

Official
As of 01/09/12

HOOKSETT PLANNING BOARD
MEETING MINUTES
HOOKSETT MUNICIPAL BUILDING
Monday, December 5, 2011

CALLED TO ORDER

Chair J. Gryval called the meeting to order at 6:00pm.

ATTENDANCE – PLANNING BOARD

Chair John Gryval, Vice-Chair Dick Marshall, Frank Kotowski, Town Administration Rep. Leo Lessard (DPW Director), Tom Walsh, Martin Cannata, David Rogers, Town Administrator, Dr. Dean E. Shankle, Jr. (arrived 6:10pm), and Brendan Perry (arrived 6:20pm).

Absent: Yervant Nahikian.

REPRESENTING TOWN OF HOOKSETT

Town Planner, Jo Ann Duffy.

APPROVAL OF MINUTES OF 11/07/11 & 11/21/11

F. Kotowski motioned to approve the minutes of 11/07/11. Seconded by D. Marshall. Vote unanimously in favor.

D. Marshall motioned to approve the minutes of 11/21/11. Seconded by M. Cannata. Vote in favor. T. Walsh abstains.

J. Gryval: David Rogers will be voting tonight in place of Jack Mudge until Brendan Perry arrives. Then Brendan will vote in place of Jack Mudge.

PUBLIC HEARING - AMENDMENT TO CONDITIONAL APPROVAL & WAIVER REQUEST

1. **BETTE L. BLAKE TRUSTEE/EXECUTOR OF ELWIN BLAKE ESTATE (#11-08)**
26 Londonderry Tpke., Map 49, Lot 47
 - Amendment to Planning Board conditional approval of November 7, 2011 to allow a bond as an acceptable form of surety for site plan improvements for the proposed construction of a 48' x 80' office building on a 1.1 acre lot
 - Waiver request to Development Regulations Section 18.03 Acceptable Forms of Surety

J. Gryval: This applicant is requesting a waiver to Development Regulations Section 18.03 Acceptable Forms of Surety to allow a bond for the performance surety.

D. Marshall: I am stepping down from this application.

Paul Scarpetti, Sierra Homes: Our waiver is to post a bond in lieu of cash or LOC. The reason for hardship is that the bank doesn't feel comfortable putting money forward.

F. Kotowski: Is the amount of the bond estimate enough?

J. Duffy: Referred to Stantec letter dated 12/02/11; we now take 30% of the site (\$59,389.20).

P. Scarpetti: The site contractor will post the bond to the Town of Hooksett.

T. Walsh: Does the amount include all site work (i.e. paving, street lights)?

J. Duffy: Yes. Also the old way included a 10% contingency and 10% escalator.

M. Cannata: What was the bank's position? If we are expecting to receive bonds again, we need the common thread.

P. Scarpetti: The process for a construction project is I do the budget for the bank. They accept it. We are paid on a progress schedule. They come out and inspect the site. To ask the bank for \$60,000 right now, we don't have anything in the ground. A LOC would put us on the hook for the same amount.

***F. Kotowski motioned to grant the waiver to Development Regulations Section 18.03 Acceptable Forms of Surety. This will allow the applicant to provide a bond as the surety for site improvements. Seconded by T. Walsh.
Vote unanimously in favor.***

P. Scarpetti: Surety is a warranty work has been done. A performance bond guarantees we will do the work.

CIP PRESENTATION

2. CAPITAL IMPROVEMENT PROGRAM (CIP) COMMITTEE 2012-2013 - 6 YEAR (2012-2018) CIP PLAN PRESENTATION.

Marc Miville: Nancy was going to be an advisor to the CIP Committee for tonight's presentation. The CIP Committee has decided to educate the public even more on the 6 year plan and the urgency. I will go through the CIP Plan per section:

GENERAL GOVERNMENT

- **Town-wide Computer Development Capital Reserve Fund:** \$10,000 every year for next 6 yrs. \$10,000 is to get it into the mind of the voters. We do need a lot of it, but not a whole lot now. Last couple of years hardware has been replaced.
- **Revaluation Capital Reserve Fund:** This is crucially important to fund in the next 2 yrs. They want to spend the beginning of 2014. The fund balance is \$143,000, and they need the whole amount to allow the revaluation to occur.
- **Master Plan Capital Reserve Fund:** This is important over the next 3 yrs. It is a lower amount the last 3 yrs. The 2004 plan needs to be updated. Most of the plan has been accomplished. The Town Planner can work on this with the Planning Board.
- **Feasibility Study for Southern Leg of Parkway:** The consensus of the CIP Committee is to remove this item. It has been on the plans for the last 40 yrs. or so. Our advice to the Planning Board is to remove it and put the funds back in the general funds. The Committee couldn't remove it based on process.
- **Pickup Truck for Building Inspections:** This is not necessary until 2014.
- **Improvements and Infrastructure of Conservation Land Capital Reserve:** This is a new line item for infrastructure changes on conservation property (i.e. trail maintenance). The name was changed to "improvements and infrastructure".

D. Marshall: The feasibility of the parkway study, the university reserved ROW for a by-pass. If we cut this out, SNHU will eat up that land. If they do that, then there is no way of ever getting that land for a road in the future. I am hesitant to let it go. Maybe we could have it out in the distant future.

M. Miville: That is why we pushed it out. It has been on for 40 yrs. and voted down every year. We questioned why we still have it. The decision is up to you.

Nancy VanScoy: (from the audience) The reason for pushing it off or removing it completely was that the presenter at the CIP Committee did not sell it as something feasible to happen in the future. I encourage you to read through the CIP minutes. If it is important to the Planning Board, then a more detailed presentation should be made to the CIP Committee in the future.

M. Miville: If the Board does not mind, I would like to have Nancy sit up here with me at the presentation table.

M. Cannata: The line item for improvements and infrastructure to conservation land is not for any land acquisitions?

M. Miville: No land acquisitions. It is in support of the land already acquired. We decided to take "maintenance" off and rename improvements and infrastructure (i.e. parking lots for trails).

FIRE-RESCUE

- **Fire Apparatus Capital Reserve Fund:** \$50,000 across the board. It is an ongoing capital reserve fund. It combines all apparatus into one fund. Over period of years it will allow more flexibility to purchase vehicles.
- **Boat #1 and #2:** These are required to remain on the CIP, but based on CIP Committee discussions with Chief Williams, they are technically not CIP items except that they have engines. Chief Williams is OK with taking these out of CIP and putting it in his budget.
- **Car #2, #3, #5:** There are several vehicles spread over the years. The only vehicle needed now is car #5. It is an SUV with 126,000 miles and an urgent need. It has \$30,000 for this year.
- **Rescue #1:** This has \$250,000 the last year of the 6 yr. plan. It is paid out of the ambulance revolving fund.
- **SCBA Replacement Capital Reserve Fund:** This is for the air packs and oxygen. They cost \$300,000, and they have \$91,000 now. It is a steady \$20,000 each year. N. VanScoy: The request was to zero out this year, but we added money in.
- **Construct Station off of Rte. 3A at Exit 10 (Station #3):** – There is no property now, but they are looking at somewhere around the exit 10 area.
- **Fire Engine for Station #3:** We pushed this out of a 2016-2017 lease. We decided to purchase it in a 3 yr. period.

POLICE COMMISSION

M. Miville: The only item is the **Emergency Radio Communications System Development Fund:** This is for the radio system and to support the multiple towers. \$100,000 was the original request. At the advice of the CIP Committee, we spread it out. Their current system is getting antiquated, and there will be no support of parts in 5 yrs. This is crucial for Town communications. First 3 yrs. at \$50,000 each year, and then \$25,000 for the last 3 yrs. to support long-term.

PUBLIC WORKS

- **Drainage Upgrade Capital Reserve Fund:** \$50,000 each year. It is for drainage upgrades for the entire Town. Last year it was for the Beaufort area. Now it has been changed to town-wide. Dept. head Lessard stated there is an urgent need for South Bow Road.
- **Plow Dump Truck Capital Reserve Fund:** The Town Administrator recommended \$80,000, and we agreed. They plan on purchasing a new dump truck in Town every 2 yrs.
- **1 Ton Dump Body:** Leo agreed it could be pushed out to 2013-2014.
- **Sidewalk Plow:** This was pushed out another year.
- **Loader (Highway):** We pushed this out to 2015-2016 and Leo was OK.
- **½ Ton Pickup (x2) Backhoe, Crew Cab Highway, Lee Roy Roller (Highway), 4x4 Highway, ¾ Ton Pickup (Highway), Utility Body 4x4**

- **Parks and Recreation Facilities Development Reserve Fund:** This is for a bathroom at Donati Field. It is \$10,000 across the board for facilities maintenance.
- **1 Ton Dump w/Plow, 4x4 Truck (Parks & Rec)**
- **Town Building Maintenance Capital Reserve Fund:** \$150,000 is crucial this year. We want to get to \$350,000 - \$400,000 for the safety center maintenance, because it didn't get prior vote. Flashing and roofing is needed this year. We are moving forward with \$75,000 in future years.

RECYCLING & TRANSFER

- **Automated Collection Equipment Capital Reserve Fund:** It has \$10,000, then \$20,000, then \$30,000 even though the program has not started and we haven't received the trucks yet (they have been purchased). There should be an ongoing amount to add up over 15-20 yrs. for funds. The \$10,000 now is to make an awareness to citizens it is needed.
- **Upgrade Diesel Tank & Fuel Dispenser Capital Reserve Fund:** DES has concerns with the current tank, and they are required to fix it in the next 2 yrs. \$25,000 this year and next. N. VanScoy: This must be done or we lose our permit. This saves the Town a lot of money to store fuel on site. M. Miville: It is also used by Recycling & Transfer, DPW, and Fire Departments. It is a replacement for a rusting tank. It is not leaking, however it is not functioning. N. VanScoy: It is for containment and sub-pumps. They need to be modified to meet DES requirements. \$50,000 includes upgrades to pumps for accountability to know who is pumping and for what vehicle.
- **Peterbilt Tractor to the Freightliner Tractor:** These are revolving funds and paid by the revenues generated. N. VanScoy: It is on the plan as a full amount, because they don't know the amount of revenue sources.

SCHOOL DISTRICTS future projected needs

M. Miville: The CIP Committee discussed if these are valid CIP items. They are asking for a lot of money. Dr. Littlefield recommendations are there is nothing urgent, but they need to be on the CIP for the voters and the Planning Board to be aware what their needs are going forward. We leveled out for no tax spikes.

- **HVAC Upgrades:** Underhill is the majority in 2014-2015.
- **Kindergarten Upgrade at Memorial:** This is a long-term goal to reconfigure classrooms from K-2 at Underhill to K-5 at both Underhill and Memorial schools. To upgrade the Memorial school for kindergarten the State requirement is 1,000 sq. ft. and have bathroom facilities. We place it in the 6th yr.
- **Paving Underhill & Preventive Maintenance on Memorial & Cawley:** This is for the parking lots at Underhill, \$90,000 this year for paving. \$37,000 next year is for preventive maintenance
- **Roof Replacement at Underhill & Reseaming at Memorial & Cawley:** We spread this out over 4 yrs.
- **Sports Field Expansion at Cawley:** The funds are in the 5th & 6th yr. plan.

- **Generator at Underhill:** This is the only Hooksett school without a generator. Although it is not urgent, Underhill could be used as a shelter for the students to provide them heat and warm meals.

FINAL TOTALS

N. VanScoy: For the final totals, keep in mind revenue funds that potentially could be subtracted from the bottom line taxation.

B. Perry: How to we compare to years past as far as allocation of funds?

M. Miville: Last year 2011-2012 we recommended \$875,550. By the time it went for election it was \$400,000. We are going to try to educate the public the CIP Plan is not just a 1 yr. plan, it is a 6 yr. plan. If we keep cutting every year, there will be unattainable spikes.

N. VanScoy: There are a couple of substantial funds that are savings accounts to be prepared for needs in the future. It will take a lot of educating the public in order to have them understand it is not something specifically, but for future needs.

F. Kotowski: In 2017-2018, isn't it the kindergarten that raises the bottom line?

M. Miville: Yes, and the fire station #3 and we don't know if that will ever happen or not. It is just conjecture.

F. Kotowski: Is this the first time we are hearing about the kindergarten?

N. VanScoy: No, it was there last year.

M. Cannata: Is paving Underhill a safety issue?

M. Miville: Yes, Dr. Littlefield stated it is a safety issue and water gets under the pavement.

N. VanScoy: Dr. Littlefield said the roof and paving are the most urgent.

M. Cannata: 2-3 yrs. ago roofing was on the CIP. Is it for a new liner?

N. VanScoy: If not for the repairs made a few years ago, then this would need immediate replacement. Because of those repairs "temporary fix", it can be addressed in the future. Keep it on the CIP.

M. Cannata: What is Cawley's age?

M. Miville: 2003.

M. Cannata: It seems premature for Cawley to need a new roof. My roof is 20 yrs. old.

M. Miville: There is no data supporting their urgent comments, it was their opinion.

M. Cannata: It could be a fund tapped later on vs. needed now.

N. VanScoy: Certainly it could be. We requested for future CIPs to break it down more. Roofing and reseaming at Underhill, Memorial, and Cawley. Better if broken down "roofing at Underhill".

M. Miville: That will be in our CIP self-audit.

J. Gryval: The southern leg of the parkway is something we have been working on for years. The college is looking for North River Road to be on their campus.

L. Lessard: I would like to see it stay in the CIP.

T. Walsh: Leave it and push it out in years.

D. Marshall: Show it in our Master Plan and prove to the university it should stay where it is. The only other landowner is MS&G.

T. Walsh: Do we have a ROW on their land to get to the school?

F. Kotowski: It is important to leave the money there. If SNHU decided to build, we lose forever the ability to connect if the time comes.

J. Gryval: When SNHU comes in for future projects, they are aware they can't build in the area set aside for the parkway.

M. Cannata: Isn't the clock ticking for the MS&G 10 yr. window for the ROW of the southern leg? Then it is back to their domain.

D. Marshall: They can do that, except any time they approach us to develop that land, we will be bring up the issue of the ROW. It is up to this Board over time, to set aside the ROW. We may end up as a community to purchase it over time, but we can say that.

M. Cannata: I thought it was a donation. We have the clock ticking in terms of CIP.

D. Marshall: We should maintain the reserve of land from any development for that southern parkway land.

M. Miville: For the boat lines, my understanding from the Town Administrator is that the dept. head needs to remove these from the CIP and put in his budget. Chief Williams said he needed to talk to Dr. Shankle. Boats 1 & 2 are now fishing boats and should be rescue boats.

J. Gryval: I thought they had a boat donated to them.

M. Miville: Yes but it was a fishing boat.

N. VanScoy: Should we keep them in the CIP or move to the budget line? It qualifies for CIP, because they have engines.

J. Gryval: Personally I think they should leave them in CIP, and work on it over a period of time vs. in the budget as one purchase.

M. Miville: Boat #1 is a 1998 and more urgent than the boat #2 donation.

M. Cannata: Using a fishing boat for rescues, I see a liability if you can't rescue and then a fatal happens. Where does that leave the Town?

T. Walsh: I thought it was a request from them to remove it from CIP to get it sooner from their budget.

M. Miville: It was a request from Chief Williams, but the CIP Committee had no authority to remove it from the CIP.

D. Shankle: I thought that because they were motorized vehicles, it had to be in CIP.

M. Miville: CIP is OK with having it in CIP.

J. Gryval: Leave it wear it is for now.

M. Cannata: Construction of fire station #3, it is like a bad dream that comes back to CIP every year.

M. Miville: We have to address it every year, because it goes to Town Council. It is up to negotiations with the gentleman who owns the property. The Town Council agreed that the Town can only afford two fire stations.

J. Gryval: Arleigh Greene was to give the land, but at first it didn't work out. Was the last property OK?

N. VanScoy: The small piece across from BJ's was not feasible. The CIP position is there is a need for a third Fire Dept. It was sold strongly by Chief Williams. He believes the need is in the near future.

M. Miville: Especially if they build out exit 11.

J. Gryval: A study for fire station was done.

J. Walter: I am also on the CIP committee. Another possibility was sharing a fire station with Manchester. This will cut all sorts of costs in half. Manchester has property available in Manchester.

F. Kotowski: Richard Danais has land in Manchester and was going to trade the fire station to develop the southern end of Hackett Hill Rd. Richard couldn't come up with money to build the fire station, and now that is a done deal.

D. Shankle: When we update the Master Plan, we should talk about the third/shared fire station under public facilities.

J. Gryval: We were offered a large enough piece for a fire station from Arleigh Greene. Last time the problem was with the piece he offered.

J. Duffy: The first site was too wet. I thought the Kimball Dr. site was going forward with the process of doing a conceptual of the building. 1 ½ yrs. ago the Council and Town Administrator were working with Arleigh.

J. Gryval: I think we should follow-up on this and button it down. Thank you very much. The CIP Committee completed a lot of work.

D. Shankle: Mr. Chair, we need a vote tonight on the CIP Plan, so that I can present it to the Council at their meeting of December 14th.

***D. Marshall motioned to adopt the CIP 6 yr. plan (FY ending 2013-2018) as presented by the CIP Committee dated 11/29/11 conditional that the Feasibility Study for the Southern Leg of the Parkway remains on both the CIP Plan and Master Plan now and in future years. Seconded by M. Cannata.
Vote 7 in favor. D. Shankle abstains.***

CONTINUED WORKSHOP

3. PROPOSED DEVELOPMENT REGULATIONS

J. Gryval: The most current changes to the proposed Development Regulations are as follows:

- I-6 Added definition for Specimen Preservable Trees
- I-12 8.03 TRC meeting 2 prior to applicant applying to Planning Board . . . for completeness review
- I-13 1) exceptions to TRC meetings
- I-14 4) . . . studies and notes (items 1-4)
- I-15 9.03 lists departments to receive application plans for comments.
D. Shankle: wherever it is listed Building Dept. should be changed to read Building a division of DPW. This is effective 1/2/12.
- I-16 4) Plan review table . . and add DPW Director. Also 4) a) omit "to

- observe any test pits and percolation test
- I-17 9.05 8) Plan compliance monitoring table . . . and add Town Planner
- I-19 10.03 1) If no response is submitted by the applicant . . .public hearing . .
- I-25 5) DPW Director or designee
- I-27 16) DPW Director or designee
- I-28 11.12 second note remove and 1) add (Public and Private)
- I-29 In areas not served by public water . . . remove from this section
- I-38 size
- I-48 1) DPW Director, or the Town Planner
- I-51 9) 674:41, add signage language

D. Marshall: Should we be issuing Cos on houses for these roads? We are telling purchasers use the road, but the Town will not be responsible.

L. Lessard: If we top the road, and then other homes get built, there will be road work.

D. Marshall: Should we grant occupancy permits, when the sign says Town not responsible?

L. Lessard: I have done this in other towns.

D. Marshall: Does it cover you for the inability for safety vehicles to access with the sign?

L. Lessard: If there is an emergency call, dispatch will call us right away. They will tell us that such and such a road is not accessible. We can find out through radio and we would plow the road in an emergency. With trees down from storms in the ROWs, we will call the contractor for an unaccepted road and tell them to remove the trees. I won't neglect all together, but only act if there is an emergency.

- I-52 11 f) DPW Director
- I-53 i) See section 18.03 Acceptable Forms of Surety for details
- I-54 13 located in Building, a Division of DPW
- I-73 18.03 Non-Lapsing Surety Bond and remove sections 18.04 & 18.05
- I-75 4 a) b) remove 10% escalator
- I-76 e) DPW Director or designee, f), g) & h) full sentences 2) a) Building, a Division of DPW
- I-77 issuance of certificate of occupancy 3) a) 4) 3. remove 10% escalator and contingency
- I-78 18.09 in accordance with the laws of the State of New Hampshire
- I-79 19 1) intent to cut

J. Gryval: What is the size of the Intent to Cut form?

J. Duffy: The form is 2 pages. For the Intent to Cut application, I have asked the Assessing Dept. to add our regulations page.

M. Cannata: Common sense of a person doing logging, whoever the logger is will be under some restrictions and they should go to the Town and get what paperwork is required.

J. Duffy: The only reason for the Intent to Cut is through the State. The person logging pays taxes on timber, and that is the only thing assessing is interested in. We can't amend the form, but thought we could add it to our regulations.

D. Shankle: We might want to add or "town ROW". My experience in the past is to have it in their head about taxes and not cutting. Frequently they feel there is no need to come in until they are done. It is an education process to get them to realize where they are cutting and what they are doing to the roads.

- I-84 remove typically
- I-4 add section #24) fire sprinkler systems. The current wording is as follows:

In areas not served by public water supply with adequate fire flow for the proposed development as determined by current ISO criteria, buildings shall be served with sprinklers in accordance with N.F.P.A. standards. In addition, cisterns with approved hydrants conforming to N>F>P>A. standards shall be provided or available within one thousand (1,000) feet of the building envelope on proposed roads.

T. Walsh: Shouldn't we go with legislation passed?

J. Gryval: We don't know where it stands right now.

F. Kotowski: There are 10 towns, Hooksett one, that can elect to continue enforcing.

T. Walsh: It is an unintended consequence of those 10 towns to decide if sprinklers for single or duplex are needed. Why wouldn't we eliminate the requirement, because legislation has passed. We could put it before the voters to see if they want it.

J. Duffy: There is nothing for people to vote on. The Development Regulations are adopted by the Planning Board. The LGC has already said if it is in the regulations, we can keep in there. However, the towns that don't already have it, couldn't add it.

T. Walsh: How does a town that had it end up eliminating it? We granted waivers.

D. Marshall: We can take it out right now, but once we do that we can't go back.

F. Kotowski: We could follow the lead of the people and take it out of our regulations.

J. Gryval: Taking out just sprinklers is one thing, but what about cisterns? If we take out the whole thing, then we lose all control.

T. Walsh: I would like to see it removed

F. Kotowski: Me too.

B. Perry: We start deciding one night to the next and there will be liability. Now the loudest gets the most attention. It is easier for us to have something that backs us. There is too much gray area. I would like to see consistency.

J. Duffy: I have had several discussions with the Deputy Fire Chief, and Fire Dept. They feel very strongly this wording remains. For adding cisterns, ultimately the maintenance and ownership become property of the Town and ultimately increases the budget of the Fire Dept.

T. Walsh: Cisterns are not a bad idea to keep in there. We shouldn't be insisting on mandatory sprinklers.

T. Walsh motioned to remove II-4 #24) In areas not served by public water supply with adequate fire flow for the proposed development as determined by current ISO criteria, buildings shall be served with sprinklers in accordance with N.F.P.A. standards. In addition, cisterns with approved hydrants conforming to N.F.P.A. standards shall be provided or available within one thousand (1,000) feet of the building envelope on proposed roads.

T. Walsh motioned to amend his motion above to read as follows: In areas not served by public water supply with adequate fire flow for the proposed development as determined by current ISO criteria, buildings shall be served with sprinklers in accordance with N.F.P.A. standards. In addition, cisterns with approved hydrants conforming to N.F.P.A. standards shall be provided or available within one thousand (1,000) feet of the building envelope on proposed roads. Seconded by F. Kotowski. Vote 2 in favor, 6 opposed. Motion not carried.

B. Perry: I feel as strongly as Tom to remove it, however let's put this off to our next meeting and invite the Fire Chief to give one last pitch.

D. Shankle: I voted against this motion because: 1) hear from the Fire Dept., and 2) next public hearing I would like to hear from the public. If we vote it out now, then we can't put in back in.

D. Marshall: I voted against the motion based on Dean's comments. We should go to a public hearing with this in it. In the meantime, I want to hear from the Fire Dept. on what they have to say. We should combine Fire Dept. and public hearing comments, before we make our decision. We want to discuss this face-to-face with the Fire Chief.

M. Cannata: Should the Chief also be at the public hearing, so the audience hears his opinion?

J. Duffy: I will invite the Fire Chief(s) to discuss this further with the Planning Board at the Board's meeting on January 9th.

- II-7 11. Mapping is not required in open space areas
- II-10 3.08 Code Enforcement Officer
- III-12 6) Building, a Division of DPW

D. Shankle: The Health Officer is trained on this.

L. Lessard: A lot of towns don't do perc tests.

D. Marshall: It takes 24 hrs. or more for perc tests to watch the water.

L. Lessard: It is timed by the gallons and perc rate per minute.

- III-14 removed natural color
- III-15 3.20 . . . hard copy . . . PDF version to . . . Community Development Dept.
- IV-23,24,25 sample of subdivision or site bond

J. Duffy: Our December 19th meeting has been cancelled; no new applications received. Our next regular meeting is Monday, January 9th. We could hold a public hearing to discuss and vote on the Development Regulations on January 23rd.

OTHER BUSINESS

4. HIGH SCHOOL STUDY COMMITTEE – PLANNING BOARD MEMBER NOMINATION AND APPOINTMENT TO COMMITTEE

J. Gryval: Do we have any volunteers to be the Planning Board rep. to the High School Study Committee?

David Rogers: I will volunteer.

5. PIZZA MAN - ALL OR NOTHING, LLC (#09-12) 254 West River Rd., Map 17, Lot 36 Staff update.

J. Gryval: We received a letter from Mr. Cote's attorney John Bisson. This letter is to be added into the minutes/record: *"Our firm represents Thomas and Lynette Cote, who are abutters to the above-referenced property. As you know, All or Nothing, LLC obtained conditional site plan approved from the Board for its property at 254 West River Road, Hooksett, New Hampshire on or about April 5, 2010. After a compliance hearing, that approval became final on June 2010. Although its plans have altered since the time of the initial approval, All or Nothing, LLC has conducted work on its property based upon the site plan approval. Of particular relevance here, it has excavated significant portions*

of its property. Unfortunately, that work has left the property in a state where it does not comport with either the plans filed with the Board or the Town's regulations. More specifically, All or Nothing, LLC has excavated up to the Cotes' property line without making any effort to reestablish the slope called for in the filed plans or otherwise stabilize the nearly vertical drop it created at the edge of the Cotes' property. Likewise, with its excavation up to the property line, All or Nothing, LLC has eliminated the twenty-five foot buffer required under the Town's Zoning Ordinance between commercial and residential uses. The Cotes have attempted to be patient as they have waited for All or Nothing, LLC to remedy the situation. However, All or Nothing's principals have asserted one issue after another, with the latest being financing when it has come to addressing the site issues. While the Cotes can appreciate the desire of All or Nothing's principals to avoid using personal funds to address the site issue, the fact remains that All or Nothing's principals elected to proceed with site work without financing in place. Thus, they assumed the risk that financing may never materialize. Accordingly, they need to address the deficiencies with their site work even if it means using personal funds. They need to do so now before their work causes harm to the Cote's property. In light of the above, the Cotes request that the Planning Board direct the appropriate Town official to forward a notice of violation to All or Nothing, LLC ordering it to stabilize the slope and recreate the twenty-five buffer by a specific date. If All or Nothing, LLC refuses to respond, the Town should first suspend the use of All or Nothing, LLC's property until the unsafe conditions on the property are remedied by the Town. In addition, the Cotes request that the Town pull the bond posted by All or Nothing, LLC, remedy the deficiencies on its property, and bring an action pursuant to RSA 676.17 against All or Nothing, LLC seeking, in addition to any other relief, civil penalties and restitution for any public funds expended correcting its deficiencies. We request this letter be incorporated in the record of the Planning Board's deliberations regarding All or Nothing's property. Thank you for your consideration and prompt attention to this request.

MJ Coronis: Since the last time here, we have spent the entire time to get the wall built. We met on site with Stantec and Town representatives. We stabilized the property. It is 90% loamed. It is back to a 2:1 ratio.

J. Gryval: What about the 25 ft. buffer on top of it?

D. MacGuire: We held a meeting with staff the middle of last week. We are looking at all different options to get a wall done before winter. We had a meeting out in the field, to discuss another revised plan on the design changes by the contractor. Since the changes would take time, and we would need to come back before the Board for an obligation before winter, the applicant decided to not do the wall but rather stabilize the slope 2:1 with loam and seed. The buffer zone ordinance is vague. We propose two rows of trees (white pines), spaced 15 ft. apart, and staggered at the top area. This should meet the requirements of a buffer zone. We propose to plant the trees in the spring. At this point in the season, white pines would have a high likelihood that we would lose the trees. I will have an exact layout plan and staggering to do in the spring. The applicant currently has a bond in place with the Town. A portion could be used to guarantee the

trees.

J. Gryval: In reading the buffer ordinance, it is not adequate. **Article 10 Commercial District, I Buffer Zones:** *“Whenever a commercial or industrial use abuts a residential use, zone or district, a buffer shall be provided subject to the approval of the Planning Board. The buffer shall be not less than twenty-five (25) feet in width and shall be planted with a dense screen of shrubbery and trees not less than six (6) feet in height at the time of planting. The screen shall be at least fifteen (15) feet in width and shall be maintained suitably by the owner. In order to maintain dense screen year round, at least fifty (50) percent of the plantings shall be evergreens. Existing natural growth may be included as part of the screen. No penetration of this buffer zone shall be allowed. With the approval of the Planning Board, a suitable combination of other elements may be incorporated within the buffer.*

(Amended 5/12/09)”

D. MacGuire: The requirement for screening is 15 ft. in width, 50% evergreens, and no less than 6 ft. in height. We are using 100% evergreen trees at 6 ft. in height. The buffer will grow wider than 15 ft. We will offset two rows of trees on center and they will grow outward as they mature.

J. Gryval: Between commercial and residential uses, the buffer is 25 ft.

D. MacGuire: The 25 ft. buffer zone means no pavement or building. The buffer zone is actually 15 ft.

L. Lessard: The two rows of trees will be staggered.

D. Marshall: From Mr. Cote’s property line, the 25 ft. into this property, where does that end up? It certainly is beyond that rim. The 25 ft. zone ends up in the air. Then you are in violation right away, because there is no safe zone. It has already disappeared. Unless you plant something along the slope like junipers, I don’t see you have a 25 ft. buffer.

D. MacGuire: The existing land sloped away from his property to the Pizza Man site. Now it is a 2:1 slope. There was a steeper slope, and now that has been fixed. The buffer at the top of the slope would meet the intent. I believe Mr. Cote is looking for this, so his house is not as visibly seen from the road.

MJ Coronis: We (Cotes, Doug, Stantec, Town reps.) had a discussion at the bottom of the slope. We all knew the slope would be nothing but trees. Everyone knew it wouldn’t be flat to his property.

D. MacGuire: We could have left the existing area of vegetation. That was not as much as we are proposing (new white pines).

L. Lessard: We know it is on a slope from Mr. Cote’s property to the Pizza Man and that you will have two layers of white pines.

D. MacGuire: There is the first row, then the 2nd row is 10 ft. lower and staggered.

M. Cannata: The pictures distributed tonight, 1) mark where the property line is, and 2) mark where the buffer is. All this is telling me is you have loam and slope. Help me understand the site.

D. MacGuire: The silt fence at the top of the slope is close to his property line. We will start plantings 5-10 ft. off that.

M. Cannata: Out vertically?

D. MacGuire: It will be planted on the slope, but at the top to make the slope 2:1.

J. Duffy: I spoke with Dan today and he looked at the site. The regulations state anything steeper than a 3:1 slope requires matting, and they are not providing that. Dan suggested they have some type of plan to stabilize the slope.

D. MacGuire: We did provide a winter stabilization method for that in the excavation plan. It will be blown hay and tacifier on top of the loam.

J. Duffy: He mentioned the excavation plan, but that was supposed to be temporary. It may be a long time before anything is done to that slope. Will the pine trees be 6 ft. at time of planting?

D. MacGuire: Yes.

J. Gryval: Before Pizza Man excavated, there was a 25 ft. buffer.

MJ Coronis: We worked to the point of the undisturbed. The area was never flat. It was steeper than that.

Tom Cote, south abutter: I have my own pictures from Google earth. They show what it looked like before and after (distributed photos to the Board).

D. MacGuire: There is no question there was a much more significant buffer. My applicant has the full right to develop their property. There was probably 100 ft.+ of buffer. What we are proposing is to fill within what was required. They are responsible for a buffer per the regulations. Just because there was a 100 ft. of buffer before is irrelevant.

B. Perry: I would like to know Dan at Stantec's take on this. If they come to a resolution, are they in compliance? There is one thing being unsightly, but another that they are in compliance.

J. Duffy: They did a good job with the recent slope work. What Doug has just presented tonight, Dan hasn't seen it. At the site meeting, we asked Doug for an updated landscape plan. Dan said if the Town wants to return some of the existing bond (\$22,500), then the

Town should keep some money in case something happens in the winter. You could have Doug submit something in writing.

B. Perry: My take on it, I would really like to hear from Dan on this. Is it a 25 ft. buffer, and are they in compliance.

J. Gryval: Dan is the engineer. He can tell you if the wall is all right. However these are our regulations and the regulations say there should be a 25 ft. buffer between uses.

J. Duffy: The buffered area should not be less than 25 ft. in width and planted dense with trees and shrubbery at least 6 ft. in height and 15 ft. in width.

J. Gryval: I want to see a 25 ft. buffer there.

D. MacGuire: What we are doing is above the intent of the ordinance.

M. Cannata: What I am struggling to try to understand is did the owner lose any of his property from the Pizza Man disturbing of the land that is there, and the land we are disturbing.

J. Gryval: But what he did lose is the 25 ft. buffer.

MJ: You think the buffer needs to be flat. Where does it say it has to be flat?

T. Cote: It was never been that steep. I would like to see more horizontal grading.

MJ Coronis: Why are we going back to change the rules now?

J. Gryval: A 25 ft. buffer is a 25 ft. buffer and not going down the hill.

B. Perry: What is a buffer?

J. Duffy: The Aesthetic Committee approved the landscape plan as part of the site plan. The planting of additional trees on that plan was for the back section of the property not towards Mr. Cote's property. The Board said that hill will fill in with brush, etc. They didn't see the necessity for any additional plantings. After the approved plan, problems started because things didn't get approved. The previous engineer, Matt Peterson, spoke with the Board and Mr. Cote voiced his concerns. Mr. Cote said they cut the trees to his property line and now you can see his house from the road. Recently at Planning Board meeting there was discussion but no plan of any sort. I don't think Mr. Cote is looking for a full flat 25 ft. buffer. I think he is asking instead of plantings going directly down, to be expanded out from his property.

T. Cote: It was told by Marty Coronis that they would put a berm up there for my property. Now the slope goes from my property straight down. I would like the top bermed, and have a little more plantings than less.

J. Duffy: I suggested to their engineer to come in with an actual plan. If we had something concrete, it would be easier to visualize. We only received a plan with the initial site plan approval. We need something for the applicant and owner to come to a solution with.

F. Kotowski: We can debate what is right and not right and your capability to take care of it. Our regulations state that the buffer should have sufficient existing vegetation or be planted with evergreen plantings as in the judgment of the Planning Board. This is only my feeling, but I believe Mr. Cote has lost a buffer that provided him with privacy. He should have an effective screen from the activity from the lot of the adjacent area. He is your neighbor. If it was me, I would put as many trees as I could.

M. Cannata: If there was an actual plan and not just words on the existing and proposed, that would nicks some of the ambiguity in my mind.

D. MacGuire: I can certainly provide a plan. What we had proposed in the approved landscape plan for the rear area is what we are proposing for Mr. Cote's side of the property.

B. Perry: It should be a 3:1 slope and you have a 2:1.

D. MacGuire: What Jo Ann was stating is if the slope is greater than 3:1 (i.e. 2:1), it has to be stabilized differently.

B. Perry: How far is the gap from Tom's house to where it drops off? I still don't know the definition of a buffer. There needs to be some sort of compromise. If not now, then it should be done in the spring. Stretch it out, slope it down, and put in trees. Try extending that spot. That would be a fair response.

T. Cote: The property line to the slope is at the property line.

D. MacGuire: if Mr. Cote would like, we could plant trees right at the property line.

T. Cote: I already planted trees there.

D. MacGuire: They already spent all this money for the grade.

J. Gryval: From the property line there was 100 ft. there. They weren't satisfied to take just 75 ft., they took the whole thing.

D. MacGuire: Mr. Chair I agree with you, if we left the existing conditions, they were full grown pines.

T. Cote: You couldn't see my house before. It will be 20 yrs. or more, before you wouldn't see my house again. Younger trees are fuller.

J. Gryval: They would have to come in for a waiver of the buffer.

T. Cote: Drawings would certainly help me decide on this.

D. MacGuire: I can come back with a plan on what I am verbalizing tonight. The staggering effect will provide a dense vegetation area.

L. Lessard: Even if they had put the wall up, it would still have been a 2:1 slope.

T. Cote: Part of the problem is the buffer area was ignored from the beginning.

L. Lessard: The plans from the beginning showed it was all set to go up to the property line.

T. Cote: There was no discussion for a buffer. It was mentioned at the TRC meeting about a new regulation for a buffer between uses. I was here for the meeting about the McDonald's project, and there was a lot of discussion over one tree. My buffer was not even discussed. I am looking for them to extend a little bit from my property line, and not start the 2:1 slope from my property line.

L. Lessard: The site plan already got approved.

T. Cote: I spent money on an attorney, and I shouldn't have had to do that. I came in here from the beginning for information and was misled and misdirected. I talked to Mr. Shankle, and he said "this wasn't your responsibility. It should have been done here at the Planning Board".

J. Gryval: If the buffer can't be met, then they need a waiver.

D. Shankle: I would like to see the approved site plan.

B. Perry: I would like to see the approved plans.

D. MacGuire: Showed the approved landscape plan from the original site plan approval.

L. Lessard: On the approved plans, you can see the cut mark right up to Mr. Cote's property line.

D. MacGuire: Technically we didn't show any buffer. Now what we are doing is more of a formalized process. We did not show any vegetated buffer.

J. Duffy: At the time, we had a landscaper on the Planning Board and the Aesthetic Committee. The committee reviewed and approved the landscape plan.

B. Perry: But the buffer is above and beyond a landscape plan. That is part of the site

plan. Why didn't our engineer pick up on this? Sloping is beyond a landscaper's expertise. I would never hold an Aesthetic Committee member responsible for buffer and sloping.

D. Shankle: The way the note is written on the plan, it sounded like they were calling the slope a buffer.

J. Duffy: After the plan was approved, there was an issue with the site. Matt Peterson, the applicant's prior engineer, said the Pizza Man owners will give Mr. Cote some sort of a buffer.

B. Perry: Our engineer should have pushed back at their engineer.

J. Duffy: Dr. Shankle was right. That area was considered the buffer. There was no big discussion if it should be the buffer or not.

D. MacGuire: We are recognizing the issue. It is an added cost to my applicant to plant white pines. A plan next month will show the trees.

J. Duffy: Is there an existing tree line?

T. Cote: Anything on their line is cut.

J. Duffy: When the logger went in there, he cut everything.

D. Marshall: When the logger came in, you were the owners of the property. You didn't know what they were doing?

L. Lessard: The logger took a lot more trees, but where they were supposed to cut was still up to the Cote's land. They took more trees at the Rte. 3A side.

J. Duffy: When Dan went out there today, they asked if he was going by the approve the plan and he said he didn't have a plan.

T. Cote: If they disturb the buffer, then that is replanted.

D. MacGuire: If we had not disturbed the buffer, you would have still seen your house through the full grown pines. At white pines grown level looking up, there will be plenty of buffer from the Pizza Man parking lot looking up.

T. Cote: Wasn't it also land taken out of the slope that shouldn't have been?

D. MacGuire: I don't see any requirement in the regulations to not alter the land.

J. Gryval: It says to maintain the undisturbed. Somebody blew it.

L. Lessard: When Jo Ann went out there and told them to stop, they didn't stop and continued.

J. Gryval: And the plan not showing the buffer should have been caught.

D. MacGuire: They did overcut, but there was no proposal at the time for a denser buffer with younger trees. In 4 day's time, my applicant has restored the slope and brought it up to full compliance with the Town. I thought that was one of Mr. Cote's big concerns, was that there be no erosion to his site.

B. Perry: Let's not make the applicants sound like rock stars, they should be doing this.

L. Lessard: They still did a good job with what they have done.

M. Cannata: Jo Ann, they will bring in a plan and their excavator will have the plan?

D. MacGuire: The plan will be approved by both Jo Ann and Dan.

J. Gryval: What about the 3:1 slope requirement?

J. Duffy: Yes greater than 3:1 requires certain material to stabilize it. Dan suggested they come up with a plan and he and Doug discuss it.

D. MacGuire: We will stabilize with blown hay and tacifier.

M. Cannata: Before spring or now?

D. MacGuire: Now, and the Town can hold some of the surety funds to assure that gets done.

DEVELOPMENT REGULATIONS – SITE COMPLIANCE MONITORING

M. Cannata: Where will Stantec leave off and DPW Director begin for site compliance monitoring? The proposed Development Regulations are making that fact more poignant. There will be supervision and by whom?

D. Shankle: My vision of this, the Board made it quite clear they are happy with the work from Stantec. Through the planning process, the applicant will work with Stantec. Once the plan is Board approved and goes to construction monitoring, then it goes to the DPW Director.

L. Lessard: Also, for the plan review process, I will be involved as another set of eyes with Jo Ann.

M. Cannata: The design requirements will be reviewed by Stantec.

J. Duffy: And Stantec will also come up with the estimates for bonding(surety).

PIZZA MAN BUFFER CONTINUED DISCUSSION

D. Shankle: The buffer thing is interesting, and we should look at that further in our regulations. For the Pizza Man site, people were presuming the slope was the buffer, and plantings in it doesn't matter if it is sloped. On the other hand, what if the buffer was to keep people in the business from looking into the house? What was there is gone, and the problem for homeowner is more than what would normally be.

J. Gryval: Our regulations state undisturbed. Instead of taking 75 ft., they took the whole 100 ft.

L. Lessard: The plan was approved to take the 100 ft. They would have had to come in higher with the wall. The plan states they don't need a bush in there, and now they want to put in white pines.

B. Perry: We need our engineer to be thorough.

J. Gryval: That is why we depend on someone to review it.

B. Perry: 50' x100' properties for buffers is house-to-house. It is different when the neighbor is a business.

L. Lessard: Jo Ann went out to the site and stopped them. She goes home and they continued over the weekend. That Monday there should have been a cease and desist order for the site.

M. Cannata: They took advantage of the Town over the weekend.

D. Rogers: From a legal perspective, that logger is an agent of the property owner. The owner had control over them over the weekend. This also goes back to the property owner.

L. Lessard: That Monday morning, the CEO or DPW Director should have done a cease and desist order on the site.

D. Rogers: Litigation could be between Mr. Cote, the Pizza Man owners, and the logger.

L. Lessard: If they ever go back to putting the wall back in, the white pines on Mr. Cote's side of the property come out.

J. Gryval: It all goes back to the application checklist and making sure everything is there.

J. Duffy: It is a buffer between commercial and residential use. When they came in for their TRC, that was the year of the zoning change for a buffer for use vs. zone. I told

them if the slope issue was not addressed, that you were going to serve them with a cease and desist order for their Pizza restaurant as part of the site.

TOWN COUNCIL REP. TO THE PLANNING BOARD

D. Marshall: Is the Council going to send us a rep.?

D. Shankle: Yes, at their meeting of December 14th.

T. Walsh: I heard you may to retain Stantec for field inspections in the performance zone (PZ).

J. Duffy: No, the DPW Director will be doing the site compliance monitoring.

APPLICANTS NOT COMPLYING WITH TOWN REGULATIONS

Susan Lovas Orr: Do we have something in our regulations to inflict a fine for an applicant blatantly defying our regulation?

D. Marshall: The first thing would be a cease and desist order. The State laws define that.

D. Shankle: It is a land use "ticket" once in court. The court gets the money out of them. A prosecutor is involved.

M. Cannata: If they are working on a Sunday police can intervene.

J. Duffy: It is similar to a property over a weekend that someone called me about and said the site was being filled. I texted the contact person for the site over the weekend, and then I filed a complaint with DES.

J. Gryval: If it is a weekend, the CEO could call into the Police Dept. and have them serve the cease and desist order.

D. Marshall: Look at our regulations and ordinances now compared to in the past. This is why they have become what they are. Hooksett is a desirable area, because it is between Manchester and Concord.

***D. Marshall motioned to adjourn at 9:05pm. Seconded by M. Cannata.
Vote unanimously in favor.***

ADJOURNMENT

Chair J. Gryval declared the meeting adjourned at 9:05pm.

Respectfully submitted,

Donna J. Fitzpatrick,
Planning Coordinator