10 the Applicant will provide a fifty-foot wide access easement to service and provide
11 access to the two rear lots. However, this is not the Applicant's preferred choice.
12

13 The Chairman asked Mr. Emanuel to further clarify the fifty-foot easement shown off of
14 Winnicutt Road. He asked if it was a driveway or a public road. Mr. Emanuel said they
15 viewed it as a right-of-way or an easement across two pieces of property for a private
16 driveway with shared access. The Chairman confirmed that they were contending that
17 the frontage on Spring Creek is a legal use of frontage even though the Spring Creek
18 Homeowners' Association did not grant access to pass and repass onto the private road.
19 He clarified his understanding by stating that the Homeowners' Association had to grant
20 access to pass and repass onto the private road and the Town has no jurisdiction to force
21 the issue. The Chairman asked if the Board can impose the frontage on the Homeowners'
22 Association private road.
23

24 Mr. Daley further clarified by stating that the Applicants have physical linear frontage on
25 Spring Creek Lane. He continued by stating that the issue involves the right to access
26 onto Spring Creek Lane and if the Applicant or Planning Board have the authority to
27 require that the Association to grant access on Spring Creek Lane. Mr. Daley said that
28 the Planning Board does not have that authority.
29

30 Mr. Ratigan began by stating that there were two different ways to approach the issue.
31 He commented that at the previous meeting, the Board approved the right-of-way of sixty
32 feet, which goes up to the lot lines of the rear two lots. Mr. Ratigan said his clients
33 acknowledged that they need the permission from the Homeowners' Association to build
34 an easement to pass and repass onto Spring Creek Lane. He continued that as the Spring
35 Creek Lane right-of-way that was approved by the Planning Board is laid out on the plan,
36 the Board could make a determination that emergency vehicle access has to be given.
37 The Applicants would be willing to install pavers on both sides of the properties which
38 would allow for a secondary source of access onto Spring Creek Lane. Mr. Ratigan said
39 the statute that governs state minimum requirements for frontage and access basically
40 allows that you can have a right-of-way whether it is called a driveway or a private road,
41 which provides access to lots without frontage, provided that it is not the sole source of
42 access to that subdivision. He and his clients believe that the emergency access gives you
43 the right to connect to your own right-of-way. Mr. Ratigan felt that Town Counsel didn't
44 address the issue of the emergency vehicle access as part of her opinion to the Board..
45

46 Mr. Ratigan continued by saying that an alternative would be to put in a private road on

1 the back lot which would meet the width requirements of the Ordinance and provide a
2 large enough turn around area for a fire truck. Mr. Ratigan stressed that his clients'
3 prefer to access off of Spring Creek Lane.
4

5 Mr. Daley informed everybody that the Board received a legal opinion from Town
6 Counsel on the issue of frontage and access pertaining to this plan. He summarized the
7 opinion of the Town Counsel concerning the issue of emergency access and the ability of
8 the Planning Board to grant the emergency access easement across the right of way onto
9 Spring Creek Lane. Mr. Daley read from Page three, second paragraph verbatim. He
10 continued by stating that the Association is not willing to grant that conveyance to the
11 abutting property for access. Mr. Daley also commented that the access easement is not
12 fully defined on the plan and that it is basically an extension of the access easement. He
13 asked Mr. Emanuel if he could define where the emergency access easement is.
14 According to the Town Counsel, the Planning Board has no authority to grant emergency
15 access easement approval without the full approval of the owners of the private road, the
16 Association. In addition, the fifty-foot access easement shown on the plans is not in
17 compliance with the Subdivision regulations, which requires a minimum of sixty feet
18 width for the right-of-way.
19

20 Mr. Ratigan responded that he didn't disagree about the access and that he agreed the
21 Board has no authority to grant them the right to traverse over to put in an emergency
22 access beyond the stone wall at the lot line onto the land that is considered a right-of-
23 way. Mr. Ratigan felt that the example of a court case cited by the Town Counsel wasn't
24 relevant to his clients' situation. He added that once a right-of-way is laid out, then the
25 Board could make a determination that there has to be access for emergency provided.
26 He further stated that the Planning Board has the authority because the road way is a
27 dedication to the Town. He didn't feel that the granting of a right-of-way goes away
28 because you have a driveway or road way that is narrower than a particular right-of-way.
29

30 The Chairman asked who has access to the emergency right-of-way to traverse Spring
31 Creek. Mr. Ratigan said the guests and invitees of the people who live there and
32 emergency response personnel from the Town. The Chairman said that was no different
33 to a driveway. Mr. Ratigan commented that two things happen when you have a road
34 that becomes a public road. First, for the dedication, you have to show the roadway on a
35 plan and usually it's expressed as a right-of-way. Second, for it to become a public road
36 there has to be acceptance from the Planning Board. There won't be acceptance in this
37 case because neither the Applicant nor the Town wants to create a public road. He
38 continued by stating that however, the fact that there is no acceptance does not negate the
39 physical existence of a dedicated sixty-foot right-of-way there. Mr. Ratigan continued
40 that if the emergency access was granted, everybody would benefit from superior public
41 safety.
42

43 Ms. Werner asked if it mattered that the intent of the emergency vehicle access is for the
44 benefit of the residents of Spring Creek Lane. Mr. Ratigan referred to the original plan
45 for the cluster Spring Creek Subdivision commenting that there was an oversight of the
46 Planning Board back then not to grant access to the lots that run along the other side of

1 Spring Creek Lane.

2
3 Mr. House followed by asking who would be responsible for maintaining the road. Mr.
4 Ratigan said his client would.

5
6 The Chairman asked where the snow would be pushed when it is plowed. Mr. Ratigan
7 wasn't sure. Mrs. Caley said it could be dragged back on to their property.

8
9 Mr. Daley asked if the easement was reciprocal allowing people of Spring Creek Lane
10 use of the emergency access in case of emergency. Mr. Ratigan said his clients would
11 give a higher quality access and that they would give the residents from Spring Creek the
12 authority to use the easement on his clients' property. Mr. Daley mentioned that the
13 problem with that is that his clients would have to cross the right-of-way and so without
14 the approval of the Homeowners' Association, that easement will be useless. Mr. Daley
15 requested the emergency access easement on the plan be removed.

16
17 Mr. Baskerville commented that sheet four should be revised to include topography
18 lines. Further, he said sheet four doesn't show the topography with the access in it and
19 should the Applicant choose to go ahead and try to make the access easement a public or
20 private road, the Board would need to see a plan of that. Mr. Emanuel explained it
21 wasn't on the plan because they are not allowed to physically record that plan. He also
22 added that certain things are currently missing from the plan as he wanted to wait until
23 they received clear direction from the Town on how to proceed.

24
25 The Chairman opened up the public hearing for comments and questions from the public.

26
27 Mrs. Pamela Bates, 65 Winnicutt Road, inquired about the location of the proposed right-
28 of-way for emergency access on Spring Creek Lane. Mr. Emanuel showed everybody
29 on the plan (sheet three), that there is a seventy feet wide ridge in the stone wall uphill
30 from the Arsenaults' driveway. The applicant would propose building through there so
31 as not to disturb any natural features of the historic land and turn left all the way along
32 the Goughs' property.

33
34 A short discussion then ensued regarding the abutter information represented on the
35 submitted plans. Sandy Murray, 69 Winnicutt Road, informed Mr. Emanuel that some of
36 the lots were wrongly represented on the plan which gave her concern to how accurate
37 the rest of the information on the plan was. Ms. Murray wanted to know who owned the
38 property that is on the plan as Margaret Barker Trust. Mr. Daley explained that that was
39 the information given to the Town by the Applicant and that Mrs. Areta Caley owns that
40 property. Ms. Murray continued that in the Subdivision Regulations 2.1.1 it says that you
41 cannot offer for sale any property before it is to be subdivided without the authority of the
42 Planning Board. Currently there is a "For Sale" sign for two acres of the lot.

43
44 A realtor explained that as long as you put in the notes "pending subdivision approval" it
45 is allowed. That is according to Real Estate law. Ms. Murray commented that she didn't
46 think that Real Estate law would take precedent over the Town's own laws.

1
2 Ms. Myra Citrin, 10 Spring Creek Lane, spoke next expressing her confusion as to why
3 this whole issue of access on Spring Creek Lane is being discussed when two attorneys
4 have said there is no right to access on Spring Creek Lane... Ms. Citrin stated that the
5 Homeowners' Association has not granted that access.
6

7 Ms. Werner asked Ms. Citrin if she was the chair of the Association. Ms. Citrin replied
8 she was not and had the least to lose from the planned development. However, she and
9 neighbors have enjoyed the drive down Spring Creek Lane with the secluded field being
10 part of the scenery and it would be missed. Ms. Werner said that she assumed the
11 Association was not going to grant any kind of access to the Caley's subdivision. Ms.
12 Citrin said nothing has been offered to the Association in exchange for this access other
13 than two new houses on a very small road and a contribution to the road fund totaling
14 three hundred dollars a year per house. Ms. Werner asked if there had been any offer of
15 road improvements by the Applicant. Ms. Citrin replied that there had not.
16

17 Areta Caley said that she had met with the Association several times in attempt to work
18 together. She had proposed numerous solutions to this problem and was very willing to
19 work with the Association. Mrs. Caley had suggested putting in a shared driveway off of
20 Spring Creek Lane giving the least amount of impact on the property, and she also
21 offered them a fifty foot tree buffer. Ms. Caley then stated that she offered them a no cut
22 zone from a specific point on the property and said she would be happy to become part of
23 the Association and allow them some control over what the new home owners were going
24 to build there. Mrs. Caley stressed that without those two lots belonging to the
25 Association, the home owners would be able to do what they want. Mrs. Caley also
26 discussed road improvements and talked to Dave Emanuel about it. The Applicant
27 represented that said improvement would be quite expensive. Mrs. Caley also spoke to
28 Mr. Daley about it and he made it clear that that was never intended to be a public road
29 and the Town was never going to accept it. Mrs. Caley informed the Association of this
30 and offered to widen the road. According to Mrs. Caley, the Association didn't like that
31 idea. Mrs. Caley said she even offered to sell the back one of rear lots, but every
32 suggestion she came up with was met with resistance.
33

34 Ms. Werner asked if it would be more expensive to bring the road up to standard than to
35 put in a driveway servicing the two rear lots. Mrs. Caley responded yes and further
36 commented that according to Mr. Emanuel and the Town, it was questionable as to
37 whether the road would be accepted given the substandard condition. Mr. Emanuel
38 clarified what would need to be done to bring the road up to Town standards.
39

40 Mr. Paine asked Mr. Emanuel if he had a comparison of prices for the driveway versus
41 the road. Mr. Emanuel said no analysis was completed to address the question raised.
42 For purposes of the application, they compared the design of Spring Creek Lane with
43 current road construction.
44

45 Mr. Bill Arsenault, 6 Spring Creek Lane, agreed that the Association had discussed many
46 of the options presented by Mrs. Caley, but none of them were considered in the best

1 interest of the Association. The only thing that was proposed by the Association, and it
2 wasn't unanimous, was that there could be value if Spring Creek Lane could be a fully
3 public road.
4

5 Mr. Federico asked Mr. Arsenault if his request of the Applicant is to make Spring Creek
6 Lane a fully public road. Mr. Arsenault said it was something that he had asked
7 personally. However, it wasn't a unanimous opinion of the Association. Mr. Federico
8 then asked if there was anything that the Association had discussed that would add value
9 to the neighborhood. Mr. Arsenault confirmed that there wasn't.
10

11 Mr. Daley added that the Town received an e-mail from the Association's attorney today
12 stating that the Spring Creek Association will not grant the Applicant any kind of access
13 by easement or otherwise to Spring Creek Lane. Further that the Spring Creek
14 Association is represented by counsel in this matter and that no further attempt will be
15 made by the Applicant or anyone else purporting to act on the Applicant's behalf directly
16 to contact any member of the Association.
17

18 Mr. Paul Gallant, 80 Winnicutt Road, asked the Board for some of the reasons they have
19 turned down some applications for shared driveways in the past. The Board responded
20 by stating wetlands and curbs cuts. Mr. Gallant said he felt the pork chop lot option was
21 a better idea and asked if you had to drive over a septic system to reach the back lot. The
22 Chairman said it was a back up septic plan incase the first one fails. Mr. Daley explained
23 that regulations stipulate that an area must be shown on the plan that could be used in the
24 event of the first septic failing and it is an area that meets state regulations. Mr. Gallant
25 asked how far away the driveway has to be from the septic. Mr. Daley said it can be right
26 next to the driveway and Mr. Federico further commented that the septic could be located
27 under the driveway.
28

29 Ms. Werner asked the property owners who live on Winnicutt Road what their concerns
30 were.
31

32 Mr. Tom Gough, 68 Winnicutt Road raised a number of concerns involving the proposal.
33 His property lies between Spring Creek Lane and the proposed subdivision. He avowed
34 that the proposed road will be located next to his property approximately 50 feet from the
35 kitchen door. Mr. Gough then stated that the additional lots would increase the traffic
36 volume on an already overburdened Winnicutt Road. He further relayed that the proposal
37 will create a ninth driveway within a 450 foot span on Winnicutt Road. Mr. Gough
38 continued by summarizing the potential impacts to the environment, drainage on
39 neighboring properties, and water quality. Mr. Gough quoted from the Subdivision
40 Regulations, 2.3.8.i, and "if a subdivision application impacts the surrounding area, the
41 application should be disapproved."
42

43 Mr. Steven Casey, 8 Spring Creek Lane, commented on the effect and impact of the
44 development will have on the wildlife in the area.
45

46 Mr. Brad Jones, 18 Winnicutt Road, said that some pieces of land are so special that they

1 should not be developed and this is one of them. He commented that the land is very wet
2 and the trees are spectacular and feels there is nothing to be gained by developing it.
3

4 The discussion then turned towards the topic of frontage and access for the two rear lots.
5 Mr. Federico stated that for the Board to approve the subdivision, Town Counsel states
6 that there has to be frontage and access. Lot 61 does have frontage on Winnicutt Road,
7 Lots 61-2 and 61-3 have frontage on Spring Creek Lane, but the access issue is yet to be
8 determined. Mr. Federico asked for Mr. Ratigan's response to the Town Counsel's
9 comments.
10

11 Mr. Ratigan commented that his client fell under the private road exception which is
12 simply you have to get approval from the governing body, comments from the Planning
13 Board and sign a waiver of liability. If the Board allows for the emergency access then
14 the Applicant wouldn't have sole access only from the easement. Mr. Federico said he is
15 having trouble determining, if the Board granted the emergency access, how that side of
16 the stone wall will be accessed if there are a certain number of feet of trees. Mr. Ratigan
17 said that the Board would have to exercise their authority on the right-of-way by saying
18 emergency access needs to be granted.
19

20 Mr. Daley said that the Town Counsel says that the Planning Board does not have the
21 authority to grant emergency access over the right-of-way. Mr. Ratigan responded that
22 the Town Counsel answered the question of whether or not the Board has the right to
23 confer an easement across the area between the right-of-way and stone wall. Mr. Ratigan
24 agreed that the Board does not have the right, but said that the Town Counsel did not
25 address the issue of whether the Board has the right to exercise its authority to make
26 public safety improvements in a right-of-way. Mr. Daley responded that the Board does
27 not have that authority and cannot force the Association to grant access without their
28 approval. Mr. Ratigan disagreed. Mr. Daley asked the Applicant to clarify if the
29 argument involves trying to create secondary access onto Spring Creek Lane using an
30 emergency access, and the fifty feet access easement servicing the two rear lots would be
31 turned into a private road. Mr. Ratigan confirmed that was correct.
32

33 Ms. Werner asked if there is no access from Spring Creek to the two lots whether that
34 frontage could be counted as road frontage. Mr. Daley said it couldn't. He added that in
35 theory the Board could approve this plan, but according to the state statute 674:41, the
36 lots would not be buildable lots.
37

38 Mr. Emanuel spoke next saying he understood some of the reasons the Association didn't
39 want to grant access, however other options are available in conformance with the
40 Town's Zoning Ordinance and Subdivision regulations. Mr. Emanuel said the next
41 option available for his client is to build a pork chop lot which still means a driveway will
42 have to be built along side Mr. Gough's property and trees cut down. Mr. Federico
43 confirmed that the Applicant satisfies the requirements for a pork chop lot and stressed
44 that property owners have a right to develop their properties. Mr. Daley stressed that
45 conceptually the Applicant qualifies for a pork chop lot.
46

1 Bill Arsenault referred to the pork chop lot idea saying that it sounds like it will be
2 approved, which is something the Association's attorney will look into. John Kauffman
3 commented that the Association's attorney has a different view about the pork chop lot
4 design being approved and it shouldn't be assumed at this juncture that it will necessarily
5 be approved. Mrs. Cheryl Arsenault commented on the view she has from her front
6 porch and how upset she is that this development will ruin that view. Mr. Daley
7 informed Mrs. Arsenault that the environment is one of the things the Planning Board
8 takes into consideration when hearing an application and ways to mitigate the impact on
9 the environment.

10
11 Mr. Ratigan invited the abutters to think about allowing an access onto Spring Creek
12 Lane as they could choose where they would like it to be and influence environmental
13 controls that would meet their requirements.

14
15 The Chairman said that he personally has no interest in creating an emergency access on
16 Spring Creek Lane. Ms. Werner said that she felt the Planning Board is required to
17 follow the legal opinion of the Town Counsel. Mr. Houghton and Mr. Baskerville agreed
18 with Ms. Werner.

19
20 The Chairman turned the topic to the fifty foot right-of-way that the Applicant is
21 proposing to construct along the Gough property and running down to the back two lots.
22 Mr. Houghton made the observation that as the Applicant doesn't have frontage then they
23 can't have access to the two back lots. Mr. Daley clarified that the two back lots do have
24 proper frontage, but not proper access according to the Town Counsel.

25
26 Mr. Ratigan said that his Applicant was willing to come back with a new proposal for a
27 pork chop lot. Mr. Daley confirmed that Mr. Ratigan's wish was to withdraw without
28 prejudice. One of the abutters requested the plan be withdrawn with prejudice. The
29 Board discussed this and decided to allow the plan to be withdrawn without prejudice.
30 Mr. Baskerville made a motion to accept that the plan be withdrawn without prejudice.
31 The motion was seconded by Mr. Houghton. The motion was carried unanimously.

32
33 **4. Public Meeting(s).**

34 None.

35
36 **5. Miscellaneous.**

37 a. Report of Officers/Committees.

38
39 Mr. Daley informed the Board that he will be receiving copies of the report from Plan
40 New Hampshire very soon and will circulate them accordingly. He said he would like to
41 invite them and members from the Town Center Committee to a future Planning Board
42 meeting to discuss their recommendations.

43
44 Mr. Daley then informed the Board that in an effort to create additional tools to allow the
45 Town to create water and sewer in Stratham. He summarized Senate Bill 353, drafted by
46 Paul Deschaine, Town Administrator, which allows a town like Stratham without any

1 water or sewer the ability to create utility districts. The bill was presented to the Senate
2 Committee yesterday with a number of positive and constructive comments. The goal
3 would be to amend the language and resubmit in time for full Senate vote later in the
4 year.

5
6 Mr. Daley then updated the Board on the status of the Exeter/Stratham Water and Sewer
7 study. He stated that the subcommittee involving representatives of Exeter and Stratham
8 met with the engineering consulting company Kleinfelder to further define the scope of
9 work. The study should be complete by June/July of this year.

10
11 Ms. Werner asked what the interest levels are like at Exeter. Mr. Daley responded that
12 the primary staffs from both Towns are supportive of a combined system. However, the
13 financial implications remain tantamount. Mr. Daley discovered lately that the cost for
14 Exeter to create a new water and wastewater facilities and water capacity will cost
15 Exeter's tax payers \$81 million.

16
17 The Board the further discussed the mutual benefits/merits of working collaboratively
18 with Exeter. Mr. Houghton asked who was funding the study. Mr. Daley said that each
19 Town allocated twenty thousand dollars for the purposes of the study. The Rockingham
20 Planning Commission (RPC) added an additional ten thousand dollars. The RPC is
21 viewed as an intermediary and has no political ties to either town.

22
23 The topic turned to the Town Meeting on Friday, March 16, 2012. Mr. Daley reminded
24 the Board that there is one minor amendment to the Zoning Ordinance, which should pass
25 without incident.

26
27 Mr. Daley informed the Board that he and the Chairman had met with Makris to go over
28 their most recent engineering design for their subdivision. Makris will appear before the
29 Conservation Commission on March 28, 2012 and the abutters will be informed of that
30 meeting. Makris should be coming before the Board on April 18, 2012.

31
32 Ms. Foss asked when the Board went through the engineering plans for Makris. Mr.
33 Daley answered about two and a half weeks ago and it was a meeting amongst staff only.

34
35 Mr. Paine informed the Board about the latest Exeter Squamscott River Sub Committee
36 meeting. He said that the Committee is looking for public outreach opportunities. They
37 do hold an EMS sponsored event for kayaking and some salt marsh teaching
38 opportunities. They are very in touch with the nitrogen issues on the Great Bay. Mr.
39 Daley asked Mr. Paine to let the Board know of any classes or programs so they can be
40 advertised in the library or on the Town website.

41
42 Mr. Daley explained that he had applied for a grant to the Coastal Program to hire a
43 consultant to inventory the Town owned drainage infrastructure within subdivision
44 developments. Unfortunately, Stratham wasn't selected as one of the projects due to the
45 overly competitive nature of the grant. Mr. Federico asked if there was a possibility to
46 use an intern from UNH. Mr. Daley said that he had already been speaking with the

1 University's T2 program. He stated that the scope would be slightly different, but could
2 be tailored to suit Stratham's needs. The Chairman asked if the grants that were awarded
3 have been published. Mr. Daley said they would be published on line.
4

5 Mr. Paine asked Mr. Daley to send a calendar reminder for the Town Center Committee.
6 He continued that the Committee had met and had their initial meeting and that he would
7 report back on future meetings. Mr. House will also start providing updates from the
8 Chamber of Commerce Sub Committee in the near future.
9

10 The Chairman said that the Board needs to look at the pork chop lot regulations as
11 apparently a developer is not allowed to develop a pork chop lot. The Chairman argued
12 that in this case the developer is also the owner. Mr. Daley agreed to research it.
13
14

15 **6. Adjournment.**

16
17 Mr. Houghton made a motion to adjourn the meeting at 9:21pm. The motion was seconded
18 by Ms. Werner. The motion was carried unanimously.
19
20
21
22