

Nottingham Planning Board Meeting

7-14-21

Official Minutes as of 8-12-21

Members Present: Chair Dirk Grotenhuis; Vice Chair Eduard Viel; Gary Anderson, SRPC Rep; John Morin BOS Rep; Susan Mooney, Secretary; Ian MacKinnon; Robert “Buzz” Davies, Alternate

Members Absent: Charlene Andersen, SRPC Rep

Others Present: Jen Czysz, SRPC Planner; Marinus Vander Pol III; Mark Wasson, applicant; Peter Landry, surveyor; Mark Davie, SRPC Staff Planner; Scott Frankiewicz, applicant; Tami Defrancesco, applicant, Steve Reynolds, audience, Robert Claxton, audience, Tina Jennings, audience; Catelyn Brown, audience; Robert Weygant, audience; Giovanni Santolo, audience; Savannah Smallman, audience; Emerall Reed, audience; Mark Sinclair, audience, Kathy Morris, audience; Lee Weldy, audience; Don McMurchy; Audience

Alternate Seated and Voting: Mr. Davies for Charlene Andersen

Call to Order

The meeting was called to order at 7:03 pm.

Roll call of all Board members.

Public Hearing

Chair Grotenhuis noted for others in attendance that there is an additional conference room available down the hall that is screening the hearing on the TV. The Chair requested people to minimize any distractions to the proceedings. The public will have an opportunity to speak and he asked for respect of applicants and the Board members. Public hearings are intended for the Board to receive information from the community. As such all comments shall be directed to the chair.

Case #21-009 LLA-Continued from 6/9/21-Application for a lot line adjustment from Gail Bateman, Administrator of the Estate of John F. Bateman, and Alland and Marsha Putnam, represented by TFMorin, Inc. - Seacoast Division.

This is for a lot line adjustment for Map 1 Lots 2, 3 and 4. Planning Board accepted this application and additional information was requested. Zoning Board gave the applicant a variance and the case is back in Planning Board for a lot line adjustment.

Mr. Vander Pol from TFMoran, applicant’s representative, introduced himself and passed out two color handouts. He introduced the project’s intent: the project will make an equal transfer land between the Batemans and Putnams to mitigate the encroachment of one of the houses onto the Putnam property.

Two waivers were requested and were read out loud by the representative. He suggested topography was not necessary. A lot shape waiver is a reasonable correction for the encroachment.

The variance was granted to reduce the frontage on the Putnam property at an earlier meeting.

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At the current time, neither the Bateman's or Putnam's properties are marketable given the encroachment. One of the properties is on the market now; however, it cannot be sold until this issue is resolved.

First handout – Outlined the three (3) deeded tracts that comprise Lots 2 and 3.

Second handout – at the last hearing, there was a request to understand the assessor lines. Mr. Vander Pol explained this further to the Board. There was a further explanation of what land is located in Nottingham and Barrington.

Staff review by Ms. Czysz, SRPC, clarified deed and tax maps discrepancy. Rear tract has no frontage. No objections to waivers from SRPC. Dates of approval must be noted.

Mr. Viel noted that the driveway for Map 1 Lot 4 does not have its own curb cut but is accessible.

He asked if Lot 10 and 12 have dwellings? Yes, 12 was occupied as of a month ago but 10 is uninhabitable.

Mr. MacKinnon asked if the intent is to keep the deeded tracts 1-3 configuration as is and sell the three together with the two (2) dwellings. Mr. Vander Pol said that is correct, the intent is also to bring the setbacks into compliance.

Mr. Viel said by not referencing tract 1 how does that impact the application? Mr. Vander Pol said that tract 1 could be sold separately.

Mr. Viel asked about the tie line on the assessing maps. Mr. Vander Pol said it merely indicates common ownership.

Public Comments

Chair Grotenhuis opened up for public comments.

Jennifer Dubois spoke noting she knows the applicants.

Public Hearing

Public hearing was closed.

Mr. MacKinnon made a motion to approve the waiver requests as read. Ms. Mooney seconded. Unanimously approved by 7-0.

Mr. Viel moved that it does not have regional impact. It was seconded by Mr. MacKinnon. Unanimously approved by 7-0.

Ms. Mooney made a motion to approve Case 21-009 LLA with Standard Conditions, including the two waivers. It was seconded Mr. Anderson. Unanimously approved by 7-0.

The applicants will address the conditions, submit to Mr. Dale Sylvia, Building Inspector, and the Planning Board will sign. Mr. Grotenhuis noted the town has a standard signature block that should be included.

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The Chair reminded all that Conference Room 2 down the hall is available with meeting audio and video.

Case # 21-010-LLA Wasson 70-25-LLC

This is for a lot line adjustment for Map 70 Lots 23 & 25. Mark Wasson introduced himself. Peter Landry was introduced, and he has completed the survey and documentation.

Chair Grotenhuis concurred this was complete.

Mr. Viel made a motion to accept the application as complete. Ms. Mooney seconded. Unanimously approved by 7-0.

There was one waiver request and PB would like to hear from the applicant.

Mr. Landry said this may have been an easier case before Warrant Article 19 was passed at the town elections. He said the warrant article notes that the roads will be accepted and transferred to the town as Class V roads and that the town has been maintaining those roads.

Mr. Landry continued: Plan includes all record information pertaining to the roads. Lamprey is a 33-foot-wide platted road in a plan recorded in 1965. It said that "Road was to be made by the leasees" to get to their lots. That is the description of the road for Lamprey Drive.

He asked how do applicants bring in additional information? The town needs to identify what was accepted. Town was maintaining only a portion of Lamprey Drive under the emergency access lane provisions. If the intent of Article 19 was only to accept the roads that were being maintained, then the portion of Lamprey Drive on this application is still private.

He continued if this is truly now a town road, Planning Board can't submit this application because there isn't enough land and this is a subdivision. Does the Planning Board know if this is a town road or not at present? He stated there is no need to go further until this is known.

Chair Grotenhuis said what Mr. Landry has presented is the edge of the travelled way. It's the gravel area plus the 33' deeded right of way. Planning Board will need legal advice to determine the limit of the road (right of way and traveled lane).

Mr. MacKinnon said Article 15 of the subdivision regulations requires adequate safe passage, not less than 50 feet wide except where not possible and the minimum may be 36 feet.

Mr. Morin asked why isn't the land to be acquired from Lot 25 is two (2) acres in size. Mr. Wasson said that was not the intent; the goal was just to improve the potential to build a home on Lot 23 in the future. Mr. Grotenhuis also noted that this could be two (2) lots: one on each side of the road.

Mr. Viel also noted that the curb cut could also become a challenge.

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Mr. Anderson noted that this is just an easement. Mr. Landry confirmed that it is a private easement.

Ms. Mooney asked did the area to be transferred also include the road right of way in the computation? Mr. Landry said yes, that is the case.

Mr. MacKinnon said Planning Board will also need to look at whether there will be a need to increase the right of way width to comply with the subdivision regulations.

Mr. Grotenhuis said Planning Board will need the town's attorney to weigh in on this application relative to Article 19.

Mr. Viel noted that the abutting property owners and the owner of Lot 25 have the most standing to challenge Article 19.

Mr. Grotenhuis said Planning Board can continue this to the next meeting and seek input from legal counsel.

Mr. Viel made a motion to continue Case # 21-010-LLA Wasson 70-25-LLC to 7/28 at 7PM. It was seconded by Ms. Mooney. Unanimously approved by 7-0.

Case #21-003-SIT- Kubota Trust

This case was continued to allow the applicant to apply for a variance. Scott Frankiewicz and Tami DeFrancesco are present at this meeting for a site plan review and approval.

Mr. Frankiewicz said the variance was approved on June 15th and they received the PB comments.

Mr. Grotenhuis said there was a request for secondary access. Ms. DeFrancesco said there is possible access through the adjacent SELT conservation land.

Mr. Veil noted that shared driveways are only allowed for two (2) residences and the current one serves four (4) residences. He continued that this needed to be upgraded to be a road.

There were comments received from the building inspector that there may be other issues that need to be addressed such as attendance numbers, dry camping, etc.

Ms. DeFrancesco said dry camping is unsupported (sic); there is camping with no hookups and everything is contained. There is no tenting allowed.

Mr. Grotenhuis said there is overflow parking proposed on Lot 8. Ms. DeFrancesco said, based on past events, spaces aren't always occupied for the full weekend; people come and go. She knows there's about 150 cars. She noted that she lives on site. Mr. Frankiewicz said on the plans, it shows 68 parking spaces.

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Mr. Grotenhuis said there are operational times that conflict between the application to town and the DOT permit. Ms. DeFrancesco said the time of 4-6 PM is correct. Mr. Frankiewicz said they will correct the time on the plan as it incorrectly states it is 2-4PM on Fridays.

Mr. MacKinnon asked about the setbacks. Mr. Frankiewicz said there are no structures proposed in the setbacks, and the town allows parking in the setbacks.

Mr. Viel said there is a berm on the eastern side of the property to mitigate noise, and he asked what about the side of the property where access is provided? Ms. DeFrancesco asked if she can put the construction trailers there to help block noise.

Mr. Viel asked will there be a need to reclaim the property in 3-5 years at the end of the excavation site? Planning Board does not have the reclamation plan on file at the town, and it needs to be on file. Ms. DeFrancesco said she submitted the 2015 reclamation plan in hard copy. Mr. MacKinnon requested electronic copy be submitted to Ms. Czysz.

Ms. Mooney asked can the AOT permit be renewed after five (5) years? Ms. DeFrancesco said yes, and the town can.

Chair Grotenhuis is looking for more information about operations and recovery of snow mobiles. He asked do recovery boats pull them out of the water immediately and are gas tanks replaced with 1 or 2 gallon tanks?

There is a prevention plan submitted.

Ms. DeFrancesco said Fish and Game has come out to observe during races to monitor.

Mr. MacKinnon said the plan needs to indicate that the site is in the Aquifer Overlay District.

Mr. Viel said the Zoning Ordinance spells out specifically what is permitted. He said as a permissive ordinance, if the use isn't listed, it isn't permitted.

Ms. Czysz read Aquifer District provision that allows all uses in the underlying district except those that are prohibited in the ordinance.

Mr. MacKinnon said the applicant has a variance to the underlying zoning district which now means it's permitted.

Mr. Viel would like to get legal review.

Mr. Frankiewicz said they don't need to do stormwater analysis as there is no additional impervious cover proposed. The easement reads "perpetual access for all customary use," and it was already a gravel pit at the time when it was established.

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Chair Grotenhuis asked if the event will block access to abutting parcels? Mr. Frankiewicz said no parking is being proposed to block that access.

Mr. Viel read Article III A, Aquifer district – “The Aquifer Protection District is a zoning overlay district which imposes additional requirements and restrictions to those of the underlying district. In all cases, the more restrictive requirement(s) shall apply.” He said since the more stringent prevails, is the variance adequate or do they need to go back to the Zoning Board?

Chair Grotenhuis said it is the applicant’s responsibility to meet all requirements. It is possible the application is all set under the Aquifer Protection District.

Chair Grotenhuis said a lot of information needs to be addressed on the plan, and he is not ready to move forward.

Mr. MacKinnon said there are additional comments from the following departments that need to be addressed as well: fire department also had comments, Conservation Commission, SRPC, and Building Inspector.

Chair Grotenhuis asked to show the proposed mitigation.

Mr. Morin asked why do we allow fertilizers and chemicals for agriculture in the aquifer protection district. Mr. Viel replied because we are an agricultural community.

Chair Grotenhuis asked as a town board, do we know that the emergency plan is consistent with the aquifer zone?

Mr. MacKinnon had a question about the need for after-the-affect wetland permit. Ms. DeFrancesco said that is for off-site, not in the area of the water cross event.

Ms. Mooney asked what are the plans for noise abatement? Ms. DeFrancesco said she wants to put up a fence next year; however, she doesn’t have the finances to do it this year.

Ms. Mooney said the driveway crosses the Pawtuckaway River; will there be any structures or conditions changed to create impact? She is concerned with numbers of people.

Ms. DeFrancesco said some people walk and carpool; cars are less impactful than the dump trucks.

Ms. DeFrancesco said they still need to get event permit from the BOS for every single event, even if it’s approved by the ZBA and the PB.

Mr. Anderson said the safety plan mentions hiring EMT and police. Also, fire extinguishers are required for every snow mobile event. Chair Grotenhuis noted that both the fire and police departments have replied.

Chair Grotenhuis opened the meeting up to the public, noting that the hearing will be continued. He said please do not repeat comments as this case is continued; please focus on new comments

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that are aimed at helping the Board to make a decision. Keep comments short, limited to three (3) minutes.

Speakers for the application:

- Robert Claxton, 85 Ledge Farm Rd – concerns raised about water quality, however, there are thousands of boats on Pawtuckaway Lake. The impacts from small gas tanks on the snow mobiles is minimal.
- Lee Weldy, 110 Nottingham Road, Raymond – salt from RT 156 and plows runoff right into the river. Five gallons of gas constitutes a hazmat spill, you would have to have five (5) sleds go under. They have booms and mats to address spills and mitigate problems.
- Tina Jennings, Seaman's Point Road, said she has attended events in the past and her family really enjoys them and went as a kid to a different location. It is a well-run community family event.
- Catelyn Brown, 214 Raymond Rd, Nottingham said there has been a lot of hard work, passion and persistence put into the applications and to mitigate any negative effects of the event. The greater good would be to allow the events that are a lot of fun; and she hopes the Board will also look at the bigger picture.
- Robert Weygant, Gile Road, said setting up an event like this takes a lot of advance preparation. For the Planning Board to send the application back to the Zoning Board keeps the application from moving forward. He understands there are issues from noise and opposition but this fits in the character of the town. He listens to gunshots and the Lee Speedway. This is good for the town and provides value. His company is a sponsor, and he can understand the challenge of lining up sponsors. The delays in the Planning Board's decision make that more complicated. He requests the Planning Board not send the application back to the Zoning Board.
- Giovanni Santolo, 31 Harriman Hill Rd, Raymond- Frequent the event and the adjacent SELT property. The sleds do not make any more sound than the gravel operations. There are no hazards created and instead the event brings people to the town and business for area restaurants. A lot of hurdles are being created for an event that has already been held. Think about the applicants' rights.
- Savannah Smallman, 23 Harriman Hill Rd – when you are a teenager living during a pandemic, events like this bring a town closer together.
- Emerall Reed, 103 Kelsey Rd., provide portable toilets for the event and as such supports it.
- Don McMurchy, Eastern Water Cross in Epping supports this event.

Speakers in Opposition:

- Mark Sinclair, 12 Indian Run, Legal question for the board's attorney, on June 11th the Governor rescinded the state of emergency order, at that time the Nottingham Zoning Board did not have the legal authority to conduct a hearing by zoom. Chair Grotenhuis said he cannot answer legal questions. Mr. Sinclair continued: would like to speak on pollution concerns; have we not learned our lessons from past use of materials such as DDT and lead that have cumulative impacts. This event is in direct contradiction to the ordinance and the Master Plan to operate in the aquifer zone, the soil is very porous and the area sensitive. The pond has a natural spring and high-water table, surrounded by sand and porous gravel, whatever goes into the sand goes into the water table. There is a

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cumulative impact of cars leaving gas, radiator fluid, oil and sleds will need to refuel and will naturally be spills. Sleds do not burn all the gas, some is expelled and enters the water and aquifer, one spilled gallon of gas pollutes many gallons of ground water.

- Kathy Morris, an abutter within 250 feet of the event said the noise is very loud, has a decibel reader. Trucks stays around 40-42 db., the sleds when racing for a extended period of time goes up to 80-85 db., so loud you have to yell when outdoors. This event was run last year due to a procedural error when the BOS allowed the event to occur without going to the Planning Board or Zoning Board first. Has been told to go away for the weekend and she just doesn't like it. The events give her a migraine that is debilitating. She doesn't have a choice. Understands this is a unique location but they are so close to the event and even a barrier won't help.

Any other comments:

- Steve Reynolds, president of Northeast Water Cross – recognizes that the event is loud and annoying. Conducted decibel readings for the Zoning Board. The prior speaker's results are consistent with those of the test. The sleds cost \$20,000 and are designed to be sealed up. Pollution with these is less than those approved annually that what is approved by Fish and Game. Most of us have been to a boat ramp and seen boats sputtering on start, contributing to pollution. The only relevant issue with water cross is that it's loud. The levels are not damaging but are annoying. The rear of condos highest reading is 80 db. at their back facing the event, the front of condo's is 60 db. Will be implementing new sound rules to reduce impacts at the upcoming event even though the town doesn't have a sound ordinance. There are events that will always pose an inconvenience to someone. But when the convenience is greater than the inconvenience, we have the freedom to enjoy that. There was no inconvenience last year other than sound. Sound readings beyond the condos were significantly diminished. Is there a checklist of what the applicants need before they come back again.

Chair Grotenhuis said there is a lot of information that PB has requested that PB has not received. If PB doesn't have the information, they can't make the decision. There has never been a water cross event in the past, so there is no check list specific to it.

Chair Grotenhuis said the Board does not have enough information to decide the case. Mr. MacKinnon, Mr. Viel and Chair Grotenhuis discussed whether they need to vote on whether to send the application to legal counsel for an opinion on the aquifer protection district.

Mr. Viel made a motion to ask for town counsel advice on whether the variance covers the underlying district use conformance. Ms. Mooney seconded. Motion passed by a vote of 4-3 with Mr. MacKinnon, Mr. Morin and Chair Grotenhuis nays.

Mr. MacKinnon said there were four (4) comment letters: SRPC, technical review, Conservation Commission, and fire department.

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359 **Mr. MacKinnon made a motion to continue this case on July 28 at 7PM. Ms. Mooney**
360 **seconded. It was unanimously approved by 7-0.**

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362 **Minutes**

363 March 24, 2021

364 May 12, 2021

365 May 26, 2021

366 June 9, 2021

367 June 23, 2021

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369 **Ms. Mooney made a motion to approve the above minutes as edited. Mr. Anderson**
370 **seconded. It was unanimously approved by 7-0.**

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372 Ms. Mooney said the Gile Road application review will be by completed by Conservation
373 Commission in advance.

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375 **Adjourn**

376 **Mr. Viel made a motion to adjourn at 9:20pm. Mr. Anderson seconded. Unanimously**
377 **approved by a vote of 7-0.**

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379 For the Nottingham Planning Board,

380 Lorraine Petrini,

381 Appointed Interim Scribe for the recording and documentation of meeting minutes

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