

**MADISON PLANNING BOARD
PUBLIC HEARING and REGULAR MEETING
JULY 5, 2017
APPROVED MINUTES**

ATTENDANCE:

Marc Ohlson, Chair - Present	Noreen Downs - Present
David Cribbie - Present	Paul Littlefield - Present
Paul Marks – Present	Phil LaRoche, Alternate - Present
John Arruda, BOS Rep – Present	Andrew Smith - Excused

Recording Secretary: Melissa Arias, substitute for Colleen King

POSTING DATE and LOCATIONS: 06/19/17 at Madison Town Hall - upper and lower levels and Madison and Silver Lake Post Offices; 06/23/17 in Conway Daily Sun.

OTHERS PRESENT: Applicant Roger Cyr (as an individual and Trustee of Fat Boy Realty Trust) and his Agent, Surveyor Paul King. Donald Burnham and Ron & Joanne Stein, property owners on Class VI Ledge Pond Road.

CALL TO ORDER: Mr. Ohlson called the meeting to order at 7:00 pm.

APPOINTMENT OF ALTERNATES: Selectman Arruda swore in Alternate Phil LaRoche for a three-year term prior to the meeting. Downs made a **motion** to elevate LaRoche to a full member for this meeting, seconded by Littlefield. Motion passed.

APPROVAL OF AGENDA: Ohlson said the Board should consider Case #17-03 prior to Case #17-02 in order to address the Boundary Line Adjustment matter first. Downs made a **motion** to approve the Agenda of July 5, 2017 as revised, seconded by Littlefield. Motion passed.

APPROVAL OF THE JUNE 6, 2017 DRAFT MINUTES: Downs made a **motion** to approve the draft minutes of June 6, 2017 as presented, seconded by Marks. Motion passed.

PUBLIC COMMENT: Property owner Donald Burnham asked whether the Board had a chance to review any documentation regarding excavation by Coleman in and around Class VI Ledge Pond Road (tax map 202, lot 008 owned by Baron Trust, LLC) prior to the meeting. The Board said no but Arias handed out copies of an email to the Planning Board from abutters Ron & Joanne Stein sent at 11:21 pm on June 28, 2017, as well as their June 26, 2017 letter addressed to the Board of Selectmen with three attached photos which was discussed by the Selectmen at their meeting on June 28, 2017. Burnham said he attended the June 28, 2017 Selectmen's meeting to discuss this matter. Property owner Calvin "Buzz" Coleman also attended the Selectmen's meeting as Trustee of the Baron Trust, LLC. Burnham said his primary residence is Derry, NH but he's owned a camp on Ledge Pond since 1982 and Coleman wasn't excavating on the property in question at that time. Burnham said there was a stump dump on the property in 1982 and Class VI Ledge Pond Road used to run between the railroad tracks and stump dump before going upslope toward the pond. Since 1982, Burnham said Coleman has changed the location of Class VI Ledge Pond Road at least 3 times, likely without Town consent. The Stein's said they bought their property on Ledge Pond in 2007 and estimate changes to the road were made around 2009 and again around 2011. Arruda said the Board of Selectmen has never

addressed a request from Coleman to alter, improve or relocate Class VI Ledge Pond Road during his tenure as a Selectman. Arruda said the Selectmen are prepared to address the Class VI Road violation with Coleman because the State Statute outlines the process one must go through to change a Class VI Road. Arruda said the Selectmen are not prepared to address the excavation violations so he recommended Burnham and Stein bring the matter to the Planning Board. Arruda said the Selectmen's Office has contacted State of NH Gravel Monitor Mary Pinkham-Langer and is awaiting a call back. Ohlson was at Town Hall earlier today and learned of tonight's discussion item so he made a site visit this afternoon. Burnham said he and Stein have documented rights-of-way in their property deeds yet they're both concerned their access will be lost if Coleman continues to excavate in the area. Ledge Pond Road is currently at the top of and close to the excavation expansion. Burnham has conducted research into the Town's Excavation Regulations and the State's Alteration of Terrain permitting process and feels the recent excavation is too close to the Town Class VI Road and abutting properties. Burnham was unsuccessful in locating Alteration of Terrain permits on the State of New Hampshire's website or at Town Hall. He said the pit expansion is likely in violation of Town and State Regulations and asked for a letter of Cease and Desist as soon as possible to allow for an investigation and inspection by Town and State Officials. Burnham has been in contact with Coleman in the last few weeks, meeting him on site today and scheduled to meet him again on site Saturday morning. Burnham says Coleman knows the situation is unsafe. The hillside is falling down because the banks are being undermined. Erosion and loss of topsoil, vegetation and trees from the height of land above the pit has occurred recently and is documented in photos by Burnham. The photos were taken between June 26, 2017 and July 2, 2017. The photos taken July 2, 2017 show changes to the terrain and prove that excavation continued after the matter was brought to Coleman's attention. Burnham said Coleman recently added a dirt barrier at the top rim of the excavation site yet it doesn't completely protect pedestrians and vehicles in the way fencing would. According to Burnham, Coleman also put cement in place with a bulldozer as recently as today to stop the undermining process. Photos also show a loamy berm at the bottom of the embankment, which may have been placed there to correct further erosion or be used in the reclamation process. The distance from the bottom of the recently expanded pit to the height of land is estimated to be a couple hundred feet according to the abutters. Burnham's photos show activity well within fifty feet of the road and abutters. Stein said there was no equipment in the pit on July 3rd and 4th due to the holiday, yet the bank was losing debris and rocks during that time, some just a few feet away from Ledge Pond Road. In addition to the potential threat to Class VI Ledge Pond Road, the two abutters are extremely worried over the impact the new expansion could have on the integrity of Ledge Pond itself. Ledge Pond is a spring-fed pond with the aquifer running directly underneath. The elevation above sea level is 454' according to Burnham. Burnham said there is standing water in the deepest part of the new excavation and he can't tell whether the water is groundwater from the aquifer or still there from recent rainstorms. Burnham is concerned that digging any deeper or closer to Ledge Pond could result in the entire body of water giving way and washing into nearby Pequawket Brook, which isn't very far from the pit expansion. He feels the property values of the camps around Ledge Pond have been impacted by the excavation expansion but would be drastically reduced if the pond ceased to exist. Burnham presented a NH Topographical Map booklet depicting Ledge Pond, the surrounding terrain, and Class VI Ledge Pond Road as it existed about 10 years ago. Google Earth images show the road in a different location than the topographical map booklet. Ohlson said the Town has old aerial photographs that could also be used in the investigation. Stein referenced a new access-way into Ledge Pond created by Coleman so he could excavate closer to the actual Class VI Road. Stein said the new access-way measured in only 12-20 feet away from Coleman's road into another pit area. Ohlson said he was on the Planning Board when the Excavation Regulations were adopted to comply with RSA 155-E. Ohlson gave a brief history of how the regulations came to be and covered the applicable dates used to determine whether

an operation is considered grandfathered. The dates listed determine what is permissible for excavation and compliance with town regulations. Ohlson said Coleman may argue that he owned the property in 1989 and is therefore exempt from the Town's Excavation Regulations. Burnham said this wouldn't exclude him from complying with the State of NH's requirement that excavation operations over 1 acre in size have a valid Alteration of Terrain permit in place which must be updated every 2 years. Although Coleman told the Board of Selectmen on June 28, 2017 that he would bring copies of all his paperwork on Map 202, Lot 008 to Town Hall to verify compliance, nothing has been produced to date. Burnham is glad Coleman agreed to meet with him and appear at the Selectmen's Meeting but Burnham is not satisfied with Coleman's handshake today when he said he'd stop excavating in the area and take corrective measures. In fact, Coleman mentioned that he planned to excavate 400' further toward Pequawket Brook and thinks there may be 10 years worth of good material in that area. Burnham would like the town to tell Coleman he must stop excavation and also start the reclamation process. Cribbie said this type of complaint is unprecedented in his time on the Planning Board. He questioned whether the Board should go out to the site as a group this evening to take measurements and shoot elevations. The Board determined that a letter needs to go to Coleman as soon as possible informing him to cease and desist all excavation on Map 202, Lot 008 (which may also contain acreage formerly known as Map 207, Lot 002 according to the map on the wall behind the meeting room table) and address reclamation as soon as possible with inspection by the State of NH Gravel Monitor Mary Pinkham-Langer before the cease and desist order is lifted. The letter should be addressed to Baron Trust, LLC, c/o Calvin J. Coleman, 14 Coleman Drive, Conway, NH 03818. The property is 281 acres and was transferred under Book 1995, Page 0232 from Calvin & Caroline Coleman on January 23, 2002. Arruda said it might be best to have the Planning Board Attorney draft the letter for the Board. Ohlson said the Planning Board usually looks to the Board of Selectmen to do necessary enforcement on the regulations put in place by the Planning Board. Arruda said the Selectmen will address the Class VI Road alterations but feels the Planning Board and its attorney should deal with the excavation matter.

Cribbie made a **motion** to have a letter of cease and desist written by the Planning Board's attorney go out as soon as possible, seconded by Littlefield. Motion passed. Arias will contact Laura Spector-Morgan at the Mitchell Group tomorrow morning with the background information and Board's request. The Board would like the signed letter sent via fax to Coleman's office with the original sent via certified, return receipt mail. Burnham and Stein asked to be notified of the date and time when the State of NH Gravel Monitor conducts an inspection. Arias will get their contact information to Linda Shackford for this purpose. The Planning Board would like Ohlson to attend as well. Ohlson closed Public Comments.

PUBLIC HEARING: (started at 8:05 pm)

CASE # 17-03 – Boundary Line Adjustment application from Surveyor Paul King, Agent for Roger J. Cyr, Jr. & Anne T. Cyr and Roger J. Cyr, Jr., Trustee of the Fat Boy Realty Trust, for property located on East Madison Road, between improved property known as Tax Map 247, Lot 020 and vacant property known as Tax Map 247, Lot 027, in the Rural Residential District, to eliminate the rear boundary line of Lot 020 (currently 1.4 acres) and adjoin 14.41 acres of backland from Lot 027 to make an improved lot of 15.81 acres owned by Roger J. Cyr, Jr. and Anne T. Cyr with existing frontage on East Madison Road.

Arias said the Public Notice was posted on the upper and lower bulletin boards of Town Hall and at the Madison and Silver Lake Post Offices on June 19, 2017. The Applicant, Agent, and eight abutters were sent the Public Notice on June 16, 2017 and all return receipts came back prior to the meeting

with the exception of Michelle Hanson. The Public Notice was published in the Conway Daily Sun on June 23, 2017. All applicable fees have been paid. The only correspondence received for this hearing was a letter from Surveyor Ron Briggs sent via email which referenced a correction required to a previously filed minor lot line adjustment on properties owned by abutter David Davis. Copies of Brigg's letter were handed out to the members. Mr. Ohlson reviewed the application as substantially complete. LaRoche made a **motion** to accept the application as complete, seconded by Downs. Motion passed. This formal application follows a preliminary hearing before the Planning Board in April 2017.

Ohlson read the June 30, 2017 letter from Briggs to the Planning Board Chairman into the public record, "I submitted a plan and application for a Minor Lot Line Adjustment between David W. Davis (Map 247/Parcel 19) and David W. Davis (Map 247/Lot 21) in December of 2012. The application was approved by the Madison Planning Board, and the plan recorded. Paul King, LLS has submitted a plan and application for a Subdivision for Roger Cyr (Map 247/Lot 27), which has a common boundary as the centerline of the Right of Way on my plan. Mr. King has determined the boundary line to be the Easterly edge of that Right of Way, not the centerline. I have reviewed the record evidence, and concur with Mr. King that the boundary is in fact the Easterly edge of the R.O.W. I left a message with Mr. Davis, informing him of this discrepancy on my plan. I will discuss this matter with Mr. Davis and let him know that I will be revising my plan to correct that boundary. The reduction in area of Mr. Davis' lot does not create any non-conformity that would affect the previous Minor Lot Line Adjustment, and this correction does not affect the current subdivision presented to the Board by Mr. King and his client. Please let me know if the corrective plan that I will file should be submitted and reviewed by the Madison Planning Board. Thank you. Respectfully, Ronald H. Briggs, LLS". Copies of the letter were provided to King and Cyr.

Mr. King presented the case as follows: The backland acreage of Map 247, Lot 027, consisting of 14.41 acres, would be merged with the existing 1.4 acre home site of Map 247, Lot 020. The existing rear property boundary line to be abandoned is shown as a dashed line on the subdivision and boundary line adjustment plan.

QUESTIONS FROM THE BOARD

The Chairman asked whether a Mylar was ready for signature tonight. King said he would like to have the Mylar printed after the meeting and delivered to Town Hall tomorrow. Ohlson said the Board will have to agree to have the plans and Mylar signed out of session.

BOARD DISCUSSION: None.

MOTION:

Downs made a **motion** to approve Case #17-03 for a Boundary Line Adjustment between Map 247, Lots 020 & 027 as presented by King with the following condition:

1. Mylar will be signed out of session by the Chair.

Motion seconded by Littlefield. Motion passed.

PUBLIC HEARING:

CASE # 17-02 - Subdivision application of Surveyor Paul King, Agent for Roger J. Cyr, Jr., Trustee of the Fat Boy Realty Trust, for property located on East Madison Road, Tax Map 247, Lot 027, in the Rural Residential District, to create two new vacant parcels of 3.46 acres and 2.11 acres from the

balance of the land remaining after the Boundary Line Adjustment approved under Case #17-03 and using existing frontage on East Madison Road.

Arias said the Public Notice was posted on the upper and lower bulletin boards of Town Hall and at the Madison and Silver Lake Post Offices on June 19, 2017. The Applicant, Agent, and eight abutters were sent the Public Notice on June 16, 2017 and all return receipts came back prior to the meeting with the exception of Michelle Hanson. The Public Notice was published in the Conway Daily Sun on June 23, 2017. All applicable fees have been paid. The only correspondence received for this hearing was the letter from Surveyor Ron Briggs read into the minutes by the Chairman above. Mr. Ohlson reviewed the application as substantially complete. Cribbie made a **motion** to accept the application as complete, seconded by Littlefield. Motion passed. This formal application follows a preliminary hearing before the Planning Board in April 2017.

Mr. King presented the case as follows:

The topographical plan requested by the Planning Board during the preliminary hearing was provided. The property contains inconsequential wetlands and no slopes over 30%.

All monuments are set in the ground.

Proposed lot 27.1 is 3.46 acres with 245.15' of road frontage on East Madison Road.

Proposed lot 27.2 is 2.11 acres with 237.47' of road frontage on East Madison Road.

The State of NH has been out to inspect the property with Subdivision Approval as #esa2017051801.

The test pit results exceeded King's expectations.

There is ample room for well installation on each lot.

QUESTIONS FROM THE BOARD

There were no questions from the Board.

PUBLIC COMMENT:

Olson opened the hearing for Public Comment. Since there was no public present, Ohlson then closed the public portion of the hearing.

BOARD DISCUSSION:

There was no Board discussion.

MOTION:

Cribbie made a **motion** to approve Case #17-02, for a 2 lot subdivision of Map 247, Lot 027 as presented by King with the following conditions:

1. Mylar will be signed out of session by the Chair.

Motion seconded by Marks. Motion passed.

OLD BUSINESS:

The Code Enforcement Officer has been asked to attend the September 2017 Planning Board meeting where Accessory Dwelling Units will be discussed.

NEW BUSINESS:

Arias and Downs prepared the CIP letters to the Department Heads for circulation on June 28, 2017. They are due back by July 30, 2017 with Department Heads expected to attend the September 6, 2017 Planning Board meeting. The CIP discussion will be posted to begin at 6 pm that evening with the regular Planning Board meeting to follow at 7 pm.

CHAIRMAN'S REPORT: Ohlson was saddened to read of the passing of Hersh Sosnoff in the Conway Daily Sun. Condolences go out to his family.

SELECTMAN'S REPORT – Arruda said the Ledge Pond Road matter discussed at the June 28, 2017 Selectmen’s Meeting is the only matter he intended to raise this evening.

CORRESPONDENCE: None.

ADMINISTRATION: None

ADJOURNMENT:

Cribbie made a **motion** to adjourn at 8:30 pm, seconded by Littlefield. Motion passed.

The next meeting is August 2, 2017. Downs & Arias will be absent. Linda Shackford will take minutes.

Respectfully submitted,

Melissa Arias, Substitute
Land Use Boards Administrator

Minutes **approved** at the August 2, 2017 meeting.