

**MINUTES
GILFORD PLANNING BOARD
MAY 2, 2011
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Planning Board met for a public hearing on Monday, May 2, 2011, at 7:00 p.m. in Conference Room A in the Gilford Town Hall.

In attendance were Chair John Morgenstern; Vice Chair Polly Sanfacon; Selectman's Representative Kevin Hayes; Secretary Richard Waitt; Regular Members Richard Vaillancourt, and Jerry Gagnon; and Alternate Members Dennis Corrigan, Chan Eddy, and Wayne Hall.

Member absent was Regular Member Richard Sonia.

Also present were John B. Ayer, Director of Planning and Land Use, and Stephanie Verdile Philibotte, Technical Assistant.

J. Morgenstern led the Pledge of Allegiance, introduced Board members and staff, and read the rules of procedure for the meeting.

He turned the discussion over to J. Ayer to review the proposed amendments.

Excavating Steep Slopes – J. Ayer referred to the previous work the Board did on this ordinance two years ago and reviewed the previous two options the Board discussed and introduced a new option for 2012. These propose to limit the amount of excavation one may do to create buildable area for any lot. He reviewed the existing definition for "Steep Slopes" in the ordinance.

J. Morgenstern said he thinks the Board is not concerned about excavation but the amount of excavation. J. Gagnon spoke about the only commercial land left in town is behind Lowe's. That land is 15% slopes or more and you would have to be excavated in order to build on it. He would hate to lose that land area for commercial development with a prohibitive steep slope amendment. J. Ayer said that is why the proposed amendment is limited to lots in Residential Zones and not Commercial or Industrial zones. He also said he thinks the proposed amendment would apply to new lots only, but on closer inspection said it affects new lots the most but could apply to other lots as it pertains to the requirement to build within the buildable area.

J. Gagnon asked what the problem is with the current zoning and why they need to change it – is it because of an instance where a builder had excavated an area in order to create buildable area. J. Ayer said he thinks it had been considered for a number of years, but one subdivider in particular had excavated extensively to create lots in his subdivision off of Mountain Drive and it created a significant concern among Board members. P. Sanfacon said she thought the Board wanted to try to limit the practice of excavating to create buildable area when it does not exist.

Discussion ensued about the 2003 failed amendment regarding Steep Slopes and the Board

wondered why the amendment failed. J. Ayer said they have no way of knowing why.

J. Morgenstern said the intent is to control the amount of buildable area that can be created through excavation.

J. Gagnon said this proposal would still allow people to excavate to create buildable area on their land. He doesn't see the point in creating an ordinance that can't be enforced.

D. Corrigan said once there is an ordinance in place it would prevent issues like what occurred on Mountain Dr. where they excavated Steep Slopes in order to create buildable area.

R. Vaillancourt does not like restricting people's rights to their property with this type of regulation.

J. Ayer discussed lots on Chalet Drive that were excavated to create buildable area and he said the area looks terrible due to excavation and because of those types of lots, where excavation of steep slopes has taken place, this is why the Board considered addressing this issue. He said if the Board cannot come to an agreement on this maybe they should not pursue this amendment.

R. Vaillancourt said the Lowe's retaining wall has held up well and retaining walls can be used to control excavations without need for changing the regulations.

K. Hayes said what if they allow excavation and re-grading of a lot with final grading plans, erosion control plans, plans for control of surface water, and future buildable area included in the proposal. D. Corrigan said there would have to be standards in place. K. Hayes said in large excavations they have to prove they can meet pre- and post-runoff controls, include a structural engineer's stamp for retaining walls, and submit a Storm Water Pollution Prevention Plan before a permit or approval is granted.

The Board decided to allow excavation up to a 33%, or a 3:1 slope. They discussed the size limit for excavation and if it should be tied to buildable area. They decided that it should apply to any excavation larger than one-half acre.

J. Ayer reviewed the list of possible 2012 amendments which he had prepared showing a description of each proposal, what the current status is, and what action is happening or needs to happen on each. He noted that besides the steep slopes/excavating to create buildable area amendment, he also had drafted an amendment to make home occupations a permitted use in the SFR zone instead of a conditional use, and was prepared to discuss possibly exempting agricultural uses from zoning regulations as a result of a recent ZBA meeting. He briefly reviewed the home occupation amendment, and noted that the ZBA Chairman was present and could perhaps speak to the topic of reducing or eliminating regulations pertaining to agricultural uses.

J. Ayer reviewed additional amendments relating to Home Occupation and allowing them in all zones instead of requiring them to go through the Special Exception process.

Andy Howe, citizen in attendance and Chairman of the ZBA, discussed a recent application to the ZBA where a Special Exception request was submitted for a "Home Occupation/Farm Sales". He explained why the ZBA decided to not require the Special Exception for "Farm Sales" as a Home Occupation. He said their determination that a special exception was not needed was due to the fact Agricultural uses are allowed in all zones and what they are selling is being produced on their farm. He also said the use "Farm Sales" is not regulated in the RSA's. A. Howe discussed the Special Exception process the ZBA completes. He reviewed the criteria of a special exception and he said the ZBA believed the applicant did not need to apply for a special exception or site plan to begin with.

J. Morgenstern said they should go through some Board review process but maybe not with a complete site plan.

Discussion ensued about exempting agricultural uses and A. Howe referred to the RSA's that relate to farming and they discussed the RSA's requirements. J. Ayer asked what A. Howe thought of the wording in the RSA (RSA21:34-a and RSA 674:32-b) that says agricultural uses were subject to local land use board approval. A. Howe agreed that the RSA allows regulation and suggested that the Board may not want to completely exempt agricultural uses from regulation.

The Board determined to get a legal opinion on whether the RSA allows them to regulate agriculture uses, and if so, to what extent.

A. Howe cautioned the Board on regulating agriculture too much. He said agriculture is a use that continues to change with economic times, and needs to be allowed to do so. He said more regulations may unduly restrict farming.

A. Howe brought up the proposal to have a reduction in setbacks for non-conforming lots or odd shaped lots. He said the ZBA sees a lot of variance cases where the setbacks are too restrictive for people.

P. Sanfacon said the Planning Board is not in favor of that proposal due to the fact they do not see the benefit to change the entire ordinance for a few smaller lots. A. Howe agreed and explained the ZBA was curious to see if there was any way to alleviate those difficult cases. J. Ayer said that a comment made at the Planning Board work session is that the Planning Board would need to have some valid convincing justification for such an amendment.

J. Ayer said he would continue to work on the list of possible 2012 amendments and would provide updates and revisions at the next work session.

Minutes

J. Morgenstern appointed D. Corrigan to replace absent member R. Sonia to vote on the minutes.

April 18, 2011 – Motion by R. Waitt, seconded by K. Hayes, to approve the minutes of April 18, 2011. Motion passed with all in favor.

Other Business

Ellacoya Barn and Grille Site Plan/Revised Plan – J. Ayer said the revised plans were submitted by the applicant to address issues raised at the last Planning Board meeting.

R. Waitt said he is an abutter to the application and he said the abutter, Mineral Springs Condominium Association, would like to be notified of the site walk. J. Ayer said he would notify them and the owner and agent.

The Board decided to hold the Site Walk at 4:00 PM Monday, May 16th at Ellacoya Barn and Grille.

Adjournment – Motion made by D. Corrigan, seconded by K. Hayes, to adjourn at 8:20 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Technical Assistant