

TOWN OF THORNTON PLANNING BOARD

Approved on: 11/15/15
PB Initials: TBR
Rec'd by Town Clerk on: 1/20/15
Town Clerk Initials: 202

Planning Board Meeting Minutes Thursday, December 18, 2014

CALL TO ORDER – SALUTE OF FLAG:

T. Phillips called the meeting to order at 6:01pm and led the pledge of allegiance.

ROLL CALL: The following members were present:

T. Phillips, Chairman	S. Babin, Vice Chairman	F. Freeman, Member	S. Macintosh, Member
G. Kimball, Member	N. Decoteau, Ex-officio	R. Gilman, Alternate	D. O'Donnell, Alternate
C. Schofield, Alternate			

The following members were not present: J. Piehn, Alternate and F. Gunter, Alternate
R. Gilman asked if he could be appointed a voting member for the meeting.

MOTION: "To appoint the following as a voting member for the meeting: R. Gilman in place of B. Regan's vacated position."

Motion: G. Kimball

Second: F. Freeman

Discussion: None

Motion passes: 5 – YES, 0-NO Abstained: N. Decoteau

B. Regan stated he would prepare a proposal regarding filling the unexpired term created when he resigned as a member and was hired as planning director.

B. Regan noted that the vacant position would be included in the annual warrant as a 2-year term.

APPROVAL OF MINUTES:

MOTION: "To approve the Minutes of November 20, 2014 as amended."

Motion: G. Kimball

Second: F. Freeman

Discussion: G. Kimball stated she had sent in a couple of small corrections to the draft which have been made.

F. Freeman asked that the word "stated" be changed to "suggested" under item 3. on page 3.

Motion passes: 5 – YES, 0-NO Abstained: N. Decoteau, T. Phillips

MOTION: "To approve the Non-Public Minutes of November 20, 2014 as presented."

Motion: G. Kimball

Second: F. Freeman

Discussion: None

Motion passes: 5 – YES, 0-NO Abstained: N. Decoteau, T. Phillips

6:15PM PUBLIC HEARING: 2-Lot Subdivision / Ahmed Mohamed - Map 6 Lot 13-1-2

T. Phillips opened the Public Hearing at 6:18pm and read the Notice of Public Hearing:

Public Hearing to consider an application for a 2-Lot Subdivision submitted by M. Mahmoud as agent for property owner

A. Mohamed on property located off NH Rt. 175 identified as Tax Map 6 Lot 13-1-2.

T. Phillips noted the current application was received on October 29, 2014 and that Planning Director, B. Regan has had opportunity to review the application.

T. Phillips noted the correspondence from Mitchell Municipal Group dated December 4, 2014 which states that on November 19, 2014 John March recorded an unapproved subdivision plan at the Grafton County Registry of Deeds (Plan No. 14772) which reconfigured Lots 1 and 2 to show the following acreages: Lot 1 – 1.06 acres and Lot 2 – 2.40 acres.

B. Regan noted that the current application before the board is for a subdivision of Lot 2 (*Map 6 Lot 13-1-2*) and that the application presents Lot 2 (*Map 6 Lot 13-1-2*) as the 2.40acre parcel in the unapproved subdivision plan recorded on November 19, 2014 as Plan No. 14772.

B. Regan stated that the Board should conduct the Public Hearing and make a determination after the application has been presented.

T. Phillips asked if the surveyor, J. March would be presenting the application.

M. Mahmoud stated he expected J. March to be in attendance.

B. Regan stated J. March contacted the office on 12/17/2014 and indicated he had a conflict which precluded his attendance at this Public Hearing.

M. Mahmoud stated he wanted to wait for J. March to present the application.

M. Mahmoud stated the Mitchell Municipal Group letter said that if he did not take action to correct the unapproved recorded plan within ten days that legal action would be taken.

M. Mahmoud continued by stating that ten days had come and gone without legal action being taken and that the Planning Board can not hold up his application based on the Mitchell Municipal Group letter.

F. Freeman stated that the letter did not state legal action would be taken after ten days and read the following section *"To correct this illegal behavior and to prevent the board from filing an enforcement action against you in court, you must, within 10 days of the date of this letter, file at the Grafton County Registry of Deeds a notice indicating that Plan No. 14722 depicts a subdivision that was recorded without the approval of the planning board"*.

M. Mahmoud stated his concern regarding use of the word "illegal" on the Agenda for the meeting under G. Correspondence 1. Mitchell Municipal Group RE: Illegal Subdivision of Moose Haven Lots 1 & 2.

T. Phillips pointed out that portion of the Agenda does not reflect how the Notice of Public Hearing was advertised but rather is the actual wording on the subject line of the letter.

M. Mahmoud stated his opinion that he owns the 2.40acres as shown on Plan No. 14772.

T. Phillips stated the Planning Board has to consider the Mitchell Municipal Group letter as it is from the attorney for the Board of Selectmen which serves as the Enforcement Agent of the Town.

T. Phillips stated that the Planning Board must consider the information before them and make a determination relative the application before them.

T. Phillips stated his opinion that it would be premature for the Planning Board to proceed with the application without having resolved the ownership of the underlying land.

M. Mahmoud stated he did not bring up the fact that in 2007 he had an issue with T. Phillips, and did not ask T. Phillips to recuse himself now out of respect for the Board.

T. Phillips stated he wanted to be very clear that he is happy to recuse himself if requested to do so and asked M. Mahmoud directly if he was requesting T. Phillips to recuse himself.

M. Mahmoud responded that it was up to T. Phillips.

T. Phillips stated that it was his opinion that he can be impartial on the matter currently before the board.

T. Phillips stated that the application presently before the board proposes subdivision of land that the ownership of which is in question as stated in the Mitchell Municipal Group letter.

M. Mahmoud restated his opinion that he owns the land in question and stated that the Planning Board should send the owners of Lot 1 (*Map 6 Lot 13-1-1*) to verify that they believe they own only 1.06 acres.

B. Regan stated the enforcement action mentioned in the Mitchell Municipal Group letter is out of the jurisdiction of the Planning Board and reminded the Planning Board that what the Board of Selectmen may or may not do with regard to enforcement is a separate matter.

M. Mahmoud stated that the Mitchell Municipal Group letter is holding up his application and asked how long it could hold it up.

S. Babin attempted to clarify the circumstance for the applicant by stating that the application as presented proposes subdivision of property which is shown on a plan that was recorded without using the legal process required.

N. Decoteau added the Mitchell Municipal Group letter states the "the planning board cannot approve the current application as it is in violation of local and state laws".

M. Mahmoud asked how he could resolve the problem.

S. Babin directed him to the remedy proposed in the Mitchell Municipal Group letter.

B. Regan suggested it may be appropriate to close the public hearing and begin to consider what action the Planning Board will take on the application before them.

T. Phillips asked if there is any further comment from the public.

M. Mahmoud asked if the Public Hearing could be continued so notice would not have to be sent again.

T. Phillips closed the public hearing at 6:55.

B. Regan, Planning Director, stated after consideration of the application submitted and the documentation relative to it, he recommends denying the application on the merits at this time because it is based on information on an illegally recorded plan.

N. Decoteau asked what option the Planning Board had if the application is based on information on an illegally recorded plan and stated the town has made an effort to inform the applicant and his agent of the problem with the application but the applicant has not addressed the issue to date.

B. Regan stated the applicant was provided opportunity to rectify the issue prior to the meeting but chose not to.

T. Phillips stated his opinion that the application cannot be approved but wants to provide the applicant opportunity to rectify the issue and suggested to continue the Public Hearing to next month.

MOTION: "To continue the Public Hearing on the application for a 2-Lot Subdivision submitted by M. Mahmoud as agent for property owner A. Mohamed on property located off NH Rt. 175 identified as Tax Map 6 Lot 13-1-2 to January 15, 2015 at 6:15pm."

Motion: S. Babin

Seconded: G. Kimball

Discussion: None

Motion Passes: 5 – Yes, 1 – No Abstained: F. Freeman

T. Phillips encouraged the applicant to work to rectify the issue relative to the proposal.

7:00PM PUBLIC HEARING: Proposed Amendments to the Zoning Ordinance

The Planning Board will hold a Public Hearing to discuss the following proposed amendment to the Thornton Zoning Ordinance.

1. To add the following language under ARTICLE VI: DIMENSIONAL REQUIREMENTS –
 - A. Conventional Development
 4. Dwellings per Lot: No more than one building used and intended for human habitation shall be erected, placed or converted to use as such on a single parcel in any Zoning District.

B. Regan stated the issue has been simmering in town for a few years over whether a building permit should be issued for more than one dwelling structure on a single parcel of land that has enough acreage to meet the density requirement (one acre per dwelling).

B. Regan reminded the board that the consensus of the Board of Selectmen does not believe allowing multiple single family dwellings to be constructed on a single parcel even if it did have qualifying acreage.

A lengthy discussion followed regarding the opinion of various board members relative to allowing/disallowing multiple single family homes on a single parcel of land.

Discussion also revolved around the issue of how to word the proposed amendment in a way that will best gauge the intent of the voters.

MOTION: "To change the wording of the amendment to the following:

Dwellings per Lot: No more than one building used and intended for human habitation shall be erected, placed or converted to use as such on a single parcel in any Zoning District unless all buildings on the lot meet all of the following: ownership of each building is that of the lot owner and each building is erected in such a manner as to meet all zoning requirements as a standalone lot in the event that the lot is subdivided in the future."

Motion: S. Babin

Second: F. Freeman

Discussion: None

Motion failed: 2– YES, 4-NO

R. Gilman Abstained

MOTION: "To move forward with the following proposed amendment to the Thornton Zoning Ordinance:

To add the following language under ARTICLE VI: DIMENSIONAL REQUIREMENTS –

A. Conventional Development

4. Dwellings per Lot: No more than one building used and intended for human habitation shall be erected, placed or converted to use as such on a single parcel in any Zoning District."

Motion: N. Decoteau

Second: G. Kimball

Discussion: None

Motion passes: 4– YES, 2-NO

R. Gilman Abstained

The Board determined to post the amendment for a second public hearing with the same wording as originally posted.

OTHER BUSINESS:

1. Waterville Birches II / Tom Avallone Informational update

T. Avallone met with the Board to update them on the status and timing requirements of his state approvals.

T. Avallone indicated he may need to ask for the local land use board to deem his project substantially complete to meet the time requirements of the AOT permitting process.

T. Avallone stated the State has changed the regulations on the Site Specific review.

T. Avallone stated when he started the Waterville Birches project he obtained a 2-year site specific approval from the state which was renewable only once for an additional five years.

T. Avallone stated his project applied for and was granted the additional five year approval.

T. Avallone stated the state changed the regulations to allow for a 5-year initial approval with an additional 5-year extension of that approval.

T. Avallone stated that if at the end of the 10 years the project is not completed, developers can go to their local planning board and seek planning board approval of the project provided there is no material change in the project

T. Avallone stated that he wanted to open the dialogue with the Planning Board in regard to the potential need for his project to be granted an extension/approval from the town in order to maintain his site specific approval with the state.

T. Avallone stated that Nobis Engineering did review the project plans and sent a letter to the Planning Board stated that the plan complies with the state and town regulations.

T. Avallone stated Phase I is complete with nine units being built and that Phase II has been started.

T. Avallone stated the detention pond is complete and the road has been extended as far as Section 2.1.

T. Avallone stated work has begun in the elevation change area in Section 2.3 as the material removed is being used for fill in other areas.

T. Phillips stated that it is important for the record to note that there have been changes to regulations on water quality. T. Phillips stated that the town requirements largely capture the changes in the state regulations it would seem that the project is meeting the intent of the state and town regulations.

T. Avallone stated that when he amended Phase II to be for stand-alone condo units rather than buildings with 2 or 3 units he had to comply with the updates to the state regulations.

T. Phillips asked if T. Avallone was asking for something from the Planning Board this evening.

T. Avallone stated he was not looking for anything at this time but wanted to update the board on the project.

N. Decoteau asked the status of the four conditions of approval.

T. Avallone stated he is still working on some housekeeping issues with the State Attorney General for approval of the Condominium Association Documents.

T. Avallone stated he is working on the phasing plan and that the bank has indicated he will not have a problem obtaining the letter of credit.

T. Avallone stated he understands he cannot pull a building permit until the letter of credit is in place.

2. Informational: A. Duguay Winery / 3447 US Rte.

B. Reagan stated A. Duguay is interested in starting a small winery at 3447 US Rt. 3 identified as Map 6 Lot 5-1.

T. Phillips asked if that is the former Lily Pad Café and A. Duguay indicated that it is.

B. Regan explained that a winery is not included on the list of businesses in the Zoning Ordinance and added that the proposed business fits best under the "Production and sale of locally produced crafts and goods" category.

B. Regan explained that this use is allowed in all zones with a special exception.

B. Regan noted that the 6 criteria for a special exception are as follows:

1. The granting of such exception is required to promote the public interest and convenience of the citizens of Thornton.
2. The granting of such exception will not result in diminution of the value of surrounding properties.
3. Adequate and appropriate facilities will be provided.
4. No excessive demand on municipal services and facilities will be required.
5. No traffic safety or substantial traffic congestion will occur.
6. It will not be contrary to the spirit of the Zoning Ordinance.

T. Phillips explained that A. Duguay would need to make an application to the ZBA to get approval for the business and then follow through with Site Plan Review with the Planning Board.

T. Phillips indicated that issues such as parking, lighting, volume of deliveries and hours of operation as well as possible impacts such as noise, smoke, and other safety concerns will be discussed at the Site Plan review.

B. Regan stated the State license the proposed business is seeking to obtain states it is for the manufacturing of the product and thus keeps the proposal away from the "retail shop" use.

A. Duguay stated that he must have local approval prior to making application for his state and federal permits.

B. Regan stated he would summarize the suggestions from the Planning Board in a letter to A. Duguay.

3. Kevin French Informational /Peter McGonagle, et al – 125 Sullivan Dr.

K. French stated the owners of Map 8 Lot 14-1A a 107.23 acre parcel intend to subdivide the lot in keeping with the existing Millbrook Valley developments.

K. French stated the first phase would create four large lots which would allow for distribution of the land to family members.

K. French noted that due to an attempt to satisfy various family members and give consideration to the lay of the land as well as existing buildings the lot lines appear slightly irregular.

K. French stated the Phase I proposal would include extending an existing cul-de-sac off Yarding Lane to provide frontage for two of the four new lots.

K. French stated Phase I would include creating a hammerhead/T-turn around at the end of Sullivan drive to provide access to the other two new lots.

K. French stated the T-turn around would be temporary as Phase II would extend the road through that area to loop around when the additional lots were created.

K. French stated that there is a conceptual drawing for the Phase II development of approximately 21 new lots averaging approximately 4 acres in size which will be presented to Millbrook Valley Association for consideration.

K. French specifically asked if there were concerns regarding extending the cul-de-sac or creating a hammerhead.

T. Phillips stated a waiver request would be needed for the hammerhead as the subdivision regulations require a cul-de-sac.

K. French asked if the Planning Board may consider granting a waiver to allow for the creation of an extension off the existing cul-de-sac to meet the frontage requirements for two new lots.

T. Phillips stated given the proposal for future development and the construction of a road it would seem that the board may consider the request for a waiver in that circumstance.

K. French indicated that the Phase I, 4-Lot subdivision application would be submitted sometime in the spring of 2015 and indicated that he was unsure of the timeline relative to Phase II.

T. Phillips suggested the developer meet with the Fire Chief prior regarding the proposal prior to submitting the application.

OTHER BUSINESS:

B. Regan presented the Certificate of Appointment for signature to appoint D. Gravel to the Capital Improvement Committee as voted at last month's meeting.

CORRESPONDENCE:

Mitchell Municipal Group: Re: Illegal Subdivision of Moose Haven Lots 1 & 2, Thornton, NH

NON-PUBLIC: Discussion pursuant to NH RSA 91-A, 3, II, (e)

At 8:55pm the following motion was made:

MOTION: "To enter non-public session in accordance with RSA 91-A:3 II (e) Pending Litigation".

Roll Call Vote:

T. Phillips - Yes S. Babin - Yes F. Freeman - Yes S. Macintosh- Yes

G. Kimball - Yes N. Decoteau - Yes R. Gilman - Yes

Motion: G. Kimball

Second: S. Babin

Discussion: None

Motion passes: 7-- YES, 0-NO

The Board returned from Non Public Session at 9:00pm.

R. Gilman stated his concerns relative to an approved campground.

T. Phillips reminded R. Gilman that the project was conditionally approved and that all of the conditions were met so that the Planning Board input is completed with regard to that approved project.

ADJOURNMENT:

At 9:16pm the following motion was made:

MOTION: "To adjourn."

Motion: F. Freeman

Second: G. Kimball

Discussion: None

Motion passes: 6 - YES, 0-NO

Respectfully Submitted,

TOWN OF THORNTON PLANNING BOARD

AGENDA Thursday, December 18, 2014 6:00PM

A. CALL TO ORDER – SALUTE OF FLAG:

B. ROLL CALL:

T. Phillips, Chairman	S. Babin, Vice Chairman	F. Gunter, Alternate
F. Freeman, Member	S. Macintosh, Member	R. Gilman, Alternate
G. Kimball, Member	N. Decoteau, Ex-officio	C. Schofield, Alternate
J. Piehn	D. O'Donnell	

C. APPROVAL OF MINUTES:

- November 20, 2014 Regular Meeting
- November 20, 2014 Non-Public Session

D. PUBLIC HEARINGS:

6:15 p.m. Subdivision Application - M. Ahmed

7:00 p.m. Proposed Zoning Amendment

E. REPORT & RECOMMENDATION:

1. Subdivision Application - M. Ahmed

F. OTHER BUSINESS:

1. Waterville Birches II (Informational) Tom Avallone (approx. 6:30)
2. 3447 US Rte. 3 (Informational) Alfred Duguay (approx. 6:45)
3. Peter McGonagle, et al – 125 Sullivan Dr. (Informational) Kevin French (approx. 7:15)

G. CORRESPONDENCE:

1. Mitchell Municipal Group
Re: Illegal Subdivision of Moose Haven Lots 1 & 2, Thornton, NH

H. NON-PUBLIC: Discussion pursuant to NH RSA 91-A, 3, II, (e)

I. ADJOURNMENT

Planning Board
December 18, 2014
SIGN IN SHEET (Please Print)

1	KEVIN FRENCH	26
2	TOM AVALONE	27
3	JACK SULLIVAN	28
4	Donlene King Terrell	29
5	ALFREDUWA AV	30
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