



Planning Review Adjustment Committee August 16, 2021

Minutes of the meeting of the Planning Review Adjustment Committee of the Fundy Regional Service Commission held on Monday August 16, 2021 at 10:00 a.m. at Crane Mountain, Saint John via teleconference.

1. Call to Order

The Chairperson, Dwight Allaby, called the meeting to order at 10:06 a.m.

2. Record of Attendance – via teleconference

BOARD MEMBERS

Dwight Allaby, Chairperson
John Cairns, PRAC Member
Glen Baxter, PRAC Member
Donna Murchison, PRAC Member
Ron Bridges, PRAC Member
Tina Dealy, PRAC Member
Brenda Rathburn, PRAC Member
Cindy MacCready, PRAC Member

STAFF

Alicia Raynes, Recording Secretary, FRSC
Nick Cameron, Assistant Development Officer
Stephen Stone, Director of Planning, Dillon Consulting

3. Approval of Order of Business

The Chairperson asked for approval of the agenda as presented.

Motion: To approve the August 16, 2021 Agenda as presented.

Moved: Brenda Rathburn
Seconded: Donna Murchison
Vote: *Motion Carried*

4. Disclosure of Conflict of Interest

None

5. Approval of Minutes

The Chairperson called for a motion to approve the minutes as circulated.

Motion: To approve the June 21, 2021 minutes as circulated.

Moved: Glen Baxter
Seconded: Brenda Rathburn
Vote: *Motion Carried*

6. Presentation of Application

a. Variance – Bare Land Condo – 16 Giffin Pond Road, West Quaco (St. Martins LSD)

Nick Cameron gave an overview of the presentation on the application for the Similar or Compatible Use Report.

Applicant: Krust Properties Inc

Request: Jens Krust of Krust Properties Inc has made an application to develop twenty-four residential lots as a bare land condominium at 16 West Quaco Road in the Local Service District (LSD) of St. Martins. If approved, a single family detached home would be built on each lot. The application is to allow this proposed land use as similar or compatible to residential uses in the St. Martins Parish Basic Planning Statement.

Requirement for Similar or Compatible Use:

Land use in the Local Service District of St. Martins is regulated by a Basic Planning Statement established in 1994 under the Community Planning Act. Since this time, the Community Planning Act was repealed and replaced in 2017 and no longer recognizes Basic Planning Statements. Therefore, there is no legal framework to amend a Basic Planning Statement. However, the current Basic Planning Statement remains in effect until replaced with a modern rural plan.

The Planning Review and Adjustment Committee (PRAC) is authorized to permit a variance from the Basic Planning Statement through Section 55(1)(a) of the Community Planning Act of 2017, which states:

"55(1) Subject to the terms and conditions it considers fit, the advisory committee or regional service commission may permit: (a) a proposed use of land or a building that is otherwise not permitted under the zoning by-law if, in its opinion, the proposed use is sufficiently similar to or compatible with a use permitted in the by-law for the zone in which the land or building is situated"

Consultation:

As per section 6.1 of the PRAC By-law and Operating Procedures, notices were sent to property owners within 100m of 16 Giffin Pond Road, West Quaco, NB (subject property). A wider range of notification may be considered if the application is considered to present ramifications which are broader than normal. Therefore, additional property owners along West Quaco Road and Shore Lane were also notified, approximately 850 metres from the subject property.

In total, notices were sent to 25 property owners on July 27, 2021. A deadline for written submissions was set for August 9, 2021. To date, 49 letters opposing this application have been received. Additionally, a petition opposing this application was also received, containing 89 signatories.

The Fundy Regional Service Commission also requested input from the New Brunswick Department of Transportation and Infrastructure, the New Brunswick Department of Environment and Service New Brunswick.

Overview of Application:

The Similar or Compatible Use Report: -

This proposal is to develop 16 Giffin Pond Road as a bare land condo, also known as a strata in other jurisdictions. A bare land condo is established under the New Brunswick Condominium Property Act. Unlike a condo building, residential units on a bare land condo are detached and situated on their own respective lot. A corporation established under the act (condo corporation) may own and maintain common elements or services within a bare land condo development.

Details of the conceptual site plan and a tentative plan of survey were provided for consideration. It was stressed that this PRAC application is to determine whether or not the proposed use is similar or compatible with residential uses, as per the Saint Martins Parish Basic Planning Statement. This application does not constitute an approval of the proposed site plan, plan of survey or a Development Permit for the proposed use. The conceptual site plan provides an overview of the applicant's plan to date, this information provides context to the application.

The applicant is proposing twenty-four lots, each with a single-family detached home and serviced by an approved septic system. Proposed lot sizes exceed one acre (4,000 square metres). The structures are proposed to be single family dwelling units on each lot.

It is proposed that the property has two accesses from Giffin Pond Road: one near the southeastern corner of the property and a second entrance near the centre of the southern boundary line. The portion of Giffin Pond Road fronting the property is classified as a public, non-maintained road and the applicant is required to upgrade this portion of the road to specifications and standards by the Department of Transportation and Infrastructure.

Staff have discussed the proposal and provisions of the Basic Planning Statement with the applicant and several site visits were also conducted.

The basis of this application is to assess whether the proposed use of the property as a bare land condo as similar or compatible with residential uses, permitted under the current Rural designation of the property, as considered by the Saint Martins Parish Basic Planning Statement. When considering similar or compatible uses, staff assess both the uses and their impacts with being similar or compatible with uses permitted by the regulation. In this case, the proposed use of a bare land condo, simply refers to the ownership structure of the use and not the actual land use. The applicant's proposed use within the bare land condo property is shown to be twenty-four (24) one unit, or single-family dwellings on individual lots that exceed one acre. The proposed structures are limited to residential uses as regulated by the Basic Planning Statement and do not constitute other uses, such as commercial. The one-unit dwellings will have similar impacts to other low density dwelling units throughout the Saint Martins Basic Planning Statement Area. Staff also note that the Basic Planning Statement regulation restricts high density residential uses in the Rural designation; however, limits the mention of high density to three family units or apartments. High density is not considered by the regulation as any number or concentration of single-family dwellings; thus, staff cannot interpret twenty-four (24), single family (one unit) dwelling units as high density. The distribution of parcels on the property will be confirmed through further engineering and design of the services (water and septic) and other considerations (topography). It is the staff's opinion that the uses proposed within the bare land condo proposal, one-unit dwellings are similar to residential uses defined by the Saint Martins Parish Basic Planning Statement regulation and are compatible with other one-unit dwellings located in the immediate area throughout West Quaco.

Staff consulted provincial agencies to confirm any concerns that should be addressed by the applicant through the permitting stage. This consultation was used to inform the terms and conditions recommended by staff.

The Chairperson made three calls for members of the public to speak against the application. Fourteen neighbouring residents and property owners spoke in opposition: Rick Willick, Sadie Willick, Monika Freunek, Pat Miller, John Miller, Bronwen Griffith, Sheena Dougan, Kenny Cryer, John Noseworthy, Pat Noseworthy, Michele Mouton, Michael Herbert, Madeleine Taylor, Dawn McLean, and Stephen Moffett.

There were concerns raised about the environmental impact of a bare land condo, how it will affect wildlife, the water table and erosion. Additionally, concerns were raised about increased traffic flow in the area and who would be assuming responsibility for the roads. There were also concerns about how many homes would be allowed on each lot.

Residents questioned why this wasn't a subdivision application and feel that the owner is not telling the whole story. The Chairperson reiterated that what is being

considered is if the proposal is a similar or compatible use to those permitted by the Basic Planning Statement.

Residents feel that the condo development is in direct opposition to the way of life in the area. It was also noted that bare land condos are exempt from Subdivision regulation.

Residents feel that if this application is approved, it will set a precedent. Residents feel that PRAC's responsibility is to do what's right for the community and this isn't right.

Many of the residents also stated that the Commission is opening the door for commercial use if this application is approved. They feel that due to the corporate ownership structure, this is more of a commercial use, not residential.

The Chairperson made three calls for members of the public to speak in favour of the application. Three people spoke in favour: Jens Krust, Matt Blain, and Mel Vincent.

Mr. Krust, the managing director of Krust Properties Inc, provided further details about the application and some of the concerns from residents. He reiterated that the application is for 24 single family homes, each on their own 1-acre lot. He stated that each home would have a septic system installed by a licensed company and that all regulations would be followed. He also advised that a stormwater management system would be in place and that all plans would be done by qualified engineers and that all regulations would be followed. Mr. Krust advised that 90% of the property would be green space, and an evaluation of existing wetlands and watercourses would be done first. It was also clarified that there would be no short-term rentals, time shares, or anything of the sort, it would be strictly residential.

The Committee asked Mr. Krust why he proposes a bare land condo rather than a subdivision. Mr. Krust stated that there were some legal issues regarding the responsibility of the private road if there were 24 owners. A bare land condo allows more control over this. He also stated that speed limits in a subdivision are too fast.

Matt Blain of Hughes Surveys, spoke in favor of the application. He advised residents that the end result of a bare land condo is similar to a subdivision. There will be singular residential homes on separate pieces of land. It was noted that for condos, developers can stipulate conditions that are similar to restrictive covenants. There are numerous checks with developments to ensure there is oversight such as the Department of Transportation and Infrastructure, and the Department of Environment. It was also mentioned that building permit applications would still be required for each individual unit to ensure compliance will all building code regulations. He also mentioned that there is a 12-hectare subdivision 5km north of Route 111 that is near identical to this application. In addition, there is a 10-lot subdivision on Kenmore Trail and a 13-lot subdivision on nearby David Farm Rd.

Mel Vincent also spoke in favor of the application. Mr. Vincent stated the condo concept has strong legislation with strict rules and no short cuts or loopholes. The project will not be able to move forward without meeting all the conditions. Mr. Vincent also noted that a bare land condo is less expensive to tax payers as tax dollars don't service the property, the condo association does.

The Committee asked if homes on the bare land condo would be built to the same standards as those in a subdivision. The Chairperson explained that whether in a subdivision or in a bare land condo, buildings would need to meet all building code regulations.

The Committee asked if PRAC could add any additional conditions such as a maximum of 24 single family units. Planning Director, Stephen Stone advised that yes, PRAC can impose additional conditions as they see fit. Mr. Krust said that he would have no problem with that condition.

Nick Cameron, Assistant Development Officer, FRSC, spoke with regards to the concerns about "commercial activity". It was explained that commercial uses are allowed but only as defined in the Basic Planning Statement. If it's outside of the Basic Planning Statement, a separate application would need to be submitted.

The Chairperson reiterated that the question for PRAC to answer is whether or not the proposed land use is considered similar or compatible with residential uses.

Recommendation:

Whereas, a bare land condominium containing lots of at least one acre and each lot containing a single-family detached home is similar to residential uses as described in the Saint Martins Parish Planning Area Basic Planning Statement.

And whereas, Section 55(1)(a) of the Community Planning Act authorizes a regional service commission to permit a proposed use of land that is otherwise not permitted under the zoning by-law if, in its opinion, the proposed use is sufficiently similar to or compatible with a use permitted in the by-law;

It is recommended that a bare land condominium at 16 Giffin Pond Road in West Quaco (PID 00278325) be considered as a similar or compatible with land use to Residential Uses, under the Saint Martins Parish Basic Planning Statement Regulation with the following recommended terms and conditions:

1. A setback and access certificate must be approved to the Department of Transportation and Infrastructure before a development permit or building permit may be issued. The application for a setback and access certificate must include plans, created by a professional engineer certified in the province of New Brunswick, to construct Giffin Pond Road up to the proposed entrances of the subject property, according to the Minimum Standards for the Construction of Subdivision Roads and Streets, and any other

requirements provided by the Department of Transportation and Infrastructure.

2. A storm water management study must be provided to the Fundy Regional Service Commission and the New Brunswick Department of Transportation and Infrastructure. The stormwater management study must be completed by a professional engineer certified in the province of New Brunswick. The stormwater management study must ensure all stormwater flows are directed away from neighboring properties. Furthermore, any stormwater flows entering the public right-of-way on Giffin Pond Road may not exceed the pre-development water flows, as approved by the New Brunswick Department of Transportation and Infrastructure.
3. A water supply assessment study must be provided to the Fundy Regional Service Commission and the New Brunswick Department of Environment. The water supply assessment study must be completed by the appropriate expertise, as per the guidelines of the Department of Environment.
4. The developer is required to comply with the Clean Environment Act, Clean Water Act, and Clean Air Act and must address concerns noted by the Department of Environment before a development permit or building permit may be issued.
5. The developer is required to comply with the Species at Risk Act and must address concerns noted by the Department of Natural Resources and Energy Development before a development permit or building permit may be issued.
6. Septic system approval must be obtained and presented to the Fundy Regional Service Commission before a development permit or building permit may be issued.
7. A completed plan of survey, as per the requirements of Condominium Property Act, must be provided to the Fundy Regional Service Commission before a development permit or building permit may be issued.
8. All access roads within the subject property must adhere to the requirements of the 2015 National Building Code of Canada, including, but not limited to, section 3.2.5.6 Access Route Design. The Saint Martins Fire Department must be engaged to determine whether these requirements are being met before a development permit or building permit may be issued.
9. A Final Site Plan must be approved by the Development Officer prior to a development or building permit being issued.

Motion: To accept the recommendation by the Fundy Regional Service Commission to approve the proposed bare land condominium at 16 Giffin Pond Road, West Quaco (PID 00278325) as similar or compatible to residential uses under the Saint

Martins Parish Basic Planning Statement Regulation with the recommended terms and conditions, as well as the following additional terms and conditions:

1. The property shall be limited to a maximum of 24 single-family dwellings for residential use only, and may include home occupations as permitted by the Saint Martins Parish Planning Area Basic Planning Statement.

Moved: Glen Baxter
Seconded: Cindy MacCready
Vote: *Motion Carried*

At 12:18pm, PRAC took a short break before resuming the meeting at 12:33pm.

b. PRAC Comments – Rezoning to Resource and Aggregate Extraction Zone – PID 00272153, Lepreau (Musquash LSD)

Stephen Stone, Planning Director, Dillon Consulting provided a summary of the application to Rezone PID 00272153 to a Resource and Aggregate Extraction Zone.

Mr. Stone advised that there was a public hearing held on July 28, 2021 and nobody from the public attended. There were also no written objections received for this application. PRAC member Tina Dealy said that several people in the immediate area stated they did not receive notices. Nick Cameron, Assistant Development Officer, FRSC, stated that approximately 30 notices were sent out and we did in fact receive a bounce back from Canada Post which would indicate that the notices did get mailed out.

Mr Stone explained that this type of application is a ministerial decision and no recommendation is required by the PRAC. The Minister would be looking for a letter from PRAC providing written views of the proposed Rural Plan Amendment.

Motion: To authorize the Chair to send a letter to the Minister advising that PRAC has discussed the application and agree with the recommendation.

Moved: Ron Bridges
Seconded: Brenda Rathburn
Vote: *Motion Carried*

7. Other Business

Nick Cameron, Assistant Development Officer, FRSC advised that there is nothing on the horizon to warrant a September meeting but advised that members could do a practice zoom meeting on September 20, 2021 to familiarize everyone for any future zoom call meetings.

The Committee asked if there was any update on the white paper or green paper. Mr. Cameron said they were expecting more information by the fall.

An update was provided on the Simonds Rural Plan. Members were advised that this plan is on hold until the white paper comes out.

8. Motion to Adjourn

Motion: The Chair called for a motion to adjourn at 12:57pm.

Moved: Donna Murchison
Seconded: Brenda Rathburn
Vote: *Motion Carried*

APPROVED (date) 2021-09-20

Dwight Allaby
Dwight Allaby, Chairperson

Alicia Raynes
Alicia Raynes, Recording Secretary