

DEERFIELD PLANNING BOARD
DEERFIELD, NEW HAMPSHIRE

JANUARY 23, 2013

MINUTES OF MEETING

PRESENT; Board members Fred McGarry, William Perron, Lisa Wolford, Peter Schibbelhute. Alternate member Richard Pelletier. Selectmen's Alternate Andrew Robertson. Also present Planning Consultant Gerald Coogan and secretary Jane Boucher.

7PM Chair McGarry called the meeting to order and appointed Richard Pelletier to sit for Kate Hartnett.

7PM LOT LINE ADJUSTMENT; JOPLIN, SPELLMAN, SCHWALLE; DANIELLE WAY
Charles Spellman, Armond Joplin and Jeffrey Green were present.

An application for a Lot line Adjustment was approved by the Board on November, 28, 2012. The intent of the application was to convey .413 acres from Lot 9-11 owned by Charles Spellman and Cho-ae Schwalle to Lot 9-12 owned by Armond and Pamela Joplin.

The Board reviewed a letter (copy attached) to Jeffrey Green from Mr. Joplin's Attorney, Bruce Marshall.

The Board reviewed the approved plans.

Mr. Spellman and Ms. Schwalle had requested the Board not record the approved plans, as they were protesting the adjustment. Mr. Spellman had been advised that, in order to hold the plans, he would need to submit a written request.

Mr. Spellman said he had requested another hearing from Superior Court. The Board had received Notice that the request had been denied.

Jeffrey Green advised that the applicants had agreed on the lines. That agreement was based on Mr. Spellman setting in four re-bars with string between them. He added that the approved plan indicated what Mr. Spellman and Ms. Schwalle had agreed on. The current approved plan complies with the court order. Mr. Green said they have done everything they can to make Mr. Spellman happy and he still does not agree.

Lisa Wolford commented that if the plan is not recorded the parties will have to re-apply.

Mr. Coogan noted that if another plan is submitted, fees will apply and another public hearing will be held.

Mr. Green added that if another plan is proposed, it will have to go back to court and court costs will apply.

Mr. Spellman said that he did not agree with the plans and someone had moved the re-bars.

Gerald Coogan said he had spoken with Town Counsel who advised that, in order to revoke the approval, one of the applicants would have to request withdrawal in writing. He added that if a letter is received the Board will hold a public hearing .

Lisa Wolford commented to Mr. Spellman that the decision is not up to the Planning Board. The parties must agree.

Chair McGarry commented that we need to have a letter requesting withdrawal and without that the Board can sign and record the plan. Right now we have a signed application by both parties.

Mr. Spellman said that he did not wish to withdraw and the Board signed the wrong plan.

Peter Schibbelhute moved to sign and record the approved plan. William Perron seconded. Voted in favor with Lisa Wolford opposed. Chair Mc Garry signed the plans at this time.

7:35PM CONTINUATION; PUBLIC HEARING; LOT LINE ADJUSTMENT; DORAN FAMILY TRUST; ISLAND ROAD AND SOUTH ROAD
James Franklin was present representing Mr. Doran.

He advised that State Subdivision Approval had been received and Mr. Doran had signed a "Release of Municipal Liability" with the Board of Selectmen.

William Perron moved and Peter Schibbelhute seconded to approve the Lot Line Adjustment for the Doran Family Trust. Approval to lapse in 60 days. (March 23, 2013). Voted in favor.

7:40 APPLICATION FOR PUBLIC HEARING; STEP ONE; AMENDMENT; CATHLEEN PERRON; PHASE III MCCARRON SUBDIVISION; MIDDLE ROAD
Cathleen Perron was present.

At this time William Perron recused himself and Andrew Robertson sat as Selectmen's Member

Chair McGarry read the notice of public hearing for Step 1 of the Plan Amendment for a two lot subdivision to separate the farmhouse from the balance of the land for property located on Middle Road (identified as Map 413 Lot 7 consisting of 62.54 acres) and owned by the applicant.

Chair McGarry read a letter from Cathleen Perron requesting a waiver of application fees.

Peter Schibbelhute moved to accept the application. Lisa Wolford seconded. Voted in favor.

Lisa Wolford moved to grant a waiver to Cathleen Perron for application fees. Peter Schibbelhute seconded. Voted in favor.

A memo was received from Steve Keach, KNA, after reviewing the plan. A copy is attached to these minutes.

Richard Pelletier moved to approve a Minor Subdivision for Cathleen Perron, Phase III McCarron Subdivision. Peter Schibbelhute seconded. Voted in favor.

7:55PM APPLICATION FOR PUBLIC HEARING; STEP 2; PLAN AMENDMENT; PHASE III, MCCARRON SUBDIVISION; CATHLEEN PERRON
Cathleen Perron was present along with Fire Chief Mark Tibbetts.

Chair McGarry read the Notice of Public Hearing for Step 2; Plan Amendment. The formal application for Step 2 of the Plan Amendment to the previously approved amendments of Phase III, conditionally approved in May, 2006 for 8 lots and amended in October, 2011 to reduce the number of lots to 6. Step 2 would conditionally approve the subdivision of the balance of the land for 6 lots.

Board members reviewed the plans.

Peter Schibbelhute moved to accept the application. Lisa Wolford seconded. Voted in favor.

Lisa Wolford moved to waive application fees for Cathleen Perron. Richard Pelletier seconded. Voted in favor.

It was noted that this was the same plan as conditionally approved. A 50 foot wide emergency access is noted on the plan. This will be provided by a deeded easement to the Town. Chief Tibbetts was in agreement.

Lisa Wolford moved and Peter Schibbelhute seconded to grant conditional approval for Step 2 of the Plan Amendment for Phase III, McCarron Subdivision; Cathleen Perron with the following conditions:

1. All State Permits Received
2. Post Performance Bond for Road Construction
3. Access Easement to be included in deeds for Lot 7-10 and 7-11,

4. Conditional Approval to lapse in 12 months: 1/23/14.

Chair McGarry called for a vote on the motion. Motion carries.

At this time Andrew Robertson left the meeting and William Perron returned to the table as a voting member.

APPROVAL OF MANIFEST

William Perron moved to approve the manifest in the amount of \$696.56 (Upton and Hatfield) and a time sheet for Jane Boucher for 18 1/2 hours. Peter Schibbelhute seconded. Voted in favor.

APPROVAL OF MINUTES

William Perron moved to approve the minutes of January 9, 2013. Lisa Wolford seconded.

The following corrections were made to the minutes.
Page 1 Paragraph 5; Correct to read "Section:330"
Page 2 Paragraph 3: correct to read "Gerald Coogan.."
Page 2 Paragraph 5: Correct to read "...inspecting the site at the end of June and on regular intervals."
Page 3 Paragraph 3: Remove sentence "Lisa Wolford seconded".

Chair McGarry called for a vote on the motion. Voted in favor with Richard Pelletier and Peter Schibbelhute abstaining.

NH COMMUNITY PLANNING GRANT PROGRAM

Gerald Coogan provided copies of an application form from NH Community Planning Grant Program. A copy is attached to these minutes.

Mr. Coogan advised that he has been working with Jack Munn, SNHPC, on the grant and asked for the Board approval to submit it.

The amount of funding requested is \$14,000 and approximately \$875.00 is a cash match.

Mr. Coogan said that he had spoken with Kate Hartnett who indicated that she is reluctant to make any changes in the Commercial /Overlay Ordinance.

Richard Pelletier felt that a prescribed commercial district is a good idea. He noted that the Commercial/Overlay discourages many people.

Lisa Wolford moved and Peter Schibbelhute seconded to have SNHPC review the Commercial/Industrial Overlay District and establish a mixed use Commercial District and possible Village Districts. SNHPC to make application to NH Community Planning Grant Program by February

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12, 2013. Voted in favor.

Peter Schibbelhute moved to authorize the Chair to sign the application. William Perron seconded. Voted in favor.

The meeting was adjourned at 8:45PM.

Recorded and transcribed by Jane Boucher
Pending approval by the Planning Board.

D'AMANTE COUSER PELLERIN & ASSOCIATES, P.A.

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RAYMOND P. D'AMANTE *
BRYAN L. PELLERIN **
BRUCE J. MARSHALL
STEVEN A. SOLOMON

RICHARD B. COUSER (1941-2008)

* ALSO ADMITTED IN NY AND CA
** ALSO ADMITTED IN MA

January 7, 2013

Jeffrey L. Green
Land Surveying Services
298 Bee Hole Road
Loudon, NH 03307

Re: Joplin/Spellman and Schwallie Boundary Line Adjustment

Dear Mr. Green:

As requested I am writing to clarify for you the current legal status of the Superior Court case from which the subject Boundary Line Adjustment was derived. As you know, a dispute between the Joplins and Mr. Spellman and Ms. Schwallie initially arose as a result of Mr. Spellman and Ms. Schwallie's failure to adhere to certain recorded covenants placed on their lot. Through the mediation process the parties entered into a settlement agreement to resolve the dispute which was then entered into the Superior Court record. (See copy attached) The settlement agreement required, in pertinent part, that a boundary line adjustment transferring a certain portion of land from Mr. Spellman and Ms. Schwallie to the Joplins, be completed. During the boundary line adjustment process Mr. Spellman and Ms. Schwallie began to unlawfully interfere with the approval process. Said interference prompted several pleadings to be filed with the Superior Court in order to enforce the terms of the settlement agreement, more specifically the finalization of the boundary line adjustment. By Superior Court order dated November 19, 2012 the Joplin's previously filed motion to enforce the settlement agreement was granted. (See copy attached) As no appeal was timely filed with the Supreme Court the dispute between with the parties has been resolved and is final under the law as well as in the eyes of the court. This was further confirmed by the Superior Court's response to Mr. Spellman and Ms. Schwallie's subsequent request for a hearing. (See copy of order attached)

I trust the above confirms to your satisfaction that the subject settlement agreement, including the boundary line adjustment, has been confirmed by the court system to be binding and final. If you have any questions or if I can be of further assistance please do not hesitate to call me.

Sincerely,

Bruce J. Marshall, Esquire

Please include the following with your application:

1. Project narrative (5 pages maximum; see details in the Grant Application Instructions)
2. Project budget (see details in the Grant Application Instructions)
3. Letter(s) of commitment for match
4. For single municipality applications:

Signed copy of the governing body's official act or resolution authorizing the filing of this application

For multi-jurisdictional applications:

Signed copy of the governing body's official act or resolution authorizing the filing of this application from each participating municipality; and

Signed copies of the intergovernmental agreement(s) prepared pursuant to RSA 53-A, or other comparable agreement

5. Other supporting documentation as appropriate, including letters of support from local boards, residents, or other entities in the community such as businesses or non-profit organizations, and any other material supporting or verifying information in the application. Do not include full paper copies of lengthy reports or planning publications; submission of abstracts of such matter and full documents on electronic media (flash drive or compact disc) or provision of Internet addresses that link *directly* to such documents are preferred.

Note: All project information and final products and materials relating to the project shall be made available to New Hampshire Housing. These materials may be used for public education and outreach, as examples for future applicants, or for training purposes by New Hampshire Housing, along with other federal, state, regional, and local organizations.

<p>Signature of Chief Executive Officer of municipality holding fiduciary responsibility or other representative designated by the governing body certifying that the information contained in the application is true and complete to the signer's belief:</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>Signature</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>Printed name</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>Date</p>	<p>Mail or hand-deliver one paper copy and one digital copy of the completed application, narrative, budget, and supplemental materials to:</p> <p style="text-align: center;">CPG Application Attn: Benjamin D. Frost New Hampshire Housing 32 Constitution Drive Bedford, NH 03110</p> <p style="text-align: center;">Applications must be <u>received</u> at this address by 5:00 p.m. on Tuesday, February 12, 2013.</p>
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**Community Planning Grant Program
Project Budget Worksheet**

Provide an itemized budget below. Itemized tasks should be reflected in the application narrative Scope of Work section, as described in the Application Instructions. Refer to the Application Instructions for information on Match requirements and examples.

NOTE: As described in the Application Instructions, a minimum of 5% of CPG grant funds must be used for outreach activities to engage traditionally marginalized or underserved populations in the community.

	Task Name	CPG Funds	Cash Match	In-Kind Match	Task Total
Task 1	Data Collection & Research	\$1,500		\$250	\$1750
Task 2	Public Outreach/Social Media	\$1,500	\$175	\$125	\$1800
Task 3	Meetings with Planning Board	\$1,000		\$125	\$1125
Task 4	Public Workshops	\$1,000	\$500	\$500	\$2,000
Task 5	Prepare New Zoning District Concepts	\$4,000	\$200	\$250	\$4,450
Task 6	Prepare Zoning District Draft & Map	\$3,000			\$3,000
Task 7	Public Hearing(s) with Planning Board	\$ 500		\$250	\$750
Task 8	Final Revisions/Adoption	\$1,000		\$250	\$1250
Task 9	Prepare Warrant Article	\$ 500		\$250	\$750
Task 10	Legal Review			\$500	\$500
Task 11	Implementation Report			\$125	\$125
Task 12					
Task 13					
Task 14					
Task 15					
Task 16					
Task 17					
Task 18					
Task 19					
Task 20					
	If more than 20 tasks are planned, list them on a separate sheet.				
	Totals	\$14,000	\$875	\$2,625	\$17,500

	Total expenditures on outreach to marginalized or disadvantaged populations	\$700		
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This **MUST** be at least 5% of the "Amount of CPG Funding Requested" shown on the cover page.



Memo

To: Deerfield Planning Board

From: Steven B. Keach, P.E.

Date: January 09, 2013

Subject: Subdivision of the Land of Cathleen M. McCarron-Perron – Middle Road
(Map 413 – Lot 7); Deerfield, New Hampshire

I was recently contacted by Town Planner Jerry Coogan relative to the captioned application for amended subdivision approval. Specifically, Mr. Coogan requested that I review Phase III project plans, which I understand are to be presented to your Board on January 23rd; however in making that request, Mr. Coogan asked that the scope of my review be exclusively limited to the “frontage question” discussed in the draft minutes of a December 12, 2012 meeting of the Deerfield Planning Board. In order to facilitate my review, Mr. Coogan caused the applicant’s consultant to forward me the following information:

- A copy of drawings (2-sheets) entitled “Phase III – Subdivision Plan and Lot Line Adjustment Plan”, dated January 02, 2013; and
- A copy of a drawing (one sheet) entitled “Phase III – Amended Subdivision Plan”, dated January 02, 2013.

Upon receipt of those drawings acknowledged above, Mr. Coogan and I engaged in a brief telephone conversation at which time he explained both the intent of the current application, as well as the genesis of the “two step” plan amendment process discussed in the cited minutes of the applicant’s December 12, 2012 conceptual consultation with your Board. In response to Mr. Coogan’s inquiry, I offer the following:

- Each of the Phase III drawings noted above cite the approved Phase II subdivision plat as Reference Plan No. 8. This Phase II plat was recorded at the Rockingham County Registry of Deeds on July 07, 2005 as Plan No. D-32832. A review of this plat confirms the full extent of McCarron Road, including the “temporary cul-de-sac easement” (situated at the southerly terminus of McCarron Road and encumbering now existing Lots 413-7 & 413-7.5), was dedicated for use as public right-of-way upon approval and recording of the Phase II plat.
- Article VI of the Deerfield Zoning Ordinance defines the word “Frontage” as “the width of a lot measured along its common boundary with the street line.” The

same Article VI goes on to define the term "Street Line" as "the right-of-way line of a street." Taken together, a working definition of the word "Frontage" is then: "The width of a lot measured along its common boundary with the right-of-way line of a street."

- Given the dedication of the platted "temporary cul-de-sac easement", as defined on Plan No. D-32832, as public right-of-way, it is my opinion that the portion of that right-of-way having a "common boundary" with existing Lot 413-7 and/or platted Lot 413-7.8, as shown on the drawing entitled "Phase III-Subdivision Plan and Lot Line Adjustment Plan" may be used to satisfy applicable minimum frontage requirements of Deerfield Zoning Ordinance.
- The subject parcels are situated within Deerfield's Agricultural-Residential District. As such, Section 204 of the Zoning Ordinance requires a minimum frontage dimension of 200 feet. As specified on the "Phase III-Subdivision Plan and Lot Line Adjustment Plan", platted Lot 413-7.8 will enjoy 183.03 feet of uninterrupted "frontage" along the public right-of-way created by the previously platted "temporary cul-de-sac easement". The same plan suggests 41.27 feet of the full length of 62.65 feet of the southerly line of the McCarron Road right-of-way is situated within the interior of the temporary cul-de-sac easement. This implies a difference of 21.38 feet is situated beyond the easement area. Adding this 21.38 foot difference to the 183.03 feet of right-of-way length, measured along the easement perimeter common to the platted Lot 413-7.8 boundary, suggests a total of 204.41 feet or "frontage" is available at platted Lot 413-7.8.
- Taken together, it is my opinion those four points noted above combine to yield a measure of "frontage" at platted Lot 413-7.8 sufficient to satisfy the requirements of Section 204 of the Zoning Ordinance.

As noted above, in order to properly respond to Mr. Coogan's inquiry I revisited the Phase II subdivision plat, now recorded as Plan No. D-32832 in the Rockingham County Registry of Deeds. Of interest is Note No. 7 on that plat, which reads: "The temporary cul-de-sac easement, as shown on Lots 413-7 & 413-7.5, is to be extinguished and revert back to the owners of said lots when and if the proposed road is extended to Maple Avenue providing a second means of ingress and egress to the subdivision, the construction of said extension is complete, and the road has been accepted by the Town of Deerfield." The text of this note caused me to pause since it appears the amended Phase III subdivision plat, as currently proposed, no longer contemplates future extension of McCarron Road through to Maple Avenue. Rather, Note No. 8 on the proposed Phase III – Amended Subdivision Plan reads: "The proposed access road easement, as shown on this sheet, is to be granted to the Town and is intended for possible future ingress and egress of emergency vehicles only. If the Town deems construction of the emergency access road necessary, snow removal and maintenance is to be provided by the Town. Fee ownership shall remain a part of the individual lot owners." If the approach described in the text of Note No. 8 on the amended subdivision plan proves to be acceptable to the Planning Board, we would recommend the final plat be expanded to include a note or notes which effectively supersede the text of Note No. 7 on Plan No. D-32832 relative to future disposition of the existing temporary cul-de-sac easement upon extension of McCarron Road.