

TOWN OF LOUDON
LOUDON, NEW HAMPSHIRE
PLANNING BOARD MINUTES
JUNE 20, 2013

Meeting called to order at 7:00 p.m. by Chairman Tom Dow.

Attendance:

Alternate Bob Ordway, George Saunderson, Chairman Tom Dow, Vice Chairman Stan Prescott, Bob Cole, Ex-Officio Dustin Bowles
Bob Ordway was appointed as a voting member in the absence of Tom Moore.
Bob Butler represented the Conservation Commission.

Acceptance of Minutes:

May 16, 2013 Regular Meeting – Bob Cole moved to accept the minutes as written; seconded by George Saunderson. All were in favor.

Chairman Dow announced to those in the audience that New England Flower Farms has asked to continue their applications. Abutters were given the date of the next meeting.

Conceptual Consultation:

Paul & Mary Nichols – Mr. Nichols explained that they own adjoining lots at M66/L8 and M65/L6 on Loudon Ridge Road. He said they would like to sell the house and land of L8 and build a new, one-story home on L6. He said they want to adjust the boundary line between the two in order to keep the access to their wood lot. They presented the proposed lot line adjustment plan for the Board's review. There was discussion about the existing driveway, proposed location of the driveway on the vacant lot, frontage, setbacks, and a pond/wetland on the vacant lot. Bob Butler asked how close the new driveway would be to the pond/wetland. Mr. Nichols explained that the new house would be at the front of that lot so it would not interfere with the wet area. He pointed out that the new boundary line would be close to the existing driveway. There was discussion about the need for a special exception for the reduced setback created by the lot line adjustment. It was agreed that the Nichols should go to the ZBA for the special exception before coming to the PB with their application.

Old Business:

Jeff Green asked to address a former matter before beginning this hearing. He explained that a complaint letter with regard to the Burke culvert on Greenview Drive was sent to DES by Julie Robinson of the Conservation Commission. Mr. Green presented a copy of that letter and the DES reply letter for the file. He said he would like it known that the culvert application was done properly and the culvert replacement is now complete.

Application #13-04, TTD, LLC – Major Subdivision on Route 129 & Pittsfield Road in the RR District, Map 25, Lot 5. Jeff Green represented the applicant. Also present was Attorney Bruce Marshall, applicant Ray Dumont, abutters Bob and Marilyn Whitten, Geoffrey Smith, and Earl and Alice Tuson.

Mr. Green gave an overview of the project to date: six lot subdivision, two+ acres each, has shown ledge outcrops, slopes over 25%, proposed well locations, has State subdivision approval, septic design approvals, driveway permits (existing house driveway to be moved/ parking area created so vehicles don't have to back onto Route 129 and two other existing driveways on Route 129 being relocated to safer locations per the State), test pit data given to the town (eight pits plus ledge probes), easement and location for cistern shown (test pit 49"), had someone review hydrology as requested, and they are asking the Board to review the information and move on a decision this evening.

Chairman Dow reviewed a list of items to be addressed from the last time the application was discussed: 1) hydrologic study; 2) safety study/traffic impact analysis; 3) profiling of ledge/areas of houses and septic systems; 4) erosion control plan on Route 129 to ensure driveways are not washing down to the pond; and 5) verification of ledge and wetlands. He stated that the Board has received the hydro study and has the town engineer's comments.

Bruce Marshall stated that all of the driveways are on State roads. He noted that two existing driveways have been relocated to safer locations. He said the State has reviewed for drainage and safety, and the fact that driveway permits were issued confirms that the driveways meet those concerns. Mr. Marshall said that addresses two items on the checklist that was read. He noted that an appeal has been made on the driveways and the abutter has no standing according to the State. Mr. Marshall explained that the State has taken preemptive authority by issuing the permits and spoke about case law on standing. He said he feels all issues have been addressed, feels this proposed plan is in conformance with all town regulations, and he would ask for a roll vote if the Board decides to act on the application. George Saunderson asked if Mr. Marshall was saying that the Town has no right to ask for more than the State has covered. Mr. Marshall said that was correct, the State has the foremost authority on State roads, and they have deemed the driveways safe and with proper drainage. He said he can find no agreement (memorandum of understanding) between the State and the Town. He said the on-site portion of the driveway is under the Town's jurisdiction but not the locations that have been deemed to meet DOT standards.

Stan Prescott said he would like to hear about the appeal that was mentioned. Mr. Marshall spoke about the DOT appeal that was filed by an abutter. He gave copies of DOT letters to the Board for their review. He pointed out that the two driveways being appealed are the two that have been existing for years and are being relocated to safer locations per the State. Mr. Marshall said he met with DOT District 3 and confirmed that the permits were issued and the driveways would be in safe locations. Earl Tuson read from RSA 236:13, V with regard to the Planning Board's authority to exercise the same highway authority within the town that the State has. Mr. Marshall said the RSA gives the Board some power but does not trump the State of NH. He explained that portions of some State roads may involve a town, such as Route 106 and the track area. Pittsfield Road resident Sherri Kluesener asked if it was determined that the driveways will be able to be built to meet standards. Mr. Marshall explained the history of the number of driveways on a lot at a certain time in history, having one year to complete the driveways, having to be at a very specific pitch, etc. He said a DOT supervisor inspects the work

and if it does not meet the standards then it has to be corrected. He said DOT will not issue permits if the driveways cannot be built.

George Saunderson stated that he spoke with James Gaynor, the staff scientist who did the hydrogeologic study. He said he explained to Mr. Gaynor about the abutters' concerns with their wells and learned that Mr. Gaynor did not speak with any of the abutters. Mr. Saunderson said he feels the Board should know the status of the current wells and go from there. Tom Dow said he thought a little more could have been done, noting that some of the closest wells were not listed and the study did not seem to address a lot of questions and concerns of the neighbors. Jeff Green said that the report states that a lot of what is being drawn out is going back into the ground. Bruce Marshall said he has never had a subdivision be required to do a hydrogeologic study when it meets all town regulations. He said he spoke with Chris Adams at Nobis Engineering who said they had not recommended that the study be done but they provided a scope to follow if the Town decided to require a study. Mr. Marshall said the Board cannot treat this case any different if it meets all regulations than any other lots in town. He said they are talking about five additional wells and by asking for information on other wells in the area it is being treated differently. Mr. Marshall said the water problems expressed by abutters could be caused by sediment, being refracted, or someone using more than they should for commercial purposes. Bob Cole said the neighbors' concerns are the Board's responsibility to address. Mr. Marshall said he understands that and in response to concerns, the Board required the applicant to get a hydrologist to do the study. He said NH law states that a decision cannot be based simply on abutter complaints. Mr. Marshall said the abutters would have to show their expert's report. He said he found it disturbing to read in the records that the town selectmen are interested in having someone else purchase this property to put a town building on. Dustin Bowles clarified that the town is not proposing anything for this lot. He said a third party spoke with the Board of Selectmen about relocating the old Legion building, which now belongs to that party, to this location.

George Saunderson asked if Mr. Marshall is saying that if there are ten concerned abutters the Board cannot take those concerns into consideration. Mr. Marshall said if the Board gets a study that does not justify their concerns then they have to present evidence, otherwise it is simple speculation/conjecture. Mr. Saunderson said Mr. Gaynor was not aware of these concerns, maybe he could do a bigger study. Bruce Marshall said he spoke with Muriel Robinette, president of the company that did the study, and made her aware of the concerns. He said Ms. Robinette said this is all that was needed and Nobis agreed. Mr. Saunderson said five additional wells might make a difference. Stan Prescott said it was stated that the Board should not be requiring the study yet the Regulations allow them to request additional information, and Nobis could have said it was not necessary if they felt there wouldn't be an overburden. Mr. Marshall said he called Nobis to clarify why the study was being requested. He said if he was told that more information was needed they would go from there.

Jeff Green asked what Nobis was saying about the study. Chairman Dow read note #6 from the Nobis comments. He said the Board does not want the responsibility if the houses get built and the wells across the street are cut in quantity. He said the Board asked for the study, they got it, and they got their engineer's comments but the neighborhood has come up with concerns of insufficient water supply. Stan Prescott stated that the burden of proof lies on the abutters. Marilyn Whitten wanted to know who owns the land and how abutters know that compensation will be available. Mr. Dumont stated that he owns the land.

George Saunderson suggested postponing a decision in order to try to answer some questions. It was asked if that was a motion. **George Saunderson made a motion to postpone the hearing for one month after asking more questions, have more answers, and maybe talk with the town's lawyer; seconded by Stan Prescott.** Bob Cole said questions have been addressed and there is always the possibility of problems down the road even with one house. He said the applicant has answered questions and the town's engineer has reviewed the study and is okay with it. He referred to paragraph #6 on the Nobis review and said he does not think another month is necessary. Mr. Cole said he feels questions have been answered and the applicant has done what has been asked. **Yes – George Saunderson, Stan Prescott; No – Bob Ordway, Dustin Bowles, Bob Cole. Motion to continue – 2Y – 3N; FAILED**

Earl Tuson submitted a letter in opposition to Application #13-04, TTD, LLC for the record. Mr. Tuson stated that an expert was at the site according to the study; he said he does not feel the expert knows his rocks. He spoke about the type of rock found on this site. Lisa Cogswell said she has concerns that there was disconnect between the scientist and his manager. She said that more could have been done per George Saunderson from the scientist. Bob Whitten said a seismic analysis could give you quick and accurate answers. He said he has only heard opinions and feels it is important to establish what will happen to the aquifer. William Cogswell said the Board wanted a traffic study and hydrologist study but it seems like a lot of internet information was submitted and the applicant has danced around doing as asked. Chairman Dow said they had a study done by experts as asked and have done what was felt to be adequate.

The chairman closed the meeting to the public and opened it to the Board only. Earl Tuson submitted a letter relative to his appeal of NHDOT's decision to issue Permit #271-247A for a shared driveway to access Mr. Dumont's proposed Lots 5-1 and 5-2.

Stan Prescott asked if Nobis was doing anything with regard to the study of the ledge on this site. Donna stated that the Board of Selectmen signed and returned a document to contract with Nobis as the town's engineer. There was discussion of the study and the lack of information on ledge. Mr. Prescott asked if profiles of the driveways were done. Tom Dow said he thought it had been determined that they fall in the State's jurisdiction. Mr. Prescott said the town oversees the section on-site. Dustin Bowles said he is concerned on the Route 129 side about material washing down to the pond. There was brief discussion about driveway standards. It was noted that test pit data with ledge probes has been submitted.

Bob Cole said he thought they had all the information but where the Nobis requirements weren't completed there are ledge questions that have not been addressed. Tom Dow wondered if that would change anything. Mr. Cole said he would agree; it is hard to know. He said wells are a tough thing to deal with, noting that neighboring wells could have iron and be clogged but it is hard to know why they are failing. Bruce Marshall said they agreed with note #6. Bob Cole said that would be an attempt to avoid possible problems in the future. He said that is the next step in the process and could be a condition. George Saunderson suggested getting in touch with the attorney with regard to future liability, get to Nobis for fault line locations, and get the attorney's opinion on bonds in case of future well problems.

Bruce Marshall asked the Board to specify what is wanted for driveway profiles, noting that the Regulations refer to town right-of-ways yet these are state right-of-ways. He asked what more the Board would be looking for and where it would be found in the Regulations. Stan Prescott referred to Article 18 of the Land Development Regulations regarding erosion control plans. Mr. Marshall asked what standard for driveway profiles they are looking for. He said

they do not know the location of future houses or where the driveways will leave the State right-of-way. He said those are governed by the building permit and CO process. Mr. Prescott said the owner walked the lots with the Board and showed them proposed locations of houses and driveways. Mr. Marshall said the building permit process address that.

Stan Prescott made a motion to continue with the following information to be submitted: 1) item #6 on Nobis comments; 2) verification of ledge; 3) erosion control for three driveways on Route 129; seconded by George Saunderson. Jeff Green asked why these are being required. Mr. Prescott said the Board of Selectmen and Nobis had a contract and they did not take the plan and verify the ledge. Bruce Marshall said it would make sense as conditions of approval as they have to know where the wells will go. If they are not sure of the house or septic locations it would be hard to do beforehand. Mr. Green said he has shown ledge and can meet the numbers for each lot. He said the best location for wells cannot be done until the house and septic are determined. There was discussion of the meaning of note #6 on the Nobis comments and who would watch the situation if made a condition of approval. **Stan Prescott withdrew his motion; George Saunderson was in agreement with the withdrawal.**

Bob Cole made a motion to approve the application with conditions: 1) paragraph #6 of the Nobis report (to be included in the Notice of Decision); 2) note placed on plan that no CO is to be issued unless #1 is completed by a hydrologist; 3) as long as the active driveway appeal does not result in alteration of the plan for driveways as presented; second by Dustin Bowles. Yes – Bob Ordway, Dustin Bowles, Bob Cole; No – Stan Prescott, George Saunderson. Motion to approve with conditions – 3Y, 2N; PASSED

New Business:

Application #13-08, Karen P Mossman Revocable Trust – Minor Site Development on Route 106 in the C/I District, Map 50, Lot 12. Bob Mossman presented the application. There were no abutters present.

Mr. Mossman stated that there will not be a farm stand this year; the trailer company will occupy the building 100%. Tom Dow asked if the business will be full-time, year-round. Mr. Mossman said it would be full-time, year-round. He said a sign permit was done for the sign that is on-site. The sign is not shown on the plan. Mr. Mossman said there is a light on a tree at the front of the lot, one at the gable of the building, and one over an entry door.

Tom Dow said what is going on at the lot is good but the Board would need to see more with the next expansion, including pavement, lighting, etc. He said this has grown from a small business and seasonal farm stand. There was discussion about how this has doubled in size even before this application, with the business selling parts and thirty trailers. It was noted that there is a portable toilet on-site. Jeff Green, as a member of the public, said the applicant has a site plan and could show what is missing or request waivers. Discussion continued about the size of the operation and if a full site review was needed.

Bob Ordway made a motion to approve the application for thirty utility-type trailers as requested, with the condition that if they come back it would be subject to a full-blown site plan. Bob Butler asked if the motion should be stated as trailer sales, not repairs, etc, just sales. **Bob Ordway said there could be no expansion beyond what was presented. Stan Prescott seconded the motion. All were in favor.**

Application #13-09, Debra Rattee – Minor Subdivision on School Street in the RR District, Map 38, Lot 27. Jeff Green represented the applicant. There were no abutters present. **Stan Prescott made a motion to accept the application as complete and move to public hearing; seconded by George Saunderson. All were in favor.**

Mr. Green explained that this is a one lot subdivision on School Street, next to the duplex at the corner of School Street and Batchelder Road. He said it would be a two acre lot, leaving approximately 25 acres on the main parcel. Mr. Green said there will be 550.07' of frontage of the main lot left on School Street after this subdivision. He said subdivision approval has been received and there are no wetlands on the lot or within 400' of its perimeter. Mr. Green gave the history of the others lots, noting that this lot is under agreement. He said there is room for two more lots on School Street and a right-of-way for a road into the remaining acreage.

Mr. Green showed a conceptual build-out for the remaining parcel. He said there is potential for a maximum of five more lots and that the owner would like to sell the balance of the parcel as one piece. There is no access to the remaining acreage from Batchelder Road. Stan Prescott asked if the power line continues through the Chesley field. Mr. Green pointed out that it goes across Russ Pearl's Dragonfly Drive and then to the Chesley field. Mr. Prescott asked about putting a road out across the Chesley piece. Mr. Green explained that it would require a major wetland crossing as there is a very well defined channel. He said they would be better off going Dragonfly Drive.

Chairman Dow read waiver requests:

Section 12.4.9 – **Bob Cole made a motion to grant the waiver; seconded by George Saunderson. All were in favor.**

Section 12.4.10 – **Bob Cole made a motion to grant the waiver; seconded by Stan Prescott. All were in favor.**

Bob Cole made a motion to approve the application; seconded by George Saunderson. All were in favor. The new lot is subject to an impact fee.

Applications #13-10 and 13-11, New England Flower Farms – Chairman Dow read a request to continue these applications to the July 18th meeting. **Stan Prescott made a motion to continue the applications to the July 18th meeting; seconded by George Saunderson. All were in favor.** The meeting will be held at 7:00 p.m. in the Community Building. There will be no further notification.

Application #13-12, David & Cheryl Rice – Minor subdivision on School Street in the RR District, Map 55, Lot 3. Jeff Green represented the applicants. There were no abutters present. **Stan Prescott made a motion to accept the application as complete and move to public hearing; seconded by George Saunderson. All were in favor.**

Mr. Green explained the location of the lot at School Street and Old Shaker Road, noting that it appears on two pages of the tax map. The proposal is to subdivide one 5.518 acre lot for the applicants' nephew to build a house on. The lot has 323.72' of frontage. Mr. Green pointed out that there are several pieces of frontage remaining on the main parcel, totaling approximately 560'. There is an existing house on the large piece. Mr. Green showed the wet area, areas of the test pits, areas of steep slopes, and noted that there is no ledge. Bob Butler asked if the wet in the corner or back of the lot will be touched. Mr. Green showed the 25' and 75' buffers and explained that a lot of the wet is road drainage. He pointed out one area of steep slope that is a berm where the pond was built.

George Saunderson asked if a site walk should be done to look at the wet, pond, and slopes. Stan Prescott stated that there appears to be steeper slopes outside the steep slope area in the well radius area. Mr. Green said there are no major areas, all are within limits.

Chairman Dow read waiver requests:

Section 12.4.10 – Stan Prescott noted that the plan shows one type of soil. He asked if it is the same type of soil in the wetland. Mr. Green explained that it is partly man-made. He said he used Merrimack/Belknap County Soils Survey. Earl Tuson said the new soils survey has made many pieces that would have previously shown various soils appear as all one type of soil.

Bob Cole made a motion to grant the waiver; seconded by Bob Ordway. All were in favor.

Section 12.4.4 – **Bob Ordway made a motion to grant the waiver; seconded by Stan Prescott. All were in favor.**

Section 12.4.9 – **Stan Prescott made a motion to grant the waiver; seconded by Bob Cole. All were in favor.**

Bob Cole made a motion to grant approval of the application; seconded by Bob Ordway. All were in favor. Mr. Green said he will add the tax map break, road names, and wetland buffer notes to the plan. The new lot, to be labeled 55/3-1, is subject to an impact fee.

Board Discussion:

MP Transportation Committee report – Tom Moore was absent; will report at next meeting.

Fieldview Lane letter - Donna informed the Board that Fire Captain Bill Lake sent a letter regarding a change of address from Oak Hill Road to Fieldview Lane. The resident is not willing to use the new address and there is concern of confusion in the event of an emergency.

MDP Development letter – The Board received a letter from Tony Marcotte of MDP Development with regard to making a change in the condominium documents for the Villages at Loudon. The change is to reflect the results of the Zoning Amendment approved in March 2013 to change the definition of elderly housing. Board members agreed that the documents should be changed to include the new definition. A copy of the Zoning Ordinance change will be filed with the Villages' records in the office.

Report of the ZBA:

There is a soil application and a variance for work in a wetland on the agenda for New England Flower Farms/Pleasant View Gardens. There is also an application for a special exception for a sign for Subway at the Beanstalk.

Report of the Board of Permit:

Stan Prescott reported that there was no meeting this month.

Adjournment:

Stan Prescott made a motion to adjourn at 10:42 p.m.; seconded by Dustin Bowles. All were in favor.

Submitted by,

Donna White
Administrative Assistant