

WPB February 12, 2013

Washington Planning Board

P. O. Box 408, Washington, Maine 04574

Tuesday January 12, 2013

The meeting opened at 7:03 pm.

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

Mr. Garnett asked Mr. Bouchard to sit for Dave Williams and Mr. Burns to sit for Dave Studer who had recused himself.

The minutes of December 11, 2012 were accepted as written.

The CEO report had been sent on-line. Mr. Bowers raised a question about a pole barn permit because he thought the setback was 50 feet. Mr. Temple explained that it was on two roads and the setback was the same as the existing setback on that road. Mr. Bowers thought the new building was subject to the setback rules. Mr. Temple said if the existing building on that road was non-conforming and no closer to the road than that one, it was allowed to expand on that. Mr. Bowers said if one was expanding that building. Mr. Temple said it (the non-conforming section) did not say that. He added that if it is a problem it should be changed. Mr. Bowers thought it should be clarified. Mr. Temple said the owner had amended the permit to make the building a little longer.

New business: Mr. Rick Whelan and his surveyor Mr. Rod Craib. were present to discuss the preliminary plan for the Frances Marr Schroyer estate subdivision. Mr. Temple noted that he had no problem with the plan as all permits such as driveway entrance permits from the Department of Transportation (DOT) had been obtained. Mr. Temple had notified all abutters of the dates of tonight's meeting and the one that would take place in March. Mr. Garnett noted that the issue discussed last time had been the requirement for a hydrological assessment. Mr. Whelan noted that the only action taken so far had been to set two pins to divide lot two from lot three. Davis Stream was the division between lot one and two. No other action was contemplated, neither buildings nor roads. Any change contemplated by buyers would be a permit by rule which was automatic, or would require a CEO or a Planning Board permit. Otherwise they would be prohibited. Mr. Temple remarked that any uses that applied in that zoning district would apply to the subdivision. Mr. Garnett pointed out that the hydrological assessment would have to be waived by the Board as the ordinance required it. Mr. Whelan pointed out that the State had already mapped the area as a high yield and gravel aquifer so nothing the surveyor could do would be any better. He had spoken with Bob Cumler an attorney representing the estate and he had spoken with a hydrogeologist who asked that actions were contemplated. They had said none except the two pins. Mr. Garnett observed that if the lots were sold as buildings lots their size would prevent any effect on the aquifer. Mr. Whelan noted that if anyone were to ask for a permit, depending on the use, any problem could be addressed then. The smallest lot is 14.5 acres and the largest is 25 so that a house with an approved septic system should not create any problem. Mr. Temple thought that if the Board was approving the estate as a residential subdivision, there would normally be no need for a hydrological assessment. Mr. Whelan pointed out that their only action was to set the two pins. To do anything otherwise they would have to address every possible activity in the Land Use Ordinance (LUO) to say what the impact might be. Mr. Cumler had asked a hydrogeologist who had said he could address the impact if someone wanted to put in a five -bay garage, but without knowing what they wanted to do he did not know how to address the impact. Mr. Craib added that if there were to be 15 or 30 house lots, there might be a need to address the impact. Mr. Whelan mentioned that once the plan is approved and recorded, any change would require Planning Board approval. He showed the Board his copy of the State statute requiring that. He noted that the size of the lots made it possible that someone might want to subdivide them and such a plan would require the planning Board's approval. That might be the time to require further action.

Mr. Garnett said the key word is assessment. Mr. Aho said p. 27 of the subdivision ordinance (11.10) showed what the Board would look at for an assessment. Mr. Burns asked about the difference between a major and a minor subdivision. Mr. Bowers noted that a major was five lots. Mr. Burns said he had been talking with the fire chief about the water supply (for fire fighting) in that area. Mr. Whelan noted that dividing a lot under the family ordinance would prevent it from being a major subdivision. Mr. Bowers said it still would have to be approved by the Board. After reading the requirements for an assessment, Mr. Whelan said he would request a waiver. He noted that he had feasibility studies for a septic system. Mr. Garnett thought the hydrological assessment requirement was based on the fact that the proposed subdivision was over an aquifer. He was not sure the language gave the Board the ability to grant a waiver. Mr. Whelan noted that the provision began with the words "when a hydrogeological assessment is submitted." Mr. Garnett argued that the provision requires an assessment when the subdivision is over an aquifer, and that was why, at the last meeting, the Board had looked for the map showing aquifers. The one we found was similar

but not the one designated in the ordinance. Mr. Temple thought the Coffin firm had a map showing the aquifers all the way to Razorville Road.

Mr. Aho also raised the issue of digging a firepond. He referred to the subdivision ordinance p. 25, (11 .6.B) He also mentioned the prohibition of dug wells (p. 25) and the requirement that all utilities be buried (p. 25). Mr. Whelan asked if there was a dry hydrant or water available in the area. Mr. Bowers thought the only water was by the old dump. Mr. Whelan asked about using a spring. Mr. Bowers said if it were not addressed, he did not think the provision would prohibit a spring. Mr. Whelan reviewed: Would the Board grant a waiver for burying utilities and digging fireponds and would approve stating on the application the prohibition of dug wells? He noted that Mr. Garnett did not think the Board could grant a waiver for the hydrogeological assessment. Mr. Temple said there was a provision for waivers but all must be shown on the final plan. Mr. Garnett noted that the provision requiring a hydrogeological assessment was on p. 14 (#21) and on p. 9 (#7) there was a provision requiring a letter from a welldriller stating the presence of adequate groundwater. Mr. Whelan said when he had stated that private wells will be used and most of the area was over a high-yield aquifer he thought that would suffice, but he would get a letter from a well driller. Mr. Aho cited the regulations regarding waivers on p. 44. Mr. Whelan referenced p. 10 (#13) which cited two causes for the hydrological assessment. A. was if the subdivision was over a sand and gravel aquifer, which it is, and B. if the average density is less than 100,000 square feet per dwelling unit. He noted the density did not apply, but the aquifer did. In his application he had requested a waiver due to the size of the lots and the fact that all future uses will be governed by the Town of Washington LUO or other Town ordinances. Mr. Studer asked if Mr. Whelan's reason for requesting the waiver was that if someone decided to do something different from building a house that person would have to come to the Planning Board. Mr. Whelan agreed that any other plan would require the person to apply either to the CEO or the Planning Board.

Mr. Aho thought there could be a condition of approval for residential development which stated that unless a hydrogeological assessment shows otherwise, areas of the subdivision are considered to be over a sand and gravel aquifer and future land uses shall conform to this condition. He did not feel that an assessment would accomplish anything, but said if the Board did not include it they needed to explain why. That was why they needed a condition that said they approve a residential development, but if anything else were proposed, a hydrogeological assessment would have to be considered at that point. Mr. Whelan noted that the man they consulted had found it hard to think what might happen other than a single family home with a garden and horses. Mr. Garnett said this was the real chance for the Planning Board to protect that land. Mr. Temple said he had checked to see if the land lay in the watershed overlay and had found it just touched the corner of the property. Mr. Whelan asked Mr. Aho again about his point. If the property contained one residence with the appropriate septic system, it would be okay, but otherwise the assessment would be needed. Mr. Aho said it was to protect against activities that would impact a substantial aquifer in town. Mr. Studer suggested a simple condition that said in order to protect the aquifer, any business other than a residence shall come to the Planning Board for review and approval. Mr. Garnett thought they should add "and shall require a hydrogeological assessment." Mr Aho felt residential should be defined. He asked whether a small farm would be considered residential and further asked whether the activity now on the corner was residential. Mr, Temple then cited all the uses that would be considered uses by right in the farm and forest district (LUO p. 24) and then those in the rural district (LUO p. 29) which was the part on Razorville Road.

Mr. Garnett asked the Board to review the points raised by Mr. Aho in regard to waivers requested. Mr. Whelan had addressed that in his application and said he felt a waiver should be given in regard to the water supply as the area was over a high yield aquifer, but if the Board desired, he would obtain a letter from Hatch drillers testifying to the adequate water supply. Mr. Garnett moved to waive the requirement in regard to the water supply if the subdivider will submit a letter from a well driller testifying to the availability of an adequate supply for each lot. Mr. Bowers seconded and all voted in favor.

Mr. Garnett read the requirement for fireponds or dry hydrants from page 25 B. He was concerned that there be adequate water for fighting fires. Mr. Whelan had asked for a waiver and noted that Muddy Pond was across the road from the subdivision. Mr. Burns stated that there was no access to the water and there was a lot of red tape involved in getting a dry hydrant. Mr. Whelan noted that the estate owned land across the road with frontage on the pond and he felt there would be no problem in getting access. It would be better than any firepond that could be built. Mr. Burns expressed concern about the availability of water because he wanted to protect the Town in case someone bought one of the big lots and made a subdivision. Mr. Garnett suggested that the Board waive the requirement for a dry hydrant for the three residential lots, and that Mr. Burns talk with the fire chief and have him get in touch with Mr. Whelan who would look into the cooperation of the estate in using Muddy Pond. Mr. Garnett noted that Muddy Pond was not very deep. Mr. Aho recalled that the fire chief had suggested the requirement in the ordinance as he was concerned that there was not enough water to fight fires if the Board allowed subdivisions all over town. Apparently there are parts of town which are difficult to access quickly with water. Mr. Bowers wondered if the Board should wait to waive the requirement until they had consulted the fire chief Mr. Aho agreed. Mr. Garnett suggested that a letter would suffice. He noted that if he knew about the land across the street and the possibility there, he might be able to say whether it was a favorable move. Mr. Burns said he would ask the fire chief to write a letter. He pointed out the difficulties of using Washington Pond or Crystal Lake and also the problems of complying with Department of Environmental Protection (DEP) rules.

Mr. Garnett suggested that the fireponds be put on hold until the Board had a letter from the fire chief stating his evaluation. He moved that the requirement to bury utilities be waived. Mr. Aho seconded and all voted in favor.

Mr. Temple asked whether the Planning Board wanted to take any action so it could be put on the plan, or if they would prefer to put it off until they heard from the fire chief. Mr. Burns said he would like to see a firepond put in across from the subdivision. Mr. Garnett advised him to talk to the fire chief about that.

The next item was dug wells. Mr. Garnett questioned the reason for restricting dug wells. Mr. Aho thought it was the possibility if a further subdivision increased the wells and created the possibility of their drying up that there might be no water supply. Mr. Whelan noted that dug wells were more prone in general to surface water contamination and drilled wells were encased in steel. Mr. Garnett moved that, based on the size of each proposed subdivision lot, the Board waive the dug well provision (p. 25. 11.6.B). Mr. Aho seconded and all voted in favor.

The next issue was the hydrogeological assessment. Mr. Aho had been trying to think how to deal with it. He noted that the present lots were large enough for a waiver, but the Board did not want to encourage anything that might harm the aquifer. He formulated a condition which he read: portions of the subdivision lie over a sand and gravel aquifer shown on the map entitled hydrogeological data for significant sand and gravel aquifers done by Maine Geologic Survey in 1985, map number 18. Unless a hydrogeological assessment shows otherwise, areas in the subdivision that are considered to be located over the sand and gravel aquifer for future land uses shall conform to this condition. Mr. Studer thought the condition should be shorter and just say the land was over an aquifer. Mr. Aho said it should indicate the particular aquifer as shown on that map. Mr. Craib noted that the applicant was aware the land was over that particular aquifer and was willing to put that on the plan, but he wanted to know what the Board wanted him to do about it. Mr. Aho said he only wanted people down the road to be aware of its being over an aquifer, and any future uses would have to take that into consideration. A hydrogeological assessment might be required if it is determined that it would have an impact on the aquifer. Mr. Studer thought the phrase should be added saying: "and should be reviewed by somebody." Mr. Craib agreed. He thought the potential buyer should be told that the land was over an aquifer and any future land use other than residential would require Planning Board review and approval. Mr. Whelan said all potential buyers would receive on the plan a disclosure regarding conditions. He raised the issue about which (sand and gravel) map was identified as the one in the LUO referred to the 1985 map and, according to the Maine Geologic Survey, that was no longer current. The one now used is dated 2002. He noted that legal language usually said "and any sequels." Mr. Craib said it was not required that the particular aquifer or map be identified. One could just say that the land was over a high-yield aquifer. Mr. Garnett summed up: any future land use may trigger an assessment. Mr. Temple expressed concern over the wording as it might avoid review by the Planning Board. Mr. Whelan suggested that he, Mr. Craib and Mr. Temple discuss wording and come up with something at the next meeting.

Mr. Whelan expressed hope that they could get an opinion from the fire chief before the next meeting. Mr. Temple noted that Dave St. Clair who owns land on Muddy Pond might be willing to put in a dry hydrant. Mr. Garnett reviewed the possible motion which was that the Planning Board approved the Frances Marr Schroyer subdivision and noted the fact that it is over an aquifer so that future non-residential use will trigger a Planning Board review and may require a hydrogeological assessment. Mr. Temple said that would cover the possibility of a use that was not mentioned in the LUO. Mr. Craib asked what would require the Planning Board review, for example would timber harvesting. Mr. Bowers suggested saying: "any use that requires a permit" as that would cover the bases. Mr. Craib read his version: "any use that requires a permit under the LUO will require a Planning Board review and may require a hydrogeological assessment." Mr. Whelan said there are other ordinances. He suggested saying "any use that requires a permit." Mr. Temple said all permits start with the LUO and then proceed to the others. For example, the conditional use has become permanent use with Planning Board review. There was further discussion as to what ordinances were covered by the language suggested. Mr. Garnett felt it was important to use the strongest language possible. Mr. Craib suggested: the Planning Board waives the requirement for a hydrogeological assessment based on the condition that any non residential use that need requires a permit under the LUO will require Planning Board review and may require a hydrogeological assessment. Mr. Garnett made the motion using that language. Mr. Bowers seconded and all voted in favor. Mr. Bowers moved that the Board consider the application complete pending receipt of the items discussed, a letter from the fire chief regarding the water supply, and a letter from the well driller. Mr. Garnett thought the Board could go ahead anyway since the fire chief's letter would determine what had to be done regarding the water supply and changes could be made at the public hearing. In the meantime Mr. Temple could talk to Mr. St. Clair and discuss possibilities there. Mr. Whelan felt that there would be no problem with getting an easement on the property on the other side of the road if that was used. The attorney could help. Mr. Bouchard seconded the motion and all voted in favor. The public hearing was set for March 12 at 7 pm in the Bryant room.

Mr. Craib reviewed what was required to go on the plan. He will include waivers such as the stone monuments, underground utilities, and the prohibition of dug wells. He asked about the firepond. Mr. Whelan said they were waiting to hear from the fire chief. Mr. Garnett said that it should be waived since if the fire chief said there was no feasibility of its being on the land, the Board would waive the requirement and Mr. Craib noted that test pits had to be shown, but said there was no requirement for the owners to use those pits. He said he would use the same language

for road entrances. There is one for each lot, but if new owners wanted to use another spot, they could as long as they had a DOT permit. Mr. Garnett mentioned that there should be a signature block on the plan. Mr. Whelan added that the phosphorus control analysis, the traffic impact analysis and the traffic analysis had been waived (see p. 10 items 14 and 15 in the subdivision ordinance). Mr. Garnett then explained the procedure for the public hearing. We will notify abutters. Mr. Whelan noted that he wanted the Board to know the entire 58 acres could be bought as one piece and he did not know how that would affect what the Board had done at this meeting as it might not have to be a subdivision.

The meeting adjourned at 8:40

Respectfully submitted

Liane Chapman

Recording Secretary.