

TOWN OF NEWPORT, NH
Minutes of the Planning Board Meeting
July 12, 2022 – 6:00 P.M.
Board of Selectmen's Room
15 Sunapee Street
Regular Meeting and Public Hearing

MEMBERS PRESENT: David Burnham, Chairman; Ken Merrow, Vice Chairman; Tobin Menard, Ray Kibbey, James Burroughs, BOS Representative; Bert Spaulding, Sr., alternate

MEMBER(S) ABSENT: none

VIDEOGRAPHER: John Lunn, NCTV

STAFF PRESENT: Christina Donovan, Planning and Zoning Administrator

COMMUNITY MEMBERS PRESENT: Cathryn Baird, Paul Baird, Virginia Irwin, David Irwin (all abutters Case 2022-SDFP-6 and Case 2022-ANNEX-5), Richard Holmes and Michael Lucco

CASE REPRESENTATIVES: Patrick Dombroski, Tom Dombroski, Warren and Kathy Fox, owners (2022-SDFP-5: Fox Family Revocable Trust); Brett Smith, CEO One Credit Union, Paul Cavolowsky, Vice President NES Group

CALL TO ORDER: Chairman Burnham called the meeting to order at 6:00 p.m. followed by a roll call of sitting members.

AGENDA REVIEW: accepted as complete

CONTINUED BUSINESS:

2022-SDFP-5: Fox Family Revocable Trust (owner): Request a final review for a minor subdivision, property identified from Map 231 Lot 021 located at 289 Maple Street in the Rural (R) Zoning District.

Chairman Burnham opened Case #2022-SDFP-5.

Ms. Donovan addressed the Chairman Burnham and stated the applicants had been approved at the Zoning Board of Adjustment (ZBA) for the backlot noted on the site plan.

Mr. Spaulding, Sr. arrived at the meeting at 6:01 p.m. Chairman Burnham appointed Mr. Spaulding, Sr. to sit for the vacant seat position.

Mr. Patrick Dombroski addressed the Board and using a posted site plan explained the minor subdivision the applicants proposed.

- ZBA Case #1131 approved the back lot shown on the site plan.
- Subdivision approval for both lots will be through the state.
- Right of Way in common was noted in the deed for lot 1 and lot 2. He explained.
- A new septic system for a four bedroom house was approved by the state.

Question from the Board:

Was there a private road agreement for maintenance? Mr. Patrick Dombroski read aloud the part of the deed that specified the Right of Way. It stated that all costs to build and maintain will be split by the two landowners with the common driveway.

Chairman Burnham opened the hearing to the public for comment for or against. There was no comment. Chairman Burnham returned to the Board.

Mr. Merrow made a motion *to accept the application for 2022-SDFP-5: Fox Family Revocable Trust as complete*. It was seconded by Mr. Kibbey. *The motion passed 6-0-0.*

Mr. Merrow made a motion *to accept 2022-SDFP-5: Fox Family Revocable Trust as complete with the condition of filing the maintenance agreement.* It was stated that the agreement was in the deed. Mr. Patrick Dombroski said it would only be executed when the owners (Fox) sold lot 1 or lot 2. Mr. Merrow stated that he understood his explanation; but one of the conditions of approval would be for the execution of the agreement. There was a discussion on the deed, the agreement and subdivision.

Mr. Kibbey asked for the following condition: conditional to when it is conveyed, it is conveyed with the deed presented at the Planning Board meeting. After further discussion on the Right of Way, Mr. Tom Dombroski addressed the Board and suggested adding verbiage to the site plan stating the specific conditions of the maintenance agreement as stated in the deed. Mr. Patrick Dombroski agreed with the suggestion, stating the whole verbiage from the deed concerning the maintenance will be added to the site plan. Mr. Tom Dombroski said that the addition will cover the Planning Board. The Planning Board members discussed the proposal and adding the verbiage to the Mylar. The motion was restated as: Mr. Merrow made a motion *to accept 2022-SDFP-5: Fox Family Revocable Trust as complete with the condition that the deed language of the maintenance agreement get attached to the Notice of Decision and be noted in full on the Mylar.* Mr. Spaulding, Sr. seconded the amended motion. After the amended motion was seconded, Chairman Burnham asked for a full motion. Mr. Merrow made a motion *to accept 2022-SDFP-5: Fox Family Revocable Trust as complete with the condition that the paragraph in the deed pertaining to the Right of Way and the maintenance agreement be attached to the Notice of Decision and be noted in full on the Mylar. "Excepting and Reserving a Right of Way in common for the benefit of the Grantor and Grantee, their successors and/or assigns, shown on said plan. Said Right of Way is to be used for ingress & egress and will contribute in equal shares to the cost of such construction, maintenance, repair and replacement of the Right of Way in common, and bounded and described as:"*

It was seconded by Mr. Spaulding, Sr. *The motion passed 6-0-0.*

2022-SDFP-6: HardScrabble Property Management, LLC (owner): Request a final review for a minor subdivision, property identified from Map 206 Lot 006 located at 213 Fletcher Road in the Rural(R) Zoning District.

Chairman Burnham opened Case #2022-SDFP-6. He asked for a motion to accept the application as complete. Mr. Spaulding, Sr. stated he could not second any motion; there was an easement on the property. He asked that the Board go into deliberations concerning the attorney's email on the fourteen page deed. He asked Ms. Donovan if the letter from the attorney was now a public document. She said yes, once it is shared with anyone other than the Town Manager it becomes public. She has told the Board that they could adjourn their meetings at any time to refer to legal counsel via phone conference. She stated the email was the written assessment of the amended deed. Mr. Spaulding, Sr. stated he would like to have a discussion, which will keep it a nonpublic document. Mr. Spaulding, Sr. moved to go into deliberations to discuss the opinion. It was seconded by Mr. Merrow. *The motion passed 5-1-0 (Kibbey voted no).*

On a Point of Order, Mrs. Irwin asked under what rule they were going into deliberations and who their legal counsel was. Chairman Burnham stated the Town's legal counsel. Mrs. Irwin asked if he was in attendance. She was told no. Mr. Spaulding, Sr. stated he (counsel) did not have to be present if the information was in writing. Mrs. Irwin thanked the Board. She clarified that the Board members would be discussing the email from the legal counsel and not the document.

The Planning Board members left the room at 6:30 p.m. to discuss the email sent by the town counsel. The Planning Board members returned to the BOS room at 6:40 p.m. Chairman Burnham opened the hearing.

Chairman Burnham asked for a motion to accept the application as complete. Mr. Kibbey *made a motion to accept the application as complete.* It was seconded by Mr. Merrow. *The motion passed 6-0-0.*

Mr. Patrick Dombroski addressed the Board and using a site plan explained the minor subdivision the applicant would like to do. He stated the land was separated from the conservation land; none of that would be touched. Continuing, he explained that there was confusion with the deed, he explained its contents and explained that in surveying "calls" supersede "metes and bounds". He explained the use of the two terms in surveying and use on the parcel. Mr. Dombroski and Mr. Merrow explained which lot was being discussed. Mrs. Irwin asked if the Forest Society was notified of the proposed subdivision. Chairman Burnham stated he did not believe they are an abutter. Ms. Donovan stated she did notify the Society. She did not get a response from them. She said that the amendments the Forest Society is aware of states that this subdivision is allowed.

Cathryn Baird addressed Chairman Burnham and stated she had reached out to the Society for Protection of NH Forests and she received an email from them. She read aloud the email which stated the Society had contacted the landowner (applicant) and reviewed his plans. Mrs. Baird read aloud the requirements needed to be fulfilled. Go to www.nctv-nh.org for the full document. (It was needed for Case #2022-ANNEX-5 not the current case).

Mr. Merrow made a motion *to accept 2022-SDFP-6: HardScrabble Property Management, LLC as submitted.* Mr. Menard seconded the motion. *The motion passed 6-0-0.*

2022-ANNEX-5: HardScrabble Property Management, LLC (owner): Request a final review for an annexation, property identified from Map 206 Lot 003 and Lot 004 located at 244 Fletcher Road in the Rural(R) Zoning District.

Chairman Burnham opened Case #2022-ANNEX-5.

Mr. Merrow made a motion that *to accept the application for Case #2022-ANNEX-5 as complete.* It was seconded by Mr. Spaulding, Sr. *The motion passed 6-0-0.*

Mr. Patrick Dombroski addressed the Board and using a posted site plan explained the minor subdivision the applicant would like to do. He stated it was basically the same as the first case. They were separating the non-conservation land; none of the conservation land would be touched. When asked, he showed the boundary line of the two lots.

Chairman Burnham opened the hearing to the public. For full explanation, go to: www.nctv-nh.org

On Mr. Baird's request, he indicated various items on the property.

Mrs. Irwin asked where the boundary line abutting the conservation easement was.

Using the posted site plan, Mr. Patrick Dombroski indicated the boundary lines on the two lots using call numbers. He answered all abutters' questions on the survey and the easement.

Mr. Kibbey said the Planning Board was in session for the lot line adjustment and tax purposes. Easements were not in their purview. Mrs. Irwin stated the easement was her concern and she had the right to know about it.

Addressing Mr. Patrick Dombroski, she stated she understood what he was doing. He was cleaning up what should have been done when they originally created the conservation easement. She thanked him.

Mr. Patrick Dombroski stated he has written on the site plan that the purpose of the plan is to separate the land from the conservation easement.

For clarification, Mr. Baird asked if any land was going out of conservation. He was told none-it can't.

Mr. Merrow *moved to accept Case #2022-ANNEX -5 as presented.* It was seconded by Mr. Kibbey. *The motion passed 6-0-0.*

NEW BUSINESS:

Ms. Donovan stated that Mr. Scott was in attendance to talk about the issues with the lighting on One Credit Union. She distributed the paperwork and drawings from the 2019 case that the applicant was supposed to follow. Through research using the video of the meeting, she had learned that the Board members stressed that the lighting was to be sharp downcast.

Site Plan Revision

Chairman Burnham opened the Site Plan Review Revision of **One Credit Union 2019-SPFP-003: Waterstone Sugar River Plaza, LLC & Harkness Sugar River Plaza, LLC (Owners) Wayne Morrill, Jones and Beach Engineering, Inc.**

Chairman Burnham stated that conditions to the case were:

- 1 Waivers for drainage analysis and exterior lighting plan.
- 2 A waiver of the Mylar was requested; the Board would receive an “as built” plan at the completion of the project.

Chairman Burnham stated that the exterior lighting did not conform to the Town of Newport building code regulations. He said the applicant had requested a waiver of the lighting so they did not have to go through the expense of detailing all the lights throughout the whole plaza. The Planning Board agreed to that but did not give the applicant a waiver on breaking building code. All businesses are required to have sharp downcast lighting. Chairman Burnham stated he did not know their plans; there are easy fixes.

Mr. Brett Scott, CEO of One Credit Union; addressed the Board. He apologized that the Town and the Credit Union were still discussing the nonconforming lighting on their building. Through miscommunication and inaction on the part of some Credit Union employees, he has had to play catchup with the Town. Looking at their plans and the hearing in 2019 One Credit Union did not willingly or knowingly break Newport Building Codes. After a brief synopsis of the Credit Union trying to comply, he explained changes they had made, dimming the lights by 50%.

Mr. Scott again apologized that through miscommunications a representative from One Credit Union had not attended a Planning Board meeting in 2021.

Ms. Donovan informed the Board that there had been a myriad of employees that she had had to correspond with over the two year time span; the latest being Mr. Scott.

Mr. Merrow addressed Mr. Scott and Mr. Paul Cavolowsky, Vice President NES Group; and asked if there was a louvre kit for the type of light they currently had on the building. He said if there was one they could install; it would be fixed and over and done with. Mr. Scott said he wanted to be clear; One Credit Union did not intentionally violate Newport’s codes. He said there was precedent in Town; the Verizon store has similar lighting. Mr. Merrow agreed that there were buildings in Town that were noncompliant. Mr. Scott stated he wanted to address their issue and assure the Board that One Credit Union was not knowingly in noncompliance. After a brief discussion, Mr. Merrow reminded the representatives that the lights needed to have a sharp cut off and downcast lighting. Mr. Merrow thanked the two for coming in and discussing the lighting. Chairman Burnham requested they send in an example of what they were planning before purchasing. Mr. Paul Cavolowsky stated he would email an example for Planning Board approval.

Minutes: June 14, 2022

Mr. Merrow made a motion ***to approve the minutes of the June 14, 2022 Planning Board meeting.*** It was seconded by Mr. Spaulding, Sr. In discussion Mr. Spaulding, Sr. questioned the statement on Page 2, 4th paragraph from the top, 3rd line: “and the Town Manager will determine when the review is complete”. He questioned the use of Town Manager, the purview of the Town Manager and the content of the sentence. After the Board members discussed the sentence, Mr. Merrow made a motion ***to table the minutes of the June 14, 2022 Planning Board meeting to the August 14, 2022 Planning Board meeting.*** Mr. Spaulding, Sr. seconded it. ***The motion passed 5-0-1 (Burroughs abstained).***

ADMINISTRATION:

Planning Board Officers for 2022-2023

Ms. Donovan took over the meeting for the election of officers. She asked for a nomination for Chairman of the Planning Board. Mr. Merrow made a motion, ***to elect Mr. David Burnham as Chairman of the Planning Board.***

It was seconded by Mr. Burroughs. There were no other nominations from the Board. ***The motion passed 5-0-1 (Burnham abstained).***

Chairman Burnham resumed the meeting as Chairman.

Chairman Burnham asked for a nomination for Vice Chairman. Mr. Spaulding, Sr. made a motion ***to elect Mr. Ken Merrow as Vice Chairman of the Planning Board.*** It was seconded by Mr. Burroughs. There were no other nominations. ***The motion passed 5-0-1 (Merrow abstained).***

COMMUNICATIONS:

Board:

Mr. Merrow said he had sent Ms. Donovan an email about traffic studies. He asked that it be shared at the next meeting. The Board was looking for a definition of a traffic study versus a traffic assessment or memorandum. Addressing the Board members, Mr. Merrow said he had asked the Hanover Town Planner what their baseline was when asking for a traffic study. He had been given information (they use Vermont DOT). Looking forward, if the Board asks for a traffic study, they will know what to expect. Mr. Burroughs said there was a NH state statute that talks about traffic studies and what they should include.

Public: none

With no more business in the public meeting, on a motion by Mr. Merrow, seconded by Mr. Burroughs; ***the Board voted to adjourn at 7:41 p.m. The motion passed 6-0-0.***

Respectfully submitted,



Maura Stetson, Scribe

Approved: December 13, 2022

The next meeting of the Planning Board will be on August 9, 2022 at 6 pm in the Board of Selectmen's Room.