

**TOWN OF DUNBARTON, NH
PLANNING BOARD MEETING MINUTES**

January 20, 2021 ~ 7:00 p.m. ~ Dunbarton Town Offices & via Zoom

The chair opened the meeting by stating that some board members were present in the meeting room and others were attending via Zoom. He asked for a roll call.

ROLL CALL ATTENDANCE

Brian Pike (present), Alison Vallieres (present), Chair Chuck Frost (present), Secretary Ken Swayze (present), Jeff Crosby (present), Ex-Officio Dave Nault (present), Ron Slocum (via Zoom)

The chair stated that a quorum is present; Ron Slocum will be a voting member in the absence of George Holt.

Also present via Zoom were Michael Kaminski, Michael & David Guiney, Pat Panciocco, Ed Rogers, and Rob Degan.

BUSINESS

The chair confirmed with the secretary that notices of this meeting were posted on the Town's website and two boards at the Town Offices. Zoom access information was provided to the public.

1. Approval of Minutes: **Ken Swayze made a motion to approve the minutes of the December 16, 2020 regular meeting; seconded by Brian Pike. Roll call vote: Brian Pike – yes; Alison Vallieres – yes; Chuck Frost – yes; Ken Swayze – yes; Jeff Crosby – yes; Dave Nault – yes; Ron Slocum - yes. Approved.**

2. Correspondence/General: None

3. Selectmen's Office Report: Selectman Nault reported that the town-owned house on Kimball Pond Road suffered damage during a storm in December. The town will have asbestos testing done, then plan to demolish the structure because of the extent of damage. The Board of Selectmen are in the budget process; most budgets are coming in at level services other than standard increases.

4. Planning/Building Department Report: Donna reported that the Building Department has been fairly busy and had some interesting situations recently. One new home under construction has an overhead garage door that is all glass which is not tempered as required by code. Mike has been researching options for the builder to meet code rather than have to replace the entire door. A couple who recently purchased a parcel of land has requested permission to use their Airstream camper as a temporary dwelling while the site is prepared, and house constructed. The Board of Selectmen were consulted; a temporary dwelling permit was issued.

Vice Chair George Holt logged in via Zoom at this point in the meeting; he will be a voting member and Ron Slocum will participate as an alternate member.

ZONING AMENDMENTS PUBLIC HEARING

The chair stated there are two zoning amendments to be considered during this public hearing. Donna shared the document on screen so all in attendance could read the proposed text. The chair asked if board members felt each amendment needed to be read in its entirety. Members agreed that the full text of each amendment was read at the last meeting, after several sessions of considering the proposed amendments, so all were very familiar with them. There was no comment otherwise from the public.

Dave Nault moved to waive the reading of the full text of the amendments; seconded by Ken Swayze. Those in the room agreed to the motion, as did George Holt via Zoom.

#1) Are you in favor of the adoption of Amendment #X as proposed by the Dunbarton Planning Board for the Dunbarton Zoning Ordinance as follows: to amend Article 5, Wetland Conservation District with the following changes:

1) Section B - Wetland Conservation District Defined – **replace** ‘adjacent Group 1 soils as depicted on the wetlands soils map in the Town Offices’ **with** ‘contiguous wetland soils’ **and delete** the list of Group 1 soils. **Add** the following paragraph: ‘The Wetland Conservation District Map is based on the current National Wetlands Inventory map and provides a general indication of the location of the larger wetlands in the community. Field verification of the actual Wetland Conservation District boundary is required through a field-conducted wetland delineation.’ 2) Section F - Procedural Requirements – Subsection 1 – **replace** ‘by means of a High Intensity Soils Survey map prepared by a Certified Soil Scientist’ **with** ‘by means of a wetland delineation’. **Add** the following paragraph as Subsection 2: ‘Wetland delineation (identification of wetland boundaries) requires a field-conducted evaluation of soils, hydrology, and plants by a Certified Wetland Scientist, unless exempted under New Hampshire law (RSA 310-A or RSA 482-A or administrative rules Env-Vt 100-800. Three indicators are used to identify wetlands: a. The presence of water at or near the ground surface for part of the growing season. b. The presence of hydric soils. c. The predominance of plants that are adapted to living in saturated soils. Wetland delineations shall be conducted in accordance with current NHDES Wetlands Bureau Rules, as amended.’ **Renumber** remaining subsections. Subsection 4 – **replace** ‘Certified Soil Scientist’ **with** ‘Certified Wetland Scientist’.

Reason: To update the article and make consistent with NH Department of Environmental Services protocol.

Dave Nault said this revision has been a long time coming, and he is glad to see the changes that include replacing soil scientist with wetland scientist. Chuck Frost said the revisions bring the article up to date and more in line with the State’s regulations. **Ken Swayze made a motion to approve the amendment as written and move it to the ballot in March; Brian Pike seconded the motion. All those in the room and George Holt via Zoom were in favor of the motion.**

#2) Are you in favor of the adoption of Amendment #X as proposed by the Dunbarton Planning Board for the Dunbarton Zoning Ordinance as follows: to amend Article 12, Section B. Building Permit Procedure by adding the following: 3. Application - b. Footings/foundations for all new building construction will be certified by a State of New Hampshire licensed land surveyor prior to any further construction. The Building Inspector or his/her agent may waive this requirement if in his/her opinion it is obvious there are no setback encroachments.

Reason: There have been several cases where a structure has been discovered to be in a setback during the construction process. The case then has to go before the Zoning Board for a variance or be moved. Having the foundation/footing verified prior to construction would help avoid this situation.

Alison Vallieres said she feels this is a good addition to the Zoning Ordinance. As a Zoning Board member as well, she said that board quite often sees after-the-fact issues. Dave Nault said this is also addressed in the non-conforming lots section of the Ordinance. Donna explained that this proposal addresses the footing and/or foundation specifically, certifying their location in proximity to the setback

before further construction is done. The certified plot plan mentioned in the non-conforming section of the Ordinance is to verify an entire parcel. **Ken Swayze made a motion to approve the amendment as written and move it to the ballot in March; Brian Pike seconded the motion. All those in the room and George Holt via Zoom were in favor of the motion.**

CONCEPTUAL CONSULTATION

Michael Guiney, Six-Lot Subdivision on Kelsea Road, Map B6-01-05 ~ Surveyor Ed Rogers spoke on behalf of the applicant. He said they were working on this project four years ago, and concerns in subsequent years delayed the project. Considering the feedback initially received, they have come back with some revisions. Mr. Rogers shared the Existing Conditions plan on the screen for all to view. He noted there are 24 acres on the north side of the road and 22 acres on the south side of the road. Per the request of the Planning Office, he has made revisions to clarify frontages, stating all are on the Class V section of the road. He showed the subdivision plan, outlining the frontage and acreage for each lot. Mr. Rogers said he feels the plan is close to substantially complete, and they would like to send out notices ASAP and schedule a formal hearing. They are here for a conceptual consultation to iron out any concerns.

There was discussion about Dave Nault stepping down from the board during this discussion. It was agreed that he would recuse himself from the discussion, participating only during public input. Attorney Panciocco said she was fine with hearing Mr. Nault's comments as long as he is characterized as an abutter.

The chair said board members have seen the plan. George Holt said review comments have been summarized. Donna shared the list as follows: 1. The subdivision does not rely on the Class VI road; it is confusing and has no demonstrated basis. The Class VI road should be removed from the plan. 2. The plan does rely on new frontage located around the turnaround, which is similarly undefined. New road, to Class V standards, would be needed to gain the necessary frontage. 3. Driveway coming off the proposed turnaround would not be approved and should be relocated. 4. Verification of wetlands delineation is required because the referenced survey was conducted more than five years ago. Donna added that the extended wetlands area appears to be contiguous with the brook, enacting the 125' buffer.

Ed Rogers asked what was meant by no demonstrated basis. Mr. Holt said the subdivision needs to be done on a Class V road. He said what is being shown as Class VI has never been on a plan recorded at the registry, it is not being used for this subdivision, so is not necessary. He said he has concerns if the Board allows the road to be on a plan that is recorded, then they are creating a road that wasn't necessarily there in the past. Mr. Holt said this is his view as a Board member and with the plans available to look at. He said it would be saying it is a Class VI road without it ever being on a previous plan. Mr. Rogers stated it is on a recorded plan. He said the condition has existed since the 1820s or 30s. He said the Board is not creating a condition, any decision the Board makes is not creating a road, it already exists. He said he has an obligation to show it on the plan, as there are public rights, even though they are not using it for frontage. Mr. Rogers referred to layout records noted on Sheet 1, Note 7, 5/29/1821, Volume 2, Page 427 of town records. He said it is shown on a boundary plan he recorded. Jeff Crosby stated that Mr. Rogers drafted a boundary survey. Mike Guiney said the road was laid out in 1821, and Mr. Rogers used that record to show this road. He said the road burdens his property and anyone buying a piece of the property needs to be aware of that burden.

Pat Panciocco said the purpose of notifying the public is why things are recorded at the registry. She said Mr. Rogers used evidence on the ground and recorded the plan to protect people who buy land. She said not to show the road is near negligence. Ms. Panciocco said if the Board is not liking the Class VI, her client might agree to the town discontinuing the entire section and wipe it off the map, but absent that, Mr. Rogers cannot legally leave it off the plan. She said the Board of Selectmen created the road in 1821 by eminent domain action. Ken Swayze said a better written dialog is needed,

explaining the legalities of how they feel this Class VI depiction is correct. He said it needs to be something that convinces the Planning Board of the applicant's position on this situation, clarifying their position of the Class VI section. Ms. Panciocco said she could do that. A copy of the layout of Kelsea Road dated 1821 was distributed to the board members. Chuck Frost noted that it refers to a three-year timeframe and a six-year timeframe; he asked how this would still exist. Mr. Rogers it happens if a road is continued to be used long after it was intended to be.

George Holt asked to view the area of the intersection on the plan, speaking about how Mr. Nault gets to his property, no indication of the easement, and concerns of the area not being defined. Mr. Rogers referred to Note 8, saying the easement was established between two landowners and it was not a public easement. He said an inaccurate survey was done in 1987, where the surveyor failed to find the layout for Kelsea Road and the original documents of the easements. He said he has tried to clarify that on this plan by drawing the center line and labeling the width. Discussion continued about the width of the 'cart road', there being two easements, the need for the easements to be clear on the plan, and maybe delineate the easement with bounds.

Mr. Holt said another area of concern is a turnaround for the plows. He urged the applicant to work with the Road Agent to come up with a better plan, allowing the trucks to make a right-hand turn. Mr. Guiney said he would allow a 50' x 50' turnaround in the confines of the right-of-way. He said the town should go out and build the turnaround, noting that Jeff Crosby built it a few years ago after losing the barn turnaround. He said no effort has been made all year long and now there are surveyors down there. George Holt pointed out that the subdivision regulations require a 60' right-of-way. He said he feels that would apply as this is the first time it would be laid out. Pat Panciocco stated the turnaround is an existing public way under statute, and she will explain this in her opinion. Ken Swayze said the Board is entitled to request a wider right-of-way. Ed Rogers said his interpretation is that the 60' is for proposed roads, this is an existing road. He said if the Board feels 60' is required, it is presumably because road improvements are planned if the town has a Capital Improvement Plan. Donna mentioned the Board being able to require road improvements as part of the subdivision approval. It was agreed this can be, and has been, done. Donna said the first plan that was submitted showed the stonewall near the 'intersection' with arrows designating the line of Class V meeting Class VI. There was a question on that because it confused the matter of frontage on two of the lots. Then on a second submittal, the arrows were removed, and the Class V/Class VI line was moved.

There was discussion about the turnaround being shown on the Class VI section, previous applicants making road improvements due to additional traffic, the Board's jurisdiction to ask for more right-of-way for future purposes, and the need for an adequate road system. Attorney Panciocco said this is an existing town road and there is no formal program in town such as roadway impact fees, etc. Ken Swayze said he would like to hear from the Road Agent. Mr. Crosby stated it is common practice to require improvements or exaction fees to be used toward improvements on roads that are somewhat substandard. He noted that Mr. Guiney has expressed several times that Kelsea Road is substandard. Mr. Crosby said one key issue is requesting the Planning Board to acquire land to create adequate turnaround, and some road improvements are needed, whether the applicant does the work at the town engineer's direction or pays an exaction fee. He said this is not an unusual request and he will continue to pursue that as the Road Agent.

Mike Guiney said Mr. Nault applied to build on three non-conforming lots in 2006, then he further subdivided and was not required to pay exaction fees or anything else. He said when Mr. Nault created a fifth lot, he volunteered to pay an exaction fee to replace a culvert damaged by his loggers. Mr. Guiney said he believes Mr. Chicoine replaced the culvert, and the exaction fee has never been spent. He said Mr. Nault never paid anything, he is now not going to get stuck with Kelsea Road being jammed down his throat. Jeff Crosby stated there is no avenue to require exaction fees on existing lots. Pat Panciocco said an existing lot of record with a new house creates the same amount of traffic as a new lot. She said the town has the obligation to apply their regulations to all residents equally. She

said her client is saying this has not been the case, he now wants to do something and is being asked to contribute to the same road someone else uses for access but made no contribution to its improvement. Jeff Crosby said he has stated, as Road Agent, what the highway department wants. Ms. Panciocco said they can talk about some widening for easements but would need more specifics. Mr. Crosby said it would include improvements such as ledge removal and widening at the beginning of the road, as well as an adequate turnaround. He said it would be what is needed to bring it to the Town's Class V road standards. Ed Rogers said it is already Class V, which is a legal status.

Ken Swayze said the need for the turnaround has been pretty well established. Donna shared sketches of three turnaround examples submitted by the Road Agent. Mr. Crosby explained each design. Donna will email the diagrams to Ed Rogers. Members spoke about other subdivisions and related road improvements done around town. Alison Vallieres said the applicant is looking for input and she feels the Board has given them exactly that.

Mike Kaminski spoke about the turnaround needing to be brought up to the Town's Class V standards, width, and length. He also spoke about the independent survey being done of Kelsea Road, as no one really knows where Kelsea Road lays. He said the Road Agent needs a turnaround, with or without a subdivision, to maintain the safety of Kelsea Road. Mr. Kaminski said he feels the designation of the end of Class V is incorrect. Ed Rogers explained that Class V roads are roads you maintain, noting that it wasn't originally but is now that the town constructed it and maintains it. George Holt said the same argument could be made for the former turnaround by Mr. Guiney's barn. Mr. Rogers said the Supreme Court would disagree, the portion by the barn was not in a public right-of-way.

George Holt said he is not against this project; he just asks that they help the Board have the tools to approve it. Mr. Rogers said he would be glad to share his research and details. Referring to plan sheet 3, Mr. Holt explained that the town does not have a setback to wetlands for structures and buildings. Mike Kaminski said if the turnaround is being used for road frontage, it would need to be developed to the town's road standards, maybe less the paving. Ron Slocum asked about legend items on the plan and spoke about upgrading a road and asking for a right-of-way expansion being two different things. Jeff Crosby stated that granite bounds are required on new subdivisions. He said obtaining a 50' right-of-way to a landlocked parcel has been required in past circumstances; that should be kept in mind here. Mr. Crosby said road improvements will be needed, and the matter of creating an adequate turnaround is huge.

Hearing nothing further from the board members or the applicant, the chair opened the discussion to the public. Dave Nault, 34 Kelsea Road, said he would like to address a few points. 1) He asked the surveyor to bring the wetlands sheet back up on the screen. Mr. Nault stated that this property abuts Black Brook, and per the Zoning Ordinance, all contiguous wetlands would have a 125' buffer. He said the plan is showing a 50' setback on two lots to the south side. Mr. Nault pointed out that the house and septic locations would be in the wetland conservation district; it looks like there is plenty of room to adjust those. 2) Mr. Nault said he is not opposed to any subdivision that meets all town regulations. Referring to comments about him breaking out/developing lots, he said all his lots on that road, other than one, were lots of records. He said he paid an exaction fee for the upgrade of Kelsea Road on the one lot that was subdivided. Mr. Nault said if this wasn't a new subdivision, they wouldn't be talking about cutting trees, moving poles, widening the right-of-way, or road issues. He said the town is looking for the upgrade of the road to accommodate new houses and additional traffic. Mr. Nault said the road agent and this board would decide that, noting he feels this should be done before the subdivision, not after. 3) Mr. Nault said the matter of the area of the barn and house went to the top court where it was determined to not be a road by prescription. The court took no position on the location of Kelsea Road. He said the Class VI location is Mr. Rogers' interpretation, others have shown it differently, and he is the only one who has shown it this way. 4) Mr. Nault said it is important to have a proper turnaround, one that would accommodate a grader or school bus, as well as the plows.

Mr. Nault spoke about the Gildersleeve right-of-way that was in place prior to Mr. Guiney owning the property. He said that is binding literature that goes with the property, and the right-of-way should go to where Kelsea Road is determined to be.

Jeff Crosby suggested that members take a ride to Kelsea Road and observe the conditions firsthand. Ed Rogers thanked the board, saying the feedback was very helpful, and they will be in touch.

OLD BUSINESS – None

NEW BUSINESS – None

OTHER BUSINESS

Map C7-02-04, 160 Twist Hill Road – Rob Degan from S & H Land Services explained that their client is looking to purchase this property, and it has been discovered there are problems with the deed. He explained the layout and known history of this (the original lot) and two abutting lots that now have houses. Mr. Degan spoke about a plat from 1974 that Donna found in the office files. There was a letter of intent with the plat, which appeared to be a lot line adjustment between two of the lots. The plat was not signed or recorded based on research. Donna shared both documents on the screen. Mr. Degan said he is looking for some guidance on how to make this correct. Dave Nault suggested an equitable waiver through the Zoning Board. Mr. Degan said the ZBA has no authority to approve subdivisions, that is the purview of the Planning Board. He said there were changes made between 1969 and 1974 that needed Planning Board approval to be created; however, it doesn't appear they ever got the approvals. Ken Swayze said this is beyond the Planning Board; they need a surveyor and attorney, as these lots have been on tax maps for years. Donna said it is not clear how the lots became individual lots. She asked if a boundary agreement would work. Mr. Swayze said that is for them to determine. Jeff Crosby asked if it would be any help if the surveyor crafted a plan for the Planning Board to sign, noting no action required. George Holt said an attorney could take this to a judge and have quiet title assigned. Mr. Degan asked if the Board would sign a plan if he got advice from a lawyer. Mr. Holt said the Board could not sign anything because of the lot size, as it would be approving a non-conforming lot when using today's zoning requirements. Mr. Degan thanked the Board for their time and input.

Having no further business, **Ken Swayze made a motion to adjourn at 8:50 p.m.; motion was seconded by George Holt. All were in favor. Meeting Adjourned.**

Respectfully submitted,
Donna White