Town of Weare
Planning Board

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Planning Board
Craig Francisco, Chairman
Frank Bolton, Vice Chair
Neal Kurk, Secretary
George Malette, Member
Keith Lacasse, Ex-Officio
John VanLoendersloot, Alternate
Bruce Fillmore, Jr., Alternate

PLANNING BOARD – APRIL 10, 2014 DRAFT MEETING MINUTES

Present: Craig Francisco, Chuck Bolton, Neal Kurk, George Malette, Bruce Fillmore, Jr., John VanLoendersloot, Chip Meany, Code Enforcement Officer and Wendy Stevens, Recording Secretary

Guests: Michael Dahlberg, Scott Foote, Michelle Foote, James Wilcoxen, Kelley Wilcoxen and Michelle Boutin.

CALL TO ORDER
Chairman Francisco called the meeting to order at 6:58 pm.

I. **PUBLIC HEARING**
Continuation of Subdivision Application

Scott & Michelle Foote
Tax Map #411, Lot #351, Rural-Agr.
Old Francestown Rd.

Chairman Francisco recalled the question was about the driveway for Lot 351-1. He stated he spoke to Tim Redmond. Mr. Dahlberg presented the board with a driveway plan. Mr. Dahlberg stated the driveway shows where the owner decided it should go. The driveway is right where the lot corner was, so they shifted the lot line down to the stone wall to make a natural boundary to avoid any issues. The driveway comes in at 90 degrees, heads left to avoid the wetland buffer, goes into the hill and there will be about a 10 foot cut towards the top of the hill. The ten foot cut is only for a short distance and then it flattens out. He presented 8.5 x 11 sketches of the other two driveways. Mr. Dahlberg stated he has completely revised the three lots/lot lines and has submitted it to Mr. Meaney. Mr. Kurk asked where the house is going to go. Mr. Dahlberg indicated the area on the map and stated it was quite a distance from the road. He has done a test pit where they would like to put their septic. Mr. Kurk asked if they were aware of the turnaround requirement, Mr. Dahlberg stated yes they were fully aware. Mr. Dahlberg said it has to go to the Selectman for the approval regarding the stone walls. Mr. Kurk asked the Chairman what legal status do they carry if the plans are not part of the milar? Can Mr. Dahlberg change his mind on what is presented? Chairman Francisco said he could change his mind but he would have to come before the Planning Board again. Mr. Fillmore asked to reference the milar on the plans as a note. Mr. Dahlberg said he could do that and he would send a .pdf. Mr. Dahlberg said the driveways are pretty much set in stone except for 351-2. Chairman Francisco referred to Note #11 on the plan, and asked for that note to be expanded to reference the driveways. Mr. Dahlberg offered to add driveway permits are required to be approved by the road agent. Mr. Fillmore suggested driveways to be referenced per these three sketches unless new driveway approval is issued. Chairman Francisco suggested "Driveway permits must be obtained from DPW prior to construction". Mr. Malette suggested we work very hard at the driveway permitting process to try and get better quality driveways and know what is going to happen before they're approved. We asked for driveway plans for this situation, and we have them before us. He thinks the Note is redundant and these plans meet the purpose. Mr. Kurk replied that the applicant would have to come back to the planning board in order to get a recommendation in respect to the stone wall. Chairman Francisco was going to try and make a recommendation regarding stone walls after this approval process was completed. Mr. Malette stated

regarding 351-1, if the driveway were moved more to the right, it wouldn't be as steep, but he doesn't have site distance. Chairman Francisco agreed the plan shows really the only place a driveway can fit.

Mr Bolton asked about the rangeway and a two rod that was discussed at the last meeting. Mr. Dahlberg stated on the east side of the property, one of the original provisions said every other range line has a reservation for a four rod range, and then every other lot line has a two rod reservation for access. So that original bar gap on the east side of the property is going to provide access to 351, and it has been there circa 1760s, and that is the traditional access point. Mr. Bolton said he looked at the range lines. Mr. Dahlberg said there is no range line until you get to the head. Mr. Dahlberg said lot lines run north to south, range lines run east to west, and in the Town of Weare there is a two rod reservation. Mr. Dahlberg said he was not talking about range lines, he was talking about lot lines. Mr. Bolton said he had never heard of this before and this affects hundreds of acres. Mr. Bolton said the frontage is not on the road. Chairman Francisco pointed out the curved line. Mr. Bolton stated looking at the plan, it does not appear he is within his rights. Mr. Dahlberg stated that was the original lot line, he did not create it, and somebody a long time ago created it. Originally the stone wall was the right of way boundary, and the bar gap was on that right of way boundary. Mr. Dahlberg stated it still is, even though the road changed. Mr. Dahlberg stated the town took the road, and moved it, it used to have a real hard bend. Mr. Dahlberg stated he spent hours up at archives researching this at the registry, matching up names with layouts more than a hundred years old. The layout is from 1768, but when you go on the ground, you don't have a four rod right of way, and he had to go back through the archives to find the additional layout which he has sited on the plan. Mr. Bolton said it is not shown on the plan. Mr. Dahlberg said there is no metes and bounds of the layout, it just says southwesterly from one house to the town line of New Boston. Mr. Bolton stated he did not understand. Mr. Bolton stated so the bar gap is there, and it can be used. Mr. Dahlberg said the town moved the road two or three times and never surveyed the area. Mr. Dahlberg said you can't deny the bar gap. Mr. Bolton stated the wall is not a rangeway. How does it have a two rod access if it is not a range line? Mr. Dahlberg said it is a lot line. The lot lines, that run north to south, have a two rod reservation. Mr. Bolton said when it was laid out, there were range lines and lot lines, and he can't believe the wall is a range line or a lot line. Historically that was not a line. Mr. Dahlberg stated yes it is, that the stone wall runs straight north south. Mr. Dahlberg clarified that older surveys from history do not have straight north south lines as magnetic compasses change between morning and afternoon, and he has seen court cases over it. Mr. Kurk asked Mr. Bolton if he was stating that lot 351 does not have frontage? Mr. Bolton stated that it has frontage if the road has moved. Chairman Francisco said the point is we have a licensed surveyor saying the right of way is here, historical access is here, therefore the lot frontage starts at a certain point, and comes around the corner all the way to a point indicated on the map. Chairman Francisco furthered that unless a surveyor has been hired to dispute the claim, Mr. Dahlberg has explained the application three times and Chairman Francisco, who is also a licensed surveyor, understands what Mr. Dahlberg is saying and finds no issues. Mr. Bolton said ordinarily a road has a specified width. Chairman Francisco said the road was originally laid out as a four road road which is 66 ft and was reduced to a two rod road. Mr. Bolton agreed.

Mr. Kurk moved to approve the application subject to Note 11 that would state driveways to be constructed per driveway entrance plan submitted to the Planning Board on April 10th, 2014, unless a change is approved by the Director of Public Works. Chairman Francisco seconded the motion. Mr. Malette said he wanted to make sure there were no other conditions they had discussed which should be a condition. He asked about the small piece of land that was going to be donated. Mr. Dahlberg stated the onwers met with Mr. Redmond and there is a dedication to the town. Mr. Malette just wanted to make sure that was covered. Mr. Kurk, Mr. Malette, and Chairman Francisco were in favor of the motion, and Mr. Bolton abstained. The motion passed 3-0-1.

Mr. Kurk moved that the Planning Board recommend to the Selectman that they approve removal and changes of stone walls for the parcel in accordance with the driveway entrance plan submitted to the planning board on April 10, 2014. Mr. Malette seconded. Mr. Kurk, Mr. Malette, and Chairman Francisco were in favor of the motion, and Mr. Bolton abstained. The motion passed 3-0-1.

II. SUBSTANTIAL COMPLETION, MICHELLE BOUTIN

SHB Properties LLC
Tax Map 411-152, Lots 1-15, 752 South Stark Hwy

Michelle Boutin came forward and stated she was looking for a definition of substantial completion for her subdivision. They are back to square one as to defining what substantial completion is. Their alteration of terrain permit is going to expire in April of 2015, so she is looking for what would qualify as substantial completion so they can apply for an extension for their permit with DES. How much does she need to complete between now and December to satisfy the town, so that she can get the extension from the state. Chairman Francisco stated he saw another case that required the road to be paved to be considered substantial completion. Mr. Fillmore asked paved meaning basecoat? Chairman Francisco stated yes, basecoat only not topcoat.

Mr. Meany said what she might want to know that in Nov/Dec, how much of that road will have to be done so that she can get her extension. Ms. Boutin has clarified they have already received one extension, and her dad has died, and it is not likely they will be able to completely pave the roads in that time frame. Chairman Francisco stated a base coat is 2" and a top coat is 1". Mr. Meany stated the base coat will have to be done by November. She asked if it is realistic? The board thought it is very feasible in their opinion to complete it within this time frame. Mr. Bolton stated the board didn't define it during the first or the second extension. Ms. Boutin said in talking with Craig Renney, she actually could get one more extension because the town never defined what substantial completion was at the initial approval. Chairman Francisco stated he believes there is legislation coming to solve this problem. Chairman Francisco recommended defining the substantial completion now. Mr. Meany recommended informing her associates that this is not going to be a rubber stamp, and that the work needs to be done. Ms. Boutin asked about phasing for the development, 5 lots of more per year – is that correct? Chairman Francisco asked for the approval date, she stated 2006. Mr. Kurk presented a hypothetical situation considering she has 14 lots, and looking ahead – it is now November and the road is in. Can she sell five lots in calendar 14? Chairman Francisco said she can sell as many as she wants, but she is only eligible for 5 building permits. Mr. Bolton said he thought the phasing no longer applies since it has been so many years and lot allowances have accumulated. Chairman Francisco replied yes phasing still applies. The current schedule says it is 5 lots per year, but the schedule changed in 2010 so he would like to check with their attorney. Mr. Meany said in 2006, it was five in a calendar year, but the new 2010 language states five in a twelve month period. Mr. Meany said if we count the vesting, she can pull five now. The question is which set of rules should she be operating from? Mr. Meany stated they would be meeting with their attorney on Monday.

Ms. Boutin asked if there is any historic practice with regards to tolling, because her dad died, which caused unusual delays with the project. Mr. Fillmore asked if something was tied up in probate? She stated yes, that is what tied them up from building, and permits were suspended. She asked if they could go back two years? Mr. Fillmore said that is another question for the attorney. Mr. Bolton pointed out she already got her two year extension from the Zoning Board. Mr. Meany stated it is going to interfere with her alteration of terrain. Ms. Boutin asked again, due to her dad's death having suspended the llc from doing any work while it was in probate, has there been anything historically in this town where the town has been able to assist and write a letter that says due to these problems, they were unable to work… it is called tolling, and it came from Craig Renee of the state, and he told her she had to work it out with the town. She also asked if they do lose their permit, do they have to do a new Subdivison Applicaton altogether? Chairman Francisco will also ask the attorney, but he suspects the answer is yes. Mr. Fillmore and Chairman Francisco both stated the rules have changed for alteration to terrain and open space and it would be much more difficult to obtain approval. Mr. Kurk said she needs to get that road in asap, and get grandfathered with the state and grandfathered with the town. Chairman Francisco stated the deed to the open space will have to change because the current open space area contains elements that are no longer permitted. Mr. Bolton stated he doesn't know the situation with this subdivision but we have discussed others and if they had to reapply, how drastic is the change? Perhaps all the sleep she is losing, is it really worth it over 2 or 3 lots? She stated it is the re-engineering and the costs. Mr. Bolton said it is not as harsh as some people believe.

Chairman Francisco mentioned having to go from 2 acre lots to 5 acre lots, and she would lose 5 lots under the new regulations. Mr. Kurk stated he was concerned about this informal off the cuff discussion on the basis of which the applicant is going to rely, and the only thing we have to help her out in the future is the minutes. If he was her, he would want something more formal, to include a definition of substantial completion. Chairman Francisco asked Ms. Boutin if that was what she wanted, and he stated they could do that after they review it with Atty. Drescher. Ms. Boutin asked what was an anticipated time frame to expect that letter? Mr. Meany responded he would hope for next week.

III. **DRIVEWAY REGULATIONS**

Chairman Francisco opened the public hearing regarding driveway regulations.

Chairman Francisco circulated the revised driveway regulations that included Mr. Kurk's clarifications. Chairman Francisco said page 2, 4c, he sees something he missed. The 8-foot (hyphen) is correct and the underscore needs to be removed. He furthered to remove the s that is stricken through. Period after public works, and V is supposed to be capitalized. Mr. Kurk said no semi-colon, or put a period and capitalize the T it doesn't matter. Regarding the phrase Public works dept., the third line switches it around Dept. of Public Works (pg 2 4c). It should be Department of Public Works throughout (DPW). And in D they listed it incorrectly, and last page 6 C. On #4 (for permanent driveways). Mr. Meany said he thought Mr. Redmond would like to see a requirement for bonding on a temporary driveway. Chairman Francisco said it was stated in the last sentence of 2. He also believes that statement came from Atty. Drescher. Further revisions were discussed and Mr. Kurk asked if a second public hearing should be required. Mr. Meany said we probably should.

Mr. Kurk stated that he didn't think a resident who wants to repave his driveway should be held to the new driveway regulations. The board agreed and the language was changed to address issues where the driveway meets the public road, but not require a resident to have to redo their entire driveway to meet current specifications just because they want to pave their driveway. Mr. Kurk suggested "A permit must be obtained before beginning any modification, paving or repaving of an existing driveway within the town right of way. Only that portion of these regulations relating to the area within the town right of way shall apply."

Mr. Bolton left the meeting at 8:55 pm.

Chairman Francisco invited the public to speak. There was noone.

Chairman Francisco closed the public hearing.

IV. Chairman Francisco discussed meeting with Chief Vezina and Tim Redmond regarding driveways. Mr. Redmond has five comments and is having his name put in the document. After the word Code Enforcement Officer, place a comma. The permit will then be issued with conditional requirements by the public works director. Any further approvals should also be obtained from the Fire Chief. Mr. Fillmore said the ultimate issuance is from the Code Enforcement Officer. Mr. Kurk asked does the document now require two signatures? Mr. Meany responded yes, DPW inspects the apron, and the CEO inspects the driveway. Mr. Meany summarized that basically every place you see the CEO referred to, it will now say CEO/Director of Public Works. Mr. Meany explained the permit first goes to Wendy Rice, then it goes to Mr. Redmond for culvert issues, etc, then it comes to himself as he will not issue a permit for a house until the driveway has been approved by DPW. At some point, he wants to be acknowledged as a part of the process. Mr. Meany said right now Mr. Redmond is the one that issues the driveway permit, and Mr. Meany issues the building permit, and this is what is coming. Mr. Kurk stated there are certain things that the Director of Public Works is required to do as part of the process. Mr. Kurk asked when does Mr. Meany sign off on it? Mr. Meany said at the end, and that he does speak with Mr. Redmond in the interim. Chairman Francisco commented that the number of signatures required might be excessive. Mr. Kurk agrees with Chairman Francisco, he doesn't see why a second signature is required. Mr. Fillmore agreed we don't need a new chain of command here. Mr.

Malette agreed that it is already built into the process.

Chairman Francisco reviewed the security paragraph, and stated Mr. Redmond would like a sentence added, "Bonding may be required by the Director of Public Works." Mr. Meany said he had an issue with the word security. The planning board didn't think the word bond should be used. Mr. Kurk pointed out that the Director of Public Works should be the one signing off on this document, as he is the one that decides if security is needed, and he is the one that can determine what dollar amount the security should be set at. Mr. Meany agreed. Mr. Kurk said before security, add the word such security. Mr. Kurk proposed, "The applicant may be required to provide security in the amount the Director of the Department of Public Works determines is necessary to ensure that any damage or alteration…" continue with existing sentence. Mr. Fillmore clarified that we cannot say "bond" per state statute, that we are required to accept non-descript forms of security such as cash, letter of credit, etc.

Chairman Francisco asked if there is a lot that has had the same owner since 1964, how are we going to enforce the new regulations? He asked the attorney, and the attorney replied the new subdivision regulations would still apply. The attorney advised that you can instead revise your existing driveway regulations. Chairman Francisco asked if we had other driveway regulations? He furthered that he could not find them in the building code. Mr. Kurk asked if we had a building code or did it mean the state building code? Mr. Meany said we had a building code, but it was superceded by the state. Mr. Meany said we need to have these driveway regulations somewhere, so it either has to go in the Building Permit Ordinance, or either in the ICC (state code) or in NFPA1. Chairman Francisco is meeting with the town attorney on Monday to discuss.

V. OTHER BUSINESS

Chairman Francisco acknowledged Mr. Fillmore as a voting member. Chairman Francisco reviewed minutes. The February 27th minutes were reviewed. First page, last line, grounds stated this was a "redesign" instead of design that Mr. Dahlberg did, then cross the rest of the sentence out. Second page, roman numeral III, reads an application for subdivision application or design review (cross out design review). Third page, end of the first paragraph – change it to say the board scheduled a site walk for (insert date or time which should read March 6th 2013). Last page, above adjournment, Scott Looney correct spelling of name. Jon said in the letterhead he should be listed as an alternate, not a member. Mr. Fillmore moved to accept the minutes as amended. Mr. Malette seconded. All were in favor.

The March 13th minutes were reviewed. Change Jon to an alternate. First page, paragraph starts out Discussion, fourth line down it says of clearance, and it should state of site distance. Halfway down it says Mr. Kurk recommending all temporary driveways must be regarded to temporary conditions – instead of on, and. Mr. Fillmore made a motion to accept the March 13th minutes as amended, Mr. Kurk seconded. The vote was unanimous.

The March 27th minutes were reviewed. Mr. Malette said on second page, 2nd paragraph, last line, "Historical Society" should say "Heritage Commission". Mr. Meany corrected that he did say Historical Society. Mr. Malette said the minutes shouldn't say there was no comment from either, but perhaps it should say no response as a no comment could indicate an action, "no comment". Chairman Francsico first page, second paragraph, Mike Dahlberg they wish to subdivide their lot…he mentioned test pits were done (add and the wetlands delineated). Last page, third line "Mr Kurk said all driveways exceeding 800 feet… all driveways exceeding should say 150 feet, not 850 feet. Same paragraph next to last line, hose needing to be a certain distance away from the house. Mr. Kurk moved to approve the minutes as amended. Mr. Malette seconded. Mr. Fillmore abstained. The minutes were approved.

Mr. Fillmore asked about an upcoming MUNI lecture series workshop and if they were still offered. Mr. Meany stated yes.

Chairman Francisco asked when does somebody's term expire? Mr. Meany stated they set expiration dates of terms stacked so that boards don't completely expire in the same year. Chairman Francisco

stated to take Dani-Jean Stuart's name as her term has expired.

VI. **ADJOURNMENT**

Mr. Kurk made a motion to adjourn the meeting at 9:33pm. Mr. Malette seconded. The meeting was adjourned.

A true record,

Wendy J. Stevens