

**Hill, NH Planning Board
Meeting Minutes
19 October 2023**

Planning Board Members Present

Marshall Bennett – Chair
Christopher Seufert, Jr. – Vice Chair
Tom Seymour – Secretary/Treasurer
Michael Munson
Stephen Thomson – Select Board Ex-Officio

Planning Board Members Absent

None

Public Present

Dee Bark & David (Voluntary Lot Merger)
Jeff & Jane Beach (Applicant)
Richard Pescinski & Attorney Laura Dodge (Applicant)
Daune & Stephen Robinson (Abutter)
Tom & Teri Whitman (Abutter)
Pat Lynch (Abutter)
Gary Pescinski (Abutter)
William O'Connor (Public)

Call to Order

Having achieved a quorum, Planning Board Chair Marshall Bennett called the meeting to order at 7:00pm.

Approval of Meeting Minutes

Marshall Bennett asked if there were amendments to the October 12th minutes. Two spelling errors were noted. Stephen Thomson made motion to approve the minutes as amended and Marshall seconded the motion. The motion passed unanimously.

Secretary's Report

No report at this time.

Treasurer's Report

The Treasurer's Report was distributed (See Attachment #1). Christopher Seufert Jr. motioned to accept the Treasurer's Report. Stephen Thomson seconded the motion. The motion passed unanimously.

Chairman's Report

No report at this time.

Committee Reports

No committees at this time



Hill, NH Planning Board Meeting Minutes

Reading of Communications Directed to The Board

None at this time

Unfinished Business / Continued Hearings

Gravel Pit Reclamation Updates

Tom Seymour reported his findings after reviewing 25 years of records covering the Morrison pit. Records show that the pit is still in use and that a portion of the lot is under "Current Use" classification. Records, though scattered and disconnected, show that each permit issued had been properly noticed and hearings held. Documents were found showing the original bond of \$25,000 was released and replaced with an escrow account with Franklin Savings Bank in 2000. The escrow was established with \$16,000 and is current valued at \$17,921.80. Agreement permits partial drawdowns not to exceed 50% of the escrow provided monies are spent on restoration with supporting evidence.

The last permit issued expired in 2020. A letter has been prepared and will be sent to the Morrison pit owners requesting a meeting to set-up the required permitting application process.

Evaluation of Current Zoning Ordinances – OPEN

Excavation Controls / Restrictions

Class VI Roads

Campers as Dwellings

Tiny Houses

Updating Master Plan – OPEN

Updating Planning Board Rules & Procedures (Revised 2005) – OPEN

Updating Land Subdivision Regulations & Associated Forms – OPEN

Motion to Suspend Business Meeting and Enter Public Hearings

Tom Seymour made motion to suspend the business meeting and enter into the scheduled public hearings. Steve Thomson seconded the motion. The motion passed unanimously.

New Business / Initial Hearings

Tom Seymour reported that the abutter's notices and the public notice were sent & posted on September 29th for tonight's hearings. The newspaper notices also ran in the Laconia Daily Sun on October 6th.

Jeff & Jane Beach: Application

Upon application review, Steve Thomson made motion to accept the application as complete. Christopher Seufert, Jr. seconded the motion. The motion passed unanimously.



Hill, NH Planning Board Meeting Minutes

Planning Board Chair Marshall Bennett declared the public hearing for the Jeff & Jane Beach application open at 7:20 pm. Mr. Beach gave an overview of the proposal for his lot on NH RT3-A. He wants to build on the 3-acre piece and needs the right of way to extend resulting in 200' of road frontage. Town Waiver from Liability will also be submitted to the Merrimack County Registry of Deeds.

During the Planning Board questioning, discussion focused on whether or not the proposed extension presented the road frontage needed. Study of the plats submitted found the added footage did not abut or extend onto the lot in question and, therefore, would not provide the road frontage satisfying the building permit requirement. The Board requested Mr. Beach get his plats adjusted and submit at the next regularly scheduled meeting. Mr. Beach acknowledged he understood the reasoning and the request.

Abutters were asked if they wished to speak. However, no abutters were present. The public was asked if they wished to speak. None chose to do so. Planning Board Chair Marshall Bennett closed the public hearing.

Stephen Thomson motioned to approve a continuance of this hearing to our next regularly scheduled meeting due to the needed plat updates. Marshall Bennett seconded the motion. The motion passed unanimously.

Dee Bark: Notice of Voluntary Merging of Lots

Notice of Voluntary Merging of Lots (Reference NH RSA 674:39-A) was presented. The Board agreed that this proposed merger will not result in a violation of Hill Zoning Ordinances. Tom Seymour made motion to approve the merging of the two lots. Stephen Thomson seconded the motion. The motion passed unanimously. Copies of the Notice will be sent to Dee Bark, the Board of Selectmen, the Town Property Assessor, and Merrimack County Registry of Deeds.

Richard Pescinski: Application

Before any actions were taken, Tom Seymour read an email that was sent to Planning Board Chair Marshall Bennett from a Hill Resident. The resident was protesting Tom's participation in the Pescinski hearing because he had previously rejected Mr. Pescinski's request for a building permit while Tom was a Selectman. The resident felt Tom should be disqualified. Stephen Thomson remarked that if Tom is to be disqualified then he should be as well. Stephen explained that he, as a member of the ZBA, rejected an appeal of the Selectmen's decision on the building permit sought by Mr. Pescinski. Planning Board Chair Marshall Bennett, Christopher Seufert, Jr, and Michael Munson all stated that the hearing was for something entirely different and that the Planning Board is being asked about a right of way, not a building permit. Building permits are the sole responsibility of the Board of Selectmen. Tom Seymour asked that a vote be taken, as



Hill, NH Planning Board Meeting Minutes

noted in NH RSA 673:14 (Disqualification of Member) so as to eliminate any question going forward.

Marshall Bennett motioned to qualify Tom Seymour as a valid participant in the Pescinski hearing. Christopher Seufert, Jr. seconded the motion. The motion passed unanimously with Marshall Bennett, Christopher Seufert Jr, Mike Munson, and Steve Thomson voting in favor.

Marshall Bennett motioned to qualify Steve Thomson as a valid participant in the Pescinski hearing. Christopher Seufert, Jr. seconded the motion. The motion passed unanimously with Marshall Bennett, Christopher Seufert Jr, Mike Munson, and Tom Seymour voting in favor.

Upon application review, Steve Thomson made motion to accept the application as complete. Christopher Seufert, Jr. seconded the motion. The motion passed unanimously.

Board Chair Marshall Bennett declared the public hearing for the Richard Pescinski application open at 7:55 pm.

Attorney Laura Dodge, representing Richard Pescinski, presented a summary of the application. Mr. Pescinski is looking to build a single-family home on R08-08 and needs to have the submitted Existing Conditions plat approved by the Planning Board in order to have the required road frontage.

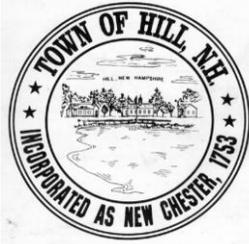
During Planning Board questioning, the focus became three-fold.

1) Does an extension of a deeded right-of-way satisfy NH RSA 674:41?

Debate occurred over the numerous plats that illustrate the right-of-way in various stages of length. The Planning Board referenced plat 11177 as it is the most recent plat that was approved by the Planning Board. Attorney Dodge wanted the Planning board to make use of the other plats as they show the evolution of the right-of-way and that it extends 300'. She also wanted to make clear that Mr. Pescinski is not seeking to subdivide.

Steve Thomson pointed out that the approved plat shows the right-of-way running through Lot 15, not Lot 8. Attorney Dodge indicated NH RSA 674:41 defines "Street" as giving access to a lot upon which a building is planned, and the existing common way does extend to the lot. She also notes that Hill Zoning Regulations defines "Street" as a public or private thoroughfare providing access.

Debate took place over the location of the 300' extension. Plats show the 300' on Lot 15, not Lot 8. Steve Thomson said to qualify as frontage it needs to be on the lot in question. Attorney Dodge pointed out that the 300' is located on the deeded right of



Hill, NH Planning Board Meeting Minutes

way that provides access to Lot 8. She referenced 674:41 and the vague definition of “street” stating it should qualify as frontage as it does provide access to the lot.

Attorney Dodge also indicated Mr. Pescinski might consider a lot line adjustment with his brother, an abutter. The end goal is to complete this in a legal manner and the most cost-efficient manner. She referenced town of Hill regulations regarding the definition of “street”. The definition establishes the right-of-way access need not be on the lot in question. It need only abut the lot.

Mr. Pescinski told the Planning Board that we keep “moving the goal posts.” He feels that each visit with the Planning Board has resulted in new requirements. Attorney Dodge followed with saying the process is hard to follow and old making this very difficult. Mr. Pescinski said if he can be told exactly what needs to be done, he will do it.

2) Where work on the right of way has already been done, is there a permit or other record of approval available?

Mr. Pescinski noted that he was given permission from a previous Planning Board member, Mike Brady, stating it was his property and he should be able to do what he wished.

Steve Thomson spoke to the impact on current use status of the property when the road work was completed. Attorney Dodge asked if the Planning Board would consider the lack of permit along with the application. Questions were asked about the extent that the right-of-way should be upgraded. This was driven by findings of an earlier ZBA decision. The October 26, 2017 ZBA decision for Lot 15 declared the remainder of ROW required significant upgrade and approval. At that time, the road was not of a condition to withstand increased traffic due to additional buildings / residences. Attorney Dodge pointed out that the information in question was not part of the Notice of Decision in addition to being at a different time, a different land use board, and a different lot. It was noted that a Notice of Decision dated 28 July 2020 did include this lot. Attorney Dodge, again, noted it was a different board which has a different jurisdiction. Christopher Seufert Jr. said our procedure requires permits for the right-of-way work already done and advance notice was not provided to the Planning Board. Where the procedure was not followed and no permit issued, he was not sure he could sign off on the approval. Christopher suggested denying the application, even though a motion had not been made, due to the lack of oversight by the Planning B Christopher suggested denying the application, even though a motion had not been made, due to the lack of oversight by the Planning board. The plan was never submitted but an “Existing Conditions” plan was submitted. oard. The plan was never submitted but an “Existing Conditions” plan was submitted. Attorney Dodge asked if this was non-starter and added that the town does not have a procedure or application for improvement of roadways.



Hill, NH Planning Board Meeting Minutes

3) To what standard should the road work have to satisfy?

Steve Thomson said that standards should be discussed during deliberation.

Attorney Dodge advise the Planning Board existing Zoning standards. Steve replied that we will use the subdivision standards as that is where roadway standards are found.

Abutters were asked if they wished to speak. Pat Lynch asked who owned Lot 7. Attorney Dodge told her the Robinsons, an abutter, owned Lot 7. She also asked if the road travels through Lot 7 as well. She was told that it did.

Tom Whitman cited Zoning Regulations and previous Planning Board and ZBA meetings and rejections regarding a building permit and asked what has changed since then. He said he felt badly for Mr. Pescinski because he feels that the property's sale was misrepresented as a buildable lot when it was not. Tom said the town has been attempting to approve this request for quite some time. He feels this is a ZBA request, but the zoning regulations may need to change in order to accommodate the application. Mr. Pescinski replied that the ZBA declared this outside of their purview.

Tom Seymour brought forward an emailed statement from Bob Benson, an abutter, in support of Mr. Pescinski's application. Tom read the email to the Planning Board (See Attachment #1).

Daune Robinson said that Mr. Pescinski was a very good neighbor and they have had no problems with him. She did not understand why the Planning Board was stopping him from building. She said the Planning Board should, at the very least, give Mr. Pescinski what he needed so he may build.

Stephen Robinson told the Planning Board he was once the Chair of the Planning Board and on the Board of Selectmen in Litchfield. He said the Planning Board was trying to apply rules they don't have a right to apply. Subdivision rules do not apply, road regulations from subdivision does not apply. The Planning Board needs to only review plat plan. Mr. Robinson said the Planning Board can't tell Mr. Pescinski the road improvements needed as it is his land. He felt the Planning Board is confused about subdivision versus Planning Board authority to approve a plat. He said that once the plat is approved, Mr. Pescinski will meet all zoning requirements needed to satisfy the town. To ask someone to recreate conditions from when the right-of-way first existed... This process should not involve questions about the right-of-way's construction.

The public was asked if they wished to speak in reference to this application. With no public comments, Steve Thomson made motion to close the public hearing. Marshall Bennett seconded the motion. The motion passed unanimously. Planning Board Chair Marshall Bennett closed the public hearing at 9:18 pm at which time a five-minute recess was taken.

At 9:25, the Planning Board began its deliberations.



Hill, NH Planning Board Meeting Minutes

Steve Thomson was concerned that the extension he thought was on the lot actually stopped short. He said the extension must abut the lot. He also had concerns as to whether the extension is of sufficient width for its entire length. Christopher Seufert Jr. shared Steve's concerns. Attorney Dodge, speaking with permission of the Chair, asked Steve not to focus on the road and focus on the "common driveway" which abuts the lot.

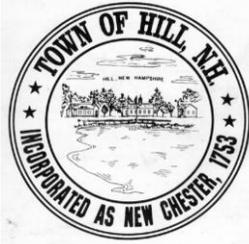
Marshall Bennett commented that we are learning as we go. Attorney Dodge responded saying she understands how frustrating this is. She also said that she and Mr. Pescinski have been here many times and your inexperience and hesitation is evident. Christopher Seufert Jr. said he raised the same questions about a year ago. She said the Planning Board needs to look at the common right-of-way and the road that weaves through the right-of-way. She also said the Planning Board needs to deliberate with respect to the Existing Conditions plan as it was presented.

Steve Thomson asked if the entire length of the right-of-way need upgrading. Mike Munson and Marshall Bennett asked if it was wide enough for emergency apparatus. Marshall did note that the right-of-way does abut the lot. Steve said the zoning standards require a minimum of 200' road frontage and he does not think this meets that requirement because the road built does not abut the lot. Christopher Seufert Jr. said the already deeded right-of-way provides access. Steve reminded Christopher that access does not necessarily translate to frontage. Attorney Dodge, with permission of the Chair, remarked that the Planning Board needs to review the previous plats to consider what the right-of-way wanders through.

Attorney Dodge said she wants a copy of the recording being made. Tom Seymour responded stating the recorder was not property of the Planning Board but was being tested for the Budget Committee. Once the minutes have been generated, the recording would be deleted. He also asked Attorney Dodge to submit a 91-A request to obtain a copy of the recording. She said she would submit a request Monday and requested that the recording be preserved.

Marshall Bennett observed that Mr. Pescinski will need to submit a waiver of liability to the town. Mr. Pescinski has offered to do so previously.

Tom Seymour said that he cannot speak for the Selectmen, but he has doubts they would approve a building permit if there were insufficient road frontage. Attorney Dodge replied that they will discuss with the Selectmen regarding the building permit. The right-of-way is abutting the lot while the constructed road does not. Steve Thomson expressed uncertainty regarding the difference between a right-of-way and a street or road but does not have access to case law and any precedents set. Though, he did express that this is a doable situation. Marshall Bennett sees the right-of-way as providing access and abuts the lot providing frontage.



Hill, NH Planning Board Meeting Minutes

Attorney Dodge said that this is not a matter of opinion. Steve Thomson wants to research more because he feels it is likely there is case law that would assist in his decision. Attorney Dodge stated that the Planning Board has had lots of time to research to make a determination. She also said that the Planning Board procedures say that one cannot influence another as she felt Steve may be unintentionally influencing others. Steve Thomson said this is not being done.

Steve Thomson said that NH RSA 674:24 reads that a lot bordering a right-of-way is acceptable as frontage. Attorney Dodge submitted a document that discussed private roads that defined a right-of-way as a roadway. Christopher Seufert Jr. read a number of right-of-way definitions. Steve cited 674:41's definition of the five types of streets that can be used as a frontage. Steve repeated that he felt this is doable. Mr. Pescinski suggested the Planning Board approve the plat where definitions for street, road, right-of-way, etc. are difficult to ascertain.

Attorney Dodge reminded the Planning Board that the application was accepted. She said she was establishing the record because she feels this may need to go to an appeal.

Marshall Bennett asked if everyone felt more time is needed to research. Steve Thomson said he would like to have more time to study the conflicting definitions and the plat. Christopher Seufert Jr. indicated he would also like more time to review. Steve added that the next thing to determine would be the standards that the right-of-way will need to meet. Mike Munson said he did not want to put the applicant off for another month and we should meet again as soon as possible.

Attorney Dodge reminded the Planning Board that the application was accepted. She was reminded that the application was approved at the onset of this hearing. She, in turn, urges the Planning Board take advantage of town counsel.

As the Planning Board began the process of setting a schedule for the next meeting, Attorney Dodge said she wanted to get a list of the questions and topic that will be deliberated at the next meeting. Tom Seymour said that it would be impossible to provide a list of questions because the pending research and discussions would yield questions not known at this time. Attorney Dodge said that the Planning Board does not know what it is doing and it is very frustrating. She said that every time they come the Planning Board they ask for specific direction and you always ask for more time. Steve Thomson noted that this is the first time we have had an application for deliberation.

Attorney Dodge noted she wants to attend as well. If she cannot be in attendance, she wants to have a recording made. Steve Thomson said that the Planning Board has not elected to record meetings. Tom Seymour said that recording tonight was simply a test of the device's ability to provide a quality recording. Tom said he would make a recording should Attorney Dodge not be in attendance.



Hill, NH Planning Board Meeting Minutes

Tom Seymour made motion to cease deliberations and approve a continuance of this hearing to Tuesday, 24 October 2023 at 6:00 pm. Steve Thomson seconded the motion. The motion passed unanimously.

Steve Thomson made motion to exit deliberation. Marshall Bennett seconded the motion. The motion passed unanimously.

Adjournment

With no further business to discuss, Christopher Seufert, Jr. made motion to adjourn. Marshall Bennett seconded the motion. The motion passed unanimously. Planning Board Chair Marshall Bennett adjourned the meeting at 10:20 pm.

Respectfully submitted,

Tom Seymour, Secretary



Hill, NH Planning Board Meeting Minutes

ATTACHMENT #1

From: Robert Benson <robert.benson361@gmail.com>

Sent: Thursday, October 5, 2023 12:38 PM

To: Shelly Henry <hilltwncnk@comcast.net>

Subject: Richard Pescinski Proposal

Hi Shelly, Will you please get the following note to the members of The Hill Planning Board for their next meeting? Thanks! Bob Benson

“Dear Members of the Hill Planning Board,

I am Bob Benson, owner of the 145 acres abutting the land of Richard Pescinski. My lot is 8-18.

Please allow Richard to implement his Plan, as proposed.

I have spent many hours in the woods there, and I have seen cellar holes, old sheep pens, stone walls, and other remnants of a time when this land was very active and was being used productively by the people of Hill.

Now, this land just sits there, and some logging company occasionally scalps it and leaves a mess.

Richard's planned use of this land is similar to what our forefathers did many decades ago...i.e., they made productive use of this great area.

I cannot attend the next Planning Board Meeting, so if you could read this note aloud to the audience, I would really appreciate it!

Bob Benson
robert.benson361@gmail.com”