

Haverhill Planning Board Minutes July 26, 2016

Draft Subject to Review, Correction, and Approval at Following Meeting

1. Call to Order

The meeting was called to order at 7:00 by Chairman Don Hammond

Planning Board members present:

Don Hammond

Mike Bonnano

Tara Krause

Howard Hatch

Clerk Ed Ballam was present.

Mike Simpson was absent

Bob Long and Robert Roudebush were in the audience.

2. Designation of Alternates

No alternates to designate

3. Agenda Approval

Mike B. made a motion to approve the agenda. Tara K. seconded the motion. The motion passed with a unanimous vote with no changes.

4. Approve Minutes of Previous Meeting

The minutes of the June 26, 2016, meeting were approved as written on a motion made by Mike B. seconded by Howard H. The vote was three in favor with one abstention, Tara K., who was not present for the meeting.

5. Scheduled Public Appearances previously scheduled.

Bob L. said Mountain Lakes precinct commissioners have been working with an abutter Dennis Connole to secure ownership of the dam and spillway which is on a lot he owns. To affect that transfer, the precinct commissioners decided to do a lot line adjustment with property the district owns leaving Mr. Connole a .35 acre parcel that he hopes to build on.

Robert R. said the commissioners reviewed the town's subdivision regulations and learned that the minimum lot size can be reduced by 33.33 percent if the lot has municipal water or sewer and the lot does have municipal water available. That means the minimum lot size would be .46 acres.

Don H. said he thought the only way the lot could be reduced is if it had both water and sewer, not either or. He said he had always believed that and if it's not that way, the board ought to change it during this most recent subdivision regulation review. He said he would be more concerned about the sewage than water.

Bob L. said Mr. Connole has a plan to someday build on it and if the planning board was willing to reduce to it .46 acres, the precinct might be able to make it work. He said the issue has been going on for a long time and the precinct wants to own the dam and the spillway. He said he was

looking for guidance from the board on how to best achieve the goals of having the precinct own the dam and the spillway with Mr. Connole retaining a buildable lot.

Ed B. said the board could not approve the .35 acre lot, so some sort of concession or adjustments have to be made. Another alternative is to seek a variance from the ZBA, Ed B. said. Tara K. said she would have no problem with the lot line adjustment if Mr. Connole would file paperwork saying the lot is not buildable and would never be built upon. Bob L. said that would not meet with Mr. Connole's approval as his goal is to have his son build a house on that lot someday.

Don H. said it does not appear there is a place for the sewerage system to be located and there's none shown on the map. Bob L. said there's no perc test on the property yet. Don H. said there's a lot of work to be done before the planning board could even consider the adjustment. Bob L. said that's what he needs from the board, some guidance about what to do so he can go back to Mr. Connole with a plan.

Ed B. said is the board willing to reduce the lot to .46 as specified in the regulations.

There was some discussion of a possible lot merger with Mr. Connole's adjacent lot, but that's not the goal. Bob L. said it would be an easy solution if that was the alternative. Bob L. said he may have that discussion with Mr. Connole about merging the lots.

Don H. said every plan the planning board gets shows where water and sewage systems are going to be located. Ed B. said that's true if it was a subdivision, but he reminded the board that the lots are already existing and the applicant is looking for a lot line adjustment. Don H. said the applicant is looking to create a building lot. Ed B. said at .8 acres, it already is a building lot, in regards to minimum lot size with the spillway. Bob L. said the .35 acre parcel in the front of the lot is the only buildable space on the property. Nothing can be built in the spillway area, or dam, but it does count as part of the existing lot.

Robert R. said there are many, many lots in Mountain Lakes that are less than .35 acres. Tara K. said they were probably approved long ago, and certainly longer than the current board has served.

Bob L. asked if the minimum lot size of .69 acres would stand or if the .46 acres, with town water, would be acceptable. Tara K. said the way the current regulations read, it would be the .46 acres. She added that if the applicant came back in, she would want to see where the water would come in and where a sewage system might be located.

Mike B. said the regulations show that .46 acres so that would be acceptable.

Bob L. said he would like the district not have to be part of the process of getting septic approval on the .35 acres, which would belong to Mr. Connole in the long term.

Howard H. said it would be a lot simpler if the district just bought the whole lot and not worry about the buildable area. He said it appears that it might require an off-site septic system because of the size and the possible problem with wetlands.

There was much discussion about options and different scenarios. Howard H. said there's no point in talking about any of them unless the lot passes a perc test. Don H. said he thought the

applicant would be hard pressed to get an acceptable perc test. Tara K. said that a perc test probably isn't required for a lot line adjustment.

Ed B. said he wanted to be clear for the minutes and make sure Bob L. and Robert R. left the meeting with sufficient information to make a decision and to satisfy the subdivision requirements. He asked pointedly if the board was OK with the .46 acre minimum lot size irrespective of all other issues. Ed B. said that just as a minimum lot size, that is an acceptable number. Whether it can be built upon is someone else's issue, he said. Ed B. said he understands that if the board approves the lot line adjustment, there may be a supposition that the lot is buildable, when it may not be and someone may come back later looking to build on it. He said he saw the dilemma the board was in regarding the request.

Bob L. said he did not have an issue with doing a perc test on the property just to get the information. He said if the board was OK with the .46 acres he would do the perc test. Bob L. also said there are other issues too, such as slope, soil types, etc.

Tara K. said as a personal thought, she wouldn't advise Mountain Lakes to do the perc test, but encourage Mr. Connole to do it himself as it is his responsibility to prove the lot is buildable.

Robert R. said it's a unique property and it's unlikely the planning board will ever see the issue again. He spelled out several hardships on the property.

Ed B. said it sounded like Robert R. was making a case for a ZBA variance. Robert R. said he was addressing a provision in the planning board regulations that allowed the board to waive certain aspects of the ordinances as spelled out in 5.1. Tara K. said she wasn't willing to waive minimum lot size.

Robert R. said he and Bob L. were not expecting a protest from the planning board regarding the perc test and he is not sure that they have any responsibility for that right now anyway.

Bob L. asked again if the board was OK with the minimum .46 acres, understanding there were other caveats.

Don H. said he did not want to give a stamp of approval that this is a building lot and 10 years down the road it turns out it's not. Bob L. said that's not what he was asking. Don H. said if it can't perc, it can't be built on. Bob L. said he understood that, but all he wanted was guidance on whether the .46 acres would be acceptable as a minimum lot size. Bob L. said the subdivision regulations say it's OK. Don H. said it is what it is until the board changes it and it might do it tonight.

Ed B. asked Bob L. if he thought the lot could meet the other provisions in the lot requirement including slope, contiguous square footage and three feet of soil. Bob L. said he believes they site would meet those requirements.

Bob L. said he's not looking for a commitment from the board, but guidance.

Don H. said the board might vote tonight to change the language in the regulations, regarding the either or situation with municipal water and sewer. Don H. said he was not aware that it was either or. Bob L. asked if that change to the requirement would require a public vote. The board said no, it was up to the board to make those changes. Ed B. said there will be a public hearing and the planning board will approve the changes to the subdivision regulations.

Bob L. said it doesn't seem like there is any way to do the lot line adjustment if the board is planning to change the ordinance.

Tara K. said if the application meets all the requirements, there is no reason why it wouldn't be approved.

Ed B. advised the board to be very careful about changing a regulation as an application is being considered. Don H. said it's only a preliminary hearing. Ed B. said that may be true, but the applicant was going on existing rules at the time the plan was drafted. Ed B. said he would consider this plan grandfathered, even if the board did vote to change the ordinances. He said the board could be on shaky legal grounds if it said as a result of looking at this application it's going to change the regulations. He said there's no question the board has talked about this application, has developed an opinion and there will be minutes generated.

Tara K. said there are some legitimate hardship points for the planning board to consider, should the applicant move forward. She said she wouldn't drop that avenue, but in the meantime, she said she'd like to see some evidence that the lot could be built on in the future at that acreage.

Ed B. asked pointedly if the 2008 subdivision regulations that Bob L. and Robert R. used to develop the plan will apply to the application. Don H. said it would appear they have to.

Howard H. said he understands the lot size and the septic size, but he questioned what size house could be built on it and how many bedrooms it has. Ed B. said the state will approve a septic design appropriate for the size lot and soil types. The planning board doesn't need to worry about that. The only concern the board has is whether it will perc at this moment, but even that may not apply because it's just a lot line adjustment.

Ed B. said, for the record, the board is OK with .46 acres, if Bob L. and Robert R. come back with a plan and perc test, barring all other concerns, the board would be OK with considering and, if it meets all other requirements, it would be approvable.

Tara K. said if the application meets these regulations [2008] the board would have no reason to deny it.

Bob L. and Robert R. thanked the board for its time and left the meeting.

6. Correspondence/Communications

Ed B. said there was only one new correspondence and that was a notice from the Department of Environmental Services regarding a request for an alteration of terrain permit from Jeff Elliot for his project on Benedict's Way. He told the board it was only advisory and required no action of the planning board.

7. Reports of Committees

None

8. Pending Business

The board spent nearly an hour finalizing the subdivision regulations going over each change made over the last several months.

The board talked particularly about the provisions in 4.4, minimum lot size and the provision to reduce it by 33 1/3 percent if the property had either municipal water OR wastewater system provided.

Don H. said he understood that the reduction was only available on lots with both municipal water AND wastewater systems provided.

Tara K. asked what percentage of the community could possibly be served by both. The consensus was probably only Woodsville and some isolated areas of North Haverhill.

Tara K. said there are state laws governing location of wells and septic systems and the distances needed between the services.

Ed B. reminded the board there are many places in town that have municipal water, but don't have wastewater services. A change in the minimum lot size would most effect North Haverhill the board agreed.

Don H. said he thought .46 acres is small and thought lots that size should have both municipal water and wastewater services. Don H. asked for opinions from the board members. After some discussion, there was a consensus that changing the word OR to AND to require both systems was the direction the board wanted to take. Don H. asked for a motion and Howard H. made one to change OR to AND which would require both systems. Tara K. seconded the motion and the vote was unanimous. Howard H. pointed out that it will be discuss during a public hearing.

The appendices were briefly reviewed and a comment was made that the fee schedules need to be reviewed and updated as necessary.

With all the adjustments completed and reviewed, the board said it was ready for a public hearing and asked that advertisements be placed noticing it for the August planning board meeting.

Moving on to other new business, the board considered a request from the Selectboard to look at zoning ordinances for Haverhill.

Don H. asked that before the planning board started working on zoning, he asked if the board had a commitment from the selectboard. Mike B. reported that the selectboard voted four to one to ask the planning board to review and consider zoning in Haverhill.

Tara K. asked why the selectboard asked for zoning and what its goal is. Mike B. said the selectboard wanted the planning board to look into writing zoning ordinances for Haverhill. Tara K. asked again why and what purpose does the board see in promoting zoning in Haverhill.

Howard H. said he believed because Selectboard Chairman Wayne Fortier thought it was a good idea. He added that's why he asked for a consensus of the full board before going any further with the exercise.

Tara K. asked again what the selectboard hopes to accomplish through zoning. Mike B. said he thinks a lot of the initiative comes out of the dilapidated and abandoned buildings in town. Tara K. said zoning will not affect that. She said the existing dilapidated buildings are "grandfathered" and zoning wouldn't change it anyway. She said even if the town did have zoning, there's no way to create zoning that would prevent it in the future.

Mike B. said the selectboard has applied for a court order to enter a residence they are going to be acting on in the future for being an unsafe building. He said he believes there are animals living in that particular building.

Howard H. said there are so many ordinances and regulations in town that are not enforced and addressed that he believes the town doesn't need more. He said the selectboard needs to get up to speed on what is going on in town and enforce the regulations it already has. Howard H. said the selectboard is having trouble dealing with ordinances it already has, including covenants on the industrial park and junkyards.

Tara K. said that if the town has zoning, all of those issues will fall to the planning board. Ed B. said he believes the selectboard would still be the enforcement agency. Tara K. said she believes that it will still all go through the planning board and the only time the selectboard would become involved in it would be non-compliance. She said the planning board would still have to deal with all the applications and from junkyards to adult video stores. She said some of the minutia that zoning ordinances go into is unbelievable.

Tara K. said Houston, Texas, has no zoning and it's touted as one of America's top communities for development and planning and being successful.

Mike B. said he believes the planning board can say it doesn't want to develop zoning ordinances.

Ed B. said the RSAs say it's the planning board's privilege and right to adopt zoning or choose not to pursue it.

Mike B. said it was just a suggestion by the Selectboard and the planning board can say 'no, we don't want to do it.'

Tara K. said she doesn't believe the planning board would have the necessary staffing or funding or resources to enforce 100 more rules when there's not enough enforcement of the rules the town already has.

Ed B. said he asked the board for direction on how to proceed with the big, overarching issue of zoning and what the selectboard hope to achieve. He said the stated goal of the selectboard was to address dilapidated and substandard housing. Ed B. said he told the selectboard that zoning won't take care of the issue the town now faces. Zoning is about land use issues. It means you can have a farm, here, and a house there and a Wal-Mart over on the other side. It does eliminate the house being a junk house, Ed B. said.

Mike B. said maybe the board should put the Zoning topic on the agenda for next month's meeting when Mike Simpson is on board and the full board would have the chance to vote on whether the planning board wants to pursue zoning.

There was some discussion about Mike S.'s whereabouts and whether it mattered whether he was present. Tara K. said she would like to deal with the issue now. She mentioned an issue on

County Road with Ralph Wright's property where the land owner has already broken the rules and in the 17 years she's lived near the property, it has never changed. She said in that time, the property immediately adjacent to Wright's land has changed hands at least half a dozen times. She said she does not believe that zoning will stop that. She said whatever use someone has in mind for property will come before the planning board and the board will say 'no, you can't do that' and they'll do it anyway. She said then the issue will go to the board of selectmen who will also say 'no, you can't do that' and it will end up in court which is exactly the same process now.

Tara K. said dilapidated buildings in Woodsville will not be affected by zoning. She said what can happen when the town has zoning is residents can be told they can't put RVs in the backyard, or they can't have a small business in their home or in their backyard.

Mike B. said zoning can be whatever the planning board wants it to be. Ed B. said at the request of the planning board he found sample ordinances from a variety of towns, including Littleton, Lisbon, Plymouth, Canaan and Henniker. He said he could not find Piermont's readily. He said they were not templates, or models, just resources the board could use if it chose to do so.

Tara K. said maybe she should speak directly to the selectboard because she said the town wants to encourage small businesses and attract businesses to the community and the more regulations there are, the less likely businesses will be attracted to the community.

Howard H. said several years ago the economic development committee met for the first time at Alumni Hall and the selectboard asked how it was to operate small businesses in town and we told the board it was difficult in town. He said the committee had students from Plymouth State University develop a questionnaire, but the committee just fell apart. He said Glenn English was the biggest hindrance to the economic development committee, but he's now gone. He said he is still not sure the economic development committee is going to go anywhere because only Darwin Clogston is the only one who owns any part of a business. He said the selectboard comes to meetings without being up to speed. Mike B. said he doesn't think the planning board should be talking about the selectboard or bash the selectboard. He said the board should stick to the ordinances and zoning. Mike B. said there are three new members on the board and there's a learning curve. He said if there's a problem with the selectboard, people should attend the selectboard meeting and bring it up. Howard H. said the chairman of the selectboard doesn't want to hear it. Mike B. said he doesn't represent the whole board. Mike B. also said it is not the time or place to bring up the performance of the selectboard.

Howard H. said he brings it up only because he thinks the selectboard can't handle what they have now, there's no need to add more.

Mike B. said maybe the board should have a vote on whether to pursue zoning or not and do it next month when Mike S. is present. Tara K. said Mike S.'s presence is not necessary for the board to take a vote. Mike B. then suggested someone make a motion to not pursue zoning.

Tara K. said she very much wants to support the selectboard and she hopes they can achieve its goals, but she does not think zoning is the answer. Moreover, she said it's a "very slippery slope."

Don H. said the zoning will only affect property from the day it takes effect, forward. All the issues town faces will remain. Tara K. said even if new issues come up zoning does not guarantee compliance.

Tara K. then made a motion to make a statement opposed to enacting zoning ordinances in Haverhill. Howard H. said he would like to have added to the motion something about adhering to the ordinances and rules the town has now. He said if the town enforced the rules it has now, the town would not be in too bad of shape. Tara K. said she agreed with that statement.

There was some discussion about the wording of the motion. It was decided that the motion would state, until the current rules and regulations are adhered to, we see no need for zoning. There was additional discussion about the phrasing. Tara K. said she did not want to have the planning board's actions or motion convey to the selectboard any indication that the planning board doesn't think they're doing their jobs. She said she understands the selectboard is in a difficult position. She said she believes there are enough ordinances on the books now to achieve what the selectboard desires.

Ed B. suggested that perhaps the planning board attend a selectboard meeting, as an agenda item to talk about the issue and to have a chance to express their thoughts and concerns.

Tara K. said she would prefer to make a very clear statement, vote on it. Then, if people want to attend the selectboard meeting, they can to discuss the board's position.

Don H. said he would leave it up to the selectboard to decide if they want the planning board to attend a meeting to discuss the board's position.

Tara K. made a motion to inform the selectboard that the planning board is not in favor of pursuing zoning at this time because it feels there are sufficient ordinance and rules on the books now for the selectboard to achieve its goals. Howard H. seconded the motion. The vote was unanimous.

Don H. said the planning board can always reserve the right to develop additional ordinances as needed, but he does not believe the town would accept zoning. Don H. said people have some misconceptions about what zoning is. He said they'll say 'I am not going to hire an electrician to change a light bulb in my house.' Ed B. said he lives with zoning in Haverhill Corner and he said it's not that bad. Howard H. said the objection is with the change from no zoning to zoning and how it affects land that people have cared for over 50 or 60 years. Ed B. acknowledged that Haverhill Corner is different and the zoning is different.

Don H. said some people have lived under very strict zoning in other states or communities and they don't want the same limits put on them in Haverhill.

Ed B. said former Selectman Rick Ladd said at a meeting recently that if a vote had been taken at the time Wal-Mart came to town, it would have passed. Tara K. said that zoning may not have stopped that store, but if the town had some regulations it could have perhaps profited from the construction or deal with the development differently. She said it likely wouldn't have stopped it because it was built in a commercial area.

Ed B. said the planning board might want to consider some specific ordinances, like impact fees where the town could get some benefits to deal with developments to buy equipment or make improvements to deal with the growth or help pay for the schools if a large residential development is proposed.

Howard H. said something has happened in Haverhill in the last five years or so with building codes. He said insurance agents are now paying more attention to residential and commercial properties, looking closely at electrical systems, taking photos and examining roof lines. He said that never happened before. He said the selectboard is trying to straighten some of that stuff out when dealing multi-family homes.

Don H. concluded the discussion of zoning and old business.

9. New Business (Applications)

.There was no new business.

10. Other New Business

None

11. Public Appearances (Not Previously Scheduled)

None

12. Comments of the Clerk

Ed B. said he would take care of the notices for the public hearing on the subdivision regulations.

13. Comments of the Planning Board

None

14. Other

None

15. Adjournment/Next Regular Meeting

Ed B. pointed out there were five Tuesdays in August and reminded the board to pay attention to the fourth Tuesday which is August 23.

Don H. asked for a motion to adjourn which was made by Mike B. and seconded by Tara K. the vote was unanimous. The meeting adjourned at 8:45 p.m.

The next meeting scheduled meeting is Aug. 23, 2016.

Respectfully submitted,

Ed Ballam, Planning Board Clerk