

Washington Planning Board
Public Hearing of September 3rd Continuation
Minutes
September 12, 2013

- 0.0 Assembly: 3:00PM
- 0.1 Members present: Cook, Crandall, Dagesse, Marshall, Schwartz
- 0.2 Alternates present: Kluk,
- 0.3 Members and Alternates Absent: Terani
- 0.4 Visitors: Peter Mellen, Shawn Atkins, Martha Hamill, Missy Hamill, Ken Eastman.

Public Hearing: Cook called the Public Hearing to order at 3:05PM.

Peter Mellen presented the plan for an annexation for Martha Hamill once again. It is an application for annexation, annexing 1 acre from TM22-59 to TM22-59-1. Everyone had seen the plan previously so Cook went through the application to see if it was complete. She asked about whether the plan showed the entire lot or just the portion to be annexed. Mellen pointed out note #2 on the plan, which explained this plan shows only the lot to be annexed and the lot to be annexed to (TM 22-59-1). A copy of the proposed lot deed was provided for future use when the annexation is completed. Cook checked off all the application requirements. Crandall questioned why this is not a subdivision but an annexation. Mellen explained that the lot is created during annexation but it doesn't occur until the deed is recorded at the time of annexation. Crandall stated that he thinks this process has been mishandled and put everyone in the middle. He feels we are under a threat and the process leaves something to be desired. Cook said that at the previous hearing we left it that we would contact the town attorney. Mellen asked if the application was complete? Marshall moved to accept the application as complete, Schwartz seconded the motion and all voted in favor. Cook opened the public hearing portion. Marshall read the aforementioned letter from the town attorney, Matt Serge.

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Hi Michelle,

I am writing to follow up our telephone conversation from earlier today concerning the Town's purchase of a portion of a 9+ acre property owned by Martha Hamel. It is my understanding that Ms. Hamel is proposing to subdivide her property into two lots, one that would be 1 acre and the other 8+ acres. Subject to Town Meeting approval, the Town would purchase the 1 acre parcel and then merge that parcel with abutting property it owns. I am aware that the Town Land Use Ordinance requires a minimum lot size of 4 acres for any development. Thus, it must be understood that this 1-acre parcel would be unbuildable under current regulation. Ms. Hamel must be made aware that if the Town Meeting rejects the purchase of this 1-acre, it must remain vacant unless it is merged with another abutting parcel.

Because of the unusual circumstances involved, the Town can proceed with this course of action as it is not the intent of any party to allow the 1-acre parcel to remain in that state in perpetuity. That said, I cannot guarantee that someone may not attempt to challenge a Planning Board decision approving a subdivision

that results in the creation of a lot with less than the required acreage. If you have any further questions, please do not hesitate to contact me. Thank you.
-matt”

also included in the letter were two NH RSAs which give the Planning Board the right to take such action:

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning

Section 674:16

674:16 Grant of Power. –

I. For the purpose of promoting the health, safety, or the general welfare of the community, the local legislative body of any city, town, or county in which there are located unincorporated towns or unorganized places is authorized to adopt or amend a zoning ordinance under the ordinance enactment procedures of RSA 675:2-5. The zoning ordinance shall be designed to regulate and restrict:

- (a) The height, number of stories and size of buildings and other structures;
- (b) Lot sizes, the percentage of a lot that may be occupied, and the size of yards, courts and other open spaces;
- (c) The density of population in the municipality; and
- (d) The location and use of buildings, structures and land used for business, industrial, residential, or other purposes.

II. The power to adopt a zoning ordinance under this subdivision expressly includes the power to adopt innovative land use controls which may include, but which are not limited to, the methods contained in RSA 674:21.

III. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate and control the timing of development as provided in RSA 674:22.

IV. Except as provided in RSA 424:5 or RSA 422-B or in any other provision of Title XXXIX, no city, town, or county in which there are located unincorporated towns or unorganized places shall adopt or amend a zoning ordinance or regulation with respect to antennas used exclusively in the amateur radio services that fails to conform to the limited federal preemption entitled Amateur Radio Preemption, 101 FCC 2nd 952 (1985) issued by the Federal Communications Commission.

V. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate and control accessory uses on private land. Unless specifically proscribed by local land use regulation, aircraft take offs and landings on private land by the owner of such land or by a person who resides on such land shall be considered a valid and permitted accessory use.

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:36

674:36 Subdivision Regulations. –

II.(n) Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or
(2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Marshall stated that it is within or power to do this. Cook asked M. Hamill if she understood. She answered that she did. Cook asked for further questions or comments. M. Hamill asked if she should have brought both deeds with her? Cook answered that it wasn't necessary. Cook stated this will be an unbuildable, non-conforming lot that could be annexed to another abutting property if the property is not bought by the town. Schwartz made a motion to approve the annexation application. Crandall asked if anyone should recuse themselves? Marshall stated that the last sentence of the town attorney's letter bears weight, we will put the plugs into our actions, sitting on a committee doesn't cause a conflict but someone is married to a fireman and takes notes at the committee meetings. Atkins addressed the board and stated that this annexation is for the benefit of the town, not for the Fire Department. It is not for a specific purpose but to add to town property. Marshall stated he would argue that point. Schwartz asked Marshall if he was asking her to recuse herself? She stated that Kluk, Marshall and Schwartz are all on the Safety Complex Committee and other members of the Planning Board are, or were, married to firemen. Schwartz took back her motion to approve the annexation plan and recused herself from the decision. Kluk stated that there is inherent value to the town to approve this, we are not setting a precedent. She presented a document that she felt stated these things clearly. Marshall said we need documentation and reasons for doing this. Cook read the document to the group and asked that it be attached to the minutes.
"September 12, 2013

The current proposal before the Planning Board to create a non-conforming one-acre parcel, which is a portion of lot TM22-59, is being approved under the following specific conditions:

1. This parcel is a key piece of property that will be annexed in the future to the existing Town of Washington owned lot TM 22-59-1. The proposed one-acre parcel is currently owned by Martha Hamill and cannot be annexed at this time to lot TM 22-59-1 because the purchase of the parcel by the Town of Washington is not complete as of today.
2. The Purchase & Sales agreement between the two parties for this one-acre parcel states that the sale is contingent on an affirmative vote to purchase the lot at Town Meeting, March 2014. The stated intention for the purchase by the town is to annex the one-acre parcel to lot TM 22-59-1, a lot already owned by the Town of Washington.

3. The owner of the lot TM 22-59, Martha Hamill, needs to create this 1-acre lot for the proposed annexation at this time, because she has a buyer for the remainder of her property: an 8.3-acre lot with a house situated on this lot. After the Planning Board approval of the one-acre lot, her attorney will generate the deeds for both parcels, so that she may close the sale of her 8.3-acre property before the end of September 2013.

4. The Planning Board agrees to approve the creation of this one-acre parcel at this time, even though it is a non-conforming lot, because of the inherent value in enlarging the existing abutting lot owned by the Town of Washington. In no way does this action set a precedent for the Planning Board to approve future creation of privately owned non-conforming lots. It is not the Planning Board's intention to create a "stand-alone" lot for development but to approve the creation of the lot for future annexation.

5. The annexation of the one-acre lot to TM 22-59-1 will be finalized and recorded with the Sullivan County Register of Deeds by end of March 2014 or as soon as the sale is completed."

Everyone agreed with the statements in the document and that more background to making our decision that can be included, the better. Everyone understood that the plan will be recorded at the registry but the deed will not be recorded until the purchase is complete. Cook asked Hamill if her lawyer had any questions, Hamill said no. Schwartz asked if alternate member Kluk could replace her in her seat on the board. Crandall motioned to have Kluk sit in for Schwartz, Marshall seconded the motion and all voted in favor. Cook again asked for questions from the floor, there being none she closed the public hearing portion of the meeting. Marshall made a motion to approve the annexation plan and resulting 1-acre lot, as surveyed, with the explanation for doing so attached in the minutes. Dagesse seconded the motion, all voted in favor.

2.0 Adjournment: Time 3:44PM
Motioned by Marshall, seconded by Crandall, all voted in favor for adjournment.

Respectfully Submitted,
Nan Schwartz