

*Orange Planning Board
Town of Orange, New Hampshire
Minutes of April 17, 2018*

Present: Judith Lindahl, Vice Chair; Robert Proulx, Secretary; Salvatore Guadagnino, Karen McFarlane, Nathaniel Emerson, Robert Ells (Select Board ex officio), and Sandi Pierson (clerical)

Absent: Scott Sanborn, Chair

Others present: Billie Brockhum, Terrance McQueeney, Rosemary Hanes, and Kevin Van den Bergh.

Meeting opened at 7 PM. Attendance taken by the secretary. In the absence of the Chair, Vice Chair Judith Lindahl chaired the meeting.

Judith introduced the members of the Planning Board. She stated that the meeting is being electronically recorded.

Minutes: Karen motioned to approve the minutes of March 20, 2018 as submitted. Nathaniel seconded. Motion passed unanimously in favor.

Goodearl Annexation: Judith stated that it was brought to the attention of the Select Board and Planning Board Chair by Terrance McQueeney and Billie Brockhum that they were not notified of the public hearing of February 20, 2018 for Richard Goodearl and Ronald Goodearl's annexation hearing (lot line adjustment). McQueeney and Brockhum own Map 3, Lot 25 which abuts the Goodearl property. Judith stated that notification had instead been sent to the previous owner of the McQueeney/Brockhum property, and that there were actually two parties abutting the Goodearls who were not notified.

Bob Proulx noted that Scott agreed it was his oversight (Scott acting as a surveyor for the Goodearls) and that he would assume the cost of a re-hearing. Judith stated that the Board offers their apologies to Terrance and Billie, to abutters Vanessa Stone and Cale Perry, and to the Goodearls. After discussion, the Board concurred to hold a re-hearing on the annexation on May 15, 2018. Bob Proulx has an updated Goodearl abutter list and will send out notifications.

Judith stated that the problem stemmed from the abutters' list being acquired from tax maps that have not been regularly updated. She stated that the Select Board's office updates their maps and assessment cards whenever there are changes in ownership. She said that going forward the Planning Board will consult the Select Board's office records when land owner notification is necessary.

McQueeney/Brockhum property access (Map 3, Lot 13): Judith stated that Terrance McQueeney and Billie Brockhum submitted a building permit to the Select Board but that the Select Board is

deeming the application as incomplete because they have not yet obtained a driveway permit. She said that driveway permits are the jurisdiction of the Planning Board, which is why Billie and Terrance are here. Billie and Terrance maintain that their property already has a driveway thus no permit is necessary.

Judith reminded all Board members that per the Right to Know Law, discussions with other Board members about the driveway issue must occur at the meeting. Judith gave all members a copy of the Orange Driveway Regulations. Judith reiterated that an Orange driveway permit is not an okay to have a driveway somewhere; it is a plan with specifications that specify location, drainage, grades, and any other factors that affect public safety.

Judith stated that though at present it is unclear that a driveway plan has been denied, deducing from the Select Board minutes, she feels that progress is not being made in resolving the issue and if the petitioners want to build this spring, the town should act as expedient as possible. She recommended the Board support having a public hearing so all parties can be heard and that all documentation can be presented and reviewed. She said that at present the Board has no information to act on. She said that if the Board's decision is that a building permit from the town is required, Billie and Terrance may appeal to the Zoning Board of Adjustment and, if desired, the land court.

Billie said she would like the Board to sign a "driveway permit waiver" of which Billie submitted to the Board. Though the letterhead on the form was "Town of Orange, New Hampshire, Driveway Permit Waiver" Billie said that she did not get it from the town. Terrance said the original version came from a webpage "New Hampshire Driveway Permit Waiver." Terrance and Billie had written into the form that "This hereby acknowledges that the Town of Orange has waived the driveway permit for Map 3, Lot 13; located at 123 Tug Mountain Rd., Orange, NH; as it has [a] vested driveway that predate[s] the driveway ordinance laws." The Board did not act on this.

Judith asked Billie and Terrance if they prefer the Board act on their request now or have a legally-noticed public hearing. She said that because the Board has not received any documentation from them, and that there is no driveway permit to deliberate on, the Board would need to skip over a number of procedural prerequisites that constitute a public hearing. Judith said that if there is a public hearing, the Board will notify them within five days after the hearing of their decision. Terry and Billie agreed they would like the Board to schedule a public hearing. Bob Proulx spoke in opposition of passing over the procedural guidelines for a public hearing, stating that there is no information, application, or driveway plan to review and act on.

Billie read a statement regarding their request to waiver a driveway permit, their constitutional vested rights of their property, a statement of it being a preexisting driveway, noted there are town documents acknowledging it as such, and their request for the Planning Board to sign a waiver that recognizes their constitutional vested rights.

Judith asked if Board members wanted to make comments or ask questions. Bob Proulx asked if the road agent had given Billie or Terrance any kind of driveway plan in writing. Terrance stated that when they met with Scott Sanborn at the site, Scott gave him a sketch of what he felt needed

to be done. Terrance said that at the meeting, Scott agreed it was an existing driveway but that there was a change in use of the property. Terrance said that at the meeting, Billie informed Scott that they had a vested driveway in existence and didn't need anything. They said they spoke with Scott and said they could do certain work, but that as soon as they sign a driveway permit, they give up their vested rights.

Judith asked Terrance and Billie if the Board should assume that the issue at hand is a matter of principle regardless if the Board approves or denies a driveway permit application, and that the issue is that the town should not be asking for a driveway permit. Billie and Terrance said yes.

Salvatore stated that regarding waivers, the Driveway Regulations state that they are "upon the recommendation and advisement of the road agent." He felt that since the road agent is not present, they should proceed to a hearing at which time Scott would be present. Salvatore asked about "vested rights." Terrance stated that Article 23 of the New Hampshire Constitution protects their vested rights and predates the Orange ordinance. He said Article 23 is from 1930. Billie said she had documentation of a farm on their property in the 1800's, and later mining.

After discussion, Judith called for a vote on the question of a hearing. Salvatore motioned to schedule a public hearing on the request of a driveway waiver. Karen seconded. Salvatore, Karen, Bob Ells, Nathaniel, and Judith voted in favor. Bob Proulx voted in opposition. Vote passed 5-1. The public hearing is scheduled for May 1, 2018 at 7 PM.

Terrance said they will be showing a 40-slide PowerPoint presentation as part of their demonstration. It was suggested they have a hard copy printed of the presentation for when the Board subsequently deliberates. Billie said she would also like to include the upper access (a roadway used to access the Standard Mine) in the public hearing because eventually they plan on using that access as well.

Judith said she will ask the Select Board to allow her to consult with the town's legal counsel following the hearing. She encouraged Board members to drive by the property to acquaint themselves with the location, but that this must be done singly and not with other Board members.

Adjournment: Bob Proulx requested the Board table two remaining items on the agenda (review of solar regulations and letter to Dave Stacy) and to adjourn the meeting at this time. Bob motioned to adjourn the meeting. Sal seconded. Motion to adjourn at 7:45 PM passed unanimously in favor.

(Note: The entire statement read by Billie Brockhum and the waiver form they drafted is available to the public for review.)

Respectfully submitted,

Sandi Pierson