

TOWN OF HOLDERNESS
Planning Board
Meeting Minutes: October 20, 2020

B. Snelling called the meeting held via Zoom to order at 6:30PM.

ROLL CALL OF MEMBERS:

Members Present:

Robert Snelling, Chairman	Angi Francesco, Vice Chairman	Donna Bunnell, Secretary
Carl Lehner, Member	Louis Pare, Member	Peter Francesco, Ex-Officio
	Janet Cocchiaro, Alternate (<i>non-voting</i>)	

Members Not Present: Ronald Huntoon, Member

Staff Present: Nancy Decoteau, Landuse Board Assistant

Others Present:

Marjoree Bogdanow	Maureen Clifford	Cici Cyr	Deanna Lussier
Annette Lamb	Chad M.	Herb Brown	Andrew Young
Nancy Isikoff	Bruce Falby	Nick Young	Richard Lovett
Bob Lamb	Anthony Randall	David Dolan	Kevin Frank

B. Snelling appointed J. Cocchiaro as a voting member in the absence of R. Huntoon.

APPROVAL OF MINUTES: September 15, 2020

MOTION: “To approve the minutes of Sept 15, 2020 as amended.”

Motion: A. Francesco

Second: D. Bunnell

Discussion: D. Bunnell stated “and” should read “an” on page 3. A. Francesco stated “consul” should read “council” on page 6.

Motion Passes: 6-yes 0-no 0-abstention 2-absent (R. Huntoon, C. Lehner)

CONTINUED APPLICATIONS:

B. Snelling stated the Board would discuss the following continued application:

Case #20-9-8: Application submitted by David M. Dolan, LLS as agent for the Robert & Lili Young Revocable Family Trust for a Boundary Line Adjustment on property owned by Robert M. Young, Trustee of the Robert & Lili Young Revocable Family Trust identified as Tax Map 246-017-000 located at 75 Coxboro Road and Tax Map 246-018-000 located at 85 Coxboro Road in the General Residential District, in accordance with the Town of Holderness Subdivision Regulations.

C. Lehner joined the meeting.

J. Cocchiaro recused herself from Case# 20-9-8 as she is an abutter.

B. Snelling accepted the recusal.

B. Snelling opened the public hearing at 6:38pm on Case #20-9-8.

D. Dolan stated Case# 20-9-8 is for a Boundary Line Adjustment between two parcels currently owned by the Young Revocable Family Trust: parcels 246-018-000 and 246-017-000.

D. Dolan noted the following regarding the Boundary Line Adjustment plan:

- The location of the water line from 246-018-000 to 246-019-000 is identified
- Parcel A is 2.98ac being transferred from 246-017-000 to 246-018-000
- Parcel B is 2.08ac to be transferred from 246-018-000 to 246-017-000
- Parcel C is 7.04ac to be transferred from 246-018-000 to 246-017-000
- Parcel 246-017-000 changes from 11.19ac to 17.33ac
- Parcel 246-018-000 changes from 44ac to 37.86ac
- Garage in northwest corner of 246-018-000 is to be removed as it is non-compliant with setback requirements
- Note 5 added regarding 246-018-000 retaining rights to the well located on 246-017-000

B. Snelling summarized that the only change to the boundary lines of the original proposal was to move the line around the well in the northeast corner of 246-017-000 so that the well meets the setback requirements.

C. Lehner commented that the project description describes 246-017-000 as 76 Cuxboro Road when it should be 75 Cuxboro Road.

D. Dolan noted that 246-017-000 is identified correctly on the plan and in the public notice as 75 Cuxboro Road.

C. Lehner noted the road frontage numbers in the project description did not seem to add up correctly.

D. Dolan stated he could provide a revised project description for the record.

B. Snelling asked for public input and hearing none he closed the Public Hearing at 6:47pm.

MOTION: "To approve Case#20-9-8: application submitted by David M. Dolan, LLS as agent for the Robert & Lili Young Revocable Family Trust for a Boundary Line Adjustment on property owned by Robert M. Young, Trustee of the Robert & Lili Young Revocable Family Trust identified as Tax Map 246-017-000 located at 75 Cuxboro Road and Tax Map 246-018-000 located at 85 Cuxboro Road in the General Residential District with the condition that a corrected written project description be submitted.

Motion: A. Francesco

Second: B. Snelling

Discussion: Plan used for Case#20-9-8: "Boundary Line Adjustment Plan of Robert & Lili Young Revocable Family Trust dated August 14, 2020, with a revision date of October 1, 2020.

Motion Passes: 6-yes 0-no 0-abstention 1-absent (R. Huntoon) Recused: J. Cocchiaro

B. Snelling opened the Public Hearing at 6:49pm to consider the following continued application:

Case #20-9-9: Application submitted by David M. Dolan, LLS as agent for the Robert & Lili Young Revocable Family Trust for a 3-Lot Subdivision on property owned by Robert M. Young, Trustee of the Robert & Lili Young Revocable Family Trust identified as Tax Map 246-018-000 located at 85 Cuxboro Road in the General Residential District, in accordance with the Town of Holderness Subdivision Regulations.

J. Cocchiaro recused herself from Case# 20-9-9 as she is an abutter.

B. Snelling accepted the recusal.

B. Snelling asked how approximate is the location of the water line shown on the plan.

D. Dolan stated that the location was identified based on the description provided by abutter Kevin Frank. D. Dolan provided the plan to K. Frank for review and stated that the line shown is within 4 ft. of its actual underground location.

B. Snelling asked how deep the water line is buried.

D. Dolan stated he is not sure how deep the water line is buried, but estimated it must be more than 4 ft. deep in order not to freeze.

K. Frank stated the water line is buried 4 1/2 to 5 feet deep and agreed that it is 6ft to either side of the line as shown on the plan.

C. Lehner stated the note on the plan which reads "Approximate location of water line from well on Lot 2 to Tax Map 242 Lot 19" should read "Approximate location of water line from well on Lot 3 to Tax Map 242 Lot 19"

D. Dolan stated he is aware of the error and has already corrected on the final plan which would be submitted for signature if approved.

D. Dolan stated the proposed lot line between Lot 2 and Lot 3 was moved so that the well would be located on Lot 3 and be compliant with the setback requirement of 35 ft.

D. Dolan stated with the minor change to the lot line between Lot 2 and Lot 3 the proposed lots created from the subdivision of 246-018-000 are as follows: Lot 1 12.32ac, Lot 2 12.66ac and Lot 3 12.89ac.

D. Dolan stated that all three of the proposed lots meet the subdivision requirements and that a 4K area is shown for each lot to depict a potential buildable area.

D. Dolan stated he believes the water line is buried deep enough so that it would be safe from traffic over it.

B. Snelling asked if a note was added regarding the use of the well for parcel 246-019-000.

D. Dolan indicated Note 4 on the plan states that 246-019-000 has rights to use the well and provides the Book/Page of the original conveyance of the easement.

B. Snelling entered a letter from K. Frank dated October 19, 2020 into the record:

Dear Mr. Snelling and Board Members,

In anticipation of the Holderness Planning Board Hearing for Tuesday October 20, I submit the following statement regarding the Subdivision Application by Robert and Lili Young, Case #20-9-9 for a 3-lot subdivision.

Introduction: I have concerns that if the Planning Board approves lot 3 of the 3-lot subdivision of Lot 246-18 it will expose my deeded easement for water source and conveyance to potential harm, both physical and legal. The latest version of the plan, at least the one shared with me by Mr. Dolan when he added the best approximation/location of the water line to the map, indicates worrisome proximity of my easement to future excavation, septic construction, and house foundation. All this would be, for this type of rural situation, uncomfortably close to my water line/deeded easement, even assuming the water supply system, septic system, and foundation for a new house could even all fit in the small available buildable area without disturbing or destroying the water line. The problems that must be anticipated include well drilling and water line construction impact, septic construction impact, driveway construction impact, foundation excavation foundation, drain construction, and additions of trees and other landscaping vegetation near or on top of the easement. The current subdivision application does not consider or address any of these problems or impacts as Mr. Dolan prepared the original subdivision plan on which the application is based without even knowing the location of my deeded easement water line. —in short, ~~T~~these are troubling eventualities to contemplate, leaving aside the unfortunate potential for two newly met neighbors to immediately find

grounds for long term adversarial disputes; disputes that would have as their primary cause—a decision by the Holderness Planning Board--should it approve lot 3.

Therefore, since last month's meeting, I have consulted with legal counsel and here is what I have learned about the legalities of this situation.

1. I have the following deeded easement rights, which have existed for a century:
 - a. One, to draw water from the spring on lot 18.
 - b. Two, to bring the water across lot 18 to my property by means of a pipe or otherwise.
 - c. And three, to dig and build waterworks for these purposes and keep them in repair.
2. In 1990, nine years before the Young's purchased Lot 18, I buried the water pipe in its present location, with the consent of the prior owner of lot 18, Helen Davie. The pipe was in its present location when the Young's bought Lot 18 in 1999 and they have acquiesced in its location ever since. The approximate present location is the water line shown on Mr. Dolan's revised plan.
3. The present location of my easement cannot be moved without my consent. Once the location of a deeded easement has been established, either by the language of the deed or by the subsequent acts of the parties, neither the easement holder nor the owner of the land burdened by the easement may unilaterally relocate it.
4. The parties can change the easement location by mutual consent, which can be implied from their acts and acquiescence. But once a change has been made by mutual consent, a further change of location may not be made by either party without the other's consent. [The name of the 2018 NH Supreme Court case that said so is Stowell v. Andrews, 171 NH 289 (2018).]
5. The location of my deeded easement was changed with mutual consent in 1990. Mutual consent is now again required for any further change of location.
6. As the deeded easement holder, I have no legal obligation to consent to moving my easement. I do not consent to moving it. Therefore, the water line cannot be moved.
7. The owner of the land burdened by an easement is generally not barred from making improvements on the land, as long as the improvements do not interfere with the easement holder's reasonable use of the easement.
8. Mr. Dolan's revised plan, at least the one I have seen, shows that the footprint of the only buildable portion of proposed lot 3 extends onto my deeded easement water line. It is a very narrow footprint. Building in that footprint or even close to it would interfere with my easement rights, either destroying or damaging the water line, threatening, or disrupting it, or interfering with access to repair it.
9. Approval of the subdivision of lot 3 would allow this interference or increase the likelihood that a civil dispute would arise, this putting my interests at jeopardy. Approval would be inconsistent with my deeded easement rights and therefore unreasonable and illegal.
10. For this reason, I ask you to deny subdivision approval for lot 3. If you nonetheless approve it, please know that I will protect my deeded easement rights. I will appeal your decision by filing a lawsuit in Superior Court ([under New Hampshire statute section 677:15](#)) seeking an order staying and reversing your decision. (~~End of statement regarding legalities.~~)

Final comment: I continue to sincerely appreciate the contributions and commitment of the Holderness Planning Board members for kindly and diligently serving our community.

Thank you for your attention to this matter.

Sincerely,

Kevin Frank, owner of 246-19, aka Franks Ln Property

K. Frank summarized by stating his attorney's opinion is that the right to draw from the well is a deeded easement.

K. Frank stated by approving the proposed lot 3, the Planning board is creating greater liability for him, the property owner who has the right to draw from the well as it creates potential for greater harm than exists in the current condition.

K. Frank stated his attorney is of the opinion that the owner of Lot 3 has no legal right to unilaterally move the location of the easement.

K. Frank stated his opinion that the assertion that development of the site will not disrupt the water line is not well founded.

K. Frank stated that the easement includes the right to dig, bury and repair the waterline. He added, that improvements to proposed Lot 3 will likely make doing those things more costly and increase the likelihood that civil action will be necessary.

K. Frank stated if the Planning Board determines to approve the subdivision he would take the case to Superior Court.

B. Snelling stated that with the +/- 4 ft. from the line shown on the plan, the location of the waterline skirts the 4k area of proposed Lot 3.

B. Snelling stated the proposed Lot 3 is a buildable property – either on the 4k area shown or on the larger upland area if NH State permitting to cross a wetland is obtained.

B. Snelling stated the term “easement” is used in the Zoning Ordinance and the context has to do with the right of passage (for people to go on to the land by foot or by vehicle) and has a 50ft. minimum width usually associated with it.

B. Snelling stated the term “easement” in the Zoning Ordinance does not encompass the type of right associated with 246-019-000 being able to draw water from the well on proposed Lot 3.

K. Frank asked about the 4k buildable area identified on the plan.

D. Dolan stated the 4K area shown on proposed Lot 3 is not the only buildable area on the lot, but only a representation that there is adequate area on the lot to develop.

K. Frank asked the Board to consider the idea that granting approval to the subdivision may give cause for the new owner of Lot 3 assuming they can develop the lot without realizing the full extent of the easement rights (to dig, bury and repair) thus creating a situation where civil conflict may result.

B. Snelling stated that the Board can only approve/deny an application based on the Holderness Zoning Ordinance and that the proposed lots all meet the requirements for subdivision.

B. Snelling stated that the right of conveyance for Lot 246-019-000 to draw from the well on Lot 3 is included on the plan and thus becomes a “buyer beware” obligation that goes with Lot 3.

B. Snelling stated that it is a civil issue between the owners and not a Zoning issue.

A. Francesco stated the right to draw from the well is not inherent in preventing Lot 3 from being a buildable lot as a future owner of 246-019-000 may choose to sell the right to draw from the well back to the owner of Lot 3.

A. Francesco stated that there may be alternative access points to buildable areas on Lot 3 and that the waterline does not make Lot 3 a non-buildable lot.

B. Snelling asked for further comment/questions from the Board.

C. Lehner stated that the Town's attorney comments indicate that it is outside the purview of the Planning Board to make a decision based on a civil matter within a deed.

B. Snelling summarized that the question is "can this lot be developed?" and the civil matter is beyond the authority of the Planning Board.

B. Snelling asked for further comment/questions from the public. None heard.

B. Snelling closed the Public Hearing at 7:20pm.

MOTION: "To approve Case #20-9-9: Application submitted by David M. Dolan, LLS as agent for the Robert & Lili Young Revocable Family Trust for a 3-Lot Subdivision on property owned by Robert M. Young, Trustee of the Robert & Lili Young Revocable Family Trust identified as Tax Map 246-018-000 located at 85 Coxboro Road in the General Residential District."

Motion: B. Snelling

Second: A. Francesco

Discussion: Plan used for Case#20-9-9: "Subdivision Plan of Land of Robert & Lili Young Revocable Family Trust dated August 14, 2020 with a revision date of October 1, 2020."

Motion Passes: 6-yes 0-no 0-abstention 1-absent (R. Huntoon) Recused: J. Cocchiaro

NEW APPLICATIONS:

Case #20-10-10: Application submitted by Anthony Randall as agent for Carol D. Smith and Gary L. Johonnett for a **2-Lot Subdivision** on property they own identified as Tax Map 202-003-000 located at 860 Perch Pond Road in the Rural Residential District, in accordance with the Town of Holderness Subdivision Regulations.

A. Randall presented the following information regarding Case# 20-10-10:

- Subdividing a 2.38ac lot (Lot 2A)
- from the existing 202-003-000 42.7ac parcel leaving a remaining area of 40.32ac.
- Located in Rural Residential Zone at 860 Perch Pond Road
- Lot 2A on the plan is the 2.38ac parcel which includes the existing home and area around it.
- The lots meet the minimum size and frontage requirements
- Book/Page reference for Current Use acres listed in a note on the plan
- Lot 2A has an existing driveway and a driveway permit has been obtained for the 40.32ac parcel.
- NH DES septic approval no: 106831 granted 7/2/1982 for existing septic on Lot 2A
- NH Subdivision approval no: eSA2020092302
- The lots meet the subdivision requirements

MOTION: "To accept the Case #20-10-10: Application submitted by Anthony Randall as agent for Carol D. Smith and Gary L. Johonnett for a 2-Lot Subdivision on property they own identified as Tax Map 202-003-000 located at 860 Perch Pond Road in the Rural Residential District as complete."

Motion: B. Snelling

Second: C. Lehner

Discussion: None

Motion Passes: 7-yes 0-no 0-abstention 1-absent (R. Huntoon)

B. Snelling opened the Public Hearing for Case #20-10-10 at 7:20pm.
B. Snelling asked regarding the notation of an alternative well site on the plan.
A. Randall stated the alternative well site is shown to indicate that an alternative well location is possible on that lot to satisfy NH Subdivision requirements.

B. Snelling closed the public hearing at 7:25pm.

MOTION: “To approve Case #20-10-10: Application submitted by Anthony Randall as agent for Carol D. Smith and Gary L. Johonnett for a 2-Lot Subdivision on property they own identified as Tax Map 202-003-000 located at 860 Perch Pond Road in the Rural Residential District.”

Motion: A. Francesco

Second: D. Bunnell

Discussion: Plan presented for Case #20-10-10 titled “Subdivision for Carol D. Smith and Gary L. Johonnett surveyed August 2020”.

Motion Passes: 7-yes 0-no 0-abstention 1-absent (R. Huntoon)

P. Francesco excused himself from the meeting at 7:30pm.

OTHER BUSINESS:

1. FY 21/22 Budget Request:

The Board began to review the FY 21/22 budget and determined that B. Snelling would meet with M. Capone to discuss some of the line items and continue the discussion with the Board at the next meeting.

2. Solar Regulations:

B. Snelling stated that he would like the Board to address the need for some regulation regarding solar panels in the Zoning Ordinance and/or the Site Plan review regulations.

B. Snelling referenced the Model Solar Zoning Ordinance document and reviewed some of the fundamental considerations in the regulation of solar panels.

- Accessory residential use and “all else” which would include non-residential solar development.
- Roof mounted
- Ground mounted
- Allowed by right or review process
- Approval process – various size/use
- Limit size of units for zoning district and/or type of solar development

The Board agreed to review the material and continue the discussion at the November meeting.

3. Discussion re: virtual/in-person meetings:

The consensus of the Board was that it is premature to consider returning to in-person meeting.

4. Next Meeting - Tuesday, November 17, 2020 at 6:30PM

CORRESPONDENCE: The following items were reviewed:

1. Town of Lincoln: Public Notice- Cell Tower Application GMR Holdings NH, LLC 10/14/2020
2. FCC Notice of Section 106 Filing: Vertex

ADJOURNMENT:

At 8:15pm the following motions was made:

MOTION: "To adjourn."

Motion: B. Snelling

Second: A. Francesco

Discussion: None

Motion Passes: 7-yes 0-no 0-abstention 1-absent (R. Huntoon)

Respectfully submitted,

Nancy Decoteau, Land Use Boards Assistant