



OLD VALUES - NEW HORIZONS
PLANNING AND DEVELOPMENT

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Planning Board Minutes
September 2, 2009

Roll Call:

Phil LoChiatto, Chairman – Present
Nancy Prendergast, Secretary – Present
Ruth-Ellen Post, Member – Present
Louis Hersch, Alternate – Excused
Sy Wrenn, Alternate – Excused
Ross McLeod, Selectman Alternate - Excused

Rick Okerman, Vice Chairman - Excused
Walter Kolodziej, Member - Present
Pam Skinner, Member – Excused
Kristi St. Laurent, Alternate - Present
Bruce Breton, Selectman Member - Present

Staff:

Laura Scott, Town Planner – Present
Tracey Mulder – Admin Asst. - Present

Mr. LoChiatto opened the meeting at 7:00 pm, followed by the Pledge of Allegiance. Seated for Vice Chair Rick Okerman is Ruth – Ellen Post.

Southern NH Rail Trail Alliance Presentation

Mr. Wayne Morris from Windham Rail Trail spoke to the Board regarding working with the Derry Rail Trail Alliance, Salem Bicycle Pedestrian Committee and the Windham Rail Trail Alliance to apply for a Transportation enhancement grant for the Rail Trail. Windham has 6/10 of a mile to complete from Ralston Rd to the Salem town line. The town of Salem, NH is looking to complete 1.1 miles from the Windham town line down to Pentucket Bank as their first phase and Derry is looking to put in a culvert at Bowers Road.

Mr. Morris is asking for a letter of support from the Board to include with his application packet when he applies for the grant. He is hoping this letter will enhance the Town's chances of receiving this grant.

Mr. LoChiatto asked Mr. Morris if he was representing the SNHRA not the Windham Rail Trail. Mr. Morris agreed he was representing the SNHRA for the purposes of this grant only. The three communities are joining to apply for the grant money to increase their chances of receiving the grant. The reason behind this idea was rather than the three communities competing for this grant they believe it will be in the best interest for all the Towns to join forces to obtain this grant.

Mr. Morris explained to the Board that if the grant money were approved to the three communities, the towns would implement the work for their trails in phases with the culvert in Derry as the first phase, Windham as the second and Salem as the third.

Mr. Kolodziej asked for clarification from Mr. Morris regarding the cost of the project and Mr. Morris assured the Board there should be no cost to the Town. Eighty percent of the cost to finish the Rail Trail will be from the federal grant and the additional twenty percent will be met by in kind services, DOT, grant from Bikes Belong, volunteers or other means. Mr. Morris stated that the letter of support he is asking for has nothing to do with the financial aspect of the project.

Mr. LoChiato clarified with Mr. Morris that in the event one of the towns could not follow-through on their phase, if Windham would be responsible for the other Towns portion. Mr. Morris stated that even though Windham is combining efforts with other towns, we are not responsible for other town's portion and if Windham or other the towns could not come up with their matching portion then the federal funds will not be allocated to the individual town. In addition, since the project is broken down into phases, if one of the towns does not follow through on their town's phase then Windham can still complete their portion of the Rail Trail. Mr. Morris said that all the phases were independent from one another even though they will be applying for the Grant together in order to have more leverage with the grant committee who makes the funding decisions.

Having worked with grant funding in the past, Ms. Post questioned whether the application required Mr. Morris to state from where the matching funds were coming. Mr. Morris told the Board he would be up front on the application and indicate that he did not know how the additional 20% matching funds would be obtained.

Ms. Scott stated that not all matching funds need to come from cash donations and that some of the matching funds can be in the form of materials, donated labor, volunteers etc. and these can be equated into dollar values.

Mr. LoChiato took an informal poll from the Board asking if they were in favor of writing a letter for Mr. Morris in support of the TE grant. Mr. Kolodziej stated he was in favor; however, he would like to see the 30K obtained from somewhere other than the Town Meeting. The Board agreed to write a letter in support of the Southern New Hampshire Rail Trail Alliance.

Public Hearings

Lot 14-B-3625 for a 2-Lot Subdivision Application

A 2-Lot Subdivision Application has been submitted for Lot 14-B-3625 on Rosewood Street, which is located in the Rural Residence Zoning District. The applicant, Russell Ward, is proposing to subdivide Lot 14-B-36-25 into 2 lots, with the existing lot to be 2.03 acres and the proposed lot to be 1.57 acres.

Ms. Scott read the case materials into the record and stated the lots meet the soil based lot sizing requirements. She stated the applicant is requesting a waiver from subdivision regulations Section 605.5 for a lot line of 75 ft. rather than 100 ft. off the cul-de-sac required in the regulations Ms. Scott briefed the Board on the details for the lot line adjustment stating that Mr. Ward will need a driveway easement because the existing driveway will cross over to the proposed new lot and that NHDES Subdivision approval is required. In addition, Ms. Scott noted for the Board several corrections on the plan:

- the lot number for the proposed new parcel is incorrect and should be listed as #6 Rosewood Street (parcel # 14-B-3639)

- Soils Area Table lists the incorrect lot numbers
- As a requirement, the driveway easement will need to be recorded with the Town when the ownership of the lots change
- NHDES Subdivision Approval is required

Discussion by the Board followed regarding past protocol by the Board to accept a motion for public hearing and to hear more about the waiver request. Mr. LoChiatto stated that in past, the Board would accept the plan for public hearing, and then granted the waiver request. However, Ms. Scott pointed out to the Board if they do not grant the waiver first, then Mr. Ward would need to apply for a variance. Mr. LoChiatto clarified with Ms. Scott that by accepting the waiver and then opening up the waiver for public hearing the Board would be in violation of RSA's. Ms. Scott explained to the Board that if they accept for public hearing first and do not grant the waiver then Mr. Ward's application would have to be denied by the Board.

Ms. Prendergast stated that it would make sense to accept the waiver first because Mr. Ward does meet the zoning requirements. The Board decided to move the motion to public hearing and then possibly accept the waiver request.

Mr. Kolodziej motioned to bring the application to public hearing for lots 14-B-3625. Second by Mr. Breton. Motion passed 6-0.

The applicant, Russell Ward, of 6 Rosewood Street, explained to the Board he did not want to move the driveway due to the curb appeal and does not want to disturb pristine look of the existing driveway, vegetation, fences etc. He would like to build another house and share the existing driveway. Mr. LoChiatto brought to the attention of the Board that an easement needs to be drawn if the existing house on the property is sold. Ms. Scott explained to the Board that since Mr. Ward owns the property, and if the waiver is granted, and the property is subdivided, that Mr. Ward cannot give an easement to himself; however, should the property of the existing dwelling be transferred to a new owner, then the easement would need to be recorded. The Board asked that as a condition of approval, the driveway easement would be required, and Ms. Scott explained to the Board what safeguards would be in place should the need arise for an easement. When building permits are pulled for a new lot, department procedures would be in place to flag the need for an easement on this property. The Board noted that the submitted plans were incorrect regarding the proposed driveway and new plans will need to be drawn showing the shared driveway.

Mr. LoChiatto discussed with the Board whether they would permit the waiver request for a lot line of 75 ft. from the cul-de-sac instead of a 100 ft. lot line. Mr. Breton is inclined to approve the waiver rather than having Mr. Ward go before the ZBA.

Mr. Breton motioned to grant the waiver for lot line length request. The motion was second by Ms. Post. Ms. Post indicated she would like to see the following included into the motion:

- Unique circumstances of this situation involving access to existing dwelling
- The need to meet soil based lot-sizing requirements

Motion carried 6-0 to grant waiver request for the 75 ft. with amendments.

Ms. Scott clarified for the Board that on the proposed new lot Mr. Ward would like to relocate the drainage easement. When the subdivision was originally completed, there was a drainage easement on the proposed new lot where drainage is not occurring, and in the current proposal, Mr. Ward will be putting in a drainage easement where drainage is actually flowing to the wetlands.

Mr. LoChiatto said it appeared as though the drainage easement change would affect the adjoining lot. Ms. Scott stated the easement cannot be changed on someone else's property and that this would be corrected upon recording of the subdivision.

Mr. Breton asked regarding note #6 on page 1 and note #4 on page 2 of the submitted plans if the applicant would be responsible for impact fees upon assessment of the proposed new building. This is an assessed amount and must be paid when the building permit is pulled.

Mr. LoChiatto opened the subdivision request to the public for discussion.

Ms. Scott read into the record the Board of Health regulations indicating all wells must be at a minimum of 75 ft from leaching fields, set back 25 ft from surface water or drainage culverts and setback 50 ft from all lot lines. Based on this it appeared as though the applicant would be fine.

Ms. Scott noted outstanding items:

- DES subdivision approval
- Driveway easement
- Changes to notes on plan regarding assessment of impact fees
- Ensure new parcel and address are correct
- Soil tables list the correct lot numbers

Ms. Post asked the Board about the difference between the proposed new driveway on the plans submitted to the Board and the actual request for a shared driveway not shown on the plan. However, the applicant is requesting a shared driveway. The Board understands applicant's aesthetic concerns but by sharing the driveway, it adds another layer of easement. Mr. Ward addressed the Board regarding the proposed house being incorrect on the map stating the house was incorrectly placed on the map by the soil scientist when the septic was added and was told it could be changed later.

Motion by Ms. Prendergast with the following modifications:

- 1) Changing #6 on map S1 referring to impact fees by changing the word 'obligated' to 'assessed' and the same on map S2 #4.
- 2) Memo from Ms. Scott to change the lot number to 14-B-3629
- 3) Correct Soils Area Table list with correct lot number
- 4) Driveway easement to be recorded when/if property is sold
- 5) DES subdivision approval required
- 6) Easement needs to be shown to property line with no changes to drainage on any adjacent property

Motion second by Mr. Breton. Motion carried 6-0.

Site Plan Review & WWPD Special Permit Application for Radial Properties

A Wetlands and Watershed Protection District (WWPD) Special Permit & Site Plan Review Application has been submitted for Lot 11-A-161 at 8 Ledge Road, which is located in the Limited Industrial Zoning District.

The applicant, Karl Dubay of MHF Design Consultant, on behalf of Radial Properties LLC, is proposing the expansion of an existing contractor's material storage yard, with associated site development, landscaping, and drainage improvements, a majority of which is in the WWPD. A waiver has been submitted under Section 1108 of the Site Plan Regulations to combine the Pre-Submission and Final Submission Application processes (Site Plan Regulations 400-405). The applicant is asking that the requirement for Pre-submission application be waived and combined into one with the Final Application, providing the Board has enough information to make a final decision.

Mr. Breton made a motion to grant the waiver under Section 1108 to combine Sections 400-405 of the Site Plan Regulations. This waiver will combine the Pre-submission application with Final Submission application. Motion second by Mr. Kolodziej. Motion carried 6-0.

Ms. Scott briefed the Board on materials included in their packet

- Waiver request
- Information and photos about addressing noise concerns and exact operations on the site
- Two memos from Keach Nordstroms indicating no issues with application
- Memo from Mr. Dubay indicating all issues have been addressed by the applicant
- Memo from ZBA granting the variance
- The Site Plans
- Abutter letter

Applicant is proposing to expand their existing materials storage yard by approximately 2 acres. The applicant is requesting more usable area for their work with no new structures or access points.

The applicant has gone through the TRC process and all concerns have been addressed. In addition, the applicant has gone before the ZBA, and Keach Nordstrom has reviewed the property for drainage issues and was satisfied with the proposed drainage system. Ms. Scott read into the record a memo regarding:

- 1) DES Wetlands permit still pending
- 2) Pictures are in WWPD drainage report if Board members would like to review
- 3) Building inspector, Mr. Mike McGuire and Ms. Scott believed public impact safety fees would not be applicable in this case because the proposal does not require extra police and fire requirements.

Ms. Scott reiterated that this was a site plan and WWPD Special Permit application. Mr. Breton noted for the Board that the reason the applicant was making this request was because they were previously granted a variance in 6.01.3 to expand their storage yard into the WWPD. Since they were granted the variance by the ZBA, it is now up to the Planning Board to determine the feasibility of the variance.

Motion to accept plan for public hearing by Mr. Kolodziej, Motion second by Mr. Breton. Motion carried 6-0.

Mr. Dubai, with MFH Design Consultants, addressed the Board noting that the applicant has received an Alteration of Terrain Permit (AOT) for this property. Mr. Dubai explained to the Board that obtaining an AOT permit from the NHDES has become more comprehensive and the NHDES has raised the bar for design performance and he is proud to say that the NHDES had no comment and he believed this was because they paid special attention to the design of the drainage system and treatment protection. Mr. Dubai noted that even though this property in the past had received an AOT permit, due to the new criteria to receive this permit, rather than amend the existing permit his applicant was required to submit for a new application under the new, more stringent guidelines and they were successful.

Mr. Dubai went over the expansion of the property that was previously approved by the Board. The gravel area is in the limited industrial district and is in accordance with the approvals. The proposal is to enlarge the previous expansion. There will be no blasting on this project, and they are merely taking the fill that is already on the property and spreading it down by expanding the area and in addition treating the water all the way around the edges of the expansion and putting in a retention area. In addition, along the edges of the expansion where there is a slope, Radial Properties will revegetate with indigenous plants. The existing building and operation will not be changed.

Ms. Post asked Mr. Dubai how much storage space would be added. Mr. Dubai noted that an additional two acres would be added for additional storage. Items stored are construction materials, roadway, and piping. Since the applicant, Mr. Cairns, obtained the I-93 expansion contract, he needs more room to perform the expansion.

Ms. Post asked about heavy-duty equipment and oil seeping into the ground since it is so close to the WWPD. Mr. Cairns and Mr. Dubai met with the NHDES for a Pre-application meeting. The NHDES set parameters on this project and did not have a problem with the gravel yard and the expansion. In addition, Mr. Dubai said rarely does any spillage occur and assured the Board that never has Mr. Cairns had a problem at the site. Fluid changes and all mechanical work are done in the garage bay and the garage bay is equipped with intercept systems. In addition, the treatment systems have deep sump catch basins and hooded catch basins to minimize any fluid spillage.

Mr. Glenn Cairns, Radial Properties, addressed the Board explaining that the original conditional requirements of the site plan approval was to have repairs take place inside garage facility and if a machine needing mechanical work is brought to the site it must be kept in the garage. The garage has complete capture systems to ensure no environmental risk from fluids. Ms. Post asked if there were scheduled maintenance checks on machines that are stored outside to check for possible leaks. Mr. Cairns answered that they do not do checks on machines and it is highly unlikely this would happen. Mr. Cairns went on to say that since the work site is under a watchful eye from an environmental standpoint, machines that leak oil cannot be run and would be kept in the garage.

Mr. Dubai spoke to the Board about the very small Wetland area that will be impacted. This Wetland area is a tiny sliver of land, roughly 1,400 square feet that is merely a remnant of an old cart path. The depression in the soil is from the cart's wheels being pulled back and forth creating a rut in the ground and making a low point for water to collect. This Wetlands area falls under a minor impact classification.

Mr. LoChiatto asked about the landscape plan and was curious why the plan called for cutting the tree line back only to have to replant it. Mr. Dubay indicated this was part of the 2-1 fill and this would take care of the slope issue.

Mr. LoChiatto questioned the proposed detention basin and indicated it looked as though an outlet is going to the WWPD and crossing the property line and going into another property. Regulations state that flow cannot be increased across property lines. Mr. Dubay explained that the flow is not crossing property line. He explained there was a perimeter system for drainage underneath the fill with intercept berms, deep sump catch basins with hoods and those all go into perforated crushed stone. Basically, the water goes into a recharge area and then gets stored. Mr. Dubay indicated that the owner is ultimately responsible for maintaining the sumps to ensure the pipes do not clog.

Ms. Prendergast asked about construction process and sediment control for what is stored. Mr. Dubay answered that Federal law requiring a Storm Water Pollution Prevention Plan (SWPPP) is required by the Board to be submitted to the Department for this project and if the owner does not comply, they will be fined.

Mr. Dubay explained the EPA controls and regulations from the State and this site and project will be closely watched by the state and monitored with silt vents surrounding the entire property.

Ms. Post inquired about the letter from the abutter, Walter Brandes, regarding the noise ordinance and hours of operation. It was decided that since this question pertained to the abutter's letter that the question could wait until the abutter spoke.

Mr. Dubay read into the record the baseline approval from the PB when the original Site Plan Approval was granted several years ago:

- 1) Item #6: Hours of operation after construction during normal business hours shall be 6:00 a.m. until 7:00 p.m. with an occasional after hours use of the property
- 2) Item # 7: Noise on site will be restricted to those levels allowable under the Zoning Ordinance
- 3) Item # 8: High noise levels will be restricted to the hours of 6:00 a.m. to 7:00 p.m. Monday through Saturday

Ms. Scott clarified to the Board regarding Mr. Brandes' concerns regarding the PB's previously approved Site Plan that nothing has changed with respect to the use of the materials storage yard in the WWPD. Ms. Scott noted for the Board that the plans they were reviewing at this meeting are exactly what had been approved by the ZBA for the WWPD impacts.

Mr. LoChiatto asked for clarification as to whether Radial Properties was submitting an amendment to the existing plan or if they were submitting an entirely new plan. Ms. Scott explained to the Board that this was an amendment to the previously approved plan.

Mr. LoChiatto opened the discussion to the public.

Mr. Walter Brandes, 78 Blossom Road, addressed the Board supplying an aerial photograph to show where his house is situated with relation to Radial Properties and a letter submitted to the Planning Board. Mr. Brandis stated that he would like to have the ambiguity taken out of this issue with respect to clarification of the noise issue. The ambiguity being that the level of *high noise* is subjective and difficult to determine as *high noise* to one person may not be high noise to another and he would like to have the definition clarified by the Board. Specifically, Mr. Brandis would like to see the definition of *high noise* be those things excluded from noise in the Town before 7:00 a.m. and 11:00 p.m. and on Sundays. Mr. Brandes believes this will take away any ambiguity because it is difficult to enforce something that has no definition.

Mr. Brandis agreed that Mr. Cairns has a right to do business on this property; however, Mr. Cairns has been slowly changing the type of business (i.e. storage facility to screening loam), and hours of operation and noise levels have increased affecting Mr. Brandis' quality of life. Mr. Brandis explained to the Board, that he could see and hear all of the work performed on the site, and since he works from home, in order to do business, he needs to keep all windows closed during the nice weather to conduct work on the telephone due to the high level of noise coming from Radial Properties work site. He went on to say perhaps screening may help alleviate some of this noise but right now he can't enjoy his screened porch and other amenities of his home due to the high level of noise. Specifically, vibrations are felt in the evenings while eating dinner – especially if he is having dinner on his screened porch and this takes away from his quality of life. He went on to say rather than the truck noise beginning at 7:00 a.m. as in the ordinance the truck noise often begins at 5:00 a.m. or earlier. And, by 5:15 a.m., the noise is at a very high level, again affecting his quality of life. Mr. Brandis is not asking the Board to decline the modest expansion but would like the Board to understand that the business has changed and Radial Properties has brought in loam to screen which utilized bucket loaders and these bucket loaders are extremely noisy, not to mention the loam screening itself. Mr. Brandes would be pleased if the expansion would provide a means for the trucks to turn around rather than backing up to eliminate the back up warning noise from the trucks. Mr. Brandes is requesting to have the screening to help eliminate the noise level, ambiguity taken out of the noise ordinance, hours of operation adhered to, and high noise hours taken into the record.

In addition, Mr. Brandes relayed to the Board that Radial Properties knew they abutted residential area prior to building their site and Radial Properties understood they would be limited in the approved business operations.

Mr. Brandes discussed the tree survey he saw in the back of his house and the trees tagged to be cut down for the Radial Properties expansion. Mr. Brandes noted that some of the trees are over 100 years old and one tree in particular which is 25 inches diameter, a White Pine, is only 3 feet from the Wetlands and Mr. Brandes thought based on the size of the tree it appeared to be over 100 years old. Mr. Brandes noted for the Board that he did not think it was necessary to impact five acres of land for two acres of usable storage space for the proposed site plan. In addition, Mr. Brandes noted that it appeared as though the tree survey is off by as much as fifty feet. In addition, the rock wall on the drawing is the property line, which indicates that the tree survey is incorrect. Mr. Brandes made the point that he does not think the Board should grant Radial Properties permission to cut down all trees tagged over 12 inches. There should be some consideration regarding how many feet from the Wetlands a tree can be cut down.

Mr. Brandis read into the record the noise ordinance for the Town Section IV: Regulation and Applicability. Mr. LoChiatto said that the Town noise ordinance was unenforceable by the Board and the Board has no authority over the ordinance; however, the Board's ordinance in section 714.3, which outlines noise control, could be enforced. Ms. Post discussed current Town law and that current Town law takes precedence over anything else. Mr. Brandis is concerned about the high noise at what has turned into a construction site in his back yard by Radial Properties.

Mr. Breton addressed the Board about Section five of the Town Noise Ordinance noting, that the backup and warning noise from trucks are except from noise ordinance. The noise ordinances are only enforceable by Windham police department and unenforceable by the Planning Board. Town noise ordinance is only enforceable by police action not by the Planning Board; however, Mr. Brandes stated he would like wording from the Town Noise Ordinance Adopted into the Radial Properties Site Plan Regulations.

Ms. Scott noted to the Board as Code Enforcement that Mr. Brandes has gone through the Police procedures and is bringing this to the Board for the amended site plan because if the notes on the plans were more specific about the hours and the noise, then Code enforcement would have authority to address the issues. As it is currently written, Code Enforcement has no authority to enforce it because of the previous ambiguity determinations about allowed noise and hours of operation. Ms. Scott explained to the Board that she believed Mr. Brandes was bringing this to the Board's attention so if the Planning Board could be more specific with regard to the hours and the noise then the Planning Department could be involved. As it is currently written, it does not fall under the Planning Board.

Mr. LoChiatto said that if the applicant wants to provide screening on Mr. Brandes' property it was outside the site plan approval process.

Mr. LoChiatto called the meeting back to order after a brief recess.

Mr. LoChiatto noted a small triangular area on the site plan and thought perhaps the applicant could explain why this is crucial part of plan and if he could eliminate this would it help to mitigate some of Mr. Brandes' concerns. Mr. Brandes indicated that by not allowing Radial Properties to process 1000 yards of topsoil at a time would immensely help to reduce the high noise volume.

Mr. Greg Kindrat, 61 Haverhill Road, addressed the Board regarding Radial Properties. His main concerns are:

- The potential impact on the water
- Concerns that the arm of enforcement is not always reliable making sure plans are adhered to as agreed upon
- Concerns regarding how many pieces of equipment will be allowed on the Site
- What kind of work will be done on the Site
- If the construction equipment will be monitored
- Fluid spillage issues

Mr. Kindrat indicated that this Site does not adversely affect his quality of life but the water issue is his main concern.

Mr. LoChiatto closed the public hearing on Radial Properties and asked Mr. Dubay if he would like to make a last statement to the Board. Mr. Dubay stated the following:

1. Not involved in writing noise ordinance two years ago, as asserted by Mr. Brandes
2. Corrected Mr. Brandes' knowledge regarding how to determine the age of a tree
3. Would like to continue deliberation on the application until September 16 Board Meeting.

Motion was made by Mr. Kolodziej to hear the two lot line adjustments after 10:00 p.m. and continue the Radial Properties meeting on September 16. Second by Ms. Post. Motion passed 6-0.

Lot Line Adjustment Application

A Lot Line Adjustment application has been submitted for Lots 21-W-40, 21-W-2, & 21-W-6 on Esty Road, which is located in the Residence A, Aquifer, and Floodplain Zoning Districts.

The applicant, Peter Zohdi from Edward Herbert Assoc., on behalf of Marlene Hulme and the Town of Windham, is proposing to reduce lots 21-W-2 by 7,197 sqft and 21-W-6 by 1,504 sqft to benefit Lot 21-W-40. In addition, Lot 21-W-15A will be merged with Lot 21-W-40, resulting in Lot 21-W-40 adjusting from 11,580 sqft (0.266 ac) to 23,743 sqft (0.55 ac) in size.

Ms. Scott noted for the Board regarding this property stating there was an existing lot with three dwellings on it. A portion of 2 lots the town owns (21-W-2 and 21-W-6) will transfer land to Lot 21-W-40 through a lot line adjustments. Another piece (21-W-15A) is going to be merged in its entirety with the Hume property. There are two issues:

- Two lot line adjustments
- One merger

Ms. Scott noted two items for the Boards attention:

1. A number incorrect on the acreage for the parent lot
2. Ensuring a lot merger needs to be take place as a condition of the approval

Mr. Peter Zohdi addressed the Board on behalf of his client, Marlene Hulme, showing the parcel location on the map and the proposed merger and lot line adjustments. It was noted by Mr. Breton that this merger and lot line adjustment was approved at a Town meeting vote.

Kathleen DuFruscia representing the Cobbett's Pond Improvement Association (CPIA) addressed the Board regarding an easement to provide the CPIA access to the dam on Cobbett's Pond owned by the CPIA. When the merger and lot line adjustment went to the Town Vote as a warrant article, the CPIA had requested that the conveyance of this property from the Town to the Hulme's, be subject to a General Access Easement to the CPIA.

The Cobbett's Pond Improvement Associates owns the dam and this requested merger and lot line adjustment hinders the entrance of the CPIA to access the dam for repairs. Mrs. DuFruscia noted for the Board that for future purposes no matter who owns the property that the CPIA has access to the dam.

Motion by Mr. Kolodziej for lot line adjustment for public hearing. Second by Mr. Breton. Motion carries 6-0.

Mr. Breton made motion to approve lot line adjustment for lots 21-W-40, 21-W-15A, 21-W-2 and 21-W-6 with the following conditions: general access easement be noted on plan and recorded with the registry of deeds for the CPIA and the lot merger form must be completed for lots 21-W-15A and 21-W-40 and lot sizing for line be corrected.

Motion by Mr. Breton to approve. Second by Ms. Post. Motion carries 6-0.

Motion by Ms. Prendergast to waive by-laws and hear public motions after 10:00 p.m. Motion second by Mr. Kolodziej. Motion carried 6-0.

Lot line adjustment on New Road

A Lot Line Adjustment application has been submitted for lots 1-C-1205 & 1-C-1206, which are located on New Road in the Rural and WWPZ Zoning Districts.

The applicant, Peter Zohdi from Edward Herbert Associates, on behalf of James Hebert and Lisa Haswell and Lawrence and Marcy Rea are proposing to adjust the Lot lines by 950 sqft. ensuring the entire driveway for Lot 1-C-1205 is on that lot.

Motion to accept the Lot Line Adjustment for public hearing by Mr. Breton. Second by Ms. Post. Motion carried 6-0.

Mr. Zohdi addressed the Board showing on a map where the lot line adjustment will take place. Mr. Breton asked if the existing boundary will conform to the lot line. Mr. Zohdi indicated that yes this would conform.

Mr. Kolodziej made motion to approve lot line adjustment. Second by Ms. Prendergast. Motion carried 6-0.

Meeting Minutes – Review & Approve 8/19/09

Motion to approve the minutes of 8/19/09, with two corrections on page 7 correcting the spelling of Mr. Kolodziej's name by Ms. Post. Second by Mr. Kolodziej. Motion passed 5-0-1. Ms. Prendergast abstained.

Ledge Road Business Park Non-Response (Meadowcroft) Follow-Up

Ms. Scott noted for the Board that the July 22 planning board meeting the Board decided that the Meadowcroft Subdivision conditional improvement null and void because it had been three years with no progress. The Board also had asked Ms. Scott to ask Meadowcroft how they planned to secure their site. Ms. Scott wrote Meadowcroft a letter and Ms. Scott did not hear back from them. The letter was sent to Meadowcroft with return receipt. Ms. Scott requested from the Board how to proceed with the Meadowcroft issue:

1. Do Nothing
2. Send another letter
3. Request Legal council contact Meadowcroft

Mr. LoChiato asked where the court case stands and Mr. Scott does not know at this point because the Town has not heard back from the Judge. The Site has not been maintained since the Board took action

in February. Ms. Prendergast thought it would be a good idea to have attorney Bernard Campbell contact Meadowcroft regarding public safety. Mr. LoChiatto wants to know what enforcements actions we can attach to the site. Ms. Scott told the Board that the property owners have been unresponsive and that contacting the attorney will be the next step. Mr. LoChiatto had several questions regarding the subdivision now that it has been declared null and void and hoped that Atty. Bernard Campbell could determine the issues moving forward.

Planners Report

The Planners Report was included in the packet that was submitted to the Board.

Ms. Scott noted for the Board that Impact fees would be on the agenda for the next meeting. Ms. Scott discussed the school impact methodology and fees from 2003 were accepted but not officially adopted.

Miscellaneous Items

Ms. Prendergast briefly discussed Work Force Housing and mentioned she will be doing a press release shortly.

Adjournment

Motion to adjourn at 10:20 by Mr. Kolodziej. Motion seconded by Ms. Post. Motion to adjourn passed 6-0.

These minutes are respectfully submitted to the Board in draft by Tracey Mulder.