

MONT VERNON PLANNING BOARD
Public Meeting Minutes
March 12, 2019

AGENDA

Times are approximate and subject to change without notice.

7:00 pm Paul Hatfield, 8 Dow Road Driveway Easement Issue

7:30 pm Joanne Draghetti – Conservation Commission
Proposed Wetlands Ordinance

8:15 pm Update: Master Plan Workgroup

8:30 pm Town Center District

- Review recent use amendments
- Conditional use check list questions

8:45 pm Other Business
Mail & Announcements
Review Minutes from 2/26/19

9:00 pm Adjournment

Seated: Bill **McKinney**, Bill **Johnson**, John **Quinlan**, Charles **Baker**, Steve **Bennett**, Michelle **Reisselman**

Present: Eric **Will**

Absent: Chip **Spaulding**, Rebecca **Schwarz**, Dave **Hall**, Jim **Bird**

7:00 PM

McKinney called the meeting to order and had everyone stand for the Pledge of Allegiance. Paul Hatfield, 8 Dow Road, came before the Board to discuss a driveway easement issue. He has purchased Lot 1-5-27. When this development was put in they had limited access to the roadway proposed. The development was designed with easements on other properties; one driveway access would service two properties. Mr. Hatfield would like to alter that and have a driveway access on his lot and not utilize the easement. He showed a sketch of the easement noting that if he in fact has to utilize the easement he will be driving across his neighbor's front yard. He feels that when the builder put up that spec house on 1-5-26 he maybe didn't realize that the easement was there. If he did he could have flipped the house so these two lots could have shared the entrance, it would have been a non-issue. As it stands now the value of the property at 1-5-26 will suffer if he is made to utilize this easement. **McKinney** noted that the development plan shows one driveway accessing both lots. It should have been that way on every lot in the development but as he understands it several of the lots were issued permits in conflict with the approved site plan. Mr. Hatfield doesn't think there is anything that states he has to use this easement. **McKinney** said that the cleanest way to look at this if he wants to remove the easement off the property would be to do a site plan amendment for those two lots; relocate the driveway, remove the easement and come back to the Board for a hearing. **Bennett** noted that the deed will show the easement also. Mr. Hatfield noted that most of the driveways on Dow Road were put in places not shown on the plan. Mr. Hatfield asked if the Board could give him permission to not have to use the easement so he can put the driveway where it makes sense as the majority of the other people did anyway. It doesn't seem fair to make him go through amending the plan as no one else had to. **Bennett** asked why the development was designed this way. **McKinney** said he assumes that the Planning Board at the time wanted to limit the number of driveway accesses to the roadway. **Bennett** explained that giving permission means amending the site plan. Everybody in that subdivision has a deed which references easements. Either your property has an easement on it to somebody else's benefit or you have an easement on someone else's property. There are legal documents that you will have to have prepared and recorded to amend the site plan. Mr. Hatfield stated that he does not feel there is anything that states he has to use that easement; just because the easement is there doesn't mean he has to exercise that easement. He built a house in the same development a year ago and had no issue obtaining a driveway permit. He said that he can take care of this and go through this proceeding again; he just doesn't want this to hold him up from moving into his home. **Johnson** said he thinks the amended site plan process can be pretty quick so long as the abutter and John Tenhave get together and

do what they're supposed to do in a timely manner. **McKinney** said what it comes down to is we cannot just tell you that you can do this because we have a signed recorded site plan that says this is where the driveways are supposed to go. **Bennett** reiterated that you cannot get a driveway permit approval if the driveway is not placed where it's depicted on the site plan. The fact that a number of people ignored that, including the prior DPW Director, does not change that fact. In summation, the abutter at 1-5-26 along with John Tenhave need to file for a site plan amendment that will remove the easement off Lot 1-5-26 and then show the driveway locations for Lots 1-5-26 & 1-5-27. Both deeds will also have to be corrected. There will need to be two applications which can be heard at the same time. When the new plans are completed we can set a hearing date. Mr. Hatfield thanked the Board for our time.

7:25 PM - Master Plan Workgroup and Town Center District

There is nothing new to report on the Master Plan Workgroup. **McKinney** met with NRPC in regards to the Town Center District. He just has to clean up everything up; they are happy with it from a legal aspect. He will meet with them one more time and then be ready to start calling for the public to come in to review it and give their comments.

7:30 PM - Joanne Draghetti, Conservation Commission, Proposed Wetlands Ordinance

Draghetti went through the updates to the proposed ordinance. She started with the section on Existing Unimproved Lots which reads that 'This Ordinance shall not prohibit the construction of or additions to principal and accessory structures within the buffer zone on unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed prior to adoption. Unimproved lots that have been approved for subdivision or which otherwise legally existed prior to adoption may use wetlands to satisfy up to 25% of the minimum lot area requirements. New construction on a legal previously approved vacant lot will only be permitted upon determination by the Planning Board that it is not reasonably feasible to locate the structure outside the buffer zone, prior to the issuance of a building permit. Any construction permitted within the buffer zone shall minimize harm to the wetland or surface water. The Planning Board may seek input from the Conservation Commission during the review process.' Draghetti suggested using Best Management Practices for Minimizing Impact on Wetlands from Development from the NHDES. **Johnson** questioned if there is an open space development and there is the potential with the new buffer zone for either a lot not being able to be developed and/or the expense of going through and doing a redesign – having been a developer in the past he would come and question why this is being imposed on him. **McKinney** explained that as this is written there would not be a denial to build on the lot because of the buffer. The Planning Board could say we have no option but to allow the house to go where it can go on the lot because it's surrounded by wetlands. This gives the Planning Board the authority to grant a waiver. **Quinlan** noted that we have a lot of approved lots that haven't yet been built on. This ordinance could potentially force someone to change the monetary basis of what they were originally planning depending on how good/bad the land is in regards to wetlands. A developer has made plans based on a calculation. Depending on the case this could cause a very large shift in what the developer can and cannot do. **McKinney** noted that the way this is written it could grant them the ability for relief by the Planning Board. **Johnson** said he was playing devil's advocate in saying that if he's a developer and has already paid for engineering and the design for a development and then we tell him he has to update the plan – we would like you to show all these buffers on the plan so now he'd have to bring his civil engineer back; and we would like you to move the houses around and see what you can or cannot fit... there is an expense that goes along with that. If he was a developer he would come back to the town and say he would make best efforts to put it where we need him to but who is going to pay for that expense. Whether it be \$5,000 or \$25,000 there is still an expense there. **Johnson** thinks trying to impose this going backwards on existing approved developments will be a challenge without exposing the Town to lawsuits. **Quinlan** said when we have a signed plan by the Planning Board, the Select Board and the developer that is a business agreement for him to build houses. That's a business deal. We've negotiated a deal where he will build so many houses on such a piece of land and these are the conditions. That's sealed, done and recorded. Now you're saying you want to change the deal at a later date. Draghetti said that an alternative could be to say once this is adopted that any new subdivision would have to follow this ordinance. **Johnson** stressed that he thinks Draghetti has done a great job with this; the point that he is trying to make is that we need to walk cautiously trying to impose this on lots that have been previously approved because there is an exposure. **McKinney** reminded that we have a long way to go with this; we are only on round two with this. The input we get from our developers is essential; we don't want to make it so restrictive that we deter development. Draghetti stressed that we have to have some teeth to it; we are not here to appease developers. **McKinney** said we need to bring some awareness to the importance of preserving our wetlands and our groundwater. **Quinlan** asked who is going to prepare the visual overlay. **McKinney** said this will eventually go to the NRPC. The Board agrees that we should have this ordinance apply from the date of adoption forward. **Bennett** stated that even then certain lots will have protection from this. If you've got an approved subdivision that has done substantial development, according to the plan they have five years before they are subject to any more zoning. So there are certain lots that will be exempt from those regulations for at least five years. **Will** noted that before 1999 there was no restriction; in 2004 there was 25% allowed; what is our intent now? Effective at date of passage you'll have to be in full compliance. The Board also discussed the Special Exception and Boundaries sections. The Board will continue to review and comment on the proposed ordinance. Draghetti will come back again on March 26th to continue the discussion.

9:00PM - Other Business

- The Board reviewed the minutes from 2/26/19. **Baker** motioned to accept the minutes of 2/26/19 as written seconded by **Reisselman**. All in favor the motion passed. **McKinney** read an email from Steve and Kim Roberge to the Board (see attached). **McKinney** and **Bennett** both said they are all very good questions. Mont Vernon did not do a town wide sprinkler ordinance. The Fire Chief relied on NFPA to

look at special conditions. In this case, **McKinney** assumes that the issue was distance. They are way out on Salisbury; a long distance from both this fire station and from our mutual aid fire station in New Boston. **Quinlan** said they were using a standard measurement; you had to be within 1000 feet of a water supply and they are about 3,000 feet away. **Johnson** commented that was a requirement in 2004 and part of the approved development and recorded as part of the deed. **McKinney** wonders why we had a building permit being issued without reviewing the site plan. There are conditions on those for a reason and permits should not be issued until they review those conditions and make sure they're following them. **Bennett** said they've got a recorded plan that requires them to install a sprinkler system. That was an agreed upon condition put on the plan. They can either comply or try to amend somehow. **McKinney** said it's in the minutes and the Roberge's were present for that meeting. Their engineer added the note to the plan so it was pretty clear. The plan was recorded long before the law went into effect that prohibited communities from requiring sprinkler systems. It's a condition put on the plan by the Fire Chief. Without approval from the Fire Chief we are kind of stuck. **McKinney** will respond to the email.

- There is a resident installing a pool on Tater St. He is questioning code requirements. He is purchasing an automatic safety cover which would mean he does not have to put a fence up. He is seeking advice on how to petition the Board of Selectmen or others to update the Mont Vernon Town Codes to adopt the 2015 Pool Safety Code. **McKinney** will respond to the email.
- The Board discussed a resident who has a farm and is starting a non-profit educational rehab for slaughter bound donkeys and mules. They will be open to the public; do we need a site plan. **Bennett** cited language from RSA 674:32-c. Joan will invite her in for discussion on 4/23/19.
- **Quinlan** relayed that the Historic District would like the opportunity to see the completed Town Center District documents before they are presented to the public. **McKinney** noted that our work sessions are the 4th Tuesday of every month and they are welcome to join us. Selectman Roberge wants a summary of any updates on the Master Plan in 2018. Joan will send her the Natural Resources Chapter that was updated. The Facilities Chapter is still in progress.
- **Quinlan** asked the Board if they have any advice or words concerning creating a 4-way stop at the Purgatory/Wilton Road intersection. **McKinney** stated that they had looked at that and do not see the need for a 4-way stop. There had been discussion with Chad Branon, the engineer working on the Orchard Hill subdivision. It was said that putting a 4-way stop in may actually be more hazardous. This is due to the hill coming north up Old Wilton at Carleton's house. During the bad weather that slope gets very slippery; coming to a complete stop and then trying to get up that hill could be dangerous. **McKinney** believes that the PD would have to do a traffic study to prove there is a reason for a 4-way stop.

9:25 PM

As there was no further business before the Board, **Bennett** motioned to adjourn seconded by **Johnson**. All were in favor, the motion passed.

Respectfully submitted,
Joan Cleary

Planning Board Members,

Thank you for meeting with us on the 26th to discuss our concerns with the "improper" recording of our subdivision plats with regards to installation of sprinkler systems as a requirement of our subdivision approval. As well what the steps would be to have those plans amended.

We have read over the minutes provided to us in the file, as well as researched, with counsel, the requirements of a sprinkler system in a single family residence.

We are certainly aware that when state regulations were adopted in 2011 stated that the planning board shall not require or adopt any regulation requiring installation of a fire suppression system as a condition of approval, that our subdivision had already been recorded. Even though this subdivision was recorded in 2004, building permits were not issued until after the state law/bill change regarding sprinklers were approved. If we waited to do our conventional subdivision now, we believe we meet the all town regulations on subdivisions and sprinklers could not be required, correct?

What we can not get from the minutes or anything in the file is what valid regulation or requirement in the Town of Mont Vernon planning or zoning regulations/guidelines allowed for this condition to be part of the subdivision approval at that time? As important to us is what prevailing efforts allow the condition to be legally enforced at this time?

We again understand, based on counsel, that the local fire chief has the authority, through NFPA regulations, to require residential sprinklers when unique site or building construction warrants them. What we are unaware of is what valid conditions prompted the requirement in this conventional single family subdivision for approval, since nothing is noted as to this? Can a planning board enforce a pre-existing sprinkler requirement for subdivision approval in the absence of a town regulation or noted reasonable condition based on health, safety or welfare? Are there NFPA codes that articulated the unique site requirement/conditions? Why was this considered and is it still considered a reasonable condition based on current adopted statutes or codes?

We felt if these questions were answered, it would help in our determination as to whether to file to have existing plans amended or apply for a new subdivision.

Thank you for your help in this matter.

Steve & Kim Roberge