

**Nottingham Planning Board Meeting**

**DATE: December 14, 2022**

**Official Minutes – Approved**

**Call to Order**

**Members Present:** Eduard Viel, Chairman; Ian MacKinnon, Vice Chair; Susan Mooney, Secretary; John Morin, Select Board Ex-Officio Representative; Gary Anderson, SRPC Representative; Charlene Andersen, SRPC Representative; Robert “Buzz” Davies, Alternate; Sandra Jones, Alternate.

**Members Absent:** Sherry Sandler, Member.

**Alternate Seated and Voting:** Mr. Davies was seated and voted for Ms. Sandler.

**Others Present:** Blair Haney, SRPC; Alana Kenney, Land Use Clerk; George Saurman, Shea Concrete; Taylor Dowdy, Shea Concrete; Barry Gier, Jones & Beach Engineering; April Burditt, Abutter; Jeffrey Burditt, Abutter; Diane Lapite, Abutter; Sam Demeritt, Nottingham Conservation Commission Chair.

**Call to Order**

The meeting was called to order at 7:00PM.

**Roll Call**

Roll call was completed.

Mr. Viel stated that Ms. Jones will be participating but will not be voting tonight.

**Public Hearings**

***Case # 22-011-SUB (continued): Application from Jones & Beach Engineering, on behalf of Jim Rosborough, requesting an eleven (11) lot subdivision. The property is located on Mooers Road, in Nottingham, NH, and is identified as Tax Map 72, Lot 13-1. The applicant has filed a Conditional Use Permit.***

Mr. MacKinnon recused himself from this case and left the table. Ms. Jones will be seated and voting for Mr. MacKinnon.

Barry Gier of Jones & Beach Engineering came forward and introduced himself on behalf of the applicant. He stated that, since the last meeting, his team has done the following:

- Attended a Raymond Planning Board meeting and obtained their approval. The only input they had was that the Board should be aware that, on new projects, Raymond requires a turn-around at the town line.
- Provided the Board with the Natural Heritage Bureau (NHB) report. The only flag was for the Blandings turtle.

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- Provided the Wetland Report and the Vernal Pool Report, as well as a response to the Lamprey River Advisory Committee.
- Provided updated documents forming the Homeowner's Association (HOA), with the added protections that had been previously discussed.
- Provided the Board with an alternative yield plan depicting an eleven (11) lot standard subdivision. They still believe that the original yield plan is valid and that the wetland impact is reasonable.

Mr. Gier advised that they are requesting three (3) Conditional Use Permits:

1. Allow the elimination of the 100-foot landscape buffer associated with the open space subdivisions.
2. Wetland impact of eighty-three (83) square feet associated with the culvert replacement.
3. Allow lot sizes greater than 45,000 square feet.

Mr. Gier suggested that the Board, if there are any questions left regarding the yield plan, vote on said yield plan. This will allow the applicant to determine how they are going to proceed.

Mr. Viel asked for clarification regarding the town line turn-around required by Raymond. Mr. Gier reiterated that Raymond requires this for new projects, and since this is not a new road, it is still up for debate.

Mr. Viel advised that the Board had sought, and received, input from Town Counsel regarding the initial yield plan and how to interpret it.

***Ms. Mooney made the motion to move into a non-public session per RSA 91-A:3 II(l). The motion was seconded by Ms. Andersen. The motion was approved by a roll call vote of 6-0-1 (Ms. Jones abstained).***

The Board exited the room and entered into the non-public session. They returned after fifteen minutes.

***Ms. Mooney made the motion to close the minutes and the non-public session per RSA 91-A:3 III. The motion was seconded by Ms. Andersen. The motion was unanimously approved by a roll call vote of 7-0-0.***

A discussion was held regarding cisterns versus sprinkler systems. Mr. Gier recalled that the Fire Chief had recommended the installation of a cistern on Mooers Road and that the two houses on Jamps Trail would be equipped with sprinkler systems. Mr. Morin suggested that all houses, on either Mooers Road or Jamps Trail, be equipped with sprinkler systems in order to save time and money. Mr. Gier advised that his team would move toward the Fire Chief's recommendations with a cistern on Mooers Road. Mr. Gier indicated if a cistern is required on Jamps Trail, they would push back on that as other recent subdivisions have been approved with sprinklers versus a cistern.

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Mr. Viel reported that he would get the HOA language submitted to Town Counsel for their review.

Mr. Viel stated that the Board had received a response from the Building Inspector/Code Enforcement Officer in regard to the question about the intermittent or first-order stream. It was determined that the stream is not impactful, no matter which classification it falls under.

Mr. Viel invited discussion about the three Conditional Use Permits (CUP).

Mr. Gier explained that the first Conditional Use Permit that they are requesting is a conditional use to Article IV Section S.8.g of the *Zoning Ordinance* to allow the elimination of the 100-foot landscape buffer. He advised that, because his team is not creating any new roads and all of the lots are frontage lots, they are asking for elimination of that 100-foot landscape buffer. This will keep the lots further from the wetland and allow construction closer to the road. This would also make the proposed lots more similar to the existing lots in the area.

***Ms. Andersen made the motion to accept the Conditional Use Permit requested per Article IV Section S.8.g. The motion was seconded by Ms. Mooney. The motion was unanimously approved by a vote of 7-0-0.***

Mr. Gier stated that the second Conditional Use Permit was to Article III Section B.6 of the *Zoning Ordinance* to allow a wetland impact of eighty-three (83) square feet for culvert replacement under Mooers Road. He reiterated that the existing culvert under Mooers Road is currently undersized and will continue to be undersized until it is replaced. They are proposing the replace the existing culvert, which requires a wetland impact of eighty-three (83) square feet.

Mr. Viel advised that this is the Wetland Overlay District, a different article, which outlines criteria for the Conditional Use Permit. The criteria are as follows:

- The proposed construction is essential to the productive use of land not within a wetland conservation area, and the area considered for development is not smaller in acreage than the wetland area being considered.
- Designs, construction, and maintenance methods will be such as to minimize detrimental impact upon the wetlands and will include restoration of the site as nearly as possible to its original grade and conditions.
- The Nottingham Conservation Commission has provided comments relative to the value of the wetland under construction and design the proposed project as it relates to the wetland.
- Economic advantage alone is not a reason for the proposed construction.
- Prior to the granting of the Conditional Use Permit under this section, the applicant shall agree to submit a performance security to ensure all construction is carried out in accordance with an approved design.
- The Planning Board may require the applicant to submit an Environmental Impact Assessment when necessary to evaluate an application made under this section.

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***Mr. Anderson made the motion to accept the Conditional Use Permit that's requested per Article III Section B.6. The motion was seconded by Ms. Jones.***

Ms. Andersen proposed that, if an amendment to the motion was made, it would be to remove the piece of it that is not applicable to the Conditional Use Permit.

***Mr. Anderson amended the motion to say that the impact is not applicable to a wetlands buffer or driveway. The motion was seconded by Ms. Jones. The motion was unanimously approved by a vote of 7-0-0.***

Mr. Gier stated that the third Conditional Use Permit was to Article IV Section S.8.a of the *Zoning Ordinance* to allow open space lots greater than 45,000 square feet. This is for Lots 4-9.

Mr. Viel stated that he generally is in favor of a project meeting the *Zoning Ordinances* if it is able to do so without causing a reduction in yield.

Mr. Morin reported that he prefers to see the lots bigger.

***Ms. Andersen made the motion to not accept the Conditional Use Permit requested per Article IV Section S.8.a so as to be more in-line with the lot size of the open space subdivision plan. The motion was seconded by Ms. Mooney. The motion was approved by a vote of 5-2-0.***

Mr. Gier advised that, because of this denial, his team would need to go back to the drawing board and provide the Board with a formal Option A.

Ms. Mooney thanked Mr. Gier for his language on the use of pesticides and herbicides in the HOA documentation.

Ms. Andersen recommended that the Board receive a final recommendation from the Fire Chief in regard to the fire suppression systems for the Mooers Road and Jamps Trail lots.

Ms. Andersen recalled that Mr. Gier and his team had mentioned that they would get back to the Board as to whether or not beach access was going to be allowed. Mr. Gier replied that the declarations declare that the landowners will be allowed beach access.

Mr. Viel opened the public hearing at 8:08PM.

Diane Lapite came forward and identified herself as a resident of 34 Mooers Road and an abutter to the proposed subdivision. She stated that the Raymond bus uses the top of Mooers Road as a turn-around but does not come down it. She expressed concern regarding the creation of a turn-around spot. She also reported that she had attended the same Raymond Planning Board meeting as the applicant and noted that the Town of Raymond had indicated that, should there be any damage done to their section of Mooers Road during the subdivision construction process, the Town of Nottingham and/or the applicant would be responsible for making any necessary repairs.

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Mr. Haney clarified that Raymond had not said anything definitive about a necessary turn-around, but rather had asked that Nottingham consider requiring it.

Ms. Lapite inquired as to whether or not it would be written in the deeds that the subdivision landowners have beach access. Mr. Viel advised that Mr. Gier would answer this once he returned in front of the Board.

Mr. Viel closed the public hearing at 8:20PM.

Mr. Gier came forward again. He advised that he thought the language regarding beach access was in the covenants but that they are not. He stated that he believes it is still the applicant's intent to include allowed beach access in the covenants.

Mr. Morin advised that the applicant will only be able to grant beach access of land where the access is written into his own deed. Mr. Gier confirmed that the beach access that has been discussed is the privately owned small cove at the very end of Mooers Road.

Mr. Viel noted that the Board may need to reach out to the Raymond Planning Board and ask for a formal letter outlining what they will require if this subdivision is approved.

Ms. Mooney brought up Article IV Section S of the *Zoning Ordinance* that talks about the protection and management of open space. She read that Section D states that the developer is responsible for the maintenance of the common area and other facilities until such time that a homeowner's association is capable of assuming responsibility. She asked if Jones & Beach Engineering would be responsible for maintaining the open space until an HOA is formed. Mr. Gier replied that he would need to look into it but would assume that the landowner/applicant would assume responsibility until the lots had been sold and an HOA formed.

Mr. Viel asked that Mr. Gier look into Section G, which mentions a one-time stewardship fee, as well.

Mr. Viel summarized that Mr. Gier will look into a couple things requested by the Board and be in touch with the Land Use Clerk, then the finalized language will be sent to Town Counsel for review and comment. He advised that the Board would reach out to the Fire Chief for a final review and comment.

***Ms. Mooney made the motion to continue Case # 22-011-SUB to the January 25, 2023 at 7:00PM meeting with deliverables due by January 18, 2023. The motion was seconded by Mr. Anderson. The motion was unanimously approved by a vote of 8-0-0.***

Mr. MacKinnon returned to his seat at the table and Ms. Jones returned as a participating alternate but not voting alternate.

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*Case # 22-007-SIT: Application from David Beati of BSC Group representing Concrete Products of Londonderry requesting approval to build a pre-cast concrete manufacturing facility. The property is located at 160 Old Turnpike Road, in Nottingham, NH, and is identified as Tax Map 3, Lot 2-2.*

Mr. Viel recused himself from this case, and left the table. Mr. MacKinnon assumed Chair duties.

Mr. MacKinnon reminded the Board that this case had been conditionally approved in August of this year. He asked for an update as to what conditions have or have not been met.

Taylor Dowdy of BSC Group came forward and introduced himself on behalf of Shea Concrete. Joining him was George Saurman of Shea Concrete. He advised that he is not the original engineer on this project and that he had taken it over a few weeks ago. He confirmed that his team has approached the New Hampshire Department of Transportation (NHDOT) to get a driveway permit. They have approved the New Hampshire Department of Environmental Services (NHDES) to get an Alteration of Terrain (AOT) permit. They plan to finalize and submit both of these applications in the next week.

Mr. MacKinnon asked if any of the plans have changed since they were last before the Board. Mr. Saurman replied that there have been. One is that NHDOT wanted the sign moved slightly further away from Route 4, which is in progress. Another change is that there is a driveway easement for a house on the front of the property that Shea Concrete owns. It was on the original subdivision plan but was never recorded. He noted that the lawyers are doing the paperwork now.

Mr. MacKinnon directed that the team submit copies of any submissions to the Land Use Clerk. The applicants were excused.

Mr. Viel returned to his seat at the table and resumed Chair duties.

**Other**

*Discussion of Possible Zoning Ordinance / Subdivision Regulations / Site Plan Changes*

Mr. Viel stated that the most completed ordinance is the Aquifer Protection District changes as drafted by SRPC as part of a grant for Nottingham and other communities. Mr. Haney recommended that it be sent off to Town Counsel for review, with enough time to get it back in time to be able to post it before the first public hearing in January.

Discussion was had about replacing the “special exceptions” with Conditional Use Permits and if wellhead protection area should be included. The Board opted to not include the wellhead protection area at this time as the impact of adding this will need to be considered more including how many properties may be impacted.

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264 ***Mr. MacKinnon made the motion to notice the January 11, 2023 meeting at 7:00PM the***  
265 ***modifications and updates as amended to Article IIIA, the Aquifer Protection District, of the***  
266 ***Nottingham Zoning Ordinance. The motion was seconded by Ms. Mooney. The motion was***  
267 ***unanimously approved by a vote of 7-0-0.***

268  
269 Mr. Viel read Portsmouth's definition of "impervious surfaces": "any modified surface that  
270 cannot effectively absorb or infiltrate water. Impervious surfaces include, but are not limited to,  
271 roofs and paved areas such as driveways, parking areas, or walkways. Impervious surfaces also  
272 include decks, patios, and gravel or crushed stone surfaces unless such structures or surfaces  
273 have been designed to effectively absorb or infiltrate water."

274  
275 ***Ms. Andersen made the motion to put the "impervious surface" definition on the January 11,***  
276 ***2023 meeting. The motion was seconded by Mr. Anderson. The motion was unanimously***  
277 ***approved by a vote of 7-0-0.***

278  
279 Ms. Andersen recalled that the Board had decided to put a pause on the Steep Slopes Ordinance  
280 discussion.

281  
282 Additionally, Mr. Viel recalled that the Board had discussed adding Roadway Setbacks to Article  
283 II of the *Zoning Ordinance*. They had discussed at the last meeting that the new language would  
284 state, "a new road shall be placed a minimum of fifty (50) feet from any property line".

285  
286 ***Mr. MacKinnon made the motion to add, "a new road shall be placed a minimum of fifty (50)***  
287 ***feet from any property line" to Article II Section C of the Zoning Ordinance. The motion was***  
288 ***seconded by Ms. Andersen. The motion was unanimously approved by a vote of 7-0-0.***

289  
290 Mr. Viel noted that the Board had discussed adding a twenty-five (25) foot no disturb vegetative  
291 buffer for wetlands, subject to a Conditional Use Permit, in Article III Section B of the *Zoning*  
292 *Ordinances*. He noted that there is no explicit vegetative buffer for wetland protection at this  
293 time.

294  
295 ***Mr. MacKinnon made the motion to notice for the January 11, 2023 meeting at 7:00PM the***  
296 ***addition of a fourth subsection under Article III Section B stating that there shall be a twenty-***  
297 ***five (25) foot no-disturb vegetative buffer around wetlands as defined by a certified wetlands***  
298 ***scientist. This vegetative buffer is eligible for a Conditional Use Permit. The motion was***  
299 ***seconded by Ms. Mooney. The motion was unanimously approved by a vote of 7-0-0.***

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***Mylar – SUB 0013 Gile Rd***

Mr. Viel reminded the Board that a Mylar (plans to be filed at the Registry of Deeds) is ready for signatures. The conditions of approval for this project have already been met, but something had been spilled on the original Mylar before it was sent to the Registry of Deeds, so a new one needs to be signed.

The second pending Mylar cannot be signed as yet, as there is one final condition still to be met.

**Public Comment**

None.

**Approval of Minutes**

*Ms. Andersen made the motion to approve the minutes of September 28, 2022, October 5, 2022, October 12, 2022, October 26, 2022, November 9, 2022 as amended, and November 16, 2022. The motion was seconded by Ms. Mooney. The motion was unanimously approved by a vote of 7-0-0.*

**Approval of 2023 Calendar**

*Ms. Andersen made the motion to approve the 2023 calendar with the edit being that the March 22, 2023 meeting is marked as no business/election of officers. The motion was seconded by Mr. Anderson. The motion was unanimously approved by a vote of 7-0-0.*

**Select Board and Staff / Board Member Updates**

Ms. Jones reported that the first CIP meeting will be held tomorrow, December 15, at 6:30PM. She plans to attend, as does the Chair of the Budget Committee.

Mr. Davies had no update.

Mr. Anderson reported that the Facility Advisory Committee continues to recommend facility maintenance.

Mr. Morin announced that the Select Board is currently interviewing candidates for the Town Administrator position; the Board has narrowed the budget for the Budget Committee down; they are currently sitting at a 5% tax cap, down from 7%, but more needs to be cut to reach the 4% cap set by recent town vote. He further advised that the Town Hall currently needs a lot of repairs. He noted that tax bills recently went out to residents.

Mr. MacKinnon had no update.



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Mr. Viel stated that he would like to hold a “process and procedures” meeting after the beginning of the new year with the new Land Use Clerk and Board so that all policies and procedures are clear and agreed upon. Mr. Morin advised that the Planning Board think about updating the Master Plan next year.

Ms. Mooney had no update.

Ms. Andersen advised that she recently read a draft of a housing study conducted by SRPC and recommended that others take a look at it. Mr. Haney advised that the final draft of this study should be completed in another month or so.

Mr. Haney had no update.

**Adjourn**

*Mr. Viel made the motion to adjourn.*

The meeting was adjourned at 9:30PM.

Respectfully submitted,  
Rachel Dallaire, Transcriber