



Town of Hebron

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Hebron Planning Board

APPROVED Minutes of Hearing 9/6/06

Members Present: Chuck Beno (alternate), Dick Cowern (Selectmen's rep), Tom Gump (alternate), Roger Larochelle (chair), Ellie Lonske (vice chair), Curtis Mooney, David Wall, Martha Twombly (alternate), and Sheila Oranch (secretary)

Others Present: Barbara Pape, Nancy Howard, Gerald Anderson, Mark Hession, Nadine Hession, Patrick H. Wood (attorney), Barbara Delaney, Richard Delaney, Bill Nobles, Carmine Tomas (attorney) Jeff Hillier, Bill Thistle, Polly Alexander, Lee Alexander, Ken Lonske, Bob Martens, Sue Martens, Bill Jensen, Mary Jensen, Alan Barnard, Larry Kill, Rodney N. Dyer (attorney).

Time Convened: 7:00 PM **Time Adjourned:** 10:20 PM

Next Meetings: 9/11/06 workshop, 9/18/06 workshop, 10/4/06 regular monthly hearing

Agenda Items:

1. Approve minutes of 8/2/06
2. Administrative Matters
3. Continuance of Jaques ET AL subdivision and boundary adjustment applications
4. Continuance of Ridgewater Commons Cluster subdivision application
5. Continuance of PEFF Corporation subdivision application for Tax Map 5, Lot 5-2
6. Road bonding phases for Hebron Country Estates
7. Any other matters that come before the Board

Roger Larochelle introduced the members of the Board and explained hearing protocol. He reminded members of the public to sign in and to state their names when being recognized. He also informed the public that at 9:30 PM the agenda would move to Item 6, Hebron Country Estates road bonding and that after 10:00 PM no new business would be taken up. Minutes of 8/2/06 were reviewed and suggested corrections were noted.

David Wall moved/Dick Cowern seconded approval of the 8/2/06 minutes as amended with Richard Delaney's e-mail of 8/22/06 and Planning Board reply appended. PASSED

Continuance of Jaques ET AL subdivision and boundary adjustment applications

Alan A. Barnard was present to represent the applicants. He gave the Board a copy of the DOT (Department of Transportation) response to a new letter of intent by the Hebron Selectmen about future road relocation of the George Road junction with North Shore Road. He said he would request a continuance because they are awaiting the approval. However, they would prefer not to wait until the

next monthly hearing on 10/4/06 and asked if the permit approval arrives before then whether the Planning Board would consent to their doing the improvements at the sides of the road to assure that required visibility can be achieved according to the updated plan. When questioned, Alan said this would involve cutting and blasting. If and when DOT approval is granted and submitted to the Board, a copy of the amended plan will be attached. The plan for the road cut is the same as shown before.

Roger Larochelle and David Wall asked for clarification because the location of the road cut has changed because the DOT had said to move it as much closer to the Hebron center (west) as possible.

Curtis Mooney said if the approval is for a driveway permit so there is no rush.

Roger Larochelle said he wouldn't mind, if the approval comes by then, if Alan brought it to the next Planning Board work session.

Ellie Lonske objected to taking time from the work session as there is so much to do.

Roger Larochelle said if it was just a quick review for a specific item, it would be okay.

David Wall said he wouldn't mind taking 15 minutes to look at it during a break.

The Board granted a continuance to September 18th to review the driveway permit if approval by the DOT arrives before then and continuance of the Subdivision application to the monthly hearing on 10/4/06.

Continuance of Ridgewater Commons Cluster subdivision application

Chuck Beno recused himself, as he is an abutter. Tom Gump stepped up as a voting member.

Richard and Barbara Delaney, Alan Barnard and Pat Wood were present to represent the project.

Roger Larochelle noted that additional information was submitted on 8/2/06 and had been reviewed.

Pat Wood gave the Board a copy of the DOT driveway permit and a draft of the proposed Covenants. He said they were not prepared to discuss the engineering review in detail yet as Corey Johnston is still reviewing it, although some comments on points in the review would be appropriate this night.

The Planning Board took a few minutes to review the driveway permit. They noted that there are specifications omitted on the permit but acknowledged that they are shown on the plan. Roger Larochelle said there were a number of issues raised by Paul Fluet's engineering review. The Board will make sure the points are clear to everyone involved. Paul Fluet did a good job of pointing out omissions and items of concern to the Town. Roger Larochelle asked Curtis Mooney to comment on how he felt the Planning Board should proceed.

Curtis Mooney said if Corey Johnston is still reviewing the report and is not present to answer questions it may not be productive to discuss the report. He said the Board would need Corey Johnston's responses in writing in the appropriate amount of time before a meeting, responding to each point verbatim and in order.

Richard Delaney said he would not present Corey Johnston's report until there is agreement about the road design, as almost all the issues are around that.

Roger Larochelle said he was struck by Paul Fluet's point about the site still being very steep and the loss of trees and vegetation. That is a strong concern for him as a reviewer.

Ellie Lonske asked how the Planning Board could discuss any of the concerns without knowing Corey Johnston's responses.

Richard Delaney explained that he feels it is a waste of time and money to do a thorough review and response to the engineering report until the Board has agreed to the proposed road design in principle.

Ellie Lonske responded that it doesn't make sense to have Paul Fluet review the plan and then say you don't want to go through the process.

Pat Wood said they need to know if the road meets all of the Town's regulations, whether there will be additional criteria the Planning Board will want the design to meet. Is the Board going to say that even though the design meets all the regulations, it will want something above and beyond that?

Ellie Lonske said the Board cannot know what else it will want done to address safety and environmental concerns.

Pat Wood restated the concern that they can only plan to comply with the regulations unless they know that additional criteria will be applied.

David Walls said it seems to him that the Planning Board is obligated to review this application in the light of current regulations. It is important to go through the engineering review point by point.

Ellie Lonske and David Wall discussed the process as the Planning Board had presented to the Applicant and they agreed that everyone understood what was to be done.

Richard Delaney explained that if Paul Fluet's review suggests widening the road four feet, that requires a redesign and then they would need an engineering review again. They don't want to go through that cycle multiple times.

Roger Larochelle said the Board will provide feedback on that question but there is no way it can pre-approve the road design as separate from the plan design. He recognized Bill Nobles.

Bill Nobles said their abutters group's engineer had pointed out a nonconformance of the proposed road and it is not reflected in the engineering review.

Alan Barnard said it is a matter of procedure.

Roger Larochelle said all information and requests have to go through the Planning Board so the additional point could not be addressed in the report requested by the Planning Board and paid for by the applicant. The further point of concern to be reviewed will be sponsored by the abutters group.

Carmine Tomas said if you look at the Subdivision regulations and DOT regulations, just because a permit has been issued, that does not confirm that a driveway is safe. Approval by the State DOT is of minimal standards and it is the Planning Board's authority and responsibility to determine if it meets Town requirements and safety concerns. All a permit does is confirm that an application is complete.

Curtis Mooney read SD-9 about minimum standards and said if the Board has any concerns about safety, of course they have to weigh in on that.

Ellie Lonske asked for clarification of what points the DOT considers before approving a permit.

Pat Wood responded that the DOT analyzes access, drainage, lines of sight, materials and more.

Roger Larochelle asked if the Planning Board members were clear about what they are considering when reviewing Paul Fluet's engineering review comments.

Ellie Lonske said the Board needs to have the Delaney engineer's responses to Paul Fluet's review. She thanked Curtis Mooney for reading the Subdivision regulations and affirming that the Planning Board has the authority to go above and beyond the minimum standards.

Roger Larochelle said it is all about safety and having as safe a road as possible and having it designed so it could be accepted as a public road in the future. Then all the bases will be covered. For example, as Paul Fluet points out, the road design includes 1,800 feet at 10% slope into a 150 foot radius curve. Just because it meets Town standards does not mean it is a safe road.

Martha Twombly said she had two thoughts. At this point would it be appropriate to have the local fire, safety and road maintenance services review the plan? Secondly, a good portion of Paul Fluet's discussion is about drainage and that is a huge issue around Newfound Lake. Could the Board look at impacts beyond this one property?

Alan Barnard said in regards to DOT permit approvals and Mr. Tomas' opinion, a driveway permit has been accepted and approved, and it had reviews before with the fire department and the turn radius of the entrance from West Shore Road was not an issue.

Richard Delaney said as a developer they have done absolutely everything the Planning Board has requested. All he is asking is for the Board to rule on the road design. There is no sense in paying for a complete review of the engineering report until the road is accepted.

Roger Larochelle said in the Town of Hebron the Board cannot accepted a road separate from a plan. He asked if there were any comments from the public.

Jeff Hillier said he has a property on West Shore Road and has lived seasonally on that road for 35 years. He can attest to the speed at which trucks go down that hill, northbound, which is beyond what the map would imply. The majority of traffic appears to be local people going to and from work, trucks and young people. He perceives great risk in having a road entrance with difficult access.

Barbara Pape said she seconds Jeff Hillier's remark.

Carmine Tomas said it seems obvious that if you have points in a review you can simply respond with a couple of lines to each comment. It would seem logical if the Board required a review it could simply take its engineer's review as its response.

Pat Wood said if you design according to the regulations, at what point does the Board instruct the Developer in what else would need to be done?

Roger Larochelle asked if anyone on the Board had any comments.

Ellie Lonske said she would like to see the Developer's response to the engineering review. The engineer is not the Board. The process is to submit a plan, have it reviewed and respond to the review.

Richard Delaney said we can't respond until we know which road design the Board wants to see.

Ellie Lonske said she wants a give and take. If their engineer disagrees with Paul Fluet, he needs to tell the Board why.

There was discussion for a while.

Roger Larochelle said this Planning Board is not going to design a road. We are going to approve a road that is safe. If someone tells us of a safety concern, then we are all ears. We need to have these concerns addressed.

Richard Delaney read from Paul Fluet's report about drainage and asserted that Paul Fluet has no concern about it not being adequate. It is the West Shore Road pipe that may need to be increased.

Roger Larochelle said let us move on from the road and before going to the conceptual plan, tell us what the response is to the EIS (environmental impact study) request.

Richard Delaney said he gave the Board a summary of points to consider.

Pat Wood handed out a sheet in which he had pulled out the points from Mr. Cooperdock's response for easy review. The only native creature of concern is the wood turtle and none have been found in or around there and they are not on the New Hampshire endangered or protected lists anyway.

Roger Larochelle said the question about an environmental impact study will be addressed after the Board reads and considers Mr. Cooperdock's response. It can't be addressed at this hearing.

Richard Delaney said he knows the Board is fairly confident it has articulated why it wants an environmental impact study. That is not clearly reflected in the minutes. What are the Boards real concerns? It feels like shooting at a moving target from his point of view.

Curtis Mooney said those concerns were spelled out in the July minutes.

Richard Delaney said environmental impact on the slopes is addressed in the drainage plan. What does an environmental impact study add?

Roger Larochelle said the Board's concern is the overall environment as it exists and how the development will impact that.

Richard Delaney read some sections from page 8 of the 7/5/06 minutes and said he is still unclear.

Jeff Hillier asked if there is any question in the Developer's mind or any of their team, he would be happy to take them for a boat ride out on Hebron Bay to show them the sand bar that has grown as a consequence of development in the area.

Richard Delaney said their environmental expert said it is not uncommon when such a study is done to find infractions on abutters' properties. Is the Board prepared to fine and enforce on those owners?

Roger Larochelle replied that the Planning Board is not in the business of enforcement, only assuring that new subdivisions meet regulations and are built safely. He moved the Board to a discussion of lot sized on the proposed plan.

Ellie Lonske asked him to consider the Board's time allocation for the evening.

Richard Delaney said it is important for the Developer to get feedback on lots in the conceptual plan being offered for proving the land would bear the proposed number of lots.

Roger Larochelle said he wanted to move beyond the conceptual and review the lots in the actual plan.

Curtis Mooney asked if there was a request to review the calculations.

Alan Barnard said Lesley Boulton uses the same software that Paul Fluet uses and told him she would happily convey her files. Alan said Paul Fluet said a licensed engineer stamped the plan and that should be acceptable.

Pat Wood said they offered to convey the files and Paul Fluet said the Board did not ask him to check the calculations.

Roger Larochelle said let's move away from the conceptual and move on with the real application. We could go around with the dead-end road discussion indefinitely.

Curtis Mooney had one more question. Under the old plan the lot size assumption was one acre. Is the new plan designed that way?

Alan Barnard said no, it was done by the soils and slopes formula.

Ellie Lonske said she was perfectly happy to move on, accept that Lesley Boulton is an excellent engineer and that her calculations are probably fine. But don't ever think that you could come in with a plan like this conceptual and think that the road would be approved, as it is obviously a way to dodge the half mile dead-end road limitation. She said she also agrees the Board should move on, as the conceptual plan doesn't change the number of lots that could be supported.

Richard Delaney attached the new plan to the black board for all to see.

Roger Larochelle said he read the new regulations on cluster development and referenced the Developer's chart of lot areas, some of which are very small. He would like to focus on lot configurations for now and asked if there were any comments.

Alan Barnard said on a cluster development each lot has to go through a NHDES (New Hampshire Department of Environmental Services) cluster subdivision review. A septic area has to be twice the area of the proposed leach field/disposal area or in lieu of that you can do an actual septic system design. Each of the proposed lots has been determined to be adequate. The State also wants to make sure there are large corridors for animals to migrate to and from abutting properties. The open area in this development will be about the 50-acre area on Hebron Country Estates III.

Ellie Lonske said for the benefit of the audience, this property extends far beyond the proposed developed area. About 68% will be open, which is one of the advantages of cluster development—that you preserve open space. The easy developments are on less steep, non-wetlands areas. In those cases,

the sensitive areas are what you leave undeveloped. You (the Developer) did not create this land and you don't have a lot that starts shallow and then goes up. In preparation for this hearing, she reviewed both the 1985 Master Plan and the 1995 master Plan. There is real concern about building on steep slopes. It is not just this development, but all cases. It seems that the steeper the area, the closer to conventional lot sizes the proposed lots should be. This plan is the opposite of that. As you look at these proposed lots, the smallest countable areas are on the lots with the steepest slopes. That is why the usable areas are so small. When you get up higher, the land levels off and the lots have much more countable area.

Martha Twombly said she shares those reservations with the additional question that if you have a steeper lot, what does that mean for cutting and filling? The idea of clustering is that you want to use less land but that may not be consistent with steep slope development.

Alan Barnard said he thinks you may be missing the point. When the new zoning regulations were adopted, they said you can't build on very steep slopes or disturb more than 10,000 square feet for building purposes. The Board should develop cluster subdivision guidelines and look at the State's analysis of cluster development advantages. If you did a conventional development, much more land would be disturbed going all the way up to the back of the lot. So far, there are no regulations about cluster subdivision lot size, only total usable/countable area.

Chuck Beno asked if there is adequate room on these lots for septic systems and protective radii for well sites. It looks very tight in terms of getting well drilling rigs in between. Perhaps a better solution would be to install community wells or shared wells.

Alan Barnard said again that would be addressed by a State review. There is provision for shared septic and/or wells in some cases. Keep in mind that all that will be covered.

Richard Delaney said there is no lot where another lot's well is down slope from theirs.

Roger Larochelle said to keep in mind that this is the first real cluster subdivision application this Board has reviewed. In general this Board favors cluster development as enabling more protection of the land. As Ellie Lonske said, the idea is to put your development on the least sensitive parts of the lot. When I look at this plan, the smallest lots are the closest to the road with the steepest slopes. Those are the ones I would really encourage consideration of whether they are the best building sites. There is no easy formula for cluster subdivision lot sizes. We have gotten mired in all kinds of road issues but the lots are the fundamental issue. Keep in mind that it all has to work together.

David Wall said when Ellie finished her discussion of clustering and the principles and purposes, I said to myself that was a very deep and thorough analysis. Then when I listened to Alan Barnard it sounded reasonable and I was divided. I think the character of the land issue in relation to our zoning regulations gets me closer to negotiating larger lot sizes. Can those lots be built making them commercially viable and still protect the environment?

Richard Delaney said if you look at the dimensions of those lots, there is not a single one on which the dwelling takes up 25% of the lot size.

Pat Wood asked for discussion of the four lots most in question.

Roger Larochelle said they are not getting into specifics but those four lots seem to violate the cluster principle and defy the logic as they are on the steepest slopes.

Richard Delaney said I think when you see the environmental impact study that this proposal avoids almost all of the sensitive areas by avoiding them entirely.

Roger Larochelle wrapped up and asked everyone to move on.

Pat Wood had a question on procedures. Would it be possible to examine the environmental concerns at the Boards work session?

Roger Larochelle said our workshop agendas are quite full and interested parties travel great distances to be present for discussions on cases.

Pat Wood requested continuance to 10/4/06 which was granted.

Roger Larochelle asked him to review what will be done before 10/4/06.

Pat Wood said Corey Johnston will review Paul Fluet's engineering review and comment on its points, Roger Larochelle and the Planning Board will review Mr. Cooperdock's letter in order to be able to discuss the scope of the environmental impact study and lot sizing on steep slopes. What about the drainage plan? They will need additional copies. On behalf of the abutters group and at their expense, Paul Fluet will do an engineering review of the plan's road cut (driveway permit area).

9:15 PM brief break

PEFF Corporation subdivision application for Whip-O-Will property Tax Map 5, Lot 5-2

Bill Thistle and Alan Barnard were present to represent the application. Roger Larochelle asked Chuck Beno to step back up to voting member and Tom Gump to return to alternate status.

Roger Larochelle said he had received a letter from William and Suzanne Thistle about the conceptual plan waiver request (on file) and read that for the Board and the public. (On file)

Alan Barnard said if you consider the uniqueness of the property, and the narrowness of the lot, there are 14 acres of countable area. There are currently 11 motel units that could be converted to condominiums and be a less desirable outcome. He read from the subdivision regulations and described the advantages of the proposed development, spreading out of the dwellings, dispersing the load of septic systems, improving draining. He said the only way to design a conventional subdivision with 10% road grades would be with tunnels like in Australia.

Roger Larochelle reiterated that you are only discussing the conceptual plan. The actual proposed plan might easily conform to the Town's road regulations.

David Wall asked for clarification of the road grade described in the Thistles' letter.

Alan Barnard explained that you could do it like the one at Wal-Mart and it is truly a "Wall" mart. Sanborn Hill is an example of a 15% slope. He gave several other examples as well.

Chuck Beno asked for clarification of road cuts on the conceptual plan.

Roger Larochelle asked if anyone had any further thoughts.

Ellie Lonske said she had a sense of déjà vu. When the Thistles came before the Planning Board for a conceptual review, she said that it was clear that the rule is that the hypothetical conventional plan would have to be something that would have been accepted in order to prove how many units the land would bear. This (referencing the financial situation in the letter to the Board) is like when you are trying to sell a house and you decide how much you need to get instead of what the market will bear. It is not the Board's responsibility to consider the economic impact of its decision. That is not within our purview. Perhaps five homes is not the right number. I don't know what the right number would be. The Board cannot approve a plan for which it has not been proven that the land can support that many dwellings. Perhaps you could build fewer but more expensive houses. We are not the developer's financial advisors. What is the actual number that could be built within the regulations?

Alan Barnard said you could approve this if you want.

Ellie Lonske said I do not think that we can do that and uphold the regulations.

Alan Barnard said, then vote and reject the plan.

Roger Larochelle said if you look at the minutes you will see that we went over all this at the 8/2/06 hearing. We are being asked to consider whether to vote that we would hypothetically approve a waiver for the road design in the conventional plan.

Ellie Lonske said the task is to prove to the Board that the land could support that number of units without any waivers.

Martha Twombly suggested that they phrase it that the Board is being asked to vote on whether the conventional plan proves this property would support the proposed number of units in the actual proposed plan.

Alan Barnard and Roger Larochelle discussed wording. Roger Larochelle asked if there were any other comments.

Curtis Mooney read SD-6.17 about cluster developments.

Alan Barnard objected because the new zoning wording is different.

The Board discussed appropriate wording for a motion.

Ellie Lonske moved/David Wall seconded a motion that a waiver is not applicable to this situation for the hypothetical subdivision plan. PASSED

Roger Larochelle reiterated that there is no waiver granted for this. The Board understands this puts the Developer in an awkward situation. This Board has such limited authority. The question is not what is better for the Town. The point is that without a waiver this lot could not support five units in a conventional subdivision. In all fairness, we need to let the Developer know that we cannot approve an application for five units on a lot that has not been proved able to support five units. The Board members then worked on appropriate wording for a motion.

Ellie Lonske moved/Curtis Mooney seconded a motion to deny the PEFF/Thistle subdivision application for the property at Tax Map 5, Lot 5-2 because the proposal for five units does not conform to lot size calculations based on Usable Area as stated in Article 6:5.a and Article 7:9.a of the Hebron Zoning Ordinance. PASSED

10:00 PM brief break

Road bonding for Hebron Country Estates

Larry Kill introduced Rodney (Rod) N. Dyer of Wescott, Millham & Dyer, LLP as his attorney for the road bonding situation. Rod said they are asking for a phasing plan. It is commonly done using an irrevocable letter of credit, which they will be getting from Franklin Savings Bank. He said he has sent a copy of the proposed agreement to Hebron's Town Counsel, Tim Bates. He referenced the plan map and where each phase ends. He said they proposed that the Planning Board agree in concept, subject to review and approval by Town's legal counsel and financial advisers.

Roger Larochelle asked Alan Barnard to go over the exact locations of the phases and to describe them in more detail.

Rod Dyer explained how the bond works and how the Town is protected.

David Wall asked if there was a cushion in the bond amount to cover increases in cost.

Larry Kill said yes, it is 10% above the estimates.

David Wall asked if the company is Andrews Construction if they will hold the quote for two years.

Larry Kill said yes, that had already been agreed on.

Roger Larochelle asked a couple of clarifying questions.

David Wall asked Larry Kill if the contract with Andrews Construction specified holding the price for two years.

Larry Kill said it has not been drawn up yet, but it will contain that clause.

David Wall asked if it can be written to transfer to the Town in the case that Larry defaults.

Larry Kill said yes, it can do that.

Chuck Beno asked if this bond only covers Phase 3.a.

Rod Dyer read the agreement with clauses about completion of Phase 3.b by October 2010.

Roger Larochelle asked Chuck Beno to state his suggestion more fully.

Chuck Beno said he is suggesting that the contract be written to include that the contract between Andrews Construction and Kill Mountain Realty be assignable to the Town of Hebron in the event that Kill Mountain Realty is unable to complete or defaults for any reason.

Rod Dyer said he couldn't imagine why the contractor would care as long as the money is there. He said he is sure they wouldn't object.

Roger Larochelle asked if there were any other questions from the Board.

Chuck Beno said just as a point of information, he wanted to ask when they are planning to get underway and when do they hope for completion.

Larry Kill said they hope to get started within a month and completion depends on the winter.

Alan Barnard said FYI the Storm Water Pollution Prevention Plan (SWPPP) has been filed.

Roger Larochelle asked for a copy for the Planning Board file and Alan Barnard agreed.

Roger Larochelle asked Larry Kill if he is willing to pay the Town's legal fees to review the agreement.

Larry Kill said he is willing to pay attorney's fees to have Hebron's Town Counsel review the agreement.

David Wall moved/Ellie Lonske seconded a motion to approve bonding of the road for Hebron Country Estates Phase 3.a conditional on 1) the agreement being approved by Town Counsel; 2) receipt of a Letter of Assignment to the Town of Hebron; 3) a copy of the estimate from Andrews Construction of their letterhead and stating that the estimate will be good for two years, and 4) the signature of the Planning Board chair. PASSED

As there were no administrative matters requiring attention, by consensus of the Planning Board members, the chairman adjourned at 10:20 PM.

SUMMARY OF MOTIONS:

David Wall moved/Dick Cowern seconded approval of the 8/2/06 minutes as amended with Richard Delaney's e-mail of 8/22/06 and Planning Board reply appended. PASSED

Ellie Lonske moved/David Wall seconded a decision that a waiver is not applicable to this situation for the hypothetical subdivision plan. PASSED

Ellie Lonske moved/Curtis Mooney seconded a motion to deny the PEFF/Thistle subdivision application for the property at Tax Map 5, Lot 5-2 because the proposal for five units does not conform to lot size calculations based on Usable Area as stated in Article 6:5.a and Article 7:9.a of the Hebron Zoning Ordinance. PASSED

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