

**Haverhill Planning Board Minutes                      April, 30, 2013**  
**Draft Subject to Review, Correction, and Approval at Following Meeting**

1.                      **Call to Order**

Chairman Don Hammond called the meeting to order at 7:00 p.m.

Planning Board members present:

    Don Hammond  
Mike Bonnano  
Bill Daley  
Tara Krause  
Tom Friel  
Mike Simpson -- arrived at 7:20 a.m.

Also present: Ed Ballam, Clerk

Members of the public include Frank Hofmann and Carol Hofmann and Dave Martella.

**2. Designation of Alternates**

No alternates to designate

**3. Agenda Approval**

Mike B. made a motion to accept the agenda as with an addition to hold election of officers. Seconded by Mike S. The vote was unanimous.

**4. Approve Minutes of Previous Meeting**

Mike B. made a motion to accept the March 26 minutes and Tom F. seconded the motion. The vote was carried with an abstention from Bill D. who was not present at that meeting and from Tara K. who missed part of the meeting because of an emergency.

**5. Scheduled Public Appearances**

David Martella asked why his mylar had not been recorded. He said he had paid the fees. Ed B. said he didn't get the mylar until last week from his land surveyor, Harry Burgess, so he couldn't record it. He said he would double check the money for recording and get it to the Registry of Deeds for recording as soon as possible.

Ed B. told the board for their information that he has been having an issue with securing recording fees for three mylars. He was going to push the issue and get it taken care of. He said the registry of deeds only takes bank checks, business checks or cash and it cost \$25 for the registry and \$26 for the LCHP state fee.

Bill D. asked how it works. He said it appears that the board approves action and then it gets log jammed and sits there until the land owner or the applicant pays the fees correctly to the county.

Ed B. said that is the typical process, but it has been working smoothly until recently. He said it becomes a log jam when people make personal checks and then they have to be converted to cash or a bank check and it becomes a hassle.

Bill D. asked if the board was approving plans before it has funds acceptable to the registry. He said it seemed simple. If the board doesn't have the correct funds, it shouldn't approve the applications.

Ed B. said it was a bit more complicated than that. There's an application fee of \$150 and fees for sending notices to abutters which is collected up front. The recording fees and LCHP fees are collected after the board has approved the plan for recording. The problem with collecting the registry of deeds fees up front is the board might decline an application and then be in the position to have to refund the money. He said the board could collect the recording fees up front as well, but he said that's not a good idea because then there might be an expectation that a plan will be approved. He said he believed the process is a good one and it should continue with the applicant or an agent paying the fees after the board approval.

The current situation is unusual and out of the ordinary, Ed B. said. Tom F. agreed and said he had not seen a similar situation in eight years he's served on the board.

Bill D. asked what happens if someone never pays. Ed B. said it just doesn't get recorded. Don H. said the board would have to notify someone sooner or later.

Ed B. said it's an administrative problem that he just let get away from him and he said he would get it under control. Tom F. said perhaps the answer would be to deny the agent from bringing any additional plans to the board until the older plans are settled. Ed B. said he didn't think that could be done, or was the right thing to do because it would penalize applicants who had nothing to do with the problem.

Ed B. said he's been trying to resolve the issue with the land surveyor, but the answer will be with the applicants and then they can settle with the surveyor, or pay the fees themselves.

Tom F. said it's the responsibility of the land owner to pay the fees. Don H. said the problem is too many applicants dump it all on the land surveyor and they expect the representative to take care of everything. If the board has questions, the land surveyor then has to go back to the applicant who isn't present for the hearing and it happens too often. Don H. said the applicants should come in with their land surveyor and be more active with their applications.

David Martella said he wanted to make a comment saying the town regulations say the fees must be paid before the application is considered. Don H. said that is for the application fee and the abutter notification fee, not the recording fees. He said he didn't believe the board should be collecting recording fees until the plans have been approved. He said the town shouldn't be in the position of having to refund money.

Tom F. said the subdivision regulations should be a little clearer about the additional fees that must be paid. Don H. said it should be clear to the land surveyors that when the mylars are submitted for signing, the recording fees must be paid at the same time. He said the absence of the fees is getting the board in trouble with the applicants.

Bill D. said the board should make a rule not to accept mylars without the fees. Mike S. made a motion to only accept mylars when the proper registry and LCHP fees have been received. Tom F. seconded the motion. The vote was unanimous.

Don H. instructed Ed B. to tell the staff in the office to not accept any mylars without the proper funds with it which is a bank check, business check or cash.

Don H. asked about the town collecting the fees and then having the town write a check to the registry of deeds. Ed B. said that's not a good idea because then the town would be on the hook for any funds and any problems with personal checks with funds going out to the registry of deeds.

The board took new business out of sequence in order to select officers per the board's bylaws which require election of officers to be held in April.

To facilitate the selection of a chairman of the board, Clerk Ed B. took temporary control of the meeting. He asked for nomination to the position of chairman. Mike B. put the name of Don Hammond in nomination. His nomination was seconded by Mike S. Ed B. asked for other nominations. Hearing none, he called for a vote. The vote for Don H. was unanimous.

Ed B. then return control of the meeting to Don H.

Don H. asked for nomination for vice chairman. Mike S. nominated Mike Bonnano for the position of vice chairman which was seconded by Don H. There were no other nominations; Don H. called for the vote which was unanimous for Mike B. The bylaws also call for the election of a clerk, however the Haverhill Planning Board has a paid clerk which is appointed by the town manager. The clerk is given a performance review by the planning board annually. Ed B. said that happened in March and said he would get evaluation sheets for Bill D. and Tara K. for the next meeting to complete the formal record. Tara K. said she has one, but hasn't turned it in yet. She said she would do so for the next meeting.

Tom F. said Frank Hofmann is waiting to appear before the board and he asked the board hear what he had to say. He made a motion to move the public hearings not previously scheduled up on the agenda to accommodate Frank H. The motion was seconded by Mike S. and the vote was unanimous.

Frank H. then approached the board with a plan. Tom F. recused himself from the board as he may be representing Frank H. at the next meeting on the subdivision.

Frank H. said he is filing an application for a three-lot subdivision on his property on Lime Kiln Road.

Ed B. reminded the board that Frank H. had been at the march meeting for a preliminary discussion of the plan. Don H. said he recalls that discussion. Frank H. said he would not be at the May 28 meeting and he would be represented by Tom F.

Don H. asked if the board had any questions. Bill D., who said he was not present for the March meeting, said he did have questions. He asked for an explanation of what was being requested. Ed B. said Frank H. has a 104-acre parcel that he was seeking to subdivide in to three lots and the board saw no issues with the plan. Bill D. said he would still like to ask questions. Ed B. said that would be appropriate especially since the applicant was not planning to be present at the May 28 meeting.

Tara K. asked about perc tests for each lot. Tom F. said from his real estate licensing days, he recalls the minimum lot size requiring perc testing was 10 acres. He said a land surveyor told him that if the lot size was five acres or less it would require perc testing.

Don H. said it was five acres. Ed B. said the town's subdivision regulations say each lot has to have a perc test. He said the subdivision regulations may need to be adjusted to reflect more clearly the state rules. Currently, the town's rules, as found in 3.6 10. He said that rule says in accordance with state rules. So, technically, if the state rules say lots five acres or more don't require test pits, they are not required, Ed B. said.

Ed B. said the board's precedence is it has not required test pits on larger lot subdivisions.

Bill D. said his question is who gets to decide what is a big lot and what is a little lot. He said there seems to be some discrepancy about whether it's five acres or ten acres, even in the profession. Tom F. said his knowledge is from the 1980s and it could be different now.

Bill D. said he was not comfortable taking a third-party's comments that five acres was the minimum lot size for perc test. He further said he was not comfortable taking the word of a board member who stepped down and who might be representing the applicant. He said the board ought to know, definitively, what the number is before acting on it. It's not a guess, Bill D. said.

Tara K. said on big lots, there's typically not any trouble perc testing the property and it adds a lot of expense that might not be necessary.

Ed B. said he believes the lot size is five acres. Don H. and Ed B. spent several minutes looking in state RSA looking for the answer.

After several minutes, Bill D. asked if it was appropriate to have the applicant present the information at the next meeting and for the board to know absolutely as well as to what the number is, whether it is five acres or 10 acres for test pits.

Ed B. said his institutional memory said it's five acres, but in any event, the rule is covered in Frank H. plan because all the lots are much bigger than 10 acres. He said he understands the importance of knowing the rule, but in the interest of time, it won't make any difference for the board to consider the application.

Bill D. said he understood that, but the board should know the answer definitively. He further said that what the state rule is is what the Haverhill board should follow. Ed B. asked if the board wanted test pits on all three sites, or are they comfortable knowing that whatever the state rule says, five or 10 acres, the Hofmann subdivision meets the minimum.

Bill D. asked if there were precedence the board has set. Ed B. repeated that the board had not required test pits on lots the size Frank H. has proposed. Bill D. asked for a definition of lots the size Frank H. has proposed. Ed B. said that lots that exceed the minimum lot size defined by the state have not required test pits.

Bill D. asked if the town's subdivision regulations need tweaking on this issue. He said he is just trying to follow rules and if the rules aren't clear, they need fixing.

Bill D. asked for the appropriate manner for changing Haverhill's regulations. Ed B. said the board has the ability to amend the rules. A proposed change is written by the board and then public hearings are noticed on the proposed change. The board takes the comments and then decides whether to adopt the changes by a vote of the board, Ed B. said.

Bill D. said it seems like an opportunity to fix a gray area and not arbitrarily impose costs on one person and not another based on a whim. He said it seems pretty clear and easy to fix.

Ed B. said that it might be time for the board to look at the subdivision regulations on a more wholesale level to see whatever needs to be fixed and then do one, global hearing process to fix a variety of issues.

Bill D. asked if there were any other ones that needed to be done. The board could not think of any. Tara K. said the last one the board did, regarding a driveway issue took 14 months to complete. Bill D. asked if it normally takes that long. Ed B. said there were some complications and challenging wording.

Ed B. suggested the board take a look and see if there are other areas that have awkward wording, or are confusing and the board could do one set of amendments.

Bill D. said, to be perfectly honest, looking at and reviewing the subdivision regulations for amendments is a waste of the board's time. He said he would try, but he said it makes more sense to look at problems as they arise.

Bill D. suggested the topic of subdivision regulation amendments be placed on the agenda as a regular, ongoing matter so the board wouldn't ignore any problem and would spend time looking at the issues.

Don H. said he found reference to five acres page 415 in the RSA laws for minimum lot size for not requiring test pits.

Tom F. polled the board to see whether they would require test pits for the site. All the board members said they were fine with not requiring test pits on Frank H.'s property. Ed B. said that he interpreted that to mean the board would not look to have test pits on each of the lots for subdivision consideration. However, if Frank H. decided to put test pits on the property for his own purposes, that would be acceptable as well.

Frank H. said if he decided to build on another lot, or further subdivide, he might need test pits. The board said yes, that would be a requirement of the state for septic system approval.

Tom F. rejoined the board after the discussion of the Frank H.

**6. Correspondence/Communications**

**7. Reports of Committees**

None

**8. Pending Business**

Ed B. asked who was planning to go to the NH Office of Energy and Planning Board training in Manchester. It was determined that Don H., Bill D. and Ed B. would attend. Ed B. said he would sign participates up on line and work out transportation details.

**9. New Business (Applications)**

An administrative request from Kenneth Paiva to ratify two lots on Pond Circle, tax map 410, lots 79 and 82 was discussed. The board was informed that the town tax records show that Paiva's property is listed as two lots, however the Registry of Deeds shows it as one. The property owner, through his attorney Kevin Bruno, requested the board chairman sign an affidavit indicating the property is two lots for recording purposes.

Ed B. explained that he had been in contact with Kevin Bruno who explained that the property owner has always been under the impression that his property was two lots, something that he thought was confirmed by the town's tax map. During the process of

trying to sell one of the lots, a deed search revealed that the property is just one lot, not two.

Tara K. said her impression is the property is all wetlands at the end of Pond Circle Road. Don H. disputed Tara K.'s assessment. He said he believes the land in question is dry, but agreed the land further toward French Pond was wet.

Ed B. said even though Kevin B. thought it was an administrative decision to be made, Ed B. said he wanted to make sure the board look at it and make a decision on whether the chairman would sign the affidavit for recording purposes.

He said the board could decide to allow the chairman to sign the affidavit, or have him not sign it. Further, the board could recommend the land owner submit an application for subdivision for the planning board to consider.

Tom F. said that in his personal opinion that if the two lots were not recorded as such in the registry of deeds, the subdivision doesn't exist.

Tara K. said she was concerned about the wetlands issues and the existence of a pond between the two properties. She said even if they two lots are regulation buildable size she wondered whether septic systems could be approved.

Don H. said that because there is no record of it being two lots, he suggested they have to subdivide it.

Ed B. said based on the discussion, the best way to resolve the issue is to suggest they subdivide the land. He said right now, the planning board seems to be considering it one lot, a 9.2 acre parcel.

Don H. said the board doesn't know if lot 79 has been perc'd and can be sold as a buildable lot.

Tara K. said it leaves the legal burden to the landowner to determine whether it's buildable or not.

Ed B. said the board could go down the path of looking for a subdivision plan or a paper trail that may yield evidence of two lots and why they're enumerated on the town's tax map as two lots, but it likely wouldn't answer all the questions. The best solution would be to have the landowner submit a subdivision in accordance with the regulations for the board to consider.

Don H. asked that the board first make a motion and a decision not to sign the affidavit.

Bill D. made a motion to not authorize the ratification and signing of the affidavit that Tax Map 410 Lots 79 and 82 is a legally subdivided lot. The motion was seconded by Mike S. The vote was unanimous.

Ed B. said that perhaps the board should issue an advisory to the landowner suggesting that should he decide to pursue subdivision, he should do so in accordance with the town's subdivision regulations. Ed B. said the board probably shouldn't make a motion telling the applicant to submit the subdivision application as he may decide not to pursue it.

Ed B. said he would inform Kevin B. of the board's decision and of the suggestion that his client could submit a formal subdivision application should he decide to pursue matter.

10. **Other New Business**

There was discussion of alternatives for when the clerk cannot attend meetings. Bill D. asked that it be placed on the agenda for discussion. Bill D. said that in the last few months that he had been on the board there's been an abnormal number of times where the meeting was moved. Dates have been moved around, and schedules have been accommodated, Bill D. said. He said he appreciates the effort to make everyone's schedule work. He said that the board, however, serves the public and he feels that by moving the meeting times around the board is defeating that purpose.

Bill D. said he would like a policy or an agreement that when the clerk cannot be present that the board has two answers to that conflict. First, he suggested the board record the meeting as is happening during the present meeting and do a good job announcing themselves so the clerk knows who is speaking and can do the minutes from the tape. Bill D. said that the alternative would be to get Karen Hyde, the selectboard's office administrative help to take the minutes.

Ed B. said Karen H. works for the town, not the planning board, so she might not be available to do that work. Bill D. said he understands that she works for the selectboard, but perhaps she could be a substitute minute taker when the Planning Board Clerk was not available.

Bill D. said that would take care of the need to have someone take the minutes and the meeting could go forward as planned.

Tara K. said she would not attend the meeting if Ed B. was not present. She said he does a lot more than take the minutes. Tara K. said Ed B. keeps the meeting on track and is the board's knowledge base and does research and

has the background answers. She said she couldn't be the clerk and be a board member. She said that Karen could take minutes and fill in, but Ed B. is much more than just a minute taker.

Mike S. agreed and said Ed B. keeps everything organized and on track.

Bill D. said that he cannot promise that he can move his schedule around to accommodate another person's schedule. He added that by moving date's around to accommodate the clerk, the board runs the risk of not having a quorum and irritating the public. He said he doesn't think the board should move the meeting times around, period and the board ought to be able to fashion a solution that accommodates the clerk's schedule, but allows the board to meet.

Bill D. said the board knows what's on the agenda far in advance and it should be able to get the advice that's needed before the meeting to carry the meeting.

Don H. asked about the ZBA conflicting meeting. Ed B. said he had forgotten the board had at the previous meeting voted to move the permanent meeting date to the fourth Tuesday. That was compounded by the fact Ed B. said he was called out of town and the fact that the ZBA had to meet on by the date to meet the state law regarding public hearing. He said it was a very unique situation because the ZBA has typically meet only once a year.

Don H. said the meeting date was moved at his request so it wouldn't conflict with the North Haverhill Precinct meeting which conflicted with the Planning Board and required his attendance. There was one or two other times in the past the board moved the meeting to accommodate the clerk, but it was an exception.

Don H. said the main reason for moving it from the third to the fourth Tuesday was to accommodate his schedule. He said he didn't think it was fair for the board to have to wait for him to convene the meeting, or go ahead without him because he was in a meeting with the precinct commissioners.

Don H. asked that the board change the meeting to the fourth Tuesday to make sure he could attend to make sure the board had a quorum. He said he tried to get the precinct commissioners to change their meeting, but it wasn't feasible.

Bill D. said because of that, the planning board went ahead and changed the date of the permanent meeting without a full discourse of the board because he was not present. Bill D. said he was never asked if the fourth Tuesday worked for him.

Don H. said the majority of the board members present voted to move it to the fourth Tuesday and majority rules.

Bill D. said he understood that, but the way it was presented to him is that the full board made the decision, but that's not true because he didn't participate in the discussion. Bill D. said he's a member of the board and he wasn't asked because he wasn't present for the meeting. He said the decision to change the board's meeting date was made without all members of the board present.

Don H. said he apologized.

Bill D. said the fourth Tuesday is OK with him.

Don H. said he hopes there are no more conflicts, but he said he was sure there were going to be some conflicts. Don H. said the board should try to hold the meetings on the fourth Tuesday at 7 p.m.

Tara K. said the board should look for alternates again to make sure there's a quorum. Don H. said he agreed but also noted it's challenging just to get members for a full board.

Bill D. asked if the public has been informed of the meeting change to the fourth Tuesday. He asked if an advertisement had been placed in the Bridge Weekly.

Ed B. said the board decided not to run an ad and it is not required to do so either as long as the meetings are properly noticed with state law. Ed B. said when the first meeting was moved from the third to the fourth Tuesday, he posted notices in the post offices and in the town office alerting the public to the new meeting date. Ed B. also said the administrative staff in the selectboard's office is aware of the change of the Planning Board regular meeting date to the fourth Tuesday, so that's another way the public will be alerted to the meeting date.

Don H. said the dates of hearings for applications also get posted as well. Mike S. asked if the town's web site reflected the new date. Ed B. said he didn't know, but was certain that Jo L. would add it as soon as she knew about it as she's good about maintaining the site.

Ed B. said the board should also be aware that state law says the board must hold a public hearing within 30 days of receipt of an application. To meet that requirement, the board might not be able to hold its meeting on the fourth Tuesday without violating state law. Ed B. did say, however, that if the applicant signed a waiver allowing the board to defer the action to the regular meeting date, that would cover the requirement and protect the planning board. He also said that's very likely that applicants would sign that agreement if it wasn't too long and also in the spirit of cooperation.

Bill D. said there must be a way to make sure the meeting isn't moved just to accommodate the applicant. Ed B. said yes there was and that was a waiver to the date requirement.

Tara K. said there have been many other times the board has met on days it doesn't ordinarily meet, including public hearings for subdivision regulation dates and to consider legal issues and petition warrant articles.

Ed B. said he appreciates the need to keep the meeting date consistent and noted the unscheduled appearance of two members of the public as evidence of that need. He said customer service to the taxpayers and applicants is very important. Ed B. said he tries hard not to miss meetings. Don H. said it's happened twice in three years. Ed B. said the April 30 meeting was the third one.

David M. asked about deadlines for getting applications in for the next meeting. Ed B. said he learned at a training session last year that the board technically can't have a deadline for getting applications in for public hearing and review. The state law requires hearings be held within 30 days of receipt of an application.

Don H. agreed and recalled the lecturer saying a waiver for up to maybe 40 days would work and meet the spirit of the law.

Ed B. said technically, the board's policy regarding deadlines for applications has been removed.

Don H. said that no matter when an applicant brings in the application, the board has 30 days to act on it unless the applicant grants a waiver.

Ed B. said it's for the applicant's protection. By requiring the board to act within 30 days, it prevents boards from sitting on applications that may be controversial or undesirable to the community.

Don H. said the only reason the planning board needs any time is for the physical time for posting to make sure those state law requirements are met. He said the abutters have to be noticed and the advertisements and public postings have to be done at least 10 days in advance of the meeting.

11. **Public Appearances (Not Previously Scheduled)**

(See above)

12. **Comments of the Clerk**

Ed B. said the state has sent another letter regarding the work on Route 10 near the Clifford residents in North Haverhill. The board has received several notices of the work and it now appears that they are going to actually do it. Don H. read the notice aloud. Ed B. said it doesn't really require any action of the board, but it was a courtesy.

Bill D. read the letter from the state about the guardrail work and said it might affect the planning board because if there was a subdivision in the area, the state might like to know because of driveways. He said that's why the planning board received the notice and it was more than a courtesy copy as presented. He said the state is requesting information from the board if there's anything that might happen regarding that property. Ed B. said the board had talked about the project in the past.

Tara K. asked if the board could make recommendations for guardrails on Brushwood Road. Ed B. said that's a highway department matter and the planning board has no authority over the matter. He suggested that Tara K. could make a request .

Ed B. said the state also received notice from the state about work done in Mountain Lakes for dry hydrant work. It doesn't require any action by the board, but the state is required to notify the town of work being done in the wetlands.

13. **Comments of the Planning Board**

Tara K. asked about the discussion at the March meeting about the proposed chicken farm. She said she left the meeting when the discussion was happening. Ed B. said it was probably best not to rehash the matter because it was not any of the planning board's business and there's been some discussion that it was out of order.

Tom F. said was not wise to discuss the ZBA meeting last week because it wasn't pertinent to the planning board.

Ed B. said Howard Hatch was speaking to the board as a concerned citizen and the board listened and he said that goes back to customer service and listening to the public and meeting their needs, but it was probably out of order.

Tom F. said personally did not feel the discussion was out of order, but there's no reason to rehash the subject.

14. **Other**  
**None**

15. **Adjournment/Next Regular Meeting**

The next meeting will be May 28. The meeting adjourned at 8:30 p.m. on a motion made by Tom F., seconded by Mike S.

**Respectfully submitted,**

Ed Ballam, Planning Board Clerk