

Surry Planning Board  
1 Village Road  
Surry, NH 03431

Minutes: October 23, 2024

Present: Ron Profaizer, Eva Morel, Matt Goodwin, Laura Barrett

7:03 PM

The minutes of the September meeting were accepted. (Ron, Matt)

Matt reported on the Master Plan Steering Committee meeting on October 8<sup>th</sup>. The survey is ready and will be sent out on November 6. There will be a public workshop on November 16<sup>th</sup>.

The Tree Agents, LLC/Jacob Bramel's request for a variance hearing has been received by the Selectmen, a date has not been set.

Ron reported that the Pond Road East is being worked on.

7:30 PM

The public hearing for the Mark and Kathy Gross/Robert and Linda Bergevin Lot Line Adjustment and Two Lot Subdivision was opened. Eva read the notice and the application was reviewed and accepted as complete. (Ron, Matt) Russ Huntley of Huntley Survey & Design presented the proposal explaining that the lot line adjustment intends to alter a line which now lies along the middle of an embankment to a line along the bottom of the embankment to be marked with iron pins, and to move part of the current line that runs through a barn westerly to a line between two barns. The subdivision intends to create a lot to be designated as Lot 6-04D that meets town's land and space requirements and would include land encumbered by a flowage easement in favor of the U.S. Army Corps of Engineers. Steve Goldsmith commented that the whole property is in a flood zone. Russ responded that the FEMA flood zone maps were used to create the submitted supplemental plan which shows the limit of the area that FEMA has labelled as the 100-year flood zone. As a surveyor Russ, must rely on the FEMA maps. John Davis, chairman of the Conservation Committee, rose to speak about the proposal and discussed soil types found on the property as found on soil maps and described in a guidebook that he possessed. The soil types appear on the supplemental plan. John explained that all the soils cited are described in the guidebook as subject to flooding. He also commented that the subdivision would create an unusable lot and that an unusable lot can't be created. Adam Kossayda, counsel for Mark and Kathy Gross, spoke that the lot would be as usable as it at the current time, as a hayfield. He went on to explain that this proposal is first to clear up a title problem. He submitted copies of deeds to the Planning Board. The buildability of the two lots is not the question and, in his opinion, should not impact consideration. He then explained that the current lot designated as Lot 6-04B, containing 23.33 acres, resulted from the merger shown on a plan by Roy Piper for Rachel Arnold dated 1981 of a lot that Mrs. Arnold acquired from Vincent Wilbur and a parcel that she acquired from Robert Reid. The Robert Reid parcel was and is subject to a flowage easement to the United States of America (U.S. Army Corps of Engineers) which is recorded in the Cheshire County Registry of Deeds. There is no recorded easement to the United States of America or U.S. Army Corps encumbering the Vincent Wilbur parcel. However, the plan drawn by Roy Piper cites the flowage easement on the Reid section and states that the Wilbur parcel "is subject to flooding easements of the United States of America." Mr. Kossayda stated that the purpose of the subdivision is to remove the flowage easement from the former Wilbur portion which he believes was erroneously added to the Piper plan in order to allow that parcel to be financed in a purchase. John Davis reported the maximum flowage numbers that the Army Corps allows in normal operations and the much higher

flowage rate that occurred in April 1987 when water went over the spillway. Bruce Smith stated that the subdivision should be denied because the flood zone makes the property is not safe to build upon. Bob Bergevin is primarily interested in the boundary line adjustment. He owned the whole property in 1987 and he and wife Linda told of how that flood affected them and how they rushed to move farm animals to higher ground when warned by the U.S. Army Corps. Bob stated that the property was under 3-4 feet of water and that people canoed in the field. Jason Contrady asked if Russ Huntley used the U.S. Army Corps inundation maps. Russ stated that he used the FEMA maps to produce the flood line on the plat. Carol Lothrop mentioned that climate change creates uncertainty as to flooding. Mr. Kossayda reiterated that the issue is cure a title problem although he recognizes that ultimately the lot will be built upon. He further stated that with proper engineering that the lot may be built upon safely. Bruce Smith reiterated that subdivision regulations say that the property should not be subdivided although he is in favor of the lot line adjustment. Mr. Kossayda responded the subdivision is to isolate the flowage easement portion of the property. Lesley Johnson asked if the U.S. Army Corps had weighed in on the proposal. Russ Huntley and Mr. Kossayda stated that the Army Corps had received notice of this hearing. Steve Goldsmith asked what liability the town would have if the proposal was approved. Mr Kossayda responded that the question should be referred to the town's attorney, it would be a conflict of interest for him to address it. Ken Maynard stated that if a buyer is willing to risk building there, it is their choice. Eva Morel explained that the 100-year flood zone designation means that the parcel has a 1 percent chance of flooding in any year. Eva Morel read a section from the Subdivision Regulations Section IV, A. that states: "Character of Land for Subdivision; Land of such character that it cannot, in the judgement of the Board, be safely used for building development purposes because of exceptional danger to health or peril from fire, flood, poor drainage, excessive slope, or other hazardous conditions, shall not be platted for residential, commercial, or industrial subdivision, nor for such other uses as may increase danger to life or property, or aggravate the flood hazard." Mr. Kossayda did not agree that this proposal rose to "exceptional danger or peril." Laura Barrett said that if someone had enough money to not need bank-financing they could apply for a building permit without the subdivision to isolate the easement. Laura Barrett suggested that the lot being created with the flowage easement be marked "not a building lot" on the plan as a work around. Bruce Smith remarked that he does not like non-buildable lots as that designation may be forgotten in the future.

A vote was taken to close the public hearing portion of the meeting. (Laura, Ron)

The planning board deliberated and asked a question about how the easement language on the Piper plan might be assigned to the correct parcel. Laura Barrett made a motion to approve the Lot Line Adjustment and Subdivision with the conditional language that Lot 6-04D is not a buildable lot. There was no second. Matt Goodwin made a motion to deny the subdivision application for the reason expressed in Section IV, A of the Subdivision Regulations. Second by Ron Profaizer. Matt explained that he sees safety concerns for both lots due to flooding and the lot labelled 6-04D in particular is not safe for building. Therefore, he felt the board could not vote in favor of the proposal without violating Section IV A of the Subdivision Regulations. Ron questioned if Lot 6-04D is marked unbuildable, does that clause also apply to Lot 6-04B as well? The board had heard a lot of anecdotal evidence of flooding which does not correspond to the FEMA flood line. Eva felt that the board could not approve a subdivision where one lot was unsafe. Matt, Eva, and Ron voted in favor of the motion to deny. Laura voted nay. The subdivision application was denied. Eva explained that the board had taken into consideration opinions heard and the responsibility to not create an unbuildable lot. A process for appeal was discussed and Eva talked to Bob and Linda Bergevin about going forward with just the boundary line agreement.

Meeting Adjourned 10:15 P.M.

Laura Barrett  
Secretary