

Haverhill Planning Board Minutes Feb. 28, 2017

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 Bonanno

Howard Hatch

Mike Simpson

Tara Krause

Clerk Ed Ballam was present.

There were several people in attendance in the audience. Jacob Burgess, Tom Smith, Robert Thorton, Dubois

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2. Designation of Alternates

No alternates to designate

3. Agenda Approval

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

4. Approve Minutes of Previous Meeting

The minutes of the Jan 24, 2017 meeting, were approved on a motion made by Mike S. seconded by Mike B. The vote was unanimous with one abstention, Howard H. who attended a budget committee meeting.

5. Scheduled Public Appearances previously scheduled.

Don H. opened a public hearing for a lot line adjustment for Robert and Linda Stoddard and Robert and Cheryl Thornton for property on Clark Pond Road, North Haverhill, Tax Map 409 lots 17 and 18 at 7:02 pm

Ed B. said the application was noticed and advertised and it appeared to be complete with fees. He asked Tom S. if there were any changes to the plans that had been presented. Tom S. said there were no changes. The plats were distributed to the board for review.

Howard H. said he would recuse himself as he was an abutter. Ed B. said he didn't think it was necessary because he had no financial interest in it. Howard H. remained at the table. Ed B. said the decision about whether to recuse was Howard H's and the board's to make.

Tom S. introduced himself and gave an overview of the lot line adjustment request. He said he was surveying the Stoddard's property which is a 90 plus acre lot and directly abutting the Stoddards are the Thorntons who have just over an acre of land. In doing the survey, Tom S. discovered the Thorntons' septic system encroached on to the Stoddard property over the property line. The proposal is to move a lot line to make sure the septic system is on the Thorntons' property. The adjustment will also accommodate the state set back rules for septic systems from abutter's lines. Tom S. said the affected acreage is just over one tenth of an acre.

Tara K. asked when the septic system was put in. Tom S. said it has been there for years. Robert T. said it was put in by Larry Lavoie about 30 years ago. He said the property owner at the time had permission to put it on the land, but it was never surveyed exactly. Tara K. said technology has come a long way since then. Tom S. said that now that he discovered it, he decided it was best to take care of it and make the adjustment.

Don H. asked if there were any questions. Mike B. asked Tom S. if he had a copy of his 2017 surveyor's license. Tom S. produced it and Mike B. inspected it.

Don H. confirmed that the application fees had been paid. Ed B. said they had been paid, but the recording fees, should the board decide to approve it, had not been paid.

The hearing was closed at 7:07 p.m. Don H. called for a motion to accept the application as complete which was offered by Mike B. and seconded by Mike S. The vote was four to one abstention, Howard H.

Mike S. made a motion to approve the lot line adjustment of property found at Tax Map 409 lots 17 and 18. Mike B. seconded the motion. The vote was four to one abstention.

Ed B. said although he did not have the recording fees yet, unless someone was prepared to pay them at the meeting, he asked the chairman to sign the mylar and the plats as a matter of convenience. He promised he would not record the mylar without the fees being paid and in hand by the applicant or a representative. The mylar was checked for consistency with the plat and then Don H. signed and dated it along with the paper plats.

Don H. then called the next lot line adjustment open for a public hearing at 7:10 pm. The application was for Carl and Jennifer Begley, Barber Hill, North Haverhill, NH. Tax Map 411, lots 57 and 68. Ed B. confirmed with Jacob B., the applicants' representative that he wanted lots 57 and 68 considered first because the Begleys had a second application which would be influenced by the outcome of the hearing on the one before the board currently.

Ed B. said the application appeared to be complete, the abutters had been notified and the hearing was advertised. He said he also had received the fee for the application.

Jacob B. stood before the board and said the application is a reflection of what he had brought before the board at a previous meeting for review two months prior.

Ed B. reminded the board that there was another lot line adjustment application pending on the same night that was contingent on the one before the board. The board decided to take them as separate applications one at a time in succession.

Jacob B. described the adjustment, which was one of many the property had been undergoing in recent months. He said this one seeks to take 1.6 acres of land from lot 68 on the other side of the right of way and add it to lot 57.

Don H. said he did not think there was a right of way on the property as it was drawn on the plat. Jacob B. said that according to the subdivision plat that was recorded in the 1980s, he believed, there was a paper road to access the original lot. Don H. asked Ed B. if that was true. Ed B. said he would have to go into the vault to get the file to double check. Don H. said did not think there was a subdivision plan on Barber Road. Jacob B. said the right of way is reflected on the town's tax maps as well.

Mike S. asked if what the board was looking at was the original piece of property. Jacob B. said it was the original piece of property back in the 1980s. He said in December, 1.72 acres was added to the lot in question.

Don H. asked if the board had any questions. Hearing none, he said he wanted to make a statement. He said he was going to vote against the applications until there was a condition put on the mylar that said none of the lots could be sold until Barber Road is fixed. Don H. said he thinks the applicant is trying to work his way around the subdivision regulations by doing lot line adjustments and registering them with the registry of deeds and once doing so, he won't have to come before the board again to sell them because they're all recorded as separate lots. Don H. said he's been thinking about the application for the past two months when there was a preliminary review of the project. Don H. said if the applicant tried to complete the project as a subdivision, rather than incrementally move lot lines to get buildable lots, he would fall under the current subdivision regulations and be forced to fix Barber Road to town standards.

Tara K. said she did not disagree with Don H. but asked him if there was a regulation that could back up his decision to vote no. Don H. said he believes the board could just put the condition on the mylar. He said he thinks the board could approve the lot line adjustment with the condition that the mylar say the lot cannot be sold unless Barber Road had been improved to town standards.

Ed B. said the board might want to seek legal counsel before making that a condition of approval. He said Don H.'s concerns were legitimate, but the board probably needs to know where it stands legally before making that decision.

Tara K. said if the board wanted to deny it for a reason, she suggested it be denied because it creates a very strangely shaped lot and the town has a regulation that says the board can deny based on shape. She said it would be a very clean denial. It would be no because it's an irregular shaped lot.

Jacob B. said if that were the case, he said the applicant had already created irregular lots in the past in the same area. Jacob B. said he is not sure whether his client, Mr. Begley, would seek legal counsel if it was denied based on the denial because of an irregular lot. However, Jacob B. said that the board might not be able to defend its position because it had already approved irregular lots previously. Tara K. said Jacob B. to show her on the map the irregular lots that had been created.

Jacob B. said just two months ago, the applicant created "a weird shaped lot" and he pointed to it on the plat. Tara K. said there was a legitimate reason for that because of topographical

considerations. Jacob B. said that the access to the lot in question, 57, would be accessed from the right of way on the original subdivision that was recorded in the 1980s. He said the access would not be from Route 116. He said he realized that the proposed lot is irregular in shape, but he reminded the board the town doesn't have zoning. Tara K. said that was true, but the town does have a regulation upon which they could justify saying no in the subdivision regulations.

Ed B. said the regulation is discretionary so the board could say this one but not that one. Tara K. said that if Mr. Begley, the applicant would attend a planning board meeting and "be up front with us" it might make the process a lot easier. Jacob B. said he agreed.

Don H. asked for someone to make a motion to table the application until it could be proven that the property had been subdivided at some point in the past. Mike B. made that motion and Mike S. second it. The vote was unanimous. Ed B. said the board was in a public hearing and there were people in the public who might want to say something. He said maybe the board might want to listen to the public before tabling.

Mike S. asked the gentleman in the room if he had anything to say and he said he did. He introduced himself as Don Dubois, an abutter to the Begley property and also represents Camp Retreat and Don and Margaret Dubois and Norm and Nellie Dubois. Don D. said that by moving lot lines around, he's skirting the fact that he is moving in excess of 100,000 square feet of land. He also said there is no subdivision approval and the state has no idea that he is moving that much material the state inspects what is going on. Don D. said his biggest concern is not the fact that he's building a lot of house up there, the problem is all the water that is running off the property on to his property. Don D. said the water is destroying his property as every bit of the water from 20 acres is being channeled on to his property. He said his property is flooded from the run off and he has never seen it as bad as it is now and he's been in the area for 30 years.

Don D. said Mr. Begley is well aware of the regulations and is dancing around them to get what he wants. He also said that because Mr. Begley is building so many houses on the property, it stands to reason that he will want to sell them some day and when that happens, it will be a huge problem for the town. Don D. spoke at length about his issues with water and the excavation on the property.

Ed B. suggested to the Don H. that if there was no further comments, the public hearing should be closed. Don H. asked for a motion to close the public hearing which was made by Mike B. and seconded by Tara K. the vote was unanimous.

Ed B. confirmed that the vote to table the lot line adjustment was unanimous and asked for what reason did the board decide to table it. Don H. said he needs to see the original subdivision to prove there was indeed an original subdivision from which Mr. Begley is making the lot line adjustments. Don H. said he also wanted to know if Barber Road is a deeded right of way.

Ed B. asked Don H. who should provide it the applicant, or do you want the clerk to research the file. Don H. said the applicant should provide the proof of the original subdivision. Ed B. said he would recommend the applicant supply the information. He said the board needs the information

to act upon the applicants request, the should be the applicant's responsibility. Don H. and the board agreed. Ed B. said the board should make that a motion and take a vote on it.

Don H. then asked for the clerk to check with town counsel about whether a notice on the plat could be made indicating that none of the lots being created by lot line adjustments can be sold until Barber Road is brought up to town standards.

Mike B. said he would also like to ask for another condition on the ground of town subdivision regulations 4.1.10 on page 17. Which states that vegetation on the lot may be enhanced on request from the planning board. Tara K. said that the provision refers to a subdivision and what the board has before it is a lot line adjustment so the question is moot. Mike B. asked to check with the town's lawyer about whether the board could put a condition on the lot line adjustment asking for vegetation. Mike B. said the vegetation on Mr. Begley's land might reduce run off.

Don H. said he believes the board has the right to put restrictions and conditions on applicants and Ed B. But, he said the planning board ought to seek the legal opinion before making any assumptions. Ed B. said he would take care of get the lawyers' advice on the matter.

Ed B. also asked again to make the board was OK with having the applicant provide the information on the Barber Road subdivision. Jacob B. said he has that information available and will provide it to the planning board.

Ed B. asked the chairman to put the request in the form of a motion to make sure the applicant and the board knows what is expected.

Mike B. made a motion to direct the applicant to provide proof that the parcel being considered had previously been legally subdivided. Mike S. seconded the motion. Don H. asked Jacob B. if he could produce that document. Jacob B. said the documentation absolutely exists and he will provide it to the planning board. Don H. said that if the subdivision existed, Mr. Begley wouldn't have to keep moving lot lines to create lots. Don H. said that once lots 68 and 57 are created or modified, the planning board will have no further say over them which is why he wants to have a restriction on the mylar regarding the sale of the lots.

Don H. said he believes Mr. Begley is going to great lengths to try to avoid fixing Barber Road. Don H. said Barber Road is a "nasty road." Don H. said Mr. Begley is trying to get around the subdivision regulations. Ed B. cautioned the board about assuming what the applicant wants and stick to what is presented in the applications. He also reminded the chairman of the motion and second about the directive to the applicant.

Don H. called for the vote which was unanimous.

Jacob B. said the second lot line application was dependent on the first lot line adjustment so he was unable to advance that second request.

Ed B. said that because the second application had been warned and advertised for tonight's meeting, he suggested it be tabled at the applicant's request.

Tara K. said she would like to at least open the map and see what the applicant is ultimately looking to request.

Jacob B. said the second application depends on lot lines that would have been created from the first application, so when the board looks at the second application, it won't make much sense.

Ed B. said the board has a right to look at the second application. He added the meeting is duly warned, the abutters were noticed the meeting advertised. Ed B. said the board may want to look at the application before it tables it. Mike S. liked that idea. Tara K. said that the board might have additional questions for legal counsel from the second application.

The first application maps and paperwork was cleared and the second application was opened for review.

Ed B. said he probably should advise the applicant that he could withdraw the second application if he didn't want the board to consider the application. Jacob B. said he would not want to withdraw the application if he would have to re-apply, Ed B. said that a withdrawal would likely mean a completely new application with a new notice to abutters. Jacob B. said he did not want to withdraw the application. Ed B. said he just wanted to make sure the board didn't do anything the application didn't want to have done.

Ed B. said the second application from Mr. Begley, like the first had been duly warned and the abutters were notified and the application appears to be complete

Jacob B. said the presentation of the second application was contingent upon the first lot line adjustments. He said the second adjustment would take the long piece of land that stretches down to Route 116 and give half to lot 57 and lot 58 making both lots bigger and making lot 57 square on the right of way being built.

Mike B. said the second application was more straight forward than the first. Jacob B. said the applicant is trying to conform to all the rules and regulations, hence the two step lot line adjustment. He said the second application makes each of the other lots more conformed. Tara K. said that after seeing the second application, she doesn't have any objections to the irregular lot shapes. She said she still has objections to the road which are legitimate. Jacob B. asked the board to table the second application until next month because it is contingent upon the first application.

Mike S. made a motion to table the application for property on Tax Map 411, lots 56, 57,58. Mike B. seconded the motion. The vote was unanimous.

Ed B. asked if the board had any questions for legal counsel regarding the second application. Don H. said the questions from the first one will apply to the second one as well.

Jacob B. thanked the board for it time and said he would provide the documents as requested. Don Dubois also thanked the board for listening. Both left the meeting.

Don H. asked about a pending application in Mountain Lakes regarding the spillway and the precinct commissioners and Mr. Connole. Ed B. said he was going to bring it up under the next item on the agenda.

6. Correspondence/Communications

Ed B. said he had received an email from Bob Long, one of the precinct commissioners in Mountain Lakes and he said he would not have the necessary paperwork and application ready for this meeting for the subdivision. Later, Bob Long sent a second email with an application without the plats. Ed B. had given the board members copies of the application to see if it was what the board wanted as it had seen the plan preliminarily last month. Ed B. said the application looked like what the board wanted, but he had not received any payments or plats. Don H. said that as long as it includes the requirements for a minor subdivision, he was ok with it. Don H. said what has been sent so far looks good.

Ed B. said he's been waiting for correspondence for planning board spring training from the ODE state office, but has seen none. He said he would keep the planning board informed.

7. Reports of Committees

None

8. Pending Business

Under discussion of the update of the master plan Don H. said that someone from the board was going to check with the selectboard about forming a committee. Mike B., who is the selectboard member representative on the planning board, said the selectmen have no problem with forming subcommittees. Ed B. asked if the selectboard was up for appointing people to the subcommittee and finding volunteers. Mike B. said he did not ask the board that. Mike B. said perhaps the board could put out a sheet asking people to sign up at town meeting. He said the selectboard will appoint people from that list. Don H. asked that a signup sheet be available at both the polling on March 14 and at the deliberative session on Saturday, March 18. Mike B. said sure that was a good idea. Don H. said he thought all the different sections of the master plan should be listed out and people could sign up for. Don H. said there is Road, agriculture, parks and many different areas of focus. Don H. said it would be great to have three people on each committee. The committee could be as large as it needs, Don H. said adding that if that plan didn't work the board would have to solicit people. He added that maybe selectboard members would serve also. Mike B. said there appears to be nine different committees. Tara K. asked that the each of the subcommittees be enumerated so people will know what they are being asked to do. Ed B. said he would see what he could do. Ed B. said the committee would probably have to be selected by the selectboard, but the planning board could submit a list of possible candidates.

9. New Business (Applications)

None

10. Other New Business

None

11. Public Appearances (Not Previously Scheduled)

None

12. Comments of the Clerk

Ed B. said he took the liberty of writing a report for the planning board for the Town Report and put Don H.'s name to it. Don H. said he was find with it.

13. Comments of the Planning Board

Howard H. said he went to visit Barber Road and he looked the area over and could not match up what he saw with what is on the map. He asked if someone could go up on the property with him who knows what is going on to help him figure it out. Howard H. also asked how planting trees and or landscaping would keep water off Mr. Dubois' property. Don H. said he didn't think it would do much. Don H. said he thought the land owner was responsible for the water on his land and couldn't divert it on to another person's land. Howard H. said the town does it all the time. Mike B. said it comes of 4.1.9 in the subdivision about drainage. Ed B. reminded the board that has to do with a subdivision, and has nothing to do with a lot line.

Ed B. said to Howard H.'s point, the board has the right to ask for a site visit to look at what the application seeks to do. Ed B. said if the board wanted to go look at the property, it do it as a board and as a warned meeting. Ed B. said people have property rights and the board shouldn't be up roaming around on the property without the owner's knowledge and consent. Howard H. said he thought Harry Burgess invited him to go up and look last fall. Ed B. said if the planning board was thinking about going up with plans and together it would need to do so during a warned meeting. Don H. said maybe the board should go up and look at Mr. Dubois' property as well. Tara K. said Mr. Dubois has been in before the board at least four times with the same complaint. She said she didn't understand why Mr. Dubois wasn't trying to do something with the water himself to protect his property. Don H. said if it were his property he'd be digging ditches and trying ways to keep the water away from the buildings.

Ed B. said if the board wants to do a site visit, the board should make a motion to do so and he would make the arrangements to have the meeting happen by contacting the owner and the Burgess. Don H., Mike B. and Tara K. said they were interested in going.

Ed B. said the board needs to make a motion for the site visit. The board reviewed the dates and picked Saturday, March 25 as the day for a site visit at 1 pm. Ed B. said he would warn the meeting and notify the abutters. He said he thinks a letter by regular mail would suffice, but he would check to make sure it doesn't require additional certified mail. Tara K. questioned whether the abutters would be allowed on the property. Tara K. said Mr. Dubois has said Mr. Begley doesn't allow them on the property. Don H. said because it was a public meeting, he thought Mr. Begley would have to allow public on the property. Ed B. said he would check with town counsel about what would need to be done.

14. Other

None

15. Adjournment/Next Regular Meeting

Don H. asked for a motion to adjourn which was offered by Mike B. and seconded by Mike S. The vote was unanimous. The meeting concluded at 7:55 p.m.
The next meeting scheduled meeting is scheduled for March 28.

Respectfully submitted,
Ed Ballam, Planning Board Clerk