

Town of Tamworth

Planning Board

*** PLANNING BOARD Word Session MINUTES ***

July 11, 2012

Meeting was called to order at 7:02 pm at the Town Office

Members Present: Dom Bergen Chairman, David Little, Steve Gray, Nicole Maher-Whiteside, Becca Boyden, and Jim Hidden, Selectmen's Representative

Members Absent: Skip Nason

Alternates Present: Pat Farley, Tom Peters

Alternates Absent: Dave Cluff, Peter Vanderlaan

Pat Farley was seated for Skip.

Public Hearing for Chocorua Valley Lumber Wetlands/SUP Application, Ossipee Mtn Hwy, Map 205 Lot 002, Map 206 Lot 040&041, continued

The hearing was reopened at 7:04 pm.

Brandon Giuda, legal representative for CVL (Chocorua Valley Lumber) spoke regarding the fact that there are no analogies between this case and Club Motor Sports. This is a unique situation. He feels that if the board disapproves this application, they will be in conflict with the Board of Selectmen. Over 50% of the alleged violations occurred before 1991, when there was no SUP. He feels that under section J enforcement, the Selectmen are the ones who craft the remedy, and that the Planning Board is advisory at this point. The Board is authorized to grant waivers. He sees the following options: consider SUP, once at enforcement, PB is advisory, or, grant the waiver.

Tom P feels that article J of the wetlands ordinance directs that it is the responsibility of the Board to recommend a course of action. In a past case regarding Lloyd Rhodes and unsuitable gravel, the Selectmen hired an engineer and acted from there. This is not for the Planning Board to decide. The PB should recommend to the Selectmen that they hire an engineer to review the plan and make recommendations. Upon approval by the Selectmen, the Planning Board would be in the position to issue the SUP for remedial action.

John Mersfelder questioned the applicability of the SUP. He questions whether the RSA permits the actions.

Rick Van De Poll - There is a convergence of opinion whether the PB is able to deliberate this application. The conditions of J2 can not be met by this application. The Planning Board will not be off the hook on precedents.

David states that RSA 676:17 referenced is only about penalties.

Steve feels that the restoration plan is the best practical way to restore the property ASAP, but that perhaps this work requires 2 separate SUPs.

Brandon states that he is not suggesting that you deviate from the voters wishes, but that there are 2 other options.

The Conservation Commission is agreeable and in support of the plan.

Becca has concerns about what work was completed prior to the ordinance, but feels that this SUP must be considered under our current ordinance. This application is asking for permission to make impacts permanent.

Tom P states that following his suggestion will meet the requirements of the ordinance, and give a means for remedial action to be approved, as well as a means by which you can evaluate the remedial action.

Becca states that this application does not apply to the remedial work.

Nicole asks if this SUP meets the requirements for our ordinance. We are not the enforcers.

Becca feels that by submitting the SUP, CVL has acknowledged those areas as wetlands.

Jim asked if the applicant applied because they felt they were encroaching or because they were afraid it would come back. Brandon replied that the Selectmen indicated it was needed.

Tom P stated that the PB could delay their vote until the Selectmen approve a plan that includes the remediation of the property and ability for a separate party to evaluate. The SUP could be granted at that point.

Brandon told the Board that the Army Corp and DES have already reviewed the plan. The State approval is pending, in consideration of the Conservation Easement and the eastern access (permanent vs. temporary).

Daymond Steer, reporter for Conway Daily Sun, asks what the issue is, since they want to fix the property. He feels that the PB is in the position to approve the plan.

Steve replied that there are questions as to whether the plan meets the requirements of the ordinance.

Tom P feels that the approval should be issue for remedial actions only.

The public comment session was closed at 7:51 pm.

The Board began deliberations.

David feels that there should be a poll of the members for the topics they would like to discuss. He would like to then evaluate and apply the ordinance to the application in front of us. He also notes that we observe the Supreme Court suggestions on voting. He would also like to seek the advice of counsel.

POLL:

David – the after the fact nature of the application, restoration, the 25' buffer impacts, and the temporary access

Pat – plan for added wetlands, 25' buffer, and question as to why Conservation Commission has approved but we still have questions.

Becca – OK with topics previously listed

Nicole – nothing to add

Steve – nothing to add

Jim – as PB we don't have the authority of remediation. This is to consider the SUP and treat these as 2 separate issues.

Dom – concerns about working in wetlands that no SUP has been requested for, and accessway

Nicole feels that we clearly have a problem with the after the fact issue but it is not the PB's issue to solve. She feels that the PB, Selectmen, and Conservation Commission should form a committee to work on this.

Becca is in agreement with Nicole.

David feels that the after the fact is not an issue at all. According to State RSAs, it is OK to apply after the fact but it doesn't prevent the State from doing enforcement. The ordinance rules have to apply. He sees two outcomes: the application meets the criteria or, if it doesn't, the impacts need to be removed.

Steve feels that Tom P has a point.

David states that an after the fact application means that there has already been a violation.

Becca feels that the PB jurisdiction is very narrow here.

Steve wants to know if the remediation can be done if the SUP is denied.

David says that the permanent impacts are not part of the restoration plan. We have to deal with the complete set of impacts. We may have to strongly suggest that they modify this application. David recommends modifying this application to include all areas being worked in. The restoration plan should be in front of us. Future construction for remediation should include the buffer impacts.

Becca agrees.

Jim feels we are beating a dead horse.

Nicole feels we should discuss the waiver for the buffer, and that we should consider the recommendations of the Conservation Commission. We are here to help the applicant. We need to stay focused on what our job is. This plan is a solid plan. We need to move forward in the most effective manner that we can, and be helpful to the applicant. She clarified that David feels the applicant should include all wetlands and get a waiver for the buffers.

Becca wants to know where under the ordinance, is the temporary access applied. This should fall under E.1.a

David states that they could have applied under E.1.c

Steve wonders if the chairman would entertain a motion to amend the application to apply under E.1.a instead of E.1.c

David says that the Supreme Court did not say we couldn't consider that. E.1.a asks if it is minimized. E.1.c states that it must meet the 7 criteria.

Becca feels that e.1.a could be used to apply for the accessway, and not have to meet the stricter standards. This may need to go back to the Conservation Commission if it is amended. She also notes that the application refers to many more wetlands that are not shown on the plans.

Steve feels that Tom has an intriguing idea by focusing on Section J. Once we have an approved plan, we could issue the SUP to do the work.

The Conservation Commission is saying that the restoration plan is a good one.

Dom asks if the Board wishes to move forward with this application, or if they would like to recommend that the applicant amend the application.

David feels that this would be premature. We need to go forward with what we have been given.

Becca would like to go through the intents and purposes individually.

Steve doesn't know which SUP he would be voting on.

David states that we would apply the ordinance to the SUP that is in front of us.

Dom comments on the purposes and intents of the ordinance.

David reviewed the Supreme Court instructions on how to vote before going through the seven criteria. He recommends : separate votes, reasoning; then vote on the criteria with pause before voting on the application.

There was a brief recess and the meeting continued at 9:10 pm.

David made a motion that stated "The Tamworth Wetlands Conservation Ordinance has a different regulatory model than State and Federal laws. All land use, within the wetlands conservation district (including wetlands, waterbodies, and adjacent buffer zones), is governed by this ordinance." Pat seconded the motion. APPROVED. Nicole abstained.

David made a motion that stated "There is no provision for mitigation under the Tamworth Wetlands Ordinance. All uses within the delineated wetland boundaries are subject to the Ordinance. Restoration work within the 1982 wetland boundaries, should be included in the application." Becca seconded. APPROVED

David made a motion that stated "Certain activity within buffer zones is prohibited, without a waiver. All construction activity, encroaching within twenty five (25) feet of the limits of a wetland, should be included on the application, with a request for a waiver." Becca seconded. 3 approved, Steve and Jim Opposed, Pat abstained.

Discussion began regarding whether the application was in conflict with the 7 intents and purposes of the ordinance.

a.1 – concern with sedimentation. Wetland 1 will receive some runoff and sedimentation. Wetlands 2 will receive the discharge of sediments. David feels that this is in conflict. Steve made a motion that wetlands 1 and 2 do not meet the criteria.

Becca understands that the restoration plan is good but does not accept the CC recommendation to approve the SUP because the intent will be met by the restoration.

Steve would like to assess that the CC recommends this as the best solution. He would vote that it is not.

Pat feels that we should follow the CC recommendations.

David states that they are using the restoration plan to assist their decision. We are not considering that with this SUP.

Nicole would like to talk more about what they need to bring before us.

David states that denial is not an option.

Nicole asks if we know specifically what we need. The need for a buffer waiver is pretty clear.

Steve wants to know if they can amend the application by adding the restoration plan.

Nicole feels that we need some more information and waivers for the buffers.

David feels that this application does not meet 6 of the 7 criteria listed.

Jim made a motion to allow public comment. Nicole seconded. David and Becca feel that we should solve it ourselves. 3 APPROVED, 3 OPPOSED. Dom voted to reopen the public comment.

Brandon said that the application takes current conditions into consideration. The impacted areas are not currently wetlands. The Board has jurisdiction over current conditions.

Rick Van De Poll feels that the PB has an “out” through section J.

Steve states that the Selectmen have jurisdiction over prior violations.

Becca doesn't feel that we can take refuge through J.

David feels that this invites people to go to after the fact jurisdiction to deal directly with the Selectmen.

Becca wants to see the wetlands that are being worked on. The Conservation Commission and Rick indicated that they would reduce the impact areas.

Steve would like to amend his motion to state that Wetlands area 1 does not meet the purpose and intent of section a.1 . David seconded.

Rick indicated that he would like to see a few thousand more feet of the wetlands not be impacted and that the slope be reduced from the 4 to 1 that is planned for flood control purposes.

Lenghy discussions ensued.

Dom directed Rick to take a closer look and bring recommendations to the Planning Board to deliberate.

David read a list of quotes from evaluations regarding the impacts.

Steve withdrew his motion. David did not withdraw his second. 4 APPROVED, 2 OPPOSED. Motion carried.

Becca made a motion that wetland 2 is not consistent with a.1. David seconded. Functions have been degraded. 3 approved, 3 opposed. Dom voted in approval, making the vote 4 to 3. Motion carried.

Steve senses that the feeling of the Planning Board is that the applicant look for additional restoration and consultation with our wetlands scientist.

David read another quote from the assessment.

Greg states that statements about the functions of the wetlands are not valid regarding the current wetlands but they will be after the restoration has been completed. He feels that the Board is becoming too narrow focused.

Nicole is looking at this through the lens of the Conservation Commission.

Rick says that it is normal for conditions and modifications to be done to a plan.

Greg feels that the Board has overstepped their expertise. There has been disregard for prior history. The way this application is being handled is unfair.

Nicole made a motion to approve the SUP. Jim seconded. Steve asked Nicole to withdraw the motion as it could preclude a resolution to the problem. Becca would also ask that the motion be withdrawn. David stated that Rick and the Conservation Commission have recommended this plan.

Nicole withdrew her motion. Jim withdrew his second.

What modifications do we want? impact areas minimized, buffers, and waivers.

Becca made a motion to continue this hearing to July 25th, no earlier than 7:15 pm. Nicole seconded.
APPROVED

A work session is scheduled for July 27th at 7pm to consider an application for a wetlands SUP waiver.

Nicole made a motion to adjourn at 11:02. Becca seconded. APPROVED.

Respectfully submitted,

Melissa Donaldson

Planning Board Clerk