

PLANNING BOARD
27 School Street
HILLSBOROUGH, NH
June 16, 2021

DATE APPROVED: 07/07/21

TIME: 7:00 p.m. – 8:15 p.m.

MEMBERS: Gary Sparks- Chairman, Susanne White-Vice Chair, Adam Charrette, Ed Sauer, Melinda Gehris, Nancy Egner

EX-OFFICIO: James Bailey III

PLANNING DIRECTOR: Robyn Payson

ALTERNATES: Denise Deforest, Bob Hansen

Excused: Denise Deforest, Bob Hansen, Nancy Egner, Ed Sauer

Board of Selectmen: JP Stohrer

Public: Jim Murphy, Jim Soucy, Cyndi Matthews, Bryan Beebe, Barbara Acorn, Richard Head, Laura Buono. Chris Boldt-Land Use Counsel

Nancy Egner, Tim Brown and Jason Brown were being present virtually. Due to technical issues, Ms. Egner and the Mr.(s) Brown lost contact with the meeting. After that, Tim Brown attended via Attorney Soucy's phone.

Chairman Gary Sparks called the meeting to order at 7:00 PM and welcomed the Selectmen to the meeting.

Planning Director Robyn Payson introduced Attorney Jim Murphy (one of the property owners), Attorney Jim Soucy (Attorney for the property owners), and Attorney Christopher Boldt (Attorney for the Planning Board)

Minutes

06/02/21

Susanne White made a motion to approve the minutes. Jim Bailey seconded the motion. The minutes were approved unanimously.

WORK MEETING

Partner's Farm Subdivision Revocation Conceptual Review

The Planning Board and the Board of Selectmen met to hear the proposed plan for the Partial Revocation of the Partner's Farm Subdivision. The applicant is asking the Town to return certain "Infrastructure Easements" as part of the partial revocation. The purpose of this meeting is to gauge the consensus of the Planning Board and the Board of Selectmen before going to the Attorney General to find out if he will grant permission to the Town to return the property.

Chairman Gary Sparks recognized Attorney Jim Murphy, one of the owners of the property, and Attorney Jim Soucy, who is representing the potential purchasers.

Attorney Murphy gave a history of the project, explained their intention and what they were asking of the town (see attached letter and map). Attorney Murphy explained that they were not asking for the 93.77 acres given to the town under Conservation Easement.

He was also asking for the return of the \$25,000.00 bond he had given to the town which he believed was intact. Robyn Payson said that when Attorney Murphy was exploring the unwinding of the conservation easements in 2018, approximately \$210.70 in costs were accrued. Attorney Murphy had requested those costs be paid through that account. The total remaining amount that can be refunded is \$24,789.30.

Attorney Soucy said he was representing the purchasers who has been looking for a large tract of land for hunting and recreating. They may in the future build a single home on the property. They are not interested in the subdivision, just the land. They have a Purchase and Sale agreement with Mr. Murphy et al for the property contingent on the resolution of the aforementioned issues. There are currently no plans to log or develop the property.

Town Land Use Attorney Chris Boldt explained the process for “unwinding” the subdivision under RSA 676:4-a. Because the deeds in question, (including the conservation restrictions) are already on file and they deal with the word “conservation”, we are obligated to go through the Attorney General’s Office because they have the oversight in amending conservation restrictions and conservation easements. The purpose of this meeting is to get a general temperature, but not a binding vote of the two boards.

If this moves forward, the next step is for Attorney Boldt to call the AG’s office and talk to the director of the Charitable Trust Division and present what we need because we are not unwinding everything. We are not unwinding the substantial asset that was transferred to the town back in 2010. We are only unwinding those things that are internal to the subdivision. He said he was not anticipating any problems from the AG’s office but he didn’t know for certain at this point.

If for some reason there is opposition by either the Planning Board or the Board of Selectmen, this proposal will not go forward. If the AG is in opposition, we are not going forward. If the general approval is there, the next official step will be a noticed, hearing on an application filed by the owners to present what they have said officially which includes a version of the plan without the lots on the inside.

Because there are deeds for the easements that have gone in to the town, there need to be deeds that go from the town. Fortunately, the Town adopted the provisions of RSA 41:14-a which means the Select Board has the authority to sell, lease, or buy land on its own and it doesn’t have to go to Town Meeting. This procedure requires the submission of an official position by the Planning Board and the Conservation Commission to the Board of Selectmen. After that process, the selectmen will sign off on various deeds that the owner will prepare for his

(Attorney Chris Boldt or Attorney Mayer's) review for the selectmen. Attorney Boldt then reviewed the flow chart he prepared for the meeting. (see attached).

Gary Sparks thanked Attorney Boldt for his input. Gary asked if there was any discussion or if there were any questions about the matter before the Boards. Selectman JP Stohrer asked the Conservation Commission Chairman for his opinion.

Gary Sparks recognized Richard Head, Chairman of the Conservation Commission.

Richard said that the Conservation Commission's position was laid out in the meeting minutes of 5/18/2021. (see attached) The Con Com took votes at that meeting that were strongly in support of the proposal.

Selectmen JP Stohrer and Jim Bailey said they were in support of this proposal. The Planning Board members were polled and they were all in favor of the matter as well.

Attorney Jim Murphy thanked the Board for their time. Attorney Murphy said he appreciated the Board's meeting at the together and asked if the upcoming hearings could be joint as well. Chris Boldt said that the statute would have to be consulted because RSA 41:14-a has a very specific process. He said it would not all occur in one night.

Gary said that hearings on this matter will be more formal in the future. He asked if there were any more comments from the Board or the Planning Director or Attorney Boldt. There being none, Gary thanked the Select Board, Town Administrator Laura Buono, Conservation Commission Chairman, Attorney Chris Boldt, and the public for attending the meeting.

Jim Bailey made a motion to adjourn. Susanne White seconded the motion.

Meeting Adjourned at 8:15 pm.

Respectfully Submitted,

Robyn Payson, Planning Director

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DERREL M. MASON*
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JAMES D'ALTON MURPHY*[⊙]
RALPH E. SLATER
ROGER R. VALKENBURGH *

* ALSO ADMITTED IN NEW YORK

⊙ ALSO ADMITTED IN VERMONT

June 10, 2021

By E-mail

Hillsborough Board of Selectmen
Hillsborough Planning Board,
Hillsborough Conservation Commission\27 School Street
Hillsborough, New Hampshire 03244

Attn: Ms. Robyn Payson, Planning Director

Re: Partners Farm, LLC
42 Lot Subdivision
222 Windsor Road, Hillsborough
Request for Conditional Partial Revocation of Subdivision Approval

Dear Members of the Board of Selectmen, Planning Board, and Conservation Commission:

By way of introduction, I write as one of the four partners in a New Hampshire limited liability company, Partners Farm, LLC. The other partners are my wife, Kristin Murphy and our friends Bob and Cathy Cassato.

About 16 years ago we learned of a large property for sale in Hillsborough known as the Corrigan Farm at 222 Windsor Road. At that time, the property was 453 acres and had only two buildings: a farmhouse built in 1776: and a very old separate barn. The barn has since been disassembled for reassembly on a nearby property. The farmhouse is now the only building on the property.

Shortly after buying the property, we began the process of surveying all 453 acres, delineating the wetlands, engineering septic systems and a proposed road, and designing/laying out 42 building lots. All the design work and proposed development was to the north of the Black Pond Brook (the Brook) which generally bisects the property on an east-west axis.

After multiple hearings before the Hillsborough Conservation Commission (HCC) and the Hillsborough Planning Board, the 42-lot subdivision was ultimately completely approved in 2010.

The subdivision approval had a number of conditions, all of which we have complied with, as follows:

1. The conveyance of two parcels of conservation land totally 93.77 acres to the Town in fee. We no longer own that land and it is not now part of this request for revocation of the subdivision. Ownership of these 2 tracts of land will remain with the Town.
2. The establishment of a 25 foot-wide pedestrian easement to provide public access to the 93.77 acres now owned by the Town. This is also to remain in place and is not part of our conditional revocation request.
3. The giving of a fire cistern easement, a road grading and slope easement, and a turn-around easement to the Town. We refer to these as the “Infrastructure Easements” and they are part of our conditional revocation request.
4. The imposition of a Conservation Restriction (identified and depicted on the approved plan as “Area C”) on (26) of the 42 Lots, by way of a deed restriction on each lot. The Conservation Restrictions are completely coincident with the flagged and surveyed wetlands on those lots and were designed to prevent each future lot owner from building or otherwise disturbing the wetlands when building the house and septic on the lot. These lot-by-lot restrictions are also part of our conditional revocation request.
5. The giving of a license to the town and the public to use the existing logging road and bridge to provide alternate access to the 93.77 acres. That license would have disappeared when the subdivision roads were built because the public would have used the roads within the subdivision instead. The Town conveying the access licenses back to the owners is part of our conditional revocation request.
6. The establishment of two 100 foot-wide conservation easements, including the right of the public to walk on the easement. One of the easements is north of Black Pond Brook and the other is directly to the south. These two easements are not part of our revocation request and will remain in place.
7. The funding/payment of a \$25,000 future legal fees fund to the Town to be available for use by the Town to enforce the terms and conditions of the subdivision, if we or anybody else violated them. There have not been any violations and I believe the entire \$25,000 remains intact. Once the subdivision is revoked, we would like to have the \$25,000 back.

Toward the end of the subdivision approval process, we were in the depths of the 2008 financial crash, which caused a severe slow down, if not a complete freeze, in the construction of new houses throughout the country. Therefore, there was virtually no market for the 42 building lots and we knew that the recovery of the real estate market and the ultimate sale of the building lots would be far in the future. Although the real estate market has picked up dramatically as a result of Covid 19, nonetheless, we have offered the property for sale as either a 42 lot fully-approved subdivision or as a 359+/- acres undeveloped property.

We have recently received and accepted an offer from two brothers, Tim Brown and Jason Brown, and signed a contract for them to buy the property. The contract is contingent on the

revocation or reversal of many, but not all, of the features of the subdivision approval, because the Brown brothers want to continue to maintain the parcel as undeveloped wooded tract of land.

The portions of the subdivision approval which would not be disturbed by the subdivision revocation process are described at items 1, 2 and 6 above:

- A. No change to the Town ownership of the 93.77 acres we gave to the Town.
- B. No change to the 25' public pedestrian access to get to the Town-owned land.
- C. No change to the 100' public access easements north and south of the Brook.
- D. Also, the license for the use of the existing logging road and bridge will remain available to the Hillsborough Conservation Commission so that they may conduct their annual monitoring/inspection visits.

The portions of the subdivision approval that we ask to be revoked and/or reversed are as follows:

- I. Infrastructure Easements are conveyed back to the owners of the 359+/- acres parcel (refer to #3, above);
- II. Conservation Restriction(s) creating "Area C" are conveyed back to the owners of the 359+/- acres parcel (refer to #4, above);
- III. Access licenses are conveyed back to the owners of the 359+/- acres parcel (refer to #5, above); and
- IV. Non-exclusive easement to pass and repass over and across the areas shown and designated as "Black Pond Brook Drive", "Starboard Drive", and "Boathouse Way" on the plans approved by the planning board for "Black Brook Pond Reserve" subdivision (see: page 2 of the "Open Space Deed").

In addition, please note that we have already appeared before the Hillsborough Conservation Commission at its public meeting of May 18, 2021 and are pleased to report that the HCC was fully supportive and voted unanimously to support our requests for the revocation and reversal process. I attach a copy of the draft HCC minutes of May 18th reflecting this unanimous support. I am not certain when the minutes will be formally adopted, but we will certainly provide a copy of those minutes when available.

Although I am not admitted to practice law in New Hampshire, I have been a land-use lawyer in Connecticut and to a lesser extent in Vermont and New York for 42 years. I respectfully submit that the request for the revocation and/or reversal of these features of the subdivision approval are proper, appropriate in the circumstances, and will not create any harm or damage to the Town or to adjacent and nearby property owners. Rather, a benefit will be conveyed. In essence, at the beginning of this process we started out with 453 acres of almost completely vacant land with one farmhouse and one barn. The 93.77 acres (with public access) which we gave to the town will be maintained in its natural state and the remaining 353 acres, which are the subject of this request, will be returned to an undeveloped natural state with one farmhouse.

The various easements for the infrastructure and the conservation restrictions were imposed in response to our proposal for the significant disruption of the land by the construction of over a mile of road, 42 houses and 42 septic systems. Once the subdivision approval has been revoked and the various other requests are granted, there will be no need for multiple

environmental or municipal fire safety protections to mitigate the development impacts of 42 houses and septic systems. There will not be any future development without new applications for review by the Planning Board and the Conservation Commission.

We have one other significant request in connection with the requests for revocation and reversal of the easements. The request is as to timing and procedure, not substance. We do not want to revoke or reverse anything at all, unless Tim Brown and Jason Brown, (or some other buyer) actually buys the property and puts it back into a natural state as they suggest. If for some unforeseen reason, the Brown brothers do not buy the property then, the next buyer may well want the subdivision approval in place. It would be unwise and very wasteful of tremendous effort and expense to revoke the carefully designed subdivision approval which is currently in place, unless it was required by these or any other buyers.

Although this letter and the requests set out here are structured as coming from the owner, Partners Farm, LLC, on a practical basis, we are also in close coordination with the Brown brothers and their counsel, Jim Soucy. We have also had an opportunity to talk and consult with the Town's land-use counsel, Chris Boldt, and its Land Use Director, Robyn Payson, at the outset of this process. We have not yet had any conversations with Bart Mayer, Town Attorney, but have copied him on this letter and have been in touch to let him know of these requests. We intend to coordinate with all of them on a continuing basis, particularly since there will be quite a bit of paperwork needed to accomplish the revocations/reversals.

Partners Farm and the Brown brothers are prepared to reimburse the Town for its legal fees in analyzing these requests and acting upon them if they are granted. That reimbursement could come from the \$25,000 legal fees enforcement fund, which the Town already has, or we will pay them separately since this is not actually a violation-enforcement situation.

In summary, we respectfully request the revocation of the subdivision approval and reversal of the conditions itemized above, which revocation and reversal would become effective when the land is transferred to the contract purchasers, Tim Brown and Jason Brown.

Thank you for your time and attention to this request. I look forward to appearing in person before the Board of Selectman and the Planning Board at your joint meeting of June 16th.

If you have any questions, please contact me.

Respectfully submitted,
Partners Farm, LLC

SI James D'Alton Murphy

By: James D'Alton Murphy
Managing Member

Copies to:
Barton L. Mayer, Esq., Town Counsel

Michael Courtney, Esq., Town Counsel
Christopher Boldt, Esq., Town Land Use Counsel
Robyn Payson
James L. Soucy, Esq., Brown's Counsel

HILLSBOROUGH CONSERVATION COMMISSION

May 18, 2021

Virtual Meeting on Zoom Platform Approved

Minutes

Chair Head called the Hillsborough Conservation Commission (HCC) meeting to order at 7:00 pm and read Emergency Authorization for virtual meeting – see Appendix 1.

Members were polled indicating their presence and any others at their location:

Richard Head, Chair – no one else present; Linda White, Vice Chair – no one else present; Sam Stark

1. no one else present, Roger Shamel – no one else present, Richard McNamara – no one else present. Also attending: John P. Segedy, Recording Secretary & Alternate; James Murphy, Paul Alfano, Tim Brown

VISITOR BUSINESS

• James Murphy – Partners Farm Subdivision, Windsor Road (M 7, L 119)

Conservation Easements - James Murphy addressed the HCC and explained that he was looking to sell the entire property that had been subdivided. As part of that he was going to be asking for the Hillsborough Planning Board (PB) to conditionally (subject to sale) revoke the subdivision and was asking for the HCC to agree. He detailed that they were not looking for return of land that had been conveyed to the Town (HCC)(Areas A & B), were not looking to eliminate the Conservation Easements along the Black Brook Pond Brook (Areas D & E), or to eliminate the access easements (Areas F, G, & H). They will be asking to eliminate and revoke the Conservation Restrictions on portions of the proposed subdivided lots (Area C). He noted that he would also be asking the PB to eliminate & revoke a slope easement and a fire cistern easement but did not believe that concerned the HCC.

Paul Alfano said they were also asking to eliminate what they referred to as a license for access over the existing logging road. Tim Brown explained that he and his brother were looking to purchase the property for building a vacation home and enjoy the property for recreation but saw the access license as a problem as they didn't want to have the general public walking or driving through the property, especially close to the existing farm house or a new vacation home.

Richard Head asked how the HCC and the public would access the other side of the brook (Areas B & E)? Tim Brown said they could have foot access through the brook. Richard Head said he was not agreeable to having access to the lot by wading across the brook. Mr. Brown agreed the bridge could be used for foot traffic.

Richard Head asked about parking near the access easement? Tim Brown said he would not want parking on the property but people could park along road.

John Segedy asked if they would be agreeable to foot access only on the logging road. Tim Brown answered no, as it would still be close to the house. He said they could agree to the HCC use of the road for its once a year monitoring.

Richard Head said he could agree to eliminate the Conservation Restrictions (Area C), but felt it was a Planning Board issue. He would like the HCC to have access for monitoring. Roger Shamel and Linda White agreed with Richard.

Linda White moved: *Upon the release/revocation of the Partners Farm Subdivision by the PB, the HCC agrees to release any interest it may have in Conservation Restrictions in Area C of the Subdivision Plan.*

Roger Shamel seconded. A roll call vote was taken – Richard Head – Yes, Linda Whit , Roger Shamel – Yes, Sam Stark – Yes, Richard McNamara – Yes. Motion passed 5-0.

Linda White moved: *Upon the release/revocation of the Partners Farm Subdivision by the PB, the HCC agrees to release any interest it may have in its own or the public's license to access easements or open space property via the existing logging road up to the existing bridge except conditioned on the HCC use of the logging road for the purpose of easement monitoring or similar access only.*

Richard McNamara seconded. A roll call vote was taken – Richard Head – Yes, Linda White – Yes, Roger Shamel – Yes, Sam Stark – Yes, Richard McNamara – Yes. Motion passed 5-0.

Linda White moved: *To authorize Richard Head as Chair of the HCC to recommend to the PB that the Partners Farm Farm Subdivision and the license of public access over the logging road, subject to conditions outlined in the above motion, be terminated upon the transfer of the property.*

Roger Shamel seconded. A roll call vote was taken – Richard Head – Yes, Linda White – Yes, Roger Shamel – Yes, Sam Stark – Yes, Richard McNamara – Yes. Motion passed 5-0.

**LOW CHART FOR
HILLSBOROUGH/PARTNERS FARM (PF) PARTIAL REVOCATION**

2. JOINT CONCEPTUAL MEETING – PLANNING BOARD (PB) & SELECTMEN (BOS) – 6/16/21
3. IF PB & BOS IN GENERAL FAVOR OF CONCEPT, TOWN ATTORNEY(S) APPROACH NH ATTORNEY GENERAL’S CHARITABLE TRUST DIVISION (AG) TO CONFIRM POSITION AND PROTOCOLS; BUT IF PF AND/OR BOS NOT IN FAVOR, PROCESS ENDS
3. IF AG IN GENERAL FAVOR, TOWN ATTORNEY(S) REPORT BACK TO PF ON RESULTS AND STEPS REQUIRED BY AG; BUT IF AG NOT IN FAVOR, PROCESS ENDS
4. PF FILES APPLICATION WITH PB FOR PARTIAL REVOCATION IN KEEPING WITH PRESENTATION ON 6/16/21 (APP)
5. PB PROVIDES NOTICE AND PUBLIC HEARING ON APP; AND IF APP APPROVED WITH CONDITIONS PROCESS CONTINUES; BUT IF APP IS NOT APPROVED, PROCESS ENDS
6. CONDITIONS MAY INCLUDE:
 - a. COMPLETION OF ALL STEPS REQUIRED BY THE AG
 - b. BOS NOTICE AND HEARINGS UNDER RSA 41:14-a FOR RECONVEYANCE BACK TO PF OF SELECT EASEMENTS AND RESTRICTIONS GRANTED TO THE TOWN BY PF
 - i. THIS PROCESS INCLUDES A PB HEARING AND A CON COMM HEARING TO “ADVISE” THE BOS
 - ii. ANY RECONVEYANCES WOULD BE CONDITIONED ON AND BE PART OF THE CLOSING OF THE SALE BY PF TO THE BROWN BROTHERS DUE TO THE CIRCUMSTANCES OF THE CURRENTLY ANTICIPATE USE
 - iii. THE RECONVEYANCING DEEDS SHALL BE PREPARE BY PF AND REVIEWED IN ADVANCE BY TOWN ATTORNEY(S); AND ONCE SIGNED BY THE BOS, THESE DEEDS WOULD BE HELD IN ESCROW BY THE TOWN’S ATTORNEY UNTIL THE EVE OF CLOSING FOR DELIVERY AT CLOSING TO BE RECORDED AT THE REGISTRY AS PART OF THE PF/BROWN CLOSING
 - c. SELECT EASEMENTS AND LAND GRANTS IN KEEPING WITH THE PRESENTATION ON 6/16/21 NOT BEING RECONVEYED TO PF
 - d. ALL COSTS, RECORDING FEES AND EXPENSES OF THE TOWN, INCLUDING ALL ATTORNEYS’ FEES, BEING REEMBURSED BY PF OUT OF THE EXISTING \$25,000 CASH BON PR PREVIOUSLY TENDERED TO THE TOWN; AND ANY REMAINING BALANCE OF SAID BOND THEN BEING RETURNED TO PF