

FINAL



**WEARE PLANNING BOARD
MEETING MINUTES
January 14, 2021**

PRESENT VIA ZOOM: CRAIG A. FRANCISCO, CHAIRMAN; BRUCE FILLMORE, JR., VICE CHAIRMAN; NEAL KURK, SECRETARY; JOHN (JACK) MEANEY, EX-OFFICIO; WILLIAM STOCKHAUS, ALTERNATE; KELLY DEARBORN-LUCE, LAND USE COORDINATOR

GUESTS VIA ZOOM: Steve Bartlett, Linda Beliveau, Sherry Burdick, Travis Corcoran, Frank & Mary Jo Campana, Mike Haas, Daniel Higginson, Dave & Kate Richards, Stephen Wallace

ZOOM HOST: Town Administrator Naomi Bolton

I. CALL TO ORDER

The Chairman called the meeting to order at 7:03 pm.

II. DISCUSSION

A.) Continuation of the application for a proposed subdivision from Frank Burl on Rockland Road and Route 77. Tax Map 202, Lot #94. The subdivision will create one additional lot.

The Chair established this application was accepted as complete, waiting on confirmation with the Board of Firewards. Daniel Higginson, Higginson Land Services LLC., stated initially, there was a delay with the Board of Firewards' scheduling. Ultimately, they require a water supply, cistern or dry hydrant. A dry hydrant in the Piscataquog River is a viable option. A cistern is expensive and Fire wardens not interested in a sprinkler system.

The Chair disagreed with the Conservation Commission comment; the 4K area appears to be 75' from very poorly drained soil. The 4K has to be 75' from very poorly drained soils and 50' from poorly drained soils. Soil type may be ok. Daniel responded State Subdivision approval has not been granted yet, he can adjust his plans accordingly.

Vice Chairman Fillmore stated a variance would be needed for a buffer crossing and a wetland permit. Daniel replied they are not crossing the wetland, original proposal, yes, but they have since decided to place the house closer to the road. The Topo sheet does not reflect this change. Daniel explained an updated version shows the proposed house up near the road.

The Chair asked the Board if this application was accepted as complete. Alternate Stockhaus responded it was accepted on August 27, 2020, waivers approved.

The Chair asked Daniel if the changes had been made on the Pre-Review Markup Plan presented by Land Use Coordinator Kelly Dearborn-Luce. Daniel answered he had not revised the plan yet, was waiting on Board of Firewards' approval.

The Chair declared the clock has expired regarding the timeline to approve or disapprove.

RSA 676:4 Excerpt: *Upon determination by the board that a submitted application is complete according to the board's regulations, the board shall begin formal consideration and shall act to approve, conditionally approve as provided in subparagraph (i), or disapprove within 65 days, subject to extension or waiver as provided in subparagraph (f).*

The 65-day clock started August 27, 2020. The Chair declared a letter of continuance is needed, allows for the Board of Firewards concerns for a water supply. Daniel asked if it is possible to approve with the Firewards requirements or is an engineered review plan needed for the cistern or dry hydrant.

Vice Chairman Fillmore stated a BOFW letter of acceptance with Daniel's proposal would suffice, engineer not necessary. Daniel stated perhaps a dry hydrant could be placed on town owned property, Buzzell Hill and Peaslee Road corner, with Selectmen approval. The Chair verified the dry hydrant would go in the river. Daniel replied yes.

Because Daniel's permits could take months, the Chair preferred a letter of continuance until April 22, 2021. Daniel concurred, letter of continuance forth coming.

No public present, public comment closed.

The Chair appointed Alternate Stockhaus a voting member for tonight's hearing.

Jack Meaney moved, Secretary Kurk seconded a letter of continuance for the Burl subdivision until April 22, 2021 is needed. Passed 5-0-0

B.) Continuation of Public Hearing for Zoning/Building amendments:

The chair opened the public hearing:

Article 4. *Adoption of current Building Codes in the Building Permit Ordinance*, The Chair asked LUC Dearborn-Luce to speak. Kelly stated this Article updates the codes to match the State ICC codes. The Board reviewed this change last year; Secretary Kurk suggested a legal review.

Secretary Kurk asked Kelly if Life Safety Codes were in the Zoning Ordinance as this Article only speaks to the Building Permit Ordinance. Kelly responded no, they are only in the Building Permit Ordinance.

Secretary Kurk also mentioned Town Counsel, who drafted the Warrant Articles, stated if any part of our ordinances were stricter than the State's Codes, they should not be eliminated. Kelly conferred with the Fire Chief and Building Inspector, nothing more stringent.

No public present, public comment closed.

Secretary Kurk moved, Jack Meaney seconded the Planning Board recommend Amendment #1 to the Weare Building Permit Ordinance. Passed 5-0-0

The Chair opened the public hearing:

Article 7.1 *Fines and Penalties in the Building Permit Ordinance*, The Chair asked LUC Dearborn-Luce for confirmation Town Counsel did not recommend. Town Counsel advised penalties could not be doubled for noncompliance; fees have to directly reflect cost. Kelly has not had time to research how other towns apply administrative fines.

Secretary Kurk suggested giving Kelly time to explore how other towns approach fees/penalties. Jack Meaney agreed, improperly administered fines could result in court action.

Jack Meaney moved, Secretary Kurk seconded to table altering Article 7.1 *Fines and Penalties in the Building Permit Ordinance* for a later date.

Passed 5-0-0

Jack Meaney moved, Secretary Kurk seconded to table altering Article 9.1 *Fines and Penalties in the Zoning Ordinance* for a later date.

Passed 5-0-0

The Chair opened the public hearing:

Adoption of new section (Article 37) regarding Private Roads, Chairman Francisco and Secretary Kurk revised the proposed Article for expansion on existing private roads to have a conditional use permitted by the Planning Board.

The Chair read the added definition to ARTICLE 4.1 as follows:

PRIVATE ROAD: Shall mean an access to 3 or more lots. The private road must be shown on a survey plan dated prior to March 1988 or be shown on a plan approved by the Planning Board. The Planning Board may only approve **additional** private roads ~~with~~ **upon approval** of a conditional use permit application.

Alternate Stockhaus inquired if the term “application” should or should not continue throughout the document.

The Chair stated it should not. Alternate Stockhaus concurred; it suggests applications are all that is required for a road. Permit approvals are required. To remove “application” at the end of Private Road definition.

37.4.2 The road shall be constructed to 20 feet in width, unless otherwise approved by the Planning Board.

Changing to 20’ will not interfere with DPW as they do not maintain private roads, the fire department will appreciate maneuvering their vehicles in a wider road.

37.4.3 The structural section of the road shall be the same as a Class V road as described in Road Standards in the Subdivision Regulations, ~~except~~ **provided, however, that** the Planning Board may waive the requirement of pavement **if the town will not be adversely affected thereby.**

The Chair stated the town is not adversely affected by paving private roads. Alternate Stockhaus questioned if Article 37.3 addressed concerns for expanding current private roads. Secretary Kurk stated the term “additional” private roads includes new and new additions to existing private roads.

37.3 DEVELOPMENT ON PRIVATE ROADS

No building permits for new multi-family or residential homes ~~fronting on~~ with access from any private road shall be issued unless the Planning Board has issued a conditional

use permit authorizing such development. A conditional use permit is not required for an accessory dwelling unit or an accessory use associated with an existing or authorized multi-family or residential home on a private road.

The Board agreed the above change was well written.

No public present. Public comment was closed.

Secretary Kurk moved, Jack Meaney seconded the Planning Board recommend the additional definition to Article 4.1, eliminating the word application at the end; and recommend Article 37 as written with the understanding that the language of the Article which we are recommending will be written by the Town Attorney. Passed 5-0-0

C.) Citizen Petition: to vote to repeal the Mount Dearborn Road Historic Area Overlay District, Article 30-A, sections 1-4 of the 2019 Zoning Ordinance.

The Chair recognized Secretary Kurk who recused himself from this discussion and then the Chair opened the public hearing. The Board after discussion will vote to recommend or not recommend this Warrant Article.

Neal Kurk, 285 Mount Dearborn Road, suggested the petitioner begin the discussion.

Dave Richards, 71 Forest Road, stated the Mount Dearborn Road Historic Area Overlay District is not for this road. The houses on Mount Dearborn are spread out from one end to the other, 7 houses built before 1840 and 14 modern houses, not a fit for this road. Mr. Richards asked the Board if they knew the history of how Mount Dearborn became the Historic Area Overlay. Did they want to know?

The Chair responded in the affirmative. Mr. Richards continued, this Historic Overlay was brought before the town when a gentleman purchased a large parcel of land and proposed a sub division. The Town voted it in by petition. The gentleman who purchased the land, Gerry Beique, sued the Town and won. It is Mr. Richards understanding, the Town Attorney told the Planning Board, if anyone ever challenges this, do not try and fight, they will win.

Vice Chairman Fillmore asked if Mount Dearborn was a Scenic Road. Mr. Richards answered yes. Vice Chairman Fillmore added that kind of limits what can happen as to stone walls and trees along the road. Mr. Richards replied that is correct, additionally, there are more outages on that road than anywhere in the town. Whenever the power goes out, Mr. Richards has to power up his generator for his farm that has a forty-foot walk-in freezer and animals that require water all the time. With 1800 laying hens, they do not take kindly to no water.

The Chair stated the Scenic Road does not stop a landowner from doing a whole lot. Mr. Richards agreed, upgrades to your house, for example, windows, to comply with 1840's older style is a hardship requiring custom windows for that circa. The type of roofing, the color of roofing, it is a big snowball. Mr. Richards clarified, if this was the center of Amherst, he would understand. The center of Amherst is beautiful, a nice little setting, but on Mount Dearborn Road everything is spread out. Take a ride it, just does not fit, Mr. Richards stated, requesting the Planning Board to approve his petition.

The Chair asked if there were any questions.

Mike Haas, 2 Depot Street, asked Mr. Richards when he purchased his property. Mr. Richards replied four years ago. Mr. Haas responded long after the Overlay was in place. Mr. Richards stated yes, his family has owned property on Mount Dearborn forever.

Mr. Richards's sugarhouse is there with 80 years still left on the lease. Advising, there are only a couple of parcels left that could potentially be developed. Both of these lots have Route 149 access; one is 65 acres across from his sugarhouse, not in conservation. Mr. Richards stated his property is in the works for conservation. If the 65 acres were developed, they would use Route 149. Also, if Neal Kurk's property were ever developed they may use Route 149 as well if it is not in conservation. His and Neal's are the only two properties large enough for development talk.

Mike Haas, repeating a question from one of his houseguests, then asked Mr. Richards what specifically would he like to do that the current Historic Overlay interferes with. Mr. Richards explained it is not necessarily just for him, but improvements on your building. Reiterating, new windows and roofing, even fencing is a hardship and a big snowball. This Historic restriction is not a great fit for this particular Road.

Mike Haas had houseguests that were attempting to ask Mr. Richards questions, but they could not be heard clearly. Mike Haas stated he would return his microphone to mute.

Linda Beliveau, 365/367 Riverdale Road, hopes the Board does not support the appeal of the Mount Dearborn Overlay. Some components of the Master Plan protects wide open spaces not just renovations. Citizens and the community of Weare as a whole, stated Linda, decided as a town to protect our historic districts, of which Mount Dearborn is one. As a taxpayer, she does not want this historic district overturned.

Steve Bartlett, 90 Mount Dearborn Road and Map 408, Lot 47, Sub lot 2, stated he built his property following the rules and the guidelines that were set forth to him. He does not see a need to change it as they keep the beauty of the area. Since there are only two large parcels that could be either going into conservation or are already in conservation, he does not think there is a need to remove it.

Mike Haas spoke again, stating Mr. Richards moved to the property long after the Historic Overlay was in place, and had nothing specifically that he would like to do, he just doesn't seem to like the fact the ordinance is there. If the objection is to the 1840's cutoff, a better way to approach this, amend the existing ordinance. Instead of repealing the whole thing.

Mr. Haas is asking the Planning Board to not recommend the Warrant Article as written. Mr. Haas then, pointing to his houseguests Sheila Cleveland and another gentleman, inaudible, stated they were in agreement. He then likened the Planning Board recommending repealing this ordinance, as sort of using a blunt instrument, where something more subtle might serve the purpose.

Mr. Richards asked Mr. Haas for a suggestion. Mr. Haas restated changing the 1840's cutoff.

Mr. Richards explained he has pictures all the way up through Mount Dearborn Road and it does not look anything like it does now. They do not show 14 modern houses on it. The landscape has no trees around, so if we are trying to go back to a 1840's circa look we have a lot of hacking to do.

Mr. Haas then suggested revising the petition to a later date that makes the updates less of a hardship. Repealing the entire thing is overkill.

The Chair explained the petition cannot be changed; it has to stay the way it was written. The Board can recommend or not recommend. It can be revisited in April after the town vote.

Mr. Richards asked the Chair for clarification. The Chair stated it cannot be changed.

Neal Kurk suggested keeping the ordinance in place. Over the years try and make some changes as the current restrictions are onerous, for example, you have to go to the Zoning Board to do just about anything. This could take a number of months and a farmer can just not wait. The ordinance is very important for the town, he reiterates the Master Plan that Linda spoke of, keeping a rural environment, open spaces. Part of the ordinance that needs to be preserved is one can only build six hundred feet back from the road. Two other historic districts came about after Mount Dearborn Road, Riverdale and Clinton Grove. It is his hope the Board does not recommend the petition. Instead, set up a subcommittee to make changes.

The Chair asked Mr. Richards if he understood what Neal Kurk was recommending. A subcommittee, working with the Planning Board, worked well in the past for the Riverdale Overlay.

The Chair asked if anyone else would like to speak before he closes the public hearing.

Steve Bartlett spoke again, he agrees with Neal. Suggesting Mr. Richards tweak his petition instead of taking the broad ax to the Mount Dearborn Historic Overlay.

Mike Haas also spoke again, assuring Mr. Richards the Planning Board is very, very supportive and helpful making a fair compromise for everyone involved. Mr. Haas stated he and his guests were on the Riverdale Overlay District Committee.

Point of Order Mr. Chairman, stated Jack Meaney. The conversation is out of hand to whether or not we recommend, it is getting to the point we are trying to force him to withdraw his petition. The Board's purpose is to recommend or not recommend, put it to the voters to go as is.

Mr. Richards responded he appreciates history as much as anyone. He is torn; withdrawing the petition would disappoint a lot of people.

Vice Chairman Fillmore explained Mr. Richards could not withdraw the petition by himself.

The Chair stated it would take everyone's signature and it is too late. If it is defeated, come back to the Board.

Mr. Richards expressed he appreciated everybody's time.

The Chair asked the Board if anyone would like to make a motion. There was no response.

Vice Chairman Fillmore asked the Chair if he could make a motion to not take a position.

The Chair responded, no, you cannot do that.

Chairman Francisco made a motion to not recommend the Citizen Petition. There was no second.
Chairman Francisco withdrew his motion.

The Chair asked someone to make a motion. There was no response.

The Chair asked if there were any comments.

Vice Chairman Fillmore struggled to speak. He stated he understands people's position on having the Overlay District in place, but currently there are more new houses than old houses. This petition was signed by 25

people. Many people living in that neighborhood own new houses and old houses. Even though it affects the whole town, the whole town does not drive by that street very often. It is not a street people use to commute, unless you live on it. He would like to support the people that live on the street. It is their neighborhood.

Vice Chairman Fillmore moved, Jack Meaney seconded to support the petition article. The Chair made it public knowledge Gerry Beique's son was a client of his. **Passed 3-1-0 Chairman Francisco voted no.**

LUC Dearborn-Luce asked if the public hearing was now closed. Alternate Stockhaus replied yes.

The public hearing was closed at 8:02pm.

LUC Dearborn-Luce mentioned meeting minutes. The Chair replied Neal would like to bring something else up first.

Neal Kurk spoke; he is resuming his Secretary position on the Planning Board.

Secretary Kurk moved that the Board reconsider its action at the December 10, 2020 meeting, where by the Board recommended the Article dealing with section 3.5 of the Zoning Ordinance. What we had done was to add accessory structures to non-conforming lots. Single-family residence and accessory structures. Secretary Kurk stated information that was relevant to the Board was not presented at that hearing.

The Chair stated instead of reopening for discussion because he was not sure they can, it is not on the Agenda.

Secretary Kurk stated a motion for reconsideration is in order. That has the effect of having us go back if the motion passes, and after discussion, we would then vote again on our recommendation.

The Chair replied how about we discuss this first, and then if we want to reopen it we can.

Secretary Kurk answered fair enough.

The Chair acknowledged he understands where Secretary Kurk is coming from because he emailed earlier. The Chair stated he, Kelly and most people were aware of the case on Quaker Street where a Building Permit was issued. He does not know exactly what happened after that, other than; a neighbor came to the Planning and Zoning Board. He was aware that happened, speaking to Kelly in her office, adding *accessory structures* was a way of making it less confusing. They were not trying to hide anything.

Vice Chairman Fillmore stated there was confusion on that long before the issue that is happening now, happened.

Secretary Kurk responded that is probably true. The problem that he has, he had heard about it, but when the Board had their discussion of this Article, he did not connect it with that case. It is his understanding, what the Board is doing now, in effect, is trying to work around the court decision. That held, the Building Permit was illegally issued. What we are trying to do is allow the individual involved to use this change, if it passes in the Zoning Ordinances, to, retroactively, get approval for a building, which is illegal on that site. In that location on that site. He does not want the Planning Board to get involved in that kind of consequence of one of its actions. That is not what the Board is supposed to be doing. Taking sides in a dispute. He hears what Vice Chairman Fillmore is saying, there is a problem here and he agrees. That is one of the reasons why he voted for it because there was a problem to deal with, but he does not think it should be done in a way that interferes with an ongoing court case. Potentially problematic situation for the town, the individual involved and his neighbors. The timing on this is inappropriate. If the Board reverse their recommendation and do not put that

Article in, they can put it in next year after the issue involving this particular site has been resolved. The Board would not be interfering with it. He is very uncomfortable with the Board taking an action, which has the effect of interfering in an ongoing dispute between the town and several residents.

Alternate Stockhaus asked if putting that statement in purposely the Board's desire to try to avoid that or to assuage that conflict. Was that the Board's initial intent or was it because now we have further information that now we need to address the issue.

Secretary Kurk responded some people were aware of the situation.

Alternate Stockhaus replied he was not aware.

Secretary Kurk stated he was not either; probably some people were aware of it probably and some people were not, but it was not discussed.

Alternate Stockhaus responded right.

Secretary Kurk continued one of the unintended consequences, of his vote, certainly, was to interfere with an ongoing dispute. That is just wrong for the Planning Board. Now that the Board knows about it, they need to do something.

Vice Chairman Fillmore stated this is a Zoning Article that the Board voted on. Re-considering that vote without posting it, without a public hearing, may not be proper.

The Chair stated he was aware of that case because it was ongoing. The former Building Inspector, Chip Meany, told him about it way back.

Alternate Stockhaus asked the Chair who else was aware.

Vice Chairman Fillmore declare we all knew about it. They had been to the Planning Board about it a year ago.

Jack Meaney stated it was more than a year ago; Chip was here for part of it. It went to the Zoning Board, back and forth, a couple times through the court system.

Vice Chairman Fillmore stated the Planning Board heard about the case, it was a public hearing.

The Chair stated it was quite a while ago, he came to the Board. The Board was aware of the case; they may not have put 2 and 2 together.

Alternate Stockhaus asked Secretary Kurk if his issue is just timing as opposed to the real need that this needs to be in there.

Secretary Kurk replied it should be in there, it is good policy, but yes, it is the timing. Intended or unintended consequences of interfering with an ongoing dispute. It is the wrong thing for a public body to do.

Alternate Stockhaus stated this is falling under approving the minutes or not approving the minutes.

Secretary Kurk answered, no. This is a separate motion that he made, the Chair turned it into a discussion. He is asking the Board to reconsider its vote. He does not believe it requires a public hearing. The Planning Board

is entitled to revisit its decision and change its mind as long as the statutory deadlines for doing these things are met.

Vice Chairman Fillmore equates this to bringing something up after it has been discussed at the Deliberative Session at the very end when people are gone. He does not like doing it.

Secretary Kurk answered the people who are going to make the votes are all here.

Vice Chairman Fillmore stated the public has not had a chance to weigh in.

Secretary Kurk replied the public already had a chance to weigh in at the public hearing.

Vice Chairman Fillmore responded yes, but now we are bringing it up again without public knowledge. No notices at all.

The Chair stated he is not sure if the Board can reconsider and not recommend, but withdraw from the ordinance.

Jack Meaney agrees with the Chair. There has already been a public hearing on it. He does not think it is proper, may not even be legal to go back and change our mind. We put it forward over a month ago. To revisit it would mean to start all over again and go back, have a hearing, rewrite it. At this point, it has already been voted on and brought forward.

Alternate Stockhaus noted given that fact, what recourse does the Board have if there is an accusation of complicity to trying to address this court issue.

Jack Meaney stated either way the Board could probably be brought into court on some type of complicity or lack thereof, but it is before the court system and Zoning Board. It will take its course that way. Going back now would add more culpability one way or the other. It would not make that much difference. Part of the job of being on the Board, being a Selectman, part of the Zoning Board is dealing with disputes with different members of the town. The purpose of their job is to try to mitigate those disputes, whether it be a building issue or a zoning issue and any issue in general in the town.

The Chair asked out of curiosity who would do a Straw Vote, who would be in favor or who would not want to recommend this.

The Chair stated Secretary Kurk would not be in favor. Secretary Kurk replied that would be correct.

The Chair stated he would still vote for it.

Vice Chairman Fillmore stated he would still recommend it.

Jack Meaney stated he would still go forward with it.

Alternate Stockhaus agreed as well. It goes back to the Board's motivation at the time. Granted with information forth coming, that kind of questions that, but the Board's motivation at the time was to clarify the Article so that it would be within means, understanding of what is permitted.

The Chair concurred. The reason he voted was to make the Article more clear what was allowed inside that reduced setback area. His thought process has not changed; the Board should have brought it up. **If the Straw Vote is 4-1 to leave it the way it is why should the Board even continue?**

Secretary Kurk agreed and thanked Chairman Francisco for doing this.

III. MINUTES

December 10, 2020 Minutes: Secretary Kurk moved, Jack Meaney seconded to accept the minutes of December 10th, as written, passed 5-0-0.

Being there was no further business to come before the Board, Jack Meaney made a motion, Alternate Stockhaus seconded to adjourn at 8:18 pm. Passed 5-0-0

A True Record

Karen Nelson

Karen Nelson transcribed from

You Tube Recording and notes

from TA Bolton and LUC Dearborn-Luce