



# Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK PLANNING BOARD

### APPROVED MINUTES

**TUESDAY, JULY 18, 2017**

Planning Board members present: Robert Best, Alastair Millns, Bill Boyd, Michael Redding, Lynn Christensen, Desirea Falt, and Alternate Nelson Disco.

Planning Board members absent: Vincent Russo and Alternate Paul McLaughlin.

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

#### **1. Call to Order**

Robert Best called the meeting to order at 7:00 p.m. and designated Nelson Disco to sit for Vincent Russo.

#### **2. Planning & Zoning Administrator's Report**

**The Board voted 7-0-0 to determine that the Vaughn Subdivision (agenda item #4) is not of regional impact, on a motion made by Bill Boyd and seconded by Alastair Millns.**

Alastair Millns complimented the Public Works Department (PWD) for fixing Amherst Road so quickly. Chairman Best thanked Town Council and administration for scheduling the project. Although the road deteriorated faster than anticipated, the Town was ready to make the repairs.

#### **3. William Lastowka (applicant) and Land of Goshen, LLC. (owner) - Continued review for acceptance and consideration of final approval of a Subdivision Plan for a twelve lot cluster subdivision. The parcel is located at 6 Watkins Road in the R-1 (Residential) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 4C, Lot 449. *This item is continued from the June 20, 2017 Planning Board meeting.***

Jillian Harris said the applicant provided a new set of revised plans that addresses the concerns raised by staff and Merrimack Village District (MVD) about elevation datum and not being able to supply water to the project. CLD comments on the current revision have not yet been addressed.

Chris Guida, Certified Soil & Wetland Scientist, Fieldstone Land Consultants, PLLC, said there would be 12 new lots and one existing lot in a cluster subdivision that got approval from the Zoning Board of Adjustment (ZBA) to install private septic systems rather than Town sewer. Part of the man-made pond on site would be used for water treatment and storm water management. Construction of the roadway would require

partial filling at the northern end. A variance is being sought to keep the existing barn in the 100' buffer. Test pits show that all soils are well drained and sandy. The applicant has appeared before the Merrimack Conservation Commission (MCC). There would be an effluent disposal area on each lot. For this type of subdivision the State allows smaller lot size and frontage and does not require a 4K area to be shown for septic. Driveway slopes would meet requirements.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

**The Board voted 7-0-0 to accept the application for review, on a motion made by Desirea Falt and seconded by Michael Redding.**

Alastair Millns wanted an existing conditions map that would show where Watkins Road is in relation to what now exists. It is just an earthen turnaround. He asked whether the emergency access and waterline easement are on the neighbor's property. Chris Guida showed the existing right-of-way, which was never constructed. The gravel road goes onto the abutting property, which is an existing condition. He showed the emergency access easement that goes to the water tower; the easement would not change. Nathan Chamberlin, Fieldstone Land Consultants, PLLC, said Watkins Road is a paper street/gravel driveway to the existing house that is shown on all reference plans. Jillian Harris added that it is on the 1974 subdivision plan. Alastair Millns saw no evidence of a gravel road when leaving Amherst Road. Jillian Harris said an emergency access road to Scott Drive appears on a number of plans. Nate Chamberlin said an old ACP water line comes through there. The Planning Board requested an existing conditions plan on a single sheet.

Desirea Falt asked for overall plan details.

Michael Redding asked about drainage, whether it is open along the road, the history of the pond, and proposed changes. Chris Guida showed the proposed grading lines. There is open drainage except for the tie-in to the culvert.

Chris Guida proposes grading the road and utilizing the existing pond as detention. The berm would be raised 1' to allow more storage in the pond. Nate Chamberlin explained the drainage. The existing flow out of the pond would be maintained. Drainage would be tied into the Amherst Road drainage coming on site. A headwall and plunge pool for erosion control would be placed at the outfall. Chris Guida said that means there is no need to create a new detention structure that would disturb the man-made pond.

Michael Redding asked about slopes and erosion control. Nate Chamberlin said a continuous slope creates a natural shallow swale along the right-of-way. There would be no erosion problem as there would be with a standard ditch and there would be less impact. Chris Guida explained that the intent is to utilize the existing land contours and to maintain height without causing runoff onto roadway and driveways. Michael Redding predicted that water would come onto properties and that homes would be in a valley. Chris Guida replied that each lot would have its own site work and must plan according to road conditions. Chairman Best noted that the developer is leaving it up to

future homeowners to fix the problem rather than to help them. Road water must be kept from running toward homes and buildings. Chris Guida will discuss the matter with PWD and make necessary changes.

Nelson Disco said that sidewalks are necessary for safety in a cluster development and would affect drainage. He asked who would own the open space on the east. Chris Guida said it might be a homeowners association. Chairman Best and Nelson Disco said a conservation easement is needed. Alastair Millns cited a Zoning Regulation that common land must be 50% of the total development. Discussion ensued about how to calculate the open space. Chris Guida said access would be from the backyards of all the lots, the cul-de-sac and the frontage on Watkins Road. The wetland is forested; it is not standing water. Planning Board requested a table of how much wetland/recreation area would be in the open space. Nate Chamberlin said there is a note on the plan that, although 11 acres are required, 12.7 acres would be provided.

Nelson Disco wanted the applicant to provide calculations showing driveway slopes and to show each driveway. Housing should not be atop a leach field. Chris Guida said a 4K area is not required, but the actual size of a leach field is. He will show it on the plan. It would meet requirements. Nate Chamberlin said that owners rather than the developer would make the final design of each lot. One cannot look into specific designs for house placement. Chairman Best explained that, if there is doubt about a driveway meeting requirements because it is the only place a driveway would work, the applicant must show that it meets the 10% slope. Referring to a previous case, he does not want a homeowner to discover too late that it is more than 10%. Michael Redding suggested noting on the plan that a homeowner can build a different design while meeting the 10% requirement.

Nelson Disco wanted to have a copy of the drainage study and asked if the Town had accepted Watkins Road. Nate Chamberlin explained that it is highly unlikely, since it does not meet standards, but it will become a Town road.

Nelson Disco and Chairman Best did not want the barn to remain in the buffer, which would require a variance from the ZBA. To build in a buffer defeats its purpose as a shield. Chairman Best wanted to prevent the backyards of lots 449-3 and 449-4, which would be partly in the landscape buffer, from being used for other purposes (e.g., deck, pool, swing set or barbecue). A building may not be in a buffer, but a buffer is going to be in someone's backyard. A leach field should be outside the buffer as well. Chris Guida agreed to reposition the proposed conceptual location of the homes on a revised plan.

Alastair Millns said a 50' turnaround at the end of the cul-de-sac is not satisfactory for a fire engine and should be increased, which means that Lot 449-4 would have even less space. Nor can a cul-de-sac be paved with grass in the center at that size. The Planning Board instructed the applicant to note how the configuration would change if the road layout were adjusted.

Discussion ensued about the direction and ownership of the access/easement to Lots 449-4 and 449-50, which Chris Guida will discuss with a surveyor.

Chris Guida stated that all utilities would be underground.

A waiver is sought to make a 22'-wide rather than a 24'-wide road and to have a vertical scale of 10:1 on the plan/profile sheets rather than 5:1. The Board wants to hear from Public Works, the Fire Department and CLD before voting.

### **Public comment**

Chairman Best summarized a letter from Dan Ricker, 12 Merrill Road, who raised questions about water use/MVD approval, elevation datum, water pressure, conflicts of interest, impact of a 6% slope, and adoption of Low Impact Development (LID) requirements.

Heather Dubois, 40 Amherst Road, said this is a heavily populated and trafficked area. A cluster would bring many homes into a small and congested area. She asked the Board to consider a conventional subdivision. Chairman Best explained that would mean larger lots and a longer road, whereas a cluster subdivision has open space and causes less environmental impact. A variance was granted for the right to build a cluster subdivision with private septic. The Planning Board cannot decide whether to put a development on a property.

Heather Dubois asked how wide Watkins Road would be when it meets Amherst Road. Chairman Best explained that there are regulations about width, angles where the roads meet and sight distances. The Board relies on CLD/peer and PWD/Town staff review. The Board has instructed the applicant to draw a better existing conditions plan. Open space is available for public use also.

Heather Dubois asked about a temporary bridge during construction. Chairman Best explained that a man-made pond has different statutory requirements from a wetland.

Fire Chief John Manuele said a cul-de-sac would be too narrow to support fire apparatus. A 46'-long fire truck does not fit in a 50'-diameter. He opposes a 22'-wide road, which must be wide enough for fire trucks, especially when there are snow banks. Nelson Disco suggested making the regulation about the size of cul-de-sacs more specific.

Chris Guida said there would be no bridge. The outlet structure to the pond would be raised and the footpath widened to make it safer. There would be some impact to the size of the pond. No Dredge-and-Fill Permit is required for a man-made structure. The Planning Board requested a letter from NH Department of Environmental Services (DES) to that effect.

Nate Chamberlin said the road to the end of the cul-de-sac would be 1,150' and that he followed the regulations, which allow for 1,200' in length and a landscaped island. Chairman Best cautioned that the Public Works and Fire Departments may want a larger cul-de-sac. Chris Guida explained that he previously used the wrong datum and left out one step. He has now made the correction.

A waiver from the sidewalk requirement is sought because this is a dead-end subdivision with little traffic that presents no real hazard to walking on the road. It is a

maintenance issue. There is no location for a sidewalk. It would go nowhere, since there is no sidewalk on Amherst Road. Several Board members noted that children would walk to Amherst Road to get to school buses and that a sidewalk is required in a cluster development. The Board agreed to allow a sidewalk on one side only.

Bill Boyd cited the criterion that specific circumstances relative to the site plan or conditions of the land in such site plan indicate that the waiver will properly carry out the spirit and intent of the regulations.

**The Board voted 7-0-0 to waive the requirements of Section 4.20.6 - Paved Pedestrian Way or Sidewalk - of the Subdivision Regulations - and to require a sidewalk on one side of the new roadway only, on a motion made by Bill Boyd and seconded by Alastair Millns.**

The Board requested the following for the August 15, 2017 meeting: CLD/staff review, existing conditions plan, conceptual footprints of proposed homes, new road dimensions, backyards of homes in the buffer, discussion of snow storage with PWD, guard rail next to the pond, ownership of open space, ownership of conservation easement, details of access easement, turnaround radius, separation of leach fields from homes, driveway slopes.

**The Board voted 7-0-0 to continue this item to August 15, 2017, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Bill Boyd.**

- 4. Brett W. Vaughn (applicant) and Brett W. Vaughn Revocable Trust (owner) -**  
Review for acceptance and consideration of final approval of a 13 lot residential subdivision. The parcel is located at 123 Wilson Hill Road in the R-1 (Residential) District. Tax Map 4A, Lot 023.

Jillian Harris said that CLD peer review comments and a majority of review comments from other town departments have not yet been received. On October 26, 2016, the ZBA granted a variance for frontage/lot area. Due to the changes in the proposed subdivision plan, the applicant must seek new variances for the proposed lots that do not comply with the frontage requirements nor agree with the previously granted variance(s).

Chris Guida, Certified Soil & Wetland Scientist, Fieldstone Land Consultants, PLLC, said this would be a conventional subdivision with full-sized lots on well-drained soils. A waiver is sought to change the driveway slope to minimize cuts and soil impacts next to abutters. A waiver for reduced frontage was granted. Jillian Harris explained that the applicant must return to the ZBA because two lots on the cul-de-sac would have frontage different from what was specified in the original variance. Chairman Best explained that the Planning Board may decide not to grant conditional approval until the ZBA rules on the variance.

Brett W. Vaughn, 123 Wilson Hill Road, said that, at the Planning Board's suggestion, he discussed water issues with abutters. Their concerns are the number of homes (one was eliminated), location of homes, a guaranteed buffer (a conservation easement and

50' buffer are proposed; the septic design would be oversized and above the standard), and no blasting (either homes would be on lots that do not require blasting or a hydraulic hammer would be used.) Abutters were favorable at the ZBA meeting. The easement would be in front of all the abutters.

Chairman Best said it appeared that the applicant had met the goal: neighbors have confidence about their wells. There would be an access easement on Brett Vaughn's driveway that would cross one new lot.

Chris Guida said Lot 4A-23-4 at the corner would meet size requirements.

Brett Vaughn will meet the 10% grade requirement on his driveway, but he will change its dimension.

Nelson Disco suggested a shared driveway and Chairman Best suggested preserving the rock wall wherever possible.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

**The Board voted 7-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Desirea Falt.**

Brett Vaughn seeks a waiver from the requirement that a cul-de-sac not exceed 1,200' in length. The property is unique. The geometry and topography require a longer roadway to provide ample buffering to neighboring properties. The development contemplates a layout that creates separation to the abutting properties while contemplating the existing conditions of the site. A 1,624.5' cul-de-sac roadway is proposed to provide adequate drainage, underground utilities and safe access to the development. Denial would force a layout that would require additional excavation, impact and land-altering activities in close proximity to abutting properties. Brett Vaughn will discuss it with the Fire Department, whose letter he has not seen. Captain Manuele suggested two cisterns, which Brett Vaughn labeled as "extreme". Discussion ensued about the alternatives of sprinklers in the homes or a fire pond.

Chris Guida said part of the road is fairly steep. He seeks a waiver to increase the required 5% slope to 6%-8% closer to the Wilson Hill Road intersection and to shift the slope to the roadway, which would minimize environmental impact. Chairman Best suggested discussing with PWD to make a depression so that water would not go onto Wilson Hill Road. Jillian Harris noted that PWD already commented on the slope in its memo. Any change must be discussed with them.

Nathan Chamberlin, Fieldstone Land Consultants, PLLC, also wants a waiver from profile scale for the same reason.

### **Public comment**

Anthony Cappuccio, 111 Wilson Hill Road, said the issues are runoff and water yield. He suggested the applicant pay to establish a base line for water yield and quality for each of the abutters and that the Town establish the number, type and timing of the test.

His own well is 220' deep; its yield is sometimes as low as 2.2 gallons a minute. He must ration water use carefully; the pump kicks out regularly.

Beth Bullerwell, 103 Wilson Hill Road, asked how to keep the buffer as a conservation area. Chairman Best explained that a conservation easement is deeded to someone (e.g., Town, homeowners association, Society for the Protection of NH Forests) and the document gets filed with the Registry of Deeds so that no one can build there. Noting another development proposed on Wilson Hill Road, Beth Bullerwell was concerned about more traffic. Her lot is on a dangerous curve. Chairman Best said that Wilson Hill Road is difficult.

Fire Marshal John Manuele said there are no cisterns in Merrimack. This would be a 13-lot subdivision with the nearest hydrant well over 1 1/2 miles away on Wilson Hill Road. A cistern holds 60,000 gallons of reliable water and would benefit the entire area of 19 homes, including the other new homes recently approved. There is no Town water for sprinklers here. They just keep fire in check until the fire truck arrives, but they do not save a house. There is no guarantee of the amount of water a fire pond will generate. It also requires maintenance. Cistern maintenance consists of painting pipes every 3-5 years, maintaining grass and keeping trees away.

Brett Vaughn suggested a condition of approval could be that timber not be cut in the green space. He will appear before the MCC. Chairman Best noted that MCC likes contiguous open space parcels, whereas these open spaces are separated. Brett Vaughn will discuss public access on the green space and a conservation easement with the abutters. Chairman Best opined that MCC might want public access if possible.

Alastair Millns asked whether there was hydrogeological testing for the 2016 Emery & Garrett water report. Brett Vaughn replied they did not test because it would cost \$250,000-\$500,000 and because the report said one can never prove water availability. In his opinion the discussion is over. Chairman Best said that is why the subdivision was redesigned. He complimented Brett Vaughn for making the lots 200' from abutters. Chris Guida said the well locations are proposed. Alastair Millns and Michael Redding were still concerned about water supply on Wilson Hill Road, adequacy of wells and lack of standards. Chairman Best said the question is not water on the new lots but the impact on the neighbors. Water test reports make clear that water can be found for the new lots. He agreed with Chris Guida that no one knows where or at what level one would hit water when digging a well, but typically every home does find water. The prospective owners must pay whatever it costs to hit water. There is no evidence that wells impact each other, especially when they are 300' apart. More than three water expert companies have submitted opinions. Brett Vaughn added that Hydrosource said there is more water than necessary. The probability that one well would affect another is nil. They came to a Planning Board meeting and answered questions. Brett Vaughn hired Emery & Garrett, who stated a study would cost \$250,000-\$500,000 without being able to predict what impact there would be on abutters. One Planning Board member said the owner has a right to dig a well on his own property. Brett Vaughn stated that DES has no regulations; it "suggests" a minimal amount of water that is less than what the abutters have. The proposed wells would be several hundred feet away from

abutters. Brett Vaughn said he has tried for a long time to make the situation clear; there is nothing else he can do. In his opinion, it is questionable whether this is under the Planning Board's jurisdiction.

Chairman Best agreed that there is nothing else the Board can ask the applicant to do. No one did this much to prove a point. Those opposed are relying only on skepticism and not on science. Michael Redding said abutters try to improve their wells. The line of evidence says adding 13 more could be more of a challenge. Brett Vaughn asked whether abutters dug 1,400' down as he did and claimed that Michael Redding has no "line of evidence". Bill Boyd quoted the minutes of April 5, 2016, in which Hydrosource states, "The available daily groundwater withdrawal is estimated at 6,000-8,000 gallons per day, which is a small percentage of the 150,000 gallons per day estimated to be available within the Aquifer in the Watershed." Emery & Garrett said that 80% of wells in the area get only two gallons per minute. Brett Vaughn repeated that DES says that is substantial. Chris Guida said the bottom line is that he has to meet State requirements. They have spent two years hashing this out. Brett Vaughn redesigned the subdivision to make the abutters comfortable. Chairman Best stated that Brett Vaughn did a lot. The answer is consistent: he can supply the lots with water. No one knows at what depth; that is up to the new owners. The effect on neighbors is a serious concern. The reports offer probabilities only. Placing wells 300' from three abutter wells is not a reason to deny approval. The problems pre-exist; Brett Vaughn's development did not cause them. The abutters have problems that predate Brett Vaughn's proposed development. There is no definite answer. There is nothing more the Planning Board can ask of Brett Vaughn.

The Board requested the following for the August 15, 2017 meeting: cul-de-sac adjustment, updated frontage variances, CLD and departmental review, waivers, road layout/slope, scaling, MCC meeting, conservation easement.

The applicant requests a waiver from the sidewalk requirement. There are no adjacent sidewalks anywhere near the site. The surrounding areas are substantially developed, so there is no likelihood of any future interconnect. The roadway configuration and drainage along this section of Wilson Hill Road are not conducive to the construction of a sidewalk in this location. Chairman Best and Michael Redding said it is important to be able to walk on Wilson Hill Road. A sidewalk on one side is practical. It should connect to the bus stop at Oak Ridge Road.

Bill Boyd cited the criterion that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations.

**The Board voted 7-0-0 to waive the requirements of Section 4.06.1(r) - Paved Pedestrian Way or Sidewalk - of the Subdivision Regulations - and to require a sidewalk on one side of the new roadway only, on a motion made by Bill Boyd and seconded by Desirea Falt.**



**The Board voted 7-0-0 to continue this item to August 15, 2017, at 7:00 p.m., in the Matthew Thornton Meeting Room, on a motion made by Alastair Millns and seconded by Bill Boyd.**

**5. Discussion/possible action regarding other items of concern**

Chairman Best announced that the Interview Committee had just met and approved two-year reappointments for Michal Redding and Lynn Christensen. He also noted that someone else is interested in joining the Planning Board.

**6. Approval of Minutes – June 20, 2017**

**The minutes of June 20, 2017, were approved as submitted, by a vote of 6-0-1, on a motion made by Lynn Christensen and seconded by Alstair Millns. Bill Boyd abstained.**

**7. Adjourn**

**The meeting was adjourned at 10:27 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Desirea Falt.**