

PLANNING BOARD MEETING MINUTES
AUGUST 17, 2022, 7:00 PM AT DUNBARTON TOWN OFFICES

The chair called the meeting to order at 7:00 p.m.

Roll Call Attendance

Ex-Officio Justin Nault, Ron Slocum, Vice Chair George Holt, Chair Chuck Frost, Secretary Ken Swayze, Alison Vallieres, and Jeff Crosby

Business

The chair confirmed with the secretary that this meeting was posted in two places and on the Town's website.

1. Approval of Minutes:

Ken Swayze moved to approve the minutes of the July 20, 2022 regular meeting; Jeff Crosby seconded the motion. Majority in favor; Justin Nault abstained as he was not at that meeting.

2. Correspondence – None

3. Selectmen's Report – Selectman Nault said he had nothing to report. Donna said she was told before the meeting that there were some 'roadblocks' on the Town Hall project, all relative to the sprinkler/pump/fire systems. Mr. Nault said he was not aware of that. Selectman Kaminski was in the audience; he said he had a brief discussion with Selectman Nault about the situation. He said there needs to be some reconfiguration of the electrical system for the fire system, some fireproofing, ditching for underground lines, etc. Donna said it was her understanding that the fire alarm panel will have to be updated as well. Mr. Kaminski said they will have a full report from Mr. Nault at their meeting on Thursday.

4. Building, Planning and Zoning Department Report – Donna reported the following: 1) Mike Cumings has been offered a full-time position elsewhere; his last day is August 25th. The building inspector position has been posted. Jon Wiggin has said he will help when he can, but his availability is limited. 2) HB1661 included several important components that board members should be familiar with; all were encouraged to view the webinar that Donna distributed earlier in the week. Board member training, publication of fees, incentives, written findings, and timelines are addressed. 3) Verification of subdivision monuments was discussed at the last meeting. Donna inquired of other towns how they handle such things. Most respondents said their town accepts a letter from the surveyor, certifying that all monuments have been set as shown on the approved plan. Because of the time involved and the building inspector leaving, she said she would like to be able to do that as well. There was discussion about doing random spot checks, board members doing some of the verifications, accepting a letter in lieu of doing full verification, and what happens if spot checks show missing monuments even though a certification has been submitted. It was agreed that judgement can be used, depending on the size of the subdivision, staffing and time availability, and letters will be acceptable.

Old Business

Application #2021-PB-004 – Michael Guiney – Six-lot Subdivision, Lot B6-01-05 on Kelsea Road in the Low-Density Residential District. Justin Nault recused himself as an abutter to the property. Selectman Mike Kaminski sat as the alternate ex-officio for this matter.

The chair asked if there are any updates to the plan since the last time this application was heard. Attorney Pat Panciocco said that Ed Rogers had another meeting this evening and was unable to attend. She said she believed the board has the most up to date plan. The chair said it was noted at a previous meeting that the surveyor would measure and depict the location of the well for the log cabin that sits close to the road. Donna said she contacted Mr. Rogers about this earlier in the day. He said his notes were that he would do the measurement and add the well to the plan when he goes out to set corner monuments. He said he was hoping that would be satisfactory to the board and could be a condition of approval. It was agreed that would be acceptable.

The chair said the only other outstanding matter to be discussed would be the assessment of exaction fees. He confirmed with Ms. Panciocco that she had received a copy of the cost analysis that was distributed. Mr. Frost spoke about the cost of relocating the Dunbarton Telephone wires that was discussed at previous meetings. He said the Town will take care of the cost of the wires at the turn around and will share the cost of those on the four other poles along the road with the applicant. The chair said that Mike Kaminski has been part of that negotiation. Mr. Kaminski stated that town counsel advised the board that Dunbarton Telephone is within their right to charge for the work to be done. Pat Panciocco asked why the phone company is charging to move the lines and why the Town is allowing that. Mr. Kaminski said legal counsel advised the board that the phone company is within their right to charge the Town, and the Town cannot demand anything from them. He said counsel said the Town does not have standing that the company do it at no charge. Ms. Panciocco asked if town counsel explained his response. Mr. Kaminski said there was logic behind it. The chair said it was attorney-client privileged information.

Ms. Panciocco said the board is asking them to pick up a portion of that cost, and she does not think they have the right to do that. She said she also does not think the utility company can force the town to take trees down so they can move their poles. The chair said the root cause of the poles needing to be moved is the subdivision. Ms. Panciocco said that was not correct, noting it has been pointed out in Chief Wiggin's memo that the road has been a problem right along, for the people living there now. She said this is on the town. The chair said that is why the town is picking up a portion of the improvements. Ms. Panciocco said the town is making it safe for existing and new residents. She said the utility company put the poles in the wrong spots, and it did not become unsafe because Mr. Guiney submitted a plan for a subdivision. She said it has been unsafe all along. Ms. Panciocco said the poles have to be moved, trees and hills have to be taken down, and Dunbarton Telephone has to move wires. She said the poles were put in the wrong spots without licenses from the town, and statutes say they have an obligation to absorb those costs. The chair said the poles have been in place for over half a century. Ms. Panciocco said they were put there with no licenses. She said the statute reads that the Town has the right to the full width of their right-of-way, and she does not understand why the Town is not forcing that issue. The chair said they have tried, asking Dunbarton Telephone twice. Ms. Panciocco said the town has the statutory right to tell them to move the poles and do the work because they have no licenses. Chuck Frost said the board has talked with the phone company twice, they still came back with a cost, and have sought legal counsel advice. He said the board has the right to impose this condition. Ms. Panciocco said that is the town's choice and her client is not assuming the cost of that choice, as the town has an obligation and right to tell them to move the poles and lines. She said she really wanted this matter finalized tonight, but they are not going to contribute to the utilities sticking it to the town and are not going to pick up a piece of the cost to allow that to happen.

Ron Slocum said he feels this discussion is done and he would like to get this finished up. Ms. Panciocco said she does not understand why the board will not stand their ground. Ken Swayze said he feels they are. Ms. Panciocco asked why they do not stand up to the utility yet will ask Mike Guiney to pick up part of the tab. She said to let the utilities move the poles and cut the trees. Ms. Panciocco asked Jeff Crosby if he felt the poles could be relocated without cutting the banks and trees. He said he had no comment. She asked

again, he said he was not getting into a debate. Ms. Panciocco said she spoke with the project engineer earlier today and was told the poles cannot be moved without the hill and trees being taken down where Kelsea intersects with Montalona. She said there just is no room. She asked who the utilities are to force that cost onto the town and Mike Guiney, saying they put the poles there without the town's permission. She said their biggest issue is that it is not fair that the town backs off and takes a hands-off approach with the utilities, passing a portion of the cost on to her client. Ms. Panciocco said she would assume that town counsel is not aware that this is not just about telephone lines, it is a bigger cost. Chuck Frost said it is only about the lines. Ms. Panciocco said the trees and hill are involved at an estimate of an additional \$34,000 on top of the lines being moved. She said they hung their wires on unlicensed poles, and she does not understand why this falls on the town or her client. Donna said they are not sure the poles are unlicensed, as she had mentioned in a previous meeting. She spoke about the research done in the Town Clerk's records and her conversation with Unitil about Concord Electric's records being archived. She said there may or may not be licenses, which is neither here nor there, as the board's actions are based on what town counsel advised. Ms. Panciocco said the utilities are trespassing on the town's right-of-way. She said again that when the discussion was held with town counsel, it was probably only about Dunbarton Telephone and not the trees or hills.

The chair opened the hearing to the public. Hearing nothing, he closed the public hearing and brought it back to the Board. Ron Slocum said it is time to move the application. Jeff Crosby said he would have no problem with moving and passing the subdivision as it stands with the implementation of exaction fees as presented. Ken Swayze asked Ms. Panciocco if she had a problem with moving forward with a decision. She said she did not think she had any control over that. Ms. Panciocco said she really wants this to be over, as all have worked really hard on this. She said she is not willing to let the utility bully them which is what they are doing through the town, and the town is rolling over for them. She said the utility has the obligation and she does not understand how the town can assess her client for costs that should be covered by the utility and use public funds because the utility will not pay them. Jeff Crosby said he is ready to vote. Ron Slocum said he is ready for this to move forward. Others agreed.

The chair asked if there was a motion. Donna advised the members to consider how to address exaction fees and in what amount before going into a motion. After brief discussion, the chair asked for a motion.

Ron Slocum made a motion to approve the proposed six-lot subdivision, application #2021-PB-004, for Michael Guiney of Tax Lot B6-01-05 on Kelsea Road.

Subject to the following conditions:

- 1. Submittal of a final, technically accurate, and graphically correct plan-set in full compliance with all current subdivision regulations and incorporating any and all additional requirements established during deliberations with the Board (per status reports, Planning Board minutes of meetings and site walk between September 15, 2021 and August 17, 2022, and any other acknowledgments).**
- 2. Approval and receipt of all other required local, state, and federal permits. There shall be no change(s) to the base plan(s) without re-consultation with the Board, as a result of such other permit approvals.**
- 3. Payment of all fees and costs associated with the Dunbarton Planning Board application process.**
- 4. That all specified work and improvements at the site, as specified by the Land Subdivision Regulations, be completed prior to the signing and filing of the mylar (e.g.: survey monumentation must be in compliance, etc.).**
- 5. Preparation, submittal, and filing of all deeds, legal instruments, and/or documents required or intended to be filed at the Merrimack Country Registry of Deeds, in such content and form acceptable to the Town.**

6. **Assessment of exaction fees to be used toward the improvement of Kelsea Road according to cost analysis revision dated 7-8-22, \$49,217 to be paid by the applicant before the filing of the plan.**

7. **Measurement of well to road for the log cabin house (B6-01-06) to be recorded on the final plan.**

Motion seconded by Alison Vallieres. There was no discussion. Majority vote in favor of the motion; Mike Kaminski was opposed.

Justin Nault returned to the table; Mike Kaminski stepped down.

Ron Slocum said it is not the board's job to be an advocate for any position, and it is not up to the board to advocate for or against the utility companies. He said the board is to make decisions based on all the information received from an applicant, the Board of Selectmen, legal counsel, other boards, and town officials. He said it is up to the applicant to address the matter with the utility company. George Holt said that is good information to use in the board's finding of facts. Chuck Frost said the board is to use all the information that comes in. Ron Slocum said the board needs to heed the legal advice sought from and provided by town counsel. Mike Kaminski thanked the board for persevering and working with him. He said he feels the process was fair overall, methodical, open-minded, and aboveboard, noting the process for assessing exaction fees having been established and used with a couple of recent subdivisions. Donna said she feels the board addressed many elements during the process, there was give and take with the turnaround, a special workshop was held in the beginning to discuss the plan and assist the applicant, another workshop was held to discuss the process of assessing exaction fees, credit was given for the cost of engineering of the turnaround, the town acknowledged the need for the turnaround and took that out of the cost equation, and the resulting exaction fees are costs of doing business. Ken Swayze said he agrees with Ron, it is not our fight and we have never had problems with utility companies on past subdivisions. Jeff Crosby said the town cannot do the turnaround until the plan is recorded because some of the pole relocation involves the area being given to the town. Mike Kaminski asked Jeff if moving the pole in the turnaround area would help this winter. Jeff said the Unitil rep said they need the boundaries of the turnaround marked before moving any poles. Ron Slocum asked if that area is being deeded to the town. Mr. Kaminski said it is, and it would be for the expansion of the turnaround. Jeff talked about the pole relocation for the turnaround and said he cannot do anything at this point.

New Business – None

Other Business - None

Alison Vallieres moved to adjourn the meeting at 7:53 p.m.; seconded by Justin Nault. All were in favor.

Respectfully submitted,

Donna White