

Washington Planning Board

P. O. Box 408, Washington, Maine 04574

Tuesday March 12, 2013

The public hearing opened at 7:08 pm.

Present were: Chairman, Mitchell Garnett; Vice Chairman/Secretary, Jim Bowers; Members: Hank Aho, and David Studer; Alternate Reggie Burns; CEO, Bob Temple and Recording Secretary, Liane Chapman; Absent: Member Dave Williams and Alternate Rich Bouchard. Attendees: Rick Whelan; Rod Craib; Stephanie and Ray Hill; Tim Vigue.

Mr. Whelan explained details of the plan for the Frances Marr Shroyer minor subdivision and showed the plan to the attendees. He noted that it would probably be divided into three pieces which would make it a minor subdivision although it could be bought as a single piece. Mr. Garnett asked about the driveway entrances. Mr. Whelan said he had permits from the Maine Department of Transportation (MDOT) for three entrances which were noted on the plan. Mr. Vigue asked about the stone monuments. Mr. Craib said they had been waived in favor of iron rods. Mr. Whelan added that numbers 5 and 6 had also been waived. Mr. Garnett asked if there were any more questions. Mr. Studer asked to see the driveway locations and Mr. Craib indicated them. Mr. Studer asked about the 911 addresses. Mr. Temple noted that it was necessary to get them before a building permit is issued. In the absence of other questions, **Mr. Garnett closed the public hearing at 7:15.**

The regular meeting opened immediately

and Mr. Garnett appointed Mr. Burns to sit for Mr. Williams. Mr. Studer was present but recused himself. **The minutes of February 12, 2013** with the amendment of an error in the heading which said January 12. There was **no CEO report** this month.

Discussion regarding the subdivision application opened.

Mr. Craib had sent all the requested information including the well driller's letter to Mr. Temple. The Fire Chief had told Mr. Temple that was not required to look at a minor subdivision. He also told Mr. Temple that he would work with Dave St. Clair to establish a hydrant to be available 24 hours a day on the edge of Mr. St. Clair's property. Mr. Craib noted that the only change in the plan from the previous one shown to the Board was that he had reset the pins to indicate more precise distances. The other change to the plan was a list of conditions of approval.

Mr. Aho began a final plan review of the checklist for minor subdivisions. The plan was submitted within 6 months of Pre-application Review or Inspection. The meeting was attended by the applicant's representative.

The Final Plan and Documents were submitted 7 days prior to meeting. These included the application form and fees, two stable-base transparent originals and three paper copies of the subdivision plan which filled the following requirements: No larger than 24" x 36" with 2" margin on left side and 1" margin on remaining sides; Subdivision name; Municipality; Tax Map & lot numbers; Perimeter survey; Monumentation; Bearings and Distances; Surveyor's or Engineer's Seal, name and address; Scale: Written & Graphic; Date Prepared; North Point; Owner & Applicants' names and addresses; Abutters' names. Also included were: Contour Elevations above sea level; Soil test pit locations; Easements; Boundaries of any flood hazard areas and the 100 year flood elevation; Existing and proposed buildings (none) Location of trees to be removed larger than 24" in diameter at breast height; (none); Size, type and location of road lights, electric and gas lines, telephone, and other utilities; (these are responsibility of purchasers); Space for Planning Board endorsement; Common open space, (not applicable); part or all of the common open space may be dedicated, (not applicable).

Supporting Documentation (Nine copies required) included: Field Survey; a copy of the Deed from which survey is based; Deed Restrictions; Easements or other encumbrances; Verification of Ownership or Legal Interest; Proposed deed restrictions, including those on clearing of trees, or prohibiting dug wells, (none proposed); proposed covenants for mandatory membership in homeowners association, (not applicable); Soils Report from Licensed Site Evaluator on test pits; Map showing test pit sites; Storm water management plan;(not applicable); Statement of Water Supply and Quality Suitability, (supported by a letter from the well driller); Copy of County Soil Survey; High Intensity soil survey, (not required); Hydrogeologic assessment, (not required at this stag, but if any future activity might impact the aquifer, the Planning board might require an assessment); Estimate of traffic to be generated on a daily basis and at peak hours, (not applicable); A traffic impact analysis, (not required); Phosphorus control analysis and plan,(not required); by-laws of the proposed homeowners association, (not required).

Mr. Aho continued the next part of the check list. A dated receipt was issued to the applicant; the Planning Board had determined that the application was complete; the applicant had been notified; a public hearing had been scheduled within thirty days of the complete submission; written notice will be made to the applicant of the Board's decision and

findings that the development meets or fails to meet the following guidelines: He said he would read the guidelines and ask for the Board's agreement or disagreement supported by a reason.

The subdivision does conform with the Washington Comprehensive Plan because it is in the right district and the use is right. The subdivision will not reserve between five and ten percent of the area of the subdivision as open space or make payment in lieu of dedication because it is a minor subdivision and the lots are large. If someone made a lot into smaller ones, they would have to apply to the Planning Board. The subdivision will not have an adverse effect on the scenic or natural beauty of the area, aesthetics, significant wildlife habitat, historic sites or rare and irreplaceable natural areas, public rights to the shoreline. There are no designated scenic areas, no unusual aesthetic areas. No significant wildlife habitat has been noted; no historic sites have been identified; there are no rare or irreplaceable natural areas, and there are no significant bodies of water, ponds or lakes, no shoreline except along Davis Stream. Based on the plan, the lots do meet the minimum size required by the Planning Board. The subdivision will not cause unreasonable traffic congestion or result in unsafe conditions on existing or proposed roads. It is the Board's understanding that the subdivision will be a residential one, and if there is another use, that use would be considered on its own merits and if a permit is required, things like traffic congestion will be considered. The other factor is that MDOT has identified where entrances can go. The requirement for adequate parking areas is not applicable because the type of subdivision does not necessarily identify parking areas. Based on examination of the lots on the plan it is evident that the subdivision will not have flag lots, other odd shaped lots or create shorefront lots with a 5:1 width to depth ratio or greater. The Board has chosen to waive the condition that utilities be installed underground. The Board determined that, based on a residential use and the size of the lots, the subdivision will not adversely affect the quality of surface water or shoreline of ponds, wetlands, rivers, streams or tidal areas. If another use were proposed, it would have to come before the Board for consideration.

Further: Because a good portion of the subdivision sits on a mapped sand and gravel aquifer, the subdivision will not alone or in conjunction with existing activities adversely affect ground water quality or quantity. The Board has a well driller's letter attesting to significant amounts of water. Any existing or proposed activities of residential use will not in the Board's opinion adversely affect the ground water quality. The subdivision will not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition results. This is based on the assumption that the use will be residential and if there is a future change of use, it would have to come before the Board. Because the area is not in the flood zone, the requirement that all buildings be one foot above the base flood elevation does not apply. Mr. Whalen showed the Board a map of the Davis Stream and noted that along its banks there is a flood zone, but he noted that building setback regulations there would prohibit building within the flood zone. Because the subdivision is residential, the Board believes it will not result in undue water or air pollution. The subdivision will have sufficient water available for its foreseeable needs. The well driller's letter supports that fact and, in addition, the subdivision sits over a significant aquifer. The same reasons back up the fact that the subdivision will not cause an unreasonable burden on the existing water supply. Based on test pits, soil types and lot sizes, the Board believes there will be adequate sewage waste disposal. As presented, the subdivision complies with local regulations and ordinances.

Mr. Studer asked whether there was a condition stating that any change of use other than residential would require that the applicant come back to the Planning Board. Mr. Craib said their application stated that any non residential use that requires a permit under the Washington Land Use Ordinance (LUO) as amended will require a Planning Board Review and may require a hydrogeological assessment. Finally, the applicant has demonstrated adequate technical and financial capacity to meet the above (requirements) because the information the Board requested has been supplied and questions have been answered to the Board's satisfaction. Mr. Aho noted that this is a residential subdivision and there were no improvements requiring Planning Board Action. There being no further discussion, Mr. Garnett called for a vote. **Mr. Bowers moved that after reviewing all submissions and going through the final checklist and finding it all acceptable, the Planning Board approve the Frances Marr Shroyer subdivision with the stated conditions of approval. Mr. Garnett seconded. Mr. Aho, Mr. Bowers, Mr. Burns and Mr. Garnett voted in favor. No one voted against. The motion passed.** Board members took a few minutes to sign the mylar copies and a paper copy. Mr. Temple said he would do the finding of facts and send it to Mr. Whelan to be recorded with the mylars and paper copy of the plan.

New Business:

Mr. Studer said he had attended the Appeals Board pre hearing meeting with JCStone. Mr. Temple told the Board that the appeals Board had spent about 6 months creating a new ordinance consolidating the data that dealt with appeals in all the ordinances. JC Stone was asking for a variance both from the Appeals Board and from the State. Mr. Temple had informed them that they had to apply both to the Town and to the State. They were scheduled to go to the Appeals Board for a pre application meeting as required in the by-laws. The meeting scheduled for this month had been tabled until next month until after the vote at Town Meeting determined what the ordinance would require. The State has requested that J C Stone have the hearing with them right away. The public information meeting will take place in Washington and explain details. It will be repeated after Town Meeting. Mr. Studer noted that he had claimed J C Stone did not even have standing to go before the Appeals Board first. He asked whether the Appeals Board had sought legal advice. Mr. Temple testified that no one had yet done that, although he could do so.

Mr. Bowers recalled that in the original application for a permit, Sonny Ludwig had said they were just planning to pick rocks from the surface of the land. Mr. Bowers said it had become an expansion of that use. The problem, he said, is that their permit has no conditions on it which allow them to do whatever they want. Mr. Studer said he had talked to Mr. Johnston who had told him that if the permit had said fieldstone, all would be well. Apparently there is a semantic difference between fieldstone and other kinds of rock. Mr. Studer had written the findings and, even though they were recorded, they were very general. When the Town took JC Stone to court, the Town lost and that gave Stone the ability to dig all over the place. Mr. Studer contended that Stone is actually quarrying even though they are not blasting. Mr. Temple complained that despite finding 17 copies (of the findings), only one was signed and there were no motions recorded. He noted that his super care with current applications and findings stems from his frustration over not being able to find minutes or the poor quality of those he has found. He noted the current approach is to scan minutes and other documents into the computer so that there is a better record.

Mr. Studer noted that the Court had decided that Mr. Ludwig could not package the rock, ie import it to the site for processing, but they could dig for rock. He felt the procedure was to go through some process first and then ask for a variance, not the reverse. Mr. Temple said the State held that JC Stone had to ask for a variance from the State's rules. because they were asking to dig below five feet above the water table. Mr. Studer said they wanted to go under the water table and there are two ordinances that are involved, the LUO and the Mining ordinance. He felt that JC Stone had to come to the Planning Board to ask for an expansion or a different use because the site was now a quarry. That was why he wanted a lawyer since everything the Appeals Board does at this point is a waste of time. He said it is necessary to find out whether the applicant is even in the right place. Mr. Temple said the Ordinance does not say the applicant must go to the Planning Board first. Mr. Bowers noted that it is an expansion of use. Mr. Temple contended that the Appeals Board could remand the application to the Planning Board, but he could not do that himself. Mr. Studer felt the lawyers should be consulted because the Appeals Board would back out and the case would come to the Planning Board. JC Stone was cooperative and did not care where the case went first. They just want it to get through the Town. Mr. Studer felt that if lawyers are consulted they will advise what to do. Mr. Temple said he would try to get an opinion from Maine Municipal Association (MMA) lawyers. He pointed out that the situation was confusing for another reason. At the same time as Mr. Ludwig's pit was involved, there was the Martz case not far from there.

Mr. Aho asked about the proposed changes in the Mining Ordinance and Mr. Temple explained that the amendments are mostly clarifications. The limit of seven years for approval has been removed because inspections will catch problems long before seven years. The time in which to get a certificate of legal operation has passed. Now owners must go to the Planning Board. The definition of small pit is now one that does not need a permit. If a person extracts gravel for his own use and it does not exceed 5,000 square feet, he does not need a permit. Beyond that, even for personal use, a permit is needed. Review criteria are stricter. Reclamation plans are no longer a matter of choice. Regarding lot size, the CEO and the Planning Board will determine lot size. It was difficult to keep track of the details. Inspection dates are now between June and October. If an owner does not make arrangements for his pit to be inspected, the owner receives a stop work order and notice of violation. If that is ignored, the Town can proceed with legal action. Not paying a fee is also a violation and a stop work order is issued. If that is ignored, the Town takes the violator to Court.

Mr. Temple also explained some of the problems involving junkyard inspections. These are the province of the Board of Selectmen, however there is one violator who ignored the order to clean up his place. It came out that the agreement to do the cleanup was based only on a handshake. Mr. Temple then issued a formal order which the owner ignored. The case is now in Court. He explained his methods which entail taking photographs of the problems. Violators are given a certain amount of time to comply and if that does not happen, the Town takes action.

The meeting adjourned at 8:20 pm.

Respectfully submitted,

Liane Chapman

Recording Secretary