

Chairman Foster said regarding the bond issue, the applicant does not think the Regulation is clear and concise.

It was the consensus of the Board regarding criteria #1 regarding the bond matter, that there was no problem that the granting of the waiver would be detrimental to public safety, health or welfare or injurious to other properties located nearby.

Chairman Foster said regarding criteria #2, this is based on the bond and not the third party review. Mr. Scalley disagreed stating it is on both the bond and third party review. Attorney Whitelaw questioned if the applicant is required to have it (bond) the Board needs to look at what is different from others (projects) and why this is different.

Ms. Karpf asked what is the procedure for public hearings? Chairman Foster said the Board listens to the applicant then deliberates and then gets input from the public. Attorney Whitelaw said it is not unusual for a board to "take stock" of where it is. The answer was, there is no written procedure.

Chairman Foster said the Board reviews (the project) as it goes along and doesn't hear from the engineer. A question was asked if the engineer was bonded. Attorney Whitelaw said, opinions differ but they have standards to go by.

Chairman Foster said the Board would come back to criteria #2.

Chairman Foster read criteria #3 again. And questioned if there is a physical problem (with the land). Mr. Mills said they must weigh the letter of the law as opposed to the intent of the law as a starting point. Attorney Whitelaw asked if every development is required to have third party review, what is the purpose and what is the difference here. Consider what would be involved in time and money if the Town staff and/or employees were doing the inspections rather than having the applicant paying for it (by an outside engineer).

Mr. Scalley said the conditions of the April 7, 2011 conditions don't state specifically that he needs a third party review.

Attorney Whitelaw said, a question for the Board is, is that enough. Ms. Moroney said there is no physical problem (with the land). Mr. Bergum said the criteria doesn't apply because potential hardship is based on communications and therefore (the criteria) is not applicable. Mr. Mills agreed that it doesn't apply.

Mr. Nelson said, this Town and State is different from what he is used to in that an engineer is always involved. Everywhere it's based on an engineer or architect. He said the applicant has an engineer involved and he doesn't feel it (criteria) is not applicable.

Mr. Bergum said we (the Board) can have disagreements of opinion and asked to move the discussion along.

Mr. Mills said the issue of criteria #3 is topography and that's not the issue at hand.

Chairman Foster asked Mr. Nelson what kind of bids he was familiar with in Minnesota. Mr. Nelson said when he first came to Town he saw so many people with so many different opinions he had to try and educate himself

Chairman Foster asked the consensus of the Board on Criteria #3. Ms. Moroney said it was not applicable.

Chairman Foster read Criteria #4, It was the consensus of the Board a waiver was not going to effect the Zoning Ordinance, Master Plan or Official Map.

Chairman Foster returned the discussion to criteria #2 which she read again. Attorney Whitelaw suggested the Board may want to hear from the public.

Ms. Karpf addressed the Board and gave copies of *Information regarding the Hunt Properties LLC Subdivision* (Attachment G), and *Reasons not to change the conditions of approval* (Attachment H) Ms. Karpf said the Board seems to have the opinion that their Regulations are too strict and hinders applicants requesting development. She said this applicant (Mr. Scalley) was given waivers and he was asked to sign a statement that he understood everything, which he did sign. She said as she listened to the Board deliberate, it gave her hope that the Board will be objective which was not her original thought due to an e-mail in which Chairman Foster states she had discussion with the applicant (Mr. Scalley) outside a public

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meeting, which is ex-parte communication. (Attachment J) She said it appears, according to e-mail, that the new engineer (Horizons Engineering) was hired by Mr. Scalley before the Board voted to let the applicant (Mr. Scalley) switch from Provan & Lorber to Horizons Engineering. She said these e-mails give her concerns regarding the Board objectivity. Ms. Karpf said, she was also skeptical of the Board's objectivity because Chairman Foster had allowed Mr. Scalley to advertise his business on her highway billboard on her property (at Foster's Crossroads Store) for no cost to Mr. Scalley and Mr. Nelson occasionally drives Mr. Scalley's vehicles as a favor. She then read the two documents (attachments H & I). Chairman Foster said she had given Ms. Karpf more time than allotted and asked that she conclude.

Mr. Karpf said the applicant has a web-site on which he states he has 30 years of experience and he (Mr. Karpf) finds it unacceptable that Mr. Scalley doesn't know regulations.

Mr. Scalley asked why the applicant didn't have a choice (to register the mylar or not and have a bond or not) and mentioned he has various e-mails that contradict Ms. Karpf. He said he has only done 4 or 5 subdivisions.

Ms. Moroney asked about the mylar filing. She asked if the applicant wants the mylar revoked. Mr. Scalley said yes if it doesn't mean he has to file a new application.

Ms. Moroney offered a motion to remove the final approval of the subdivision (Hunt Properties, LLC, Map 207 Lot 36 – off Paquette Drive, known as Ruby's Way) for the sole purpose of allowing the Applicant to construct Ruby's Way without posting a bond. This does not affect the requirements to either have third party review (Horizons Engineering) or obtain a waiver of that requirement. The subdivision will continue to be subject to all Zoning Ordinances and Subdivision Regulations in effect at the time of application. The Planning Board will file the appropriate documents with the Registry of Deeds and pay any recording fees. The motion was seconded by Mr. Hogan The vote was 6 – 0. The motion carries..

Regarding waiver of third party review, Ms. Moroney said she doesn't see that the Board has enough (to grant a waiver). She said, the conditions of the property are not different.

Mr. Mills offered a motion to approve the Applicant's (Hunt Properties, LLC) request for a waiver from the requirement that he have a third party review of the construction of Ruby's Way (a subdivision, Map 207 Lot 36 off Paquette Road). Mr. Nelson seconded the motion.

Discussion; Mr. Hogan asked Mr. Mosedale if he has had third party review. He said the Road Agent did the inspections. Mr. Mills said he is against granting the waiver because he is concerned with due diligence and an unbiased third party reviewer would alleviate that concern. Chairman Foster said she is not against third party review and giving the applicant the ability to remove the bonding requirement (with the revoking of the mylar), they should have third party review.

The vote was 0 – 4 – 2 (Mr. Hogan and Mr. Nelson abstained) the motion fails.

The waiver was not granted. Horizons Engineering will perform the third party reviews and such reviews will be paid by the Applicant (Hunt Properties, LLC).

(Note: two e-mails regarding bonding which were referred to in the previous discussion are Attachment K and Attachment L)

Mr. Karpf rejoined the Board.

Public Hearing – CNL/Bretton Woods Alpine & Country Club, Map 211 Lot 14, application for a waiver to extend the temporary building permit of the temporary building by (5) five years – located at 95 Ski Area Road, Bretton Woods

Chris Ellms and Steve Hilliard spoke to the Board. Mr. Bergum asked why they are requesting a five year extension when the last two extensions were for 3 years each. They replied that they are projecting out for 5 years and asking for 3 years would be disingenuous. They said the "tent" building was not intended to be permanent and is not the best use of the land it is located on. They said building a permanent structure depends on the economy.

Mr. Nelson offered a motion to grant a waiver to extend the temporary building permit on Map 211 Lot 14 of the temporary building for an additional 5 years. Mr. Mills seconded the motion.

Discussion; This granting of the waiver will require approval of the Fire Chief for fire and life safety as well as the Code Enforcement Officer's approval.

The vote was 6 – 0. The motion carries.

Cancellation of Public Hearing – Map 210 Lot 7, CLP BW, LLC

Chairman Foster said this is informational for the public and abutters because the applicant has retracted his application to relocate the stables.

Other Business (public comment):

Secretary's Job Description

Mr. Karpf offered a motion to table the Secretary's Job Description. Mr. Bergum seconded the motion. The vote was 6 – 0. The motion carries.

Public comment

Mr. Scalley asked if it is in the regulations when the third party reviewer (Horizons Engineering) will inspect.

Mr. Karpf, as a member of the public, said he suggests that the Board send a letter to Horizons informing them they are the Town's third party reviewer on the Hunt Properties, LLC Ruby's Way subdivision project.

Chairman Foster asked that Attorney Whitelaw draft that letter.

Mr. Bergum offered a motion to request that Attorney Whitelaw draft the letter to Horizons Engineering informing them that they are the Town's third party reviewer for the Hunt Properties LLC, Ruby's Way subdivision. Ms. Moroney seconded the motion. The vote was 6 – 0. The motion carries

Mr. Hogan offered a motion to adjourn. Ms. Moroney seconded the motion. The vote was 6 – 0. The motion carries.

9:57 PM Chairman Foster adjourned the meeting.

Respectfully submitted
Linda J. Dowling
Secretary
Carroll Planning Board