

Planning Board & Conservation Commission Meeting
May 27, 2010 - 7:00 PM
Library, Elementary School
347 Rte. 125, Barrington, NH 03825
Joint Work Session

Planning Board members present: Chairman John Huckins
Alan Kelley
Edward Lemos
Dawn Hatch (Alt)

Conservation Commission members present: Chairman Michael Hastings
John Wallace
Pam Failing

Town Planner: Constance Brawders

Guests: Heather Stanley Cooper
Daniel Ayers

Conference with Heather Stanley Cooper - lot on Route 4

Chairman Huckins opened the meeting for a conference with Heather Stanley Cooper concerning what her plans were for the site on Route 4. Abutter Daniel Ayer was also present. Huckins asked Cooper why she was before the Board. Cooper said she had received a certified letter so she felt that she had to come. Brawders asked what she intended to do on the site as far as running a business or parking business vehicles on it. Cooper said she did not have any plans for the site. She said it was a commercial lot where her husband parked his trucks. Cooper said her husband did not work in New Hampshire; his business was in Massachusetts. Cooper said they obtained permits to clear an area to park the trucks. She said her husband got "carried away" and cleared more land than he should have.

Brawders said that the Town Administrator had received a letter from Daniel Ayers, abutter to the Cooper lot. She said they share a driveway. Brawders said the Ayer's letter requested all complaints from the Town regarding the lot. She said that the Planning Board had never received any complaints concerning Cooper. Brawders said she had viewed the Ayer's site plan and found that Cooper and Ayer enter their lots from a common driveway.

Brawders said she had reviewed the Building Inspector's/Code Enforcement Officer's file and found complaint letters in it. She said she had had a conversation with Ayers and understood his issues of concern. Brawders said that Ayer had gone before the Board for a site review which had cost money but his neighbor had not had to follow through with the same process.

Brawders said she had sent a letter to Cooper and talked with David Price of the Department of Environmental Services. Price told her that a draft for an Administrative Order had been done. He said that there was an Administrative Order in progress against the property. Price said there was a documented order for the land owner which Cooper said she had received.

Cooper said she had Randy Orvis; a Wetland Scientist map the wetlands and specify what fill had to be removed. She said the enforcement was in effect and she had begun the process. Cooper said she had met with David Price and Orvis on the site so she knew what had to be done.

Cooper said she also had received a letter from Attorney Laura Spector who said she was in violation and what needed to be corrected. Cooper said she needed to talk with Ted Buczek to correct

the violations. Cooper said after addressing the problem with Ted Buczek they would put back what had been removed before the impact.

Cooper said they park one truck, a trailer, and a piece of equipment on the site. She said the pile of asphalt on the site needed to be cleaned up and the wetlands restored. She said they intend to correct the impact to the wetlands.

Huckins said if it was a contractor's storage yard it would have to go before the Board for a conditional use in most Districts. He said as Route 4 was the Regional Commercial District all parking of vehicles on the lot would be a permitted use and if Ted Buczek as Code Enforcement agreed it was allowed through his review. He could approve the use and it would not need Planning Board approval. He said the Zoning stated that a contractor's storage yard was a permitted use on Route 4.

Huckins said if a paving business was on the site with materials such as cold patch and hot top it would be a business. He said 500 feet from Route 4 was commercial use. He said if Buczek found things in violation they would need to be brought into compliance. Huckins said if Cooper had to go further Buczek would notify the Planning Board.

Cooper said she would meet with Buczek to discuss what she needed to do. Lemos said Cooper needed to start with Ted. Huckins said if Cooper felt that Buczek had asked for more than what needed to be corrected she had the right to appeal to the Zoning Board.

John Wallace, BCC said the wetland issues were with the State. Cooper said she had met with David Price and was told what needed to be done. Huckins said the Town issues should be dealt with through Ted Buczek, the Code Enforcement Officer.

Cooper said Ted was well aware of the 2 properties. Huckins said Buczek would give Cooper direction on how to proceed. Cooper said she understood this. Brawders said that Ayer knew the process and had dealt with his issues correctly through the hearing process. She said she had met with Ted Buczek to keep all informed of what was going on. All thanked Heather Stanley Cooper for coming before the Board.

Joint meeting with Conservation Commission to discuss possible zoning changes

John Wallace, BCC said he had given the Planning Board members a suggestion to add to the Authority and Purpose, Section 13.1 of a conservation subdivision. He said he thought that the first purpose to be met should be the protection and preservation of land. Wallace said that in the case of the Landry cluster he did not think that protection and preservation of the land was the first priority. All agreed that the suggestion made good sense. It will be added as a second paragraph to Section 13.1

Huckins said in defense of the Planning Board Hale Bog, the Riparian area, vernal pools, and a large setback from Nippo Pond had been protected. Wallace said he agreed that the Board had protected valuable areas on the site. Wallace said conservation came later in the process. Pam Failing said the resource assessment came later and had not been a thorough assessment. She said it was important to make a developer clearly identify and work around valuable areas that needed to be protected.

Huckins said the Board tried to weigh both ways and found if one had more value than another we tried to protect the most valuable one. Wallace said conservation of the land should be most important. Failing agreed that conservation of the site should be the top priority. Kelley made a motion to insert the paragraph suggested by the Conservation Commission in the Authority and Purpose section of the Subdivision Regulations, seconded by Lemos, all in favor.

Add as second paragraph:

Since the primary purpose of a Conservation Subdivision is the protection and preservation of the town's natural resources (as itemized below), the Initial and most important step in determining the feasibility of a site for a Conservation Subdivision is to identify the natural features and resources

of the property that most merit protection. The housing lots that are proposed for the subdivision should be situated with the aim of protecting these features as best possible.

Beaver problems and removal from a site

Hastings said RSA 210.9 now allows removal of a beaver dam by hand. He said a person could not put equipment in a wetland to destroy a dam without permits. Failing said beaver pipes can be installed to keep the water at a set height without destroying the beavers or creating more wetlands.

Require conservation easements on subdivisions

Wallace said he had brought this subject up before and the Board felt that to require conservation easements on subdivisions instead of a home owner's agreement as a deed restriction was a taking. He said he had briefly discussed this with Attorney Whitelaw who did not think it would be, in lieu of the optional nature of the conservation subdivision. He said by requiring a conservation easement it would be all or nothing. Brawdgers said in her opinion it would be a taking.

Failing said that there were costs to set up and hold an easement. She said a person could give the land and then have to pay to have it monitored. Huckins said one of the problems he sees is that an easement takes months to develop and costs more than a deed restriction. Wallace said if the Board felt that it was worth looking into he would pursue it.

Huckins said 70% of the open space land was done through deed restrictions. He said sometimes it was difficult to find a group that would take the easement. Wallace said Strafford Rivers, the Conservation Service and others could be contacted with regards to holding an easement. He said he has told people interested in preserving their land to meet with the Natural Heritage Committee as this is what they do best. Wallace said a person should start putting an easement together early in the process.

Changes in Subdivision Regulations / Zoning

Failing asked if we would put together all changes and then hold a hearing on them for consideration. Huckins said we would look at each change on an individual basis with a review by our Attorney. Brawdgers would help with the wording. Hastings asked about using the Local Government Center for legal opinions. He said all communities have this opportunity and it saves town money. He said we could ask questions and get opinions without cost.

Huckins said we have always used Mitchell Group, basically Attorney, Jae Whitelaw to review and finalize any changes. He said as we depend on Whitelaw to defend our position the Board feels that it is best to have her involved from the start. Huckins said we hope to post any changes by early July.

Transfer of development rights

Huckins had received several regulations for the transfer of development rights from other communities. He said it appeared that the requirements had not been used in many cases. Hastings said that he had talked with Bill Hume from Lee who stated the same thing. All agreed that we should find out why this was so.

Failing said usually this was done with abutting lands. One person transfers his development rights to another for a sum of money and his land was preserved. Wallace said we would like to see this used on large parcels and not necessarily abutting ones.

Huckins said he did not think that the money could be banked for whatever a town or commission wanted to use it for. The transfer has to be specific and for a specified parcel of land. Huckins said usually the land owners negotiate their own proposal. Brawdgers said sometimes the

transfer was done for wetland mitigation. Lemos said there would be benefit to both parties and a development. Huckins said each parcel would have the same density.

Brawders said if a developer took his idea for a higher density to the Town Center transfer of development rights might work in both the Town Center and the Village District. Huckins said if a developer used his design and supported a greater density development it might work. He said that the requirements would have to be in the Ordinance. Huckins said the Conservation Commission and the Board would need to get started to have something ready for March 2011.

After a discussion with regards to value, preservation of lands and how it would work all came to the conclusion that the first thing that had to be answered was why communities that have transfer of development rights in place do not use them. Once this was addressed we needed to get started to something in place.

Brawders said developers were comfortable designing standard subdivision but would need to be educated for something new. Hastings said profit plays a large part in any development. Hastings said that development of rights was in place in Jericho Vermont. He said we might want to see if it is used and if so how it works.

Brawders said she would be talking with Bruce Mayberry to start working on the impact fees as the economy was in an uprise and now was the time to proceed. She gave ideas from Ipswich Massachusetts and what was being done in Washington and Oregon as these states were similar to New Hampshire in many ways. Brawders said these were challenging times and we needed to be ready when the economy turns around.

Failing agreed that we needed to find out why transfer of development rights was not working or not used in other communities. Huckins said maybe others were not using it but this was no reason why we should not have something in place. He said we needed to look at different procedures and how to make it work. Huckins said everyone should forward their ideas to Brawders for her to put together for a second meeting. Failing said we could move forward communicating our ideas to each other.

Brawders said we needed to be careful using our email so it did not appear to be a meeting. Towns that we have received transfer of development rights from were Lee, Bedford, Dover, Chic ester, and Milton was added.

Fluvial Erosion/ Hazard Mitigation Plan

Brawders spoke on this issue. She said the Town would need to create an overlay zone for fluvial erosion hazards. This information was provided by Strafford Regional Planning Commission. Huckins said to do this would need to go before the voters.

Brawders said SRPC wanted a hazard mitigation plan developed. She said Barrington was in a high priority area. Brawders said we should involve the Fire Chief and Police Chief. Huckins said Fire Chief Rick Walker was also the emergency management officer. He said he thought that Walker had created a plan.

Failing said there were different types of hazards; gas stations, dams, flood zones etc. Kelley said all of the above would need to be addressed. Brawders will work with the Fire Chief on this project. Failing stated that she thought that this should be done. She said we should work with other communities to see what was needed. Huckins said to check with Walker to see what he might have in place. We will get together in late June or July to discuss this item further.

Failing said FEMA only covers certain areas, Huckins agreed. Failing said Shane Cook was the person to talk to for help in making people aware of what was covered and what was not. She said in flood plain areas people need to carry flood insurance. Failing said this would cover rivers and streams that overflow.

Failing said she thought that a Storm Water Management Plan would be more valuable as it would address the storm water effect, headwaters of rivers and streams, and runoff throughout the entire town. It would show what was going on in high flood areas. Failing said the flood plain maps only cover certain rivers and bodies of water. It was not developed for the entire Town.

Failing said we need to address the cumulative effects of development, for instance, installation of culverts, effects of land downstream, the duration of the high water, and runoffs. She said the requirements can allow an increase in peak flow but the flow cannot leave the site at a higher rate. Failing said it could run longer but could be very erosive in the process. Failing said rivers have a wider protection and with a Storm Water Management Plan one could evaluate how much flowage a stream could take.

Failing asked about consideration of low impact development. She said this was packaged differently and we could discuss it at another time. Huckins said Strafford Regional Planning Commission did studies using money from member towns. Brawders said SRPC needed to get the money for research to do these studies. Huckins said for example the Route 125 Study and the Natural Heritage Inventory Study were studies that the Town benefited from. He said we should give our support.

Hastings said a classic example of runoff was the Wood Brook/Gerrior Subdivision. He said that the photos showed -200 soils which were not fill. Failing said the detention pond was storing water at its peak and then letting water out creating an accumulative effect of eroding the stream downstream.

Huckins suggested that the Strafford Regional Planning Commission the Conservation Commission and the Planning Board meet to discuss the items that had been discussed. Huckins asked Brawders to see if we all could get together on June 10 and get back to the members.

Failing said in her opinion a Storm Water Management Plan would be far more valuable than the Fluvial Erosion Plan. She said it could be looked on a lot by lot basis at the local level. The plan would help minimize water runoff from a site. A developer would pay for the study and we could plan ahead for any problems concerning flowage. Huckins said it also could work in the PUD in the Town Center if it was in place.

Checklist - Subdivision Site Review

Brawders said when a person represents a plan other than the land owner we should have the signature notarized so we know he is representing the owner. All agreed that this was a good idea. Brawders said it might be a good idea to have a title search done on a parcel of land being subdivided. She said it was expensive to do but was protection for the Town.

Failing said with first sale this would be discovered through a title search. Members agreed that they did not want to require this as it was up to the developer. We ask for a signature and that was enough.

Brawders said she had talked with the Attorney and was told as the conditional approval was not signed we could extend the subdivision.

Brawders said that Carol Reilly had been discharged from the hospital. Police Chief Conway would be acting Town Administrator. Hatch said we had been told that we might be moving to the Good Sheppard School and modular on Route 9. Brawders said we would know more after the department heads meeting on Tuesday, June 1.

Huckins said he had talked with Attorney Jae Whitelaw concerning issues before the Board. He said Whitelaw said that we could not talk about any cases unless they were posted on the agenda. He said he would meet with Brawders to get her abreast of where we are on the Hill proposal and any others that she might like to address. He said Whitelaw said that New Hampshire law was very different than Arizona and Massachusetts. He said it would take time to learn. Huckins said Attorney Whitelaw

had not met Brawders and he would like to set up a meeting with the Board so both could meet each other. We have held an annual meeting this each year.

Huckins said we should go over Farrell's checklist so we would know that it was complete at his hearing on June 3. Lemos made a motion to review the Farrell checklist in the office, seconded by Kelley, all in favor.

Huckins said we needed to approve the minutes as we don't do this on a regular basis. He said we discuss them but don't vote. Kelley said he had edited the minutes over the past months and was sure that he had read and reviewed them from when the last set was approved. **Lemos made a motion to approve the minutes of January 5, 7, 14, 19, 21, 28, 2010 – February 4, 11, 18, 22, 23, 2010, March 4, 11, 18, 25, 2010 April 15, 29, 2010 May 6, 13, 20, and 27, seconded by Kelley, all in favor.** Meeting adjourned at 10:10 PM, motion by Kelley, seconded by Hatch, all in favor.

Dawn Hatch, Clerk