

MINUTES  
PLANNING BOARD MEETING  
July 6, 2016

PRESENT: Bert Hamill, Chairman, Ed Dekker, Ned Nichols, Paul Termin, Tim Jones, Liz Freeman, David Lage, Deirdre Daley, Louise DelPapa

The meeting was called to order at 7:30 p.m. at the Town Office.

The Board reviewed the minutes of the June 15, 2016 meeting. The following corrections were made: the first page, fifth paragraph, fourth sentence should read; "and the **latter two** lots will share a driveway." The first page, fifth paragraph, fifth sentence should read; "and **this** is stated in the notes." The second page, second paragraph, the third sentence should read; "Mr. Lehtonen offered to build the driveway at 16 feet **wide**." The second page, first paragraph, the seventh sentence should read; "and stated from station **1+00 to 3+00** should be riprap." The second page, first paragraph eleventh sentence should read; "**after which** erosion could become an issue." The second page, second paragraph should read; "the Planning Board **and other departments sign off on the occupancy permit**." The second page, fourth paragraph, second sentence should read; "**allow** a performance bond." The second page, fourth paragraph, the last sentence should read; "**5** members were in favor and **2** were opposed, **and the issue was resolved without seeking legal opinions**." Bert accepted the minutes as amended.

**Voluntary Merger, Marcia Ober, 26 Lower River Road, lots 11/193 & 11/192A**

The Board reviewed a Notice of a Voluntary Merger. Ned made a motion to approve the merger. Dave seconded the motion and it passed unanimously.

**Mr. Gary Litchfield, Paving of Green Farm Road and Jacqueline Drive**

Mr. Gary Litchfield, Builders Land Co. stated he met with R & D Paving Co. and Peter Goewey, Director of DPW, at Jacqueline Drive and Green Farm Road to review the condition of the roads. Mr. Litchfield distributed a report to the Board conducted by S.W. Cole Engineering, Inc. which provided coring samples at nine different locations on both roads. Mr. Litchfield stated Mr. Goewey will be walking the property on July 6, 2016 with R & D Paving to show them the areas of concern. Mr. Litchfield did acknowledge the structures have collapsed on the roads and he has agreed to repair them and will also cut back the brush. The Board discussed the sub base of the road and it was determined the sub base coat is adequate and Mr. Litchfield will cut out the problem areas and make repairs. Mr. Litchfield stated the sub base coat has compacted for at least 10 years and Mr. Goewey agreed that it was not a problem. The consensus of the Board was for Mr. Litchfield to go forward and pave the roads with 6 members in favor and 1 member opposed. Ned requested a copy of the initial inspection report/approval from Kent Brown at the time when the money was released. The Board requested a paving schedule for the project which will be completed this year. They also would like to be involved in the inspection process.

**William Poole, 11 Porter Hill Road**

Bert read a Zoning Board notice for a public hearing for Mr. William Poole, lot 11/6, for a Special Exception for retail sales. If the special exception is approved, the Board will discuss if Mr. Poole will need to meet with the Planning Board for a Site Plan review.

**8:15: USA Properties, Stowell Road, lot 10/7, Mr. Bruce Simpson, President and Peter Holden, Holden Engineering, Continuation of a public hearing for a 47 lot subdivision**

Bert read a letter from the Temple Board of Selectmen addressed to the Board of Selectmen dated June 30, 2016. The letter rejected Mr. Simpson's request to have Moran Road in Temple upgraded.

Bert read a letter from USA Properties, dated June 15, 2016 denying paying for the cost of re-noticing the abutters for the continuation of the hearing. The letter requested the Planning Board confirm it will accept responsibility of payment. Bert stated the Board will discuss this issue at a later date and moved forward to the public hearing.

Bert began the hearing with a few comments and expressed the Planning Board is here to help USA properties and to resolve issues without litigation. Mr. Simpson stated that the Board has acted unreasonably and illegally. Bert disagreed with Mr. Simpson and stated the Board had different interpretations of the law and did not act illegally. Tim stated he would like to focus on issues and move forward. Mr. Simpson distributed a letter dated July 5 requesting Liz Freeman and Ed Dekker recuse themselves from this case. Ed stated that he and the Board has an obligation to work with the applicant and told USA Properties at the first design meeting of the issues with density and the dead end streets. The Board has attempted to work with the applicant and create a proposal that is consistent with our regulations. USA Properties returned to meetings with unmodified plans. Liz stated when Mr. Dekker and Ms. Freeman were referred to in court, the reference was to a joint hearing between the Planning Board and Zoning Board and she feels the court was referring to the two chairs, one being Ms. Wendy Freeman and not her. Both Liz and Ed stated they were not biased against USA properties and would not recuse themselves. Bert stated the Board will consult with legal counsel.

The Board reviewed fifteen items (15) from a summarized list dated 11/19/14 with Mr. Simpson and Mr. Holden:

1. Regional Impact – This item is completed; Town of Temple was notified and will be notified for every meeting.
2. Number of lots allowed - The Board has requested a new plan showing 47 lots which needs to be completed.
3. Open space requirements - The Board requested a calculation sheet for open space and where they are located.
4. Disturbance of slopes over 25%- resolved, no further action needed.

5. Utility Plan – The Board requested a new detailed plan – Mr. Holden stated the plan was submitted to PSNH. The Board requested new plans for **all** of the utilities and requested it be submitted electronically.
6. Details for individual lots - The Board requested an 11 x 17 sheet with lot details with each lot having a separate sheet. The driveways are to be shown along with drainage calculations for driveway and house.
7. Lot sizes – Ned stated the lots are 1/3 acre and feels the State should look at the whole project for the impact on the sub surface waters not just on the single lots. The Board discussed requesting a report from a qualified septic engineer/designer for each lot. Mr. Holden stated the designs are submitted to DES who looks at the whole project and once the project is approved, an individual plan is submitted for each lot.
8. Wells – A study was completed by a geologist and USA will submit the study.
9. Drainage and Erosion Control – Mr. Holden stated he submitted an Alteration of Terrain permit to the State. The Board discussed having Kent Brown review the erosion control Plan if Kent feels it is warranted. The previous filed Plan is to be modified. The Board will ask Kent if he needs to review this plan.
10. Reclassification of the Class VI portion of Stowell Road – The road needs to be upgraded to d Class V standards. The applicant stated they are considering building a new private road using their own property. USA properties stated they would like to meet with Selectmen and will call Joanne. Liz stated they will need to submit a new plan or get permission from the Selectmen to upgrade the road. The Board discussed frontage and Ed stated the applicant is not using the frontage on Stowell Road for home lots; they are using frontage on the new loop roads and you cannot connect to a Class V private road via a Class VI road.
11. Emergency Access – The Planning Board has determined the roads that cross over other people's property must be removed from the plan. They requested the applicant to explore emergency access, traffic impact and a safety study by a traffic safety engineer. The applicant stated that lot 10/6, the Craven Development open space lot, may be used for an emergency access road if the homeowners agree. Mr. Simpson distributed a traffic study report that was completed by Holden Engineering. The Board having a traffic engineer complete the study.
12. Condition of Stowell Road – The Planning Board discussed hiring a civil engineer to evaluate the road and come up with suggestions for improvements. Mr. Holden stated they would like to find their own engineer. The Board will select three names and let the applicant choose the engineer or they can use Kent Brown.

Paul made a motion to adjourn the meeting at 9:30. The Board voted with one in favor and 6 opposed. Paul left the meeting and Bert appointed Deirdre to fill in for Paul.

13. Temporary Dead End Roads – Bert read the Supreme Court decision and the court has remanded it back to the Planning Board and the discussion is still open. Bert stated the Planning Board is desperately trying to avoid another delay due to litigation and would like to find a solution. The applicant feels their roads are in compliance and their

position has not changed. Bert stated the Board will need to consult with legal counsel. This issue is not resolved.

14. Skipped item.

15. Additional Plans and Documents – State approval for septic systems was previously discussed. Letter from road agent addressing access issues is needed. Letter from Fire Chief is needed. Copy of Site Specific permit from DES is needed. Erosion control plans for driveways was previously discussed.

The Planning Board requested a new set of plans from the applicant after they meet with the Selectmen.

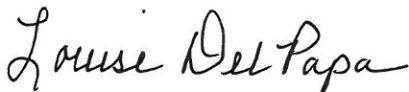
The Planning Board would like to meet with Attorney Gary Kinyon and Bert will schedule a meeting for the August 3, 2016 meeting.

The hearing for USA Properties was continued to September 21, 2016 at 7:40 p.m.

The meeting adjourned at 10:15.

Attachments: Letter from USA Properties dated 6/15/16  
Letter from USA Properties dated 7/4/2016

Respectfully submitted by:

A handwritten signature in black ink that reads "Louise DelPapa". The signature is written in a cursive, flowing style.

Louise DelPapa  
Land Use Clerk

**USA PROPERTIES, INC.**

PO Box 296  
Dublin, NH 03444

Town of New Ipswich  
Planning Board  
661 Turnpike Road  
New Ipswich, NH 03071

June 15, 2016


Dear Ms. DelPapa,

In response to your letter requesting that USA Properties, Inc. pay the costs of re-noticing the resumption of the Board's consideration of our subdivision application on remand from the Superior Court.

We feel strongly that this should be the Town's expense, not ours. The Superior Court in its latest decision ruled that the Town had acted unreasonably and unlawfully in ruling as it did with regard to the road issues. But for the Board's unreasonable and illegal decisions, the consideration of the application would have continued without any need for re-noticing.

I would also like to point out that this is the third time the Superior Court has found decisions made by the Board unreasonable and illegal. These decisions have cost our small company many thousands of dollars in costs and legal fees. In consideration of this, and the fact the Board's illegal decision was the reason for the need for additional notice, the Town should pay the costs associated with resumption of the case. Please confirm that it will accept this responsibility.

Sincerely,

  
Bruce Simpson, Pres.  
USA Properties, Inc.

cc: Aaron Harber  
Michael Malaguti, Esq.

# USA PROPERTIES, INC.

POST OFFICE BOX 296 - DUBLIN, NH 03444

Chair, Planning Board  
Town of New Ipswich  
661 Turnpike Road  
New Ipswich, NH 03071

July 5, 2016

Re: Remand of USA Properties Application, Lot 10/7

Dear Sirs,

We continue to be very concerned about the impartiality of the Board with respect to our application. Three times the Board has made prejudicial and erroneous decisions on the application, over our objections: first by refusing to process our application at all, in violation of state law; secondly by attempting to apply zoning rules enacted after our application was submitted, again in violation of state law; and thirdly, by attempting to apply unreasonable interpretations of the road length regulations in order to defeat our project. Three times we have needed to appeal this Board's decisions to the Superior Court, and all three times the Court has ruled that the Board acted unreasonably and illegally. All this has cost us years of delay and has cost our small company, and the taxpayers of New Ipswich, tens of thousands of dollars.

I would like to bring to the Board's attention the words of Judges Temple and Colburn of the Superior Court. In his decision of July 2014, finding that the Board had acted illegally for the second time, Judge Temple wrote:

*In sum, after reviewing the record in its entirety, the Court is quite troubled by the Board's unwillingness to work with-rather than against- one of its corporate citizens. The Court reminds Mr. Dekker and Ms. Freeman that they have "a constitutional obligation to provide assistance to all their citizens under Part I, Article I of our State Constitution...the Court strongly encourages the Board, in furtherance of its duty...to attempt to negotiate a workable plan acceptable to both sides. On remand, the Board is ordered to meet this constitutional obligation."*

Likewise, in her November 2015 decision finding the Board had acted illegally and unreasonably for the third time, Judge Colburn wrote:

*In its prior order involving these parties, the Court (Temple, J.) strongly advised the Board to work with USA in developing this parcel, and reminded it of its constitutional obligation to do so. Despite this order, the Board proceeded to create non-standard definition of "dead-end street", the effect of which was to derail and/or delay USA's application.... This case is remanded to the Board. The Board is ordered, again, to work with-rather than against-USA in developing this parcel of land.*

Like Judge Temple, Judge Colburn also mentioned Mr. Dekker and Ms. Freeman by name, and wrote "...the Court strongly recommends that any Board members who may be biased against USA recuse him or herself on remand".



We feel that anyone person who reviews the record, including all the meeting minutes, would come to the conclusion that Mr. Dekker and Ms. Freeman in particular have prejudged our application, failed in their constitutional duty to assist us, and pushed the Board to attempt to derail our application by any means necessary. Members of the Board apparently agreed when they proposed a motion in November 2014 to recommend that Ms Freeman recuse herself from the case, and Mr. Dekker recuse himself as Chair due to "an appearance of bias". Accordingly, we would ask that the Board take a vote recommending that those two members specifically identified by the Court recuse themselves from further consideration on our application so we may be afforded the impartial tribunal required under state law.

Respectfully Submitted,

Bruce Simpson, Pres.

USA Properties, Inc.

cc: Peter Holden, HOLDEN ENGINEERING

Aaron Harber, USA PROPERTIES, INC.