

APPROVED
Town of Fitzwilliam
Planning Board Meeting
June 21, 2016

Members Present: Terry Silverman, Robin Blais, Paul Haynes, Tom Parker, Suzanne Gray, and Nancy Carney, Selectman's Representative.

Others Present: Attorney Earl Duval, Blue Sky Towers, LLC, Steve Filipi, Russell Raitto, Carl and Scott Hagstrom, Mr. and Mrs. Heald, Rick and Bruce Brackett.

Call to Order: 7:00 PM

7:00 PM Preliminary consultation. Paul Grasewicz to present a boundary line adjustment between Map 29, Lot 23-2 and Map 28, Lot 36.

Mr. Grasewicz presented plans for the proposed boundary line adjustment between the Ford property, Map 28, Lot 36, with access off Route 119 W, and that of Mr. Vaal, Map 29, Lot 23-2, with access off Collins Pond Road. The new lot will have 2 acres, from which Mr. Vaal plans to build a driveway to access Route 119 W.

Silverman noted that the steepness and turns on that particular stretch of Route 119 W have a horrible impact on access to or from the road. He added it is not a line of sight issue. There are a lot of trucks on the road and he said it is the absolutely worst place for a driveway access. Silverman said the driveway isn't for residential use, but for commercial use by trucks leaving the site onto a bad stretch of road. Grasewicz said he would investigate the road specifications and delineate wetlands on the proposed new lot. Blais noted there will be ledge to deal with on the property. Parker said he didn't see a problem with the driveway access but that it was up to NH DOT to determine access.

7:10 PM Public Hearing continued. **Lon Caracappa** application for a conditional use wetlands permit to construct six foot wide access steps over the bank to access Laurel Lake from property located on West Lake Road, Map 24, Lot 1, Rural District.

Silverman recused himself from this hearing. Gray chaired the hearing. She noted she had a dispute with the contractor on another matter not related to this case. The Board did not feel she needed to recuse herself.

Carl Hagstrom said that several things were asked of him at the last meeting and he has done them. Gray said the Board had requested reports from the Conservation Commission regarding the Caracappa project. Gray reviewed the Planning Board preliminary consultation minutes on this case, indicating that pressure treated lumber should not be used on steps into the water, unless permitted by DES. During that meeting Mr. Hagstrom said the project was exempt from the need to apply for a wetlands permit, citing Chapter 127-16.1, D. 7 (d). Haynes asked if the type of wood used in the steps was determined by the Conservation Commission. Gray read from the Conservation Commission minutes which stated that a product called "Clear, similar to Trex," was to be used. She noted that she removed a tag from the steps in the water and they are constructed of pressure treated wood. She wondered if the newer pressure treated wood is called Clear? Blais said she didn't think the old fashioned pressure treated wood was sold anymore.

Gray questioned the number of steps and Mr. Hagstrom said no one was quite sure how many were needed to go over the boulders at the shoreline. Blais asked the property owner, Paul Grasewicz, what he thought of the project. He said he wished the steps were only 3 feet wide and that the whole project not so huge, but he agreed he had signed off on the project.

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Gray said the Board needed to find out just what kind of wood was used for the steps. It was noted that neither the state nor DES regulate the use of pressure treated wood in the water.

Gray moved on to the criteria for approving a conditional use permit under 127-16.1, D.7 (d).

- a. The activity is a productive and reasonable use of the land;
- b. Design, construction and maintenance methods are established to minimize detrimental impacts to the wetlands and restoration is provided for.
- c. No reasonable alternative exists which would avoid wetlands alteration or lessen the impacts;
- d. The altered wetland area is less than 2000 sf.

Blais moved, Gray seconded and the Board approved a conditional use approval for this project, noting the approval is retroactive since the project was completed prior to receiving DES approval and the conditional use approval. The motion carried unanimously.

The Board asked that Mr. Hagstrom provide proof of the type of lumber used in the steps.

The Board noted that the project required a construction permit, which had not been obtained prior to construction. The applicant needs to apply for a retroactive construction permit and pay the fine for not obtaining one prior to the start of construction. The Board also noted that the application for the conditional Use Permit was not signed by the property owner and that needs to be done.

Haynes asked about how the property would be assessed now with the new construction. Carney said the Selectmen will take that up with the Assessors, who review all new construction permits annually. They will discuss the impact of the construction on the property taxes with the property owner. The Notice of Decision will be sent to the applicant's agent Carl Hagstrom, and the property owner, Paul Grasewicz.

CANCELLED by the applicant - Preliminary consultation. Andrea Hiekkinen to discuss a boundary line adjustment between properties located on East Lake Road, Map 27, Lots 23&24, Residential District.

7:30 PM Public Hearing continued. Blue Sky Tower Partners, LLC application for a conditional use permit under Article IV, Section 127-16.2 G. to install a multi-user Wireless Communications Facility consisting of a 125 foot monopole tower within a fenced compound located on property known as the Pinnacle, owned by Filipi Contracting, LLC on Upper Troy Road, Map 15, Lot 6-12, Residential, Rural and Historic Districts.

Attorney Duval reviewed the last meeting, recalling that the Project Engineer Tom Johnson had confirmed that T-Mobile does not plan to have a generator on site. They will have battery back-up on site, which will give them several hours of operation during an electrical outage. He said it would be a rare circumstance that they would have to tow a generator to the site.

Attorney Duval said Verizon and AT&T will propose to have natural gas or propane generators for back-up, if they locate on the tower. He noted that any carriers wanting to co-locate on the tower will have to submit an application to the Planning Board and complete a site plan review. They would have to comply with the town's noise ordinance for any generator.

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Attorney Duval reiterated that T-Mobile does not plan to have a generator on site. He said generators would only be used in an emergency situation and they would operate within the town's regulations.

Attorney Duval said he heard today that Blue Sky Towers has purchased an equipment shelter for the WiValley and public safety equipment which will now be located within the 65 X 65 foot compound. WiValley and public safety equipment will be removed from its current location and placed in the new equipment shelter within the 65' X 65' fenced compound.

Parker asked what the liability is for the town of having the tower, and under what conditions might the town be liable. He added that the town is not party to the installation and he wants to be confident that the town is not liable for anything.

Mr. Duval said there are no contracts or agreements between the Town and Blue Sky Towers or any other carriers. He said lease agreements require insurance. He said usually there is a surety bond for removal of the installation should it be abandoned. He said Blue Sky Towers will inspect the property twice a year and certify that the tower and associated equipment are operational; if technology changes the bond would provide assurance that the tower and equipment could be removed. He added that Blue Sky Towers does not want the tower or equipment to be an "attractive nuisance" and the bond will insure that is not the case.

Mr. Duval will submit a statement from the Project Engineer regarding a recommendation for the amount of bond the Town may decide to approve.

Gray asked if there would be lighting on the tower. The tower is below the 200 foot threshold for the FAA required lighting. Attorney Duval noted that Blue Sky Towers had submitted an air navigation report from the FAA with their application stating that lighting was not required.

Gray asked if there would be any other lighting on the site. Attorney Duval said the equipment cabinets may have motion detector activated lighting, tilted down, within the fenced compound.

Parker asked if there were any lingering concerns regarding seeing the tower. Attorney Duval said the balloon tests and photo simulations were publically noticed. He said he and Mr. Filipi, property owner, conducted a private balloon test for an abutter who indicated he was OK with the project. Mr. Raitto felt there were still issues with the Planning Board to be resolved. He thanked Mr. Duval and Mr. Filipi for conducting the private balloon test. He added that the balloon test was fine. He said he had agreements with WiValley and wondered where things stood with those issues. He said he would now have to rely on the town to resolve any issues.

Silverman said the ZBA took care of siting the tower and the Planning Board is doing its part with the site plan review, including bonding for removal and is now ready to write a notice of decision.

Attorney Duval said Blue Sky Towers had been through many ZBA meetings and they had explored many options with their sound expert David Maxson. He added that Maxson believed they had found the very best location to provide cell service to most of the town residents, at the same time obviating the need for additional facilities in Town. He added that the ZBA did something very good for the town based on Mr. Maxson's advice. He added that the ZBA notice of decision required that an independent engineer will measure the height

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of the tower to insure it does not exceed the approved 138 feet height.

Attorney Duval noted that the ZBA decision overrides Section 6401 required by the TCA, noting that any proposal by any carrier for an increase in height will be required to appeal to the ZBA. He added that the town has not given up its rights to review towers nor have abutters been deprived of their rights to appeal.

Silverman suggested continuing the hearing so the Board can work on the notice of decision. Silverman moved, Gray seconded and the Board continued the hearing to July 5, 2016 at 8 PM. Silverman asked if there was a consensus among Board members that the application meets all the criteria for approval. The Board agreed it did. Silverman said they will work on the specific details for a notice of decision.

Minutes. The Board reviewed minutes of the 06/16/16 work session with Eversource. Haynes moved, Gray seconded and the Board approved them as written. The Board reviewed minutes of the 06/07/16 meeting. Blais noted that comments she made regarding a Ranger Solar incentive package were omitted from the minutes. Blais moved, Gray seconded and the Board approved the minutes as amended.

Gray asked about a proposed June 28th work session to finalize the Eversource Memorandum of Understanding. Four of the sitting Board members will not be able to attend a meeting that night. The Board decided to postpone the work session until the scheduled Eversource hearing on July 5, 2016 at 7:00 PM. Silverman noted that the indemnity clause is the only sticking point now with the MOU. He said Attorney Cunningham, who reviewed the MOU for the Town, did not like the MOU at all since it ties the town to Eversource. He added that this is why the indemnification clause is so important.

8:30 PM Public Hearing. Gary Heald application for minor subdivision of property located on Dunton Road, Map 7, Lot 28-2, to create a new 2.83 acre building lot on the west side of Dunton Road.

Silverman moved, Gray seconded and the Board accepted the application as complete. Grasewicz distributed the plans to the Board. He described the layout, noting that the proposed lot is wooded. He said there are no wetlands on the property and it has very good soils that are well suited to this purpose. He said the private road is kept in good condition.

The proposed lot is 2.83 acres with 302.77 feet of road frontage. The property from which this new lot will be subdivided will have 23 remaining acres and 297 feet of road frontage. There is a single family residence with a barn, two garages and shed on it, and lots of pasture land.

Gray noted that the road had a lot of work done on it fairly recently when Bruce Brackett subdivided his land to create a lot for his son Rick Brackett. Blais noted the Board had approved that subdivision. She wondered if the people on the road, who love their community, are aware that there is the possibility of further subdivisions like this.

Silverman read the notice of decision for the Rick Brackett subdivision:

“You are hereby notified that on June 19, 2012 the Fitzwilliam Planning Board approved the **Bruce and Lisa Brackett** application for a two-lot subdivision of property located at 119 Dunton Road, Map 7, Lot 28-1, Rural

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District with the following findings and conditions:

1. Any local, state or federal permits that may be required are obtained, including building permits, and this subdivision approval shall not be construed as any kind of recommendation with respect to such other permits, nor as having any affect upon the issuance of such other permits;
2. It is agreed that Dunton Road (formerly Old Military Road) is a private road. Dunton Road shall be upgraded as per the road plan agreed to by all parties; and the upgraded road shall be maintained by the Dunton Road homeowners' association. The "road plan" will be filed in the selectmen's office and a copy filed in the map and lot folders of each of the newly subdivided lots. Improvements to the road shall be completed concurrently with the issuance of a construction permit. The Board of Selectmen or their agent shall verify that the improvements to the road have been satisfactorily completed. With these improvements, Dunton Road does not meet the road specifications for subdivision requirements, that is, it is still substandard."

Findings of Facts re Brackett subdivision:

- Dunton Road, formerly Old Military Road, is a private road. Old Military Road was discontinued sometime in the 1800s at which time the land comprising the road from the centerline reverted to the abutters on either side, thus a private road. It is not of the standard required by our current subdivision regulations. It is narrow in general and one lane in several spots. The surface is potholed and in need grading. Areas of the road needing improvement were discussed during the site walk May 18, 2012 with the homeowners and verified by the town's road agent who acted as a consultant for the planning board.
 - All property owners who have homes on their property have recorded agreements with the Cheshire Registry of Keene.
 - There is a homeowner's association that takes responsibility for the repair and maintenance of the private section of Dunton Road. The private section of the road currently serves 11 (now 12) households.
 - It is clear that the substandard condition of the road is the main concern of the planning board.
3. The subdivider shall execute a statement in a form approved by the Selectmen, to be recorded in the Registry of Deeds prior to, or contemporaneous with, the recording of the subdivision plat, and which acknowledges and agrees to the following: (a) That the Planning Board's approval in no way alters the legal status of Dunton Road as a private roadway; (b) That the Board's approval does not constitute any type of approval or recommendation for Dunton Road to become any class of public highway; (c) That responsibility for maintenance of Dunton Road if any, including plowing, shall rest upon, and be performed by the affected landowners, and not by the Town; (d) That in accord with state law, the Town shall not be liable for any maintenance of Dunton Road, or for any accidents or other injury or damage which may be caused by, or occur as a result of, such non-maintenance, or for any failure of emergency vehicles or other public or private services to reach the subdivided properties as a result of such non-maintenance."

Silverman said there would be no Planning Board recommendation that Dunton Road be upgraded to a higher class of road, and reminded Rick Brackett that he needed to sign the agreement to be recorded.

In response to Blais's comments, Rick Brackett said that Mr. Van Blarcom has no legal frontage but several other properties on the road do. He noted that Mr. Heald also has Class V frontage on Templeton Turnpike. He said the existing community is a multigenerational one, and supports aging in place. The new house lot will

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assist the rest of the homeowners to maintain the road. He added that this subdivision allows the land around the Dunton Road community to remain a viable wildlife habitat, whereas if the lot was on Templeton Turnpike it would interrupt wildlife pathways.

Bruce Brackett said the road is much improved since the Board was last there. Silverman said he'd read the notice of decision to make this proposal possible rather than to obstruct it.

Gray said the Board was very familiar with this road. She said there is just one proposed new lot and clearly the abutters support this proposal. She said that if a large subdivision application came to the Board it would be a different situation. She added that the language in the Brackett subdivision notice of decision could be used for this subdivision

Blais moved, Parker seconded and the Board approved the subdivision as presented with the notice of decision using the same language as the Brackett notice of decision.

The meeting was adjourned at 8:45 PM.