

TOWN OF CENTER HARBOR
PLANNING BOARD
Hearing
Tuesday, May 5, 2020
6 p.m.

Due to COVID-19, this meeting was conducted via Zoom. Participants, which included the public, could join the meeting through video web or by telephone. All documents pertaining to this meeting were sent electronically to Board members and the same files were posted on the Website under the meeting announcement on the PB Calendar for public access.

Chairman calls the meeting to order at 6 p.m. Chair announced the meeting was being recorded and provides the protocol of the meeting (that document is contained in this set of minutes). Chair provides the Roll call of PB Members/Alternate Members. Due to our clerk, Aimee Manfredi having to recuse herself Kelli Kemery has been appointed Clerk Pro Tem for this matter.

**Roll Call: Chairman, Charles Hanson, in attendance no one else in the room
Vice Chairman, Peter Loudon, in attendance no one else in the room
Secretary, Bill Ricciardi, in attendance no one else in the room
Selectmen's Rep Harry Viens, in attendance no one else in the room
Member, Kelli Kemery, clerk Pro Tem
Member, Mark Hildebrand, in attendance no one else in the room
Alternate Member, Rachel Xavier, in attendance no one else in the room**

Not in attendance: Member David Reilly

Chair announces the voting members are: Charles Hanson, Harry Viens, Peter Loudon, Bill Ricciardi, Kelli Kemery, Mark Hildebrand and Rachel Xavier.

I. MINUTES:

Peter Loudon motions to approve April 21st minutes as read. Seconded by Bill Ricciardi. All were in favor of passing of the minutes of both March 3rd and April 16th.

II. PERMITS:

No discussion on the permits.

III. HEARING –AMENDMENT TO SUDUBDIVISION AND BOUNDARY LINE ADJUSTMENT BETWEEN EDWIN D. KLINE, JR TAX MAP 212 LOT 32 AND J. CONOR AND AMANDA HAYES TAX MAP 212 LOT 30.

Mr. Hanson announced that the Board would hear an amendment to a subdivision and a boundary line adjustment of land owned by Edwin D. Kline, Jr, Tax Map 212 Lot 32 and a boundary line adjustment of land owned by J. Conor and Amanda Hayes, Tax Map 212 Lot 30. This property is located on Kline Road off of Route 25B. Mr. Hanson said that this will be an introductory hearing. Mr. Hanson thanked Carl Johnson for the maps.

Carl Johnson introduced himself and explained that he is a land surveyor and has been working in this area for some time. He said that he thought that the Board was familiar with the location of this property. It was a subdivision approved by the Center Harbor Planning Board in April of 1989. It involved a roadway, right-of-way, that extended from Route 25B, it created lots and ended in a hammerhead style figuration essentially at a dead end. The road does not have any other access to any other road. The process was that

some of the lots were conveyed and the roadway was partially constructed along most of the length. There was a section of the roadway from one of the last two lots to the hammerhead that was not constructed. There has been litigation that has lasted some time. Mr. Johnson just wanted to mention that and does not want to go into details, but wants to explain how they got from the litigation to where they are now.

He explained that he was contacted by the Kline family to provide some survey support for them and produce an existing condition plan, which would help the Planning Board see what is out there and what has transpired since the original subdivision approval in 1989. Along through the litigation process it became evident that the Town was going to be a party at some point to this whole situation. In a cooperative effort, there was a meeting with the Town Code Enforcement Officer, Ken Ballance. Mr. Ballance suggested that maybe, as a part of some sort of resolution, the roadway right-of-way, may be lessened to a width of thirty feet along the section of the road along the Hayes property, or portions of the Hayes property, such that the roadway would be constructed as far away from their property as practical. That suggestion would result in a conveyance of twenty feet of width of the right-of-way that borders the Hayes property. The remaining thirty feet would essentially be the right-of-way that the road would be constructed within.

Mr. Johnson gave a little history of rights-of ways. Saying that, generally speaking in the 1970s up until now, fifty feet is generally the standard width for a right-of-way. That would deal with situations that have drainage, wetlands and significant slope issues. To construct a roadway to fall within a certain strip fifty feet is generally required. In circumstances where there aren't necessarily those limitations roadways can be constructed within strips of much less than fifty feet. Mr. Johnson continued to say that in this particular case the slopes are generally gradual so the Klines are not faced with any challenges there; but there are wetlands issues and the challenge there is to provide drainage such that the roadway is not compromised and also to protect all of the abutting properties from any drainage issues that may result from the roadway. That being the case, the Kline family hired Bruce Gilbay, a certified soil scientist from the Concord area. Mr. Gilbay delineated all of the wetlands within the vicinity of the right-of-way. As a land surveyor Mr. Johnson went out to the property and physically located the wetlands flags on the ground and produced a plan. At this time Mr. Johnson showed the proposed boundary line adjustment plan. He pointed out the Hayes' house that is shown on the plan. He also showed how the road comes up and basically ends at the driveway that comes into the Hayes property. He showed an old pass-way and the way it went into the Heiner property. Mr. Johnson pointed out that the road has not been constructed from the edge of the Hayes driveway to the hammerhead, which was part of the subdivision approval in 1989. Mr. Johnson said that "the meat of the matter" is the traversing along the limit of the Hayes property. Mr. Johnson also did mapping to demonstrate an adequate roadway and turn around for the remaining Kline lots. Mr. Johnson pointed out an inset at the right of the plan showing a twenty-foot parcel of land. He explained that Center Harbor has a policy of attaching the fee of the road to the last lot in a subdivision. Parcel A which is shown in the inset on the plan would be conveyed from the Klines to the Hayes' and would become fee interest subject to a couple of things. One, an agreement that was part of the settlement, is the underground utilities that would be servicing the other lots in the subdivision would be constructed within the twenty-foot strip because they will be buried and not visible. Additionally, and subsequent to the original agreement and because there are some drainage issues it has been agreed that limited amount of the slope of the road could fall within the right-of-way. Mr. Johnson explained that essentially when you have the utilities, the easement and the slope in that area it is essentially part of the right-of-way although it will be owned by the Hayes'. There will be a document filed along with the deed in the Registry that will identify what uses can occur in the twenty-foot strip and will allow certain portions of the slopes of the road to extend within it. Mr. Johnson showed where the drainage from the road would be picked up, making sure that it goes past any portion of the Hayes property and will be treated with culverts and other methods that might be necessary. The engineering plan that was submitted as part of the package shows more detail of the area. John Rokeh, of Rokeh Consulting, LLC, has provided this plan essentially for information only at this point. They are still trying to work out the drainage issues. There is a request for a scheduled hearing with the state of NH Wetlands Bureau to get their input as to how they are handling and going through the approval process for the road to be constructed. They are in a position with the Wetlands Bureau that this is an

existing subdivision and an existing right-of-way that was approved in 1989 servicing lots that have no other means of access. There is part of an obligation of the Wetlands Bureau to approve some type of roadway through this area and it is just a question of what type of drainage treatments the Wetlands Bureau is requesting be provided. Mr. Johnson said that subsequent to that meeting Mr. Rokeh will produce an engineering plan that has all of those elements and it will be submitted to the town for review. Hopefully at that time it will be a plan approved by the State of NH Wetlands Bureau.

Mr. Johnson said that he is not an engineer. He is familiar with road construction and could answer some rudimentary questions. He said that he is not a soil scientist although he is somewhat familiar with the elements of the soil science itself. Mr. Johnson said that subsequent to the approval of the plan in 1989 there have been some substantial changes as to what classifies a wetland as a jurisdictional wetland. In this area there were some predominately poorly drained soil types, a Ridgebury soil type, identified by the Belknap County soil survey. Most towns listed and still list a Ridgebury soil type in their soils and slopes calculations. Prior to the change in the rules a Ridgebury soil type could be counted. It was not considered a jurisdictional wetland and a septic system in a Ridgebury soil type if you had sufficient area of it. Problematic to that is, the rules changed and many of these plans and subdivisions that Mr. Johnson's company did throughout the 1970s and 1980s did not show any wetlands. Mr. Johnson said that when you go back and do delineations, they are in fact jurisdictional wetlands with today's standards. The State is very familiar with the fact that there are pre-existing situations where there are no options for relocating any portion of a road. We have no options to relocate any portion of the road to the northeast and there is no benefit to the southeast. Mr. Johnson said that one of the important things that the Board should consider when looking at the plan and at the site walk is that there is no benefit for this road to be located either in the center of the right-of-way or any closer to the Hayes property for wetlands standards. There would be no gain. By putting this roadway to the right-hand side of the fifty-foot right-of-way and giving up the twenty-foot has essentially no bearing on the wetlands impact. This is a good thing because the State may not recognize civil situations when going through the approval process.

There are a few things that Mr. Johnson wanted to bring to the Boards attention. Mr. Johnson said that they have done a significant amount of work to produce a plan that he feels gives the Board some visual information as to what is there and he agrees that the site walk will be beneficial for the Board to see physically what is on the ground and see what they are dealing with. At this time Mr. Johnson said that if there were any questions, he would be happy to try and answer them. Mr. Hanson thanked Mr. Johnson. And then opened up the meeting for questions from the Board Members first. Mr. Hanson said that he is hoping to set up a site walk by next week and asked Mr. Johnson if he thought that they would have their meeting with DES by then or by the third meeting in May. Mr. Johnson said that under the constraints imposed by Covid-19, the DES in his experience, is not responding to requests as quickly as they were before. Mr. Johnson said that there has been no response from the State saying that they will be able to give a specific date. Mr. Johnson said that he would be hesitant to be optimistic about having a meeting in that short period of time. Mr. Hanson asked if there were any other questions from the Board. Bill Ricciardi asked Mr. Johnson if the underground utilities would be affected by the wetlands. Mr. Johnson said that underground utilities would not be affected by the wetlands until you get to a vault situation. In those situations where the underground utilities are in a wetland there are certain additional requirements for the construction of the concrete vault. One of the conditions is to create something like a foundation drain down slope to keep the water out of the vault. In terms of going through the wetlands, it is part of the wetlands impact that will be presented to the State, but it is a temporary impact unlike the roadway which once it is built the roadway is there. The underground utilities temporarily disturb the wetlands, the pipe is buried and then the wetlands are essentially returned to their original state. Mr. Hanson asked if the underground utilities in the twenty-foot piece are the only underground utilities? Mr. Johnson said that was correct.

Mr. Hanson then asked if there were any more questions from the Board. Hearing none he opened it up to the public for questions. There were no questions. Mr. Hanson said that the next step would be to set up a meeting out on Kline Road. He proposed, May 13th at 6:00 P.M., the Board

members agreed. Mr. Hanson asked Mr. Johnson if the engineer would be in attendance at the site walk. Mr. Johnson said that he has spoken to Mr. Rokeh and he said that he would be happy to attend if the Board felt it was important. Mr. Hanson felt that it would be prudent because the Board would be able to look at the structures and he thinks that engineering questions might come up and the Board members agreed. This hearing was continued to May 13th at 6:00 P.M. at Kline Road.

Mr. Hanson asked Mr. Kline if he has given permission for the Board to come onto his property. Mr. Kline responded, "Yes, you may." Mr. Hanson then asked Mr. Kline if he would put that in writing. Mr. Kline will send an email. Mr. Hanson reminded those present that for the site visit, with Covid-19, they should keep a social distance, and if you want to wear a mask to wear one. The public can attend this meeting. The Board will not be doing any deliberating. The sole purpose of the site walk is for Mr. Johnson and the engineer to show the Board in the field what is going on and for the Board to get information so they can deliberate on this at the next meeting, which will be on Tuesday, May 19th. Mr. Hanson said that it is important for the Planning Board, when they are out at the site to generally stay clustered together. Bill Ricciardi has offered to record this meeting out in the field because they want to get it accurate. Mr. Hanson also mentioned that this meeting is being ZOOM recorded. The meeting minutes will be transcribed by former clerk Sheila Mohan and they will be reviewed by Clerk Pro Tem Kelli Kemery, who is a Planning Board member. After her review the draft minutes will be given to the board members. Mark Hildebrand mentioned that it could be a liability issue about the Board members staying clustered together on the site walk. Mr. Hanson said that to be clear when he said, "clustered" he meant with social distancing in place, when questions are asked of Mr. Johnson it needs to be done so that Mr. Ricciardi can pick it up on this audio recorder. Mr. Viens asked where they would meet on Kline Road for the site walk. Mr. Hanson thought that the most practical place would be by the field across from the Hayes property. There is also a cul-de-sac prior to the straight away by the field. Mr. Hildebrand asked if there could be an advance notice sent to the Board members and Mr. Hanson said that a reminder would be sent. Mr. Hanson then asked if there were any more questions. Hearing none Mr. Hanson continued this hearing to Wednesday, May 13, 2020 at 6:00 P.M. on Kline Road for the site walk.

IV. OTHER BUSINESS:

There was no other business.

V. ADJOURNMENT:

This meeting was adjourned at 6:34 P.M. Site walk scheduled for May 13, 2020 at 6:00 p.m.

A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency

As Chair of the Center Harbor 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 the ZOOM platform for this electronic meeting.¹ All members of the 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 dialing the following phone (See website for call in and password) or by clicking on the following website address: www.centerharbornh.org/planning-board

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 using Zoom or telephonically. Instructions have also been provided on the website of the Center Harbor Planning Board at: www.centerharbornh.org/planning-board

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 603-481-1485

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.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.

¹ Many public bodies are utilizing video teleconferencing technology, such as Zoom, to ensure the electronic meeting comply with the Right-to-Know law and any applicable due process requirements. In certain circumstances, a regular business meeting of a public body may be conducted utilizing audio-only technology. If you have any questions about the appropriateness of the technology utilized to conduct your meeting, please consult your agency counsel or the Attorney General's Office.