



**TOWN OF MADISON
PLANNING BOARD**

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**PLANNING BOARD MINUTES
May 3, 2023**

MEMBERS PRESENT: Marc Ohlson; Paul Marks; Dave Cribbie; Karl Nordlund; Jay Buckley, Paul Littlefield, Selectmen's Representative, Adam Price

MEMBERS EXCUSED: Alternate Phil LaRoche

OTHERS PRESENT: Katharine Young, Land Use Boards Administrator; MadTV Aysia Morency, Daniel Yule, Jory Daniel Bailey, David and Pamela Arel and Bill Dempster

POSTING DATES & LOCATIONS: Notice was posted on April 27, 2023 at the Madison and Silver Lake Post Offices, in the Madison Town Hall – upper and lower levels. The hearing notice was published in the Conway Daily Sun on April 27, 2023.

CALL TO ORDER: Ohlson called the meeting to order at 7:00 PM.

APPROVAL OF AGENDA: **Motion** by Cribbie, seconded by Marks to approve the Agenda as written. The motion passed **unanimously**.

Ohlson asked the Board for a motion to approve the April 5, 2023 minutes as written.

APPROVAL OF DRAFT MINUTES: **Motion** by Marks, seconded by Buckley to approve the April 5, 2023 minutes as presented. The motion passed **unanimously**.

PUBLIC COMMENT: Ohlson opened Public Comment. There was none so Ohlson closed Public Comment.

PUBLIC HEARING:

Ohlson read aloud **Case #23-01 – Continued – Boundary Line Adjustment** – for agent Bryan D. Berlind, Licensed Land Surveyor of Land Technical Service Corp., for property located at 1293 Village Road, Tax Map 118, Lot 27 owned by Daniel & Carolyn Yule and Tax Map 118, Lot 27-1, owned by Jory Daniel Bailey.

Ohlson stated this case is continued from last month as there was an error in the abutter notification and Young stated the abutter was properly notified.

Yule stated he is the owner of Tax Map 118, Lot 27 and is also a representative of Land Tech as well as agent for Bailey. Yule stated he provided the Board with a plan revision which now shows all monuments have been set and he has received approval from NHDES for the subdivision. Yule further stated a portion of his property will be conveyed to Bailey to make Bailey's lot conforming to a two-lot subdivision. He also stated this was a tricky lot due to the large power line easement going

through the property and this easement consumes an acre and a half of land. He also confirmed that there will be no access driveway off of High Street and that both lots have the required buildable two acres. Cribbie asked what were the changes on the subdivision plan? Yule stated they had to add to the final Mylar subdivision plan the state approval and DES approval number as well as the monuments have been set.

Marks asked why the second lot is outlined in orange and is this access for High Street? Yule stated no, this is access off of Route 113 near the easement area and comes in by Pole 31.

Ohlson asked if the Board had any further questions. There were no further questions and Ohlson opened the Public Hearing to the public.

David Arel of 35 High Street – stated he is concerned about the High Street driveway entrance and he wanted it confirmed there will be no access to or from the second property off of High Street.

Ohlson closed the Public Comment.

Ohlson asked if the Board had any further Board deliberations and since there were none, Ohlson asked for a motion.

Motion by Marks, seconded by Littlefield to approve the Boundary Line Adjustment Plan as presented for **Case #23-01**. The motion passed **unanimously**.

Ohlson read aloud **Case #23-02 – Continued – 2 Lot Subdivision**– for agent Bryan D. Berling, Licensed Land Surveyor of Land Technical Service Corp., for property located at the corner of Village Road and High Street, Tax Map 118, Lot 27-1 owned by Jory Daniel Bailey.

Yule stated he previously presented his case with Case #23-01.

Ohlson asked if the Board had any further questions. There were no further questions and Ohlson opened the Public Hearing to the public.

David Arel of 35 High Street - stated he has the same comment as noted above that he is concerned about the High Street driveway entrance and he is against any access off of High Street.

Ohlson closed the Public Comment.

Ohlson asked if the Board had any further Board deliberations and since there were none, Ohlson asked for a motion.

Motion by Buckley, seconded by Marks to approve the Subdivision plan as presented for **Case #23-02**. The motion passed **unanimously**.

Ohlson read aloud **Case #23-03 – Preliminary Site Plan Review** – for Hank Walther, Applicant and Neal Underwood, Owner, for property located at 1381 Village Road, Silver Lake, Tax Map 118, Lot 32 to open Silver Lake Railroad in May 2023 using rental pedal-powered track vehicles called “railbikes”.

Walther presented his case and stated that the owner of the property, Neal Underwood was in Florida. Walther referred the Board to the plan of Silver Lake Station wherein he stated there are no structural changes, there is rail bike parking and rail bike overflow parking, there will be a temporary style canopy to sign waivers and for safety briefing. He further stated there will be nine bikes which he has already bought and there would be no more than 20 people out on the rails with multiple guides and they will travel to Boulder Road and back to the station. There will also be complimentary water but no food service. Walther may open the back half of the station building with historical information again. Walther also stated he has insurance. Walther further explained that Neal's lease expired in 2017 and the state asked him if he wanted to renew and he said no and then in 2018 the state put out a letter of interest in this corridor, 28 miles and there were multiple responses from snowmobilers. Walther stated he applied in 2023 and still the state has not send out the Right for Proposal and the Parks Department said it would be coming out in the spring but now it will be the end of the calendar year. Walther further stated that the state wants to lease the right-of-way to Walther. Walther also stated that some parties want the rails ripped out. Walther wants to use the rails the way they are and there would be no change to the environment.

Cribbie asked if DOT has an easement over Underwoods property? Walther stated no and that Underwood owns 756 feet of the track. Walther stated the State of New Hampshire promised the Right for Proposal would be out by the end of the year and Walther has that in writing and maybe he could open a year from that time frame. Ohlson stated maybe give Walther a two-year permit.

Buckley asked Walther about safety and if someone was sick or having a heart attack how would first responders get to the patient? Walther stated he has high powered speeders that could bring people back from being on the rail trail. Walther stated he will be taking a CPR class and will require his guides to do so as well.

Walther stated he is waiting for the State of New Hampshire's authorization to use the right-of-way trail. Walther thought the DOT right-of-way was inactive and thought you could ride on it but he found out you are not even supposed to walk on it but they really do not enforce it. Cribbie asked if the Board needs to approve this now? Buckley stated the approval could be contingent upon state approval.

Walther stated he has in writing from the State of New Hampshire that the Right for Proposal will be send out by the end of the calendar year and he is hoping he will be up and running this time next year.

Motion by Nordlund, seconded by Marks to approve a site plan for this site for two a two-year period, contingent upon state approval. The motion passed **unanimously**.

OLD BUSINESS:

Definitions: Buckley stated he just wanted the definitions available for the Board Members and explained this is a list of definition issues and proposed changes to the current and existing zoning and he asked the Board that instead of tackling this at a board meeting, if possibly, a sub-committee could be formed to deal with these issues. Nordlund stated that some Board Members have no interest in pursuing this right now and the Board Members that are interested should move forward with the definitions and regulations as a sub-committee and he feels they would get a lot more done. Ohlson stated someone would need to take minutes if a sub-committee was formed. Cribbie does not see the need for a sub-committee based on the amount of the definitions and feels this can be done as a Board. Ohlson stated someone will need to take minutes. Cribbie stated he feels this is something the Board can do unless there are more than definitions. Nordlund stated he thought there would be.

Buckley stated he had mentioned to Young the term “commercial” had been struck out and Young found something different. Young inadvertently stated the commercial definition should have been removed.

Bill Dempster, 157 Doe Drive asked to speak to this and stated that he went to the town hall and pursued this with the Town Administrator and he received a letter dated March 2, 2022 and he believes it is not supposed to be removed. Young corrected herself and believes that the Commercial definition should not be removed. Young gave Ohlson the letter dated March 2, 2022 from the Town Administrator addressed to Dempster and it stated that she did some research as to the Commercial definitions in the Zoning Ordinance and she found in the 2010 edition of the Madison Zoning Ordinance the Commercial Definition stated “a use primarily concerned with the marketing of goods or services” and in the 2011 edition of the Madison Zoning Ordinance she found Commercial Use – “Any use involving in part or in whole the sale of merchandise, materials, or services, but not including home occupations as defined in this section” and she believes these definitions clearly show the change to the ordinance that passed at the March 8, 2011 Town Meeting. The 2018 and 2022 edition of the Zoning Ordinance contain the same definition as the 2011 edition.

Cribbie stated it may be a good idea to go back 20 years and look at each town’s warrant and confirm everything that was passed at town meeting is changed in the ordinance.

Bill Dempster, 157 Doe Drive stated he has done this but the Planning Board would need to research it.

Buckley also stated that in addition to the Commercial definition, was the transient and non-transient and he wants to know the history of how these definitions got into the Zoning Ordinance.

SELECTMEN’S REPORT:

Price stated that the Select Board has been asked a few times by the public about any intent of reviewing the Master Plan because some portions of it have not been updated since 2002.

Ohlson asked Price what is the enforcement of STR’s? Price stated they are at a standstill and are meeting with their attorney to review everything before they do anything based on Conway’s decision.

Ohlson asked Price, why does the Building Permit not state as of March, 2022 that STR’s are illegal? Price stated he would need to talk to the Selectmen.

Bill Dempster, 157 Doe Drive stated that since March 8, 2022 there are 35 new STR’s not in compliance.

Buckley stated since the complexity of the definitions and looking back 20 years and looking at the Master Plan, there should be a sub-committee which should include members of the public. Ohlson stated he was opposed to this but will allow the Board to make the decision. He further stated that you would need to have Public Hearings, someone take minutes, swear people in and a place to have the meetings.

Bill Dempster, 157 Doe Drive stated that last year there was talk about a sub-committee and the Planning Board shut the idea down for the reasons Ohlson has stated, so why is the Board entertaining this now? Dempster further stated that last year the sub-committee came up as to STR’s and the Board was not in agreement. Ohlson does not feel a sub-committee is needed as the Board is not very busy but the Board can vote on it. Nordlund stated look at where we were and where we are

now and we are in the same place and may need to think differently. He stated the Board needs to decide who they want on the sub-committee.

Buckley recapped the temporary time line of what the Board needs to do to be ready for Town meeting that being all language for next year's ballot questions in by September which then can be reviewed by the attorney in October and then come back to the Planning Board for Public Hearing in November and then a second in December and be ready for March. He reiterated there are only four meetings to resolve the definitions and any regulations that they want to put forth for STR's if they are going this route. Ohlson asked how they would form a sub-committee, have them sworn in and minutes. Buckley stated the sub-committee would have to meet twice a month every month and report to the Planning Board every month. Littlefield stated then the entire Board would have to hash it out and approve it and he feels it makes more sense to do it as a Board. Marks stated it would need to be made an Agenda item and they need to work on it and not just talk about it.

Price asked if the definitions were proposed changes or errors? Buckley stated there are some discrepancies and proposed changes which are marked in red on the definition's handout. Buckley stated there may be a lot of ambiguity in some of the definitions and if you take the definitions and go back to the regulations and see where that word is used it sometimes does not make sense.

Ohlson asked if they still want a sub-committee. The Board decided no but to have the definitions on the Agenda. Ohlson stated the Board should pull together questions for Atty. Laura Spector-Morgan at the June 7, 2023 meeting and try to get something scheduled with her in June. Cribbie stated if the Planning Board is going to go forward with the STR regulation then the Planning Board would need to meet with the Selectmen and if not going forward then they would not need to meet with the Selectmen.

Buckley stated that Conway Planning Board is working on regulations for STR's in the Commercial Zone and he is not sure the Selectmen agree but if STR's are now perceived to be allowed in the residential district, those regulations will be modified to address the residential districts as well and with that being said, would it behoove this Board to at least work on regulations for STR's for the next ballot in March in case Madison decides to go the same route as Conway.

Ohlson stated he talked with the Selectmen's attorney at town meeting about a conditional use permit which is enforced through the Selectmen. Cribbie stated that regulations that do exist that are most effective are the ones that are Selectmen enforced and not land use and they are licensing and at that point, the only way you can do that is call it is if you are calling it a commercial use because is it licensing and that is the problem the Board needs to figure out if that is enforceable or not. Cribbie stated that Attorney Laura Spector-Morgan said licensing is not allowed. Buckley stated the Board needs to be ready this year in case they have to do something. Cribbie agrees with being ready but the problem is the only way the Board can be ready is to go against the advice of their attorney who said they should not be doing licensing or the Board would have to go with a land use regulation. Cribbie wants to do something but there is not a good path forward so far.

Ohlson stated the Board should bring the STR regulations to the June 7, 2023 meeting and bring the definitions in question and see if they can get to where the Board wants and he will schedule Attorney Laura Spector-Morgan some time in June to discuss these two items and he will also keep up with the Selectmen to see where they are going with their attorney.

Price stated the Selectmen have a meeting with their attorney next Tuesday. Cribbie asked Price if in the Selectmen's conversations with their attorney if he could ask about the licensing of STRs.

Young stated that she thought the Board wanted to also talk about Bergeron's zoning change for setbacks of existing structures on Class VI roads and Buckley asked also the definition of STR and 1.3b. Cribbie stated that at one of the Planning Board hearings for 1.3b someone stated that all of the surrounding towns have the ability to go to a less non-conforming expansion of the property. After Attorney Meier stated that did not exist at the January 4, 2023 hearing, Cribbie stated he started researching through a few different local ordinances to adjoining towns and he cannot find any adjoining town that has this in their ordinance. He further stated that this changed his position on this because someone in the audience stated that every town around us allows for non-conforming structure expansion to less non-conforming areas and he cannot find anything on this and this changed his view on 1.3b entirely and there is a lot more work on the ZBA. Ohlson stated this would be a good question for our attorney but maybe the Board resolve this and they would have to decide if they want any expansion in non-conforming and if they don't say no expansion of use in non-conforming. Ohlson will run this by Attorney Laura Spector-Morgan.

NEW BUSINESS: There was nothing to report.

CHAIRMAN'S REPORT: Ohlson stated he received an email about a Voluntary Merger for a condominium that was created in 2010 for Pomeroy Trails End Trust. This property is on Winter Road Extension which consisted of three dwelling units in the same family which abutted The Nature Conservancy. They gave some land to The Nature Conservancy and kept out 7.2 acres. They had three dwelling units and developed those into three different condominium units. Now they want to erase the condominium development that never got fully done as no condominium plans or Declaration were ever recorded so this was never established according to the guidelines of the New Hampshire Condominium Act. Ohlson stated that now you have three units on 7.2 acres and does this comply with our current regulations? Cribbie stated no and Ohlson said it would be two. Ohlson read an email from Attorney Laura Spector-Morgan and she stated that right now we do not have an application and only a draft of a Voluntary Merger submitted to staff for a draft review so the Planning Board should not take it up. She did offer to reach out to Attorney Warren.

Cribbie stated this is a Class VI road and there are three dwelling units on one lot and if you merge them and he does not see how this can be done as you need 200' of frontage per lot. Ohlson stated you can have two on one lot. Ohlson stated the Board could have them make an application or have Attorney Laura Spector-Morgan reach out to Attorney Warren. Buckley asked what would the attorney be deciphering for us? Ohlson stated 4.2 whether this would violate our current Zoning Ordinance. Cribbie stated attorneys talking with each other will cost money and then applying to the Planning Board and the Board telling them that the regulation is cut and dry that you cannot have three dwelling units on one lot does not cost us money. Ohlson stated they should submit an application.

CORRESPONDENCE/ADMINISTRATION: There was nothing to report.

ADJOURNMENT: Motion by Cribbie, seconded by Marks to adjourn. All Approved. The meeting adjourned at 8:24 pm.

Respectfully Submitted,

Katharine Young
Land Use Boards Administrator