

Town of Farmington  
Planning Board Meeting Minutes  
Wednesday, February 15, 2023  
356 Main Street-Farmington, NH 03835

**Board Members Present:**

Rick Pelkey, Chairman  
Bill Fisher, Vice Chairman  
Charlie King, Selectmen's Rep  
Stephen Henry, Secretary  
Jeremy Squires  
Mike Day

**Board Members Absent:**

Rebecca Patton-Sanderson

**Others Present:**

Kyle Pimental, Planning Director  
Ross Weaver, applicant  
Adam Bumford, applicant  
Susan Bumford  
Joe Berry, Berry Surveying & Engineering  
Matthew York, applicant

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

Chairman Pelkey called the meeting to order at 6 p.m.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Review of Minutes:**

**February 1, 2023-Public Meeting Minutes**- No errors or omissions

**Motion:** (Henry second Squires) to approve the minutes as written passed 5-0-1 (Day abstained).

**Public Comment:** None

**Consideration and Possible Vote on Minor Boundary Line Adjustment:**

Mr. Pelkey said the first item on the agenda is a minor boundary line adjustment between Ross and Maurine Weaver (Tax Map U-10, Lot 113, 9 Blaine St.) and Adam Bumford (Tax Map U-10, Lot 98, 12 Mooney St.). He read from the staff memo that the applicants are proposing a boundary line adjustment which includes the transfer of a total of 6,527 sq. ft. (roughly 0.15 acres) from Tax Map U-10, Lot 98 to Tax Map U-10, Lot 113 and both properties are in the Urban Residential Zoning District.

He said the staff has looked at the application and they recommend that the board vote to accept the application as complete.

**Motion:** (Pelkey, second Henry) to accept the application as substantially complete passed 6-0.

Mr. Pelkey said the next step on the checklist is for the board to review the location and scope of this application to determine if the application is a development of regional impact.

**Motion:** (Henry, second Pelkey) that we determine that it's not a development of regional impact passed 6-0.

Mr. Pelkey asked the applicant to come forward and tell the board what they would like to do. Applicant Ross Weaver said they are proposing to create where the boundary line should be which is on the map. He said that the adjustment would correct the line to align with the property deed for U-10, Lot 98 so that they are not using any property that was owed to U-10, Lot 113.

Mr. Pimental said this is a pretty straightforward minor lot line revision and the only thing he would add to that is the property is on Town water and sewer so that reduces the minimum lot size to a ½ acre. He said this would bring it more into compliance than what it already is and it meets all of the other regulations so the staff doesn't have any other comments other than what they have for the approval process.

Mr. Pelkey read that the staff recommendations on the conditions of approval include that a note be added to the Notice of Decision stating this approval in and of itself does not effectuate a change in the lot line locations. Such approval merely constitutes recognition by the municipality that the lot line configurations as proposed are in conformance with local land use regulations or are otherwise accepted with non-conformances.

Mr. Pimental said all that really means is we won't change anything on our maps until this is submitted to the Strafford County Registry of Deeds and as soon as that happens, the Town will make the change on their tax maps.

Mr. King asked if there is a mortgage on either of these parcels.

Mr. Weaver said there is no mortgage on Lot 113.

Adam Bumford said he has a mortgage on his lot.

Mr. King asked they will need their lien holder to sign off even though they're just getting their property because if the land is collateral and they're adding to it, it should have increased value because it's a change in collateral.

Susan Bumford said it is not adding to them it's taking away from them.

Mr. Bumford clarified that they have the mortgage and it's not adding to their property it goes to him (Mr. Weaver).

Mrs. Bumford said the 6,600 sq. ft. is going to Mr. Weaver. She said they have been paying taxes on that since they purchased the property.

Mr. King said his concern is because they have a lien holder with a lien on the property with the change of that asset he believes they need to have it signed off by the mortgage company to change the collateral that they borrowed against.

Mr. Bumford asked if he needed to reach out to them and if that would impact what is happening here.

Mr. King said he thought they could approve it contingent upon that and they could say no or that this is a small adjustment they have no issue with but they've had this come up before

when they haven't asked the question.

Mr. Weaver said their deed has his property line as shown on the map and it doesn't reference where the 6,527 sq. ft. that's already not part of their loan.

Mr. King asked if it is shown on the tax map.

Mr. Weaver said yes.

Mr. Bumford said as far as the information they've gotten that been related to him, this is changing the tax map and he has been paying for his land. He said the property line is established with stakes in the ground and that's all agreed upon and that's what he bought and when he got the problem.

Mr. King asked if either of these parcels has a recorded survey.

Mr. Bumford said he didn't know what that is.

Mr. King said its survey by a licensed surveyor saying these are the meets and bounds and it's recorded at the Strafford County Registry of Deeds.

Mr. Weaver said the property agreement has that information.

Mr. Pelkey said there was a boundary survey recorded in 2021 for Blaine Street.

Mr. Bumford said he got that paperwork when he bought the house and it's in the house somewhere. He said this is their 6<sup>th</sup> year there and he didn't know if there was a time span on that. He said he is showing on that map where the line should be and that's proper and is what they were shown when they bought it.

Mr. King said if this is what it should be and it's just a tax map issue and both deeds clearly show this then he didn't need it verified.

Mr. Pelkey said if the tax map is incorrect but the deed is correct they're in the register for something that hasn't already happened.

Mr. Weaver said the deed is correct for Mr. Bumford (Lot 98) but the deed for Lot 113 is not correct.

Mrs. Bumford said they are not disputing that the property is his.

Mr. Bumford said he believes the map shows where his property is and that's where the 2 stakes are on their properties.

Mr. King said in this plan by the engineer it states it's a boundary line agreement plan not an adjustment. He said if it's not an adjustment to say to U-10, Lot 98 that's their property it's really a clarification of the deed for U-10, Lot 113.

Mr. Henry said it would still be a lot line adjustment for Lot 113.

Mr. Pimental said he thought that's why they are here because it's still a lot line adjustment for Mr. Weaver's property even though it lines up correctly for Mr. Bumford's property. He said he just looked the Town's tax maps and it's definitely not what is being shown on this survey. He said that's where they felt as though it would be a minor lot line adjustment because of that being abandoned and moved to correctly address Mr. Weaver's property even though it is correct in Mr. Bumford's property. Someone needs to move he said.

Mr. Pelkey said it needs to be recorded against Mr. Weaver's deed in order for it to be correct. He said at one time there used to be a signature line for lien holders on the application.

Mr. Pimental said there is one on the merger application but they don't have it on the lot line application but they can add that and moving forward that's an easy fix. But right now it's not something that is required he said.

Mr. Pelkey said this doesn't change the property that has the mortgage on it so that's why he's not too nervous about it. He said Mr. Weaver's deed will be recorded with the lot line where it's supposed to be.

Mr. Weaver said he would take it to the registry to get it recorded and asked if they would notify the Town.

Mr. Pimental said yes.

Mrs. Bumford asked once that's changed if they would have to notify their lien holder-because the information they have is correct.

Mr. Pimental said they don't have to do anything. He asked the board if they need to add anything and he didn't think so if the one that's changing doesn't have a mortgage on it.

Mr. King said if their deed matches this line then there's no change

Mr. Pelkey said if their deed matches that line and there's no issue with the mortgage.

Mr. Henry asked if they typically confirm that there's no lien holder.

Mr. Pelkey said they have for other applications in the past.

Mr. Henry said he wanted it to be a condition that they confirm there are no lien holders.

Mr. Pelkey said they know there is one on one of the parcels.

Mr. Henry said that's correct but that person isn't being changed from what the lien is on. He said as a matter of practice they need to confirm there are no lien holders.

Mr. Pelkey said he thought it should be a condition of approval for Lot 113 and asked how they would prove that and if there is any legal way to check that.

Mr. Henry said it would be on file with the Registry of Deeds.

Mr. Pelkey then said the Town Clerk/Tax Collector would know too and it's part of when they issue the tax letters so they know who all the lien holders are.

Mr. Pimental read aloud what they added to the merger application a couple of years ago as follows: "Per RSA 674:39a (2) if there is any mortgage on any of the lots the applicant shall give written notice to each mortgage holder at the time of the submission of the application. The written consent of each mortgage holder shall be required as a condition of approval of the merger and shall be recorded with the notice of the merger. Upon recordation of the notice and each consent of the mortgage(s) shall be deemed by operation of law to apply to all lots in the merger and the municipality shall not be liable for any deficiency in the notice to the mortgage holders."

Mr. King said they need something similar or exactly the same for lot line adjustments.

Mr. Pelkey said he thought it should be a condition that when the paperwork gets filed to

upgrade the deed it needs to be filed with the written acknowledgement from the lien holder.

Mr. Henry said if there is no lien holder there is nobody to notify.

Mr. King said in the past they have accepted a letter from the applicant attesting that there is no mortgage.

Mr. Pimental said they can do that going forward but in terms of the RSA the applicant shall give written notice to each mortgage holder at the time of submission of the application.

Mr. King added and to receive consent.

Mr. Pimental said written consent of each mortgage holder shall be required as a condition of approval.

Mr. Pelkey said it sounds like that law was written for when there is a line affecting 2 different deeds not just one.

Mr. Pimental said that's correct because this is a merger.

Mr. Henry said he was not comfortable approving this without the condition of approval that says that we need to confirm that there is no lien holder because not that he thinks it is happening here but the potential for adding some sort of a hazard that devalues the property. Here we are adding land to the deed but there could be something about that land that could devalue the property he said.

Mr. Pelkey said he could see that if it went to the county to be registered and the county knows the law as much as they do and if they saw a lien holder on it when they went to file on the deed they would say "hey, wait a minute".

Mr. Henry asked if the county can kick it back after they approve it.

Mr. King said they can kick it back if they don't like the way the lines cross on the paper.

Mrs. Bumford said they are just trying to change the picture.

Mr. Pelkey said they get that they're just trying to make sure they cross all their T's. He said he has no issue with what they're asking for at all and they're just trying to make sure they get it right so they don't have to come back and notice all their neighbors, etc. again.

Mr. Pimental said he wanted to bring this to the Town Attorney for a legal opinion because the state statute treats lot line adjustments very differently than mergers and there is sort of a gap in the state's regulations in that the Planning Board's authority is only to review the configuration of the proposed new lots and they're not approving the lot moving until the conveyance actually happens at the Registry of Deeds.

He said all the board has authority to do is to make sure that they're in conformance with the land use regulations and any zoning. He said he doesn't know how making it a condition for a property owner with a lien showing that they do or don't have a lien fits into the Planning Board's authority with a lot line adjustment. I'm not positive on that so I want to get clarification before we change the application he said.

Mr. King gave the example of when his father couldn't do a lot line adjustment in Rochester because he had a home equity loan on the property and he couldn't get the loan company to

sign off on it and the Rochester Planning Board said they couldn't proceed without it so he ended up having to pay off the home equity line. He said they were probably doing that because if they approve it, go through the process and it gets there and it doesn't get recorded or it gets recorded and the lien holders didn't sign off on it then what happens. I think towns do it just to prevent problems for the applicants he said.

Mr. Pimental said he didn't disagree but wondered if that is more of an advisory to the applicant as opposed to a condition (of approval). He said in this particular case it's sort of a moot point because there's no lien holder on it and they are taking the applicant at his word. He said he would like clarification on if we can make that advisory or if the board has the authority to mandate it as part of the conditions of approval and he would follow up on it. There may be a reason we don't have it on the application for boundary line adjustments because of the board's limited authority on lot line adjustments by state statute he said.

Mr. Pelkey said in this case they could ask the applicant to provide a letter stating there is no mortgage on his property and that would be the condition he would use. He asked the board if anyone would have an issue with that as a condition.

Consensus of the board was they had no issue with that as a condition.

Mr. Pelkey then asked Mr. Weaver if he had a problem with that.

Mr. Weaver said he didn't think so but asked for clarification on if they were asking him to show something that says there is no mortgage or no home equity loan on his property.

Mr. Pelkey said he would be happy if he wrote a letter to the Town of Farmington that says "I, (property owner's name) own this piece of property and there is no mortgage or lien against the property" and sign it.

Mr. Pimental said he could send the letter to the Planning Dept. and he would be all set.

Mr. Pelkey said if Mr. Weaver was okay with that he would make it a condition of approval as long as the rest of the board was okay with it.

Mr. Weaver said that's fine. He said at the Registry of Deeds every time a mortgage gets changed they note that and they also have the one that says it been paid in full so he could print that out as well and send it along with the letter.

Mr. Pelkey said he was okay with him just attesting to it in writing and they would take him at his word. He added if he is not telling the truth they have it on paper and he can deal with it.

**Motion:** (Henry, second King) to approve this lot line adjustment with the condition that we receive from the applicant Ross Weaver a letter attesting that there are no lien holders on his property which is Tax Map U-10, Lot 113;

**Discussion:** Mr. Pelkey said the other 2 conditions in the staff recommendations are that a note be added to the Notice of Decision saying the approval doesn't effectuate the change in lot lines it constitutes recognition by the municipality that the configurations as proposed are in conformance with the land use regulations and that a request be made of the applicant upon recording the documents reflecting the conveyance with the Registry of Deeds submit a copy of

the transaction to the Planning and Community Development Dept. That is to let the Town know when to update the tax maps.

Mr. King said and to provide a copy of the recorded plan.

Mr. Weaver asked the Registry of Deeds would notify the Town when the documents have been filed with them.

Mr. Pimental said that Mr. Weaver would have to let the Town know and he could send him an e-mail to let him know it has been submitted and recorded.

Mr. Squires asked if they just said they can't make it a condition of approval and Mr. Henry motioned for it to be a condition.

Mr. Pimental said he is unsure they can make the letter a condition of approval.

Mr. Squires said so they are rolling the dice with it even though the RSA says they can't.

Mr. Pelkey said he didn't think Mr. Weaver sees this as a new burden and that's why he asked him if he was okay with it before he made it a condition otherwise if he wanted to argue about it they would have to have a different discussion. He said that the way he heard it when Mr. Pimental read the RSA was it said they are responsible to make sure all the land use rules were enforced correctly and one of them has to do with having a release from the lien holders.

Several members said that is for a merger.

Mr. Pimental said he thought it was fine for this because the applicant is okay with submitting a letter to us but he would want to get clarification before they change the application. He said he would make sure this is clarified by the next meeting and come prepared.

**Vote:** The motion passed 6-0.

Mr. Pelkey said the Planning Dept. will give Mr. Weaver with a copy of the Notice of Decision and that will tell him what he needs to do.

Mr. Pimental said they have a copy of the plan and as soon as they get the letter from Mr. Weaver at the next meeting he will have Chairman Pelkey sign the plan. He said he would then give Mr. Weaver a call and he can come pick it up and bring it to the registry.

**Public Hearings:**

**Public Hearing and Possible Vote on a Major Boundary Line Adjustment for Matthew York, Tax Map U-8, Lot 24 and Tax Map R-35, Lot 7.** The applicant is proposing to make a boundary line adjustment which will include the transfer of a total of 8.56 acres from Tax Map R-35, Lot 7 to Tax Map U-8, Lot 24. The properties are in the Suburban Residential Zoning District.

Berry Surveying Project Manager Joseph Berry said he was here with Matthew York who is the land owner of both parcels. He said Mr. York lives at 55 Paulson Road and the other tax map is R-35, Lot 7 which is vacant and used to be owned by Pike Industries.

Mr. Pelkey asked if that is the pit that recently closed.

Mr. Berry said yes across from the ball fields. He said what they are looking to do is a two step

process and the first step is a lot line revision to transfer 8.56 acres to his house lot making this lot a little over 3 acres to eventually subdivide it but they will get to that after. He said they did a full boundary survey, wetlands survey, topographic survey of the parcel and the wetlands shown are Class III wetlands in Farmington so only septic setbacks apply.

Mr. Berry said for this portion of the project Mr. York wants to make his house lot a little over 10 acres and keep the other land for future development. He said the existing boundary lines for the house lot are going away and pointed out on the map where new lines are going.

Mr. Henry asked if the Utah shaped lot does not exist now.

Mr. Berry said no and it is part of the big lot and it goes all the way around his house lot.

Mr. Pelkey read that the staff recommendation on completeness is that the board vote to accept the application as complete. He asked if anyone had any questions on the application.

Mr. King asked if there is a mortgage on either parcel.

Mr. York said there is a mortgage on the house lot but not on the pit.

Mr. King said that is a change in the collateral that is increasing it and it should be signed off by the mortgage holder.

Mr. York said they are willing to provide that.

Mr. Henry asked if the pit was properly reclaimed.

Mr. Pelkey said it was inspected and that it came before the board about 5-6 months ago.

Mr. Squires said they voted that it was (properly reclaimed).

**Motion:** (Pelkey, second King) to accept the application as substantially complete passed 6-0.

**Motion:** (Pelkey, second Henry) to determine that this is not a development of regional impact passed 6-0.

Chairman Pelkey opened the hearing for public comment at 6:35 p.m.

Mr. Pimental said the board can add as a condition of approval a letter of consent by the lien holder (on the house parcel).

Mr. Squires said the guy that owned the property prior to this they asked for a letter just stating he owned it and asked if they are asking for that for the part that he owns and an agreement from the lien holder for the other parcel.

Mr. Pelkey said that would be reasonable and in the future it should be part of the application so they don't have to muddle through it.

Mr. Pimental said the staff felt that technically this wasn't necessarily creating a new buildable lot but because there was going to be a subsequent subdivision right after this that it made sense to put them together as 2 public hearings. He said there was already a public hearing for the subdivision and it was a little cleaner to do it that way.

He said some of the things normally required for this they are pushing off to the subdivision part of it. All other land use regulations have been met he said.

Mr. Henry asked what happens if they don't approve the subdivision.

Mr. Pimental said for this example a state subdivision approval would be needed because they



are creating a lot that's less than 5 acres but instead of requiring it here they would require it during the subdivision process.

Mr. Henry said but they are not doing a subdivision here.

Mr. King said it's not creating a lot it's reducing a lot.

Mr. Berry said to less than 5 acres which technically would have to have the NH Dept. of Environmental Services' approval.

Mr. Henry asked if in the lot line adjustment they were creating this lot.

Mr. Pimental said yes- which is less than 5 acres.

Mr. Henry said they are not really creating a lot.

Mr. Pelkey said they are not creating a lot they are transferring land from that lot to the adjacent lot.

Mr. Henry said there are 2 lots now and there will be 2 lots when they finish this application.

Mr. Pimental said whether that's applicable or not it will be during the subdivision process.

Mr. Henry said if they were going to put something off he wanted to make sure they address anything they need to hear in the event the subdivision isn't approved.

Mr. Pimental said the staff doesn't know that the lot line adjustment was rendering the property to be less than 5 acres.

Mr. King said but it's not below what is required in the zone so he's not reducing it below our regulations.

Mr. Pimental said it's below the state regulations and that would be handled during the subdivision process.

Mr. Pelkey asked for the reason for the 5 acre threshold.

Mr. Pimental said it has to do with septic systems and the sub-surface rule.

Mr. Berry said the state came up sub-surface rules and for the worst conditions soils a 5 acre lot can hold the minimum size 4-bedroom home.

Mr. King said you're allowed to do subdivisions without state subdivision approval if they're 5 acres or larger.

Mr. Berry said they don't want a bunch of lots under 5 acres and people want to put a 6-bedroom home on it and it can't hold the septic system. He said the lot line revision to the state is still kind of a gray area and some towns don't require it and some do and some people at the state think you do and some don't and they're going to take care of everything in the subdivision portion.

Mr. Pimental said lot line revisions fall a little bit into no man's land with the state. He said they see it as essentially under the same rules as a subdivision and because this was a major (boundary line adjustment) that's why that gets triggered and why the staff thought this would potentially need state subdivision approval if they were just doing the amendment because it is creating a lot that is buildable.

Mr. Henry asked if this is a buildable lot as it exists now.

Mr. Pimental said yes.

Mr. Henry said so they are not creating a buildable lot.

Mr. Pimental said not technically but because this is going to be subdivided right after and the public hearing was already going to take place it was easier for them to group them together and not do separate noticing that would save the applicant on the abutters cost because they just bundled it into one letter. We were trying to simplify and save some money for the applicant by bundling this under 2 hearings but under one notice he said.

Mr. King said the wording for minor versus major could use some work.

Mr. Pimental said the state is the one that determines a buildable lot not the Town.

Mr. King said he meant what the threshold is for major or minor and in essence they treat them the same.

Mr. Pimental said they treat them differently in that a minor is no public hearing which is why Mr. Weaver did not have a public hearing and it was at the top of the agenda. He said the major's have a public hearing, it has to be noticed in the newspaper, etc. and the minor's don't. Mr. Pelkey said for conditions of approval they are going to ask for Tax Map R-35, Lot 7 which doesn't have a lien on it they will need a letter from the land owner attesting to that and for Tax Map U-8, Lot 24 they will want the lien holder's consent in writing.

He said the other 2 conditions (recommended by the staff) include adding a note to the Notice of Decision stating that this approval in and of itself does not effectuate a change in the lot line locations and that such approval merely constitutes recognition by the municipality that the lot configurations as proposed are in conformance with local land use regulations or are otherwise accepted with non-conformances (no non-conformances are being accepted with this one).

He said the second staff recommended condition was to request that the applicant upon receiving the documents reflecting the lot line revision between Tax Map R-35, Lot 7 and Tax Map U-8, Lot 24 with the Registry of Deeds submit a copy of the transaction to the Planning and Community Development Dept. The Planning Dept. recommends that the Planning Board vote to approve the boundary line adjustment with those conditions.

**Motion:** So moved by Mr. Pelkey and seconded by Mr. Squires.

**Vote:** The motion passed 6-0.

Mr. Pelkey closed the public hearing on this matter at 6:46 p.m.

**Public Hearing and Possible Vote on a Minor Subdivision for Matthew York Tax Map R-35, Lot 7. The applicant is proposing a 2 lot minor subdivision that will provide access from a shared driveway at an existing gravel entrance off Paulson Road. The proposed subdivision is in the Suburban Residential Zoning District and will be served by municipal water with on-site septic.**

Mr. Berry said they are taking their newly created 3.16 acres lot and cut it roughly in half so that one lot (Lot 7) will be 1.73 acres and the other lot (Lot 7-1) will be 1.43 acres. He said per the Town regulations sheet 1 of the plan set is the existing conditions what just took place so this is

the current configuration of the lot they're working on. He said they show all the topography with the steep slopes, the test pits and all the wetlands they discussed.

He said Lot 7 will have 200 ft. of frontage and Lot 7-1 will have 248 ft. of frontage and they both are going to take their driveway access from the existing gravel roadway and they are doing this due to a steep slope in this area. He pointed out a hashed area on the map and said this area is the 25% or greater steep slopes so it would be a place to get a driveway through and they looked at grading a driveway in there but it would be too steep or you would have to back down the hill which wouldn't make sense for a delivery truck or a fire truck so they felt using the existing gravel road for the driveway was the best bet to stay away from the steep slopes.

Mr. Pelkey asked if there was an ability to put in a separate driveway for that lot in the future if that was deemed necessary.

Mr. Berry said in the future someone could work on getting a driveway in there but it would cost a lot to construct and they would have to configure their house location in the right manner but it could be done. He said the road goes up into a little depression, goes up again and then drops down to an 18%-20% slope he pointed to on the map.

He said with the easement this lot would have granted rights to use that for access and utilities which are shown on sheet 4.

Mr. Pelkey asked who would be responsible for the maintenance of the driveway.

Mr. Berry said they would have a shared maintenance agreement which would be recorded along with the transfer of the easement.

He said they did a test pit on each of the lots in the 4k areas and each lot can support a septic system. He said there is municipal water along the roadway they are proposing to tie into so each lot would have municipal water and a utility easement would branch off each house.

He said both lots meet state requirements for lot loading and they will apply for that once they get approval here but each lot can sustain a 4-bedroom home which is the state minimum.

Mr. Berry said sheet 4 is blow-up of the access/easement area and pointed out where the existing gravel road enters the pit and how it would turn into a driveway and fork off to each house location and the steep slope where they are trying to avoid putting the driveway.

He said they are asking for a waiver from the Subdivision Regulations Section 9.I. (4) c which requires a NH DES subsurface disposal permit before the board can grant final approval. He said they are asking for a waiver to that because they already proved that each lot is buildable and any small change from a septic plan requires a new approval from the state so if they show a leach field here and the buyer wants to move it 2 ft. they have to go through the whole permitting process again. It's just an extra step that doesn't make sense because both lots are buildable and the state will have to approve each lot for subdivision anyway he said.

Mr. Pimental clarified that the applicants would like to push that off to the issuance of a building permit as opposed to as a condition prior to the signing of the plans which this board has discussed before.

Mr. Henry asked what if the land isn't capable of supporting a septic system and they have approved the creation of the lots.

Mr. Pimental said then they wouldn't get approval from the state.

Mr. Henry then said so they've created an unbuildable lot.

Mr. Berry said if it was never finalized then you don't create the lot.

Mr. King said they create it once they approve the subdivision because once they approve it, and they have granted this waiver in the past, it's a subdivision even if he can't build on it. He said they dug test pits to show that they could build on it so they got it to test pit data which is the field it would be designed around and the soil type of the test pit determines the septic system that can be set up on it.

Mr. Pelkey said they didn't want to get tied down to a septic design in a specific location.

Mr. King said they proved to the minimum level that it can be sited based upon the test pits.

Mr. Henry said there may be only one place it could be put but there is at least one spot.

Mr. Berry said a residential leach field a 4,000 sq. ft. so they do have some wiggle room on this lot for where they can put it but at the very least it can go where the 2 test pits are.

**Motion:** (Pelkey, second Henry) to accept the application as substantially complete;

Mr. Pimental asked Mr. Pelkey to read aloud the summary of the application and he did so as stated in the notice of the public hearing shown above.

**Vote:** The motion passed 6-0.

**Motion:** (Pelkey, second Henry) that they do not consider this a development of regional impact passed 6-0.

Mr. Pimental said the applicant submitted their plan, they got their comments back to them and they incorporated all of the staff comments on the plan. He said the only thing he would add that came from the Water Dept. was to indicate the location of the shut off valve at the proposed water line split.

Mr. King asked if the location of the shut off would be determined by the Water Dept. not the applicant though he could propose one.

Mr. Pimental said they want to see where the location of the Y-split and the general location of the shut off valve so if they have to shut off the water for one property.

Mr. King asked if the location shown on the plan would be okay with the Water Dept.

Mr. Pelkey asked whose responsibility it would be to make sure that thing is clear and noted that it's not on Town property.

Mr. King said that typically the shut-offs are within the Town's right-of-way.

Mr. Berry said they show a curb stop on the plan that would tie into the water line and would shut off the water completely and where the water line forks off each house would have its own shut off as well.

Mr. Pelkey asked if those shut offs would be within the easement as well.

Mr. Pimental said yes.

Mr. Henry asked if house 1 didn't pay their water bill house 2 loses their water too.

Mr. Pelkey said that is a good question.

Mr. Pimental said that was why the Water Dept. wanted to know so if for some reason if they had to shut off one house it wouldn't shut them both off.

Mr. King asked if the Water Dept. is named in the maintenance easement that they have access to get to those shut offs.

Mr. Berry said they could make it that way.

Mr. King said it would need to be because one of the future landowners could say they don't have permission to be here. He said if they are planning to go up there to shut off one house if there's an issue they should be named in the easement.

Mr. Pimental said he agreed and one of the conditions is the Planning Dept. and the Town's legal counsel will review and approve the access and utility easement language prior to the Chair signing the plans. He advised Mr. Berry to add something in there that talks about the Town having access for the specific purpose of shutting off the water if necessary.

Mr. Day asked why they wouldn't just put 2 T's in the main off of Paulson Road, one for each property.

Mr. Henry said that would be that much more water lines as there would be 2 lines for the 2 properties.

Mr. Berry said that would be a lot more expensive.

Mr. Day said he would have to T off the main and T off the main running up to the houses and asked about water capacity.

Mr. Berry said the Water Dept. recommended running a 1" main up to the Y and then ¾" line up to each house. He said on the first draft it showed 2 lines but then they came back and asked for this.

Mr. Pelkey asked who is providing the shut off valves.

Mr. King said the Town provided the one at the street.

Mr. Squires said the building contractor would provide them.

Mr. Pelkey asked how they would know if they would conform to the tooling the Water Dept. has to use to shut them off with.

Mr. King said if they approve this they need to have this or two on the street because there may be some thinking by the Water Dept. or they change their minds and they don't want to have to come back here.

Mr. Pelkey said he would be wondering which one would cost him more- a water shut-off valve or an extra how many feet of line.

Mr. Henry said this was outside the scope of his expertise but the water shut off needs to be addressed one way or another.

Mr. King said it just has to be in agreement with the Water Dept.

Mr. Henry said he was comfortable with that.

Mr. Pelkey said he gets "twitchy" any time he sees a shared driveway, a shared water access or shared anything because in theory it works great until 2 property owners decide they don't get along anymore and then they come to us and say they have a problem and need to change this. He then opened the hearing to public comment at 7 p.m.

Mr. King asked if the applicant's engineer ever addressed the contiguous upland requirements of these lots.

Mr. Pimental said the reason that they didn't is what is written in the Town Zoning about contiguous area is if a lot of residential development is to occur that does not have access to municipal water or wastewater it must contain the specified contiguous area but because this is connected to water it's not a requirement.

Mr. King said there is a little spot right in the middle of the site plan that says poorly drained wetlands and they determined that to be a perched wetland and when they excavated that it opened up like a spring and it was running down through that site right out through that driveway. He said maybe it stopped but his concern was has it been addressed on the water coming off that area which running right down to where this driveway is. He asked what it really looks like on the ground and if the water has dissipated and is not running down towards this corner of the lot. He said the area was not to be mined because it was a perched wetland but when they did mine it, it sprung a leak.

Mr. Berry said when he was out there this was kind of in a bowl itself with uphill on either side of it. He said this doesn't look like that area and pointed out the area that was mined and the area that has full grown vegetation around it. He said when he was out there, there was no water rushing out of here.

Mr. King said it was outside of the untouched area and it was coming right out of the ground adjacent to it. He said it was close to the perched wetland and it was coming up profusely and he didn't know if that has subsided and the water flow was coming down to where the "V" is. He asked what the area where the common development is really looks like just above where the driveway splits. He then asked what's the watershed coming right down to corner diagonal to where the driveway splits from that perched wetland and if there is a lot of water that has to be dealt with.

Mr. Berry said the times that he has been out there, there has been no water coming in this direction. He said there is a little bit of water in another wetland but there was no rushing water and when they did test pits here there was no ground water seeping into the hole.

Mr. Squires said it looks like they did their test pits in September according to the drawing.

Mr. King asked if they don't see any significant drainage issues on this shared driveway.

Mr. Berry said no.

Mr. King asked if all the areas that are shaded on the map are wetlands or steep slopes.

Mr. Berry said the shaded areas are steep slopes that are 25% or greater. He said a lot of them were manmade but per code enforcement they still have to disclose it.

Chairman Pelkey closed the public hearing on this matter at 7:05 p.m.

He asked the board to take up the waiver request and read the applicant is requesting relief from Section 9.I. (4) c of the Subdivision Regulations requesting that a NH DES subsurface disposal permit be obtained prior to the issuance of a building permit instead of at the time of plan signing. He said they explained the purpose for that to them and made the following motion:

**Motion:** (Pelkey, second Day) to approve the waiver passed 6-0.

Mr. Pelkey asked for the list of staff recommended conditions of approval and if they added anything.

Mr. Pimental said the staff recommended conditions of approval are on page 4 of the staff memo. He said right now #1 f says they will review and approve the access and utility easement and asked if the board wanted to make an amendment to that to say specifically that will also include Town access to that. He said he was asking where they landed on the shut off piece because that is going to dictate whether or not they need to add that language in there.

He said in talking with the Water Dept. they said in an ideal world they would have 2 lines but if the applicant is proposing this they were okay with the 1 inch and then  $\frac{3}{4}$  inch to each house so long as it was in the easement. They said they would rather see 2 but if they were going to go with one that was what they wanted to see he said.

Mr. Pelkey said the proposal before them just has one and that is what they're going to be approving.

Mr. Henry said his condition of approval would be something that is satisfactory to the Water Dept.

Mr. Pelkey said the easement language needs to say that Town Water Dept. can access it.

Mr. King said the applicant could change his mind, the Water Dept. could have a change of heart or a prospective buyer could say I don't want that I want my own water shut off.

Mr. Pelkey asked what the easement language would be because they have to record this before they put in.

Mr. King said if there is an additional shut off along the driveway the Town is granted access to shut off the water.

Mr. Pelkey asked if they could put language saying "if there is" in the deed.

Mr. Pimental said the utility easement is not going to be recorded until the very end and would be a condition until the Certificate of Occupancy is issued so they want to review that here but it won't actually be recorded until the CO so that could change.

Mr. King said it needs to say if there are additional shut offs that are inside the property that the Water Dept. is granted access to shut off the water if required. He said if they change it so it is not there then they don't have permission to come on the property.

Mr. Henry said it is actually attached to the building permit.

Mr. King said the recording of the easement is part of the approved subdivision and is approved

by Town counsel.

Mr. Henry said it's when they start building that's going to trigger the water line.

Mr. King said that's right but the easement is going to be recorded with the subdivision.

Mr. Henry said he thought the easement was recorded at the CO which is post the building permit.

Mr. Pimental said that's how we have it right now.

Mr. Berry said you can't grant an easement to yourself so if he owns both lots jointly he can't grant himself that easement.

Mr. Pelkey said if he conveys the lot to somebody else he will have to put the easement in there.

Mr. King said if it's a condition of approval he needs to provide access to that easement if there is a shut off then we're covered.

Mr. Pimental said then question becomes if they are going to require them to show the approx. location of the second shut off valve at the split or leave it as whatever they decided so long as it's in the easement language that the Town has access.

Mr. King said he didn't want to require it because this plan could change totally. He said if somebody wants to buy this but says they don't like this and they want their own driveway or they want it here or they hit ledge it could be totally different than this.

Mr. Pimental said he was just passing along what was relayed from the Water Dept. but the easement language allowing access to the Town covers if there is a shut off valve that goes beyond into the property not just the one along Paulson Road.

Mr. Pelkey said that is covered by his wording concerning the review of the easement language by him and legal.

Mr. Pimental said yes and that will also include all of the responsibilities of maintenance and everything else would go into that easement language.

Mr. Pelkey asked the board to take a run-down of the conditions the staff recommended which are as follows:

#1. Conditions to be met prior to the signing of plans:

- a). The board acknowledges the application is established on Tax Map R-35, Lot 7 which completed a minor lot line adjustment with Tax Map U-8, Lot 24 that has yet to be recorded.
- b). Provide a copy of recording documentation reflecting the lot line revision between Tax Map R-35, Lot 7 and Tax Map U-8, Lot 24 has been recorded with the Registry of Deeds.
- c). Provide copies of the final plan set with a stamp and signature of the LLS and CWS for recording at the Strafford County Registry of Deeds with appropriate fees with separate fee for Land Conservation Historic Investment Program.
- d). The applicant shall provide a NH DES subdivision permit.
- e). Submit a certificate of monumentation form ensuring all monumentation referenced on the subdivision plan have been accurately installed.
- f). The Planning Director in consultation with the Town's legal counsel reviews and approves the



access and utility easement.

g). Revise the plat as detailed in minutes and this report:

i). The applicant shall add a note stating which waivers were approved and the date of approval

~~ii). The applicant shall make the following revisions to the plat sheets:~~

~~1). Indicate location of shut off valve at proposed water line split.~~

Mr. Pimental said that one could be removed and Mr. Pelkey said they would take that one out.

#2. Conditions to be met prior to the issuance of a building permit:

a). The applicant shall provide an approved driveway permit.

b). The applicant shall provide a NH DES subsurface disposal permit.

c). Schedule a Dig Safe visit from the Water/Sewer Dept. to mark location of the existing water line and any other utilities in the area.

d). Obtain a water service connection permit for each lot.

#3. Conditions to be met prior to the issuance of a certificate of occupancy:

a). The access and utility easement shall be recorded.

Mr. Pelkey asked if they wanted the final location of the shut off valve recorded as well.

Consensus of the board was not to require the final location of the shut off valve to be recorded.

Mr. Pelkey then asked if anyone had anything else to add to the Planner's conditions.

Mr. King asked what happens when the applicant has a buyer that says they want to buy that lot but they don't want to use a shared driveway.

Mr. Henry said they aren't approving the driveway.

Mr. King said if they approve it that's the access he's been granted by easement.

Mr. Pelkey said it would seem that he would be able to come back and try to get a driveway permit for his lot.

Mr. Squires said it is a condition to his building permit for this.

Mr. King said they have made this requirement for access management and have done this in the past to limit curb cuts. He said they are not asking this the applicant is proposing this but depending on the potential buyers... He said he was not in favor of this configuration because he thinks it will be problematic but the buyers aren't there and asked if there is a buyer if they need to address that under the conditions of approval that if in the future that this lot that doesn't have any access on their frontage has the ability to take access as part of his approval and only has to meet the threshold for a driveway permit with the Town.

Mr. Pelkey asked if that is a statement they could make on the approval saying that the Planning Board after reviewing it...

Mr. King said if this is approved and he wants his own driveway they have to come back here.

Mr. Pimental asked if they could add that as a note to the plan.

Mr. Pelkey said he thought they can do that and that it was a good idea.

Mr. Pimental said it could simply say that if the applicant decides to move forward with 2

separate driveways that all they would be required to do for the second curb cut would only be to get a local driveway permit as opposed to coming back for an amended subdivision plan.

Mr. Pelkey clarified for Tax Map R-35, Lot 7-1.

Mr. Henry said they may not be this applicant.

Mr. Pelkey said he may sell it to somebody else but the approval will go with the land and that he liked the idea of saying that we approve the possibility if the owners of Lot 7-1 determine that they wish to have their own individual driveway that they may have one as long as they get a driveway permit.

Mr. Henry asked if they would be creating a situation that the lot with the driveway is developed first the easement is recorded and somebody buys the other lot and says I'm doing my own driveway but he still has the easement across from the other lot.

Mr. Pelkey said the shut off for the water would be there too.

Mr. Henry gave the example of the owner of the 2<sup>nd</sup> lot telling the owner of the first lot he can't put his shed there because that is his easement and he doesn't like his roosters crowing in the morning and he is going to be a jerk so he can't do that even though he doesn't need that easement.

Mr. Pelkey said it could become problematic in the future.

Mr. Fisher asked if they could put in wording to the effect that he may want to build his own driveway then the prior easement granted would be null and void.

Mr. King said no because the easement is for the utilities.

Mr. Pimental said they are getting into the weeds of what happens with future buyers and he knows that could be problematic for the board but the Town allows for shared driveways and the applicant has made a case as to why a shared driveway makes sense. He said the board should approve this the way it is laid out and if things change down the line then the applicant may have to come back and address it at that time and he didn't know if there is any other way around it.

Mr. Henry asked if the buyer of the smaller lot wants their own driveway why that would have to come before the board.

Mr. King said because that is their approved access.

Mr. Henry asked if they approve the access on subdivisions.

Mr. King said the rough access point and this has been the past practice.

Mr. Pimental said it is within the rules and with the justification of the steep slopes they've made a good case as to why the shared driveway makes sense for this. He agreed this does create ownership problems down the line but that's a problem they'll have to deal with at that time and it's not within the board's authority to try to micro-manage it.

Mr. Henry said he agreed but if they propose a driveway location for this other lot that would avoid having to come back if the buyer decides (they want their own driveway).

Mr. Pimental said he thought they would have to come back because their access is from the

other lot and the utilities for that lot are there and they're approving that so if the buyer wants to do something entirely different then...

Mr. Henry said they could approve 2 accesses.

Mr. Day said they don't know if a buyer comes in and buys both those properties and says he is not putting a house over there and I'm just going to put a house here and I don't care about that over there. We can't forecast the future he said.

Mr. King said their other option is after the subdivision they could go to the Zoning Board of Adjustment and say we did this but what we want to do is reduce the frontage of this lot so they could take access off 2 separate driveways because it makes that little triangle of land useless. He said the frontage there is 200' and it requires 150' and the driveway is in the middle of that width so if they held to 150' they could put 2 driveways side by side on the property but that would take some excavation of the slope but this is what they applied with.

Mr. Pelkey asked Mr. Pimental read back the conditions of approval and that he thought they got them all.

Mr. Pimental said all of them were covered and they weren't adding anything other than taking off the indication of where the shut off valve is at the proposed water line split.

Mr. Pelkey said and to add the wording for Town access to the easement for the review.

Mr. Pimental said under #1 f with the review and approval of the access and utility easement he would say to ensure that also adds language about Town access. He said that he and Town's legal counsel will review that and work with the applicant to make sure the language is sufficient to protect the applicant and the Town as best they can with having those easements as clearly defined as they can.

**Motion:** (Pelkey, second Day) to conditionally approve the application with the conditions they've gone through passed 4-2 (Pelkey, Fisher, Henry, Day-aye; King, Squires-opposed).

#### **Any Other Business before the Board:**

**March Board Meeting-**Mr. Pimental said they discussed at the last meeting that the March 15 meeting is the same night as Town Meeting and that they would discuss whether or not to move that based on applications received and they do need to move that. He said he would appreciate it if they could move it up to March 8 and that means they would have 2 weeks of back to back meetings one on Wed., March 1 and one on Wed., March 8.

He said the agenda for the March 1 meeting is very light and would only be the draft Request for Proposals for the old fire station lot. He said if the board wanted to hold off on that and cancel the March 1 meeting, hold the March 8 meeting and do it all during that meeting he is also open to that as well.

Mr. Squires asked if he would still want to do a second meeting that month.

Mr. Pimental said no and he wanted to make sure that the applications that have been submitted that were going to be on the 15<sup>th</sup> were heard. He said they weren't going to hear anything on the 1<sup>st</sup> and the agenda would be to review the minutes and the draft RFP. He said

he wanted to give the board time to review the RFP and not have it be rushed and he was okay with it if they just want to have one meeting on the 8<sup>th</sup> and the agenda would be the RFP and several public hearings.

Mr. Squires asked for the number and type of hearings.

Mr. Pimental said there would be a major site plan review for the Dana's Collision expansion, a "unique" lot line adjustment and there may be one more.

**Motion:** (Pelkey, second Henry) to combine the meetings from March 1 and March 15 to March 8 passed 6-0.

**NH Business and Economic Affairs** -Mr. Pimental said the board received copies of the flyer he received the other day (for a presentation on affordable housing and broadband expansion at the Dover Police Dept from 9:30-10:30 a.m. on Feb. 21) and they were asked to share it with their Planning Boards and their Boards of Selectmen and it was something for them to consider.

**Water Dept. Award**- Mr. Pimental said this will probably be discussed more in the coming weeks but he wanted to congratulate the Water Dept. on winning a pretty significant national award for water taste and they received third place in the entire country. He said staff went down to Washington, D.C. and it was pretty cool to see and it's a pretty cool award.

**Adjournment:**

**Motion:** (Squires, second Day) to adjourn the meeting passed 6-0 at 7:29 p.m.

Kathleen Magoon  
Recording Secretary

  
Richard "Rick" Pelkey, Chairman