

**PLANNING BOARD
RINDGE, NEW HAMPSHIRE
MAY 18, 2004
MINUTES**

**DATE: May 18, 2004
6/1/2004**

TYPE: Work Meeting

DATE APPROVED:

TIME: 7:00-10:25 PM. Katie Duffy, Chair

CALL TO ORDER, at 7:00 PM – 10:20PM

ROLL CALL: Katie Duffy, James Hoard, Dr. Gerald Parker, Arthur Fiorelli, Jo Anne Carr, Robyn Payson sec

APPOINTMENT OF ALTERNATES: No sworn alternates present

MINUTES OF PREVIOUS MEETINGS: Dr. Gerald Parker, moved to accept, James Hoard, 2nd Minutes accepted unanimously.

Alternates-in-waiting Paul O'Connor and Kim McCummings were welcomed by Katie Duffy.

Dr. Parker made a statement regarding the Planning Board's recent involvement in code enforcement issues, and the necessity for the planning board to focus on germane issues.

NEW BUSINESS:

➤ **Voluntary Merger Map 47 Lot 49 and Map 47 Lot 50**

Merging 2 contiguous non-conforming Lots on Lake Contoocook to make one larger buildable lot. Katie Duffy signed merger.

Continued Site Plan Review

➤ **Town Garage Map 28 Lot 7-1**

The site layout was reviewed at a short site walk at 6:00 pm to review building orientation, driveway location and storm water management. Jeff Murray of CMA Engineers presented the revised Highway Garage plan reflecting input received by the Board of Selectmen, The Planning Board and citizens of Rindge. He explained about the storm water treatment systems that will discharge and treat storm water. Changes were also made in aesthetics of the building to make it fit in more with the historic feel of the center of town. Patrick Duffy asked where the wetlands were being filled in and if they building on the filled in wetland. He also asked where the water used to wash the trucks would go. Jeff replied that there is a "dredge and fill" permit that will be acquired and building will occur on the filled area. The wash runs into a wash water recycling system, oils and greases are removed from the water and it is reused. When the water is no longer useable it will be pumped into a storage tank where it will be stored until it can be moved off site. An alarm system will alert the Highway department when the tank needs to be emptied. Patrick Duffy asked about the slope of the floor, if it would keep the waste water from flowing

out the doors. Jeff replied that the floor was sloped to contain wastewater and direct it toward recycling system.

To address concerns regarding contamination from stored wash wastewater, Jo Anne Carr suggested that the tank be tested per the underground storage tank bylaw although it is not required for water.

There was a motion to accept the revised Highway Garage plan by James Hoard Dr. Gerry Parker 2nd The plan was unanimously accepted.

There was a motion to approve with the following conditions:

- State septic approval.
- Army Corps of engineer approval.
- Testing of underwater storage tanks.
- Blasting by contractor.
- Final detail on road.
- Stabilize site.

Motion made by Dr. Parker James Hoard 2nd Motion carried unanimously.

➤ **Ali Jabar Map 13 Lot 1**

Dave Duval of Kelley Construction presented the revised site plan of Ali Jabar's store/restaurant at the former Valley Marine. The architecture was modified to include dormers a mansard roof and the use of glass on the front of the building was minimized to improve the over all aesthetics of the building. Lighting consists of soffits in the front of the building and 15' light poles with Halite down lighting. Landscaping and snow removal issues were also addressed and rectified. The code enforcement officer, David DuVernay noted that there were more signs on the plan than are allowed by town ordinance. Dave Duval said that signs had not been addressed yet. The Cypret's of Valley Marine made known that he was in favor of the project and would cooperate with Ali Jabar regarding his parking issues.

Motion was made by Arthur Fiorelli to approve with the condition that the signs comply with town ordinance. James Hoard 2nd the motion was passed unanimously.

➤ **Franklin Pierce College Map 10 Lot 17**

Site plan review of the development of the town house dormitories. Jeff Kevan of TF Moran presented updates of issues discussed at the previous meeting.

- **2nd Driveway**-Following site walk, made a gravel access road with a locked gate.
- **Drainage** Water comes from parking lot into culvert into a grass swale to a level spread. Analysis done regarding dam and run-off. .4 and .5 CFS increase going to lake. There was analysis done on the dam for 25 and 50 year storm events. There is about 3 CFS going over the dam, but because of the length of the dam, it registers a water surface elevation change of less than 1/100th of a foot.
- **Lighting** The college will be using a decorative light with a lower wattage.
- **Landscaping** Storm water and pollution prevention plan. Discussed plantings and annual street and catch basin cleaning. Arthur Fiorelli asked if the college would be willing to switch from using salt to sand in the winter and Jeff said that would be acceptable.

- **Water System Design** Jeff Kevan presented the change in the water system design. Instead of using previous plan a public water supply, it would shortcut the permitting process and spend the same money to extend the water line from Mountain Road, where there are three wells, to service the buildings. Jeff sat down with water supply and is submitting application for permit 5/20/04. He anticipates receiving the permit within a week.
- **Fire Safety** No sprinkler, dry hydrant.

Four corners is a positive place to draw water from because although there are only 2 active wells currently the college is permitted for so additional water sources are readily available. It is also good to have the water source away from the development.

Jo Anne asked Jeff about irrigation for the ball fields and Jeff said that the ball fields would have synthetic surfacing so irrigation would not be an issue. Jeff said the water layout has not been changed except for the new connection.

Status of Permits

Site specific permit within 1 week

Water connection 28th of May

Septic will be up to the town within a few days and then sent to the state.

This matter is continued until June 1st in anticipation of the permits being acquired.

Dr. Gerald Parker takes the chair for Katie Duffy.

➤ **Thomas Duffy Minor Subdivision: Map 2 Lot 59-3**

Due to the lack of a quorum, will be continued until June 1, 2004.

Dr. Parker relinquishes the chair back to Katie Duffy.

➤ **Stephen and Lois Lundsted Minor Subdivision: Map 3 Lot 29-6**

Want to subdivide their lot because they intend to give one of their children their current home and they wish to build a smaller house on the new parcel. They have also applied for a waiver of the perimeter survey and utilities.

Dr. Parker motioned to accept the waiver, Arthur Fiorelle 2nd waiver was unanimously accepted.

James Hoard motioned to accept the subdivision, Arthur Fiorelli 2nd the subdivision was unanimously accepted. Dr. Parker motioned to approve with the following condition,

- State subdivision approval

Arthur Fiorelli 2nd the subdivision was unanimously approved.

➤ **John Hill -598 Associates Minor Site Plan: Map 31 Lot 3**

Tom Duffield of TF Moran, presenting for John Hill, wants to relocate the building from RTE 119 next to Walsh Realty to this site for an office building. A septic plan has been submitted to the state and approved. Small lot at 1.33 acres but it is grand fathered. While on the site the, Mr. Duffield and his crew discovered additional wetlands so they will be re-designing the septic plan and bringing it before the board at a later time. It was decided by the board that a site walk was necessary to address wetland, buffer and cutting issues. Abutter Mike Hendricks would only object if the business going in would be open outside of normal office hours. An office open at

5:00am-7:00am would be unacceptable, but 7:30am would be ok. Mr. Hendricks was also concerned about the height and wattage of the lights. Mr. Duffield said that the plan was to use 18' poles and 150 Watt bulbs. The board asserted that they were very sensitive to issues regarding lighting. A site walk is scheduled for 6/15/04 at 6:00pm.

➤ **Tim Halliday**

BOA asked for board's recommendation on Tim Halliday's request for a variance to address a violation. The board's opinion was to not support Mr. Halliday's request for re-zoning.

➤ **Bob VanDyke**

• **Cell Towers**

Dr. Parker motioned that Mr. Van Dyke be given a one-year extension. A letter will be sent to the selectmen to help contact cell carriers in order to try and obtain service to activate the towers. Katie Duffy 2nd motion carried unanimously.

• **Taggart Meadows Transcript**

Addressing issues as they relate to the PURD of 1987.

Bob VanDyke-This is the plan we came in with last year, at an informal and said that we were planning on expanding Taggart Meadow Estates on this side and on this side. And the question that we brought up at that time was, if we were expanding Taggart Meadow Estates, and I don't know how many of you were around for that...

Katie Duffy-I know I was, Gerry would have been, and we have other board members who would have been.

Bob VanDyke-With the existing expansion, the existing frontage is...were they enough or did I have to do frontages in the subdivision to do an expansion? And the answer was that the existing frontages were adequate for that.

Katie Duffy-I know we talked about this right of way, and this section in the minutes I can remember very clearly.

Jo Anne Carr-I brought a copy of the minutes as well.

Katie Duffy- ...talking about the frontage here counting for the new Phase 2 with this right-of-way that was cut in here for these houses and we talked about the driveways and we talked about having a driveway for two condos or whatever...

Bob VanDyke-This was another...there were two meetings that I came in and did a preliminary. This was in, in 1991 preliminarily. And we came in for a preliminary meeting to let the planning board look at it with Vorce and Soney. And there was a square hammer head on the end of this and we talked about that and the planning board said that they wanted that changed, and there were certain things that you wanted changed and one of them was to do a cull de sac or a radius

down here instead of the hammer head and do those things. Then I came back in last year. This isn't the plan I just made. This is the plan from you that we brought to that meeting this is a copy of the one that came to the meeting and I said I was doing the expansion of Taggart Meadow. After that I got a letter from Sharon that said...

Jo Anne Carr- I have a copy of that letter too.

Bob VanDyke-...that addressed the frontage issues but it also said that the common area things should be discussed with legal council which I did to Jim Callahan. So anyway.

Arthur Forelli-Could someone tell me what the issue is here? I am trying to understand what the issue is...

Bob VanDyke-We came in a year ago...

Katie Duffy- Let Dave explain why you're here.

Dave DuVernay-My understanding is, that there is Common Land all the way around this portion of this subdivision. And, basically you eliminated the idea of putting a house here and cut back here through the Common Land, in order to draw one of your phases 2 or three. You did the same thing right here through the buffer, through the Common Land, to put in Phase...

Katie Duffy-Three, they're both connected.

Dave DuVernay-Three, ok.

Arthur Fiorelli-That's these two we are showing here?

Dave DuVernay-There's a register of the Association of the Rules Regulation By Laws and State Statute RSA 674-21-A which states, "Any open space designation or other development restriction which is a part of a Planned Unit Development lawfully imposed by a local land use board as a condition of subdivision or other type of approval which has been filed in the records of the local land use board in accordance with established procedures shall be deemed to create a Conservation Restriction as defined under 477-45 which shall run with the land and shall be enforced by the municipality regardless of whether any deed or other instrument conveying restriction has been executed or recorded." You didn't have to specifically record the Common Land in the right of the PURD owners but by registering the regulations and the bylaws in which you include if I quote properly section 5, "interest in the common property belongs to the association members."

Bob VanDyke-That's correct. The last part's correct that the land belongs to the association members. As of right now I am the association. There has been no dues paid and that is from legal council. Let me read you letter I got from my lawyer. "Dave DuVernay's letter of April 28, 2004 states that you have violated the 1987 PURD approval and are also violating the Taggart Meadow Estates Association By-laws. I believe that these conclusions overlook the fact that you control this association and that you reserve certain rights regarding Phase 2 and Phase 3

of the development. As you know this is a fairly complex development and your activities should be looked at as a whole. It's premature to discuss specifically your Phase 2 and Phase 3 developments. I suggest any discussion regarding purported violations be deferred for several months in order to give you an opportunity to better develop your conceptual plans and present them to The Planning Board on an informal basis as a prelude to future submissions regarding development." Also, so my lawyer and town council and the state can agree on what can be done.

Arthur Fiorelli-But you've already cleared this road?

Bob VanDyke-Ok, I'll read you some more. No, what we did after I had the meeting with the planning board we had all this property flown and topo'd by Eastern Topo and they could not get topography because it was 87% concealed with Hemlock. So we laid out off the USGS maps from the topo maps we had from them we laid out conceptual subdivisions here and here , got permits to cut and went out and cleared those areas and also thinned the woods which is perfectly within my rights according to the ...

Arthur Fiorelli- No, what I am talking about is did you cut through the area designated as Common Land and buffer?

Bob VanDyke-Yes

Arthur Fiorelli-And why is that Bob?

Bob VanDyke-Because there is nothing about cutting in the Common Land that's restricted in this development. Because I control the Common Land its not to be kept natural. Can I read this letter from Mr. DuVernay?

Arthur Fiorelli-And this original plan was approved Bob?

Bob VanDyke-Yes

Arthur Fiorelli Is this land here described as Common Land?

Bob VanDyke-Yes, this buffer area is a building setback.

Arthur Fiorelli-The people who are purchasing these homes, don't they have a right to think this is Common Land?

Bob VanDyke-It's a common land for them to use.

Arthur Fiorelli-How can it be common land for them to use if you put a roadway through it?

Bob VanDyke Because they would get the same amount of common land on an expansion of these developments. These developments are done all over the state all over the country expanding a subdivision.

Arthur Fiorelli-Do you have approval for Phase 3 for expanding the subdivision by putting a roadway through the Common Land?

Bob VanDyke-I control the Common Land yes. Can I read my letter?

Katie Duffy-Yes you can and then I have few things that I want to address to clarify things.

Bob VanDyke-This is a letter from Dave DuVernay dated July 23, 2003. "The PURD regulations that are in effect paragraph G Landscaping Buffer states a Planned Unit Residential Development shall have a 150 foot buffer to provide an adequate transition between the development and existing town roads and 100 foot landscape buffer to provide an adequate transition between abutting land uses. The vegetation shall be maintained in its natural state unless otherwise directed by The Planning Board in as much as The Planning Board did not oppose condition 9 they did in fact modify the PURD regulations. Since condition 9 restricts the required landscape buffer only to the construction or clearing for dwellings leach fields and accessory buildings the tree cutting you have undertaken appears to be quite legal and acceptable.

Dave DuVernay- If I may, I think I used the word buffer. This is the buffer, this is the Common Land, you cut into the Common Land.

Bob VanDyke-That's true. You addressed two issues you said the buffer in your letter and you said the Common Land.

Katie Duffy-Read the second letter.

Bob VanDyke-This was a letter from Sharon O'Keif it says, "I have conducted a little research on Taggart Meadow with specific attention to PURD regulations and the issue of VanDyke cutting within the 100' buffer. It is apparent that as far back as 1979 the zoning ordinance in the general provision section provided for PURD's on 6 acres of land the only requirement was that the density did not exceed the conventional subdivision and subdivision regulations apply. A new PURD regulation was adopted by the town in 1987 adding additional requirements that are still in effect today. In 1988 an amendment was made requiring 20 acres instead of 6 acres. I found this information in the annual report of 1988. However I cannot find a copy of the 1987 or 1988 PURD. The oldest I can find is from 1989. The 1989 PURD required that the landscape buffer shall remain in its natural state unless otherwise directed by The Planning Board. As you can see by number 9 the adopted resolution approving subdivision the board did have some direction it states there should be no clearing or construction in the landscape buffer for dwelling leach field or accessory structure. However, that does not restrict clearing for any other reason. In my opinion there can be cutting in the buffer area for this particular PURD."

Katie Duffy-What was the date on that letter?.

Bob VanDyke-July 17, 2003.

Katie Duffy-So we are talking this buffer area, so the cutting can be in there. Sharon also wrote a letter and we talked about the informal hearing . We had the informal hearing some time last year, we addressed Phase 2 which had the right of way here, and we talked about the frontage and I think there was no problem. You came in showed us some of your plans and that was where it was. You met with us. As for Phase 3, in the letter from Sharon, “you proposed phase 3 of development with an extension of the Monadnock View Road into Map 5 Lot 10 raises some issues. Enclosed is a copy of the PURD ordinance and please note the definition of Common Area. I believe town legal council needs to confer on this matter. Since you own the Common Land I would think as long as you provide an area of additional Common Land as replacement, the board would be willing to consider this approach.” In no way was there a formal meeting or any minutes or any decisions come to. What Sharon was stating was you do own it, and probably should take town council. So what we have is cutting in the Common Area that is a violation at this point. Whether you own it or not. The buffer seems to be ok. I think where you are with this whole scene is you need to set up a plan as your lawyer stated, I think you need to stop what you are doing. Before you start any condos or do any work we need to have a site plan. If you want to come for an informal or set up a regular one, but I think it means the board need s to see a site plan to be moving forward and the issues will be addressed at that point. I think the board is willing to look at this because that’s what we are here for. How do you address it.

Bob VanDyke-If its not legal its not legal.

Katie Duffy-But I think this is where we are. There is no reason to butt heads, there’s no reason to go round and round its pretty clear that there is some kind of violation there’s been no decision no approvals for Phase 2 or Phase 3. There was an informal hearing which is not binding. Therefore, I think you need to come before the board with your site plan and we move forward. And that’s where we will come up with a decision. Until that time I wouldn’t cut any more in the Common Land I would leave things alone.

Bob VanDyke-I agree. The cutting we did was to get engineering done.

Katie Duffy-Ok, then everything should stop. I think that Phase 2 shouldn’t be going on because we haven’t seen a plan there has been no approval. Nothing is to be done here and Phase 3 needs to be totally addressed because this subdivision was not on the original. I think this piece was originally with the land. This piece was a new subdivision that you purchased later on?

Bob VanDyke-Yes, 10 years ago.

Katie Duffy-So I think that we need to have this come in so we have some idea here. That’s where we have to move forward on this. And I would appreciate any comments from the board on that so that we don’t keep going round and round. I think we realize that there is a violation, I think Bob knows we are all trying to work this out and that would be my solution.

Dave DuVernay-I am going to talk to town council.

Katie Duffy-From a planning board standpoint we are not an enforcer of this violation we are looking at our PURD regulations, we are looking at Phase 3 and Phase 2, we are looking at work that might be starting and it is not in the regs that that can happen so I think that Bob's next step is to set up for a site plan and subdivision.

Jo Anne Carr-I would just like to remind the board that this wasn't shown as a Phase on the original approval. You could intuit that Phase 2 was proposed because of the rights of way that were on this original approval you could imply that you were thinking of developing out here because of that right of way. There is no Phase 3 shown on this approval. I would be careful even to say that it is even coming in as Phase 3 or Phase 2 it would be a new subdivision application.

Katie Duffy-Bob definitely has to come in with a new subdivision with site plan. I'm sure you don't want to do the subdivision if you don't get the site plan. If the board is comfortable with that I think that is how we should address it and until that time Bob doesn't continue to work. And the rest is taken up with Dave. Are there any comments?

Dr. Parker-I saw a handshake right here. There won't be any more cutting no more violating in the Common until we see what is going to take place out there.

ANNOUNCEMENTS

Jo Anne Carr announced an Economic Development Workshop being hosted by SWRP on May 25 in the evening. Jo Anne told Jeff Porter that the board was very interested in participating but there was a conflict on that particular date.

Jo Anne will be attending the New Hampshire Economic Development Association Seminar May 19.

NEXT MEETING

Work Meeting
May 25th

Motion Made to adjourn by James Hoard Dr. Parker 2nd
Meeting Adjourned
10:20pm

Respectfully submitted,
Robyn Payson