

Present: Vice Chair Jack Karcz, Members Jack Downing, Andy Kohlhofer, and Roger Barham, RPC Senior Planner Jenn Rowden, and Land Use Administrative Assistant Casey Wolfe

Also Present: John Ratigan, Martin Ferwerda, John Chagnon, Denny Byrne, Joanne Passanisi, Rosemarie Stevens, Al Witham, Brenda Samoissette, Jean Swett, John H Folland, Barbara Folland, Nancy Rines, David Rines, Deb Rich, Todd Rich, Warren Gerety, Jack Mullen, Rita Macpherson, Steve Bassett, and Diane Gorrow.

Mr. Hunter opened the meeting at 7:01 pm.

## **I. MINUTES**

Mr. Karcz stated that the approval of the October 4, 2017 minutes would be tabled to the next meeting.

## **II. CONTINUED BUSINESS**

### **Public Hearing for Marty Ferwerda who seeks a site plan amendment and lot line adjustment at Governor's Forest [Map 3 Lot 2]**

Mr. Ratigan, the attorney representing Mr. Ferwerda, had a letter signed by Mr. Witham. He distributed it to the Board members. He stated that the Chair wanted to address the concerns of Ms. Blair's house (one of the encroaching homes). Since the last meeting, the lot line has been altered so that it goes around the encroaching home. Mr. Ratigan asked the Board to approve the proposed lot line plan and driveway plan. He stated that Mr. Ferwerda still refuses to have the access road paved. He stated that his client has already had an enormous loss of income due to the cease and desist. He also stated that on the original plans the access way was not required to be paved anyway. Mr. Karcz asked where Mr. Ferwerda stood on the easement. Mr. Ratigan stated that Mr. Ferwerda is willing to bring it to the lot line but no further. He was never required to make any connections with any other roads. Mr. Barham stated the building permits for the house on George's Way in Witham Park were issued based on plans approved by the Planning Board. These plans show the house meeting the 30 foot setback. Additionally, the permits for the house on lot 18 for Governor's Forest were given based on the plans provided by the applicant. Again, according to the scale on these plans, the home should have met the 30 foot setback, however, the house is only 24 feet from the boundary. Mr. Ratigan stated that Mr. Witham's plan has nothing to do with his client's plan. Mr. Ratigan stated that the Town gave building permits and a certificate of occupancy to Mr. Witham to build on his client's property. Mr. Barham stated that the permits were given based on a plan that showed that the buildings met the setbacks. The Town gave permits on good faith based on the information provided to them. Mr. Ratigan stated that he agreed with Mr. Barham if his point is that both parties need to work together to straighten this out. Mr. Barham stated that he is looking for an access way that connects Tarah Way to Country Lane. Mr. Ratigan stated that Mr. Ferwerda is not willing to do that. He stated that originally only a stub connection was approved by the Planning Board and that Mr. Ferwerda was never required to make a connection with Country Lane. Mr. Barham stated that the two parties are now at an impasse and asked for input from Attorney Diane Gorrow (town counsel). Mr. Ratigan stated that there are no plans that show a connection on Mr.

Witham's side of the property line and reminded that Board that his client has already lost hundreds of thousands of dollars. He encouraged the Board to put an end to this and approve the plans and stated that the Town needs to compromise.

Mr. Barham stated that way before the Selectmen got involved the Planning Board asked Mr. Ferwerda to maintain the access way from Tarah Way to Country Lane and eventually passed the issue on to the Selectmen because nothing was being done. Mr. Barham asked Ms. Gorrow to address the issue of the access way ending at the lot line. Ms. Gorrow stated that she has not seen all of the record of the Planning Board's original approval, however, she has seen the recorded plan and it does state that there needs to be an emergency access. So, it does need to connect to something so that it can be used as an emergency access. She stated that she cannot speak to the particulars that went on during the original approval process, but it is her understanding that this is an especially long road leading to a cul-de-sac and that regulations may have required this access way due to the length of the road. She does not know what was originally proposed to be over the lot line but clearly there is an easement that provides rights to the abutting property for emergency access. Mr. Barham asked Ms. Gorrow if the Board has the right to require Mr. Ferwerda to make use of the easement and extend his emergency access to Country Lane. Ms. Gorrow stated that the Planning Board has jurisdiction over Mr. Ferwerda in this plan to require that he provides emergency access so that it is not just a road that leads to know-where. In a Planning Board case, applicants can be required to do off-site work as part of a proposal. She stated that she would characterize the emergency access as something that is off-site that the applicant needs to connect to make the access viable. Mr. Barham stated that the road needs to be completed and requested that the applicant uses the rights granted under the easement to do the work to make it a connected access way. Mr. Ratigan stated that that is not the plan that has been proposed. Ms. Rowden stated that technically there are two separate plans that have been proposed, the lot line adjustment plan and the amended site plan. It is possible for the lot line plan to be approved and not the site plan. She stated that the lot line adjustment application is a complete application and the Board could accept jurisdiction over it. Mr. Barham stated that he would be happy to proceed with the lot line adjustment so that only the emergency access issue is pending. Mr. Kohlhofer made a motion to accept jurisdiction of the proposed lot line adjustment. Mr. Downing seconded the motion. The motion passed 4-0-0. Mr. Ratigan stated that he is not willing to have just one of the applications approved and that the two applications come as a package. Ms. Rowden stated that there are separate regulations for site plans and subdivision plans and that it is possible to approve one and not the other.

Mr. Ratigan stated that his client does not find it acceptable to have one application approved but not the other. Mr. Ratigan stated that he and his client are bending over backwards to work with the Town. He stated that the hallmark of a compromise is everyone giving a little and that he does not see the Town doing that. He stated that all that was required for the original approval was that the road was brought to the property line. He also restated that Board needs to consider both applications and that they come as a package. Mr. Barham asked Mr. Witham, who was sitting in the audience, if he would be willing to extend and maintain the access way on his side of the property. Mr. Witham said that it would not be a problem. Mr. Barham stated that the engineering needs to be done as a condition of approval. Mr. Ferwerda stated that he is not willing to pay for that and that this arrangement would be strictly between the Town and Mr. Witham. Mr. Ratigan stated that he does not want his approvals to be tied to Mr. Witham's

project because his plan needs to be recorded in a timely manner. Mr. Barham took Mr. Ratigan's point and wondered how to get assurance from Mr. Witham that he would stick to his word. Mr. Ratigan stated that he thinks Mr. Witham's word is good because he has been in Town a long time and that he made these promises at a public meeting. Mr. Witham stated that in the past he had made sure that a removable cable was there so that the Fire Department could get through if they had to and he guaranteed that it would be there. Mr. Barham stated that the one impasse now is the paving issue. He stated that he is aware that the original plan did not require the road to be paved, however, there has been a history of washouts. Mr. Ratigan insisted that the road is gravel. The Board can place a condition that states that the road needs to be repaired if it gets washed out. Mr. Barham stated that getting Mr. Ferwerda to maintain this access in the past has been difficult and it has not been passable. Mr. Karcz asked Mr. Witham if he willing to pave his side of the access way when he makes the connection up to the lot line. Mr. Witham stated that it would not be a problem. Mr. Karcz stated that the Board wants Mr. Ferwerda's side to be paved as well. Mr. Ratigan stated that compromising would be recognizing how much Mr. Ferwerda has already lost financially. He stated that his client is willing to go to court if he is asked to pave his side of the road to get his proposed amended site plan approved. Mr. Rowden suggested having a maintenance bond in place. Mr. Ferwerda did not like this idea and stated that it is his road and his responsibly. Mr. Ratigan restated that his client will keep the road maintained. He recommended that the Board asks his client's engineer what gravel materials will stay in place and require those materials to be used as a condition of approval.

Mr. Chagnon, the engineer for this project, stated that there was a question earlier about the easement. He stated that the plans for the easement were not resubmitted but they should be in the file. The plans for the site plan amendment were not altered since the last meeting, which is why he did not resubmit copies of this plan for this meeting. The plans show how the easement will be relocated slightly to avoid the homes that are encroaching on Mr. Ferwerda's property. The proposed turning radius is just as good if not better than what was originally proposed. Mr. Chagnon stated that the grading plan shows grading along Mr. Ferwerda's property and that the road will be stable as a gravel drive. Mr. Karcz asked what the slope of the road is. Mr. Chagnon stated that it becomes a 10% slope as it heads toward the Witham property. Ms. Rowden stated that this would be pretty steep for a road that is used every day but this is an access way meant only for emergency purposes. Mr. Chagnon redid his calculations and stated that it is more like an 8% slope and it should not be a problem for fire trucks. Mr. Kohlhofer suggested that the Board gives a condition that he has to maintain the access way so that it is passable. The Board of Selectmen could always issue another cease and desist if Mr. Ferwerda does not comply. Mr. Braham stated that it has been a long standing wish for the road to get paved but we are so close to an agreement. Mr. Barham made a motion to accept jurisdiction of the site plan amendment. Mr. Downing seconded the motion. The motion passed 4-0-0. Mr. Barham alluded to the gentlemen's agreement with Mr. Witham to complete the access way. Mr. Kohlhofer made a motion to open up public comment. Mr. Downing seconded the motion. The motion passed 4-0-0. Mr. Denny Byrne of 71 Tarah Way commented that while it would be nice for the access way to get paved, however, the reality is that the paving would promote more access. Mr. Barham commented that one thing that has been discussed is that the access way will be purely for emergency vehicles. Mr. John Folland asked who would plow the road. Mr. Barham stated that the site owners would plow the road. Mr. Folland stated that the plow could rip up a gravel road. Another abutter asked if the road will be separate from the driveway.

Mr. Kohlhofer made a motion to close the public hearing. Mr. Downing seconded the motion. The motion passed 4-0-0. Mr. Barham asked for a clarification on the proposed changes. Mr. Chagnon stated that he would need to make an addition to the cross section that would show the materials that are to be used in the driveway. Mr. Barham stated that a condition would be that the cross sections are done to the town engineer's approval and asked if this would be acceptable. Mr. Ferwerda agreed that this would be acceptable. Mr. Barham stated to Mr. Witham that there would be the same condition on his side of the property line. After some discussion about a possibly encroaching septic system, Mr. Ferwerda stated that he will give an easement for the septic system if it encroaches on his side of the property line. Ms. Rowden stated that the easement for the septic system, a recordable Mylar, a review of the cross sections by the town engineer, and the maintenance of the access way are all possible conditions for approval. Mr. Barham had a question about the gate. Mr. Witham stated that he would put a removable chain on the entrance way. Mr. Chagnon stated that he would change the name of the plans to "amended site plan." Ms. Rowden clarified that conditions of approval for the lot line adjustment would be the recordable Mylar and the easement for the septic system if an encroachment is found. Mr. Kohlhofer made a motion to approve the proposed lot line adjustment with these two conditions stated by Ms. Rowden. Mr. Downing seconded the motion. The motion passed 4-0-0. Mr. Barham made a motion to approve the proposed amended site plan under the conditions that the details of the cross section of the emergency access is reviewed by the town engineer, that the access way is maintained by the property owner, that the access way is gated with a removable chain, and that a recordable Mylar is provided to the Town. Mr. Kohlhofer seconded the motion. The motion passed 4-0-0. Mr. Ratigan asked when the cease and desist order will be lifted. There was some discussion about a sixty-day deadline to construct the access way after the plans are recorded.

### **III. OTHER BUSINESS**

#### **Warren Gerety to discuss economic revitalization and the cap on 55+ housing in town**

Mr. Gerety introduced himself as the Chair of the Economic Development Committee. He stated that the committee is an independent business organization that works closely with the town and that he was pleased that the Board of Selectmen have attended every meeting. He described the first objective of the committee is to promote desirable commercial developments and over 55 residential complexes to increase the tax base and bring in more tax revenue. The committee also recognizes the responsibility of maintaining the tranquil rural atmosphere that makes Fremont a special place in the heart of its residents and businesses. Mr. Gerety knows that no one in town wants a Plaistow route 125 situation, and he made it clear that the committee is not working towards that at all. One of the first things that the committee did was contact the State of New Hampshire's Division of Economic Development and applied for Economic Revitalization Zones. The town has since then received approval for five of these zones. New businesses in these zones can receive the opportunity to receive tax credits for as long as five years. He explained to the Board that companies coming to New Hampshire look for these zones first so that they can receive these tax credits. Fremont is now on the map in this respect. He briefly went through each of these five areas in Town that have been approved by the State to be an Economic Revitalization Zone.

Mr. Gerety then moved on to Senior Housing in Fremont. He stated that seniors now occupy one out of five housing units in New Hampshire and that by 2025 it could be one in three housing units. There are not enough two bedroom units to accommodate for this sector of the population. Currently the Fremont Zoning Ordinance allows 10% of the housing units to be senior housing. As of 2015 in Fremont, there is a total of 1,643 housing units. With the restriction of the elderly housing ordinance, there can only be 52 more senior housing units built in town. Black Rocks Village has 112 units. Black Rocks Village has added more than \$22 million to the tax base. Last year the community brought in more than \$654,000 of tax revenue. If the percentage is increased from 10 percent to 15 percent it would allow 134 units to be added and could increase the tax base by \$33.5 million. Based on the 2016 tax rate, it would bring in \$1 million of tax revenue without any impacts to the school system. He would like the Board to have this proposed change from 10 percent to 15 percent on the March 2018 Warrant Article. If the Board chooses not to do this, then he will put together a citizen's petition to get it on the Warrant Article. There was some discussion on this suggested proposal. Ms. Rowden stated that the advantage of this would be that tax revenues would be increased without burdening the school. On the other hand, senior housing could require more emergency services. Going from 10% to 15% could result in a bigger development coming in.

Mr. Gerety also wanted to discuss the Corporate Commercial district on Shirkin Road and updating it from a class six road to a class five road. He stated that all of the developable land in that area is unlikely to get any prospects without the necessary infrastructure in place. He stated that the road is now a priority project for the Regional Economic Development Center. This gives the town a real opportunity to get a Federal infrastructure grant, it would be a 50/50 private-public partnership, and the Regional Economic Development Center would help the Town get funding and move forward if the Town decides to get going on the project. Mr. Kohlhofer stated that some landowners out there are willing to sell their property. Mr. Gerety stated that businesses looking to move to the area would be interested to see that the project is a priority project for the Regional Economic Center. He stated that the next Economic Development Committee meeting is on Monday November 13<sup>th</sup>. Ms. Rowden brought up that the USDA has rural development grants available and that Fremont may qualify. Mr. Kohlhofer wonders if people are willing to build large homes and felt that this will help with the tax base. Mr. Gerety left at 8:21 pm.

**Preliminary for Todd & Deb Rich to discuss a submitted amended site plan application for 5 Hall Road [Map 3 Lot 15]**

Mr. Rich explained that he seeks to convert his mix-use building to completely residential. Ms. Rowden explained to the Board that the actual lot would not change in characteristics and that there would not be a new building. She also stated that this project seems very doable as long as the septic system is adequate for the number of apartments. She felt that this application would be appropriate for a minor site plan. Mr. Rich explained that there is enough parking. He originally thought the units were for either commercial or residential. He would like a total of six residential units. Benson's Driving School and the SAU are both gone. Ms. Rowden felt that the lot sizing should be adequate. She suggested that a good change to the site might be screening for the dumpster. Mr. Barham agreed that this application is a good contender for a minor site plan

application. There was a consensus that this could be a minor site plan. Mr. and Mrs. Rich left at 8:28 pm.

**Preliminary for Jack Mullen to discuss subdividing 117 Tavern Road [Map 6 Lot 47-1-1]**

Mr. Mullen explained that his home is down Tavern Road right before you get to the Town Forest. The house is in the Northeast corner of the lot. He would like to subdivide the land into seven lots including his home. Ms. Rowden explained that he would need to go through the usual subdivision process. The plan would need to be an engineered plan. Mr. Mullen explained that he has tried for years to conserve the lot but has been unable to do so. Part of his retirement plan would be to get revenue from this land. Ms. Rowden explained that he would have to meet submission deadlines, he would have to send out abutter notices, and pay for an engineering review done by the town engineer. She explained that after the application is complete, the Planning Board can approve, conditionally approve, or deny the application. Once the Board makes a decision, the applicant has 90 days to get the plans signed and recorded. The subdivision process can take several months.

Mr. Mullen explained that he has already hired Beal's Associates to draw up a preliminary design. The firm has already gone through the checklist. Mr. Mullen asked the Board if the Town will require Tavern Road to be paved. His current lot has about 980 feet of frontage, however, only about the first 100 feet is paved. Mr. Barham stated that for the homes to get certificates of occupancy, the road will need to be paved. Mr. Mullen stated that there have been some new homes recently without pavement. He also stated that Old Ridge Road in town is not paved. Mr. Karcz stated that the road would need to be paved. Mr. Mullen explained that he needs the revenue from the first two proposed lots on Tavern Road to construct the new road. After some more discussion, Mr. Mullen left at 8:43 pm.

**Discussion with Steve Basset about accessing his land through Map 2 Lot 151-2**

Mr. Bassett wanted to update the Board on his right-of-way through Map 2 Lot 151-2. He stated that the owners of the lot have implied that he can cross to get to his land, but when he crossed they threatened to call the police. He stated that his right-of-way should have been on the recently conditionally approved plans for Altaeros Energies. Ms. Rowden stated that according to the town's site plan regulations, all easements and right of ways need to be displayed on the plan. The surveyor was charged with doing this research. Ms. Rowden stated that she actually went back to 1840 records and did not find any evidence of an easement. She stated it is possible the surveyor did not portray the site plan accurately. Mr. Basset can appeal the Planning Board's decision to the Zoning Board of Adjustment. She suggested that he finds the document that says he has legal access to his property. While the burden is on the surveyor to do the deed research, a standard title search may not go back far enough.

**Stantec rebuttal letter**

Mr. Barham stated that he felt that the letter from Stantec covers all of the bases. Mr. Karcz asked if Stantec engineer Dan Tatem should come in. The Board asked to have Dan Tatem in at the November 1<sup>st</sup> Planning Board meeting.

#### **IV. CIRCUIT RIDER BUSINESS**

Ms. Rowden informed the Board that the Ordinance does not comply with FEMA regulations. A representative at the Office of Strategic Initiatives has made some edits to comply with the standards. These changes are mostly definitions. Ms. Rowden explained that the purpose of this is to make sure that people who need flood insurance can get it.

#### **V. ADJOURNMENT**

Mr. Barham made a motion to adjourn the meeting at 9:06 pm. Mr. Downing seconded the motion. The motion passed 4-0-0.

Respectfully Submitted,

Casey Wolfe  
Land Use Administrative Assistant