



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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**Approved Planning Board Minutes
Wednesday, September 2, 2015
7:00pm @ Community Development Department**

Alan Carpenter	Chairman	Present	Joel Desilets	Selectman	Excused
Paul Gosselin	Vice Chair	Present	Ross McLeod	Alternate/Selectman	Excused
Kristi St. Laurent	Member	Present	Matt Rounds	Alternate	Present
Ruth-Ellen Post	Member	Excused	Gabriel Toubia	Alternate	Present
Margaret Crisler	Member	Present	David Oliver	Alternate	Excused
Dan Guttman	Member	Present	Kathleen Difruscia	Alternate	Present seated for Ms. Post

Staff:

Elizabeth Wood, Community Planner
Suzanne Whiteford, Minute Taker

Call to Order/Attendance/Pledge of Allegiance

Continued from 8/5/15

Case#2014-33/Highclere Open Space Subdivision/Standard Subdivision/WWPD Special Permit

A Final Application for an Open Space Subdivision, Standard Subdivision, and a Wetland and Watershed Special Permit has been submitted for Lots 11-A-1400 & 1418 (Pilgrim Road), located in the Rural District, Wetland and Watershed Protection District Zone, and Aquifer Protection District. The applicant, Karl Dubay of the Dubay Group, Inc., on behalf of the property owner, AWAC Realty Trust, is proposing to subdivide the land area into one (1) standard lot with an existing home sized 229,390 sq. ft. (5.27 acres); two (2) standard lots for single family residential use, sized 168,284 sq. ft. (3.86 acres) and 198,198 sq. ft. (4.55 acres); thirty-two (32) open space single family residential lots ranging in size from 19,979 sq. ft. (.459 acres) to 29,985 sq. ft. (.688 acres); and eight (8) open space lots totaling 3,092,376 sq. ft. (70.99 acres). Two of the standard lots are proposed to be built off of Chestnut Street and a new road with a 2,400' cul de sac length is proposed off of Hawthorne Road to access the open space lots. A written waiver request has been submitted from Section 605.5 of the *Subdivision Regulations*.

Applicant, Karl Dubay, The Dubay Group, Inc. presented a completed plan revision. Mr. Dubay met with Conservation Commission and Fire and Police Chiefs. The Town engineer reviewed the plans and submitted a memo, dated 8/26/2015 and on file, with a punch list of final items. The plan added plantings for the middle of the Chestnut street cul de sac with a note that they are conditional of selectman approval. Mr. Dubay referred to the 5 page legal review letter submitted and on file from Attorney Bernie Campbell. The letter included lot # identification, clarification of inconsistent terminology and extensive trail network on the plan after trail committee review.

Mr. Gosselin suggested to call the 'open space' according to the town's legal definition of 'open space' 'common area'. Ms. Difruscia agrees with MR. Gosselin's suggestion. The open space is actually being deeded to the town via an easement.

Chair asked Ms. Wood for a copy of Attorney Campbell's review.

Mr. Guttman asked Mr. Dubay if the reason for the 'open space' being separated from the plan's open space is for tax reasons. Mr. Dubay and Ms. Difruscia responded that there is not tax issue at all with the 'open space' and the plan's open space being separated.

Ms. Crisler asked if the open space in the subdivision is granted to the Town of Windham with monitoring by the Conservation Commission.

Ms. Dubay explained the town would have vested rights of the easement and monitoring right thereof. There is an existing driveway that goes thru the open space, the rights of that driveway would be retained. Mr. Dubay is asking for permission to maintain the driveway and for right of access easement. Chairman Carpenter expressed that he has no interest in creating categories of open space lots; and would ask the applicant to make it a classic open space subdivision. Chairman Carpenter asked the size of the cul de sac.

Mr. Dubay described the cul de sac as expanded. The square footage of the island in the middle of the cul de sac is almost 11,000 sq. ft. (About a ¼ of an acre).

Ms. Crisler suggested to Mr. Dubay that he make the areas he wants to beautify a different term other than open space.

Chairman Carpenter agreed with Ms. Crisler that Mr. Dubay make a clean division between the open space, private land, etc.

Mr. Rounds agrees with Chairman Carpenter, clarify what is open space and what is not

Mr. Toubia agrees with above mentioned PB members and their reasons.

Ms. Crisler agrees with Chairman Carpenter and she is concerned about the placement of snow when plowing.

Mr. Dubay is in agreement to redesignate the areas discussed as something other than open space and maintain it as not buildable and not credited towards the open space. The area (referred to as 'the common area' for the remainder of the document) in question is specified on the plan as owned by the home owners.

Ms. Difruscia, Mr. Guttman, and Ms. St. Laurent agree with the PB's desire to specify what open space on the plan is and redesignate the other areas with a different term.

Chairman Carpenter pointed out that he has not ever seen The PB accept an open space with an easement over it. Mr. Dubay explained the existing driveway has been on the property since 1976

Ms. Wood pointed out there is an existing subdivision with an easement on the land; it is used to access the property that would otherwise be landlocked.

Chairman Carpenter asked if there are any notes from Conservation Commission.

Ms. Wood received an email Wayne Morris on behalf of Conservation Commission, which is not yet on letterhead that indicates the committee will provide an opinion after they read Attorney Campbell's review. The trails committee wants to do the same. The Conservation Commission does not want to see a road from Highclere to Pilgrim because of the environmental sensitive nature of the land.

Ms. Difruscia asked if the Conservation Commission Committee saw the communication from Chief Lewis concerning secondary road access.

Ms. Wood distributed a letter from Wayne Morris (referenced above as email not on letterhead) on behalf of Conservation Commission to the PB for review.

Mr. Dubay explained that he looked at the only 3 options for secondary road access into the development. Mr. Dubay described each option and showed on the plan the unreasonable challenges presented for achieving the access. In addition to the landscape challenges and the extensive impact to wetlands, building a secondary access road is cost prohibitive.

Ms. Crisler pointed out that the town engineer measured the cul de sac length to be 2565 feet and that exceeds what the PB is allowed to approve by 165 feet.

Mr. Rounds commended Mr. Dubay's effort in working with the PB. Mr. Toubia believes public safety should take precedence over preservation of wetlands and wildlife and should consider secondary road access; especially based on the Chief's comments.

Chairman Carpenter summarized for the PB there is an existing cul de sac length regulation based on public safety and traffic. Options are available but they are aggressive. Conservation Commission cost benefit analysis concludes the secondary road access is not worth it. Safety Chiefs would like a second access point. The residents would like a secondary access point. Chairman Carpenter agrees with Mr. Dubay that the three possibilities for a second access road don't make sense in consideration of cost and what has to be done to achieve it. Chairman Carpenter outlined the following for consideration of the PB: should the PB consider an emergency access road, live with one access and decrease the number of lots and decrease the cul de sac length.

Ms. Difruscia asked if shortening the cul de sac would negate the concern for the secondary access.

Chairman Carpenter does not believe shortening the cul de sac length would satisfy the fire and safety concern. Ms. Difruscia has very serious concerns regarding the preservation of wetlands and wildlife and weighing that with public safety. Minutes can make a difference in an emergency when fire and police may be needed. Ms. Difruscia would not want life to be endangered because there is not a secondary access to the development.

Mr. Guttman believes there should be consideration the fires risk. He is concerned about the significant impacts on wetlands. Mr. Guttman pointed out this development would not have the furthest duration from the fire station to the subdivision location. Mr. Guttman asked if the PB can petition the town to make an alternate road to decrease the amount of time it takes for fire and police to respond to the subdivision.

Mr. Rounds pointed out that just because something was acceptable in the past (in terms of distance and response time from fire and police to a subdivision location) doesn't mean we should not change it now.

Ms. Crisler acknowledges this question has come up repeatedly.

Ms. St. Laurent believes that whenever possible fire and safety would like to see a connection. Ms. St. Laurent pointed out that the houses in the proposed subdivision are on top of a hill. An emergency access road would require significant engineering due to the terrain. In this open space subdivision plan the houses are close to each other and close to the road. The entire subdivision is designed with fire suppression. Creating a secondary or emergency access road would be detrimental to the wildlife in the area.

Mr. Gosselin does not believe reducing the cul de sac has any merit because the applicant could choose to go with a conventional yield plan and the open space would go away. A 10 foot wide gated access road would not have any merit; it defeats the purpose for emergency response.

Chairman Carpenter acknowledged that there seems to be no decision that would please everyone concerned.

Hearing opened to the Public

Mike 10 Pilgrim Road

- Built his house 36 years ago.
- Because of the wetland behind the house he believed there would not ever be concern with having neighbors.
- The area behind the house is very wet. He can hear the creek bubbling through the back yard. Placing the access road will not benefit the neighborhood.
- He would prefer that in general, someone would find a better solution rather than keep adding access roads that won't do any good on the whim that someday they may be needed.

No further public comment

Mr. Guttman asked Mr. Dubay what the impact on the project would be if the cul de sac was decreased to 2400 feet.

Mr. Dubay responded he would appeal that decision because of the merits of the project. An EMS study was done. The project would not get approved with any of the three access roads, as previously described, on the plan. The EMS study showed there is not an EMS response time issue with the plan as proposed. The 165 feet of cul de sac length in question adds an extra 30 seconds of EMS response time when traveling at 30 mph. Mr. Dubay described the history for deciding cul de sac length of 1200 and 2400 feet was an arbitrary number picked. Mr. Dubay pointed out the cul de sac is centrally located within the average access times from the fire station to the end of the cul de sac. No board would ever require a project to have home sprinklers for fire suppression. This plan voluntarily proposed home sprinklers system for each home. Mr. Dubay pointed out that his proposed subdivision would be the second in existence with individual home sprinkler systems. The cul de sac for the subdivision is flat. The houses are right up against the street. Most EMS studies show emergency access issues are from the street to the front door. The project will not get approved with a proposed secondary access road. The project meets the required EMS response time. Mr. Dubay is requesting the waiver be granted tonight based on above listed criteria.

Ms. Difruscia believes concerns about EMS response have been satisfied by the applicant. The homes are close to the street, each with an individual home sprinkler system. Due to the uniqueness of the subdivision with regards to fire suppression, granting a waiver for the requested cul de sac length would not be setting a precedent. Ms. Difruscia suggested the PB be more creative with their language of granting the waiver for the cul de sac length and make the unique fire suppression features of the homes part of the condition.

Mr. Dubay agrees with Ms. Difruscia and pointed out that the details are in writing and highlighted in the proposed subdivision plan and also put in a report.

Ms. Crisler agrees with Mr. Dubay concerning the lack of secondary road access options. Ms. Crisler pointed out that Mr. Dubay made a good point with regards to the cul de sac being flat, and the homes close to the street. After listening to Mr. Dubay's presentation, Ms. Crisler is convinced on the issue of not having a secondary road access. Ms. Crisler believes sprinklers are a good addition and that it makes sense to grant the waiver for the additional 165 feet to the cul de sac.

Chairman Carpenter asked the PB how we deny an applicant in the future that comes in requesting a waiver for a cul de sac length of 2700 feet.

Mr. Gosselin explained that granting a waiver must include a justification. Mr. Gosselin recognizes Chairman Carpenter's concern; but if a waiver is granted predicated on the design features of the project there could be a rational justification placed on granting the waiver and use it in the future if needed. Ms. St. Laurent commented that pulling the cul de sac back 165 feet will lose 2 or 3 house lots. Mr. Dubay has presented the change to the design of the development, pointed out the cul de sac is level road, the houses are close to the road, and the houses have in house sprinklers. Mr. Dubay has asked for a waiver and describing the features listed above and presented a good case for justification of the cul de sac length waiver. Ms. St. Laurent commented that this is why we have a waiver process in place. She believes there is enough justification to grant the waiver. Mr. Dubay pointed out to the PB that the development of Castle Reach has a longer emergency response time than his proposed plan. There is 4 seconds of response time for the 165 feet of cul de sac length requested for a waiver. Chairman Carpenter commented that the PB has never granted a waiver beyond 2400 feet. Ms. St. Laurent calculated the 165 feet of cul de sac length added to 2400 feet of cul de sac length results in the applicant asking for about 6.9% increase. Chairman Carpenter and Mr. Rounds are opposed to granting a waiver tonight. The remaining members of the PB are in favor of granting a waiver (for the 165 feet of extra cul de sac length) tonight.

Mr. Rounds asked Mr. Dubay if there are any other thoughts to solve an access road. Mr. Dubay explained that the only three (unreasonable) options for an access road previously discussed are the only available options. Mr. Toubia commented that he is pro conservation and wild life; however, human life takes presentence. Mr. Toubia finds the 50% EMS response time acceptable and is in favor of not having a secondary access road. Ms. Crisler in favor of not having a secondary access road. Mr. Gosselin believes there are too many challenges and obstacles that make adding a secondary access road unreasonable. Ms. Difruscia commented that she believes protection of property and human life are critical. After listening to everything tonight it does not seem possible to develop a secondary access road. Ms. Difruscia believes it is also essential to protect our wetlands and wildlife. A secondary access road is not rationale in this situation. Mr. Guttman and Ms. St. Laurent are in favor of no secondary access due to the reasons stated previously.

Chairman Carpenter asked where the solar fields going to be located. Mr. Dubay would like to have the right to locate a solar field in the open space. Chairman Carpenter asked if the solar fields are intended to benefit the houses in the open space subdivision or the Pliskin homes. Mr. Pliskin addressed the PB and explained that the proposed subdivision has been a conservation subdivision plan. It became apparent to the energy committee that a solar field may be a possibility. One of the larger energy companies may have an interest in coming in and installing solar. The energy company has indicated they need 2 or 3 acres available to place a passive solar garden. The solar field would benefit the home owners association to the open space and not the homes within the subdivision.

Mr. Gosselin commented that nothing is allowed to be built in the open space. There is a clear definition about what is allowed in the open space.

Chairman Carpenter asked for the Conservation Commission Committee to weigh in on the idea of placing a solar field in the open space.

Chairman Carpenter suggested the PB close and continue the case after Conservation Commission comments, and the Woods Trails committee has seen the legal documents.

Mr. Dubay plans to meet Thursday night (9/3) with the Conservation Commission Committee.

Don Clark, 3 Pilgrim Road

- Received a letter regarding a 7900 foot dredge and fill permit to fill in wetlands.
- Does it have anything to do with the proposed access road.

Chairman Carpenter clarified it has nothing to do with an additional access road, it has to do with the access road shown on the plan.

Motion by Ms. Crisler to continue Case # 2014-33 to date certain 9/16/15 at 7pm as presented with the inclusion of the following:

- **Legal documents have been reviewed by the Woods Trails Committee and Conservation Commission.**
- **Automatic alarms and sprinklers as presented**
- **A document agreed upon from Conservation Commission which grants a Conservation Commission easement to the town.**
- **Remove any solar from the plan.**
- **Install the trails before any CO's are approved.**
- **Bonding to assure completion of the project**
- **Separate waiver to approve a cul de sac length of 2565 feet.**
- **Need a waiver for the driveway which has perpendicular lot lines not being 100 feet**

Second by Mr. Guttman

Vote 6-0-0

Motion passed

Motion by Ms. Crisler to open Case #2015-17 for public hearing

Second by Ms. Difruscia

Vote 5-0-0 (Chairman Carpenter not present for the vote)

Case#2015-17/Minor Subdivision/Lot Line Adjustment/16 & 18 Viau Road

A Minor Subdivision Application has been submitted for a Lot Line Adjustment at 16 and 18 Viau Roads (Lots 16-Q-211-211B), located in the Residence District A and Cobbetts Pond, Canobie Lake Watershed Overlay Protection District, and 100-year flood zones. The applicant, Joeseeph Maynard of Benchmark Engineering, Inc., on behalf of the property owners, David and Anita Robitaille and Richard and Virginia Viau, are proposing to adjust the adjust the lot line between the two lots by removing 900 sq. ft. +/- from lot 16-Q-211B, currently sized 26,518 sq. ft. and integrating it into Lot 16-Q-211, currently sized 8,362 sq. ft. thus resulting in reconfigured lots sized 25,630 sq. ft. and 8,362 sq. ft. respectively 9,247 sq. ft. No land development activity is proposed.

Applicant, Mr. Maynard presented Case # 2015-17 to the PB.

Mr. Guttman asked why this case is before the PB.

Mr. Toubia clarified this is a lot line movement between family members.

Hearing open to the public. There are no public comments. Case closed to the public.

Motion by Guttman to approve Case#2015-17/Minor Subdivision/Lot Line Adjustment/16 & 18 Viau Road as submitted to adjust the lot line between the two lots by removing 900 sq. ft. +/- from lot 16-Q-211B, currently sized 26,518 sq. ft. and integrating it into Lot 16-Q-211, currently sized 8,362 sq. ft. thus resulting in reconfigured lots sized 25,630 sq. ft. and 8,362 sq. ft. respectively 9,247 sq. ft. Relief is granted for Section 601.2.1, section 601.23, and Section 601.26 as detailed in the memo on file from Mr. Keach of Keach-Nordstrom to Ms. Wood dated August 25, 2015, and the book and page number at which the easement for the shared use of an existing septic system physically located on Lot 211B recorded at the RCRD be cited on the final lot line adjustment plan.

Second by Crisler

Vote 6-0-0

Motion passes

Administrative Review

Case#2015-18/Major Watershed/35 West Shore Road (22-L-73)

A Cobbetts Pond and Canobie Lane Watershed Application has been submitted for 35 West Shore Road (22-L-73), located in the Residence District A Zone, Cobbetts Pond and Canobie Lane Watershed Overlay Protection District, and Flood Plain District. The Applicant, Joseph Maynard of Benchmark Engineering, Inc., on behalf of the Chowdhry Family Trust, is proposing to construct a single family residence on the property along with a driveway, well, and septic. The impervious surface coverage will increase from 0% to 1,342 sq. ft. or 29.7%. Silt fencing is proposed for erosion control and dripline trenches are proposed for stormwater management.

Applicant Mr. Joseph Maynard presented Case #2015-18 to the PB.

Motion by Mr. Gosselin to approve Case#2015-18/Major Watershed/35 West Shore Road (22-L-73) as submitted to construct a single family residence on the property along with a driveway, well, and septic. The impervious surface coverage will increase from 0% to 1,342 sq. ft. or 29.7%. Silt fencing for erosion control and dripline trenches for storm water management and to include submission of a copy of the NHDES Shoreland Permit, add the Permit # to the plan, add a note to the plan indicating the Variances that were received, and add a signature block for the property owners and for the PB Chair as detailed in the memo on file from Mr. Keach of Keach-Nordstrom to Ms. Wood dated August 26, 2015 and to include Note No. 2 on sheets 1 and 2 of the project plans be expanded to indicate the subject parcel is situated within the Cobbetts Pond/Canobie Lake Watershed Protection Overlay District as detailed in the memo on file from Mr. Keach of Keach-Nordstrom to Ms. Wood dated August 24, 2015.

Second Ms. Crisler

Ms. Difruscia commented she doesn't like the encroachment.

Vote 5-1-0 Mr. Guttman opposed for reasons previously stated by Ms. Difruscia

Motion carries

Case#2015-19/Major Watershed/31 Walkey Road (17-I-111)

A Major Watershed Application has been submitted for 31 Walkey Road (17-I-111), located in the Residence District A and Cobbetts Pond and Canobie Lake Watershed Overlay Protection District. The Applicant, Joseph Maynard of Benchmark Engineering, Inc., on behalf of Branden and Cheryl Tsetsilas, is proposing to raze the existing dwelling, garage, and gazebo, and construct a new single family residence, deck, and garage on the property. The applicant would also like to relocate the septic tank and well. The existing impervious surface coverage is 6,164 sq. ft. or 35.4% and the proposed is 6,115 or 35.1%.

Applicant, Mr. Joseph Maynard presented Case #2015-19 to the PB.

Ms. Difruscia asked the applicant if he is willing to plant along the shoreline. Ms. Difruscia encouraged the applicant to provide as much as possible a natural buffer along the shoreline.

Mr. Maynard has some plantings on the proposal where the grid is weak.

Motion by Ms. Crisler to approve Case#2015-19/Major Watershed/31 Walkey Road (17-I-111) as presented to raze the existing dwelling, garage, and gazebo, and construct a new single family residence, deck, and garage on the property and to relocate the septic tank and well. The existing impervious surface coverage is 6,164 sq. ft. or 35.4% and the proposed is 6,115 or 35.1%. Include the condition that Note No. 6 on Sheet 2 of the project plans remove Section 401 and 406.2 of the Ordinance.

Second Mr. Gosselin

Vote 6-0-0

Motion carries

CIP committee requested a response from the PB regarding amount of money requested for completion of Phase II of the Master Plan and if there is urgency to complete Phase II of the Master Plan in 2015. The PB consensus is that the requested \$50,000 was the right amount of money and there is a sense of urgency for completion.

Chairman Carpenter received a letter from Mr. Sullivan regarding soil based lot sizing. Mr. Keach's presentation for changing how lot sizing is currently done was different than The Conservation Commission Committee's opinion. Chairman would entertain a motion to table Mr. Keach's recommendation and take it into consideration later after more information can be obtained.

Motion by Ms. Crisler to table Mr. Keach's recommendation for the proposed change for soil based lot sizing.

Second by Ms. Difruscia

Vote 5-0-1, Mr. Gosselin abstained due to lack of information

June 17 minutes reviewed and amended

Motion by Mr. Guttman to pass minutes as amended

Second by Mr. Gosselin

Vote 4-0-2, Ms. Difruscia and Ms. Crisler abstained; they were not at the meeting.

Mr. Guttman reported there has been another successful month of the PB's Adopt a Spot. They collected more than 8 bags of garbage, and the PB continues to be role models for the town.

Motion by Ms. Difruscia to adjourn

Second by Mr. Gosselin

Vote 6-0-0

9:53pm adjourned

Minutes submitted by Suzanne Whiteford, Minute Taker