

**Official
As of 1/7/13**

**HOOKSETT PLANNING BOARD
MEETING MINUTES
HOOKSETT MUNICIPAL BUILDING
Monday, December 17, 2012**

CALLED TO ORDER

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

ATTENDANCE – PLANNING BOARD

Chair John Gryval, Town Administrator, Dr. Dean E. Shankle, Jr., Town Council Rep. Susan Lovas Orr, Town Administration Rep. Leo Lessard (DPW Director), Donald Winterton, David Rogers, Frank Kotowski, and Thomas Prasol.

Excused: Tom Walsh and Vice-Chair Dick Marshall.

Absent: Robert Duhaime.

REPRESENTING TOWN OF HOOKSETT

Jo Ann Duffy, Town Planner.

APPROVAL OF MINUTES OF 12/03/12

F. Kotowski motioned to approve the minutes of 12/03/12. Seconded by S. Lovas Orr. Vote unanimously in favor.

J. Gryval: Alternate Thomas Prasol will be voting tonight in place of Tom Walsh AND alternate Donald Winterton will be voting tonight in place of Vice-Chair Dick Marshall.

DISCUSSION - ECONOMIC DEVELOPMENT CHAPTER

1. ECONOMIC DEVELOPMENT CHAPTER FOR THE MASTER PLAN

J. Gryval: Everyone has a copy of the most recent version of the Economic Development Chapter. Jack couldn't make it tonight, so if you have comments or questions please prepare them before our next meeting (1/7/13).

F. Kotowski: Towards the back of the chapter in the Economic Assets Profile, David Boutin is crossed-out as Senator and he is the Senator and should be reinstated. On the next page under elected officials, the Sewer Commission is not an appointed position it is an elected position.

J. Gryval: We will plan on having the public hearing to adopt the final version of this chapter on February 11, 2013.

DISCUSSION – CONCEPTUAL SITE PLAN

2. REM CENTRAL, LLC

90 West River Rd., Map 29, Lot 72

Update on conceptual site plan to modify previously approved site plan for phase 2 to remove fast food restaurant in lieu of a 7,950 sq. ft. retail building.

Chris Rice, TF Moran: I was here last month to discuss a conceptual plan for a 3.6 acre site across the street from Kohl's and next to the Irving Gas Station and Dunkin Donuts. The project was approved as a phased development in 2003, and amended in 2004 for a fast food restaurant. In the 2004 minutes it states when phase II is built a cross-access will be constructed. We are proposing to change from a fast food restaurant to a retail building. The last time we had a discussion with the Board, we asked if we could remove the cross-access. Access option A may be somewhat of a safety issue with people heading south. Option A to center line is 30 ft. to edge of pavement; option B is 60 ft. Would the Board consider a compromise access in the middle of options A & B? If there are two tractor trailers parked there, and a car comes out of there the sight distance is blocked. We propose something in between the two access options for someone coming around the corner. The compromise would be 40-45 ft. from edge of pavement. I don't know if that is something we can consider.

D. Rogers: What is Irving's feeling on the cross-access?

C. Rice: If none of those options (A, B or in-between) are considered by the Board, than it is not worth me talking to Irving.

L. Lessard: Access by the tractor trailer trucks, at our last discussion I was saying there needs to be some type of island or berm as a diverter to force cars to go around where one of the tractor trailers is to force the cars to keep them out of the front. This way they can't go left (north) either. The other thing I was thinking of is the cars from Dunkin Donuts coming across some of the cars behind the parking lot. That is a safety issue. Bring Dunkin Donuts traffic behind the building and come out at access B. Coming out of Dunkin Donuts cars are backing out and kids may run into traffic. People out of retail place should be forced to go behind the Irving Gas Station vs. by the gas pumps.

J. Gryval: Could you do what Leo is suggesting?

C. Rice: I will have to check with Irving to see if they are OK with losing a truck space.

D. Winterton: Could you move the truck spaces to the right?

C. Rice: It is all ledge and a steep slope up. We would build the access to my property line. We have contacted Irving recently. The letter the Planning Board has is from 2003 Irving corporate to my client that it would be beneficial to have a mutual cross-access. That gentleman who wrote that letter is no longer with the company (Irving). Irving now stated they are not interested in a cross-access. At our last meeting with the Board, we discussed a cross-access or to extend the median so that any northbound traffic cannot

take left into the site. We propose an island up to the Dunkin Donuts' island and making that existing left-turn only island a sharper turn. First we will work with Irving for some type of access agreement. If they (Irving) stick to their guns and will not agree to a cross-access, then we need other options. Secondly we propose extending the median to just where the existing Dunkin Donuts' island is located, so Dunkin Donuts traffic can still make a left turn into the site heading north.

F. Kotowski: The proposed retail parking parallel to Rte. 3A, is there room, if the road is continued, to eliminate that parking in front and put it on the south side of the building? If the road is running parallel have one row of parking facing the building. Is there room behind there without making a safety problem?

C. Rice: The safety issue is at option A or B or the median at Dunkin Donuts. We contacted Irving as requested at our last meeting with the Board. Irving said they are not interested in a cross-access at this time. If I moved parking spaces, that would not change my access options.

L. Lessard: If he was to extend the median to the Dunkin Donuts island to the point to deter people coming out of Dunkin Donuts from going north; I don't have a problem with that.

J. Gryval: I would like to know the length of the median. We will have to know how it is written. Work with staff to see if the median option is amendable.

C. Rice: Our first course of action is to work with Irving on a cross-access. Thank you and have a great holiday.

D. Winterton: I am an abutter for both items #3 and #4 on tonight's agenda. I am stepping down from these applications.

CONTINUED PUBLIC HEARING

3. BIELIZNA, DIANE & STANLEY (#12-18)

1266 Smyth Rd., Map 48, Lot 19

Proposal for a 4-lot major subdivision (parent lot + 3 new lots)

- Further reconsideration of Planning Board decision of 10/15/12 to require a cistern in lieu of sprinkler systems

J. Gryval: Have the comments from Stantec been taken care of?

J. Duffy: No there are still drainage issues. Stantec spoke with Robert Rook, but we haven't seen his revisions. Also there are a few other comments from Stantec's prior review. Tonight we want to clear-up the issue for sprinklers vs. a cistern.

Don Duval, Duval Survey, Inc.: Stantec's comments are minor drafting issues. I don't see anything drastic. If we get that far, we could ask for a conditional approval tonight. Most of Stantec's comments have to do with the cistern. We are asking the Board to reconsider the cistern one last time. They (Bieliznas) have had people give them

approximate quotes for a cistern. The quote is \$80,000 and that is quite excessive. With that price tag on it they will have a problem with moving the lots. Your regulations require sprinklers, and we are agreeable with that. The last time the Bieliznas were approved for their subdivision (plan #10-02), people (lot purchasers) asked for waivers to the sprinkler system requirement. This time you required a cistern, but the Fire Dept. stated they wanted sprinklers. We had a meeting with me, my client, and Jo Ann to discuss sprinklers vs. a cistern.

J. Gryval: At our last meeting, the Board wanted to make sure if they (lot purchasers) didn't put in sprinklers, there was at least something by having a cistern.

D. Duval: A cistern for three (3) lots is getting cost prohibitive for these people.

J. Duffy: Don is correct; we did meet to discuss sprinklers vs. cistern. In the beginning, we suggested an easement for a potential cistern so that if future lot owners came in and didn't want to do sprinklers and received a waiver, then the cistern would be there. The requirement in our regulations is sprinklers and only a cistern if the building is on a new road. I think the Board is being overly stringent with a cistern. They never asked for a waiver of the sprinklers. I think they should be able to have sprinklers.

J. Gryval: If the Board OK's the sprinklers, will the cistern easement still be there?

D. Duval: Yes.

J. Duffy: They would need to provide us with a deed for that easement and check with the Tennessee gas line for approval for that easement.

D. Duval: I spoke with the Tennessee gas people and they have control within their easement, but they have no control over our easement (cistern). Our cistern easement will be 50-60 ft. from their easement line. Their pipes are 10-20 ft. within their easement. We will be 60-75 ft. from the gas line.

J. Gryval: If you can get something from them (Tennessee gas line) in writing that wouldn't hurt.

S. Lovas Orr: I am glad to see this (sprinklers vs. cistern) back on our agenda. The decision (cistern) the Board made the last time was uncomfortable for me. We have a regulation and an applicant who would abide by that regulation. If a lot owner comes forward for a waiver of the sprinklers, we will have to stand our ground and say no.

D. Duval: The realtor can inform the purchases of the lots that anything constructed on the lot they will need to install a sprinkler system.

S. Lovas Orr: There should be something in writing for these lot owners that the sprinklers are required.

D. Duval: Yes there will be a note on the plan.

S. Lovas Orr: In the absence of a cistern, they really need fire sprinklers. I believe we should not require a cistern. Let them sell the lots with the sprinkler system requirement.

J. Gryval: A buyer of these lots should know more than just a note on the plan.

S. Lovas Orr: The realtor or whoever should make it very clear to a purchaser of these lots that they have to have sprinklers.

D. Duval: I am only the surveyor. The realtor is here tonight. A lot purchaser would be aware of the note on the plan, and when they get their building permit the Building Dept. should tell them they need a sprinkler system. So you have the note on the plan, the realtor telling them, and the Building Dept. telling them.

F. Kotowski: Can that note be put on the deed?

D. Duval: Even if it is on the deed, they would have the right to ask for a waiver.

D. Rogers: The deed will reference the plan, and there is the title search process. It is a double check for the realtor and the Town. There are 2-3 layers of notification.

F. Kotowski: We do not want an unsuspecting lot owner buying a lot and not being aware of the sprinkler requirement. If they want a sprinkler great; if not they ask for a waiver.

Open public hearing (sprinklers vs. cistern)

Diane Bielizna, 1266 Smyth Rd.: I am the owner of this property with my brother Stan. We have lived there all our lives. Stan is a Vietnam veteran and worked in auto body until he became critically ill 2 yrs. plus. I worked at the VA medical center when Stan was there and for 35 ½ yrs. We took care of our parents for 30+ years. We tried to make our lives comfortable now. We have three (3) lots and want to have sprinklers. We don't understand why we need a cistern instead of the sprinklers. We did not ask for waiver of the sprinklers. The gentleman from the Fire Dept. said sprinklers are for life safety. We hope the Board will reconsider having sprinklers vs. a cistern.

Stanley Bielizna, 1266 Smyth Rd.: We have lived on Smyth Rd. all of our lives. In 20-25 years we have never seen a house fire on Smyth Rd. A sprinkler system will already jump on the fire vs. a cistern. I am told a cistern is empty in 20 minutes once the Fire Dept. starts taking water out. I was in the service and wanted to enjoy my life afterwards. A cistern price of \$80,000 affects us pretty bad.

Ray Guay, 1293 Smyth Rd.: I used to be a member of this Board and continue to follow your minutes. On this subject, I am not a fan of sprinklers on a single-family detached home. When I saw the Board was requiring a cistern for only three (3) residential lots . . . a cistern is meant more for commercial or multi-unit lots. For the 8 or 9 towns requiring

sprinklers, Hooksett is one of them. In Milford I was involved with a development that had a 30,000 gallon cistern. The cost was \$32,000 just for the cistern and another \$12,000-\$15,000 to put it in. That is adding \$17,000-\$18,000 per lot, and a lot of times that would be added to the price of the lot and the consumer pays. In this market it will decrease the value of the raw land by \$50,000. I know there should be affordable housing in Hooksett and your (Board) hearts are in the right place. Every time you do something like this (requiring a cistern for three lots), it is counterproductive. Today you can't build a \$200,000 house and that is what everyone wants in Hooksett. I would ask you reconsider the cistern. The Fire Dept. argues sprinklers are a safer situation, and there is no argument, it is safer. Also riding with a helmet is safer, no argument, it is. Three (3) houses with a cistern? It is not this landowner's responsibility for cistern for the neighborhood. Sprinklers are a far more reasonable condition.

Close public hearing (sprinklers vs. cistern)

*D. Shankle motioned to **reconsider** sprinklers in lieu of the previously required cistern. Seconded by S. Lovas Orr.*

D. Shankle: The reason we went down this road was due to a mistake done in the past and then waivers were given for a previous subdivision. Those are no longer a precedent. It was a staff error and that staff is no longer here. We felt we had to give those waivers to be fair. Anyone buying those lots now should be told they have to have sprinklers. This is a completely different situation. These are new lots. As long as everyone going forward understands this. I feel bad for those few houses that are not sprinklered. There is no precedent set and the Board will do the right thing in the future.

Vote unanimously in favor.

D. Shankle motioned to require sprinklers in accordance with N.F.P.A. standards in lieu of the previously required cistern conditional that a cistern easement be provided. Seconded by S. Lovas Orr. Vote unanimously in favor.

D. Duval: Yes we will leave the Town a cistern easement. Also if they want, we can complete the cistern design and leave that with the Town. I ask the Board for a conditional approval tonight. Stantec has one old letter with comments and 7 new notes on the cistern.

Open public hearing (conditional approval)
No comments.

Close public hearing (conditional approval)

J. Duffy: I think we can work out the conditional approval internally.

F. Kotowski motioned to approve the application conditional:

- All review fees are paid-in-full
- LCHIP check payable to Merrimack County Registry of Deeds is submitted to the Community Development Dept.
- 2 mylars, 11 paper copies (22x34), 1 paper copy (11x17), and 1 digital
- All outstanding comments from Stantec are addressed to Stantec's satisfaction (see letter dated 12/14/12 from Stantec). Applicant submits two (2) final plan sets directly to Stantec for their review and final letter to the Community Development Dept. recommending plans be signed and recorded
- All outstanding Federal, State, and local permits are obtained and submitted to the Town and Stantec
- Note on plan that sprinklers are required for each new building lot within this subdivision in accordance with N.F.P.A. standards
- Cistern Easement to be submitted to Community Development Dept. for Town Attorney review and approval at applicant's expense
- Signed Cistern Easement document to be submitted to Community Development Dept. for recording with plan set
- Recording fees for each easement are \$12.00 for the first pg., \$4.00 each pg. thereafter and \$1.99 postage return; total amount payable to Town of Hooksett and submitted to the Community Development Dept.
- Tennessee Gas Pipeline to submit written acceptance of cistern easement
- All waivers noted on plan cover sheet
- At the discretion of the DPW Director, the applicant agrees to attend a required pre-construction meeting after (a) all bonds are submitted and approved, (b) site plan compliance monitoring escrow is in place, and the Inspection Funding Agreement is signed and submitted, and (c) the plans are signed and recorded
- At the discretion of the DPW Director, the applicant agrees to site plan compliance monitoring
- Applicant agrees to remit **\$25,257** in impact fees 10 days prior to the issuance of the Certificate of Occupancy subject to NHRSA 674:39 (Schools \$4,978, Public Safety \$1,326, Recreation \$695, and Roadway \$1,420 = \$8,419.00 for each new buildable lot).
- PDF version of signed plans is submitted to Town via e-mail attachment

Note: The above conditions in no way reflects all requirements to be met by the applicant per the Town of Hooksett Zoning Ordinances, Development Regulations, Minutes of Boards/Committees/Council, Stantec, and Merrimack County Registry of Deeds.

Seconded by D. Rogers.
Vote unanimously in favor.

PUBLIC HEARING – MODIFICATION OF PRIOR APPROVAL

4. POTENTIAL PROPERTIES CORP. (#12-25)

19 Prescott Heights, Map 43, Lot 42

Condition of the 1969 Planning Board approval of Lot #2 states “no building may be erected on Lot #2 unless proper access and frontage is provided”. The applicant is requesting the Planning Board modify this condition to state “proper access and frontage is met under the above condition through the granting of a variance for Lot #2 as a non-

conforming lot by the Zoning Board of Adjustment”

Conrad Cascadden, Shaheen & Gordon: To my right is Mike Gallo of Potential Properties Corp. He rehabs old properties and sells them to low income families.

He purchased this lot because there are two lots on the property. He proposes to renovate the existing front property and hopefully build on the back lot. We work with the tax department and he found a condition on the lot. Exhibit C was Morrill Rd. and is now Prescott Heights Rd. There are brackets around a note to the right on the plan, “no building may be erected on Lot #2 unless proper access and frontage is provided”. I don’t know what this Board back in 1967 intended. We are recommending the condition be modified to read “proper access and frontage is met under the above condition through the granting of a variance for Lot #2 as a non-conforming lot by the Zoning Board of Adjustment”. Now it is a separate lot with this condition. Looking at this lot, the frontage was never provided. The modern definition of frontage, we have no idea what the Board was thinking back then. Existing lot #1 has a house and is located at the bottom. There is property to the right and left of this lot. To the rear of the property in back is the septic. If a driveway ran across lot #1 the only place to run it is where the red line is on my hand-out. Zoning code states that access could be granted over this path and this is the only possible way. Couple of ways: 1) joined driveway or 2) based on septic plan enough room to provide full access over 20 ft. The next step is to go before the ZBA and have a discussion with the Fire Dept. 20 ft. is enough access for the Fire Dept. Zoning setbacks I don’t believe are an issue for lot #2.

J. Gryval: There is a big difference between access and frontage. Our regulations require frontage. That rear lot would need frontage on the road. If he owns both lots and does an annex with lot #1 for frontage for lot #2. I am only one vote. I will let the Board answer that.

L. Lessard: That red rectangle on his hand-out, a lot line adjustment would make the frontage.

F. Kotowski: If you put in a lot line adjustment for 20 ft., then you would need to go to the ZBA and face that issue. Has anyone spoken with the property owner to the left? How many feet is it to the proposed driveway and neighbor?

C. Cascadden: It runs along the property to the neighbor on the left.

F. Kotowski: 20ft., 30 ft.? That’s not that far.

C. Cascadden: The neighboring house is turned and the driveway would run along their garage.

L. Lessard: I went out there last week and it is 20-25 ft. from it. The visibility in our regulations requires 50 ft. between driveways for a new subdivision. With this existing, I believe what he is proposing would work.

D. Shankle: We went back and forth on the easement and ownership. Where does this

go next? You haven't talked to the neighbors or the Fire Dept.

C. Cascadden: You are our first step at the recommendation of your Town attorney.

D. Shankle: If you don't get this, what is plan B?

M. Gallo: This is the only plan worked out.

C. Cascadden: If we gave no access to the lot, the Town's interpretation is it is a lot with a condition on it. Mr. Gallo may need to pursue Superior Court to challenge.

D. Shankle: Are you the owner of the lot in front?

M. Gallo: Yes I own lots 1 & 2.

D. Shankle: Before the Planning Board, I would like to see a more flushed out plan (i.e. if neighbors have a complaint). You would take out a whole row of trees for a driveway.

M. Gallo: Some trees would be taken out on lot #1, but most of the trees are on the neighbor's lot.

J. Gryval: The Town is not saying you can't do it.

M. Gallo: We went to Assessing and I am getting taxed as one lot (with 2 tracts). I asked they separate it and they said no. Then we went to Planning and we found the original plan with the condition for lot #2. Planning then went to the Town attorney for his comments and we are acting on his comments.

J. Gryval: I don't understand why the tax department can't make it two lots. The only problem with ZBA is the width of frontage.

M. Gallo: Your attorney said to meet with the Planning Board first.

J. Duffy: According to the Town attorney, the Planning Board needs to vote to modify the condition of approval of 1969, before they can go to the ZBA and then proceed with the process of putting in a driveway.

D. Shankle: Once you do this, is the front lot also non-conforming?

C. Cascadden: The front lot is already non-conforming.

M. Gallo: I think it needs 1 ½ acres and 200 ft. of frontage. I have two preexisting non-conforming lots.

J. Duffy: In 1969 the Planning Board approved two lots by a subdivision. The Town treated it as two tracts on one taxable lot and they should not have done that. It is two

non-conforming lots. Atty. Buckley said before they go for a variance, the Planning Board needs to modify the condition that the Board will allow frontage and access if the applicant is successful in getting a variance with the ZBA.

D. Shankle: They would be making a non-conforming lot more non-conforming.

J. Duffy: The frontage on the front lot #1 would become more non-conforming. **Article 5 MDR C c)** When served by neither municipal water nor municipal sewer the lot area shall not be less than 65,340 square feet and the frontage shall not be less than 200 feet. It wouldn't be unbuildable if they get a variance.

C. Cascadden: With the ZBA we would need two variances for lot size (lot #1 and lot #2), and a variance for access.

L. Lessard: What about the septic lot size?

J. Gryval: If we modify your prior approval before a lot line adjustment we are creating a land locked piece of property.

J. Duffy: Merger lot of records can be built on. It is less stringent per:

- **Article 26 Non-Conforming Uses, Lots, and Structures B.2. Use of Lot of Record.** A non-conforming Lot of Record which does not meet the requirements for area or Town requirements established by this Ordinance, may be used for the purposes provided in the district in which the property is located in the following manner:
 - a. The lot has frontage, as defined by this Ordinance sufficient to provide access to the lot;
 - b. The Code Enforcement Officer determines that the use of the lot will not create a potential health or safety problem due to inadequate areas for on-site waste disposal and water supply, access for police and fire protection or other factors.

D. Shankle: If someone had a buildable lot, but the Planning Board at that time didn't see that it was a buildable lot. I disagree with our attorney's thought. Give this to the ZBA to clean-up. This isn't a matter of fairness. 1969 and since then if it was merged, you still don't comply.

J. Gryval: It is still two non-conforming lots.

J. Duffy: Our attorney is saying before they go to ZBA to get a variance, the Planning Board needs to modify the 1969 condition of approval first.

C. Cascadden: Atty. Buckley refers to "access and frontage". We would have 175 ft. of frontage, but then zoning says no because you won't meet the frontage requirement.

J. Duffy: It is actually 200 ft. of frontage needed.

J. Gryval: I think the condition from 1969 is a good condition. You can get frontage and access on that lot by an annex.

F. Kotowski: How do you have 200 ft.?

J. Duffy: 210.74 ft. 1969 lot #1. Then there is 32.63 ft. next door on lot #7 from 1969. Actually this owner does not own lot #7, therefore we can't add in the 32.63 ft.

Open public hearing

Keith Morency, 20 Prescott Heights Rd.: I was previously before you for the Bielizna subdivision. The reason I moved to Hooksett is to get out of Manchester and their size lots. I don't agree with taking a non-conforming lot to make two lots to build another house. I am a builder, but this is why I moved out of Manchester.

Don Winterton, 10 Prescott Heights Rod.: I am an abutter to this property across the street. The regulations in that area require 200 ft. of frontage and they would need the size and location of the driveway. That neighborhood is a beautiful neighborhood. To allow a smaller and different kind of housing is not what we should do. I know he is trying to maximize his assets, but it is not the right thing to do for multiple non-conforming lots.

J. Gryval: We can continue the public hearing for when they have something more concrete from neighbors and the Fire Dept. What is the consensus from the Board? Change the condition like our attorney said or leave it alone.

Close public hearing

D. Shankle motioned to deny the request to modify the condition of approval from 1969 and keep it as is to read "no building may be erected on Lot #2 unless proper access and frontage is provided" based on:

- **Article 5 MDR C c)** When served by neither municipal water nor municipal sewer the lot area shall not be less than 65,340 square feet and the frontage shall not be less than 200 feet
- **Article 26 Non-Conforming Uses, Lots, and Structures B.2. Use of Lot of Record.** A non-conforming Lot of Record which does not meet the requirements for area or Town requirements established by this Ordinance, may be used for the purposes provided in the district in which the property is located in the following manner:
 - c. The lot has frontage, as defined by this Ordinance sufficient to provide access to the lot;
 - d. The Code Enforcement Officer determines that the use of the lot will not create a potential health or safety problem due to inadequate areas for on-site waste disposal and water supply, access for police and fire protection or other factors.

***Seconded by F. Kotowski.
Vote unanimously in favor.***

***PUBLIC HEARING – WAIVER REQUEST(S) & EXTENSION REQUEST(S) –
CONDITIONAL APPROVAL PERIOD**

- **Waiver Request** - Development Regulations (6/4/2012) section 10.03 2) Time Limits for Fulfilling Conditions "The Board may grant extensions, upon written request filed with the Board **at least thirty (30) days prior to expiration** of conditional approval."
- **Extension Request** – Development Regulations (6/4/2012) section 10.03 2) Time Limits for Fulfilling Conditions.

**5. *MANCHESTER SAND, GRAVEL, & CEMENT (MS&G) – HEAD’S POND (plan #07-05 & 07-42)
Map 3, Lots 1 through 11, 17, 19 through 24, 26 AND Map 14, Lots 2 through 5**

The proposed project includes:

- Lot line adjustment & consolidation
 - Major subdivision – 428 total units (156 single family, 72 Village single family, 59 Village townhouses, 33 single family zero lot line, & 108 townhouses) to include 5.5 miles of roadway improvements
 - Phasing plan
- Application conditionally approved on 06/20/2011. On 07/09/12 the Planning Board granted an extension to 12/20/2012 for Time Limits for Fulfilling Conditions. Applicant requesting another extension to 02/12/2013.

***MANCHESTER SAND, GRAVEL, & CEMENT (MS&G) (plan #11-10)
Map 14, Lots 2, 10 & “A”**

Lot line adjustment between Map 14, Lots 2, 10 & “A” to provide 80.926 acres for Map 14, Lot 2 (Head’s Pond project proposed school parcel).

- Application conditionally approved on 11/07/2011. On 07/09/12 the Planning Board granted an extension to 12/20/2012 for Time Limits for Fulfilling Conditions. Applicant requesting another extension to 02/12/2013.

D. Campbell: We are here tonight to request the Board extend us (Head’s Pond plan #07-05 & 07-42 AND MS&G plan #11-10) to February 12, 2013, and to continue this public hearing to January 7, 2013 so that we may get the Board’s final approval to our conditional approval of 6/20/11.

J. Duffy: Reviewed Development Regulation changes to include but not limited to: 80.96 acre school site donation, pg. 4 easement states 12/31/11 and needs to be 12/31/13, and parcels donated to the Town. The School Board did vote to accept the school parcel and we are waiting to get something in writing (minutes) from them. The dates for 12/20/12 should now be 02/12/13. Town consulting engineer changed to Town DPW Director and/or designee. Also there is the wetland permit that states the land donated to the Town Conservation Commission the developer has to pay a \$10,000 stewardship for the Conservation Commission to maintain that land. I want that \$10,000 listed in the Development Agreement so it doesn’t get lost. We are trying to tie up loose ends. There are lots of different deadlines.

D. Campbell: We really want to clarify any loose ends. We want both the developer and the Town to be clear. Acreage on the school site didn’t change. It is just an additional 49 acres to total 80.96.

F. Kotowski: The Conservation Commission will take action tomorrow night.

D. Campbell: I spoke with Steve Couture.

J. Duffy: When you are going to see Steve tomorrow, he spoke with Lori Sumner at

DES. For the University Heights conservation land, we don't have to go back to DES. What you will need to do in the future when the land is deeded to the Town is go to the Town Council for approval.

Open public hearing

No comments.

Close public hearing

*F. Kotowski motioned to grant the above waiver request and grant an extension for time limits for fulfilling conditions of the 6/20/11 approval (plan #07-05 & 07-42) to 02/12/2013. Seconded by S. Lovas Orr.
Vote unanimously in favor.*

*D. Winterton motioned to grant the above waiver request and grant an extension for time limits for fulfilling conditions of the 10/07/11 approval (plan #11-10) to 02/12/2013. Seconded by F. Kotowski.
Vote unanimously in favor.*

Waivers above per RSA 674:36 (II) (n)

APPLICANT TO NOTIFY ABUTTERS FOR THEIR NEXT APPEARANCE BEFORE THE BOARD FOR THE BOARD'S FINAL APPROVAL OF THE CONDITIONAL APPROVAL.

OTHER BUSINESS

6. VOLUNTARY LOT MERGER – Donald R. Winterton Revocable Trust, contiguous lots Map 48, Lot 19-3 & Map 48, Lot 19-4

J. Gryval: For the record, I will sign the Winterton merger and have it recorded at the M.C.R.D.

7. APPROVAL OF STANTEC INVOICES

F. Kotowski: I would like staff to confirm the work Stantec in invoicing for has been done.

J. Duffy: I agree the work has been done.

*T. Prasol motioned to authorize the Planning Board Chair to review and approve the Stantec SPR invoices as of 12/17/12. Seconded by D. Winterton.
Vote unanimously in favor.*

8. CHANGE OF USE

1. Burton Wire & Cable, 1 Brookside West, Map 25, lot 3-2. Burton Wire will relocate from Manchester to space previously occupied by Fife Packaging off of Route 3A near Oakhurst Dairy. They make electrical type wires.
2. Gigunda Group, Inc., 5 Lehoux Drive, Map 31, lot 35-2. Expansion of existing warehouse and office space to include 2nd floor mezzanine of 600 sf. Permits and inspections required by building and fire.

MIACOMET (WEBSTER WOODS PLAN #07-37)

J. Duffy: The Town has been served with a notice of order Miacomet Development LLC v. Town of Hooksett. I believe they did this because of the 30 days window to file an appeal for a court date. They filed before our hearing on November 19, 2012 with the court because they had to due to the deadline. At our 2nd hearing the Board granted a 6 month extension and their attorney Sharon Cuddy Somers, Donahue, Tucker & Ciandella, PLLC said that was fine. Then all of a sudden we got this paperwork in the mail. Two attorneys are involved – John Rattigan represents the applicant, but attorney Sharon Cuddy Somers came to the meetings. She was OK with the 6 months and conditions, but he wanted to go along with the suit. Atty. Rattigan said to “stay” until May 2013. We will see if he will go forward with the suit. Atty. Buckley said you are wasting your money to him, but he thinks we should still go forward with the March hearing and getting certified records ready in January, so that Miacomet can’t hold the May 2013 date over our heads for another extension.

J. Gryval: Is there any way we can put a cost of staff and time involved to get ready for the suit? Somebody should pay us for that.

J. Duffy: Sometime you can ask for attorney fees, but I don’t think you can in this case.

D. Rogers: We did what they asked for, but Atty. Rattigan seems that he needs to cover his backside. It is going to cost us something. If Rattigan agrees to withdraw his suit, then we should be reimbursed.

J. Duffy: Atty. Buckley doesn’t have final say in the suit. It is up to the Town.

J. Gryval: Atty. Somers said they didn’t have their permit to do the work, but then they were out there doing the work anyway.

J. Duffy: I spoke with Dan (Stantec) today and they still don’t have their final plan. It is still a reclamation plan. The day they came into this meeting, they were supposed to get their wetland permit and had 4 items to address. Then they came up with this whole new idea. They needed two permits: 1) AOT, and 2) wetland. I know they didn’t get their wetland. They may have had the AOT for the site plan, but not for the restoration.

S. Lovas Orr: They had a timeline and knew there were wetlands. How many years have they been into it and they still didn’t have their permit.

J. Gryval: The reason for the suit is remember when we came up with conditions and one being \$300,000. Then they came back (11/19/12) and we came up with new conditions and an extension through May 19, 2013.

S. Lovas Orr: I think we should ask for money for processing this law suit.

D. Rogers: The argument is on the merits.

D. Winterton: Jo Ann said the Town will decide to move forward. Would it be the Planning Board and not the Town Council to decide whether to move forward?

S. Lovas Orr: Any action to the Town is to the Town Council's determination.

J. Duffy: We gave 4 conditions (10/15/12) and one was to meet an item by 10/22/12. Then they didn't do anything. They are saying they couldn't do anything, because they didn't have their permit.

D. Rogers: Then 3 weeks later (11/19/12) we changed the conditions

J. Duffy: And they changed the plan and that plan has not been accepted by the Town or State. The only thing approved was an emergency stabilization to get through the winter months. In May 2013 they will be back for another extension.

D. Rogers: That is why Atty. Rattigan wants to "stay" now and then in May 2013 get another extension to get his 1 yr. extension.

D. Shankle: The Board changed their mind on some of that stuff. I will call Atty. Buckley to file for a mute and frivolous summary judgment for court costs and lawyer fees. Why would the court want a suit for something we already gave them?

S. Lovas Orr: It is based on righteousness to ask for the fees paid back to the Town.

***S. Lovas Orr motioned to adjourn at 8:00pm. Seconded by T. Prasol.
Vote unanimously in favor.***

ADJOURNMENT

Chair J. Gryval declared the meeting adjourned at 8:00pm.

Respectfully submitted,

Donna J. Fitzpatrick,
Planning Coordinator