

**Planning Board  
August 25, 2016  
7:30 pm**

Members Present: Barry Hantman, Chris Giordano, Jim Castine, David Cogswell, Chris Smith, Roger Whitehouse, Janet Denison-clerk

Excused Members: Chip Current

Others Present: Kevin Hatch, Walter Baird, Carol Baird, Ed Delorey, MaryAnn DiStefano, Carsten Springer

Minutes:

Chris G. made and Roger seconded a **motion to accept the July 28, 2016 minutes as amended.** Chris S. abstained. The motion **passed.**

Correspondence:

- From Heritage Commission, dated August 24, 2016
- From NH Division of Historic Resources, re: Long Pond Road culvert replacement
- Email from Cliff Sinnott of the NHRPC, sent August 22, 2016, re: I-93 CTAP phase three grant
- Two letter from Dennis Quintal, dated August 17 and 25, 2016
- From Peter Loughlin, dated August 16, 2016

Master Plan/Zoning Ordinance updates

No updates have been done yet. David said he has been reviewing the section regarding gravel operations. It was agreed that when a few sections are updated, the public hearing will be held.

Barry reminded the Board to be aware of any updates that need to be made for the Zoning Ordinance (ZO). These will need to be discussed in October in preparation for the public hearings to be held at the end of the year. Barry will be updating the section regarding accessory dwelling units. The Zoning Board will be contacted to see if they have any suggestions. Chris G. said the law can change regarding accessory units so the changes to the ZO can wait. Any other changes due to legislature will be researched for possible inclusion in the ZO.

Meetinghouse subdivision, Map and Lot 2-75

Barry said there were still some questions regarding the deeds and ownership of parcels surrounding the property. A meeting was held with town council, Peter Loughlin, and the engineer for the applicant. After the review, Barry communicated with Mr. Loughlin regarding that meeting over the phone and via email. Barry presented the Board a letter from Mr. Loughlin dated August 16, 2016 and with the Board member's consent, shared it with the applicant.

Barry summarized Mr. Loughlin's letter, stating that after listening to the applicant and the Heritage Commission and reviewing all of the documentation presented, Peter believes the information provided by the applicant has merit. Mr. Loughlin said that he believes the town should not hold up the applicant's application for land that's in the area of the application. However, he believes there's a question about the frontage for lot 1 as shown on the plans and believes additional documentation should be provided to verify the frontage. Barry said that Mr. Loughlin's letter doesn't remove any right to land that may belong to others and anyone can assert title to land they feel they own.

The letter dated August 24, 2016 from the Heritage Commission was read.

Barry concluded that there is obviously still some concern and disagreement regarding the parcel boundaries. He said future evidence may surface that clarifies this question, but Mr. Loughlin offered his opinion that the Planning Board should not hold up the application for the subdivision proposed within the perimeter except for the frontage issue. Barry said that, given that this is a contentious issue, he asked the Board for a **motion to proceed with Mr. Loughlin's recommendation to proceed with the subdivision with the proposed bounds with the exception of the 68' of frontage which has been called into question.** Chris G. made and David seconded the motion. All voted in the affirmative except for Jim who voted nay. The motion **passed.**

Barry recommended to any future buyers of the lots that they purchase title insurance. The two letters from Dennis Quintal were given to the Board members. The August 17 letter was not reviewed. Mr. Hatch gave the Board members new plans. He said Dennis Quintal, the town engineer, wanted a driveway culvert on lots 1 and 2. This is shown on sheet 8. The culvert is shown in the detail sheet. He said if the deed description is taken at face value, there's still a conflict regarding frontage. Mr. Hatch said the line has been adjusted and stated the lot still has 200' of frontage. Mr. Hatch stated his client has waited for three months for an answer from Mr. Loughlin regarding this and does not want to wait any longer. Mr. Hatch asserted his plan is correct.

Barry said that to proceed, the Board will need additional documentation to conclude that the 68.11' must be considered as frontage. These documents have not been provided. Mr. Hatch showed on the plans that he has added 67.61' rather than the necessary 68.11'. There was a short discussion about the frontage and where the different trees may have been located as referenced in the early deeds. Mr. Hatch said that he and Mr. Loughlin made assumptions where the boundaries are.

Mr. Hatch said he will move the line on the plans to add additional length to the lot there will be 200' of frontage. He said the other lots' frontages will need to be skewed as well. He was asked to recalculate the amount of upland soil and to check the driveway locations.

Mr. Hatch explained the septic areas as shown on the plans. Each lot has the septic, receiving area, reserve area, and typical house on separate parcels. He said the exact septic and house locations will be determined by the developer when construction starts.

Carsten Springer clarified that the Conservation Commission had asked for a reserve area for each lot due to the proximity to the wetlands. The letter dated June 23, 2016 from the CC was reviewed. The letter also referred to three-chamber systems to be used. The Board stated that additional test pits should be dug in conjunction with the reserve septic areas. Mr. Hatch agreed to dig additional test pits.

Dennis Quintal's letter dated August 25, 2016 was reviewed. There was a short discussion of having a deed restriction regarding the swale management. Mr. Hatch gave the Board a sample deed with language stating the homeowner is responsible for maintenance. It was agreed that any future problems with the swale would be addressed by the Selectmen or code enforcement.

Mr. Hatch agreed the buffer zone will be marked per the ZO and noted on the plan. Mr. Hatch will add the NH driveway permit numbers to the plan.

The Board did not have any other questions at this time. The meeting was opened to the public.

Carol Baird asked about the vegetative buffer. This will be marked with town markers and will be noted in the deeds.

Carsten Springer mentioned the tall pines that are in the buffer zone and that they will eventually die off. He suggested that something will need to be put into place as a good visual screen. Mr. Hatch said they intend to leave what's there in its natural state and not remove or add anything to it. He said when the house is built, much of the vegetation will be removed up to the buffer, allowing sunlight to fill in the undergrowth. A note will be added to the plans that if something dies, it will be replaced. Carol asked about who will enforce this if the landowner cuts down the buffer. It is assumed the Selectmen will issue a cease and desist order and ask for a restoration of the buffer if necessary.

A question was asked about the triangle piece on which the Old Meetinghouse sits. Barry pointed out that the beginning of the southern point of the triangle referenced in the deed is unknown. Walter Baird pointed out on the plan that the other triangle referenced in the old deeds, as interpreted by Mr. Hatch, make the front of the private property to the north actually town property. Barry said the town has not had these two lots surveyed. Barry said that he wouldn't be surprised if more research is done which brings to light other facts regarding these properties' boundaries. Mr. Baird pointed out that a certified survey of the private property to the north did not show a triangle piece in front of it. Barry said that if the town owns the land now, it will own it in the future, and appropriate action can be taken by the town at any time.

MaryAnn DiStefano asked if the Meetinghouse Lots can be surveyed. Chris G. said that this can be done at any time.

Mr. Hatch pointed out on the plans that one edge of the Meetinghouse triangular piece is 293' long, as referenced in Mr. Loughlin's letter. Mr. Hatch showed several different starting and end points for the line, depending on where the white oak was. Jim pointed out that one plan shows the triangle having a right angle and what Hatch just showed is not a right angle. Chris G. said the oak was cut down between 1764 and 1826. Jim said the stone walls that run along the property end short of the subdivision parcel.

Chris G. made and David seconded a **motion to close the public hearing**. The motion **passed** unanimously.

Barry listed the conditions needing to be met thus far:

1. Adjust the frontage to be at least 67.84' on the southern portion of the north lot, requiring recalculation of upland soils and lot sizes
2. Add a note regarding deed restrictions
3. Add a note regarding the town markers for the buffer zone
4. Payment of any outstanding fees owed to the town

It was noted that Mr. Hatch agreed to also have additional test pits done for the reserve septic areas. Barry said this is not part of the conditional approval. Mr. Hatch asked for conditional approval based on the conditions listed by Barry and a clean letter from the town engineer. Chris G. made and David seconded a **motion to grant conditional approval based on the aforementioned request**. The motion **passed** unanimously.

Mr. Hatch pointed out that he received an itemized statement with the expenses listed as review fees, that it was over \$10k, and that these are not reasonable expenses. There was short discussion about the RSAs that state additional costs for third party reviews shall be borne by the applicant. Mr. Hatch said he doesn't think that covers attorney/client privileged information. Barry said that Mr. Loughlin has been considered as a third party consultant and the letter has been provided to the applicant. Chris G. pointed out that Mr. Hatch agreed to meet with Mr. Loughlin while the Board was willing to get a different consultant to review the deed information. Barry said it can be agreed there is ambiguity with the deeds

and the review was necessary to bring some conclusions. Mr. Hatch said the basis for the research was not reasonable.

The Board discussed impact fees. Chris G. made and Chris S. seconded a **motion to assess impact fees as stated in the ZO**. The motion **passed** unanimously. It was pointed out that conditional approval is good for one year. Mr. Hatch said he'd have the mylar to the office next week and he asked about the date for the Board to sign. Barry said it would be good for Mr. Hatch to attend the meeting to explain compliance with the conditions needed to grant final approval. He was told to work with the clerk regarding any outstanding fees owed.

Tuckertown Road/Terra Realty gravel preliminary discussion

Timothy Tanner introduced himself as the attorney working for Terra Realty. Plans had been submitted to the Board members electronically. Barry explained this is a preliminary discussion and that nothing said by either party is binding.

Mr. Tanner explained the conditional excavation permit was granted and that certain conditions need to be met. He said that they are supposed to be working only with the Selectmen but the Selectmen asked them to meet with the Planning Board.

It was explained that normally this type of plan was to be reviewed in light of the excavation regulations but this is different. After the court proceedings, the town and the property owners agreed to certain conditions, which will be used rather than following the town regulations exactly. Barry pointed out that once the Selectmen grant the excavation permit, it is good for one year. It needs to be renewed annually to ensure continued compliance.

The engineers at Jones and Beach sent a cover letter and new set of plans that show all of the issues from May 2000 have been addressed. It was agreed that since the permit has already been issued, the owners don't need to a formal application and a notice to the abutters is not necessary. It was mentioned the permit was issued by the court. Mr. Tanner said he's already met with the Conservation Commission. The Planning Board will review the reclamation plan and offer comments to the Board of Selectmen.

There was a discussion about conducting a site walk to see if conditions have changed. Mr. Tanner said the plans show today's existing conditions. Carsten Springer asked about wetland flagging. Mr. Tanner said the same wetland scientist used 15 years ago has been working on the current plans. This person was agreed upon by both parties.

Chris G. said he can ask the other Selectmen whether or not they want the PB to review every paragraph in the agreement or just the reclamation plan.

The plans have been sent to Dennis Quintal. Mr. Tanner said he can itemize the paragraphs in the agreement and state how each has been met or will be met.

Chris G. pointed out that each land owner will need to sign the paperwork.

There was a short discussion about the fees set 16 years ago for the road bond and escrow. The Town Engineer can be asked what he thinks appropriate amounts may be in light of today's cost. Any change in the agreement will probably have to be agreed upon by both parties.

Carol briefly explained that in May 2000 the Selectmen invited several town committees to walk Tuckertown Road with Terra Realty. A letter had been sent by the Heritage Commission after that site

walk. She asked if anything from that letter has been addressed. It was pointed out that there are many unknowns and many things have changed since the agreement was made.

Carsten asked whether or not the agreement has to be adhered to strictly or if it can be renegotiated, or if a renegotiation will start a domino effect. Chris G. said that nothing is etched in stone and it is possible for both parties to agree to a change. It is unknown if any amendment has to be submitted to the court for their approval. Carol explained the road is now considered part of the Historic District which has different parameters put upon it than what was there 15 years ago. It was agreed that the property should be bound by the parameters that were in place at the time. Carsten stated the language which states the road is to be "as is" will be very important to consider. He said the applicant had spoken about how they will protect the road. He said there may be disagreements about what "as is" means but the road needs to be protected. Barry said this will be reviewed carefully.

At this time, the road is impassable in places. David pointed out that any damage to the road has to be repaired. Barry suggested adding language to the reclamation plan that any temporary improvements are to be removed at the end of the project. Mr. Tanner said that if the town does not want it passable after the excavation project, they can return it to that state.

Jim asked why another route to the parcel isn't being used, such as from Sandown Road. Carol explained that PSNH has the right to use the land through their easement but the properties underneath it retain ownership and there are several different property owners, not all of whom agreed to let Terra Realty cross. The town didn't want Terra to cross through the town forest, which is why this eventually went to the court.

It was agreed that Dennis Quintal will review the information and the applicant is at liberty to meet with Mr. Quintal to facilitate the review.

No site walk is required.

Mr. Tanner asked about watering wells that are supposed to be installed by the town. Mr. Tanner agreed to ghost write an application to the state for a temporary wetland crossing. The Conservation Commission may want to see a more permanent crossing. Carsten said the temporary mats are not good environmentally and the permanent crossings will be advantageous to the town. It was pointed out that the agreement states these are to be temporary.

This discussion will be continued to the next agenda. The notice will state that this is a review of the permit already issued.

#### Fire Suppression Ordinance

Chief Woitkun said that he has just spoken with Ed Delorey outside. He expressed his displeasure with the Board that he was not consulted regarding the fire suppression required for any subdivision of three or more lots. Barry said the citizen's petition years ago left the ZO in a bizarre state. He said the opening paragraph states the applicant must comply with one of three options, one of which was removed by the petition and subsequent town vote. His opinion was that this means someone can say they are going to comply with the first choice, which is nothing as the paragraph was removed.

Chief Woitkun explained the history of putting together the fire suppression ordinance. Chris G. said the first paragraph needs to be rewritten to make it enforceable. He apologized on behalf of the Board.

At 10:00pm Chris G. made and Roger seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet Denison  
Land Use/Assessing

Sept. 8, 2016 agenda

7:30pm Minutes and Correspondence

7:40pm preliminary discussion with Charlie Zilch regarding subdivision of M&L 3-140

8:00pm continued review with Wayne Morrill of Jones and Beach regarding Tuckertown Road, Terra Realty, conditional excavation permit