

KINGSTON PLANNING BOARD

**OCTOBER 17, 2023
PUBLIC HEARING/MEETING
MINUTES**

Ms. Merrill called the meeting to order at **6:45 PM**; there were no challenges to the legality of the meeting.

Ms. Duguay introduced the Planning Board ("PB" or "Board").

MEMBERS PRESENT:

Robin Duguay, Acting Chair	Peter Coffin
Chris Bashaw, BOS Representative	Steve Padfield
Peter Bakie	Rob Tersolo

ABSENT: Lynne Merrill, Chair

ALSO PRESENT:

Glenn Greenwood, Town Planner
Dennis Quintal, Town Engineer
Robin Carter, Land Use Admin.

PUBLIC HEARING(S) (in these minutes)

Christopher North and Moira Bashaw, 49 Danville Rd., R22 54-2	Pg. 8
Centerview Hollow Land Company LLC, Small Pox Rd./Off RT 125, R19-30	Pg.11
Hawks Ridge of South Kingston, LLC, Mulligan Way, R3 LU4, 4020	Pg. 2
Housing Support, Inc., 186 Main St., R34-21	Pg. 1
Samantha Snow, 16 New Boston Rd., R26-39	Pg. 2

PUBLIC HEARINGS

Continued hearing:

**Housing Support Inc.
186 Main Street
Map R34 Lot 21**

Purpose:

This is a **site plan review application** for the total renovation of the existing structure to create four (4) one (1) bedroom housing units, including a small addition at the rear. Also, the extension of the right-side driveway to accommodate one handicapped parking space and three extra parking spaces at the rear.

The applicant has requested a continuance to November 21, 2021.

Mr. Greenwood explained that he contacted Housing Support, Inc. to withdraw their application. He spoke with their Counsel, Attorney Baum, and Mr. Baum asked the Board to continue for one (1) more meeting, one (1) more month. He wanted all appeal processes to have lapsed before they withdraw their application to the Planning Board. The appeal period for the variance they requested through the Zoning Board of Adjustment has closed out, he was concerned that there could be an appeal of a building permit process and wanted to give time for this to go through. Mr. Greenwood commented that the PB is not actively looking at this application.

Motion made by Mr. Coffin to continue the Housing Support, Inc. hearing until November 21, 2023 Planning Board public hearing at 6:45 PM. With any modified plans due to the Town Hall by November 9, 2023 at noon. Seconded by, Mr. Padfield. A vote was taken, all were in favor, the motion passed. (6-0-0)

**Hawks Ridge of South Kingston, LLC
Village at Granite Fields Condominium
Mulligan Way
Map R3, LU4, 4020**

Purpose:

The applicant has submitted a **Site Plan Review Application to amend the existing site plan** to seek approval to adjust/relocate Land Unit 4020 (20) and its associated Land Unit Area to a location on Mulligan Way between Land Units 23 & 24.

The applicant has requested a continuance to November 21, 2021. This was the first public hearing for this application. The Board decided to open the hearing to address the applicant's request for continuance.

Motion made by Mr. Coffin to open the public hearing for Hawks Ridge of South Kingston for the purposes of continuing. Seconded by, Mr. Bashaw. A vote was taken, all were in favor, the motion passed. (6-0-0)

<Board note: This hearing opened at 6:48 PM.>

Motion made by Mr. Coffin at the applicant's request to continue to the November 21, 2023 at 6:45 PM. With any plans being due to the Town Hall no later than November 9, 2023 at noon. Seconded by, Mr. Bashaw. A vote was taken, all were in favor, the motion passed. (6-0-0)

<Board note: This hearing ended at 6:49 PM.>

**Samantha Snow
Daniel Snow
16 New Boston Road
Map R26 Lot 39**

<Board note: This hearing began at 6:50 PM.>

Ms. Duguay read the legal notice.

Purpose:

The applicant has submitted a **Site Plan Review Application** for a home childcare facility.

Applicant: Samantha and Daniel Snow came to the table. Ms. Snow spoke and explained that they are requesting a home childcare facility in their residential home. They have renovated their basement.

- This would be for 12 preschool students, plus an additional 5 after school, school age children.
- It would be her and one other teacher.
- They are not adding on to the house.
- They fenced in a playground area.
- They renovated the whole basement including a bathroom for the kids separately.

Ms. Snow said that she has been in contact with the State as far as licensing through them. She will be working with them to meet those requirements. One of the requirements is the Town's approval that a daycare can go in the zone where their property is located (C3AQ).

Department comment(s):

Public Works – Ms. Duguay read the comments that were provided by Phil Coombs, Director of Public Works. "New Boston Rd. is a dangerous road due to sight distances and excessive speed and the proposed location does not have the needed space to accommodate the vehicular traffic. Additionally, this is taking place at an intersection with another road that has commercial and residential traffic entering and exiting. The plan as proposed would create a more dangerous condition for both motorists and customers, increased by the fact there are young children involved."

There were no other department comments.

Town Planner comment(s):

Mr. Greenwood gave his comments: The applicant is requesting permission to open a home childcare facility. This is the first public hearing for this proposal so the Board should consider invoking jurisdiction on the application. No new construction is proposed to the home or garage. The application materials suggest the facility will care for 17 students which includes the owner/ applicant's two children. In addition, one additional employee beyond the residents of the home are anticipated to be on-site each day. The following are my comments after reviewing a plan entitled, Plat of Land in Kingston NH showing existing Site Conditions & Proposed Day Care at 16 New Boston Road, prepared by Millenium Engineering Inc and dated 8/8/23:

1. The proposal adds 16 new individuals to the site each day. The applicant must prove that the existing septic system for the 3-bedroom home can handle an additional 160 gallons of effluent flow which is the design standard in the NHDES Individual Sewage Disposal System design standards found in Table at 1008-1 of NHDES administrative rules.
2. The applicant has offered a parking safety plan for student drop off and pick up each day. The very limited parking area in the front yard of the home seems inadequate for the number of trips proposed. Is it possible to create an additional paved section of the driveway that would allow vehicles to reverse direction and exit onto New Boston with their cars pointing forward instead of backing onto New Boston Road?
3. The property is located in the aquifer protection zone (APZ) so a conditional use permit for a commercial activity must be granted by the Planning Board.
4. The plan should indicate by way of note that the site does not exceed the maximum coverage allowed in the APZ.
5. The applicant will be required to get a sign permit from the Board of Selectmen for the sign that is proposed on site.

Town Engineer comment(s):

Mr. Quintal provided his review comments: He said he received a copy of the plan -
(1 Full Size sheet "Plat of Land in Kingston" showing Existing Site Conditions & Proposed Day Care at 16 New Boston Road, by Millennium Engineering, Inc, dated August 8, 2023.)
and copy of Application, Tax Card, Tax Map, Deed.
His comments are:
1. The Tax Card shows the dwelling as having 3 bedrooms. I presume the sanitary waste disposal system is only sized for the 3 bedrooms. With a proposed day care facility, sanitary waste disposal system design must be approved for this lot to accommodate the additional wastewater flow associated with this business.
2. Although a pickup/drop off program is proposed (Item 5) there still will be an issue with vehicles backing out into the right of way. I would recommend a plan amendment where vehicles will not be backing out into the right of way or queuing along the edge of the roadway.
3. As part of obtaining a State License to operate, I presume drinking water testing results will need to be provided. Also, a floor plan to show adequate areas designated for children to play or sleep separately from each age group.
4. Provide for additional solid waste associated that would be produced in addition to that produced from the normal single family dwelling.

Ms. Snow provided responses to comments made.
- Regarding Mr. Coombs comments that New Boston Rd. is a dangerous road, she did agree it is. She noted that the posted speed limit is 35, but people tend to go much faster than this. They are at the start of New Boston so people do not always get up to full speed that they do travel. Small Pox Rd. across the street from them is a dead-end road and is not a thru way.
- Ms. Snow mentioned that they are comfortable with considering either adding a paved area to the side of their driveway for a turnaround or possibly a semi-circle in the front so cars would enter and leave in one direction and would be forward facing onto the road.
- She said that the septic system they have installed would accommodate a 5-bedroom home. This system was installed in 2019. (Note: This information was not provided with the application and was provided at the meeting.)
- The bathroom that was installed in the childcare area was installed with a grinder pump to make sure the solid waste is being broken down.
- The parking plan provided was to operate on a staggered plan to make sure that no more than 3 people are dropping off and picking up at one time. Families are assigned a specific time.
- Ms. Snow mentioned that she does operate as an exempt home childcare right now. The State only requires that you get licensing if you take on more than 3 children. They haven't had any issues with the parking.
- She brought up that she would consider requesting licensing at a smaller capacity, i.e., possibly only the 12 preschool students and not adding the additional 5 after school if safety was an issue, do not want to put anyone in harm's way.
- There is a section of the State application that requires them to get their water tested. The Health Inspector has to check and make sure it is on record.
- In regard to solid waste, since the Town has the new larger bins now, they do have the space in their residential bins to accommodate the trash. Between recycling and composting they tend to be able to limit their trash impact on a weekly basis.

She said they understand that parking is their biggest issue and will explore options in terms of essential pick up and drop off.

Mr. Greenwood brought up the NHDES septic requirements. The requirement is 10 gallons septic flow per individual. He explained that removing the 2 children that live in the home the

count is 15 children which results in 150 gallons of affluent and more than covers 2 additional bedrooms that are designed into the system over the 3 that are in the home because it is designed for 150 per bedroom. He noted that having the system designed for 5 bedrooms covers the sanitary flow requirements. Ms. Snow commented that the septic tank is a 1,500 gallon and leach field is over 3,000 S.F.

Ms. Snow said that they did submit a sign permit. Mr. Greenwood explained that it is on hold with the Board of Selectman (BOS) because they have to wait until the site plan review process is done. Mr. Greenwood noted that the applicant is required to show the location of the sign on the site plan to show where it can go, but the Planning Board does not grant the sign permits, the allowance for the sign is handled through the BOS.

The Board took a vote to invoke jurisdiction.

Motion made by Mr. Coffin to take jurisdiction. Seconded by, Mr. Padfield. A vote was taken, all were in favor, the motion passed. (6-0-0)

Mr. Coffin explained to the applicant that jurisdiction means that the Board is accepting the application as being complete enough. He stated that one of the things the applicant is going to need is a Conditional Use Permit (CUP) for the Aquifer Protection zone and this can't be done until the Board accepts jurisdiction. This is the Board's way to say they have officially accepted the application and are ready to discuss and move forward with it.

Board comment(s):

Ms. Duguay asked what comes first, the State licensing or the Board's ability to review the plan and if State approval would have to be a condition of approval. Ms. Snow read some language from the State application. Mr. Greenwood said that it does seem like the State is not going to act until the Town makes a decision on the proposal. Mr. Greenwood commented that the Board would have to discover where there is a level of safety on the site.

Ms. Duguay asked the applicant where the changes to the driveway would be. Ms. Snow said if they extend the driveway it would go towards the side of the driveway where the house is not located and that they are going to run into an issue with having the wetland there so this might be an option B for them. If they go option A, which would be a semicircle they would be moving the mailbox and front shrub from the front yard and would come from the corner of their current driveway and half circle to the other side and work with the set back of being within 20 feet of the property line, their well is in the front and is only 30 feet from the road to the porch steps. May be tight but they have been in touch with someone on this and have received a quote.

Mr. Bashaw brought up that he knows the safety concerns are preferred from not pulling out into the driveway but is there a legal requirement from the State. He commented that there is not one for residential purposes but is there a requirement that businesses have to uphold or a business and residential mix. Mr. Quintal said for a Town road it is the Town's requirement he is not aware of it separating it from residential and business. Proper site distance is the important thing. He noted that they are on a curve that you can see in both directions, and it is a matter of getting the cars in, unload and out safely and being able to see in both directions.

Ms. Snow said that they do have a procedure that the parents sign off on that they have to use Small Pox Rd. as a turnaround, this way the cars do not have to be stopping waiting to pull into their driveway.

Mr. Bashaw mentioned that if they didn't have their parking plan that it may create an illegal standing situation along the road. He commented that it is tight in the driveway and the applicant would much rather have a turnaround or semicircle, but his preference is not to make it a requirement of the application if unable to do it if it is not required by law or ordinance.

Mr. Coffin said that a turnaround would be a good idea. Ms. Snow said they do want to make it easier and more functional for parents. Ms. Duguay mentioned that the staggered drop off and turn around on Small Pox would be a good short-term solution.

Mr. Greenwood commented that it isn't in the site plan regulations that you can't back on to a road, but the premise of site plan review is done to ensure adequate design and safety of each site. This is an issue that comes under the authority of the Site Plan Review for the Town.

Public comment(s):

Public comment was opened at 7:23 PM.

Brett Williams, 18 New Boston Road –

- Mr. Williams noted that New Boston Road is 35 miles an hour. If this is not against them safety wise, he doesn't see anything wrong with it. It doesn't bother his property.

Public comment closed at 7:24 PM.

The Board went over the conditions for a Conditional Use Permit in the Aquifer Protection zone (201.4.G). The Planning Board may grant a Conditional Use Permit (CUP) for those uses listed in 201.4.G. items 1-3 only after written findings of facts are made that all of the following conditions are met.

Conditional Use Permit conditions –

- a) the proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
 - Mr. Bashaw asked that based off of the applicant's responses to the septic design do Mr. Greenwood or Mr. Quintal have any concerns with any of these conditions based off of the newer septic system involved. Mr. Greenwood stated that the only thing that could get impacted under this process would have been an inadequate septic system. From his perspective the applicant provided evidence that this is not a concern. Mr. Quintal agreed. (The applicant brought a copy of the septic design that was installed in 2019 and mentioned that it was for a 5-bedroom system.)

Motion made by Mr. Bashaw to move to affirm that they have met section a. of the Conditional Use Permit, the proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants. This is moved based on the evidence submitted by the applicant in their application and the evidence that they testified tonight about the updated septic design system and that seems to satisfy the needs of the Town Engineer and Town Planner. Seconded by, Mr. Bakie. A vote was taken, all were in favor, the motion passed. (6-0-0)

Motion made by Mr. Bashaw to move to affirm that they have met section b. of the Conditional Use Permit, the proposed use will not cause a significant reduction in the long-

term volume of water contained in the aquifer or in the storage capacity of the aquifer. This is based on no concerns brought forth by the Town Engineer and Town Planner with this being a pretty substantial aquifer zone. Seconded by, Mr. Bakie. A vote was taken, all were in favor, the motion passed. (6-0-0)

Motion made by Mr. Bashaw to move to affirm that they have met condition c. of the Conditional Use Permit, the proposed use will discharge no wastewater on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined. This is based off of the application information available to the Board as well as the updated information brought to the Board regarding the five (5) bedroom septic that has been installed that would be able to handle the septic load for the proposed use on the site. Seconded by, Mr. Bakie. A vote was taken, all were in favor, the motion passed. (6-0-0)

Motion made by Mr. Bashaw to move to affirm that they meet section d. of the Conditional Use Permit, the proposed use complies with all other applicable sections in this Article. Being that no issues were brought forward by the Town Planner and Town Engineer. Seconded by, Mr. Bakie. A vote was taken, all were in favor, the motion passed. (6-0-0)

Motion made by Mr. Bashaw to move to affirm that they meet the conditions of section e. of the Conditional Use Permit, a hydrogeologic study shall be submitted for uses whose septic system is designed for more than 2,400 g.p.d. In Zone A, a study shall be submitted for any septic system designed for more than 2,000 g.p.d. This is based off of the fact that the system being submitted, and the calculations would not exceed the limitations as outlined in section e. Seconded by, Mr. Bakie. A vote was taken, all were in favor, the motion passed. (6-0-0)

Conditional Use Permit Approval -

Motion made by Mr. Bashaw to move to grant the Conditional Use Permit after the Board has voted to affirm that the applicant has met the requirements in sections a.-e. as proposed on the plan. Seconded by, Mr. Bakie. A vote was taken, all were in favor, the motion passed. (6-0-0)

The Board discussed the parking situation and pick up and drop off suggestions. Mr. Bakie mentioned that snow and snowbanks could be an issue trying to back out of the driveway. Giving the ability to turn around on the right-hand side would help. Mr. Coffin said that the standard of care for an invitee for a business is significantly higher than that of a guest visiting and it would certainly work in their favor to provide adequate safety conditions. Modifications of the driveway would require a driveway permit. The applicant would have to design the driveway plan and submit it to Phil Coombs (Director of Public Works).

Mr. Greenwood mentioned that the idea of having the construction of the driveway be closer to the wetland on the righthand side; the Planning Board has the right to grant a CUP in areas designated as wetlands as well as areas designated as buffer areas to wetlands provided that the conditions of the CUP are met. So, if that is what the Board is proposing the Board should look at the CUP language found at 202.6.

Mr. Snow spoke and explained that they have a driveway that fits 4 cars. They have a garage that fits both of their cars. Technically they can pull up and do a 3-point turn in the driveway. He questioned why if they have a standard drop-off with 2 families at a time, why they have to spend

thousands of dollars for all the construction of pavement when they have staggered drop off bounded by contract. The driveway is 22 x 30+.

Mr. Tersolo said with 17 kids coming in and out he'd like to see more driveway space to turn around.

Mr. Quintal wouldn't recommend going closer to the wetlands. He recommends going to the front of the house and making a horseshoe, the surface could be gravel. Suggested one way traffic in and one way traffic out, this would make it a lot safer and easier for people going there. Ms. Snow said that having the traffic flow one way would make it easier for them to assist the children. Mr. Quintal noted they would need a driveway permit and from Mr. Coomb's comments he is concerned about the driveway too and suggested to the applicant to talk with him.

Conditional Approval -

Motion made by Mr. Bashaw to grant Conditional Approval of the plan as presented with the following conditions:

- 1) The Conditional Use Permit that was issued tonight being noted the plan.**
- 2) That the updated septic design with the five (5) bedroom septic being able to handle the proposed septic load be noted on the plan.**
- 3) A note stating that the applicant will ensure proper drop off and pick up procedures to ensure that no vehicles are illegally parking or standing on New Boston Road during pick up and drop off.**
- 4) That the applicant will make improvements to the driveway situation to either create a second entrance for a multipoint enter/exit or be able to turnaround front facing driving onto New Boston Road.**
- 5) Indicate that they will comply with the impervious lot restrictions not to exceed the maximum coverage area in the Aquifer Protection Zone A.**
- 6) The applicant has 180 days to complete these conditions.** (Mr. Bashaw explained that if the applicant is not able to meet the 180 days, they have the option to come back and request an extension, but they cannot let this expire; they have to request an extension prior to the expiration of the timetable.)

Seconded by, Mr. Coffin. A vote was taken, all were in favor, the motion passed. (6-0-0)

The applicant was directed to contact Mr. Greenwood for questions on next steps.

<Board note: This hearing ended at 7:50 PM.>

Christopher North Bashaw and Moira J. Bashaw
49 Danville Road
Map R22 Lot 54-2

<Board note: This hearing began at 7:51 PM.>

Mr. Bashaw recused himself for this hearing.

Ms. Duguay read the legal notice.

Purpose:

The applicant is seeking a **Conditional Use Permit for an Accessory Dwelling Unit (ADU)** in a detached structure.

Applicant: Mr. Bashaw described their ADU proposal. They have an already permitted and authorized barn built on the property. Looking to convert part of the barn into an Accessory Dwelling Unit. Charlie Zilch of S.E.C. and Associates is his engineer, but he could not be here tonight to present the proposal.

Mr. Bashaw explained that the waiver that was part of the application package for Mandatory Preliminary Review was an oversight by Mr. Zilch. and is not required for a CUP/ADU application. Mr. Bashaw withdrew the waiver request because it is not applicable.

Description of the property:

- 2-acre lot, 87,071 S.F.
- 200 feet of frontage on the north side of Danville Road. This lot was created from a subdivision in 2003.
- The house was constructed in 2004.
- The dwelling is currently a 5-bedroom single family residence, served by its own septic system and water supply.
- To the northwest of the dwelling is a 40 x 84 S.F. one story barn with tall ceilings.
- The property is located entirely within the Single-Family Residential zone. Previously, a small strip on the east side of the lot was shown to be in the Aquifer Protection zone. However, Aquifer Protection Districts maps adopted in 2022 indicate that none of his property is in the aquifer protection overlays.
- They are not proposing any exterior changes to what has already been permitted through the building permit process for the barn.
- There will only be internal changes to the barn to convert to the ADU space. It will contain a 1 bedroom and be 817 S.F. in size. The maximum S.F. is capped at 819 S.F. based on the GLA calculations on the tax card.
- There are no known variances required.
- Will be served by the same water supply as the existing dwelling and will have its own separate tank feeding into the existing septic system. Contingency design has been prepared and has been approved by the State.
- They have received State approval for the septic system.

Department comment(s):

The Fire Department provided the following comments: Comply with NFPA and Comply with Town of Kingston Rules and Regs.

There were no other department comments.

Town Engineer comment(s):

Mr. Quintal went over his review based on the following documents.

- 1 Full Size sheet "Contingency Proposed Sewage Disposal System Plan" 49 Danville Road in Kingston, NH

showing proposed garage with ADU, by SEC & Associates, dated September 11, 2023.

- 3 Sheet House Plan set "Bashaw Barn" by Total Construction Solutions, LLC, dated 9-12-23.

1. The Sanitary Disposal Plan shows 4 parking spaces in front of the big garage doors. There needs to be an area for turning the cars around so not to encourage backing out into the street.
2. Grading should be provided to show that roof runoff from the west side of the barn does not flow onto the abutter's property or to the street.
3. I presume walkways will be provided on the east side of the barn for access from the parking to each of the doorways.

4. I would recommend some form of structural diversion to prevent snow & ice from falling onto the pedestrian doorway building access points.

5. If there will be a patio or deck at the rear of the building off the sliding doors, it should be shown.

6. Perhaps percent impervious area of the lot should be provided.

Town Planner comment(s):

Mr. Greenwood provided his comments. This is the first public hearing for this proposal to construct a detached ADU, so the Board needs to consider invoking jurisdiction on the application. The application includes an expansion of the existing septic system for the one-bedroom ADU. Floor plans and building elevations have been provided. A new driveway meeting Town standards has been proposed and permitted by the Highway Department.

The application complies with all the requirements found in Article 206 Accessory Dwelling Units Ordinance.

Board comment(s):

The Board discussed the parking and driveway design. Mr. Bashaw commented that this is not subject to site plan review. He noted that there is space to park 4 cars in the house driveway and he didn't have to show parking in front of the barn/ADU because only a total of 4 spaces is required. Mr. Quintal stated that he mentioned it because it would be convenient to make a turnaround and that it didn't have to be done.

Motion made by Mr. Coffin to invoke jurisdiction. Seconded by, Mr. Padfield. A vote was taken, all were in favor, the motion passed. (5-0-0) (Mr. Bashaw was recused from this hearing.)

Mr. Bashaw provided responses to the comments raised.

- **#2 of Mr. Quintal's comments above.** Mr. Bashaw explained that this was already a permitted structure by Town standards. The only thing before the Board is the interior changes. The grade lines between the barn and the road are lower.
- **#3 “.** He does not have any intention of putting in walkways, it will be lawn area. He did that to make it more in line with the spirit of the ordinance to make it appear as an ancillary building. They designed it in a way knowing that there was no requirement to have them.
- **#4 “.** The roof will be roofed with asphalt shingles. It might be nice to alleviate snow concerns, but If it is not a building code requirement, he is not inclined to do it.
- **#5 “.** Patio and deck are not being considered at this time.
- **#6 “.** According to the updated aquifer maps none of his property is in the Aquifer Protection overlay. Previously if it was, it would have been in Zone B and it would have been a tiny sliver on the other side of the property of where this is being constructed. He commented that in doing a quick calculation based on the size of the barn, size of the house, the 50 x 50 basketball court that is outback it equates to 9,000 S.F. of impervious surface with these buildings and 25% mark for 2 acres he is not close even if the property was still in the aquifer overlay.

Public comment(s):

Public comment opened at 8:07 PM.

John Dennis, 51 Danville Road –

- He saw the garage going up and it looks nice, but wanted to make sure it wasn't going commercial.

Public comment closed at 8:08 PM.

Motion made by Mr. Coffin **to approve the Conditional Use Permit for an Accessory Dwelling Unit as presented in the plans of S.E.C. dated September 21, 2023. Seconded** by, Mr. Bakie. **A vote was taken, all were in favor, the motion passed. (5-0-0)** (Mr. Bashaw was recused from this hearing.)

Mr. Bashaw said he is fully aware of the impact fees due prior to occupancy.

<Board note: This hearing ended at 8:10 PM.>

<Mr. Bashaw returned to the meeting as a voting Board member.>

Centerview Hollow Land Company LLC

Small Pox Road & Off Route 125

Map R19 Lot 30

<Board note: This hearing began at 8:11 PM.>

Ms. Duguay read the legal notice.

Purpose:

This is a **Site Plan Review Application** for an amendment to a recently approved earth excavation and restoration operation.

Applicant: Tom Schamberg of Civil Design Consultants presented on behalf of the applicant. (He went over the Intent letter dated July 21, 2023 submitted from Charlie Zilch, Project Manager of S.E.C. & Associates, Inc.)

Mr. Schamberg explained that his is an application for an amendment to a recently approved earth excavation and restoration operation for the property located at Tax Map R-19 Lot 30.

- The initial application filed was approved in September of 2021. Since this it has been sold to the current owner, Centerview Hollow Land Company, LLC in February, 2022.
- Centerview transferred all permitting to their name, fulfilled all remaining outstanding conditions and began the excavation operation shortly thereafter.
- The subject property recently merged lots 31 & 30 is located on the southern end of Small Pox Road where it contains approximately 148' of frontage.
- The property is served by a 50' wide right of way that runs along the east side of RT. 125 for approximately 732'.
- The lot is located within the Rural Residential zone as well as within the Aquifer Protection District.
- Eversource easement runs through the center of the property.

Currently the owner is approaching the limit of the depth for the excavation as established on the previously approved site plan.

- This was 8' from the seasonal high-water table of the property. This depth was determined through test pits performed by Timothy Ferwarda and the Town's agent Michael Cuomo to establish the seasonal high-water table. At the time the depth reached were limited by the walls caving in due to the depth of the water table and the soil being sand, so the original depth used was determined based on the depth of the pit bottom. In order to establish a true depth to the seasonal high-water table, they installed 3 monitoring wells. Based on these readings it was determined that an additional 3-4.5' of additional material could be excavated from the property while maintaining the 8' separation.
- Upon request from Lenny Lord, from Rockingham County Conservation Department (RCCD) additional test pits were performed to ensure that the data from the monitoring wells was correct.
- Now that the excavation has taken place and the elevation of the property is lower, it is possible to reach the seasonal high-water table.
- Test pits were performed in March of 2023 and verified the data of the monitoring wells.

The application before the Board tonight is to include the additional depth of excavation to the site plan.

- This increased the total yield from 55,000 cubic yards (cy) by an additional 8,600 cy. or a total approximately of 63,600 cy.
- The excavation will be entirely within the original excavation area and does not add any disturbance outside of the previously approved limit of work.
- As with the previous site plan the proper buffers shall remain around the 3 Eversource transmission line poles.
- The operation remains subject to all notes, restrictions and limitations as noted on the previously approved site plan set.

Department comment(s):

Ms. Duguay read the comments provided by Phil Coombs, the Director of Public Works. "What is the status of the road bonds that Lewis Builders and Dan Parks both were required to have for these projects on Small Pox? I am unsure of the specifics of those agreements but would ask that a review be conducted before approval to ensure the town is protected and conditions are being adhered to."

Mr. Greenwood spoke and said that he did verify that both bonds still exist and are in place. There is no indication that they have not been adhered to. They do not cause any concern for going forward with this project.

Town Planner comment(s):

Mr. Greenwood went over his review comments. This is the first public hearing for this expansion proposal and as such the Board should consider invoking jurisdiction on the application. The application includes a request for a waiver to the mandatory preliminary review. This is requested because no additional area is being disturbed by this proposal. The request is to excavate deeper than previously permitted because new test pits and the installed monitoring well have been able to verify seasonal high-water table, and this permits a deeper excavation. The RCCD, our consultants on this project, were authorized to engage with the applicant earlier this year. That was done and they report and summarized that there is better information about seasonal highwater table and how much could be additionally excavated and ensure the 8' separation that the Town requires.

Town Engineer comment(s):

Mr. Quintal said that he reviewed the information and the consultants involved are very reputable. He agrees with what is being proposed is acceptable to him and he doesn't see any objections. He has no additional comments resulting from his review of the submitted documents.

Motion made by Mr. Bashaw **to invoke jurisdiction. Seconded** by, Mr. Coffin.

Board discussion: Mr. Coffin asked the applicant to go over the numbers for the delta between the excavation and the top seasonal high water. Mr. Schamberg responded that the required separation is 8'. Mr. Coffin said that that is in the Town ordinance too and asked if they were going down to the 8' line. Mr. Schamberg replied, yes. Mr. Bashaw took a look at the site this weekend and looked at it from the Dan Parks excavation site and the top of his pit is approx. 30' below where they are looking to do excavation. Looks like there will be plenty of separation. They do need to comply with the requirements, the sloping and grading near the utility easement area. Mr. Coffin mentioned that when they first approved this, the plan included a reclamation plan that was going to level out (plan not yet proposed) but the idea was to make it buildable. Would the lower elevation still produce enough elevation above the highwater mark to produce septic systems. Mr. Schamberg commented that is his understanding that when the excavation is finished it could potentially be a buildable lot.

A vote was taken, all were in favor, the motion passed. (6-0-0)

Motion made by Mr. Bashaw **to grant the waiver to waive Mandatory Preliminary Review based on the fact that there is no changes to the square footage area and it is only depth; and we have improved data due to the monitoring wells and this has been verified by the Rockingham County Conservation District (RCCD) as well as by the reviews conducted by the Town Engineer and Town Planner. Seconded** by, Mr. Coffin. **A vote was taken, all were in favor, the motion passed. (6-0-0)**

Public comment(s):

Public comment was opened at 8:21 PM. There was none. Public comment was closed at 8:21 PM.

Board comment(s):

Mr. Coffin brought up the question since this a change the Board does not have to redo the conditional use permit (CUP) because this is *sand and gravel excavation and other mining provided that such excavation or mining is no carried out within eight (8) vertical feet of the seasonal high-water table. (201.4.G.3)*. This requires a conditional use permit. Mr. Greenwood explained that we would not need a CUP because one was already done (September 21, 2021).

Motion made by Mr. Bashaw **to grant the amended site plan as presented, noting the granting of the waiver of Mandatory Preliminary Review with no conditions associated. Seconded** by, Mr. Padfield. **A vote was taken, all were in favor, the motion passed. (6-0-0)**

<Board note: This hearing ended at 8:23 PM.>

BOARD BUSINESS

Approval of the September 19, Minutes:

Motion made by Mr. Coffin that the September 19, 2023 minutes be accepted as presented. Seconded by, Mr. Bashaw. A vote was taken, all were in favor, the motion passed. (6-0-0)

Correspondence:

1) **Invoice from Truslow Resources Consulting, LLC** (Invoice #574), dated 10/12/2023 in the amount of \$770 for NHAAAL (All American) water quality monitoring review (Oct. 2021-Oct. 2023). **The Board approved this invoice.**

2) Email from Code Enforcement, Kyle McManus to Glenn Greenwood (dated Oct. 16, 2023) **re: Bresnahan Storage Facility on RT. 125 –**

Ms. Duguay read the email. “As we spoke about the Lights are compliant with the town ordinance. The Lighting cut sheet is attached for reference. These are 15000 lumen, 110 w LED fixtures which have been installed roughly 12’ above grade for the parking lot. The Electrical contractor also did provide internal shielding for the horizontal lighting. I believe the glare issue is possibly 2-fold, the glare off the window and the lack of visual barrier between the property and the lights.”

Mr. Greenwood explained that this came up because the Board of Selectmen (BOS) wanted a better handle on what exactly was happening with the lights at the Bresnahan facility. Mr. Bashaw further explained that the BOS continues to get complaints from folks who feel Bresnahan’s is not being compliant with the approved site plan. The 2 issues were 1) the lighting – the individual who installed the current lighting is the Town electrical inspector, so the Board asked that Kyle McManus (building inspector/code enforcement) review the electrical standards of the fixtures with someone who is not the person that installed them. Mr. Bashaw commented that he believes they technically meet the specifications and requirements and that the bigger problem is the way the lights reflect off the windows. The other issue is 2) that tree plantings have never occurred. There have been continued hearings on this and hasn’t been resolved. Not holding people accountable to their site plans is problematic. They have received comments that there should be revocation of their site plan for not following the site plan.

Ms. Duguay said that what you are saying is the lighting does comply. Mr. Bashaw commented that according to the Code Enforcement Officer and the resources he utilized he is stating it is within compliance. Mr. Bashaw noted that he (Mr. Bashaw) is not an electrician or a lighting expert, so he has no means to contradict this.

Ms. Duguay questioned then it is the plantings that are outstanding. Mr. Bashaw said any of the plantings and screen that was required as part of the buffer areas or to replace the areas where they cut down all the trees that they were not supposed to cut down. Mr. Bashaw brought up that Bresnahan did offer to write a check to the Town for the amount of the plantings and this was not acceptable.

Mr. Coffin said that the rule should be that you should not be able to see the light source. He referred to the Lighting Ordinance (302.4.B). the height “shall not exceed 25 feet”; and (302.4.C) “any luminaire or lamps rated at 1800 lumens or less, and all flood or spot lights with a lamp or lamps rates at 900 lumens or less, may be used without restriction to light distribution or mounting height, except that, to prevent light trespass, if any flood or spot light is aimed, directed or focused

so as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to pedestrians or persons operating motor vehicles on public ways, the luminaire shall be redirected, or its light output reduce or shielded, as necessary to eliminate such conditions." Mr. Coffin noted that this has always been the issue. It may not be that they are not compliant, but you can see the light source from off the property which is not compliant.

Ms. Duguay brought up that it is not the light source they are seeing it is the glare off the windows. Mr. Bashaw said that it is the light it casts can't exit from the property.

Mr. Greenwood explained that Mr. McManus actually went out at night and what you see is light reflecting onto the concrete at the building site. The lighting is directed down by shields that are on the fixtures and that the issue stems from glare from the windows and the fact that the topography change between RT. 125 and the business puts the lights at a different place than they would normally be because the building is lower than the street level. These were the 2 reasons Mr. McManus gave the reason for the appearance of glare that doesn't disqualify from being site requirements met.

Mr. Bashaw stated that the Board needs to make a determination on whether they want to take up the issue of the glare reflecting off the windows.

Mr. Coffin commented that it has been determined that it is glare and referred to the part of the Lighting ordinance (302.4.C) "to create glare perceptible to pedestrians or persons operating motor vehicles on public ways, the luminaire shall be redirected, or its light output reduce or shielded, as necessary to eliminate such conditions."

Mr. Greenwood said that he has gone by this site several times and appears to him that the fixtures don't appear as dark sky compliant fixtures. However, now this is the 3rd professional that does say they have an understanding of what is going on and they are constructed the way they were permitted to be constructed and installed the way they were permitted to be installed. He commented that the only other way to do this is to have a lightning expert look and doesn't know if this is something the Town wants to do.

Mr. Bashaw said that there is the issue of the plantings and screenings and does the Board want to take that up. Site plan revocation for site plan violation has to be heard by the Board and then recommended to the BOS for enforcement.

Mr. Greenwood mentioned that the Board has for over 7 years given Mr. Bresnahan every opportunity to do the plantings. He has had at least 3 conversations over 3 years with Mr. Bresnahan on this and has been told it would be done next planting season. Mr. Bashaw asked the Board ever informed Bresnahan that the next step would be site plan revocation? The Board discussed this and didn't believe it was done. Mr. Coffin said that the Planning Board made a recommendation to the BOS to enforce it. Mr. Bashaw explained that the BOS can enforce the lighting, but the planting can only be enforced through a formal vote by the Planning Board to revoke the site plan based off of the non-compliance of putting in the plantings.

Mr. Coffin brought up that the BOS has already gotten the recommendations from the PB that Bresnahan has not met the deadlines.

Mr. Greenwood stated that this is still part of their site plan, and it still becomes a code enforcement issue of the site plan. The BOS could go by way of an injunction or some sort of

process in court to cease and desist, and if he doesn't cease and desist start assessing fines that the zoning ordinance allows.

Mr. Coffin said that the request has been made from the Planning Board to the BOS for enforcement and the BOS has tried.

Mr. Bashaw explained that the BOS continues to get complaints and would like to know how the Planning Board would like to handle this. Does the PB want to demand that the BOS take it as an enforcement issue or the PB can decide to hold a hearing for site plan revocation. Mr. Quintal suggested giving a deadline for the plantings to be completed before considering revoking the site plan.

The Board asked Mr. Greenwood to contact Bresnahan in writing in regard to a deadline to complete the plantings and explain that if it isn't done the Board will begin proceedings to revoke their site plan.

Motion made by Mr. Bakie that the required plantings as required by the site plan need to be completed by April 30, 2024 or the Board will plan on scheduling a hearing for site plan revocation. Seconded by, Mr. Coffin. A vote was taken, 5 in favor, Mr. Bashaw abstained, the motion passed. (5-0-1)

Board Business Cont.:

Capital Improvement Plan (CIP) -

Mr. Bashaw reminded Mr. Greenwood that the Capital Improvements Plan (CIP) needs to be done.

ADJOURNMENT

Ms. Duguay declared the meeting adjourned at 8:47 PM.

****Next Public Meeting/Hearing is scheduled for Tuesday, November 7, 2023. Subject to change.****