

## PLANNING BOARD MEETING OF May 8, 2012: Town Hall Banquet Room

### I. ADMINISTRATIVE BUSINESS

Chairman Wayne Hayward – Opened the meeting at 6:30 p.m.

#### Quorum/Attendance

Members Present - Chairman Wayne Hayward, Albert Borges, Frank Budryk, Rene Fleurent, Peter Nopper and Gary Staffon

Members Absent – Jeff Lucas and Joseph Morra

Planning Director, William Roth was also in attendance.

#### Acceptance of Minutes of April 3, 2012

Gary Staffon moved to accept the minutes of the meeting on April 3, 2012, and was seconded by Albert Borges. The motion passed by unanimous vote.

#### Planning Board Bills

1) Staples -\$49.29

Gary Staffon moved to pay this bill, which was seconded by Peter Nopper. The motion passed by unanimous vote.

2) SRPEDD – Annual Meeting-\$315.00

Gary Staffon moved to pay this bill, which was seconded by Chairman Hayward. The motion passed by unanimous vote.

3) Monaghan Printing –Envelopes: \$68.00

Gary Staffon moved to pay this bill, which was seconded by Albert Borges. The motion passed by unanimous vote.

### II. Current Planning

#### Receipt of Plans: Special Permit – Robert Leidhold – 23 Summer St (PH-5/22/12)

Chairman Hayward- This is a request to put in an accessory apartment.

William Roth – The public hearing will be set for the 22<sup>nd</sup>.

Chairman Hayward - For many years they were handled as in law apartments by the Board of Appeals. We've only had 2 or 3 of them. My only concern is the word shall in the text of the bylaw. My understanding is that he's only got a lot of 12,000 square feet. So, he's short by 10,000 square feet.

William Roth – I think debating this is prejudicial to the applicant and his application. You're prejudicing the Board on this application. I'm confused why we are debating this now. This agenda item is to inform the Board that a Public Hearing will take place on May 22<sup>nd</sup>.

Chairman Hayward – We're not discussing the application.

William Roth – I respectfully disagree.

Rene Fleurent – I want to make sure he complies before he spends the money on the hearing. They're tying our hands with the word "shall".

William Roth – The notice and abutter letters have already gone out so funds have been expended. I'm not discussing this anymore. This is not the forum to do so.

Chairman Hayward – Can we waive 1,000 square feet unit requirement.

William Roth – Yes, the Building Commissioner and I both feel that the Board through the Special Permit process can waiver from any of the standards. In fact this Board waived this exact same requirement on another application. I'm done discussing this.

Rene Fleurent – I've seen a circumstance where someone was given a three unit approval. Can the ZBA issue a variance?

William Roth – I'd have to look into this.

Rene Fleurent – How do we prevent someone from coming in front of this Board and requesting this?

Chairman Hayward – They need to meet the requirements under the application. Let's say someone wanted to apply for a Form A with only 50-feet of frontage.

William Roth – I would try dissuade an applicant from applying because the Form A requirement is very clear. Do you meet frontage or not, the Board does not have any discretion in that type of action. However, the Special Permit process gives the Board great latitude.

Chairman Hayward - Even if they meet all 4 criteria, we can still deny. I'm trying to figure out what can be waived and cannot.

William Roth – You are pre-judging this application before they appear.

Rene Fleurent – Can the Board of Appeals decide this?

Chairman Hayward – No, sir. The only relief is the Superior Court. Should we move forward?

William Roth – Yes.

Rene Fleurent – Can we offer a waiver if they don't comply?

William Roth – Yes

Rene Fleurent – We do have some flexibility. This will make anyone who wants one of these to apply for one think about it.

William Roth - This is prejudicial and wrong and you need to move on to the next agenda item.

Chairman Hayward – Let someone else run the meeting, then. I was speaking to a code.

Rene Fleurent – I think we should give this gentleman a public hearing.

Chairman Hayward – Would my argument hold up in court. Could I deny?

William Roth – You need to move on to the next agenda item.

Approval of Plans: None

### **III. LONG RANGE PLANNING**

#### 1) Chapter 316 Procedural Rules: Street Acceptance Procedure Flow Charts

Chairman Hayward – There are two flow charts. Street Acceptance with Plans and Legal Description, and Street Acceptance and use of Engineering Funds. I believe the second one is pretty well finished. Is there any kind of time limits?

William Roth – With regards to use of Engineering Funds request, the Selectmen have authority at that point and then hire the engineer to get the layout surveyed. I do not know of any time line, except having the plan and legal description completed in time to get it published in the warrant book.

Chairman Hayward – Are we not using the deadline within the Town Code of the second Thursday in November?

William Roth – I do not have that in the chart. Since I have been here, the Selectmen typically call for Street Acceptance articles and set a deadline in January. I will look into the Code.

Chairman Hayward- Please see if there is a deadline and report back to us. If there is just one street, there is no sense in having a vote. It's a beef between the Selectmen and Board of Public Works. The point is that government officials see this. We should post this on line. The only correction on the Street Acceptance with Plans and Legal Description is to change application to petition. If there was one owner on a house, would we notify them? 75% of the abutters should be in the code.

William Roth – Yes all abutters have to be sent notice on street acceptances.

Chairman Hayward – This takes a majority vote of Town Meeting?

William Roth – Yes.

Chairman Hayward– Let's keep working on this a little more.

#### 2) Washburn Avenue: Subdivision Plans Endorsement and Security

Mr. Roth has spoken with the Engineer and we are waiting for covenant and the Mylar.

### 3) Chapter 322 Technical Specification: Chip Seal

William Roth – Reviewed his recommendations on how to add Chip Seal as an option in the subdivision regulations. He also indicated that the Board had approximately \$800 in the Contracted Services Budget, which would be more than sufficient to cover the cost to have GCG Associates, Inc. (GCG), the Board's Consulting Engineer, to prepare the detail drawing.

Chairman Hayward – The BPW needs to recommend when this should be used.

William Roth – The way the code is written it indicates “may be allowed in special cases”. I created an appendix E, which is the detailed standard the BPW gave us. We can add it as an appendix or just reference the Public Works standards. If they change it, we have to change it again. This is a decision of the Board.

Chairman Hayward– I imagine they would change recommendations.

William Roth – They are setting their standards.

Chairman Hayward – But it's the Town's standard; a double standard. Whose is it? I think Potter Street makes perfectly good sense.

William Roth – If you went on line, you will see all of the Planning Board's regulations, applications or a link to the State Law. The Planning Board has to go through a formal Public Hearing process and in some cases Town Meeting approval to enact regulations. This is not so for other Town Departments who merely vote on a policy or regulation, and may make it available online. I recommend that you include Appendix E so someone who is looking at the Subdivision regulations can have all the information they need in that one document.

Chairman Hayward – I would defer to an Engineer on the detail drawing.

William Roth – I will hire GCG, and specify that they don't go over the funds of the Planning Board.

Gary Staffon moved to hire GCG to prepare the Chip Seal detail and not to exceed \$800. Rene Fleurent seconded. The motion was passed by unanimous vote.

### 4) Chapter 198-29.5 Wind Energy Facilities: Bylaw Review

Chairman Hayward – We tried to get an Article on the Special Town Meeting. Moving forward, we were going to look at the bylaw a little further. We don't need a moratorium.

William Roth – A moratorium would be a Bylaw Amendment and the Public Hearing could not be longer than six months out from Town Meeting. If the Windwise group wanted to proceed with a moratorium for the May 2013, Town Meeting then they should submit the proposed Article to the Selectmen around Thanksgiving. I recommended to them that they work with the Planning Board on a revised bylaw. If they didn't agree with what was being presented, they could submit a moratorium article at that point.

Chairman Hayward – It wouldn't mean a permanent ban. Once we post the public hearing, that would itself be a moratorium.

Ken Pottel (Windwise Fairhaven) – We have a number of people reporting health problems to the Board of Health. So, this will become transcendent because what we fear is happening all of the time. As we go into the neighborhoods, we will give information. I think the Planning Board is going to want to see this information.

Chairman Hayward – We will be looking to the Board of Health and getting their inputs.

Dawn Devlin – Right at this moment, there could be a contract being hammered out for more turbines.

Chairman Hayward – If the Special Town Meeting Article on height and setback, we tried to do, went forward, it would have created a moratorium of sorts. That didn't happen. We need the Town Planner to get involved and take another look at this as well as some of the members of this Board and anybody who is concerned. I'm thinking this summer and in September conducting some more work sessions and then work on a Bylaw ready by January, for the Selectmen. So, you're looking at a moratorium in January.

William Roth – If Windwise or anybody else wants to give me any information that's relevant in drafting a revised Bylaw or actual new Bylaw language; I would encourage them to submit it. I have a box already. I recommend that they go through their information and distill it down to what affects the code itself. I think there was a lot of miscommunication on what type of information and how it should be presented, so that it is relevant to writing a Bylaw. To start the discussion, I'm presenting a draft that we started discussing in 2011.

Chairman Hayward – If we had something ready for the Selectmen in January, we will have our document. We will have a Public Hearing. Will the Selectmen allow us to change it after the Public Hearing?

William Roth – My goal would be to submit something to them at the beginning of December so we can advertise a hearing in late January or early February.

Ken Pottel – Does that mean that the next day a developer can come in and propose more of these?

Chairman Hayward – Yes, that's true. Nothing stops them.

Ken Pottel – What about a Special Town Meeting this summer? We are looking at getting the signatures for a Special Town Meeting for a moratorium.

William Roth – You need to think about the sequencing of doing that so you do not get hung up on another technicality like at this past Town Meeting. If you wish to proceed on petitioning a Special Town Meeting just for the moratorium, you need to file a petition, with 100 signatures, for a Zoning Amendment for a moratorium, almost the same language you previously submitted. That goes to the Selectmen; within 14 days they send it to the Planning Board, who will then advertize a Public Hearing. Once you know the hearing dates or after the hearing, you would then get the requires signatures to call a Special Town Meeting and give that to the Selectmen, which then have 45 days to call a Special Town Meeting.

Ken Pottel – Does asking for hearings hold all applications?

William Roth – That's a legal issue I can't answer.

Chairman Hayward – I can't tell you that.

Ken Pottel – So we're at the mercy of the developers?

Chairman Hayward – The only thing that can help stop this is you.

William Roth – This will remain on future agendas.

Chairman Hayward– Also, Selectman Espindola asked us to look into a Solar Bylaw.

#### **IV.PUBLIC HEARING**

NONE

#### **V.OTHER BUSINESS:**

##### 1) Town Account Letter: Vote

Chairman Hayward – The Town Accountant would like the Planning Board to vote on who is authorized to sign on various bills, such as payroll, supplies, advertizing, etc.. We voted on this last year. What you voted on last year was to authorize myself as Chairman to sign off on payroll, in my absent Mr. Roth would be the alternate and all other bills would be approved by a majority of the Board.

Rene Fleurent moved to have the Chairman sign the payroll with Mr. Roth as an alternate, and all other bills are to be approved by a majority of the Board. Francis Budryk seconded. The motion passed by unanimous vote.

##### 2) Planning Board Photos: Budryk & Lucas

##### 3) NSTAR Property – Doane Street

William Roth – This has been talked about this for many years. Mr. Roth shows plans and reviews the history of the project. CPC approved with the State, an offer for \$150,000. They said no. Some negotiations have taken place over the years but no agreements were ever reached. Jeff Osuch and I met with NSTAR and they offered the property to the Town for \$150,000. We have to go back to the State and CPC. The second option would be if the Planning Board would agree to a single Form A adjacent to the Doane/Laurel Street intersection then they would donate the remaining acreage.

Francis Budryk–Where is this property?

William Roth –The property is approximately 4 acres on the south side of Doane Street where Laurel Street ends. The property is adjacent to Fort Phoenix State Land.

Chairman Hayward – Would they meet our regulations?

William Roth – The Form A lot would comply but the Planning Board would have to make a determination that the frontage was sufficient. NSTAR said we could have input on the lot configuration and size. We would need to address having a drainage swale installed adjacent to the Laurel Street right-of-way, since the drainage from the end of the street drains over this property. We would need to make accommodations if they hit the old “Rogers Drainage System,” to re-route it like the other adjacent home owners have done in the past.

Gary Staffon – This will come off the tax rolls.

William Roth – Yes, but the taxes NSTAR pays is minimal and the one house lot should make up that. I think the Board should also consider the public benefit of getting this as conservation land and public access to the Fort Phoenix.

Rene Fleurent moved to have the Board consider the one Form A lot with remainder donated to the town. Francis Budryk seconded. The motion passed by unanimous.

## **ADJOURNMENT**

Gary Staffon moved to adjourn the meeting, which was seconded by Francis Budryk. The motion passed by unanimous vote. The meeting was adjourned 8:51 p.m.

Respectfully Submitted,

William D. Roth, Jr., AICP  
Planning Director