

**TOWN OF BOWDOINHAM
PLANNING BOARD MEETING MINUTES
Town Office – Kendall Rm
July 22, 2021 – 7:00 P.M.**

APPROVED 8-26-2021

MEMBERS PRESENT: Nate Drummond
Reeve Wood
Richard Joyce
Tracy Krueger
Justin Schlawin

MEMBERS ABSENT: William Shippen and Allen Acker

STAFF PRESENT: Jennifer Curtis, Town Planner and Economic Development
Coordinator

1. REGULAR MEETING CALL TO ORDER

Chairman Drummond called the meeting to order at 7:00 p.m.

2. DETERMINE QUORUM AND VOTING MEMBERS

It was determined that a quorum was present.

3. APPROVAL OF THE MINUTES OF THE June 24, 2021 MEETING

Motion was made by Ms. Krueger, seconded by Mr. Wood, and it was unanimously

VOTED

To approve the minutes of the June 24, 2021 meeting, as amended.

Amendments: Pg 5 of June 24th minutes typo T7H instead of T&H
17B Containment tank – add “concrete”, 17D needs a “does”, Krueger misspelled as Kreuger in a couple spots, Take out “waived” from “waived or met” for building stds, Take out “waived” from “waived or met” for sewage disposal

APPROVAL OF THE MINUTES OF THE July 1, 2021 MEETING

Motion was made by Ms. Krueger, seconded by Mr. Wood, and it was unanimously

VOTED

To approve the minutes of the July 1, 2021 meeting, as amended.

Amendments:

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PUBLIC HEARING

At 7:15 the regular meeting was closed and a public hearing was opened for project R05-035; Tier 2 Application Amendment

Applicant – William Panzino

Property – 791 Carding Machine Road (R05-035)

Project – Applicant updated the proposed locations of an autobody garage and an automobile recycling business, and associated application material.

Chair Drummond stated that the purpose is for the Planning Board to hearing from applicant and members of the public and hear concerns or support for project and answer questions. He requested that the public address comments to the planning board. He stated that the floor would be open to applicant first, and then open to the public, and then allow the applicant to respond. Speakers should state their name and where they reside.

First speaker – Brad Pattershall speaking on behalf of the applicant. Proposed 30x30 garage and 40x40 Gravel pad that vehicles will be stored on.

Chair Drummond clarified that the applicant is not proposing to dismantle vehicles stored on site. The applicant affirmed they are planning to pursue a license for an automobile recycling facility. The Board discussed setback differences between automobile graveyards and automobile recycling facility and which definition is met by the application.

Chair Drummond reviewed written comments -

Mr. Bannon stated his previous letter was now moot

Mr. Asmussen said he would speak on his own behalf later

A letter received from John Murphy was summarized by staff

An email from Melissa Paine received on July 21, 2021 was read by staff

Specialist hydrogeologist speaker Carol White stated that

The storage of petroleum products does create a risk to groundwater

High water table that can easily contaminate groundwater to a standard that is not drinkable (she stated 1 cup of gasoline makes 1 million gallons un-drinkable.

Doesn't think it's a good location because the geology is sensitive and nearby homeowners are all dependent on private wells, where there is no public water in the area, including the farms which are dependent on the same water. She said it's easier for the automobile repair business to move than for the farms to move.

The reason the setbacks are there is to protect against spills. If the project is approved, it should include a Spill Prevention Control and Countermeasures plan that conforms to DEP guidance.

She recommends pollution insurance – because the cost of repair can be financially significant.

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Suggesting there should be a stormwater plan for the project – typically a stormwater system would have a system for catching petroleum materials for removal.

In her community (Chebeague) another applicant with a cemetery setback requirement had a ground penetrating radar brought out to verify the location of the cemetery.

Chair Drummond asked for a specific example. The specialist said an unlicensed automobile repair shop in her community did contaminate their own well and neighboring well.

She stated that the Town of Richmond had to intervene – a former Automobile Repair Facility had required intervention. John Bannon stated that David McHaskell at DEP had information about the Richmond case.

She stated that in her experience smaller operations are more likely to be problematic because they don't have the resources to uphold standards.

She recommended contacting DEP for information about spill prevention.

She spoke to the Maine Geological Survey data which states that the soil is glacial till and that the casing of nearby wells is often at around 20 feet, and the wetlands indicate that the water table is high.

Board member Richard Joyce stated that he was concerned about the area being a wetland.

Speaker David Asmussen stated that the use is inconsistent with the comprehensive plan. He continued to read his statement as previously submitted, in writing. He stated that auto repair businesses are prohibited in some parts of nearby communities Richmond and Topsham. He referenced the performance standards for groundwater and water quality. He stated that the water on the farm is sold to the public and therefore the water used by the agricultural use as public water. That is why Towns try to keep separate the incompatible uses.

Chair Drummond stated that he appreciated the argument for limiting the location of auto repair to specific districts.

Mr. Asmussen made the case that the agricultural use would draw more water from the aquifer and the risk is greater, and he feels the public water standards should apply because the public consumes crops that are irrigated with the well water.

He stated the farm has a 660 foot deep well they were trying to put an acre-inch of water over everything, which works out to approximately 50,000 gallons per week onto the crops.

The water is tested annually to a drinking water standard to wash the vegetables with.

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Mr. Asmussen stated that with the current proposal, his well would be 600' from the project.

Chair Drummond stated that in the ordinance automobile graveyard and recycling are categorized as industrial, whereas repair is categorized as commercial.

Agricultural is categorized as agricultural.

Edward Sauviod abutting landowner, spoke. He said the bedrock is high and concerned about groundwater contamination especially because of being dependent on a well.

Speaker Sharon Kegerreis from Abagadasset Farm – they are concerned about their property, water, and livelihood. The site had water flowing across the site, under the road, and to their property. A spill on his property could contaminate their property and the neighbors'. They don't feel it's the right place for the use.

Attorney John Bannon spoke, stating that the project is subject to two setbacks – the 500' setback from the cemetery and 300' from private wells. He has discovered several problems with the measurements of the plan. It is off-scale. It would be desirable to have a surveyor determine them. Once the plan was enlarged to the proper scale, the measurement from the cemetery to the storage lot was about right, but the measurement to the nearest well was wrong. It was reported to be 315', but by scale, it's only 280'. The storage lot does not meet the 300' setback from the nearest well. Moving the project creates setback issues on the other side. In order to correct for what's wrong on the plan, it needs to be clarified by someone who knows how to measure distances accurately.

Beneath the location of the cemetery is a note that says not exact location, so the outline can't be relied on as the location as the boundaries – just the general location, at best. If the middle of it is known, there's still no way to know what the edges are. In order to know where to measure from, they need to know where the gravesites are in order to ensure the setback is legally adequate. Before the board could make a finding that the setback has been met, it needs to determine where the cemetery is.

Mr. Bannon asked Mr. Pattershall (as approved by the Chair) how Mr. Panzino did his measurements.

Mr. Panzino stated that he measured to the cemetery using a measurement wheel.

The well on the plan is not accurately located, but he measured using google images.

Mr. Panzino stated that measuring the setback to the cemetery using Google Earth measuring tools tree to tree.

Town of Union Vs. Strong. Maine Supreme Court said that setbacks cannot be measured across the surface of the ground. The only way that setbacks can legally be done for zoning purposes is measuring horizontal distances on the earth, which only surveyors are qualified to do.

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Expressed that the Planning Board cannot approve the plan and require the proof after approval. The proof needs to be presented upfront. The proof needs to be provided before they make a finding.

He stated that the Board would be irresponsible if they didn't require proper measurement.

Mr. Pattershall spoke and said he had appreciation for those who had spoken about their livelihoods and Mr. Panzino is also attempting to create a livelihood.

He doesn't agree that Google measurements are not acceptable ways of measuring.

He understood Mr. Asmussens citation to the Comprehensive Plans, but the use is permitted, with approvals by the PB and SB. He cited that lots of industrial uses are permitted in the Residential/Agricultural District.

He stated that the scope is a maximum of 4 cars stored for a maximum of 7 days and has put together a plan to collect and trap leaking materials.

Chebeague Island automotive shop is likely very close to the well(s), as it was put in prior to the wellhead protection act.

He requested that the applicant be allowed to submit additional information that's necessary to meet the requirements.

The board was amenable to allowing additional information be submitted.

Mr. Schlawin asked about an area of the site is to be filled with gravel.

Mr Pattershall stated that there isn't a drainage plan on the plan.

Chair Drummond said he observed that the parking area is not an area of flowing water.

Ms. Krueger stated that they had seen a packet of materials. He stated that they only updated what is changed. She said there was lots of older materials like the insurance plan that wasn't on the website.

Mr. Pattershall pointed out that the ordinance states that the board may require pollution insurance.

Chair Drummond said that having all the materials altogether would be helpful.

Mr. Pattershall said he was happy to pull all the materials together.

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Public hearing was closed at 8:46PM

Chair Drummond said the Board would go through performance standards and highlight areas that they have concerns.

Vehicular access – make sure that the Fire Chief signs off on it

Utilities – new construction in new location, making sure utilities are on the plan and written description of what the service capacity will be.

Fire Protection – Fire Chief signoff

Wetland – Ms. Krueger stated that having a parking lot immediately adjacent to the seasonal stream. Chair Drummond stated that the plan is for a 130' impervious lot sloping toward the stream and would feel more comfortable with a call in to DEP that no NRPA permit is required and either way there needs to be a stormwater plan to deal with runoff going into that stream. The elements of the stormwater plan, given the size of the lot and the slope.

Mr. Bannon stated there is a 200' setback from freshwater wetlands 10ac or greater (does not apply), but everything else is a wetland as defined by NRPA.

Ms. Krueger stated that she had significant concerns with stormwater because the proposed location is now upstream and immediately adjacent to the wetland.

Mr. Schlawin agreed that the wetland doesn't meet the definition of freshwater wetland, but it is a concern for stormwater management.

Mr. Wood noted that it may behoove the applicant to keep an eye on if there is a NRPA concern otherwise.

Mr. Drummond said his concerns were around water quality, hazardous special and radioactive materials, and stormwater management.

The project will need a stormwater plan

Issues of how to prevent and mitigate petroleum product releases – similar to previous iterations

Last time they were asking for pollution control insurance, too

Ms. Krueger suggested DEP could provide the applicant with examples of a SPCC plan and Stormwater Management Plan.

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Mr. Joyce commented on the cemetery setback – looked at the difference between a cemetery and burial site. An ancient cemetery is one before 1880. One stone is 1870, which is in the category of an ancient cemetery. Construction or excavation may not happen within 25'. He said he does not know the answer of how to measure the boundary of the cemetery.

Mr. Wood said that where the project is such a tight fit, having surveyed lines will be important to the Board to make sure that the setbacks are met.

Mr. Drummond said to clarify, the Board didn't require a whole new survey, but surveyed measurements are required.

Ms. Krueger stated that if surveyed measurements showed that they had additional room on the side of the cemetery, the lot could be moved closer to the cemetery and further from the stream.

Mr. Drummond stated that the stormwater issue would be significant and they should consider very precisely how much space they have and how to manage it. He said that the question of where the cemetery starts is on the applicant to justify, and if it's not well-justified then it's an appealable. Mr Drummond recommended having an expert opinion – a surveyor with experience in that topic, or ground penetrating radar.

Ms. Krueger suggested redesigning the site plan to accommodate site plan and encouraged him to talk to a stormwater expert at DEP for guidance. Mr. Wood agreed that having guidance from someone who knows what they're talking about is helpful Board for making their decision.

Mr. Drummond said with the additional complication of potential contamination, that the stormwater plan should be developed to consider it.

Chair Drummond stated it would be helpful to have more information about spill mitigation in the garage portion of the operation. Noting that it is on a concrete floor and any spill prevention measures that will be incorporated.

Chair Drummond brought up that the public expressed that the use should not be allowed at the site.

Ms. Krueger said that applying the Comprehensive Plan in place of the ordinance. Chair Drummond echoed her statement and said that it's hard to enforce the general provisions on the comprehensive plan, vs the specific standards in the ordinance and he finds the guidance in the Comprehensive Plan is not specific enough to this business or situation to rely on it. It provides guidance that the Board should use it to guide the application review and mitigate risk to the greatest extent possible. Also, he recognizes that Board has approved similar automobile repair businesses in the Agricultural/Residential District. Existing business of a similar scale located in the Ag/Res District. Those elective requirements, such as insurance and SPCC are where the Comp

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Plan moves the needle from “may” to “will”. Mr. Wood agreed. For better or worse, the Land Use Ordinance has the force of law in a way the Comp Plan does not, and the Comp Plan should guide discretion but not outlaw whole uses using that discretion.

The Board discussed the need to balance the needs and risks of small businesses and neighboring uses.

The Board discussed the Bylaws

The Board requested staff to research suggested language for remote meeting participation to incorporate.

VOTED

Ms. Krueger motioned to request that staff to research if the Select Board has the ability to remove members, and draft language for Planning Board to be able to remove members if SB doesn't have authority, or to recommend to the SB to remove a member.

Motion was by Mr. Wood, and it was unanimously approved

VOTED

Mr. Wood made a motion to approve the proposed changes to the numbering of the Site Plan Review approval criteria as presented to the Board

Ms. Krueger seconded the motion, and it was unanimously approved.

ADJOURN MEETING

Motion was made, seconded, and it was unanimously

VOTED

To adjourn the meeting at 10:00 p.m.