

Haverhill Planning Board Minutes March 28, 2017

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

1. Call to Order

The meeting was called to order at 7:08 by Chairman Don Hammond

Planning Board members present:

Don Hammond

Chris Luurtsema

Howard Hatch

Tara Krause

Clerk Ed Ballam was present.

Mike Simpson was not present.

Attendance in the audience. Harry Burgess, Don and Margaret Dubois

2. Designation of Alternates

No alternates to designate

3. Agenda Approval

Howard H. made a motion to accept the agenda as presented, seconded by Tara Krause. The motion passed unanimously.

4. Approve Minutes of Previous Meeting

The minutes of the Feb. 28, 2017, meeting, were approved on a motion made by Tara K., seconded by Howard H. The motion passed unanimously with one abstention, Chris L. as he was not a member of the board prior to the March 28 meeting.

5. Scheduled Public Appearances previously scheduled.

none

6. Correspondence/Communications

Ed B. said on March 25, the board had an Email from Mike Simpson that went to all members of the planning board except Chris L. wasn't on the email list. Ed B. said he sent out a reminder to everybody about the Barber Road site visit. There was an exchange of emails and Mike S. said couldn't make it because a family member was near death. As a result of the email exchange, Mike S. said he resigned, not only because of a family emergency, but an email from the chairman caused him to say he was done with the planning board.

Ed B. said he didn't know what effect the email had with the Mike S. that was purported to be from the chairman. It indicated that the chairman waited a half hour at the town office building waiting for others to for a half hour to go to the Barber Road site visit. It asked that when agendas and appointments are changed that the chairman be called personally because he doesn't have time to check email's daily. Ed B. said the email said it was sent from "my iPad."

Don H. said he doesn't own an iPad. He said he would again apologize for his wife who sent the email. He said she heard him say something and then went "shooting her mouth off."

Howard H. asked if Don H. was at the town office building on Saturday. Don H. said he was at the town office building for a half hour. Howard H. said he came to the town office and waited until 12:45 p.m. He thought there was going to be carpooling out to the site. He said it was very confusing. Don H. said he got to the town office building at about 1 p.m. or a little after, and waited until 1:30 and no one showed up. Ed B. said the time was always 1 p.m. to meet with Harry B. and Mr. Begley. So, when 1:30 came and went, Don H. said he decided to go home. Howard H. asked Don H. if he really thought that no one from the board would show up. Don H. said he thought it was pretty funny, but he thought that maybe Ed B. postponed because Mr. Begley wasn't going to be there. Ed B. said he confirmed it with Don H., in person, on Wednesday night at a fire meeting. Don H. said when he got home, it took him 15 or 20 minutes to open his email to find the reminder and he decided it was going to be after 2 p.m. and the board would be all done so he didn't go.

Tara K. said he understands it's his wife sending emails, but she said it was also the second time her emails have lost the board a member. Don H. said if the board wants him to resign, just say the word. He said he didn't need the headache any longer. Don H. as far as he's concerned, Mike S. was just looking for an excuse to get out anyway. Tara K. said he was a regularly attending member. Don H. said that maybe he would just resign. Ed B. said he didn't think that was the answer. He said the board should acknowledge that Mike S. has expressed his desire to resign and the board will need to notify the selectboard of the resignation and the vacancy. Ed B. said that the planning board would tell the selectboard he resigned for personal reasons because each was a personal reason – the death of a close family member and even the other issue with the email exchange is personal. He said procedurally, that's what the board should do. Anything else, like discussion about the incident that lead to the resignation, or the emails, is something completely separate from the resignation.

Howard H. said the selectboard has to recognize the planning board a little bit. He said the selectboard needs to recognize volunteers a little more. He said volunteers in Haverhill “get Shi* on” and get very little. He said volunteers are vetted very closely to make sure you meet everything to get on. He said it really shows up on the budget advisory committee and the highway advisory committee. They want input when there's trouble but they don't give any teeth to the volunteers and he said it's going to be an on-going thing with the planning board.

Chris L. asked Howard H. if he thought the current situation is such because the selectboard had not given the planning board enough support. Howard H. said it's not just the planning board, it's all committees that are volunteer in town. Howard H. said the fire departments are another example. He said in 10 years, maybe 5 years, there won't be any volunteers because people are putting families before volunteerism. Howard H. said in the past when the fire whistle went off everyone dropped everything and went. He said the selectboard is going to have to step up and do something because there won't be any volunteer firefighters soon. He said there's a saying in the town report that says volunteers and paid and they are not worthless because they're priceless. He said he didn't think the selectboard really meant that. Howard H. said he has volunteered on just about every committee and commission in town and only got paid for one and that was the cemetery commission. \$100 a year for two meetings. Howard H. said that since the town manager form of government was put in place, and the advisory budget committee works differently now. He said the budget advisory committee used to build budgets and did so

in a way that meant money couldn't be moved around. He said there was one article on the warrant this year that said the selectboard and the budget committee were against it and it passed anyway because no one would stand up and say why they were against it.

Howard H. said he didn't want to see Don H. quit, but he said he needed more practice in his position.

Don H. asked for other correspondences. Ed B. said the planning board did get some advice from the town attorney for the Begley property. He said it was a bit irrelevant now that the board has received advice from the town's lawyer, Walter Mitchell. Ed B. said the board asked a bunch of legal questions.

Don H. asked that the clerk follow up with the town attorney to see if the board could legally put a notice on the mylar before recording that before any of the lots are sold, the road must be upgraded. Ed B. said he would do what the board asked. Tara K. asked how the board could now put that restriction on the lots when it just approved the lot line adjustments this evening. Don H. said forget that he asked. He added somewhere along the line Barber Road is going to be held responsible for Barber Hill not being brought up to town spec's and when it happens, he said it won't have his name on it.

Ed B. reminded the board that the selectboard has to accept the road after it's been brought up to specs. He said it may never be a town road unless the parties petition for it. Don H. said because it's a private road and doesn't meet specifications, emergency vehicles don't have to go up the road.

Chris L. said isn't there a rule that says a lot can't be sold until a road is brought up to town specifications. Don H. said there wasn't any which is why he wanted to make a notation on the mylar. Don H. said the Barber Road applicant is circumventing the town ordinances. Ed B. cautioned the board about using that kind of language because Mr. Begley has an approved subdivision form 1991 and all he's doing is a lot line adjustments. Ed B. said Mr. Begley is not circumventing anything, rather he's following the process to get what he wants and there's nothing wrong with that. Tara K. said Mr. Begley has been as transparent as one could possibly be with his intent.

Chris L. asked is the process working the way it is because the lots already exist. Tara K. and Ed B. said yes. Ed B. said the Barber Road property is an anomaly. Project don't usually evolve like this. There were initial questions about whether there was a subdivision in the first place, and the applicant provided proof that there was approved in 1991. Therefore, the planning board signed off on the road the way it was in 1991 when it approved the subdivision. Ed B. said just by the questions the town's lawyer was asking indicates there's not much the planning board can do to make the applicant upgrade the road. Ed B. said the lawyer asked what would trigger an upgrade to the road if there is no subdivision. He said that question is pretty much the answer because there's nothing in the subdivision regulations that would require the upgrade. Ed B. said he thought the concessions the board got tonight were a win. Ed B. said if the applicant is going to divert surface water on to his own property and retain it, that's about as good as it is going to get regarding the plight of the abutters. Chris L. said that doesn't address the road concerns or how

the planning board can notify prospective buyers of the land about the road and the risk they are getting.

Tara K. said the planning board has in the past asked that notices be put on mylars spelling out the condition of the road and the liability the prospective purchaser takes on. Ed B. confirmed that the board had done that in the past and he would check with Harry B. about his client's willingness to add that to the mylar. Ed B. said he didn't see any way the board could ask for the road to be brought up to town standards before the lots are sold. He said he could ask the lawyer that very pointed question, and he thought he had. He also said on a question like that, he believes the lawyer almost wants you to give them the answer before they provide the answer back. They have to know all the angles and all the information and that's not easy to provide. There's no argument they're better off making opinions with more information, but at some point they should say no you can't or yes you can based on the information at hand. Ed B. said that ultimately, the planning board will have to make the decision anyway because lawyers are just advisors, they're not the ones that implement or make decisions. Tara K. said the planning board would probably still be liable anyway if an emergency vehicle doesn't make it up the road because a property owner could say they didn't understand that on language on the mylars, or might say why did you let them build there anyway.

Tara K. mentioned the Hastings Road proposal that led to the planning board's decision to allow no more than two homes be served by a driveway instead of just one house. Chris L. said that proposal involved his father-in-law, Dick Guy because there was some thought his family would build on the road which did not happen.

Don H. said Brooks Road is another subdivision that was warned emergency vehicles may not be able to travel the road. Don H. said if the board can do nothing else, it should push to have the mylar marked with the caution about emergency vehicle access and liability.

Don H. said he would like to have that language on the mylars.

In other correspondences, Ed B. said he had a conversation with Mountain Lakes Commissioner Bob Long about the proposed subdivision of land owned by Dennis Connole and the voluntary mergers. Ed B. said Bob L. thought the application was going to be considered tonight. He said he sent in all the information and thought he had completed the application. Ed B. said he didn't recognize it as a completed application and did not put it on the agenda. There was some talk about having a special meeting early in April to handle the subdivision and mergers. Ed B. said there was no money from the applicant and he had not noticed the hearing. He came to the board with two voluntary mergers, which is clearly not enough. Ed B. said Bob L. went back and got a subdivision application completed and submitted it to the planning board to see if it was what they wanted to see. Ed B. said he did not understand that it was a completed application because there were no plats and no check which are required for consideration. Ed B. further explained that the board has 30 days to act on any application. Because Bob L. thinks he submitted an application, the clock may be running which means the board might have to have a special meeting before April 25 to act on the application. Don H. said because there has been no plats and no checks received, until that happens, the application is not ready for the planning board's

review. Ed B. said he will tell Bob L. the board's decision and ask him to get everything prepared and submitted for consideration at the April meeting.

7. Reports of Committees

None

8. Pending Business

Don H. opened the discussion of a pending application submitted by Carl and Jennifer Begley for property on Barber Hill Road identified as Tax Map 411 Lot 56, 57, 58.

Harry B. introduced himself as the representative for the applicants and said last fall (2016) he attended a board meeting for preliminary discussion describing what the applicant wanted to do and the planning board said it would be best to show it on three separate maps as a means to an end. The first, Harry B. said, was approved in January and in February the applicants came back in with the next step and it was tabled. Harry B. said in the third step immediately following the tabling of step two, it was also tabled because the third step can't happen until the second step is approved. He asked the planning board if the applicant could have the last two steps on one map rather than having two separate maps.

Tara K. said she wanted to clarify that it wasn't that the planning board wanted two maps, rather the planning board rejected the proposal that took everything in during one proposal. Tara K. said the steps needed to be broken out into separate steps to achieve the objective. Tara K. said the board could not have approved it the way it was configured in the first proposal. Harry B. said he understood that it was confusing as it was a matter of lines being moved around on paper

Harry B. then proceeded to explain the lot line adjustment for lots 57 and 68. Harry said in January, the applicant got permission to expand lot 68 to be about 3.9 acres to include both sides of the right of way. In the second phase, Harry B. said the applicant would like to add lot 57 to 68 and create a new line. In the third proposal would be to take what is left of a leg of land that extends down to Route 116 and split it between two adjacent lots. Tara K. said if the board had done it the way Harry B. proposed, the board would have had to call it a subdivision and the road would have had to be upgraded.

Harry B. said that the previous Saturday, March 25, the board went out for a site visit. Harry B. said after the meeting, he had a chance to talk to the applicant about some of the concerns the board has about the project and make some recommendations. He said he would like to show the board members who were not present for the site visit how water flows and how it will flow with some improvements. He said currently, there is one culvert under the right of way that drains water on to the Mahoney's land. Harry B. said there's a proposal to create another culvert that will drain more water on to Mr. Begley's land and keep it away from abutters. There was much discussion about the second culvert and Ed B. suggested the abutters be included in the description of how the water was planned to be managed since it was their overriding issue.

After the abutters were shown the plan, there was cross discussion and multiple people speaking and explaining the finer points of the lot line adjustment.

After photos were examined and explained, there were some comments on the proposal by abutter Don D. he said the Begley's would be allowed to develop the property without improving the road and to create more buildable lots with the approval of the lot line adjustments.

Tara K. said she wanted to make it clear that the planning board asked for four different lot line adjustment applications, over the last several months to avoid calling it a subdivision. She said although the application process was a bit cumbersome in the long run it kept it from being a subdivision. Don D. said the applicant's biggest problem was probably Don D. (him) because he keeps wanting the water problem solved. He said if there was a way to fix the water problem, he would not object to the construction of the houses. Don D. said it did not appear to him that there was any resolution to the water issue and it is not on the plan. Tara K. said that it sounds like, in listening to remarks from Harry B. that there was some compromise possible and a second culvert has been proposed. Howard H. said he thought that a discussion between Harry B. and the applicant would yield the most benefit. Howard H. said, speaking as just a private citizen, it would be best for the applicant to put the runoff water on to his own property. Howard H. also said he thought it might make common sense for the applicant to put in some sort of retention pond to keep the water on his own property.

Don H. said a second culvert might help but he said something would have to be done with the first culvert to either cap it off or have some sort of diversion ditch that puts the water on to the applicant's land. Don H. asked for clarification of the property owned by the Dubois'. Don D. described the land he owns on a map and said it amounted to about 160 acres. He said he bought a lot of the land he now owns from the town. There was a lot of cross talking and Ed B. spoke up that there were at least two conversations going and he was not going to be able to record both to have accurate minutes.

Don D. said he and his family never had any problems with water until Mr. Begley started digging on his property and that's when all the water problems occurred. Don D. said he wouldn't worry about the lot line adjustments and subdivisions if the water problems were resolved.

Don H. said to be clear, there are no subdivisions happening. Ed B. said the applicant has proved the planning board with an approved and recorded subdivision from 1991 that shows exactly the same number of lots. The matters before the board now are only lot line adjustments to make the lots more buildable. Don H. disputed what Ed B. said commenting theirs is a whole new lot on the other side of the right of way. Ed B. said it was done by inch-worming the lots from one side of the right of way to the other. There were no new lots created, Ed B. said. Don H. said he didn't agree. Ed B. asked that Harry B. explain the process. Don D. asked a question, about Mr. Bagley's intentions. Harry B. said the applicant's intentions were to build two houses on either side of the end of the right of way. One of the lots already has an approved septic design and a drilled well. Harry B. explained that one of the lots that was on the Route 116 side of the right of way has been moved to the opposite side of the right of way and that was approved in January by this planning board. The matters before the board now was to eliminate the remnants of an unbuildable lot by adjusting two lot lines to absorb the remaining land.

Don H. said the lot on the uphill side of the right of way was created. Harry B. said it was moved and it was already a done deal. Harry B. said originally, back in the 1970s, the same land was subdivided into many more lots than what Mr. Begley currently has but they were later merged together. He said that is irrelevant now because the 1991 subdivision is what governs the land

now. He said there were originally 25 or 30 lots and that's why the numbers jump and are not sequential because many were merged.

Harry B. said there remains a large tract of land in back of the property. Ed B. said if that land was subdivided that's when the subdivision regulations would come in and the applicant would have to upgrade Barber Road. Harry B. said the applicant is well aware of that. As it stands now, he has just four remaining buildable lots and he wants to build on all four. Harry B. said he told the applicant that if he wants any more lots on his property, he was going have to pave and improve the road.

There was more cross talk with the planning board that was not audible and not reflected in the minutes.

Howard H. said it looks like there's a possibility that the applicant will be back in for more lots with a subdivision. Harry B. said that's possible, but the applicant is fully aware that if he wants more lots, he's going to have make significant improvements to Barber Road. Harry B. said he's already done a tremendous amount of work on the road.

Don H. asked Harry B. if the applicant was planning to cap off the existing culvert to have all the water go another culvert that would dump water on to his own land. Don H. said if not, legally, Mr. Begley would have to make the water divert right back on to his own land as soon as it came out on the downhill slope of the right-of-way.

There was much discussion about the location of the one and only culvert and its use. There was no consensus or agreement to cap the culvert which Harry B. said was in the lowest point on the right of way.

Don H. talked about the permit process for a road and the town form for building roads. Don D. also talked about the standards for building roads outlined in the town's subdivision ordinances.

Ed B. reminded the board it was talking about a lot line adjustment, not a subdivision, not road building. Don H. said he was not going to give the applicant any approvals that would allow him to build more houses when he doesn't have the correct permits for the ones he's already built. Ed B. said he was just a clerk and the board can do what it wants. Don H. said there has to be a time when the applicant is "reeled in" and not allowed to do anything he wants. Don H. said the board can't say this isn't a subdivision and let the applicant keep on building.

There was more cross talking making it difficult to hear the conversation.

Tara K. asked if there was a way to have the selectboard more closely look at the building permits when they come in and make sure it meets the selectboard's building permit criterion and then deal with the lot line adjustment. Don H. said the board can't let the applicant continue to divert water on other people's land. Tara K. said that's not a planning board issue.

Chris L. said it might not be a planning board issue but it is a selectboard issue and it has to be taken care of.

Harry B. said if the lot line adjustment was approved, the applicant would still have to get his building permits. Harry B. said the planning board isn't granting building permits. Don H. said the planning board doesn't issue building permits anyway. Don H. said building permits are just handed out at the Selectboard's office and not checked into. Don H. said he thought he would attend a selectboard meeting to make sure things got done right with building permits.

There was cross talk with the abutters and individual planning board members that was not audible or understandable.

Margaret D. said they've had issues with water for too long and they're getting the runaround from the state and the town and something needs to be done to keep their property from being ruined. She said the applicant is getting everything he wants while they're getting all the water.

Chris L. said he understood that the selectboard was kicking the can down the road and he empathizes with the Dubois' He said he was on the selectboard and he wouldn't allow the issue to be kicked down the road again. He said the selectboard has an obligation to act. The Dubois asked then the next selectboard meeting was happening, and Chris L. told them it would be the following Monday, March 3 at 6 pm.

Harry B. asked the board if they would approve the lot line adjustments provided he does something to keep the water on his own property. Tara K. said she didn't think the board could put that kind of condition on the property owner.

Ed B. said the planning board can't but the applicant and his representatives can and it sounds like Harry B. offered to make that stipulation himself.

More cross talking. Don H. was asking about the difference between two lots and Tara K. was speaking with other planning board members about the process of lot shapes. The minutes do not reflect all the cross talking as it was impossible to understand it and keep track of it.

There was some talk about how the irregular shape of one proposal would be resolved by the approval of the second proposal.

Harry B. said it may have been a mistake to characterize the different pieces of the proposal as phases, he said it is more like steps to achieve just one goal.

More cross talk on both ends of the table

Ed B. said just to focus the board, there are two applications that need consideration. Chris L. asked about Harry B.'s offer to fix the water issue. He asked about capping the lower culvert and Harry B. said the better way to handle it would be to angle it to flow on to the applicant's property.

Harry B. said in addition to angling the culvert the second culvert should be added.

Howard H. said in addition to diverting the water to the applicant's land, it should also be retained because if it is not, it might cause problems and run on top of the land down to Route 116. He said it's not too difficult to calculate the size of a retention area. Harry B. said he's not an engineer. Howard H. said he still thought it wouldn't be too hard to figure out the size and he said the applicant has a lot of machinery up on the property capable of doing the work. Howard H. said to Harry B. that as long as Harry B. is able to talk to the applicant and have him take suggestions, the complaints will stop and it might not be so difficult to consider his applications.

Chris L. said he is new to the board and wasn't aware of some of the issues the abutters have with water. He said drainage and run off seems to be the biggest issue that separates Mr. Begley from his goals of being allowed to build more houses on the property. Chris L. said that anything that Mr. Begley could do to alleviate those problems will only make it easier on him in the long run. Chris L. said he didn't think it was an undue burden to keep water off of abutter's land

Harry B. said he didn't think it was an undue burden either and he added that he believes it is the law to keep water on your own property. He said you can't divert it and send it on to your neighbor's property. Harry B. said not only is Mr. Begley diverting water on to his neighbors, he's increasing the flow with all the developing he's doing. Tara K. said Harry B. works for Mr. Begley and he's not a relationship counselor to patch things up between neighbors. Harry B. said he is still Mr. Begley's agent. He said that's why he threw out the possible solution. Harry B. said in conversations with Mr. Begley, the applicant is willing to keep the water on his property.

Tara K. asked if the board had approved as complete the applications at the last meeting. Ed B. confirmed that it had. Tara K. then made a motion to approve the lot line adjustment for Carl and Jennifer Begley for property on Barber Road identified as Tax Map 411 lots 57 and 68 with the recommendations from Harry B. that the applicant divert and keep all the water on his own property. Howard H. seconded the motion. Under further discussion, abutter Don D. said that he understands that Harry B. works hard for his client, but he wanted to make sure that it is noted that he and his wife Margaret work hard for their money and property too which is why they've spent so much time trying to protect their property. Tara K. said she just didn't want the planning board to jeopardize the relationship Harry B. has with his client. Don H. asked for the vote which was unanimous to approve the lot line adjustment for Tax map 411, lots 57 and 68.

The board moved on to the second lot line adjustment application or Carl and Jennifer Begley for property on Barber Road. Ed B. said the application had been warned, the abutters notified, the paperwork has been filed and fees paid. He said it appears the application is complete. Tara K. made a motion to accept the lot line application for property at Tax Map 411, lots 56,57,58. The motion was seconded by Howard H. The vote was unanimous.

Don H. asked for any other discussion on the second application. Hearing none, Don H. asked for a vote to approve the application. Howard H. made a motion to approve the lot line adjustment for property at Tax Map 411, lots 56, 57, 58. The motion was passed on a unanimous vote.

Harry B. said he was going to put language right on the mylar indicating that all surface water and culverts have to be on to his own property. Don H. said that he was in agreement with that language and promise.

After the vote was taken and as Harry B. and the Dubois' were filing out of the room, Chris L. asked to make a general comment. He said he was going to bring the issue up to the selectboard because under the terms of RSA 674:41, it does state the land owner must assume all liability for building on a Class 6 Road and for any damages for alteration to terrain or drainage. He said it's obvious that that has happened. He said that's the authority and power the selectboard has. He said the issue will be brought up at Monday's selectboard meeting. He told the Dubois' that he could not promise that a resolution would be found at Monday's meeting, but he said he would not let the selectboard kick it down the road one more time.

Don D. said the town has another form on its web site that governs building on class 6 roads.

Harry B. said that with road bans and mud season upon us, he wasn't sure that Mr. Begley would might not be able to do work like digging up culverts and moving them and he said it might not be the best time to do it anyway. He said it may take a month or two to start the project.

Don H. asked if he was planning to do it as soon as the weather permits. Harry B. said that would be the goal and certainly to have the work done before asking for any building permits.

Tara K. said as far as the road ban goes, she suggested that Mr. Begley already has all the necessary equipment to do the work. Harry B. said he will need gravel to do the work and it might not be easy to get a truck up into the area where the material would be needed.

Chris L. said if there was another building permit requested, it won't be completed until the work is done. Tara K. asked if the building permits go to the selectboard or be handled administratively. Chris L. said that is a whole other issue that will be addressed.

Don H. asked what the board wanted to do next, to go back to the agenda in order or to complete pending business.

Also under pending business, Ed B. mentioned that he had put out a number of sign-up sheets for those interested in serving on the long range planning committee to sign-up. The lists were available at the polls and town meeting day. Ed B. said there were at least 10 people, maybe more who signed up. He the board reviewed the names and mentioned that they would like the selectboard help to find some names that would be interested in serving.

The board moved back on to reading of correspondences

9. New Business (Applications)

None

10. Other New Business

None

11. Public Appearances (Not Previously Scheduled)

None

12. Comments of the Clerk

None

13. Comments of the Planning Board

Chris L. thanked the board for accepting him as a new member.

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 8:50 p.m.

The next meeting scheduled meeting is scheduled for April 25...

Respectfully submitted,

Ed Ballam, Planning Board Clerk