

TOWN OF ALTON PLANNING BOARD

PUBLIC HEARING

Minutes

October 16, 2012

Approved December 18, 2012

Members Present: David Collier, Vice-Chairman
Roger Sample, Clerk
Tom Hoopes, Member
Bill Curtin, Member

Others Present: Ken McWilliams, Town of Alton Planner
Members of the Public

I. CALL TO ORDER

D. Collier called the meeting to order at 6:00 p.m.

II. APPROVAL OF AGENDA

B. Curtin made a motion to approve the agenda as presented. T. Hoopes seconded the motion which passed without opposition.

III. PUBLIC INPUT

D. Collier opened the floor to non-case specific public input. There was none at this time.

IV. COMPLETENESS REVIEW OF A LOT LINE ADJUSTMENT APPLICATION AND PUBLIC HEARING IF THE APPLICATION IS ACCEPTED AS COMPLETE

Case P12-20 James A. Gregoire and Michael R. Amicangioli	Map 16 Lots 3 & 2	Lot Line Adjustment Reed Road
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On behalf of James A. Gregoire and Michael R. Amicangioli, Bryan L. Bailey, LLS, has submitted an application for a lot line adjustment plan. The proposal is to enlarge Tax Map 16 Lot 2 from 0.12 acres to 2 acres and reduce Tax Map 16 Lot 3 from 50 acres to 48 acres. The lots are located on Reed Road in the Rural (RU) Zone.

Bryan Bailey, Mike Amicangioli and Stephen Nix, representing James Gregoire, spoke on behalf of this application.

B. Bailey requested the following waivers.

1. Waiver to section 7.2.6 to allow the scale of a portion of the drawing to be at 1" = 500' to show the remainder of Tax Map 16 Lot 3. The remainder of Tax Map 16 Lot 3 has not been surveyed as part of this proposal.

2. Waiver to section 7.2.14 to not show building setback lines but to show current building setback requirements in chart format as a note on the plan.
3. Waiver to section 7.2.15 to allow the locus block to be placed in the upper right corner of the plan. This is necessary due to the overall lot configuration and available space on the plan to provide a locus map without interfering with metes and bounds details of Parcel A.

The following requests for waivers all have the same rational for the requested waivers; It is B. Bailey's considered opinion that to require the following studies and specific survey details of the remainder 48 acres of Tax Map 16 Lot 3 is both unnecessary and overly burdensome to effect the purpose of the proposal or to provide any meaningful information to the Planning Board to make an informed decision.

4. Waiver to section 7.2.21 to not show the metes and bounds location of all existing and proposed property lines with dimensions and bearings.
5. Waiver to section 7.2.24 to not show the soils information as shown by the Belknap County Soil Survey. Lot #2 is already developed.
6. Waiver to section 7.2.26 to not provide a plan showing future improvements to Tax Map 16 Lot 3. No future improvement plans at this time.
7. Waiver to section 7.2.27 to not provide two to five foot contours to Tax Map 16 Lot 3.
8. Waiver to section 7.2.29 to not provide a potential Future Development Plan for the remainder of Tax Map 16 Lot #3. No future development plans at this time.
9. Waiver to section 7.2.33 to not provide all wetland boundaries with the limits of either Tax Map 16 Lot 2 & Tax Map 16 Lot 3.

T. Hoopes motion to approve the waivers.

B. Curtin seconded the motion which passed without opposition.

B. Bailey explained the future plan of the lots and the fact there is already houses on the lots so there will not be any further building. He also explained that they were on a Class VI road and showed the Board where the Class VI road began and ended.

D. Collier opened it up to the public. There was none at this time.

T. Hoopes made a motion to approve the boundary line adjustment in Case P12-20 with the conditions precedent.

CONDITIONS PRECEDENT

Conditions Precedent: The following conditions must be satisfied prior to the Planning Board Chair signing of plans.

1. A note shall be added to the site plan prior to plan signing stating that Best Management Practices shall be utilized during any timber cutting on site.
2. The following note shall be added to the plat prior to plan signing: This site plan is subject to the Conditions of Approval itemized in the October 16, 2012 Notice of Decision on file at the Town of Alton Planning Department
3. The applicants need to submit signed deeds to record with the Lot Line Adjustment Plan within 60 days of approval of the lot line adjustment by the Planning Board. The deeds would be for:
 - a. transferring Parcel A consisting of 1.89 acres from James A. Gregoire who owns Tax Map 16 Lot 3 to Michael R. Amicangioli who owns Tax Map 16 Lot 2. The deed must clearly state that the 1.89 acres is not a separate lot of record, but that it is annexed to and becomes part of Tax Map 16 Lot 2 in accordance with the lot line adjustment plan.
 - b. a new deed from James A. Gregoire to himself for the land in Tax Map 16 Lot 3 less the 1.89 acres transferred to Michael R. Amicangioli.

SUBSEQUENT CONDITIONS: The following conditions subsequent shall be met during construction and on an on-going basis:

1. The applicant shall comply with all of the Town of Alton’s Subdivision Regulations.
2. The approval is based upon the plans, specifications and testimony submitted to the Planning Board. Any alterations, additions or changes to the plans are not authorized and require additional Planning Board approval.
3. A subdivision or lot line adjustment which has been approved, conditionally or otherwise, may be revoked, in whole or in part, by the Planning Board when an applicant or successor in interest to the applicant has performed work, erected a structure or structures, or established a use of land, which fails to conform to the statements, plans, or specifications upon which the approval was based, or has materially violated any requirements or conditions of such approval.

Provided all listed precedent conditions are satisfied, this approval will remain valid for implementation 365 days from date of original approval, unless extended by the authority of the Planning Board after petition by the applicant.

Motion above was seconded by Bill Curtin and passed without opposition.

V. CONTINUED PUBLIC HEARINGS:

Case P12-11 Spring Haven Campground LLC	Map 65 Lot 17	Design Review – Site Plan Review 1702 Mt. Major Highway
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A site plan for the Spring Haven Campground was approved by the Planning Board on January 26, 2007. The owners of the campground did not build the campground according to the approved site plan. After

removing the units not approved in the campground and moving some other units to comply with setbacks, the Spring Haven Campground LLC is retuning to the Planning Board to propose an alternative site plan for the campground.

Attorney Simon Leeming, Tom Varney and Bernie Lynch spoke on behalf of this application.

K. McWilliams discussed the Site Walk done on September 25th and the minutes. He created a summary list of the issues.

S. Leeming went through the list one at a time.

1. The pins and identities of the setbacks and property lines are in. Decision to set the corner pins and every fifty (50') feet or so set the setback pins.
2. They have the approval of the driveway permit from the State. K. McWilliams stated that that permit does not show what they are looking for. They need something in writing from the State that says they authorize them to put in the lamp post and the landscaping in the right-of-way. S. Leeming stated that they don't give those sort of letters. They have the same plan and based upon that they have approved it. The State signed off on the plan and granted this permit based upon that. S. Leeming read into the record: "This permit authorizes access to NH Route 11 in accordance with the plans and title... any change in use or increase in use will require reapplication."
3. S. Leeming stated that the fire pits are grandfathered and should be permitted to remain in the setbacks. T. Hoopes stated that the setback is a buffer and the campers should not be using it. K. McWilliams read into the record the Section of Recreation Camping Park Ordinance that deals with the perimeter buffer. "A planter's strip of 75' shall be provided along all abutting off site road, side and rear boundaries of the park in which no camping may take place. This buffer strip will provide a visual buffer sufficient to minimize any adverse impact on abutting land use." A site walk was discussed. They also requested that one electrical be allowed to remain because it is grandfather and difficult to move. They will be using the water and electrical hookups for site 1 that are presently in the setbacks between the site and the highway. B. Lynch stated that he can move the water and cap off the sewers. S. Leeming summarized by stating that they would want the electric hookup on site 1. They would locate the sewer hookup for site 2 and they would depict on site 2 the existing structure and remove it from site 1. They would want to retain the three fire pits. They would depict the three of them on the plan and they would remove any other structures that encroached within the set back.
4. Not mentioned.
5. The campground road was shown both in the 2007 plan and it has been there forever. It has been since 1947 and it is grandfathered. B. Lynch stated that they moved the road after the train station to widen the road for the emergency vehicles. He stated that the past Building Inspector did not mention that they needed a permit but required that they move the road.
6. They are okay that each site needs to be numbered and that will be taken care of.
7. The electric company no longer uses the utility pole but there are some fixtures on it and they are asking to leave it as is. B. Curtin was concerned that it said it was condemned and should be taken down for safety reasons. S. Leeming will provide photographic evidence of the pole.

8. They will take care of the stabilizing, the electric and removal of the locks.

9 & 10. Relate to the drainage system that T. Varney has designed that is meant to alleviate the problem. T. Varney discussed putting dry wells in to take the water from the road. T. Varney installed drain tile through Acorn Drive. S. Leeming felt that the problem for Mr. Connelly was a Town issue to put rip rap on the side of the road.

11. Relates to the same as 9 & 10.

12 & 13. B. Lynch went to the Deputy Fire Chief and he said it was okay as it existed now. S. Leeming stated with respect to the Deputy Fire Chief, State Standards and Alton Town Driveway Standards they are in compliance so the 45' would be excessive.

14. Deputy Fire Chief told them that he felt the location of the emergency access now is better than moving further north.

15. T. Varney will take care of this issue and add calcium chloride.

16. B. Lynch is prepared to do what needs to be done to provide room for the proposed RV storage.

K. McWilliams explained that the applicant was in the Design Review phase and they still have to come back for a final site plan application and public hearing.

The Board decided that it was sufficient to only pin the corners of the park.

The Board decided that they did not have a problem with three fire pits if they are marked on the plan and no further pits will be built over the set back.

The Board decided that Spring Haven needs to produce a letter from Public Service that the pole is safe to be used.

D. Collier called a five (5) minute recess.

The meeting was called back to order at 7:42 p.m.

Case P08-08 Ryan Heath	Map 8 Lot 25	Public Hearing on Site Plan 182 Frank C. Gilman Highway
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Ryan Heath is requesting the Planning Board to:

- A. *make a determination whether the conditional approval granted in the Notice of Decision dated July 29, 2008 for the Stone Meadow Commons elderly housing project is still valid and whether the Planning board will authorize the Chair to sign the Site Plan; and*
- B. *consider an amendment to the Site Plan for that project resulting from approval of the Alteration of Terrain (AOT) Permit by the NH Department of Environmental Services that required deleting two buildings from the plans to add drainage features. This amendment is required by condition #5 of the July 29, 2008 Notice of Decision that states that any changes to the plans are not authorized and require Planning Board approval.*

K. McWilliams summarized Attorney Sessler's input when he met with the Board members. There was a site plan presented to the Board in 2008 and they conditionally approved that. That showed a total of 53 units. The applicant was not able to secure the permits for that plan that the Board approved. The AOT Permit would not be approved at 53 units. They insisted on deleting eight (8) units from that plan. The applicant never came back to the Board for approval of that amended plan. So there is no site plan that he can present to the Planning Board that has all the State permits. Attorney Sessler's opinion is that the approval has expired.

D. Collier asked if they had a copy of the Zoning memo. They stated they did.

K. McWilliams stated that the memo was information on what they can do beyond this and is not to be used to help the Board come to the decision of whether it is expired or not.

T. Hoopes stated that he was in agreement with Attorney Sessler. He reaffirmed that there was not a substantial improvement made. There were things that were done that met the requirements that the Board had for the case but nothing was done on the site.

John Arnold was here representing Ryan Heath. He stated that there are two issues before the Board. The first is the removal of the two buildings as part of the AOT permitting and the second is whether there was substantial action under the original site plan approval. First regarding the removal of the two buildings by AOT. He stated that was a requirement by DES. It wasn't anything the applicant had control over. When that occurred, Mr. Heath went to the Town Planner and asked her if he needed to come back and do anything regarding the change in the plans required by DOT. She told him he was fine and did not. It wouldn't make sense to require Mr. Heath to come back because of that change in the plans for two reasons. The first reason is that the removal of the two buildings improved the site. It decreased density and reduced the impact on neighbors from a site that the Board had looked at and approved. It improved the conditions that the Board said were okay. The second is that even if Mr. Heath had come back, the Board would be in a position where practically it is relatively powerless because they would not be in a position to overrule what DES said was the maximum amount of units out there for the site. The only decision the Board can make on that is that it is okay because they have to remove them because it is a DES requirement. To ask the applicant to come back for that approval doesn't make any sense. The third point which ties into the substantial action component is that even if the Board decided that the applicant had to come back, the fact that he didn't within a year was not fatal to his application. The site plan regulations that were in affect at the time of this application in 2008 stated that you had to have substantial action on the application within a year or it automatically expires. It doesn't say with the current site plan regulations that you have to complete each one of the conditions within the year. Substantial action means something less than full completion. Substantial means a lot. It doesn't mean you have to go out and satisfy all of the conditions, just some of them.

T. Hoopes stated that substantial is applied to what is taking place on the land. It is not dealing with the conditions because the conditions are the requirements for the approval.

J. Arnold stated he understood that but he felt that the language in the old site plan regs that applied to substantial action, there is a tendency to confuse that term with what is in the RSA's right now which is active and substantial construction. That is a term that is used in the new site plan regs too but they are two very different things.

T. Hoopes stated that they change as the Legislature changes. They have no option, but if the legislature's verbiage is one thing and then they change it then the Board changes. They use what is required by State Statutes or by specifics for the Town.

J. Arnold stated that all he wanted was to distinguish between the active and substantial construction under the Statute which is exactly what they are going through. They are on the ground, they are building the buildings and there is substantial construction going on on the site. This is a term in the new site plan regulations. It is not necessary within a year period from approval. The new site plan regulations still give applicants a year from the date of approval to satisfy all the conditions and then only after that one year period does that time frame begin to run for active and substantial construction. A time when they are out there on the property building the buildings and doing the physical construction on the lot. That time frame which is in the new site plan regulations recognizes what the practical effect is for any developer which is that if they go in and get a conditional site plan approval and they have all these conditions that they need to satisfy, one of which is going and getting your State and Federal permits, you cannot go and get that work done within a year period and get out on the site and get substantial construction done because the permit process takes that long. That is why the site plan process gives applicants a year to get it done. The current site plan regulations the time period it has given for satisfying conditions as a separate time period as a time period given for active and substantial construction that it is useful to understand what is behind the statute of limitations in the site plan regulations that existed in 2008. He felt it would be a mistake to read that statute of limitations to not only require a developer to get all the permits and approvals and get out there and do a lot of work on the ground.

D. Collier stated that the difference they are talking about is a conditional approval and they had a year to meet the conditions of approval. Then they are talking after the conditional approval which is the site construction. That comes after the conditional approval and what they are talking about to see if it complies is that if the conditions of the approval were met. It was for one year.

J. Arnold is trying to make the distinction that the active and substantial construction is separate. It is after the approval is finalized and the plan is signed off on and recorded. The site plan regulations that were in effect in 2008 require that within a year there be substantial action. The site plan does not say you have to meet every one of the conditions in a year. Even if they had to come back to the Board because it was not satisfied it is not fatal to the plan because under the regulations they did not need to check every box off on the conditions but needed substantial action on all of them as a whole. By looking at all the conditions that were met under that time frame and all the work that happened on the site he feels that that is substantial action under that term that was used in the 2008 regulations which is different than what is in the new regulations now.

R. Heath stated that when the two buildings were removed they came back with his then counsel Melissa Guldbransen met with the Planner at that time Sharon Penny. R. Heath stated S. Penney did the whole checklist of conditions with us and they had met everything and she specifically stated that they did not have to come back. The only dispute to that is that K. McWilliams couldn't find anything in the file pertaining to that and he wasn't present at that time. What R. Heath wants the Board to take in consideration is that they are being told by the Planner at that point in time that it does not need to come back. They had no reason to question that answer and come back to the Planning Board. So at that point in time they were told the direction to go in and followed that direction, even to the point when last time when they were discussing this at the last meeting the Board had even said that the Planning Board had made a decision to call people who had plans of subdivisions and site plans at that time when the economy fell to get extensions. He was not contacted or told. All this time he is under the assumption of the

direction of the Planner at that time. The other conditions were not in the file either. The file was incomplete from that era because some of his State permits were not in the file which were also sent to the Town and cc'd by the State. The legal documents that were recorded at the registry and approved by Town Counsel were not in there. There were a lot of things missing and unfortunately they are left with taking his word for it. He is asking if that is a fair practice because he followed the directions he was given at that point in time. K. McWilliams stated Town Counsel's opinion on this is, that the conditioned approval expired.

D. Collier asked if M. Guldbranson has records of her meeting with the Planner.

R. Heath stated that she has her notes. Her notes are of the old site plan and were turned over to his attorney now who has her check marks and scribbles on it as she goes down thru those notes and that is the record of the meeting that she has.

B. Curtin asked if they could get a letter or statement from her.

R. Heath stated that he could try but cannot guarantee anything. She is in a completely different position at this point in time.

D. Collier stated that it might be worth it to put some weight on the situation.

R. Heath stated that he did submit the Notice of Decision that was written by the Planner when she specifically writes in there that there is no change in the DES approved buildings.

K. McWilliams asked if that was on the Notice of Decision for the Workforce Housing Project.

R. Heath said that was correct but it was the same project, just amended.

K. McWilliams stated that it was not the same project; it was for the workforce housing application.

J. Arnold stated that it is a different project but the point is still valid which is the application was back before the Board for the conversion to Workforce Housing and at that point it showed the reduction of the number of units and if the Planner thought that is was an issue with the plan that is something that would have come back as part of the Planning Board decision on it. The Planner never said to the Board that they had removed two buildings and that was a problem with the plan.

K. McWilliams stated that at that same meeting there was a former Planning Board member, Cindy Balcius, who picked up on the fact that there were units being deleted from a previous plan and she made the comment that when State permits are approved that necessitate changes in the site plan they should be coming back to the Planning Board for approval. That plan was not before the Planning Board for review and discussion on the Elderly Housing Project at that point so it wasn't appropriate to have that in-depth discussion but she did note that that was a change and it should come back to the Planning Board. That was her comments in the meeting minutes when they were discussing the Workforce Housing Project.

B. Curtin read from the minutes what was stated.

J. Arnold stated that he felt those comments could be read to suggest that as a broader issue for the Board to address that saying that this plan needs to come back for another review. She said the changes were broad enough to require additional review. He stated that these weren't the type of changes that can benefit from further Board review because they were required by DES to begin with.

R. Sample stated that the plan is going to come back to be signed and if there is a problem with those things it would be brought up then.

T. Varney stated that you rely on the Planner to tell you what to do next.

R. Sample stated that that would be the time to discuss if there was a problem.

T. Varney stated that there is not direction for them until they come to the Planner that is where you are going to get directions to go another step and that is when you rely on the Planner.

R. Heath stated that he knows that the plans that T. Varney did and sent in, all had copies that were delivered to the Planning office. He was in and out with these plans and there was never any discussion about deletion of these two buildings. She was made well aware of it.

T. Hoopes asked if there was any trace of any of the files and permits in any of our records.

K. McWilliams stated that he cannot find anything about what R. Heath is referring to. There is no written sign off by the Planner in the file on the change in the plans when they brought in different plans.

J. Arnold stated that if the Board would like they could see if M. Guldbranson can provide some type of letter based on her notes recollecting what was stated at that meeting. R. Heath is telling them tonight his recollection of the meeting and they have first hand testimony from the applicant here tonight telling them about that conversation.

R. Heath stated that when he met with K. McWilliams and they sat down and went through the checklist together there were several items in that list and R. Heath provided new copies of those items that were not in the file. One of which he specifically has e-mail and a paper work was the legal documents such as the Easement and the Bylaws. Those were required to be sent to Town Counsel who received them and approved them and then they were recorded in the registry. He wants to substantiate the fact that there were a lot of things missing from the file so it shouldn't be surprising that one item is missing about the conversation of coming back or not coming back regarding the two missing buildings.

The Board was bothered by the fact that legal documents were missing from the files.

The Board felt that they needed something from M. Guldbranson. If it is a letter it should be notarized.

T. Hoopes motion to continue Case P08-08 to next month meeting November 20th.

B. Curtin seconded the motion with no opposition.

VI. PUBLIC HEARINGS ON AMENDING REGULATIONS.

1. Subdivision Regulations.

Add a new Section 7.5.1.4 “Any professionals assisting with preparing an application shall submit an insurance certificate that names the Town as an insured beneficiary.”

T. Hoopes made a motion to approve the amendment.

Board had a discussion.

T. Hoopes withdrew his motion.

T. Varney spoke regarding this amendment and asked why they are doing it.

B. Curtin stated because of past problems they have had with other subdivisions.

T. Varney stated that he felt it was up to the Planning Board to know what is going on and it is up to the Board to have other people review the work and the plans. The professionals put their stamps on the plan. When they say professionals they need to be careful who they are talking about and making problems for themselves because some of them are not going to have insurance. He stated that you can have insurance on land and gave examples of how it helped others. It bothers him that this is the first town to do this.

T. Hoopes motion to continue both public hearings, subdivision regs and site plan review regulations, until the November 20th meeting.

B. Curtin seconded the motion with no opposition.

VII. Other Business

1. Old Business – Mr. Bothwick asked to extend his subdivision for another six (6) months.

T. Hoopes motion to grant a six (6) month extension to Harold Bothwick on Case P11-33.

B. Curtin seconded the motion with no opposition.

2. New Business –

T. Hoopes asked about finding alternates since he and Tim Roy miss a lot of meetings.

Tim Croes of the Baysider offered to put something in the paper to get alternates.

3. Approval of Minutes, September 18, 2012 regular Planning Board meeting

B. Curtin made a motion to accept the minutes of September 18, 2012 as presented.

T. Hoopes seconded the motion which passed without opposition.

Approval of Minutes, September 25, 2012 Site Walk of Spring Haven

B. Curtin made a motion to accept the minutes of September 25, 2012 Site Walk of Spring Haven.

T. Hoopes seconded the motion which passed without opposition.

4. Correspondence

The Local Government Center is sponsoring a seminar on Saturday the 27th of October. Fundamentals for Planning Board and ZBA. R. Sanborn has the sign up sheets for the Board members.

5. Any other business that may come before the Board - none

VIII. Public Input

T. Croes spoke regarding the Site Walk for the campground he brought up an issue regarding a resident running a boat detailing service that was served a Cease & Desist Order in July 2010. He spoke with Dave Hussey and Scott Williams. He is simply stating this so it is on the record. He was told it needed to be handled by the Code Enforcement Officer.

Public input was closed.

IX. Adjournment

T. Hoopes made a motion to adjourn. The motion was seconded by R. Sample and passed without opposition.

The Public Hearing adjourned at 8:45 p.m.

Respectfully submitted,

Randy Sanborn, Recorder, Public Minutes