

**PLANNING BOARD MINUTES  
OCTOBER 7, 1998**

**ROLL CALL:**

David Dubay-Chairman-Present  
Bernie Rouillard-Vice Chairman-Present  
Jack Gattinella-Secretary-Present  
Wayne Morris-Regular Member-Present  
Russell Wilder-Regular Member-Excused  
Annette Stoller-Regular Member-Present  
Walter Kolodziej-Alternate-Present  
Keith Goldstein-Alternate-Present  
Margaret Crisler-Selectman-Present  
Galen Stearns-Selectmen's Alternate-Present

Mr. Dubay opened the meeting 7:30 P.M., at the Planning & Development Department. Mrs. Stoller motioned to recess the meeting to Town Hall and Mrs. Crisler seconded. Passed 7-0.

Mr. Goldstein replaced Mr. Wilder on the Board.

**CORRESPONDENCE:** The Board received a confidential communication from Atty. Campbell, Town Counsel, regarding ex-parte communications. This letter was in response to Mr. Turner's memorandum concerning RSA 673:14 and RSA 43:6. It was brought to the attention of Mr. Turner that several members of the Board had received communications at their homes and received telephone calls regarding the subdivision. Atty. Grant Kidd, representing the residents of Heritage Hill Road that abuts the Heights of West Windham Subdivision, discussed a discrepancy with the process and presented the Board with an affidavit from Mr. Peter Schmidt. Mr. Turner explained the incident that took place on November 2, 1998 in the Planning & Development Offices. Mrs. Crisler expressed her concern with the integrity of the file. Two (2) letters were added to the file, a memo from Chief Lipe on the response times of emergency equipment and a letter from the School Department. Mr. Dubay had closed the public portion of the public hearing on October 7, 1998 and continued the hearing for the engineer to provide additional information on the trails. Atty. Phillip Currier, representing the owner, Mr. Everett Ryan, stated it was inappropriate for material to be submitted to the members except at a public hearing and the applicant did not contact anyone outside the public hearing process. The applicant had thought the public portion was closed.

Letter received from Benchmark Engineering, Inc. requesting a postponement of the Fritschy Site Plan to November 18, 1998. Mr. Turner stated he would be recommending rejecting the application. Mr. Jack Semplenski, of Benchmark Engineering, then requested a withdrawal of the application. Mrs. Crisler motioned to accept the withdrawal and Mr. Rouillard seconded. Passed 7-0.

Road Bonds: Mr. Turner presented the Board with a bond reduction for Blossom Road, letter of credit. Mrs. Crisler motioned to reduce the bond \$50,455.00 and retain \$111,914.00 and

Mr. Morris seconded. Passed 7-0.

Mr. Turner presented the Board with a bond reduction for Sherwood Road, a letter of credit. This road has the first coat of paving and the amount would be sufficient to complete the road. Mrs. Crisler motioned to reduce the Sherwood Road bond by \$29,158.00 and retain \$62,197.00 and Mr. Goldstein seconded. Passed 7-0.

Brochure on "Economic Opportunities for your Community," a seminar to be given December 2, 1998.

Letter received from Nassar Investment Trust supporting a proposed zoning amendment involving lot 13-C-1.

Notice received regarding one day workshops to be held by UNH Continuing Education. The State Planning Newsletter was received and will be on file.

Mr. Rouillard reported the Conservation Commission walked the Lamplighter Site, off Route 28, and presented the field inspection report to be placed on the file.

Mr. Morris reported the CIP will be meeting November 10th, at the SAU Building, at 7:00 P.M. The CIP would like to move up the date of the joint meeting with the Planning Board. The Board will set a date at the next meeting.

## **HEIGHTS OF WEST WINDHAM SUBDIVISION & SPECIAL PERMIT (24-F-150) - PUBLIC HEARING CONTINUED**

Mr. Morris requested a Board vote on disqualification, RSA 673:14, he has received a package from the opponents, did not open it but did communicate with the abutters after the May 20th meeting. Mr. Goldstein questioned the relationship with the abutters and Mr. Dubay suggested a workshop on responsibilities and abilities. Mrs. Crisler motioned to have Mr. Morris remain on the Board and Mr. Goldstein seconded. Passed 6-0 (S. Morris abstained). Mr. Rouillard reported he received a package from Heritage Hill Road residents and did read the material. Mrs. Crisler received a package and letter but did not read the material. Mrs. Crisler has also communicated with residents but did not discuss her own viewpoints. Mr. Dubay received a package and letter but didn't feel it would impact his judgement. Mrs. Stoller received a packet but did not read the material. Mr. Kolodziej received the material and received a phone call at his residence but did not discuss the case. Mr. Goldstein did not receive anything at his residence. Mr. Gattinella received two piece of mail and brought them unopened to the Planning & Development Offices. Mrs. Crisler motioned that none of the members needed to step off the Board unless they personally felt they should. Mr. Goldstein seconded. Passed 7-0. Mrs. Stoller motioned Mrs. Crisler be included in deliberations and Mr. Goldstein seconded. Passed 6-0-1 (M. Crisler abstained).

Mr. Turner reported several communications were received. Discussion followed on the amount of information and testimony the Board would allow. Mr. Rouillard motioned the Board continued the meeting for the purpose of reviewing additional communications and

Mr. Goldstein seconded. Atty. Currier, representing the owner, stated the applicant should at least receive a copy of the communications and would object as they had no time to review. Motion passed 7-0.

Mr. Dubay read into the record the following communications:

- a. Chief Lipe's memorandum regarding response time analysis dated October 25, 1998.
- b. Mr. Turner's memorandum dated November 2, 1998 concerning subdivision regulation issues that need resolution.
- c. Letter from VHB, traffic engineers representing the Heritage Hill Road residents, regarding the connector between Heritage Hill Road and Castle Hill Road.

Mr. Morris questioned the test information Chief Lipe submitted and whether there was any problems with equipment traversing Heritage Hill Road. Chief Lipe stated adverse weather conditions affect all roads and Heritage Hill Road was no different than others. Mr. Goldstein questioned the day of the test analysis and what the response time would be at rush hour. Mrs. Crisler asked Chief Lipe if Heritage Hill Road was worse than Castle Hill Road. Chief Lipe responded Castle Hill Road was more hazardous than Heritage Hill Road and would slow down the response time.

- d. Letter received from the N.H. School Administrative Unit No. 28, dated November 2, 1998 regarding the connection between 24-F-150 to the school property.

Mr. Morris questioned the topography at the connection to the school property and was concerned with the steepness.

- e. Letter received from Atty. Grant Kidd, dated October 31, 1998 regarding section 602.2.2 of the subdivision regulations and Mr. Turner's interpretation.

Atty. Kidd felt this was a premature development and would jeopardize the safety of the residents of Heritage Hill Road.

Mrs. Stoller commended the residents for their work and discussed a circulation plan showing a connector. Mr. Turner has researched the circulation plan and would not compare South Willow Street in Manchester to any street in Windham as Mr. Kennedy, of VHB had done in his letter.

Mrs. Crisler asked Chief Moeckel to comment on the hazards of making a connection between Heritage Hill Road and Castle Hill Road. Chief Moeckel responded he did not feel this was an acceptable connector due to the two "S" curves and the steep grade on Heritage Hill Road. Chief Moeckel stated he was in favor of connector roads with lesser grades and no "S" curves. Discussion followed on weather related problems, emergency services and the length of the cul-de-sac. Mr. Gattinella indicated the focus should be on the fact that Heritage Hill Road was always a temporary cul-de-sac. Mrs. Crisler questioned whether the

Safety Committee should be made aware of the problems on Heritage Hill Road. No complaints have been lodged with the Safety Committee.

Mrs. Stoller questioned Chief Moeckel if the empty lot at the end of the cul-de-sac was an issue with the Police Department, i. e. vandalism. Chief Moeckel responded there wasn't a problem at this time.

Mrs. Crisler questioned Robert Devlin, Road Agent, as to any concerns with safety and plowing. Mr. Devlin stated the road should go through for plowing and public safety. Mr. Rouillard questioned the drainage problem at the top of Heritage Hill Road and Mr. Turner explained the problem. The drainage for the new subdivision would correct this problem. Mr. Devlin indicated it would be easier to maintain with a connector.

Paul Konieczka, transportation planner representing the applicant, answered questions concerning the amount of traffic the subdivision would add to Heritage Hill Road with the connection. Mr. Konieczka suggested as the roads in the new subdivision were circuitous it would not draw through traffic. Mr. Rouillard questioned what width of pavement Mr. Konieczka would recommend. Mr. Konieczka could only approximate 22' to 24' of pavement. Heritage Hill Road is 26' wide.

Mrs. Crisler motioned to open and continue the Lamplighter Site Plan and Special Permit, public hearing and the Shoreline Site Plan, public discussion to November 18, 1998, at 8:00 P.M. Mrs. Stoller seconded and passed 7-0.

Mr. Rouillard had previously requested the trail system be placed on the plans. Mr. Peter Zohdi, of Edward N. Herbert Assocs., Inc., reviewed the trail system and agreed to provide right of ways to two town parcels and the school during phase II and phase III. Mrs. Stoller questioned what guaranty the town had and requested a written guarantee with some small bonding. Mr. Turner reported no funds have ever been collected for trails in the past. Mr. Gattinella felt the developer had clearly defined his intent as to trails and right of ways during phase II and phase III. Mr. Rouillard requested the trails be depicted on the plan and wanted to save some of the existing trails. Mr. Morris questioned the accuracy of the trails shown. Mr. Zohdi stated the trails were located from an aerial topography. Mr. Turner suggested a pedestrian easement along the back of lot 24-F-165 to town property be part of this phase. Mr. Morris noted he currently has a packet of information relating to trails and suggested the Planning Board may require trails and be reasonable to incorporate a trail network.

Mr. Zohdi explained a trail easement would be given to the school along the property line. Mr. Everett Ryan, the applicant, explained the owner never gave permission for use of these trails and eventually they became a nuisance. Trails close to homes become an economic disaster and they are presently trying to cooperate with a walkway to the school property. The lots would be economically impaired with trails located on them.

Mr. Gattinella indicated the Board had an obligation to uphold the laws and make a reasonable attempt to provide trails but a subdivision could not be held up because of trails.

Mr. Turner indicated a planning board could do anything it wants until proven wrong. Mrs. Stoller reported usually the town prevails. Mr. Rouillard requested to review the existing network and evaluate to see if there was any merit in asking for an easement and reconfigure the lots. Mr. Zohdi showed the aerial topography map. Mrs. Stoller again expressed her desire for some guaranty on the easements and right of ways. Mr. Zohdi stated he has gone on record to provide a right of way to every parcel that is landlocked.

Atty. Phillip Currier, representing the developer, stated the legal position, that the owner was willing to work with the town but would not provide a public trail system. Mr. Rouillard quoted RSA 674:37 regarding open space and trails.

Mr. Goldstein motioned to approve the subdivision plan with the trail system on lot 24-F-165, the additional trail system in writing and with the conditions previously stated in the October 7, 1998 minutes. There was no second to the motion.

Mr. Dubay opened the meeting to the public requesting new information only. Bonnie Sanders, an abutter, expressed her concern with traffic on Heritage Hill Road.

Mr. Peter Schmidt, of Heritage Hill Road, submitted a summary of the previous proceedings (on file) and requested Mr. Dubay read the first six pages into the minutes. Mr. Kennedy, of VHB, traffic engineers, reiterated the need to balance the benefits to the Fire Department and Road Agent with the safety issues of the grade and curves of the road. Mr. Kennedy did not feel there was sufficient data on the number of cars.

Mr. Dubay read the first six pages of material submitted by Mr. Peter Schmidt summarizing the concerns of the Heritage Hill Road residents. Atty. Kidd suggested an alternative access road that would be gated but could not substantiate whether the road could be a class 5 or a class 6 road. Mrs. Crisler questioned whether the town could bar a class 5 road or only private roads, class 6 roads. Atty. Kidd was not sure. Mrs. Stoller requested Mr. Turner clarify the circulation plan shown. Mr. Turner explained the connections and the disposition of Johnny Hill Road.

Atty. Currier addressed the Board and asked that they focus on the fact that the 16 lots meet all subdivision regulations and reminded the Board of the direction given to the developer at the May 20, 1998 meeting was to make the connection. Mr. Dubay closed the public portion of the meeting. Mr. Goldstein motioned to approve the subdivision with the following conditions:

- Conditions 1 through 5e, of the October 7, 1998 meeting;
- Create a public easement/trail through lot 24-F-165 to town lot 24-F-4000;
- Additional trail system as proposed by the applicant in phase 2 to be submitted and filed.

Mrs. Stoller seconded. Discussion followed on extending the trail system to 24-F-164 and Mr. Rouillard requested the construction of the new Heritage Hill Road be no wider than the

existing Heritage Hill Road for the entire distance. Mr. Turner reported Heritage Hill Road was 26 feet wide and the road agent has had to add one foot on each side in areas. The new road would be curbed.

Mr. Rouillard motioned to amend the motion for the right of way to extend to 24-F-164 and Mr. Morris seconded. Mr. Rouillard amended the motion to construct the new Heritage Hill Road no wider than the existing Heritage Hill Road or Castle Hill Road and Mr. Morris seconded. Discussion followed on Johnny Hill Road and Mr. Morris requested an easement on Johnny Hill Road. Mr. Zohdi stated the developer was not ready to dedicate any additional trail system.

Galen Stearns addressed the Board concerning RSA 674:35 regarding easements and the law that they should not be part of the approval and cannot be a part of the approval. That would constitute land taking. Mr. Morris questioned Mr. Turner on the mechanism for requiring playgrounds. Mr. Turner explained until a judge declares it a taking, a board can make requests. Mr. Stearns reiterated the Board should not include the easement as part of the motion. Mr. Zohdi agreed to dedicate the trail easement to 24-F-164.

Vote on the first amendment to add 24-F-164 to the easement passed 4-3 (Opposed D. Dubay, A. Stoller, J. Gattinella). Vote on the second amendment to make the new road no wider than Heritage Hill Road or Castle Hill Road failed 5 opposed and 2 in the affirmative (W. Morris, B. Rouillard).

Mrs. Crisler questioned Mr. Turner on how the board could address the safety issues on Heritage Hill Road. Mr. Turner suggested they draft a letter to the Safety Committee.

Vote on the main motion as amended passed 6-1 (W. Morris opposed).

## **HEIGHTS OF WEST WINDHAM SPECIAL PERMIT (24-F-150) - PUBLIC HEARING CONTINUED**

Mr. Peter Zohdi, of Edward N. Herbert Assocs., Inc., reviewed the proposed crossing of the W.W.P.D. for the roadway in one section and a treatment swale to be placed in the W.W.P.D. Mr. Turner questioned the slopes in the areas and the total area of impact. The plan depicts erosion controls and Mr. Rouillard questioned the discharge into the swale. Mr. Turner indicated the swale was adequate. Mrs. Crisler motioned to approve the special permit and Mr. Rouillard seconded. Passed 6-1 (W. Morris opposed).

Meeting adjourned 12:45 A.M.

Mona Feciuch