

Planning Board
Public Hearing meeting minutes
April 10, 2002

Chairman Susan Dunlap called the public hearing to order at 7:05 p.m. stating the purpose of the public hearing is to review the application and hear input from the public of Russell and Trina Watermans application for a used car sales on their property on Waterman Drive. Attending from the Planning board are Todd Morey, Dwayne Woodsome, Tim Neill and Roland Denby and Everett Whitten enter at 7:20 p.m. There are 10 members of the public in attendance.

Sue Dunlap explains this is the Waterman's second application with a long history and the board has conflicting attorney opinions. Sue states that she will summarize what the limitations are. Sue states that in her opinion there is enough documentation that this lot is part of Fieldstone Acres subdivision. The issue is whether the deed restrictions on the other lots apply to the Waterman's lot. Sue states that we will not be discussing whether this lot is part of the subdivision or not.

Russell Waterman explains the proposed use for the used car sales. They would like to have a small used car lot with 6-8 cars. The gravel lot area for the cars to be is a 50 x 100 foot area. Their state license allows for 50 car sales a year. They are expecting to only have 5 or so cars at a time. There would be no maintenance at all to any of the vehicles. There will be no special building built for this business, they will do the office work out of the house. There will be no tow trucks. All of the vehicles will be driven onto the lot. There will be no outside storage.

Sue Dunlap asks about a sign. Trina Waterman states that she believes the state will require a sign and the sign will be on Waterman Drive but they are not sure exactly where it will be placed yet.

Sue Dunlap opens the meeting up for public comment.

Greg Lee asks the board if they have received the most recent petition. Sue Dunlap states that they have. Greg then asks if the town attorney has changed his opinion.

Sue Dunlap states that the latest attorney letter dated February 27, 2002 states that the planning board has the authority to make a ruling whether the deed restrictions apply to this lot or not based on evidence provided by the land owners and abutting property owners. There is also a letter from Maine Municipal Association dated February 20, 2002 that states that the planning board should not be looking at deed restrictions at all.

Greg Lee states that he agrees with the March 2000 opinion from the attorney in that the board should be looking at the common scheme of development and if the balance of the land is developed one way that the subdivider can not unilaterally change that scheme unless they specifically reserved that right. Greg Lee states that he read through the minutes of the approvals for Fieldstone Acres from 1989 and did not see where the owner reserved that right.

Eilleen Lee states that the attorney disagrees with Mr. Katsificas from MMA. That is sounds to her as if the attorney's opinion stands as it was in 2000. Eilleen adds that she thinks this lot should be governed by the restrictions placed on the lots within the subdivision.

Donna Dawloff states that she bought land from Dean Webber and she has different deed restrictions. When she bought her property she thought her home would be in a residential area.

Sue Dunlap states that the board can not look at what she thought when she bought her property and that is actually the AR zone where a lot of uses are allowed.

Trina Waterman reads from the Jeffery Clark letter dated September 14, 2000 the second page last paragraph: where it states the obvious intent of the developer was clear when he made two conveyances on the same day; one to the development company for lots 1 through 7 and a second to his wife and child for the remaining land. The deed for lots 1 through 7 has approximately three pages of restrictive covenants, whereas the deed to Mrs. Brown and Gregory Brown does not. Anyone searching title to any of the lots 1 through 7 could not help but notice this fact.

Trina Waterman reads from the Robert Yarumian opinion of April 10, 2002. Trina reads that the Waterman lot is not one of the numbered lots of this seven lot subdivision. The property is the remaining land of Brown shown on the subdivision. The area summary on the plan indicates that the subdivided area is 14.13 acres this indicates that the total area being divided and approved by the planning board is limited to the seven lots. The area summary further indicates that the remaining land including the right of way 9.038 acres indicates the land is being separated from the subdivided area. If the area of remaining land of Brown, (now Waterman) was included then then the total subdivided area would have been over 20 acres. If the remaining land was part of the subdivision the planning board would have required it to have a lot number, soils tests, contour lines, potential well site, Hydrogeo study and proper road frontage. The deed to the Waterman property does not mention that the property is subject to any conditions and or restrictions except that the right of way is subject to the rights of the owners for lots 3 and 4 which is because of note 14 on the subdivision plan. He states that those reasons listed above are significant enough to indicate that the Waterman property is not part of Fieldstone Acres Subdivision.

Sue Dunlap reads from the MMA opinion that states that the remaining land is part of the subdivision.

Fred Pierce states that he lives across the street and that he walked this lot and knows the land and was told there would be 7 houses and the rest of the land would be conservation land. Mr. Pierce asks if the application is approved where would they display the cars? The cars would be up on the Waterman's property.

Eillean Lee states that she lives on the right of way and the bus picks up six children there and she feels that the right of way should be bound to the restrictions of all the lots within the subdivision. Eillean adds that she feels the kids should have the right to ride their bikes in safety on that right of way.

Sue Dunlap confirms from the deed that the Waterman's own the right of way and that she would argue the rights of kids to play in the road.

Eillean states that they shouldn't be allowed to test drive cars on that right of way.

Dwayne Woodsome asks the Lee's if they own frontage on West Road? Yes they do.

Hearing no further discussion Sue Dunlap closed the public hearing portion of the meeting at 7:35 p.m.

Minutes of the regular Planning Board meeting April 10, 2002

Chairman Susan Dunlap calls the regular meeting to order at 7:36 p.m.

APPOINTMENTS

7:30 p.m. Russell & Trina Waterman with conditional use application for a used car sales on map 6 lot 18. Sue Dunlap states that this is not a public hearing. This is an application for a used car sales on

West Road. The issue is whether this lot is bound by restrictive covenants that the other lots are bound by.

Sue would like the petition signed by 10 residents opposing the used car sales to be entered into the record. A letter from Janice Jarosz also in opposition is also read and entered into the record.

Sue reads from notes she has made from reviewing the file regarding her thoughts on where the board stands with this application;\

1. Brown deeded 7 lots to Brown lumber and the remaining land to relatives with no obvious deed restriction on the remaining land.
2. Attorneys agree that the remaining land is part of the subdivision.
3. Ken Cole states that the intent was to restrict all the lots.
4. Ken Cole states that the planning board should hear evidence to decide if the restrictions apply.
5. MMA states that most likely this lot is not subject to the deed restrictions.
6. MMA also states that there are circumstances where lots are restricted but not in the deed.
7. MMA states that deed restrictions are not enforceable by the town and the planning board must rule on land use only.
8. Jeffery Clark states that the Brown's records reveal obvious intent that the lot is not restricted. Sue does not think that the intent is obvious at all.
9. The real issue is do the restrictions apply to this lot or not.

Tim Neill states that board's responsibility is to enforce the ordinances of the town. This seems a matter of interpretation and he doesn't feel the planning board should be in that position.

Todd Morey states that he doesn't think its up to the planning board to determine previous intent. There are other boards and bodies that do that. Todd states that he feels the restrictions should apply to the Waterman's lot but that this board doesn't have the authority to make that decision.

Dwayne Woodsome states that he doesn't think anything has changed as far as the status of this lot and he thinks the intent was that this lot be part of the subdivision.

Everett Whitten made the motion to deny this conditional use application because there are conflicting attorney opinions and this should receive an interpretation from the Zoning Board of Appeals. Roland Denby seconds the motion. Motion carries with a unanimous vote in favor.

Victor Wright for an informational meeting for expansion of his business. He is looking to construct an additional free standing structure on the same property and possibly rent out the existing building to another business. There was discussion regarding the proposed general purpose zone.

Susan Anderson with a conditional use application for a setback reduction on map 49 lot 11E. Susan is asking for a 35' frontyard setback to Alder Drive. She is on the corner lot of Alder Drive and Oak Lane. Susan states that they have considered the overhang in the reduction request. There is discussion about having an as built survey before and after the foundation is poured.

Dwayne Woodsome made the motion pursuant to section 2.08 to approve the setback reduction application of Susan Anderson on Map 49 lot 11E with the following conditions: all other setbacks to be met, applicant to provide an as built set of plans upon completion of construction. Todd Morey seconds the motion. Motion carries with a unanimous vote in favor.

OLD BUSINESS

Ed Daye with a setback reduction met with the board in November and was asked to provide a septic design to prove that this lot will support a new septic system. He was also asked to provide a revised site plan with the setback that he was requesting. Mr. Daye provided the requested information. Todd Morey made the motion to approve the sideline setback to 15' with the following conditions: all other setbacks to be met, provide and as built set of plans upon completion of the construction, all erosion control measures to be used during all phases of construction. Dwayne Woodsome seconds the motions. Motion carries with a unanimous vote in favor.

Discussed the public hearing of April 2 where public opinion wanted to increase the building size allowed in the general purpose zone. Dwayne Woodsome made the motion to approve the changes as printed in the warrant based on that public hearing. Todd Morey seconds the motion. Motion carries with a unanimous vote in favor.

COMMUNICATIONS

Susan Dunlap reviews the selectmen meeting minutes where it is stated that the selectmen plan to bring a growth ordinance and impact fees proposals to special town meeting in September. Sue states that Willis stated that the planning board is not taking any action on the growth in town and Sue disagrees with that statement. Sue added that the board has brought many changes to this annual town meeting in response to growth issues and that Doug Foglio stated in that same meeting that there has been no great outcry from the public asking for a growth ordinance.

NEW BUSINESS

MICELLANEOUS

Dwayne Woodsome states that we should send a request to the Water District regarding the application for used car sales on the property that falls in the wellhead protection zone. Dwayne states that this should be a standard for all lots that are within that zone.

Dwayne would like an item on the agenda for the next meeting setting aside some time to assign warrant articles to each member of the planning board for town meeting discussion.

MEETING MINUTES

Todd Morey made the motion to approve the March 28 minutes as written. Roland Denby seconds the motion. Motion carries with a unanimous vote in favor.

ADJOURNMENT

Everett Whitten made the motion to adjourn at 8:45 p.m. Roland Denby seconds the motion. Motion carries with a unanimous vote in favor.

APPROVED DATE:

Susan Dunlap Everett Whitten
Jim Hunt Dwayne Woodsome
Roland Denby _____