

## Minutes

### Planning Board Meeting

June 4, 2015

Members of the Planning Board in attendance were Charles Moreno, Chairman, and Donald Clifford, Terry Hyland, Steve Leighton, Lynn Sweet and Donald Coker, Mark Whitcher, and Denise Markow-Speed, Alternate members. The Chairman opened the meeting at 7:30 p.m. The closing date for applications to appear on the agenda for the July 2015 regular meeting is 5 p.m., Tuesday, June 16, 2015. The Chairman advised 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 Chairman advised that the Board will be considering new business first this evening.

The first item of new business was the application of Mark and Susan Adams, Trustees, ADAMS FAMILY REVOCABLE TRUST for 2-lot subdivision of their property located at 174 Tasker Hill Road, (Tax Map 3, Lot 14). Ray Bisson of Stonewall Surveying presented the plans; Mark Adams was present. Phil Auger, an abutter, was also present. Mr. Bisson explained that the Adams want to cut off a 5.93 acre lot with the existing house and keep the 60± acre remainder of the property open to pass on to their daughters. Mr. Bisson conducted a concentrated survey and wetlands study on the front part of the lot. There is a stream along Water Street and a vernal pool along Tasker Hill Road with a brook and pond just beyond. The lot is hilly; Mr. Bisson provided ground topography to show what parts of the lot have slopes greater than 25%. They have dug test pits on the large lot but the project does not need state subdivision approval because both lots are greater than 5 acres. The plan set includes three sheets. Sheet 1 details the new lot, Sheet 2 shows topography with the buildable areas by slope highlighted in green, and Sheet 3 shows the whole property. There is an existing tote road accessing the rear of the property from Tasker Hill Road, and the road agent has approved that location as a driveway for the large lot. It was noted that the property is under current use assessment and there will be a land use change tax penalty on a small portion of the house lot if it is sold. Board members then reviewed the plans with the checklist. There were no items missing. Steve Leighton then made a motion to accept the plans as complete for consideration. Lynn Sweet seconded the motion. There was no further discussion and the vote was unanimous in the affirmative. The Chairman then opened the public hearing on the application. There were no comments. The Chairman then closed the public hearing. Steve Leighton then made a motion to accept and approve the plans for 2-lot subdivision as presented. Lynn Sweet seconded the motion, and there was no further discussion. The vote was unanimous in the affirmative. Board members thanked Mr. Bisson for bringing such complete plans, and directed the applicant to bring the final plan for recording to the office for signatures along with a check for recording fees.

The first and only item of continuing business before the Board was the application of BRIAN and SANDRA PAYNE for a conservation subdivision development and boundary adjustment on Payne Drive off Roller Coaster Road (Tax Map 7, Lot 8 and Tax Map 37, Lots 11 and 12). Bernard Cote of Géomètres Blue Hills was present accompanied by Atty. James Shulte and David Whitcher representing the applicants and by Brian and Sandra Payne. Lissa D'Anjou and Bob McLelland, abutters, were also present. The Chairman addressed the group and noted that he is planning on running an orderly and civil meeting. He noted that it is important that only one person speak at a time and asked that anyone who wishes to speak address the Board from the easel area. Donald Coker noted that a direct family member of the applicant is sitting as an alternate member of the Board and asked if that person wished to recuse themselves from this discussion. Lynn Sweet and Steve Leighton disagreed, noting that alternates do not vote and saying that they felt that there would be no lack of impartiality. Mark Whitcher noted that he could make comments as easily from the audience. Mr. Coker noted his concern with public perception. It was agreed that it would be up to Mark Whitcher to recuse himself. Discussion then turned to a "Petition for Waiver of Planning Board Vote Conditions" submitted by Randy Orvis on May 19, 2015. There were no revised plans submitted.

Steve Leighton asked why the waiver approval would not be null and void and review of the application starting over if the applicants do not agree to the voted stipulations. Atty. Shulte said that the Board suggested that they could submit a new waiver request, which they have done. It was noted that there are two new Board members who did not participate in the vote on the waivers at the January meeting. Mr. Leighton summed up the results of the January vote, saying that the Board agreed to waivers but the applicants must meet certain conditions. If they do not agree, there is no waiver. Atty. Shulte suggested that although the Board voted on the waiver request, the courts

say that the only real vote is the final vote on the application, so the January vote is not really final. So, the issue of the waiver is still there. Atty. Shulte said that he is here to address the six conditions voted, and he noted that on most of the conditions, the applicant does not disagree. Donald Coker noted that it was the applicant's decision to request waivers. The Chairman and other Board members suggested that if the original waiver request is no longer valid, the applicants should withdraw the original request and request new waivers. Atty. Shulte again said that he feels that the original waiver request is still on the table because there is no final vote until the end of Board review. After discussion it was agreed that all of the requested waivers are still floating.

Atty. Shulte then said that he planned to address the six conditions voted by the Board, one at a time. The first condition, a conservation easement, was addressed at the May meeting. Atty. Shulte said that the minutes of the May meeting suggest that since there does not seem to be an agency willing to accept an easement, that the applicants can deed the conservation area to a homeowners association under the ordinance, with pertinent restrictions. David Whitcher again noted that they have consulted with Atty. Coraine, who drafted a conservation restriction deed on another project. There was a brief discussion and it was noted that the group had agreed to a homeowners association at the last meeting. It was noted that there are additional statutory protections for conservation deed restrictions granted as part of the subdivision process. It was noted that the conservation restriction deeds must be reviewed by the town attorneys.

Atty. Shulte said that he would like to skip #2 and move on to #3, which he says is okay. #4 they also agree with, and would add the word "anyone" so that the restriction would read "before anyone brings the road to the Town for acceptance, it must be brought up to full current Town standards. There was a brief discussion of town meeting issues and the acceptance process for town roads. Atty. Shulte said that they want to show the note on the plan so that future buyers would be alerted to the restriction. Donald Coker asked if it should be "anyone" or "any entity". Atty. Shulte suggested "any person or entity" or "anyone, whether person or entity". There was some discussion of whether the note should say "current design standards" or whether "current" was enough. It was agreed that there is time to complete the precise desired wording here.

#5 concerns the requested buffer behind proposed Lot 8-5. Atty. Shulte asked how large a buffer the Board was requesting. It was suggested that the Board wanted at least 25 feet. Steve Leighton said that he does not agree with the buffer because access may be needed in the future. There was a general discussion of the issue, with Donald Coker noting that the idea was to provide protection for Lot 8A and noting that the Board was looking at the waiver request in terms of trading the waiver for conservation values. Finally it was noted that the applicants are willing to agree to the buffer, so the Board agreed to move on.

Condition #6 was a requirement that the ROW crossing Ms. D'Anjou's property be restored once the new drive was built. Atty. Shulte said that they have two concerns. First, the utility poles may need maintenance so they feel that you cannot close off the whole road. Secondly, the request involves land outside this application, and they feel that it is inappropriate to include in the discussion. The developer is willing to shut off access at either end of the old ROW to address the concern about secondary access, but they must leave one end open for the utility companies, they feel. Donald Coker noted that he has seen some very rough access to utility poles across the town and state. Steve Leighton asked if PSNH/Eversource has a utility easement, and said that truck access would need to be maintained if they do. Lissa D'Anjou said that she has found nothing that says that the area must be kept open. Mr. Leighton suggested that it would be in her deed, and she indicated that it was not. Lynn Sweet suggested that the issue is between Lissa D'Anjou and the Paynes. Donald Coker agreed that it is not a Board issue if the road is moving. Atty. Shulte said that they are prepared to reach an agreement to shut off access to the old ROW. Steve Leighton suggested that the old ROW needs to be gated where it intersects with the new road on the Payne property. Donald Coker asked at whose expense, and Atty. Shulte said that the applicant would pay to block it off. Atty. Shulte then suggested new language for this item, stating that when the new entrance to the Payne properties is built, the applicant will block off the ROW entrance with a gate to be installed where the ROW enters into the Payne property.

Atty. Shulte then returned to item #2, which was the Board's request that 55% of the buildable area be put into the conservation area. The applicants do not agree with this condition. Atty. Shulte noted that over 40% of the buildable area is included in the current plan, and 87% of the non-buildable area, which is more than the ordinance requires. Charles Moreno noted that the Board requested a table showing the acreages, and that the Board has yet to see a revised table. Donald Coker noted that the ordinance requires "at least" 40%. Atty. Shulte said that he hasn't seen the rationale for the request, and said that the request is effectively asking the Paynes to reduce the lot with

their home by half. Over half of their land would be conserved, he noted, and asked for the rationale for asking them to conserve more. Don Clifford advised that he is a new Board member, but he said that he has been researching conservation development and he said that this project is very different in design from most conservation developments because of the large house lot in the middle. He noted that many other conservation developments have pavement, and suggested that he feels that there should be some negotiation. Charles Moreno agreed, noting that conservation developments are usually clustered, with the valuable conservation areas identified and plans drawn in order to protect those areas. Here the applicants are using the conservation development model in order to get a plan to work, and are now asking for waivers. Atty. Shulte noted that the ordinance suggests that one goal of conservation is to minimize pavement, and he noted that some Board members have expressed the view that paving is inconsistent with conservation. He also noted the issue with runoff as had been noted by Denise Markow-Speed. Mr. Payne is entitled to live at the end of his property, he noted, and much of the large lot is area that he has improved. Mr. Moreno noted that at the January meeting, Board members had noted that if the conservation area and the large lot were held by one landowner, that person could control the conservation area and would not need to include all that land in their house lot. Mr. Moreno noted that the applicants have now taken that option off the table. Several Board members agreed that the bar had been set high in the discussion at the January meeting, but noted the trade-off for the waiver. Atty. Shulte again noted that the current plan would put more land into conservation than required by the ordinance. Bernard Cote said that his role in the January discussion had been to facilitate what the value would be, given the areas discussed by the Board. Board members agreed that it had been a general discussion involving all of the Board, including members whose terms have now ended.

David Whitcher and Atty. Shulte then requested that they be allowed to take a recess to discuss the situation with the applicants. Board members willingly agreed.

Upon their return, David Whitcher addressed the Board. He said that since the open space would be governed by a homeowners association, it gives him the ability to bend on the size of the large lot. They are willing to take an additional piece off the large lot—5 acres behind the house—this added with the piece from the buffer behind Lot 8-5 would get the buildable area part of the open space in the direction that the Board is looking. Mr. Cote will design the reconfiguration, which would bring the large lot down to about 20 acres and will get the conservation area up to 49 to 50% of the buildable area. Mr. Moreno responded that he was not sure that there was any consensus among Board members and said that he thinks that the Board needs to see a revised acreage table. Atty. Shulte said that the applicants need direction from the Board and asked if there was a majority prepared to say whether the proposed compromise was acceptable. He said that he hoped that this would be ready for the next meeting where the application comes up. Donald Coker said that he feels that the whole issue is compromise; the Board was at 55%, the applicants in the 40s, if the reconfiguration gets to 50%, he feels that this is a reasonable compromise and accommodation to the needs of the Board and the applicant. Terry Hyland agreed, saying that he thinks that the compromise is reasonable and noting that he had not attended the January meeting. Mark Whitcher said that he thought that it makes sense. Don Clifford said that he felt that if they can get up to 50%, it is a good compromise, and he can justify the decision if asked based on land going into conservation. Steve Leighton said that he knows that the pavement is a hardship but his position is that frontage should be on blacktop. If you are going to create lots, he said, it needs to be blacktop, noting that there are many issues faced by the Selectmen, school districts, etc. especially for handicapped residents. Atty. Shulte asked if private road waivers under RSA 674:41 were required, and Mr. Leighton said that they are, but that the waivers do not change the responsibility to the towns if there is a handicapped child. Lynn Sweet agreed, saying that as a Selectmen, she feels that it should be paved. Denise Markow-Speed said that as a highway engineer, she is looking at the engineering, and a private road would be maintained by the Paynes until it meets design standards. She said that the stormwater runoff from pavement would cause more damage going into the wetland area, and she feels that it would make more sense to waive the pavement because of the conservation development and the intent to preserve the land. Mr. Moreno asked if she felt that pavement was a concern for all conservation development and Ms. Markow-Speed indicated that here the runoff is going into a wetland area. Steve Leighton asked about a retention pond. Ms. Markow-Speed suggested that it might not be needed here given the average daily traffic. Mr. Moreno said that over time, the taxpayers end up with the costs of poorly constructed roads, and he said that he is concerned that this road could lapse into town responsibility. He said that he is also concerned that waivers are a slippery slope, and after all the discussion, he still feels that it is important to set the bar high. Brian Payne said that his trucks are not tearing up the main road. Steve Leighton came back to the issue of frontage, and suggested that consistency is important. Atty. Shulte noted that conservation developments give the Board the ability to grant waivers because the rules are written to allow flexibility. He said that he feels that the Board would need a reason to impose a restriction here. Steve Leighton

noted that there are many large parcels of land and said that this situation is not that unique. The concern is opening a door to similar situations.

Atty. Shulte asked about the next steps. Mr. Moreno recapped the situation, noting that the plan has been accepted, public hearings have been held, and the applicants have the option to bring the plan forward without waiver requests or with whatever set of conditions. Donald Coker suggested that the applicants provide revised plans and the acreage table requested by the Board some months ago. Denise Markow-Speed advised that the applicants have heard the Board and have the lay of the land, and the applicants must now decide how to proceed. Mr. Coker suggested that he thought that the Board would be ready for a vote when the applicants return. Atty. Shulte noted that he had heard 3:2 of the voting members against the proposed compromise on open space acreage. Discussion among Board members turned to Steve Leighton's comments about the town's responsibility in the case of a handicapped child or severe storm damage. He noted the Webber Road situation several years ago. He again noted that for creating lots, the definition is that you need a Class V road or equivalent for frontage, and that means a paved road. There was some continuing discussion, and it was agreed to continue discussion of this application to the next meeting.

Board members then turned to the calendar, and agreed, as in previous years, to hold the July meeting on the second Thursday in deference to the Independence Day holiday. The next meeting will be held on Thursday, July 9<sup>th</sup>, and it was agreed that revised plans and any new information for the Payne project, if submitted, would be due to the Board by June 23<sup>rd</sup>. Board members briefly noted one item of potential new business. Board members then turned to the minutes of the May meeting. Lynn Sweet made a motion to accept the minutes as presented with the addition of one sentence about the evening's schedule. The motion was seconded and the vote was unanimous in the affirmative. A motion to adjourn the meeting was then made and seconded. There was no further discussion and the vote was unanimous in the affirmative. The meeting adjourned at 10:45 PM.