

TOWN OF THETFORD
DEVELOPMENT REVIEW BOARD

MEETING MINUTES
January 23, 2024, HEARING

Act No. 78 (S.222). General provisions; public information; Open Meeting Law; temporary provisions an act relating to authorizing temporary Open Meeting Law procedures in response to COVID-19 This act provides temporary authority for public agencies to hold meetings through electronic means without designating or staffing a physical meeting location. A public agency that uses this temporary authority must use technology that allows the public to directly access the meeting by electronic means and by telephone. A municipal legislative body or school board that uses the temporary authority provided by this act must record its meetings held by electronic means. This act also permits a public body to extend the deadline for the posting of minutes, provided that the public agency has a staffing shortage due to COVID19. Finally, this act permits a public agency to post meeting notices and agendas in electronic locations.
Effective Date: January 18, 2023

Members/Admin Present:

For Agenda #1-Tim Taylor (Chair), Bill Bridge, Orin Pacht, Sue Howard, and Kelly Gardner (ZA).

Attendees/Applicants: Henry Kinne, Benjamin Kinne, and David Goodrich (Selectboard DRB Liaison).

For Agenda#2- Bill Bridge (Acting Chair), Orin Pacht, Sue Howard, and Kelly Gardner (ZA). Tim Taylor reclused.

Attendees/Applicants: Richard Balagur, Nick and Megan Dubuque (abutter), Whitam Van Meter (abutter), Emily Silver (abutter), Tim Taylor (abutter), Chris Brown (Zoom), Jim Maddin (Zoom- abutter) David Goodrich (Selectboard DRB Liaison).

1) Continuation of Warned Hearing on Application (TSD701) (ZP23-45) Consider by Harry Kinne III for a subdivision on 7814 Route 113, Thetford, VT. This property is in the Village Residential district.

This parcel is located at 3397 Route 113, Village of Post Mills, Town of Thetford, Vt. This is in the village residential district. The parcel number is 0V113D.43 and the tax map number are 01-02-79. This parcel consists of 12.8 acres per town tax map.

This is a continuation of the pre-subdivision informational discussion on October 24, 2023, the hearing dated November 28, 2023, where a continuance was requested, and the hearing dated December 12, 2023, where a continuance was again requested.

Meeting is called to order by Mr. Taylor at 7:00Pm.

Mr. Harry Kinne and Mr. Benjamin Kinne are invited to the table in front of the board. A copy of the proposed subdivision had been previously received by the board and was displayed. In referencing this proposed subdivision, Mr. Harry Kinne begins the discussion with the 2.2-acre lot in question being moved to the edge of his property as suggested, also, the entire lot can be viewed on the plat, as requested by the board. An approximate septic is shown, and they are still applying for a permit with the state to tie in the house that is on the property and the new home that will be built. Mr. Kinne shows the design for the septic that was presented to the state. Mr. Kinne notes that the state has told them they cannot go ahead with the testing until they get approval from the town on the subdivision. Mr. Kinne notes that he has spoken to Attorney Chris Burgess out of Grossmans Associates, as there is concern in the last hearing of septic maintenance between both properties. Mr. Kinne states that Attorney Burgess has said that language for easements, septic and driveway agreements will all be included in the deed. Mr. Burgess also notes the surveyor has not got back to Mr. Kinne.

Mr. Taylor points out that there is no signature line on the plat for him to sign. There was no language for the easement, or any additional objections noted on the plat.

Mr. Harry Kinne states this is only a preliminary survey. On the final one that will be submitted to the town there will be, except for the well as that has not yet been determined.

Mr. Kinne's states that their "drop dead" date is today as even if approved today it will be November until the children would be able to own a modular home per the modular company. Mr. Kinne asks for approval with a guarantee that they will comply with everything needed by the town, as if not approved they may lose the year. They will build a septic in compliance with state and town if the septic that is on the property now does not comply. Mr. Kinne displays a copy of the wetlands and states that all abutters had been notified via The Zoning Administrator. Mr. Kinne said they are committed to satisfying the board, but they are under a deadline. Mr. Kinne also notes that his attorney is going to call Carl Fuller the Northern District Supervisor and Regional Engineer of Agency of Natural Resources as he feels the septic will go through without a glitch.

Mr. Taylor explains this is plat is preliminary and what Mr. Kinne has been asked is very basic. The board wants the wetlands shown. They need to know the home will not be built in the wetlands. Language for the easement needs to be drafted on this as well. Mr. Taylor says he cannot vote to approve this tonight. He also states that Mr. Kinne can tell his builders that it would be ready by the time needed. Mr. Taylor says usually surveys will have notes stating subject to an easement, or additional objections. Ms. Howard declared she also needs this in her work.

Mr. Kinne asks if they would be willing to do an approval contingent on the stipulations Mr. Taylor said no. They can complete a continuance. Mr. Benjamin Kinne asks if there is specific language that the surveyor should be using, as it seems there is not satisfaction in what the surveyor has completed and what the board wants to see. Mr. Taylor reiterated they need to see where the wetlands are, a signature line along with the other items mentioned. Mr. Taylor says we can approve a mylar even if not in the exact spot for a septic area or well. An approximate area might do, and you might have to submit another mylar at another date to update this one.

Mr. Kinne says the design from Hogg is what he specified to bring the pipe to the septic. Mr. Taylor replies the language needs to be drafted into the survey, but he can live with the 30-foot easement language. It would be nice to have more information. Mr. Kinne responds this would all be in the deed. Mr. Taylor asks to have the draft of the deeds submitted to the board.

Mr. Benjamin Kinne questions the septic and said if the state approved it in 1991 to Skip Malmquist, then does the town supersede the state authorization, or does it reset with change of ownership? Hogg Hill has specific recommendations on how we navigate that.

Mr. Taylor replies that what the town wants to see is an updated septic permit/wastewater permit or a letter stating the one from the 1990's is fine and the permit showing the amount of bedrooms. Mr. Taylor states the professionals should have given better guidance. Mr. Taylor notes that we should continue this hearing until the 13th of February. Mr. Kinne is informed that he can give all documentation to Ms. Gardner the Zoning Administrator.

Mr. Benjamin Kinne asks to go over the checklist. Mr. Taylor reaffirms they want language that identify the driveway, wetlands, and the septic. They would like a approximate building location on the Plat and the board also wants the pipe on the property shown. Mr. Kinne says he also has the easement and Mr. Taylor notes that should also be on the survey as well.

Mr. Harry Kinne says he plans to restrict the one entrance that goes to his driveway as he would like the driveway kept private and not have people driving by his home. Mr. Kinne feels he also needs his interests protected with the septic.

Mr. Taylor made the motion to continue the hearing to February 13th.

All In favor 4/0

Agenda Item #2:

1). Continuation of Warned Hearing on Application (ZP23-37) to consider whether the Zoning Administrator erred in issuing a zoning permit to Richard Balagur at Macs Way, Thetford Vermont. This property is in the Village Residential area of Thetford.

This hearing is a continuation of the hearing dated October 24, 2023, and the hearing dated December 12, 2023. The purpose of the hearing is an appeal for a building permit due to the property was in the wetlands and the property has septic lines of the neighbors running through it.

Mr. Taylor reclused his position as chair due to being a neighbor and Mr. Bridge became acting chair. Ms. Gardner handed the updated plat that was received from Mr. Balagur to the public.

Mr. Bridge starts the hearing stating that when looking at the updated map it appears that the building area is not in the wetlands. No issues were found with this decision. Mr. Bridge states he is also unsure if we have any authority over whether a septic line is running under a lot.

Mr. Balagur agrees that the wetlands have been resolved. He explains Brad Wheeler, the Vermont Environmental Consultant, decided where the wetlands were. Mr. Balagur and Mr. Wheeler then pulled and staked a 50-foot line and Mr. Wheeler completed a GPS survey which was then transferred onto the plat by the surveyor. A variance is not needed for the wetlands as the building site is completely out of the wetlands.

Mr. Balagur goes on to discuss the septic/wastewater lines. Mr. Balagur notes that there are at least three points marked on the survey. These are shown on the plat as 94 and 95 and he believes another point inside the general building zone but out of the wetlands is marked 158. Mr. Balagur points out this is the basic septic line. Mr. Balagur states the septic line is about 8 feet below the ground and driving over it adds no additional pressure on it. The septic line continues heading northwest along the outside of the graded area and stops just before the driveway, crossing the road to Dubuque's house. He does not intend to build on top of a septic line. The driveway is 5 or 10 feet to the west of the line that crosses the road. Mr. Pacht asks if there was a forty-foot setback.

Mr. Dubuque and Mr. Taylor, as public members, ask for it to be explained again, asking what the numbers meant. Mr. Balagur does not know what the actual numbers mean, and remarks that they could be the internal reference of the surveyor, but he says the number represents the standpipes that come up mark where the clean outs of the septic line are. Mr. Balagur discloses as far as he was concerned the numbers could be A, B, and C but it shows the standpipes of the septic. Mr. Pacht asks if they all went to the 91 number, Mr. Balagur confirms that they did. Mr. Bridge also asks what the origin of the numbers are, and who put the numbers on the plat. Mr. Balagur reinforces that they were the standpipes. Mr. Balagur says he also has stuck a tape down one and it is 8 feet below grade level. Mr. Pacht asks if the building envelope will be even smaller due to this, and Mr. Balagur says no.

Mr. Balagur feels that it is the other landowner's responsibility to know where their personal septic lines are rather than put the burden on him. He does not feel he needs to hire a survivor to find the other landowner's lines. He knows approximately where the lines are.

Mr. Taylor explains that the Zoning Administrator, on her first day, issued a building permit in error, however, although reasoning could be found why this was in error, Mr. Taylor feels one of the requirements under permitted uses in the application for a zoning permit must have a sketch plan and the plan needs to follow the requirements as shown on page 45 of the Thetford Zoning Bylaws under permitted uses. Mr. Taylor notes that the following was needed on the plat: A location footprint, location of access, location of easements and locations of wetlands. This was the first error the Zoning Administrator made. The second being the location of existing and proposed water and wastewater systems. Mr. Taylor states this is a complicated case and describes the septic plans of the 80's. He is concerned about where the pipes are. He does not understand the dilemma in bringing a backhoe in to find the pipe location. Mr. Taylor questions if this hearing should be recessed until they can get on the land and find the pipes.

Mr. Balagur expresses he wishes this was discussed earlier and he asks if he is supposed to provide proposed wastewater pipes. The board states that no it is the existing they would like to see. Mr. Balagur questions this stating, basically everyone who has built a home may be in violation as they didn't provide the location of the wastewater systems. Mr. Dubuque notes that Mr. Balagur installed the line. Mr. Taylor says what we are trying to understand is if the Zoning Administrator committed an error in issuing the permit. Given the fact of this complicated wastewater permit and would Mr. Balagur feel comfortable with a buyer purchasing this lot as is. Mr. Balagur affirms he would argue that except for the Dubuque's line everything is on the far side of the potential building site, and it would be an extensive project to complete a full line search as they cross over the road. He can take a guess where most are, but he knows they are on the far side of this line. Ms. Howard asks if there is the capability of using a camera to look down into the lines without excavating.

Mr. Chris Brown, a potential buyer, speaks, stating he has read the septic approval dated 1997 and there is an original set of drawings of where they proposed to put the lines. They later had to move the lines as a well was placed in a different location. He notes he has a friend in the septic business and the cleanouts are put only where they run an angle for the line but otherwise the lines are as straight as possible. Mr. Dubuque states the other septic lines crossing into that do not have clean out pipes. Mr. Balagur says that its Mr. Dubuque septic line shown and everything else is on the far side of that line.

Mr. Bridge states his opinion is that what Mr. Balagur shows today does show evidence of the existing septic. He says the plat is much clearer than it was last time. Mr. Balagur says he is happy to draw a line connecting the points if necessary and any prospective buyer will be informed of that location. He intends to cut the cleanouts poles off a foot below grade and put a in a stake there, as he does not want to have the clean outs showing.

Mr. Taylor asks the perspective buyer if he is concerned about the septic locations at all? Mr. Brown states he is somewhat concerned. He has seen the wetland delineation, and he is ok with that. He is concerned about the lines and has read through all the permitting that happened when Macs Way was created. Mr. Brown notes with everything he has seen the builder would want to stay 10 feet away from building a house on these lines but as Mr. Balagur said the lines run very straight and without a lot of bends in them. The property is bound by the fact that the lines run through, but if there is a possibility of putting a small home on the property, then he is very interested.

The lot holds the burden of the pump station as shown on the plan dated March of 1997. Mr. Brown believes that it's true to what is shown on the site plat. Mr. Brown states a proposed well is shown but he believes it will be on the outside bounds of the driveway.

Mr. Taylor asks Mr. Balagur if you sell the lot will you remain responsible for the septic pipes? Mr. Balagur replies no I will not, I am selling the lot. Mr. Brown says he will take that responsibility if purchases. Mrs. Dubuque states she would argue that any time in the next 50 years if a pipe is damaged then Mr. Balagur should be financially responsible for all repairs. She says even if nature damages the pipes, it should not be on the other landowners to fix the pipe. Mr. Balagur responds saying if something happens and the pipe comes apart, you have a right of way across the land, but you don't have a guarantee of your line. You have a right to build, install and maintain your line across the land. If you dig it up you must repair the property afterwards, but you have the right to do it. When you bought the land, you did not get a lifetime guaranty on the land, but you got the right to use it. Mr. Dubuque says if someone is digging and breaks the pipe it's not our responsibility. Mr. Balagur said that is correct. Mr. Bridge asks the board and the public if there were any more comments.

Mr. Bridge states he believed that this plat presented fulfills the requirements of the existing septic. Ms. Howard asks the Dubuque's if they knew something different about the lines coming through that contradict with the plat. Mr. Dubuque states he just knows the lines are a mess and he is trying to avoid a catastrophe. Mr. Bridge confirms if the builders do damage to your line, then they have to fix it. You have no liability. Mr. Brown reiterated, the clean outs are there, and the lines run straight. They do not zig zag. Mr. Dubuque states the clean outs are not shown correctly on the plat. Mr. Taylor asks Mr. Balagur, did your three points get surveyed in and Mr. Balagur replies yes, and notes the certification written on the plat stating the survey is certified by the surveyor.

Mr. Chris Parlin asked how do we know the lines do run true and none are shared? Ms. Silver asks if the lines in other surveys are usually clearer than this. Mr. Bridge says usually a map is drawn and it is never exactly where it is shown on the survey. Mr. Bridge and Ms. Howard say this survey is consistent with the map shown. Mr. Balagur said most lines are going into the tank itself. In three different groups. Ms. Silver describes her lines.

Mr. Bridge asks where the lines joined for the additional houses across the road. Mr. Balagur says no lines come in the envelope of where the building will be. He states the only interaction is with Dubuque's and the lot will connect from the back of the plan to the septic or a T that is capped off. There was discussion of where the line of the new home would join into the septic.

Ms. Silver asks if the pump station could only take so many additional lines. It was shown that the pump station can take up to 16 houses. Mr. Balagur notes the system was designed to handle 26 units. They took at least 10 houses off the septic by the neighbors getting their own septic's. The recommendation is that they should not create additional capacity otherwise sludge sits there too long, but these were questions for the state.

Mr. Pacht again asks if Mr. Balaur is willing to draw existing lines. Mr. Balagur says he is happy to draw lines for Dubuque's but everyone else has some idea of where their lines are. Mr. Taylor says his concern is while you hold that approval in your hand, these lots were not actually developed for 25 years afterwards so he doesn't think that anyone ever looked at the plan noted, and everyone probably should have acquired a hook up permit from the wastewater. He goes on to describe some of the history of Macs Way. Mr. Taylor does not understand what a little digging would hurt to define the line exactly. Ms. Howard confirms it would be nice to have a as built.

Further discussion is had about where all lines go on to the property. Mr. Pacht states it still stands that the pipes are to the east of the building zone. The Dubuque's is the only pipe in question. Mr. Dubuque says we don't know the location and he sees no harm in checking out where the lines are.

Mr. Bridge again notes that if the Dubuque's line is damaged then the landowner must repair it. Mrs. Dubuque says it's a very fragile lot and she is concerned about the safety of all the wastewater. Mr. Bridge states what has been provided he feels fulfils the requirements of the board. Mr. Pacht says he thinks the appeal should be denied of the administrative decision.

Mr. Bridge states, "With the new final survey that shows the wetlands and the maps that now the Zoning Administer is not errored.

All in favor 3/0

Administrative:

December 12th minutes are discussed, and a few clerical errors, but approved by the board.

Adjourn- 8:50pm

Please note: Hearings will be called in the order they appear above. If more than one hearing is scheduled and the applicant does not appear, the next applicant should be prepared to begin their hearing.

Respectfully submitted,
Kelly Gardner, Zoning Administrator

Approved on the ____ day of _____, 2024.

Bill Bridge (Acting Chair)