

WOLFEBORO PLANNING BOARD

December 3, 2013

MINUTES

Members Present: Kathy Barnard, Chairman, Stacie Jo Pope, Vice-Chairman, Vaune Dugan, Chris Franson, John Thurston, Members.

Members Absent: Brad Harriman, Selectmen's Representative, Paul O'Brien, Members, Dave Alessandroni, Chuck Storm, Alternates.

Staff Present: Rob Houseman, Director of Planning & Development, Lee Ann Keathley, Secretary.

Chairman Barnard opened the meeting at 7:00 PM at the Wolfeboro Public Library.

Other Business

Kathy Barnard stated the Board received a petition amendment to the sign ordinance and requested a motion to schedule a public hearing for such.

It was moved by Vaune Dugan and seconded by John Thurston to move the Petition Zoning Amendment to the Sign Ordinance to public hearing, scheduled for January 7, 2014. All members voted in favor. The motion passed.

Public Hearing

➤ **Lots With No Frontage Ordinance**

Kathy Barnard stated there are approximately 200 lots that would qualify under the ordinance. She stated the lots are already controlled by RSA 674:41 which includes a provision to allow applicants to seek relief from the ZBA. She stated the ZBA rendered a decision that the statute is less than clear and requested the Planning Board assist with establishing a mechanism and clarity to the ordinance for lots without frontage. She stated Town Counsel has reviewed the ordinance.

Rob Houseman reviewed the Lots With No Frontage Ordinance, see attached.

Chairman Barnard opened the public hearing.

Ken Perry stated he is a property owner and President of the North Wolfeboro Area Association. He stated the proposed ordinance has issues, specifically that the ordinance will address small lots and shorefront lots. He stated the lots located in North Wolfeboro are larger lots and once developed there is a major change to the natural resources (hunting grounds, watershed protection, fragmented forest lands, wildlife corridors) in Wolfeboro and will be impacted. Therefore, he stated the Association proposes an amendment that the ordinance will apply to all the near Town zones but not apply to the Agricultural and Rural Agricultural Zoning Districts. He requested the Board consider such and stated the amendment would be more compliant with the Master Plan.

Mike Hodder, resident and ZBA member, stated the ordinance brings clarity to a process the ZBA has been struggling with currently. He stated RSA 674:41 is very vague and the ZBA has been struggling with parameters to impose on decisions. He stated he is in favor of the ordinance and sees such as a protection and not a danger.

Suzanne Ryan, ZBA member, agreed with Mr. Perry's comments and amendment request and would prefer the Downtown and lake lots be subject to the ordinance (drawing the line at the North Line Road area). She stated she feels the ordinance flies in the face of the Master Plan; noting the Master Plan survey depicted that 66% were in favor of open space. She stated the proposed ordinance allows for development on fragmented lots. She

referenced pages 31-59 of the Natural Resource Chapter and stated she hopes the Board does not include North Wolfeboro. She stated development adds children and currently most of the land in North Wolfeboro is in current use which equals no children and taxes saved. She stated the original concern was regarding subdivision development. She stated Dave Ford recently stated it costs \$1 million per mile for a Town approved paved road; noting such would act as a deterrent to developers. She stated the proposal promotes premature and scattered development; noting an impact to emergency services. She stated a recent court case was remanded back to the ZBA in which the court questioned the relationship between road frontage and a back lot. She stated the ZBA addressed the issue with the court; noting the Town and ZBA now has precedent from the court case in that if a house doesn't need to have a relationship to road frontage then most likely a permit would have to be granted. She stated the ordinance is not necessary and recommended review on a case by case basis. She expressed concern regarding the legality of the proposal stating the ordinance is less restrictive than State law; noting Town law cannot preempt State law. She reviewed Attorney Bernie Waugh's opinion. She stated the Board hasn't addressed reconfiguration of lots and feels the language of the ordinance is convoluted.

Kathy Barnard requested Ms. Ryan specify the language she believes is convoluted.

Suzanne Ryan stated the Statement of Purpose is a broad brush approach in which the ordinance doesn't say where it is applied. She stated the Statement of Purpose doesn't state that it is a complete zoning change throughout the town; noting the voters should know it's a zoning change applicable to the community. She stated the statute says island lots can be exempt and noted confusion in the language of such.

Vaune Dugan stated the ordinance is clear that it applies to the whole town; noting the ordinance is accompanied by a map.

Suzanne Ryan stated the map will not be in the voting booth and available at the time of voting.

Vaune Dugan stated the Board has never proposed to overrule any federal or state law.

Suzanne Ryan questioned whether it is Town Counsel's opinion that the ordinance does not supersede state law.

Mike Hodder read RSA 674:41.2.A as follows, "Municipalities may accept any lot, including island lots, per the requirements of paragraphs 1. & 2. by an affirmative vote of the legislative body before submitted to the Planning Board for its approval."

Rob Houseman stated there are municipalities adjacent to Wolfeboro that have exempted all lots including lots on Class VI roads. He stated Town Counsel provided guidance to the Board and drafted the ordinance.

Mike Hodder stated paragraph 2 of the statute(674:41) puts the application process on the ZBA and reviewed the conditions noted in the paragraph that provides guidance to the ZBA in how applications should be reviewed. He stated many cases remanded back to the ZBA from Superior Court involved 674:41. He stated the Board's standards provide clarity where the State's standards do not and provides stronger protection than the State's statute.

Suzanne Ryan stated she feels the ordinance is less restrictive than state law and the Statement of Purpose is unclear. She questioned whether the Town is superseding RSA 674:41. She questioned whether the part about Class VI Roads would remain and if so, should the ordinance include the section from the statute regarding such. She stated she struggles with discerning which sections of 674:41 the ordinance is exempting. She stated the Board hasn't described what areas of Town will be included in the ordinance and requested North Wolfeboro be excluded from the ordinance.

Rob Houseman stated the language of the ordinance is written specifically to include those lots that do not have frontage with deeded rights to a private way and lots with frontage only on a private way not shown on a subdivision plat approved by the Planning Board. He stated the ordinance applies to those lots town wide. He asked Ken Perry if the North Wolfeboro Association took a vote on the issue.

Ken Perry stated the Association did not take a vote however, discussed the issue. He stated the majority of the residents in attendance at the meeting were in favor of the points he made in his earlier comments. He stated those in favor of the ordinance were representatives of the larger lots.

There being no further questions or comments, Chairman Barnard closed the public hearing.

Chris Franson recommended the ordinance be moved to Town Warrant as proposed. She stated the standard should be the same for every lot and believes the development of one house on a 50-acre lot has less impact than the development of a .25-acre shorefront lot.

Stacie Jo Pope stated without road frontage a lot cannot be subdivided; noting the applicant has to prove a deeded right of access exists. She stated the ordinance helps clarify the statute. She stated the development of one house has less impact than five houses regardless of the area of the Town and doesn't feel the Board could justify excluding a specific section of town from the ordinance. She noted the lots included in the ordinance are pre-existing lots.

John Thurston stated he is not in favor of taking land and noted some of the land has been in families for years; noting the ordinance will allow those families to develop their property.

It was moved by Stacie Jo Pope and seconded by Chris Franson to move the Lots With No Frontage Ordinance, as proposed, to Town Warrant. All members voted in favor. The motion passed.

Scheduled Appointments

Southern Spectrum, LLC

2-Lot Subdivision

Agent: Jim Rines, White Mountain Survey Co.

Tax Map #266-4

Case #201310

Rob Houseman reviewed the Planner Review for December 3, 2013 and stated the applicant proposes a 2-lot subdivision in which Lot 1 will consist of 51.5 acres and Lot 2 will consist of 7.1 acres. He stated the proposal is designed to be exempt from the provisions of the Conservation Subdivision standard by submitting a Conservation Subdivision (Open Space) Conceptual Plan as required by the ordinance; noting the proposal meets the exemption criteria. He stated the applicant has requested the following waivers; Sections 174-7. (4), (6) and 174-9.B. (2).

Kathy Barnard asked that if the conceptual plan moves forward in the future would the owner have the ability to subdivide a maximum of 7 lots.

Rob Houseman replied no, the plan is a conceptual plan that is nonbinding upon all parties. He stated if a developer proposed a different density or proposal, there could be 12 lots; noting the number of lots is based on a mathematical equation.

Chris Franson asked if any future subdivision would have to abide by this exemption. She asked if, theoretically, of the 51 remaining acres were subdivided, what would be the number of lots that could be developed.

Rob Houseman replied 30+ lots because the Town's zoning allows for one acre lots with 150' of frontage. He noted in 7.5 years exemption criteria #4 would apply however, if the property is developed in one year, the subdivision would have to abide by the exemption. He stated the conceptual plan is guided by the ordinance.

Referencing the waiver requests, Jim Rines stated the topography has been mapped and soil analysis has been conducted; noting the proposal satisfies the minimum lot size by soil type standards. He stated mapping the remaining 49 acres would be financially unnecessary since the information provided shows compliance.

It was moved by Chris Franson and seconded by Stacie Jo Pope to grant the following waivers; Section 174-7. (4), (6) and Section 174-9.B (2). All members voted in favor. The motion passed.

It was moved by Stacie Jo Pope and seconded by Chris Franson to accept the application as complete. All members voted in favor. The motion passed.

Chairman Barnard opened the public hearing.

Kathy Barnard asked if the applicant has the authority to depict the Right-of-Way.

Jim Rines replied yes, it is a 50' deeded Right-of-Way and was granted as part of the Boundary Line Adjustment several years ago for the purposes of what a road would be used for.

Vaune Dugan asked if the Right-of-Way is specifically located.

Jim Rines replied yes.

Kathy Barnard verified the conservation subdivision conceptual plan is not being contemplated at this time.

Jim Rines stated the plan was submitted only for the purposes of satisfying the criteria of the conservation subdivision exemption for the creation of this subdivision.

Kathy Barnard verified that if the subdivision is approved, the conceptual plan would not be a stamped plan of record.

Vaune Dugan stated the subdivision looks like a typical subdivision rather than an open space subdivision.

Jim Rines stated there are aspects to the proposed subdivision that would not be included in a typical subdivision such as the 100' buffer and conditions that slope over 15% would be protected.

Referencing the exemption criteria #3, Vaune Dugan stated it is unclear to her that the conservation subdivision becomes a requirement and that it's not possible in seven years to change. She read the following excerpt from criteria #3; "There is additional land that may be developable in the future for which a conceptual long-range plan meeting the requirements of this chapter will be prepared. All lots being created as part of the exempt subdivision will be consistent with and incorporated into the long-range plan as part of a conservation subdivision, and no additional lots will be created in the future that are not part of a conservation subdivision."

Chris Franson stated what drives the conservation subdivision is the minimum acreage.

Rob Houseman retracted his earlier statement; noting the seven year clause may be taken away by criteria #3 for the undeveloped lot.

Vaune Dugan stated that if such is the case the applicant needs to know that.

Jim Rines stated it is their understanding that such is the case.

There being no further comments or questions, Chairman Barnard closed the public hearing.

Rob Houseman reviewed the following conditions of approval;

1. The Planning Board finds that the Conceptual Plan, submitted as part of this subdivision application, complies with the exemption standards expressed in **175-148. Exemptions, B(3).**

2. The following plans, as amended by the Planning Board approval, are incorporated into the approval;
Plan 1. Plan of Subdivision Prepared for Southern Spectrum, LLC, Springfield Point Road, Wolfeboro, New Hampshire, Prepared by Wilson W. Stewart, LLS, White Mountain Survey Co., Inc., PO Box 440, Ossipee, New Hampshire, 03864, Dated September 10, 2013.
Plan 2. Existing Condition and High Intensity Soils Map Prepared for Southern Spectrum, LLC, Springfield Point Road, Wolfeboro, New Hampshire, Prepared by Wilson W. Stewart, LLS, White Mountain Survey Co., Inc., PO Box 440, Ossipee, New Hampshire, 03864, Dated September 16, 2009, Wetland Delineated by Gregory Howard, CWS, CSS, and dated September 10, 2013.
Plan 3. Conservation Subdivision Conceptual Master Plan, Plan of Subdivision Prepared for Southern Spectrum, LLC, Springfield Point Road, Wolfeboro, New Hampshire, Prepared by White Mountain Survey Co., Inc., PO Box 440, Ossipee, New Hampshire, 03864, Dated September 10, 2013.
3. The applicant shall submit Mylar plans for recording at the Carroll County Registry of Deeds.
4. The applicant shall be responsible for monumentation and the submittal of the Certificate of Monumentation and updated plans.
5. The applicant shall be responsible for the payment of all recording fees.

Kathy Barnard stated she is opposed to condition #1.

Rob Houseman recommended striking the condition which references Plan 3.

Board consensus to strike the reference to Plan 3 (condition #1).

Chris Franson stated the wetlands need to be marked.

Rob Houseman stated wetlands delineation occurs at the time of the issuance of a building permit.

It was moved by Chris Franson and seconded by Vaune Dugan to approve the Southern Spectrum, LLC Subdivision application, Case #201310, subject to the conditions of approval (striking condition #1), noting the Conservation Subdivision Conceptual Plan complies with the exemption standards of the ordinance. All members voted in favor. The motion passed.

Trites Real Estate, LLC

2-Lot Subdivision

Agent: James Rines, White Mountain Survey Co., Inc.

Tax Map #132-11

Case #201311

Rob Houseman reviewed the Planner Review for December 3, 2013 and stated the applicant proposes a two-lot subdivision in which Lot 1 will consist of 4.065 acres and Lot 2 will consist of 3.157 acres. He stated both lots are compliant with area and frontage however; there is a question as to whether the lot coverage definition and requirement adopted in 2013 and proposed for 2014 allows the lots to be configured as proposed. He reviewed the definition of pervious area as adopted at the March 2013 Town Meeting; noting there are travel ways and access ways that have not been calculated/deducted therefore, he cannot present the total lot coverage figures. He stated the applicant has not submitted the total lot coverage information required to fully review the issue.

Regarding pervious coverage, Jim Rines stated the Town's definition of such prior to 2013 included buildings. He stated the definition in 2013 was changed to include gravel areas and driveways and excluded access ways and travel ways from the computation. He stated he believes the application complies due to an access easement and a gravel area on the lot. He stated there will be cross easements to access between the two buildings. He stated an easement is proposed for the Lake Wentworth Association for access to the property. He stated one lot will demonstrate 40% lot coverage and the other lot will demonstrate 50% lot coverage.

Kathy Barnard asked if the proposal has to comply with the 40% since it is in excess of such.

Rob Houseman stated the proposed zoning takes effect on the day of posting; noting the Board reposted the zoning two weeks ago however; the changes made were not related to lot coverage. Therefore, he stated the question then becomes whether a lot can be subdivided that exceeds the lot coverage and become nonconforming with the new ordinance. He stated he has contacted Town Counsel regarding such and noted the posting of the ordinance takes precedence over the day of the application submittal.

Vaune Dugan questioned the creation of a new right-of-way between the two lots that can then be deducted from the calculation.

Rob Houseman stated he would pose the question to Town Counsel.

Vaune Dugan stated the setback to Fernald Brook should be 100' however; she believes the plan depicts a 75' setback.

Jim Rines stated the setback is related to a septic setback per State requirements. He stated that regardless of the ability to deduct easements, easements need to physically exist between the buildings in order to move the vehicles in and out of the buildings. He stated the ability to deduct the easement is not the applicant's creation rather, it is required by the ordinance.

Vaune Dugan stated the boundary line and subdivision doesn't exist.

It was moved by Stacie Jo Pope and seconded by Chris Franson to accept the application as complete. All members voted in favor. The motion passed.

Chairman Barnard opened the public hearing.

Attorney Randy Walker, representing Trites Real Estate, LLC, stated the goal is to subdivide the property and sell one lot to Bartlett Tree Service; noting there is a Purchase & Sale Agreement that includes time constraints and limitations. He stated it is the applicant's hope to submit an application to the ZBA and the Planning Board in January 2014. He asked the Board to approve the application with a condition that Mr. Rines submit certification that the proposal complies with the lot coverage requirement. He stated pavement will be removed and improvements to make the lot more compliant however such will be addressed as part of the site plan application.

Kathy Barnard recommended continuing the application to the 12/17/13 meeting.

Rob Houseman stated the applicant intends to submit a site plan review application in January 2014; noting the proposal includes the reduction of impervious area. He stated the Board could conditionally approve the application on 12/17/13 subject to Site Plan approval if the applicant submits the lot coverage calculations and modifications to the plan representing the proposed improvements reduces the impervious area (as part of the Bartlett Tree Site Plan Review application).

Kathy Barnard stated the Board will present Town Counsel's opinion once received.

Vaune Dugan stated the Board is working on the Center Street zoning with the intent to preserve water quality and the lakes and requested the applicant point out features that support such.

It was moved by Chris Franson and seconded by Stacie Jo Pope to continue the Trites Real Estate, LLC Subdivision application and public hearing to December 17, 2013. All members voted in favor. The motion passed.

WORK SESSION

➤ Center Street/Route 28 Mixed Use Business District

Rob Houseman reviewed the changes to the Center Street/Route 28 Mixed Use Business District, see attached. Referencing Permitted Uses, J. Personal Services, he stated he opted to include a footnote "excluding laundromats, dry cleaning establishments and/or onsite laundry services" rather than modifying the definition in

the ordinance. He stated the Board modified the definition of Business Services to exclude photofinishing. He stated the intent of the Board was to exclude photofinishing from the Center Street/Route 28 Mixed Use Business District and not Town wide. Therefore, he recommended revising Permitted Uses H. Business Services to include a footnote similar to Personal Services rather than modifying the definition of such in the ordinance.

Following further discussion, the Board agreed to the following change;

- Permitted Uses, H.; include the following language; “exclude photofinishing” as a footnote rather than modifying the definition of such in the zoning ordinance

➤ **Stormwater Management Regulations**

Rob Houseman reviewed the comments provided by Dave Ford, Underwood Engineers, White Mountain Survey Co., see attached. He recommended Staff and Underwood Engineers work together to produce a final product.

Consideration of Minutes

October 15, 2013

Corrections: Page 2, 12th paragraph (motion); strike “assets” & replace with “properties”
Page 2, 14th paragraph; strike “Municipal Asset Inventory and Management Plan” and replace with “Facilities Plan which would be part of the larger Municipal Asset Management Plan”

It was moved by Vaune Dugan and seconded by Chris Franson to approve the October 15, 2013 Wolfeboro Planning Board minutes as amended. All members voted in favor. The motion passed.

November 5, 2013

Corrections: Page 1, Stormwater Management Regulations, 1st paragraph; strike “he” & replace with “she”
Page 2, 11th paragraph; change “sheer” to “sheet”

It was moved by Chris Franson and seconded by Vaune Dugan to approve the Wolfeboro Planning Board November 5, 2013 minutes as amended. All members voted in favor. The motion passed.

November 19, 2013

Corrections: Change “Maase” to “Masse” throughout document
Page 3, 8th paragraph; change “principle” to “principal”
Page 3, 9th paragraph; change “les” to “less”
Page 4, 3rd motion; include “dry cleaning establishments” in the motion

It was moved by Chris Franson and seconded by Vaune Dugan to approve the Wolfeboro Planning Board November 19, 2013 minutes as amended. All members voted in favor. The motion passed.

It was moved by Chris Franson and seconded by Stacie Jo Pope to adjourn the December 3, 2013 Wolfeboro Planning Board meeting. All members voted in favor.

There being no further business, the meeting adjourned at 9:34 PM.

Respectfully Submitted,

Lee Ann Keathley

Lee Ann Keathley