

**TOWN OF TUFTONBORO
PLANNING BOARD
September 3, 2020
Tuftonboro Town House & Virtual Access
APPROVED MINUTES**

Members Present (in-person): Roll call: Matt Young, Chairman – yes, Gary Qua, Vice-Chairman – yes, Tony Triolo – yes, Carol Bush, Member – yes.

Members Present (virtual): Roll call vote: Kate Nesbit – yes (acknowledged no one is present with her), Member, George Maidhof – yes (acknowledged no one is present with him), Alternate.

Members Absent: Bill Marcussen, Selectmen’s Representative, Laureen Hadley, Member.

Staff Present: Lee Ann Hendrickson, Administrative Secretary.

Chairman Young opened the virtual meeting at 7:00 PM.

Matt Young read the following preamble to the meeting:

As Chair of the Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor’s Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

- a) *Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:*

We are utilizing GoToMeeting for this electronic meeting. All members of the Planning Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through logging onto <https://global.gotomeeting.com/join/136356229>. To listen via telephone call 1-866-899-4679, access code is 136-356-229. Please note that the public will be able to interact during the public input the online service however, will only be able to listen to the meeting via telephone.

- b) *Providing public notice of the necessary information for accessing the meeting:*

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting telephonically.

- c) *Providing a mechanism for the public to alert the public body during the meeting if there are problems with access:*

If anybody has a problem, please call 603.486.2692 or email at: hendrickson.leeann@gmail.com.

- d) *Adjourning the meeting if the public is unable to access the meeting:*

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Chairman Young stated George Maidhof will continue to sit as a full voting member.

I. Public Comment

None.

II. Consideration of Minutes
August 20, 2020

It was moved by Tony Triolo and seconded by Gary Qua to approve the August 20, 2020 Tuftonboro Planning Board minutes as submitted. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Kate Nesbit – abstain, Carol Bush – yes, George Maidof – yes. The motion passed (5-0-1).

III. Scheduled Appointments/Public Hearings

YMCA Camp Belknap

Tax Map #39-1-13, Chase Point Road

Site Plan Review; Air Rifle Range, Bath House & Relocation of 2 Staff Houses

Public Hearing continued from July 16, 2020 and August 20, 2020

Matt Young stated the public hearing was continued from August 20, 2020.

Gregory Wirth stated there were two assertions brought up in the August 18th submission; the assertion that the NH Supreme Court indicated that you can take any more than one distinct tax parcel and consider them together with respect to matters such as those before the Board this evening. He noted in his submission that the Supreme Court did not say that. He stated when the Court was asked to review whether you can take distinct tax parcels as a whole versus one, they didn't rule on it; noting they didn't rule on it because they didn't have to. He read the following excerpt from one of the cases cited by Attorney Brunelle; "Our decision is not affected by whether the property is consolidated parcel or two separate lots thus, we need not address the argument concerning this issue." He stated before the Carroll County Superior Court earlier this year the Camp filed a pleading with Judge Ignatius and in that pleading what YMCA Camp Belknap specifically indicated that "you do not look at multiple parcels as a whole." He stated specifically they argued to the Superior Court that separate tax parcels were to be considered separate. He noted such is what he has been saying at previous hearings and is now asserting. He stated what they are arguing before this Board is the polar opposite from what they argued before the Superior Court in April of this year in a ruling that went against them. He stated Attorney Brunelle cited the New London Land Use Association V. the New London Zoning Board case (1988 Supreme Court decision); noting Attorney Brunelle stated there is a three part test and the test and the test is 1) to the extent to which the challenged use reflects the nature and purpose of the prevailing non-conforming use, 2) whether the challenged use is merely a different manner of utilizing the original nonconforming use or whether it constitutes a different use and 3) whether the challenged use will have a substantially different impact upon the neighborhood. He stated the Supreme Court stated, in the same decision, "we are mindful that nonconforming uses cannot be substantially enlarged or expanded but may only be altered where the expansion is a natural activity closely related to the manner in which a piece of property is used at the time of the enactment of the ordinance creating a nonconforming use." He stated they also said, "While we have previously upheld an increase in the volume, intensity or frequency of a nonconforming use that reflects the natural expansion and growth of trade and does not substantially change the uses effect on the neighborhood, we have done so only within the confines of the existing structure. We have never permitted an expansion of a nonconforming use that involved more than the internal expansion of a business within a pre-existing structure and we will not do so here." He stated you can't do what YMCA Camp Belknap wants to do because it is an enlargement of a nonconforming use. He stated not only is case law contrary to what they want to do but the Town's own internal regulations in terms of definition of enlargement. He stated they also militate against this Board doing what YMCA Camp Belknap would like you to do. He stated they need to go before the ZBA and they haven't done it. He stated the application, as presented, must be denied.

Tom Quarles, Esq., Devine Millimet Law Firm, stated it would be most efficient if he didn't respond to Attorney Wirth's presentation and let the meeting proceed.

Matt Young stated there are three issues; question of an expansion of a nonconforming use, grandfathering of the property and a question of the site plan itself. He stated the Board has received a lot of information as to when the property was acquired by Camp Belknap and noted the minutes have been reviewed by Planning Board Counsel. He stated Town zoning regulating summer camps went into effect in 1988 and Camp Belknap acquired the property in the 1970's and there has not been any information that would leave the Board to believe that they did not put the property in use in 1988. He stated the property has been used as a summer camp prior to 1988.

Gary Qua stated Camp Belknap purchased the property in 1972/1973 and the Town's ordinance was enacted in 1972. He stated there were changes to the Town's zoning with regard to camps in 1978 and further changes in 1988; noting it appears that Camp Belknap purchased the property well before zoning was in place. He stated the proposal for the relocation of the rifle range, staff houses and construction of a bath house is the same use as the use that currently exists today with a small expansion on the porches; noting the integrity of the camp is maintained. He stated the relocation of the rifle range is much quieter and safe as it is proposed to be moved further away from the neighbors and abutters.

Tony Triolo stated he believes the use is grandfathered.

Carol Bush stated she has reviewed all of the documents and Attorney Justin Pasay's opinion and agrees that TM #39-13-1 has been used as a summer camp and reflects the purpose of a nonconforming use as a summer camp and is in keeping with the nonconforming use issue. She stated the Town's Code Officer hasn't had any issues with the uses and no one has challenged his decisions.

George Maidof stated he concurs with the comments from the Board and that the use is grandfathered.

Matt Young stated it is the Board's opinion that the Tax Map in question is a current nonconforming use. He requested the Board provide comments relative to whether the expansion is permissible. He referenced the 3 part test; 1) to the extent to which the challenged use reflects the nature and purpose of the prevailing nonconforming use. He stated there is no question as to what the property is being used as which is a summer camp. He stated they are proposing use as a summer camp therefore. He referenced #2 & #3 of the test; 2) whether the challenged use is merely a different manner of utilizing the original nonconforming use or whether it constitutes a different use and 3) whether the challenged use will have a substantially different impact upon the neighborhood. He stated there is no significant change in the nature and character of the current use. He stated he doesn't see how a use that is going to be 800' away from an abutter will have a negative impact on the neighborhood. He stated the use/activity can't be seen or heard by an abutting property.

Tony Triolo stated he agrees with Mr. Young and noted the proposal is an improvement to the campers and abutters. He stated the relocation of the air rifle range is safer.

Gary Qua stated Camp Belknap has been using the property since 1903, the range has been in existence since the 1940's and the cabins were built in the 1950's. He stated Camp Belknap proposes to continue to use the property as a summer camp; noting he does not see a change in usage. He stated the abutters are further away from the relocated structures than the existing structures and is safer.

Matt Young stated he understands the need to accommodate families and staffing changes; noting the proposal addresses such. He stated the relocation of the rifle range is safer.

Gary Qua stated the air rifle range is quieter and safer.

Kate Nesbit agreed with Mr. Qua and Mr. Young and noted that no one has questioned the Code Officer's decisions in the past.

George Maidof stated the use of the camp is the same and the proposal has more positives than negatives. He stated the property is being used solely as a camp.

Matt Young confirmed the applicant has submitted drainage calculations.

Seth Kassels replied yes.

Matt Young requested a summary of such.

Seth Kassels stated the calculations show an overall reduction; noting the summary states there is a minimal increase in impervious area and there will not be an increase in runoff. He stated pre and post development calculations were submitted; noting the pre-development numbers are higher than the post development numbers.

Matt Young confirmed the applicant submitted lighting specs, plans for the air rifle range and trajectory study.

Seth Kassels stated lighting and safety specs were submitted as part of the proposal. He stated the Board reviewed elevations above and over Chase Point Road; noting the minimum was 80' and maximum misfire was up to 400'.

Matt Young confirmed that nontoxic pellets would be used as opposed to lead bullets and asked if the proposed buildings would be built on sono-tubes.

Seth Kassels replied yes to the latter.

Matt Young confirmed there are no proposed changes in grade other than for utilities.

Seth Kassels stated and stormwater management that has been submitted.

Matt Young verified the Board received a letter from the engineering firm stating the septic system is capable of supporting the proposed use.

Seth Kassels stated the septic system design was submitted that notes the total maximum capacity.

Matt Young stated he has thought a lot about the air rifle range. He stated the State Police range is 50 yards off the road; noting he has never heard of accident or a problem with such. He stated the camps in the area have offered such a program and there hasn't ever been an accident. He stated even if the range were to stay in the same place that a .22 is much more deadly than an air pellet rifle; noting there is no question that the proposal is much safer and an improvement than what is currently occurring.

Gary Qua stated the proposed air rifle range is safer which regard to both the pellet and the way the range will be built. He noted the pellets clear the road and the decibel level would decrease from 140 decibels to 94 decibels. He stated the relocation of the range is set farther back from abutting residences (913' and 771' from properties). He stated there hasn't been a safety issue with the current range the way it has been managed and noted the proposal is a better safer option.

Tony Triolo stated the proposed air rifle range is safer than what currently exists.

Kate Nesbit stated given the information provided she believes the impact will be significantly less than what currently exists.

George Maidhof stated a .22 is far worse than an air rifle; noting the proposal is safer and the range will be contained.

Matt Young recommended a condition of approval to include review and sign off of the proposal from the Police Department since none of the Board members are experts.

Carol Bush stated the proposed safety factors and changes are to be applauded; noting the proposal is safer.

Referencing parking, Matt Young asked how the number of parking spaces were ascertained to meet compliance.

Seth Kassels stated a waiver for parking travel lanes would be submitted however, nine parking spaces were provided; noting one extra space was provided.

Tom Quarles submitted and read the waiver request from Section 6.3.2 noting the applicant proposes the driveway to be parking travel lanes 14' wide which is less than the Town standard of 22'. The intent of the driveway will solely serve the camp staff and cabins and is adequate to the needs of the Camp.

Matt Young verified the parking spaces were based off a residence and recommended a condition of approval include review and sign off from the Fire Department.

Carol Bush questioned the length of the driveways.

Seth Kassels stated the entrance to get to the parking spaces is approximately 30'; noting there are many different access ways.

Matt Young verified the road accesses the parking.

Gary Qua stated he has no issue with the waiver.

Kate Nesbit and George Maidhof agreed.

It was moved by Gary Qua and seconded by Tony Triolo to grant a waiver of Section 6.3.2. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Kate – yes, Carol Bush – yes, George Maidhof – yes. The motion passed (6-0).

Matt Young confirmed the only easement on the property is through the NH Protection of NH Forests and that the applicant has submitted a letter from them. He stated there was a question about a 50' boundary line adjustment that was not included on the plan.

Gregory Wirth stated there was a boundary line adjustment done on 39-1-12.

Staff questioned whether the boundary line adjustment has been recorded.

Matt Young stated a condition of approval could include a plan revision reflecting such.

Gary Qua questioned the hours of operation for the air rifle range.

Seth Kassels replied 9am – 10pm; noting such are the current hours of operation for the range. He stated the core use is between 9am and 8pm. He stated the tennis courts are lit until 10:30pm and the campers are on the courts until then. He noted the Camp has never received a complaint regarding the current activities.

Matt Young reviewed the following conditions of approval;

1. The applicant shall submit Police Department signoff or third party range official verification on the air rifle range safety and procedure.
2. The applicant shall submit Fire Department sign off.
3. This approval is subject to all Federal, State and local permits and any conditions attached thereto.
4. During construction wood chip berms of approximately 18 inches shall be placed around the areas being worked on or a sediment fence shall be installed during construction.
5. Only nontoxic pellets shall be used on site.

6. The approval includes the use of only air rifle range only. The range cannot be converted to a pistol or rifle range.
7. The applicant shall restore the grade fully following installation of utilities.
8. Stabilization of all bare areas that are disturbed during construction with wood chips.
9. The plan shall be revised to reflect the boundary line adjustment between Tax Map 39-1-12 and the subject parcel, Tax Map 39-1-13, if the boundary line adjustment has been recorded.
10. Hours of operation for the air rifle range shall be 8am to 10pm.

It was moved by Gary Qua and seconded by Carol Bush to approve the YMCA Camp Belknap Site Plan Review application, Tax Map 39-1-13. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Kate – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

Matt Young noted he did not close the public hearing and requested a motion to do so; noting he would review the conditions again and requested a second vote on the conditions of approval.

It was moved by Tony Triolo and seconded by Gary Qua to close the public hearing. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Kate – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

It was moved by Gary Qua and seconded by Carol Bush to approve the YMCA Camp Belknap Site Plan Review application, Tax Map 39-1-13. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Kate – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

IV. Discussion Items

2021 Budget

The Board reviewed the 2020 budget and expenditures to date.

Staff noted that historically the request and appropriation for office supplies has been \$500 however, an additional \$605 was appropriated in 2020 to reflect the purchase of a new computer (Town wide replacement program). She stated following the purchase of the computers the funds were taken from another budget source therefore, the line is under expended. She stated she has held off on purchasing any supplies and has been conservative in her hours given the amount of legal expenses. She recommended reducing the line item to \$500.

Following further discussion the Board agreed to;

- Decrease 01-4191-01-620, Supplies from \$1,105 to \$500
- Increase 01-4153-02-320, Legal Planning from \$10,000 to \$20,000

It was moved by Tony Triolo and seconded by Carol Bush to approve the 2021 Planning Board budget as proposed. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Kate – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

Zoning Amendment; Section 3.6.F.13

Gary Qua distributed and reviewed the proposed changes.

Jack Parsons requested a copy of the proposed amendment for review and comment and expressed concern for outdoor storage whether a building exists or not. He stated commercial storage is an issue.

Gary Qua and Matt Young referenced portions of the proposed amendment that address such.

Staff stated she would forward the amendment to Mr. Parsons and continue the discussion to 9/17/20.

Master Plan Draft Land Use Chapter

Staff requested the Board review such for discussion at the September 17, 2020 meeting. She noted the Board is currently out of contract with LRPC.

V. Other Business

N/A

VI. Public Comment

None.

It was moved by Tony Triolo and seconded by Gary Qua to adjourn the September 3, 2020 Tuftonboro Planning Board meeting. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Kate Nesbit – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

There being no further business before the Board, the meeting adjourned at 8:29 PM.

Respectfully Submitted,

Lee Ann Hendrickson

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