



## ZONING BOARD of APPEALS

*Town of Montague*

*1 Avenue A*

*Turners Falls, MA 01376*

*(413) 863-3200 ext. 206*

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DRAFT MINUTES FROM MAY 1, 2019  
NOTICE OF PUBLIC HEARING #19-01  
6:30 PM in the Upstairs Conference Room  
1 Avenue A  
Turners Falls, MA 01376

Meeting being taped.

Votes may be taken:

### **ZBA#19-01: 128 Turners Falls Rd., Turners Falls, MA**

PRESENT: Ernest Brown Chairman, John Burek Vice Chairman, Allen Ripingill Member, Richard Ruth Member, William Doyle Alternate Member, Joshua Lively Alternate Member, Christopher Rice Zoning Enforcement Officer, and Karen Casey-Chretien, Clerk. Applicant: Town of Montague Attendees: Kathleen LaPointe, Anita & Herb Morin, Arnold Houle, Tom Bergeron, Joe Spellmeyer, Mark Fairbrother, Steven Ellis, Roger Hout, Gregg Yanchenko, Chris Rasine, David Jensen and Walter Ramsey.

Absent: Robert Sojka

Hearing opened approx. 6:30 PM

EB: I like to call this meeting to order.

Clerk reads the Public Notice #19-01. 30 Notices were sent, 9 returned, 7 did not object, 1 objection, 0 undeliverable, 1 undecided, 4 written testimony.

Presentation just ended.

JS: Is there any tree line buffer between building site and TF Rd?

Yes. 100 ft.

JS: 100 ft. wide or 100 ft. deep?

Approx. 100 ft. deep of mature trees that you currently see out there. I think the pines range about 60 ft. tall or what ever and the undergrowth there. What we introduce some new evergreens here and as you looking through you have the upper canopy there this would be screened somewhat and the lower canopy and leaves come mature and we're proposing blue spruce or something like that and keep the lower limb not so much the white pines and stuff you see you only have the upper canopy so the idea you have the screening there from the upper level as well as the lower lever.

JS: And what about the cemetery for when there's people who are burying their loved ones

Again there was the same consideration there you can barely see it but this is already cleared area ?

By the time we got the grading and everything we had broken through any of the ability to keep anything of that so again there would be an introduction of evergreen buffer there blue spruce or that type to address that screening.

RR: Sir your name again?

JS: Joe Spellmeyer

EB: Yes John

JB: What are those three buildings I can't read it from here.

So this is that salt storage that I was talking about.

JB: What's the next one?

Right next to it would be the material storage and this grey area what you're talking about is not actually a structure its just a gravel parcel there so that's where the DPW can lay down like structure's poles piping whatever they need . so that's just a gravel base there.

JB: Getting back to the driveway. Now this is a question I don't know. Who owns where you're putting the electrical line overhead that portion of that property. Turners Falls Water Dept. I understand owns property there. And my question is has the proper things been done at the registry of deeds to make sure that doesn't create a conflict.

KM: Actually when George Cook did the surveying. He surveyed that black line back there with the 8 acres so they could get the ? and check the grades out and drainage. George told me when he started rechecking the police dept. and the fire dept. that that stuff was never registered. It never put in there them lines were readjusted back when. So I've talked to Walter about when this gets all said and done that stuff has to be reconfigured . You're correct about the point there

JB: Just for sake of discussion when the police station was built I sat at this table or maybe downstairs and I asked Deb Radway when the road was discontinued how was the road how was the property divided usually they go down the center of the road and each half goes to each

KM: At the time the cemetery actually the Church owned that property the town didn't. When that road was abandoned who bought it later on (Ken talks to Walter you can't hear) same time police station was built...

JB: Well I think the town needs to look into it save some money. I don't know the answer. I'm asking a question? I don't know.

One other thing to add is on the application we did seek approval of a shared driveway which I believe is required in the Zoning Regulations I didn't mention it while I was up there but obviously it is being used as a shared driveway now since DPW proposal that the DPW uses it I believe we'll be seeking approval of a shared driveway as well.

JB: How you going to do that? It's not town of Montague land it's the fire dept. or the water dept. land. That needs to be done at the registry of deeds I believe.

EB: You're talking different entities completely. The Turners Falls Fire & Water District is different from the Town of Montague.

KM: The police have been using it for since....

EB: We get along pretty good I thing you know. But I think I agreed when your talking that you've got to have the lines and who owns what. But I think we've got to do that. But that's the Town's responsibility to work with the Water Dept. or the Fire Dist. which ever to get it straighten out. We have no authority to do anything here.

JB: Ernie, It was suppose to have been all straightened out when they did the police station that was brought up, and they said it was all set don't worry about it.

EB: I don't know what you want to do? If it's not done and it's not correct those responsible in this town better get to work.

JB: I want it corrected. So it won't cost so much money I worry about cost.

EB: Oh no of course!

WR: I don't perceive it being any issue to get the proper easement or whatever language we need from the Fire District you could have it as a condition of the Special Permit that something be filed (?)

JB: I don't think it works that way Walter you're going to have to pay at least a \$1.00 for it!

EB: I'm a little leary myself. That the land and that property hasn't been straightened yet. The Police Station I don't think that's been done yet.

WR: The property line goes right through the building and it hasn't (?) issues

EB: Well then I think it's time we got it straightened out then. Especially when it comes to light here that's doing nothing but holding us up for what you're asking us to do or their asking us to do. That's all it is. The other one isn't done yet.

EB: We're going to get thrown out you know

JB: Can I say one more thing. I'm just trying to save the town money everyone is money conscious or they pretend to be let's get serious.

(?) I'm not rich are you?

JB: No, I'm paying \$10,000 bucks for a rickety shack in Montague.

SE: Hi there, I'll just say this, this is the first time this issue has come to my attention

JB: No I brought it up at the Police Station meeting you listening

KM: (?) prior to Steve coming on also knowing.

SE: I'm certainly happy to you know engage with the Water and Fire District and have conversations and make sure we do attend to it this time. I think your point is well taking when I say something is going to be attend to...I assume it will be part of the project cost I'm not sure there will be a significant cost associated with it. We have an excellent relationship and it's one where we work together to reduce and minimize costs not create unnecessary costs between the town and the districts so this is something we can get on we can work (?)

JB: Who's going to pay?

JB: Before you do it you better consider one more step, was the road properly discontinued at the registry. There is a certain procedure you have to go and I believe you have to go to town meeting and bring it up. And there's a whole procedure to discontinue a road.

EB: Yes you do.

SE: I don't know whether David or Walter or someone who was involved. I guess Walter might not have been but there were a number of (?)

DJ: I believe and it's worth checking that that road section was discontinued.

JB: Let's see the paper. How can it be discontinued if it never went to town meeting? I don't know that's part of my question. It's a broad question with a lot of consequence if it's not done right. And the problem don't go away

DJ: Well if it's a public way we don't even have to worry about it. Have them remove their police station.

EB: I guess your presentation is all done. I'll open it for questions what I like it if someone has something new I think that we're taking notes just so all you who have taken the time to be here know that we will have some minutes so that the proper people can be contacted that we've discussed. If you have anything new lets not rehash the old stuff again because that's already in there but if there is something new by all means.... Yes

Anita: Hi I'm Anita again, for the construction of this building are there going to be pile drivers used (?) No. This will just be backhoes to full standard 4 ft. spread footing there will be no pile drivers.

Anita: There's not going to be a lot of shaking of the earth

There should be no other then minor compacting of the soils but it's all standard

DJ: I like to differ slightly There'll probably be a (?) roller at some point.

But that shouldn't be impacting the house

DJ: Those vibrations travel very well in sand. I would expect that there would be something

Anita: Because our house already has crack from the tremor and earth quakes in Greenfield. I found cracks in the foundation and my mother had a big storage (?) across from her house and they went out to the properties and took pictures of the properties to see if any walls crack. The shifting of everything.

DJ: It's standard procedure (?) to examine (?)

Anita: Will they be coming into the home to take (?)

Does anybody remember when Turners Falls Road was last paved?

(?) Probably, six years ago

(?) No it's been longer than that.

To many people talking all at once inaudible

EB: I have one more question from a board member

JB: Not a question just a suggestion

EB: Oh suggestion

JB: You don't have to deal with the Water Dept. if you keep it all on Police property and go out on to Turnpike Rd. like some of the people requested.

EB: Members of the committee I know we have to at least two or three here. Was it every considered to go out onto Turnpike Rd.

KM: Actually we had a drawing (?) and we had one engineering firm suggested it and we did research it But we were going to impact bear, deer there was already a driveway here you know you have to take and try to weight it out I think the re-inline it the other place doesn't line up with Montague St. I think also Town Planning Broad there is a lot there and they look at impacting...If we put a driveway on both sides like Dave says it was over the cost prohibited to do it. We thought that this was the best of both worlds but we have consider both ways,

EB: I think he's got one more. I think he's going to get thrown out before me.

JB: That parking lot was supposed to be a retention basin for the police station it was paved over for some reason. Maybe while all this oolala is going on you might look into that.

KM: The little parking lot off of Turnpike Rd. that's where all the wells are for the

JB: You know there is suppose to be a retention basin there?

There is. There is

JB: It's all paved area.

KM: Right in the back of that there is a little retention pond.

JB: It can't be very big you can't see it from the road?

EB: I drove through there and I saw it.

RR: Are you done starting trouble.

So from the logistic and the administration of the project we been asked to put this project out to bid as quickly as possible tentatively the schedule is to go out to bid on the street May 15<sup>th</sup>. And the reason being for the fact that I don't know how many of you are familiar with the construction site but getting the project out in May is one of the better times for better pricing if this gets pushed off into June or July for bidding (?) what ends up happening typically the contractors are busy at that time so the prices jack up which means it would probably have to be postponed. We're looking for optimal pricing the fall and winter would be like a Jan Feb bid release for next spring. I know the committee asked us to work closely with the committee to try to get this out on May 15<sup>th</sup> for getting bids coming in in early June so that there could be a potential construction start sometime in June or July. I don't know what will have what ever the ZBA tells us to do we'll do. I just wanted to give you guys a little bit of information that attentively this project is schedule to go out to bid on the 15<sup>th</sup> of May. Just sharing information

JB: Can I say on more thing?

RR: No

JB: Is this a legal meeting? They're using the new zoning laws that haven't been accepted by the Attorney General as far as I know yet. This application I believe is in error. I don't know it's a question.

Typically what the designer do we go to the town the appropriate Planning Board and request the Zoning By-laws and we base it we work on what ever certified by-laws (?)

JB: What year do you have.

WR: I can respond to this

JB: I don't believe you

EB: Well don't ask him a questions if you don't believe him Geeze John!

WR: Do you want my response.

JB: Of coarse I do.

WR: So regardless of what zoning we use we are in this grey area and the Attorney General is going to issue a determination any time within the next 30 days. Regardless of what the Zoning is the height limit is still the same that didn't change, the site plan review still required that criteria didn't change and the common driveway still required and that criteria didn't change. Doesn't matter

JB: It does matter Walter

RR: No it doesn't!

EB: No it doesn't!

JB: If a contractor bid with this bylaw and the new ones are in effect it might have been a different price. Don't tell me No I've been through this.

RR: You're wrong

EB: I think you're wrong too!

KC: Let's go on?

EB: Let's go on.

JB: I'm going home so you won't have enough people to vote cuz I'm wrong. You want to play games I'll play games with you.

EB: Go ahead John come on

JB: Why should I be abused you guys think I'm full of hot air why be here.

RR: Are you resigning is that what you're doing?

JB: No I'm not I'm going to think it over. Why, you want me to resign? I take it you did because these drawings aren't very good it's not even listed on here where Turners Falls Rd is. How do you know where this building is and these prints I went to the eye doctor and got my eyes examined and I got a magnifying glass and you still can't read what's on there so how in the hell can you do a site approval? Too many members talking at once.

RR: There at the town hall they've been at the town hall since we got the notice.

JB: Then why mail me these then they wasted money. You guys better get on the stick. Towns been taking some expensive hits.

EB: Steve I'm trying to get through this do you have something else

SE: I just want to reassure you that the Town did vote in 2006 to properly discontinue that section of road.

JB: Was it recorded at the Registry?

SE: My assumption will be that anytime that happens (John over talked Steve)

JB: No, no assumption. Was it recorded at the registry?

SE: What I was able to research in this very brief period of time were the town meeting votes themselves. I can only provide the information I have accessible this moment I just wanted to let you know that I did find that reference.

EB: Steve the other way to check it is to check with Deb at the Town Meeting because it has to go to Town Meeting.

SE: This was the Town Meeting.

EB: If it was Town meeting I would You got to trust somebody once and a while

SE: Yes I certainly double check on everything but I have no reason given our recent history to expect otherwise (?)

EB: I think we're ready to at least discuss if we can, we're asked to do a couple things here a special permit and Site Plan approval and basically the Special Permit one of them is the building height and that goes from 28' which is in that NB district to 30'.5" is there any discussion on that single issue.

EB: Ok voting tonight will be Alan, John, myself, Richard and Bill. Ok lets start voting.

**Vote:**

AR: YES

JB: YES

EB: YES

RR: YES

WD: YES

EB: So there five yes on the issue of the height.

EB: Ok now we have the and the other one was the Common Driveway be shared with the safety complex any questions from the Board on that or discussion.

RR: I would like to add a stipulation that the survey property deeds are all correct and proper before they're granted their Special Permits.

To many people talking at once in audible

RR: I beg your pardon?

DJ: Before you issue the Special Permit or after the Construction is over that it all be straight. The timing.

RR: That's the stipulation to get the SP is that they get there act together that the lines and deeds are all correct.

EB: so what his stipulation I understand to be is that all those lines and everything is proper recorded and then granted if they are not done it's not granted.

DJ: I'm just suggesting that the (?) that could be a problem.

EB: Because the hold up in time?

DJ: Because the hold up in time. If it's a condition someway during the process prior to construction post construction or something like that (?)

EB: I see what you're saying it's the timing of the construction

SE: May I ask if Mr. Ruth would be willing to alter his motions to stipulate the property deeds and rights are properly recorded in and expeditious fashion to begin immediately after this approval. That would allow us to actually do the bidding.

RR: My experience is that that doesn't happen. That's the problem. We have a lot of paper streets, we have the church fiasco, we have all kinds of property lines that are running all over the place that haven't been recorded and we don't understand where they go, and the town is all cut up and the registry of deeds has no idea what's going on.

KM: This did come up I remember clearly I am a water commissioner for the Town of Montague for 20 something years and it did come up the (?) crossing this even when we were over here trying to line up this is some where in here is the water main and that was the old street and that's about where they drew Fire Dept. but even at now this is an imaginary line this is a lot owned by the town of Montague which is about 23 acres it was 28 here and this was about 23 so talking to Walter we knew this would have to get realigned and maybe there was an option somewhere down the line this lot to be used and you know it's going to get cleared up. But this was discussed about crossing the Water Dept. property.

Would you be willing to amend your suggestion that the deeds and paper work be properly in place before construction award because that would allow us to go out to bid I agree with you if that paper work is not in place before construction award no contractor will work on that.

RR: I guess what my concern is, is that I don't want the common driveway built until the paper work is done. I don't have a problem with sending it out to bid in that aspect

So my I suggest that we say before construction award. So that means we can go out to bid and get the prices in that window that we're bidding the Town will then do research because in theory you should have to only go down to the Registry of Deed and pull the Deed and hand it to you. If it's a bigger issue then that then the contract doesn't get awarded. That's what I'm saying. So we still can take advantage of the good pricing season but if the paper work is not in place before they sign the contract that what I'm saying is contingent. You cannot award this contract unless the paper work is in place.

RR: I'll agree.

EB: Did you get that changed

KC: I got that.

EB: Any questions from the board members

AR: Should we make a stipulation on the planting of landscaping on the neighbors adjacent.

RR: That's something the Town has to deal with on their own.

EB: That's the towns. I don't believe we can

RR: No I don't think that's something we want to get involved in.

EB: I think it's quite clear that they're putting trees in instead of lower shrubs they're still going to put in lower shrubs I feel pretty confident that that's going to be done I really do. And I know we've got a couple of interested parties in the audience that will keep their eye on their work and make sure they do get planted.

KM: Well actually Pam on our committee Pam Hanold we thought that something we can't do in this contract to go on to somebody's property so Pam made a statement that it could be cause they're doing it now there was 800 trees given to the town so there is a way around it with another committee to take care of that I'm sure it'll get done with PAM.

I'm not aware of any mechanism where you can take public funds to do a betterment on private property. He's referring to PAM I think the Feds correct me if I'm wrong a funding for trees for improvements which can be used. At that's why we're saying the trees wouldn't come from this pot of money it would come from the Feds pot of money from the trees they donated.

RR: Is that good Alan

AR: yes that's good.

EB: Any other questions from Board member

RR: Can you read back that stipulation

KC: OK (STIPULATION) You wanted the lines surveyed and deeds recorded before the construction is awarded.

EB: This is the second part of that. (Common Driveway)

**Vote:**

AR: YES W/STIPULATION

JB: YES W/STIPULATION

RR: YES W/STIPULATION

WD: YES W/STIPULATION

EB: YES W/STIPULATION

EB: Ok what do we have left?

RR: Site Plan Review

EB: Site Plan Review we didn't do that.

RR: So I have a question for the Planning Board. Do we need to address your concern about the shrubbery change of are you happy with the discussion that's already happened here.

WR: Yeah it wasn't clear about to the Planning Board (? To many people talking) arborvitae (? To many people talking) the Board wanted to see some hardwoods mixed in there but they didn't go as far as to make a recommendation of this site plan (?) something to go in afterwards and add in with that (?) trees.

DJ: There been number of discussions about the border between St. Anne's cemetery and this facility it's very close potentially disruptive and another complication is the first 20 feet is cleared already it looks as if it part of the cemetery so any buffering happens after that right now and this was tentatively

put down that this row of trees be put in a few of the member and DPW Superintendent went out there and between the four of us there was a proposal if you will to the rest of the committee and that was to leave the rest of the 25 feet uncleared and only selective cutting of some of the unhealthy hardwoods would happen in that next 25 feet and that those trees proposed closer on the berm or to the top of the berm that's being constructed so what you would see from the cemetery is the pine under brush about half of the oaks look like they it was suggested they come out the other half which are shorter and healthier would stay so there would be a modest tree canopy there and that that line of balsam fur or spruce be moved back behind this 30 foot of naturally occurring underbrush. It's fairly dense it was like little scrubby pines but the needles and other things there was a flow through of consistency you clear it out to that edge and there's going to be a two hundred foot interruption of what you see. How it exactly stands with the committee at the moments I am not clear I think that paraphrases the agreement.

KM: to go further we talk about during construction because the site had cut and fill where the building is located toward the back heading west is probably 6 to 8 foot cut there and a little bit of filling in the front of the parking so we came to the point said if they are going to filling and working around trees that were going to be dying they were going to have to go. We had a basic print to work with and this came along this is more finish and completed and like they said we were going to leave a buffer there While the work was going on but it just so happened that the cemetery or that Tom mentioned that they maintain road along the woods so there's 25 feet or better that's mowed by the cemetery so it's kind of hard to leave a buffer there when you're digging 25 feet you know what I mean try to work on the site we're on and not encroach on the cemetery. The discussion goes both ways we're trying to do the best for the community but in the same token I know what it cost to work around a tree and if it ends up dying you have to look at that down the road.

EB: We are on the last issue are there any questions from the Board members? I sense you're prepared to vote.

**Vote:**

**AR: YES**

**JB: YES**

**RR: YES**

**WD: YES**

**EB: YES**

**RR: Motion to Adjourn**

**BS: Seconds**

**Meeting ended at 8:00**