

PLANNING BOARD MEETING
APRIL 3, 2013

PRESENT: Ed Dekker, Chairman, Oliver Niemi, Bert Hamil, Liz Freeman, Paul Termin, Jim Shultz, Ned Nichols, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office.

7:00 p.m. USA Properties, Inc. - Continuation of public hearing for 48 lot subdivision:

Mr. Bruce Simpson and Mr. Peter Holden were present for the applicant. Mr. Simpson had sent a letter to the Board requesting a continuance of this evening's hearing. A Complaint for Declaratory Judgment was filed by the applicant at the Hillsborough Superior Court on the density issue on March 21, 2013.

The applicant was asked how long of a continuance he was requesting and Mr. Simpson responded until such time as the Superior Court decides on the Declaratory Judgment. If the Court disagrees, they might end up with a small cluster off Stowell Road. Liz stated that if the Court agrees with USA, they will be back to the Board and if they disagree a different application would need to be filed; she could see no reason for a continuance and asked what purpose a continuance would serve. Mr. Simpson stated while the issue is in front of the Court he did not think it was fair to them and the Court would not appreciate the Board disposing of the application before they made their decision.

Ned stated that to him the density issue was not that important. He listed other issues of concern to him: the Class VI road and how the applicant proposed to make that a Class V; the dead end road issue has not been resolved; Stowell Road is 5,000 feet of dirt road that needs improvement and questioned if the applicant was prepared to upgrade it whether it be for 27 or 48 lots. Mr. Simpson responded that it would depend on the number of lots allowed; their obligations would be different depending on that number. Ed noted that these questions have been pending since 2006 and no progress has been made toward resolution. Mr. Simpson responded that they have reopened negotiations with Mr. Barnsley and access over his lot. Ed referred to a letter to the Board from Kumatsu Gumi expressing their intent to reserve their rights.

Liz asked again what the purpose of the continuance would be. If the Court finds in favor of the applicant, then the application would come back to the Board and it would be automatically continued. If the Court finds against the applicant, they would have to come back with a new application. There have been no significant changes to the regulations that would be a factor to them. Mr. Simpson responded that it would be unfair to deny the application now and not wait for the Court. Mr. Holden asked what the advantage was of denying the application now and Liz responded that the application has been dragging on for years and there is a consistent pattern of scheduling meetings and no-one showing up; the Board does not have a great deal of confidence that the applicant is going to move forward in a prompt manner with the application. When the applicant is ready and they know what

they want to do and they can put together a plan that is complete they can come to the Board and the Board will work with them.

Mr. Kinyon clarified the procedural process. The Declaratory Judgment filed by USA Properties is not an appeal but a request of the Court to decide on a interpretation of the Subdivision Regulations. If the Board votes to deny the application, USA Properties can appeal that denial. If the Board votes to continue the application, there is no way for USA Properties to appeal. If the Board votes to deny and USA Properties appeals that denial and if in deciding the appeal of the denial the Court sides with USA, it is likely the Court would remand the application back to the Board. If the Court says the Board is correct in the denial, the case is done unless USA appeals to the Supreme Court.

Mr. Simpson stated they were happy to revise the application but they cannot do that until they hear from the Superior Court. Ed noted that the Board has been asking about the dead end road issue for 7 years. Ned asked how long the Court could take to act on the Declaratory Judgment and Attorney Kinyon responded that it could be six months to a year.

Liz stated that she believed that the Board has gone out of its way to be fair to the applicant throughout the whole process and she saw no reason to drag the process out longer. Tim agreed with Liz.

Liz made a motion to deny the request for a continuance. Jim seconded the motion and it passed unanimously.

Mr. Simpson was asked if there was anything further he wanted to say regarding the application. Mr. Simpson responded that it was their understanding that they would have a chance to revise their application and one of the things they needed to know in order to make the revisions was the decision of the Superior Court. They would still like the opportunity to do that. Depending on what the Court says, the application could be different. They are not being given the chance to find out what the Court says before revising their application. Liz noted that back in November when the applicant was last before the Board there was no talk of the Superior Court; the Board was asking for a plan for a 26 lot subdivision. Ed added that back in November when the Board voted, they did so to enable the applicant to be able to go the Superior Court at that time; the applicant chose to wait additional months. It is now six months later; if the applicant had gone in November, there could have been a decision by now. Bert also noted that the Board had set up a special meeting on January 30 at the request of the applicant and the applicant had not shown up or corresponded in any way; he found that unconscionable. Ned added that there are no plans to fix the dead end road issue or fix the road.

Mr. Simpson stated that it did not make sense to make revisions to the plan until they knew how many lots. Ned responded that the road had nothing to do with the plans, were they going to upgrade the road or not. Mr. Simpson responded that they had a discussion with the Selectmen on the upgrading of the road. The Board noted that offsite improvements will be determined by the Planning Board. The Class VI upgrade to a Class V has to be discussed with the Selectmen. Mr. Simpson stated that off site

improvements are tied to the number of lots. Liz responded that is not hard and fast and Ed noted there is no dollar value per lot for offsite improvements.

Jim noted that at the last meeting the applicant attended they brought a plan for a 26 lot subdivision. A special meeting was scheduled on January 30 and the applicant did not show up. He asked if anything further had been done on the plan. Mr. Holden responded that nothing further has been done because they did not know the number of lots. The applicant had nothing further to be presented this evening.

Ned made a motion to deny the 48 lot cluster subdivision off Stowell Road because it is premature and scattered for the following reasons:

1. The majority (35) of the lots along the proposed street named Haleakala Drive are accessed off a section of Stowell Road that is a Class VI highway.

According to the New Ipswich Subdivision Regulations, the definition of a Street under Article 3:15 specifically excludes Class VI highways or streets. Further, under 4:01 "Subdivisions on Class VI streets are by their nature deemed premature and scattered...". This application can be rejected on this basis alone.

2. Stowell Road is a dead end road from its intersection with Green Farm Road. There are two proposed streets off Stowell Road for access to the lots which would be created by this project. These streets are Haleakala Drive and Adrienne Drive. Adrienne Drive leaves Stowell Road at approximately 4000 feet from the intersection. Haleakala Drive leaves Stowell Road at approximately 5100 feet from the same intersection. This 5100 feet includes approximately 250 feet of Stowell Road that is considered to be Class VI.

The applicant claims that the New Ipswich Subdivision Regulations concerning dead end streets, Appendix B:02 E & F, applies only to the newly proposed streets and not to the streets providing access to them. Even so, the applicant exceeded the 600' maximum length of the dead end street permitted by the regulation. The total length of Adrienne Drive from Stowell Road to the end of the loop is approximately 1200 feet. The total length of Haleakala Drive from Stowell Road to the end of the loop is approximately 2300 feet.

With regard to Haleakala Road, the applicant claims that he has not exceeded the 600' maximum length of the dead end road because he has provided another possible outlet on the proposed plans. No such outlet was included for Adrienne Drive.

The Board rejects the applicant's logic. Even allowing for the applicant's claim that only the newly proposed streets be considered the dead ends, the applicant's proposed possible outlets shown on the plans are not credible because the applicant does not control or propose to control the land over which these outlets would have to be constructed. Furthermore it seems

that the applicant does not accept the fact both proposed streets are dead ends including the loops.

Finally, under 4:03 of the New Ipswich Subdivision Regulations, Premature or Scattered, "The Board shall not approve a scattered or premature subdivision which would involve danger or injury to health, safety or property, nor will the Board approve a subdivision that would necessitate an excessive expenditure of public funds for the supply of municipal services or facilities". The Board agrees that adding 48 new homes at the end of a nearly one mile long dirt road would be a danger to the health and safety of the new residents.

3. Stowell Road is a dirt road. In a 2004 report by Steve Pernaw, traffic engineer for the applicant, he states that Stowell Road is 17-21 feet wide including the shoulders. He further states that normal standards including shoulders for the amount of traffic estimated with the addition of the development would require at least 30-32 feet. There are presently 47 housing units served by the dead end portion of Stowell Road. Therefore, the proposed development will essentially double the traffic on the road.

It is obvious that significant upgrades to Stowell Road will be necessary as a result of this project. The applicant has not proposed any improvements to Stowell Road as part of this development. The Board must reject this application because it would be irresponsible to double the number of housing units on Stowell Road until the road is properly upgraded.

Under 4:03 of the Subdivision Regulations, Premature or Scattered, "The Board shall not approve a scattered or premature subdivision which would involve danger or injury to health, safety or property, nor will the Board approve a subdivision that would necessitate an excessive expenditure of public funds for the supply of municipal services or facilities".

4. Plus whatever Liz wants to add.

Liz added that the density, as stated in the preamble of the cluster ordinance, is not consistent with what a conventional subdivision would be. Also, the Board does not have information they need to have to make a determination such as a utility plan, drainage plan, erosion control plan, traffic impact study and hydrology study and there are questions about the overlapping wells. The plan does not comply with the Subdivision Regulations for dead end roads and the Board takes the position that the length of a dead end road should be determined by the location where there are two accesses and the length of Stowell Road itself must be included in determining the dead end road.

Bert stated that all of these issues were previously mentioned at prior meetings going back several years; in particular the September and November meetings of 2012 specifically addressed all these issues and the applicant has failed to respond to these issues.

Ed expanded on Ned's motion and included a reference of all of the previous meetings on this application and the fact that these issues have not been addressed since 2006. They are not new issues but ones that have been gone over several times.

Bert seconded Ned's motion as amended by Liz and Ed and it passed unanimously.

7:40 p.m. Charles Saari - Conceptual discussion:

Mr. Saari, 37 Ashlawn Farm Road, explained that currently he and a group of people are meeting in his house for religious purposes. He would like to move the location to an existing barn located on Adam Haavisto's property, 39 Ashlawn Farm Road, adjacent to Mr. Saari's property. Their purpose is to love and serve people.

There are no signs or lighting proposed. Parking is in a field. Currently they serve approximately 40 people and meet on Sunday morning for a couple of hours and every other Friday night.

The Board informed Mr. Saari that he would need to apply for a site plan review and address hours of operation, traffic impact, adequate septic system, fire safety, parking, and impact on neighbors.

Mr. Saari was advised to review the regulations and request written waivers with justification if needed. He should also obtain a statement from a septic installer that the septic system can handle the barn. He does not need engineered plans and he was advised to submit a waiver from the review by the Town Engineer.

At 8:00 p.m. the Board met with legal counsel.

8:15 p.m.:

Jim left the room and Paul was appointed in his place until his return.

Liz made a motion to appoint Ed Chairman for the year. Ned seconded the motion and it passed unanimously. Bert made a motion to appoint Liz Vice Chairman for the year. Ned seconded the motion and it passed unanimously.

Bert made a motion to approve the minutes of the January 30, 2013 meeting. Liz seconded the motion and it passed unanimously.

Paul made a motion to approve the minutes of the February 6, 2013 meeting. Ned seconded the motion and it passed with two abstentions.

Liz made a motion to approve the minutes of the February 20, 2013 meeting. Paul seconded the motion and it passed unanimously. Bert made a motion to approve the non public meetings of February 20. Paul seconded the motion and it passed unanimously.

As all conditions of approval were met, the Board signed the mylar for Scott Honkala's two lot subdivision on Poor Farm Road.

There will be a conference call to Attorney Richardson tomorrow at 3:00 p.m. regarding the stipulations. Paul will prepare copies of articles the Board referred to during their work on LWES. Attorney Richardson will be asked if that should include newspaper articles as well.

The Board expressed an interest in meeting with Town Engineer Kent Brown. Joanne will schedule a meeting.

At 8:45 p.m. the meeting was adjourned.

Respectfully submitted,

Joanne Meshna, Land Use Manager