

TOWN OF ESSEX
PLANNING COMMISSION
DRAFT MINUTES
OCTOBER 28, 2021

Note: This meeting was in-person and virtual on Teams.

PLANNING COMMISSION (PC) PRESENT:

IN PERSON: Dustin Brusco, Chair; Ned Daly; and Tom Furland.

VIRTUAL: Josh Knox, Vice-Chair; John Mangan, Clerk; David Raphael and Jonathan Schumacher.

OTHERS PRESENT:

IN PERSON: Owiso Makuku, Community Development Director; Sharon Kelley, Zoning Administrator; Darren Schibler, Planner; John Stuart, P.E.; and Betsy Dunn;

VIRTUAL: Blair Haxel; Meredith Mann; Kemener Whalen; John Egan; Brian Armstrong; Ken Signorello; and Patty (unidentified).

Chairman Brusco called the meeting to order at 6:30 p.m.; called out the Commissioners who were in attendance virtually and in person; and noted the changes to the Agenda being additional topics under to include discussion on PC Operating Procedures, Cannabis and a Bylaw modernization grant resolution.

AGENDA ITEM 1: PUBLIC COMMENTS:

Commissioner Raphael noted for the record that with the landowner's permission, he walked the site visit prior to the schedule date as he was scheduled to be out of town.

AGENDA ITEM 2: CONTINUED SKETCH PLAN- PUBLIC HEARING FROM 6/25/2020 & 10/14/2021- RENEE & BRAD LAFOUNTAIN: PROPOSAL FOR A 3 LOT PLANNED UNIT DEVELOPMENT-RESIDENTIAL (PUD-R) LOCATED AT 109 BRIGHAM HILL ROAD IN THE AGRICULTURAL RESIDENTIAL (AR) ZONE. TAX MAP 14, PARCEL 15-602.

Chairman Brusco noted the Public Hearing remained open, provided the public oath, and again to the late arrivers.

Darren Schibler, Planner, noted the site visit was completed. The PC saw where the houses would be situated on the lot, relative to where they stand and to other buildings. He noted the fundamental issues the PC should address relate to the wetland impact; potential for scenic impact; clustering and performance to the Planned Unit Development (PUD) standards. He believed the issue for this meeting was for the PC to address the following questions, discuss and determine is if the competing elements, namely clustering, wetland encroachment, and scenic vistas justify a waiver. Schibler stated the proposal does not meet the Planned Unit Development (PUD) standards.

John Stuart, P.E., stating that it was well discussed at the last meeting, and re-iterated the following comments:

- The plan represents two lots on 9+ acres of land;
- Both house sites would preserve the scenic beauty;
- The house proposed closest to the road and property line is allowable by the Regulations; and the lawn will preserve the scenic view. The second house will have zero impact on the scenic views;
- The existing driveway will be upgraded and will require a state wetlands permit;
- An open space lot, which has existing trails, is proposed wherein the lot owners could enjoy;
- A mound system is proposed in the area of agricultural soils that continue to be discussed. He reported that the agricultural soils have minimal value;
- He noted that the plan speaks for itself;
- He believes this is the best use for this piece of land; and
- He noted that the PC has visited the site so they should be able to realize the scenic vista is more important.

Commissioner Daly stated that now that he has inspected the site, he was not convinced that where the buildings are located would have any serious impact with the scenic views. He noted that you can't see Mount Mansfield if you walk the two-house sites. He was okay with the locations of the house. He asked the planner if the project was approved as a PUD, could more things be built on the property.

Owiso Makuku stated that the development pattern in this area is for large structures on the same property. Her big concern was if one takes a bird's eye view of Brigham Hill Road, the PC would be opening the door for a lot more PUD subdivisions to come in the door. She felt it was a shortcut from skirting the minimum subdivision regulations without any public benefit. She believes this would set a bad precedent. She noted the PC has already set a precedent of denying projects like this proposal.

Daly agreed and that was his concern as well.

Vice-Chair Knox agreed with Commissioner Daly and Owiso's comments. He was uncomfortable with the idea that this could open the door to a lot of other things.

Commissioner Schumacher said, "Ditto to what's been said." At some point, he would like to understand what a conventional subdivision would look like for this lot. He would like to proceed in that direction so that the PC is not doing a disservice to the PUD regulations.

Schibler replied that the staff report noted that the lot could accommodate the additional home, without a boundary adjustment. Two houses can go on one lot without a subdivision and with just the issuance of a zoning permit; it could also be a duplex which would have a lesser visual impact. He stated that the Staff Report notes that two houses could be placed by the road, but even then, it would not be a PUD. He stated the lot could not further be subdivided under conventional zoning.

Chairman Bruso asked if under conventional, the lot could only support one house. Schibler clarified that it would only be one lot, but the regulations allow for two homes on one lot. Commissioner Schumacher stated the lot could not be subdivided, but that you could put two

houses on the lot.

Commissioner Furland noted that with the proposal they are reviewing, there could be 4 units as each house could have an accessory dwelling unit. Schibler was not aware if we have a situation where two houses on one lot both have an accessory dwelling unit.

Sharon Kelley stated that every single-family house is allowed to have an accessory dwelling unit.

Commissioner Furland like the proposal as he liked preserving the visual view. He suggested that if the PC approves the application they need to insert some language to capture the reason being the visual view.

Commissioner Mangan said, “Ditto” as everything has been covered.

Commissioner Raphael said, “He was good.”

The following public comments were received:

John Egan, stated that he was looking at this project as a lay person and his standouts were:

- The land itself offers wonderful views of the mountains and he believes this feature is more important to be kept preserved;
- He believes where the houses are situated is a better proposal than a condo situation; and
- He felt it would be better for everyone to approve where the two houses are proposed to be situated.

Betsy Dunn, Trails & Conservation Committee, reported that she looked up the Wikipedia definition of a PUD and noted that it calls for both varied and compatible land uses, such as housing, recreation, commercial centers, etc., and she does not see this proposed. She noted that the Pinewood development has a pool for its community. She believes the houses, proposed towards the front of the lot/road made more sense and, this would also preserve the wetlands. The wetlands were more of a concern to her with the proposal. She did not support the application as proposed.

Chairman Bruso agreed with the sentiment that if the application was not a PUD, he does believe the two-house placements are ideal for that parcel. The first house site with minimal visual impact, the second house with no visual impact. He agrees with Commissioner Daly regarding the visual forestation, you do not see the mountains once you get down into the parcel. He stated that he does not challenge the layout as proposed but, he does not see it as a PUD. He said, “It’s not the right application now.” He said it felt like the PC was trying too hard to make the application fit with what the regulations allow. Bruso appreciated the work, the layout, the placement of the house behind the treeline. He stated that “it feels like we are trying to put a square peg in a round hole.”

Commissioner Daly suggested the PC could get a lot worse under the existing regulations. He felt the only stumbling block was that he did not feel the proposal was a PUD.

Commissioner Schumacher ditto’s Commissioner Daly’s comments. He was struggling to say

how it benefits the community and all the other various criteria that define a PUD.

Chairman Bruso asked the Commission if they have enough information and were they at a point or did they need to go into deliberative session.

Commissioner Furland asked about the civil settlement. Schibler said the civil settlement “is neither here nor there when it comes to town zoning. The civil issue is outside their purview.” Commissioner Furland was struggling because he liked the layout, and if the PC can’t go with a PUD, they could do something different, go bigger, and get more money.

Owiso Makuku stated that they can build what they propose, it will just be on two separate lots. Commissioner Furland did not think that was viable.

Schibler stated that although the regulations allow for two single family homes on one parcel, with adequate density, the landowner would need to adhere to the legal agreement, which states, in part that the structure would need to be 200’ away from the road; within 150’ of the northerly boundary; and no higher than 30 feet. Schibler went on to say that the only reason the boundary adjustment is proposed was to position the house on land that was not subject to the legal agreement. Schibler noted that the applicant may still come in with the boundary adjustment if the application is denied.

John Stuart suggested there were three options: 1) put a duplex on the parcel, which would be a massive building and potentially impacting the visibility; 2) the existing plan, which was an attempt to make it as consistent as possible with the PUD provisions; and 3) place two houses on the land without any restrictions at all as far as placement of the houses. He stated that he felt the proposed plan preserves the resources better than the other options.

Chairman Bruso stated that he felt the question before the PC was, “Is this a PUD” and not “Do you like the layout.”

Commissioner Daly Moved and Commissioner Furland Seconded a Motion to close the Public Hearing. The Motion passed 7-0.

A brief discussion ensued on whether the PC should go into deliberative session.

At 7:06 p.m. Commission Mangan Moved and Commissioner Schumacher Seconded a Motion to go into Deliberative Session at the end of ‘Other Business’ as noted on the Agenda. The Motion passed 7-0.

AGENDA ITEM 3: DISCUSSION/WORK SESSION:

- Discussion on PC Operating Procedures. The PC reviewed the proposed draft changes, made modifications and accepted the amended Operating Procedures.
- Proposed Amendments to Zoning & Subdivision Regulations. Staff reported additional additions to the proposed changes since the time the packet went out to the PC. Minor edits were received. Staff reported that due to the upcoming and expected legislative law on cannabis, the amendments will be on hold so that they can be captured and inserted with this round of amendments.

- Zoning related to Cannabis. Commissioner Schumacher noted that the memo accurately reported the issues and, that the question comes down to whether the town wants to regulate or not regulate cannabis retail. He noted that only the State regulates large integrated operations, and this does not bother him as he believes the State will be “pretty tough.”

Owiso Makuku stated that zoning was the only way to regulate cannabis and that the Selectboard will address items like densities and whether-or-not to allow onsite consumption in the Town. Owiso stated the PC could consider where they would allow cannabis shops are allowed; any applicable design review; lighting and signage; parking requirements; hours of operation; minimum or maximum size; and school mandates from the property line. Owiso stated that the purpose of this discussion was to serve as a preliminary introduction on this issue if it were approved by the voters in March.

Chairman Bruso stated it would be his thought to not allow the sales in any zones that has a school; and have the same lighting standards that we currently have for site plan. The PC determined to see how the Selectboard was going to go forward with this issue. Chairman Bruso accepted comments from citizens on this topic.

Betsy Dunn stated that Massachusetts has “state run things you go to there”, but Washington State and Maine have bouncers that are at the door who asked how old you are and makes sure you’re the right age to even get in the door.

Brian Armstrong thanked the PC for the forum; provided a brief background of himself; he was born and raised in Essex; currently lives in South Burlington; is currently a CEO of a real estate company; has a small property management and other smaller companies. He hopes that Essex creates a “very welcoming environment for this opportunity” for responsible welcome for a variety of reasons. There is a significant opportunity to bring jobs to the community. He stated that it looks like in the next year or two there will be an option for some type of local tax and if it is welcomed into the Essex community, it is an opportunity to add to the community. A responsible, adult cannabis shop, which will aid in keeping cannabis out of the black market and bring financial opportunity to the Town is good. He believes the State is going to evolve in the next two years and will bring clarity to the topic. He stated Meredith Mann is well versed on this topic, they have a business in the Essex Experience which is a location area. They currently sell Cannabis and cannabis will fit into the area at this location.

Kemener Whalen, is currently an Essex resident, has an 11-year-old and, wanted to weigh in and frame the thought process. The economic development with an expansion of a business is good. He stated there is currently a large black market and getting cannabis under a regulated structure creates all sorts of revenue opportunities. A local option tax would be a great benefit to Essex however, he believes frame of mind is more important. He noted the process of licensing for cannabis is different than the Department of Liquor Control. Cannabis is still a very controlled State licensing process for an adult use recreation product and will be no different than alcohol. He urges the Board and Commission to allow the same as they do for alcohol sales. He noted that “nobody freaks out about a liquor store anymore.” He encouraged the PC to consider, and not make assumptions, on zoning districts where these types of facilities would be allowed. He fully supports retail cannabis for Vermont on a whole and the opportunity is significant.

Chairman Bruso thanked all for the comments and noted the PC is on a “wait and see” pattern. Owiso agreed.

AGENDA ITEM 4: MINUTES 10/14/2021:

Chair Bruso MOVED and Commissioner Furland SECONDED a MOTION to approve the 10/14/2021 Planning Commission hearing minutes as written. The MOTION passed 7-0.

ITEM 5: OTHER BUSINESS:

- Bylaw Modernization Grant Resolution. The PC agreed to sign a Resolution needed for the grant application.

At 8:43 p.m., the PC came out of Deliberative Session.

Vice-Chair Knox Moved to Deny the application due to its lack of conformance to defined goals, policies, and regulations relating to clustering of development and open space preservation, affordable housing and efficient development of the site, I move that the Planning Commission deny the application by Brad and Renée LaFountain for a Boundary Adjustment and 2-lot Residential Planned Unit Development at 109 Brigham Hill Road (Tax Map 14, Parcel 15, Lot 602) and 113 Brigham Hill Road (Tax Map 14, Parcel 18).

Commissioner Furland Seconded the Motion. The MOTION passed 7-0.

The meeting adjourned at 8:47 p.m.

PLANNING COMMISSION

By: _____
Dustin R. Bruso, Chair