

**TOWN OF CENTER HARBOR
PLANNING BOARD**

**Tuesday, May 3, 2022
Meeting @ 6 p.m.**

Chair Charles Hanson called the meeting to order at 6:00 p.m. Present Vice Chair Peter Loudon, Selectmen's Rep Bill Ricciardi, Secretary Rachel Xavier, Members Mark Hildebrand, David Nelson, Alternate Member Steven Brown, Alan Rilla and Clerk Pro-Tem Sheila Mohan. Absent with notice Kelli Kemery. (PB Clerk Aimee Manfredi-Sanschagrin was not in attendance due to her recusal from the Kline Hearing. Clerk Pro Tem Sheila Mohan will be transcribing the minutes for the Kline Hearing, the remainder of the minutes will be transcribed from the recording by Clerk Aimee Manfredi-Sanschagrin)

Public Attendance: Duke Kline, Derek Kline, Eric Taussig, George Gurney, Helen Heiner, Susan Patz, Maribel Storm and Attorney Chris Hilson.

Chair Charles Hanson makes a few announcements for those in attendance.

Chair announces the Voting Members, Charles Hanson, Peter Loudon, Bill Ricciardi, Rachel Xavier, Mark Hildebrand, David Nelson and Alan Rilla. (Due to the absence of Kelli Kemery, Chair announces Alternate Member Alan Rilla will be a voting member and if the Kline hearing needs to be continued, Alan will continue as the voting member for any subsequent hearing(s) relevant to the Kline case) Chair also announces Clerk Pro Tem Sheila Mohan is in attendance due to the recusal of the regular clerk from any proceedings or discussions dealing with Kline Road.

Chair announces when they get to the Kline case there will be no new application, it's the same application as before, the Board is just following up on what has been done on the approval therefore, the case number remains as 2020-0505.

I. MINUTES:

Chair asks for a motion on the April 5, 2022 minutes. Peter Loudon motions to pass the minutes as read. Seconded by Mark Hildebrand. All were in favor of approving the minutes.

II. PERMITS:

David Nelson states the only question he had was for BKM Realty and that there were no plans attached. Chair requested the Clerk provide verification. Clerk Pro Tem Sheila Mohan will relay.

III. HEARING DUKE KLINE CASE 2020-0505

Mr. Hanson asked that if there was anyone who wanted to speak to please state their name clearly for the record because this was being recorded.

This is case 2020-05-05, the Amended Roadway Improvement Plan. Mr. Hanson stated that the Notice of Decision is in the packets that the Board members have reviewed. This is a follow-up to the November 2020 approval that the Planning Board granted the Klines.

Mr. Hanson said that the Klines have gone through the process with DES to obtain the necessary permits and from the Army Corps of Engineers to be able to build this road. When the Klines dropped this amended plan off it was reviewed by Bill Doucette, our Code Enforcement Officer, and everything is in order. Mr. Hanson said that there are subtle changes which you would expect when dealing with Wetlands, they always have you move culverts and things like that.

Mr. Hanson said that that is one part, the plan itself. Then we have a request from Mr. Kline to waive Condition 5 of the November 2020 hearing. We will take that as a separate matter, after we take on this (the amended road plan).

Mr. Hanson asked if either of the Klines would like to comment on the plan. Derek Kline stated that they had gone through multiple amendments with the Department of Environmental Services. He said that it was a really long process and they had to go out multiple times with the wetlands soil scientist. They went through various revisions with John Rokeh, their civil engineer, to get the plan to where it was acceptable for DES.

Mr. Hanson asked if there were any questions or comments from any of the Board members. David Nelson asked what the major changes were, changes to the original plan that occurred. Derek Kline said that the board could correct him if he was wrong; when the Planning Board approved it in 1989, there were really no jurisdictional wetlands discussed. So, the hammerhead was placed directly in what is now a wetland. The Department of Environmental Services made the Klines move the hammerhead out of the wetlands into an upland area. The only upland area is where the hammerhead is today on the plan. Derek Kline said that it is a difficult site. Derek Kline also said that he thought that there were four preapplication meetings with DES just to solve the issues to have the subdivision completed. DES also wanted a culvert under a driveway into that field and the driveways into the lots.

Mr. Hanson commented, just for the record, the Board did put timeframes on all our conditions and none of them were met. Mr. Hanson said he thinks that because of the number of circumstances, not the least of which Covid was going on, that the Board should go ahead and not get hung up on that and keep moving forward. The Board was in agreement.

Bill Ricciardi made a motion seconded by Peter Loudon to accept this plan with all of the previous conditions attached to it. Mr. Hanson asked if there was any discussion about the plan or the motion. Hearing none Mr. Hanson asked all those in favor to say aye, anyone opposed. This version of the plan was approved by a unanimous vote.

Mr. Hanson announced that the next thing was a request by Mr. Kline for one of the conditions that were just reaffirmed, Condition 5, a bond in the amount of \$243,000. Mr. Hanson asked Mr. Kline to speak to this. Mr. Kline responded that he is a retired educator on a fixed income and he has tried several financial institutions and they won't give him a bond. Mr. Kline continued that

the deal here with this road is, it is going to be a private road completely. It will never be a public road. Mr. Kline said that he has gotten financing to build the road as you see on the plan.

Mr. Kline said that he has put out thousands of dollars in engineering fees to get this done and he believes that there are other people that have done roadwork in town that haven't had to spend so much money to build a private road. Mr. Kline said that this is going to be his road. He maintains it; he said that he does all the plowing and ditching. Mr. Hanson said that that is all well and good right now, but in five years from now somebody can come back and petition the town to accept that road, so the Board has to make the assumption that at some time the road could come back to the town. Mr. Kline said that all of the property owners on Kline Road have it written in their deeds that they are responsible for their apportion of the maintenance of that road and that it will always be that way. Mr. Kline said that he can't even think of the fact that would be a possibility. The Town would never have to deal with it. Mr. Kline said that you have all those people that are investing money into the maintenance of the road now. Mr. Hanson said that regardless, that is a possibility. Mr. Kline said that he thought it was very remote, and burdensome. Mr. Kline stated that all he wants to do is build the road like he and Diane dreamed about back in 1970 whatever. He said he is getting stonewalled and it is very upsetting to him.

Mr. Kline said that after giving so much of his personal time as a conservation commissioner for seven or eight years and even a parks and recreation director for a while, and his wife was a selectman for the town, he said he feels that he is being treated unfairly. Mr. Kline said that there may be other people in this town that are doing some road work that haven't had to jump through the hoops that he has. Mr. Hanson said that every property is unique and we take it one case at a time. We do have to go by the fact that this could become a public road. This is a basic tenet that we go by. Mr. Kline said that he would be happy to sign an affidavit that this would never become a public road. Derek Kline then said that they can't get a bond.

Atty. Eric Taussig said that he has represented Mr. Kline in court on the litigation in this matter for three and a half years. He said that first of all the bond is only for construction, after the road is completed, the bond will be retired in any event. This is not a bond that is going to continue for the rest of time. What it really comes down to is why you want to have a bond in that amount for a road that wouldn't even cost that much to construct. This is not a bond that is going to continue for the rest of time. Atty. Taussig said that this is an extension of the road that is entirely within the Kline property; within the forty-five acres of the Kline property. None of it abuts anybody else. It doesn't abut any part of any abutter to the Kline property. It is in the property itself. It is going to service two additional lots. That's all it is doing. Atty. Taussig said that a construction bond is to ensure that the bond is there to make sure that the road meets the requirements that are in the engineering report. Atty. Taussig said that he doesn't see why after the road is completed have the consulting engineer, Quantum, go back and check out whether the road meets the requirements. If it meets the requirements, why do you need a bond. At that point if there is a problem, the problem can be rectified.

Atty. Taussig said that he looked at several other applications that are on and off Dane Road and by the Danes themselves and they were never required to post a bond. Atty. Taussig said that we are talking about a road extension not about a new road. All of the people who are on the road are

on the road now. When the road is finished the two lots will still be owned by Mr. Kline, unless he sells the lots. At this point there is no change in ownership. Atty. Taussig feels that there is no justification for the bond; certainly not a bond that is going to be perhaps three to five times the cost of the road itself.

Derek Kline said that if they can't get a bond, they can't build the road. Mr. Hanson said that there may be other creative ways to come up with. Mr. Hanson said that right now the request in front of the Planning Board is to waive the bond requirement and that is what we are here to discuss.

Mr. Hanson asked the Board members if they had any thoughts. Alan Rilla said that his first question is what efforts Mr. Kline made to get a bond. Derek Kline answered Meredith Village Savings Bank and Double A Surety Bond. Mr. Rilla asked what the reason was that they were turned down. Derek Kline answered that they don't have the financial backing. Mr. Rilla said that it's not a matter that you couldn't get a bond, but that you can't pay for it. Derek Kline agreed. Mr. Rilla said it sounded like a financial matter. Derek Kline agreed. Mr. Kline said that he is on retirement income and that is a large part of it. Mr. Rilla said that to some people it may sound like an outlandish thing to have but from his experience, he has practiced law for twenty years, he has never been involved with a construction project or anything like that where a bond wasn't required. Mr. Rilla said that you are asking us to approve your project which has just been done and we need some guarantee that it is going to be completed according to the plans and on time. Mr. Rilla said we are not asking for a lot. Mr. Rilla asked how the Board arrived at the \$243,000 figure. Mr. Hanson answered that standard engineering values were used to determine that amount. Mr. Hanson said that he knew that some people thought it could be done cheaper but the reality is that the \$243,00 figure is now a year and a half old and in that time with inflation construction costs have gone up, but the Board is sticking with the \$243,000.

Derek Kline asked why the Board didn't require the Barker Trust to have a bond. Mr. Hanson said that every project is unique and tonight the Board is here to talk about this. Derek Kline said that it seems inequitable and disproportionate to require them to have a bond when others of a similar road that provides extension to two lots has to have a bond. Derek Kline said that they want this matter over and done with. It has been going on for four years. He then asked the Board to please grant the waiver to get this matter over and done with.

Derek Kline told Mr. Rilla that there is an underlying settlement agreement, that settled litigation that requires the Klines to complete the road and complete it on time, there is the assurance that the town will have a completed road and it will be completed on time. Mr. Rilla said that he wasn't around for that. Derek Kline said that it has been a long process.

Atty. Taussig said for Mr. Rilla's information that there have been three pieces of litigation. The town has been subject to one and a half. One piece was the building permit. The original permit was going to be issued as a settlement until the abutters got an injunction. That action was eventually settled favorably to the Klines. There were three other plaintiffs in that particular case who ultimately settled, who were objectors previously. They have now endorsed the building of this particular road. There was another matter relating to one of the town employees. Atty. Taussig

said that they have settled with everybody. Atty. Taussig said that he doesn't think that the town wants to go back into Belknap Superior Court on something.

Atty. Taussig said that he thinks the bond is unreasonable. Atty. Taussig said that he has represented other people and he was on the Planning Board in Moultonborough and the requirement for a bond was very rarely imposed upon. He said that New Hampshire is different from Massachusetts and it is not necessarily a requirement that a bond be placed in every situation. He would agree that if this road was going to be a town road it would make sense because of the specifications. But the specifications of this road would not meet the requirements of a town road. Since this is entirely the ambit of one property owner, it is not outside, and it is a dead-end road. Atty. Taussig said that the real question in his mind is if the Code Enforcement Officer comes out and checks the requirements and codes by Quantum and Rokeh and so forth are being met why would you need a bond. The bond ends afterward. Atty. Taussig said that you couldn't have a connecting road because ultimately this goes down to Squam Lake. There is no other road there. This is not going to become a through road, this is a dead-end road. Atty. Taussig said that it makes no sense, it is up to the Board but he really doesn't see the reason for it. And to impose a bond of almost a quarter of a million dollars in circumstances like this is onerous.

Mr. Hanson asked if any other members had any thoughts. Hearing none Mr. Hanson asked if anyone wanted to make a motion.

Peter Loudon motioned, seconded by Alan Rilla to deny the request to waive the bond requirement because we need assurance. Mr. Hanson asked if there was any discussion on the motion. Hearing none, Mr. Hanson asked those in favor to say aye, then anyone opposed. The vote was unanimously in favor of denying the waiver request.

Mr. Kline said that what the Board was saying is that they are killing the project that he can't access his property because he can't afford the bond. Mr. Hanson told Mr. Kline that from their prospective the Board has given him a path forward to accomplish what he wants to do. Historically things haven't been done the way they were supposed to have been done, but the Board is holding the line on what Mr. Hanson feels is quite reasonable.

Mr. Hanson said that they are trying to get this done as quickly as they could knowing what Mr. Kline wants to do. Mr. Hanson said that the Board has some standards and they are going to stick to them.

Derek Kline asked again why the Board didn't require this on the Barker Property. Mr. Hanson responded that properties are unique. Derek Kline said that they didn't even require engineering plans on it. Mr. Hanson told Derek Kline that this isn't a discussion for tonight. This is about what the Klines brought forward. The Board has given you two decisions and that is where we stand.

Mr. Hanson told Mr. Kline that he has thirty days to appeal the decision. Mr. Kline said that it was very disappointing. Derek Kline asked why the Board would want to go to court and if Boldt is going to represent them on this matter? Mr. Hanson said that Atty. Boldt is not going to represent them on this matter anymore.

Mr. Rilla asked how much the bond would cost. Atty. Taussig said the cost of the bond is normally 10%-15% of the face value of it. Mr. Hanson said that all they want is surety at the end of the day. Derek Kline said that you have it, we have a settlement agreement that they need to fulfill, if they don't do it the litigation is not settled. Derek Kline said that is your assurance.

Mr. Hanson said that they have the opportunity to present another concept to the Board. Mr. Hanson said that they want to be reasonable. Atty. Taussig requested that the Board retract their vote at this time. Mr. Hanson said, no, there was a request made, we are going to finish that, put it aside, bring us something new. That's what the Board wants to do to keep it clean. One issue at a time. The Board members agreed.

This hearing was continued to June 7, 2022. (Kline hearing minutes transcribed by Clerk Pro Tem Sheila Mohan).

IV. OTHER

LRPC – Mark Hildebrand mentions there is a household hazardous waste meeting that he would be willing to attend. Chair thanks Mark and states he would like him to attend.

Koss Construction, LLC Moultonborough – Mark Hildebrand states he sent a summary email to the Board. There is a 4-page document on the Moultonborough site from their last PB meeting and suggest everyone reviews it. Mark mentions it was pushed out to June 8th due to the town planner being on vacation. Chair Hanson says that he really appreciates that Mark has been going to the meeting and keeping the Board updated as to the status. Mark mentions he will be attending the next meeting. The zoning portion is essentially done with the exception of the appeals, one from the Center Harbor Town Attorney and the other is an appeal in the Superior Court that was filed by the abutters of this property. The question was raised on whether or not the town may want a bond on this new road for the development and Mark states the abutters want a 500K bond on the well which may not matter because DES has denied, at this time, the ability for the developer to draw on the well. Every meeting there is more being added to the list which is pushing this project further from being voted on. Mark just suggests for everyone to go read the minutes.

State Planning Board Sessions – David Nelson mentioned he attended the State Sessions for the Planning Board (online) he found it very useful.

Chair asked if anyone from the public would like to speak. Mark Hildebrand asks if the Board can have a non-meeting with counsel. Attorney Chris Hilson states it would be a consultation with counsel. Chair states if the public has no input, he was going to adjourn the meeting. Helen Heiner asks a question regarding the road and whether or not the cul-de-sac was part of this discussion because she didn't hear anything. Chair responds that when Bill Ricciardi made the motion to approve the road plan, he referenced the original conditional approvals because we want to reinforce that those conditions still apply of which the cul-de-sac is part of. Helen Heiner responds she's asking because she didn't hear that being said. Chair states that it's very clear, he knows

exactly what he needs to do so “tout finis” and with that I’m officially adjourning the meeting at 6:32.

**All meetings (unless specifically noticed as “non-public”) are open to the public. The Boards try to encourage as much public participation in meetings as possible. All information such as agendas, upcoming cases and meeting minutes can be found on the town website on the specific Boards page. Anyone wanting more information or looking to get more involved, should contact the Town Office for more information. **

IV. ADJOURNMENT

Clerk Pro Tem requests a motion to adjourn David Nelson motioned to adjourn the meeting at 6:32 seconded by Peter Loudon. All were in favor. Meeting adjourned at 6:32. Next meeting is scheduled for June 7, 2022 at 6 p.m.