

DRAFT MINUTES
PLANNING BOARD MEETING
NOVEMBER 19, 2014

PRESENT: Ed Dekker, Chairman, Ned Nichols, Paul Termin, Bert Hamill, Tim Jones, Woody Meiszner, Liz Freeman, Joanne Meshna

The meeting was called to order at 6:30 p.m. at the Town Office.

Paul made a motion that Member Freeman recuse herself from discussion and voting on the USA Properties' hearings. Ned seconded the motion. Paul added that she was cited in the judgment and he was not sure that Member Freeman could give an appearance of bias. Ned stated that it was for the good of the Town that she recuse herself. Liz responded she would not recuse herself. The vote was 2 in favor of the motion and 5 opposed.

Paul made a motion that Chairman Dekker be asked to sit on the Board as a regular member and to select someone else to Chair for the same reason as with Member Freeman and the appearance of bias. Liz reminded the Board that Attorney Kinyon saw no need to do so. Ned noted that Attorney Kinyon had said if they can be unbiased. Tim stated if the hearings go on for several nights and the Board starts to feel that there is that perception on the part of USA Properties, the Board could revisit the discussion. Bert stated that Liz and Ed add much more to the meetings than detract from them. The vote was 2 in favor of the motion and 5 opposed.

Liz stated the reason for the early meeting tonight was to discuss whether or not to post the proposed amendments for cluster subdivisions and accessory dwelling units. The hearings do not commit the Board to anything but gives them options. She referred to the calendar and explained how the hearings have to be scheduled in order to be put on the 2015 warrant.

Paul asked when the last time was that the Board did not discuss proposed amendments or have hearings but went ahead with a public hearing. Liz responded that the Board spend a meeting discussing the cluster ordinance and there is a subcommittee working on revisions. The Board could discuss further at the December 3 meeting. Paul asked what the reason was for jamming the amendments though. Ned could not see any urgency with either of the amendments. Woody could not see the urgency. Liz stated that in April the Board had decided to do commercial development and cluster amendments. Bert felt only one amendment should be worked on and that two was too much for the Board. The subcommittee met last week with Russ Salo, a developer. There is still work to be done on the cluster amendment. A meeting is set up for the 24th to work further on it. It still needs to be modeled on a computer to see if it works. There is a cost associated with posting the hearings in the paper. Bert did not have an objection to holding a hearing to see if there was any public input. Liz supported Bert and noted she would not be ready to vote on the amendment as it now stands. Ned thought it was putting the Board under the gun and there needs to be discussion by the whole Board.

Liz made a motion to schedule the hearings. Tim seconded the motion and it passed with five in favor and two against. Woody added "with the understanding that if the Board cannot agree with something, they will set it aside and not move it forward."

7:05 p.m. USA Properties, Inc. - Public hearing for 48 lot subdivision:

Mr. Bruce Simpson and Mr. Peter Holden presented the application to the Board.

Mr. Holden summarized the proposal by referring to a map. The property is located on Stowell Road. Wetlands have been delineated. There are two cul-de-sacs off Stowell Road with lots off the cul-de-sacs. This is a cluster subdivision. There are three wetlands crossings. The roads have been designed as well as the drainage. The lots have septic systems on the lots and wells on each lot or in the common area. They will need to go the Zoning Board for the wetland crossings. State subdivision approval is required. Test pits are done. They will need to apply to the State for a wetlands permit. Originally they had divided the acreage by two and rounded it up but now have rounded it down to make 47 lots.

Attorney Kinyon questioned if the applicant would be going to the Zoning Board concurrently with this application process or would they be looking to have the Planning Board approve the application on condition of approval of the Zoning Board. Mr. Holden responded it was the most desirable to go through the Planning Board first. Attorney Kinyon noted that the two cul-de-sacs are dead ends and asked the length of both of them. Mr. Holden responded that they are under the maximum length of 600 feet.

Attorney Kinyon noted there is a lot of documentation that addresses the overlay districts and density provisions that are in the ordinance. He asked the applicant to go over the cluster residential development restrictions and confirm that they comply with those restrictions and where in the supporting documents that compliance can be found. Mr. Holden responded he was not able to do that this evening but if that was something the Board wanted he could do it later. Mr. Simpson added that there are documents in the application that show dry and non-steep land. Attorney Kinyon asked for support where that information can be found.

Liz stated that she had reviewed all the discussions about the application by referring to the minutes and the engineer's report. She distributed her summary.

- 1) Regional impact - the application was determined to have regional impact.
- 2) Number of lots allowed - there is agreement that the number of lots is 47.
- 3) Open space requirements - there was a request for a calculation sheet for the open space requirements. Liz did not think it was submitted yet.

- 4) Disturbance of slopes - there had been discussion that some driveways would disturb slopes over 25%. However, on the site walk it was determined the slopes were manmade and were not an issue.
- 5) Utility plan - there was a request for a utility plan that has not yet been received.
- 6) Details for individual lots - there was a request for a plan showing individual lots. Some information has been received but not all.
- 7) Lot sizes - there was question why the lot sizes did not correlate with soil based lot sizing and the Board has asked to see the methodology for calculating lot sizes.
- 8) Wells - there was concern expressed about the overlapping wells and some discussion about whether a hydrology study may be required. That has not yet been determined.
- 9) Drainage and erosion control - the Board had indicated it may require engineering review of the drainage and erosion controls plans. That has not yet been determined.
- 10) Reclassification of Class VI portion of Stowell Road - the Board met with the Selectmen previously. Still to be discussed is RSA 231:22-a.
- 11) Emergency access - there has been a lot of discussion on emergency access and nothing has been resolved yet.
- 12) Condition of Stowell Road - there has been some discussion of the condition of Stowell Road but not fully discussed. Mention was made of a traffic study done for Stowell Road in 2004 as part of an application for a different subdivision.
- 13-14) Temporary dead end roads and permanent dead end streets - there has been lots of discussion about temporary dead end roads and permanent dead end roads and no resolution yet.
- 15) Additional plans and documents - there are additional documents and plans in the engineer's report but they have not been discussed yet.

The 65 day clock was discussed. Mr. Simpson noted that the case has been open since they filed the application and it was stayed when it went to court. He agreed to the 65 days. The application has been accepted as complete.

The applicant agreed to 47 lots. A new map is needed with the 47 lots drawn on it.

Liz's list was discussed.

- 3) Open space requirements - Mr. Holden noted they had submitted a sheet that had all the calculations. The Board needs a sheet that goes through the ordinance point by point and shows where each point is addressed in the plan set. Woody added that he would like to see where the open space is located. Mr. Holden stated he had a colored plan that shows steep slopes, wetlands and open space. He will submit the calculation sheet for open space requirements again.
- 4) Disturbance of slopes - has been resolved.
- 5) Utility plans - Mr. Holden stated the utility plans are done and the electric company has approved them.

- 6) Details for individual lots - The Board would like a 11x17 sheet for each lot and it would be helpful to have each lot on one page only. The Board asked that the driveways be shown. Mr. Holden noted that in the drainage calculations an area for a driveway and the house were included. Bert noted that some lots have longer driveways, some have different soils types, grading could change slightly depending on the location of the house and it is important for the design of catch basins to make sure they are draining in the correct way. It is possible to use a curb number which estimates an approximate impervious area based on soil types but that is not the best way to do it. At the least driveways and houses should be shown on the lot in order to determine impervious areas.
- 7) Lot sizes - Mr. Holden stated that when they sized the lots they did the lot size calculations following sewage and loading calculations for all the lots.
- 8) Wells - There were some concerns expressed by the Board of the overlapping well locations. Mr. Holden noted that when they did Craven's subdivision they had a similar layout of lots and a hydrological study was done that they followed when placing the lots. The wells are located in the open space common land. Ed noted there is a distinction between common land and open space. The Board agreed to read the Craven study first before considering a hydrological report. Liz noted the definition for common area is any area other than open space set aside for common ownership as a result of a cluster development, including areas for common facilities such as roads, rights of way, common or individual utilities including wells, common buildings, and recreational facilities. No more than 15% can be common land. Mr. Holden stated there is a plan that shows easements for the wells.
- 9) Drainage and erosion control - Bert stated there should be two reviews: 1) a complete review of the drainage once the houses and driveways are placed on the plan, and 2) there should be a plan provided for storm water management/sediment control showing how the siltation fences/hay bales or other erosion control methods are going to be used during construction to prevent erosion of soils into the wetlands. Mr. Holden stated he had submitted a drainage plan but was not sure about an erosion plan. The plans are to be reviewed by Brown Engineering. The plan should show the houses and driveways. Ned stated they should be reviewed by the Town Engineer with a copy of the storm water calculations pre and post.
- 10) Reclassification of Class VI portion of Stowell Road - The applicant had met with the Selectmen and should probably meet again with them. Mr. Simpson noted an alternative to the reclassification would be to build a road running parallel to Stowell Road where the Class VI road starts and make it a private road maintained by the homeowners. The Class VI section of road should be indicated on the plan. RSA 231:22-a notes a Class VI road can be reclassified by town meeting vote or the Selectmen can do so by petition. The applicant was referred to the RSA.
- 15) Additional plans and documents: Lots with septic systems showing the 4,000 square foot reserve area with slopes over 12% should be relocated or a septic approval is required. A letter is required from the Road Agent regarding access issues, adequacy of turnarounds and safety of driveway locations. A letter is required from the Fire Chief addressing water for fire suppression and adequacy of turnarounds. A letter was submitted by the Fire Chief on April 16, 2010 in

which he requires a third party engineer to draw up the fire suppression requirements; the cost of the third party is to be paid by the applicant. Mr. Holden noted he would be applying for an AOT permit from DES. Mr. Holden will contact the Road Agent and Fire Chief again.

- 11) Emergency access - The Planning Board has expressed concern that the existing road network is insufficient to address safety concerns regarding emergency access to the development. There was a traffic study done in 2004 as part of the Craven subdivision. Mr. Holden stated it was done for this subdivision by Steve Pernaw. Ed noted that the study needs to be updated for 2014. Ned added in particular the study should address the dead end road issue and the condition of the road.
- 12) Condition of Stowell Road - The issue of off-site improvements to Stowell Road has been raised but not fully discussed. Ned asked for a report of how much it would take to improve the road and how much the Town's portion would be.
- 13) Temporary dead end roads - The Board and the applicant disagree on the definition of temporary dead end roads. The Board had questions over temporary being to 15-20 years or longer. There is a difference in the way the dead end road length is measured. The Board's measurement had gone from the end of the loop to where there are multiple paths out and therefore they are talking about close to a mile for a dead end road. Mr. Simpson responded that the ordinance allows for dead end roads in excess of that as long as future exits are shown on a map and dedicated to the Town. Ed noted that the Board felt that was for phase development where continuation of the road was a phased development and clearly planned. Mr. Simpson stated that the ordinance made sense and implied that in the future when neighboring properties are developed they can tie into those roads which would make less cul-de-sacs and dead end roads.

Mr. Hank Somero, an abutter to the property, stated he was against roads being drawn through his property for any future access or emergency access.

Mr. Holden was asked to show a proposal for a road and he indicated there is a 50 foot right of way that goes onto the McNiff property where a road could connect. A lot of municipalities have planned streets because they understand if they do not let people plan a network of roads, they end up with lots of short cul-de-sacs roads. They suggest making connections to a property and some time it will be developed. Another option considered was onto the Craven property but no roads can go through their common land. The other options were through the Somero property and the Foster property. Paul asked which one would actually work within 2-3 years. Mr. Holden responded that a reasonable one would be that the towns of Temple and New Ipswich got together and opened up Stowell Road. Bert disagreed strongly with the applicant's position that a temporary dead end is a temporary road and asked for a legal definition of a dead end of a temporary dead end road before going any further.

Attorney Kinyon stated that in general if an applicant is proposing a dead end road that exceeds 600 feet they would need to request a waiver. In this case the applicant has not applied for a waiver as they do not believe they need a waiver. He asked the applicant if the road was a permanent dead end road do they agree it exceeds 600 feet or not. Mr. Holden responded that they are both around 1000 feet.

Mr. Simpson added that the 1000 foot length would apply to it and that generally the courts have said when a Planning Board relaxes something, they are saying that it makes more sense than before. Attorney Kinyon said that argument should be made in the context of a waiver. Ned added that is not the correct definition of a dead end road, it goes to the end of the loop. The applicant is saying the beginning of the measurement is at the intersection of Stowell Road. Mr. Holden noted the ordinance says the maximum length and it can be longer. Attorney Kinyon made reference to B:02 F. which states "Temporary deadend streets, where future expansion to another outlet is approved by the Board, or where indicated on the subdivision plat, may exceed six hundred feet in length. In such a case, the full width of the right-of-way to the subdivision property line shall be dedicated to the Town of New Ipswich." If the Board is of the position that we are not dealing with a temporary dead end street, then 600 feet is exceeded. He then referenced B:02 E.2 which states "The length of the deadend street shall not exceed 600' unless an alternate distance is determined to be appropriate by the Planning Board." Liz added that for a deadend road the Planning Board measures to the point where there are two ways out. Mr. Holden stated he could not find that in the ordinance. There is no written definition for a deadend road. The Planning Board could take the position that the reason they are talking about deadend roads is safety and for access by emergency vehicles.

Attorney Kinyon stated in the absence of a definition of a term in the ordinance rules of statutory construction under NH law says that common usage of the term is what would apply and a Board has discretion to apply a common usage definition. There is not a definite definition that he is going to find but there is that discretion of the Board. He suggested to the applicant that they consider applying for a waiver of the deadend distance of 600 feet without waiving their right to argue that the temporary dead end street applies. He also suggested the applicant consider having their counsel brief the legal issue for consideration at the next meeting.

Mr. Aaron Cormier, an abutter, stated he gave up .2 acres of his land so they could extend the Class V portion of the road to where it ends now. He indicated on the map where the end of the Class V portion of the road was.

Attorney Kinyon stated that if the Board disagrees with the applicant's temporary deadend analysis, then the only way that the plan can be approved the way it's shown is with a waiver of the deadend requirement. If the applicant wants a decision from the Board on the applicability of the temporary deadend provision with the idea that the Board does not agree on that, the applicant may want to appeal that to the Superior Court before going through the rest of the work for the subdivision approval. It makes sense to get a decision on the waiver request.

Ned added that with a waiver request the applicant needs to present a technical case why the waiver should be granted.

The hearing was continued to January 21, 2015 at 7:30 p.m.

9:00 p.m.

Joanne noted that a complaint was filed regarding the Kuusisto gravel pit on Binney Hill Road and that it was operating before the regulatory hour of 7 a.m. and beginning work at 6:00 a.m. Joanne will send a letter to Mr. Kuusisto reminding him of the hours of operation.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Joanne Meshna
Land Use Manager