

MINUTES
PLANNING BOARD
April 17, 2024, 7:00pm
In-person/Zoom

Present: Co-Chair Josh Muhonen-in person, Shawn Talbot (Ex-Officio)-in person, Bruce Ruotsala- via zoom, Nichole Talbot-in person, Craig Smeeth- in person, Graham Heagy-in person, Lou Guarino- in person, John Schaumlöffel-in person, Jennifer Minckler- in person.

Citizens in attendance – Chuck Ritchie- Fieldstone Land Consultants, PLLC- Engineer for the applicant of Brook Haven Farm, LLC, Christine Robidoux-Planning Board Chair, Town of Temple-in person, Ashley Saari-Reporter of the Monadnock Ledger-via Zoom, David Somero-in person, Emily Krook-in person, Ben Krook-in person, Robert Fournier-in person, Liz Freeman- in person, Mike Maki -in person, Jenny Williams-in person . Patricia Chalke-in person, Bert Hamill, Planning Board Engineer-in person.

Open meeting with the pledge of allegiance.

Roll Call taken by Co-Chair Josh.

Selectmen's Report & Chairman/Land Use Report: The Land Use Clerk reported that Lou Guarino has submitted a subdivision application which will be heard on June 5, 2024. The Land Use Clerk advised the board of the training taken on working through subdivision and site plan approvals, which was highly informative. Two points from the training were that in being a good board member is not to abstain. Also, when conditions precedent has been met the final approval is granted and final plans can be signed. The Land Use Clerk will provide the link for the training to the board members.

Selectman Talbot advised the board that phase two has begun in contamination assessment of the old town garage. There is no timeline of when the work will be completed, which began yesterday. It is hoped that the reports will be provided within a couple of months to find out if remediation is needed or not. This has been paid through a state grant, at no cost to the taxpayer yet. If the land is contaminated, the town needs to resolve that prior to selling or deciding what to do with the property. A community center is one option being explored. Lou asked if there are houses with residential drinking water that may be contaminated. Selectman Talbot advised that Furnace Brook is there, but he does not want to discuss it as this is still in the fact-finding stages. The town is to take responsibility for remediation if needed. Future grants will be looked at if it is found that there are contaminants.

7:10: Public Hearing for Abandoned Excavations per 155-E:2, II- Nathaniel E. Tuttle Ashburnham Road, Map13 Lot 29 continuation from 9/20/2023,12/6/2023, 2/7/2024 and 4/3/2024.

Patricia Chalke provided plans for reclamation for the gravel pit. Josh asked Patricia to provide an overview. Patricia explained that the plan reflects both lots as they opened at the same time. There were two seven acre lots and across the street is the gravel pit lot that is 10 acres. The other lots require some type of reclamation as it is all sand, so that also needs to

be addressed. The second page reflects guidelines to follow. Josh asked what the timeline is. She advised that she has spoken with Nathaniel Tuttle and there is to be no more excavation. He is no longer in that business anymore. She does not object to changing the land from a pit to just land. The plan is to have clean up done by 8/1/2024. They have a company that will work with Nathaniel and by August or September 1, 2024, clean-up will be done. She stated not all the reclamation will be finished but if it is more of a house lot look, the loam will be down and seeded.

Josh advised that we are looking for the cleanup and reclamation on it. Patricia stated that it has been inspected. Josh confirms that it is a gravel pit, and it is not an active gravel pit and is being used for storage which is against the regulations.

Patricia advised that there is an expense and if they had the money they would pay the back taxes. Josh advised the cleanup needs to be done and if done by August 1, 2024, that would be a good date to inspect and to proceed with a reclamation plan. John questioned if the cleanup is under the purview of the Selectmen. Selectman Talbot advised this is clearly an abandoned gravel pit but with a lot of truckloads of trash. Patricia said it was from a house that burned.

Josh advised there is a way to get the gravel pit out of a gravel pit designation and the way to take it out of being a gravel pit is to determine it is abandoned as it meets that criterion. Patricia said she may hand it over to her daughter and get the taxes paid. She does not know if the property is landlocked, but she does not believe that to be true.

Selectman Talbot stated that with the abandoned pit designation, the town and the code enforcement can compel the cleanup and then there is a lien put on the property and other steps. The Planning Board is trying to simplify the process and not complicate it and get it to the point of reclamation and being a good piece of property again.

John suggested continuing to a date certain then at that time determine whether or not it has been cleaned up, as a first step. Selectman Talbot advised it needs to be cleaned and reclaimed and you cannot simply put a house up on it as suggested at the prior meeting.

Josh asked if there was any public comment. There was none. John asked the applicant what date is good for getting it cleaned up. Patricia advised September 1, 2024.

John made a motion to continue the hearing to a date certain September 4, 2024. Craig seconded the motion. Selectman Talbot made an amendment to include the time. Time of hearing to be 7:15pm. Motion to continue the hearing to a date certain September 4, 2024, at 7:15pm. Roll call vote. Motion carries.

Patricia will give the board a courtesy call when the cleanup begins.

7:30: Public Hearing- Brook Haven Farm LLC, 33 lot cluster subdivision Map 6/20 & 6/20-9, Appleton & Maki Road continued from 12/20/2024, 1/17/2024, 2/8/2024, 02/21/2024, 3/6/2024

Chuck Ritchie, Engineer of Fieldstone Land Consultants, PLLC representing Brook Haven Farm, LLC provided background as it has been a month since he has come before the board. This is for a 33-lot subdivision originally proposed. Input was needed from the Town of Temple NH and SWRPC which was received. At the last meeting, the checklist items were discussed and determined that the yield plan needed to be revised, which was done and submitted to the Planning Board two weeks ago, after a meeting with H-Star Engineering. Improvements to the wetland impact were made on the revised plan. The purpose of a yield plan is to determine density of the proposed subdivision. Chuck asked to run through H-Star comments and how Fieldstone addressed it.

Chuck advised the following:

- that the first major change was the entrance from Appleton Road to the south which required a new wetland crossing and it was revised to frontage on existing lot 6/20-9 which has an existing gravel crossing but will require a wetland permit update.
- In the meeting with H-Star engineering, an agreement was made that the site will only support 29 lots with proper changes to the plan
- Condition of the entitlement area- the State DES Dam Bureau has rights to an elevation of 1074 feet. Chuck showed the easement for flooding on the plan. This is on Appleton Road near Furnace Brook flood zone area. Chuck advised that it is not impacting any of the lots on the cluster or yield plan.
- The other comment from H-Star of the review was wetland impact. The entrance was addressed. The secondary impact is on Maki Road which is a safety issue for fire in creating a loop. There are two additional crossings for the through road to the south which the applicant owns under a different entity. If the board requires a letter, one will be provided saying that they are happy with the through road. The location for the crossing is designed to minimize impact to the wetlands and it is crossing to the narrowest section they can. It is feasible. The other wetland crossing would be the common drive to three lots that are oversized, and they support it. Wetland crossing is feasible for density.
- Steep Slopes was another concern. The gravel pit operation is well underway, and they are coming up to the limit of grading, which is changing as we speak. In particular there is a large band of steep slopes right at entrance to lots 23 through 28 and 29 which the Planning Board Engineer stated was inaccessible. Chuck advised that in reality the grading is all being pushed back per approved gravel pit grading. With the through road there is a section of steep slopes before the wet and there is a hill or knob of sandy area. Chuck explained that the contours are shown before the gravel pit operation got underway because that was the most up to date information at the time, rather than show what is proposed. These are a feasible way to get to the site by limiting the disturbance. Chuck said one of the comments was there is no development allowed with twenty-five percent slopes. Fieldstone looked at development as being houses, septic systems, drainage areas driveway, not access. The first crossing is

eighteen percent and the other one is right at twenty-five percent to twenty-six percent slope but feels it is a feasible design to access the three to five lots.

Liz Freeman asked if the plan for flowage was in the Dropbox and available seven days prior to this meeting. Chuck advised he did not submit it as it was only 1000 square feet of the elevation of 10,074 of the wetlands. Chuck showed the plan again, showing the dam highlighted in yellow and the area that Brook Haven is and stated it does not impact the subdivision.

John addressed Chuck by saying this is a cluster subdivision which needs to abide by the yield plan regulations and the zoning ordinance. Chuck confirmed this as correct and the density of the yield plan is determined by this yield plan. John read the cluster ordinance which state: Cluster residential developments for single family dwellings may be permitted in all districts providing the following conditions have been met. John read Condition B of the ordinance which states: for the purpose of land preservation a minimum of 55% of the total land tract shall be set aside as open space.

John asked Chuck how many acres and Chuck responded 110. John asked Chuck where there is roughly 67 to 65 acres of open space. Chuck responded that this is for the cluster design. As a checklist item to have the cluster accepted as complete, a yield plan had to be provided and the board approves the yield plan for density purposes. This is a conventional layout. Bert confirmed that a conventional layout does not require open space. Chuck advised that the proposed cluster does show the fifty-five percent. He stated that the number of units is down from 32 units to 29 units. The proposal is now 29 units.

John asked how many wetland crossings there are. Chuck advised the yield plan has four and the cluster proposes two, the first entrance and connection to Maki Way. John asked that the interior roads do not have wetland crossings. Chuck responded that is correct. Chuck advised there are four wetland crossings and showed them on the plan.

Liz asked if the spur road has a wetland crossing. Chuck showed on the plan where the four are located.

John asked Bert, the Planning Board Engineer what the N/A stands for on the plan he provided the Planning Board. Bert advised that they are not acceptable lots based on the plan submitted because there was not a copy of gravel removal plan, which is going to remove most of those steep slopes and basically the engineer submitted incomplete information. If those steep slopes are removed through the gravel operation then those lots become viable. Chuck stated lots 23 -28 will be 8% to 10% slopes. Bert stated that the heavy slopes will disappear with the gravel operation and then you can put in average roadway and average driveways. Bert said he did not have that information for review. Chuck said he provided to the Land Use Clerk a couple of weeks ago. Bert has not seen it and Josh said it was not attached to the yield plan.

Josh advised that continuing on to John's reading of the zoning ordinance for the yield plan you continue onto item D and read the following: *To determine the maximum number of buildable lots that can be created in a cluster subdivision, the applicant shall prepare a Yield Plan showing a feasible conventional subdivision plan of one family dwellings, consisting of conventional lot and street layouts, and which*

may be conceptual in nature and is not intended to involve significant engineering costs, but which would be reasonably capable of receiving subdivision approval in the opinion of the Planning Board. A conventional subdivision is a subdivision, other than a cluster subdivision, which could be created according to the provisions of the New Ipswich Zoning Ordinance. The number of lots shown on the Yield Plan is the maximum number of lots that can be allowed in the Cluster Subdivision. There was discussion on wetland crossings, the plans, and the assumption that the Board was getting into compliance items and the board should be determining completeness. Bert advised that the number of lots needs to be determined for completeness. Bert advised that if removing steep slopes from the site and the wetland crossings are effectively less than one percent of the site, they have met the criteria. Josh asked Bert if the steep slopes are eliminated then the 29 lots are viable.

Josh asked if there are any other concerns of the board. John questioned the checklist review and it was determined that the yield plan was last on the list. John asked about the board voting on waiver for the perk test and Chuck advised there is a waiver for completeness which was a perk test because the layout was still being figured out because lots may be being moved around. The test pits will be done as they are required. The other waiver for completeness is for road stations every one-hundred feet.

Liz asked if there will be public comment for completeness. Josh opened the hearing to public comment at 7:55 pm. Liz Freeman of Ashby Road spoke and provided documents which are below in the body of these minutes. Liz stated she thought Bob Boynton sent a map of the flowage for the earlier subdivision in process which Liz feels this conflicts with that. Liz provided the map and it is below in the body of these minutes. Liz advised that the flowage appears to affect lots 10, 11 and possibly 38, if you look at the bend on Appleton Road and you look at the map. Liz cannot vouch for the map but it did come from the Conservation Commission. Liz advised that it does raise concern of where the flowage easement is. Bert asked Chuck if the easement is based on elevation. Chuck confirmed. Bert advised he is not sure how Bob generated that map but Bert said Chuck generated elevations based on the same plan as the state, so there is an inconsistency. Liz advised that is up to the board to decide what is to be done about that.

The second point Liz made was that the subdivision had to show base flood elevation data to be shown and asked if that was on the yield plan. Chuck advised that the property is not located within a 100 year flood hazard area. Liz asked if it is on the yield plan. Chuck advised no. Liz stated that it should be on the yield plan. It needs to show a conventional subdivision. That is information you need to know whether that potential subdivision would be approved. Bert said that basically what Chuck is saying is that there is no flood elevation. Liz said that should be on the yield plan and if it is, the board's job is to look at the yield plan as a conventional subdivision. Bert advised that this is not really a conventional subdivision. It is a simulation of what could be built on the property. Liz stated that a yield plan showing a feasible, conventional subdivision plan, a conventional subdivision is a subdivision that could be created according to the provisions of the New Ipswich Zoning Ordinance. If the information is not on the yield plan or missing you cannot determine if it would be approved as a conventional subdivision.

Liz also stated that the yield plan indicates slopes over 15% but she advised slopes over 25% are also required. They may be eliminated but they need to be shown on the yield plan.

Liz mentioned the spur road (see notes below in the body of these minutes)

Liz discussed backroads (see notes below in the body of these minutes)

Liz mentioned lay out of lots (see notes below in the body of these minutes)

Liz mentioned Potential safety issue of Boynton Hill Road and Fish Road (see notes in the body of these minutes).

Liz also provided a lot by lot summary which is also in the body of these minutes.

Mike Maki read from the letter dated 4/16/2024 on the yield plan (see below in body of these minutes).

Josh closed public comment at 8:15pm.

Lou feels the letter from the Attorney representing Mike Maki could cause legal issues for the town. He advised that the attorney is not against this but the number of lots should be 19 not 29 lots.

Bert advised that a yield plan is a conceptual process rather than a rigorous application of the regulations. It is not going to be designed to be built and would require a more rigorous development of the conventional plan if the yield plan were actually used. It is designed to be a tool for the Planning Board to determine the number of lots this parcel will support and it is nothing more than that.

John commented that the difficulty he has with the plan is that the applicant has come before the board stating they want to do a cluster subdivision and presented a yield plan and each lot has significant square footage of steep slopes and wetlands. He does not feel that this meets the requirements of a cluster subdivision. John also feels based on the public comment of back lots, that they are not feasible. Chuck believes the comment was that the lots must be two acres excluding the roadway and steep slopes of some of the lots which are lot 24, 25 and 27. Those slopes will be pushed back as part of the current gravel operation. Chuck feels the lots are larger than they need to be. Josh advised that the point of the two acre lot size is not including the access area. The access area is considered the portion of the back lot between the approved road and the point of which the back lot is at least 200 feet wide. The access area shall be part of the backlot but its area may not be used to meet minimum acreage requirement to the back lot. Josh feels there is room to adjust the lots. John advised the Engineer stated the maximum is 29 lots. He thinks the yield plan should show 29 lots, address the condition of the back lots and address the shape of the lots 6/20-15 (John calls it the lava lamp lot) 6/20-15 and 6/20-15

which are bizarrely shaped). John thinks the yield plan should be two acre lots, two acre minimum on the buildable portion of the back lots, not more than 29, more or less rectangular or square shaped lots.

Josh said it would be useful to see this on the plan as the board is looking at steep slopes that are not accurate. Chuck said there is a proposed plan but is under Hutter Construction.

Selectman Talbot questioned if we are allowed to consider current conditions instead of going off of this type of mapping where it is not the existing conditions. The impacted area of the gravel pit once completed will change the wetlands and steep slopes once the gravel operation is completed. We are looking at not what is there today. Bert advised normally you are looking at a plan with a scattered condition that will be changed to a new condition. There will be ever changing conditions until the final subdivision is built. We do not really have a handle on what the final conditions will be before the roads are built and so forth.

John advised that they will need to have actual plans with real elevations when coming before the board for compliance. Selectman Talbot asked if there is a plan for reclamation of the pit. Chuck advised approval from the State was provided. He would have to see what was proposed. Bert asked when the final grading and closing of pit timeframe would be. Chuck advised there is no set deadline yet.

John stated that we can make a decision on completeness and deal with compliance later on. For example , the applicant could be asked to come back with elevations, what is expected when the pit is reclaimed, with the cluster subdivision final layout. But John feels that the yield plan doesn't match the recommendations of the Engineer and it has some shortcomings. At some point there will be variances and should meet the requirements before they go to the ZBA to request a variance. There should be a yield plan that meets the current requirements of the Zoning ordinance.

John made a motion to request that the applicant prepare a yield plan that:

- A. Meets the engineers recommendation of 29 lots
- B. Demonstrates that the buildable area of the back lots is two acres
- C. Has all of the lots in a more or less square, rectangular or sided shape
- D. That the applicant come back before us before we vote for completeness.

Motion seconded by Craig.

There was further discussion.

Selectmen Talbot asked if we should incorporate current conditions or remove some of the items that are not there currently. John responded by stating that if you want to go by current

conditions the applicant would have to shoot elevations throughout the gravel pit and they are currently changing. John wants the non-hypothetical presented to the board to meet the current zoning regulations and reclamations.

Lou asked about the letter from the attorney stating 19 versus 29 lots. He asked if we should seek legal counsel. John responded that every applicant or abutter before the board has the opportunity to retain legal counsel and discuss taking legal action but John feels that should not drive the board. John confirmed that the only person to reach out to legal counsel for advice is the Chair. Josh confirmed that we want to see a yield plan with 29 lots. He advised that the letter from the lawyer made us aware of potential issues that the board may run into if not paying attention to it. John advised that the letter is a public document so the applicant has access to it. It is one abutters and their counsel's opinion.

Josh advised that when we obtain a yield plan with 29 lots that the elevations will not be accurate to the current conditions. John advised conditions on the yield plan change.

Josh asked if the board is ready to vote and John read the motion which was:

Request the applicant provide the board with a yield plan with 29 lots shown on it as recommended by the Engineer that addresses directly the two acre size requirement or backlots 6/20-27, 6/210-25, 76-20-24 and that has all of the lots including 6/20-16 and 6/20-15 have more or less shaped as described in the regulations and ordinance such as being square, rectangular or trapezoid. Bert asked John to amend the motion to state no more than 29 lots. John amended the motion to state no more than 29 lots. Motion seconded by Craig. Roll call vote. Unanimous. Motion carries.

Chuck spoke and advised the board that he would have liked to see some of these comments and requests earlier. The shape of lots can be looked at but does not feel it a benefit to change lines. He advised that Bert did a give a verbal recommendation, not written. Chuck is taking the Engineer's approval as a written approval. Bert advised he is not sure what Chuck is saying. Chuck advised the last letter Bert wrote, there were 10 or 11 lots that were marginal. Earlier in this meeting Bert said with the current proposed grading they would be reasonable. Chuck wants it confirmed that the board needs it in writing from Bert. Josh advised that Bert will review it anyway. Chuck asked if the yield plan can be conditional approval or could it be conditional pending rectangular lots, Engineer approval and two acre backlots. Chuck stated that he is asking for conditional approval on the yield plan based on those three items being met. John stated that the first recommendation of the Planning Board Engineer on 29 lots was April 9. He takes exception to Chuck's comment that the board was aware of this some time ago. John further stated that conditional approval of the yield plan is like conditional approval for completeness. You really cannot do that. You need to close the book on completeness to go to compliance. If we agree for a date certain for the next public hearing, we can evaluate for completeness and continue to compliance at that meeting as opposed to doing completeness and

then continuing for compliance. Josh advised we will expect to see a yield plan, vote on completeness and vote on compliance. Josh asked if May 15 works for the board. The Land Use Clerk advised 7:20pm would be perfect. Chuck asked to continue the meeting to May 15 at 7:20 pm.

Josh made a motion to continue the public hearing for Brook Haven Farm LLC, 33 lot cluster subdivision for May 15, 2024, at 7:20PM John seconded the motion. Roll call vote. All were in favor. Motion carries.

Minutes of March 6, 2024 - Motion to approve by John. Motion seconded by Shawn. Roll Call vote. 2 abstentions by Lou and Josh due to absence. Motion carries.

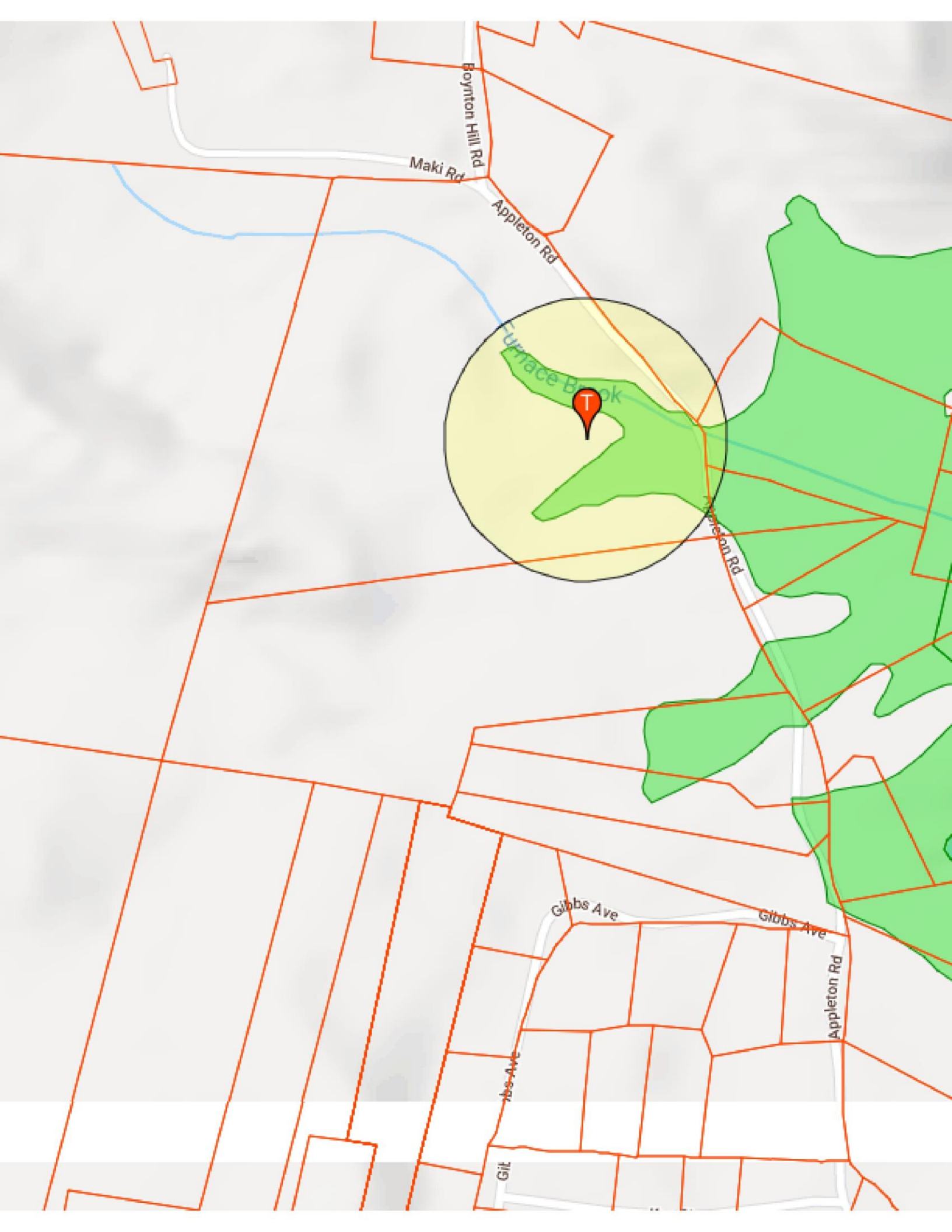
Minutes of March 20, 2024- Motion to approve by John. Motion seconded by Josh. Roll Call vote. 3 abstentions by Craig due to recusal of Silver Scone, Lou and Shawn due to absence. Motion carries.

Minutes of April 3, 2024- meeting was cancelled. Motion to approve by John. Motion seconded by Shawn. Roll call Vote. Motion carries.

Old/New business: John advised that the Air Force has segregated itself and there is now a Space Force so we should have a Space Force flag as well. Selectman Talbot will discuss it with the Town Administrator.

Motion to adjourn 9:05 by Josh. Motion seconded by John.

Respectfully submitted,
Jennifer Minckler
Land Use Administrator



CONCERNS RELATIVE TO PROPOSED SUBDIVISION PLAN FOR TAX MAP 6, LOT 20

Article XIII Section E Paragraph 2 d. states in part, ". . . the applicant shall prepare a Yield Plan showing a feasible conventional subdivision plan of one family dwellings. . . which would be reasonably capable of receiving subdivision approval in the opinion of the Planning Board. A conventional subdivision is a subdivision . . . which could be created according to the provisions of the New Ipswich Zoning Ordinance."

Flowage easement not shown on Yield Plan

A state requirement is "if your land is encumbered with a flowage easement, you may not construct any structure for human habitation within the flowage easement."

The Conservation Commission has submitted a map showing the location of a flowage easement on this property. The map suggests that some of the lots might be affected by the flowage easement, but this can't be determined with the current yield plan, because the easement is not shown. Lots that appear to be affected are:

Lot 10, Lot 11, possibly Lot 38 and perhaps others?

Base Flood Elevation Data not shown on Yield Plan

The Subdivision Regulations Section 4:04 Unsuitable Lands states, "Land subject to the following conditions shall not be subdivided for building purposes unless the unsuitable conditions are remedied to the satisfaction of the Board." Paragraph A lists one of those conditions as "Land prone to flooding." Subdivision Regulations Section 4:02 states in part, "The responsible person shall require that all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is lesser, include within such proposals base flood elevation data."

The Base Flood Elevation does not appear to be shown on the Yield Plan. This information is necessary in order to determine if portions of the property would be considered "Unsuitable Land" due to being "Land prone to flooding."

Slopes greater than 25% not identified on Yield Plan

The Zoning Ordinance Article X, Paragraph C.4.a states, "Development will not be allowed on slopes exceeding 25%"

The current Yield Plan identifies slopes over 15% but does not indicate whether any of these are over 25%. If the slopes shown do not include any slopes over 25%, there should be a statement to that effect. Due to the extent of steep slopes indicated on the plan, this information is essential in order to determine the feasibility of the yield plan.

Spur Road shown on Yield Plan not in compliance with Subdivision Regulations

The Subdivision Regulations Appendix B, Design Criteria, Section B:02 Paragraph E states in part, "No Street shall extend more than 1,000 feet beyond an intersection with two unique access routes . . . " The spur road indicated on the Yield Plan extends beyond 1,000 feet. The Applicant states the spur road could be connected to another property with the same owner. If this were a

Submitted by Liz Freeman April 17, 2024

conventional subdivision, the Planning Board would need to require that the Applicant construct a road (constructed to class V standards) across the second property to connect with Appleton Road. Given the costs of road construction, can this Yield Plan really be considered a "feasible conventional subdivision plan?"

If the spur road were to be limited to 1,000 feet, the following lots would not be in compliance with the Subdivision Regulations:

Lot 31, Lot 32, Lot 33

Backlots shown on Yield Plan not in compliance with Subdivision regulations

The Subdivision Regulations Section 4:05 Paragraph C states in part, "The access area is considered that portion of the back lot between the approved road and the point at which the back lot is at least 200 feet wide (on a line parallel to the approved road). The access area shall be part of the back lot but its area may not be used to meet minimum acreage requirements of the back lot."

The following lots do not appear to meet this requirement.

Lot 27, Lot 24, Lot 25

The 75 foot square shown on Lot 20 appears to be in the access area

Layout of lots shown on Yield Plan not in compliance with Subdivision Regulations

The Subdivision Regulations Section 4:05 Paragraph B states in part, "Side lot lines shall generally be at right angles to straight street lines or radial to curved street lines. In keeping with the intent of side boundaries, the lot shapes shall approach the look of being rectangular in shape. Where boundaries are along stone walls and existing properties the straightness of boundary lines are waived."

While the Planning Board has always allowed for some flexibility in meeting these requirements, some of the lots shown on the yield plan do not appear to comply, specifically:

Lot 10, Lot 11, Lot 17 with Lot 15, Lot 16
and Lot 21 questionable

Potential safety issue

Boynton Hill Road and Fish Road (in Temple) are substandard Class V Streets.

Although the Fire Chief has stated there would be no problem for emergency vehicles accessing the proposed subdivision via Fish Road and Boynton Hill Road, an additional concern is whether the area could be safely evacuated in the case of an emergency, such as a forest fire, with residents trying to leave while emergency equipment is trying to get in.

This issue may warrant a traffic study to determine if there are any safety issues with the limited road network serving the proposed subdivision.

Lot #	flowage easement	spur road lenth	back lot size	lot layout	Town Engineer		
10	x			x			
11	x			x			
12							
13							
14							
15				?			
16				?			
17				x			
18							
19							
20			?				
21				?			
22							
23					x		
24			x		x		
25			x		x		
26					x		
27			x		x		
28					x		
29							
30					x		
31		x			x		
32		x			x		
33		x					
34					x		
35							
36							
37							
38	?				x		



April 16, 2024

New Ipswich Planning Board Town of New Ipswich
661 Turnpike Road
New Ipswich, N.H. 03071

Re: Subdivision Application of Brook Haven Farm, LLC

Dear Chair Daley and Members of the Planning Board:

I represent Dr. Michael Maki of 72 Maki Road, which abuts the subject property. I write to present several concerns about Brook Haven Farm's proposed subdivision. I do not intend to be at the April 17, 2024 hearing, as it appears, based on the published agenda's allotted time for this hearing and the Board not yet having found the application to be complete, that the Board may not open the public hearing that night. Nevertheless, Dr. Maki will be in attendance. Please consider my comments herein as the Board evaluates the Applicant's revised Yield Plan.

Yield Plan

The Yield Plan dated March 9, 2024, is not feasible, as it would require at least one variance and many other approvals. As stated in H-Star Engineering's April 9, 2024 letter to the Board, 11 of the 29 lots shown on the Yield Plan "require either special approval or additional consideration by the Planning Board" and "only 19 lots appear to be viable without waiving various regulations. With regard to the variance, there was some discussion at the January 16, 2024 hearing about whether the ZBA would grant a variance, with the Applicant's engineer expressing optimism. However, per Article XIII.E.2.d of the Zoning Ordinance, a Yield Plan that requires even one variance is not "feasible." That Article provides as follows:

To determine the maximum number of buildable lots that can be created in a cluster subdivision, the applicant shall prepare a Yield Plan showing a

feasible conventional subdivision plan of one family dwellings, consisting of conventional lot and street layouts, and which may be conceptual in nature and is not intended to involve significant engineering costs, but which would be reasonably capable of receiving subdivision approval in the opinion of the Planning Board. A conventional subdivision is a subdivision, other than a cluster subdivision, which could be created according to the provisions of the New Ipswich Zoning Ordinance. The number of lots shown on the Yield Plan is the maximum number of lots that can be allowed in the Cluster Subdivision.

•

(Emphasis added.) Per this language, a Yield Plan is only feasible if it "could be created according to the provisions of the New Ipswich Zoning Ordinance." A variance is, by definition, outside the provisions of the Zoning Ordinance. Any Yield Plan that requires a variance—regardless of the likelihood of it being granted by



the ZBA—is not "created according to the provisions of the New Ipswich Zoning Ordinance." Similarly, a Yield Plan that shows 11 lots needing special approval or additional consideration does not depict a conventional subdivision that is viable and feasible under Article XIII.E.2.d. For the Board to decide otherwise would be a clear legal error. In short, the purpose of a Yield Plan is to show a conventional subdivision that is viable and feasible, not one that bends certain requirements and needs special approvals to make it feasible and viable.

At the January 16, 2024 hearing, the Board was appropriately concerned about the flowage rights easement on the eastern side of the Yield Plan. Before the Yield Plan can be approved, the Applicant must clarify exactly what implications the flowage rights easement has on the Yield Plan and the proposed cluster development. If the flowage easement would require an easement or otherwise not permit the development shown on the Yield Plan, that plan is not "feasible" for purposes of Section 8.01 .A. 10 of the Subdivision Regulations and Article XIII.E.2.d of the Zoning Ordinance. H-Star Engineering states that "consideration should be given to protecting this area," but it is unclear whether the Applicant has taken any measures to do so, as the limits of the flowage-easement area are not shown on the Yield Plan. Certainly, the flowage easement impairs the developability of certain lots, and it appears that the Applicant is not incorporating this into its plans.

Wetlands

This is the second phase of this subdivision. Two of the lots already subdivided (Lots 6-20-1 and 6-20-8) have wetlands crossings. The Applicant is now proposing more wetlands crossings. In the area where the proposed Brook Haven Farm Road would meet Maki Road, there are two separate, proposed wetland crossings. The proposed Brook Haven Farm Road is already proposed to have one wetland crossing; two more beyond that is excessive and unnecessary. These crossings would also violate Section 11.01.B.9 of the New Ipswich Subdivision Regulations, which requires that "the Board shall ascertain that adequate provisions have been made by the applicant" for "environmental factors such as protection against pollution, noise, odor, and the protection of natural features." The Board cannot approve two additional wetland crossings and still find that the Applicant has made adequate provisions to protect natural features.

The Applicant could still subdivide and develop its property without these additional two wetlands crossings and instead have a cul-de-sac at the end of the new road coming off Appleton Road. Although the Applicant is limited to a length of 1,000 feet for such a dead-end road pursuant to Appendix B:02.E.3, the Board could waive that limitation under Section 5.03. Such a waiver would be related to the "conditions of the

land" and would "carry out the spirit and intent of the regulations," as provided in Section 5.03, by eliminating two wetland crossings.

The Applicant's property is highly ranked Tier II Open Space as shown on the New Hampshire Fish & Game's Wildlife Action Plan and in the New Ipswich Open Space Plan, which is part of the Master Plan. This land is also atop an aquifer. To protect wetlands, to protect wildlife habitat, and to protect the groundwater in the aquifer, unnecessary wetlands crossings should be eliminated. The Applicant can fully develop this property while eliminating these two wetland crossings.

Additionally, we agree with H-Star that the Applicant should provide compensatory wetlands for any wetlands that are disturbed. However, the ratio should be more than 1 : 1, as the existing wetlands are unique habitats that cannot be replicated.

Maki Road Upgrade

The condition of Maki Road was briefly discussed at the January 16, 2024 hearing. It would not be safe to allow the Applicant's proposed loop road without requiring that the Applicant upgrade Maki Road to Town

specified, class V road condition. Although Appleton Road has been upgraded and is now 22—24 feet wide, Maki Road is still only about 16 feet wide. Not only is Maki Road's current condition unsuitable for the increased traffic associated with the proposed subdivision, this increased traffic would be dangerous to the many people that currently walk Maki Road. By creating a loop road that adds subdivision traffic to Maki Road, the Board cannot find that the Applicant has made adequate provisions for pedestrian safety as required by Section 1 1.01.B.2 of the Subdivision Regulations, which requires that the Applicant make "adequate provisions [for] . . . [p]edestrian access and safety." Please add this letter to the Board's record on this matter.

Sincerely,

on Reimers, Esq.
reimers@nhlandlaw.com

cc: Dr. Michael Maki

•