

**Fairhaven Planning Board
December 6, 2016
Minutes
Town Hall East Room**

Mr. Hayward opened the meeting at 6:30 p.m. and noted they are being recorded on the Government Access Channel.

Present: Chairman, Wayne Hayward; Vice Chair-Gary Staffon, John Farrell Jr., Rene Fleurent, Jeffrey Lucas, Clerk-Peter Nopper, and Ann Richard.

Absent: Cathy Melanson

William Roth, Planning Director, was also in attendance.

Acceptance of Minutes: November 22, 2016

Gary Staffon made motion to accept the minutes and was seconded by John Farrell, Jr. The motion passed 6-1, with Jeffrey Lucas abstaining.

Wayne Hayward advised the Board they were still working on receiving the September minutes completed for two meetings and one meeting in October. He thanked Pattie Pacella for doing the minutes in a timely manner.

Bills:

1. Office Supplies – Monaghan Printing - \$72.00

Bill Roth advised the members that this bill was for Planning Board envelopes.

Gary Staffon made a motion to approve the \$72.00 for the Monaghan Printing bill and was seconded by Jeffrey Lucas. The motion passed unanimously.

B. Current Planning: None

Receipt of Plans: None.

Approval of Plans: None.

Revised plans: None.

C. PUBLIC HEARING:

1. Repetitive Petition – VCORP, LLC (2B) – Charity Stevens Lane, Map 40, Lot 14 (cont. from 11/22/16)

Steven Gioiosa of Sitec, Engineering was on hand with the applicant, David Vermette.

Mr. Gioiosa began explaining that the Planning Board had approved a Definitive Subdivision in the past. He said that Planning Board reviewed the legal frontage, and the access road. He said the bulk of the 9 ½ acreage site was wetlands, but there was enough dry land for a single family that was proposed. Mr. Gioiosa explained the process that they needed to go through, which was Conservation Commission, which came with an Order of Conditions; Board of Health, which was approved and they had to go in front of the Zoning Board of Appeals (ZBA), for the review under the Nasketucket River Basin District of the zoning by-laws. He stated that under this by-law, they required a Special Permit for construction of a leaching field (ie: septic system) in the river basin. Mr. Gioiosa stated that the night of the ZBA meeting, he was out of the country and the applicant was in Arizona, so no one attended.

Mr. Gioiosa stated that he has reviewed the tape from the ZBA meeting that evening and they were provided input from the abutter, to the site regarding storm water drainage but they did not consider or discuss the leaching field or economic viability of using the site. He stated because of this lack of consideration of the two zoning by-law requirements for the granting of the requested Special Permit, it is their position that there exists specific and material changes in conditions which, if presented to the ZBA, would allow for a favorable decision regarding this project.

Mr. Gioiosa explained in order for the Planning Board to allow a Repetitive Petition to be made, documentation must be provided to the Board illustrating how the request is materially different from the request denied by the ZBA. He explained the material changes were: A) Order of Conditions – the ZBA did not have access to the Order of Conditions which was signed and issued by the Conservation Commission on September 12, 2016. B) Roof drain recharge – that the roof drain recharge system depicted on the approved septic system plan was not depicted on the original Subdivision plan and profile sheet; it was subsequently added to the plan and this new plan is part of the proposed Repetitive Petition to be considered by the ZBA. And C) The ZBA decision which was recorded with the Town Clerk on September 20, 2016, states that the petition was for a Special Permit for a single-family home, when in fact the referenced Nasketucket By-Law only regulates leaching field and not single family home construction.

Bill Roth reviewed his memo dated November 15, 2016. He read under Staff findings that he had reviewed the request and the ZBA file. Mr. Roth stated that the ZBA file consisted of an application, Building Department-Board of Appeals denial form, 300-foot abutter list and a set of plans. He stated there was no other information within the file, no Staff report with findings or recommendations, no copy of the notice that was mailed to abutters, no copy of the news paper legal ads, no copy of the fee that was paid, no transmittal to the application and engineer notifying them when the Public Hearing was scheduled. All of which would be typically found in a file for a Special Permit. Mr. Roth also reviewed the material changes to the plans and overall submittal as identified by the applicant. In conclusion, Mr. Roth recommended an approval for this Repetitive Petition.

Mr. Roth read a letter that Jeffrey Lucas filed with the Town Clerk that discloses his present job is a company that does business with VCORP, the letter was reviewed by Town Attorney, Thomas Crotty and determined that because Mr. Lucas is not gaining anything directly from VCORP that by filing this disclosure with the Town Clerk he wouldn't be violating any ethic law and would be able to vote this evening.

Wayne Hayward stated that he also reviewed the ZBA meeting of that evening and that the Planning Board approval didn't come up at all during the meeting. Mr. Hayward felt that as a ZBA member, they should want to know that information. He said he does not have an issue with Repetitive Petition.

Bill Roth said that the ZBA has not routed any Special Permits or Variance for review and comment by him or on behalf of the Planning Department. Mr. Roth explained the routing list that the Planning Board goes through for their Special Permits and all development applications, which include, but not limited to Mark Rees, Fire and Police Departments, BPW, Board of Health, Conservation Commission Agent – Wayne Fostin, Assessor's Office and Wendy Graves, Finance Director. He said that in review of the file, he was never routed any information from the ZBA regarding this application, because had he, he would've explained what the Planning Board had already done with the applicant, and they would've at least had that information.

Wayne Hayward said he did not want to pick on another Board; however, they really need to set a procedure for Special Permits.

Gary Staffon asked why the applicant didn't go to the ZBA first.

Mr. Gioiosa said that for Variances they are required to go to the ZBA first; however, since this was the Nasketucket By-Law they were required to go to the other Boards first.

Jeffrey Lucas said he thought that the question on hand tonight was that the Board had to decide and agree that there is a substantial change to move forward.

Mr. Gioiosa stated after the denial he did speak to Mr. Wayne Fostin and he confirmed the discussion at the meeting was drainage not the leaching field.

Wayne Hayward advised everyone that the change had to be "material" change, not to be confused with "substantial" change.

Rene Fleurent agreed that the ZBA had no policies and procedures in place for Special Permits, and he debated between if there is substantial or material change to move forward.

Jeffrey Lucas made a motion that the information presented tonight displays a material change to approve the Repetitive Petition and was seconded by John Farrell, Jr.

Wayne Hayward, although appreciating the motion did state that it was premature as Mr. Roth still wanted to share information and there was an audience member who also asked to speak on the situation.

Mr. Roth simply explained to Mr. Fleurent's last comment that the information presented tonight was indeed a material change of the overall application materials and not just changes to the plans, additional information such as, the Order of Conditions not at the time of the ZBA hearing could be considered a material change as well and it was his recommendation that it should be approved.

Audience member and direct abutter, Mark Monteiro, who lives at 30 Charity Stevens Lane expressed concern over the drainage and water that pools in his backyard presently without anything being back there. He said that he is not out to stop someone from building a house in that area; however, he does have concerns about the sitting water and what damage he will have to his septic in five to seven years with more water drainage.

Mr. Hayward thanked him for his comments and stated that the question tonight is not to change the decision of a subdivision. He stated that one of their conditions spoke about the maintenance clause regarding drainage; but tonight was simply about was their enough information presented to move forward on the Repetitive Petition.

Gary Staffon moved the question. The Board voted with a 7-0 unanimous vote that there is enough significant material information to approve the repetitive petition.

D. LONG RANGE PLANNING

Authorize Chairman to sign Master Plan Contract with VHB.

Mr. Roth advised that VHB has been awarded the Master Plan Contract in the amount of \$107,849. The Board will need to give the Chairman authorization to sign the contract.

Gary Staffon made a motion to allow the Chairman-Wayne Hayward to sign the VHB contract and was seconded by Jeffrey Lucas. The motion passed unanimously.

E. Correspondence: None

F. Other Business:

Bill Roth advised the Board that the agenda for next week's meeting is in their packet and for them to take it home and review.

There was discussion on if next meetings would take place and if everyone had to be present. Ann Richard advised she would not be able to attend next week's meeting, as well as John Farrell, Jr. said he would not.

Wayne Hayward said that the meeting would be a discussion only and if moved forward they would then hold a Public Meeting.

Gary Staffon made a motion to adjourn and was seconded by John Farrell, Jr. The motion passed unanimously.

Meeting adjourned at 7:32p.m.

Next meeting, December 13, 2016.

Respectively submitted,

Patricia A Pacella
Recording Secretary