

# TOWN OF FITZWILLIAM

## PLANNING BOARD

### Minutes

December 20, 2022

**Planning Board Present:** Suzanne Gray, Chair; Paul Haynes, Vice Chair; Robin Peard Blais, Secretary; Barbara Young; Ed Goodell; Tom Rothermel; and Martin Nolan, Selectmen's Representative.

**Staff Present:** Lori Nolan, Land Use Coordinator.

**Others Present:** Karen Viens; Robyn Bates; Normand Dion; Joan Dion; Charles Pace; Dana Pinney; Jason Drew; Sarah Olson; Kevin Woolley; Patricia Pine; Laura Kelsey; Mike Rossi; Bill Pine; Steve Filipi; Chris Guida; Charley Lawrence; Curt Felix; Kim Gilbert; Don Gilbert; Nancy Clark; Rolf Briggs; Susan Silverman (remote).

Call to Order at 7:01pm. Gray held roll call and explained protocol.

**Public Hearing: Case #22-11: Filipi Contracting LLC – Minor Subdivision (3-lots) at Upper Troy Road. [Map 15, Lot 6-12 – Residential/Rural Districts]**

The LUC confirmed that proper notice was given to the public and abutters.

The Planning Board discussed if the application was complete.

- #7 – missing acreage: The applicant, Steve Filipi, amended the application to include the missing acreage;
- Master Plan #17 (protect current and future water supplies) and #19 (facilitate affordable housing opportunities). These items are not required but the Planning Board asked for an explanation. Filipi felt this question related to town and private wells and how the homeowner has responsibilities. He will not be fracking oil or gas and there will be no underground tanks. He is just creating housing lots.
- #9 – culverts (marked n/a) – Charley Lawrence, surveyor, felt this was in regards to approved driveways as staked out. If the location changes, the future homeowner may need to apply for new driveway permit. Future culverts may be in the right-of-way and they are prevented from accessing the right-of-way until they have an approved driveway permit.
- #19 – Filipi was unsure what the current definition was for affordable housing, but his houses are priced in the lower end. They are three-bedroom starter/retirement homes. It costs \$100-125k just to acquire land, install well and septic. He is unsure of plans. Some abutters are interested in some of the land and they will be given first right of refusal. Ed Goodell felt affordable housing was not clear to everyone and suggested clarity and education be provided to the public.

**Goodell motioned to accept the application for Case # 22-11: Filipi Contracting LLC – Minor Subdivision (3-lots) at Upper Troy Road. [Map 15, Lot 6-12 – Residential/ Rural Districts] as complete. Paul Haynes seconded. Motion passed unanimously.**

Yes: 7 [Gray; Haynes; Peard Blais; Young; Goodell; Rothermel; M. Nolan]; No: 0; Abstained: 0

Filipi began his presentation stating that all three proposed lots meet all zoning requirements.

- Original lot: 45 +/- acres
- Proposed Lot 16: 140 feet frontage; 3.25 acres
- Proposed Lot 17: 137.18 feet frontage; 2.0 acres
- Remainder of original lot 12: 257.93 feet frontage; 42.27 acres

The two new lots will be completely within the residential zone and will end at the zoning line between residential and rural. The large lot will have reduced frontage of 250+ feet due to it having double the minimum lot size.

Gray asked about the well houses. Filipi stated they have deeded rights going back to the 1800s. He does not plan to do anything except re-secure the tops (seal and bolt to concrete frame). He felt it would be hard, if not impossible, to clear the deed of the well rights. Filipi explained that two wells will be on the 42 acre lot; one on the 3.25 acre lot; and another near the Raitto driveway further down Upper Troy Road. Filipi speculated that the wells are 8-10 feet deep and used up until the 1940s. He is prevented from filling in the wells as long as people have deeded rights. Filipi explained that he planned to use the existing path near the abutting property (Buonomano) and then another area further up that has an opening in the stone wall where a former house was accessed at as the two curb cuts. The large lot would continue to use the shared driveway. Lawrence stated that the road agent has given preliminary approval of the curb cut locations.

Patricia Pine – 44 Upper Troy Road – commented that the locus is off on the survey map. She spoke in opposition as this area has a huge water problem. A stream flows across Upper Troy Road in between their house and an abutting property. Any rain event floods them. She felt clearing the woods will make more runoff. There are aquifers present in this area and an old drainage system that runs to Sugar Hill Road. The National Wetlands Index surface water map indicates water flowing towards everyone due to topography. Many homes on Upper Troy Road have multiple wells because of the abundance of water. She felt the Pinnacle should be preserved for run-off and town water rights reasons.

Bill Pine – 44 Upper Troy Road – spoke in opposition. He explained that he has lived in his house since 1987 and has an earth science background. The Pinnacle is a bedrock aquifer, in which water comes up but also goes underground. The area cannot handle much water as 1-3" of rain takes 8 hours to drain. In speaking with the DPW, there is no resolution. B. Pine felt the land should be preserved.

Gray asked if this should be referred to the Conservation Commission because of the water concerns. The Planning Board was in agreement. Gray referred to reports in the property file from 2007 about a possible aquifer in this location. Martin Nolan commented that the DPW made changes for the better but he is unsure if the problem can be completely eliminated as there is a lot of water that comes off the Pinnacle.

**Gray motioned to conduct a site walk on January 3, 2023 at 7:00am in regards to Case #22-11: Filipi Contracting LLC – Minor Subdivision (3-lots) at Upper Troy Road. [Map 15, Lot 6-12 – Residential/ Rural Districts]. Haynes seconded. Motion passed unanimously.**

Yes: 7 [Gray; Haynes; Peard Blais; Young; Goodell; Rothermel; M. Nolan]; No: 0; Abstained: 0

**Gray motioned to continue the public hearing for Case #22-11 until January 3, 2023 at 7:00pm. Rothermel seconded. Motion passed unanimously.**

Yes: 7 [Gray; Haynes; Peard Blais; Young; Goodell; Rothermel; M. Nolan]; No: 0; Abstained: 0

#### **Follow-up Consultation**

Case #19-03: Fitzwilliam LLC – Site Plan Review – to discuss exterior noise and any expansion of business footprint at 179 Route 12 North. [Map 15, Lot 29 – Light Industrial District]

Gray stated that she is not a direct abutter but can hear the noise. M. Nolan stated that he works for Superior Oil, which is an abutting property. The Planning Board was okay with both proceeding as voting members.

Gray welcomed Mike Rossi, representative for Turnkey Lumber, to the meeting and explained that this is not a public hearing. It is a follow up to address expansion of the business and also noise complaints. Gray stated the BoS conducted a site walk on December 15. Gray and Young attended. Rossi stated that there were six lights shining into the trees. They have since been changed to shine down and are on motion detectors. The noise is typically 7:00am to 5:00pm inside with nail guns. They also excavated to fix drainage, which included chipping ledge and leveling land, and consolidated materials to the back of lot. After Rossi spoke with the LUC and work was stopped on Sundays. Come spring, they will have two days of putting down gravel and will notify town when they begin flattening land. The area is way in the back overlooking the valley in the direction of the pond and north 5/8 of mile from road. The area is lower than the water tanks. Tom Rothermel commented that the area they are leveling is 150x300. Rossi felt this was the only change from the past years. They cut trees a few years

ago. Everything will be completed inside with the exception of grabbing material and loading trucks. They have approximately 75 employees with 40-45 involved with production.

Young asked when the new structure was built. Rossi stated last year. Gray advised Rossi to speak with the LUC to file for a construction permit. Rossi will take down structure instead.

Gray gave Rossi a copy of the noise ordinance.

Gray suggested that an Alternation of Terrain permit needed to be filed. Susan Silverman, member of the public, asked if the cleared area is larger than the work area defined in the original site plan. Gray stated yes, they have expanded beyond that.

Dana Pinney, member of the public, commented that he was at the original site plan review and he complained about the night sky violation. He also attended the recent BoS site walk. He felt the land clearing is being minimized tonight. According to Google Earth, he estimated an area approximately 305,000 square feet was excavated. AoT permits look at drainage, site screens, erosion, etc. He felt an AoT permit must be obtained.

Kim Gilbert – Upper Troy Road – explained that there is a property between hers and Turnkey. She stated that the excavation began before 7:00am and ended after 5:00pm. She was glad to hear that it will end. But she will continue to hear the trucks. Noise registers at 79 decibels at her stone wall, which is approximately 1,000 feet from the property line. The noise is very disruptive. The noise is jackhammering and truck movement. Rossi explained that forklifts move materials. He suggested working on this and coming back in 30 days to reassess. Young commented that this is a health risk from the noise to the neighbors. She is happy that Rossi has been so successful at this location. Rossi did not want to bother anyone. He wanted to work to find a resolution.

Curt Felix – Upper Troy Road – observed the same things as Gilbert. The noise changed in the fall. He lives approximately 1,000 feet away and the noise ranges from 45-80 dBs. He felt the noise was normal business operation noises from the movement of materials from the storage area to the building. He suggested an electric forklift. Rossi agreed that the noise most likely was coming from the heavy duty propane forklifts. M. Nolan commented that cutting all the trees did not help but trucks on the road are at peak power due to the hills.

Goodell suggested that all future noise readings be taken on the property line to ensure ordinance compliance. Rossi had concerns that the noise is echoing over the top of the hill. He had a possible solution of building a lean-to to store material but also block noise from vehicles. Haynes commented that the noise barrier at Eversource worked out really well. Gray felt that proper material and design will help a lot to dampen noise. Rossi was open to all ideas.

Gray advised Rossi to obtain an AoT permit and to come back before the Planning Board when he changes or adds any structures.

### **Follow-up Consultation**

Case # 20-04: Rolf and Barbara Briggs – Conditional Use Permit – to discuss construction within the WPOD at 46 Rantilla Lane. [Map 38, Lot 9 – Rural District]

Gray welcomed Rolf Briggs and Nancy Clark, representative for the Dion's, to the meeting. Clark had submitted a letter of complaint in regards to the Briggs property on September 13 to the BoS, which asked for Planning Board and ZBA input. The BoS felt the complaints were a civil matter. Clark felt that determination was in error. She explained there are three main issues to the complaints.

1. Conditional Use Permit: there are 11 items within 75 feet of the pond that were not included on the plan.
2. The demolition and construction permits were issued in error as there was insufficient activity to reissue the permits.
3. Rantilla Lane – millings were put down resulting in dangerous steep ravens on the east side, potentially causing a vehicle to turn over.

Gray reviewed the road condition and explained that this is a private road. The road agent was asked to confirm the material used on the road and the rest is not within his purview. Clark stated that this is a private road, which is 95% of the Dion's property. The Briggs have a right-of-way over the Dion's land but never received any

permission from the Dion's to do any road work. Clark also felt that the Briggs required a driveway permit from the Town. M. Nolan responded stating that the BoS did look at the complaints. The driveway is an existing curb cut. The remainder of the driveway and any issues with the shoreland permits are not within the BoS, DPW, or Planning Board's purview. Clark disagreed and felt any construction to a driveway requires approval. The existing conditions make for a dangerous situation to cars and EMS, especially in winter. The Town should be concerned as they have an interest in accessing all houses in town, including Rantilla Lane. M. Nolan stated this is a private road that has long since been grandfathered and is a civil matter.

Rothermel asked if a driveway permit is required when a new driveway is built. Briggs stated that this is a private road with a driveway attached to it. There are three owners that own parts of Rantilla Lane – Hoffman's, Franks', and Dion's. Briggs explained that he did a lot of research with the State on the best ways to maintain the road. He hired a road engineer and shared plans with the Dion's. The road sat low in the wetland so the road never dried. They replaced road materials with gravel and a top coat. Bigger culverts were installed. The original width of the road remains. The Dion's do not use their property in the winter. AAA and Fire would not come down the road in the condition it was. Fire looked at it and recommended pull-offs, widening the road, taking down the fence at the end, and rebuilding the turnaround area. The Briggs asked the Dion's to remove the fence, but they did not receive a response. Briggs stated the road is holding up well. No silt problems and stormwater has lessened. There have also been no issues with plowing. Briggs has completed Phase 1. Phase 2 is a pull-off, straightening and widening the road by the Franks and rebuilding as original by deed and will be done in 2023.

Clark stated that the Dion's do not give permission for the pull-offs. She is requesting that the Town require a permit for the road. The road is in a dangerous condition. The original scope of work and the actual work are different. She is requesting a referral to the BoS for a driveway permit. Gray stated that the Planning Board and BoS are different boards and they do not take direction from the other. M. Nolan stated that outside of the curb cut, the rest is private. The BoS have no authority. They have stated their position that it is a civil matter. Rothermel felt that the BoS became involved once Fire gave recommendations. Peard Blais felt there is a safety issue if it isn't safe for EMS.

Joan Dion felt that Briggs is not being truthful as the Briggs never contacted the neighbors. Normand Dion commented that the asphalt covering Rantilla Lane does not end at the fence. He stated that they maintained the road over the years. The Briggs presented them with two proposals. The first was to install a gravel road for \$30,000. The second was to pave the road for \$60,000. The Dion's objected because asphalt is a petroleum byproduct and is bad for the environment. The road length is 1,066 feet. Joan Dion stated there are now four feet drop offs and additional culverts (from 2 to 10). She confirmed that EMS and Fire could access the property fine when the previous owner lived there.

Clark was not looking for a resolution tonight but requested a driveway/road permit. She is requesting a referral to the BoS for a driveway permit. Rothermel felt that BoS should look at this to ensure road stability, width, culverts, etc. M. Nolan felt that BoS do not have legal authority. They can make recommendations through Fire, DPW, and best management practices. However, Fire will work with what they have. The BoS felt this is a civil matter. Peard Blais had concerns about asphalt in relations to the wetlands. Briggs stated that NHDES recommended not using gravel following a site walk. The Briggs followed NHDES recommendations. Road work was finished November 2021. M. Nolan confirmed the material is regrind and not asphalt. Normand Dion felt that installation of a pull-off on his land is not fair as it is taking of his land. Young asked if the Land Use Office had received the NHDES communications. The LUC stated that NHDES only sends communications in regards to permits.

Chris Guida, certified wetlands scientist representing the Briggs, stated that the road was resurfaced using regrind. The regrind adheres to itself. In regards to NHDES, most attention is given to erosion. The stormwater management system is working. Guida commented on the amended shoreland permit explaining that the driveway was pre-existing. They did not require a permit for shoreland as there is no expansion. There is no net gain or loss as gravel is characterized as the same as asphalt. Gray felt this was a civil issue. Young asked if the BoS has visited the site. M. Nolan stated they have not as long as he has been on the BoS. Peard Blais requested Conservation Commission opinion.

**Gray motioned to refer the most recent communications from Case #20-04 to the Conservation Commission and request they look at the construction of the driveway and any adverse effect to Rockwood Pond or wetlands, including the placement and sizing of culverts. Young seconded. Motion passed unanimously.**

Yes: 7 [Gray; Haynes; Peard Blais; Young; Goodell; Rothermel; M. Nolan]; No: 0; Abstained: 0

Young requested written correspondence from the NHDES. Haynes requested written reports from the Road Agent and Fire.

**Gray motioned to conduct a site walk on Saturday, January 7 at 8:00am. Haynes seconded. Motion passed unanimously.**

Yes: 7 [Gray; Haynes; Peard Blais; Young; Goodell; Rothermel; M. Nolan]; No: 0; Abstained: 0

**Gray motioned to continue the review of existing conditions for Case #20-04 to February 7, 2023. Haynes seconded. Motion passed unanimously.**

Yes: 7 [Gray; Haynes; Peard Blais; Young; Goodell; Rothermel; M. Nolan]; No: 0; Abstained: 0

#### **Review of Minutes**

After a brief discussion and one minor edit, **Gray motioned to approve the minutes of November 15, 2022 as amended. Haynes seconded. Motion passed unanimously.**

Yes: 7 [Gray; Haynes; Peard Blais; Young; Goodell; Rothermel; M. Nolan]; No: 0; Abstained: 0

With no further business to discuss, **Haynes motioned to adjourn the meeting. Gray seconded. Motion passed unanimously.**

Yes: 7 [Gray; Haynes; Peard Blais; Young; Goodell; Rothermel; M. Nolan]; No: 0; Abstained: 0

The meeting was adjourned at 9:47pm.

Respectfully Submitted,  
Lori Nolan  
Land Use Coordinator

**Minutes approved as amended on January 3, 2023.**