

TOWN OF ESSEX
PLANNING COMMISSION
MINUTES
April 14, 2022

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

PLANNING COMMISSION (PC) PRESENT:

IN PERSON: Dustin Bruso, PC Chair; Ned Daly; David Raphael; and Johnathan Schumacher.

VIRTUAL: Joshua Knox, Vice-Chair; John Mangan, Clerk; and Tom Furland.

OTHERS PRESENT:

IN PERSON: Sharon Kelley, Zoning Administrator; Sally Fleury; Paula Duke; Patty Davis; David Shenk; and Bryan Currier.

VIRTUAL: Darren Schibler, Planner; Greg Duggan, Town Manager; Alan Botula; Adam Morse; Lorraine Zaloom; Steve Bissonette; Chris Stubile; and Ken Signorello.

The meeting was called to order at 6:30 p.m. Chairman Bruso noted that he was moving the called out the amendments to the Agenda and announced the meeting was in person and on Zoom. Chairman Bruso stated that if the public provides any testimony, they are acknowledging that it was truthful to the best of their ability.

AGENDA ITEM 1: PUBLIC COMMENTS:

Patty Davis, read the following comments into the record:

Stipulation 4 in the 1991 August 29 PC Meeting read, "An easement will be granted to the Town of Essex around the pond shown on the survey plat, of 20 feet above high water." Davis stated the Grant easement dated 9/13/1991 conveys per 'Perry& Shmucker', "the right to use the lands for recreational and conservation purposes only." Davis felt it should say, "... for recreational and conservation purposes, together with the right to construct, maintain, repair and improve a trail and erect signs. She stated that the easement is for the Town to the pond and add a 50' strip around the pond. She noted the agreement for recreation use of the property is dated 2/13/1979 and recorded at Volume 145, Page 550. In 1991, the administration recommended protecting public access to the pond by requiring a deeded easement around the perimeter of the pond, was this not recorded? Also, this pond is accessed via trail network Mo-Flo' that is located south of the proposed lots. In 1991 the public hearing to add 2 industrial lots in the RPD-I Zone Forestdale Heights, applicant, requested you amend a final plan to create 2 industrial lots which were comprised of land area both in and outside the designated 25% industrial area of the Saxon Hill Industrial Park. A portion of these lots lie within the 60% conservation/recreation area. Now you are asking for more amendments and when is it going to stop?

Sally Fleury asked about crosswalk on Route 15. Chairman Bruso informed her that is a state road that the town does not regulate. Fleury reported that the state sent her to the town. Commissioner Raphael instructed her to go before the Selectboard with her issue on this matter. Schibler reported that the town is working with CCRPC to re-evaluate Route 15 and a sidewalk may come out of

those discussions. Fleury asked if the town was waiting for someone to be killed. Chairman Bruso noted the same concerns were true coming from his street on Sunset Drive. Fleury noted that an actuated crosswalk was put in on VT117. Kelley reported that some of the businesses contributed to get this crosswalk installed.

(Note: Agenda items 2 & 3 were swapped)

AGENDA ITEM 2: COLLABORATIVE WORKFLOW: UPDATE

Vice-Chair Knox attended virtually and explained that he and his family was ill and he would be leaving the meeting after this agenda item.

Vice-Chair Knox created a simplified Workflow 1 and Workflow 2 charts for both the PC and the work groups to understand the work steps that leads to the point where work groups are created. He provided an overhead presentation, walked through and explained the document. Knox explained that he will be running as the PC point on the groups and, that Phase 1 is up and running. He noted that ideally there will be an end-product, with a report back to the PC. Once all the comments are collected and settled, there will be a public hearing on the draft regulations. Once approved, the document will then be forwarded up to the Selectboard.

Chairman Bruso noted key points:

- Looking for the PC members to be a voice within the other groups.
- Key point, this will allow for much more public viewing.
- Due to electronic submissions, the document will be pushed up to the Selectboard much quicker.
- He asked Vice-Chair Knox to be the point to coordinate the Commissioners in working with other groups.
- Asked PC members to send an email to Josh to state its interest in specific committees.
- He noted that this is an experiment to reach more of the public; and
- Advised them to be ready to make changes if necessary.

Chairman Bruso asked Town Manager Duggan for his thoughts or questions on the process. Duggan really liked the concept of groups working together, including interdepartmentally. He noted the Selectboard is doing something similar, such as the re-appointments of the volunteers. He mentioned inclusion week around Boards and Commissions is scheduled for Saturday, May 15th.

Alan Botula appreciated getting more background on the process.

AGENDA ITEM 3: SITE PLAN & BOUNDARY ADJUSTMENT: Black Bay Ventures, V, LLC & Shenk Enterprises, LLC c/o David Shenk: Proposal to construct a 106,372 SF warehouse building in 2 phases at 35 Thompson Drive and convey 0.78 acres from 19 Thompson Drive located in the Resource Preservation District-Industrial (RPD-I) Zone. Tax Map 72, Parcels 9 & 10.

Darren Schibler, Planner, made the following points:

- The proposal is to construct a 10,372 SF warehouse building with 9 on-site parking spaces and 24 off-site spaces with the landowner's abutting lot, known as 35 Thompson Drive.
- The proposed use needs minimal parking.
- Staff supports the application and calls out 2 waivers requested with this application. 1) Requests a waiver from the 50' buffer regulation by clear cutting and replacing with lower shrubbery. This request results from the fire department needing 4-sided access; and 2) a minor lighting waiver to allow a .02 lighting encroachment over the path;
- He noted a possible issue is that there are several existing trails located on the site. He stated he has been working with the applicant on a resolution to keep connectivity and understands that some of the trails will be removed due to the location of the proposed building. He reported that although warranty deeds made reference to the recorded plat, it appears only the plat was recorded. He suggested this easement needed to be cleaned up but should be separate from the proposal. He noted that the landowner owns the abutting parcel and, the trails also connect to that lot.
- He ran through the changes that he made to the staff report since it was distributed to the PC.

Commissioner Mangan asked about the unofficial trail that was mentioned. Schibler repeated the history of how the trail came to be, the recording of the plat, but the deed not being recorded.

David Shenk and Bryan Currier provided comments on this application. Shenk stated that the planner did a good job presenting and he accepts the staff report except for Condition 6d. Shenk said, "A blanket easement to the Town of Essex is not acceptable." He noted that Autumn Harp is a member of the community; they use the trail however, with ownership comes responsibilities. He noted that the planner shared language with the PC that sounded good but is not all encompassing. Shenk noted the trail abutting the pond is in a wetland buffer; it is undevelopable and is under state rules. Shenk said, "There is no continuous trails." Shenk pointed out that if someone wanted to construct a trail in this location, it might be possible, but there is a buffer, challenging terrain and the landowner is responsible if there is damage. Shenk stated that this was not a matter of being a good citizen, it is a matter of open-ended topics. Shenk stated that past-history was to provide access to the pond. He said, "The town owns ½ of the pond and ½ of the other land around it."

A lengthy discussion took place between the PC, staff and applicant regarding the trails the town was looking to obtain. Chairman Bruso reminded the applicant that they were seeking two waivers and the PC would like something to benefit the town from said waivers. Chairman Bruso noted that the buffer was mostly scrub, and it was typical to waive the 50' buffer. Schibler noted that if a waiver was granted in the location the town was proposing, the town would be responsible for any injury within the easement.

Commissioner Raphael stated language needed to be provided so that a title search will clear up the past trail issue.

Bryan Currier, P.E., of O'Leary-Burke Civil Associates, referenced a Trudell plat from 1978 which captured the recognized trail by the pond. Currier noted that several other trails located on the parcel were put in by Fellowship of the Wheel. Shenk stated that they are now ready to develop the lot; there is no approval or deeds for these trails; and the trails are located where

construction is being proposed. Shenk noted that the same landowner owns the abutting lot and the same conversations will occur with that lot. He hoped to clear up the trail issues for both lots with this application. Shenk stated that he is not agreeable to provide a trail easement on the parcel. He noted that there is an existing path in front of the lot that allows people to connect back into the woods. Currier & Shenk showed the location of the 1978 trail next to the pond and agreed that it appears a deed was never filed.

The PC noted that the trail easement they are looking for is constructed, used and maintained. The town is looking to take responsibility for the trail. Shenk replied that they were before the PC with a request to grow the business; that they have been a good business for the town; many of their employees live in the town and use the trails; and noted there are many other trails available within the area.

Chairman Bruso confirmed with the planner that the trail was not on the official map. Schibler replied, "correct" and by adding it to the official map will clean up any murkiness. Bruso confirmed that the trail can be added to the official map. Schibler replied, "yes."

Currier reminded the PC that the proposed business is situated close to an existing warehouse that comes in with dozens of trucks, in an industrial area. The trail by the pond is within the wetlands and built without a wetlands permit. Commissioner Raphael noted that was a good point and asked the PC if they support the trail. The PC had mixed feelings regarding this trail.

Commissioner Schumacher MOVED and Commissioner Raphael SECONDED a MOTION to Open the Public Hearing. The MOTION passed 6-0.

Steve Bissonnette, facility manager for Reinhart, asked what happened to the 10' easement from the front of the building to the pond. Schibler responded that the applicant owns two abutting parcels and showed on the plan how the trail would run on the lands. Shenk noted that he already spoke to Bissonnette on this question.

Adam Morse, Fellowship of the Wheel (FOTW), noted that the trail has been in existence for a long time; has state-wide advocacy; has liability insurance for any user or event; and they work with landowners for continued access.

Commissioner Furland asked Morse if the landowner had to do anything with regards to insurance. Morse stated that the landowner would sign an agreement form, usually for 10 years, giving permission for FOTW to use and be responsible. Morse noted the agreement can be tailored to the landowner's requests. Schibler noted the Town also had VLCT insurance.

Chairman Bruso asked if the trail was outside the ROW outside the pond. Schibler stated that the town is looking for an easement of how the trail exists today. Currier asked the PC if they want to set a precedent if you cut a trail through a lot.

Alan Botula, Chair of the Conservation Committee, stated that the Committee wants to emphasis the need for this trail as it is good for beginners and for people who are aged later in life. He hoped they would find a way to retain the trail.

Lorraine Zaloom asked about the other parcel the applicant owned and how it will be developed; and asked what Autumn Harp was doing for noise, time of truck deliveries. She has concern for the wetlands and suggested shrinking the building. She stated that the RPD-I is

breaking the Town Plan and asked if the concern is about wetlands, why keep allowing cutting trees in the buffer. Zaloom asked about the working hours of the business.

Chairman Bruso replied that the PC supports requests to waive the 50' buffer to maintain consistency of buildings; getting rid of scrub and spindly trees; allow for the installation of stormwater measures; and for better access for emergency vehicles as they enter into the site.

Shenk stated that they will not operate like Reinhart and estimated 10 trucks a day.

Bruso asked Shenk if the applicant would support a trail across the parcel. Shenk said, "No, but they can support something within the 50' wetland buffer."

Ken Signorello stated that the request for a 50' buffer waiver in exchange for an easement to relocate the trail is reasonable. Ken asked if there was or was not an existing easement over the property at this time. Schibler stated that he does not have an answer.

Sally Fleury supports Black Bay Ventures. She noted that a lot of people are having to give up land for a trail "smack through her lot" and stated it happened to her when she developed her lot. She felt the sense of entitlement was bothersome.

Adam Morse noted that lots are being bought for conservation and hoped that could happen here. He asked that the trails be preserved as long as possible. Morse supports the PC's efforts to gain a clean easement for the trail around the pond.

Commissioner Schumacher MOVED and Commissioner Daly SECONDED a MOTION to Close the Public Hearing. The MOTION passed 6-0.

At 8:47 p.m., Commissioner Schumacher MOVED and Commissioner Raphael SECONDED a MOTION to go into Deliberative Session. The MOTION passed 6-0.

At 9:30 p.m., the PC came out of Deliberative Session.

After a brief discussion between the PC and applicants about the trails, the applicant agreed to provide a trail easement running east to west and depicted from the high-water mark of the pond. The deed and plat will reflect same.

Commissioner Raphael MOVED and Commissioner Schumacher SECONDED a MOTION to approve the application of 19 Thompson Drive, as warned, subject to the Findings and Conditions of a Staff Report dated April 14, 2022, with the following changes:

Finding E, Line 252 & Condition 8 as follows: Change "\$14,032.80" to "8,070.30."

Finding III, Line 486, after "The Commission supports" delete the remaining language and replace with, "a waiver for buffer clearance on the grounds that stormwater infrastructure and multiple utility lines will be located within the 50' buffer. At the conclusion of this clearance, landscaping that meets staff approval shall be required within the buffer, and it is the expectation that this shall be the case throughout the development of Thompson Drive. In this particular parcel, the retention and planting of shrub types native to the parcel is to be preferred for landscaping, bearing in mind the impact of stormwater detention facilities on said plantings.";

Finding III, Line 497: Add the following new statements

“The Planning Commission finds that the light spillover onto Thompson Drive is advisable because it would enhance safety by illuminating an area where the sidewalk crosses a vehicular entrance. Therefore, the Planning Commission waives the requirement prohibiting light trespass of two-tenths (0.2) foot-candles five feet beyond the property line to the level specified in the lighting plan.”

“The Planning Commission finds that additional research is required to address historical easements that are referenced in the land records and for which some deeds appear to not have been properly recorded. The Planning Commission supports the applicant working with staff to modify the easements to reflect 50 feet from the current high water mark running east to west starting along the southeastern property line at Thompson Drive.”

Delete Condition 6d.

Add a new Condition 7 and renumber remaining Conditions, to read,

“Applicant shall work with the staff and the Town to resolve historical easements that are referenced in the land records and for which some deeds appear to not have been properly recorded. The applicant will modify the property plat to create a 50-foot non-motorized recreation and conservation easements to reflect 50 feet from the current high water mark running east to west starting along the southeastern property line at Thompson Drive.”

Change Condition 19 to read, “Prior to the issuance of a certificate of occupancy, the applicant shall install a Fire Department Connection at a location accessible to firefighting apparatus without obstruction, with the specific location to be determined in coordination with the Fire Chief and State Fire Marshal.”

Change Condition 22 to read, “Prior to the issuance of a certificate of occupancy, a key ...”

The MOTION passed 6-0.

AGENDA ITEM 4: MINUTES 3/24/2022: Moved to next meeting.

ITEM 5: OTHER BUSINESS:

Sharon Kelley reported that Pomerleau, 86 Center Road, was approved for a site plan for the development of a restaurant (Burger King). Very recently, Burger King pulled out and the landowners are in discussions with other restaurants. They have requested a one-year extension to the written site plan approval.

Commissioner Raphael MOVED and Commissioner Daly SECONDED a MOTION to approve a one-year extension from the June 2, 2020, written approval. The MOTION passed 6-0.

The meeting adjourned at 9:39 p.m.

PLANNING COMMISSION

By: _____
Dustin R. Bruso, Chair