

MINUTES OF FEBRUARY 4, 2009 ADOPTED 3/4/09 WITH CORRECTIONS



Town of Hebron
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Hebron Planning Board
Minutes of Public Hearing 2/4/09

Members Present: Roger Larochelle (chair), Ellie Lonske (vice chair), John Dunklee (selectman), Chuck Beno, Martha Twombly (alternate), Mitch Manseau (alternate), Joe Hogan (alternate), Richard Cowern (alternate) and Sheila Oranch (secretary).

Others Present: Richard Delaney, Barbara Delaney, Attorney Willard (Bud) Martin, Debra Mekula (court recorder hired by Mr. Martin), Alan Barnard, Betsy Twombly, Phillip Twombly, Mark Coulson, Katherine Keon, Anne Hall and Lee Alexander.

Time Convened: 7 PM **Time Adjourned:** 9:45 PM

Next Meetings: 3/4/09 hearing

Agenda:

1. Administrative Matters and Announcements.
2. Review minutes of prior meetings for additions, corrections and adoption.
3. Continuance of Jaques ET AL subdivision and boundary adjustments.
4. Continuance of Limited Editions (Rogers Ledge West)
5. Any other matters that come before the Board.

Administrative Matters/Announcements

Roger Larochelle welcomed everyone and asked members of the Board and the secretary to state their names. He noted that David Wall had an excused absence and appointed Richard Cowern as a voting member for this hearing.

Review Minutes

Minutes of January 26 were approved with the correction of “polica” to “police” in the last line.

John Dunklee moved/Ellie Lonske seconded a motion to adopt the minutes of the January 26, 2009 hearing as corrected. PASSED

Minutes of January 7 were reviewed and no corrections or additions were suggested.

Chuck Beno moved/ John Dunklee seconded a motion to adopt the minutes of the January 7, 2009 hearing as written. PASSED

Continuance of Jaques ET AL subdivision and boundary adjustments.

Alan Barnard said they are still awaiting signatures. Continuance was granted to March 4, 2009.

Continuance of Limited Editions (Rogers Ledge West)

Roger Larochelle noted that Chuck Beno, Martha Twombly and Joe Hogan recused themselves. Mitch Manseau was appointed as a voting member for this application. Mr. Larochelle had each voting member sign a certification form as requested by the Applicant’s attorney. He then presented Hebron Planning Board Public Hearing Guidelines and noted that in the current version of the Rules of Procedure, Section 8- Record Keeping.2, hand notes will be discarded after minutes are typed.

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Betsy Twombly asked if members of the public are permitted to submit written questions after the meeting. Mr. Larochelle explained that any materials submitted after adjournment of a meeting would become part of the record at the next hearing. He instructed that for this hearing, only materials submitted previously as part of the Rogers Ledge West application would be under discussion. He noted that the Planning Board secretary had e-mailed a chronological list of all minutes pertinent to the application and that all Board members had been given copies of the March 2006 Notice of Decision, current abutters list, original Site Plan and application materials. He also noted that in the Notice of Decision the application date given was 6/1/05 but the application was not accepted as complete until 8/3/05. The Board had continued hearing the application monthly into the following year, until the decision. Now the original application has come back to the Board by order of the Supreme Court. The Board members have received copies of the original Plan submitted in 2005 and the last Plan submitted in February 2006 as seen by the Court. The challenge is to really get a handle on materials pertinent to Rogers Ledge West as part of the original application plus materials which may be introduced that were developed as part of a later application. Mr. Larochelle asked Planning Board members for cooperation in treating the case fairly without consideration of other cases. The Board should be fair and impartial as always.

Mr. Martin opened the Applicant's presentation by saying the Court used a phrase he felt captures the spirit of the hearing, as an "ongoing process." The Applicant team wants to review material submitted in February 2006 which the Planning Board had said they could not review as it was so different from the original plan. Mr. Larochelle noted that he had copies of the Zoning, Subdivision Regulations and Site Plan Review Regulations that existed at the time of the original 2005 application. These are the only ordinances and regulations that would be used to judge compliance. Alan Barnard said they are presenting plans from March 2006 with twenty lots incorporating information from February 2006 that was not heard. It is a Cluster Subdivision style plan. Some building lot areas are smaller than one acre, and one has access off West Shore Road. For the record, he stated that this property is owned by Limited Editions, Richard and Barbara Delaney. He went through the checklist of materials required in the 2005 Subdivision Regulations for completeness of the application, and noted that #5, the parking area requirement, does not apply to cluster developments. He highlighted the fact that about 61% of the lot is planned to be set aside as Open Space. By clustering, it minimizes impervious areas and impact on the environment. Restricted and protected areas can be worked into the agreement. Preservation areas about about 82 acres of Audubon land and both about about 80 acres on Hebron Country Estates, so when all are combined it will result in more than 300 acres protected. Within this lot there are 14.7 acres of jurisdictional wetlands and 37.4 acres of slopes 25% or greater (about 33%). There is green space as a buffer around all building lots except the one by West Shore Road. The plan was designed in accordance with RSA SD-1:4.3 and SD-11:6.17 Cluster Definitions. The Applicant will seek a punch list to take away from the Planning Board at this hearing. Mr. Larochelle acknowledged Attorney Martin to add to the presentation, and Mr. Martin said the three critical areas are the environment, qualification as a cluster development and the road design. They need to know where the road can be located to be acceptable to the Board and what lot sizes will be permitted. Then they can go into Mr. Cooperdock's report and additional material from Mr. Gold, after which they may want to adjust the plans. They may want to establish restrictions and protections of sensitive areas in the deed. On a go-forward basis, with concerns on the entry portion of the road and road curve radius it might be between the 100 foot and 150 foot extremes. The Board had voted for 150 feet but there may be a compromise. Before going forward, they will need to know cluster lot sizes. If the Board feels this is not a cluster plan, what would be? Because operating under the 2005 Zoning and Subdivision Regulations does not mean they can't design to a higher standard. Residents have expressed many concerns they would want to address.

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Mr. Larochelle asked Planning Board members for their comments. Ms. Lonske said she had spent the past three days re-reading all the materials provided and has the best interest of Applicants at heart but when there is a conflict with the Town's interest, she has to go with the Town. She described the evolution of her understanding of planning and the need for precision in holding to the law. Two points need legal checks. First is the Yield Plan for the number of lots in a conventional plan per Subdivision Regulation on page 11, in reference to 617.1. Would the conventional hypothetical subdivision plan first submitted need a road waiver? Yes, that was included. On Plan Link she found a case in which abutters sued a planning board decision due to such a waiver. Second, sticking to the letter of the law, based on Lee Alexander's comments in the minutes about ZN6, Section A, in which the wording was cumbersome so in March 2006 it was cleaned up, in paragraph K, only permanent, detached, single-residence dwellings may be built without a Special Exception from the Zoning Board of Adjustment. The next amendment in March 2006 made cluster developments possible. If you want to go on the 2005 ordinance, the application must go to the ZBA. It might be better to all agree to move up a year in zoning. Other points Attorney Martin raised. The Planning Board members are not engineers. I think you are looking for a conceptual view of what might fly. The Board can't give specifics as things like lot size depend on circumstances. If you truly want to hear what the Planning Board has learned in the process, good. Otherwise, it ain't me Babe. Mr. Cowern underlined the same thing that Lee Alexander had brought up but it wasn't discussed. Mr. Dunklee said he has heard a lot of background which he chooses to disregard. He is a retired electrical contractor, was in the building trades, and in his youth plowed snow. As long as the Town benefits, tax rates decrease and there are no complications for the Town, he is comfortable. In that light, we are pretty much stuck on the 150 foot road radius. Mr. Manseau said he has been a Hebron resident about a year and is blank on this case. Mr. Larochelle said he checked with engineer Paul Fluet and he is willing to communicate about the work he did on this application. Mr. Larochelle shared his concerns. Road location is not as much a concern as having a road with 1600 to 1700 feet at 10% grade ending with a turn into a road curve with a 150 foot radius. He shares Mr. Dunklee's sentiment that reducing the radius in light of the long grade is a safety concern, not an engineering concern. About needing a Special Exception to have a Cluster, in the Subdivision Regulations, lot sizes are determined by the Board which allows flexibility between the Planning Board and the Applicant. Also, if you are getting away from multi-family units, you may want to withdraw the Site Plan Application to avoid confusion. We want to process the application as much as we can without sending the data through more hoops. For the record, Attorney Jae Whitelaw, Mitchell Municipal Group, P.A., 25 Beacon Street East, Laconia, NH 03246, 603-524-3885, jwlaw@metrocast.net, has replaced Tim Bates as Town Counsel. Engineering details like the height of the retaining wall, drainage, etc. will need to be refreshed. About slopes, we would like to see a plan of this lot configured with 5 foot topographical lines on steep slopes with the road on the same map. The Planning Board has worked hard over the past two years on how to review cluster subdivision plans. We would definitely like to see slopes on lot plans.

Public Comments

Phil Twombly was recognized as an interested citizen of Hebron. He said first, if looking at the map the green shaded area is open property, will that be left as is? If so, it will leave a nice buffer zone. Second, in lot layout there is usually road frontage for each lot, and access to each lot without having to create right-of-way. Mr. Larochelle responded about open space that Alan Barnard had stated the property owners would retain land use rights as part of Common Use for logging, etc.

Chuck Beno, an abutter and very interested party said his main concern is for drainage. Ross Brook runs through the Beno property into the lake at Hebron Bay, which is very shallow. He is concerned about nitrogen, etc. getting into the Bay and rapid plant growth, and eventually die-off. He observed

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this happening in another lake. The difficulty with small lots is that no individual lot would be disturbing more than 100 square feet so they won't be controlled by DEP and there would be no control of what could be put on their lawns. He would not want to be part of the generation that allowed the death of Hebron Bay. Also, he went to Italy and was inspired by the stone walls. He would like to see retaining walls like Hebron Country Estates stone walls which are esthetic assets.

Anne Hill, an abutter, sent in comments last time around. Can they be included or should she send them again? Mr. Larochelle said just to be sure, please send them again.

Martha Twombly, a Hebron resident, said she has several concerns and recommends the Planning Board look for additional professional experts such as blasting experts. This is a highly sensitive environmental area with ledge and wetlands. She would like to see professional advice as to an assessment of whether this is a cluster development with all elements of a cluster development. As for open space, who is the holder going to be? Open space easements are usually held by a bona fide organization.

Board Comments

Ms. Lonske added that if the reading of the 2005 Zoning Ordinance is correct, the Planning Board can't decide if the application goes to the ZBA, but the Board needs legal advice. She referred to the plan on display and agreed with comments on the 150 foot road curve radius. However, these are minimum standards. Please look at the new zoning that says if there is a steep grade into a curve, one or the other has to give. The rise/climb from West Shore Road to the circle at the end of the road is about 400 feet. It will require quite a retaining wall. Request that it go from 2 to 1 to 1 to 1. It may look better but what about drainage? Make sure it is calculated for that. As for lot size, it is more a heuristic, a rule of thumb encapsulated by Attorney Pat Wood as a hybrid development. Steeper slopes equal bigger lots to a maximum of conventional size. Larger lots spread out homes. On level areas, cluster them closer. It's not a number but a relationship. Consider that if lot size on steeper areas is a maximum of conventional size, they might want to make that part conventional buildings. Good luck. I wish you well on coming through with a plan that is good for the Town and financially viable. God speed.

Mr. Larochelle offered Attorney Martin a chance for general comments. Mr. Martin said they do need guidance. They are three years out on this development. The submitted plan from a qualified engineer purports to meet Subdivision Regulations. They need specifics of what does not meet those regulations.

Mr. Larochelle summarized a list of questions. Does this application need a Special Exception? Alan Barnard said he knows Town Counsel said they need a Special Exception for anything such as a summer camp and the Thistle application needed one. He agrees with Ms. Lonske that under the 2005 Zoning they would have to get a Special Exception. Ms. Lonske responded that the other option is to agree to apply the next version of zoning that was voted on at Town Meeting 3/06. Mr. Larochelle said he will consult with Town Counsel about whether they can change the zoning year. Mr. Martin opined that the Applicant should be able to change to the less restrictive later year. It is not yet determined if this does qualify as a cluster. If not, they might consider going on as a conventional development. Ms. Lonske replied that it is the Applicant's choice whether to apply as a conventional or cluster subdivision. Mr. Martin said on a go-forward basis, they need to know whether this is a cluster or not. Mr. Larochelle asked Mr. Barnard if based on lots and soils and slopes how many, if any, of the proposed lots would qualify as conventional. Mr. Barnard agreed with Ms. Lonske that if the Planning Board deems this is a cluster it has to go to the ZBA.

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Richard Delaney was recognized and said as the developer Applicant to hear now after all this time that this has to go to the ZBA is unbelievable, based on page 125 of the Court briefing on Lee Alexander's comments. Mr. Martin said it is a very slippery slope. Mr. Larochelle asked if in the hypothetical conventional plan with 23 lots, was a road waiver part of that plan? Mr. Barnard said they never did a conventional plan on this application, he only did the calculations. Also, on this plan there is no wall. That was the second plan. Be careful of comments relating to other plans. Lee Alexander's comments actually pertained to something that didn't get into the zoning wording. Later zoning amendments pulled the word "condominium" because they can't be prohibited. Mr. Barnard strongly advised everyone to view the plans just as they are. Mr. Larochelle expressed concern over the difficulty of reviewing this plan without regard to later information. For example, it is 2100 feet at 10% grade on this plan. Ms. Lonske said when you ask for feedback, you have to take it in good faith. If I say something incorrect, it's just an error. I'm not an engineer and can't read plans. I need an engineer to explain it. Take it in the spirit that none of us is an engineer; we're trying to be helpful. Mr. Martin said his thought before coming here was the word "focus." There are a lot of complexities. He thought there were two constraints; the road and lot size. All the other details can be worked out. In a Special Exception for an Allowed Use such as a cluster subdivision, he's not sure what the conditions could be. The Board has offered to give the Applicant an "advantage upgrade" in view of all the hard work and learning that has gone on. After looking at the 2006 Zoning Amendments they might be inclined to take the upgrade. Mr. Dunklee said that on the Special Exception stuff, the Applicant is dealing with the 2005 code. If they are willing to step up to the 2006 code, considering that "we" liked it better, why not accept it? Ms. Lonske asked if they could step up just one issue. Mr. Delaney asked for clarification. Mr. Dunklee explained just that one section K that allows for Cluster Development as a Permitted Use. Mr. Larochelle said we can't go much further without that decision. Mr. Martin related that an issue is "topo" for slopes on a plan with the road. Mr. Barnard said addressing the issue of cluster as a Permitted use is good. It is important to know that if the Applicant decides to change to a conventional plan that is acceptable. Mr. Larochelle explained that reports done for this land can't be entered into this case by the Planning Board but they can request such information for this application and the Applicant can submit those reports. Mr. Delaney said they need to get a ruling on the road first. They don't want to spend any more money on engineering until they know the road is acceptable. Ms. Lonske and Mr. Delaney went back and forth about minimum standards do not equal being safe. Mr. Barnard explained that in this application they made the road meet all the standards and all the comments from Paul Fluet were addressed. Mr. Delaney reviewed what they had done about the road. 1. They widened the road area of the curve going uphill. 2. They promised to keep the road private. 3. They got emergency services to sign off on the long slope at 10% grade. Ms. Lonske quoted Paul Fluet who said that if we accept this road the Town should seek a way to be held blameless. Mr. Delaney said Hebron Country Estates has 11% grade going into 150 foot curves more than once. Further comments were too fast to capture. Richard Cowern agreed with Mr. Delaney that the Planning Board should tell the Applicant whether it will accept the road as designed or not. Take a poll. Ms. Lonske agreed with taking a poll. She said clearly if a steep slope is going into a tight curve, either reduce the slope or widen the curve. It is not impossible to widen the curve; it is just more "cut and fill." Mr. Dunklee agreed with Mr. Cowern that if the road meets the requirements at the time of the application, it is acceptable. Ms. Lonske argued. Mr. Dunklee said she was out of line. Ms. Lonske agreed that the road design met the minimum requirements but that the Board could request more. Mr. Cowern said the Applicant did change the road design according to Mr. Fluet's suggestions to widen it. Mr. Cowern said the concern is safety. Regardless of whether the Town is "held harmless" the Town has an obligation to do its best for the safety of the residents. With such length and slope it does present risks, which has always been the objection. He agreed with Mr. Delaney that it has to

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be a basis to go forward whether the Board can accept the road. Mr. Larochelle said part of the application record was a waiver which was denied. He agreed if the Applicant complies with the regulations of the time, without a waiver, they should accept it. He quoted phrases about regulations designed to assure safety and good development. It's a difficult balance between meeting the regulations and considering the larger issues. The Board cannot bind itself to accept the road without considering the swales and culverts and drainage. Mr. Barnard asked for clarification about Mr. Larochelle's statement and asked if he was saying they could meet or exceed the regulations for the road and the Planning Board could still reject the road? Mr. Larochelle said there are other considerations that may not be included in the design yet. Mr. Delaney quoted the definition of insanity as continuing to do the same thing and expecting different results. Mr. Larochelle said you do not need approval of the road; you need approval of the entire subdivision. It has to be in context with the development. Mr. Delaney said in prior meetings every member of the Board approved the road by vote on a later application. So why not accept the design now? Mr. Martin said hearing in good faith, if you complied with the regulations, the road should not become a barrier. He said he felt they were making progress. Mr. Cowern asked Mr. Barnard if to his knowledge this road is the same as the one commented on by Paul Fluet. Mr. Barnard said yes, it is the same and Mr. Delaney would incorporate all of Mr. Fluet's comments into Plan 2. Mr. Larochelle asked Mr. Barnard whether the radius on the plan shown is the same or if it was pushed uphill with a wider bus turnaround area. Mr. Barnard said they would incorporate all engineering information they had acquired. Mr. Larochelle summarized by instructing the Planning Board members to review minutes relevant to the application and Paul Fluet's comments. He will address the question of the Special Exception with the legal team. He will encourage them to communicate with Attorney Martin. The Board will need to review details of the proposed road with Mr. Barnard or decide on an expert engineer for the road whether it is the first or later road plan. The lot size issue hinges on the question of the Special Exception and the process of determining if this is a cluster, which is designed to protect the most sensitive areas. The process by which lots are determined may be more driven by the road than protecting areas. There are also questions of shared driveways and back lots. Mr. Delaney requested whether the Planning Board could formulate the questions in advance. Mr. Larochelle explained that there is no chatter or feedback about an application outside of hearings. The questions can only be culled from the minutes. Mr. Martin and Mr. Barnard recapped their understanding of reviewing Paul Fluet's comments and submitting a waiver for the road. Mr. Larochelle asked if there were any other comments. Ms. Lonske said it seems like we are talking about two different roads. If you are going to incorporate Paul Fluet's comments, then that's what we will be talking about. Mr. Delaney said it will be the same road and wall that Corey Johnston presented. Mr. Barnard explained that this is the plan that had to be presented tonight according to the Court. Ms. Lonske said just remember we have to address this like a new application because we will not understand any of it without explanation. Mr. Larochelle and Mr. Barnard agreed they will submit whatever plans are to be discussed in the proper time. If they can't have them ready before the March 4 hearing, they will ask for continuance. Mr. Larochelle said he wants to see house placements, areas that will need to be cut in order to place houses, as much as possible all disturbed areas. Understand this version is what we had to start with. At 9:43 PM Mr. Larochelle said it was time to wrap up this application. Mr. Martin requested and was granted continuance to April 1, 2009.

Roger Larochelle thanked everyone for their time and attention.

Mitch Manseau moved/Dick Cowern seconded a motion to adjourn at 9:45 PM. PASSED

Respectfully submitted,
Sheila Oranch, secretary

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SUMMARY OF MOTIONS

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