

Attachment H

Regarding the Hunt Properties, LLC, Map 207, Lot 36 off Paquette Drive;

Reasons not to change the conditions of the approval granted on April 7, 2011 and reaffirmed January 3, 2013.

Note that the Applicant did not seek a waiver from the Board from compliance with these regulations and did not exercise his right to appeal either decision.

Subdivision Regulation section 1 Authority

The Carroll Planning Board adopts the following regulations governing the subdivision of land in the Town of Carroll: ***For the purpose of protecting the health, safety, convenience, prosperity and welfare of our inhabitants; for the purpose of protecting the economic investments of homeowner residents of subdivisions;*** for the protection of our Town's scenic beauty, the following land subdivision regulations are hereby enacted.

Under 5.10 Where the planning Board finds the extraordinary hardship or practical difficulties may result from strict compliance with these regulations....It may approve waivers to these subdivision regulations so that substantial justice may be done and other public interest secured, ***provided that such a waiver shall not have the effect of nullifying the intent and purpose of these regulations; and further provided the PB shall not approve waivers unless it shall make findings based upon evidence presented to it in each specific case that:***

Criteria: The request is based on conditions unique to the property; and features of the specific property create a particular hardship to the owner as distinguished from mere inconvenience if the strict letter of these regulations are carried out.

On March 3, 2011, Mr Beaulieu, the applicant's engineer from Headwater Hydrology stated there is adequate area for the septic system on each lot and that there were no wetlands. A waiver was requested and granted for road length. No other hardship was stated or waiver was requested relating to property conditions.

Criteria: Granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other properties located nearby.

The Town Engineer will be the Town's representative during the construction of required improvements. He will make periodic visits to the site to familiarize himself generally with the progress and quality of the work and ***to determine in general if the work is proceeding in accordance with the requirements of these regulations.*** Waiving the condition of Horizons Engineering as Town Engineer would be detrimental to the public safety, health or welfare, or injurious to other properties located nearby for these reasons based on the documentation presented:

- a) Without regard for Planning Board authority or RSA 91a, Mr Scalley, the applicant, took it

upon himself to hire Horizons Engineering as the Town Engineer before a Board vote at a public meeting.

b) Despite signing a document date 2/11/2011 confirming Town requirements of a Bond and Consultant and despite confirmation of Planning Board vote requiring the same, the applicant constructed 150 feet of his subdivision road without notifying the Town Engineer or presenting a bond to the Town.

c) Despite The Planning Board reaffirming the regulations requiring a bond and Town Engineer, the applicant continued to voice his opposition to the conditions and without reason.

d) Although on March 3, 2011 Mr. Beaulieu the applicant's engineer from Headwaters Hydrology stated he as familiar with Town regulations; and even though a document dated March 24, 2011 from Headwaters Hydrology stated " we have prepared a cost estimate for the project that will be used as a basis for providing the Town with a Bond prior to construction, the Planning Board received a letter from Mr. Beaulieu dated November 20, 2012 confirming that he was aware of current construction of 150 feet of roadway at the applicant's subdivision. No bond was in place and Horizons Engineering, the Town Engineer, was not notified.

e) On January 3, 2013, despite no changes had been made to the conditions or Town regulations of which he stated he was familiar with, Mr. Beaulieu of Headwaters Hydrology believed they should be doing the inspections since they were familiar with the design.

f) On May 2, 2013, despite having knowledge of the applicant's conditions, and despite members of the Board and the public questioning the legality of the action, the Planning Board disregarded its obligations and unreasonably and unlawfully amended the conditions of the subdivision approval.

g) Horizons Engineering's (the Town Engineer) review of the subdivision application listed 9 items to be addressed before final approval and 7 other requirements to address standard engineering practices in NH.

h) On March 3, 2011, it was stated that this subdivision was over the Town's aquifer. The Town has an aquifer protection ordinance. A document from Horizons Engineering dated March 28, 2011 addresses its concerns and recommendations regarding its protection.

i) Despite Headwater Hydrology reporting in a letter dated November 20, 2012 stating they inspected the 150 foot road way at the applicant's subdivision to ensure the project was being constructed in conformance with the Plans, Specifications and Town requirements; the Town Engineer's report found several deficiencies in the same work.

Based on the above statements it appears that the only way to ensure that regulations are followed, that the subdivision plans are adhered to, that public safety health and welfare is protected and that the work shall be performed in a good and workmanlike manner is to keep Horizons Engineering as the Town Engineer representing the Town.

----- Forwarded message -----

From: **Foster's** <fostercpm@roadrunner.com>
Date: Thu, Mar 17, 2011 at 6:37 PM
Subject: RE: engineers
To: drevannh@gmail.com
Cc: Rena Vecchio <twininfo@roadrunner.com>

Attachment J

Mr. Karpf, As before, you assume that Rena acted on her own. She acted on my request. Rena may have been approached by Mr Scalley but so was I. He was upset at the cost of Provan & Lobar and asked where in the regs does it say that they are the only engineer to use for 3rd party review. Their attitude to him was just that, they were the only ones he could use period. I could not give him the authority to use another because I am just one board member. I asked Rena to poll the planning board and the only thing she did wrong was phrasing where the request came from. Even I assumed that you were giving the go ahead for Mr Scalley to use Horizon from your email stating you saw no problem using Horizon after most of the other board members also agreed. In my opinion you have blown this out of proportion. Yes we have to follow regulations but we are allowed to use common sense. I do not feel we have the right to increase costs to the applicant and we should, (as Mr Bergum stated) give a list (short or long) to the applicant of certified and acceptable engineers. We will most certainly address this issue at the next meeting. Donna Foster

Rena, please send this onto the other members as I do not have all their emails in my computer.

90423

Attachment K

From: Bernie Waugh
Sent: Sunday, September 09, 2012 4:13 PM
To: 'Linda'
Cc: Bill Dowling; Donna Foster; Erik Bergun; Ernie Temple; Evan Karpf; Kenneth Mills; Richard Nelson
Subject: RE: permit vs bond question

Hi Linda:

I should have added my response to this note to the one I just sent to Mr. Mills. However I tend to answer E-mails one at a time, since I know of no other way to get through them all.

Just to be clear, I am assuming you are referring to Section 4.19, not 8.19.

Your question is: "Is it better for the town to require a bond or is it better for the town to withhold building permits to insure that work is completed?"

DISCUSSION: I have re-read Section 4.19 as a whole, and I now have a better understanding of why you are asking this question. Section 4.19 as written is somewhat ambiguous, and nothing I can do as a lawyer can completely erase the ambiguity. I would strongly suggest that the Planning Board should try to fix the ambiguity at some point (amending the regulations using the procedure in RSA 675:6).

The first ambiguity is the one pointed out by Mr. Mills -- namely that the first paragraph says "except [where] each lot is an existing improved Town road..." That plainly means to refer to a situation where each lot has **frontage** on an existing town road. I don't truly think the meaning is unclear, although it would be a good thing to fix.

The more difficult ambiguity lies in the fact that the first four paragraphs (which clearly are meant to read together) says that (again, with the exception of where all lots are on an existing town road), that all applications **must be** accompanied by a surety bond, or cash deposit. But then in the next paragraph appears the language you quoted, which seems to contemplate that there may be times when no bond has been posted.

In my opinion the only possible consistent way to interpret this is that if the subdivider posts a surety bond, building permits will not be withheld, but if the subdivider posts cash, then building permits will be withheld. In my view the 5th paragraph which you quoted should **not** be construed as saying that the subdivider has the option of providing **no** security at all. In **every** case, it must be either a surety bond, or a deposit of cash into escrow, and if it is cash, then building permits must be withheld until the road is done.

But now the next question is whether this interpretation is consistent with **state** law. In my opinion it is not, because RSA 676:12, paragraph V says that building permits cannot be denied if the construction of streets and utilities has been secured by a bond **or other security approved by the planning board**. Therefore in my opinion if a subdivider has posted **either** a surety bond or cash, then building permits cannot be withheld.

SUMMARY OF OPINIONS:

1. **Every** subdivider (except where all the lots are on existing town roads) must post **some** kind of security (under your regulations either a surety bond or cash - but I would recommend waiving this regulation so as to also allow the option of an irrevocable letter of credit if it is in a form approved by the Town's legal counsel.

Attachment L

22 of 2

From: "Bernie Waugh" <bernie.waugh@gardner-fulton.com>
Date: Monday, November 19, 2012 2:41 PM
To: "David Scalley" <davidscalley@dscontractorsinc.com>
Cc: <billdowling1@roadrunner.com>; <fustacpn@roadrunner.com>; <eborgum@worldsunder.net>;
<gemiet@roadrunner.com>; <droyannh@gmail.com>; <skydive399s@gmail.com>; <paulbuss@earthlink.net>;
<NelsonRA25@gmail.com>; <stamb7@myfairpoint.net>; <twinmtn@roadrunner.com>
Subject: RE: Ruby's Way Street and Subdivision Bond

Gardner Fulton & Waugh PLLC
78 Bank Street
Lebanon, NH 03766
603-448-2221

NOTE: This E-mail message and any attachments are confidential and may be privileged. If you are not the intended recipient, do not read this E-mail. If it has reached you in error, please also notify Gardner Fulton & Waugh P.L.L.C. immediately by telephone at (603) 448-2221 or by E-mail to G&F law@Gardner-Fulton.com, and delete or destroy all copies of this message and any attachments. Any unauthorized distribution or copying of this message and any attachments is prohibited. Thank you.

Dear Mr. Scalley:

I did not want to be rude by not responding to you. However please understand I have not been given any authority by the Town or its Planning Board to discuss or "negotiate" any substantive issues with you concerning your land. Just a couple of procedural points, however:

With respect to your letter to me, I have not "directed" or "instructed" anyone to do anything. I am not an official of the Town, and my role vis-a-vis the Town's officials is to give legal advice, not instructions.

The local body with ultimate legal authority over your subdivision, including any issues relating to enforcement of conditions, is the Planning Board. Thus your letter of today (of which you sent me a copy) asking for a hearing before the Board is, from a purely procedural standpoint, a step in the proper direction. Again, I haven't been authorized to discuss the substantive issues with you.

Sincerely,
H. Bernard Waugh, Jr.