

Approved

Orford Planning Board

Sept 5<sup>th</sup>, 2024 Meeting

Minutes

## Town of Orford Planning Board

### Meeting Minutes – September 5<sup>th</sup>, 2024, Meeting

*Board members:* Mark Adamczyk-Chair; Paul Goundrey-Vice Chair; Martha Rose-Secretary; Caleb Day-Member; Ruth Hook-member; Tom Thomson-member; Ann Green-alternate (arrived at 5:30PM).

*Selectboard Members present:* Chase Kling-Chair; Kevin Follensbee-member, Esther Dobbins-Marsh, Administrative Assistant.

*Board members absent:* None

Staff absent: Vickie Davis UVLSRPC

*Public attending in-person:* None

*Public attending virtually:* None

Mark Adamczyk called the meeting to order at 5:02PM

Before the minutes are reviewed, Chase K. made a point of order that this is a joint meeting of the Orford Board of Selectman and the Orford Planning Board. The reason being that both boards need to review the application from Mark Miller and that both boards have a role that they must play in the process. It was planned that the town attorney would be at this Planning Board meeting to explain exactly what procedures to make sure that they are followed very carefully because failure to follow procedure after 3 ½ years lead to a court case that the town lost based not on the merits of the application but due to procedural errors. He also mentioned that there was a procedural error in sending out the public warning for September 5, 2024 meeting with the wrong day of the week. The date was correct, September 5, 2024, but the day of the week was printed as Tuesday when September 5, 2024 is a Thursday. All the notices were posted publicly, and all the notices were sent to the abutters with the wrong day. Chase K. noted these kinds of errors are very costly and holds up the application process and can leave the town open to court cases. Tom T. asked how this happened, and Chase K. said they are still trying to figure that out. Chase K. said that the town counsel could not be present as expected due to an illness. He said that due to the town council not being present, he would do his best to answer all the questions that come up and we would make a list of question during this meeting to send to the town council to be answered before our public hearing next month. Chase K. then turned the meeting back to Mark A. to proceed with the meeting.

**Item 1: Review minutes from the previous meeting:** Ruth H. made note that the order of the approval of the previous (August 13, 2024) was seconded by Tom T. but it says he did not arrive until 5:40PM. Correct to remove Tom T. arrived at 5:40PM. Chase K. noted a typo in the spelling of "Orr & Renop" to be corrected, "Orr & Reno". Ruth H. also made note to change wording under item 3, 6 lines down to change "that" to "than". Chase K. also noted that these minutes were thorough, and very thorough minutes are critical to the success or challenges that we will face with this case. It was cursory minutes that did not have the detail necessary so that when we ended up in court we could not convince the judge that the Planning Board or the Board of Selectman had done the job, when in fact we had commented but it never showed in the record about the state of the roads for the waivers and that is where the town fell down. For that we need to say not only what we are deciding, yes or no, and explain why we believe it should be accepted as a driveway or why it cannot be a driveway, and explained yes or no, and why on each waiver. Tom T. also noted that it is up to everyone around this table to check to get the point that we want in the record. Chase K. made a motion to approve with corrections and Tom T. seconded. All in favor.

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**Item 2: Tax Map 1-91-53: 1-91-61, Mountain View LLC, informal discussion:** Chase K. noted that he asked the town attorney “what procedures should be followed in receiving, evaluating and processing the street plat application from Mark Miller, Mountain View Hideaway, LLC (referred to as MVH)? What does the Planning Board need for documents? He noted that there is a check list that we need to make absolutely certain we go down through the list before we accept the application as complete. Then go to public hearing. The checklist then goes to Vickie Davis to review the application and the documentation. Chase K. then listed that everyone on the planning board should have, the application and a copy of the survey. He asked Martha to point out on the large board both the site map and the survey of the street plat. He asked if everyone understood where this is? The board members all responded that they do. This was prepared by TFM Civil Engineers. Chase K. asked if everyone had a copy of the engineering study. Chase K. noted the letter from Robert Carey dated 9/4/24 where he talks very specifically about section 12.02 of our Planning Board regulation noting “New construction of new streets shall meet these minimum design standards for street design. The applicant may obtain a waiver from these design standards with written approval from the Town’s licensed engineer and agreement of both the Planning Board and Selectmen”. This means that if there are waivers, we need to have a list of waivers and we do have that. He noted that what happened with the previous MVH application is that the Planning Board and the Selectboard just rubber stamped the waivers and said “yes”, but we did not explain why we said yes, and we must take up each and every waiver separately. Chase K. confirmed that we received a letter from Robert Carey dated 9/4/24 with each of the seven waivers requested and the reason for each request. What we need him to do is show us on the engineer’s survey map, exactly where each location is that is not compliant with town regulations. He also said it was very important that all Planning Board members should go out and do a site visit. He also asked if everyone understood the protocol to do a site visit. The standard is that you contact the property owner and gaining their permission, we can go in small groups as long as we do not have a quorum present. Martha R. asked if Vickie Davis received the packet application and Esther M. said she has a packet. We do not yet know if she has reviewed it for completeness. Chase K. next said that everyone needs to see the court opinion of the land court so that everyone has a clear understanding about why this application is under reconsideration. He went on to say that after we lost in court, the two litigants being Mark Miller and Greg Gould, met with an arbiter and came up with an agreement. Then we reviewed the settlement agreement as well as a letter from Greg Gould dated July 31, 2024, regarding the settlement and what is OK up there. They have agreements about utilities, the use of the right of way (ROW), no cell towers, no turbines and other restrictions. This agreement prohibits this land from ever being subdivided. Martha R. questioned, on the settlement agreement it says there will be a letter from Gould (included) and a letter from Furstenburg (not included), do we need that? Chase K. will ask town council if the application is complete without this letter. Martha R. then asked about the sign-off from Mark Miller to absolve the town from liability for emergency services needed? We don’t have a copy what he signed several years ago, and do we need a new one? Chase K. asked us to review document from Christine Johnston dated August 27<sup>th</sup>, 2024. On page 5, the question to her; If the street plat is approved, is there a next step for the applicant to submit the application to construct off a Class VI Road to the Selectboard for consideration on whether to grant a building permit? She answered, No I don’t think Selectboard permission is required for building on a Class VI Road, but Selectboard agreement is going to be required as part of the Planning Board process for waivers under section 12.02 of the subdivision regulations. Chase K. noted that we have a form that we use when people build on Class VI roads that releases the town from any liability for providing fire, police, ambulance and any other services because the town has no ability to maintain the road. He also added that this needs to be brought up with the Selectmen. Does the applicant need a building permit because they don’t have road frontage? Explained by RSA 674:41? Ann G. asked if the waiver needs to be re-done and it’s not in the packet. Esther M. then asked about the waiver that has already been signed for a land-locked piece of property states they can only build one building, not 2 or 3. Question for the town counsel, if these waivers are approved does this not constitute a country road which then makes this roadside frontage so they are not land-locked, thereby changing the permit the board would issue? Tom T. asked, in the letter from Christine Johnston, is this being considered a Class VI Road? Chase K. responded that the ROW is being considered as a street plat, and everyone who builds on a Class VI Road must sign a waiver and then there is also a building permit for them. Tom T. continued to question why Mark Miller does not need a waiver, Chase K. said he does not need a building permit but does need a waiver.

At this time the Zoom connection was being terminated by Zoom. Mark discontinued the Zoom. No participants joined. 5:38PM.

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Chase K. said these are all questions we need to get answered. He said that Christine Johnston says we don't need a building permit, but he thinks they do. Kevin F. asked, isn't the building permit part of signing off on the waivers? Esther M. added that we might need to modify the current liability waiver to meet the needs of this applicant. Tom T. then asked who will maintain the street plat ROW? Chase K. answered that it was in the settlement that Mark Miller would maintain the ROW.

Next discussion; the waivers. There are 7 waivers. Chase K. said we need to look at each one of them and noted that even if one waiver is not approved, the application will collapse. He then noted that the first waiver requested is for the street plat to be only 25 feet wide rather than the required 50 feet width. He stated that this not possible due to the conservation easement that is managed by the Society for New Hampshire Forests (SNHF) which only allows for a maximum of 25 feet ROW to be built. Martha R. pointed out that the letter dated 9/4/24 from Robert Carey listed the reasons for the waivers, but did not mention the conservation easement managed by SNHF. Chase K. wants the engineer to be present at the public hearing to point out the ROW width, travel service width, horizontal curve radii, vertical curve radii, maximum grade, minimum grade and minimum sight distance on the survey map where each requested waiver exists and why.

Chase K. then discussed our actions at the end of the approval process. After the public hearing is closed and a final decision is made, we have 45 days from that day to present the final decision in writing to the applicant. Ann G. asked about internal driveways to the second house. Does this now constitute a subdivision? Chase K. said the only thing the Planning Board can consider is the ROW where it leaves the Class VI Road up to Mark Millers property boundary. Ann G. asked if the next meeting is a public hearing and has everyone, including the engineer been notified? Chase K. reiterated what was discussed before Ann G. arrived. Ann G. said OK. Martha R. then asked if there is any consideration by the Planning Board because the settlement agreement and Greg Gould's letter states that MVH can build a main house, a guest house, a garage and a barn. Paul G. noted that we are then also talking about public safety to potentially having 4 houses on the property that can be short term rentals. It was brought up that the question had been raised at the informal presentation meeting by Ann G. as to what constituted "other" buildings and they responded in addition to the single-family home, there could be a garage or barn, and they left out "guest house". Does this change the town liability waiver? Chase K. felt that the two parties that worked out the settlement agreement and both agree, then it's not the Planning Boards business. He felt that all we are supposed to be doing is saying the road is OK. Esther M. then brought up that building on a Class VI Road you can only build one house. She feels that the settlement agreement violates the towns regulations and that other people in town have been held to that regulation. Chase K. brought up the recent many applications to add or enlarge septic systems because people are enlarging and adding to their existing homes in Orford. The state of NH has legislated that people cannot be kept from enlarging or adding living space on their property where other regulations don't prohibit. Tom T. said the question that Esther M. asked should be asked and responded to by the town council in writing. Tom T. also asked if the engineers' report reflected the use of the trucks that would need to use the street plat to build a home. Specifically, the bridge. Chase K. found the "conclusions" in the engineer's report to say, "we find that the observed conditions on November 4<sup>th</sup>, 2022, of the private driveway, in its current condition, located off Prettyman Road (Class VI Road) in Orford, NH to be suitable for its use for a resident(s) subject to the Fire Department's concurrence." Chase K. added that the engineer, Nicholas Golon, P.E. added to the report, "in coordination with the site evaluation conducted by our office, we concur with the Planning Board's finding that the waivers requested are appropriate for the limited use of the private driveway, in it's current condition, for access to a residence(s) given the historical use of the driveway, in addition to the findings stated elsewhere in this letter", then listed the waivers. Esther M. pointed out that in the settlement agreement it says, "MVH will maintain the ROW in the current condition as a gravel road." It does not specifically address the bridge. Before ending the Selectman's part of the meeting, Tom T. asked Kevin F. if as the fire chief, then Kevin F. corrected him, he is not the fire chief, but was going out to personally view the street plat as part of the Selectboard. Chase K. brought up RSA 153:5 as a state implemented a minimum driveway width must be 50 feet if over 150 feet long and another RSA 153:3 he believed that the fire chief needs to go check the suitability of getting a fire truck up to the property. Kevin F. reviewed the engineer's report stating that he felt the road is adequate, with concurrence from the Fire Department separately.

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We then discussed where to send the questions. It was decided to circulate the question to the board to make sure everyone had their questions on the list and to ask Vickie Davis as well. Then we will send them to Esther to move them to the town council, Christine Johnston.

Chase K. if there are no more questions, this concludes the Selectman's part of the meeting is ended at 6:00PM. Now to return to the Planning Board Meeting.

**Item 3: Discussion-collating telecommunications responses:** Mark A. said he'd received a few email responses and Martha R. added that some had come into the Town Office. It was decided we would talk about it and put on the meeting in November. Tom T. asked about sending it to "resident" and there are multiple people in a household. He suggested that in the future we would add that to the mailer. Ann G. added that the mailer was also sent to renters in Orford. The Planning Board would like to get input from the residents of Orford.

**Item 4: Gravel Pits:** Mark A. said he needed to do more investigation on the subject. Chase K. asked Paul G. if he found the survey map and he did not get to look for it. Paul G. said he would look for it before the next meeting on Sept. 12<sup>th</sup>, 2024 and would find the survey map and the gravel pit permit. We only have one gravel pit in Orford. Paul G. would check the permit and see if it needs updating. Chase K. thought it could be over 10 years old and may need to be updated and a site visit was needed.

**Item 5: UVLSRCP:** RE: 2023-2024 Planning Board and Land Use Regulation Handbook Orders. Martha R. and Caleb D. would like a copy, and it was decided to order 2 books and one e-book. Martha R. would take care of the order.

#### **Other Business:**

**-Review any invoices/mail:** No new invoices or mail.

Martha R. asked who Chair's since Mark A. would be attending by zoom. Paul G. said he would chair the September 12<sup>th</sup> meeting.

**-New Applications:** no new applications.

Respectfully submitted, Martha Rose, Orford Planning Board Secretary

#### **Tentative Meeting Agenda for September 12th, 2024, 5:30 PM Town Offices'**

-Amory Host, Peak Properties & Development Corp. informal discussion

-Nick Castel, 48 LR Property LLC, informal discussion

-Gravel Pit discussion

-Invoices and mail

Mark A. made motion to adjourn at 6:15PM and was seconded by Caleb D. and unanimous agreement followed.