

TOWN OF SUTTON
Planning Board
Pillsbury Memorial Hall
Meeting Minutes
September 11, 2014

Present: Planning Board Members: Carrie Thomas, Chairperson; Carole O'Connell and Julie McCarthy, members; Dan Sundquist, Ex-Officio; (Bob DeFelice, Roger Wells, and Peter Blakeman, members, were absent); Laurie Hayward, Land Use Coordinator (LUC); Martin Feins, owner/applicant, Jon Feins, owner, Clayton Platt, applicant; Betsy Forsham, Chair of the Conservation Commission; Ann Boyle, Elizabeth Copeland, Aimee Ayer, and Thomas Schaumberg, interested members of the public.

The meeting was called to order at 7:14 PM, by Carrie Thomas, Chairperson.

Public Hearing: The Chair opened the public hearing and asked the LUC to read the notice for the first hearing. The LUC read:

“You are hereby notified of a Public Hearing, **Case 2014-05**, concerning a request by **Martin Feins, Trustee for Michelle Feins Revocable Trust**, for removal of the Conditions of Approval of January 26, 2010, as Phase I, Lot 1 of Harborview Subdivision, located at 77 Stonehouse Road, Sutton, Tax Map # 10-805,328 which is in a Rural-agricultural district.

The Chair began with the question of the status of the Harborview subdivision. Interested members of the public asked for clarification. The LUC explained that before the Board could take up the cases on the agenda, the question of the status of the Harborview subdivision and whether that subdivision is lapsed should be addressed first. Asked what “lapsed” meant, the LUC answered that in this case the approval was made some years ago with conditions and those conditions were never met so the Board essentially needs to determine whether the Harborview subdivision exists anymore. The LUC further explained that the question is important to both of the public hearings being heard this evening. The Board agreed to take up whether the subdivision is lapsed and whether the owner agrees that is the case before either new case is heard. The Chair called for a motion. **McCarthy moved that the Harborview subdivision approval conditions were not met and the subdivision is lapsed. O'Connell seconded the motion. The board voted unanimously that the 32 lot subdivision called Harborview has lapsed.**

Returning to the Martin Feins application (Case 2014-05), the Chair explained that Martin Feins has asked that the Condition placed on his lot that it not be subdivided be removed. Sundquist explained a bit of the history, including that the Martin Feins lot was subdivided, as Phase I, before the rest of the Harborview (Phase II) subdivision was approved. At that time the owner, Jon Feins requested the condition preventing further subdivision in order to allow that lot to be sold to his parents before the larger subdivision was approved.

Board members had some questions about the letter that Jon Feins had provided. The Chair asked for an explanation. Jon Fein explained that he felt the condition was strictly there because at the time the larger Harborview subdivision was incomplete. Sundquist suggested that the Board ask Martin Feins to give his thoughts on the condition and its possible removal. McCarthy pointed out that the Board does have Jon Feins letter on July 1, 2014, requesting removal of the condition and read:

“I understand that the Harborview subdivision approval has lapsed and that, as a result, the only remaining lots are the lot owned by my parents, the lot known as Phase I, Lot 1, (21.11 acres) Sutton Tax Map, Lot# 10-805,328, and my lot containing the remaining 168.9 acres, Sutton Tax

Map, Lot # 10-688,134, and I request that the board affirm that the subdivision has lapsed and that my parents lot is not affected by the lapse.”

The LUC stated that Martin Feins also included a letter of his own with his application stating that he wished the condition be removed. The LUC further clarified that she had requested that both Jon and Martin Feins provide letters stating that they understand and request the Board affirm that the Harborview subdivision is lapsed. Jon Feins explained that he spoke with the Sutton town attorney and that the wording is as recommended in that conversation. Jon Feins further explained that from his point of view, the only reason the condition exists is because of the larger subdivision, Harborview, which no longer exists. So, because the reason for the condition no longer exists, he requests the condition be removed.

Jon Feins explained that his parents are now trying to sell their property and had a possible buyer who would only purchase if the condition was removed. The Chair reiterated that just because the condition is removed does not in any way say that a property can be subdivided. As always there would need to be Planning Board approval and many questions answered about the site and placement of well, septic system, structures, driveway etc. The Chair asked for questions from members. Sundquist stated that he can see the potential for two more lots on the Martin Feins lot and the Board should be mindful of that. Sundquist suggested that they table this question and look at what the applicant; Jon Feins wants to do with the larger lot, formerly known as Harborview. The Chair asked if they could hear about the Jon Feins proposed minor subdivision before determining this request. The LUC explained that the Board could call for a continuance on PB 2014-05 and then take up the next case. The Board could decide to return to this case either at the end of hearing Case PB 2014-06 or determine to continue to a future date.

Sundquist moved to continue the Public Hearing, Case PB 2014-05, Martin Feins’ request for removal of Condition until immediately subsequent the hearing on PB 2014-06, Jon Feins’ request for minor subdivision, O’Connell seconded and it was voted unanimously.

The Chair opened the second public hearing, reading the notice for PB 2014-06, regarding the request for minor subdivision.

“**Case 2014-06**, concerning a request by **Jon Feins**, for a Minor Three-Lot Subdivision of the same property which was formerly known as Phase II of Harborview Subdivision; located on Stonehouse Road; Sutton, Tax Map # 10-688,134 which is in a Rural-agricultural district. This case requires a determination of the status of the Harborview Subdivision.”

The Chair explained that what is under consideration is that the property, formerly Harborview subdivision, be subdivided into three lots instead of 132 lots. She explained those three proposed lots show as lots 2, 3 and 4 on the plat that is displayed. The Chair asked the LUC if the application was, in her opinion complete. The LUC stated that it did appear complete and that all of the fees and costs had been paid. **Sundquist moved that the application be accepted as complete O’Connell seconded the motion and it was voted unanimously to accept the application as complete.**

Board members reviewed the plats provided. Clayton Platt stepped forward to explain about the subdivision. He says they expect that the houses would be built at the top of the hill. They propose a common drive for the three lots as a way to minimize the impact to the site. The Chair noted that there was approximately 2150 feet of shared driveway shown on the plan. McCarthy asked the applicant and the owner if they were installing the driveway. Both Platt and Fein indicated that they did not plan to install the common driveway; but, to leave it up to the buyers of the properties. The Chair asked if the town didn’t have rules about shared driveways. The LUC stated that there is a rule limiting shared driveways.

[See Sutton Subdivision Regulations SECTION VII, DESIGN REQUIREMENTS, D. Driveway Standards 1. “Number: No more than two (2) driveway entrances shall be constructed from any one (1)

street to any one (1) property, unless frontage along that street exceeds five-hundred (500) feet.”]

At the Chair’s request, Platt stepped forward and explained that he is the Land Surveyor on the project and that each lot has 400 feet of frontage on Stonehouse Road, although the frontage is not used for access. Platt stated that the expectation is that buyers would want to build at the top of the lots which have had some clearing and do have views. Feins explained that the common driveway as shown on the plan avoids the wet areas and the very steep areas. Forsham, the Sutton Conservation Commission Chair, expressed a concern that building the common drive might be a problem and limit access to houses on the individual lots. Sundquist asked if the basic plan was to deed a 40 foot easement to allow the buyers to build a road into the home site areas. The Chair asked if the owner and applicant were saying that they did not expect to build the common drive. Platt and Feins both confirmed that the expectation was that they would not undertake to build the driveway access to the three lots. Feins did say there might be a situation where he would share some of the cost to build with a buyer or buyers. Feins confirmed that because the driveway would cross multiple lots, there would definitely be an easement to permit the access to all three lots.

Board members had Platt confirm the location and shape of the three lots. The Chair asked if the three lots could do without the shared drive and simply access through each lot’s own frontage on Stonehouse Drive. Platt and Feins both said that would entail crossing wetlands. Forsham expressed to the Board her concern regarding the very steep terrain on the property and her concern that people involved would not understand how difficult it would be building and maintaining a long common driveway, especially if the owner and surveyor are leaving it to the potential buyers. There was a brief discussion about the approval ten years earlier for many more lots; but, with many requirements and conditions attached to that approval, especially in connection to the roads and access.

Sundquist explained that the original discussion about Harborview centered on storm drainage issues and that plan had detention basins and ditches designed to handle storm run-off. Sundquist asked what controls will there be to handle erosion from storm water drainage or sedimentation coming down the common drive onto the road and further down into other abutting lots and onto town roads. He noted that leaving this to a single private homeowner to build a driveway for which the town has no control or specifications leaves the open question of how the Planning Board is to be assured that there will not be a problem down the road from this construction. Sundquist pointed out that a 14% slope for 2100 feet, when anything in excess of 5% slope should be protected with an armored swale for drainage, leaves him very concerned. Sundquist stated that he has reservations about whether the driveway as shown can perform as a regular driveway. Feins said that it is not all 14%; but, in some places is 10% or less. Sundquist stated that his concern remains about steep slopes and drainage and he also questioned how emergency vehicles could access the eventual homes on such a steep, long and narrow common drive. Sundquist asked if the Fire Chief has reviewed the plan. Feins explained that he spoke to the current and a former Fire Chief about requiring sprinklers and had the impression that would be “ok”. Sundquist stated that having sprinklers was good especially as there is a cistern. His concern is that a future owner would not understand the issues connected with the site drainage and with emergency access. The Chair asked for clarification whether a buyer would have to come before the board before he could build the driveway. Board members agreed that if the minor subdivision is simply approved, a buyer would not have to come before the board before building a drive/common driveway. Platt spoke explaining that anyone who would purchase the property should know that he/she is going to have to spend in excess of a \$100,000 to build a driveway and will be in a position to do that. McCarthy explained that the Planning Board cannot assume that and must consider their responsibility to the town.

Sundquist asked the LUC to obtain information from the town counsel regarding town liability if approval is given with no agreement about installation of the common driveway. The road is an issue both in terms of number of properties (3) off one common drive and in terms of the difficult terrain and the length. Also it is important that Board members remember the issue of precedence in connection with three lots off a common drive. Historically the Board has denied/limited common drives to access only two lots.

Feins stated that there could be a separate driveway to lot 2; but, to do it does not seem the right thing to do because of the way the properties are shaped, including that it makes no sense to have two driveways running right together.

There was a question regarding the impact of additional traffic on a small, narrow road. Aimee Ayers, an abutter, mentioned that autos cannot pass on Stonehouse Road without one stopping/pulling over. Sundquist mentioned that this would be less of a burden than there would have been with Harborview. But with Harborview they recognized that the road had to be widened and trees cut so the road would have been improved prior to the addition of large amounts of traffic from the additional 32 lots. Sundquist asked about the current situation in the winter. Ayers said that in the winter there are fewer residents; therefore it is less of an issue. Sundquist recommended a site visit with the Road Agent. He also mentioned that there are numbers of trees that would be in the way of a snowplow. The Chair also noted that there are stonewalls along the road which make widening that road difficult. Feins noted that they were planning to widen the road to 50 feet along the frontage of the property in question.

Sundquist asked Feins if he would be willing to limit the three lots in the proposed subdivision to no further subdivision. Fein indicated that it would depend upon whether he is required to put in significant improvements in either Sutton or New London. Fein said he would really like to let people do one subdivision so that, if a family wanted to cut off one lot for a child or a guest house, they could. Sundquist noted the importance of getting a handle on how many lots could eventually be subdivided on the property.

The Chair asked if the proposed road was marked on the site. Platt said that it is easy to identify in a site visit. He went on to explain why they went with the common drive and why he feels it is a more environmentally friendly approach. Platt further explained that he would expect that there might be a sharing of costs. Forsham expressed her concern about shared drives and the issues that arise between homeowners. She pointed out that it is not unusual for there to arise questions that lead to dissention amongst neighbors especially in terms of sharing costs for maintenance. Fein explained that he expects there to be a legal document to cover the way that the costs are managed going forward.

There was a brief discussion about the timing of the site visit and that meetings for hearing continuances do not require noticing under the same statutory requirements as the initial hearing does. Sundquist noted that a continuance would allow the Board to obtain input from the Road Agent, the Fire Chief and others to support any decision they make. The Chair asked if the property is marked or flagged in such a way that a visitor to the site can see how the proposed access would work. The applicant said that it is easy to see where the proposed access is. He added that he and the owner both feel that each lot having its own very long driveway emptying out on Stonehouse Road is not as environmentally friendly.

Sundquist moved for continuance of the Public Hearing, PB 2014-06, Jon Feins' request for minor subdivision on Stonehouse Road; McCarthy seconded and it was voted unanimously to continue the hearing at a later date to allow for a site walk.

Sundquist asked the LUC about available dates for a hearing. The LUC explained that the next meeting would be on September 23rd. The applicant and owner indicated that date did not work for them. It was agreed that was too soon to put together a site walk anyway. The LUC explained that meetings could also be held on October 14 and October 28. The applicant and owner and Board members agreed that October 14th would work. Sundquist asked Feins if the Board had permission to walk the site. Fein said that they could. Sundquist directed the LUC to contact the Fire Chief and the Road Agent to let them know the Board would like their assessment of any issues connected with the applicant's proposal, to determine their availability and get a date for the walk. **It was agreed that the continuance hearing would be scheduled for October 14, 2014.**

Approved October 14, 2014

The LUC agreed to contact Fire Chief Cochran and Road Agent Parker regarding the Board's need for their input and see if they can be available for a site walk. She will try to coordinate with members so that the maximum number of Board and town representatives can be available. She will put out notice in the form of agendas for the site walk and take minutes on that date.

The Chair asked if the Board would like to return to the Martin Feins request at this point. **Sundquist moved and McCarthy seconded and it was unanimously voted to re-open the Public Hearing, Case PB 2014-05, Martin Feins request for removal of Conditions.** The Chair explained to the interested parties that the Board was now back in Public Hearing and talking about Lot I. Sundquist explained that he does not see a reason to continue the condition. **Sundquist moved that the condition be removed; McCarthy seconded the motion.** Sundquist pointed out that Board members now have a better idea of what is being considered for the rest of the former Harborview subdivision. The Chair asked for more discussion, there was none. **The vote was taken and it was voted unanimously that the Condition prohibiting further subdivision be removed.** The LUC explained to Martin Feins that he would receive a copy of the recorded Notice of Decision.

This ended the Public Hearing, PB 2014-05.

Administrative:

Minutes of previous meetings: The Chair asked for a motion regarding the minutes of previous meetings on July 8 and July 22, 2014. Sundquist moved to approve both sets of minutes. O'Connell seconded and it was voted unanimously to approve the minutes of July 9 and July 22, 2014.

Correspondence: Nobis Engineering emails requesting a determination of whether Planning Board approval or permits are required to replace poles for PSNH in the area along Route 103 and Roby Road.

The Chair read: "Nobis and PSNH are moving forward with permitting (Utility Maintenance Notification) for the PSNH 317 Line Project. The Project will involve replacement of the existing utility poles and overhead wires along a portion of NH Route 103 between Morse Loop Road and Roby Road, approximately 4,020-feet. I've provided response below to the questions you emailed to Chris Nadeau from our office last September." The LUC explained that Nobis simply wants to know if they need to do anything beyond this notification to the Planning Board before they do the pole replacement work. Sundquist stated that he didn't have any problems with this as Nobis and PSNH will have already obtained all of the necessary state permits for this work. McCarthy added that she did not think that Sutton would want to say "no" when the state has already permitted this. The Chair also indicated that the Board really does want these old poles replaced as do those who rely on those poles for their electricity. The Chair stated that she did not see any reason that they need further approval from the Planning Board. The LUC is directed to let her contact at Nobis know that it is the sense of the Planning Board that there is no need for additional approval for the described pole replacements.

Next item of correspondence was the Town Administrator email to the LUC covering a request by Blaisdell Lake Protective Association, the Birch Hill Road upgrades, an issue on Kezar Lake with a "cigar boat" and the status of both the Moulton business move and the Mapes' issues.

The Chair opened with the request made by the Blaisdell Lake Protective Association that the Town of Sutton take on the responsibility of a preapproval site inspection before any work can commence on a new septic system. McCarthy asked why the group was requesting this. Sundquist explained that it may be because of a problem that arose on a property on Camp Kemah Road. In that situation a septic system failed on an unusual and difficult property. The owner had a new system designed and that failed as well. Sundquist further explained that the problem was not with the design, rather that there were some unusual

circumstances, including issues caused by drainage from a town road. There was an extensive discussion on this proposal and the issues. In the course of the discussion, members considered costs and benefits of such a move and concluded that potential costs outweighed benefits.

Among other issues, members agreed that taking on this would require taking on significant additional costs to hire and train someone to undertake this complex and technical work to preapprove every septic system to be built in Sutton before the work can begin. Septic designs themselves come with certified designers stamps and state certification and then go through the state review in order to get DES approval. Sundquist pointed out that getting certified to do this kind of work is expensive and is not easy, so finding or training someone to do these inspections might prove to be difficult and expensive. Members questioned why the town would want to insert itself and take on the potential liabilities when the state already has an extensive process in place to review and approve septic system designs and employs people with the technical expertise to manage the process. Board members unanimously agreed that the sense of the Planning Board is that the Town does not want to take this one on at this time.

The Board then took up the status of the Birch Hill Road upgrades and that the Select Board is notifying the Planning Board that the Birch Hill Road work to bring that road up to town standards has been completed so that the Planning Board may notify the owner, Michael Rogers of that fact and that the exaction payment has been expended fully. The town spent about \$55,000 and Rogers' exaction was a bit over \$5,000 for a total of roughly \$60,000 in road improvements to Birch Hill Road. It was agreed that the LUC would notify Rogers of the fact that the Birch Hill road work is complete.

The next item to take up was the "cigarette boat", actually a hydroplane boat with a number of pipes off the engine and no mufflers that sped around the small lake making a good deal of noise. The LUC pointed out that it is against the New Hampshire boating laws which require that engines have mufflers. She further explained that a noise ordinance would not be applicable, that in New Hampshire all waters and boating fall under the state Marine Patrol.

The LUC let members know that the Zoning Board of Adjustment was having a work session to go over possible revisions to the Zoning Ordinance. She explained that Derek Lick had offered to go over the Ordinance for possible changes in wording and members were welcome to attend if they wished.

There was a short discussion about the Mouton Landscaping business. The LUC explained that the ZBA had requested and the Select Board had agreed and offered the business until October to move the business. She explained that she understood there was progress on the Moultons finding a new location. Sundquist confirmed that he had heard that; but, it really needs to be confirmed.

Reports: Open Conditions Report: The LUC explained that there has been significant progress on the Mapes Open Conditions. The New Hampshire DES has now formally approved the new Septic System design and Greg Mapes has submitted an application for Site Plan Review. Mapes requests an October 28th Public Hearing date. The Board agreed to the date and suggested that the LUC suggested that the LUC see if David Burnham could stop by the site and check the septic system for signs of failure in advance of the hearing.

The other significant open condition is that ITW has ceased work on the site construction for the cell tower. The LUC has been working with Mark Moser who has been monitoring the site. They agreed Moser would contact Delaney of ITW about the incomplete site. Moser called and then followed up with an email explaining what was required to stabilize the slopes before winter and was told that work would be done.

Master Plan: The LUC told the Board that to date there had only been 105 Survey Monkey replies and 14 paper responses to the survey. The original plan was to cut it off at the 15th of September. The question is

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do we want to leave this open beyond the 15th and when would we like to do the kick-off meeting? Sundquist asked whether the Board wants to advertise. Board members agreed that Survey Monkey be held open until the end of September and plan on the kick off in October. O'Connell volunteered to prepare an ad and email it to the LUC. It was suggested that a piece should be in the Shopper.

Next regular meeting is scheduled be a work session on September 23, 2014 at 7:00 PM.

Next regular meeting is scheduled to include Public Hearing, the continuance of PB 2014-06 and will be held on September 23, 2014 at 7:00 PM.

There being no further business, Sundquist moved, McCarthy seconded and it was unanimously voted that the meeting be adjourned at 9:20 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator