

TOWN OF RUMNEY  
PLANNING BOARD MEETING  
MINUTES  
February 23, 2021

The February 23, 2021 Planning Board meeting was a Zoom meeting hosted by Tara Bamford.

Meeting was called to order at 7:03 pm

Present: Brad Eaton, Brian Flynn, Armand Girouard, Isaac DeWever, Don Winsor, and Judi Hall.

Absent: David Cooke

Also Present: Tara Bamford, Ed and Jan O'Brien, Blake Allen, Michael Donahue, Sue and Scott Bartolomei and Janie Morey

1. There was a brief discussion with Tara regarding what we can require prior to approving a subdivision application. She said that state law did not allow us to hold up a vote of approval pending the receipt of a permit. However, permits can be "conditions precedent" and the documents would not be signed and become permanent until the permits are received. Judi stated that she did not think we were ready for a vote at this meeting. Brad said he thought we should discuss money first and see where we stand on that before moving ahead with conditions. Don asked if we had received a large copy of the septic design. Judi said there is one as part of the Town Tax files. We have also received a 24x36 copy of the property.

Brad asked if any felt we could vote on this tonight. A question was raised about the cost of legal counsel – could we ask for more than the \$1500 we mentioned at the last meeting. Judi said we have to look at what part of the final fee is specific to this case vs. what part is Christine familiarizing herself with our regulations. Isaac said he thought we could move on with a vote this evening.

Brad said we should read the conditions. Tara said they are on page 3 of the letter that Christine Fillmore sent to us. The first condition is a "condition precedent" and the other two are "conditions subsequent". Brad said we will add the request for payment.

Brian asked whether we would read these conditions out in the meeting with the applicant. He said we should explain these during the meeting with the applicant.

Brad decided to defer approving the minutes. He then reviewed our attorney's opinion of the application. Christine Fillmore agreed with the applicant's attorney

that we had to approve the subdivision based on prior case law. There is no change in the land therefore we cannot deny the condominium.

Judi suggested that Brad explain what an ADU (Accessory Dwelling Unit) is. He then explained it for the abutters and interested parties on the meeting. Scott Bartolomei then asked if an ADU is a condo. Brad explained that an ADU is a single owner property. Scott asked if once an ADU becomes a condo can these units have ADUs? In this case the septic would be an issue. Also ADU pertain to single owner dwellings.

There was further discussion about why the state enacted the ADU law. Mr. Bartolomei stated that he feels the town needs to do something to protect the lake and if we don't the lake properties will decrease in value, losing tax revenue for the town. Hall explained that the town has tried to add some zoning ordinances in the past 40+ years but has not been successful. As long as the town is unwilling to look at what the consequences of not having some ordinances there is little that can be done.

2. At this point Jack McCormack joined the meeting. Eaton explained to Jack that we have been discussing single family homes and ADUs. He then went on to say that we had spoken to our attorney Christin Fillmore and that she said 1) that we are within our rights to require subdivision for condominium conversion and 2) that she agreed that what Fatherland Family Trust is proposing is in compliance with our regulations. Eaton then said we had been in touch with DES and have been told that a state subdivision approval is required.

McCormack then said Mr. Carter and his engineer Mr. Ferguson have been in contact with DES and went through all of that sometime in the last three months. McCormack asked for our DES contact information because they had been around and around and around with them about this already but he didn't want to get into that now.

Hall asked if there was paperwork showing what had been decided. McCormack said Joe had tried to give them information and DES wouldn't accept it and said it was not necessary. McCormack will talk to Carter and Ferguson regarding this and will get us the information. Hall said that we need to have the subdivision approval from DES. McCormack then started to explain what we need to have from them and Hall replied that we know what we need.

Eaton then said that we would also request a driveway permit for the second curb cut. Hall said that she had contacted DOT and found that no permit was filed for either the new driveway or the changes to the existing driveway. Mr. Carter had started the process in 2019 but did not follow through with filing for the permit. Hall will share her contact information with McCormack.

Eaton then said that the town was requesting a check for \$1500 for legal counsel. McCormack then said he had done some research on this and found that if the complexity of the application was such that it required engineering or surveying expertise it was appropriate to ask the applicant to pay for those services. In this case it was due to the planning board not understanding the law and therefore was not appropriate to ask for reimbursement. He said the fee should be "a reasonable allocation". He is sorry that our town is not a wealthy town. He said he has never represented an applicant that was required to pay for legal fees like this, it's never done.

Tara suggested that Brad ask for a motion to accept the conditions we had before us. Brad said there were actually four conditions, the fourth being that "The applicant will comply with requirements of RSA 485-A:39 regarding site assessment of shorefront property prior to sale or conveyance." McCormack asked why that would be part of the conditions when the law requires that. The response was that all the conditions stated were what is required. McCormack said he feels that they are being singled out. Flynn said this is what our attorney advised and we just want to be fair to all.

A motion to approve the application was made by Isaac DeWever with the Conditions Outlined by Attorney Fillmore. Eaton read the conditions provided by Attorney Fillmore as follows:

1. Prior to signing and recording of the subdivision plan, the applicant will provide the Planning Board with either (A) an acknowledgement from the DES Subsurface Bureau that the current ISDS approval, dated 7/26/2018, No. eCA2016061614, will continue to be legally sufficient if the property in its current physical state is converted to condominium units, or (B) a copy of a new ISDS permit for the condominium conversion of the property. (Pursuant to Sections 5.06(4) and 902(C)(3) of the Subdivision Regulations.)
2. The property will at all times remain in compliance with all relevant statutes, regulations and permit requirements for wastewater disposal, shoreline and wetlands construction/impacts administered by NH DES, as well as driveway requirements administered by NH DOT.
3. The applicant will comply with requirements of RSA 485-A:39 regarding site assessment of shorefront property prior to sale or conveyance.
4. There will be a legal payment to cover Town Counsel of \$1500.

It was noted that item four was not in the letter from counsel but had been discussed at the previous meeting and had been verbally discussed with counsel in meeting on February 18

Hall suggested we wait until we heard back from Mr. Carter as to whether he agreed to the \$1500 fee before proceeding further. McCormack asked whether item 4 was part of Counsel's letter. Eaton said not it was not but was part of our discussion with her. Eaton added that it is in his words. There was a discussion about where the \$1500 came from. It was noted that that was the figure discussed in the previous meeting. Hall said that if Carter refused the payment, we could deny the subdivision. McCormack stated that was an interesting comment. He went on to say that he had sent Hall a letter offering to pay \$750 and he had expected that to be the topic of tonight's discussion. McCormack asked when he would be able to see the letter.

Winsor said he felt we didn't need to share that with McCormack. Eaton said it was okay to share it. It was noted that a vote to release the letter was necessary.

McCormack pressured the board to vote on the application tonight.

Eaton asked for a second to the motion. There being no second, motion was dead.

McCormack continued to press the board to vote on the application. He said he didn't understand how waiting another month would change anything. What more did we want from the applicant? Eaton said we wanted to come to an agreement about the cost.

Attorney McCormack stated that although he did not feel it was right, he had spoken with Mr. Carter and was authorized to accept the \$1500 figure. He went on to argue that there was now no reason to delay the approval at this point and these late meeting are getting tedious.

After further discussion and at Attorney McCormack's insistence Chairman Eaton asked if the Board was ready to vote on approving the Condominium Conveyance.

A motion to approve the application with the conditions previously stated was made by Isaac DeWever. The motion was seconded by Armand Girouard. Chairman Eaton called for a vote on the previously stated conditions.

Armand – aye

Brian - aye

Don – aye

Isaac – aye

Judi – nay – Not prepared to make a decision tonight

Brad - aye

The motion passed.

3. We discussed how we can prevent a situation like this from happening in the future. Attorney Fillmore suggested that we add the following to our Subdivision Regulations:

Subsequent condominium conversion and /or condominium conveyance of any ADU separate from the principal dwelling unit is prohibited pursuant to RSA:72, 1.”

Scott Bartolomei asked what the RSA referred to. This is the ADU RSA. He asked what he and other Stinson Lake owners could do to help the town. Eaton said we could use any help we can get to promote the appropriate regulations. Eaton then went on to reading the RSA cited. Bartolomei asked how then new addition to our regulation would prevent a situation like this from coming up again. Bamford said this would still allow ADUs but would prevent them from becoming condos in a backhanded sort of way.

Hall said that if we had a building permit, we would have a better idea of what was being built. Bartolomei asked if we don't have building permits how do we know what is being built and how to tax landowners properly. The answer is we don't. There are the annual inventory forms but it's up to the landowner to fill them out fairly if at all. As Attorney McCormack stated in his town people just pay the fine rather than filling them out. DeWever said there are assessors who do go around to properties and inspect but it is possible to build a house or an addition that the town is not aware for a few years. Bamford asked Bartolomei is he is out of state. He's in Michigan. She explained that NH recognizes the International Building Code but towns have to vote to enforce it. Once it has been voted in by a town it can be enforced.

Eaton said that Carter had not added all he was doing to his inventory forms. There is no mention of additional bedrooms or bathrooms, DeWever said the property owners are not required to let assessors into their properties and there is some supposition about number of bedrooms and baths.

Hall said that we have very little to work with and it makes the work of the Planning Board very frustrating. Eaton said this is a particularly extreme case of a very small lot on the lake.

Hall said that we should check on who is working on this at DES and who the Septic Designer Carter is using is. Winsor asked if DOT is also working on this. Hall said she has talked to an engineer at DOT about the lack of permits and they are looking into this.

Bamford said that the reason we require things like the driveway permit and the Shoreline assessment requirement is that now we can enforce those things.

Mike Donahue asked a question about whether the septic plans are sent into the

Selectmen. DeWever said the Selectmen do look over the plans to be sure that they are complete. Donahue asked if the Planning Board should have a more active role in approving these plans to help monitor properties like Carter's. Hall said that at the time the plans came before the Selectmen no work had been done on the existing building and the septic plan was an improvement on the substandard system that was in place at the time. Eaton added that this new system required six waivers to be approved by DES. Donahue asked to be put on the list to help out with town regulations.

Armand Girouard said that it was important to let people know that this is an example of what happens with no sort of enforcement like zoning or anything like that is in place and what we can and cannot do and as a Board. We're not here to quash anyone's dreams or limit them with what they can do if they meet our regulations. But tonight is a good example of what can happen without a zoning tool in place and going into the future other things may happen in the town, as the board does not have a lot of legal authority to challenge whether we approve or disapprove an application. As long as an applicant can meet all of the things on the checklist, all of the stipulations, we can't legally stop it. We don't have tools in place. More and more this is going to be happening and word needs to get out. Some residents may say all well and good unless it's happening in my neighborhood.

Scott Bartolomei asked if the people of Rumney are opposed to zoning for Rumney proper can there be a lake zone. We talked about various plans that had been proposed in the past to create some zones that met with major oppositions. Mike Donahue asked about the Shorelands Protection Act. We do have some subdivision regulations that apply to various named waterbodies.

Mike asked if people are aware that Rumney is one of the few towns without zoning. Girouard said people are very aware of it and realtors advertise places in Rumney stating that there is no zoning. This is a big draw for some people.

The next meeting will be March 30<sup>th</sup>. There are a few items on the agenda for next month – CNHA has both their excavation permit and a lot line adjustment coming before the Board. We also have election of officers for 2021.

Judi will send a group email to all who have been part of our meeting on the Fatherland Trust subdivision about the outcome of this application. She will also be following up with both DES and DOT about where the permitting is headed. Mrs. Obrien thanked the Board for their work.

Bamford said we did not vote to share the attorney's letter with McCormack and there are reasons why that is not typically done. Eaton said he had agreed to send it but thought now we didn't have to send it.

Eaton asked if there was any other business. Girouard reminded us that we had not approved the minutes. Girouard asked whether we needed to use John instead Jack when referring to Attorney McCormack. All correspondence that has come from his office is as Jack McCormack so we will leave it as that. A few other minor spelling errors were corrected.

Eaton asked for a motion to approve the minutes. DeWever made a motion to accept the minutes as corrected. Winsor seconded the motion.

Armand – aye

Don – aye

Judi – aye

Brian – aye

Isaac – aye

Brad – aye

The minutes passed.

Selectmen's report – Isaac reported that the Town Meeting will be on March 11<sup>th</sup>. It will be in person. Rumney doesn't have the technology to meet the state guidelines for a Zoom meeting. Smaller towns are having trouble with this. Flynn asked if there was absentee voting for this election. Absentee voting on town election day March 9<sup>th</sup> is available. Isaac said that the two big issues at the Town meeting will be voting on the rest area and the addition to the town hall.

The new police car is in service. We do not have a new officer yet but Greg is getting close to choosing a new hire. It's been hard to find someone with experience.

Brad confessed that he had signed up to run for Planning Board again. He was thanked by Don.

The meeting was adjourned at 8:45.