

MILFORD PLANNING BOARD PUBLIC HEARING  
June 19, 2012 Board of Selectmen's Meeting Room, 6:30 PM

Present:

**Members:**

Janet Langdell, Chairperson  
Tom Sloan, Vice-Chairman  
Kathy Bauer  
Chris Beer  
Steve Duncanson  
Judy Plant  
Susan Robinson, Alternate member

**Staff:**

Jodie Levandowski, Town Planner  
Shirley Wilson, Recording Secretary  
Justin Atwood, Videographer

**Excused:**

Paul Amato

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**MINUTES:**

1. Approval of minutes from the 05/15/12 meeting.

**OTHER BUSINESS:**

2. **37 Wilton Road Milford, LLC & 282 Route 101, LLC/Pine Valley Mill Subdivision – Wilton Rd – Map 6, Lot 14;** Request for a six month extension of a conditionally approved subdivision.
3. **Ashwood Development, LLC – Falcon Ridge Development – Maple St/Falcon Ridge Rd – Map 3, Lots 5 through 5-45.** Request for Amendment #3 to the Development Agreement dated 8/10/2006.

**OLD BUSINESS:**

4. Request for partial subdivision revocation (Suzanne Fournier letter)–Ayotte property, Map 6, Lots 41 & 41-1.  
*(Tabled from 5/15/12)*

Chairperson Langdell called the meeting to order at 6:30PM, introduced the Board and staff, and welcomed the new Town Planner, Jodie Levandowski. She then explained the process for the public hearing and read the agenda.

**MINUTES:**

J. Langdell submitted a correction on page 3, stating her comment “that materials will only be processed on site” was meant to have been a question. S. Duncanson made a motion to approve the minutes from the 5/15/12 meeting as amended. J. Plant seconded. C. Beer abstained and all else in favor.

**37 Wilton Road Milford, LLC & 282 Route 101, LLC/Pine Valley Mill Subdivision – Wilton Rd – Map 6, Lot 14.** Public Hearing for a request for a six month extension to a conditionally approved subdivision.  
*No abutters were present.*

Chairperson Langdell recognized:  
Andrew Prolman, Prunier & Prolman P.A.

A Prolman, representing the property owners, referenced the letter dated 5/18/12 for a six month extension and explained that the project costs turned out to be more than anticipated and the owners are still trying to find resolution. Also, the variance for this case expired this past April, so if this project does go forward, we would have to go back to the ZBA. There is a project coming to the Planning Board, hopefully next month, for the Pine Valley Mill renovation and if that new project does indeed get built out, this ten lot subdivision will be withdrawn in its entirety. If that renovation doesn't go forward, we want to maintain this existing approval.

Chairperson Langdell opened the discussion for public comment; there being none, the public portion of the hearing was closed.

There was no further discussion by the Board.

S. Duncanson made a motion to grant a six month extension to the conditionally approved subdivision. C. Beer seconded and all in favor.

**Ashwood Development/Falcon Ridge Subdivision–Maple St/Falcon Ridge Rd–Map 3, Lots 5 through 5-45.** Request for Amendment #3 to the Development Agreement dated 8/10/2006.  
*No abutters were present.*

Chairperson Langdell recognized:  
Carl Kasierski, Whiting Hill Realty Trust

J. Plant recused herself as she is an abutter to this subdivision.

C. Kasierski explained that the development agreement for the Falcon Ridge project has expired and the purpose of this amendment would be to extend the timeframes for the completion of the work and to align the bond amounts that have been prepared by the Town's engineer.

J. Langdell added that the Board is in receipt of a four page resolution, prepared by Attorney Drescher and a letter dated 5/22/12 from Barbara Deneault, owner of Whiting Hill Realty Trust, requesting the amendment. The dates and amounts in both documents are in agreement.

Chairperson Langdell opened discussion to the public; there being none, the public portion of the hearing was closed.

Chairperson Langdell brought up page 3 of the Resolution and stated that under *Off-site improvements, Phase I – Date of Completion – to October 31, 2014* was consistent with the letter from Whiting Hill Realty Trust; however, she questioned the additional *Phase I – Date of Completion – to October 31, 2015 and Phase II – Date of Completion – to October 31, 2015*. C. Kasierski said those additional lines should not be there, it may have been

a typo. J. Langdell noted that she did consult with staff prior to the meeting, to make sure they were not part of a previous agreement.

Chairperson Langdell stated that those two lines will be deleted from the Resolution and then read the following sections from the Resolution:

*Recitals-Item #10,*

*Revisions in Development Agreement,*

*Provisions of Security Consent of Successors in Interest to WHRT*

*Vacating Finding of Default and Withdrawal of Action to Collect on Bonds.*

T. Sloan said he would like to revise the last sentence under Provision of Security to read.... *The agreement shall include provisions that adequate security shall be maintained in place until the completion and acceptance by the Town of said improvements. We want to make sure they are done in accordance with the plans that have been accepted, not just completed. B. Parker said that shouldn't pose any problems because it all happens concurrently anyway.*

T. Sloan made a motion to grant the Resolution as read, with the deletion of the two lines in *Off-Site Improvements*, and the inclusion of the additional wording under *Provision of Security*. S. Duncanson seconded and all in favor.

OLD BUSINESS:

Request for partial subdivision revocation (Suzanne Fournier letter) – Ayotte property, Map 6, Lots 41 & 41-1.

Chairperson Langdell recognized:

Suzanne Fournier, requestor

Robert & Grace Nordman, owners of 6/41

Roland & Clara Ayotte, owners of 6/41-1

Robert Wisniewski, Woodward Dr.

Bill Parker, Community Development

S. Fournier said in response to the staff memo for tonight's meeting;

- Mr. Parker mentioned the widening of the 1993 widening of the 40ft easement to 75ft; however, the driveway as it is built exceeds the bounds of the 75ft easement so in 1998 the two property owners did plan #29510 to shift the easement over 75ft to account for where it went out of bounds. The plan was shown at the last meeting but she did not see a copy in the files in the office. Is this plan legal because it was not approved on a subdivision and the driveway exceeds the bounds? Plan #29510 was given to the Board. J. Langdell noted that the plan was a copy of a document printed from the Hillsborough County Registry of Deeds.
- S. Fournier said subsequent to that, there was a lawsuit by the new owners Grace & Rob Nordman that ended up adjusting that driveway and there is a new plan, based on this plan, and reiterated her question asking if the plan was even legal. Does the Town have a copy of this and was it approved? The first note on the plan stated that the purpose was to create an easement but at the bottom of the plan there was a certification that said we do this plan but there is no way that it is being changed. Both statements are contradictory, so she would like the Board to look at that.
- Item C on Mr. Parker's report references the time period. Law 674:39 talks about where subdivisions have a five year period wherein in no new laws or ordinances can affect it. The law for revocation references that time period but there was no time period specified in 1989 and when none are specified law 674:39 kicks in. Since 1989, about twenty-three years ago, only one house was built.

Chairperson Langdell opened discussion to the audience.

R. Nordman said he owns the property that this easement goes through; the property he purchased from Daniel Ayotte. Originally when he bought the house he was told of the 75ft easement and was given documentation that showed the 75ft easement, so he was fully aware that an access road went through the property to the back property that Roland Ayotte owns. When that property was put on the market it was at that time he realized the

access road to the back property was outside that 75ft easement, so he contacted Daniel Ayotte and questioned him about it. He told me I'd have to speak to his father and I had multiple conversations with Roland Ayotte who basically told me I was mistaken. I then came to find out that three days post purchase and sales agreement there was an additional registered 75ft easement. That made a 150ft easement; more than one third of my property was put under easement unbeknownst to me. Needless to say I was a little bit upset. I spent two and a half years trying to rectify it and if this Planning Board has within its power to make some kind of decision around that easement, that was not disclosed either through title insurance or through the owner, I would fully and one hundred percent support revocation of that second easement. J. Langdell asked if this was brought to court. R. Nordman said there was a settlement out of court. J. Langdell noted that the question regarding whatever action occurred and that easement, for all intents and purposes, was dealt with from the settlement back in 1996. R. Nordman said, again, if the Planning Board has it within its power since this was never disclosed, never presented and never approved through the Planning Board then yes I say revoke it.

C. Ayotte said I respect Mr. Nordman's problem but it was not of our doing; it was a title company error/issue and Roland & I were absolved of any wrongdoing in that situation. It also cost us a fortune in legal fees just as it did the Nordmans and I believe it was resolved at that time. I would like the Board to make note that the right of way was also changed at that time.

R. Wisniewski explained that he was an abutter to the Ayotte property with about 1,700ft. Historically, he didn't think anybody sitting on the Board or Mr. Parker were here at the time this property was subdivided. Roland and Clara bought the lot from Bud Zahn who lived on Savage Rd. Bud Zahn owned the whole parcel at one time and at the time of the original subdivision of his land, he gave a 30ft access easement abutting the Woodard Dr properties to the back lot the Ayottes' purchased. Subsequent to that, the Ayottes wished to divide that lot for a house for their son and a house for themselves to be built on the land purchased from Bud Zahn. At that time, I owned some land, also on Woodard Dr, under the power lines and I offered that to the Ayottes as an access so they wouldn't have to use the 30ft ROW for some 500 ft through the pines and through another wet area; they could access the lots directly from Woodard Dr. However, my concern as an abutter was that they weren't going to put a condo development or a multi lot development in there and the Planning Board, the Ayottes and myself kind of agreed that there would be a 40 ft right of way to the back lot. 40ft is not wide enough for a street, as they are usually 50ft. That is how it was approved and that is where I lost track of it. When the Nordmans bought the property from Dan Ayotte and I was talking to Bob about it, Bob referenced a 75ft ROW. I told him he didn't know what he was talking about; it was a 40ft ROW easement. My question to the Board is, as an abutter why was I never notified that there was going to be a change to that plan, to change that from a 40ft to a 75ft ROW which might possibly access a road to the back property in development that we didn't approve of at the time it was subdivided? J. Langdell said we'd be going back to 1994 and she could not answer what procedurally did or did not happen. R. Wisniewski reiterated that if the ROW was changed from 40ft to 75ft, that was a change of a plan approved by the Planning Board, agreed upon by everyone and why was he never notified that there was going to be another meeting to change that approved plan? T. Sloan said that comes under statutory requirement; if there is not a major or significant change to the subdivision as proposed, in this case you're speaking of a 40ft ROW to a 75ft ROW, and that would not require a public hearing. R. Wisniewski said that would be almost a 100% change. T. Sloan said did that change the full intent of the original 40ft easement? R. Wisniewski said yes, the size has changed. T. Sloan said a 75ft easement instead of a 40ft easement would not affect the development as proposed. R. Wisniewski said he would not have sold the land with a 75ft easement because it could be developed. J. Langdell said the ZBA ruling and the Planning Board decision was decided on in 1989. It is one piece of land, divided into two lots with a single family home on one of the lots. If, by chance, whomever eventually owns this down the road, wanted to do something different on those lots, they would have to come back probably to the ZBA and definitely to the Planning Board. R. Wisniewski said he agrees with that but disagrees that this was not a significant change. B. Parker said he didn't have the RSAs available to quote from, but going back to the minutes at the time of the easement change, procedurally the plan was brought to the Planning Board at the end of the meeting to be signed for recording purposes, so the Planning Board at that time did not feel any sort of public hearing or notice was necessary. It was eighteen years ago, so it is hard to determine exactly why this happened.

B. Nordman added that going from 40ft to 75ft, as a matter of interpretation, may not be a procedural significant change, but going from 40ft to 75ft to 150ft; to him, that's a significant change. It was changed after two and a

half years of litigation and \$40,000 out of my pocket too. We basically took the second 75ft easement and abutted it to the first 75ft easement, so at the top it is 100ft, winds out to 125ft and then comes back to 100ft. Even that is a significant change from the original plan that was presented. J. Langdell said that may be the case, but that question has been resolved.

G. Nordman said she was told it had to be approved and asked if it was not approved by the Board, does it exist? J. Langdell she didn't know if all easements have to be approved; there are easements on properties in town that don't necessarily come to the Planning Board for approval.

R. Ayotte said we've owned this property in the back for thirty-five years and we pay taxes on it. What he remembers is that he did purchase the lot from Mr. Wisniewski because it is a lot easier to get in from Woodward Dr. than from the original 30ft ROW to access the lot. He was glad to have it and does appreciate it. We did sign a document when we bought the lot that said we can only traverse this lot for two lots; that's it. He doesn't remember anything about a 40ft ROW and the only reason we made it 150ft was because there is a ridge that ran along the back and this was the best way to get into the back lot. My daughter-in-law was the one who said the access was better over here, so that saved us money on a \$20,000 road which we have in place and naturally we wanted to protect this road for the back lot. The only reason it came up was because the lawyer forgot to register it at the time and did so a little bit late. We're not guilty of anything; it was the title company that didn't do their job properly.

R. Ayotte also stated that we did recently buy the property in front as an adventure in our older age to try to make something nice out of this property and we did have some trees cut. J. Langdell interrupted and said the activity that happened on lot 6/40 is not before the Board. A lot of things have been brought up and as requested, have been looked at and everything has been found to be in compliance including the owners using best management practices for timber management. R. Ayotte said he would not be here tonight if we hadn't bought 6/40; this didn't matter to anybody.

S. Fournier stated that there were people who noticed; the Nordmans had spoken to her through the years. She also wanted to clarify that there were several people in this room who were here in history, although Mr. Amato is not here tonight. Mr. Parker was the Director of Planning in 1994, so he was here when the easement change plan was signed. Two current board members; Mr. Amato was on the Planning Board in 1989 and Ms. Bauer was on the Zoning Board in 1988 when the subdivision was initiated. She must find it very interesting to be dealing with this issue now. Thank you.

R. Ayotte said we went through all the channels to have this lot be what it was. If the Zoning Board started to change all the decisions they made in the past, whoever was or was not on the Board, they would have a nightmare on their hands. You make a decision and if everybody does what they're supposed to do, there is no reason to change these things.

Chairperson Langdell closed the public portion of the meeting.

B. Parker stated that Ms. Fournier brought, up at several times, the difference between the original Zoning Board application for 25 + acres and what was approved by the Planning Board at 22+ acres, so today after some research in the older plans he found where the discrepancy was. An original boundary survey done for Mr. Zahn in 1973 by compass and tape did show a 25 +/- acre parcel. The subsequent subdivision plan in 1989 was done by David O'Hara who used non compass and tape methods and further refined the parcel down to 22.5 acres.

J. Langdell read from Ms. Fournier's letter dated 4/1/12 which begins with *Requesting review for partial revocation of 1989 Subdivision Plan #26866... subdivision of lot 6-41 into 6-41-1* and closes with after submitting considerable information to the Board, by stating *...I hope that the above details have provided the Planning Board with enough information to consider reviewing the Ayottes' 1989 Subdivision Plan #26866 for partial revocation, in order that any future development considerations of the second lot meet all current laws and standards.* J. Langdell reiterated that should any development wish to occur on 6-41-1, certainly when a building permit is requested it would need to come up to current standards, whether it be regulations, RSAs, or building codes, so that concern from the letter is well taken care of.

J. Langdell then read RSA 674:4-1 for the criteria and circumstances under which revocation may be considered and offered the following responses:

- (e) There is no security related to this.
- (d) This was an approved two lot subdivision; we have two lots and a house on one lot, so rights are vested.
- (c) There were no conditions of approval.
- (b) There is no evidence the applicant having failed to conform to the specifications of the approval.
- (a) There has been no request by the applicant or applicant's successor in interest.

J. Langdell stated that there were no grounds with which the Board would want to move forward, in any manner, on this request.

T. Sloan made a motion to deny the request for partial revocation of the 1989 subdivision plan #26866. C. Beer seconded and all in favor.

**OTHER BUSINESS:**

S. Duncanson said that the CIP is in progress and we are meeting the first and third Wednesdays of the month. He has been elected chair again and the first departments scheduled are DPW and the Library.

J. Langdell inquired if the schedule will be posted on the website. B. Parker said if it wasn't, it will be. J. Langdell noted that information would be very helpful to educate the public about the Capital Improvements Plan (CIP).

The meeting was adjourned at 7:20PM.

**MINUTES OF THE JUNE 19, 2012 PLANNING BOARD PUBLIC HEARING APPROVED JULY 17, 2012**