



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**PLANNING BOARD
MINUTES
JANUARY 11, 2007
(Approved as written 2/22/07)**

PRESENT: Paul Morin, Chairman; Frank Bolton, Vice Chairman; George Malette, Secretary; Tom Clow, Exofficio; Craig Francisco, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Michael R. Dahlberg, LLS; Randall K. Dearborn; Darcie M. Dearborn; Ginger Esenwine; Justin Fitzgerald; Jim Smith; Jon Dowst; Judy Lamont; Don Rogers; Judy Rogers; Diane Durgin; Michael Durgin; Brian Pratt; Andy Fulton; Dan Higginson; Henry Tiffany; Wayne Daniels; Jed Callen; Bill Boisvert; Jack Dearborn, ZBA member; Ian McSweeney, ZBA member; Forrest Esenwine, ZBA member; Elwood Stagakis, ZBA member.

I. CALL TO ORDER:

Chairman Paul Morin called this meeting to order at 7:05 PM at the Town Office Building. Chairman Morin stated that this is the regular hearing night and the first order of business is actually a joint public hearing with the zoning board of adjustment. This is something that the applicant can request and typically the Chairman of the Planning Board would preside over these proceedings, but since the first order of business largely concerns the ZBA, Chairman Morin stated that he would introduced the proposal and then turn it over to the acting Chairman of the ZBA to conduct that portion. The Planning Board members took seats in the audience and the Zoning Board members came to the table.

II. JOINT PUBLIC HEARINGS W/ZONING BOARD OF ADJUSTMENT:

Case #0507 Diana Spring
Variance, Article 14, Section 14.1
Applicant is requesting permission to create a 3 lot “open space”
subdivision with all 3 lots having less than 10 acres and proving
9.3 acres of open space.
Tax Map 411-315 & 411-316 Helen Dearborn Road

Ian McSweeney, Vice Chairman of the Zoning Board of Adjustment opened the meeting. Vice Chairman McSweeney explained to the public how the meeting will be conducted. Vice Chairman McSweeney then asked all members present to

introduce themselves. Vice Chairman McSweeney appointed Elwood Stagakis to sit in place of June Purington for this hearing.

Mike Dahlberg was present. Mr. Dahlberg stated he represents Diana Spring and her husband Jim. His client would like to subdivide map 411-316 into three lots, basically for his children. Under article 14, section 14.1 states that land on class V streets that are gravel require a 10 acres minimum lot size. Fundamentally the argument to that is that they feel it is confiscatory and wasn't based on any sound planning. It was by petition article and it renders the land useless. The property is zoned as RA with an RC rural conservation overlay. The underlying district in RC, the minimum lot size has to be doubled based on slopes and soils. The minimum lot size in that district according to the soil type is 2.47 acres, 4.94 acres in the RC district. His client is proposing a 3 lot subdivision, all in excess of the 5 acre minimum for the RC district with some open space attached to the rear of the lots, totaling 9 acres. There is adequate frontage for four lots. There is a substantial amount of wetlands on the property. There is no problem with access. Septic and wells all fit on the lots. Mr. Dahlberg then went through the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The proposed use is residential and is consistent with the surrounding properties. Any proposed houses, septic, driveways and wells would comply with all applicable ordinance and regulations for the Town of Weare and State of New Hampshire.
2. That the granting of the variance will not be contrary to the public interest because: The proposed use is residential intended for single family use which is fully in compliance with the zoning ordinance. All zoning requirements shall be met in terms of area and frontage in the underlying district of RC.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: His client proposes an open space subdivision with the front portion of the property is all usable by the Springs' and their children. The rear of the property will be deeded as open space. A conventional subdivision does not allow for open space without roads or excessive development. Slopes and wetlands preclude other types of development to access this property with a paved cul-de-sac would not be acceptable for road construction.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The unique configuration of the property does not lend itself to any other feasible methods of development. A road is not feasible because of the physical characteristic of the land. The current zoning requires 5 acres.

The proposed subdivision meets the requirements of the rural-conservation zone. The maximum number of lots allowed under the R-C zoning is 3. The number of lots sought is 3. They are not asking for more lots. In fact they've attached a yield plan which his client could squeeze in four lots.

4. That through the granting of relief by variance substantial justice will be done because: A 3 lot "open space" subdivision which provides 9.3 acres of open space could be approved by the Planning Board. A conventional subdivision would provide no open space because in the RC district article 30 does allow for a cluster development and they do meet those requirements.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The 3 lots are in compliance with the current zoning. The residential use is in harmony with the surrounding properties.

Jack Dearborn asked the subdivision only occupies lot #316? Mr. Dahlberg stated correct. Mr. Dearborn asked how many acres lot #316 has. Mr. Dahlberg responded that one of the parts of the application is that they want to do a lot line adjustment, which would give lot 315 at least 50 feet of legal frontage. Mr. Dearborn stated that what he is getting at is you have enough frontage to do three lots notwithstanding the 10 acres. Mr. Dahlberg interrupted and responded, we have enough on the yield plan to do four lots. Mr. Dahlberg responded that post lot line adjustment lot #316 has 18.6 acres. Mr. Dearborn stated, so you have enough land for 1 lot today and you can get 2 lots by annexing 1.5 acres to lot 316.

Vice Chairman McSweeney asked how large lot #317 is. Mr. Dahlberg responded 17 acres and further explained that that lot is really rough and they had hoped to leave that lot alone. Mr. Dearborn stated that he is having a hard time that not all the remedies have been exhausted. It may not be the remedy the owner wants, but due to the topo of the land, it could work.

Mr. Dahlberg stated that he feels the ordinance is poorly written. If you read the ordinance in the RA under Article 14, then go to Article 30 it says that individual lots, but in cluster housing the table 1-1 requirements must apply. There is a gigantic gap in the ordinance. Mr. Dahlberg stated that he will grant the board that this is a non conventional cluster development, but they meet the requirements of a base lot of 15 acres. 50% must be left for open space. It doesn't say anything, and if you go to Article 30.4.3 it says all other setbacks and district requirements shall be the same as those in the RA district. He feels they meet that. It doesn't say anything about a 10 acre minimum in a cluster development in the RC district. Mr. Dahlberg didn't think that they should even be there.

Forrest Esenwine stated, but a cluster development has to go by the minimum lot size based on the district it is in. Mr. Dahlberg responded that is not what it says. It says that the lot area in table 1-1 “shall” apply. Mr. Dahlberg stated that he disagrees because the minimum lot size for a cluster in the RC district is under table 1-1.

Jack Dearborn stated that he would like to separate a point of order here. This is before us under 14.1 by his own application. If he chooses to go through the town under 30.4.2 he doesn't need us, the zoning board. If he fails before the Planning Board because they don't believe that's what it says, he can apply to us as the zoning board for an administrative appeal on the judgment from another board. This board can then decide whether his assertion that he doesn't have to be here because of 30.4.2, we can then take that under consideration. Then we can choose whether or not the article is worded improperly, like 14 doesn't count under 30.4.2 and he can still preserve his avenue for a variance, as a secondary approach to come before the Town.

Chairman Morin explained that the beauty of a joint meeting is that we actually do this. We can exchange chairs. If in fact the correct order of events is for the determination as to whether he does comply. If there is no need for a variance then he can proceed with his application to the planning board. What happened when this was brought to the Planning Board, we were unclear because as Mr. Dahlberg has pointed out the language is sloppy. It does not lead us unambiguously to a clear conclusion. We thought it would be good to involve the ZBA to help us to interpret this somehow. If Mr. Dahlberg should not proceed with this variance, because Chairman Morin in his opinion felt that the crux of the matter is 30.4.2 and the plain language of it which can't be unambiguous, maybe the Planning Board should reach its conclusion on that and if it is favorable for Mr. Dahlberg he can proceed with his application. If not then maybe it would be determined that he might need to re-apply for a variance under Article 30.4.2. The difficulty with an application for a variance, Chairman Morin stated that he would like to see at least this joint meeting, get it to what we have to do sooner rather than get caught up in procedure if we can deal with it right now.

Jack Dearborn asked for clarity from Chairman Morin. Mr. Dearborn stated that what you are asking is to swap seats with the Planning Board and allow Mr. Dahlberg to make his case under 30.4.2 to the Planning Board. If the Planning Board says no then the applicant has to decide whether to get a decision from the Zoning Board on Article 14.1 or withdraw. At this point in the meeting Jack Dearborn moved that the Zoning Board swap seats with the Planning Board, Forrest Esenwine seconded the motion, all in favor.

At this point Paul Morin returned back as the chairman seat. Chairman Morin appointed Craig Francisco as a voting member for this evening.

Chairman Morin stated that the issue that is being put before us is whether the language of 30.4.2 conforms to this plan.

Frank Bolton asked if we are looking at it binding or non-binding. He wondered if there may or may not be conflict, he wondered if the stricter of the two would apply. The language is short in this case and Mr. Dahlberg is claiming that it is clear and unambiguous which goes to table 1-1. Mr. Bolton didn't think there was an option because he felt the more restrictive applies. If it was on a tar road he thinks there would be a problem.

Craig Francisco stated that nobody has mentioned that under article 14.3 a yield plan is necessary to demonstrate the maximum number of conventional lots available. Mr. Dahlberg stated that they did a plan, which they came out with four lots and they only want three. Mr. Francisco stated that is all mentioned under article 14, so he would assume that it would have to be all 10 acre lots.

Tom Clow stated that under article 14 it seems like article 14.1, which differentiates the difference of the size of the lots a gravel or paved road, which dominantly dictates the lot size for the yield plan. If that is so and you go to article 30.4.1 compared to 30.4.2, where it specifically talks about doubling table 1-1, he still thinks because the table links the two arguments and the 10 acres would still apply.

George Malette stated that he felt the link goes further because of the surface of the road needs to be considered for the minimum size.

Frank Bolton then asked who owns lot 315. Mr. Dahlberg responded, Diana Spring. Mr. Bolton felt that clearly if you pursue this lot line adjustment with the 50' of frontage on a dirt road is not appropriate on a dirt road. George Malette stated that under article 27 then refers back to 27.3.3 which refers back to the paved road versus dirt road.

Tom Clow stated that when you move down through article 14 to the table it doesn't refer anything from that point on to the type of road to determine the lot size. Mr. Clow stated that he feels that there is a direct linkage to article 14.1.

Craig Francisco stated that it under 27.3.3 states that "and all other requirements of this ordinance" which is certainly going to encompass article 14.1. Mr. Dahlberg responded then we are going to keep going around and around because article 30 in the very clear language, because he feels article 30 the overlay district trumps article 14 because it requires the lot sizes to be double, which is more restrictive, so you are now saying that we have to quadruple the lot sizes? Mr. Dahlberg stated that in his opinion there is no clear direct linkage back to article 14.1 from article 30.

Mr. Dahlberg, asked what are we going to do? Chairman Morin responded that what we do is, you make the best case on behalf of your side of the argument and we as a board has to make up our minds have to do that.

Mr. Dahlberg stated that to reiterate his point that it is his opinion that article 30 has no clear linkage back to article 14.1.

Chairman Morin then asked the board if they had any further questions or discussions. Chairman Morin stated that the question is does he need the variance or not. Tom Clow felt there is a linkage between the two articles and he feels he needs a variance. George Malette stated that he would agree that the gravel surfaced road requires a 10 acre minimum and he also feels a variance is needed. Frank Bolton stated that needs a variance, but he felt is it a piece of prime agricultural soil and the owners could probably convince the planning board to this if they serious look at this, but not tonight. Craig Francisco stated that he feels a variance is needed. Chairman Morin stated that he Planning Board has made its decision that they need to go to the variance.

At this time the zoning board reconvened and the planning board took to their seats in the audience.

Ian McSweeney, Vice Chairman of the Zoning Board asked Mr. Dahlberg what he wanted to do. Did he want to proceed with this under article 14.1?

Mr. Dahlberg asked for clarification, if he proceeds and is denied under article 14.1 can he come back to the board under another article. Mr. Dearborn explained that it would be up to him and he could come back under something different with a different appeal.

Mr. Dahlberg stated that he wanted to proceed under article 14.1. Mr. Dahlberg stated that the hardship is that, accepting the 10 acres the owner can't take full best use of the property under the underlying district of the RC zone. The lots have excessive frontage and excessive area and the well locations and septic areas show that there is more than enough room on each lot. No impact on any wetlands. There is already a house on the end of the road beyond these lots. It is a residential use which is allowed in the zone. They don't need any dredge and fill permits.

Jack Dearborn stated that even if article 30.4.2 was to be interpreted to paragraph 14.1 10 acres. There is still reasonable enough use of the 17 acres which could be considered back land. Under the cluster ordinance it allows 30 acres of land, whatever lot size they want and combine lot 317.1 with lot 315, so there is a remedy without requiring a variance. Even under 14.1 cluster is still allowed here they can still enjoy the front of the lots with a combination of the open space. There is a reasonable remedy for the owner if he wishes to retain a separate lot and come through another vehicle of the zoning. Under an area variance, it is not

as stringent as a use variance, but he felt there is a reasonable use even under the strict enforcement of article 14.1. A variance is usually granted as to a hardship of the land not just the preference of owner's choice.

Elwood Stagakis asked about the dedicated open space, what does that mean. The thought was that there would be no building in that area. Mr. Stagakis asked about the public access to the open space, as the cluster development regulations state. The intent would be to keep the open space in private ownership.

Forrest Esenwine stated that he has a concern with the road width. That road is not as wide as most roads in Town, even though it is Town owned.

Approving Abutters: NONE

Disapproving Abutters: Jonathan Dowst, abutter, stated that he doesn't have a comment on this plan but would like to talk to the Springs' about their intent. His thought was that in a cluster development he thought the open space proposal as shown on the plan, in his mind doesn't fit the intent.

Public At Large: Don Rogers, property owner, stated that he enjoys the beauty of the road. You don't have to pass anyone. If he had his way he would like to see it stay the way it is today. He stated that he has known Jim & Diana for years. The value of his property is worth more with the open field versus houses. He is not in favor or against it, he is interested in what is the best use of the property and least environmentally use of that, but emphasizing the least amount of houses that go in the field that fine with him. If there is an alternative that is better, then ok.

Other Boards: Paul Morin, Chairman of the Planning Board, stated that the present conditions, Mr. Dahlberg's client owns three consecutive contiguous parcels. Lot #316 is 23.66 acres before adjustment. Lot #315 is 7.26 acres before adjustment. Lot #317.1 is approximately 17 acres. Chairman Morin continued, he realizes that 317.1 has been left out of the application and if it gets included, all three together total 48 acres, with 860 feet of frontage on a class V gravel road. If you take all three properties, you get 4 lots, no variance, straight to the planning board, it seems to be that all combined yields 4 lots.

Vice Chairman McSweeney closed this hearing at 8:45 PM.

Point #1: Forrest Esenwine moved to accept point #1, Jack Dearborn seconded the motion. Discussion: Forrest Esenwine stated that it is consistent with the use of the properties. Vice Chairman McSweeney commented to the point of the consistency of the surrounding properties lot sizes which are smaller. Vote: 3 in favor (Dearborn, McSweeney, and Esenwine) and 1 opposed (Stagakis). Point #2: Forrest Esenwine moved to accept point #2, Vice Chairman McSweeney seconded the motion. Discussion: Forrest Esenwine stated that he doesn't accept

the explanation because it is such a variation from the ordinance it self. It is for the Town in general and not just the surrounding neighborhood. Vote: 1 in favor (Dearborn) and 3 opposed (McSweeney, Esenwine, Stagakis). Point #3aa: Forrest Esenwine moved to accept point #3aa, Jack Dearborn seconded the motion. Discussion: The board felt that discussion on this was covered in the previous discussion with regard to the open space, it is not open space as open space is considered, if it was on the proper size lot it could still be open or a no cut zone. Jack Dearborn stated that if this lot is strictly lot #316 they would have 23 acres and they could have 2 lots. They are moving this lot line and it is moving it further into non compliance. He felt this by virtue of moving the property lines around they are making the special conditions more extreme by moving the lot lines. Rather than leaving it alone and getting it based on the merit of the property. There is a possibility they are creating a bigger hardship. Vice Chairman McSweeney wondered why they are only wanting to include the lot lines of 315 and 316 but not including 317.1. Forrest Esenwine stated that agreed with Mr. Dearborn's response. Elwood Stagakis stated that he felt the zoning ordinance is 10 acres and he has other options. Vote: 0 in favor and 4 opposed (Dearborn, McSweeney, Esenwine, and Stagakis). Point #3bb: Jack Dearborn moved to accept point 3bb, Forrest Esenwine seconded the motion. Discussion: Forrest Esenwine stated that he felt that this could be achieved by another reasonable alternative, referring again to Mr. Dearborn's reasoning. Vote: 0 in favor and 4 opposed (Dearborn, McSweeney, Esenwine, and Stagakis). Point #4: Jack Dearborn moved to accept point #4, Forrest Esenwine seconded the motion. Discussion: Forrest Esenwine stated that he felt that the answer relates property to substantial justice as Mr. Dearborn clearly stated the avenue is there. Elwood Stagakis stated that there is no public access to open space. Vote: 1 in favor (Dearborn) and 3 opposed (McSweeney, Esenwine, Stagakis). Point #5: Forrest Esenwine moved to accept point #5, Vice Chairman McSweeney seconded the motion. Discussion: Forrest Esenwine stated that he felt it would definitely and is clearly contrary to the spirit of the ordinance. Vote: 1 in favor (Dearborn) and 3 opposed (McSweeney, Esenwine, Stagakis). Forrest Esenwine moved to approve the variance for Case #0507, Vice Chairman McSweeney seconded the motion. Vote: 0 in favor and 4 opposed (Dearborn, McSweeney, Esenwine, and Stagakis). The reason for the denial is because all five points of hardship did not pass, particularly points 2, 3aa, 3bb, 4 and 5, which is a requirement of the State Statute.

As there was no further business to come before the Zoning Board of Adjustment, Forrest Esenwine moved to adjourn the Zoning Board of Adjustment portion of the meeting at 9:00 PM, Jack Dearborn seconded the motion, unanimous in favor.

The Planning Board members returned to their seats at the table.

DIANA SPRING – LOT LINE ADJUSTMENT & CLUSTER DEVELOPMENT (CONTINUED HEARING), HELEN DEARBORN ROAD, TAX MAP 411-315 & 411-316: Chairman Morin opened this hearing at 9:04 PM. Chairman Morin

stated that clearly the application is not in compliance with the zoning and no variance is granted so the option is up to the applicant to withdraw or have the board act. Mike Dahlberg stated that he would like to withdraw the application at this time. Chairman Morin closed the hearing at 9:07 PM.

Craig Francisco stated that he would be stepping down for the next hearing.

MICHAEL DURGIN- APPROVAL OF FINAL CHANGES FOR CONDITIONAL APPROVAL, COLBY ROAD, TAX MAP 412-154 & 412-154.002: Chairman Morin stated that the reason this item is on the agenda is to fulfill condition #2 from the November 9, 2006 conditional approval which stated “reconfiguration of the lot line for lot #2 & #18 so as to allow access to the open space off of the proposed road in a practicable way to be determined by this board with the amended plans”. Brian Pratt from True Engineering was here tonight in place of Tom True. Mr. Pratt stated that he has reconfigured the open space of lot 2 to allow access off of the proposed roadway. The plan also shows an access trail of how one could get to up the hill to the open space. Chairman Morin moved that the board deem point #2 of the original condition fulfilled, George Malette seconded the motion, all in favor.

Craig Francisco returned to his seat on the board for the remainder of the evening.

HIGH ROCK DEVELOPMENT – SUBDIVISION (CONTINUED HEARING), TWIN BRIDGE ROAD, TAX MAP 110-077: Chairman Morin opened this hearing at 9:17 PM. Dan Higginson was present for Art Siciliano. Chairman Morin stated the only purpose of tonight’s meeting is to determine the type of plan the board would like to see, cluster versus conventional. There has been a site walk. Andy Fulton was present and discussed the Conservation Commission’s thoughts of keeping it as a cluster. Being there was no further questions or comments, Chairman Morin closed the public portion of this hearing at 9:25 PM. Mr. Higginson stated that the applicant still wants a conventional layout. Tom Clow stated that when we walked the site there was evidence of partying and a lot of misuse. The other concern with the residents was which way would best protect the lake from added usage, which is a point of discussion to best protect the lake. George Malette added that on the site walk the majority of the residents were in favor of the open space as they felt it would be a better level of control and enforcement. Frank Bolton asked Mr. Fulton because there is a lot of evidence of misuse, with ATV’s and partying, trash etc. is this something the easement would help out on and how would the enforcement issues be handled. Craig Francisco stated that he is concerned about the access to the lake with a cluster development. Certain restrictions can be placed on the open space easement deed for protection, but who enforces it. Mr. Francisco felt that he didn’t see a huge conservation benefit. Chairman Morin stated his issue is the loop road versus the cul-de-sac. Frank Bolton moved to require the applicant to submit a cluster development, George Malette seconded the motion. Vote: 3 in favor (Malette, Bolton, and Morin) and 2 opposed (Clow and Francisco).

Chairman Morin pointed out to Mr. Higginson that after the December meeting the actual 65 day clock expired and the board will need something in writing to extend the statutory clock to sometime in March of 2007. Mr. Higginson verbally agreed to the extension and will put something in writing and bring it to the office. George Malette moved to continue this hearing to February 8, 2007, Craig Francisco seconded the motion, all in favor. Chairman Morin closed this hearing at 9:41 PM.

LOOK-N-2 STORE, LLC – REVOCATION OF SITE PLAN APPROVAL FOR THE FOLLOWING: 1) VIOLATION OF WETLANDS; 2) CONSTRUCTION THAT IS BEYOND THE SCOPE OF THE SITE PLAN APPROVAL; 3) VEHICLE STORAGE THAT IS BEYOND THE SCOPE OF THE SITE PLAN APPROVAL, CONCORD STAGE ROAD, TAX MAP 403-003.001: Chairman Morin opened this hearing at 9:43 PM. Jed Callen, attorney for David Wilusz was present. Chairman Morin explained that the purpose of this hearing was to entertain the right to revoke the previously approved site plan for the above listed items. Attorney Callen stated that his client would ask that the board not revoke approval but rather to suspend the approval until such time he has become compliant with the NH Department of Environmental Services violation. Hi client realizes that he made a mistake, even though the filing was done by another party, his client gave the permission to fill, so they have filed an application with the State and will be working with them to correct the problem. Chairman Morin stated that this board has the right to entertain revocation on plans that were approved and not constructed as approved. Chairman Morin stated that the one of the items that is not on the list is the limousine used as a sign and he asked Attorney Callen to have his client remove it right away, or apply for an amended site plan review because of what was approved and the location is not what approved.

Chairman Morin stated that the board should entertain a motion to suspend the approval that was granted site plan approval with the date of 9/8/05 and if he wants it restored he has to provide the board with the following:

1. Once the DES issues are resolved the board needs to have an as built plan provided of the entire site to make sure there are no other violations or lot line issues.
2. A copy of an approved wetlands restoration plan with the State of NH to be submitted to this board
3. Remove the limo serving as an unapproved sign immediately
4. Sell the van before it becomes and issue

George Malette seconded the motion, all in favor. Chairman Morin closed this hearing at 10:04 PM.

ROBERT J. & GAIL C. SILVA REVOCABLE TRUST – LOT LINE ADJUSTMENT (CONTINUED HEARING), SOUTH STARK HIGHWAY (ROUTE 114), TAX MAP 411-103 & 412-247: Chairman Morin opened this

hearing at 10:05 PM. Dan Higginson was present. Mr. Higginson explained that they have reduced the lot with the house from the prior plan of 10 acres to 5.5 acres and added the other acreage to the abutting empty lot. Naomi pointed out that the application had not yet been accepted. Frank Bolton moved to accept the application, Tom Clow seconded the motion, all in favor. George Malette moved to approve the lot line adjustment, Chairman Morin seconded the motion, subject to the condition that the well be researched for the well easement and if there is a well easement a note would be added, all in favor. Chairman Morin closed this hearing at 10:19 PM.

THOMAS J. & ELIZABETH G. OLIPHANT – SUBDIVISION, TIFFANY HILL ROAD, TAX MAP 404-130: Chairman Morin opened this hearing at 10:20 PM. Mike Dahlberg was present. Henry Tiffany was also present. Mike Dahlberg explained that his clients have worked out and come to an agreement with the Weare Conservation Commission. A purchase and sales agreement has been signed between the Conservation Commission and the Oliphant's. The Town will be purchasing 64 acres (the remainder lot) for conservation land. A waiver was submitted for the topography and soils type. Tom Clow moved to accept the waiver for the topography and the soils type, George Malette seconded the motion, all in favor. Mr. Dahlberg explained that they originally wanted to do this plan as a lot line adjustment plan, but no one from the Board of Selectmen or Conservation Commission would sign the application so they put together a subdivision plan and after the lot is purchased it can be merged with the abutting Town land. Mr. Dahlberg asked if the board could waive the design review phase and consider this as a final application. Chairman Morin moved to grant waivers on the following items on the Design Review Checklist, #'s 1, 3, 4, 5, 6, 7, 8 and 9, George Malette seconded the motion, all in favor. Item #2 – proposed deed and easements – Chairman Morin explained that the intent of this was to not get too far down the path and wrestling with language at the end. Craig Francisco moved to grant the waiver on item #2, George Malette seconded the motion, all in favor. Frank Bolton moved to accept the application, George Malette seconded the motion, all in favor. Chairman Morin asked Mr. Dahlberg what he would like to do. Mr. Dahlberg stated that he would ask that this be continued to February because there may be a slight change to one boundary once the site walk is done. Tom Clow moved to continue this hearing to February 8, 2007, George Malette seconded the motion, all in favor. Henry Tiffany stated that Mr. Oliphant has been tolerant of all this juggling and if this could be expedited it would be appreciated. Chairman Morin closed this hearing at 10:35 PM.

III. OTHER BUSINESS:

WILLIAM BOISVERT – COMMON DRIVEWAY PLAN: Bill Boisvert was present to seek approval for the second common driveway for the other two lots. He was here on December 14, 2006 and was granted approval for the first request. This plan shows the December 14, 2006 approved common driveway, it is shown as the dark line. This second common driveway request was where the proposed road was to be built. Frank Bolton moved to allow common driveway access for

lot 406-51.3 from the existing driveway on 406-051.2, Craig Francisco seconded the motion, all in favor.

REMINDER OF TUESDAY, JANUARY 16, 2007 FINAL ZONING HEARING MEETING: Naomi wanted to remind the board of the special meeting next week, Tuesday, January 16, 2007 for the final public hearing on the zoning amendments.

2007 CAPITAL IMPROVEMENTS PLAN: Chairman Morin went through the 2007 Capital Improvement Plan requests and what the subcommittee submitted to the Board of Selectmen. Craig Francisco moved to recommend the plan as developed by the subcommittee to the Board of Selectmen, Frank Bolton seconded the motion, all in favor.

SHB PROPERTIES – PROPOSED NOTES TO BE ADDED TO THE PLAN:

Naomi informed the board that she received an email from Tom Sauser of SHB Properties looking for the board's approval of the wording of the notes, before he prints the mylar and plans. The following were the suggestions from Mr. Sauser:

1. Blazing – The common property line of the residential lots and the open space will be blazed with blue paint at 100' intervals. The board suggested changing the 100' to 75'.
2. Pesticides – Between approximately 1950 and 1980 approved pesticides were legally applied to the apple trees on lots 8 through 14. The board suggested adding "and that portion of the orchard in the open space" to the end of the sentence.

The board agreed on the notes to be added to the plan and Naomi will forward these changes to Mr. Sauser.

FOX HOLLOW (JH SPAIN) AND ASSURED REALTY TRUST ESCROW RELEASES: Naomi informed the board that there are a couple of old still open engineering escrow accounts that should have been closed in 2004 and 2005, but haven't. Naomi asked Tina Pelletier, Finance Clerk how to handle this. Ms. Pelletier stated that it would be cleaner if the board would make another motion to close these and she will take care of it. Chairman Morin moved to release the balance of the engineering escrow accounts plus interest to JH Spain and Assured Realty Trust, Tom Clow seconded the motion, all in favor.

ATTORNEY BILL DRESCHER SENT AN EMAIL REGARDING FINAL NOTICE ON VOTING ON AMENDMENTS:

Chairman Morin shared with the board a copy of an email that was sent today regarding the very last day the Planning Board can make their recommendations for any zoning amendments. Chairman Morin stated that the recommendation of the board must be determined by a point in time that allows the printing of the warrant. Chairman Morin stated that he would be very reluctant to hold off a vote from next Tuesday's meeting.

IV. ADJOURNMENT:

As there was no further business to come before, George Malette moved to adjourn at 11:25 PM, Craig Francisco seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator