

Planning Board Meeting Minutes

April 12, 2016

6:30 PM

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Chairman Burns called the meeting to order at 6:42 PM.

Chairman Burns took roll call.

Members Present: Alan Theodhor - Alternate, Frank Lombardi, Mark Lufkin – Selectman Representative, Scott Burns - Chairman, Everett Kennedy, Christine Fillmore – Town Attorney, Michael Carifio - Alternate and Joyce McGee – Secretary.

Absent: John Tholl Jr.

Public Present: See attached list.

Chairman Burns appointed alternate Alan Theodhor as a voting member in the absence of John Tholl Jr.

Chairman Burns introduced Attorney Fillmore who explained that there was another town selectman present in the audience and so long as the two selectmen present didn't discuss town business or make a decision relative to the town then it was fine for him to be there.

Public Hearing(s):

1. Subdivision

#597 – Owner(s): Kimberly Grattan, Joseph Harris and Holly Harris Sullivan – who is/are requesting a Two (2) Lot Subdivision at 362 Kimball Hill Road, Tax Map 245 Lot 011 said lot is 87.30 acres. Lot 1 is to be 17.97 acres and Lot 2 is to be 69.33+/- acres, per plan of Timothy W. Sutherland, Land Surveying.

Mr. Sutherland was present and looking for final approval of said subdivision. He stated that Secretary McGee had a few corrections and that they had been made. He also told the Board that the plan showed 17.97 acres being taken out of the big piece to make two lots, Lot 2 will now be 69.33 acres. The land being subdivided out is predominately pasture and the rest is forest. The Board wondered if Lot 2 had access either from Rte 116 or Kimball Hill Road. Mr. Sutherland said that a driveway already existed off of Kimball Hill Road near stonewall as Rte 116 is steep.

Frank Lombardi read through the subdivision checklist.

A motion was made by Alan Theodhor to accept the application as complete, seconded by Mark Lufkin. All in favor, motion carries.

No further discussion.

4/12/16

<u>Name</u>	<u>Address</u>
Jody Hodgdon	Po Box 70, Littleton, NH 03561
PICKARD HARRIS JR	123 OLD EAST RD WHITEFIELD
MARK VANDER-HEYDEN	DALTON NH
Allison Scobie-Carroll	200 260 Hall Rd Whitefield
Amy Scobie-Carroll	260 Hall Rd Whitefield
Robert C. Maroon JR	107 Hall Rd. Whitefield
JALLY MAROON	107 Hall Rd. Whitefield
KATHLEEN KOPP	65 ELM ST. WHITEFIELD, NH
Peter Corey	38 S. Whitefield Rd
John Ritt	104 Main Street Lancaster
Kevin Caron	237 Hall Rd Whitefield
Carlene Abbott	237 Hall Rd Whitefield
RALPH McLEAN	170 HALL RD, WHITEFIELD
Tim Sutherland	10 LONGVIEW DR, LANCASTER, NH

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A motion was made by Frank Lombardi to accept the plan as presented, seconded by Everett Kennedy. All in favor, motion carries.

Minutes: Board deferred the minutes of March 9th and April 6th.

Public Hearing(s):

2. Pursuant to RSA 676:4-a Revocation of Recorded Approval - Continuation

#596 – Owner(s): Harris Family Trust, Richard S. and Nancy J. Harris Sr., Trustees - to determine whether or not to revoke, in whole or in part, the 2008 so-called Rexford subdivision involving Map 218 Lot 51, Map 218 Lot 51.1, Map 218 Lot 51.2, Map 218 Lot 51.3, Map 218 Lot 51.4, Map 211 Lot 14 and Map 211 Lot 15, and the associated 50' right of way onto Hall Road. The Board is considering revocation because the applicant or successor in interest to the applicant has failed to perform a condition of the approval within a reasonable time specified in the approval, or if not such time was specified, within the time periods for vesting under RSA 674:39, and/or because the time periods specified in RSA 674:39 have elapsed without any vesting of rights as set forth therein, and the plat, plan or approval no longer conforms to the applicable ordinances or regulations.

Mr. Harris requested permission to record the meeting. Chairman Burns stated, "you may".

Attorney Hodgdon handed out a letter from Larry Rexford regarding the 2008 Rexford Subdivision regarding monies spent on the development (see attached). Board members had a chance to read the correspondence, Chairman Burns asked if there was any discussion.

Attorney Hodgdon stated that there was evidence presented that the Rexford Family had invested substantial monies and that when Mr. Harris bought the property as a subsequent owner this development was passed on and that the board should conclude that the revocation be denied.

Attorney Riff stated that just putting in a dirt road is not substantial and the 6 lots are not even done. It would cost roughly about \$20,000, 80% return on \$150,000 selling price, 20% outlay to profit and have a vested right. The logging road is essential if that is substantially complete we would have a lot of road around here like it. I ask that you find the 2008 plan not complete and revoked.

Attorney Hodgdon referred to AWL Power Inc. vs City of Rochester stating that vesting can occur without actual construction. Rexford plan was to build the road and they intended to sell off lots unfortunately it did not come to fruition as father passed. In the court case it was determined that the developer acted in good faith, the court found that AWL Power Inc. showed substantial burden and the developers rights were vested.

A motion was made by Mark Lufkin not to revoke the subdivision in light of the new letter from the Rexford's, discussion took place.

Frank Lombardi stated that we should be following guide and bring up a few things before making decision. Before Mr. Harris took over subdivision it was submitted to the Board in 2005 with condition of state approval that happened in 2006 but the Planning Board never signed until 2008 which is when the clock began. If you look at the CDG it's not as clear as one would like, the Board is working on it to see what is actual being stated. Mr. Lombardi referred to page 35 of the CDG definition of Development which states: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation. Also, included in this definition is subdivision of the land and demolition of structures. Does the CDG apply to the subdivision or is one to refer to the Subdivision Regulations? The CDG over rules the Subdivision Regulations page 15: IX - c Effective Period of Development Plan the guide states: The development shall be constructed in a timely manner. The development shall be subject to revocation under the following conditions: c. Final plan time limit: The applicant must undertake and complete the development of an approved final plan within three years from the time of final approval. For the purpose of this section, a development is substantially complete once all building and engineering improvements (water, sewer, streets, curbs, drainage, lights, fire hydrants, etc.) are installed and completed in accordance with applicable regulations, at which time the Planning Board or its representative shall inspect the development and issue an occupancy permit. Failure to develop within the specified time limit and improvement requirements shall cause a forfeiture of the right to proceed under the final plan and require re-submission of all materials and re-approval of the same. The question - Is there any items that may not have been completed? Issue of the road is the cul-de-sac not being completed. Mr. Rexford's letter states 75% complete. If not fully complete and if it was revoked it would give the landowner a new starting time, then the plan could be adjusted to a design he wants and the time starts over. It's best to follow the guide.

Mr. Harris brought up again that Exit Realty had asked about the subdivision two years ago and why now are you voicing your opinion. Are you looking to revoke every subdivision that doesn't comply?

Frank Lombardi – It's very challenging that the road needs to be finished.

Mr. Harris – Then why didn't you revoke it back then?

Attorney Hodgdon – Vesting of Rights, does the Board find it vested under the RSA?

Frank Lombardi – The CDG is more stringent, we were not aware of it until we met with Attorney. We are learning more about this guide as we read and what it means.

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Chairman Burns stated that we need to vote, is there a second to Mark Lufkin's motion. **Chairman Burns seconded the motion.**

Attorney Fillmore stated that the motion should not be on a negative motion, you need to make the vote on something.

Mark Lufkin withdraw the prior motion.

Mark Lufkin – I would like to keep the subdivision as is.

A motion was made by Mark Lufkin on revoking subdivision, seconded by Alan Theodhor. No further discussion took place. Chairman Burns went around the table. Frank Lombardi and Everett Kennedy voted in favor (yes) of revoking subdivision, Mark Lufkin and Alan Theodhor voted (no) against revoking. Chairman Burns voted no due to a tie. Motion stands not to revoke said subdivision.

3. Preliminary Master Plan (Continuation)

#594 – Owner(s): Harris Family Trust, Richard S. and Nancy J. Harris Sr., Trustees – who are requesting an expansion of use to their existing Mobile Home Park, Tax Map 218 Lot 050, 051 and 053.

Attorney Hodgdon - Would like to take the boundary line adjustments first before the master plan.

Chairman Burns – Master Plan should come first and we need something regarding the whole lot.

Attorney Hodgdon – We are going to have to proceed with the boundary line either way.

Chairman Burns – We will proceed with the Master Plan.

Surveyor Mark Vander-Heyden - Presented the board with a preliminary plan.

Chairman Burns – What is going to happen to the slice of land in front of Carlene Abbott property (218 Lot 052)?

Mr. Harris – Nothing that was part of the subdivision, nothing I did.

Frank Lombardi - Home 41 and driveway needs to be 25' away from abutters boundary line.

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Mr. Harris - Driveways don't need to meet the setbacks.

Frank Lombardi – Referenced CDG page 21 - #29 Setbacks.

Mr. Harris – If it's in there then it needs to change.

Everett Kennedy – You will need 600 feet of space between units with room for turning, CDG page 30 – D. Activity – Residential #4.

Mr. Harris – That proposal is for the future, I never was asked about parking per mobile home before.

Everett Kennedy – We are asking these questions because it's part of the Residential development criteria so it's good to know.

Mark Vander-Heyden – Can provide more area for parking which will include driveway.

Attorney Riff - What are you doing with the remaining acreage (Tax Map 218 Lot 051)?

Mark Vander-Heyden – If Mr. Harris developed large lot then he would have to come forward to the Board.

Mr. Harris – It's for sale right now.

Chairman Burns – You need to put on what your plans are for the rest.

Mark Lufkin - Is there a reason why the Rexford's never subdivided the rest of lot 051?

Mr. Harris – It's undevelopable, wet.

Chairman Burns – So it's open space?

Mr. Harris – No, it's for sale.

Frank Lombardi – Wetland is not considered open space.

Mr. Harris – It has taken me 12 years to do what I have done so far.

Attorney Riff – If this is a Master Plan, what are you doing with the rest of the lots? Expansion of a Mobile Home Park is not allowed in the CDG.

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Mr. Harris – Where does it say it? I've been to the Board eight times and it's been allowed. It's your interpretation.

Frank Lombardi – The guide can be taken as prohibitive or permissive. If it's not stated in the CDG then you can look at it two ways.

Attorney Hodgdon – Mr. Harris had been in here and it's been allowed using the same CDG each time. CDG page 29: Activity: Residential when it says, 'such as', it means including but not limited to.

Attorney Riff – Handed out an Addendum to Objection on Behalf of David Dodge et al, this was referred to regarding the "such as" phrase and how it is treated. Items that are not specifically included can only be approved as special exceptions or variances by the ZBA. (see attached).

Attorney Hodgdon – Attorney Riff points out that expansion is not allowed, but the Board has voted on expansion 6 or 7 times. If it wasn't allowed, then the Board would have contradicted themselves.

Mrs. Maroon - First time applied for original park in the wetland you had more than two trailers. I think the records would show that.

Frank Lombardi - You were approved for a certain amount of trailers and when you came to the board you would come in telling us you had so many units left that you were approved for.

Attorney Fillmore – Chronology of file on trailer approvals (get from Christine)

Time limit of three vs. five years was discussed. The three year is what is in guide.

Peter Corey – All the trailers, are they part of the original Master Plan or subsequent plan?

Mr. Harris – Not part of the original Master Plan.

Peter Corey – Additional applications were submitted?

Mrs. Maroon – The different lots have spread.

Mr. Harris – In time a plan was needed. I have a vested right.

Everett Kennedy – I want to see where the original homes were to be. How many approved.

It was noted that Mr. Harris had revised his plan in 2006

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Attorney Riff – I have concerns of a conflict of interest with Mark Lufkin. Mark are you cousins with the Rexford's?

Mark Lufkin – yes, but my decision was not based on them being my cousins, 3rd or something. I believe there is substantial completion with the construction.

Mr. Harris – I have talked with you many times Mr. Riff.

Attorney Fillmore - The law allows for the person of conflict to recuse himself or not. I do not believe that a 3rd cousin or something would call for it.

Attorney Riff – Objection and asked for recusal and to take another vote.

No action was taken on another vote.

Mr. Harris – I was approved for 23 units in 2006.

It was agreed that the CDG needs to be worked on. Attorney Fillmore - The Board needs to do some thinking about what has been heard and take into account what both Attorneys have said. Address, is it permitted in the CDG or not.

2006 plan and 2009 plan don't show the same areas of where the trailers were to be located and Mr. Harris didn't ask the Board for permission to change location when installing the homes.

Mr. Harris – Things change when you start digging, ledge was part of it.

Attorney Fillmore – Is there something that showed where they were going?

Mr. Harris – 911, occupancy permit.

Chairman Burns – Did you make that request at the time of where they were going do to the lay of the land.

Mr. Harris - No, only occupancy permit which have been approved separately over the last sixteen years. I have not expanded what was approved on Master Plan.

Frank Lombardi – Are we looking at this as a new park or an expansion of the existing?

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Chairman Burns – We need to think about it. Maybe for the future sites (Homes 41-44) as expansion. They would be contiguous. You mentioned house lots and the back area being undeveloped.

Mr. Harris – One family house lots at the moment.

Attorney Riff – And so isn't this one (Lot 050).

Frank Lombardi – Lot 050 needs 25' showing for driveway setback.

Everett Kennedy – Nothing done since 2008, abandoned.

Mr. Harris – As long as you pay taxes on it.

Everett Kennedy – It was abandoned and trees growing. No longer the same use.

Mr. Harris – You can't take the grandfather status away.

Attorney Fillmore – Understanding from the assessment card in 1997 mobile home was valued at 1,000 until 2003 note states no value, owner is from Mass and not legal or primary residence. It was on the lot until Mr. Harris moved it recently.

Mr. Harris – To say that it has no value it is not true, aluminum value.

Frank Lombardi – Could you move it (driveway) 25' setback it would be more acceptable and give the distance.

Mr. Harris – If that was your request, I would entertain it.

Frank Lombardi – Would it be possible?

Mark Vander-Heyden – It would crowd septic but could be done.

Frank Lombardi – Driveway is a change of use.

Chairman Burns - Shawn White had Mr. Harris fill out permit because it was going from one residence to two. Which we have not voted on.

Everett Kennedy – It is not 25' away at this time.

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Mr. Harris – I will get a variance if I need to, it's a legal driveway.

Everett Kennedy – No the driveway does not exist, it's abandoned.

Mr. Harris – A small family is living there, i.e. wildlife.

Chairman Burns – Would request 25' setback on that lot.

Mr. Harris – It's not abandoned.

Attorney Fillmore – Read meaning of abandonment. Not prepared to give you an opinion on the law as other attorney's may not agree.

Attorney Riff – Objection, as one lot expansion from here to here is not allowed.

Mr. Harris - What would it take to satisfy your client?

Attorney Riff – Buffer where it was cut along the road, limit the Rexford Subdivision to single family homes, lot 50 one home and get rid of other home not, not expand the park. Cutting before approval violates law.

Mr. Harris – Director approved and it showed approval was pending on project.

Frank Lombardi – Is lot 51 for sale.

Mr. Harris – Yes

Frank Lombardi – If contiguous lot are we looking at an additional line.

Mark Lufkin - Are you selling or renting?

Mr. Harris - Just the mobile homes not the land.

Attorney Riff – I am willing to sit down and mediate with Attorney Hodgdon.

Frank Lombardi – Would it be considered as a park, the one lot.

Mark Lufkin – Attorney Riff has made an offer to sort it out in some way is Mr. Harris willing to talk? Maybe you should sit down and come to an agreement, if possible.

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Mr. Harris – Just kicking the can down the road.

Frank Lombardi – The Absolute Criteria asks if there are any conflicts.

Mr. Harris – Why didn't the other side buy it they have the means.

Mr. Maroon – How much do you want for it right now?

Mr. Harris – You come to my office and we can talk about it.

Mrs. Maroon – It was supposed to be a house development not a trailer park.

Chairman Burns – As one member this is not a complete Master Plan.

Mark Lufkin – Both sides need to get together and come back with some compromise, if not then the board will need to make a decision.

Frank Lombardi – You need to follow the guide, 25' setbacks.

Everett Kennedy – I agree with Mark Lufkin.

Attorney Hodgdon – Who do you represent Attorney Riff, Mr. Dodge? What terms to get together and who else would be part of this?

Attorney Riff – I will have to talk to David Dodge and everyone that has an interest in it.

Frank Lombardi – Need to listen to abutters concerns.

The Board agreed that the Attorney's get together. Attorney Fillmore advised that it was in the authority of the board to do this.

Attorney Hodgdon – Can possible have it done for next meeting.

Attorney Riff – Not on my schedule, family comes first.

Mark Lufkin – Parties can agree on stopping the clock.

Attorney Riff – Agreeable on stopping the clock.

Mr. Harris – What are the boards concerns?

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Chairman Burns – 1. What is happening with the remaining land of lot 51, should there be a line dividing homes 36-38.

Mr. Harris – Only if sold then divide.

Frank Lombardi – No other phases involved.

Mr. Harris – Nothing can be done until sold.

Chairman Burns – Our suggestion is that we would like to see it subdivided off.

Frank Lombardi – 25' setback on driveways and buffers for the character of the area.

Mr. Harris – The character of the area does not show any buffer. Discrimination for manufactured housing.

Everett Kennedy – Originally you said you would have a buffer along the road and now it's cut down.

Mr. Harris – That was an informational meeting, I would be willing to do what my abutter's have, character of the area. (Mr. Harris showed pictures of the area homes).

Mrs. Maroon - The road is older than the town of Whitefield, scenic road.

Mr. Harris – They are non-conforming.

Mrs. Maroon – Some were built in the 1700's.

Everett Kennedy – Are you willing to work together?

Mr. Harris – If you vote it down you have a Board of Adjustment.

Frank Lombardi – If you talk you are at least trying to resolve it. Come to us with the modifications and what is being proposed.

Mark Lufkin – Asked for a 5 minute recess, Everett Kennedy agreed - 8:45 PM

8:48 PM – Meeting resumed.

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Frank Lombardi – We would propose suspending the starting of the time clock so that you can meet with Attorney Riff and compromise on some of the issues.

Attorney Riff – Looking at a deadline of June 14th agreement if not then July meeting.

Mr. Harris – Don't need much time.

Attorney Hodgdon – Would the Board entertain a meeting in late May as June is busy.

Everett Kennedy – We could move schedule around.

Mr. Harris stated he was okay with suspending time clock.

A motion was made by Frank Lombardi to suspend time clock for preliminary plan deadline and to start the clock at the time of the meeting were the board left off.

Attorney Hodgdon – Who is in this group and who is coordinating this?

Attorney Riff - Needs to know how many will be involved, he has done this before.

Mr. Harris – I have changed the maps twice this has been a burden on me to keep changing.

Attorney Riff – Can you authorize your surveyor to give me a copy of the plan.

Mr. Harris – Do I need to revise it again?

Mark Lufkin – You need to go through the criteria list.

At this time, it was noted that the CDG that everyone had did not include the criteria list, so copies were given out.

Frank Lombardi – The guide is flexible, you need to compromise and resolve some of the conflicts.

Mr. Harris – Not very flexible, I am paying for it in my opinion.

Soil questions came up on depicting them on the plan. Mark Vander-Heyden informed the Board that they were already on there.

Chairman Burns asked that the board gets back to the vote at hand.

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A second by Mark Lufkin. All in favor, motion carries.

A motion was made by Alan Theodhor to continue the Preliminary Master Plan and the Lot Line Adjustments until the next meeting, seconded by Everett Kennedy. All in favor, motion carries.

Minutes:

Attorney Hodgdon handed a letter with a few supplements that he would like to see in the draft minutes of March 9th meeting. (see copy)

A motion was made by Mark Lufkin to table the minutes of March 9th and April 6th, seconded by Alan Theodhor. Frank Lombardi felt that the amendment should be dealt with now since someone wanted to change the minutes. Attorney Fillmore stated that the board could take this information and make sure it jives with the draft minutes. All in favor to table, motion carries. These minutes will be looked at on May 10th meeting.

Merger:

- David Scalley submitted an Application and Notice of Voluntary Merger Pursuant to RSA 674:39-A for Tax Map 103 Lot 059 and 060. **APPROVED**

Development Permit(s):

-Ball, Bradley & Ada – 188 Jefferson Road, Tax Map 226 Lot 089: To construct a 10' x 38' addition on to existing Mobile Home. Slab is already there. Meets all setbacks. **APPROVED**

-Lupton, Elmer & Claire – 75 Newell Lane, Tax Map 244 Lot 008: To place a 3.99 W Residential Solar PV Array, net-metered and mounted on the house roof. **APPROVED**

-Skillin, Wayne – 291 Colby Road, Tax Map 233 Lot 049: A letter of enforcement was sent by the Board of Selectmen on 4/11/16 asking Mr. Skillin to comply with Town's permit process.

Other Business:

- Do to the submittal of a 3 lot subdivision in town the board wanted to know if there was a standard lot size. Joyce McGee and Frank Lombardi did some research and .66 of an acre keeps coming up. Attorney Fillmore agreed that had been used in the past. Chairman Burns stated that there are other smaller lots. Joyce McGee stated that these would be new lots. Mark

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Lufkin said the Hammon's are looking for paperwork on the sewer line that was installed. Frank Lombardi said the lot is up hill and very steep off of Park Street, would need to bring in a lot of fill.

Everett Kennedy thought a letter should be sent to Mr. Stiles stating that nothing has been approved and he needs not do anything until the May 10th meeting.

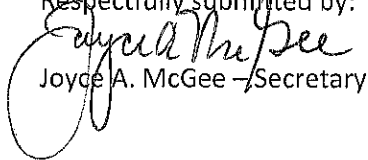
A motion was made by Everett Kennedy to send Mr. Stiles a letter to this affect, seconded by Mark Lufkin. All in favor, motion carries.

- State of EOP is wanting a survey on 2015 Dwelling Units – Joyce McGee will make sure this is done.

No other business came forth.

A motion was made by Everett Kennedy to adjourn the meeting at 9:28 PM, seconded by Alan Theodor. All in favor, motion carries.

Respectfully submitted by:


Joyce A. McGee – Secretary


Scott Burns – Chairman

April 11, 2016

Town of Whitefield Planning Board
56 Littleton Road
Whitefield, New Hampshire 03598

Re: 2008 Rexford Subdivision, Whitefield, New Hampshire

Dear Board Members:

I have been asked to provide this letter as a supplement to the information provided by my brother, Carroll Rexford, at the Board's March 9, 2016 meeting relative to the issue of the possible revocation of the 2008 Rexford subdivision now owned by the Harris Family Trust.

As previously stated, the development of this subdivision was done as a partnership among my father (the owner of the land) and my brother Carroll and I, who performed the actual labor and provided the materials associated with the project. Our in-house cost expended on this project was approximately Thirty-Five Thousand Dollars (\$35,000.00). If this work was performed at a retail cost to a third party the cost would have been significantly higher. We considered the project at least seventy-five percent complete, with an approximate in-house cost of Eight Thousand Five Hundred Dollars (\$8,500.00) remaining at the time we stopped work. In my opinion the development project was substantially complete at the time we stopped work, and the final portion of the road would have been completed upon the sale of the first lot in the subdivision, consistent with the practice commonly used by developers in Whitefield at that time. Unfortunately the sale of individual lots did not occur as contemplated due to the death of my father.

Sincerely yours,


Larry Rexford

cc: Richard Harris

TOWN OF WHITEFIELD

Addendum to

Objection on Behalf of David Dodge et al

to

Plan(s) of Richard Harris

NOW COMES David Dodge and others by their attorney, John L. Riff, IV, and respectfully update their objection to the Plan(s) of development proposed by Richard Harris for Tax Map 218, Parcel 51, 50 and 53, as follows:

Overview

1. There are four additional reasons why the Applicant's Plans should be denied.
 - a. The Guide's "such as" phrase does not include items that are not mentioned.
 - b. Items that are not specifically included can only be approved as special exceptions or variances by the ZBA.
 - c. The Planning Board should not consider the three Plans separately but rather as one Plan.
 - d. The Applicant has violated NH RSA 227-J:9.

The Guide's "such as" phrase does not include items that are not mentioned.

2. At the last meeting the Applicant argued that the language of Part D. Activity: Residential included things that were not listed.
3. Specifically, the Applicant noted that the Residential section of the Guide begins by stating "Includes all residential uses such as...." with emphasis on the "such as" portion of the opening paragraph.

4. To the Applicant, the "such as" language means that the list of allowed items, which follow the "such as" language, is not exclusive and includes things that are not listed.
5. This interpretation is incorrect and unreasonable, and should be disregarded, for the reasons that follow.
6. First, the phrase "such as" means "for example."
7. "For example" means "1. One that is representative of a group as a whole. 2. One serving as a pattern of a specific kind." The American Heritage College Dictionary, 3rd Ed.
8. In other words, "such as" means the specific things that follow the phrase or things like those listed.
9. In this case, the specific things that follow "such as" are "multiple family dwellings, townhouses, duplexes, manufactured housing, presite built housing, group homes boarding and rooming houses, nursing homes, public and private schools, residential uses that also provide meeting places and places for public assembly with incidental office space and/or public and quasi-public recreational use, child care (as accessory use), home occupations."
10. What does not follow "such as" are "manufactured housing parks."
11. Therefore, because "manufactured housing parks" were not specifically listed after "such as" they are not part of the "such as" items.
12. Thus, "manufacture housing parks" are not allowed under the Guide.
13. Second, the Board should look at what is left out of the definition clause.

14. Typically, if the intention of a clause is to list items but not be limited exclusively to the listed items, the clause will also include the phrase "but not limited to," to indicate that the list is not exhaustive. That phrase is not included in the subject clause.
15. Had the drafters of the Guide intended to include other uses, besides what was listed, the drafters would certainly have drafted the clause to read: "Includes all residential uses such as, *but not limited to*....,"
16. Since the expansive language of "but not limited to" is not included, the only reasonable interpretation is that the listed uses are the only allowed uses.
17. So again, because "manufactured housing parks" are not included they are prohibited.
18. Third, the Applicant's argument also fails when one considers the implications of adopting his position.
19. If the Planning Board were to adopt the Applicant's interpretation, the purpose of the Guide would be nullified.
20. If everything and anything is allowed, the Guide has no purpose.
21. While the Guide is suppose to be flexible, it is not suppose to be so flexible that it whips back and hits the abutters in the face.
22. Fourth, we know that "manufactured housing parks" are not like or similar to the other uses listed.
23. The Guide has a separate definition for manufactured housing parks and New Hampshire law specifically addresses manufactured housing parks separately and allows towns to treat and deal with them differently.

24. Therefore, it follows that because manufactured housing parks are not like the other listed items, manufactured housing parks are not included in the "such as" phrase and thus, not allowed under the Guide.
25. Fifth, if there is any ambiguity with respect to the meaning of the Guide, then the Planning Board should not act until that ambiguity is removed.

Items that are not specifically included can only be approved as special exceptions or variances by the ZBA.

26. Even if the Planning Board believes that a manufactured housing park may be allowed, such belief still does not provide the Applicant with the necessary foundation to have his application approved.
27. Where the Guide is silent with respect to a proposed use, the Planning Board does not have the authority approve the proposed use unless and until the Zoning Board either approves it as a special exception or variance.
28. At this time, the Zoning Board has not approved the Applicant's proposed use as either a variance or special exception.
29. Therefore, at this point, because the Guide does not specifically state that manufactured mobile homes are allowed, this matter is not ripe to be heard by the Planning Board. Instead, the Applicant first needs to go to the Zoning Board.
- The Planning Board should not consider the three Plans separately but rather as one Plan.**
30. Another issue that needs to be addressed is the Applicant's attempt to segregate his overall plan into three separate plans.

31. As discussed at the last meeting, the Applicant has three (3) contiguous parcels of land and is now attempting to adjust the lines between them in three separate applications.
32. However, the net effect of all three plans is to expand the manufactured housing park overall, as one Plan.
33. The abutters object to the Board hearing the three applications separately.
34. Where the effect of three plans comprise in fact one plan, the Board should require the Applicant to consolidate the three plans into one application.

The Applicant has violated RSA 227-J:9

35. Finally, it is important to note that the Applicant has violated NH RSA 227-J:9.
36. RSA 227-J:9 prohibits the cutting of more than "50 percent of the basal area of trees... within 150 feet of ... [a]ny public highway."
37. Anyone that has been out to the site recently knows that almost the entire area from the edge of Hall Road (a scenic and public road) back from the road (150 feet, plus) has been clear-cut, in violation of this statute.
38. Now, the exception to the prohibition to clear-cutting this close the road is when the landowner has a building or subdivision permit.
39. However, the landowner does not have those permits. Therefore, he is in violation of the statute.
40. Of course, one could argue that the landowner may get the permits, but that is not enough.
41. In fact, RSA 227-J:9, III, specifically prohibits this type of after-the-fact reasoning, to wit:


"No person shall clear land of natural vegetation on a given lot, tract or parcel proposed for subdivision pursuant to RSA 485-A:32, unless such subdivision plan has been submitted and approved in accordance with the requirements of RSA 485-A."

42. Not only does the statute prohibit what the Applicant has done, but it is a misdemeanor and this Town has a duty under the statute to take action against the applicant. See RSA 227-J:9, VI and VII.
43. It is not just that the Applicant violated New Hampshire Law.
44. It is also the fact that the Applicant has demonstrate why the abutters and others are so concerned about this board proceeding without requiring the Applicant to strictly follow the Guide and provide a true master plan.
45. The Applicant's actions in clear-cutting right up to the road, demonstrate the Applicant's complete disregard of the law, this Town, the abutters and other concerned citizens.
46. Given that gross disregard, the Planning Board should not allow the Applicant to do any development without strictly following the Guide.
47. In addition, given that the Applicant has violated the statute, it appears that the Applicant has waived his right to get the subdivision at all.
48. There is no provision under that statute for the Applicant to get approval after he has violated the statute.
49. The Statute is crystal clear that the Applicant must get the subdivision approvals prior to cutting.

50. Therefore, it follows that once the Applicant violates the statute he cannot go back and get the subdivision approval. Essentially, the Applicant is going to have to wait until the trees grow back.
51. While this may seem harsh, the statute is clear.
52. Furthermore, if the Applicant were to be allowed to get away with clear-cutting before getting his permits, the statute would be completely useless.
53. The only way that the statute can operate as a deterrent is if the Applicant is denied his subdivision.
54. Therefore, the Planning Board must deny the Applications.

Dated: 4/12/16

Respectfully submitted,
David Dodge and others,
By their attorney,



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