

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD DECEMBER 9, 2021

Present: Jon Morse, Anne Whitten, David Ballard, Mark Cahoon, Matt LeConte, CEO, David Galbraith from SMPDC

Absent: Chairman Geoffrey Aleva, Scott Strynar

Also Present: Dwayne Morin, Jack Olea, Michael Peverett from Civil Consultants, Jerry B. Klausman, Joy McIntyre, Jim McIntyre, Kathryn Harrison, Lincoln W. Harrison, Cheryl Hoffman, Shannon Regan, Steven Morse

1. Call to Order:

Vice Chairman Jon Morse will be the Acting Chairman for tonight's meeting. Acting Chairman Morse called the meeting to order at 6:33 pm.

2. Review Previous Minutes: November 18, 2021

Anne Whitten motioned to table the approval of the minutes of November 18, 2021 until the next meeting due to most members not having a chance to read them due to the length of the minutes and the short time that they had to review them. Mark Cahoon seconded the motion.

VOTE: 4-0

3. Current Business:

3.1 Ordinance amendments proposed by the Town Selectboard

- Ordinance 5.2.23 Performance Standards – Drinking Establishment – addition
- Ordinance 3.2 Definition change to the “driveway” definition

Dwayne Morin stepped forward to discuss the proposed Ordinance amendments. He also introduced David Galbraith from SMPDC, who will be our new planner to help us through any of our processes on various projects.

Dwayne stated that there are 2 questions that the Board of Selectmen are recommending to be placed before the voters for zoning changes this coming year. The first question is regarding liquor licenses. He stated that the Town of North Berwick needs to vote to allow liquor licenses to be given out in our town. In previous years, towns have been able to limit the liquor licenses in 2 different ways. The first way is by liquor which is malt, wine or spirits and we could also

limit what we were going to allow. We could allow Class A restaurants, bars, taverns, clubs to name a few. We were able to allow beer to be sold only in Class A restaurants.

Dwayne said that the State did a complete review of liquor licenses last year and of the 580 towns in the State of Maine, 465 of them were in violation. We were one of the ones that were in violation. The State then passed a law that said that any vote by towns before 1984, the State would accept the results of those votes. The vote that we did to allow restaurants to sell alcohol was done in 1997. At that time, even though the State Liquor Commission told us the question that we needed to vote upon, they will not recognize our vote. For the past 25 years, we have been issuing liquor licenses to Class A restaurants because that is what our vote allowed. The State says that, as of July 1, 2022, this will no longer be a valid vote.

Dwayne said that the State gave us some options. One of the options is to not allow liquor to be served in our town. The other option is to go through the process for allowing liquor to be served in the town. However, the parameters have changed. We can no longer choose what type of liquor will be allowed and we are not allowed to pick categories anymore. We can no longer just say that just Class A restaurants can serve alcohol. It will allow for every classification under the State's classification code to be allowed to get a liquor license. The only restrictions that we can do is through zoning.

Dwayne said that we have 1 liquor license that we issue within our town and that is to Johnson's Seafood and Steak Restaurant. If we don't do anything, then they will lose the ability to serve alcohol. The Board of Selectmen have decided that they do not want to take this away from them so they are placing 2 questions before the voters for liquor license that will allow liquor to be sold within our town borders both on Sundays and the rest of the week. This will open up the opportunity for bars and taverns to come into our town. Within our Zoning Ordinance we currently have places defined for bars and taverns, but we do not have any Performance Standards for them. The Board of Selectmen have put together some Performance Standards to adopt. Dwayne went on to read the proposed questions:

Question #1: "Shall this municipality authorize the State to issue licenses for the sale of liquor to be consumed on the premises of licensed establishments on days other than Sundays?"

Question #2: "Shall this municipality authorize the State to issue licenses for the sale of liquor to be consumed on the premises of licensed establishments on Sunday?"

Dwayne went on to read the proposed Zoning questions:

Zoning Question #1: Shall portions of an ordinance entitled "Proposed Zoning Ordinance Amendments" be enacted to require performance standards as set forth in the proposed ordinance in Section 5.2.23: Drinking Establishment Performance Standards?

Dwayne said that what the Board of Selectmen did was take the Medical Marijuana Performance

Standards, duplicated them, and called them Drinking Establishment Standards. He said that things like alarms, safes, video surveillance and locks will need to be done. They will need to comply with health and safety codes. He said that Setbacks from sensitive areas will remain the same. Setbacks will be 1000 feet from any public schools or daycare centers and 300 feet from a park, playground, and church. Dwayne said that these are the setbacks that they have always had for all these types of uses. The Board did add that there will not be any bars or taverns within 400 feet of each other within the town. They also added that there cannot be a bar within 100 feet of a residential area. Dwayne said that drinking establishments are only allowed in the Industrial and Commercial zones and do require a Conditional Use Permit so they would have to come before the Planning Board.

Anne Whitten asked if there was anywhere in town where a drinking establishment could be put that wouldn't be within 100 feet of a residential area. Dwayne stated that there were numerous locations that they could be located in town. Mark Cahoon asked if there was a way to stipulate how many drinks they could serve when the town issues a license. Dwayne said that it is a State of Maine Law so there is nothing that we can do to do that. It is a Liquor Enforcement Law and the town cannot do that. We can only look into the applicant and make sure that they are not a criminal or have any other issues. Dwayne said that once the town grants the permits, it goes to Liquor Enforcement and the State is responsible for all of that. Anne Whitten asked what year the town had become a non-dry town. Dwayne said that, in 1968 the town voted on the majority of our liquor licenses. At that time, we allowed some things and didn't allow some things. In 1990, the town allowed for stores to sell beer in town and in 1997 is when we allowed Class A restaurants and clubs to sell alcohol. In 2017, we updated it to allow liquor stores to be allowed in our community.

Dwayne stated that the 2nd Zoning change is a pretty simple one. For as long as we have had a Zoning Ordinance, we have had a definition of a driveway. The last time that Shoreland Zoning was enacted which was about 6 years ago, there were a number of definitions and the driveway one kind of snuck in. The definition of the driveway before was:

Driveway: a vehicular access-way serving two single-family dwellings or one two-family dwelling, or less.

Dwayne said that with the new Shoreland Zoning definition you are not allowed to have a drive longer than 500 feet, so the definition was changed to:

Driveway: a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

Dwayne said that this definition is now all encompassing throughout our entire town, and it is causing some problems within our community especially as it relates to back lots and accessing back lots. He said that they have been discussing this change for some time now. He had been

discussing it with Roger for about 3 years before he passed away. He said that they would like to change the definition as follows:

Driveway: a vehicular access-way serving two single-family dwellings or one two-family dwelling, or less. In the Shoreland Zoning Districts, the driveway length is restricted to no more than 500 feet in length.

David Ballard asked if anyone that was in violation of this new definition would be grandfathered in? Dwayne said that they would be. Dwayne said that they are finding that a lot of our road frontage has been developed and people are starting to build behind, especially in the Farm and Forest zones.

Dwayne stated that the Planning Board will need to hold a Public Hearing for the Zoning Ordinance questions. He said that the Board can vote to be either in favor or against, but it will go to the voters to decide. He said that the Public Hearing has to happen before 2/8/22 so he is recommending that they hold the Public Hearing on 1/13/2022. This will allow enough time for them to get everything together to be submitted to the Town Clerk for Town Meeting which will be on 4/9/2022 this year.

Anne Whitten motioned to hold the Public Hearing on the Ordinance changes proposed by the Board of Selectmen on January 13, 2022. Mark Cahoon seconded the motion. VOTE: 4-0

3.2 Public Meeting of Adeline's Way Subdivision, prior known as Hagan Subdivision Abutting 166 Somersworth Road – Map 001 Lot 070 & 070A

Conditional Use Application for a Major Subdivision Review – The Applicant is proposing a 7-building lot subdivision on Somersworth Road with 5 of the lots proposed to be for duplex dwellings (2 per lot), 1 lot for public dedication, and 1 lot for the owner's existing home.

Mike Peverett from Civil Consultants stated that he was filling in for Chris Mende tonight. He said that Mr. Mende is still working with Maine DEP and the Army Corps of Engineers. They would like to table any discussion on the project so they can review the Underwood comments.

Dwayne Morin said that the Board had motioned to send the application for 3rd party review, so he sent the plans out to Underwood Engineering. He has included Underwood Engineering's review which has their comments. One thing that is not included in their review is the drainage because it is still being reviewed. He said that when Civil Consultants submitted the drainage calculations, they submitted it as part of the DEP application packet and not as a separate drainage to the town. When he submitted the information to Underwood, the drainage calculations were not included in the review. Dwayne said that they found it and resent the information to Underwood on Monday. Underwood said that they would have those reviews done by January. Dwayne said that the next meeting may be too soon to review this project

because Underwood had a significant amount of comments to review and we still have not received the HOA draft. He thinks they should table it to the first meeting in February.

Anne Whitten motioned to table the Adeline's Way subdivision until the February 10, 2022 meeting. David Ballard seconded the meeting. VOTE: 4-0

3.3 Public Meeting of Curtis Sand and Gravel LLC – proposed gravel pits Stub Marsh Road – Map 009 Lot 039 & 051

Conditional Use Application Review for Mineral Extraction – The Applicant has proposed the development of two mineral extraction locations on including East Pit consisting of 9.5 acres and West pit consisting of 4.2 acres.

Mike Peverett from Civil Consultants stepped forward to discuss this project as well. He said that they would like to table this discussion too. They would like more time to review the comments from Underwood Engineers and the town attorney comments that just came through today. He said that they still have not heard back from Maine DEP. Immediately after the last meeting, they reached out to DEP again and they are still waiting for a response.

Acting Chairman Morse stated that he noticed another letter in their packet from the attorneys from Norman, Hanson & Detroy. He asked Dwayne if they had heard from the town's attorney. Dwayne said that, at the last Planning Board meeting, the Board had asked for Dwayne to submit the letters from Norman, Hanson & Detroy to our town attorney for them to review. He said that the response from our attorney came in today and he gave each of the members a copy for their review. Dwayne stated that the letter from Norman, Hanson & Detroy was a request from the neighbors to produce an environmental report for endangered species for both flora fauna and animals. The summation that the town attorney is stating is that this is not something that the Planning Board would typically ask for. They would ask the applicant to do this through their DEP process because there are State and Federal laws, and the Planning Board has no jurisdiction over those. Knowing that it is an environmentally sensitive area, our attorney is recommending that the Planning Board, prior to any approvals being granted, direct the applicant to provide us with permits from the State and Federal governments basically addressing these concerns. Dwayne said that the applicant will have to do that anyway through their DEP permitting process. They will be involved with Inland Fisheries & Wildlife and federal agencies as it relates to endangered species for flora fauna and animals.

Anne Whitten asked Mr. Peverett if the applicant had sent out to get the answers that is being requested by the neighbors. Mr. Peverett said that the only permitting authority for this project is the DEP with the Notice of Intent. Dwayne said that they will have to also obtain a DEP Excavation Permit. Mr. Peverett said that they were told they only needed the Notice of Intent, but Dwayne said that is not what our attorney is saying. Mr. Peverett said that it is an existing permitted pit, and they are modifying it so that is why it is a Notice of Intent where they just pay a fee.

Dwayne said that in his capacity as Road Commissioner, he did review the project and has some additional comments. David Galbraith from SMPDC has put together a draft Findings of Fact and they have received Underwood's preliminary comments. Dwayne said that the Planning Board should send these off to Civil Consultants so they can start addressing the comments. Dwayne has also submitted a memo to the Planning Board for their review. The first thing that he mentions in the memo is for the Planning Board to require the applicant to respond in writing to the comments made by Underwood. He also recommends that they follow the town attorney's opinion as it relates to the legal questions regarding the environmental concerns.

Dwayne stated that there are a couple of notes on the plan that need to be addressed. On Note #5, there is a statement as it relates to crushing and there has been some question as to whether crushing is allowed within our town. The town has allowed crushing in the past with the Gerrish Pit, Putnam Pit and Quint Pit locations. Crushing has to be done in compliance with our Noise Ordinance. If the Planning Board is going to allow crushing in this pit, the note should be changed to state that it is in compliance with Noise Ordinance which means that they cannot have more than 70 decibels at property line measured 4 feet above the ground. Anne Whitten asked him why this would have to be noted on the plan if it is an actual Ordinance. Dwayne said that the Board can opt not to allow crushing. Also, by adding the note, it makes it very clear that it is a requirement for the applicant. Dwayne said they may also want to consider crushing hours. Even though there are decibel limitations as it relates to those types of activities, setting up hours would be beneficial to the neighbors.

Dwayne said that the other note to review is Note #17. On the plan, it appears that they are planning to process off-site material within the pit. He can find nothing in our Ordinance that allows for that to happen within the Town of North Berwick. They are allowed to process what they have in their pit, but they are not allowed to bring in material and process it within that pit. Their note currently states that as long as they get DEP permit to process off-site, they would be allowed to do so. He said that the applicant is here to obtain an earth removal conditional use permit, not an earth processing one. He is recommending that Note #17 be changed to read, "No off-site material may be processed on this site."

Dwayne stated that they have a 5-acre limit line on the plan. He knows that the DEP allows for a 5-acre open pit, however the Town of North Berwick does not allow it. We only allow for 3 acres to be open at any one time. When they start the 3rd acre, they need to start reclaiming the previous 2 acres. He said that their Note #7 on the plan actually states the 5-acre limit. Dwayne said that they should remove this limitation line from the plan. When they submit their plan to the DEP, they can have it on that plan but it should not be on the town plans that the town is reviewing.

Dwayne said that as Road Commissioner he has to look at the trucking methods and routes that are being proposed by the applicant. They are proposing that all loaded trucks will be covered to prevent dust and contents from spilling or blowing from the load. The truck route will be southwest on Stub Marsh Road to Dillingham to intersection with Lebanon Road. In his capacity

as Road Commissioner, he finds this is an acceptable method, route, and traffic flow. Mr. Peverett said that he didn't think that this was the only way that they stated that the route would be for the trucks. Dwayne said that this is what is written on the plan and that is what he would approve. He said that if they are planning to do something else then they need to submit it to Dwayne for approval.

Dwayne stated that he saw from previous discussions that a question was raised about limiting truck trips on this project. He reviewed other gravel extraction projects within our town, and we have never limited truck trips within our community. He has some concerns about limiting truck trips. He said that if we limit truck trips, it will extend the life of the pit. Also, by establishing some sort of condition or restriction, you want to make sure that it is enforceable. Enforcing a truck trip limit will be extremely difficult as it relates to staffing for our community. We have only 1 Code Enforcement Officer. The most effective way to limit the number of trips is to limit the hours of operation.

Dwayne stated that the Planning Board will need to establish a performance guarantee for the reclamation of the project. Like we have done in the past, we have asked Underwood Engineering to provide us with that estimated cost for the performance guarantee. He said that Underwood is still in their review in creating a cost that they feel would be appropriate for restoration costs for the reclamation of the pit.

Dwayne said that there are some concerns regarding Road Construction and Underwood addresses those in their comments. However, there was a request for an installation of a stop sign at the end of Stub Marsh Road. He spoke with the Police Chief to see if the stop sign would have any enforceability. He was told that a stop sign on a private road does not have any enforceability. The only thing the Police could enforce is if a vehicle is leaving a private road and entering a public road, they must yield to traffic on the public road.

Anne Whitten motioned to table the Curtis Sand and Gravel project until the February 24, 2022. Mark Cahoon seconded the motion. VOTE: 4-0

4. Other Adjustment:

There was not other business at this time.

5. Adjournment:

Anne Whitten motioned to adjourn the meeting at 7:25 pm. Mark Cahoon seconded the motion. VOTE: 4-0

Matthew LeConte
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

David Ballard

Scott Strynar

Mark Cahoon