

Town of Hinesburg Development Review Board

October 2, 2012

Approved November 6, 2012

Members Present: Zoë Wainer, Tom McGlenn, Dennis Place, Dick Jordan, Ted Bloomhardt, Greg Waples and Kate Myhre arrived late.

Also Present: Peter Erb (Zoning Administrator), Alex Weinhagen (Director of Planning & Zoning), Renae Marshall (Recording Secretary) .

Public present included: Mary Beth Bowman, Wendy Patterson, Elly Coates, Gill Coates, David Lyman, Barb Lyman, Bill Moller, Jim Collins, Sam Collins, Dorothy Pellett, Margery Sharp, Carolyn Murphy, Beverly Chase, Wayne Chase, Sheila Jacobs, Steve Giroux, Bryce Busier, Barry Russell, Jean Kiedaisch, Jody Ciano, Christina Lamb Sidell, Andrea Morgante, Carol Jenkins, Ken Brown. Catherine Goldsmith, Kathy Rohde, Steve Carlson, Sally Reiss, Chuck Reiss, Jeff Greenough, Robin Greenough, Michelle Rushford, Mike Rushford, Jessi Rushford, Sarah Murphy, Mike Bissonette
Representing Applications: Scott Jaunich, Tyler Sterling, Doug Boyce, Bob Provost, Ed Waite, Frank Koss

Tom McGlenn chaired the meeting, which started at 7:34 pm.

Minutes from September 4, 2012 meeting:

Tom M. **MOVED to approve as written.** Dick J. seconded the motion. The motion **PASSED 5-0.** Greg abstained as he was absent at that meeting.

Hannaford: Cont'd from September 18th—reopen site plan review in order to obtain clarification of evidence important to rendering a decision. Specifically, the DRB needs clarification on the proposed Farmer's Market easement provisions as these relate to the project's required accommodation of the future community facility shown on the Official Map. The DRB intends to limit the scope of the reopened hearing to the general issue noted above.

Tom M. stated that he first would like to give the representatives of Hannaford an opportunity to address the concerns that were raised.

Tyler Sterling (representing Hannaford) stated that they had made several changes prior to the September 18th meeting and a minor change since then. The changes he noted are as follows:

- Incidental uses of space in easement area outside of Farmer's Market aren't restricted. (see paragraph 1 of Easement Deed)
- Separate easement into two separate documents so in future it could be more easily amended. The specifics regarding uses are placed in exhibit B. Exhibit B dictates the conditions of the Farmer's Market. (see paragraph 3 and Exhibit B of Easement Deed)
- Space can be used for other uses besides Farmer's Market. Public can use green space upon advance written consent from Hannaford. Also, public can use entire space upon advance written consent from Hannaford. Hannaford has the right to turn down the request if it impacts safety and the operational use.

- Term is changed to a perpetual easement if isn't used within 5 years, the easement would go away.
- Parties agree to work in good faith, if that doesn't work, the parties will work with a non-binding mediator.
- Deleted last sentence in Section 6 with regard to paying our legal bills as requested by the Town after consulting with the Town's insurer.

Greg Waples noted that with respect to mediation, no mention was made to costs in terms of attorney fees. Greg wanted clarification in the document stating if these fees were to be shared. Tyler S. confirmed that each party would pay for themselves and together they would share the cost of the mediator. Tyler S. said they would make that change to have it further clarified in the easement deed.

Dick J. questioned in mediation, who would have final say. Tyler S. responded that it would be non-binding mediation. First, they would try to reach an agreement through mediation. If that fails, it would go to court and the judge would make the final decision. Dick J. also asked with regard to written consent for other use, does everyone have to request written consent to sit at the picnic table? Tyler S. replied no, anyone can use the picnic tables. He noted that this was referred to in paragraph 1 beginning at the bottom of page 1. The change of use is specific to the Farmer's Market outlined in Exhibit B.

Dick J. voiced concern that Exhibit B specifically ties the use to the Farmer's Market. He questioned if the Town would be able to replace it with a different use in order to prevent the easement from going away within 5 years. Tyler S. responded that the intent of the language was to provide the ability to potentially change that use upon agreement with both parties.

Scott Jaunich stated that the Official Map requires that we accommodate a public facility and that is why the Farmer's Market use was utilized. If another use is agreeable to the Town and acceptable to the Official Map, then the easement can be changed. Dick J. requested that Hannaford make the last sentence of #3 broader to state an easement used by the Town.

Peter E. asked for clarification of #2 to specify which party has responsibility for maintaining the easement area. Tyler S. stated that they could amend that to read maintained *by Hannaford*.

Tom M. opened the meeting up to the public reminding them that the conversation must be specific to the Official Map and Lot 15 only.

John Roos commented that the green strip is located outside of Lot 15. He noted that the use of the picnic table is being referred to as incidental use. My understanding is this green space is outside of Lot 15. He stated that is not what is designated on the Official Map and questioned how this piece mitigates the public facility need of the larger parcel. Alex replied that the proposal includes that to be part of the project area. Ted B. doesn't feel that it is large enough to stand-alone. This lot doesn't exist as an independent lot today.

Mary Beth Bowman commented that Hannaford has spoken about what is good for business; she would like to consider what is good for the community.

John Kiedasch expressed concern that this is essentially a 3 party agreement regarding what easement involves for the Town.

- 1.) lots of restrictions
- 2.) quite specific requirements that the Town becomes responsible for
- 3.) How can DRB can issue a permit on a project that requires the Town to sign an easement agreement for Town to only have a small advantage of using this space for short periods of time.

John K. feels either way, the Town ends up signing an agreement in order for the condition to be met. He is concerned with the implicaitons to the Town. He feels the DRB needs to consider:

- 1.) what does the Official map require?
- 2.) Does this application meet those requirements?

John feels the answer is no.

Jim Collins introduced himself as a member of the Lions Club and of the Farmer's Market Committee. He stated that in 2010, the Lion's club and the Farmer's Market went before the SB, interested in moving to Lot 1. In an attempt to get a better location for the Farmer's Market, a document was created entitled *Features of Ideal Location for Hinesburg Lion's Farmer's Market*. This document defines the facility necessary and what is needed for a successful market. It states the purpose was for vendors to have a place to sell local products. He stated that Hannaford approached them (Lion's Club) in 2011 with questions of what they wanted and needed as a farmer's market. The Lion's Club came before the DRB & SB and got approval for Lot 1. Now questions have come up regarding wastewater permit. The state has said that we can't have a permanent building. We need space for a shed. We need space and Hannaford is willing to provide that space for the equipment that we use at the market. The idea of moving to Lot 1 is less likely than it was one year ago.

Chuck Reiss shared some of his concerns. He stated, in his opinion, that this is indeed not a public facility. He doesn't feel this meets the requirement of a public facility. He also has concerns that if it is not used as a Farmer's Market within a 5-year period, the easement could be revoked. He noted that a public survey was done recently and it was noted that most people don't want the Farmer's Market at Lot 15. He feels it is very likely that the Farmer's Market could end up in another space and then where would the Town be. Hopes that the DRB looks at this closely and considers what constitutes a public facility.

Catherine Goldsmith had 3 brief comments:

- 1.) She brought 3-D model to demonstrate where the additional piece of land is located.
- 2.) The additional parcel that is being requested to be added is actually located in the Village District not the Commercial District.
- 3.) A survey was conducted—in the survey, 155 responded; 80% preferred a different location for the Farmer's Market—either Community School, Lot 1 or Lot 15 if it was developed into a Town Green .

Tom M. cautioned that the DRB needs to be careful about closing the hearing. He asked the board if they felt that procedurally, they should wait for Hannaford to make the noted changes to the easement and come back with revised language before they close the public hearing.

Greg W. responded that they have been bouncing this back and forth for months. He doesn't feel they need to wait for revised final language before making a decision. He stated this would not sway his decision either way.

Dick J. again expressed his concern that the easement specifically defines this use for a farmer's market. Tyler asked if they add "or amended use" in paragraph 4 on the third line down after Farmer's Market, would that address that concern. Scott Jaunich felt that it was addressed in the last sentence of paragraph 3. Alex stated that paragraph 3 does tie the use directly to the Farmer's Market and suggested if they wanted flexibility with regard to negotiating an alternate use, they should request further clarification in that language. Scott J. suggested that could be addressed in the second sentence of paragraph 3 by adding the parties agree the easement including the use and terms and conditions.

Ken Brown referenced the first sentence in paragraph 1 that reads, "Grantee's use of the Easement Area is for a public farmer's market". He felt if you are going to make changes in order to not make the use tied specifically to the Farmer's market, you would need to start there. Ted B. replied that we are simply noting in paragraph 3 that in order for the use to change, all parties have to be in agreement.

Carol Jenkins asked who is in charge in this—is the Town accommodating Hannaford because they have deliveries or is it Hannaford accommodating the Town because we want a public use? Ted B. replied that we are just trying to clarify their offer to accommodate the public use. He stated that this is an offer that we get to accept or reject.

Mary Beth Bowman questioned what reasonable or reasonably unnecessary means. She felt it was too vague. George Hollock who lives on Silver Street introduced himself as a "recovering lawyer". He agreed that the fogginess of the language "reasonable accommodation" lays traps for future disputes. He cautioned the board that regardless of what decision they make, they need to remove the vagueness in the language. The language needs to be more precise or it will be a source of future problems.

Sarah Murphy noted that as far as other future uses, she sensed Hannaford's apprehension. She said the Farmer's Market was an easy accommodation for them. She asked the DRB to consider what other possible uses could fit into such limited hours.

Tom M. noted that we have 3 changes that have been requested. Hannaford has agreed to make those changes and submit a revised draft by the end of the week.

The 3 changes agreed to were as follows: (note: the wording may be cleaned up as necessary)

- 1.) Paragraph #2 The Easement area shall be maintained *by Hannaford* and the Farmer's Market shall be operated by Grantee....
- 2.) Paragraph #3 The parties agree to make reasonable efforts to work cooperatively to amend and modify *the Easement including the use and Terms and Conditions*....
- 3.) Paragraph #12 Add as last sentence—*Parties will each bear their own costs and share mediation costs equally.*

Tom M. made a **motion to close the public hearing and take the matter up in deliberative session.** Ted **seconded the motion; all in favor.**

Hinesburg Police/Ed Waite: Cont'd from September 18th --Conditional Use/Home Occupation – The Town of Hinesburg, Police Department and Ed Waite are requesting a conditional use review for a home occupation for the purpose of a temporary dog boarding kennel for the animal control officer. This property is located at 607 Birchwood Drive in the Rural Residential 1 Zoning District.

Police Chief, Frank Koss presented the request to the DRB. He stated that Ed Waite is currently the Animal Control Officer for Hinesburg. They are requesting that Ed W. be allowed to temporarily hold dogs at his residence that have been impounded. He will have 1 or 2 kennels located in a mudroom inside his home. Frank K. mentioned there would be on average 1 dog/week or less that would need this accommodation. Zoë Wainer questioned who would watch the dogs when outside. Ed Waite said that the dogs would be walked around outside on a leash at all times. He added that he or another police officer would be the only ones to hold the leash.

Frank K. stated that Ed W. could have applied for this on his own. However, they wanted to demonstrate that the Hinesburg Police holds responsibility here as well. If neighbors have any concerns regarding safety or noise, they can contact the police chief directly. We purposely have an alternative location at the Police garage for dogs that pose such problems.

Christina Lamb Sidell introduced herself as a neighbor on an adjacent property. She expressed concerns regarding the height of the fence on the Waite property. She was concerned that an aggressive type dog could potentially jump the fence and go toward their two year old who plays outside their fenced in area.

Michelle Rushford who lives in the Waite's neighborhood also expressed concerns with safety. She has a 2 year-old grandson and has had the Waite's personal dog enter her yard on several occasions.

Beverly Chase who is also a neighbor to the Waite's has seen the Waite's dog outside of their fence on many occasions. She too has small grandchildren and is concerned with their safety. She also stated that the Waite's dog barks a lot and she doesn't want the added noise that new dogs could bring.

Robin Greenough expressed more of the same concerns. She has young grandchildren as well as a small cat. She added that there are many small children in the area and this is a big concern for the neighborhood.

Frank K. stated that the draft decision that he read had specified that any dog beyond Ed's personal dog would not be left unattended in the yard. He assumes that a conditional use can be revoked if the applicant is found in non-compliance in the future. He wanted to assure the DRB and the public that these dogs will not be left unattended. He said that he is very respectful of the safety and noise concerns raised by the neighbors. He assured them that he takes these concerns very seriously. He again reiterated that they have an alternative location for these dogs if necessary.

The board discussed how to best condition the draft decision based on the concerns that have been raised. Alex suggested they modify the order & conclusions to state that dogs will never

be outside off leash. Based on the discussion, the decided to make changes to the order & conclusions related to the following additions:

- 1.) Add if any dog creates an unreasonable noise, it will be removed to an alternative location.
- 2.) Approval will expire when Ed W. is no longer serving the role of Animal Control Officer and the conditional use would be removed at that time.
- 3.) Kenneled dogs will be on leash at all times when outside held only by Ed W. or a police officer.

Peter Erb, Zoning Administrator, asked if they would include as part of the order that a use permit has to be granted (by Zoning Administrator) for any conditional use moving forward. Tom M. confirmed they could include that from now on.

Beverly C. commented that it appears the Town is willing to take the risk of having children and grandchildren getting hurt. Tom M. replied that any concerns regarding safety should be directed to the Hinesburg Police.

Bill Moller understands the concerns that have been raised with regard to children and grandchildren safety. However, he noted that these are dogs that are found to be loose and running around. If the police don't capture these dogs, they would be posing an even greater risk to the public. He feels that by kenneling these dogs at Mr. Waite's home and keeping them on a leash when outside, the public would in fact be safer as a whole.

Tom M. made a **motion to close the public hearing and take the matter up in deliberative session.** Ted B. **seconded the motion—all approved.**

Carlson/Provost: Cont'd from September 18th—Subdivision Revision—Applicant is requesting a revision to the subdivision approval that was granted on 8/5/2005 and subsequently revised on 1/3/2006 and 5/1/2007. The original engineering plans had a condition which stipulated that Upper Access Road be improved to 18 ft. in width. The applicant is requesting that this condition be removed. This property is located in the Rural Residential 1 Zoning District.

Bob Provost stated they are requesting that they be allowed to leave the travel portion of the road as it currently is (12-14 ft.) and clean up the shoulders to allow for 2 feet of shoulder width on each side. The fire chief has indicated that the current road base is adequate but stipulated that the shoulders be widened to allow for winter plowing and snow removal. Bob P. added that if we are required to further widen the road, we will have to take trees down which could lead to erosion as those root systems are containing it right now.

Ted B. stated that at the time the road was approved originally, the board had a blanket 18 ft. requirement for any road that had more than 2 houses. He noted that some modifications have been made subsequently but he can't imagine leaving it as 12 to 14 feet as it is now. He commented that some driveways are wider than this.

Peter E. noted that emergency service (fire & police) is satisfied with a minimum of 12 ft. travel width so long as there are pull-offs every 500 feet. However, the concern is how to maintain that 12-foot travel width with regard to winter snow removal and maintenance. He stated that was noted in the staff report on page 2 in the second to last paragraph from the bottom.

Alex then showed photos taken by Peter of Upper Access road showing the width and where the pull-offs are located. They discussed what was currently available in terms of shoulder width and how the pull-offs are in relation to what is required in terms of size.

Jody Ciano lives on Upper Access Rd. in the furthest house away from Pond Brook Rd. She stated that she has never had a problem traveling on that road and very rarely even meets another car while driving on the road. She said that people who live on that road like it just the way it is. Tom M. clarified that the board's primary concern is to ensure that emergency services have sufficient room to get to houses on this road. Jody C. stated that she had a friend visit her this weekend with a 32 ft. RV and had no problems navigating the road. Steve C. added that they have had ambulances come to their home on many occasions with no problems as well.

Bob P. added that Owiso Makuku, another neighbor who lives on the road, submitted a letter with her input. He stated that Owiso comes from a planning background and so her comments are mostly technical in nature. The basis of her letter was to request that the road be left the way it is for ecological reasons--erosion, sediment, etc.

Steve Carlson gave a brief history of this issue on Upper Access Rd. He stated that basically the proposed widening of the road has been a condition of every year-round permit granted leading up to this one. Conditions have been included which state when the road widening occurs; everyone on the road bears responsibility for it.

Gill Coates questioned what the zoning regulations require. He stated that when his father wanted to get a variance many years ago for the 18 foot wide easement on Seneca Creek Rd., a ZBA (Zoning Board of Adjustment which was previous board prior to formation of the DRB) member said there was no way that he could get a variance. Alex responded that when that project happened, there was an old set of road standards that referred to the 18 ft. road width. In 1999, those road standards were revised to address flooding and other natural disasters in order to make us eligible for disaster relief. The Town adopted many of the State standards that stated that the width of the road should vary depending on the volume of road traffic. There was a minimum of 14 ft. to as much as 28 ft. based on traffic volume. In 2001, the DRB asked for clarification from the SB as to how they should enact these State standards. The SB gave the DRB flexibility to grant width requirements for each road based on the level of traffic.

Gill C. questioned if all those people who were previously required to have 18 ft. road widths can now allow their road widths to shrink. Ted B. replied that no, that would not be the case as they would have to come before the board to make that request. Gill C. questioned how certain roads were allowed to not comply with these requirements. He commented that it seems like this should be an enforcement issue.

Steve C. clarified that the road widening was included in the permits of previous properties that were being converted into year-round residences. However, the implementation was deferred until property on our (Carlson) deed was improved. This subdivision is what has triggered this requirement now. Peter E. noted that language was not included in the decisions.

Bob P. stated that his understanding of what triggered the road widening was the construction of the 5th lot of this subdivided lot (Lot 1 on Upper Access Rd.). He noted that when they pulled

the permit, they discovered in order to get a CO (Certificate of Occupancy), they would have to address the conditions in the permit such as erosion control, widening of road, etc. He again clarified that they are not asking for a variance; they are simply asking for relief based on a precedent.

Bill Moller questioned what has changed since the DRB order of the 18 ft. road width. Was the erosion concern the reason for not widening? Ted B. replied that the Town rules have changed. We now have a sliding scale depending on traffic volume. He noted that he is not taking into consideration the trees with regard to erosion control, as there are other ways to mitigate that.

Peter E. stated that when it was 18 ft., there was never clarity on what was required with regard to shoulder width beyond the 18 feet. Bob P. read the statement from emergency services with regard to what their requirement is.

Tom M. said the DRB needs to see a plan of what is being proposed by the applicant. Bob P. said we are requesting that the travel portion of the road be left as is (12 ft. width) and place 2 ft. shoulders on each side to allow for adequate space for snow removal and winter maintenance. We also need clean up pull-offs to the size standards and address erosion and storm water run-off where slopes are greater than 5%.

Ted B. discussed possible conditions of approval for staff to draft such as increasing road width from 12 ft. to 14 ft. Greg W. asked if the Board should be requesting plans. They talked about size requirements of the pull-outs, etc.

Alex stated that he is hearing a disconnect with regard to what the applicant is requesting and what the DRB is willing to accommodate. Alex suggested that perhaps the DRB should deny rather than place restrictions on a decision that doesn't reflect what the applicant is requesting.

Peter E. feels the minimum should be a 14 ft. travel width with 2 ft. shoulders on each side for safety reasons. He stated he has traveled on this road many times and in fact, slid on ice and hit a tree once. Jody C. said she feels the road is safe. She has lived there for 20 years and has never had a problem. Peter stated that he doesn't believe the standards would allow us to go below 14 feet.

Steve C. expressed frustration that he was aware of many other private roads that have year-round houses that have been updated recently and were approved with much narrower road widths than Upper Access Rd. Peter replied that he had noted in the staff report every road that had undergone DRB review and were allowed reduced widths and the reasons the board made those decisions.

Bob stated that what we are talking about is 1100 feet of road length. A significant cost is involved to build the road this long to the specifications that are currently in the permit. This is why this property hasn't sold in the seven years it has been on the market. Prospective buyers have been deterred by these costs for improvements.

Jody C. pointed out another road near Lake Iroquois, Wood Run. She said there are 5 year-round residences on this road that have recently undergone substantial improvements. She questioned why these were allowed to occur without increasing road width on a road that is narrower than Upper Access Rd.

Tom M. asked Bob if the road could be brought up to a 14 ft. width and what percentage of the road already is at 14 feet. Bob replied that it would be difficult. Some of the areas are already at 14 feet. However, some locations have ledge that would prevent it from being widened or greatly increase the expense. He estimated that between 40-50 % of the road is currently at a 14-foot width.

Greg W. suggested they continue this application and conduct a site visit to Upper Access road to look at the road width. Peter suggested that Bob identify what areas can or can't be widened to 14 ft. by flagging. Dick J. also suggested that Bob mark off the pull-offs and indicate the full 50 ft. length requirement. Bob agreed that he would be willing to do that prior to a site visit. The board discussed with Alex the availability of time at the next meeting to continue this application. After considerable discussion with regard to the upcoming applications and the time constraints the applicant has with regard to getting the modular home in place, it was determined they could continue this application to the October 16th DRB meeting with a site visit to take place on the Saturday prior to this meeting.

Ted B. **MOVED to continue the public hearing to the next meeting and hold a site visit on October 13th at 9:00 am.** Tom M. **seconded the motion.** The motion **PASSED 7-0.**

Other Business: *Burnett Scrap Metal:* Finalization of Decision

Tom M. made a **motion to go into deliberative session to discuss the Burnett draft decision.** Ted B. **seconded.** The motion **PASSED 7-0.** The board entered into deliberative session at 9:41 pm. The Board came out of deliberative session and the meeting was adjourned.

Respectfully Submitted,
Renaë Marshall--Recording Secretary