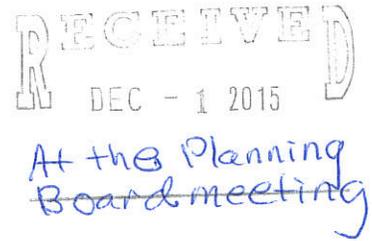


MEMORANDUM



To: New London Planning Board
From: Steven C. Root
Date: December 1, 2015
Re: Planning Board Recommendation to Board of Selectmen Relating to Building Permit Applications and Identification of Property Lines

I am submitting my suggestions to the Planning Board regarding ways to promote compliance with setback and other requirements of the New London Zoning Ordinance, specifically through improvements to the Building Permit process.

The following important considerations should be kept in mind:

- The building permit process should ensure compliance with the Zoning Ordinance.
- The application process should avoid imposing burdens and expense on applicants that are not necessary to ensure compliance.
- The process likewise should not put undue burdens on the Town and its staff.
- Getting it right in the approval process is far better than after-the-fact enforcement.

Bearing these points in mind, I suggest that the Planning Board make the following recommendations to the Board of Selectmen:

(1) ***Revise the warning language in the Building Permit application.*** For at least the past two years, the Building Permit application has contained the following statement:

The Building Permit must be accompanied by:

1. A plot plan drawing of the site. You may use a copy of the tax map to prepare this drawing; however, the tax map is not a surveyed plan and should only be used as reference. Tax maps are available at the Town Offices or on the Town website.

The tax map is known to be inaccurate. The application should warn against the use of the tax map, not invite its use. The following would be an appropriate warning:

The Building Permit must be accompanied by:

1. A plot plan drawing of the site. You are responsible for accurately showing property boundaries and the location of structures and features. You should NOT rely on the tax map to prepare the plot plan, particularly if your application involves a new structure, a change in the footprint of a structure or any change that would reduce a setback. The deed for the property establishes its legal boundaries. In order to prepare an accurate plot plan, you may need to rely on a survey. [Note: If a survey is required in some cases (see (3) below), replace the last sentence with a statement to that effect.]

Similar revisions to the Building Permit Application FAQ should be made.

(2) ***Carefully review the level of diligence in Building Permit applications.*** The issue of requiring a survey in connection with Building Permit applications arose from problems at 1891 Little Sunapee Road. In that case, the tax map was egregiously in error, which led to embarrassing and costly mistakes.

I have examined the file for the 1891 Building Permit, and I agree with the views, expressed by one member of the ZBA, that there was a serious lack of diligence in the preparation of the application. Unlike many deeds, the property description in the deed was clear and could easily be understood by a layman. A few minutes reviewing the deed description against the tax map revealed that the key boundary line from the tax map was very wrong.

The plot plan map submitted by the applicant with the 1891 Building Permit application contained this prominent note (all capitals in the original):

THIS PLAN IS NOT A BOUNDARY SURVEY. PROPERTY BOUNDARIES SHOWN ARE AS FOUND IN THE FIELD AND ON THE TAX MAP. NO SURVEY OF THE PARCEL WAS FOUND.

This statement makes no reference to the deed, and clearly admits to reliance on the tax map. The application – for new structures on a legal non-conforming lot (a very small one) in the Shoreland Overlay District – clearly was very sensitive as to setbacks. The statement, however, clearly admits that the applicant’s professionals had little confidence in the boundaries shown on the plot plan.

This leads to two specific suggestions:

- (i) Staff should recognize that this kind of statement is a red flag, and further inquire of the applicant as to how the boundaries were determined, asking in particular, what evidence indicates that the boundaries are reliable given that the tax map is not reliable.
- (ii) In an application in which setbacks are in issue, the application should require that the applicant (or professionals acting on behalf of the applicant) specifically identify reliable sources for the determination of the boundaries, and explicitly affirm that the applicant believes the boundaries are true and correct.

(3) *Require that sensitive boundaries be based on a reliable survey.* The recommendation by Lucy St. John, in her September 8, 2015 memorandum, suggests requiring a survey in some cases. This makes sense, but the requirement could be more simply stated, such as the following:

If the building permit relates to a Structure or other action that will be within the applicable required setback plus 50 feet from any property boundary, that specific property boundary must be identified based on a boundary survey plan, provided that this requirement will not apply if the proposal relates to a Structure and would not reduce the setback distance of any dimension of the Structure from such property boundary. If the survey is older than ten years, the applicant must affirm that the applicant, after due inquiry, has grounds to believe the survey remains reliable.

Note that this proposal is intended to (i) require only that the “sensitive” boundary be based on a survey, rather than all boundaries of the property (if, for example, only one boundary line were implicated); (ii) does not apply if the proposal is for a change that does not make the setback an issue; (iii) allows for use of a survey obtained by an abutter or a prior owner, and (iv) allows for use of an older survey if the facts and circumstances indicate that it remains reliable.

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