

Planning Board Meeting
August 6, 2009

Members of the Planning Board in attendance were Charles Moreno, Chairman, Paul Eaton, James Graham, and Kate Sawal, Alternate Member.

The Chairman called the meeting to order at 7: 34 PM and announced the members present. The closing date for applications to appear on the agenda for the September 2, 2009 regular meeting will be 5 p.m., Tuesday, August 18, 2009. Paul Eaton then made a motion to approve the minutes for the July meeting as presented. Jim Graham seconded the motion, there was no further discussion, and the vote was unanimous in the affirmative. The Chairman reminded the audience regarding rules of procedure at a public hearing and noting that the Board has a policy setting time limits for meetings and that the Board will not consider any new business after 10:30 PM.

The first order of continuing business was the application of DAMARA MASS, INC. for 6-lot conventional subdivision of their property located at Canaan Road and Back Canaan Road (Tax Map 4, Lot 83-1). Randy Orvis of Géomètres Blue Hill was present representing the applicants. It was noted that the final report from Normadeau Associates, the consulting engineers for the Town, had been received late this afternoon. Neither Board members nor Mr. Orvis had had time to review the final report, but Mr. Orvis noted that he had seen the draft reports and been in contact with the Normandeau team. Mr. Orvis advised Board members that his initial review of the report suggested that there were no general comments, simply some minor plan clarifications. He then noted the first item on the Normandeau list, regarding the shape of proposed Lot 83-1-12, and suggested that he could easily address the minimum width issue by reorienting the boundary between the lot and the detention pond area. Board members agreed that this simple solution would make sense. Mr. Orvis noted that he was aware that he would need to make some corrections regarding the shifts in the wetlands lines. His engineer will also be looking over the report. Regarding the farm dump, Randy noted that the trees growing out of the dump are 20 to 30 years old, and the contents seem to be the ideas that one would expect to see in an old farmstead dump, including an old car. In closing, Mr. Orvis said that he has not seen anything in the report that they would have a hard time correcting, so they are hoping that if everything has been addressed to the Board's satisfaction, the Board might be able to grant conditional approval next month. The Chairman asked Mr. Orvis to submit updated plans by the middle of the month for the Board to review before the meeting. Mr. Orvis was also advised to start work on the wetlands application. By agreement between the applicants and the Board, further discussion was continued to the next meeting.

The first item of new business was the application of Public Service of New Hampshire (PSNH) for a public hearing in accordance with NH RSA 231:158 and the Town of Strafford Scenic Roads Ordinance for permission to trim and/or remove trees located along Evans Mountain Road and Willey Pond Road, designated Scenic Roads in the westerly portion of the Town of Strafford, in order to set new poles and replace poles needed to provide cable service to residents located in this section of the town. Jeff Enman, arborist for PSNH, and Ray Whitney for Asplundh Tree, the trimming subcontractor, were both present. Mr. Enman advised that under an agreement between Metrocast and the Town for cable service for this area, Metrocast has asked PSNH to prepare the poles for cable, which would involve setting 9 new poles because of the National Electric Safety code requirements for minimum distances between lines on the poles and between the lines and the ground. They have met with the Road Agent, who has asked that the new poles be set back farther than the existing poles. They will need two new mid-span poles and 7 replacement (higher) poles. Board members asked if there would be any disturbance of stone walls, and they said that there would not be. Paul Eaton asked if they had planned to minimize the impact of the cutting because of the scenic road designation, and they said that they had. Board members asked if the proposed work was mainly trimming. Mr. Enman said that no, there were trees to be cut, although the majority are about an 8 to 10 inch diameter. There is at least one larger oak, he noted. All the trees on the list are in the town road ROW and they have received permission from the landowners to have the trees removed. The total distance is 9 poles/18 spans for about one mile of affected road. Board members briefly reviewed the list. Jeff Enman noted that there is one area on Willey Pond Road involving several trees because the road agent has asked that the poles be moved back about 5 feet because he has been clipping them with the plow, and there are several maples near Taskers, as well. Jim Graham asked if there had been much damage in this area from the ice storm. Mr. Enman noted that the response to power outages in this area is now delayed because PSNH has closed their Pittsfield office.

The Chairman then opened the public hearing. Bob Perry asked first about the orange tags found on some trees. Only trees marked with green tape are part of the current project, although Mr. Whitney speculated that the orange tags may have been from scheduled maintenance trimming activities. Mr. Perry then asked if only one tree in a cluster was marked, whether all the trees in the cluster would be cut. The arborists both confirmed that only trees that have been marked would be cut. Next, Mr. Perry asked if they would be cutting trees smaller than the threshold for protection under the scenic roads statute. They agreed that they would be doing quite a lot of trimming of the smaller trees. The arborists also advised that there are trees on private property that may also need to be cut. They have only marked those that fall under the protection of the statute, but the majority of the trees that would need to be cut are on the list, they said. Finally, Mr. Perry said that he feels that there is a misunderstanding of the statute, and noted that the statute and the town ordinance both say that the Planning Board decides which trees are to be cut, so it is the responsibility of the Board and not PSNH or landowners to decide. Mr. Enman noted that they also need landowner permission since landowners own to the middle of the road under NH law. Mr. Perry closed by submitting photos of a number of trees marked for trimming, and formally requesting that the Board conduct a site review, noting the incident of over-cutting a number of years ago, and the useful compromises made once PSNH, the Board, and landowners met on-site. Mark Montross then addressed the Board, stating that he is suspect of the process and concerned that PSNH does not carry through with projects as designed, while at times moving forward without approval for other projects. He said that he is okay with the trimming project, but would like it done within the confines of the statute and ordinance. The Metrocast contract was briefly discussed. The Chairman then closed the public hearing.

Board members briefly discussed the situation. Jim Graham said that the photos show that some of the trees proposed to be cut are historic scenic trees and that it seems as if extensive cutting is proposed. He said that he thinks that it needs to be looked at. Kate Sawal agreed. Paul Eaton asked about the contract, and there followed a brief discussion of the PSNH's responsibility for setting poles and differing regulations for telephone, cable, and electric lines. Board members agreed that the final solution must be a compromise between the various needs. It was agreed to schedule a site review for Thursday, August 20th at 6PM. The Board will contact the Road Agent to join the review. The Chairman asked Mr. Enman if they could identify all trees to be cut, even those on private property, since they may affect the overall visual impact. Further discussion will be continued to the next regular meeting.

The next item of new business was to hold a public hearing on the Request to Stay Further Review on a Conditionally Approved Subdivision Pending Conclusion of Quiet Title Action. GRAYSTONE BUILDERS, INC. is requesting that the Planning Board continue any further hearing on the application for conservation subdivision development as required by remand of the NH Supreme Court until resolution of the quiet title action regarding Birch Drive and Bunnell Drive. Noting that the issues might be connected, the Board also posted notice that they may address the deadline for compliance with the condition that the quiet title issues be resolved that was imposed by the Board as Condition #1 in its Notice of Decision dated August 11, 2005, extended to May 1, 2008 by vote of the Planning Board at the June 7, 2007 meeting, and further extended by vote of the Planning Board at the April 3, 2008 meeting. (17-lot Conservation Development subdivision, Bunnell Drive (Tax Map 3, Lot 2, Owner: David B. Smith) After introducing the agenda item, the Chairman called on Atty. Greg Michael, representing Graystone, to explain the request. Atty. Michael briefly recapped the history of the various legal issues, noting that the conditional approval of the subdivision application had been appealed all the way to the Supreme Court, whose initial decisions affirmed in part, overturned in part, vacated in part, and remanded to the Board some of the issues raised by the original conditional approval of the conservation development subdivision. Various road layout issues, some stemming from the yield plan approval and others involving waivers to the subdivision regulations have been remanded to the Board for new review, which is the part that the Board plays in the current legal process. At the same time, the quiet title legal case is still working its way through the court system. A recent Superior Court decision on the roads included elements that both parties have issues with, and has been appealed. So, Atty. Michael advised, realistically everything should be held in abeyance until the roads case has been resolved, as it may eliminate the need to come back to the Board., while action on the remand issues now could result in additional litigation and costs. Atty. Michael noted that they have periodically sent letters to the Board and tried to keep the Board informed. In closing, he said that they feel

that the correct thing to do is to keep the remand order in abeyance. He suggested that the resolution of the roads case would take at least another year.

Atty. Michael Donovan, representing the abutters, then responded. He advised the Board that if they grant Graystone a continuation, that they are also granting another extension to the conditional approval. The deadline has been extended twice already, he noted, and this would reextend the deadline indefinitely. Atty. Donovan said that the abutters group wants that deadline to expire; he noted that it has already been 4 years since the original approval, and the project was first proposed 6 years ago. He then recapped the legal issues from the abutters' perspective, noting those issues in the court decisions that had been remanded to the Board, and also noting that Graystone had lost the quiet title action in Superior Court. He said that the Board had knowingly set the original deadline for 2 years in order to grant Graystone enough time to secure their rights to the roads, and knowing that the deadline did not allow for lengthy appeals. Atty. Donovan again suggested that Graystone themselves had originally been responsible for some of the delays. He then formally requested that the Board not grant the stay, saying that they feel that the court's opinions on the quiet title issue were fact based and will stand on appeal. But even if not, he noted, there is no prejudice to Graystone, they would simply need to reapply for the project. But continuing the existing application is continuing the project beyond the statutory 4 year vested rights normally granted to subdivision plans. It is not right, he argued, to leave a project on the table vested against any changes at the town or the state level.

Phil Auger, one of the abutters, then addressed the Board directly. He reminded the Board that part of the Supreme Court decision was a precedent setting decision against the Town and the way that waivers to the subdivision regulations had been used. He said that in his common sense interpretation, the proposed 17 lot subdivision was unrealistic, and it is the responsibility of the Board to apply the regulations on behalf of the townspeople. He noted that Garysotne has the right to come back with a new plan, and noted that there are some state regulations that have changed since the original application date and would apply to a new current application. Phil Davis, another abutter, addressed the Board and said that he feels that this application review has been going on too long and that it is time to stop. Atty. Michael responded that it was the Supreme Court that had remanded the application to the Board and noted that the application will come back as a result, it is not an option. Atty. Michael advised that Graystone as the property owner also has rights and said that everybody, both Graystone and abutters, have been using their legal statutory rights. He noted that they had many issues to pursue before they could begin with the legal process and that they had not delayed. But now, he said, further review should be delayed until the litigation is resolved. Atty. Donovan replied that the remand has nothing to do with the deadline, and said that the court has not spoken about the deadline and is not forcing the Board to continue review. There being no further comments, the Chairman closed the public hearing.

Board members then discussed the matter amongst themselves. It was noted that the Board can take some time to digest all of this information. Jim Graham noted that the Board also has a great deal invested in this situation, and that the Board needs to do the best for the Town. It was noted that the applicants have not requested an extension. There was some discussion of the deadline, and Board members all agreed that the deadline expired in April prior to the most recent court decision, and that the applicant had not requested an extension. At first Board members suggested that they might draft a list of questions to be put to both attorneys present for response. The first question was why didn't Graystone ask for an extension. The second was whether the conditional approval has thus expired or whether the courts have kept it alive through the remand. Board members did agree that it makes sense to stay the remand, but also agreed that the sticking point is the question of the deadline. The next item was the issue that extending the deadline would continue to vest the project to the regulations of 6 years ago. But, does the Board have a choice in that matter. Finally, how does the court's ruling that the yield plan was flawed factor into the matter. Paul Eaton summarized the discussion by noting that the Board has at least three choices—to stay the remand; to not stay the remand; to deal or not with the extension question; or to wait and absorb the information and talk to the town attorney. As Board members agreed, the Board respects the Supreme Court, but does not know where the expiration stands. After more discussion, all Board members agreed that they need more time to think. They then agreed to hear both sides of the issue speak once more briefly. Atty. Michael began. He said that the Board has the power to do what is right and fair. He noted the timing of the various court decisions. He said that the lengthy court schedule had not been

intended by the Board when they imposed the original deadline, and that the 2 years had just been a best guess of how long it would take. The Chairman asked what was the problem for Graysotne with simply reapplying once the legal issues were completed. Atty. Michael said that the issue is the cost of any re-engineering that they might need to do. Atty. Donovan recapped the various dates, noting that the conditional approval expired on April 3rd, and that the first court ruling on roads was dated April 16th and remand order dated April 23rd. On June 26 the court granted a motion to cancel the status conference, and the remand question came to the Planning Board. Atty. Donovan said that as a result, the issue is really about vesting. He suggested that he feels the quiet title action may actually take another 2 years, which would mean that one could potentially be talking about 8 years total. In closing, he noted that Chairman Huckins several years ago had said that it was Graystone's nickel, and thus Graystone that took the risk of going for design approvals before addressing the road issue. There were no further comments. Kate Sawal then made a motion, seconded by Paul Eaton, to table further discussion of this request until the Board has an opportunity to talk with Town Counsel. The Chairman called the vote and the vote was unanimous in the affirmative. Atty. Michael then asked if the public part of this discussion was over, and it was agreed that the hearing is closed. Both attorneys were advised that they could submit comments on the questions in writing, and were advised that the deadline for items for the September meeting is August 18th. Further action by the Board will take place at the next public meeting.

Board members then reviewed recent correspondence, including an inquiry from Tim Osgood regarding his auto repair business on Lake View Avenue. A letter from the Shoreland office at DES regarding the Corey Colwell's subdivision application was reviewed. Further approvals from DES appear to be needed. Finally, Board members agreed to review the question of day care and preschool to be sure that the White's preschool meets zoning requirements. There being no further items before the Board, a motion to adjourn was made and seconded. The meeting adjourned at 10:00 PM.