

ACTON PLANNING BOARD MEETING
January 21, 2010

A. ROLL CALL – 7:00

Members present were:

Chip Venell – Chairman

Thomas Cashin – Vice Chairman

Yoli Gallagher

Keith Davis

Jessica Donnell – 1st Alternate

Members absent were: David Jones- 2nd Alternate

Also present were Kenneth Paul, Code Enforcement Officer; James Doyle of the Ridge Beach Association; Williams Todd of the Acton Ridge Beach Association and Larry Julius.

B. MINUTES

1. December 17, 2009 – A Motion was made and seconded to approve the Minutes of the December 1, 2009 Meeting as submitted. Davis/Cashin – Unanimous.

2. January 7, 2010 - A Motion was made and seconded to approve the Minutes of the January 7, 2010 Meeting as submitted. Davis/Gallagher – Unanimous.

C. UNFINISHED BUSINESS

Patrick Frasier – Proposed Division of Lot – Mr. Frasier submitted a plan of his proposed division of a lot in the area of Hebo Hibo Road for the Board's review. He stated there was a question when the Board last reviewed the sketch plan concerning the status of Hebo Hibo Road and whether it had been discontinued. He said as per a surveyor, it has not, therefore, he would like to use that road for the required frontage for Lot #4. He mentioned as he said at the previous Meeting, he intends to improve the road for his and the cemetery's use since they also use that road at this time. He informed that he has determined that only discontinued roads are returned to the abutters.

Mr. Paul advised the proposed improvements are required to meet whatever level of standard imposed by the Road Ordinance if it is a newly created road. He felt in this instance the road should be improved to at least a B standard which must be at least 34' wide.

To Mr. Venell's question whether an abandoned road can be used for frontage for a lot, Mr. Frasier stated the road is a maintained road and exists at this time. He mentioned that 13th Street is not up to the required Town standards, but he is able to construct a dwelling on that road with Mr. Venell pointing out that 13th Street is a private road.

To Mr. Venell's question whether the Town can allow a property owner to upgrade an abandoned road, Ms Donnell advised the Town made her do it.

Mr. Davis mentioned that the Board obtained an opinion from MMA as well as the Town Attorney regarding the Hebo Hibo Road when a property owner proposed creating camps there. He suggested that the Board review those opinions.

Mr. Venell suggested possibly the Board could ask MMA whether that road can be upgraded.

Mr. Frasier advised he spoke with SMRPC and made the changes suggested by that agency. He asked if the Board would be willing to draft a letter to SMRPC giving them permission to continue with the review at his expense. He felt it would be easier for him to speak with that agency since they are available on a daily basis.

Mr. Venell advised if Mr. Frasier gave the Board something official, they can draft a letter to SMRPC as requested. He mentioned that at this point, Mr. Frasier should submit an application as well as an abutters' list as per the Subdivision requirements.

D. NEW BUSINESS

James Doyle – Ridge Beach Association – James Doyle advised he had prepared a statement he would like to read and submit to the Board. He stated he would be glad to answer any questions following the reading of the statement. He advised he is aware that William Todd appeared before the Board in the fall

requesting permission to drive motor vehicles onto the beach. He stated there are restrictions the Planning Board placed on the approved plan having to do with altering a lot from its natural state. He said he is disputing the ability of a property owner in that subdivision to drive down to the beach with motor vehicles. He stated the approved plans are on file in the Code Enforcement Office.

Mr. Venell advised he spoke with the Code Enforcement Officer requesting that he have the plans available for this evening's Meeting.

Mr. Doyle referenced a map he drew and submitted for the Board's review. He stated he is aware that Mr. Todd appeared before the Board on August 6, 2009 and there was a discussion concerning allowing the residents of this subdivision to access the beach with motor vehicles. He advised he had not been aware that there would be such a discussion or he would have attended that Meeting. He mentioned on October 9, 2009 he wrote a letter to the Board as well as the Code Enforcement Officer expressing his concerns about what was occurring. He said thereafter the Code Enforcement Officer made a site visit. He stated that currently some members of the Beach Owners Association are driving on a trail that doesn't appear on the approved plan. He stated the motor vehicles are generally parked in the dock area on the property. He mentioned a snow mobile trail has been created which goes to the dock to access the beach. He said, in his opinion, the use of the lot should be reviewed and approved by this Board and the amended plan recorded at the Registry of Deeds. He stated he is concerned about erosion occurring because of the use of the snow mobiles. He mentioned the steep slopes on the property don't meet the Ordinance standards for motor vehicle use. He advised in order for the motor vehicles to be operated on the property, the owners must obtain permission from the landowner which is not included in the deeds to the lots. He mentioned the Planning Board approval included the parking area and steps to access the beach. He reiterated that according to the Ordinance the use of the lot must be reviewed and approved by the Planning Board and until that occurs, there should be no use of the lot. He stated any new trails on the Little Ossipee River must be reviewed and approved by the Saco River Corridor Commission which has not occurred at this time even though the property owners have made an application. He felt what has been created are roads and not just trails as per their description. He read the definition of a trail and also referenced the DEP's definition. He also referenced the Acton Zoning Ordinance definition of a road. He stated there is a lot near his property which is used by the motor vehicles which the vehicle owners have not obtained permission to use. He said he would like the Board to prohibit the use of the lot by motor vehicles and snow mobiles. He stated the members of the Beach Owners Association must amend the plan, submit it to the Board for review and approval and then record it at the York County Registry Deeds. He said he would like the Board to document its position and notify the property owners of their decision. He mentioned he is the owner of lot #16.

Mr. Paul stated he conducted a site visit after receiving Mr. Doyle's letter and found that the steep area is approximately 336' from the lake. He mentioned he didn't see any erosion, but there was some in the photographs Mr. Doyle gave him. He felt if all the residents used that area it could well become eroded. He stated when he was on the site, he didn't see any evidence of usage of the lot.

To Mr. Venell's question whether he was having problems with the association about this situation, Mr. Doyle answered in the affirmative. He explained there are two associations, the Beach Owners Association and the Ridge Beach Association both of which are non-profit corporations with rules and restrictions that are contained on the approved plan. He stated people who are using that area are not following the rules and are also using other areas of which the Code Enforcement Officer isn't aware. He explained the trail from the water to the dock was enlarged two years ago with the removal of trees for access to the dock. He mentioned there were only two docks when the developer left and since that time, others have been added which he felt was reasonable. He didn't think the approved plan indicates a path to the docks.

Mr. Venell indicated the foot path that goes to the beach on the approved plan.

Mr. Doyle indicated the path he is talking about and mentioned there is evidence of the use of motor vehicles there.

To Mr. Venell's question whether the use was just by ATV's or motor vehicles, Mr. Doyle stated ATV's, golf carts and snow mobiles which he considers to be motor vehicles. He said he spoke to the Beach

Association about his concerns and the day after the discussion, the association president told him he didn't care about the rules and he would drive his snow mobile in that area this winter. He stated given that statement, he doesn't think they are willing to discuss the matter. He mentioned the Beach Ridge Association contacted an attorney to determine whether they can enforce the rules. He advised his association wrote to the Board of Directors of the other association and suggested they go through the proper procedures to revise the rules if they wished. He felt the resolution to this situation is contained within the Acton Zoning Ordinance. He stated he is representing himself and an abutter to the dock area. William Todd advised he didn't think the Board had jurisdiction. He said he has lived in the subdivision for eight years and knows that motor vehicles have used that area for ten years. He mentioned they have repaired any erosion that has occurred. He stated he is a director of both associations and has been at odds with the Ridge Association. He mentioned a letter from an attorney delineating what the rights and responsibilities are of both associations. He stated the letter said the lakefront property owners have the right to govern themselves. He felt the other residents can hire an attorney if they wished. He mentioned they have the authority to revise the rules if they follow the correct procedure.

To Mr. Venell's question concerning a certain area of the plan, Mr. Doyle explained that is the tennis court which is overgrown now and which everyone in the subdivision has the right to use with Mr. Todd advising the tennis court has not been disturbed.

To Mr. Davis' question whether the foot paths existed when the subdivision was created, Mr. Doyle explained the rear portion was the only path when he moved in and there were two docks close to the beach.

Mr. Todd advised that the Saco River Corridor Commission authorized the installation of 14 docks as per a plan he has.

Mr. Doyle said he has no problem with the foot path to the dock along his property line, but when you get to the end there shouldn't be a vehicle. He stated with regard to restricting motor vehicles in that area he read that no vehicles of any type are allowed in that area. He stated he understands that the rule has been revised by this time, but the deeds have not.

To Mr. Venell's question whether what he was reading from indicates that the Planning Board restricted the use of motor vehicles, Mr. Doyle stated he never said the Planning Board did that and he understands that is a civil matter. He said he is simply pointing out that the lots have been changed which is what he is asking the Board to deal with.

To Mr. Cashin's question whether there was anything on the plan indicating that any revisions have to come back to the Board, Mr. Venell stated in reviewing the plans, he hasn't found any deed restrictions that were imposed by the Planning Board. He said there is a designated community area between lots #12 and #14. He mentioned the only restrictions from the Planning Board deal with use restrictions. He stated the only place where there are deed restrictions are in the rules. He pointed out that paths can't be cut out in certain areas because it is designated a wilderness area. He said the only reference to motor vehicles is in the Beach Association by-laws, but there isn't anything in the approved plan prohibiting them on any numbered lot in the wilderness area. He felt that the only thing the Board can deal with is what has been altered from its natural state.

Mr. Doyle stated the plan indicates a parking lot and foot path, but there is also another path that has not been approved. He explained that the vegetation has been removed because they were unable to negotiate the motor vehicles down the steps.

To a suggestion from Mr. Cashin that there are really two issues (1) the middle path that follows the water course which should be abandoned and (2) there is no snow mobile access in that area, Mr. Doyle said since no motor vehicles are allowed, why would you want to say where they should go.

Mr. Todd reiterated that he doesn't think the Board has jurisdiction. He advised the Beach Association has the ability to revise their regulations by a majority vote.

Mr. Cashin stated he feels the Board has jurisdiction with regard to the lots that have been altered without Planning Board approval which is the only issue the Board can address.

Mr. Doyle pointed out that according to the Acton Zoning Ordinance Land Use Chart the Little Ossipee River area is subject to the regulations of the Saco River Corridor Commission. He pointed out that the

Land Use Chart also indicates that trails are subject to a Site Plan Review which is another reason why the Planning Board must approve a new plan.

Mr. Venell concurred with Mr. Cashin's assessment that the only item the Planning Board can deal with is any alternations to the unnumbered lots and the rules referenced by Messrs. Doyle and Todd are governed by private associations comprised of the home owners. He mentioned that was the conclusion of the Board when Mr. Todd appeared before them on August 6, 2009, but they didn't have the plans or the rules to review, therefore, they didn't have all the necessary information. He stated after reviewing the plans, he agrees the Board does the have authority to deal with the activity on the unnumbered lots. To Mr. Cashin's question whether his group would be willing to develop a plan to submit to the Saco River Corridor Commission for its approval and the Board generally concurs with that approval, Mr. Todd stated he didn't have the authority to speak for his association and there are other members involved. He stated given the situation with Mr. Doyle, it is difficult to think that anyone will agree on anything. He said he has heard things tonight of which he had not been aware of, therefore, he would like a month or so to work on the situation. He mentioned that Mr. Doyle stated they only had to make the necessary changes to the plan and they are in the process of doing so. He mentioned there are only four individuals who take motor vehicles in that area and Mr. Doyle has created a lot of problems for them. He asked how the residents would access the dock if they can't walk.

Mr. Davis suggested they develop a plan of what existed previously and what exists at this time for submission to the Saco River Corridor Commission. He said once that agency approves the revisions the Board can then review that approval. He asked if the board wished to set a deadline for their appearance before the Saco River Corridor Commission.

To Mr. Doyle's comment that the Saco River Corridor Commission requires that all abutters be notified and whether that is the same procedure for this Board, Mr. Venell explained this Board is not required to notify anyone unless they are conducting a public hearing. He pointed out any revised plan will be required to be recorded at the York County Registry of Deeds, but mentioned that the revision will not appear on the property owners' deeds.

F. OTHER BUSINESS - There was no new business to come before the Board.

G. CODE ENFORCEMENT OFFICE BUSINESS - There was no Code Enforcement Officer business to come before the Board.

H. ADJOURNMENT - The Meeting was adjourned at 8:45 PM.

Respectfully submitted,

Secretary

ANNA M. WILLIAMS, Recording