

**TOWN OF TUFTONBORO
PLANNING BOARD
September 5, 2019
MINUTES**

Members Present: Matt Young, Chairman, Tony Triolo, Vice-Chairman, Bill Marcussen, Selectmen's Representative, Kate Nesbit, Gary Qua, Members.

Members Absent: John Cameron, Laureen Hadley, Members.

Staff Present: Lee Ann Hendrickson, Administrative Secretary.

Other Present: Justin Pasay, DTC, Planning Board Counsel.

Chairman Young opened the meeting at 7:00 PM at the Tuftonboro Elementary School.

I. Public Comment

None.

**II. Consideration of Minutes
August 15, 2019**

Corrections: Page 3, 2nd paragraph, 2nd sentence; add "Northpoint Engineering" following "Horizons Engineering"
Page 3, 3rd paragraph; strike paragraph

It was moved by Tony Triolo and seconded by Gary Qua to approve the August 15, 2019 Tuftonboro Planning Board minutes as amended. All members voted in favor. The motion passed.

III. Scheduled Appointments/Public Hearings

**David Winchester, Donald Winchester and John Winchester and C&R NH Realty Trust, LLC
Tax Map #40-2-1
10-Lot Subdivision**

Matt Young stated a member of the public at the previous public hearing for the application felt that he has a conflict because he owns a marina and someone could rent a dock/boat slip from me. He stated he spoke with Planning Board Counsel on the matter and feels there is no conflict; noting he does not have a financial interest in the application. He stated that while possible someone who purchased a lot could do business with me in the future the same could be true of any tradesman. Therefore, he requested an advisory vote of the Board regarding such.

It was moved by Kate Nesbit and seconded by Bill Marcussen to determine that Matt Young does not have a conflict of interest in the David Winchester, Donald Winchester and John Winchester and C&R NH Realty Trust, LLC application. Kate Nesbit – yes, Bill Marcussen - yes, Tony Triolo - yes, Gary Qua - yes. Matt Young abstained. The motion passed.

Tony Triolo stated the same member of the public also stated that he had a conflict. He stated the State classifies a real estate agent as an independent contractor. He stated he has no personal or financial gain as a result of the decision and as such, will not recuse himself. He requested the Board affirm such.

It was moved by Kate Nesbit and seconded by Bill Marcussen to determine that Tony Triolo does not have a conflict of interest in the David Winchester, Donald Winchester and John Winchester and C&R NH Realty Trust,

LLC application. Kate Nesbit - yes, Bill Marcussen - yes, Matt Young – yes, Gary Qua - yes. Tony Triolo abstained. The motion passed.

Scott Frankiewicz stated the proposed subdivision has been reduced from twelve lots to ten lots. He stated the original proposal included a land area of 13.58 acres however, it has been determined that the lot size is 13.4. He noted Doucet Survey had previously determined the acreage to be 13.3 via aerial photography. He stated the plan needs to be revised to reflect 13.4 acres. He stated the reference line has been more accurately delineated and noted the largest lot is 91,000 SF and three of the lots are under 53,000 SF. He stated the frontage ranges from 150' to 423'. He stated further research was done on the easements; noting a 10' easement along the power lines to NH Electric Co-Op currently exists on the site. He stated in addition to such, a condition has been proposed to add another easement along the property line going north to that each lot could access power. With regard to test pits and data, he stated all has been updated and added to the plan. He stated two different datum exist (29 and 88); noting the FEMA maps are an 88 datum and showed a reference between the two datum on the plan. He stated the flood plain elevation for Lake Winnepesaukee is 506 and the flood plain elevation for the full lake elevation is 503.8288 therefore, every lot on Lake Winnepesaukee has some form of flood plain on it. He stated the island has a very abrupt shoreline and noted the plan depicts the 506 contour and flood plain. He stated NH Electric Co-Op has since gone out and tested the line and submitted a letter to the Board stating the line is in good working condition. He stated Fish & Game went to the site and didn't find any loon or eagle nesting sites and there were no impacts as part of the NH Heritage Bureau review. He stated the only other approval needed is State Subdivision approval; noting any NHDES shoreland permits would come after the fact when the lot is developed. He stated State Subdivision approval typically takes 30-60 days. He noted the application does not object to extending the 65-day clock and will provide such in writing.

Matt Young requested a written waiver for the extension of the 65-day rule. He stated the Board previously discussed contracting a third party engineering review of the application; noting the applicant agreed to such. He stated Gary Qua researched third party engineering firms and requested Mr. Qua to speak to such.

Gary Qua reviewed his research on engineering firm candidates, see attached. He noted the proposal from Horizons Engineering is more detailed and in depth.

Tony Triolo stated Horizons Engineering has the necessary resources to review the project.

Matt Young stated he has worked with Horizons Engineering for permitting issues; noting they are superb to deal with. He noted the firm has extensive experience with Municipal wastewater systems and RIB systems.

Bill Marcussen stated Horizons Engineering has all the necessary disciplines in-house.

It was moved by Tony Triolo and seconded by Kate Nesbit to contract Horizons Engineering for the peer review of the David Winchester, Donald Winchester and John Winchester and C&R NH Realty Trust, LLC application. All members voted in favor. The motion passed.

Andy Sullivan submitted a signed extension of the 65-Day rule from Randy Owen and Cynthia Pratt. He stated an Alteration of Terrain Permit is not required due to the lack of disturbed area and review by the Army Corps of Engineer is not required and not applicable. He stated the NHB report of July 16, 2019 did not report occurrences of sensitive species. He stated the NH Preservation Alliance indicated there is no loon nesting on the site (potential for such but, no current loon nesting). He reviewed the criteria for Regional Impact and stated the first criteria asks if the proposed residential subdivision increase more than 25% of the dwellings of the Town. He noted the Town has approximately 2200 dwellings, half of which are full time and the other half are seasonal. He stated per the Town's Master Plan, page 83, the zone provides for protection of water quality and wildlife habitat. He stated the Camp has expressed its concerns but also wants to buy the property; noting Camp Belknap has made an offer to the Winchester family for substantially higher than what the applicant has. He stated his client is running against the clock and time is of the essence with the original Purchase and Sales contract. He asked for appreciation of the timing involved.

Matt Young asked who owns the electric line.

Randy Owen replied NH Electric Co-Op.

Matt Young asked who would repair the line / who has liability for such and who would pay for the repair.

Randy Owen NH Electric Co-Op; noting he would confirm such. He stated it is the same line and specification except newer and shorter than the line servicing 140 homes on Bear Island.

Andy Sullivan stated NH Electric Co-Op owns the easement and owns the line.

Matt Young stated he wants such spelled out – where the responsibility of NH Electric Co-Op (NHEC) begins and ends and a maintenance agreement for the line that extends beyond the NHEC's responsibility.

Randy Owen stated NHEC will own the line; noting they indicated that if he were to go aerial then he would own it however, if he opts for direct burial and use vaults then NHEC owns the line and the vaults. He stated he would get confirmation of such in writing. Relative to parking, he stated there is available parking on the side of the road on Route 109 now that it has been opened up (noting however, that parking is not necessary).

Matt Young stated he has always heard that the highwater mark of Lake Winnepesaukee is 504.32 however, Mr. Frankiewicz mentioned it is 504.82. He questioned such.

Scott Frankiewicz stated there are two datum that are referred to – 88 and/or 29; noting there will be another datum coming out in 2022. He stated the datum 29 is 504.32 and the flood plain is under 88; noting the data he had was under 88 therefore, he adjusted the full lake elevation to the 88 datum and noted such on the plan so that it is relative to everything and to each other. He stated there is not a mixture of 88 datum and 29 datum.

Gary Qua confirmed that all the data presented in the letter from Jim Rines, White Mountain Surveying & Engineering, dated 7/8/19, has been corrected and the plans updated. He asked how the concerns noted in the letter from Cynthia Balcius, Stoney Ridge Environmental, dated 7/11/19, has been addressed (specifically reference to group 3 soil types using test pits in 8% slope).

Scott Frankiewicz stated slope was the issue with regard to the comments made in the Stoney Ridge Environmental letter. He stated there was a comment regarding the tie-line; noting there is still a tie-line on the plan that is 147 however, frontage on the reference line is 150' (the cottage lot).

Gary Qua stated the letter from Stoney Ridge Environmental questioned the soil test pits recorded for the application (lots 5-12), specifically the names of the soil types and that the shallow water was shown at 32".

Scott Frankiewicz stated the soil types were taken off the test pits; noting such is not required by NHDES. He stated the NRCS soil types have been included.

Referencing Lot 2 and the location of the septic system 4K area, Gary Qua asked why the location wasn't moved further back on the lot.

Scott Frankiewicz stated when the test pits were done the location was part of the original layout. He noted that when the lots are developed new test pits would be done.

Gary Qua stated that when the lot is developed the area of the septic system could be improved on and moved further back. He stated that Lot #2 does not appear to have the 250' shoreland setback properly drawn. He stated the shoreline from Camp Belknap on the Southwest side of the lot falls within the 250' setback and that the line needs to be down correctly.

Scott Frankiewicz stated he would review such and verify the setback line for accuracy.

Matt Young opened the meeting for public comment.

Karen Simus, Haverhill Acres Road stated she wants to make people aware of the number of organizations and volunteers that address water quality in 19-Mile Bay; NH Lakes Association, Lakes Region Conservation Corps., NHDES weed watchers, Lay Lakes Monitoring Program and Lake Winnepesaukee Association. She expressed concern for water quality of 19-Mile Bay and requested a third party engineering review.

Frank Gardner Sr., 4 North Point Chase Road, stated that loons don't always nest in the same location every year and noted the island is a viable area for the loon to nest.

Matt Young stated he walked the entire island with a NH Fish & Game Biologist. He stated it was the opinion of the biologist that only two suitable places existed for a potential loon nesting site; noting one area is 18" wide behind a big boulder and the other site is located in the cove in the area of Camp Belknap's canoe launching site. He recommended a buffer to the latter location.

Scott Frankiewicz stated the area is noted on the plan as potential loon nesting site and to take extra precaution. He noted a wetland surround that area and the setback to the wetland is 50'.

William Laase, 5 Bay Road, reviewed and submitted information from winnepesaukeegateway.org and the Moultonborough Bay Inlet Watershed Municipal Ordinance Review, see attached. He requested a third party engineering review and stormwater management review.

Francis Laase, 5 Bay Road, reviewed the history of loon breeding; noting it's a productive area. He stated Moultonborough Bay produced four loon chicks last year and one this year.

John Cooley, Loon Preservation Committee, stated the Committee have worked with NH Fish & Game and volunteers to track loon activity in 19-Mile Bay since the 1970's. He stated over that time the 19-Mile Bay territory has been one of the most productive territories on Lake Winnepesaukee (top 5 territories for tracking loon chicks). He stated in general they have found in NH that loon productivity and the presence of loons on a lake is negatively associated with shoreline development and land use. He stated a busier lake is harder for loons to be viable and is the basis for their general concern of shoreline development. He stated given the limited remaining undeveloped shoreline on Lake Winnepesaukee and Tuftonboro their concern was elevated about the prospect of the island being developed. He stated the setbacks noted on the revised plan is encouraging with regard to the underlying concern however, may not address the management issue if the island has ten houses and docks on it. He stated the cove and shoreline on the east side of the island and between Farm Island, Chase Island and the main land is a consistent brooding area for the territorial pair when they do hatch young and undeveloped shoreline along the island increases the chance of feeding and rearing their young. He stated by the middle of August this year there were only 3 loon chicks on Lake Winnepesaukee. He recommended consideration be given to fewer lots, greater setbacks or designating a limited number of access points at the shoreline.

Matt Young questioned the state of the loon population.

John Cooley stated the loon population in NH as a whole has gradually and slowing been making its way back from the 1970's. He stated the number of loons have tripled since that time and are headed in the right direction.

Bill Marcussen questioned the number of loons and chicks in the loon population.

John Cooley stated there are 314 breeding pairs (counted this year) of loons throughout the State and approximately 140 loons chicks have survived this year (continuing to review data).

Matt Young asked how many chicks are born on shorelines as opposed to platforms.

John Cooley stated a quarter of the loon chicks that are hatched come from the loon rafts that are put out.

Gary Qua questioned the number of chicks on Squam Lake this year.

John Cooley replied four surviving chicks.

Gary Qua questioned the number of chicks on Squam Lake last year.

John Cooley replied about the same.

Randy Owen questioned the location of the second nesting area that was found by the Fish & Game Biologist.

Matt Young replied on the Belknap side of the island.

Randy Owen questioned the activity near and around the nesting area.

Matt Young stated the activity level was heavy; noting the area is next to the location of the Camp's canoe landing area.

Greg Moore, 5 Greenwood Road, stated Camp Belknap has a backup offer on the property. He stated there is a current signed Purchase & Sales Agreement by the applicant and assumes there is an expiration date on the agreement. He recommended letting the expiration date run out to allow for Camp Belknap to buy the property.

Sue Moore, 5 Greenwood Road, requested additional information on parking. He stated she disagrees with the statement that there is enough parking; noting the beach area has become more active and there has been an increase in trucks and trailers along both sides of the road.

Matt Young stated he'd like to respond to Mr. Moore's comment with regard to the Planning Board delaying until the Purchase & Sales Agreement runs out. He stated the Planning Board treats every application the same and intends to do the same with this application. With regard to Ms. Moore's comments about parking, he stated he drove to Pier 19 to monitor the situation on the Saturday following the first meeting on this application due to the number of comments made at the meeting regarding traffic and safety; noting it was 95 degrees on that Saturday. He stated there were cars parked on both sides of the road; noting such was alarming due to potential safety issues. He stated he also drove to the Town parking lot; noting the parking lot was virtually empty. He stated there isn't a lack of parking but rather an enforcement issue.

Sue Moore stated she is concerned about the traffic and noted that the Pier 19 store might be opening.

Andy Sullivan stated there may be an enforcement issue however, such is out of the control of the applicant. He stated other people, other than island people, park along the sides of the road.

Maureen Forbes, Currier Lane, expressed concern about the amount of trash on the side of the road; noting such has magnified over the past couple of year. She stated the fence near the public beach changed. She stated there at times is a visibility issue coming out from the Town beach because of the trailers.

Matt Young agreed regarding the safety issue however noted that such is an enforcement issue and not a lack of parking. Relative to the boat ramp usage, he stated he researched the utilization rates for valet from several marinas in the area; noting it is one of the highest utilization rates for the summer.

Barry Ennis, Sawyer Road, expressed concern for the parking. He stated the ten people that are going to buy the houses are probably already here and already have boats here. He asked those who own waterfront property have only one boat; noting that having more than one boat is also an issue.

Suzanne Brunelle, Devine Millimet, representing Camp Belknap, stated this application from any other application should be treated the same and a traffic study would not be unreasonable to request such. She stated tree cutting hasn't been covered and requested an environmental study and a traffic study.

Jackie Williams, Chase Island, disagreed with the statement that parking is not an issue. She stated she is a full time resident and everyone is parking in the Pier 19 parking lot. She stated it is absurd to sell ten lots on an island and have people scurrying around to find a place for their boats and trailers. She stated she doesn't believe the Town parking lot is a full time lot for property owners rather, it is a temporary lot and a permit is required. Therefore, she stated there is no facility or place for people to park. She stated the parking issue needs to be very carefully looked at.

Mary Jane Smith, North Chase Point Road, stated the area is a special and wonderful place for all. She related a story about the introduction of Camp Belknap by a father to a son.

Don McWhirter, 10 North Chase Point Road, requested to show a video (https://youtu.be/EAqexY8nC_Q) that depicts excessive congestion on the lake, excessive noise and excessive traffic from Camp Belknap. He stated ten houses have less impact than the Camp owning the entire island; noting he would prefer to see the island developed with ten houses. He stated 50-60 kids are shipped to the island and camp out overnight without bathroom facilities or permits and there are a hundred kids in the bay.

George LeClair stated Camp Belknap has been there for 100 years and doesn't feel it impacts the area. He stated the indication that the increased traffic at the Camp is a continual event is false.

Randy Owen stated with the current rules he is doing everything exactly the way it should be done; noting Farm Island is located in a residential zone. He stated Camp Belknap has ten platforms of impervious surface that is built within 250' of the shorefront. He stated Camp Belknap continues to ignore the laws. He noted one of the loon nesting areas is located next to the canoe landing. He stated Camp Belknap is trying to delay the process. He stated he does not want to develop the island to its fullest extent or exploit it; noting he is interested in a family compound for he and Cindy's children. He stated they are moving forward with Farm Island.

Glen Cordelli, State Representative from Tuftonboro, stated there is no need for the applicant to make a personal attack against Camp Belknap and requested control of the meeting.

Barry Ennis showed the public a tax map of Chase Island and Farm Island; noting Chase Island has 31 lots and is a smaller island than Farm Island. He submitted the tax map to the Board.

Seth Kassels stated it is the expectation of Camp Belknap that the Planning Board does its job. He stated he was not aware of the potential loon nesting site until one month ago; noting the canoe site will be moved.

Ron Albert, 19 Winnishores Road, stated parking is an issue and recommended more space be created. He stated several people have requested an environmental review, parking study and mitigation study; noted he endorses such. He stated he asked members of the Planning Board how the issues beyond the surveys, plot plan and septic systems get adjudicated and the response was they would hire a third party engineer. He stated he objects to such; noting the issues are larger than that (parking, boat traffic, septic outflow going into 19-Mile Brook, loss of habitat). He stated Farm Island is the last sizeable unprotected, undeveloped island on the lake. He stated there is money out there that could be raised to buy the property and preserve it and suggested the Town buy it.

Andy Sullivan stated he has participated in hundreds and hundreds of subdivision applications; noting that environmental and traffic studies are not always requested and depends on the context and size of the subdivision. He stated there are objective elements that can be analyzed and decided upon by the Planning Board and third party engineer. He stated there are many other subjective elements however, the Town has to review the objective elements and doesn't feel those studies are necessary for the project. He stated right

now there is a binding contract in place and the Town is not going to buy it. He stated the application is for a 10 lot subdivision and the island is owned by the Winchester family, not owned by the public, not owned by the Town. He requested respect of the applicant and the proposal; noting it is a contracted property that the applicant has the right to buy it and use it in a manner the Town, the law and the State allows.

Ron Albert stated his suggestion is for the Board to find experts in parking and water quality issues.

Guy Pike, 107 Middle Road, stated Attorney Sullivan referenced the Master Plan and noted the Master Plan was due to be updated in 2016 and it is now 2019 and there is no updated Master Plan therefore, don't expect the Board to do anything in a reasonable amount of time.

Referencing Regional Impact, Matt Young stated the Board has been requested to consider the application as a regional impact. He read RSA 36:54, 36:55 and 36:56. He stated the Board has been presented with an overwhelming amount of information and asked the Board

Kate Nesbit stated it would be better to refer the application to the Lakes Region Planning Commission (LRPC) because the development is on the lake and it would be better to err on the side of more input.

Gary Qua recommended review by LRPC.

Bill Marcussen stated it may be another complication in the process however it provides for another set of individuals with the expertise to provide input.

Tony Triolo stated he doesn't feel it qualifies as a regional impact however, due to the controversy he recommends it.

Matt Young stated in his mind it's important that everyone is treated the same and he is reluctant to deem the application as having a regional impact when the Board has reviewed numerous larger subdivisions and excavation operations and have not asked for such.

Andy Sullivan stated a regional impact is something the Board decides not based on controversy but rather how the subdivision affects the region and not how it affects the Town. He referenced the Master Plan and stated he doesn't see a regional impact and how ten lots affect other municipalities. He stated controversy is not a legitimate criteria to determine regional impact. He provided examples of what would be determined as a regional impact.

Matt Young stated how the subdivision affects water quality is an issue; noting it is important to receive input from other towns.

Gary Qua stated the water quality statistical letters from the public will also be addressed by the third party engineer. He stated if the subdivision impacts water quality then it does impact other municipalities.

Matt Young stated the Board received a lot of information regarding water quality with no refuted data to offset it.

Bill Marcussen stated the water in the Town is carried outside of the boundaries of the Town. He stated he doesn't feel he is qualified to say whether the proposed subdivision would or would not have an impact.

Kate Nesbit agreed with Mr. Marcussen.

Bob Bahr, 88 Chase Point Road, stated the Town is waiting for a report of Wolfeboro's gray water going through 19-Mile Brook and 19-Mile Bay; noting the effects of such are unknown.

Scott Frankiewicz stated the proposal is for a subdivision; noting the property is not being developed at this time. He stated at the time of development, such will be governed by NHDES and water quality will be reviewed by State agencies.

Suzanne Brunelle stated she is a member of a regional planning commission and noted RSA 36:55 cites six factors for the Board to consider; noting water quality is included as a criteria. She stated the RSA also states that if the Board is not sure, to err on the side of caution. She recommended review of the RSA.

It was moved by Tony Triolo and seconded by Kate Nesbit to deem the David Winchester, Donald Winchester and John Winchester and C&R NH Realty Trust, LLC 10-Lot Subdivision application as a regional impact. All members voted in favor. The motion passed.

Ron Albert stated he doesn't like the plan to chop up the island into lots. He stated this could all be brought to an end if the property is purchased and left as it is. He stated to the applicant not to underestimate community opposition.

Member of the public stated the project has an impact on the Town.

It was moved by Kate Nesbit and seconded by Gary Qua to continue the David Winchester, Donald Winchester and John Winchester and C&R NH Realty Trust, LLC application and public hearing to October 3, 2019. All members voted in favor. The motion passed.

Fran Laase asked how much more 19-Mile Bay can take; noting issues with Wolfeboro's RIB and contaminants from the fire at Pak 2000. He stated he has seen an increase in aquatic growth. He asked the Board to allow for the study to be finished to see if there is anything that can be done to mitigate the issues.

IV. Action Items

N/A

V. Discussion Items

N/A

VI. Informational Items

N/A

VII. Other Business

N/A

VIII. Public Comment

None.

It was moved by Tony Triolo and seconded by Gary Qua to adjourn the September 5, 2019 Tuftonboro Planning Board meeting. All members voted in favor.

There being no further business before the Board, the meeting adjourned at 9:08 PM.

Respectfully Submitted,
Lee Ann Hendrickson
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