



**Town of Gilmanton, New Hampshire
Planning Board**

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Roy Buttrick, Chair
William Mahoney, Vice Chair
Brett Currier, Member
Vincenzo Sisti, Member
Jacob Dalzell, Member
Marty Martindale, Member
Mark Warren, Selectmen Rep
Mark Fougere, Certified Planner
Bre Daigneault, Planning Admin

PLANNING BOARD MEETING

Minutes of December 10, 2020

A. CALL TO ORDER- Chairman Buttrick opened the meeting of December 10, 2020 at 7:00pm.

B. ROLL CALL

Member Marty Martindale, Chair Roy Buttrick, Vice Chair Bill Mahoney, Member Brett Currier, Member Vincenzo Sisti, Selectmen's Representative Mark Warren, Planner Mark Fougere, and Planning Administrator Bre Daigneault were present at this meeting. Member Jake Dalzell was absent. There were 18 members of the public present both in person and virtually by utilizing Zoom.

C. SALUTE TO THE FLAG

S. Rep. Warren reviewed meeting protocol of social distancing and when it would be appropriate to remove one's mask.

D. Public Hearings-

a. New-

PB CASE #LLA2020-704: Admin. Daigneault had stated she received a call earlier from property owner's agent, Craig Bailey. Mr. Bailey requested to be placed further down the agenda as he had a case in another town starting at the same time. The Board would return to this case.

PB Case #SUBMIN2020-509: Applicant Paul F. Zuzgo of Prospect Mountain Survey, on behalf of property owners Kathryn C. Kardinal as trustee of the Kathryn C. Kardinal 2019 Trust and Joanna L. Kardinal-Stockton are proposing subdividing a 21.7 acres lot with existing structure leaving the remaining land of 268+/- acres. Both lots will exceed the minimum lot size and road frontages. The property is located at 121 Halls Hill Rd, map and lot 416-023, located in the Rural zone.

Land agent Paul Zuzgo described the subdivision request. The farm house and land would be sold, while the remaining land would remain with the current owners. Planner Fougere made the board aware of the waivers submitted- topography, wetlands, and survey of the entire land, and perk tests.

Chair Buttrick made a motion to accept the application. Vice Chair Mahoney seconded.

Motion passed 6-0

Chair Buttrick opened to public hearing. Resident Nate Abbott inquired if there was an offer on the house. Mr. Zuzgo stated, there is no current offer, but the house would be placed on the market. There were no additional comments. Chair Buttrick closed the public hearing.

Member Currier made the motion to accept the waivers as submitted. Member Sisti seconded.
Motion passed 6-0

Member Currier made the motion to approve the application as proposed. Motion was seconded by Member Sisti. **Motion passed 6-0**

PB CASE #SUBMIN2020-508: Property owner Van E Hertel, Sr, Trustee of the RAED Hertel Family Trust, is applying for a three-lot subdivision to land located on Middle Route, more specifically described as map and lot 410-049.3, located in the rural zone. The lots would be 5.31 acres, 11.20 acres, and 12.25 acres. All lots exceed the minimum road frontage. The owner is represented by Norway Plains Assoc, Inc.

Land agent Steve Oles presented the revised plans of the subdivision which was conditionally approved at the November 12th meeting. Chair Buttrick advised members of additional information on range-ways in their case file. The board did have additional questions on the range-way (known as Hill Top Farm Rd). Mr. Oles explained the road was formed as a range-way during the Kings grant, therefor being a town owned Class VI road. Chair Buttrick stated there was no record of it becoming a town road. Mr. Oles stated they (range-ways) were given to the town by the King. Planner Fougere stated research had shown the ownership of a range-way is extremely gray. He recommended adjusting the notes on the plan to reference the ownership of the road, as there is no proof the Town has ever taken this over. He does not see any issues with the subdivision as the lot fronting Hill Top Farm Rd has frontage on a Class V road, Middle Route. Mr. Oles said that was added to the plan for the private maintenance. Chair Buttrick requested it be stated the road is a range-way. Mr. Oles stated the town has Class VI roads that are subject to gates and bars and the Town has Class VI roads that are just not maintained. S. Rep. Warren felt that if there is no evidence stating that it is a town road then it shouldn't be referred to as such on the plan. Mr. Oles felt he could go to the Registry and pull a copy of the Town's plotting plan to prove it is a road. S. Rep. Warren asked how important it is to be labeled as a Town road on the plan. Mr. Oles didn't feel it would affect the subdivision as there is frontage on a Class V road. He could refer to it as a range road and would leave the note pertaining to maintenance. Member Currier wanted note #10 on the plan to not just reference the maintenance agreement with Dockhams (who currently maintain the road) but to include future owners. S. Rep. Warren trusted in Mr. Oles expertise, however, felt where it could be a gray area and without holding up the plan, if it wasn't something Mr. Oles felt was important to the plan, could the wording be removed. If it is important, there are methods to take with the Selectmen to verify the ownership of the road. Mr. Oles stated it is his stamp on the plan and he would place on the plan however it is found to be. He would review this further with another member of his office. Chair inquired if the "Town road" statement could be removed. Mr. Oles responded it could be if that would suffice. Member Currier noted the map and lot number of the Dockhams needed to be corrected on the plan. He wanted to make sure the language was right to protect to current property owners. Members had no further concerns.

Chair Buttrick made the motion to accept the application. Vice Chair Mahoney seconded.
Motion passed 6-0

Chair opened the case to public hearing. Resident Peg Dockham, whom along with her husband built up and maintains Hill Top Farm Rd, read note #10 on the plan referencing "a road maintenance agreement with the Dockhams". She felt this would not be enforceable by

the town and would fall strictly on them. If someone else messes up the road, who would be required to fix it. There are times they are busy on the farm and do not open up the road for a few days, would it be a liability to them if someone went off the road. Planner Fougere responded any responsibility would fall on the owners, not the Town. Currently, the applicant is indicating the driveway would be off Middle Route, not Hill Top Farm Rd. They cannot say at this point, where a buyer may build. It was discussed a realtor selling the property should disclose it is a range way. Mrs. Dockham hopes the expense of maintaining a private way is expressed to any buyer. The board cannot mandate the driveway be built in the location as on the plan. Chair Buttrick expressed his understanding of concern to Mrs. Dockham. Without further comments, Chair Buttrick closed the public hearing.

Member Currier continued to express concern of the possible use of Hill Top Farm Rd and the affect it could have on the Dockhams. Where would the driveway permit come from if the Town does not own the road. Member Sisti agreed with his concerns. If a driveway is to be built of there, who is to deal with it. Vice Chair Mahoney concurred. Member Martindale felt if it was not a town road, the land would go to the abutters. With the lack of clarity in a range way, it doesn't automatically give the abutter rights to it. The owner of the lot (49.3) would need to prove they have the rights to use it. Planner Fougere read the last paragraph regarding range ways from *A Hard Road to Travel*: "In Short any claim of town title to range ways is still up for debate. The Town needs sufficient document to prove ownership over a particular range way. What is important though, a range way issue is only about title...". Chair Buttrick inquired if a driveway permit could be issued on the range road. Planner Fougere stated the Town would not issue a driveway permit on it. It was agreed a legal interpretation would be needed to clarify the access to the range way. Admin. Daigneault wanted to remind the board, the subdivision as proposed meets the minimum road frontage and acreage requirements. If someone does want to build off Hill Top Farm Rd, the owner would need to receive a private road agreement from the Selectmen. S. Rep. Warren focused back on the application, and whomever buys the land would have to address this issue. He does not want to board to hold something up based on the lack of clarity of the range way. Member Currier wants something placed on the plan to solidify the owner would need to, at their own expense, prove they have the rights to build and utilize the range way. Members furthered discussed possible ways to provide clarity to a potential buyer to the use of the private way. Planner Fougere recommended adding a note stating: "The ownership of Hill Top Farm Road range way is unknown. Any proposed access off this way shall submit sufficient evidence to the Board of Selectmen proving access rights to this way."

Member Currier made the motion to approve the plan with the note as stated by Planner Fougere, to remove town owned on notes nine and ten, and to correct the lot number on and clarify the road maintenance agreement would go with the property, not just the Dockhams on note 9. Vice Chair Mahoney seconded. **Motion passed 6-0**

Mr. Oles wished to make the Board aware of the map included in their application showing the road as an only source of access to a lot sitting behind the subdivision.

b. Old-

PB CASE #SPR2020-402: Applicant Gary Anderson on behalf of Bear Investment, LLC is requesting a continuance until the February meeting. The engineer he has hired has not completed the site plan.

PB CASE # 203-2016: The Planning Board has requested a review of the Site Plan approval

granted to property owner Bear Investments, LLC to ensure compliancy. Applicant Gary Anderson has been requested to update the Board on the condition and use of his property located at 136 NH Route 106, map and lot 421-018 located in the Business zone.

Chairman Buttrick felt a contractor's yard was being run on the property and does not believe this was ever approved on his site plan. He inquired as to Mr. Anderson what other business were currently operating at the property and how many employees were on site. Mr. Anderson stated there is a doggie daycare, three (motor vehicle) dealerships, and a garage. He does not know the extent of employees at each business. There was concern with the number of employees and the size and condition of the septic tank. Mr. Anderson has been working on relocating tenants on the property to improve the look of the yard. He felt he had approached the board to have the cable company rent the space. Members did not recall seeing this in his file. Chair Buttrick believes the cable company should be registering their trucks in Gilmanton as they have been located there for over six months. He was also concerned with the safety of having cable reels on the property without fencing. Member Currier stated the property is unsightly and has heard the same from others in the community. It was also discussed the number of parking spaces approved. Mr. Anderson is in the process of cleaning up the property visually. Chair Buttrick requested Mr. Anderson bring in a new plan updating the tenants and layout showing the contractor's yard. Planner Fougere commented on the trees removed (abutting Allens Mill Road) and leaving just the stumps; typically, this would have been graded. S. Rep. Warren requested the board clarify for Mr. Anderson what they would like to specifically see, for example a site plan for the contractor's yard. Member Currier felt the contractor's yard, a count of the number of employees working in the building, and the number of customers. Mr. Anderson does own the building but does not spend a lot of time there, he tends to hire a manager for the property. He does have a new property management company. Chair Buttrick requested a new updated site plan showing the property, what's in the building, and adding the contractor's yard. Member Currier stated the site plan would be approved for so many employees and Mr. Anderson should be telling his tenants how many employees can be in the building. Mr. Anderson stated there should be some vehicles removed from the property and tenants changing spots. He feels there are less employees in the building currently then there has been in the past. He would be prepared to fix the septic if it malfunctioned but does not feel that submitting additional documentation regarding the septic is beneficial at this time. Chair Buttrick does not feel the plan he has submitted is what is on the ground. Member Currier feels a septic design should be submitted for the number of employees present. Mr. Anderson takes responsibility for the condition and will be working on cleaning it up. Member Currier felt the board needs to know what the septic can handle and how many people are currently utilizing the system. Mr. Anderson questioned the need for a new site plan. Chair Buttrick replied they could have code review the current site plan, go to the building, and shut anything that does not have approval. Member Martindale feels the site plan itself can be a work in progress and should be updated when tenants change. Member Sisti stated there are documents in the file showing when tenants have changed. He feels the concern is if the septic is up to date, the possibility of a driveway that does not have approval, and the aesthetics of the property. Member Currier did not feel the previous board placed enough restrictions on the original site plan approval. It was confirmed a site plan would be needed, not a separate contractor's yard permit. Admin. Daigneault requested to summarize for Mr. Anderson that the board is requesting a site plan review application for the contractor's yard, an update of the businesses currently there, the number of employees each business has including how many during the day or at one time, how many vehicles and where parking is for cars on display and for employee/customer parking. Board members were in agreement with the summation. Member Currier inquired if there is a

septic plan on file. Mr. Anderson thought there was one on file at town hall. Chair Buttrick stated it is a 1,000 gallon tank. It was re-iterated to Mr. Anderson what the board is requesting.

New returned to: PB CASE #LLA2020-704: Property owners Heather Mick-Carito & Holly Faber are requesting a lot line adjustment with abutting property owners Stephen H. & Judith A. Hopkins as trustees of the Stephen H. Hopkins Revocable Trust and the Judith A. Hopkins Revocable Trust. The adjustment would transfer 91.6 acres from map and lot 419-71 (Mick-Carito/Faber) to 419-65 (Hopkins). The properties are located in the rural zone. Land agent for the property owners is Craig T. Bailey, LLS.

Mr. Bailey presented the proposal via Zoom. The project is a lot line adjustment consisting of a 180-acre parcel. This would add 91 acres to map 419 lot 65 and reduce lot 419-71 to 88 acres. The challenge with lot 71 was to give frontage on the Class V portion of Thistle Road. The solution was to run a small strip down the southern boundary, down Thistle Road and down the discontinued portion of Thistle Road to gain the 200 feet of road frontage. Member Currier inquired how much of the land would be remaining on Thistle Rd. Mr. Bailey clarified the land fronting Thistle Rd would be 88 acres and the 91-acre parcel would become part of Mr. Hopkins land on Route 107. Mr. Hopkins land would have both frontage on Thistle Rd and Route 107. Member Currier asked if the land (lot 419-71) was to ever be built on, the access would be the long strip of land off Thistle. Mr. Bailey stated the land could never be built upon; it is straight up and down. This lot has many access easements off from Route 107, this would not be used as access. Planner Fougere requested a parcel line between the 91 acre portion and lot 65 to clarify the land would become one. A waiver request would be required for section VII:A.2: "lots with very irregular shapes, as determined by the Board, would not be accepted...". Member Currier did not feel the shape was an issue as it is already an irregularly shaped lot. He would be willing to waive that. Mr. Bailey pointed out the easements leading across lots that front Route 107. He felt where it was such a large piece of land, it would be meeting the intent of the ordinances. Member Currier inquired if a wood lot could be created without road frontage. Mr. Bailey would need to go to ZBA to create a lot without frontage on a Class V road. Planner Fougere responded that according to State RSA, you cannot create a lot without frontage. Mr. Bailey would write the waiver to request a waiver from the shape rule. Chair Buttrick did not feel this request meets the ordinances of the Town. He felt the subdivision could be accomplished differently. Planner Fougere felt it would be a problem if they were using it for access, which they have been told is not going to happen. Mr. Bailey did not feel they could maintain the shape factor if done other ways. He would request a waiver from this shape factor. There are no proposed changes to the existing snowmobile trails. Chair Buttrick inquired of members how they would feel about granting the waiver. Members answered in affirmative.

Member Martindale made the motion to accept the application. It was seconded by Member Mahoney. **Motion passed 6-0**

Chair Buttrick opened to public hearing

Property owner Heather Mick-Carito felt this was a win-win for both property owners. The Hopkins plan on placing the land in conservation which would be a win for the Town as well. Her and her family had enjoyed the land for many years. They wished to keep some for their children to continue enjoying.

Property owner Holly Faber gave the history of the land being in their family for many years. They have a lot of fond memories in the area and on the land.

Property owner Stephen Hopkins stated he and his wife have been here four years and have dedicated a lot of effort in preserving the beauty that is part of the Town. They are pleased to ensure this land is never built.

Abutter Anthony Hartford owns lot 48. He has a deed for 60 acres, book 962, page 949 recorded at the Belknap County Registry of Deeds. Bryan Bailey surveyed the walled in area of 40 acres. There was a question of where the other 20 acres was. Tax maps are not for legal purposes and his deed states he has 60 acres. Mr. Hartford feels before any land trading goes on the deeds need to be clarified.

Abutter Bruce Clay on Thistle Road was concerned the property was going to be developed. After hearing the buyer speak of turning this into conservation land, he has no problems with it. He does not want to see the property developed.

With no further comments, Chair Buttrick closed the public hearing.

Member Currier responded to Mr. Hartford that it is not the purview of the Planning Board to figure out boundary lines. Deeds are not always an accurate description. The surveyor is putting his license on the line. He does not see a problem with the plan and would like to make the motion to accept the waiver (for section VII:A.2). Member Sisti seconded. **Motion passed 6-0**

Members Sisti and Mahoney did not see any problems with the plan. Member Martindale concurred with Currier that they could not legally clarify boundaries. Surveyors are putting their name on the line. Planner Fougere added the abutter could hire a surveyor of their own and contest the plan.

Member Martindale made the motion to approve the plan with the waiver. Vice Chair Mahoney seconded. **Motion passed 6-0**

E. Minutes-

November 12, 2020- Member Sisti made the motion to accept the minutes with correcting "KW" to "kw" and to correct a spelling error. Vice Chair Mahoney seconded. **Motion passed 6-0**

F. UNFINISHED BUSINESS

G. CORRESPONDENCE

H. OTHER BUSINESS/PUBLIC COMMENT

a. Zoning Ordinance Discussion-

- **Solar-** The board reviewed the updates. Member Sisti recommended the table be updated to "kilowatt" versus "K". Additionally, section F should be updated to reflect anything under 10kw versus anything except roof mounted.

Chair Buttrick opened to public hearing.

Resident Sarah Thorne suggested increasing the capacity from 10 kw to 15 or 20 kw on the table by right on the table. With a larger family and electric cars becoming more common, there may be more than 10 kw needed. Two categories of commercial use may be beneficial. There are large industrial sized solar developments which may need more rigorous requirements such as tailoring what zones there are allowed in. There should be a definition of "backyard" added; a parallel line to the back boundary line, for example. Ms. Thorne recommended checking the model ordinance from Clean Energy NH. Hand

drawn plans may be alright for residential use, however large commercial projects should really have an engineering plan. May wish to extend the abandonment time frame. It may be difficult in the winter to remove the panels in 90 days. S. Rep. Warren inquired of the model ordinance Ms. Thorne referred to. She stated it is Clean Energy New Hampshire, a non-profit that developed a model ordinance for municipalities to follow. Chair closed the public hearing.

Planner Fougere clarified if the board made any substantive changes, they would have to hold a secondary public hearing. Chair Buttrick had concern with panels in the Historic District. Member Sisti agreed with Ms. Thorne that a definition of backyard needs to be added. Member Currier thinks they are ugly and will take away from the historic beauty of the town. He feels all ground mounted should be allowed by conditional use that way the board could have say in where they are placed. Member Martindale agreed. They may be able to clarify backyard as out of view. S. Rep. Warren feels the board does want a voice in this newer industry. The challenge would be to remove disputes. He feels this would need to either by CUP or clarify what the definition of backyard is, so it's not left up to something arbitrary. He stated a 10 kw system is between 30 and 40 panels. This does have a pretty big mass to it. He recommends starting at 10 kw. The majority of members agreed any ground mounted panels should be by CUP. Planner Fougere commented on the ordinance in another town is working good by CUP for anything ground mounted. Members discussed extending the abandonment time to 120 days. It was discussed whether or not to differentiate from small commercial and large commercial. Member Sisti recommended not differentiating between large and small commercial. It was the consensus of the board to make all ground mounted arrays allowed by CUP; add to section F:3II that hand drawn plans can be allowed for residential solar; and to update section G:II to 120 days from 90.

- Outdoor Venue- S. Rep. Warren stated concern he had received from residents questioning what constitutes a commercial event. Does this not allow for someone to host a wedding on their property? The differences between this proposed ordinance and the current definition of "special event" were discussed. Member Currier felt this ordinance is important to allow people to utilize their land and not have to go to ZBA for a special approval. Member Martindale felt an individual property owner may not understand the liability they take on when hosting these events. This ordinance would be for commercial events where a special event would be for private functions. Any commercial event would fall under this ordinance.

Member Martindale made the motion to send to the ballot as written. Vice Chair Mahoney seconded. **Motion passed 6-0**

- 55+ Development- Chair Buttrick inquired of Planner Fougere to explain how 55+ housing developments financially impact a town. Planner Fougere's analysis of these types of developments in other communities is that they generate a significant amount of positive cash flow from a fiscal impact assessment standard. Which means they generate more than tax revenue than they require of municipal facilities; the biggest impact being ambulance calls. For every dollar the town collects from taxes, 80% is excess revenue as they would not be utilizing the school system and most roads and trash pick-up would remain private. Chair Buttrick feels this important for the residents of town to know, as they are looking to expand the tax revenue. Member Currier inquired of

the dwelling unit density of one unit per acre in section C:2. Members agreed to have the line removed from that section. S. Rep. Warren inquired of paragraph 14 that all master bedrooms should be located on the first floor. For a multi-unit building an elevator would be acceptable. These changes would be made and reheard at the next meeting.

- Manufactured Housing: Storage & Use of Recreational Vehicles: Admin. Daigneault explained the town's attorneys had re-written the existing article. The only change to the ordinance intent would be to allow for a non-resident to store an RV on their dwelling lot. The attorneys did not feel that allowing a resident and not allowing a non-resident to store an RV on their dwelling lot would hold up in court. Admin. Daigneault recommended adding VI.B to the end of paragraph 2 and changing the term "may accommodate *residence* in the RV" in paragraph 5. Members discussed the proposed ordinance. The changes would be made and reheard at the next meeting.

S. Rep. Warren excused himself from the meeting.

I. NON-PUBLIC

Chair Buttrick made the motion to go into non-public pursuant RSA 91A:3,II(e) for Litigation. Vice Chair Mahoney seconded. **Motion passed 5-0**

Chairman Buttrick made the motion to come out of non-public. Member Currier seconded. **Motion passed 5-0**

Chairman Buttrick made the motion to seal the minutes. Vice Chair Mahoney seconded. **Motion passed 5-0**

Admin. Daigneault stated for the record there were no votes made in the non-public session.

J. ADJOURNMENT

Member Currier made the motion to adjourn. Member Sisti seconded. **Motion passed 5-0**

*Respectfully Submitted,
Bre Daigneault, Planning Administrator*

Authorized by


Chairman C. Roy Buttrick

Date:

