

# **TOWN OF TUFTONBORO PLANNING BOARD**

**October 20, 2022**

**7:00 PM  
Town Hall, 240 Middle Road**

## **MINUTES**

**Members Present:** Gary Qua, Chair; Carol Bush, Vice Chair; Tony Triolo, Member; George Maidhof, Member; Bob Murray, Selectmen's Representative

**Members Absent:** Laureen Hadley, Member; Kate Nesbit, Member; Matt Young, Alt. Member

**Staff:** Susan Burnside

**Members of the Public:** Steve Heyliger, Surveyor; Steve Stettner, Tuftonboro Resident; Steve Fusco, Tuftonboro Resident

**7:00 PM Call to order**

### **I. Public Comment - none**

#### **Approval of Minutes – September 15, 2022 Planning Board Meeting**

The draft minutes from the September 15, 2022 Planning Board Meeting were accepted as written.

Bob motioned to accept the minutes and Carol seconded. All were in favor and the motion passed.

### **II. Public Hearings**

#### **a. Town of Tuftonboro and Michael and Deborah Southworth Boundary Line Adjustment**

Steve Heyliger, Surveyor for this Boundary Line Adjustment, described the proposed changes to the boundary line to allow for an alteration in the trajectory of the boundary line as it extends out into the Lake. This change is being made to give room for construction and repairs to Union Wharf and to avoid any conflict of title that may occur as a result of work done on the Wharf with the boundary line as it currently exists. The line is being moved slightly away from the Wharf and adds 53 square feet to the Southworth property. Gary asked if the Board had any questions – there were none.

Gary asked for a motion to open the public session. Tony so moved and Carol seconded. All were in favor and the motion passed.

Gary asked for public comment. There was none.

Gary asked for a motion to close the public session. Tony so motioned, Kate seconded and all agreed. The motion passed.

Gary asked for a motion to approve the application with the following conditions:

1. The applicant will submit a Certification of Monumentation to the Planning Board.
2. An exchange of deeds is required. Submit copies to the Planning Board.

Tony so motioned, Carol seconded and all agreed. The motion passed.

**b. Conceptual Discussion of Zoning Ordinances and Amendments – Request of Tuftonboro Resident Steve Stettner**

Gary explained that this discussion is a non-binding discussion with the purpose to describe the process for submitting zoning ordinances and amendments on a conceptual level. He also stated that he and the Planning Board are willing to help with the process as best as possible.

Gary explained the procedure as follows: The Planning Board is responsible for amendments; whereas warrant articles are sometimes drafted by the Select Board. Also, citizens can submit petitions for warrants. However, Gary didn't think that a warrant article is the route Steve would be taking – but rather a zoning change or amendment. There are different ways to approach this for Planning Board review and then review with consul to ensure legality of the language. RSA 31:39(n) gives power and duties to the Town to regulate noise or nuisance as may be presented at the meeting. The State does not regulate such issues and assigns this responsibility to the Town.

Gary also discussed the time frame for submitting amendments for towns like Tuftonboro that have traditional March town meetings. Gary distributed a copy of the calendar provided by the State and clarified the window for submissions – November 14 for first submission and December 14 for the second submission.

Steve Stettner stated that previous email communication with the Planning Board informed him that the Planning Board was seeking consul on the legality of the existing Tuftonboro nuisance zoning ordinance. Gary clarified that his question to consul was not about the legality of the zoning ordinance, but the rights of a citizen. Gary further stated that this discussion is not about MX171, as an application was never presented to or heard by the Planning Board; therefore, the Planning Board has no jurisdiction on MX171. Steve stated he understands that the Planning Board has no jurisdiction. Gary stated that if MX171 had come to the Planning Board, then the Planning Board could have acted upon it. However, since that did not occur, the Planning Board cannot act upon MX171.

Steve Stettner and Gary discussed Section 5.2.2 of the Tuftonboro Zoning Ordinance. Gary stated that Steve would most likely want to draft an amendment to 5.2.2 to add noise to that ordinance. Steve asked about the legality of the language in Section 5.2.2 and if there is a legal problem with the language. Gary said he doesn't think there is a problem with the language and Steve agreed that there are many towns that use this same language. Gary stated that smaller towns generally used simpler language in their ordinances than larger municipalities. Steve stated that the language is in 5.2.2 "loose" and undefined. Bob added that the language is not quantified and indicated that we all have the right of interpretation and it could be interpreted differently by different people. Steve asked if the Planning Board members were involved in the language in 5.2.2. in the Zoning Ordinance book dated 2019. Board members stated that this language was done before any of the current members were on the Planning Board and it was adopted by Town vote back in the early 1980's. Steve asked if similar complaints about noise had come before the Planning Board previously. Gary stated not that he is aware of any concerns during the time he has been on the Board. Tony, who has been on the Planning Board for 10 years, said that he has not seen any complaints during that time. Bob suggested that it would be possible to make changes to the language by amendment.

Steve Stettner stated that the Board of Selectmen decided to "red-lined" a section of 5.2.2 and that the Code Officer told Steve there was nothing he could do, as it was the Selectmen's responsibility – Gary noted that the Code Officer reports to the Board of Selectmen. Steve asked whether there was a legal process for which the Selectmen decided not to enforce this part of 5.2.2. Steve asked about the normal process for making the decision to ignore, change, delete or not enforce this part of 5.2.2 for whatever reason and if it would come back to the Planning Board. Gary clarified that he thought that if the Selectmen had an issue with this part of the 5.2.2 ordinance, the Selectmen would consult with the Planning Board; however, the Planning Board has not been involved at all. Bob's understanding is that enforcement of the ordinance is reflective of a decision made by either the Code Officer or the Selectmen and at this point, the decision is appealable to the Zoning Board and the Zoning Board or Selectmen can send it to the Planning Board. Bob clarified that in this case, the Selectmen did not technically make a decision. Steve asked what would it be called, as it seems that the Selectmen made a decision not to enforce that part of 5.2.2 for whatever reason, valid or not, and it would then come back to the Planning Board. Gary again stated that the Planning Board is not involved in enforcement, but he thought it would have come back to the Planning Board and at which point, Steve,

as a citizen, has the right to give the Planning Board, his thoughts and documents indicating how he thinks this ordinance could be enforceable. Gary further stated that this could be done as an amendment that Gary could review and seek appropriate consult to determine if the amendment presents better language than the current ordinance. Gary again suggested that this is the process Steve would most likely want to pursue.

Steve indicated that during his previous discussion with the Select Board, they informed him that he could go to the ZBA to inform them that this section of 5.2.2 was not being enforced. Steve asked if this is the correct process. Both Gary and Bob Murray clarified that this is not the process – rather, Steve should address this issue with the Planning Board, which is responsible for amendments for zoning ordinances. Steve again brought up the decision made about MX171 and both Bob and Gary reiterated that this discussion is to talk about the amendment process in general and not about specific recent issues related to MX171. Steve asked if there has been any effort made to the zoning ordinance with regard to noise. Gary stated that Planning Board has not been informed of any issues to date with exception of Steve's current concerns. Steve also asked whether zoning ordinances can be interpreted differently by different people and whether different people can have different perspectives.

Gary stated that the current ordinance is a nuisance ordinance and not a noise ordinance. However, the town could consider implementing a noise ordinance, which is different, although there is some overlap. However, a noise ordinance can target specific sources of noise, such as loud cars, fireworks, and those types of noise sources. Gary referred to the Town of Antrim, which is similar in size to Tuftonboro. Antrim established a disruptive noise ordinance a few years ago, which specifies sources of noise, distances and comparisons to other noise sources. Gary gave Steve a copy of the Antrim noise ordinance to consider as a model for drafting a noise ordinance. Steve suggested looking at Moultonborough's noise ordinance. Gary stated that Moultonborough has different characteristics from Tuftonboro and is much more commercial, which does not apply to Tuftonboro.

Steve raised the concern that this zoning ordinance is written in a manner to allow for various parties to interpret issues differently, but with regard to the noise component, he was told that there is no interpretation and it is not quantified, so it is being red-lined. Steve said that the Selectmen have taken one component of this ordinance and that a person of reasonable sensitivities is a measure that should be considered, as it is spelled out in criminal code. Steve said that we use that same concept in other aspects of zoning; however, this is not applied to this component of the nuisance ordinance. This is holding 2 different standards to the same ordinance, which Steve claimed as "cherry picking" out the part that isn't liked to allow conduct that would otherwise be enforceable. Steve asked how can all of the entirety of the ordinance be open to interpretation by persons of reasonable sensitivities, but this one section cannot. Steve thinks this is inconsistent.

Gary stated his opinion that again, if there is an issue with the noise aspect of the nuisance ordinance, then the Selectmen would bring this to the Planning Board. Gary further stated that the Selectmen have not addressed this question with the Planning Board. Steve stated that the question is not strictly whether the issue is enforceable, but whether it is defensible. Steve claimed that the noise component of the nuisance ordinance is 100% enforceable and is defined. Steve read that portion of the ordinance (1.1) "except where specifically defined herein, the words used in the ordinance carry their customary meaning. He was told by the Selectmen they can't enforce the noise component because it is not defined (the word used by the Selectmen); however, the ordinance states that the words carry their customary meaning - in other words, every word in the ordinance is defined by customary meaning, which carries legal connotations and are defined in law (words like obnoxious, noise, dust, dirt, etc.). Steve asked why the zoning ordinance is open in its entirety to interpretation, except this part, which the Selectmen claim, is not defined or open to interpretation. Steve also stated that there is nothing wrong with the way this ordinance is written and does not need to be changed as there is nothing in the ordinance that is unenforceable or indefensible. Gary said he understands what Steve is saying.

Carol asked what this issue is about (MX171). Gary stated that MX171 is not the business of the Planning Board and this is not within the jurisdiction of the Planning Board as it never came before the Planning Board. Gary also stated that Steve and his neighbors have the right to pursue this issue as they see fit. Steve stated he has people shooting guns around his house and blowing up bombs around his house and town has refused to act, which is the worst example of governance because the people who were supposed to protect the neighbors have done nothing.

Gary stated that he understands his point of view and he would be happy to take whatever Steve suggested for changes to the ordinance to the Planning Board attorney for review and input.

Steve said that the position of the neighbors to MX171 is that the ordinance does not need to be changed - it needs to be enforced. To quantify and qualify this, he obtained signatures on a petition from 84% of the neighboring homes asking the Selectmen to enforce section 5.2.2 and 88% of the people in this neighborhood signed the position, as they find the activity of MX171 horribly offensive. Tony asked what their attorney advised them to do. Steve stated their attorney advised them to sue everybody. Steve clarified that their attorney suggested that they first address the Town in every way possible and to every Board to be heard. Tony suggested that if there is a change of money, it would make this a commercial operation which violated zoning in that district. Steve exchange of money is not the only criterion for making this commercial – there is an exchange of service.

Gary and Bob Murray again stated that this is supposed to be a conceptual discussion for the amendment process and not a discussion of the MX171 issue. Gary re-directed the discussion away from MX171.

Gary again asked Steve to present a written draft amendment or a new draft ordinance to the Planning Board for review and again stated that the Planning Board cannot enforce ordinances. Steve stated it is very clear that the Selectmen are not willing to enforce.

Steve stated that the Fuscus' have kept a calendar on the activity of MX171, which operates 5 hours a day and 7 out of 10 days on average. Steve again presented Moultonborough's zoning ordinance. Steve read through parts of the ordinance. Gary asked Steve to use that language as a starting point and to write up a draft amendment and submit it to the Planning Board and the Planning Board would take the appropriate steps to bring this to Town Meeting.

Steve asked if an amendment or new ordinance passed through Town Meeting, would pre-existing conditions be grandfathered. Gary stated he would have to ask legal for an opinion. Steve again used Moultonborough as an example. Gary again asked Steve to write up his own document and Gary would then move forward with it, but Steve must initiate this action.

Steve asked how Gary could force an application be submitted to the Planning Board. Gary stated he cannot force someone to submit an application.

Steve asked how he could get Jack Parsons to address this issue. Gary also clarified that Jack Parsons reports to the Selectmen and not to the Planning Board and that the Planning Board has no involvement with enforcement.

Gary again reminded that this is conceptual discussion and if Steve wants to propose changes to the ordinance or a new ordinance, Steve needs to submit a document to the Planning Board and the Planning Board will take appropriate action to move it through to the Town Meeting.

Steve again brought up specific issues regarding MX171 and how it can be enforced. Gary again stated that he cannot enforce anything and this is up to the Selectmen.

Steve asked if the meeting recording would be publicly available. The Board explained that the recording is not public and was used for transcribing meeting minutes only.

The discussion ended.

### **III. Other Business**

The Board discussed changes to the Rules of Procedure to remove the requirement for public notice for amendments to the Rules and to add fees as part of the Rules. The Board agreed with that process and this revision would be publicly noticed for the next meeting to remove the requirement that amendments to Rules would require public notice.

Gary updated the Board on the status of Farm Island Acres, LLC with respect to completion all conditions of approval listed in the October 16, 2019 Notice of Decision. Gary noted that he is waiting for the Planning Board attorney to review a response

letter to the Farm Island Acres, LLC attorney. Once the Planning Board attorney approves the language in the letter, which will then be sent to the Farm Island Acres attorney, Farm Island Acres will be able to submit their subdivision plans to the Carroll County Registry of Deeds.

**Adjournment** – Tony motioned to adjourn the meeting, Bob seconded and all were in favor. The meeting was adjourned at 8:35 PM.

Respectfully submitted by Susan Burnside