

**DRAFT**  
**Planning Board**  
**Minutes of March 17, 2009**

**Members Present: Tom Vannatta, Chair; Barbara Freeman, Vice Chair; Travis Dezotell; Jim Powell, Ex-Officio; Bill Weiler; Ken McWilliams, Advisor**

Mr. Vannatta called the meeting to order at 7:05 p.m.

**CASE: Adm1-008: Board Elections**

**CHAIR**

Mr. Weiler nominated Tom Vannatta for Chair of the Planning Board. Ms. Freeman seconded the nomination.

No further nominations or discussion.

All in favor.

**VICE-CHAIR**

Ms. Freeman nominated Bill Weiler for Vice-Chair. Mr. Powell seconded the nomination.

Mr. Weiler stated that he does not have the time to commit to the position of vice-chair.

The nomination was withdrawn.

Mr. Vannatta nominated Barbara Freeman for Vice-Chair. Mr. Powell seconded the nomination.

No further nominations or discussion.

All in favor.

**ALTERNATE**

Mr. Weiler nominated Ron Williams as a three-year Alternate Member, term to expire in March 2012. Ms. Freeman seconded the motion. All in favor.

The Board reviewed the minutes of February 17, 2009 and made corrections.

Mr. Weiler asked Mr. McWilliams if the board can set condition(s) when it approves a subdivision that new deeds must be presented before the mylar is signed.

Mr. McWilliams said yes.

Mr. Weiler made a motion to approve the minutes of February 17, 2009 as corrected. Mr. Dezotell seconded the motion. All in favor.

Mr. Vannatta circulated and announced upcoming Land Use workshops.

**CASE: 2009-001: Final Site Plan Review – George & Linda West – Bed & Breakfast – 348 Route 103A – Tax Map 018-213-220.**

*Notice is hereby given that the Planning board will receive submission of an Application for a site Plan Review from George & Linda West, for property located at 348 Route 103A, Newbury, NH Tax Map 018-213-220 on Tuesday, March 17, 2009 at 7:15 p.m. in the Town Office Building at 937 Route 103 in Newbury, NH.*

The Board reviewed the application for completeness.

Mr. Weiler made a motion to accept the application as complete. Mr. Dezotell seconded the motion. All in favor.

Linda West explained to the Board that the Bed & Breakfast is currently under construction, and they anticipate 20 weeks to completion to hopefully open for customers at the end of the summer. There are proposed three bedrooms with accommodations for breakfast and light lunch (soup & sandwich-type) meals. Due to the provision of serving meals, the State requires a commercial kitchen, but this kitchen will not be used as a restaurant. It will be for guests of the Bed & Breakfast only.

Mr. West informed the Board that the proposed lighting is shown on the site plan. There is a 60 watt light proposed on a corner post, placed in such a way as to not disturb the neighbors and two porch lights. There is an old well that will have a light in the center to provide more light and for safety reasons. All lighting will be low intensity and all directed downward onto this site. There is currently an existing motion light on the residence.

Mr. Weiler noted that according to the plan, the second driveway is a temporary access until the new, proposed driveway is complete.

Ms. Freeman asked to Board how will the hand drawn plan with the parking detail on a larger scale get referenced and attached permanently to the survey plan.

Mr. Vannatta suggested writing 'Page 1 of 2' and 'Page 2 of 2' on the plan so that in if in the future someone pulls the plan, they will know there should be two pages.

There were no further questions from the Board. Mr. Vannatta opened the meeting to the public.

Suzanne Levine stated that she would like to see the complete plan, inside and out. She commented that five parking spaces seems like a lot in such a small area and asked if there would be enough room to safety maneuver vehicles.

Mr. West explained that he and the abutter, Michael Gobes, completed a lot line adjustment which gave the Wests an additional 10 to 12 feet beyond the well, which provides plenty of room to accommodate and maneuver five vehicles. He commented that the contractor who is currently working on the site has a long trailer and a couple of employees. They have had no trouble maneuvering the site.

Mrs. West commented that they followed the guidelines in the regulations to make sure there would be enough parking in numbers and space. With only three rooms available, there will seldom be more than three vehicles.

Mr. Weiler noted that the regulations call for 9-ft. wide spaces, and they have provided 10-ft. wide spaces.

Ms. Levine asked Mr. West if the septic issue that was part of the conditional approval from the Zoning Board of Adjustment was satisfied.

Mr. West said yes. He explained that on June 26, 2006 an approval for operation was received from DES, Approval No. CA2006070984 for a 6 bedroom system. A copy of the approval was filed with the application.

Ms. Levine thanked the Board and the West's and commented that her concerns were satisfied.

Being no further questions or comments from the public, Mr. Vannatta closed the hearing to the public. There were no further questions or comments from the Board.

Mr. Dezotell made a motion to approve the site plan as presented with two pages. Mr. Powell seconded the motion. All in favor.

**CASE: 2004-006: Angel Hawk Subdivision - Jaimie Gould aka Advanced Conception Property Development, LLC – Development Agreement**

*Notice is hereby given that the Newbury Planning Board will conduct a public hearing on March 17, 2009 at 7:30 pm to consider revoking part of the Angel Hawk Subdivision as provided by RSA 676:4-a Revocation of Recorded Approval. Specifically, the part of the Angel Hawk Subdivision the Planning Board will consider revoking includes Lot 4 (Tax Map #048-599-104), Lot 6 (Tax Map #048-599-106), Lot 7 (Tax Map #048-599-107), Lot 8 (Tax Map #048-599-108), Lot 10 (Tax Map #048-599-110), Lot 11 (Tax Map #048-599-111), and Lot 12 (Tax Map #048-599-112).*

*The reason the Planning Board is considering revoking that part of the Angel Hawk Subdivision specified above is that the owner of the Angel Hawk Subdivision has failed to sign the Development Agreement that provides, in part, for the completion of the subdivision improvements.*

*This public hearing will take place at the Newbury Town Offices, 937 Route 103, Newbury, NH.*

Mr. Vannatta asked Mr. Gould if he had anything with him that would cause the Board not to have this hearing for consideration of revoking the subdivision.

Mr. Gould informed the Board that he had the signed Development Agreement with him. He apologized for the lack of communication and explained that he has been working down South in Georgia. The last correspondence he remembered regarding the Development Agreement was when he indicated that he signed the copies, but the Board had not yet received them. He stated that he had also asked the Board for relief on the \$3,500 escrow that was due upon signing but does not recall a response to that request. He explained that the reason he has not followed up is that due to the declining economy, he has gone where the work is, which happened to be down South. He reminded the Board that he ended up with title to the Angel Hawk Subdivision in lieu of a substantial amount of money owed to him by the prior owner because there was a chance of the prior owner filing bankruptcy, so he was looking to protect his investment in the subdivision.

Mr. Gould stated that he would respectfully like to ask the Board to consider a few provisions.

1. To adjust the Development Agreement to allow the sale of lots providing a determined percentage of the sale price be placed in an escrow account to be used for the construction of the road.
2. To reconsider the complexity of the engineering and length of the off-site improvements of the road. Through recent sales of other properties, there is no intention of further subdivision, therefore the length and complexity of road is excessive.
3. To consider the fact that a finance company is not going to issue funds for a subdivision that cannot sell lots.
4. To reconsider the revocation of the subdivision and consider not requiring the bond for the offsite road improvements until 15 days prior to the commencement of the offsite road improvements.

Mr. Vannatta informed Mr. Gould that the Board is apprehensive about negotiating with him because there has not been much, if any, communication from him; and what he said he was going to do did not get done.

Mr. Gould explained that he does not have regular access to email. The emails received from him were through his mother's email account on an evening he happened to be visiting with her. He also does not regularly check his post office box, especially since he has been out of state.

Mr. Weiler pointed out that it is Mr. Gould's responsibility to get the Development Agreement to the Board as soon as possible. Then the Board could have worked with Mr. Gould regarding issues of bonding after receiving the signed agreement.

Mr. Gould presented the signed agreement, dated November 11, 2008. He stated that there were no changes since the Board's final draft, but he does not have \$3,500 for escrow for the offsite improvements.

Mrs. Freeman explained to Mr. Gould that the fact that he has not been business-like in this endeavor makes the Board nervous that he is going to fulfill the promises and requirements of this subdivision.

Mr. Vannatta asked the Board how they would like to proceed.

Mr. McWilliams commented that Mr. Williams had suggested that the funding for the escrow account not be required until the road construction is ready to begin. He stated that he does not see a problem with that.

Mr. Vannatta recalled another request regarding the sales of properties to fund the escrow for the road construction.

Mr. Gould confirmed Mr. Vannatta's recollection and explained that it is very difficult to get funding for a road to a subdivision that cannot sell lots. Therefore, to make the cash flow and the money come forward, he is suggesting a certain amount of money on lot sales to go into an escrow account to fund the offsite road improvements. Secondly, he asked the Board to consider if such a complex and lengthy road necessary to service a maximum of 11 additional homes.

Mrs. Freeman explained that the road design is based on Town standards. The Board cannot have less of a road because of a bad economy. The specifications were required based on the Angel Hawk Subdivision as originally proposed.

Mr. Powell commented that he does not think the Board has enough information to make a determination regarding altering the requirements of the offsite road improvements. He commented that certainly the road could be shortened, but the standards and quality of road cannot be reduced. He expressed concern that if the Board allows Mr. Gould to sell lots without completing the road improvements and the road is never built, that puts the Town in a difficult position.

Mr. Gould commented that by reducing the length of road to and beyond the entrance of the subdivision that would reduce the cost of the road construction significantly. He asked if the specifications to build a new road are the same as the specifications to reconstruct an existing road.

Mr. Powell stated that the standards are the same either way.

Mr. Vannatta pointed out to the Board members that if the Board agrees to allow the sale of lots to happen in order to fund the escrow requirement, it would be violating the first item of the Development Agreement: 1. *'No lot may be sold unless and until security in the form of a performance bond, letter of credit or cash is posted with the Town of Newbury in the amount and form satisfactory to the Town to ensure the completion of all improvements shown on the Plan or the improvements are completed, and the planning board and board of selectmen confirm, in writing, the satisfactory completion of said improvements. Advanced shall not undertake any work until it meets with, and secures the approval of the board of selectmen to proceed.'*

Mrs. Freeman suggested that Town Counsel ought to be consulted.

Mr. Powell commented that he is also concerned that if there is a dead end road which services five lots, the land owner at the end could end up landlocked if the road improvements are not completed.

Mr. Gould informed Mr. Powell that the road is already built and all lots are accessible.

Mr. Powell pointed out that although the road is roughed in; it is currently in substandard condition.

Mr. Gould stated that he would be willing to escrow 80% of lot sales or more if necessary to fund the escrow account for the offsite road improvements with a deadline set for completion, assuming the proposed deadline is far enough away to compensate for the current economy.

Mr. Powell suggested that the Board should consider continuing the hearing to a future date to give the Board enough time to meet with the road agent and town engineer and walk the site. Perhaps something more reasonable and safe for the home/lot owners can evolve through discussion and reconsideration of the offsite road improvements.

Mr. McWilliams advised the Board that if the requirements of the offsite improvements change, then the subdivision will have to be reopened with a public hearing.

Mr. Weiler commented that the whole point of prohibiting lot sales until the road is fixed is to protect the Town. The Board needs to keep the Town a priority.

Mr. Dezotell commented that the original negotiation agreement was for road improvements. That was agreed upon when there was a different economy with a person who was looking at selling 11 lots. Now we are working with a person during a bad economy who can only sell a maximum of 7 lots. He commented that in his opinion, the Board should not impose those conditions on a person who does not have the ability to come away with the same benefits as the person who made the agreement.

Mrs. Freeman commented that she believes Mr. Weiler is right in that if the Board allows more lots to be sold, it puts the Town in a bad position. On the other hand, it also may make sense to look into the road requirements regarding length to see if the burden on the developer could be relieved without changing the existing agreement and safety for the home owners.

Mr. Vannatta commented that it may be beneficial to consider providing the opportunity to have those individuals come together to see if there is a way of lessening the burden by revisiting the road length. However, since the Board has not officially been given the signed Development Agreement, the issue on the table is consideration of revocation of the subdivision.

Mr. Gould stated that he is officially giving the Board the signed Development Agreement, but he does not have the \$3,500 security.

Mr. Weiler made a motion that the \$3,500 escrow not be required until two weeks before construction of the offsite road improvements. Mr. Dezotell seconded the motion. Discussion followed.

Mr. McWilliams commented that there is a 3-year time limit from when the subdivision was first approved by the Board to completion of the offsite improvements. There is an opportunity to ask for an extension of the 3-year limit written into the regulations. The specific date of approval is in the subdivision file.

Mrs. Freeman asked Mr. Gould if he was ready to begin road construction.

Mr. Gould stated that he is not ready to begin the road improvements, but it is going to be difficult to obtain financing to get it started if the lot sales are frozen. He reiterated that decreasing the length of the road will lower the costs, and he may be able to get financing if the cost is not so high. Also, he would be willing to put most or all of the money received for lot sales toward the offsite improvement requirements.

Mr. Weiler commented that withholding lot sales is the only way of the Board being able to guarantee that the offsite improvements will get done.

Mrs. Freeman advised Mr. Gould that the Board is not willing to change that part of the agreement because it is too risky for the Town. She commented that since the Board has stated that it is going to have a different condition for the letter of credit, an addendum to the agreement should be signed by the Town and Mr. Gould. That agreement should be reviewed by Town Counsel prior to signing. Additionally, the Board should relook at the road with the Road Agent, Town Engineer, and the Developer to determine if the requirements can safely be adjusted.

Mrs. Freeman made a motion that representatives from the Planning Board, Board of Selectmen, the Town Engineer, and the Road Agent meet on-site with the Developer to investigate revising the plans for the offsite improvements of Angel Hawk Subdivision. Mr. Dezotell seconded the motion. All in favor.

Results from the onsite visit will be reported to the Board at the May 5, 2009 Planning Board worksession regarding potential revision of the required road improvements.

Mr. Gould gave Mr. Vannatta and Mrs. Freeman different contact information that may be more effective for communicating.

Mr. Vannatta, by consensus of the Board, closed the hearing. There was no consideration of the revocation of the Angel Hawk Subdivision since the signed Development Agreement was officially delivered and the amount of road security is being reconsidered.

Mr. Vannatta opened the hearing up to the public for comment or questions.

There were no questions or comments from the public. Mr. Vannatta closed the hearing to the public.

**CASE: 2008-010: Annexation – Bradley LaClair – Park 10 – three lots into two lots - Lots 020-055-210; 020-069-280; 020-057-229.**

*Notice is hereby given that the Planning Board will receive submission of an application for a Final Hearing for an Annexation from Brad LaClair for property located on Park 10 Road, Newbury, NH Tax Map 020-055-210, 020-069-280, and 020-057-229 on Tuesday, March 17, 2009, at 7:45 p.m. in the town Office Building at 937 Route 103 in Newbury, NH.*

The Board reviewed the application for completeness.

Ms. Freeman made a motion to accept the application as complete. Mr. Dezotell seconded the motion. All in favor.

Roger Rodewald, agent for Brad LaClair, presented an annexation plan of three lots into two lots to be accessed off Park 10 Road. He explained that Mr. LaClair would like to build a house on each of the two resulting lots.

Ms. Freeman asked if the right-of-way that is drawn on the plan, a.k.a. Spring Street, is going to be used as the access to these proposed lots.

Mr. Rodewald stated the right-of-way known as Spring Street will not be the access to these lots. There is a new, proposed access on the southerly side of the lots that will be used. He stated that since Spring Street will not be used and is only a paper road, it will be divided down the middle and each half given to its respective abutter. Most of the streets indicated on the tax maps are not actually built.

Ms. Freeman asked Mr. Rodewald to explain the before and after acreage calculations.

Mr. Rodewald stated that he was not sure how the acreage was calculated because they were done by the surveyor, Wayne McCutcheon. He commented that it is a difficult area to survey.

Mr. Freeman stated that the before and after acreage needs to be recalculated and correct, and the plan needs to be redone.

Mr. Weiler asked Mr. Rodewald to clarify the placement of Park 10 Road on the survey Plan.

Mr. Rodewald explained that Park 10 Road is not a subdivision road. It was built in the path of least resistance and is actually an encroachment on several lots, including Mr. LaClair's. It is an existing problem that will probably never be solved.

Mr. Rodewald asked the Board if they wish to see the individual lot lines of the original lots.

The sense of the Board was that it is only necessary to show the lots lines of the three existing lots being merged into two lots.

Mr. Vannatta opened the hearing up to the public.

Patricia MacDonald stated that she submitted a letter to the Planning Board regarding her concerns.

Dear Board Members,

I am writing this letter to address my concerns regarding access to my property, map and lot 020-063-208, which abuts Mr. LaClair's proposed annexation and lot merger. Mr. LaClair's proposed plan merges 2 parcels that abut either side of a right of way/paper road, known as Hemlock Street that leads to my property. My concerns are that if the merger takes place, my land will become inaccessible. The proposed plan notes read "2, Title of subject lots may extend to the centerline of or across adjacent rights of way in which roads have not been constructed. See NH RSA 231:51." Below is a copy of NH RSA 231:51

## TITLE XX TRANSPORTATION

### CHAPTER 231 CITIES, TOWNS AND VILLAGE DISTRICT

#### HIGHWAYS

##### **Discontinuance of Class IV, V and VI Highways Section 231:51**

**231:51 Dedicated Ways.** – Any street, lane or alley within this state which has been dedicated to public use by being drawn or shown upon a plan of lands platted by the owner, and the sale of lots in accordance with such plan, may be released and discharged from all public servitude by vote of the governing body of a city or town if such street, lane, or alley has not been opened, built, or used for public travel within 20 years from such dedication.

**Source.** 1913, 121:1. PL 79:5. RL 95:5. 1945, 188:1, part 9:7. RSA 238:7. 1981, 87:1. 1989, 131:1, eff. July 16, 1989.

As far as I am aware of, all the paper roads in the Park 10 development have never been released and discharged from public servitude by vote of the governing body. If this were to happen, many property owners in Park 10 would lose access to their property. My objective is to bring this to the attention of the Planning Board so that the rights of the property owners in Park 10 are more clearly defined and are not infringed upon.

I request that the Board require that Mr. LaClair's annexation and tot merger plan state that access across the right of way/paper road known as Hemlock Street (see Plan #66 and 2120) continue to be left open for passage to parcel 020-063-208.

Thank you for your consideration of my request.

Ms. MacDonald stated that she would like assurance that if this annexation is approved, that she will not lose access to her lots via Hemlock Street.

Mr. McWilliams stated that when property is annexed, it does not erase any existing rights-of-way, nor can a person build or block a right-of-way.

Mr. Weiler asked if Hemlock Street is a right-of-way through the land in question, then how did Mr. LaClair get title to it.

Mr. Rodewald stated that a person can own a property with a right-of-way crossing it.

Ms. MacDonald informed the Board that Mr. LaClair's deed references lots 85,86 & 87; not the Hemlock Street right-of-way.

Mr. LaClair stated that Hemlock Street is an existing right-of-way that will remain open.

Ms. Freeman commented that the Board needs to know if Hemlock Street is and/or should be included in the calculations for lot size.

Mr. LaClair asked if the annexation goes through, are the lots buildable.

Ms. Freeman stated that if the setbacks and other regulations and requirements can be met, then they are buildable.

James McGaffigan commented that a topographical map should be provided due to the steep slopes. He advised the Board that he has a camp nearby that was built in 1915 with a stone foundation. He fears that if the lots are built upon, the ground will become unstable and his foundation and camp will collapse.

Mr. Vannatta state that the Board is not in a position to make a decision this evening. More information is needed. He suggested that this hearing should be continued to April, at which time, it would be helpful if the surveyor could join the meeting.

Mr. McGaffigan also expressed concern for the perennial stream that runs through the property.

Mr. Weiler explained that if the stream is not a permanent stream and named in the zoning regulations, it does not qualify for stream setbacks. He explained that typically, the Board does not require topography lines and water drainage for annexations since the outside boundaries are not changing.

Mr. McWilliams explained that in a situation such as this one, the steep slope, wetland, streams and septic design issues will be addressed in the building permit process.

Being no further questions or comments from the public, Mr. Vannatta closed the hearing to the public.

Ms. Freeman made a motion to continue this hearing until April 21, 2009 at 7:30 p.m. Mr. Dezotell seconded the motion. All in favor.

Mr. Powell asked for volunteers from the Planning Board to help at the recruitment seminar.

Mr. Geddes had previously volunteered, Ms. Freeman and Mr. Vannatta joined.

Mr. Dezotell made a motion to adjourn. Mr. Powell seconded the motion. All in favor. Meeting adjourned at 10:00 p.m.

Respectfully submitted,

Linda Plunkett  
Recording Secretary