

Sutton Development Review Board Hearing

Minutes of hearing
July 19, 2019
Town Office, 6PM

In attendance: Paul Brouha, chair, Darlene Ahrens, Hank Parker, Byron Savoy, Patrick Seymour, Martha Tack, clerk, and applicant David Prewitt, dba Dream Home Estates, Inc/Kingdom Village LLC, Jason Wells (applicant), Shane Clarke (surveyor representing applicant) and Carolyn Greaves (attorney representing applicant), Dennis Bean (neighbor), Jeff and Shelly Smith (neighbors), Orinthia and John Strickland (residents of house in subdivision), David Gowler (visiting listener), Carole Camber (neighbor), Joe Witt (Sutton Zoning Administrator).

The meeting was called to order at 6:08 PM

1. Warning of hearing read by Martha Tack, clerk: The warning was published in *Caledonian-Record*, July 4 and July 8, 2019, posted at property (visible from Rte. 5), three locations in Sutton (Town Clerk's Office & Outside Bulletin Board, Scott Spencer's Garage), and at West Burke Post Office), 6/25/2019

Text of warning: "TOWN OF SUTTON

REVISED NOTICE OF SPECIAL PUBLIC HEARING BEFORE THE DEVELOPMENT REVIEW BOARD

The public hearing before the Development Review Board scheduled July 9th is cancelled. The public hearing will now be held July 19th at the Sutton Town Office @ 6:00 p.m. to hear the following subdivision application:

The Harris Vermont Realty, Inc. and David Prewitt, dba Kingdom Village, LLC proposes to subdivide a 21.5-acre parcel adjacent to the Portland Pipeline Pumping Station at 4435 U. S. Route 5 into nine lots.

A copy of the application may be obtained at the Sutton Town Clerk's Office.

Participation in this hearing is a prerequisite to the right to make subsequent appeal."

No Additions/deletions made to proposed agenda.

2. Introductions and confirmation of events: Chair Brouha (Paul) explained process and procedure of DRB meetings to consider applications and the rights of interested persons and how all interested persons could participate but must sign in to be recorded as present at this meeting.

Ex parte communications--it was disclosed that Dennis Bean, neighbor, spoke by phone with ZA Joe Witt with concerns regarding the septic system (and proposed backup system) on lot 9. Paul also met with applicants to acquaint them with applicable sections of the bylaws. No conflicts of interest were disclosed.

3. Consideration of application as follows: Applicants David Prewitt (David) and Jason Wells were sworn in with the required oath to be truthful in presentation of evidence concerning the application.

Proposed Findings of Fact: Kingdom Village, LLC proposes to subdivide a 21.5-acre lot (Parcel ID 500-4435) at 4435 U. S. Rte. 5 into nine lots—eight of less than an acre (totaling 4.44 acres) and the ninth of roughly 17 acres including a “conservation area” of 4.56 acres for the subdivision.

The property deed is recorded in Book 77, pages 124-125.

The current zoning map shows the property as being in the Industrial District (Table 205.02 of Sutton Unified Development Bylaws, adopted March 7, 2017 and amended April 26, 2018).

The purpose of the Industrial District is to accommodate a variety of industrial uses that are compatible with Sutton’s rural character and limited town services, while minimizing adverse impacts to residential, silvicultural, and agricultural areas. This district supports uses that can expand the town’s tax base, while making use of highway and rail access, as well as availability of three-phase power.

Minimum lot area and dimension requirements in the Working Lands District are as follows:

Lot area	1 acre
Road frontage in feet	200
Setback from center of road in feet	50
Setback from side and rear lot lines in feet	25

Because of its 21.5-acre size the parcel is too small to be eligible for Current Use.

Applicant has timely notified abutting landowners in writing of plans including the date/time of the public hearing.

The original application submitted to the Town Clerk’s Office was signed and dated June 22, 2019 and the required fee of \$50 was submitted by July 8, 2019.

Summary of application history and documentation: Two different versions of the application materials (original & revised) were passed out to the audience and to the board members by the chair and the applicant. The discussion followed the revised version David brought to

clarify the discussion and included a sketch which was posted on the hearing room bulletin board with copies passed to board and audience.

Paul requested David summarize the application to subdivide and create a planned unit development (PUD) at the 21.5-acre site of the former Portland Pipeline Pumping Station. David discussed the specifics as documented in the application.

At the conclusion of his summary David further explained the operation of the Homeowners Association/Common Interest Association (HOA) including how the new owners' and the developer's votes would be counted in proportion to their respective ownership interests. He detailed how he planned to refurbish and then slowly introduce the vacated/unoccupied houses to the market while keeping current tenants as well as allowing current tenants to purchase as feasible. He noted the developer and the owners share the responsibility to achieve the HOA standards. The occupants would pay \$100-125/month for all services (water, wastewater, garbage, private road maintenance, etc.).

Questions by members of the Board: Byron Savoy asked who would be responsible for failure of these services and for maintenance of the houses which are old and would be grandfathered as "non-conforming structures" and small lots subject to development restrictions? David answered that the HOA would initially have a transfer fee from the developer for each lot which would create a \$24,000 reserve for needed repairs/service. HOA fees paid by owners would subsequently ensure financial capability.

Following questions about the water quality at the pump house and well which serves the occupants of the 8 housing units it was noted that there may be fuel oil/petrol damage on lot 9. Discussion followed regarding monthly water quality tests and whether the well was an artesian well. Dennis Bean confirmed that it was and that he had himself 'worked on it'. The question of whether an environmental study should be done regarding water and land quality was asked- specifically about the abandoned building and the history of open oil pans under the pumps and related spills. David stated he has full "Phase I and II reports" on the environmental problems on the site. Paul suggested the "brownfields restoration" of lot 9 was outside the scope of the hearing and focused discussion on whether bylaw housing density restrictions in the Industrial District of one house per one acre were being met.

Paul explained the density standard, especially regarding common areas in a PUD. David said the proposed density of PUD meets the standard. Paul stated the current 4.56 acre "conservation area" easement of lot 9 is not part of the PUD and to avoid the continuing tax burden on lot 9 it should be made part of the PUD and the density standard would then be met. He then explained that density bonuses would not be needed. Joe Witt agreed each lot should be enlarged and that the septic system and backup site, currently on lot 9 should be with the PUD. David said that configuration was originally considered and that the proposal could be revised to include it.

David went on to explain that the design/maintenance standard for a Class 3 road would be applied to the access road covered under HOA maintenance provisions.

Paul introduced a letter from the Portland Pipeline Company (Portland) stating that in 1952 when they sold the property there were no environmental issues and that subsequent owners/tenants were responsible for any environmental problems. David said the statement conflicts with reports from previous tenants and state agencies. Paul then detailed the second point in Portland's letter stating that the pipeline easement is not a strict easement of 50 feet and that it is important that it be correctly drawn on the survey. David said Shane Clarke will correct the drawing when he completes the survey.

Jeff Smith asked whether a variance of required setbacks would be needed. David replied a variance from the 50 feet setback from center of road and 20 feet from sides would be needed. Paul said the variance would be included in the PUD and houses would be "grandfathered" as "non-conforming structures" which predate the bylaws. Byron asked how potential buyers would be made aware of this restriction. Paul explained it would need to be in each deed and would become part of the land records. Byron asked if this meant the owners could not expand. Paul said any expansion would require a building permit and might limit buyers.

Questions by interested public: Dennis Bean asked if there would be private sales; he stated he does not want to live across from a messy/junky housing development. Paul stated the HOA would have restrictions and bylaws. David acknowledged Mr. Bean does not want the subdivision to look bad. There has been a variable history of management from the Harris's first purchase from Portland Pipeline Company. Mr. Bean said the new owners propose different management. David confirmed he plans to provide the subdivision better regulation with the HOA; leases would have standards on how many occupants there can be. Management would be responsible. Mr. Bean stated the occupancy limit would be important to ensure not overloading the capacity of the septic system. Hank asked if such restriction would be the responsibility of the HOA and David responded that the tenants must abide by the HOA rules and their lease provisions.

Patrick asked what would happen if the current tenants wish to remain? David stated 50% of the units would be available as affordable housing and 50% are investment property but he could not predict the future mix. Upon creation of a vacancy he plans to do light renovation as needed to fix up units for rental/purchase. The future depends on the market and the owners. David Gowler asked if the owner might be interested in selling all units to one buyer. David replied that such a sale was not what they are looking to do. He stated Kingdom Village has a long-term interest and especially a long-term interest in repurposing the abandoned building on Lot 9, perhaps as a B & B or brewpub "down the line."

Paul suggested keeping the discussion focused on the application under consideration. David acknowledged that the lot 9 "brownfields" program is at least five years "down the line" but that they will not need to comply with Act 250 regulations as they have received a "jurisdictional decision" from District 7 that the project is exempt from such considerations.

Paul mentioned that the houses were built in 1941 (and are 79 years old). They would be considered "historic" under state law. David agreed and pointed out early copies of property photos in his presentation booklet. Paul pointed out that the bylaws designation as an Industrial District does not necessarily mean the whole area is industrial. Shelly Smith asked if

the name "Kingdom Village" is just a name and David confirmed it was. Paul passed extra copies of the sketch as posted on the bulletin board.

Paul suggested David contact Northeast Vermont Development Association (NVDA) concerning the rest of the environmental issues and that he inform neighbors/occupants about plans as they develop.

Paul noted, based on the discussion, applicants needed to revise their proposal and that the Board would provide specific direction as to what was needed to enable timely consideration and a decision. David agreed to provide needed information.

Concluding motion: Byron moved the Board enter into deliberative session. Darlene seconded the motion. The motion passed.

Adjournment: Paul closed the hearing at 7:15.

4. No new Business

Deliberative Session (Board members only): Paul stated the proposal would probably be good for the Sutton tax base: Individual ownership of the eight houses and future development of lot 9 would also be an asset to the area.

Byron expressed concerns about the ancient septic system and that people of modest means be able to sustain the necessary repairs. Paul read from the wastewater section of the application; Byron said he had read it

Joe Witt said accepting home ownership and the standards in an HOA may be a problem for new owners.

Byron stated people need to know the problems and need to know what could happen.

Hank said there are only 4 houses financially responsible because tenants of the 50% in "affordable units" wouldn't be liable to pay.

Darlene stated backup septic system would be pre-approved by state agency.

Joe said he didn't like all the problems being thrown into lot 9, but making the lots 1 acre is a good idea. "Conservation area" part of lot 9, septic system, and existing well needing to be easements may cause problems.

Hank asked why a real estate firm from California is interested in this. There are extra acres for housing as part of lot 9 but it has to be cleaned up first. Where is the opportunity?

Joe suggested the developers are looking at the whole area. Burke is full, but he never thought the Kingdom Trails development would affect Sutton. Maybe a pub or brewery in isolation on a main road would be a good venture.

Joe suggested there is grant money for clean-up of lot 9 which could be very profitable.

Hank added they could get a tax credit for low income housing.

Paul noted the shared access road behind houses could be added to the conservation common area for all 8 lots.

Paul read a portion of Section 802-02 of the bylaws. "B. Conservation PUD: Clusters development to protect open space...."

Joe stated that meant the PUD could have a conservation area in common and said he was surprised application didn't contain this feature.

Byron asked if the Board votes yeah or nay? He stated concern that people without means would find themselves limited by the restrictions. He suggested Board avoid even conditional approval until applicants provide more information.

Joe agreed they should submit a new plan with revisions so Board knows exactly what is proposed.

Paul reminded Board it has 45 days to consider additional information.

Byron suggested Paul be authorized to write a letter to David requesting additional information—members agreed.

Hank noted some contiguous property owners were not present at the hearing. He also was concerned several people said that the land is very wet and not buildable.

Joe suggested a couple perk tests were needed to see what happens to wastewater and Paul stated Shane Clarke, the surveyor, understood that need.

The Deliberative Session adjourned at 7:40.

Minutes recorded by Martha Tack