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Town of Tamworth
Planning Board
Public Hearing Minutes
Application of Club Motorsports LLC
December 14, 2010

Meeting called to order at 7:00 pm at the Brett School Gymnasium by Steve Gray

Members Present: Steve Gray, Tom Peters, David Cluff and John Roberts.

In addition, Richard Sager, Attorney for the Town of Tamworth is present.

Mr. Peters made a motion to ask Attorney Sager to chair this meeting. Mr. Roberts seconded. Motion carried.

Attorney Sager began by speaking about the history and steps leading to this hearing. On November 8, 2006, a decision was issued by this board denying Club Motorsports LLC Motorsports' request for a Special Use Permit ("SUP") under the Tamworth Wetlands Conservation Ordinance ("WCO"). The denial was appealed to Carroll County Superior Court and then appealed to the NH Supreme Court. A remand was ordered.

Attorney Sager had requested that attorneys for the applicant Club Motorsports LLC (hereinafter "Motorsports") and the "FOCUS:Tamworth" (hereinafter "FOCUS") organization to submit documents regarding the procedure for this remand, as they were parties to both the superior court and NH Supreme Court cases leading up to this remand hearing.

Thomas Quarles, the attorney for Motorsports, requested in his written submission that Mr. Peters recuse himself this evening. Attorney Sager asked Mr. Peters if he feels that he can be impartial in his decision. Mr. Peters feels that he is impartial. Mr. Roberts asked Mr. Peters to explain when he was first asked to recuse himself. Mr. Peters stated that it was after the second vote was made (referring to Motorsports' second application to the Planning Board, which was seeking approval for access ways only). Mr. Peters mentioned he was an alternate to the Board, and did not sit on that application. The Board members have no issues with Mr. Peters sitting tonight.

The submissions by FOCUS and Motorsports will be held for inclusion in the record in order to preserve the appeal rights of the parties. Attorney Sager indicated the appealable issues raised in the submissions are preserved.

The purpose of this meeting tonight is to issue a new decision based on evidence that was previously submitted during the 2006 hearings.

This is a public hearing at which the board will be deliberating on Motorsports' 2006 application. Under statute, this meeting must be noticed to the public. The public has the right to attend, but no public input will be received, as the meeting is to allow the board to deliberate again on the application.

In Motorsports' submission, it listed various issues, summarized as follows:

- Mr. Peters should recuse himself;
- A new evidentiary hearing should be held;
- Duality approach – separate analysis of access ways versus other wetlands impacts is required;
- The Board must conduct a stringency analysis, comparing the requirements of the WCO versus State and Federal regulations; and
- The Planning Board should issue an SUP under the WCO.

In FOCUS's submission, it listed various issues, summarized as follows: –

- Mirror Motorsports' concerns regarding legal standards and analysis; and
- The Planning Board should once again deny the request for an SUP.

The process leading to tonight:

- All sitting members deliberated on the application in 2006;
- The members had access to information contained in the Certified Record and information in the Town files;
- Met with Attorney Sager on 12/8/10 regarding procedures; and
- Met with Attorney Sager just prior to this hearing; discussed submissions from FOCUS and Motorsports.

Attorney Sager observed in the submission from Motorsports that Table B-1 it included is from page 55 of the Certified Record, when in fact it should have included Table B-1 as amended by Motorsports found at Page 171 of the Certified Record. This Board will be using the amended table in its deliberations.

Sherry Young, attorney for FOCUS, submitted a "Proposed Process" for dealing with the various issues before the Board. The Board indicated it is comfortable with the outlined process. Mr. Cluff made a motion that the Board follows the process outlined by Attorney Young. Mr. Peters seconded. Motion carried. Attorney Sager is in agreement with this process.

1. Identify the wetland impact areas that are considered "access roads" under Section E.1.(a) of the WCO, as well as the wetland impact areas that are considered "other uses" under Section E.1.(c) that must meet each of the criteria under Section A.

Table B-1 is a summary of wetlands impact prepared by Motorsports. Impact Areas 10, 11, 12 and 13 fall under WCO Section E.1.(a). Impact Areas 1 through 9 and 14 through 17 fall under WCO Section E.1.(c) and sometimes Section E.1.(a). Mr. Gray pointed out that Impact Area 8 was added back in for informational purposes for the Conservation Commission.

Mr. Gray made a motion that impact areas 10 through 13 will be analyzed as access roads. Mr. Peters seconded. Motion carried.

Mr. Gray made a motion that the remaining impact areas other than access roads as listed on Table B-1 will be analyzed as other areas under Section E.1.(c) of the WCO. Mr. Roberts seconded. Motion carried.

Mr. Peters made a motion to consider impacts of areas 1, 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16 and 17 under Section E.1.(c) of the WCO. Mr. Roberts seconded. Attorney Sager noted that area 8 does not need approval under Section E.1.(c) of the WCO, but does need approval under Section F.(C)2 of the WCO. Mr. Peters stated that drawing W-7 (Certified Record, page 865) indicates an open bottom culvert crossing the water stream, conditions of fill over the top of the culvert, and fill in the buffer areas as well. This crossing needs analysis under Section E.1.(c) as well. Motion carried 3-1.

2. Discuss whether WCO may be fairly interpreted as being more stringent than state and federal wetland laws, considering the following: (a) the Ordinance's intent is to *prevent* the development of structures and land uses on naturally occurring wetlands which will contribute to the pollution of surface and groundwater; (b) the WCO requires that *each* of the seven criteria in Section A be met; and (c) unlike federal and state wetlands regulations, the Ordinance does not allow for the "mitigation" of impacts to wetlands and buffer areas by conserving wetlands in other areas, including other Towns.

Mr. Gray feels that requiring prevention or minimization of impacts is more stringent than mitigation.

Attorney Sager stated that the State and Federal regulations do not differentiate the way the WCO does. State and Federal regulations allow mitigation in certain instances.

Mr. Cluff made a motion to confirm that the WCO in Tamworth may be fairly interpreted and is more stringent than state and federal laws. Mr. Peters seconded. Mr. Peters referred to the Conservation Commission meeting minutes from 9/12/06, in which a statement was made that the WCO does not require judgment in differences, does not include mitigation, and is more stringent than federal and state regulations of the wetlands. Motion carried 4-0.

3. Determine whether the wetland impacts to be evaluated under Section E.1.(c) of the WCO (all but Impact Areas 10, 11, 12 and 13) meet *each* of the criteria set forth in Section A of the WCO.

Non-Access Ways – Section E allows for Special Use Permit and identifies areas allowed. Section E.1.(a) provides that streets, roads, access ways, utilities, etc can be constructed to

minimize impacts on wetlands. Section E.1.(c) states that a Special Use Permit is required for impacts/uses not otherwise permitted, if that use is not in conflict with Section A.

The Board reviewed the “Proposed Findings” provided by FOCUS:

1. The proposed activity does not fall under any of the permitted uses under Section D of the Tamworth Wetlands Conservation Ordinance (WCO) and therefore requires a Special Use Permit (SUP) under Section E.

The Board is in agreement with this finding.

2. An SUP may be issued by the Tamworth Planning Board (Board) for streets, roads and other access ways if they are located and constructed so as to minimize any detrimental impact to such uses upon the wetlands. See Section E.1.(a) of the WCO.

The Board is in agreement with this finding.

3. An SUP may be issued under Section E.1.(c) of the WCO for uses that are not otherwise permitted in the Wetlands Conservation District if it can be shown that the proposed use is not in conflict with any and all of the purposes and intentions listed in Section A of the WCO, as follows:
 1. Prevent the development of structures and land uses on naturally occurring wetlands which will contribute to pollution of surface and groundwater by sewage, sediment, or noxious substances.
 2. Prevent the destruction of, or significant changes to, natural wetlands which provide flood protection.
 3. Protect rare, unique, and unusual communities, both floral and faunal.
 4. Protect wildlife habitats and maintain ecological balances.
 5. Protect potential water supplies and existing aquifers (water-bearing stratum) and aquifer recharge areas.
 6. Prevent expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.
 7. Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands.

The Board is in agreement with this finding.

4. For purposes of the Board's review, it accepts the designations of wetlands impacts as set forth in the revised Table B-1 of Appendix B to the SUP application (Certified Record, page 171). The following wetland impact areas are impacts for access ways only, and therefore must be evaluated under Section E.1.(a) of the WCO: 10, 11, 12, 13.

The Board is in agreement with this statement, with the exception of Impact Area 8.

5. The following wetland impact areas are impacts for the race track, which is not an otherwise permitted use, and therefore must be evaluated under Section E(I)(c) of the WCO and must meet *each* of the Section A criteria: 4, 5, 7, 9, 14, 15, 16, 17.

According to Table B-1, Impact Areas 1 through 9, 14 through 17 are road course, and are required to be evaluated under Section E.1.(c). Impact Areas 4, 5, 7, 9, 14 through 17 fall under Section E.1.(c) only as they are road course only. In total, Impact Areas 1, 2, 3, 4, 5, 6, 7, 9, 14, 15, 16 and 17 require Section E.1.(c) analysis. The Board is in agreement with this. Mr. Gray began a discussion about the impact of Impact Area 8. Mr. Peters explains that work will be done in the wetlands buffer at this area. Mr. Cluff made a motion to reconsider adding Impact Area 8 to the Section E.1.(c) criteria evaluation. Mr. Roberts seconded. Motion carried. Mr. Peters made a motion to remove Impact Area 8 from Section E.1.(c) consideration. Mr. Gray seconded. Motion carried 4-0.

The Board agrees with Motorsports, as outlined in Table B-1, as to which impact areas will be analyzed under Section E.1.(a) and Section E.1.(c), or both. Section E.1.(c) analysis is for non access impact areas. The Board is in agreement that Section E.1.(c) analysis will be used for Impact Areas 1 through 7, 9, and 14 through 17. Attorney Sager read Section A of the WCO. Conservation Commission recommendations were read from the Certified Record, beginning at page 172. Mr. Peters referred to page 176 of the Certified Record, speaking to sediment pollution and potential for small amounts of contamination. Construction of the arched culverts will interfere with the groundwater in wetlands areas and will impact the wetlands. Impact Areas 1 through 7 call for arched culverts, which may allow erosion and sediment issues under the arches. The Conservation Commission feels that uncontained spills of noxious substances could contaminate the wetlands. Mr. Cluff feels that sedimentation could happen with the structures that do not contain a bottom.

Attorney Sager asks that the Board vote on each area with regards to Section A criteria in the WCO.

Mr. Gray made a motion that Motorsports has not met the criteria set forth in Section A.1. ("Prevent the development of structures and land uses on naturally occurring wetlands which will contribute to pollution of surface and ground water by sewage, sediment, or noxious substances.") Mr. Cluff seconded. Motion carried 4-0. Mr. Gray is in agreement with statements made by the Conservation Commission as contained in the Certified Record, and made by Mr. Peters.

The meeting was recessed at approximately 8:30 p.m. for ten minutes.

Section A.2. ("Prevent the destruction of, or significant changes to natural wetlands which provide flood protection.") Refer to the concerns voiced by the Conservation Commission in the Certified Record, speaking to impervious surfaces, flood areas/hazards, and hydrological studies. Mr. Cluff made a motion that Motorsports did not meet the criteria set forth in Section A.2. of the WCO. Mr. Roberts seconded. Mr. Peters referred to page 182 of the Certified Record, indicating that the Army Corp of Engineers listed impacts of public interest, and Motorsports' plan to mitigate through a storm water management plan. The WCO does not allow for mitigation. Motion carried 4-0.

Section A.3. (“Protect rare, unique, and unusual natural communities, both floral and faunal.”) Mr. Gray made a motion that Motorsports has met the criteria set forth in Section A.3. of the WCO. Mr. Cluff seconded, stating that no rare or unique flora or fauna has been found on the property. Motion carried 4-0.

Section A.4. (“Protect wildlife habitats and maintain ecological balances.”) Mr. Peters referred to the Conservation Commission findings listed on page 182 of the Certified Record. The Army Corp of Engineers permit indicates that the project will have adverse impacts on wildlife. Mr. Cluff made a motion that Motorsports has not met the criteria set forth in Section A.4. of the WCO. Mr. Roberts seconded. Motion carried 4-0.

Section A.5. (“Protect potential water supplies and existing aquifers (water-bearing stratum) and aquifer recharge areas.”) Mr. Gray recalls that there was discussion at a public hearing, regarding what percentage of a spill could be contained. No solid assessment information was presented at that time. The Conservation Commission noted concerns on this issue. Mr. Gray is concerned with pollutants. Mr. Cluff made a motion that the applicant has not met the requirements of Section A.5. of the WCO. Mr. Roberts seconded. Voted 2-2. Motion failed.

Section A.6. (“Prevent expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.”) Mr. Gray made a motion that the applicant has met the requirements of Section A.6. of the WCO. Mr. Cluff seconded. Mr. Peters stated that Motorsports indicates that it will pay all bills and expenses created in the construction of this project. If Motorsports fails to complete the project and the site is abandoned, how will this be treated? A suggestion of Motorsports securing a bond to cover eventualities of failure to complete the project may be satisfactory to approve Section A.6. Motion carried 3-1.

Section A.7. (“Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands.”) Mr. Cluff feels that unmet criteria in the other sections answer this. Mr. Cluff motioned that Motorsports has not met the requirements of Section A.7. of the WCO. Mr. Roberts seconded. Mr. Peters states that a road course in this area is not harmonious with low intensity. Encouragement of low intensity uses would be beneficial to the property itself. The WCO does not allow for mitigation. Mr. Cluff states that contingent on the design we see now, modification and encouragement of low intensity uses may allow Motorsports to meet the requirements of Section A.7. Mr. Gray agrees. Motion carried 4-0.

Attorney Sager stated that based on the votes, it appears Motorsports has not met the criteria for the SUP under Section E.1.(c) of the WCO. The Board is in agreement with this statement.

Attorney Sager advises that the NH Supreme Court does not mandate that the Board consider access ways for the project if Motorsports has not met the requirements to construct the road course. Mr. Peters feels that the Board is not in a position to evaluate one portion of the application and not the other. He feels that we can not split an approval. The WCO allows that access ways need to be designed to minimize wetlands impacts. Mr. Gray feels that the location and use of the project dictates access needs. Mr. Peters made a motion that the Board performs an access way analysis. Mr. Cluff seconded. Motion was voted 1-3. Motion failed.

Mr. Cluff made a motion that the Board be prepared to approve access ways once Motorsports has met the criteria set forth in Section E.1.(a) of the WCO. Mr. Gray seconded. Motion carried 4-0.

The Board turned to a discussion of wetlands buffer impact under Section F of the WCO.

Mr. Peters states that the impact on the various impact areas is exacerbated by the amount of fill going into the buffer areas themselves. This statement applies to Impact Areas 1 through 12. Impact Areas 13 and above have fill areas that are not so significant. Impact Areas 16 and 17 have serious amounts of excavation and filling. The buffer areas are a significant issue that needs to be addressed. Mr. Gray states that the Planning Board can issue waivers when the proposal is designed to give maximum protection to the wetlands. Mr. Peters feels that this project should be designed to minimize impacts on the buffer areas. Mr. Peters made a motion that Motorsports has not met the requirements set forth in Section F of the WCO. Mr. Roberts seconded. Mr. Cluff notes that there is a discrepancy between the reviewers and Motorsports concerning the actual amount of buffer impact. The actual impact needs to be determined. Motion carried 4-0.

Attorney Sager stated that based on the votes, it appears Motorsports has not met the criteria for issuance of the Special Use Permit under Tamworth WCO. The Board is in agreement with this statement.

Mr. Peters made a motion to deny the Special Use Permit to Motorsports. Mr. Roberts seconded the motion. The purpose of this meeting was to go through the information presented and provide the court with a decision. The criteria were reviewed, and Motorsports has not met the requirements. The motion to deny the Special Use Permit carried, 4-0.

Mr. Roberts made a motion to adjourn at 9:21 pm. Mr. Cluff seconded. Motion carried 4-0.

Respectfully submitted,

Melissa Donaldson

Planning Board Clerk