

COÖS COUNTY PLANNING BOARD
Granite State Room, Lancaster NH
April 18, 2018

Present from the Board: John Scarinza – Chair; Fred King – Vice Chair; Jennifer Fish – Clerk; Ed Mellett, Scott Rineer, Mike Waddell, Rick Tillotson, and alternates Leon Rideout, Tom McCue and Mark Frank

Also in Attendance: Tara Bamford, Planning Consultant; Wayne Presby, The Mount Washington Cog Railway Company; Attorney Earl Duval, Duval & Klasnick LLC; Attorney Jason Reimers, BCN Environmental & Land Law; Chris Magness, Keep the Whites Wild; members of the press and public.

John Scarinza, Chair opened the meeting at 6:06PM. Chairman Scarinza appointed alternate Mark Frank for Tom Brady and alternate Tom McCue for Wayne Moynihan.

APPROVAL OF MINUTES OF February 28, 2018

Mike Waddell made a motion to approve the minutes of February 28, 2018 as distributed. Fred King seconded the motion. There was no discussion and the minutes were unanimously approved by voice vote.

PUBLIC COMMENTS NOT RELATED TO AGENDA ITEMS

None

OLD BUSINESS

a. Commissioners' Request for Advisory Opinion Regarding Cog Trail

Chairman Scarinza began the discussion by explaining that the Commissioners received a complaint from attorney Jason Reimers on behalf of Keep the Whites Wild. The complaint stated that the Mount Washington Railway Company built a roadway without obtaining a permit from the Planning Board. The Commissioners asked the Planning Board to investigate the complaint and to render an opinion on whether a violation had occurred. At the last Planning Board meeting, the Board asked the attorney representing The Cog Railway to provide a written response to clarify the purpose of the trail and what was done to construct it. The Board also requested that pictures and plans be provided of the trail.

John Scarinza stated that a letter was received from Attorney Earl Duval on behalf of the Railway and distributed to the Board prior to the meeting. Attorney Duval distributed several pictures to board members at the meeting. John explained that the purpose of tonight is for the Planning Board to contemplate, discuss the issue and to interpret the zoning ordinance. It is not a public hearing. John stated that he had asked Tara Bamford to review the complaint and she provided the Board with a memo that was distributed.

John asked Attorney Duval to clarify what is meant in his letter dated April 3, 2018 where it refers to the pathway of the tracks being a right-of-way. Is it a right-of-way or a fee ownership? Attorney Duval responded that it is a fee ownership.

John explained that the issue is what constitutes a trail and what constitutes a road. In the Coös County Zoning Ordinance Section 3.92, a trail is defined as a route or path other than a roadway,

and related facilities used primarily for recreational activities, which passes through or occurs in a natural environment and may involve the disturbance of the land's surface in its construction or use. Related facilities may include but not be limited to subsidiary paths, springs, campsites, viewpoints and unusual or exemplary natural features in the immediate proximity of the trail, which are commonly used or enjoyed by the users of the trail. In Section 4.03F, Steep Slopes & High Elevations (PD6), trails for motorized recreation are allowed:

7. Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies

8. Snowmobiling and ATV trails

In Section 3.75, a roadway is defined as a public or private road including any land management road. A land management road is defined in Section 3.41 as a route or track consisting of a bed of exposed mineral soil, gravel or other surfacing material constructed for, or created by, the repeated passage of motorized vehicles and primarily for agricultural or forest management activities, including associated log yards.

Mike Waddell asked Attorney Duval where the power line is, is it buried under the road? Mr. Wayne Presby responded that the power line is buried adjacent to the railway line and if you are looking up the mountain, it is on the left hand side of the tracks from the base to the summit. Mike asked if the power line is actually buried or is some of it visible. Mr. Presby answered that it is buried. Mr. Presby explained that in 2007, the Mount Washington Railway company and the NH Department of Resources and Economic Development entered into an easements and rights-of-way agreement to bring grid power to the summit of Mount Washington to meet the recreational needs of Park visitors. Mr. Presby further explained that in 1970 after the State of NH had acquired the summit there was a masterplan developed for the summit. In the masterplan, one of the reasons that they wanted to bring grid power up to the top was because there were 100,000 gallons of kerosene being stored up there for generators that were supplying all the facilities atop the mountain. There was a concern that there would be a leak and it would cause a huge ecological problem.

Fred King asked about the work that was done along the tracks and if anyone objected. Mr. Presby responded that no one objected. He explained that the work he was doing up there was because when the state's contractor completed his work of installing the power line he had cut away some of the earth next to the tracks and it was causing a possible hazard to the tracks. Mr. Presby put some rock back up against the track to protect it from further erosion. He also notified the State that some of the line had become exposed and he was willing to make repairs to the power line.

Leon Rideout asked if there was always a trail there along the tracks prior to the power line being constructed. Mr. Presby responded that there has always been a trail. Attorney Jason Reimers disagreed stating there is no mention of an existing trail where the power line was constructed. John Scarinza clarified that there has been a hiking trail but not an excavator trail.

Tom McCue wanted to clarify that what the board is dealing with is that the Railway performed some work in the summer of 2017 in the same area where the power line is buried. Mr. Presby stated again that the maintenance performed in 2017 was for the repairs to the track and to the power line. John Scarinza stated that what he was hearing was that the purpose of the excavation work was track and power line maintenance. Leon Rideout asked if the trail was altered in

width. Mr. Presby stated that one section of about 400 feet was leveled and flattened. The trail is over the existing conduit except for about 500 feet.

Chris Magness stated that a time-lapse video was provided to the Board that showed work on the mountain moving a significant number of boulders and widening an area a mile higher than what Mr. Presby described. Attorney Jason Reimers stated that the issue came to light in October 2017 at a meeting of the Mount Washington Commission. Mr. Presby was quoted as saying that the Cog had just opened up a trail to the summit on its right-of-way that he believes will be able to accommodate passenger-carrying “snowcats” up the three mile route in winter, a concept that, he said would soon be tested. Attorney Reimers said that he is not seeing in the reports in the media that this was just for maintenance to the track and conduit.

Mr. Presby stated that the construction of the power line has provided another means of access that has many benefits. Tom McCue said that what he is hearing is that the trail could be used to operate snowcats. Mr. Presby said that it is a possibility.

Mike Waddell stated that whether it is considered a road or a trail, DRED built it for the purpose of a power line. Scott Rineer asked if highway vehicles have used the trail. Mr. Presby stated that highway vehicles have never used it.

Rick Tillotson made a motion to reply to the Commissioners that the Board did not find that any zoning ordinance violation occurred. Leon Rideout seconded the motion. Mark Frank stated that he does not think that the Board has clearly identified what has happened. If the Railway has taken over the project and DRED is no longer doing the project and that this work was performed in PD 6 zoning area. Mark continued that if DRED was performing the work it would not fall under the Board’s jurisdiction, but if a private company was performing the work, it would. Tara Bamford stated that it is not who is doing the work it is whether the work is being done for a governmental purpose. Mike Waddell referred the Board to the November 16, 2017 letter from BCM Environmental & Land Law, PLLC. He read the second paragraph:

“It has come to our attention that the Mount Washington Railway Company has constructed a road (“Snowcat Road”) for the purpose of operating passenger-carrying snowcats.”

He stated that this is the paragraph that the Board has been asked to address tonight. Mike Waddell summarized that what he has heard that the road was built by the State and as long as the road exist, that maintenance will always need to be performed. What Mr. Presby brings up as a proposal or idea at the Mount Washington Commission meeting is a separate issue. Tom McCue wanted to state that he wanted people to understand what the role of this Board is and what the Board is limited to do. Some of the language that the Board has been presented with is not the Board’s concern nor does the Board have the authority to get into it. There was no further discussion. The motion was approved 9-1 (Frank).

John Scarinza stated that it is important that if in the future there is a change of use of that corridor for something other than maintenance of the tracks or conduit then it may need to come before the planning board for either site plan review or zoning permit . Attorney Reimers asked if charging money for the recreational use of that corridor would be a reason to come to the board. John Scarinza stated that if the use of the corridor is for other than maintenance than site plan review is required. Attorney Reimers stated that he believes that the Railway is charging skiers to park and use the trail. Tara Bamford stated that a site plan would not apply for the parking but if the use of the trail changes then it would require site plan review.

b. Review of PD8 Unusual Areas

At the last meeting, it was discussed to remove the PD8 district and to amend the Master Plan. Tara displayed the large zoning maps to show that the PD8 areas on the large zoning maps are easier to see. Mike Waddell stated that we should not have a zoning district for these areas. John asked if the areas would be in the Natural Heritage Resource Index. Tara stated that that was for endangered species. Tara stated that she would always recommend that if there were something that the Board does not feel comfortable enforcing then it should be removed. Tara said she would write some narrative for the Board to review about amending the Master Plan in regards to the PD8 district.

c. New Application Forms: Lot Line Adjustment, Subdivision, Site Plan, Voluntary Lot Merger, and Zoning Permit

The forms were distributed at the last meeting for review. Tara noted that she needed to make some minor corrections to some of the forms. There was no further discussion. Mike Waddell made a motion to approve the forms subject to the minor changes. Tom McCue seconded the motion. The motion was approved 9-0 with Rick Tillotson abstaining.

RATIFICATION OF ZONING PERMITS

Rick Tillotson made the motion, seconded by Ed Mellett, to ratify the following permit applications as approved by the Chairman.

Permit#487: Success – Eugene Marois – 10'x30' deck replacement

Permit#488: Millsfield – Ralph Lyford II – reconstruction of a 16' x 24' boathouse in existing footprint

Permit#489: Atkinson/Gilmanton – Robert Klunder – 10'x 20' storage shed replacement

Permit#490: Millsfield – Gregory Dube – remove existing camp and rebuild 20'x 32' camp in existing footprint with an addition of a 12'x 20' deck.

NEW BUSINESS

a. Review of PD4 Fish Spawning Areas

John Scarinza started the discussion by stating that he, Ed Mellett, and Tara Bamford met with biologists, Will Staats, John Magee, Katie Callahan and Diane Timmons of the NH Fish & Game (F&G). Tara explained that Katie Callahan does F&G's mapping. Through this process there have been some mysteries regarding some of the districts that were on the zoning maps. There are a couple of different version of the zoning maps and a couple of different organizations that said they digitized the maps. The original zoning maps were from 1990. The maps were hand drawn on US topo maps and sent to Complex Systems to be redrafted. The reason why things refer to those maps that say 1:1000 is that back then they did not have 1:24,000 digitally. Complex systems lost the data and in 2005, Katie created the small maps which are not as detailed because she did not have access to the data. Tara explained that it might be possible that F&G might be able to make the maps again. Tara explained that one reason why she wanted to dig into the minutes and the maps was that PD4 does not show up on the small maps. It turns out that it is not on the large maps either. The language for the district has always been there but it was never mapped.

Tara passed out a handout that identifies the Board's shoreline district (PD5) language; a map that identifies second order streams and higher and 1st order streams; and the fish spawning

district (PD4) language. Tara noted that the only difference between the two districts is under *Uses requiring a permit*. In PD4, agricultural management activities, forest management activities and land management roads except for water crossing permitted pursuant to RSA 485-A:17 (Terrain Alterations) require a permit whereas in PD5 they do not. F&G's response was why bothering having the district if you are going to allow those activities with a permit. F&G would like to see a no cut zone. Diane Timmons suggested that a no cut zone would be hundred feet from the second order streams and higher and first order streams.

Best management practices were discussed and the guide, Good Forestry in the Granite State was mentioned. There are best management practices that are regulatory and there are some recommendations. Scott Rineer stated that he would recommend the Board not use the guide. He said there is a disclaimer in the guide that it should not be used for land use regulations. Tara recommended that if the district is not identified on a map that the district should be removed. Tara suggested that it would be a good idea to have the F&G biologists attend a meeting so members can ask questions. John asked Tara to send out language that references having a vegetative buffer in the shoreline district.

TIME AND DATE OF NEXT MEETING

The next regular meeting is scheduled for May 23, 2018 at 6 pm in Lancaster, NH.

ADJOURNMENT

Rick Tillotson made a motion to adjourn. Mike Wadell seconded the motion. All voted yes.

The meeting was adjourned at 8:08 pm.

Respectfully submitted,
Jennifer Fish, Clerk