Newfields Planning Board Meeting Minutes
May 9, 2019

Attendance: Chairman John Hayden, Town Planner Glenn Greenwood, Selectmen’s Representative Mike Sununu, Jeff Feenstra, Mike Todd and Mike Price. Absent from the meeting was Bill Meserve.

Chairman Hayden called the meeting to order at 7:04pm.

Lot Line Adjustment Map 20 Lot 10.1 and 10.2-Ray and Scott Buxton

Glenn stated the application for lot line adjustment was complete and ready for acceptance.

A motion was made by Mike Price and seconded by Jeff to accept jurisdiction of the application for lot line adjustment. All were in favor and the motion carried.

The applicants wish to straighten out the boundary line between lots 10.1 and 10.2. Glenn said both lots still maintain appropriate frontage and lot size after the adjustment.

Scott explained that when he built his home there wasn’t enough frontage on Old Lee Rd for his lot because the road ended. Now that the road has been extended there is sufficient frontage to straighten out the boundary line.

A motion was made by Mike Price and seconded by Jeff to approve the plan as presented. All were in favor and the motion carried.

A motion was made by Mike Todd and seconded by Mike Price to allow John Hayden to sign the mylar, when available, outside of a regularly scheduled meeting.

Continued Hearing Old Lee Rd Subdivision and Lot Line Adjustment-Map 208 Lot 15

John Hayden read a letter into the record from abutters Robert Kelly and Robin Marcotte. In summary, the abutters have not come to an agreement with Mr. Peterson regarding the swap of the 50 foot right of way. Robert Kelly would like the lot line adjustment completed prior to the development of the subdivision.

Dan MacRitchie said that at the last meeting he agreed to provide an updated plan showing two additional test pits and that has been provided. He would like to focus on the yield plan and bonus provisions before discussing the conservation subdivision. He would like to get feedback from the Board and abutters and come back with a plan that is approvable. In the meantime, the applicant will work with abutters Robert Kelly and Robin Marcotte to resolve the issues addressed in the letter.

Mike Price didn’t understand how Dan’s statement above relates to the movement of the access and the changing of the lot line. Dan explained that they had an understanding the lot line would be moved from point a to b with the covenant that was filed and recorded at the registry of deeds. It makes no sense to move the lot line before any subdivision approval takes place. Dan would like the opportunity between now and next month to come to an agreement with the abutters and have RCCD review and comment on the updated plan.
Mike Price asked if it has been determined what the boundary line will be. Dan said each party has a different interpretation of what the covenant states and the specifics of the swap of the 50 foot right of way are not clear.

Mike Price asked if the Board should even be entertaining a discussion on a development on property that is not owned by the applicant.

Glenn said the understanding was that the plan was reflecting what the covenant in place was requiring. He discussed with Dan how he felt the applicant should move forward but that was before this letter was submitted. A boundary line adjustment cannot take place if both parties are not in agreement. The plan that has been proposed is the applicants attempt to bring that covenant in to play.

Robert Kelly, the author of the letter spoke. He said the proposal, dimensions and exact relocated lot line have not been presented to him and agreed upon prior to it being submitted. He wasn’t asked if the proposal was what he wanted or if it made sense. It has been 2 years and the lot line has not been adjusted and there is no agreement. Neither he nor Robin Marcotte were asked by the applicant to be a participant in the design and relocation of the right of way. He would like the lot line adjustment done prior to the subdivision.

Dan said he is not asking for the Board to act on a subdivision and lot line adjustment that both abutters have not agreed to. This dispute can be and will be worked out prior to approval. His concern was that the lot line may have to be moved over one way or the other to provide access to the back part of the lot.

John asked Robert Kelly if he is willing to allow the applicant to move forward. He is not okay with it. He was clear with the applicant that he would be submitting this letter as of May 1st if no lot line adjustment had taken place.

John said a condition of the approval can be the need for an agreement between both landowners.

Glenn said he understands that Mr. Kelly and Mr. Marcotte have been wondering for 2 years when the land swap would take place. This application has always been noticed as a conservation subdivision and a lot line adjustment. It would be a benefit to the applicant if the boundary line adjustment was done and it can be acted on by itself. The subdivision planning process is not a quick process. The plan will not be approved tonight or even next month. If Mr. Kelly withdraws his approval it will negatively affect the plan moving forward.

Dan said the lot line adjustment is not something Mr. Kelly consented to; it is in the covenant. Although, there is a disagreement with the configuration there is a covenant in place, and it will be incorporated into the plan and needs consent. The covenant is clear and there is no time limit on it.

Glenn asked if Dan would be opposed to getting the lot line adjustment completed and acted on quickly. He said that would be up to his client Robert Peterson.

Robert Peterson said the covenant is clear with no time frame on it. The swap of the 50 foot easement is going to be done the way it’s going to be done, in a timely fashion. If the State or Planning Board want a change, the plan will change. The lot line adjustment cannot happen now. Items need to be done in proper order.
John interjected and said he wanted to address the letter as it came in since the last meeting. He looked for advice from the Town Planner.

Glenn said there is a recorded covenant that is in place between the two parties. It is not a concern. John said a condition of the plan would be that both parties agree where that final area is that is swapped. The Board cannot get involved in the property owner’s agreement.

Abutter Larry Averill asked if he had any say as to where the access is located. He received a letter from DES to allow work within the 20 foot setback, but he did not sign it. John said the issue is between DES and him; not the Planning Board. The Planning Board gets direction from DES about whether the wetlands permit is approved but they have no control over the permit.

Larry Averill asked about the 20 foot setback. John stated that for a conventional subdivision design there is no setback for the access road. Setbacks are for structures. Septic systems are considered structures but not right of ways.

Dan said DES has gone back and forth on this and it is okay to be 20 feet from the property line. The original plan showed the access 20 feet off the boundary, but it needed to be closer. DES re-evaluated the plan because they were concerned with the impact to the wetland and told the applicant 20 feet off the boundary was fine. DES walked the site on Wednesday May 8 and that is the conclusion they came to.

Glenn stated that the abutter cannot ask for an additional 20 foot setback from the existing 20 foot setback. Dan said the slope and shoulder of the road, not the pavement, would be 20 feet off the property line.

Larry Averill asked if a culvert was considered a structure. Glenn said it is a structure but not a building and the setback would most likely not apply.

Dan MacRitchie continued to discuss the yield plan. He understands there is concern with the cul-de-sac length and he would like the Board to take a vote tonight. If the roadway is considered a cul-de-sac is it reasonably approvable. The yield plan is the same as last months except for two new test pits which the Board asked to see added to the plan.

Summary of letters submitted by the applicant dated April 11, 2019, April 12, 2019, and May 8, 2019:

Dan read the letter of April 11, 2019 into the record.

The letter contained Information pertaining to the conservation subdivision. Dan read the definition of cul-de-sac and street from the subdivision regulations. In his opinion, the proposed roads “a” and “b” are two separate roads. Road “a” connects to Old Lee Rd and road “b” connects to road “a”. Road “a” and “b” are not streets with multiple points of access and they do not meet the definition of a cul-de-sac and are not subject to the length requirements. If the Planning Board finds that the proposed streets are cul-de-sac streets; the applicant requests a waiver for the cul-de-sac length.

Due to the unique configuration of the lot and the location of the wetlands, nearly 700 feet of street measured from Old Lee Rd is required to clear the wetland and the associated wetland buffer zones. The proposed configuration is exceptional to the productive use of the land. There is no alternative road configuration that would comply with the cul-de-sac requirements. Nor is there an alternative
configuration that would provide multiple points of access of the existing road length. Strict conformance of the cul-de-sac regulations would result in undue hardship and injustice to the owner.

Dan said in addition, the Overlook Drive Subdivision was approved with a length of 1,910 feet. Well in excess of the 1,200 feet on this proposed subdivision. The Planning Board issued a waiver for the Overlook Drive Subdivision.

April 12, 2019 Letter-Wetland Conditional Use Permit

The subdivision requires limited road construction in an area designated as wetlands. The Planning Board is authorized to grant a Conditional Use Permit for this work provided that the following conditions have been met:

1. The proposed construction is essential to the productive use of land not within the wetland’s conservation district.
2. Design and construction and maintenance methods will be such as to minimize detrimental impact upon the wetland and will include restoration of the site as nearly as possible to its original grade and condition.
3. No alternative route which does not cross a wetland or has less detrimental impact on the wetland is feasible.

The conditions stated above have been met for the proposed conservation subdivision.

May 8, 2019 Letter-Yield Plan Test Pits

Two additional test pits have been done on the south east corner of the property and they have been witnessed by RCCD. The test pits have been added to the yield plan and test pit data has been submitted.

Rebecca Watts stated that the developer of Overlook Dr. made many concessions; there were trade-offs and we got something in return for allowing the longer road length. What are we getting in return if this waiver is granted?

Dan said there is nothing in the regulations that require something in return for an injustice with property.

Mike Price asked the distance to the hammerhead and then from the hammerhead to the cul-de-sac.

Dan said from Old Lee Rd to the hammerhead is 990 feet and then from the hammerhead to the cul-de-sac is 875 feet; a total of 1,865 feet.

Mike Price read Section 11.7.3.6 of the regulations which states, “The yield plan shall comply with conventional subdivision standards and shall not require a variance or waiver from the existing ordinances or regulations in order to achieve the layout supporting the proposed density unless the waiver meets the requirements of the regulations and would reasonably be considered as part of a conventional design.”

Dan replied that regardless of whether we are talking about the yield plan or the conservation subdivision, either the cul-de-sacs apply to these roads or they don’t. It’s an all or nothing thing. If we get to a point where the Board agrees that these are not cul-de-sac roads then they both do not require
If it does require a waiver, would the Board consider approving a waiver? It was considered for Overlook Dr. and it is reasonable in his opinion.

Mike Todd said the yield plan should have no waivers and now we are debating the definition of a cul-de-sac and street. In his opinion, the yield plan is useless, and the applicant has a long way to go. There is no way the applicant can get 10 lots.

John made it clear that the Overlook Subdivision was a significantly different parcel. There was more acreage, less area of impact and not like this proposed plan with significant wetland crossings. Overlook Rd is a loop and not an extension with a cul-de-sac and cannot be compared to this plan. He too is having a hard time with the road layout and Dan’s interpretation of the regulations is a bit of a stretch.

Glenn asked if Dan had an opportunity to talk to DES for an opinion on granting the second larger wetland crossing. Dan said it was his understanding that the Conservation Commission Chair was going to reach out to DES. The standard is that landowners have a right to access land in the least disruptive way.

Conservation Commission Chairman Steve Shope did ask Stephanie at DES about the additional crossing and he has not heard back from her. He does not consider crossing wetlands twice as being the least impactful way of accessing the land.

Conservation Commission member Jeffrey Couture said that at the last meeting the second wetlands crossing was going to be addressed. The Conservation Commission has expressed concerns with two of the lots. He is confused as to why these concerns are not being addressed by the applicant.

Dan replied that the differentiation is whether it meets the standards for a DES permit. Whether or not it is a cul-de-sac; whether it is waivable. He understands there are concerns but he has the right to maximize the use of the property.

Glenn said the Board needs to determine whether the regulations define cul-de-sac the way Dan believes. Old Lee Rd was not created through subdivision process and it does not qualify as a road with multiple access points because it was a road before we had cars. Old Lee Rd is a single access road. The Board needs to be concerned with applying subdivision regulations to roads that are being developed for a subdivision. The length of the roads exceeds the definition of cul-de-sac and would require a waiver.

Julie LaBranche said that Old Lee Rd at one time was a through road to Newmarket and Newfields discontinued that portion of Old Lee Rd at the gates and bars and it is no longer a through road. In addition, Julie mentioned the wetland conditional use permit and pointed out Section 7.5.1.3 which clearly states that economic benefit or loss is not a viable reason to ask for an exception from the regulations. Section 7.9.5 states economic advantage alone is not reason for the proposed construction. Julie asked how many lots there were before the second wetland crossing.

Dan said there are 8 lots on the first cul-de-sac and 2 lots on the second. Julie commented that perhaps the reasonable use of the land is 8 lots.

Dan said the land has no productive use without crossing a wetland. Julie’s interpretation is that the productive use of the parcel must be looked at in its entirety. There is nothing that says every portion of
the parcel must be useable. In her opinion, 8 lots is a reasonable and economical and viable use of the land.

Dan said that each person in the room has a different interpretation, and nobody wants this project at all. He has no productive use of this land without a wetland crossing.

Shane Merritt asked if productive use of the land means maximum use of the land. He argues that it is not.

Adrian Fieldhouse asked about the second wetland crossing and whether the applicant needs to ask for a waiver.

Glenn clarified that from the State’s perspective any wetland crossing must be approved by DES. The Town requires the approval of a conditional use permit. There are two different levels of review by two different entities and approval is needed for both.

Julie LaBranche stated that the yield plan does not meet the requirements for a conditional use permit according to Section 7.9.

Steve Shope spoke about the wetland impacts of this subdivision and needing a conditional use permit. He read into the record portions of the Wetlands Ordinance in Section 7.1. The purpose and intent of the ordinance is to prevent the destruction of, or significant changes to natural wetlands; protect unique and unusual natural areas; protect wildlife habitats; encourage those low intensity uses that can be harmoniously, appropriately and safely located in wetlands; and preserve and enhance the aesthetic values associated with wetlands in the town. In his opinion, the impacts that we have here are not in harmony with the purpose and intent of the Wetlands Ordinance. He encouraged the Board not to grant a conditional use permit.

Steve added that after the site walk it is apparent the developer has no concern for the wetland impacts. He showed photos of damage done by an excavator which was driven through the wetlands. How can we trust what they will do when they specifically knew the Conservation Commission had concerns? This has been brought to the attention of DES and it is not allowed. Both Dan and the applicant Robert Peterson should have known better. Steve urged the Board to vote no on a conditional use permit and asked at what point the permit would be acted upon.

Glenn said at any point the Board can vote on the conditional use permit if they are comfortable with the yield plan or they can have extra work done on the yield plan to satisfy the ordinance. He added that the 65-day timeline is nearing and if the Board is not making a decision they would have to come to an agreement with the applicant.

Steve Shope requested that the Planning Board ask for an independent environmental impact assessment.

Mike Sununnu ask the applicant what they were doing and if they were aware that the excavator was not allowed through the wetlands.

Robert Peterson said he has been doing this for 40 years and he goes through wetlands all the time. He talked to the State yesterday and he should have cleaned up the area. He did go through the wetlands to do test pits which is required by the Town and the only way to access that area is through the
wetlands that they are getting a dredge and fill permit on. He is accountable to the State of NH not the Town. He deals with DES every day on the telephone and they are good.

Julie LaBranche stated that there are best practices that are standard for crossing wetlands. Padding or wood could have been put down to prevent the ruts and prevent disturbing the wetlands habitat. The applicant is not only subject to the state requirements but also under the rules and guidelines of the Town’s Wetlands Ordinance.

Mike Todd would like to see a yield plan that conforms to the regulations, with no waivers. He made a motion to have the applicant submit a plan without waiver and it was seconded by Jeff Feenstra. All were in favor and the motion carried.

Michael Sununu asked if it would make more sense to vote yes or no on the plan before them, since we are nearing the 65-day deadline.

Glenn said that making a request of the applicant to change their yield plan would require an extension of the 65-day deadline. Deciding on this plan tonight would restart the 65 days.

Dan said he would not hold the Board to the 65 days and he would agree to an extension. He would like to work with the Board through the issues. It would be premature to vote on the plan tonight.

A motion was made by Mike Todd and seconded by Mike Price to continue the hearing until next month. All were in favor and the motion carried.

Dan asked that the motion on the floor to provide a yield plan with no waivers, be withdrawn because this means there is no use of the property. The motion appears to determine the Board’s definition of a cul-de-sac.

Glenn said the yield plan does not constitute action on the conditional use permit. The yield plan is done to determine density.

Mike Sununu said the requirement will yield fewer lots, but it will not prevent the applicant from using the property.

Dan said he cannot provide the Board with a plan showing 650 feet to a cul-de-sac because of the wetlands. He is looking for flexibility on the access and feels it is appropriate to reconsider the motion.

Glenn stated that the access into the property is going to constitute a long distance. The concern the Board has shown is those additional two lots and how they get access.

Mike Price said it isn’t just the two lots on the second wetland crossing that extend the cul-de-sac beyond a reasonable length and beyond our regulations. Those are our regulations and if you cannot develop by our regulations then he isn’t sure what more the Board should do. Economic development is not a hardship.

Glenn said the ability to provide relief is certainly within the Boards powers. He does not think the Board feels the lot is entirely undevelopable. The access issue and degree of distance that is required, requires some flexibility.

Mike Todd said that is the lay of the land. He will agree to give some relief when Dan brings back a yield plan that is reasonable and makes sense.
Robert Peterson wants the vote reversed or he is going to seek legal counsel.

Glenn’s guidance to the applicant is the yield plan is unacceptable and a yield plan that is closer to our guidelines may be acceptable.

The Board withdrew the motion to require a yield plan with no waivers.

Dan will prepare two more plans for the Board to review. We are talking about the road length and existing ordinances.

A motion was made by Mike Todd and seconded by Jeff Feenstra that the applicant supply a yield plan according to our regulations that can incorporate the ability to provide flexibility to the road length standards found in the subdivision regulations. All were in favor and the motion carried.

**Eversource Public Hearing on Tree Trimming**
Eversource will be cutting and trimming trees on Halls Mill Road and needs approval from the Planning Board because the road is designated as a scenic road. They provided a list of trees, marked with blue and white ribbons, to be cut down. A motion was made by Mike Price and seconded by Mike Todd to approve cutting six trees and brush removal within the right of way on Halls Mill Rd. All were in favor and the motion carried.

A motion was made and seconded to adjourn at 9:10pm.

Respectfully submitted,

Sue McKinnon