

RINDGE BOARD OF ADJUSTMENT

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APPROVED

July 25, 2006
Meeting Minutes

**PRESENT: Regular Members: Joseph C. Hill, MD – Chair, David Drouin, Bill Harper, Kathy Peahl; Alternates; William Thomas and Charles Phillips.
(Harper did not arrive until the beginning of the Haskell Case.)**

PUBLIC MEETING

Hill opened the Public Meeting at 7:00p.m. with the Pledge of Allegiance.

All members introduced themselves and stated if they were a regular or an alternate member.

The Secretary stated that the case(s) were posted in the following places: Rindge Town Office, Post Office, Police Station, Ingalls Memorial Library, Transfer Station as well as being published in the Monadnock Ledger.

Hill stated that he had e-mailed all members and alternates the following with which to be familiar. RSA 674:21, RSA 674:39 section II, RSA 674:41, RSA 675:2-4, Rindge Zoning Ordinances V-B1, XVI-13, Wetlands Ordinances 5-A, 5-B, 5-C, Section 2-A, Section 2-B and 8, as well as Subdivision Regulation Section P. This is not an attempt to influence a vote, but simply to educate.

Hill polled all members permanent and alternates.

1. Are you unbiased and able to make a determination that is fair to both the applicant and the Town of Rindge? All members replied **YES**.
2. Are you familiar with the cases before this Board and have reviewed the information available? All members replied **YES**
3. Is there any reason that you need to be recused from any case before us tonight for any reason (state the reason), including financial interest, family or extended family interests or connections, predeterminations, or as an abutter? All members replied **NO**

Mr. Phillips will read the applications and Mr. Thomas will read the pertaining RSAs/Ordinances.

CASE #956: Alain Choquette, Application for a Variance to Rindge Zoning Ordinance, Article XVI, Section M, 13 & Article V, Section B,1, Requesting a building lot to have frontage on a public right of way maintained by the state or the town as shown on a subdivision plan approved by the Planning Board. Location Abel Road, Rindge, NH – Map 5, Lot 9-5.

Continued:

Sitting Members: Hill, Peahl, Drouin, Thomas, and Phillips

Hill stated that Mr. Choquette wants to drop the frontage on Abel Road (Class V) from the current entire piece with him building in one small portion of that lot, where he already has access from Bean Hill Road (Class VI). By doing this, that would be technically creating a sub-division on a Class VI road. From what

was heard from Thomas, unless the governing body, which in Rindge is the Board of Selectmen, has granted this, Hill's understanding is that this should come before the Board of Selectmen and the Planning Board, rather than the ZBA. It would not be advantageous to the ZBA to grant a Variance on this without having a complete plot plan as to what the proposal is and we do not have that because we had turned Choquette down. Hill asked Choquette if there was something new.

Choquette replied that the Town's attorney gave a review and he has his attorney's comments and a copy of a plan that shows the specific lot configuration. Hill stated that the point is that the Board had not allowed the first two applications and Choquette had withdrawn the third, so having done that, what you had submitted before does not give the Board an up to date plan. The plan that was given to us before is no longer valid as far as construction.

Choquette read comments from his Attorney John Ratigan. He stated that his attorney is in agreement with the Town's Attorney Sam Bradley in his letter, in that Attorney Bradley said it was up to the Board to determine whether Choquette has met the use variance criteria, and if Choquette had done so, the variance could be granted. Choquette went over and addressed issues in the letter received from Attorney Bradley.

Hill stated that there were some other things in the Town Attorney's letter that Choquette did not address and in that, it stated that it is not wise for a ZBA to grant a sub-division on a class VI road. Hill said the problem in general is that the Board of Selectmen (BOS) is the governing body, and that they have to make certain that sub-divisions on a class VI fits certain criteria, if they wish to grant them. It is Hill's opinion that Choquette should be going to Planning Board or the BOS, not the ZBA on this.

Hill closed testimony and went into deliberation:

Peahl feels that the Board can grant the variance subject to the Planning Board approval of the sub-division. Hill stated if the applicant drops the frontage on the present lot where he is building his home, it no longer has frontage on a class V road; it has access on a class VI road but it does not have, under regulation P, a sub-division frontage on a town maintained road. Hill read section P of the sub-division regulations.

Drouin stated that Choquette is not asking for Bean Hill Road to be accepted as a class V road, to be maintained by the Town, or to be upgraded. He signed waivers that he is taking full responsibility for the road. Drouin does not know why the Selectmen have to be involved because they do not have to accept Bean Hill Road as a road; it is an abandoned road with 1/2 the road reverted to the abutters.

DuVernay stated that it is not an abandoned road. Drouin asked DuVernay if it has not been maintained for more than 4 years and DuVernay replied that it does not matter. DuVernay stated that it is a non-Town maintained road.

Hill said that if the ZBA grants this we grant basically a sub-division on a class VI road.

Peahl said that Choquette will still have to go to the Planning Board to get sub-division approval and it is not the ZBA's job to approve a sub-division. She said two approvals are needed and she sees no reason that we couldn't, if we chose to, grant the Variance contingent upon sub-division approval from the Planning Board. Hill replied or the BOS. Peahl does not know why the BOS should be involved.

Thomas said he is confused because according to Bradley's letter, Rindge permits building on class VI roads and the applicant has a permit for that. Drouin stated if we grant the variance it would not change reality; he is going to be using Bean Hill Road.

Hill stated that everyone knew Choquette had access off of Bean Hill - that is not a problem; however he had frontage on Abel Road, and now he will no longer have frontage on a Class V road for the small piece of property. Hill feels that the ZBA would be creating a sub-division. Peahl stated no one is disputing that, and she feels that the applicant recognizes that and the applicant replied absolutely.

Drouin said there is no practical reason to require to have him have his 250 feet of frontage on Abel Road when he is not using it for his access and there is no safety problems and he is taking full responsibility so that it is no impact to the Town.

Thomas stated that he agrees with Peahl & Drouin.

Phillips said if there is any doubt as far as the status of the class VI road, why don't we make the approval subject to the Selectmen as well as the Planning Board?

Drouin said the only problem he has with that thought is that it sounds like the ZBA is asking for the Selectmen to accept the road and the applicant is not asking for Bean Hill Road to be accepted as a Town maintained road. The applicant is not asking the Town to incur any more expenses for that road.

Thomas said it says in the RSA that the governing body is the one that should be making the decision as to whether he builds on a class VI road or not. Peahl said that decision has already been made. Thomas replied, "Have we heard from the Selectmen?" Peahl replied he already has a building permit and Hill replied he only has permission for one house and nothing else.

DuVernay said as a matter of course, we do issue building permits on Class VI roads provided the roadway is signed and recorded.

The Board determined:

1. The variance **will not** be contrary to public interest because it reflects the actual day-to-day use.
2. Special conditions **do** exist such that literal enforcement of the ordinance results in unnecessary hardship:
 - a. The zoning restriction as applied to this property interferes with the reasonable use of the property, considering the unique setting of the property in its environment. The applicant proposes to waive the 250 ft frontage on a Class V road for the purpose of creating a minor sub-division on a class VI road.

And **this is** a reasonable use because requiring 250 ft on Abel Road is not practical to the existing condition.

The property **has** a unique setting because the frontage on Able Road is a significant distance from the proposed house lot and access is approved off Bean Hill Road.

- b. No fair and substantial relationship exists between the general purposes of the Rindge Zoning Ordinance and this restriction on the property. The purpose of the applicable Zoning Ordinance provision is for 250 feet on a Class V road for safe access and public safety and granting this variance **will not** interfere with that purpose.

The Motion carried 4-1 – Hill opposed

- c. The variance **will not** injure the public or private rights of others, because there will be no increase in public expense and no effect on private landowners.
3. The variance is consistent with the spirit and intent of the Rindge Zoning Ordinance. The variance **does not have** any negative impact on these considerations as there is no negative impact on health, safety and welfare and will preserve the values and charm of the Town.
 4. Substantial justice is done by granting the variance. If the variance is denied, the applicant will be burdened because it unduly restricts what he can do with the remaining land.

5. Granting the variance **will not** diminish the value of surrounding properties.

The feeling of the majority of the Board was that the applicant does not need to go before the governing body (Rindge Selectmen) for permission to create a minor subdivision on a Class VI road, but this was not unanimous.

Motion was made by Drouin and seconded by Peahl to grant this use variance, subject to the following conditions:

1. The applicant must obtain Planning Board approval for a minor sub-division on a class VI road.
2. The applicant must submit to the planning Board and work from only Plan C-1 dated 5-16-06 entitled Subdivision of Land, project 0058-11-05 with Lot #2 - showing 2.24 acres & frontage of 291.7 ft. on Bean Hill Road.

The motion carried 4-1 with Hill opposing

CASE #952: Robert VanDyke, Administrative Appeal of January 17, 2006 from an Administrative Decision of Code Enforcement Officer re: Impact Fees, Map 50, Lots 46 and 47.

Motion for Re-hearing

Sitting Members: Hill, Peahl, Phillips, Drouin, and Thomas

Hill stated that we had received a letter dated July 10, 2006 from Town Counsel which involves fees. We had ruled in the past that Impact Fees were applicable and that Attorney Fernald states very strongly the Impact Fee Statute specifically addresses Mr. Van Dyke's situation. He submitted an application for site plan approval after the adoption of the fee ordinance, but before the adoption of the Impact Fee Schedule. RSA 674:21 states that when Planning Board approval is not required or made prior to the adoption or amendment of Impact Fee Ordinance, Impact Fees will be assessed as a condition of the issuance of a building permit. She does not recommend a re-hearing.

Phillips agrees with Town Counsel's opinion, Peahl also agrees with Town Counsel. Drouin does not see anything different. Thomas & Hill also agree with Town Counsel.

A motion was made by Phillips and seconded by Drouin to deny a re-hearing as the ZBA has already ruled on this specifically under RSA 674:21, Section D and on advice of Counsel.

The Motion was carried unanimously

Hill closed the Public Meeting.

PUBLIC HEARING

CASE #957: Thomas Coneys, Appeal from an Administrative Decision – Approval of Building

Permit No. RP2006-18. Location: 29 Commercial Lane, Rindge, NH – Map 6, Lot 99-4

Sitting Members: Hill, Peahl, Phillips, Drouin, and Thomas

Attorney Derek Lick represented Thomas Coneys. Mr. Coneys stated that he hired the attorney to represent him because he has had other misinterpretations by members of the town.

Attorney Lick gave testimony on the applicant's issue. In brief, the situation is that the Town had issued a building permit based upon a site plan that was approved 19 years ago. The successor of the property has now come forward and asked the Town to allow construction of the building, even though no new building permit was issued, no construction on this building was begun in the year of the site plan approval, and no substantial completion was completed within four years of the original plan, even though three buildings were completed.

The reason Mr. Coneys contacted Attorney Lick, according to Attorney Lick, is simple; Mr. Coneys wants nothing more than for the Planning Board to review the proposed development. That is the issue in this case. They are not asking that the development be granted or denied. All Mr. Coneys is asking is to have the Planning Board review the plan and make sure the building is proposed based on the site plan that is 19 years old and that it meets the site plan regulations.

Hill said that Lick stated that Mrs. Letourneau was granted permission for seven and it is Hill's understanding that that is not true, she was granted six. Lick replied that she requested a total of seven buildings and was granted permission for four.

Hill also said that in 1987, the Board advised her to pursue approval on buildings 1, 2 and 3 only, as 4, 5 and 6 could not be approved as they were in violation of wetland and Hill does not see a 7. Hill's understanding is that back then they did build #s 1, 2, 3 that were completed and # 4 was not built. By doing #s 1,2,3 they had completed a substantial part of this project and therefore the permit did not expire. Hill is concerned as to why Mr. Coneys considers himself an aggrieved party in this, at this time.

Hill asked Mr. Coneys why he felt he was an aggrieved party. Coneys stated that he was on the Planning Board for two sessions, when Market Basket was approved and recently was voted off due to an expired term. Our Ordinances are very specific in issuance to building permits and site approval. Mr. Coneys said there was a paragraph in the regulations that says that when a building permit is not issued for an existing site plan that has been approved, it will become null and void. It is very clear that if we do not, in this town, receive a permit within one year you will have to go back to the Planning Board. He feels that many other people in this town have followed the rules and go through the steps for site approval. He has no problem with Mr. Aucoin or the project. Coneys believes that the Planning Board never even looked at this plan prior to the permit being issued. He believes it was just rubber-stamped.

Hill said, "What you are saying, in effect, and correct me if I am wrong, that your issue is with JoAnne Carr." Coneys responded that the Planning Board did not review this project and the administrative process in which this was issued was incorrectly followed. Hill said that 75% was completed and Coneys disagreed because the buildings that are in contention were approved in a separate site plan. He stated that there were two separate site plans presented in 1987. One was for a multi-tenant building and was approved as such, and in subsequent site plans for three more buildings.

Drouin said, "Do we have the original site plan? I do not know how we can talk about the 19 year old site plan without having something in front of us." Drouin asked DuVernay. "it this was a residential project of 25 units that was 19 years old, but not all sold, would the developer have to come back?" DuVernay stated no and referenced Taggart Meadows as an example.

Hill stated that we do have the original stuff from 1987 when David Tower was Chair of the Planning Board.

DuVernay stated that Mr. Coneys has no standing before this Board and should not be heard. He is not an aggrieved party, and if anything he may be a competitor. DuVernay stated that only persons that are aggrieved have standing to appeal Planning Board and Zoning Board decisions.

Attorney Lick went over the letter from Attorney Fernald that was passed out in reference to Standings and how he feels it fits into this case.

Brent Aucoin gave testimony on the case stating that his mother-in-law did not sit on the approval nor did she give it away. She made a huge investment at that time and it was a financial burden for her to the point in the early 90's she came close to losing it and in the latter part of the 90's she had a stroke and was unable

to pursue with the project. Brent and his wife took the business over about a year ago when his mother-in-law's health was failing and started filling up the units and getting business in there to the point it was starting to make a profit. Now they are trying to fulfill the original plan. It is certainly a hardship because a lot of money has recently been put into completing this project.

Hill is concerned about the timing of the project. Hill understands that when Aucoin was served with the cease and desist order concerning construction, it was issued just prior to the process of pouring cement. Hill checked with Town Counsel whether this was a reasonable challenge that Coneys was making and was told that it was if Mr. Coneys is aggrieved. Hill stated, "I raise the question in my own mind, was this because of competition or not? My understanding is that the aggrievement cannot be on the basis of competition. An example would be that you would not have had a Hannaford when Market Basket was in Town."

The answer that came from the Town Attorney was that anybody can challenge and unfortunately for the person who is doing the project, anybody can challenge they have that right and Mr. Coneys has the right to challenge. However, from what Hill has seen and reviewed 3 out of the 4 buildings have been constructed in good faith and that covers doing the 4th because a substantial part of the project had been approved.

Drouin said he thinks that Coneys answered Hill's question for his reasoning, but he does not think he answered the question why he is aggrieved.

Attorney Lick gave further testimony and stated that all they are asking for is for the Planning Board to review this project and go thru proper channels and follow the rules.

DuVernay stated that Aucoin's mother-in-law did not consciously or deliberately intend not to build this building. This project was vested when they did substantial completion to the project that was approved. There is nothing that the Planning Board can do to change that fact and sending it back to the Planning Board does no good and does additional harm to someone who now must wait another 30 or 60 days. Mr. Coneys is not an aggrieved party.

Thomas Coneys gave testimony on this issue, as did Douglas Gutteridge.

Drouin made a motion seconded by Peahl to close this hearing and go into deliberation. The motion was carried unanimously.

Peahl stated that the issue of standing needs to be addressed. She stated, "I sympathize with Mr. Coneys feelings that procedures were not followed. However, is he an aggrieved party under the statutes?" Peahl read about the Nautilus Case. She feels that no one made a mistake and therefore he has no standing.

Thomas and Drouin agree with Peahl

Phillips does not think that Coneys has standings based on the limited review of the Nautilus Case.

Hill also does not believe that Coneys has standing in front of this Board.

A motion was made by Peahl and seconded by Phillips that the ZBA not to hear Case #957 based on the fact on the grounds that the applicant does not have standing before this Board as an aggrieved party because of lack of proximity between the applicants property and property at issue, and that there is no negative impact to the applicant.

The motion was carried unanimously.

**CASE #958: Mark Haskell, Application for a Variance for installation of a pressurized sewer line within 100' of wetlands. Location: 63 Mountain Road, Rindge, NH – Map 37, Lot 6.
Sitting Members: Hill, Peahl, Harper, Drouin, and Thomas**

Mark Haskell gave testimony on his plan to put a pressurized sewer line within 100' of wetlands. He is hoping to build a house on a 1.3-acre parcel of land he owns. By putting the leach field across the street he will not have to do any cutting of trees. He presented a plan to the Board that kept the leach field and the tank outside the 100-foot mark. He stated, when asked, that for several years he has used the land as a vacation spot, and had a portable Porta-Potty on the land. He has been taxed as a buildable lot. He stated that if denied the Variance, he would consider the land non-buildable and consider tax abatements.

Haskell said the pipe would be a double wall pipe from the tank all the way over to the leach bed with magnetic tape over the top of it.

Harper stated that the magnetic tape has been thrown out by a lot of towns and cities because it failed within a short amount of time. Harper would like to see it replaced by a real piece of wire that is made to be put in a ditch and would last longer than a piece of tin foil. Harper would recommend that it be replaced with appropriate wire before this went anywhere.

Hill stated that we had an Advisory Opinion from the Conservation Commission and read the two scenarios. He also stated that the Conservation Commission supports scenario two with conditions.

Lawrence Coleman gave his concerns in regards to leakage from the pipe causing contamination in a pond that as of now is in pristine condition and would like to keep it that way. He is afraid that could lead to hazardous bacterial growth.

Hill asked Haskell if he could give him a 100% iron clad guarantee that those pipes will never leak and Haskell replied no.

Harper stated in Haskell's defense he is using one piece of pipe, that he is not counting on gaskets, not counting on welding, glue or adhesives - it is one piece of pipe. It would be easy for us to specify that it be 200-PSI pipe so it would be able to stand 200 PSI. He will be running it at 25 or 30 PSI so there are ways to make the pipe right and there are ways to make the sleeve right and there are ways to make the marker right.

Drouin said he had done some checking and the system is designed for 150 PSI but the pumps are running at 25 to 30. Harper stated that it couldn't run at 150 simply because of the type of pump it is. Drouin stated you have a 4 to 1 minimum safety ratio. The pipe from the house to the septic system is not under pressure it is a drain. Harper said it meets all the setbacks anyway.

Mellor gave testimony on the memo he presented to the Board.

Ernestine Coleman gave testimony on the issue and feels that with all the ponds and lakes in this town, they should be taken care of and cherished. She said unfortunately Lake Monomonock is already fighting for its life. Contoocook has just gone through great expense to have a company come in and kill exotic waste. Ponds do recover but they only recover as far as they are able to and she would hate to see us ask for any more trouble.

Kathy John gave testimony.

DuVernay stated that as far as the application, the recommendation is to get the leach field as far away from the pond as possible.

Peahl stated that if the ZBA were to ever grant a Variance concerning a septic system and the wetlands, this was a logical case.

Harper made a motion seconded by Drouin to go into deliberation. The motion was carried unanimously.

The Board determined:

1. The variance **will not** be contrary to public interest because it moves the septic tank and the leach fields outside the 100-foot wetland setbacks.
2. Special conditions **do** exist such that literal enforcement of the ordinance results in unnecessary hardship:
 - a. The zoning restriction as applied to this property interferes with the reasonable use of the property, considering the unique setting of the property in its environment. The applicant proposes to have a pressurized sewer line within 100 feet of the wetland in violation of 5-b.

And this is a reasonable use because the applicant has made every effort to utilize the best use of available material and practices.

The property **has** a unique setting because of the narrowness of dry land along the driveway.

- b. No fair and substantial relationship exists between the general purposes of the Rindge Zoning Ordinance and this restriction on the property. The purpose of the applicable Zoning Ordinance provision is to prevent contamination of ground water and granting this variance **will not** interfere with that purpose.
 - c. The variance **will not** injure the public or private rights of others, because of an effort to protect the public waters and there is no impact to another private party.
3. The variance is consistent with the spirit and intent of the Rindge Zoning Ordinance. The variance **does not have** any negative impact on these considerations because the applicant has provided a State of N.H. design to absolutely minimize the risk to surrounding environment.
4. Substantial justice **is** done by granting the variance. If the variance is denied, the applicant will be burdened because the lot will be rendered non-buildable and there is no significant benefit to the Town in denying the variance.
5. Granting the variance **will not** diminish the value of surrounding properties because the leach field is being moved farther away from wetlands.

Motion was made by Drouin and seconded by Peahl to grant the variance for Case #958 to wetlands Section 5-b, placement of force main within the 100 foot setback, in accordance with Plan 06-115 Revised July 25, 2006 with conditions as noted.

Conditions:

1. A double wall pipe will be utilized; the interior pipe will be 1-½ inches with a 200-PSI capability and of one continuous length. The external pipe will be 3 inches, schedule 40, as a minimum. The piece of pipe under the road will be either a 6 inch galvanized pipe schedule 40 with threaded couplings if driven under the road, or 6 inch PVC if the hole is horizontally bored.
2. The warning tape and approved insulated detection wire will be utilized.

The motion was carried unanimously

**CASE #959: Matthew T. & Tracey Ann Despres, Appeal from an Administrative Decision of Code Enforcement Officer re: Impact Fee Ordinance Waiver; Map 49, Lot 12.
Sitting Members: Hill, Peahl, Harper, Drouin, and Phillips**

Attorney James R. Davis represented the Despres and handed out a series of materials that will show that his clients have made efforts to make substantial improvements for purposes of development on the property even before the adoption of the Rindge Ordinance. He stated he has broken down the type of expenses that his client had.

Attorney Davis gave testimony on this case in detail.

Drouin asked about the wetlands violation.

Hill asked Attorney Davis what happened with the settlement that was in front of the Court and Davis replied that it was settled by agreement of the Town, Mr. & Mrs. Despres and the Walsh's and he explained how it was settled.

Harper asked what the last date on the Planning Board decision was and he was told June 2004. Harper also asked about a P&S and was told that they had no P&S at the time. Harper also said, "so it was the Town of Rindge and the Zoning Board of Adjustment's fault that you were tied up for a couple of years in litigation, is that what you are trying to say?" Attorney Davis replied that he does not believe that it is anyone's fault. Harper replied, "you want mercy from the Town of Rindge for Impact Fees, and how much are we talking about?" He and was told \$5,875.00. Davis said they are not seeking mercy - they are seeking a waiver. Harper stated that some of the expenditures are because he violated a wetlands ordinance.

Drouin asked if they appeared before the Planning Board in 2002 with a plan and was told no, that the client filed the plan & application on January 21, 2003. Drouin said, "So the work was started before he had approval," and was told yes. Drouin said he thinks it would be hard pressed to prove that you started development work in late 2002 when there was never even an appearance or plan.

Harper asked, "Are all the receipts in the package that was handed out?"

Hill made a blanket statement, stating "you presented us tonight for the first time, late at night with a massive amount of materials without us having a chance to sit down and think about it. This is grossly unfair. It should have been presented to the Board so that we had a chance to look at it and become familiar with it. To get it at 10:45 at night and never having seen it before, I think you are doing your client a disservice."

Davis said, "I do not think we are responsible for the timing tonight." Hill said, "I would have said it if it was 8:00 o'clock at night." Davis stated that Board obviously has a very busy docket, does a very good job, and if the Board feels it needs more time to look at the materials that is the Board's prerogative.

DuVernay gave testimony and stated that he stands by his Administrative Decision.

Matt Despres gave testimony on his project.

Harper said that we would like to see plot plans, maps, whatever, showing before, during and after. Hill reminded the applicant and attorney that these would need to be submitted 21 days prior to any continuation of this Hearing.

A motion was made by Harper and seconded by Drouin to continue this case until the August 22, 2006 meeting so the members will have time to go over all the materials that were handed out. The motion was carried unanimously.

The minutes of June 27, 2006 were approved with corrections.
The minutes of June 29, 2006 were approved.

The Second Reading of the ROP was read by Hill. "The Secretary will notify the Chairman and the Vice Chairman upon receipt of any application. Both (or one plus another member or alternate of the Board)

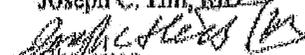
shall review the application as soon as possible for completeness, and any immediate action that needs to be taken, prior to the application being scheduled for presentation to the Board.”

All members were in favor of accepting the second reading of the ROP.

Meeting adjourned at 11:30 p.m.

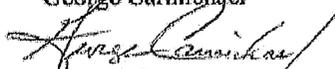
Respectfully submitted

Joseph C. Hill, MD



Chairman

George Carmichael



Vice-Chairman

Helen Mae Olson
Secretary/Clerk