

CONWAY PLANNING BOARD

MINUTES

MARCH 24, 2016

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A meeting of the Conway Planning Board was held on Thursday, March 24, 2016 beginning at 7:02 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Robert Drinkhall; Selectmen's Representative, Steven Porter; Vice Chair, Steven Hartmann; Martha Tobin (Acting Recording Secretary); Raymond Shakir; and Planning Director, Thomas Irving.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Mr. Hartman, to approve the Minutes of March 10, 2016 as written. Motion passed unanimously.

DENNIS AND LINDA GORDON/RICHARD AND HEATHER HAMEL/GINA O'NEIL/DAVID AND GWENDOLYN FONTENAULT/CHAD AND LYN MCCARTHY (FILE #S16-05) – BOUNDARY LINE ADJUSTMENT REVIEW (PID 254-37, 39, 40, 41 & 42)

Shawn Bergeron of Bergeron Technical Services appeared before the Board. This is an application to convey 1.74 acres to PID 254-39 (Hamel) from PID 254-37 (Gordon); to convey 1.72 acres to PID 254-40 (O'Neil) from PID 254-37 (Gordon); to convey 1.70 acres to PID 254-41 (Fontenault) from PID 254-37 (Gordon); and to convey 1.67 acres to PID 254-42 (McCarthy) from PID 254-37 (Gordon) at 126, 146, 166, 184 & 186 Partridge Run Road, Conway (PID 254-37, 39, 40, 41 & 42).

Mr. Porter made a motion, seconded by Mr. Hartman, to accept the application of Dennis and Linda Gordon/Richard and Heather Hamel/Gina O'Neil/David and Gwendolyn Fontenault/Chad and Lyn McCarthy for a Boundary Line Adjustment as complete. Motion passed unanimously.

Mr. Drinkhall asked for Board comment; Mr. Hartman asked what the purpose of adjusting the line is and Shawn noted they want to increase the size of the four smaller lots and eliminate the "tail" of land behind their lots. The owners want more land; it doesn't create any new lots; it's not a subdivision.

Mr. Drinkhall asked for public comment; Mike Cleary is an abutter; he'd like to know if this line can be moved back or if the lot can be subdivided. As it sits now the lot has no frontage to allow subdivision. Mr. Irving noted the lot could be subdivided via two methods; one would be a unit subdivision where the lot stays the same size but with an increased number of dwellings which would probably require upgrades to road, or if road frontage was created to that back piece. This is part of the Partridge Ridge subdivision; the covenants say there can't be multiple dwellings on a lot. Mr. Irving noted the only way to subdivide it, then, would be to create frontage. The absolute answer is that it could be subdivided but that would require building a new road

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accessing these parcels or if they built a loop road. The Board would then say Partridge Road would have to be brought up to current standards. Mr. Drinkhall closed public comment.

Mr. Drinkhall read the waiver requests for §131-25.E; §131-30.E; §131-37.1.A; and §131, Article X. **Mr. Porter made a motion, seconded by Mr. Shakir, to accept the waiver request for §131-25.E; §131-30.E; §131-37.1.A; and §131, Article X.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there were none. **Motion passed unanimously.**

Mr. Porter made a motion, seconded by Mr. Shakir, to conditionally approve the Subdivision for Dennis and Linda Gordon/Richard and Heather Hamel/Gina O’Neil/David and Gwendolyn Fontenault/Chad and Lyn McCarthy conditionally upon submitting Town Engineer Approval; on sheet 2 show new location of shed in setback on PID 254-39; add note to sheet 2 near shed in right-of-way on PID 254-39 that states “shed to be moved per building permit #10189 issued 03/11/16”; revising Waivers Granted table on the plan; four copies of revised plans with original signatures; a Mylar; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on September 22, 2016. Motion passed unanimously.

DALE DREW (FILE #S16-06) – BOUNDARY LINE ADJUSTMENT AND 2-LOT SUBDIVISION REVIEW (PID 250-3.1 & 3.2)

Wes Smith of Thaddeus Thorne Surveys appeared before the Board. This is an application to 0.21 of an acre to PID 250-3.2 from PID 250-3.1 and then subdivide PID 250-3.1 into two-lots of 6.21 acres and 3.88 acres at 930 & 970 West Side Road, Conway (PID 250-3.1 & 3.2). **Mr. Porter made a motion, seconded by Mr. Shakir, to accept the application of Dale Drew for a Boundary Line Adjustment and Subdivision Review as complete. Motion passed unanimously.**

Mr. Drinkhall asked for Board comment; there were none.

Mr. Drinkhall asked for public comment; Albert Lane is an abutter and there is a disagreement about the property line. He spoke with an attorney who suggested the matter be tabled until the Lanes have the property surveyed by their own surveyors. Mr. Irving asked for Albert’s reasons for thinking the line is incorrect. Albert was walked along the boundary when he purchased the property in 1971; there is a brook there and they didn’t actually walk through that area however a short time after that Dale’s grandfather asked if he could keep the fence on Albert’s side of the river. Albert said of course he could; the horses needed water. Mr. Drew cleared land but he left that tree at the galvanized pipe and told Albert “you know whose tree this is” meaning it was Albert’s. Since then the measurements have changed; after Dale withdrew his application the last time he came to Albert and they talked at Albert’s house; he thought they had come to an agreement, including a handshake, that he would honor the lot from the galvanized pipe. Albert brought that to his attorney today who did talk with someone at Thorne Surveys but he was more confused after he got off the phone with them. The attorney asked Albert to request this be

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tabled and he is contacting a surveyor. Mr. Irving had one more question; he'd like to know if the dispute over the property line is based on any previous deed, document or survey. There's not been a survey in the last forty-five years; apparently it was not required back then; it was a lot of record. Albert got two mortgages on that property in that time period; he's not sure if someone didn't do something but he is respectfully requesting this to be tabled.

Mr. Irving asked Wes to give the back story on this; if there is substantial doubt; it is incumbent upon the Board to find out. Wes noted the original application was withdrawn as he didn't want to bring an application to the Board with questions about it. Thorne found further evidence going back to 1843; these measurements match the original deed; Thorne surveyors has done what it can to give the Lanes their legally owned property; Thorne gave the Lanes all of their required frontage and back land by their deed as best as Thorne could.

Dave Bennett is also an abutter; he has his original deeds and he thinks his land encompasses a small piece in the same area being disputed by the Lanes. Dave noted there is a discrepancy about that boundary line and he feels this should be continued. He'll let the Lanes fight it out with Mr. Drew and he'll take what's left.

Shirley Lane would like to see what the deed is that Thorne has; Mr. Irving will provide the Lanes with a copy. Wes noted the language and measurements changed since the original creation of the parcel. It was changed from "by land of" to the specific information regarding how many feet it was. Thorne has the whole chain going back to the original parcel. Shirley feels they are being penalized. Wes reiterated that Thorne did what they could to give the Lanes as much land as they have; they can't give the Lanes one hundred fifty feet when they only had one hundred thirty-two feet according to the deed.

Dale Drew noted when he decided to subdivide this parcel he went to Wes and hired him to do the survey and then he went to Mr. Bennett and the Lanes. Mr. Bennett said not to worry about it, he was good and Dale told him he would try to make this right regarding this boundary; this subdivision is under agreement pending approval of the subdivision. Dale thought the Lanes were going to deal with the new owners. When Dale heard that the Lanes were not satisfied he went back to them; he's trying to do the right thing and be a good neighbor. They asked Dale to give them the land as they have been maintaining it all these years. Dale has a potential buyer so he can ask if it is okay then he'll give it to the Lanes. If the potential buyer doesn't want to pay "x" for the property, then the Lanes would pay the difference. On Monday at three thirty Dale went over to talk to the Lanes and they want to have the land. Dale was quiet; the property's not going to be his much longer and the potential buyers were unsure what they wanted to do. They could allow the Lanes to use it for as long as they owned it or allow the Lanes to buy the land. They also discussed option C; the boundaries are the boundaries and the Lanes have to get used to it. That was the discussion on Monday afternoon so he's getting blindsided tonight. Dale is

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one hundred percent confident that these boundary lines are right; he respectfully requests that the Board not table this so Dale can move forward. Mr. Drinkhall closed public comment.

Mr. Shakir believes Thorne has done due diligence including historical documents; those individuals that are complaining haven't produced anything. Mr. Hartman asked if the Lanes have a surveyor lined up; Albert noted one was contacted today but there's no timeline; he will hear from his attorney tomorrow. Dale noted he has already delayed once to try to satisfy the Lanes; he has an agreement pending approval; he doesn't want to lose the buyer. Both Wes and Dale are trying to do the right thing; the potential buyers are still working with them.

Mr. Porter would like to see this resolved before the Board moves on it. Mr. Hartman has a general question to Tom or Wes; he wants to know how long it would take to get another survey of the property? Wes noted if one were to start today and have no other work load it could take a week. Mr. Hartman wondered if it would be feasible to have the survey done by the next meeting; he wondered if Dale thought an extension to April fourteenth would kill the deal.

Mr. Porter was asked why he thinks there is sufficient doubt when Thorne has all this paperwork and the Lanes or Mr. Bennett have nothing. Mr. Porter noted Wes and Dale are presenting the subdivision so they have to have the documentation whereas the Lanes or Mr. Bennett weren't asked to bring documents. The original application was withdrawn so the Board didn't react to that; tonight is the first time the Board has had a discussion about this. In Mr. Porter's opinion there is enough doubt; back in the seventies, sixties, fifties, forties land transactions happened differently than they do today. If another surveyor finds the same boundaries, then Dale will be good to go; if the lines are different then the Board has appeased the Lanes and Mr. Bennett. Dale noted there were offers made either way when he met with the Lanes on Monday; he wondered what would happen if he and the Lanes come to an agreement outside this room. He was informed if the agreement resolves the boundary line as it is shown on the plan presented tonight then the Board can approve it; if the Lanes are looking to adjust the boundary line then they have to come back; the Board has to be sufficiently confident that the lines are right. Dale noted the agreement was that the Lanes would work with the new owners. Wes noted Lorelei Gerard from Thorne Surveys met with the Lanes; they hired Thorne to do a survey including Mr. Bennet's property as they are encroaching on him too; the Lanes gave Thorne the go-ahead to do the work; it had nothing to do with Dale. The Lanes knew this was the plan they were going to be seeing; Lorelei showed them this plan.

Mr. Irving noted there are a number of other items to be addressed so the application is not likely to receive a full approval tonight anyway; if the Board finds there is sufficient reason to table the decision he'd ask that the Board address the other waivers so they will come back only for this one issue. Mr. Hartman hates to fault somebody that is not clear on this; he wondered if the Board could approve the plan with the caveat that they have ten days to come back with information about the disputed property line. This would give the Lanes ten days and Dale still

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has his approval without having to wait for next meeting. Mr. Irving suggested the Board not do such a complicated condition of approval; granting a conditional approval based on what the Board has before it may create a problem for the Board in the future if the Board knows there's doubt. He is uncomfortable the Board might find it based its decision on wrong information.

Mr. Shakir would like to not address the continuance at this time but to address the waivers; in the meantime, Dale and Wes can address the issues within that timeframe. It was clarified that the Board either has to continue the hearing or issue a decision tonight. Those are the only options. Mr. Irving asked Albert if he has any documentation from when he purchased the land; he does not. It was wondered how the Lanes got a mortgage without a description of the property and Albert noted he had two lawyers involved; the bank's lawyer did the title search and called Albert to say there were no measurements but it went through.

Mr. Irving noted there is a third option and that would be for the Lanes to withdraw their request for a continuance; the applicant would like the Board to rule on this tonight; he wondered if the Board feels it can confidently make a decision based on the lines on the plan presented tonight. Mr. Porter had some concerns but in good conscience he can't rule against Dale; there are no documents to warrant what the Lanes are saying.

Mr. Hartman asked what amount of land is in question; Wes noted it is one-thirteenth of an acre.

Mr. Drinkhall read the waiver requests for §131-37.1.A; and §131-67.C.8.h. **Mr. Porter made a motion, seconded by Mr. Shakir, to accept the waiver request for §131-37.1.A; and §131-67.C.8.h.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion passed unanimously.**

Mr. Porter made a motion, seconded by Mr. Shakir, to conditionally approve the Boundary Line Adjustment and Subdivision for Dale Drew conditionally upon Town Engineer Approval; Conway Village Fire Chief Approval; Conway Police Chief Approval; NHDES Subdivision Approval and indicating approval number on plan; submitting a copy of a recorded Water Rights Easement between PID 250-206 and proposed PID 250-3.11 and indicating book and page on plan or indicating a proposed well on proposed PID 250-3.11 or submitting a copy of an easement for an alternative water source for proposed PID 250-3.11 and indicate book and page on plan; submitting a copy of a recorded utility easement between PID 250-3.2 and proposed PID 250-3.11 and indicating book and page on plan; revising Waivers Granted table on the plan; four copies of revised plans with original signatures; a Mylar; a check for \$25 made payable to Carroll County Registry of Deeds for the LCHIP fee; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on September 22, 2016. Motion passed unanimously.

EARLE AND SARAH MACGILLIVRAY (FILE #FR15-07) – FULL SITE PLAN REVIEW (PID 244-7)

Victor Manougian of McLane Law Firm appeared before the Board. This is an application to construct a wireless communication facility and associated infrastructure at 819 East Conway Road. **Mr. Hartman made a motion, seconded by Mr. Porter, to accept the application of Earle and Sarah MacGillivray’s for a Full Site Plan Review as complete. Motion passed unanimously.**

Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none.

Mr. Irving noted there are a number of requested waivers; staff has no issues with the waivers. Most of them are regarding the existing site not the proposed area for the towers. Mr. Hartmann wondered if the site will be accessed through the storage facility; this was affirmed. The towers will not require lights and there is no new sight lighting; it is not a manned sight; staff will visit to perform maintenance.

Mr. Drinkhall read the waiver requests for §123-20.G; §123-21.A; §123-22.B; §123-26; §123-29.A.3; §123-29.A.3; §123-29.D.8; §123-31; and §123-36. **Mr. Shakir made a motion, seconded by Mr. Hartman, to accept the waiver request for §123-20.G; §123-21.A; §123-22.B; §123-26; §123-29.A.3; §123-29.A.3; §123-29.D.8; §123-31; and §123-36.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion passed unanimously.**

Mr. Hartman made a motion, seconded by Mr. Shakir, to conditionally approve the Full Site Plan for Earle and Sarah MacGillivray conditionally upon Redstone Fire Chief Approval; revising Waivers Granted table on the plan; four copies (three to remain with the Town) of revised plans with original signatures; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on September 22, 2016. Motion passed unanimously.

OTHER BUSINESS

Gary and Kim Sylvester (PID 255-31 & 32) – Lot Merger: Mr. Shakir made a motion, seconded by Mr. Porter, to merge PID 255-31 & 32 into one lot of record. Motion passed unanimously.

Meeting adjourned at 8:24 pm.

Respectfully submitted,

Martha Tobin, Acting Recording Secretary