

PLANNING BOARD MEETING
FEBRUARY 4, 2015

PRESENT: Ed Dekker, Chairman, Ned Nichols, Paul Termin, Bert Hamill, Tim Jones, Joanne Meshna, Attorney Gary Kinyon

The meeting was called to order at 7:10 p.m. at the Town Office. Joanne was appointed to fill Liz's vacancy for the first part of the meeting not including the USA Properties hearing.

Ed asked Attorney Kinyon to explain his advice to the Board with regard to Ned and Paul's comments on the waiver request from USA Properties, and not putting it in the record. Attorney Kinyon stated the time to comment would have been after the hearing on the waiver request.

The minutes of the January 21, 2005 meeting were reviewed and the following corrections made: page 2, last paragraph, third sentence should read "The only provision they have sought is to have the dead-end streets installed under the temporary dead-end provision..."; page third, last paragraph, second sentence should read "Mr. Holden responded that for the most..."; last sentence in that paragraph should read "The Class VI part of Stowell Road is approximately 300 feet."; page 4, fourth paragraph, add the following sentence after the fourth line, "Woody pointed out that the ITE recommends that the maximum length of a cul-de-sac should be 1000 feet , and serve a maximum of 20 dwellings."; same paragraph, third to last sentence should read "...and many are like Keene or are defined by multiple..." Tim made a motion to approve the minutes as amended. Bert seconded the motion and it passed with Tim, Bert, Ed, and Joanne in favor and Ned and Paul abstaining.

Joanne distributed a letter from AECOM regarding the Tennessee Gas Pipeline Company and request for information. The Board referred the letter to the Conservation Commission.

7:30 p.m. USA Properties, Inc. – Continuation of public hearing for subdivision:

Mr. Bruce Simpson and Mrs. Peter Holden were present for the applicant. Ed noted at the conclusion of the last hearing on January 21, 2015, the Board had decided on the measurement method for the dead-end road and wanted to review the traffic study and Pernaw report. He continued that he had not found anything regarding the safety of a dead-end road in the studies and asked the applicant if he had any further information. Mr. Simpson stated the studies spoke for themselves and he had nothing further to add.

Ned stated he would like to find a way to make the project work but forty-seven houses at the end of a mile long dead-end road is a very poor practice from an emergency management situation. He suggested the hiring of an expert in the field to look specifically at the dead-end road issue and the ability to handle emergencies. Paul added he was not an expert in this field and it would be helpful to have one speak on the issue. Ed noted the Board has the recommendations of the National Association of City Transportation Officials and their citation of the ITE recommendations that cul-de-sacs be limited to 1,000 feet and a maximum of 20 dwellings. He added he would expect an expert to explain why these recommendations are wrong. Mr. Simpson responded the standards are not in the regulations

and he asked the Board to follow the regulations. Ed noted the applicant is asking the Board to ignore its regulations. Ned continued it is a public safety issue that the Board needs to look at with any applications and common sense says this is not a good idea.

Bert noted he had looked at the risk factors on Stowell Road. The proposal is well beyond the recommended standards but based on the length of road, risks involved, and number of medical emergencies that could be expected, there would be one additional life threatening emergency every three years if this application was approved. Paul stated there are people who have done these studies that might be able to offer the Board some valuable advice and that was what he was asking to be done before the Board makes a decision. Tim agreed with the comments made and that the next step is a study.

The Board and the applicant discussed the process for the hiring of a mutually acceptable expert. Paul noted there are four firms in Manchester that are nationally known in this field. Ned added someone who has expertise in emergency management should be hired. Attorney Kinyon suggested the Board might want an expert to look at the safety issues arising from a dead-end road situation, how would they be addressed in this particular development, and what would they consider the length of the dead-end road to be. Mr. Simpson was uncomfortable with an open ended question that was proposed saying this development sitting where it is and what are the safety implications. Ed stated his questions would be more open ended as he would ask why this situation so decisively surpasses the industry recommended maximum. Mr. Simpson stated that was a leading question and Ed responded he would want the expert to contrast what he finds with the industry standards. Mr. Simpson stated he would not be asking what is it that makes him think that the Subdivision Regulations that refer to a dead-end road refers to a town road it comes off; there is no reason to think that. Attorney Kinyon stated he would want the Board to have an expert opinion in addressing dead-end road situations and what they consider to be a dead-end road. They can understand the applicant's position about the length of the dead-end road being different from the Board's position, but from an engineering standpoint what do they consider to be a dead-end road. Mr. Simpson responded from the safety perspective it is irrelevant, whether Stowell Road should be added into the 600 feet or not has no effect on the safety issue. Ed responded if it is not an issue for the engineer then the engineer is provided the input from the Board's vote last meeting where they decided that it is a 7,000 foot dead-end road so either they are going to comment on the measurement of dead-end roads or accept the Board's determination of dead-end roads. Mr. Simpson stated that if that was the Board's final determination he would like to get the Superior Court to measure in. It is just like the Board's interpretation of the density, one block for two acres, and the Court would not accept it.

Tim stated it was his recollection that the Board defined the length as 7,000 feet from Green Farm Road and asked if the applicant had that understanding or not. The issue is, is this a 7,000 dead-end road and what does the expert think about the safety issues of that situation. He asked if the applicant disagreed with the vote at the last meeting. Mr. Simpson responded he thought the Board was going to vote tonight on everything the Board was discussing. Ed noted the Board is now considering a waiver request for the 7,000 foot dead-end road, not how dead-end roads are measured.

Paul stated he would word the question differently such as is a road measuring 7,000 feet from the last intersection to the entrance to the cul-de-sac and/or the first house in the cul-de-sac a safety issue. Ed noted that there are pre-existing homes and the 47 homes in the development are in addition to them on this 7,000 foot road.

Mr. Holden asked if the expert comes in and says this is not a problem is the Board going to accept or not believe that, and Ed responded the Board would listen to what he has to say. Mr. Holden further asked if he comes in and says it is a big problem you would not throw him out because of that, you will only throw him out if he comes in and says it is not a problem. Attorney Kinyon stated that was not a fair way to characterize it. The applicant heard statements from Board members that as the proposal now stands they are concerned about the length of the dead-end road and the traffic safety issues and they were not addressed in the existing traffic reports that have been submitted. Before they can consider the issue further they need to hear from an expert. Neither the Board nor the applicant has to accept any report that an expert submits.

Bert referred to the study and questioned why they chose the number of 1,000 feet. He stated he had never seen a dead-end road 7,000 feet long and questioned the safety risk involved. Mr. Simpson responded they filed a waiver for the roads they are creating. The issues dealing with town roads are out of their control and plays into whether the application is premature and scattered. If the issue of whether the interior road lengths can be waived or not, they can get the Superior Court to weigh in. It does not make sense that the Subdivision Regulations refer to existing town roads. Subdivision regulations refer to septic systems and Mr. Simpson questioned if they refer to septic systems other than what the developer is putting in.

Attorney Kinyon questioned the applicant if they agreed there is no definition of dead-end streets in the regulations. Mr. Simpson agreed and added the regulations are intended to limit what the developer is creating in the subdivision. Attorney Kinyon asked for sections in the regulations that say that. Mr. Simpson responded if the town roads are part of the dead end roads, the Superior Court would agree with him and if the Board disagrees he would like to get a decision to that affect and proceed from there. Attorney Kinyon asked if he understood the applicant's argument correctly which is that the applicant does not need a waiver under the definition of a dead-end street. Mr. Simpson stated from the beginning they did not need a waiver and that was in the letter with the waiver request. A waiver is not needed because the regulations state 600 feet or whatever the Board thinks is appropriate. They do not need a waiver because one of the dead-end roads is in compliance and the other is a temporary dead-end road which is included under the ordinance. Mr. Simpson stated he would like to get a ruling that he could appeal. Attorney Kinyon stated that what the applicant has stated relative to the first waiver request from the 600 dead-end limitation is that they are not requesting a waiver for the first loop road because it does not exceed 600 feet. The applicant is saying, assuming the Board adopts a different definition for the first road dead-end length, they want a waiver from that length to the extent it is more than 600 feet. Mr. Simpson responded they would ask that. Attorney Kinyon further stated what the Board is saying is applying the definition of dead-end street they adopted at the last meeting they cannot act on a waiver request without more information from an expert about the safety of what it deems to be a dead-end road exceeding 600 feet. Mr. Simpson stated he would be happy to withdraw the waiver request and get a ruling on the temporary dead-end road issue.

Attorney Kinyon stated the applicant seems to be saying they will withhold the waiver request on the first loop road and go to Superior Court to get a ruling on whether the first loop road needs a waiver or not based on the definition of dead-end streets. Mr. Simpson stated that if you measure to the end of the end of the loop that makes it more than 600 feet. Ed noted the Board voted at the last meeting that they are measuring down Stowell Road so the measurement is 7,000 feet and Mr. Simpson responded he would be happy to go to Superior Court for that. Further, Attorney Kinyon stated that relative to the first loop road based on the definition of dead-end the Board adopted, the applicant does not want to proceed on the waiver request until they get a ruling from the Superior Court on what the definition and length of the dead-end road should be for the first loop road. Mr. Simpson responded that the Court would agree that the regulations apply to the roads being created.

Attorney Kinyon continued that the applicant agrees that the calculations of the second loop dead-end exceeds 600 feet so a waiver is needed or it has to be a temporary dead-end road. He asked if the applicant wanted the Board on the second loop road to rule on a waiver request or to rule on the temporary dead-end road request. Mr. Simpson responded the temporary dead-end road request. Attorney Kinyon stated the waiver request submitted is not applicable to either road. Mr. Simpson responded it was necessary because the Board has the authority to waive it. Attorney Kinyon stated the applicant is done for now on the first loop road for any more consideration by the Board until they go to Superior Court to see what the court says would be the length of the first loop dead-end. What the applicant does not have from the Board is a ruling on whether the second loop road is a temporary dead-end or not and he asked the applicant if they wanted consideration or deliberation by the Board tonight and Mr. Simpson responded he did.

Ed stated what is being considered is Section B:02 F., page 25, of the Subdivision Regulations of the Town of New Ipswich adopted March 1986 and amended May of 2007 and he read that section of temporary dead-end streets. Ed stated his reading of the section was the full width of the right-of-way to the subdivision property line for the non-subdivision property should be dedicated; it has nothing to do with the dedication of the right-of-way within the subdivision. The definition preserves the ability to build the road at some later date because it grants the right to build the road; simply granting a right-of-way within the subdivision does nothing to guarantee the road is built in the future. Mr. Simpson responded the road on the plat will be dedicated to the Town of New Ipswich. Ed noted the question is the meaning of "right of way to" and his understanding was that the right-of-way off the subdivision needs to be dedicated. Mr. Simpson stated the Superior Court judge would have a good laugh about that because it is clear the regulations are talking about the right-of-way across their subdivision to the property line.

Attorney Kinyon read Section B:02 F. and stated his understanding was that there needs to be another outlet from the applicant's land out to a street and that is not shown on the plan. Mr. Holden noted the regulations do not say "to another street;" those words are missing; it says to the property line. Those that wrote the regulations were smart enough that if they meant to another street they would have put those words in and they did not because the industry standards for planning subdivisions suggest little stub roads to another adjacent property, and that property gets developed in the future and eventually

does find its way to another street. Further, he stated he spoke at the last meeting on mapped streets which is what municipalities do.

Bert stated the crux of the problem is the definition of what constitutes the subdivision plat. In his opinion the subdivision plat is the land currently owned by the applicant, not adjacent properties, and he believed the applicant is using the adjacent properties for the secondary outlet. He did not think that was what was intended in the regulations. He questioned Attorney Kinyon if the definition of the subdivision plat is the land owned by the applicant. Attorney Kinyon responded it was and Bert continued that the access shown outside of their ownership does not constitute a portion of the subdivision and Attorney Kinyon agreed. Attorney Kinyon stated his interpretation of the provision for temporary dead-end is that on the subdivision plat if the road is going to be temporary it has to be shown on the plan and dedicated for use for a future outlet. This plan does that but what is lacking it is not lining up with an outlet. It is suggesting that if the applicant acquires the land or the right to connect to the land it may no longer be temporary.

Mr. Hank Somero, an abutter to the property, stated he was not interested in having a road go through his property. He noted at one time the subdivision plan showed a right-of-way through his property.

Ned stated he could not get past the safety issue. He could not see putting 47 houses 7,000 feet from the nearest intersection. It does not seem a good practice.

Ed noted his understanding was that temporary dead-end streets were put into the regulations for phased subdivisions. Mr. Simpson asked where it stated that in the regulations and Ed responded it was his interpretation. Mr. Simpson referred to the plain language of the ordinance and Ed responded plain language of the ordinance is where future expansion to another outlet is approved by the Board or indicated by the subdivision plat. Mr. Simpson noted it does not say approved and Ed responded it is not a plat until the Board approves it. Mr. Simpson asked for a vote and stated once these issues are resolved we can then start talking about the next concerns and the scattered and premature issue.

Attorney Kinyon stated he would like to get further information from the applicant and asked Mr. Simpson if it was correct that looking at the plan marked Overall Plan, USA Properties, Inc. the second access road into the subdivision is called Halekala Drive and that there is a 50 foot right-of-way on the north side of the subdivision that the applicant is saying constitutes the temporary dead-end and Mr. Holden responded it is dedicated strip of land. Further Attorney Kinyon stated that 50 foot right-of-way does not go to any existing outlet of any kind, it just goes to neighboring land and Mr. Holden responded that it does. Attorney Kinyon asked if the applicant owns the neighboring land and Mr. Simpson responded that the regulations do not require it. Further Attorney Kinyon stated there is no existing road that is adjacent on the neighboring land to this 50 foot right-of-way and Mr. Simpson responded there would be a future road there. Attorney Kinyon asked if it was the applicant's position under the regulations being dealt with that temporary dead-end streets simply mean that within their subdivision they have to show a road to the border of their property on the possibility that in the future they might acquire abutting land to create the outlet. Mr. Simpson responded not necessarily, that is not required in the regulations. They have done what they need to do and that is how the regulations were written.

Bert stated the application does not meet the regulations for a dead-end road and a waiver is needed, and it does not meet the requirements for a temporary dead end road.

Attorney Kinyon stated the Board is dealing with an interpretation of the Planning Board regulations and the Board has the right and obligation to interpret the regulations. Tonight's vote would be to decide if the Board interprets the temporary dead-end street provision in the way the applicant suggests they should so that his second access road qualifies as a temporary dead-end street or not. If the Board does not accept their interpretation, the applicant can appeal the Board's interpretation of its regulations relative to the definition of dead-end road for the first access road and the definition of temporary dead-end road for the second access road to the Superior Court and the Court is then in the position of interpreting the regulations. The Board has already voted on the definition of dead-end street relative to the first access. The Board should vote on the applicant's interpretation of the temporary dead-end street provision so the applicant can get both interpretations resolved.

Bert made a motion to deny the proposal as submitted by the applicant as it does not meet the definition of a temporary dead-end street under Subdivision Regulations B:02 F. May 2, 2007. Ed seconded the motion.

Ned stated the proposal is not credible. The applicant is proposing an extension to nowhere that they have no intention or ability to build. It does not pass the common sense test. Ed agreed with Ned and added his reading was that the right-of-way outside of the subdivision must be dedicated. Paul agreed and stated just marking it on the map is meaningless without even a tentative agreement with the abutters. Bert agreed with all that had been said and noted he would like to avoid further litigation and a waiver should be required with proper justification and study.

Ed noted the Board is voting to reject the applicant's interpretation of B:02 F. of the Subdivision Regulations and the applicability of temporary dead-end streets to their development.

The vote was taken and was unanimous in favor of the motion.

At 8:45 p.m. the Board with legal counsel.

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Joanne Meshna, Land Use Manager