

PLANNING BOARD MEETING MINUTES

September 14, 2017

PRESENT: Elmer Clegg, Steven Strojny, Jeanne Azarovitz, Daniel Doucette, Robert Gendron, William Grant, Elizabeth Brown, Lou Gallo

ABSENT: Sandra Goldstein

STAFF: Jennifer Copeland, Asst. Town Planner, Roger Laporte, Inspector of Buildings

PUBLIC: Jim Mulvey, Ken Motta, and other members of the public

Ann Gutterson, Recording Secretary

Chairman Clegg called the meeting to order at 7:00pm.

Minutes of 8/10/17: Chairman Clegg made some grammatical changes to the LCP section and reviewed with Ann.

Mr. Strojny made a MOTION to approve as corrected. The MOTION was seconded by Mr. Doucette with all in favor.

1. **Public Hearing for Site Plan Special Permit #14-2016:** 25 Perry Ave. Darling Development. To add the condition to the existing decision that construction can begin prior to the road being built and no occupancy permit will be issued until the road is completed.

Eric R. atty, on behalf of Darling Development. This was discussed at the meetings but never formally put in the decision.

Mr. Strojny: I reviewed my notes, it should have been in the decision that construction could begin prior to the road being completed. Without the road they wouldn't be allowed a building permit by the Building Dept. this road will service more than the Hampton Inn. May come a time in the future the entire road may not be complete at that point of occupancy.

Mr. Strojny made a MOTION to add the following condition/statement to the decision:

- Construction and permitting for the hotel can be ongoing before the road as labeled as Kendall Court on the Subdivision Plan, is built and the occupancy permit is to be held until the road is complete to the satisfaction of the Planning Board.

The MOTION was seconded by Mr. Doucette.

Mr. Gallo: I thought a binder course would be down when you opened?

Eric: The road will have that in front of the hotel and a temporary cul-de-sac where the Hampton Inn property ends, then the road will go all the way through to Keystone.

Appears the road will be done in stages.

Mr. Gallo: I think it should be finished to the end.

Chairman Clegg: If they do that, the road will start to be used, not a good idea.

Mr. Strojny: We don't know when the next project will have a shovel in the ground and a deteriorating road is bad. Let them build, build the road and we continue to have oversight on the project.

Eric: Can't haul in fill until the road is constructed, was part of the discussion. Looking at getting foundation permits in February. The site work is what prompted this.

Roger Laporte: Base coat at the time they start to build. Only concerned about the Hampton Inn. The Motion is good as it stands. Construct the road at the same time. When they want an occupancy permit, if you want more or less, you can tell them.

Chairman Clegg: We failed to include this authorization into the decision. Not changing the plan in any way.

Roll Call Vote as follows:

Mr. Strojny – yes	Mr. Gendron – abstain	Mr. Grant – yes
Mr. Gallo – yes	Ms. Azarovitz – yes	Ms. Brown – yes
Mr. Doucette – yes	Mr. Clegg - yes	

2. **Public Hearing for Special Permit #06-2017:** Cont'd from 8/10/17: 1077 County Rd. Rose Kozaryn Living Trust. For more than four horses, indoor riding arena and associated site work in a Water Resource District.

Roger Laporte: Why we are here:

7/30/15 – building permit issued for indoor arena

3/1/16 – Cease & Desist order

10/20/16 – citations began

3/23/17 – Magistrates hearing. Agreement in 30 days to meet with the Town Planner, me, engineers, then 30 days after to file for the special permit by the Planning Board.

Cease & Desist reason – Work done in conjunction with the arena. The retaining wall built and collapsed under its own weight. (pictures of the wall were presented). A large amount of fill was brought in, Well fields rejuvenated by water going into the ground (water resource area). Fill was brought in from a strip out. The material above is clean fill but impervious on the right. On the left, the neighbor is lower than them. I don't believe they want to cause damage to the neighbor, water increased due to the fill. The drainage system of the neighbor is being compromised with the silt. How much is impervious, etc. That's why we're here tonight.

Don Nagle, attorney for the applicant: The application is for four or more horses in a water resource district. There are five horses approved by the Board of Health. The Candy Lane Ranch is a non-profit organization for kids. Five ponies/mini horses. On the property there is a horse barn, two houses, sheds, corral area, and area for indoor riding arena. We seek the special permit and lifting of the Cease & Desist. Arena construction had begun. A working round pen is part of the plan Extend the existing berm to mitigate runoff and reconstruct the retaining wall.

- Provide technical and engineering specs to rebuild the wall
- Address Stormwater runoff concerns on the East side of the property. 5.9ppm, meets the standards. No net increase in Stormwater runoff, compliance with DEP Stormwater regs.
- Total impervious 13,116sf (14%) of the lot
- Less than 40% total area – 4722A
- Riding arena is most of the impervious area. Proposing two subsurface recharging fields.
- Removal of ground cover vegetation because of the arena.

We provided a written response to the comments made. On Sept. 1st comments by Green Seal Environmental, Sept. 7th by Alec Joyce on behalf of BCT. Have been working with Roger, the Town and neighbors to address the concerns. THE owner constructed an infiltration trench between the driveway and neighbors property. Very helpful but work still needs to be done with the sediment that threatens the neighbor's yard. Water naturally runs down to the neighbor, not from the driveway but from the horse pens. Suggest we come back with specific plans to address that issue.

1077 County Rd.

Mr. Grant: Describe who this is for?

Victor Gross: Some handicap. Trying to work with kids in the area, work with MENTOR, our main concern and Vets.

Mr. Grant: How do the kids arrive at the facility? How many visits daily?

Victor: A small van. 4-6 people at the most a day. Each session is 45 minutes and work with one person at a time. We try not to have more than two people. They aren't on the horse the whole time – tack, grooming, set up obstacle course, etc. Bonding with the horse.

Chairman Clegg: Are you a principal of Candy Lane Ranch?

Victor: Wendy, me and four other board members. We are a 501C3 and have a letter from the IRS.

Don: Kids, Vets, traumatized. Studies show working with horses is very therapeutic.

Victor: A girl that came to us was in college for three months, had a nervous breakdown and takes care of the horses. Recently she went back to college. It calmed her down enough to go back to school. Her mom works for MENTOR, there was no money exchanged. I don't consider it conducting business.

Chairman Clegg: Requires capital and an operating budget. Will you be receiving revenue?

Victor: We are going to get grants.

Chairman Clegg: Revenue stream in five years. Not concerned with it growing. You're covering your own expenses? It's a more philanthropic venture on your part?

Victor: Had a rough childhood. Have foster kids and their kids. Why not help them if it can help. Working with horses, see how it helps. Everything we make goes back into this.

Chairman Clegg: No doubt we all feel it's a noble endeavor. It's a nice thing, but is it a nice thing for the location you're doing it in?

Victor: Trying to fix it. Steve Ballentine wouldn't let us touch the wall. It was 6'.

Roger: A permit is required if a wall retains more than 4' of unbalanced fill. There is no permit for the wall. The Code says any wall requires a permit or if required for safety reasons. I'll require a permit for any height.

Chairman Clegg: Section 4700 Water Resource District. Claiming an agricultural exemption. Has that been tested? What are the grounds for your claim that this falls under agricultural?

Don: Case law. Stable for five horses, riding arena clearly falls under agriculture as used in Ch. 40A and other statutes. There are documents in Town files. Got opinion from the Zoning enforcement officer that this is primary use. Cases cited that support.

Chairman Clegg: I agree the endeavor falls under the MGL definition. The regulation Ch. 40A Chapter 3: The town shall not unreasonably regulate/require a Special Permit for primary use of commercial agriculture. It didn't mention there are two residences on the property. Who lives there?

Don: Rose Kozarian and the second house is leased out.

Chairman Clegg: 3 bathrooms in one house and 1.5 in the other. Is the primary purpose of the property commercial agriculture? Agree a dual use – residential and business.

Don: There is case law that addresses this situation. Most farms have a farm house and out buildings. What makes it primary and what doesn't? We fit well in the primary use.

Chairman Clegg: All such activities confined to 5 acres or more. You have 2 acres.

Don: You said "may" and throughout the bylaws encourage and refer to agricultural activities. Bourne isn't a "right to farm" town. I have a zoning letter from Roger dated 9/15/14 stating that

1077 County Rd. Cont'd:

construction of a riding arena is allowed. Opinion that it's not an accessory use. Take as an allowed use. This is a homespun project.

Chairman Clegg: This is here because it's in the Water Resource District. Looking at the basic question "does this qualify?" The building inspector doesn't take direction by the Planning Board.

Don: We need the Special Permit in order to have the Cease & Desist lifted.

Roger: The letter: rational for riding arena, the Planning Dept. found verbiage for agricultural use. Do a pen and ride. Everything that happened. When someone does a project it affects the letter, permits, neighbors and all other factors.

Chairman Clegg: Parcels of two acres qualify for agriculture exemption, products produced on that land, based on gross sales. Area not zoned for agriculture. What product do you produce?

Don: Long paragraph in Sec. 3. I believe Sec. 3 as a whole and case law that addresses this. Feel we are safely in the parameters. We hit a snag that came from the neighbors complaining. Homespun not professional as you will. The wall collapsed, runoff, sand/sediment from the corral area. We have some thoughts we'd like to develop to make sure the neighbor isn't harmed by that. Wait to make sure not a detriment to the neighborhood.

Chairman Clegg: After we consult with Town Counsel, if you don't qualify, then subject to the entire section 4700. There was a tremendous amount of fill brought in. Nitrogen loading study calculations take into account driveways, residences, vegetated areas, etc. Vegetation absorbs water. The vegetated area is overfilled.

Don: Part of the driveway is reinforced with fill but it's still a gravel driveway and there is some fill in the arena area.

Chairman Clegg: There is more than 50% of fill in that area. Filled up the drive and went around existing trees.

Mr. Grant: Residential and riding are intertwined. Wastewater calculations are based on the number of bathrooms. There are two instructors and various people coming.

Don: We will be bringing in a port-a-potty.

Mr. Grant: Based on existing bathrooms, that isn't listed anywhere. Impervious calculations as well. How much fill has been delivered to that site?

Don: I don't know. It's clean fill but not a specific amount. Most used to provide a proper base for the arena.

Mr. Grant: Mentioned a soil analysis so we can find what it consists of.

Don: How relevant is it under the requirement of the bylaw? Permeability meets the regulations. Find it's not necessary if that material is treated.

Mr. Grant: Extrusive site work. The infiltration trench is not adequate as you said. Need to do a site visit. Need more detail on where the fill was deposited. We don't how many loads were delivered, we need that information. If under a building, then your argument has some merit. Looks like it extends up to the wall.

Chairman Clegg: Diagram of how much fill was put in different locations. What has been calculated as vegetated may not be anymore. Should they subject to a higher calculation? The Planning Board can hire peer review of nitrate testing/analysis. Valid point.

Don: Possible overfilling beyond the arena footprint. The plan provides a revegetation plan.

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Ken Motta, engineer: Quality/quantity of fill. We have topographic conditions of what's there now. We can approximate what was there based on some information out there.

Mr. Grant: Is the property staked now?

Ken: I believe the corners have been staked.

Victor: We had Cape & Islands do the survey. The driveway was encroaching before we bought the house.

Don: We have all necessary approvals from the Board of Health.

Chairman Clegg: We have a letter from the Board of Health and the application was withdrawn.

Victor: Only due to the number of horses.

Ken: Used the Cape Cod Commission model which is acceptable by the DEP. Took into account the number of bedrooms, riding arena. No further septic systems, the grass areas around the proposed building. The footprint of the building will go into two recharge systems.

Chairman Clegg: On the overfilled with suspect substance, you'll top with 4" of soil and grass seeded. You assume will be nitrogen.

Ken: The nitrogen is absorbed through the root system. Underlying material not much effect on it.

Mr. Grant: Peer review of Stormwater overall, comprehensive. Soil test of the fill.

Ken: These two areas pointed out to me. No doubt there's a problem there. Kettle hole area is somewhat a shared responsibility. Come up with a Stormwater and erosion control plan.

Don: Peer review: one abutter submitted a peer review. Want to get through this with undue financial burden to my client.

Mr. Strojny: Between your engineer and Green Seal Environmental, if peer review comes in, they'd have almost 90% of what they need. We try to limit the cost and not add to the burden of development.

Chairman Clegg: What is the square footage of the roof? The building is 8,700sf.

Ken: Metal roof with a 5'6" pitch. Excess of 10,000sf. What exactly are you looking for with the soil analysis? Tell the gradation of what's there.

Mr. Grant: I'll convey what we are looking for to Mr. Nagle.

Ken: Scope of peer review? Nitrogen loading analysis and Stormwater.

Chairman Clegg: So far.

Mr. Doucette: Soil testing of permeability. Content of soil? Know it's clean, but contaminants. Down gradient we have a farm which uses a lot of water also.

Susan Derubio, abutter: Lived there since 1993. Worked in Special Ed for 40 years, great respect for what it provides. Strongly opposed now. Looks like a large commercial business. What happened to our drainage system, changes and what "might" work. Doesn't seem like enough. Limited space, lack of grazing opportunity. Showed enlarged photos. We installed our drainage in 2008. Fill delivered in April 2016. The area between the road and paddock is covered with hardpack. Runoff: There is maybe a 2' section behind our fence that still has vegetation. Water coming down the hill and down the driveway turns to our property and is destroying our drainage system. August 19, 2017: photo showing the pitch and angles and how the sand gathers then flows into our driveway.

Chairman Clegg: you get that coming from the paddock?

Susan: Coming from everywhere.

Mr. Gallo: Sugar bowl effect, you're at the low point. Did you have a water problem before?

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Susan: Yes. In March 2016 the fill started coming in.

Chairman Clegg: They installed a retention system in 2008.

Susan: There was always a water problem, but dirt and soil can be cleaned out. The impermeable silt is causing the problems. The water doesn't absorb now.

Chairman Clegg: Is there a proposal to prevent this from continuing?

Susan: That and if we can recover any damages, we've spent a significant amount of money.

Mr. Strojny: That isn't in our jurisdiction. Is agriculture the primary use of the land, there are other uses – houses, storage trailers, other businesses being run there.

Mr. Grant: Is there another commercial business being run there?

Don: To my knowledge there is no other commercial entity being run on the property. There was a stormwater problem before this. The sediment that is impacting that system, we are prepared to do that.

Victor: I have a small commercial business and I keep my trailers there and one shed has my tools in it. The Board of Health did a test and there are no feces going onto their property. My videos do not show anything like this (the pictures Mrs. Derubio presented) and they are all dated. I do have a problem, but not like this. The upstairs of the barn is my weight room.

Chairman Clegg: Tell us how much rain came down on those two dates.

Alec Joyce for BCT: They are the abutter to the west, the dwelling on the property isn't used and there is a barn with one horse and two goats on just over three acres. Submitted photos of the collapsed wall. BCT is a non-profit 501C3. Steve Ballentine is here and the engineer from Green Seal. Ch. 20A Sec. 3 topic – farm uses. The arena is an agricultural use and exempt from zoning. That doesn't necessarily affect the rest of the parcel. Frontage is less than allowed for two dwellings. Sec. 2440, enough land area for a barn, 2 sheds, close to the property line. Either have a riding arena or two dwellings and no arena. Respect the Planning Board to look at access requirements, close to the road. 1900's the 2 bedroom dwelling was built, the rear dwelling was built in 1990, access and drainage. The second dwelling must have adequate access. A third building with busses with handicap coming in is an intense use of the property and it doesn't need a 8,700sf arena.

Mr. Grant: How does the prior use impact? Houses and sheds were there.

Alec: Because you have an exemption, doesn't protect the rest of the property. Doesn't exempt other two dwellings. If want a riding arena you condition only one dwelling on the property.

Don: The special permit is for five horses, that's what in front of you. What I just heard is that the two dwellings are long standing and used. Permits issued to construct a home. Reasonable doesn't mean forcing my client to tear down a home on his property.

Chairman Clegg: What I heard – given the two houses, should another structure be allowed?

Don: Not a home, an arena which is an agricultural pursuit. What I heard was no riding arena or tear down a house. Not reasonable.

Chairman Clegg: Waiting to see if we look at the entire bylaw or just Section 4700. Will take some time to answer.

Bob Bursen, Green Seal Environmental: We submitted court cases for the record. Sec. 3332A access drive 15' within the property line paved. If not, need other product.

Chairman Clegg: Does it apply to the side property line or only from the street?

Don: The whole purpose is to reduce the driveway itself.

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Chairman Clegg: Area that embodied in Mr. Nagle's correspondence didn't have a chance to digest as we just received it yesterday. Has to be in Monday at noon prior to a meeting.

Bob: I received the drainage calculations today, haven't had a chance to review. Off the hill and from the arena, grassed area and circular pen need to be addressed so there are no problems in the future. Agree the soils should be tested. Haven't seen any calcs on the wall yet.

Chairman Clegg: Will we see more details on the wall plan?

Don: Yes. We are prepared to address directly all concerns. We have some ideas. Open to ideas from others. A site visit should happen prior to issuing statements.

Bob: An erosion control plan should be on the site plan. Access on driveway to County Rd, site distance should be looked at. Nitrogen calcs – agree with methodology. Don't think soils in back bring up to 10ppm. But did address the horse urine. I was the public works director in Brewster and we took in all the horse manure to stop any problems.

Chairman Clegg: Any cases that involved animal urine runoff?

Bob: No, we composted it.

Brian Handy: Submitted a letter. What happens in the future is my main concern. Drainage – recirculation trenches, berm to direct, then it becomes my problem as it goes downhill to my property. Just went through a GAP audit, one question is animals and where does it go if in ground will end up in my bog? I don't know, is my concern.

Chairman Clegg: Addressed on the site plan. The lot and how it sits, everything is downhill from where the arena sits.

Brian: The very back is a few feet lower.

Chairman Clegg: Runoff experience from that property affecting your bog?

Brian: no.

Chairman Clegg: More than 100' of the wetlands, no septic proposed within the 150'?

Don: Correct.

Chairman Clegg: Does this application need to be sent to the water district?

Don: I believe a letter from them is in the packet.

Mr. Grant: Need to do a site visit with Don, the abutters, engineers. Post a meeting.

Chairman Clegg: I suggest 9/21/17 at 4:30 for a site visit.

Mr. Grant: For the soil analysis I'll communicate what we're looking for. Percentage of vegetation removed Since July 2015, subject to quantification. Peer review will occur after your revised plan is submitted. That will be after our site visit and soil analysis.

Mr. Strojny: Give any thought when to involve that engineer in the process?

Ken: May be beneficial to have your peer person look at the plan before I revise it.

Coreen will arrange for peer review, provide a draft scope to Mr. Nagle prior to sending out.

Mr. Grant: If you have case law about rental property please send. Will see if Health and Conservation need to participate.

Mr. Grant made a MOTION to continue to 11/9/17. The MOTION was seconded by Mr. Doucette with all in favor.

3. **Public Hearing for Site Plan Review/Special Permit7 #07-2017:** Cont'd from 8/10/17.

5 & 7 Commerce Park Dr. Kent Properties LLC. Demolish building and replace with office/storage building with increased impervious surface to 51.2% in a Water Resource District.

Mr. Doucette made a MOTION to continue to 9/28/17. The MOTION was seconded by Mr. Gendron with all in favor.

4. **LCP Update**

Chairman Clegg: It wasn't on the 8/22/17 Board of Selectmen agenda as planned. The CCC is redoing the RPP and will have impact on the LCP planning process. Mr. Guerino will keep it off the agenda until after the Special Town Meeting. I'll keep pushing.

5. **Board Member Reports**

Mr. Grant: Stormwater group all towns have to come up with a revised stormwater regulation plans and they're extensive. The last rain we got closed shellfish beds for 3-4 days. Will come before us. A lot of areas need to be improved on. Come up with a bylaw and what our role is. Enforcement is the problem/issue. Bylaws/enforcement mechanism. Affects quality of water going into our bays. Will be 6-9 months before we are involved.

Coreen: When engineers commit substantial compliance. Asbuilt certify compliance, we need that. They'll hire a GIS person. Hasn't been consistent, have to beef up on that.

Ms. Brown: I'm on the bylaw committee and going to the ADA training.

Mr. Doucette: the CPC met and the applications are in to be processed by the CPC for town meeting.

Mr. Strojny made a MOTION to adjourn. The MOTION was seconded by Mr. Doucette with all in favor. With no further business before the Board, the meeting was adjourned at 10:05pm.

Respectfully submitted,
Ann Gutterson