

**Town of Goshen
Planning Board
Minutes of July 20, 2023
FINAL APPROVED**

Planning Board members present (quorum = 3): Kayla Frink (Chair), Sebastian Zyzdorf (Vice-Chair), Philip Stasulli, Derek Tremblay (ex-officio to the Select Board)

Guest (s): Bob Bell

Meeting called to order at 7:07 p.m.

Review of Minutes (6/15/2023)

Sebastian Zyzdorf motioned to accept the minutes of June 15, 2023 ‘as is’; Philip Stasulli seconded the motion. All were in favor, 4-0.

Review of Non-Quorum Minutes (7/6/2023)

The Board reviewed the meeting minutes but no motion was taken.

Capital Improvement Plan (CIP)

Chair Frink discussed the next steps of the Capital Improvement Plan. It was noted by the secretary that an email had not yet been sent to the department heads and Kayla Frink mentioned that she would like to have the Board review and make edits to the previous year’s email and then the email can be sent to department heads. She added that she thought it would be a good idea to invite the department heads to come and speak with the Board, especially if they are anticipating adding something to their CIP.

The Board discussed potential projects that may be brought before the Board and decided to go ahead and review the email from last year, make edits, and then finalize the email at the next meeting. Once the email has been finalized, department heads will be invited to an upcoming Planning Board meeting. The Board determined a tentative date of October 2nd for the department heads to submit their proposed CIP projects. This will give enough time for the Board to review and submit their suggestions to the Board of Selectmen and then make their final approval before budget season ends. No further actions were made at this time.

Property Runoff (Pheasant Runn Development)

Chair Frink asked Mr. Bob Bell to give an update on the property runoff and erosion that has been taking place behind his property and in the Pheasant Runn Development on Brook Road. Mr. Bell gave a brief history of the property and explained the current situation. He explained that the driveway on the un-developed 10-acre lot on Pheasant Runn Road (Tax Map and Lot 412-022-002) has been washing away since the spring and continues with every rain fall to cause run-off and damage to his property.

He shared some photos of the run-off and further explained that he had spoken with the new owner of the property and although the owner suggested looking into the problem, no actions have been made at this time. He added that he has also submitted complaints to NH DES but has not heard back. Bob Bell expressed his frustration with the whole situation and urged the Board to consider options for future developments and added that although the driveway was off a private road, he believes the Town should have some say in how residents develop their land. He continued that the Board should have some type of follow-up plan to monitor these types of developments.

The Board explained that they reviewed the original subdivision map and information provided in Tax Map files. They spoke with Shae Simino, Goshen Road Agent, to hear his review after his inspection of the damaged area and they discussed the placement of catch basins, materials used, and drainage issues. The Board also explained that they sent an email to the Town's legal counsel for advice on whether the Planning Board had the ability to further assist in this matter by sending out a letter to abutters. The Board offered to send the Town attorneys response to Mr. Bell for his review (see response below).

The Board also stated that they have started reaching out to the NH DOT and will continue to try to seek guidance and information about possible next steps that may be taken on the Planning Boards side. However, it was mentioned that due to the fact the problem lies on a private road the Board is limited in their responses and have been advised by the Town attorney that the issue remains to be a civil matter.

Chair Frink suggested having an on-site inspection during the next meeting and inviting the Building Inspector, Bruce Nadeau, to join the Board at Mr. Bell's property to observe the damage to his property and see the washed-out road area. The Board agreed to an on-site inspection during the next meeting on August 3rd. The Board will meet at the Town Hall and then travel to the site to review the area. No further actions were made at this time.

Member Discussion (ongoing)

Alternate members are still needed for the Planning Board, this topic will remain a standing agenda item until filled. Anyone interested in becoming an alternate member of the Planning Board should stop by any of the Planning Board meetings at the first or third Thursday of the month at 7pm in the Goshen Town Hall. Applications for the alternate position can be found on the Planning Board webpage.

Other Business

- **Upcoming Meetings:** The next meeting will be the first Thursday of the month – August 3, 2023.

Sebastian Zyzdorf motioned to cancel the August 17, 2023 meeting. Philip Stasulli seconded the motion. All were in favor-yes; motion carried, 4-0.

Standing/Upcoming items

- Master Plan Review - Pending
- Capital Improvement Plan

- Solar/alternative energy RSA and town regulation discussion - Pending
- Rand Pond Beach Discussion for inclusion in Master Plan - Standing Item
- Member Discussion - Standing Item
- *Budget due December 1, 2023*
- *Annual report due January 1, 2024*
- *Annual audit of CIP (May/June)*

Philip Stasulli made a motion to adjourn the meeting. Sebastian Zyzdorff seconded the motion. All were in favor-yes; motion carried, 4-0.

Meeting adjourned at 8:15 p.m.

Respectfully Submitted,
Melissa Salinardi
Recording Secretary

***Conversation with Town Attorney regarding Property Run-off:

Hello Phil,

I think it might be helpful for me to explain some of the legal framework that affects this situation. I don't have all of the details yet so I'm not sure what the exact answers are, but this information may assist with our discussion.

As I understand it, the property involved here is all located in the vicinity of a private road which branches off from Brook Road in the northeastern corner of town, close to the Sunapee border. Brook Road is a state road. A selectman observed some significant ponding on Brook Road and erosion in May after a heavy rain. The Town was also notified by a property owner (Mr. Bell, Map 412 Lot 22-1, on the corner of Brook Rd and the private road) that his lot was being affected by silt runoff from the neighboring lot, Map 412-22-2. You have explained that it appears a 15-inch pipe that was part of an approved site plan in the 1990s was supposed to be installed on Lot 22-2 but was not actually installed. This seems to be causing the runoff, flooding and erosion issues.

If these facts are correct, it appears that there are no Town roads involved here. The impacts of the runoff are confined to (a) Brook Road, which is controlled by NH DOT, (b) a private road that is not any class of Town road (i.e, it is not Class 4, 5, or 6) and appears to act as a driveway for the 5 to 7 lots that surround it, and (c) private property.

The Planning Board, like every other municipal board and official, is subject to the foundational principle of town and city government in New Hampshire, which is this: towns and cities get all of their authority to act from the NH legislature and may only do those things which are either authorized in a statute or are necessarily implied in a statute. Some state constitutions grant particular powers to towns and cities, and some others say "here is what the State does, and everything else is reserved to towns and cities." IN New Hampshire, our state constitution doesn't mention towns and cities at all and grants them no powers. It says "here is what the state can and cannot do." This means towns have no inherent power at all. If a town board wants to take a particular action, we have to find a statute that says the board can do it, instead of simply relying on the idea that "there is no law that says we can't."

With that in mind, there are limited areas of authority for a planning board in New Hampshire. The issues involved in this situation are (a) enforcing the terms of a site plan approval, (b) addressing runoff from private property onto a State road and/or a private road, and (c) addressing runoff from one piece of

private property onto another. I'll go through all three in order and look at whether the Planning Board has authority to deal with them.

- A. Enforcing the terms of a site plan: As you have explained it, the problem may be related to a failure to install a 15-inch drainage pipe that was part of an approved site plan for this area in the 1990s. A planning board has one very narrow area of authority regarding faulty implementation of an approved plan. Under RSA 676:4-a, a planning board may, after notice and a public hearing, revoke an approved site plan or subdivision, in whole or in part, when requested by the property owner or when the owner has not complied with the terms of the approved plan. However, the statute doesn't apply and the approval cannot be revoked once the project has "vested", meaning it was begun and substantially completed within the time frames set forth in RSA 674:39. In this case, the subdivision/site plan was approved somewhere around 30 years ago and you explained that 5 of the 7 lots have been built upon. That very likely constitutes substantial completion and I would be very surprised if the Planning Board could revoke that approval at this point.

Enforcement of the zoning ordinance and of the various approvals issued by the Planning Board and ZBA is the responsibility of the Board of Selectmen under Section VIII of the Zoning Ordinance. To the extent any enforcement action is called for regarding the failure to install the drainage pipe, it would have to be done by the Board of Selectmen.

- B. Addressing runoff/silt onto the state road and private road: As I understand it, the water and silt issues are not affecting any Town roads. The two roads that are affected are Brook Road (which is a state road) and the private road that these lots branch off from. The Planning Board's authority regarding runoff is limited to issues caused by faulty driveway intersections onto a Town road, under RSA 236:13. I don't know whether the missing drainage pipe was supposed to be put into a driveway in this case, but if so, it would either be a driveway onto Brook Road or onto the private road, and the Planning Board doesn't have any authority over that. It would either be an issue for NH DOT or for the owners of the lots served by the private road. If the runoff onto Brook Road is being caused by something other than a driveway, it is still NH DOT's area of authority and not the Town's. The Board of Selectmen does have authority to protect the integrity of roads under RSA 41:11 and can take steps to address runoff from private property onto roads, but this only applies to impacts to Town roads (class 4, 5, or 6). The Selectmen have no authority over impacts to a state road.
- C. Runoff from one private property onto another: This is a private civil matter between the property owners.

From the looks of the draft letter you have sent, the Planning Board's interest in this situation is to make sure the property owners know that the Town is aware of the problem. Given the Planning Board's very narrow ability to take any action in this case, however, I am not sure how appropriate the letter is. These are issues that seem to be completely within the purview of the NH DOT and the Board of Selectmen, so it might be more appropriate for a letter to come from the Selectmen, if they choose to do that. You can certainly suggest to property owners who contact you about this that they bring their concerns to the Selectmen, the Road Agent, or NH DOT.

If you would like to have a conversation about this, I'm happy to do that. I will be unavailable for most of the rest of today as I will be presenting at a conference this afternoon. However, I should be available most of tomorrow if you'd like to set up a time to talk then.

Regards,
Christine

C. Christine (Fillmore) Johnston

Attorney
DrummondWoodsum

From: Phil S <[REDACTED]>
Sent: Thursday, June 8, 2023 9:25 AM
To: C. Christine (Fillmore) Johnston <CJohnston@dwmlaw.com>
Cc: Planning Board <planningboard@goshennh.org>
Subject: Draft Goshen Planning Board Letter

Christine,
Thank you for speaking with me this morning. Below is the draft letter we discussed. I will get with Kayla to find a time to discuss with you in more detail.

Regards,
Phil

Draft Letter:

It has come to the Goshen Planning Board's attention that erosion damage has occurred during the heavy rain storm in the beginning of May. Specifically, the property located at Tax Map 412, Lot 022-002 suffered severe erosion effects and this resulted in materials to wash onto Mr. Robert Bell's property, Tax Map 412, Lot 022-001 causing damage. The Planning Board is also aware that several properties within the Pheasant Runn Development have incurred multiple erosions events. Further, these erosion events have affected adjacent or abutting properties to include Brook Road.

At this time, we want to keep you aware of the situation and remain open during our public meetings on the first and third Thursdays of the month to hear from agencies, abutters, or stakeholders regarding this matter.

Please be aware that the Planning Board is working with all relevant and local state agencies.

We appreciate your assistance and patience on this matter.

If you have any questions or concerns, please contact us at planningboard@goshennh.org.