

**Planning Board**  
**June 16, 2009**  
Approved August 18, 2009

**Members Present: Tom Vannatta, Chair; Barbara Freeman, Vice-Chair; Travis Dezotell; Deane Geddes; Bruce Healey; Bill Weiler; Ron Williams; Ken McWilliams, Advisor**

Mr. Vannatta called the meeting to order at 7:10 p.m.

MINUTES

The Board reviewed the minutes of May 19, 2009 and made corrections.

Mr. Weiler made a motion to approve the minutes of May 19, 2009 as corrected. Mr. Dezotell seconded the motion. All in favor.

**CASE: 2008 – 010: Annexation – Bradley LaClair – Park 10 – Lots 020-055-210, 020-069-280 & 020-057-229**

Mr. Vannatta advised the Board that Mr. McWilliams had been in contact with Bart Mayer, Town Counsel regarding the interpretation and Mr. Mayer's opinion of Mr. LaClair's application. Roger Rodewald, representative for Mr. LaClair was present to discuss Mr. LaClair's position.

Mr. Rodewald presented a set of plans which did not include the area of the road and right of way as part of the lot size, per Mr. Mayer's legal opinion. The proposed plan annexed three lots totaling 1.159 acres into two lots, one at 0.298 acres and the other at .861 acres. The 0.298-acre lot would be considered the "back lot" and would be serviced by a 20 ft. wide right-of-way off Park 10 road along the westerly side of the 0.861-acre "front lot". The water source for the back lot would come from an existing spring. Mr. Rodewald also presented a plan that showed the potential building envelope for the back lot.

Mr. Weiler asked why there needs to be a 30 ft. set back of the building from Spring Street if Spring Street is not considered a road to meet the criteria of the frontage requirement.

Mr. McWilliams explained that Article 5.9 Setback Requirements: *'For existing lots and lots that are two acres or greater: From the edge of any adjoining right-of-way as measured with respect to the building footprint or attached structure: thirty (30) feet; from the side or rear property line: fifteen (15) feet....'* He explained that after talking with Town Counsel, it is evident that RSA 674:41 overrides the town's non-conforming lot provision. The lot in the back that has no frontage from a legal standpoint would have to be granted a variance from the Zoning Board of Adjustment prior to receiving a building permit. Mr. McWilliams reported that in general, Mr. Mayer's opinion was that these are very small lots and he questioned the viability of creating two building lots from them.

Mr. Rodewald commented that he thought these lots were grandfathered and therefore automatically buildable lots. He stated that he does not understand why a variance is necessary.

Mr. Weiler explained that not all lots are necessarily buildable. If all of the building requirements are not able to be met due to some constriction of the lot, then it is not buildable.

Mr. McWilliams clarified that a variance would be necessary to build on the back lot whether a permit was applied for under the existing conditions or after the proposed annexation due to the classification of the right-of-way. He explained to Mr. Rodewald that Mr. LaClair has a couple of options.

1. Appeal to the Zoning Board of Adjustment for a variance to build on the lot and then return to the Planning Board for annexation approval,
2. Merge all three lots into one building lot, or
3. Leave it as is.

Ms. Freeman asked if the Zoning Board has the authority to override the RSA's.

Mr. McWilliams stated no and explained that there is a provision in the RSA which gives authority to the Zoning Board of Adjustment to grant a variance if it sees fit.

Mr. Dezotell commented that he is concerned with the precedence that the Board may be setting which could result in Park 10 being dotted with houses all over the hillside.

Mr. Weiler commented that any one decision does not set precedence on another. They have to be judged by their own merit.

Mr. McWilliams commented that he would guess that there are several other situations in Park 10 just like this one.

The sense of the Board was in order to give Mr. Rodewald enough time to seek a variance, draft new plans and return to the Planning Board, the time limit for approval after final application should be extended. Mr. Rodewald was in agreement.

Ms. Freeman made a motion to continue this hearing until September 15, 2009 at 7:15 p.m. Mr. Dezotell seconded the motion. All in favor.

**CASE: 1993-009: PSNH Scenic Road Hearing**  
***Gillingham Drive***

Dave Crane, PSNH Representative, was present to discuss the trimming necessary on Gillingham Drive. He explained that he is the Arborist for Public Service of New Hampshire. PSNH is on a four-year cycle of maintenance. The last time Gillingham Drive was trimmed was in 2005. He explained that 80% of the trimming in Newbury this year is on scenic roads. The trimming specifications are to remove trees that are 4" in diameter or more or trees that are at least within 8 ft. to the side, 10 ft. below or 15 ft. above the power lines. These set-backs anticipate the average growth over four years and the bending of limbs in a winter storm so that the limbs do not make contact with the power lines. Large trees are removed on a case by case basis with

consideration being given to dead and diseased trees. All property owners are contacted prior to trimming and/or removing trees and their wishes are taken into consideration as much as possible. Asplundh is contracted by PSNH to do the cutting. The cutting will begin at the northern end of town.

Mr. Weiler asked Mr. Crane when he expects to reach Gillingham Drive.

Mr. Crane estimated in approximately one month. He explained that there had been some trimming along the Loch Lyndon Reservoir access, but not part of the Gillingham Drive project.

Mr. Vannatta opened the hearing to public questions and comment.

John Brooks asked if everything under 4" in diameter is left alone.

Mr. Crane commented that generally, everything less than 4" in diameter is left unless it is dead or decaying or poses a threat to the power lines. The specifications stated earlier are for the primary conductors which are the lines on the streets, not the lines going to individual homes. The house lines have less voltage and service individuals instead of groups of individuals. Typically, those limbs are taken only if they are rubbing on the lines or wearing the protective coating off the line. There is a cost analysis that is used to determine if a tree is worth taking down or not. If there is a tree on a service line to a house, PSNH would be happy to take a look at it. If it is not a big expense or looks as though it would take a lot of time, sometimes PSNH works out a deal with the home owner that PSNH will have it taken down if the home owner agrees to do the clean-up.

Albert Tonkin asked for clarification regarding the Town's right of way from the center of the road.

Mr. Weiler explained that typically, a town road is 2 Rods wide or approximately 33 ft.

Mr. Crane explained that only PSNH and the Town Highway Dept. are restricted in the way that they perform maintenance on scenic roads. Property owners are allowed to do whatever cutting or maintenance they want as long as they don't offend any other existing regulations.

Mr. Eller asked Mr. Crane what is the nature of the complaints to PSNH regarding the trimming and if leaving high stumps behind is a normal practice.

Mr. Crane stated that leaving stumps behind is not normal practice for PSNH. The Audubon Society likes the stumps left behind for wildlife. Usually PSNH takes the tree down to the ground. If a stump was left behind, it may be that the tree was cut as a quick fix during a wide-spread power outage and PSNH forgot to go back and remove it the rest of the way.

Mr. Crane stated that the general nature of complaints is clean-up complaints, which PSNH tries very hard to avoid; excessive trimming complaints; and inadequate trimming complaints. Neither extreme, excessive trimming nor inadequate trimming is something PSNH tries to achieve.

Mr. Brooks asked Mr. Crane how the Comprehensive Shoreland Protection Act affects PSNH's trimming and/or cutting practices.

Mr. Crane commented that the CSPA has not had a big effect on PSNH's activity because there is a 50 point system allowed within the shoreland buffer. Generally, PSNH does not have to go beyond that. Additionally, if there is a hazardous tree, it can be taken down regardless of where it is. The only time the CSPA could be an issue is if there was only one tree in a 50 ft. stretch of shoreland that needed attention.

Louise Brooks asked Mr. Crane if PSNH would take down trees that are on the other side of the road as the power lines.

Mr. Crane stated if it appeared those trees would be a threat to the power lines, they would be appropriately trimmed or removed even if they are on the other side of the road. Again, each situation is evaluated on a case by case basis.

Ms. Brooks asked if PSNH finds that it is not necessary to take down trees that appear to be hazardous, is there any recourse to having them taken down anyway.

Cal Prussman, Newbury Highway Administrator, advised that the property owner owns the trees along the side(s) of the road, and they need to give permission in order to have a tree removed.

There being no further questions from the public, Mr. Vannatta closed the hearing to public comment.

Mr. Williams made a motion to approve the application from PSNH to prune and trim trees along Gillingham Drive. Mr. Dezotell seconded the motion. All in favor.

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

Mr. Vannatta advised the Board that the Town is not in receipt of the following documents agreed to by Mr. Gould at the May 5, 2009 Planning Board Meeting:

- 1.) A proposal to phase the Newbury and Sutton sections of Nelson Hill Road.
- 2.) A proposal to be able to place a bond in portions.
- 3.) A time line and schedule of obtaining funds and putting the bonds in place.
- 4.) A time line for work to start and be completed.
- 5.) A proposal to ask the Board for a time extension to complete the subdivision and offsite improvements.

Mr. Gould was not present to offer any explanation, nor was any known communication received by him as indicated at the May 5, 2009 Planning Board meeting.

Ms. Freeman made a motion that the Board hold a hearing on July 21, 2009 at 7:30 p.m. to consider revocation of the Angel Hawk Subdivision. Mr. Weiler seconded the motion.  
Discussion followed.

Mr. Geddes commented that he would like to see that Mr. Gould receive a certified letter rather than rely on the usual method of communication informing him of the Board's action. This is a very serious matter, and the Board should make certain Mr. Gould is aware.

The Board discussed several ways of informing Mr. Gould of the pending hearing. E.g. certified mail and certified mail-return receipt.

Mr. Healey asked Ms. Freeman why she proposed this motion.

Ms. Freeman explained that revocation is the only recourse the Town has to fulfill its requirements. The Board had considered revocation before under prior ownership and Mr. Gould came forward with empty promises. He has not lived up to his commitments, so the Board has little choice.

Mr. Healey asked what the consequences are of revoking this subdivision.

Ms. Freeman explained that all of the lots that are not already sold become one parcel. In the future, if Mr. Gould comes back with the requirements in hand, the Board could reinstate the subdivision and it would revert to the way it is today.

Mr. Weiler stated that the Board could also require a new application.

Mr. Geddes asked who would then be required to complete the road improvements.

Ms. Freeman stated that if the Board reinstates the subdivision, the owner of the subdivision would be required to do the improvements as originally agreed.

Mr. Geddes asked who would be required to complete the road improvements if the subdivision is not reinstated.

Mr. Weiler stated that the Town would do minimal road maintenance of Nelson Hill Road.

Mr. Dezotell asked if the applicant could come back at a later date and reapply for a new subdivision approval and not have to be required to do the same offsite improvements.

Mr. Weiler commented that the required offsite improvements would be up to the Board to determine at the time of re-application.

Mr. Williams commented that if the Board follows through with the revocation and the subdivision ceases to exist, there is nothing to preclude Mr. Gould from selling the open land. The new owner could then subdivide under the same structure or a different configuration.

Ms. Freeman reminded the Board that this motion is only a motion to have a public hearing to consider a revocation, not necessarily to go through with the revocation.

Mr. Healey asked what impact revocation would have on the existing home owners in the Angel Hawk Subdivision.

Ms. Freeman explained that the revocation would have no impact on the existing home owners except that there would be no more road improvements done. Maintenance of Nelson Hill Road would be done by the Town as it is now to keep it in passable condition, and maintenance of Chapin Way would be the responsibility of the developer.

Cal Prussman, Highway Administrator, informed the Board that the town of Sutton plowed Nelson Hill Road last winter. Sutton did not want to plow Nelson Hill Road in the condition that it was in; so this summer, Newbury Highway Department did some patchwork, filling in of pot holes and light maintenance. He stated that if it gets to a point where Sutton won't plow Nelson Hill Road, Newbury would step in and take care of it especially for safety services access. Additionally, Mr. Prussman stated that if he is going to have the expense of the upgrade and maintenance of Nelson Hill Road in his road plan, he is not going to be happy if Mr. Gold comes back at a later date after the work is done with no accountability to the road improvements.

VOTE: All in favor to hold a hearing on July 21, 2009 at 7:30 p.m. to consider revocation of the Angel Hawk Subdivision.

**CASE: NH Fish and Game development of the Wild Goose Boat Launch**

Mr. Vannatta advised the Board that he and Mr. McWilliams have reviewed the plans and application for the Wild Goose Boat Launch and have drafted a letter in response. The Board reviewed the draft and made recommendations for changes.

Mr. Geddes commented that the draft letter is an extremely well-written document and very well done. He agreed to contact Charlie Hirshberg regarding Independent Engineering Analysis input.

Mr. Vannatta recognized Mr. McWilliams for being the major contributor for composing the draft letter.

Mr. Weiler suggested that a statement be added at the end of the letter which indicated that based on the information the Board has seen so far, Newbury could not grant a site plan approval for this boat launch under its current regulations.

Mr. Dezotell made a motion to adjourn. Mr. Geddes seconded the motion. All in favor.  
Meeting adjourned at 9:15 p.m.

Respectfully submitted,  
Linda Plunkett  
Recording Secretary