**Town of Orford Planning Board Meeting**

**May 19, 2014**

**Subject to approval**

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| **Members Present** : Ann Green (Chair), Harry Osmer, Chase Kling, Lawrence Hibbard, Jim McGoff, Tom Steketee (Select Board), Andy Schwaegler, Vickie Davis (Planning Assistant) |
| **Others Present** : Melinda Ricker (Scribe), Harry Burgess, Bruce Balch, Christine Balch, Deb McGoff, Bonnie Cook, Kurt Gendron, Shirley Gendron, Joan Robie-Dieter, Paul Dieter, Arthur Dennis, David R. Smith, Chad W Clark, Cicely Richardson, Deirdre O’Donnell, Rob O’Donnell, Jay Johnson, Peter Dooley, Heidi Wilson, Julie Bell, Tom Trunzo |
| **The meeting was called to order at 7:00PM** |
| **The minutes from April 21, 2014 were reviewed and the following additions and changes were noted:** |
| Change the date of the April meeting to the 21st  Remove duplicate name in Others Present: Kurt G. listed twice  Under the Changes to March Minutes, all references to the ZAB should instead read “ZBA”. Also, it was later noted that the correct name of the Act is Shoreland Water Quality Protection Act (there is no “and” in the Act’s title).  Under General Business, the lot number in the underlined title of the section should be changed from Lot 8-95-5B to Lot 8-95-5. Also remove the words “as Alternate”. Change Chase K. noted that the Conservation Easement Deed did not get sent out with the rest of the packet. The DES approval is missing but can be approved conditionally to read as follows: Chase K. noted that the Conservation Easement Deed did not get sent out with the rest of the packet. Vickie D. responded that it was not part of the packet. The DES subdivision approval is missing but the application can be approved conditionally.  Under Public Hearing, 1st paragraph, change “but lot 5B still **needs** a driveway” to “but lot 5B still **needs** a proposed driveway to be shown.”  In the paragraph beginning “Discussion: Chase K…”, add the words “Due to Board and attendee concerns” before the sentence “Vickie D. said that we need…”.  In the same paragraph, change “They plan to seek legal counsel on whether this lot can be split into 3 lots or just into 2 lots.” To read “They plan to seek legal counsel on whether this lot can be split into a total of 3 lots.”  In the paragraph Shirley Gendron’s Well, change the word listed to “shown”.  In the paragraph headed Summary of next actions needed:, change “Balches need to provide a driveway design for Lot “ to “The Balches need to provide a driveway location for Lot 5B”. Change Vickie D also added Lot 5C ROW? –is for access to conserved land, and need to add RBF into the legend” to “Vickie D also added that the ROW for the Lot 5C driveway should be noted on the map and is for access to conserved land. The map also needs to show the proposed well for Lot 5C and “RBF” needs to be added into the legend.  In the paragraph headed **Public Hearing Adjourned**, change the date to May 19th, 2014.  Under **General Business: Tullar Action Taken**, change the word **“accept”** to **“approve”.**    Under **General Business: Stacey Thompson Excavation Permit,** change “0894 24E” to “8-93-24E”  Under **Other Business,** change the entire paragraph beginning Chase K asked about Ray Clark…. To read as follows:  Chase K asked about the Ray Clark application update: Ann G. reported that Peter Dooley was notified and looked into it. Ann G said they only need to be notified if they are doing construction. Vickie D. said that the flood zone on the map is unclear. Fixing that map was one of the conditions. He also needs to come back with approval to get on town water. Floodplain ZBA’s role is not related to subdivision, only construction. Ann G. said that the ZBA says they don’t need to know about roads. Ann G. noted that there should be a means to inform owners about floodplain status.”  Add “Submitted by Melinda Ricker” to the end of the minutes.  Add the following list of people who attended the Site Visit for Stacey Thomson’s excavation permit application for Lot 8-93-24E: Stacey Thomson (property owner), Caroline Flower, Ludlow Flower (abutters), Kirsten Glass, Robin Cushman, Jennie Littlewood, Planning Board Members Andy Schwaegler, Harry Osmer, Jim McGoff, Lawrence Hibbard, Tom Steketee, Ann Green, and Vickie Davis (Planning Assistant). |
| **At 7:15PM, Harry O made a motion to approve the April minutes as amended. The motion was seconded by Jim M. and passed unanimously.** |
| **7:16PM Continuation of Public Hearing begun and adjourned on April 21, 2014 on Major Subdivision Completion Review: Subdivision of Tax Map/Lot 8-95/5B on Route 10 and Grimes Hill Road, proposed by Bruce and Christine Balch** |
| Jim M. recused himself at this point. |
| Ann G. noted that the town attorney had been consulted and believes that the note on the survey about the lot being divided into 2 lots is not legally binding. A quote from the conclusion drawn by the town attorney in his letter is as follows: *“In my opinion the “two house lot” notation is not legally binding on anyone. It was not a condition imposed by the Town. It was not a condition imposed by the Conservation Easement. It was basically nothing more than a unilateral statement of intent by the Buntens at that time (1989), but there is no reason in law why that intent could not be altered by a future (current) owner of that 10.53-acre parcel.* ***Caveat:*** *The upshot of this legal opinion is that the Planning Board should not, and indeed cannot, legally deny the approval of three lots on the basis of the “two house lot” notation on the plan.* The Planning Board accepted this assessment of the situation and went on to consider the proposal for 3 lots.  Ann G. asked for the new map and Harry B. passed out copies. Ann G. offered a copy of the Conservation Easement for anyone to look through, but no one took her up on the offer.  Harry B. gave a brief history of the “Bunten Farm” property, noting that it is owned by the Balches, that a Conservation Easement was placed on 160 acres with 10 acres on Grimes Hill Road excluded from it, and that it is this excluded portion that the Balches now want to subdivide. It already had a lot subdivided in the middle, Lot 5A, which was sold to another owner. This lot bisected the larger lot and now they want to subdivide the 2 sections on either side of that lot into 2 distinct lots, which will become lots 5B and 5C.  3 wells are shown on the map that serve abutting parcels—they were added to the map and labeled with the landowners’ names. Gendron’s and Bell’s are shown with exact locations but the Dieter’s well is several hundred feet away and the exact location is unknown, so they put its approximate location. All of these wells are deeded. The page numbers of the deeds are also shown on the map.  The lot near the house which was shown on the earlier map has been removed and Ann G. has a letter from the Balches officially removing that lot from the application for subdivision.  After consulting with Charlie Waterbury, they also added driveway locations to the map. |
| Harry B. said that since lot 5B is less than 5 acres, he sent in paperwork to the DES for approval. He received a letter from them on 5/2/14 saying they wanted to know the status of 5A and to do a site visit. Harry B. sent them proof that 5A was approved and expects to get final approval from DES in the next week or so. **DES approval is a condition of Planning Board approval for this application.** |
| The various wells were pointed out and discussed, Chase K reminding the Planning Board that we need to be careful about not impinging on anyone trying to assert their water rights. |
| The proposed ROW going across “Parker Land” (actually owned by Thunder and Lightning Revocable Trust) goes 50 feet up the drive and will be put on the deed. This will be in the ROW deed and the Thunder and Lightning Revocable Trust Deed. The ROW will be used to brush hog the pathway and other periodic maintenance of the Conservation easement, per stipulations in the easement. |
| The Gendrons said that they appreciate their well being shown on the map. |
| Other concerns: the Planning Board has not yet received the driveway agreements, and Parker requested a copy of the map and the conservation easement document. The name on lot 5A should be changed to Thunder and Lightning Revocable Trust if indeed that is how it is currently recorded. |
| **Conditions of approval set by the Planning Board: 1 driveway permit for Lot 5B, 1 driveway maintenance agreement for lot 5C, ROW agreement between property 5A and into lot 5C, State subdivision approval for lot 5B, and name change for 5A if necessary.** |
| **At 7:51PM a motion was made by Andy S. to approve the subdivision application conditional upon the driveway permit, ROW agreement and maintenance agreement, State subdivision approval for 5B. The motion was seconded by Chase K. and APPROVED unanimously at 7:52PM.** |
| Ann G. noted that the Planning Board will issue a refund to the Balches because the total number of lots being subdivided was reduced from 4 to 3.  Harry B. noted that when he receives approval numbers they will be reflected on the Mylar. |
| 7:55PM Ann G thanked everyone for coming, (there was a nice big crowd). |
| Jim M. rejoined the Board at this point in the meeting. |
| **7:58PM Voluntary Merger between Joanne Morey and Jeffrey Morris Tax Map 8-29-3A and 8-29-1** |
| This is a home lot with 2.87 acres and a vacant lot of 3 acres which the owners want to merge. The Fire Department is an abutter but because it is a merger abutters need not be notified nor does there need to be a public hearing. Ann G. will notify property owners. |
| **Ann G made a motion that lots 8-29-3A and 8-29-1 be merged. The motion was seconded by Harry O. and was approved unanimously at 8:02PM.** |
| Peter Dooley reported to the Board regarding the Ray Clark property 8-108R-35 on Rt. 10 and concerns that had been noted about the flood plain. Andy S. said that the Planning Board’s concern is about the access. They have found a place out of the flood zone for the house. P. Dooley said that the ZBA would like to be notified when the Planning board gets an application (and indeed in this case that is exactly how it happened). Ann G. said that’s the point at which the ZBA gets involved. |
| The town implemented the rules included in the ZBA rules regardless of insurance status, though of course whether the rules are followed does influence insurance coverage. The correct process is for the landowner to come to the Planning Board and then for the ZBA to become involved. Not sure what the consequences for non-compliance are—it was suggested to check with Jenny Gilbert. |
| Chase K. expressed concern over the ad in the newspaper, given that NH law says that you cannot put a property up for sale until the subdivision approval is obtained. Ann G. said that Clark said he was unaware that the ad would be going in the newspaper. In the documents it is noted that the property is “subject to subdivision”. The Planning Board *did* approve the subdivision ***subject to conditions,*** but those conditions have not been met so it is unclear whether the listing of the property was in violation of the law or not. Vickie D. said she would look into it. |
| Ann G. added the following update to the subdivision process: Ray Clark has been trying to get State approval for subdivision and an easement for a driveway, but could not get that until a ROW is established with the other property owner, which has not yet been done. The Planning Board is not sure if this should be a driveway maintenance agreement or a country lane agreement. |
| Lawrence H. asked about the location of the abutter’s septic system and whether the ROW would pass over it. |
| **The Planning Board agreed that it would be a good idea to get Ray Clark to come back in and review the conditions that were placed on the approval of the subdivision.** |
| Peter D. expressed his opinion that it would be difficult to give permission to do anything on that lot. The question of access is very important, and there are still many questions. Is there a time limit on meeting conditions? Andy S. thinks that it is several years. **The Planning Board wants to find out if there is a time limit and what it is.** |
| Peter D. said that the ZBA responds to requests for variances for buildings. They are currently looking for a 5th member. T. Steketee said he would try to help find someone to serve in that position. |
| Rob O’Donnell asked if the Planning Board and ZBA have the latest accurate maps drawn up after Tropical Storm Irene. |
| **Other Business** |
| Ann G. wanted to add the list of people attending the site visit to last month’s minutes (added above under Minutes) |
| Rob O. expressed his willingness to join the Planning Board as an alternate (recommended by Chase K) and Ann G. explained the position to him.  **Tom S. moved to accept Rob O’Donnell as an Alternate to the Planning Board. Jim M. seconded the motion and it passed unanimously.** Rob will need to be sworn in by Deb H. |
| Lawrence H. went to the NH Office of Energy and Planning Conference May 3rd, enjoyed listening to different scenarios that other people had encountered. The biggest thing he got out of it was a comment by a lawyer from Concord, who asked how many boards got unanimous decisions—is that a problem? Are the right questions not being asked? Dissention could bring forth more discussion. L Hibbard brought a packet for interested people to look through. There was also a short discussion about the fact that most planning board members—here in Orford and in other towns as well, are in a certain age bracket, and whether this is a concern for the future. |
| There was a memo from Tim Cole about the need for more dry hydrants in town and whether that might be something the Planning Board might consider requiring for subdivisions. |
| **Tom S. moved that Sam Hanford be accepted as an Alternate to the Planning Board. Harry O. seconded the motion and it was approved unanimously.** |
| Ann G. noted that she wrote a letter to Robin Cushman explaining that her property did not abut the property involved in Stacey Thomson’s permit application that was considered at last month’s Planning Board meeting. |
| Ann G. received a request for project review of lot 8-93-67. This is north of Sopers’ on river side on Rt 10; it has been sold and is going to be developed. They got permission from NH Division of Historical Resources regarding archeological finds. |
| Town Sand Pit: The Board thinks that Mary Picknell indicated that if they are used for town roads, they’re exempt. L. Hibbard will research this further—he thinks she may have said that the Town has to have a reclamation plan. RSA 155E indicates that no more than 1000 cu yds of gravel can be removed from private property. Chase K. thinks that the **Planning Board should review all of the information they went through on Gravel Excavation Regulations at the next meeting.** |
| Country Lane Agreement and Shared Driveway Agreement:  Vickie did find a model for something like a Country lane—she will sort through them and send out. |
| Vickie D. asked about getting Planning Board Manual binders back from previous Planning Board members—this needs to happen. They will have to start charging for materials not returned. |
| **At 8:47PM Chase K. moved that the meeting be adjourned. The motion was seconded by Andy S. and passed unanimously.** |
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