

1 Planning Board Meeting and Hearing

2 April 23, 2024, Meeting House

3 Members Present

4 Greg Meeh (Chair), John Schneider (Vice Chair), Joshua Gordon, Rich Marcou,  
5 Logan Snyder, Megan Portnoy, Kent Ruesswick (BOS rep): Alternates Brendan  
6 O'Donnell and Ben Stonebraker.

7 Members Absent

8 Alternates Hillary Nelson and Jonas Sanborn

9 Others Present

10 Michael Courtney, (town attorney: Kal McKay (Administrative Assistant): Cathy  
11 Viau and Al Nash (applicants); Webster Stout, (surveyor); Attorney Ruth Hall  
12 (applicant attorney); Calvin Todd; Aaron Portnoy; Clifton Mathieu; Scott Doherty  
13 (Chair Select Board); Beth Blair, (Selectman); Ken Folsom (Town Administrator);  
14 Sam Papps (Town Clerk); Tom Andrew; Ruth Heath; Jen Jackson-Baro; Denise  
15 Luneau.

16 1. Call to Order

17 Greg Meeh called the meeting to order at 7.32 pm. He indicated that typically  
18 the Board will conduct hearings before dealing with previous Minutes.

19 Greg recused himself from the hearing and handed it over to John Schneider,  
20 Vice Chair.

21 2. Alfred Nash – proposed subdivision application on Wyven Road -  
22 continuation of hearing

23 John introduced the continuation of the Nash application which had been tabled  
24 at the hearing on September 26, 2024. Since then, the Board had become  
25 aware of RSA 674.41. The application had been found complete. John invited  
26 the applicants to speak first, then the abutters present and then the Board  
27 would begin discussion.

28 Megan Portnoy asked if item 2 was moved. John confirmed that it was and  
29 would be after the hearing.

30 Logan Snyder moved to seat Alternate Brendan O'Donnell. Joshua Gordon  
31 seconded. All members were in favor.

32 Web Stout handed out plats to the Board members. One was an overview and  
33 the other was in more detail. The property was 85 acres in all. They had  
34 reconfigured the lots since the last meeting. The land covers 2 zones, Rural and  
35 Agricultural, with different acreage requirements. They had approval for the 5  
36 acre lot from the state (? *Missed acreage of both lots, LS*).

37 Brendan asked about wetlands on the lots and access to the wetlands. Web  
38 indicated where they were. He said they would not impact the access to the  
39 lots. He described the leach field and septic plans. The state did not require a  
40 test pit on the larger lot.

41 Brendan asked what the wetlands scientists had looked at. He noted that the  
42 original lot had different configurations this time.

43 There were no further questions from the Board. Rich recalled that they had  
44 discussed many issues last time. Web mentioned that the Shakers have the  
45 right to draw water from Lyford ponds. There are Shaker built bridges by the  
46 canal dug many years ago, shown on the overview plat.

47 John thanked Web. He invited abutters present who might like to speak, asking  
48 them to not repeat information already submitted to the Board.

49 Tom Andrew asked why he had heard from Attorney Ruth Hall when he had not  
50 been notified as an abutter. Attorney Hall stated they had sent letters out as  
51 widely as possible, to people they thought might be interested in attending,  
52 not strictly as abutters.

53 Logan said she had not seen the attorney letter.

54 Ruth Heath addressed the issue of access, on behalf of the Soft Path  
55 Association. She stated they were not opposed to the subdivision but were  
56 opposed to the use of their road for access to that subdivision as there is  
57 another way out onto Nash's property.

58 Denise Luneau agreed with Ruth Heath in that they are not opposed to the  
59 subdivision but to the use of their end of the road when the other end has  
60 started to be developed.

61 Jennifer Jackson Buro stated they are in the same position. They do not want  
62 to see increased traffic and maintenance on the road.

63 Web responded that the applicants propose access at either end of the road as  
64 they believe it is a Class VI Road. They want to come in the north end or south  
65 end of Wyven Road.

66 Brendan asked if the applicant would be prepared to agree that they come from  
67 north end only and not the south end. Attorney Hall said no.

68 John invited any other comment or questions. He asked for them to be directed  
69 to the Board.

70 Ruth Heath asked if the Board had considered that the road has been marked  
71 a private road on the north end. How can it be considered private at one end  
72 but not the other. The town maps say it is private. John thanked her and noted  
73 that comment.

74 Joshua raised some questions. He asked about note #7 on the plat where it  
75 stated this is a Class VI road. Joshua cited several things that cast doubt on  
76 that. For instance, the neighbors' deeds indicate it is a private road; Mr. Messier  
77 came in before and claimed because it was a private road he owned half of the  
78 portion of Wyven Road; there is the town road map signed by Jim Bassett in  
79 the 1990s that indicates it was a private road; and Web had another applicant  
80 (*?? Did not hear this sentence*); there is signage too that says it is a private  
81 road. It is probable the road was correctly discontinued even though some  
82 disagree with that view.

83 Joshua referred to the subdivision regulations. There must be access and  
84 ownership has to be recorded on the plat. He doubted that this is a Class VI  
85 Road but that is not a decision for the Planning Board to make. He would have  
86 a hard time voting on something when note #7 claims this is a Class VI Road  
87 when there is so much evidence otherwise. It was the elephant in the room to  
88 be addressed before the Board could move forward.

89 Megan had a question for Attorney Hall (*did not catch that*)

90 Attorney Hall referred to Select Board Minutes for November 2019. She had  
91 been researching and in those minutes the Selectmen decided that any road

92 that was discontinued would revert back to a Class 6 road. Joshua repeated it  
93 is not the Planning Board's business to resolve that question.

94 Attorney Hall requested that the Board vote the application up or down. They  
95 want to proceed forward. If the Board denied it, they would give a written  
96 decision. They were asking for a positive or a negative vote.

97 Joshua suggested that the Board could grant the subdivision on condition that  
98 the road status was resolved. It would need a waiver from the Select Board. It  
99 would be conditional approval based on the appropriate authority deciding  
100 about the road.

101 Logan stated that what they eventually filed had to be accurate about the road.

102 Brendan addressed Attorney Hall. He read from RSA 674:41, sections 1. c and  
103 1. d. He asked why the applicants were calling out that Wyven Road is a Class  
104 VI road. Why was that significant? Attorney Hall said that they believe the lots  
105 were closer to the southern part of the road, so in selling the lots they would  
106 need access to that end. She understood the middle part of the road was bad  
107 to drive on so any buyer of those lots would want to use the southern access.

108 Brendan said that for the purposes of RSA 764:41, it does not matter what the  
109 road is so would she change the notes on the plat? Web said that normally  
110 when they do subdivisions most boards do like to have the designation of the  
111 road so they have always put that on the plats. Joshua said it is required by the  
112 subdivision regulations. He reiterated he would like the issue of the road status  
113 resolved. The Board could grant with a condition, to change or eliminate note  
114 7. He felt a duty to resolve this prior to voting. A condition would be better  
115 than denial.

116 Web invited the wording of the condition. Joshua suggested 'grant on condition  
117 that the status of the road be resolved by the appropriate authority and note  
118 7 and the road designation be amended accordingly.'

119 John asked who the proper authority would be and Joshua said it would be the  
120 Superior Court. Megan noted that the application does not require the status  
121 of a road to be ? (*Missed that word*). Brendan said this situation is one where  
122 there is dispute so the Board can request changes to the plan. The Board did  
123 not want to be seen as deciding what the road is. Megan said that if the Board

124 was demanding the applicants change, it was in effect telling them. (*Not sure if*  
125 *that is exact wording but the gist of it?*)

126 There was discussion about tracked boundary lines and lot lines. Brendan  
127 thought the boundaries were likely in accordance with the metes and bounds.  
128 Joshua had doubts about the track line on the plat. Web said that if you looked  
129 at Soft Path, their lines go down the middle of the road. (*? Not sure if that is*  
130 *enough here*)

131 Joshua asked again if they would accept the condition precedent that the status  
132 of the road be resolved by the appropriate authority. Web said there was more  
133 than one. They could get rid of note 7.

134 Brendan stated there is a distinction between what information is needed for a  
135 completed application and what is ultimately approved in a plat. It does not  
136 preclude being able to ask for something like that. RSA 674:41 says it does not  
137 matter whether it is Class VI or private road, the Board is not going to decide  
138 on that or the access for applicants.

139 Joshua asked should they strike note 7 or amend it? Brendan suggested  
140 striking it in its entirety and take it off Wyven Road and anywhere it is  
141 mentioned on the plat.

142 Brendan asked to pivot the discussion to the wetlands. He proposed that there  
143 be a condition that the wetlands scientists look at the road, not just the lots,  
144 and ask for DES and Select Board approval about wetlands protection. (*? I*  
145 *think that is what I understood but not sure*).

146 Megan said the state approval was from ESMI (*? Not sure this is correctly heard*  
147 *and what followed*)

148 Joshua asked for classification or improvement material (*? Not sure*). Brend  
149 asked that they either get a letter of DES permits or a letter to say they are not  
150 required.(??). Web said as long as the wetlands are not filled they would not  
151 get DES approval (??). Brendan said that the focus had been on the 2 lots not  
152 the road and wetlands. Joshua also asked that BOS have the same requirement  
153 about the dirty dirt, or – ‘recycled material’, Web said. Joshua said it is an  
154 obnoxious use regardless of what DES says and it should be the Select Board

155 who decide on that as it is an obnoxious use. They would want a letter from  
156 the Select Board certifying it is not an obnoxious use.

157 Megan asked if that was a matter under purview right now and could they put  
158 that determination on. (*?missed anything else*)

159 Rich said that they were trying to determine access, whether from the north  
160 end or south end. Brendan suggested if they went through all the subdivision  
161 requirements, at a minimum there will need to be improvements to Wyven Road  
162 whichever way they travel. There should be DES permit to show wetlands are  
163 protected. (*check this??*)

164 Logan thought this property was significantly closer to the north end than the  
165 south. That was discounted. Johsua showed her where the gate is.

166 John asked what the town's position was if a private citizen did something with  
167 a town road. It was acknowledged that permission is needed from the town  
168 and Select Board for such changes.

169 Ruth Heath spoke. When a subdivision is granted, you have to ensure there will  
170 be access. She was not sure it made a difference whether they went through  
171 the north or south end. Will they just build a road up to use it? When they built  
172 their road they had to make it wide enough for fire trucks. That could be done  
173 at the other end. Denise Luneau stated that for the subdivision their house sits  
174 on they had an easement in place to travel the road. She thought there had  
175 been different requirements for different things over time. The subdivision plat  
176 was created in 2017.

177 Joshua said that the Select Board would have to provide a waiver? The  
178 applicants have access to this from the north end of Wyven Road. If the Select  
179 Board required a road maintenance agreement and upgrade requirements, it  
180 would come out to the same thing, the same requirements under RSA 674.41.

181 Brendan suggested the Board go through the subdivision standards and talk  
182 about them. Rich said that was done in September last year and the 5  
183 conditions were set then.

184 Brendan said that was to see there were the minimum requirements initially  
185 and now they have to see if they have met the requirements. Has the applicant

186 met the burden of proof. Issues like disturbing the environment and other  
187 conditions had to be taken into account.

188 Members looked through the subdivision check list in the regulations. Most of  
189 the criteria had been met. It was noted that for item 4, state and municipal  
190 approvals, the DES requirement could be added for that. The 'dirty dirt' was  
191 not part of the application, it had only been mentioned in a previous meeting  
192 so the Board was not approving or disapproving any road material. It was also  
193 agreed there was no need for a traffic impact study.

194 Brendan noted the one condition that was flagged prior was about the lot size  
195 and shape and he did not see any concern with the new plan.

196 Rich expressed concern relating to the Soft Path testimony and pasts  
197 requirements to obtain an easement. There was precedent. Joshua was not sure  
198 if the testimony was accurate in terms of easement or roadway (?? *Not sure*  
199 *here*). It would be between the parties to the sale of the land or between the  
200 Selectmen and the applicants.(?? *not sure here*).

201 Logan said those in the southern end have a private road arrangement so they  
202 can put the gate up or buy into the association or find other resolutions. (??  
203 *Not sure here*). Brendan said whether it is Class VI or private they can get a  
204 building permit. Rich thought the Select Board would grant access under RSA  
205 674:41. Logan they will still have to improve the road in front of the lots to  
206 have access. Rich agreed something would have to be done to the road and  
207 they will need BOS approval. Joshua said the Board had to assume they are  
208 using legal material and if they are not then someone will file for an  
209 investigation with the Select Board and/ or the DES. That is not part of the  
210 Board's purview but access is still a problem. John said they cannot go north.  
211 Rich said they could if they get a road waiver.

212 Brendan agreed they will need a road waiver from the BOS and then they have  
213 the right to access.

214 Johsua and Brendan discussed options for the language in the motion that the  
215 Board could make. Joshua wanted to have a condition precedent that the road  
216 status be resolved by the Board of Selectmen. Brendan preferred to require  
217 getting approval from the local governing body, striking out note 7 and all

218 references to Wyven Road as Class VI on the plat, and before any upgrades  
219 were done, to obtain either permits or letters to say these were not necessary.  
220 There could be a blanket requirement for all state and local approvals. Code  
221 enforcement would have to take the issues up later if necessary. Web had no  
222 problem with that. Attorney Hall preferred Joshua's language and stated they  
223 wanted simple, clean, clear language. *(again – not sure I have that all covered*  
224 *here).*

225 **Brendan O'Donnell made a motion to approve the subdivision application**  
226 **subject to 3 conditions precedent:**

227 **Condition 1. That the applicant obtains all required approvals from the Select**  
228 **Board to provide access to lots 16-1 and 16-2 including pursuant to RSA**  
229 **674:41.**

230 **Condition 2. That the applicant amends the plan to strike current plan note #**  
231 **7 and all other references to Wyven Road being a Class VI Road.**

232 **Condition 3. That the applicant obtains all required state and local approvals.**

233 **Rich Marcou seconded. There was further discussion. s**

234 Ruth Heath asked a clarifying question. By saying you have to go to the Select  
235 Board to obtain all state and local approvals, if Selectmen say this is a private  
236 road, will that force them to go to north end or do they come back to you or  
237 what did this means for them at the south end of the road. What is the BOS  
238 telling them?

239 Johsua said the problem with motion is that it did not resolve the issue of  
240 access. Rich said if they go to the north end they have to get Selectmen waiver  
241 and if they go to the south end they have to buy in to the road agreement in  
242 existence. There is precedence for buying in and getting access, it still boils  
243 down to that. Brendan said the Board did not have that information. Logan  
244 said that if the Class VI argument was not being made the application would  
245 be less complicated. Somehow, they would have to buy in or get appeasement.

246 Rich said the motion covers the bases. Joshua said no because the Board has  
247 a duty to ensure harmonious and coordinated development and they were  
248 punting the issue to someone else.



Brendan said that typically a land use board does not look at private limitations on applicants. It is between them and the people on the road and it is not for the Planning Board to resolve. The two parties are the landowners and the applicants. They can seek declaratory judgement action or make peace with neighbors.

Rich said the Board was striking the erroneous language off the plan so one way or another it is either a Class VI or private road and both could have a subdivision. Megan said the Board cannot impact harmony between neighbors.

**The Chair called for a vote. All members presented voted in favor of the motion to approve the subdivision with conditions.**

### 3. Previous Minutes from April 9, 2024

Megan had printed out and distributed two documents. One was a packet showing edits to Minutes and the other was a letter of April 21 to the Chair of the Select Board and Town Administrator with itemized notes concerning mistakes and alterations in the Minutes.

Logan abstained from discussion of those Minutes since they were not present at that meeting.

Greg spoke to start the discussion. He said that Megan had a number of issues with the Minutes and how the Board does minutes. There is no secret how the Board does it. The minutes have been done that way as long as he was aware. However, if the Board wanted to change them, that would be fine. It has been always an executive summary. Some boards are more sparse and some do transcriptions. Members had talked about minutes over the last 2 boards, trying to do them more efficiently and faster. It was in the interests of time that they had started the process of sending them out and getting a response from board members via email. That is not legal and responses must be in the meeting and in person. Greg added the town attorney said he had no problem with the secretary and Chair working together to create a first draft of minutes.

Megan read her letter of April 21 as a statement regarding improper handling of public meeting minutes. See the attached letter ?? (*this can be attached if the secretary receives the digital copy*). The secretary had given Megan previous drafts of the April 9 draft Minutes. Megan found 19 corrections required for

281 accuracy. She had used Microsoft 'Compare Documents'. There were two main  
282 areas of concern. One was the handling of minutes, and the other was changing  
283 things that are inaccurate.

284 Joshua asked if there were details to be fixed now. Megan stated how the draft  
285 got sent around violated the Right To Know law. The original draft should be  
286 available within 5 days but what was issued had been twice edited. Greg said  
287 that is how we have done it since he has been Chair.

288 Megan said things were changed from the original draft and made inaccurate.  
289 Rich asked if there were examples. Megan said she could send digitally the first  
290 round of the drafts and also the edits made. She had comments. Greg  
291 suggested they go through her changes. Joshua said board secretaries send  
292 drafts to their chair and that results in a second draft that is then distributed.  
293 *(Not sure if I got all that part)*. Is there a problem with that process?

294 Megan said Kal sends things to Ken Folsom for the Select Board minutes but  
295 for specific things, not the entire changing of sections and changing of names.

296 Megan began going through the list of corrections needed. The first 3 or 4  
297 edits were agreed upon. Members were concerned about the time at that point.  
298 Rich suggested that Megan might come to the next meeting with revised  
299 minutes and maybe bold the words to change. It was agreed to table the April  
300 9 draft Minutes until the May 14 meeting.

301 Megan suggested that the secretary should send the draft minutes in a Word  
302 document so people can add their edits and bring them in. That is the law.

303 Brendan suggested perhaps members could send their list of edits and the  
304 secretary collects the edits and print that out in hard copy for members to see  
305 at the following meeting.

306 Joshua moved to table the April 9 Draft Minutes. Logan seconded and all voted  
307 in favor.

#### 308 4. Rules and Procedures

309 Logan suggested it was too late to embark on that discussion and members  
310 were too tired.

#### 311 5. New Board Email Addresses

Kal had attended a recent Right to Know Law training and was going to work with all the boards and committees in town to have .gov email addresses for their committee work. They should not be using personal email addresses. Kal distributed a handout and also the new email addresses and passwords to members. Kal will help get these into their computers. Further discussion of this process was tabled, for May 14. Members were asked to read the document, Right to Know Email Changes, that Kal distributed.

#### 6. Master Plan and May 14 meeting

Greg laid out some of the items for the May 14 meeting. For the Master Plan, the draft chapters to be presented will be Land Use and Housing and he asked for volunteers to help present these to the public. Rich volunteered Megan for land use. She does not have the time. Rich volunteered and also John will help.

Greg expected that CNHRPC will do what they did last time, bring the draft chapters.

Among other items for May 14 will be the tabled Rules and Procedures and also the draft Minutes from April 9.

The Site Plan and Subdivision Regs (Land Use) Subcommittee is meeting on Tuesday May 7 at 6 pm in the Meeting House.

#### 7. Adjournment

Logan made a motion to adjourn. Johsua seconded. All voted in favor. It was 10pm.

Respectfully submitted,

Lois Scribner, secretary