

**Cornwall Development Review Board (DRB)
MINUTES • February 5, 2020 • 7:00–9:45pm
Hearing • Cornwall Town Hall**

MEMBERS PRESENT: Barbara Greenwood, Joe Severy, Shari Johnson, David Anderson,
Magna Dodge

ALTERNATES PRESENT: Gary Barnett, Cheryl Cesario

ATTENDEES: Nigel Cheetham [via Skype], *Applicant*; Jason Barnard, *Applicant's Land Engineer*; members of the public (7)

1. CALL TO ORDER: 7:00pm. Barbara opened the meeting.

2. QUORUM: Established.

3. AGENDA: Barbara requested amendment of the Agenda with the addition of “Consultation with Potential Board Applicant” to #8 *Other Business* and “Executive Session” as item #10 of the agenda, if elected, for discussion of further action on the Board applicant's submission. Magna MOVED/Shari SECONDED to approve the Agenda as amended. **Motion passed**

REGULAR BUSINESS MEETING: Barbara called for the regular business meeting of the DRB to be resumed after the Hearing, turned the Chair over to Joe, and—having been recused from the DRB for the matter being heard this evening—went to sit with the members of the public.

4. HEARING—Nigel Cheetham, U-Phoria Minor Subdivision Application

- Joe opened the hearing with a reading of the warning as published in the *Addison Independent* prior to the first hearing on this matter.
- David administered the oath to those members of the public who expected to speak or present testimony during the hearing.
- **HOUSEKEEPING—Ex parte Communications, Conflicts of Interest, Visits to the Site**—Joe asked the Board to disclose any *ex parte* communications, conflicts, or site visits.
 - *David*—Noted he had been left a voicemail from Mary Dodge on January 29, 2020. He returned her call on the 30th. Mary advised she had received an inquiry from an individual asking how and to whom questions/issues regarding this matter should be addressed. David advised her that the individual should present any issues with, or questions about, the project at this hearing. Mary should do the same if she has any related items.
 - *Gary*—spoke with Nigel this morning about a separate non-related issue.
- **Exhibits**—Joe received two emails after the first hearing which he attempted to pass on to the Board, one was from Nigel, the other from Jason. However, it appears that neither email was received by members.
- **APPLICANT’S PRESENTATION**
 - *Nigel*: Opened his presentation noting that he had sent a 15-page email in response to numerous issues he had after the first hearing. The issues he reiterated, focused primarily on what he feels are inequities regarding his treatment over the course of the process to-date on his subdivision application, included:

- Failure of the Board to properly communicate with him regarding materials requested from him; failure to send him draft and approved Minutes to review;
- Failure of the Conservation Commission to contact/interview him, although doing so with other residents; failure to establish opinions as facts according to rules of evidence. The CCC relied upon the biased opinions of objectors to his project as facts for their report, he therefore questions the evidentiary validity of the report
- Failure of the Board to require that those offering testimony at the hearings be held to the same standards of rules of evidence that he followed. He does not feel his neighbors' opinions should be accepted as facts because they do not meet the rules of evidence.
- He noted all his attempts to be transparent and to do everything he could to assist the Board in their review of his application, then turned the presentation over to Jason.
- **Jason:** Noted that the Greenwoods' well has now been located on the map and is in excess of 200' from the mound on Lot 2. The reason it had not been located on the map previously was because it did not lie within the area of concern. He also noted he had reviewed the design standards referenced by Barbara.
- The documents submitted by the Applicant show that adherence to the design standards have been adequately met, particularly those related to the following:
 - Preservation of natural features, values and tax basis, open space
 - Viewshed impacts: minimized impacts by the spatial layout of the proposed parcels (limited clearing outside the building envelopes, primarily removal of dead trees) to:
 - maximize space between building envelopes
 - incorporating significant space in front of mounds and house sites
 - render houses somewhat hidden, though not invisible, by space along roads (setbacks)
 - Natural cover: Noted that, as proposed, their project will keep 70% of Lot 2 conserved and 75% of Lot 3.
 - Wetlands: Jason has visited the site with two State wetland ecologists who have delineated the wetlands on the property. Where the mound systems must cross the delineated areas, directional drilling under the wetlands and the 50' buffers on either side will be used rather than a pipe across. No additional permit is needed for this.
- **Mary Dodge** asked about the impact of the water brought under N. Bingham to the property by means of the culvert. **Jason** noted that the culvert flow was one reason why the subdivision's parcel boundaries were laid out as they had been. He also said the flow had been taken into account by the ecologist(s) and that there is a 150'+ distance between the culvert and the wetland area. This, in conjunction with the fan-flow discharge (rather than a channelized discharge), provides natural treatment for whatever effluent is discharged through the culvert before it reaches the wetland areas. **Nigel** noted that the wetland areas are increased by the increased rains and the poor drainage from the roads due to poor design and culverts.
- **Jason** also noted that the State, after reviewing the wastewater plans and conducting on-site reviews, has issued the required water/wastewater permits. The permits should be in the Town Office for recording shortly, if this has not already happened.
- **Magna:** *Wished to have it on the record that she has received no response to her query about an acceptable alternative location, not necessarily the preferred or "most acceptable" location, for the Lot 2 septic mound. Jason had assured her at the previous hearing that he would contact Elias Erwin for his opinion.* **Jason** noted that, having

issued the permit, it is unlikely the State (Erwin) will have the time to give a written answer, but he will try to at least get an oral response.

- **Jason:**

- The Lot 2 mound can be screened, though he recommends not doing so in order to preserve best line-of-sight to Sperry Road when approaching on North Bingham. The mound is more than 60' from the road right-of-way so there is room for screening.
- ANR has found no significant wildlife crossings through the property.

- **QUESTIONS FROM THE PUBLIC—**

- *Who owns the trees along the road? Can the lot owner cut them down or are they under Town authority?* **Jason:** The owner has the right to cut trees along the road.
- **Mary Dodge:** *The CCC's wildlife estimates for the area of concern and used in their report came from interviews with people living on North Bingham Street and Sperry Road, as stated. A full and accurate set of figures would require a state/professional assay. The primary area of concern lies mainly to the north of the property toward Rte 125. Immediately north of the proposed project is a deep ravine running South to North. The ravine forces animals on its west side to travel southward to the property and circle back northward. Wildlife will be distinctly impacted by the homes and human activity in their area of travel.*
- **Nigel:** *Objected to the many biased opinions from non-experts reported by the CCC as if they were facts. Their survey should have been conducted in a fair fashion without the influence of biased objectors to his project. Their opinions amount to hearsay and break all rules of evidence. He finds this whole process to be biased against the applicant. Again, no one has inquired with him regarding the wildlife in the area with which he has lived and is very familiar.*
- **B. Greenwood:**
 - *She urged the Board to not approve the Lot 2 mound location;*
 - *The mound will be an eyesore and being at or below road level does not make it less so. If it is approved, she would like screening by densely planted evergreens to be required;*
 - *Questioned if the mound extended into the road right-of-way?* **Jason:** No, it is not allowed to be in the road ROW and is 20' from it.
 - *Objected to having insufficient time for public review of the evidence submitted prior to this hearing (the letters from Nigel and Jason).*
 - *Regarding the biased opinions: The Board is not limited to strict rules of evidence as a court would be. It can accept credible evidence. The CCC interviews were conducted before the public knew of the pending Sketch Plan Review, as such Reviews are not warned in the newspaper nor are notices mailed to abutters.*

- **FINAL QUESTIONS OR COMMENTS—**

- **Magna** *wants a definitive answer from the State, not someone hired by the Applicant, in response to her question about availability of an alternate mound location on Lot 2.* **Jason** will contact Elias and try to get a written response. He warned that due to pressures of their work log and resultant lack of time he might only be able to get an oral response. He will draft an email tomorrow and will be happy to use her own words, if she wishes to send her question to him. As soon as he receives a response he will email it to Joe. He will push the issue.

- No additional Board, Applicant, or public comments or questions.
- **HEARING ADJOURNED**—The Board discussed whether or not they had sufficient information and were ready to close the hearing or to adjourn, awaiting additional information. The Board wished more time to review the submissions for this hearing and to have a response regarding an alternative Lot 2 mound location. At 8:45, with no further questions or comments from the Board or public and a request for a response from the Applicant regarding the State's opinion on a Lot 2 mound alternative site, Joe adjourned the hearing to March 4, 2020 at 7:00p.m. at the Town Hall.

Board Business Resumed--Barbara resumed her duties as Chair and called the Board back for its regular business meeting at 8:50 p.m..

5. MINUTES: Magna MOVED, David SECONDED, to accept the **Minutes of January 9, 2020**, as amended. *Motion passed.*

6. CORRESPONDENCE: Barbara noted she had received additional testimony from several persons regarding Beaver Brook, but as the hearing was closed no further testimony will be accepted into evidence.

7. UPCOMING MEETINGS—

- *March 4, 2020:* All expect to be available.
- *April 1, 2020:* All expect to be available.

8. OTHER BUSINESS:

- *Potential DRB Candidate*—Discussion with Joan Lynch about her interest in becoming a DRB Alternate.

9. DELIBERATIVE SESSION:

- Beaver Brook Properties LLC

10. EXECUTIVE SESSION: Not elected

11. FAREWELL AND THANKS TO GARY

NEXT MEETING: March 4, 2020, at 7:00 pm, Town Hall

ADJOURNMENT—Meeting adjourned at 9:45p.m.

Respectfully Submitted,
Robin Conway, DRB Secretary