

TOWN OF GILMANTON PLANNING BOARD
THURSDAY, SEPTEMBER 13, 2007
MINUTES OF MEETING
ACADEMY – 7 p.m.

Present: Chairperson Nancy Girard (arrived late), Vice-Chair John Funk, Selectmen's Representative David Clairmont, Felix Barlik, Dan Hudson, Doug Isleib, David Russell, Alternate Member Monica Jerkins, and Planning Administrator Lynne Brunelle.

Absent: Alternate Members Pam Fecteau & Marty Martindale

Vice-Chair John Funk informed those present that Chair N. Girard was running late and he will therefore serve as Acting Chair until her arrival. He opened the meeting at 7:05 p.m., introduced the Board members and explained meeting procedures.

ACCEPTANCE OF MINUTES: At the request of Chair N. Girard, the approval of minutes was deferred until later in the meeting due to the anticipated lengthy discussion to follow.

PUBLIC HEARING – Amendments to Subdivision Regulations: To amend Section III.C. of the Subdivision Regulations by adding paragraph 3. "For Subdivisions that involve land designated as Special Flood Hazard Areas (SFHA) by the National Flood Insurance Program (NFIP)" and to amend Section IX of the Subdivision Regulations by adding the definition of "Floodplain".

J. Funk opened the public hearing and explained that at the March 2007 Town Meeting the Floodplain Management Ordinance was adopted. The proposed amendments to the Subdivision Regulations directly result from its adoption and are the final steps required by the State National Flood Insurance Program (NFIP) in order for specific areas of town to be eligible for flood insurance. At this time, J. Funk opened the floor to public input.

There was no input offered from those members of the public present.

Planning Administrator L. Brunelle informed that Board that the draft language was forwarded to Jennifer Gilbert, Assistant State Coordinator, NFIP, State of NH Office of Energy & Planning (NHOEP) for review and comment. Ms. Griffin approved the proposed amendments and stated that she was pleased to see that the Board **plans to adopt language that exceeds the NFIP minimum requirements.**

D. Russell conveyed that he is a member of the State Commission to Develop a Comprehensive Flood Management Plan and that Gilmanton is one of the few towns remaining in the State to participate in the NFIP. He's glad that we're finally addressing the issue because those individuals who live in a designated flood zone will now be eligible for flood insurance. L. Brunelle added that by adopting the NFIP the town will also qualify for FEMA funding.

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J. Funk asked if the adoption of this ordinance would effect existing structures? For example, if a house is located in the floodplain and is destroyed by a flood, can it be rebuilt? D. Russell responded that yes, it can be rebuilt, but it must meet specific construction standards based on the Base Flood Elevation (BFE).

F. Barlik asked how will the ordinance be enforced? L. Brunelle informed the Board that Building Inspector/Code Enforcement Officer Bob Flanders has worked in other towns that have adopted the NFIP and is therefore familiar with its enforcement. The only change would be to the Building Permit Application asking if the property is located in the floodplain, and if so, what is the BFE? She continued that the proposed amendments to the Subdivision or Site Plan Regulations would apply to any new subdivision or development, and would not only need to show the BFE, but also must meet the required construction standards.

With no further input from the Board members or the public, Acting Chair J. Funk entertained a motion to close the public hearing.

Motion: D. Clairmont moved to close the public hearing, seconded by D. Isleib. Vote passed unanimously.

Motion: D. Russell moved that the Planning Board accept the proposed amendments to the Subdivision Regulations adopting the Floodplain Management Ordinance and the National Flood Insurance Program. D. Clairmont seconded, motion carried 5-0.

PUBLIC HEARING – Amendments to Site Plan Regulations: To amend Section V of the Site Plan Regulations by adding the definition of “Floodplain”, and to amend Section VII of the Site Plan Regulations by adding paragraph C. “For Site Plans that involve land designated as Special Flood Hazard Areas (SFHA) by the National Flood Insurance Program (NFIP)”.

J. Funk opened the public hearing and explained that the purpose of the proposed language is similar to the previous public hearing. There being no questions from the Board members or input from those members of the public present, Acting Chair J. Funk entertained a motion to close the public hearing.

Motion: F. Barlik moved to close the public hearing, seconded by D. Russell. Vote passed unanimously.

Motion: D. Isleib moved that the Planning Board accept the proposed amendments to the Site Plan Regulations adopting the Floodplain Management Ordinance and the National Flood Insurance Program. D. Russell seconded, motion carried 5-0.

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PUBLIC HEARING – Crystal Lake Farms: Final Plan Review for Open Space Subdivision of Town Tax Map/Lot #415-29 (previously Map/Lot #34-03) to subdivide 35 acres into four lots of 1.49, 1.81, 9.89 & 20.81 acres each; 20 acres to be maintained as permanent open space. Property located at 117 Crystal Lake Road in the Rural Zone; PB#1406.

At this time, N. Girard joined the meeting but did not assume the Chairmanship.

Ron Johnson, L.L.S., was in attendance to present the plan. Also in attendance were Tom Varney, P.E. and Kurt Rague, applicant. The plan depicted topos, contours, wetlands delineation, soils, buildable area, test pits, minimum 30,000 s.f. area, septic sitings and a proposed fire pond. Mr. Johnson explained that the purpose of the plan is to subdivide the 35-acre parcel into two building lots of 1.49 and 1.81 acres, create another 9.89-acre lot and a 20.81 conservation lot, which is currently a tree farm. He stated that State of NH Subdivision Approval has been received for the first three lots. The proposal also includes the construction of approximately 600' of road to Class V gravel standards for Phase 1, with a hammerhead turnaround. Mr. Johnson stated that his calculations determined the conservation lot exceeds the required 50% buildable area, with or without the one-acre area excluded from the conservation easement.

M. Jerkins asked if any setbacks were included in the calculation of the 30,000 s.f. buildable area? Mr. Johnson indicated that waivers were requested for the front and side setbacks; therefore, only wetland setbacks were applied. M. Jerkins noted that it doesn't appear that the 50' wetlands setbacks were included on any of the lots. Mr. Johnson agreed and stated that he will apply the wetland setbacks now that he has clarification as to the 30,000 s.f. application.

Tom Varney, P.E., presented the updated road plans in accordance with the April 20, 2007 report from Hoyle, Tanner & Associates, Inc. (HTA). Changes to the plan include a 20' x 20' turnaround for emergency apparatus at Station 6+50, guardrail detail at Stations 8+00 to 8+50 and correct culvert sizes. A Storm Water Pollution Prevention Plan, which included a sediment and erosion control plan, was also submitted.

A report from Kathleen Surowiec, C.W.S., dated September 13, 2007 was presented and reviewed by the Board members. This report reflected her visit to the site in August 2007 to review the subject parcel, at the Planning Board's request, to confirm and reflag the edge of the wetlands on site. She indicated that the wetland boundary, delineated in 2001, does in fact represent the edge of the jurisdictional wetlands for the entire parcel and the submitted plan accurately depicts the wetland boundary.

Gilmanton Conservation Commission (GCC) Chair, N. Mitchell, was in attendance and indicated that the recently submitted plan, dated August 14, 2007, is identical to previous plans and there have been significant site changes including the wetlands.

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N. Mitchell continued that she is aware of four wetland applications, as well as new drainage areas and newly created wetlands. She asked if Kate Surowiec hung new flags, have they been picked up by the survey? Furthermore, the Planning Board specifically requested that the stamp and seal be updated, and it is still dated 2001. Mr. Johnson responded that Kate Surowiec did sign the plan; however, it was his error that it wasn't updated to March and August 2007.

J. Funk referenced the letter dated March 15, 2007 from the Planning Board to the applicant listing ten conditions, and addressed the status of each item as follows (condition appears in *italics*, response from applicant and/or agent appears in ***bold text**):

1. *Your Certified Wetland Scientist, Kathleen Surowiec, shall redelineate and reconfirm the edge of the wetlands for the entire parcel, Map/Lot #34-03.*
***Report of September 13, 2007 submitted.**
2. *All culverts shall be upgraded and/or stabilized as follows:*
 - a. *Crossing "A" currently shown as 15" CPP on the plan shall be upgraded to a 36" culvert, stabilized and correctly referenced as 36" CPP on the final plan for Phase 1;*
***Application submitted in April 2007. Letter received from State of NH-DES requesting more information. Does not need to be inspected until road construction is complete. Please copy GCC on all correspondence to State of NH-DES.**
 - b. *Crossing "B" currently shown as 20" CPP on the plan: the Wetlands Permit requires an 18" culvert, which shall be installed, stabilized and correctly referenced as 18" CPP on the final plan for Phase 1; *Done.*
 - c. *Crossing "C" currently shown as 15" CMP on the plan: the Wetlands Permit requires an 18" culvert, which shall be upgraded, stabilized and correctly referenced as 18" CPP on the final plan for Phase 1. *Done.*
3. *Silt fences shall be erected at Crossing "A" in accordance with the State of NH Best Management Practices (BMP). Erosion control measures shall be applied wherever wetlands exist and referenced on the final plan for Phase 1.*
***Silt fences installed for Crossings "B" & "C" - ongoing erosion control measures at end of proposed road, across from the river.**
4. *Erosion control measures shall be installed, maintained and/or replaced every 45 days, as needed. The slopes on either side of the roadway entrance shall be seeded, mulched and stabilized in accordance with Town standards, at a slope not to exceed 2:1, and in a manner satisfactory to the Code Enforcement Officer.*
***No site work has occurred.**
5. *The Road Plan shall show accurate culvert sizes, shall reference the correct road name and shall depict Class V Town Gravel Standards up to the western boundary of the two approved building lots located at the beginning of the road. This portion of the road must be completed prior to the issuance of any building permits. *Done.*

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6. *There shall be a hammerhead turnout at, or just beyond, the two building lots so that emergency vehicles may safely turn around. ***Done.***
7. *No disturbance or site work shall be performed until all conditions of approval are met, appropriate permitting obtained and final plan for Phase 1 is signed and recorded. No work shall commence on Phase 2. ***Acknowledged.***
8. *You must contact the State of NH-DES at (603) 271-2973 to determine whether an Alteration of Terrain permit is required for Phase 1 and/or for future Phases. Also, a Storm Water Pollution Prevention Plan (SWPPP) shall be submitted and/or Storm Water Discharge Permit obtained, if required. ***Will not apply for Alteration of Terrain until Phase 2 – should apply to State of NH-DES as a phased development. SWPPP submitted with updated road plan.***
9. *A Road & Restoration Bond shall be submitted for the proposed roadway, amount to be determined by the Town upon receipt of the road specification information requested from you in order for the Board to provide a cost estimate. **Tom Varney, P.E. submitted road spec information and determined a cost estimate at approximately \$92,100 (including 10% contingency).***
10. *Appropriate funds shall be submitted for purposes of retaining a third-party engineering consultant retained by the Town to perform the inspections during road construction. A statement from Hoyle, Tanner & Associates, Inc. is enclosed and due for payment. You are responsible for the amount due. Please submit a check, made payable to the Town of Gilmanton, for \$2368.50. ***The May invoice of \$2368.50 was paid in July 2007; however, it was noted that the Board was unable to have HTA review the updated road plans and SWPPP because the applicant has not submitted any funds to retain additional engineering services.***

J. Funk referenced the letter dated June 22, 2007 from the Planning Board to the applicant addressing the status of the same conditions and determined that the only item that has not been addressed was a written report from the Fire Chief regarding the submitted road plans/hammerhead turnaround. The Board members referenced the Fire Chief's memo attached to their staff report; however, L. Brunelle informed them that this memo pertained to the proposed fire pond. According to the memo, the applicant had requested the Fire Chief to approve the fire pond to be located on the subject property. The Fire Chief indicated that at this time, without an approved plan, he cannot make the appropriate recommendations for the project.

D. Hudson agreed that he is not comfortable approving the plan showing a fire pond which was not part of the original approval, especially if its germane to Phase 2 of the development. Mr. Rague responded that the pond will be used for irrigation and that he wanted it shown on the plan to determine buildable area.

J. Funk asked what is involved regarding disturbance of terrain? Mr. Varney stated that it will be located in a fairly flat area, about 60' x 80' and approximately 10' deep.

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GCC Chair N. Mitchell indicated that this complicates the language of the Conservation Easement (CE) deed, particularly the value of the reserved right regarding fire protection. If the pond runs dry while irrigating, how will it effect fire protection? Mr. Rague stated that there is a natural spring that may be able to support it.

L. Brunelle presented the Fire Pond plan and Dry Hydrant detail dated January 16, 2007 and drafted by Tom Varney, P.E. The Board agreed to incorporate language into the CE deed and/or conditional approval pertaining to the fire pond. It was duly noted that the Fire Chief must approve the Fire Pond/Dry Hydrant plan.

J. Funk referenced the minutes of August 14, 2006 where the Board granted a waiver of the contiguous 30,000 s.f. buildable area for the two front building lots. F. Barlik asked Mr. Johnson if he calculated the 30,000 s.f. area for the 9 89 acre lot because it is obviously not contiguous due to the amount of wetlands. Mr. Johnson responded that he did not consider the waiver for this lot; therefore, he will need to recalculate.

F. Barlik also asked if the one-acre need to be used for a future farm stand need to be removed from CE area? It was determined that yes, it does, because that was the reason to separate it to begin with. The area to be utilized for the hammerhead, the barn and the fire pond will also need to be removed from the CE area. Even though they are appropriate uses, they shall not be included in the calculation to determine buildable area.

Jennifer Czaja, abutter on Crystal Lake Road, was in attendance and stated that this past spring during the heavy rain events, the road almost flooded and she asked if there was an erosion control plan to handle the run-off? Tom Varney, P.E. stated that the SWPPP shows the water would run into a ditch then through the culvert under the road before going into the river. J. Funk asked what would eliminate any oil from running into the lake? Mr. Varney stated that there will be a stone ditch and a catch basin that will filter the water before it runs into the culvert. D. Isleib added that he has driven Crystal Lake Road for 34 years and it has always been backed up in that area, and since Mr. Rague has improved the entrance to his road, it has flowed much better.

Thomas Czaja, abutter, was in attendance and asked how many units is the applicant proposing to build? J. Funk informed him that the two building lots at the beginning of the road are for single-family dwellings, and the third lot cannot be built on at this time because there will be no road frontage, and the other lot is a tree farm and will remain as permanent open space. When the applicant is ready to improve the road and come in with a proposal for the third lot, then a new application will be submitted for Phase 2, which will be posted and abutters will be noticed at that time.

Mr. Czaja asked what type of road will it be? J. Funk explained that it will be constructed to Class V gravel standards up to the first two building lots (Phase 1) and then the entire road will be Class V asphalt standards (Phase 2).

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It will remain a private road until it is accepted as a town-maintained road at Town Meeting. J. Funk asked Mr. Johnson if he understood that the proposal was for three lots? Mr. Johnson agreed yes, two building lots, the 9-acre lot and a conservation lot. Mr. Rague asked why the Board couldn't approve the 9-acre lot until such time that the road is upgraded? It was suggested that the lot could be approved as woodlot until such time that it has sufficient road frontage (Phase 2) to become a buildable lot. Discussion occurred regarding the fact that since the proposal is in the form of an Open Space Subdivision, the 9-acre lot would only need 75' of road frontage according to the ordinance. It was determined that since the existing woods road bisects the two lots anyway and one lot will remain as a conservation lot, the 9-acre lot will be considered it's own lot.

GCC N. Mitchell asked about any encroachment of the road onto the CE land. It was agreed to include language referring to the easement that would allow construction activity to be consistent with the submitted road plan.

The Board asked L. Brunelle to forward a letter to the applicant listing the remaining items to be addressed before the next meeting. J. Funk asked if anyone would like to revisit the site? All agreed there is no need to revisit the site at this time.

Motion: N. Girard moved to continue the public hearing until the next regularly scheduled meeting on October 11, 2007 and request the application to provide the requisite documents and attachments by the meeting deadline. F. Barlik seconded, vote passed 6-0.

INFORMAL DISCUSSION – Ron Johnson, LLS, for Van E. Hertel, Sr.: Subdivision of Town Tax Map/Lot #405-21, of approximately 240 acres, into two lots, located on Middle Route in the Conservation Zone.

Ron Johnson, L.L.S. presented a preliminary plan to subdivide 240 acres located on the southerly side of Middle Route and Grant Hill Road, a discontinued road. The property is owned by Van Hertel, also in attendance.

Mr. Johnson stated that the proposal is to subdivide the property into two large lots of approximately 186 and 54 acres each. The building sites would require long driveways but would have nice views. He continued that the land is wooded, steep in areas, and has many ledge outcroppings. When asked if he has any future plans to further subdivide, Mr. Hertel responded no, he just wants to sell the two lots separately and hopes that the new owners won't develop it. He thinks that if it were to be sold as one piece, its more likely that it will be viewed as development potential.

D. Isleib reminded the Board that Ed Duby had come in with a conceptual Open Space Subdivision design for this parcel and wanted to put in a road with 20 house lots.

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Everyone agreed that this is a much better proposal for the property. D. Clairmont asked if the boundary between the two lots could be moved westerly so that one is approximately 60 acres, and the other about 180 acres. This would make both lots more regular in shape. All agreed this was a better design. Mr. Johnson will apply this change. He continued that since the property is located in the Conservation Zone, the minimum is ten acres with 400' of road frontage. He considered an Open Space design, but they really should be large single lots.

M. Jerkins asked if the proposed driveways meet the slope requirements? Mr. Johnson responded yes, however, they are long driveways, approximately 1300'. He also stated that both lots will meet the contiguous 30,000 s.f. area. M. Jerkins asked if he will depict the driveway locations on the plan? Mr. Johnson stated that he would prefer not to, but he will if the Board requires it due to safety issues. Mr. Hertel stated that it would be acceptable with him; however, the buyer may or may not wish to build there, but he has no problem showing them on the plan. Mr. Johnson indicated that both are existing driveway cuts with adequate site distance.

Mr. Johnson will return with a formal application for the October meeting. The Board thanked Mr. Johnson and Mr. Hertel for coming in.

ACCEPTANCE OF MINUTES: The minutes of the August 9, 2007 meeting were reviewed and changes were made. **Motion:** D. Russell moved to accept the minutes of 8/9/07 as amended, seconded by F. Barlik. Vote passed 6-0-1, D. Hudson abstained.

ADMINISTRATOR'S REPORT

NorthEast Earth Mechanics Reclamation: Planning Administrator L. Brunelle informed the Board that she will be forwarding a letter to NEEM reminding them that the restoration of the gravel site on Sargent Road is due October 30, 2007 and the bond expires as well. She also informed the Board that she received a call from Bill Nutter wanting to assume the restoration of the gravel site. Lynne informed him that he must submit an application for Excavation Permit and Site Plan. Mr. Nutter stated that he would like to contact Chair N. Girard to see if he could assume the site without the having to submit an application. Lynne has not received a phone call or an application.

Crystal Lake Farms, LLC: L. Brunelle asked Selectmen's Rep D. Clairmont to update the Board on whether Code Enforcement Officer (CEO)/Building Inspector Bob Flanders was still going to be able to perform site inspections at Crystal Lake Farms. D. Clairmont reported that Mr. Rague submitted a formal complaint against CEO Bob Flanders denying him access to the site. The Selectmen sent Mr. Rague a letter informing him that any future inspections must be performed by a third party inspector, to be paid by Mr. Rague. He has not yet responded to the letter.

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L. Brunelle asked the Board members what they would like her to do regarding the recently submitted road plans that were submitted in response to the specific report by Hoyle, Tanner & Assoc. (HTA). The Board directed Lynne to include in the letter to Mr. Rague that HTA must review the updated road plans, or the Board reserves the right to deny the application. Therefore, the appropriate funds must be submitted upfront for retaining HTA as the town's third party engineer.

OTHER BUSINESS

Darbyshire Subdivision Decision: Chair N. Girard received two requests to reconsider the Planning Board's decision of August 9, 2007 in the Paul Darbyshire Subdivision. One request was from Bill Angevine and the other was from the Board of Selectmen. At this time, both letters were read into the record and are attached to the minutes. N. Girard stated that she consulted with Town Counsel and the recommendation to Mr. Angevine's request was that he is not an abutter, a person of interest or one who is aggrieved by the decision; therefore, he does not have much standing to appeal or make this request.

She is turning the request from the Selectmen over to the Board and asked them if they wished to reconsider. D. Isleib stated that the Selectmen referenced "steep slopes that exceed 15% shall not be platted" does not necessarily apply because that was figured into the calculation as unbuildable land. He continued that the entire driveway does not exceed 15%, only portions of it will.

D. Russell stated that if the Board were to change their decision, would it not put us in a more serious light than having the Selectmen asking the Planning Board to reverse any decision we make? F. Barlik agreed and feels that the Planning Board has the right to grant waivers where they see fit.

D. Isleib asked N. Girard to read the Fire Chief's letter to the Planning Board regarding the Darbyshire Subdivision into the record, which is attached to the minutes. F. Barlik referenced the Board's decision, which incorporated the Fire Chief's recommendations verbatim, with the exception of the 10% grade due to the fact that the existing driveway contained sections that exceeded 15% slope.

D. Hudson indicated that he was not at the meeting when that decision was made but he agrees with D. Isleib that the Board considers each application and/or waiver on a case-by-case basis. The purpose of the Planning Board is to weigh all factors, otherwise, there wouldn't be a need for a diverse Board; there would be a checklist. L. Brunelle asked D. Hudson if he attended the Site Walk? D. Hudson responded that he went on the second Site Walk. She informed the Board that Attorney Mitchell had asked for notes from the Site Walk and since she was on vacation and did not attend, there were none in the record. She asked if anyone has notes from the Site Walk to please forward them to her so that she may include them in the file.

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Extensive discussion occurred regarding the waivers requested, the waivers granted by the Board on a case by case basis, what was viewed and discussed at the Site Walks (there were two), the judgment allowed under RSA 674:36 II (n) to provide for waivers.

Motion: D. Isleib moved that the Planning Board maintain their decision of 8/9/07 to approve the Darbyshire Subdivision, seconded by F. Barlik. Motion carried 4-1-2. F. Barlik – yes, N. Girard - yes, D. Russell – yes, D. Isleib – yes, J. Funk - recused, D. Hudson – abstained, M. Jerkins – abstained, D. Clairmont – opposed because it does not represent the majority of the Board of Selectmen.

Mr. Angevine believes that any citizen has the right to appeal and has the right to take them to Superior Court. N. Girard read directly from Town Counsel’s letter. D. Isleib referenced RSA 677:15 stating that any person aggrieved by the decision of the Planning Board may present a petition to the Superior Court.

RE-OPEN MINUTES: Planning Administrator Lynne Brunelle had a question regarding the vote and decision on the Darbyshire Subdivision. She asked Selectmen’s Representative D. Clairmont why, in the minutes of August 9, 2007 did he vote in the negative for the motion to approve the subdivision but vote in favor for the waivers? D. Clairmont responded that he did not vote in favor for the waivers. Chair N. Girard stated that he did not vote in opposition. D. Clairmont indicated that he did not say anything; therefore, he abstained. Chair N. Girard informed him that when a she calls for a vote, she asks for the “ayes”, then for any “nays”. If anyone is in opposition or abstention, that would be the time to let it be known.

Motion: D. Clairmont moved to reopen the minutes of August 9, 2007. F. Barlik seconded, vote passed 6-0.

Motion: D. Russell moved to reconsider the motion on page 6 of the August 9, 2007 minutes to waive Section VI.B.12 of the Subdivision Regulations requiring a maximum driveway grade of 10% be granted; driveways shall not exceed 17%. D. Isleib seconded the motion, vote passed 4-0-2, J. Funk abstained, D. Clairmont recused.

Motion: F. Barlik moved to accept the minutes of August 9, 2007 as amended, seconded by D. Clairmont. Vote passed 4-0-2, J. Funk and D. Hudson abstained.

ADJOURNMENT: On a motion made by J. Funk and seconded by D. Hudson, vote passed unanimously. Meeting adjourned at 11:05 p.m.

Respectfully submitted,

Lynne R. Brunelle