

TOWN OF THETFORD
DEVELOPMENT REVIEW BOARD

MEETING MINUTES
August 13, 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 (zoom), Sue Howard, and Kelly Gardner (ZA).

Attendees/Applicants- Rob McGregor.

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

Attendees/Applicants- Don and Jan Longwell, Brett Ryan, Jill Fornier, Linda Adams, Harry Burgess (Surveyor), Jason Crance (Attorney).

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

Attendees/Applicants- Don and Jan Longwell, Brett Ryan, Jill Fornier, Linda Adams, Harry Burgess (Surveyor), Jason Crance (Attorney).

Attendees/Applicants:

1) Warned Hearing on Application (ZP24-42) Consider by Rob Roy McGregor for a conditional Use in the Historical District.

Mr. Taylor opens the hearing with zoning permit application 24-42 in the Historical District of Parcel Id 0V113B.27. Location of 2436 Route 113, Thetford. The proposal is to replace the doors, windows, deck and hot tub. Mr. Taylor introduces himself and the board.

Mr. Taylor notes that the board has read the Historic Preservation Report from the Historic Committee and states that it is exciting to get a favorable report from the committee. They do all the work and then we make the decision. Mr. Taylor says, “the only thing I would like to get clarified for the record is what is of interest to them is what was going on the roadside, and what was on the back wasn't of interest”. Mr. Taylor also notes there is a door that the Historical Committee wants Mr. McGregor to change out and your doing that. Is that one of the Home Depot orders?”

Mr. McGregor states the committee wants him to have rectangular windows versus the six square windows as the square is not historical but somehow the rectangular is. "To make a long story short I am not replacing the front door short term but if I have approval at least I know I can." Mr. Taylor states, "you would like us to act on it" Mr. McGregor states he would. Mr. Taylor states he thinks they can.

Ms. Gardner states, "I have sent all of the specs to the Historical Committee. They rejected the first set and have approved the second set". Mr. Taylor says, I just want to make sure for the record that we have this straight. The approval is for the three little rectangular windows Line item 500-1". Mr. Taylor says, "other than that I think everything looks good on the report". Mr. Bridges notes the deck, and the sauna are in the back.

Mr. Taylor states, "I would like to make a motion to approve this subject to the replacement of that door and other than that just the favorable report and the fact that they approved it and what that means. The key is what you have submitted in evidence and what you're going to do. They approved and there was a revised specifications subject to that door. The Historical Committee feels the work on the northwest and the northeast are not visible and they are not as concerned or affected by the appearance".

Mr. McGregor states, "three of the doors the Historical Committee states are fine, it's just the one they rejected for the front". Mr. Taylor asks Ms. Gardner if she has everything, she needs to write up a decision. Ms. Gardner believes she does. "

Mr. Taylor says, "these are always conditional use, and it fulfills all or the criteria.

Mr. Taylor entertains a motion to approve the conditional use subject to the information as discussed. Mr. Bridge also moves the motion to approve.

All approve 4/0

Mr. McGregor says, "thank you, the windows are subject to the 7/8th inch Mullions?" Ms. Gardner says she will send Mr. McGregor the decision when written. Mr. McGregor states, "I can go ahead and order stuff". Mr. Taylor says, "yes you can, in theory until you get that decision and another 30 days run there could be an appeal but there are no parties and so there can't be an appeal."

2) Warned hearing on appeal of Zoning Administrators decision in the matter of Jan and Don Longwell V. Brett Ryan/Lamountain Farm LLC. This property is in the Village Residential district.

Mr. Taylor starts the hearing stating, "this is an appeal of the Zoning Administrator's decision. The location is 1318 Stevens Road. It is in a rural residential area and the concern is the trees along the lot line. Mr. Taylor states, "I will reference the site visit as we go along, please all of you let me know if I am leaving anything out particularly."

Mr. Taylor invites Mr. Longwell to speak and state his case in the matter.

Mr. Longwell passes out a packet containing the zoning regulations, definitions, and diagrams of sun angles. Mr. Longwell notes the highlighted portions of his own hand out, reading, "property owners should enjoy unhampered use of their property, providing that such use does not affect the health or safety of their neighbors, or unduly impair the value of neighboring properties." Mr. Longwell goes on to state, "this is sort of the premise for their case. The red comments are the list of why I think it harms us. We have already talked about the shadows." He is referencing the list he previously handed out. Mr. Longwell states, "We get a lot of light and heat right now. during the winter the sun that comes into the house is very welcome". Mr. Longwell references the blocking of solar by the trees. "It will limit any kind of future solar. They block natural light and heat from coming into the house. It limits breezes. We have many more mosquitoes than we have ever had. We have always had breezes, and they pretty much have been reduced. It will shade the lawn and makes shoveling difficult during the winter. It will shade our property in the spring and the fall, and the garden is mostly sun plants". He goes on to note that they are deprived of views and the lawn will become deteriorated. They do not get the sunlight and breezes which are healthy to people. Mr. Longwell states, "that's essentially what it does to our property, and I would like to know if anyone has any comments on that? Are those legitimate wrongs, do you see those to be wrongs to us and our property?"

Mr. Taylor states, "my issue with this presentation is that the purpose is the general concept behind our bylaws that are then enumerated by the specific bylaws here. So, in this case we would be talking about the fence, wall and hedge issue and that kind of thing and that is really the focus".

Mr. Longwell says," but at the same time our zoning regulations do not cover every singular particular that is going to come up and you have to go back to the purpose statement". Mr. Taylor says, " you can make that point but I would even point out a there was a particular case in 2010 where we had a similar issue and we point out that this section 1.02 (zoning bylaws) is the general one and the one in 3.02 which has to do with fences and walls is the particular one. We feel the particular one takes precedent over the general one but with that being said I would like to make a couple comments before I call on Mr. Ryans Attorney." Mr. Taylor, he notes, "one thing I noted while were there was the interest seems to be on the southern line and there were some tremendous locust trees on the property. They are much closer to your house than the present pine trees. I kind of wished I had paced that off. " Mr. Taylor requests to look at the

Survey. Ms. Howard wants to know what the scale is of the survey. Mr. Burgess (surveyor) states, "the scale is one inch equals 50 feet. Mr. Taylor asks where the locust trees are based on the property line. Mr. Harry Burgess comes to the table and shows where the lines are. He states, "they are approximately 80 feet. Mr. Taylor asks Mr. Longwell if he has any concern about the property with the trees to the west. Mr. Longwell does not. Mr. Taylor says, "is it correct to say we are really talking about the trees along the south. Mr. Longwell is concerned with the ones closer to his house. Mr. Longwell notes, "in the winter our house is already shaded". He discusses the difference between the locust and the pine tree types. Mr. Longwell believes solar is the way of the future and the pine trees will shade them.

Mr. Bridge asks Mr. Ryan why he planted the trees. Mr. Ryan states, "I got a note on my tractor on a Saturday morning from some guy named Doug Smith as I recall. Mr. Smith has been watching in the farm for a year at these people's requests" Mr. Longwell, interrupts, stating "Doug Jogstone." Mr. Ryans states that Mr. Longwell is correct. Mr. Ryan reminisces the conversation with Mr. Jogstone and notes nothing was found that Mr. Ryan had done wrong, and efforts were made to make sure there weren't agricultural spray problems, etc. Mr. Ryans asked Mr. Jogstone what he would do, and the discussion of pine trees was held. Mr. Ryan had asked Mr. Jogstone what he would do, and the discussion about pine trees was held. Mr. Ryan noted that Mr. Jogstone said he wished more farmers would do that, but it is not cheap.

Mr. Ryan states "I spoke with the previous Zoning Administrator, about what to do and she stated that they needed to be planted 10 feet from the property lines, if they were over the 10 feet of the boundary line they were fine". Mr. Longwell says, "I called Mr. Jogstone and I sent an email to him as well and he said he would not have recommended white pines. "

Mr. Longwell wishes himself and Mr. Ryan had got together to discuss whether the trees were needed but he was never given the opportunity to decide whether the trees were needed, particularly on the south side. Further discussion is made of the trees growing in height.

Mr. Taylor asks Mr. Longwell, "if your neighbor gets tired of farming and wants a forest there, maybe having a strong interest in having carbon going back into the atmosphere, so he wants to plant that entire field into trees, and so forth do you think we would be wrong in permitting that?" Mr. Longwell states "I would want to discuss it with the owner. If the pines were back 30 feet, we probably wouldn't be having this discussion. It wouldn't be shading my house as bad as it is going to."

Mr. Taylor asks Mr. Longwell if he agrees the trees are on Mr. Ryans property. Mr. Longwell agrees to the trees being on Mr. Ryans property. He says, "I know has a right to do what he wants on his property as long as he doesn't adversely affect mine." Discussion is made of

the property being in land trust and there are restrictions. Ms. Howard wants to know if the Upper Valley Land Trust weighed in on trees. Mr. Longwell states, “no, and we tried to get them to.”

Mr. Taylor discusses the agriculture exemption in the town bylaws. Exemption under 1.04. “It says that no zoning permit shall be required for the following activities, accepted agricultural activities and this includes the construction of a farm as defined by the secretary of agriculture. They need written notification including a sketch plan, showing setbacks and where surface water shall be. This is submitted to the zoning administrator. This is for structures much less than planting a tree.” Mr. Longwell says I think its a little more then a tree, its definitely a hedge.” Mr. Taylors asks Mr. Longwell, “ If you were looking as section 3.01 what would you be asking us?

Mr. Longwell rereads section 3.01 and continues to discuss the 10 feet boundary and reads from the bylaws. He asks the board why hedges are not in the first section of (D)of 3.01. Mr. Longwell says, “My question to you is what are we trying to protect by saying fence or wall? My guess is it's for viewing, sunshine, and breeze.

Mr. Bridges states, "I can understand why this is not included as hedges are more of a natural thing". Mr. Taylor states fences and walls are also structures. Mr. Longwell repeats the bylaws.

Mr. Taylor asks Mr. Longwell, “you would be happy if he topped them now?” Mr. Longwell says, “it would still ruin the view. The thing about topping them is that they will grow sideways and then they come closer, and they spread.” Mr. Bridges states, “they are still not a good wind break because they don't thin out at the bottom. Mr. Taylor asks for Attorney Crance to speak. Mr. Longwell continues to speak. Mr. Taylor interrupts this by saying” “the board is having trouble characterizing this because the word is not there, and we need to let these gentlemen have their say now.”

Attorney Crance asks “Is there is a dispute with the survey? I understood from the site visit that there was confirmation that the closest tree was about 12 and a half feet on one side and 18 feet on the other.” Mr. Taylor says, “I think from the site visit there seems to be confirmation as to those distances. We did have the surveyor show us where the lines were.” Mr. Taylor states what was seen and it is noted that the Longwells do mow between the locust trees and the pine trees which are on the Ryan property, so he does not think there is a dispute. Mr. Longwell intervenes saying, “I agree with Mr. Burgess except I have a issue.” Mr. Longwell shows where he thinks markers used to be. Mr. Burgess goes over the survey with the board and the attendees. Mr. Tylor asks Mr. Burgess if he is a professional surveyor and for how long. Mr. Burgess has been a surveyor for 34 years. Attorney Crance

confirms the closest tree is about 12 and a half feet away from the property line. After consideration all agree that the survey is not disputed. Mr. Longwell notes that a monument was never found and has discussions of where this may be located. He mentions the boundary is not mentioned. Mr. Burgess explains the process of finding the property lines. Mr. Longwell questions this. Mr. Taylor states to Mr. Longwell, "all we need to know is do you accept this distances on the south side or do you think it's your land and therefore your land is closer to the trees? The trees are closer and encroaching within 10 feet. Yes or no."

Mr. Longwell states, "I think it could be, yes." Mr. Taylor asks why Mr. Longwell why he has not had a surveyor. Ms. Longwell asks, why this is relevant to the discussion." Mr. Taylor replies, "well we were trying to understand because the trees are between 20 feet and 18 feet which is substantially outside the setbacks. The only thing that you would be hanging your hat on would be that fences and walls that exceed 10 feet must be authorized as a conditional use by the DRB. If they were within the 10 feet then you have the word hedges, so that is why I am asking you. If you dispute the distance you need to have an expert that can testify to that. They have an expert testimony". Mr. Longwell states, "this could be an adverse possession issue if I wanted to go that route". Mr. Longwell states, "I never have because it didn't seem too neighborly". Mr. Longwell says, " I agree with the survey."Mr.. Taylors confirms, "you agree with the survey and now we can move on."

Attorney Crance states, "I would like to talk about the first issue being addressed which is kind of your own anecdotal history about how purpose provisions and bylaws are treated". Attorney Crance, "states you are correct. They are aspirational." Attorney Crance cites the Kalkowski case which has been entered into evidence. Attorney Crance states, "generally municipal bylaw statements of purpose have no direct regulatory effect. They are aspirational. This is a case out of the environmental division from a couple of years ago". Attorney Crance notes, "holding the town plan is advisory and that broad policy statements phrased as non-regulatory extract extractions are not equivalent to enforceable restrictions. "He goes on to say, "as it pertains to section 1.01 which is an aspirational statement of public policy the DRB doesn't have any enforcement authority. Mr. Longwell could take some sort of civil action in the next 30, 40, 50 years, and that is between the Longwells and their heirs and the farm and its heirs. First off, the trees haven't grown that tall yet and secondly this is just not enforceable by the DRB under Vermont law."

Attorney Crance goes on to state, "Issue number 2 is the check down section of 3.03. I think it was with intention. I think that hedges were expressly left out of the first two parts of the section and addressed in sentences 3 and 4". Attorney Crance goes on to mention

the 10 foot set back that was created by the planning board and this is the setback that every one must follow. Attorney Crance says, "even if it is a hedge, which I don't think it is, it meets the setback requirements." Attorney Crance defines a hedge referencing websters dictionary. "A hedge or hedge row is line of shrubs or low trees intending to establish a boundary line. You have heard Mr. Longwells testimony, the intent was not to create a boundary line. The intent was to create a best management practice for the potential spray of pesticide. "

Attorney Crance states, "I spoke with a woman in the Department of Agriculture and there is state policy purpose that you have to mitigate against spray. It is the sprayers' responsibility. It is not the landowner's responsibility. Pines are considered the best management process to mitigate against spray drift". Mrs. Longwell asks who Attorney Crance spoke with. Attorney Crance says he can get her the information.

The last thing Attorney Crance wants to point out is that the other property that we looked at on the site visit were trees on a boundary line of the home.

Mr. Taylor asks, "what do you think of the agricultural exemption" Section 1.04. Is it applicable in this case? Attorney Crance says, "there is a list of accepted agricultural practices. I don't know how updated they are. Most deal with storm water and there are clear obligations with the pesticides."

Mr. Longwell expresses his concerns with the trees blowing over and asks, "whose responsibility it is to clean them up". Further discussion is made on the clarity of the town bylaws. Attorney Crance states, "these are civil issues. The case law does not invest in the entity like the DRB to adjudicate those types of disputes".

Mr. Taylor states he cannot overturn Ms. Gardners findings. Mr. Bridge says, "it does not say hedges." Mr. Taylor states, "I think Ms. Gardner made the correct decision and you appealed it. You say she was incorrect in doing that and we are saying she was correct in doing that. Ms. Howard suggests the neighbors try to talk about it.

Mr. Taylor says to Mr. Longwell, "The section that you really hung your hat on is aspirational and general in nature. It's the general purpose behind why we have the bylaws, but it is these specific bylaws that actually tell us what to do, and they are not always the clearest. My thoughts are that the word hedge is not there, and the trees are out of the setback requirements. My thoughts are that Ms. Gardner did not err in rescinding the violation letter and that we should vote to deny your appeal. I understand where you are coming from and that would be where you would get together with your neighbor hopefully and talk to him about whether there is an opportunity to remove some of those trees".

Mr. Taylor states, “I am going to entertain a motion that the board vote to affirm the decision of the ZA, that a permit was not required for the planting of the trees.

Mr. Orin refrains from voting due to not being at the site visit.

All In favor 3/0

Mr. Taylor states, “we have 45 days. We make a decision verbally then it goes into writing and the time for appeal doesn't trigger until that is up”. Mrs. Longwell asks if they have a quorum. Mr. Taylor confirms that there is.

Administrative

Discussion of who will be attending further hearings. Timing of the minutes.

Hearing of adjourned 8:20pm.