



(Minutes approved 7/8/2014)

BARRINGTON PLANNING BOARD MEETING

Barrington Annex (next to the Elementary School)

572 Calef Highway

Barrington, NH 03825

Tuesday June 17, 2014

6:30 p.m.

NOTE: THESE ARE SUMMARY ACTION MINUTES ONLY. A COMPLETE COPY OF THE MEETING AUDIO IS AVAILABLE THROUGH THE LAND USE DEPARTMENT

ROLL CALL

Members Present

Anthony Gaudiello-Chair

Jason Pohopek Vice-Chair

Joshua Bouchard

George Calef

Members Absent

Jackie Kessler

Bob Williams

Dennis Malloy, Ex-officio

Alternate Members Present

Daniel Ayer Arrived at 6:45 p.m.

Town Planner: Marcia Gasses

MINUTES REVIEW AND APPROVAL

1. Approval of the June 3, 2014 Meeting Minutes

The Board made minor grammar and spelling corrections

Without objection, the minutes were approved as corrected.

REVIEW OF PLANS

A. Gaudiello explained the memo from Jae Whitelaw. The current process of plan review was not considered proper. The process of picking up the plans, taking them home, and reviewing them on the members own time would occur. The Board should review the applications on their merits.

Memo from Jae Whitelaw:

Marcia -

I am writing to follow-up our telephone conversation of last week regarding the board's procedures on applications. My understanding is that the board reviews an application for completeness at a public meeting, but does not provide notice pursuant to RSA 676:4, I (b). As we discussed, the statute requires that a completed application "sufficient to invoke the jurisdiction of the board" must be "submitted to and accepted by the board" at a public meeting for which notice has been given to the abutters and others, just like for a public hearing on the application. The difference is in the type of meeting held (meeting v. public hearing), not in the notice that is required.

I believe the board exposes itself to a potential claim that the board is deciding an application is complete without the required notice because it essentially makes that decision at the non-noticed meeting. I understand that there are times when the board may decide that the application is missing something and instruct you to notify the applicant and at the same time schedule and notice the public meeting for actual acceptance. However, this is not always the case. I also believe that the fact that the board may not 'vote' on completeness until the noticed meeting is not sufficient to cure the lack of notice; the board does make the decision on completeness, even if it doesn't vote.

The board has a land use administrator who can deal with the major completeness issues before an application gets to the board by working with the applicant, the application and "completeness" checklist. An application should not get to the board too often that is not complete unless an applicant wants a waiver from an application requirement. I recommend the board change its procedures and properly notice the meeting where it first considers whether an application is complete; if it finds the application requires more information for completeness, the noticed meeting can be properly continued so additional notice is not required.

Please don't hesitate to call with further questions. Thanks.

Jae
Jae Whitelaw
Mitchell Municipal Group, P.A.
25 Beacon Street East
Laconia, NH 03246
603-524-3885
jae@mitchellmunigroup.com

G. Calef expressed we need to go by the book. He expressed it was a very difficult task to know all the regulations.

The following applications had been received by the Land Use Office:

2. [220-18-GR-14-SR \(Stephen M. Flynn\)](#) Request by the applicant for a Site Review and 3.4 Conditional Use Permit to open a Powder Coating home business with capacity to machine custom small parts with CNC mill machine on a 1.1 acre lot on 78 Greenhill Road (Map 220, Lot 18) in the General Residential (GR) Zoning District.
3. [206-20-GR-14-SUB/LL \(Dawn & Douglas Hatch\)](#) Request by the applicant for a Boundary Line Adjustment, Waivers and a 3 lot Subdivision on a 12.9 acre lot on Second Crown Point Road and Pond Hill Road (Map 206, Lot 20) in the General Residential Zoning District. By: Randy R. Orvis, Geometres Blue Hills, LLC; PO Box 277; Farmington, NH 03835

A. Gaudiello requested M. Gasses briefly describe the applications received.

M. Gasses briefly explained a home business application and a lot line revision with subdivision had been submitted. The Board could not discuss the application specifics because the abutters had not yet been notified. The new applications would appear on the July 8, 2014 agenda for possible acceptance as complete and public hearing.

CASES BEFORE THE BOARD

4. [203-7-GR-14-SD \(Joseph & Virginia Carbaugh\)](#) Request by applicant for a 2 lot subdivision to create a back lot and a 9.6 Special Permit on a 10.52 acre lot on 282 Second Crown Point Road (Map 203, Lot 7) in the General Residential Zoning District. By: Kenneth A. Berry, PE, LLS; 335 Second Crown Point Road; Barrington, NH 03825

Previously approved by the Board to be continued until July 8, 2014

5. [268-1& Additional Lots –GR-13-SUB \(Gerrior Lane Trust\)](#) Request by applicant to

present a Section 9.6 application for Special Permit for Construction in wetland buffer, **subdivide and create 10 lots, construct approximately 990LF of roadway, a shared driveway and realign a portion of Saint Matthews Drive located on Gerrior Lane and Saint Matthews Drive (Map 268, Lots 1, 1.1, 1.2, 1.3, 1.4 & 1.5) in the General Residential (GR) Zoning District. By: Michael Sievert, P.E.; MJS Engineering, P.C.; 5Railroad Street; Newmarket, NH 03857.**

Previously approved by the Board to be continued until August 5, 2014

A. Gaudiello discussed the document he had put together to provide guidance to new Board members. Substantive law was discussed. See attachment A.

A. Gaudiello explained he was working on a welcoming packet.

D. Ayer expressed frustration with the determination that the Board could not conduct plan review without abutter notification as they had done in the past and asked to be dismissed.

D. Ayer left the meeting at 7:30 p.m.

COMMUNICATIONS RECEIVED

6. Discussion on a joint meeting with the Barrington Conservation Committee.

Margaret Mausteller expressed her thought of what John Wallace and Ken Grossman expressed at a recent Selectmen's meeting. She believed the Conservation Commission felt the Board was not listening to their recommendations.

Discussion ensued among the Board members on how they were bound by the ordinance and regulations and the Conservation Commission was not bound by the same rules. The Board expressed that they felt they listened to the Conservation Commission and incorporated their recommendations where appropriate based on the ordinance and regulations. The Board welcomed input concerning the revision of the ordinance and regulations.

REPORTS FROM OTHER COMMITTEES

J. Pohopek explained he had met with Ken Grossman, John Wallace, and Marcia Gasses on June 11, 2014 to work on revisions to the 9.6 permit application. The group had a productive meeting working on developing a checklist to go along with the application. The group would meet in the near future to go over the checklist before presenting the draft to the Board.

UNFINISHED BUSINESS

OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD

SETTING OF DATE, TIME AND PLACE OF NEXT MEETING AND ADJOURNMENT

July 8, 2014 6:30 p.m. at the Elementary School Annex

Without objection, the Board adjourned at 8:05 p.m.

Respectfully submitted,

Marcia J. Gasses
Town Planner & Land Use Administrator

Your description of the experience you had while deciding to volunteer to the Board led me to jot out the following:

So you're thinking about serving the community and are wondering "What's this planning board membership all about?"

- **Talk to a member**
 - Call the Planning Board Office for a general chat and leave a number so a planning board member can arrange to speak with you.
- **See it in operation**
 - Come to a Planning Board Meeting (usually the 1st and 3rd Tuesday of each month.
 - You don't need an invitation. All planning board meetings are open to the public..
- **Arrange to question the Board**
 - On your "observation visit" to a meeting, if you let someone know you are visiting, the Board , if at all possible, will allow a brief period for you to question the Board after the conclusion of business.
- **Still have questions?**
 - The Town Planner, the Chairman or a Board member will do what they can to answer them
- **Have a question about the appointment process that hasn't been answered?**
 - The appointment process is a function of the Selectman's Office. Talk with a selectman about selectman's appointment process.
- **Fill out "an application."**
 - As much as possible, the Town Planner or the Board Chairman will let you know what's happening with your application.

As promised next comes my notes and comments on our conversation about getting Oriented.

What's in it for the Planning Board? The Planning Board is eager to have citizen participation in a vital community function.

What's in it for you? You will learn a get deal about your town and how wise land use rules and management benefits everyone.

What does the planning board do?

It protects the rights of property owners and the rights of the community within which the property exists. It does so by the lawful adoption, development and implementation of appropriate regulations, which regulations are based upon reasonable study and planning.

Where does the Planning Board get its Authority to Act.

The first thing to know is that the powers of the planning board (PB) are limited to those given to the Municipality (Barrington) by State Statutes. They are further limited and defined by the subsequent assignment to the Planning Board by the Municipality through the enactment of a Zoning Ordinance.

Substantive rights are embedded in and conveyed by substantive law ("Constitutions", legislation and, as, some would say, natural law.). Substantive rights emerge from the premise that the people have the right to be self-governing and have the "right to life, liberty, and happiness." Along the way, the right to have, and hold property was taken as an essential derivative of those rights and the laws of such having and holding build up from there.. (5the Amendment US Constitution – in part "No person shallbe deprived of life, liberty, or property without due process of law; not shall private property be taken for public use without just compensation."

No right is in itself can be absolute. However, the abridgement of any right requires of "good and sufficient" purpose and it requires the protections of lawful "due process" whereby the infringement is to be brought about.

For the planning board , all this means is there are rules regarding the substance of our operations ("the what we do") and the processes of ur operations ("the how of what we do").

Get a cup of tea and read about (google) Dillon's Rule.
<http://www.patobannon.com/frequently-asked-questions/what-is-the-dillon-rule>

The right to light.
<http://www.citylab.com/politics/2012/06/birth-zoning-codes-history/2275/>

- RSA 672:1, I Presents the finding of the state legislature that zoning and related regulations should be controlled by the local municipalities.
- RSA 672:1, II Presents the finding that Zoning Ordinances and Regulations will enable the municipalities to effectively meet local needs.
- RSA 672:1, III Presents the finding the health, safety, and general welfare are protected thereby and that wise use of land is supported as well.

- RSA 674:16 Grant of Power – authorizes the municipality to adopt & amend a Zoning Ordinance
- RSA 674:35 Details the grant of power to regulate subdivisions.
- RSA 674:43 Details the grant of power to regulate Site Plans.

The Zoning Ordinance: Defining and limiting arrangements for the protection and uses of land for various good and lawful reasons (for instance, health, safety, the well-being of the communities, the protection and preservation of the environment and the value of property.) ,

Subdivision of Land: Arranging for the configuration and dimensional description of land and for reconfiguration and redefining of land and the registration of same to describe and define ownership of that land.

Site Review: Arranging for the authorized or permitted uses of land and the structures upon that land. For us, site review is limited to commercial uses and structures including multifamily housing complexes (more than 2 units).

RSA 674:4 Board’s Procedure on Plats
 This passage (Through its Subdivision RSA 676:4, IV) describes in detail what is to be done with plats or plans submitted to the Board and how it is to be done.

(A side note: I took it apart sentence by sentence and action by timeframe to study it. It contains wording that if not used carefully can lead to confusion. Words such as “filed” [in ...676:4, I(a)], “included or submitted” and “submitted” and “accepted” [in ...I(b)], “notice” [in... I(d)(1)], “hearing” and “public meeting” should be attended to in context as they have specific meanings. Also “conditional approval” and “final approval” entail quite different follow-up actions by the board.

In New Hampshire statutes, a ‘plat’ is defined as a map of a specific land area whose boundaries are defined by metes and bounds. A plat may show:

1. Newly created parcels, streets, alleys and easements as in a subdivision; or
2. A lot-line adjustment or site plan depicting existing parcels defined by legal descriptions contained in deeds, grants or other legal documents.

Often the words plat and plan are used interchangeably, however, note they are not equivalent in meaning.

The remaining chapters (673 through 678) layout the detailed requirements whereby the substantive and procedural rights of parties are to be protected in those zoning and related regulatory documents authorized to be adopted, promulgated, amended and enforced by the Municipalities.

I don’t mean to imply that we’re done with the RSA’s – far from it. It is the main reference work and source of guidance when issue arise regarding application of the Regulations and Rules of Procedure.

Also the Board does not (or I should say “should” not) reserve all its activities to review of plans. We have also in our charge the Master Plan, Capital Improvement Program, and the Official Town Map where the RSA’s provide responsibilities and authority.

As for the topics ahead:

Using the Manuals of Regulations (Subdivision and Site Review); Rules of Procedure, and Meeting Processes (Minutes, Discussions, Motions, Votes.). Whichever you feel will best serve you at this time.

When next we meet we can go over this, branch to your choice of one of the above topics (or both).

[Up to here – sent to Bob on 5-24-14]