

Official

**HOOKSETT PLANNING BOARD
MEETING MINUTES
HOOKSETT MUNICIPAL BUILDING
Monday, May 6, 2013**

CALLED TO ORDER

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

ATTENDANCE – PLANNING BOARD

Chair John Gryval, Vice-Chair Dick Marshall, Dr. Dean E. Shankle, Jr. (Town Administrator), Town Council Rep. Susan Lovas Orr, Town Administration Rep. Leo Lessard (DPW Director), David Rogers, Thomas Prasol, Donald Winterton, Robert Duhaime and Tom Walsh.

Excused: Frank Kotowski

REPRESENTING TOWN OF HOOKSETT

Jo Ann Duffy (Town Planner) and Dan Tatem (Stantec)

APPROVAL OF MINUTES OF 04/15/13

D. Marshall motioned to approve the minutes of 04/15/13. Seconded by D. Winterton. Vote unanimously in favor. T. Walsh abstained.

COMPLETENESS HEARINGS

1. SNHU – EAST PARKING LOT (plan #13-02)

**East Side Dr. & North River Rd., Map 33, Lot 67
(and Manchester, NH Map 558, Lot 1)**

Site plan to construct a 436+- space parking lot with associated access.

- **Waiver Requests** – Development Regulations Part III–site plan completeness 19, 24, 31, 33, 35

S. Lovas Orr recused herself. She is an abutter.

*T. Walsh moved to grant the waiver. Seconded by D. Marshall. **Vote unanimously in favor.** Waiver above per RSA 674:44 (III) (e).*

- **Waiver Request** – Development Regulations 11.12.1 Rainfall Intensity

D. Tatem: They are asking for that waiver to match the new DES requirements which is actually higher volume of rain. We don't have any issues with that.

*D. Marshall moved to grant the waiver. D. Winterton seconded. **Vote unanimously in favor.***

- **Waiver Request** – Development Regulations 11.12.2,jj Interior Pond Slopes

D. Tatem: The regulations require 4:1. DES and most towns require 3:1. 3:1 is more of the standards. We may recommend to the Board to go back to 3:1. We don't have any issues with that.

*D. Marshall moved to grant the waiver. T. Walsh seconded. **Vote unanimously in favor.***

Motion to find the plan complete carried unanimously.

D. Marshall moved to schedule the hearing on May 20th. D. Rogers seconded. Vote unanimously in favor.

2. SNHU – DEPOT PARKING LOT (plan #13-03)

Depot Rd., Map 38, Lot 1

Site plan to construct a 156+- space parking lot with associated access.

- **Waiver Requests** – Development Regulations Part III–site plan completeness 19, 24, 31, 33, 35

D. Marshall moved to grant the waiver. Seconded by T. Walsh. Vote unanimously in favor.
Waiver above per RSA 674:44 (III) (e).

- **Waiver Request** – Development Regulations Part III–3.04.4.d.1.a Landscaped Open Area

Landscaped open area has not been reviewed by Stantec.

The applicant is requesting not to have to put an interior island at the parking lot just for ease of plowing.

D. Marshall moved to grant the waiver. Seconded by T. Walsh. Vote unanimously in favor.

- **Waiver Request** – Development Regulations 11.12.1 Rainfall Intensity

D. Marshall moved to grant the waiver. Seconded by T. Walsh. Vote unanimously in favor.

Motion to find the plan complete carried unanimously.

J. Duffy: The School has agreed to erect a Town Historic plaque in recognition of the Elm House and Allen Farm that was formerly on that site.

D. Marshall moved to schedule the hearing on May 20th. D. Rogers seconded. Vote unanimously in favor.

3. WENDELL A. TERRY/AL TERRY PLUMBING (plan #13-08)

1776 Hooksett Rd., Map 9, Lots 21 & 22

Site plan for the proposed construction of a 6,480 sq. ft. 2-story building and to retain the existing 5 apartments in the existing building.

- **Waiver Request** – Development Regulations Section 15.01 16) Parking Standards for mixed or joint use

R. Duhaime recused himself. He is an abutter.

Jennifer McCourt, McCourt Engineering: He is putting in a building to run Al Terry Plumbing more efficiently. Providing the necessary parking, lighting, drainage, sewer, water, etc. Met with the Fire Department and Central Water for technical review.

J. Duffy: This is for completeness. There is also a merger that will be handled as part of this application. The board does not need a vote to approve the merger. It will be noted on the record that the Chair will be signing the merger.

J. McCourt: The waiver is for visitors' spaces. Requirement is 2.5 spaces per unit for residential. The spaces being provided for the business side is way over what is needed. We thought, to minimize pavement on site, we could use some of the parking for residential use.

D. Marshall moved to grant the waiver. T. Walsh seconded. Vote unanimously in favor.

Motion to find the plan complete carried unanimously.

D. Marshall moved to schedule the hearing on June 3rd. D. Rogers seconded. Vote unanimously in favor.

- **Voluntary Merger** – Map 9, Lots 21 & 22

Voluntary merger will be signed by the Chair.

CONTINUED PUBLIC HEARING

**4. 3-3 EAST POINT INDUSTRIAL PARK, LLC / UNITED RENTALS (plan #13-07)
2 Sutton Circle, Map 49, Lot 3-3**

Amended site plan for a loading dock (now ramp), ramp for lower parking lot, and dual fuel tanks

David Udelsman, United Rentals: We basically have an existing building and two existing paved storage areas. We're taking down a chunk of the fence and doing a pavement connection between the two storage areas. We'll be constructing a 25' x 30' fueling tank pad. Creating a retaining wall and ramp at the existing dock doors. The last time we were here there were questions regarding landscaping. The landscaping will be brought up to the original site plan of the property. The areas for employees and visitors parking have been designed with lighting. Deteriorated asphalt to be repair. I believe at this point, we have addressed all of the staff's comments and concerns.

J. Duffy: There were 3 items on Stantec's letter of May 12th to be addressed. Stantec was recommending that a guard rail be installed. The applicant does not believe a guard rail is needed. There was a comment about the sheer key should be added to the joint. The applicant does not agree. Something under "F" and under "Drain" should be incorporated into the design. Leo did review those comments.

L. Lessard: On the drain, it's a 4 ft. wall there's no need for an under drain. I worked with Keach Nordstrom, they've got #4, #5 rebar coming up, which is more than sufficient to tie it in. Instead of putting a guard rail as Stantec recommended, put up a hand rail. I'm fine with that. I've met with Keach Nordstrom and we got it all rectified.

T. Walsh moved to grant the waiver. D. Rogers seconded. Vote unanimously in favor.

D. Marshall moved to find the plan complete. D. Rogers seconded. Vote unanimously in favor.

Opened to the public.

No public comments.

Public hearing closed.

D. Marshall moved to find the plan complete. D. Rogers seconded.

J. Duffy stated the only issue is the boiler plate.

R. Duhaime asked about the fuel storage tank. This is in wetlands. There are no issues?

L. Lessard: No, the tanks themselves are all contained.

Vote unanimously in favor.

***PUBLIC HEARINGS – EXTENSION REQUESTS – CONDITIONAL APPROVAL PERIOD**

5. *MIACOMET DEVELOPMENT, LLC (plan #07-37)

“Webster Woods II”, Hooksett Rd., Map 6, Lot 114

55 year+ development of 23 duplex and 7 single ranch style units (total 53 units) conditionally approved on 11/02/2009. Granted a 1st extension to 5/19/2013 (Planning Board meeting of 11/19/12).

L. Lessard recused himself due to an e-mail sent to all Planning Board members.

Chair J. Gryval read an e-mail into the record (see attachment).

- **Modification Request** - modify one of the original 11/02/2009 conditions “no certificate of occupancies (CO’s) will be issued until the offsite improvements are 100% completed.”

The request was read into the records. (See file.)

Sharron Cuddy Somers, Donahue, Tucker & Ciandella introduced herself as well as Steve Haight, Haight Engineering and Jim Gove, Gove Environmental.

S. Cuddy Somers: Before we proceed, I’d like to ask for the record given the fact that Mr. Lessard’s e-mail went out to all members, whether or not this would create a difficulty or problem with you in terms of your individual pre-judgment of the matter. If it doesn’t, that’s fine. I’d like to pose the question if you’re comfortable given the fact that you received the e-mail.

Each member indicated he received the e-mail but either did not read it or will make his own decision.

S. Cuddy Somers: What we are seeking is to be able to have the security required for improvements, to be able to get certificate of occupancies for the first 25 units and be able to put those in the market, sell those and use the cash flow to move on with the project. It’s the basis for the request and I’d ask you to consider that.

Opened to the public.

Don Ingalls, 4 Hickory Court: I have mixed feelings about this. I’d like to make sure that there are no other outstanding issues. Do they have all the permits and agreements in place? My first suggestion would be to post a bond for this. The major issue thing when someone does something in the future, is to look at what they’ve done in the past. I’d ask you to look at the conditions of approval from November of 2009. It’s been 3 and a half years, have they progressed on that? They are looking for this modification. Will they do what they say they are going to do? I just ask you to consider their past history.

Closed public hearing.

J. Duffy: I just wanted to add that this condition of approval is actually a condition of their DOT permit. The DOT is requiring the offsite improvement. The applicant does not yet have an agreement with the property owner for which the easement is needed. I would not recommend that the board grant this request. As far as I can remember, we’ve never granted a request like this before. There are 2 issues here. The extension of Phase II approval, which was granted back in 2009. Part of the Phase II approval included 18 conditions. One of those conditions was for them to come up with a plan to address the erosion that exists in Phase I. They have done that and today they received their wetlands permit for the erosion issue not for Phase II. They’ve satisfied that condition. There are still 3 outstanding issues that have not been satisfied. (1) The approval by the Town Council of the trail easement. They are scheduled to meet with the Town Council Wednesday evening. Late notice, it’s been 3 years now. (2) All outstanding comments from Stantec be addressed. We have not yet received final notice. And the last one is for the Town Attorney to approve the Bert Street Slope Easement. This is an easement from a property owner in order to do the improvement on Hooksett Road. I spoke to the owner last week and he stated that 3 years ago he submitted in writing what his proposal was but said it was negotiable. He had not heard back from anyone. Last Thursday, Mr. Haight called him and they spoke but there is no agreement at this point.

S. Haight: This letter from the attorney that says, continue to work on offsite improvements. Our offsite improvements are not defined as the erosion issue. These are different issues.

J. Duffy: It's the roadway improvements.

D. Shankle moved to deny the modification request. D. Winterton seconded.

D. Shankle: I think giving out CO's prior to offsite improvements is a bad idea, specifically as the staff noted there is no precedent and this is not a good time to set one. The issue of cash flow and Planning Board considering a concept of financing is a bad one. You'll end up dealing with it with every plan that comes before you.

R. Marshall: What they're saying is that they would do the offsite improvements as long as they can use the money from the first 25 CO's, which means it's dependent on them carrying through with their obligations and promises. Their track record shows that they don't follow through with what they are supposed to do. For that reason, I cannot grant this request.

D. Rogers: There's no timeframe when those 25 units might be sold. I cannot grant the request.

Motion carried unanimously.

Applicant requesting a 2nd extension (1 year) to 5/19/2014 per the following:

- **Extension Request** – Development Regulations (6/4/2012) section 10.03 2) Time Limits for Fulfilling Conditions.

The request was read into the records. (See file.)

S. Cuddy Somers: We have an amended permit, an alteration terrain permit and as of today, we have an amended permit for the wetlands, for both the erosion plan and Phase II. We have arranged for a contractor to be on site. We would not have been able to do that by May 19th, the deadline imposed back in November, without having the permit today. It will take a month to get the work done. With regard to the other conditions, we were instructed to get all the conditions from 2009 done. As of Friday afternoon, there were 4 outstanding items. All outstanding comments from Stantec have been reviewed and taken care of. With regard to the approval of the trail easement, I asked to be scheduled for May 8th. For some reason that was pulled. That trail easement was submitted to the Town and reviewed by the Town Attorney. The Town Council should be in a position to authorize the Town Administrator to sign the easement on Wednesday. Finally, with regard to Mr. Beauchesne, he stated he is amiable to issuing an easement to Miacomet. It's a question of a dollar number and that will be done. There is no particular complexity. It's a simple easement. All of these matters have been taken care of. With regards to your decision tonight, the standard that you are to operate on is one of reasonableness. We have worked diligently in the last 6 months to get these done. The primary asset of the company is the land for Phase II. The ability to finance Phase II and the erosion work we obtained approval for is driven by the certainty of having an approved plan for Phase II and the certainty of having that plan be vested. Without this, it would be a very difficult decision for Miacomet to proceed with Phase II and the erosion work. It's really critical that the board understands that. We know it's been a difficult relationship. We know there has been litigations between the Town and Webster Woods. It was due to the difficulty in getting a permit for the erosion from DES. We are asking to grant the request to extend the time limit to fulfill the conditions. I understand this has been a long and difficult process. In light of what we have accomplished, it would not be an exercise of good faith if that request is denied.

D. Tatem: The permits received in the last couple days referenced the slope erosion plan. They do not reference Phase II. I'm unaware of the status of the permits for Phase II.

S. Haight: They have amended both permits.

D. Tatem: The permits do not state that. The amendments do not reference Phase II. I am aware that the DOT permit was extended. It was mentioned that the slope easement has not been obtained yet. I just want to clarify a comment Atty. Sommers made. She stated that all previous comments from our letter have been addressed. Maybe they have been but we have no correspondences documenting that they have been addressed. The letter that we wrote on April 16th. Ms. Sommers noted that we said as long as the gully or the erosion issue has been addressed then we recommended approval of the plans. That is not the case. The letter from April 16th referenced again, the Webster Woods drainage improvements plans dated May 21, 2010 and revised April 1, 2013, it specifically stated we recommend that the DES permits are obtained then the plans should be approved. This has nothing to do with Phase II. We have not done a review with Phase II since the last letter in 2009.

D. Shankle: The trail easement is still on the Town Council agenda for Wednesday night.

S. Cuddy Sommers: I was advised otherwise but if it's still on the agenda, I will be here.

R. Duhaime: The biggest thing we have is to motivate you to get things done with Phase I. You could see how this has been dragging on. I don't see how it would benefit the Town to give you an extension?

S. Cuddy Somers: It would benefit the Town in terms of Moving on with Phase II and the erosion work being done that was approved today.

R. Duhaime: How long would it be before all the conditions are met?

S. Cuddy Somers: I think the biggest thing to be done is the easement with Mr. Beauchesne and the erosion work. I think that would take 4-6 weeks. We'll be amiable to reducing it down from a year.

D. Marshall: You've used the terms reasonable and good faith. Miacomet has certainly stretched both of those words for the last 2 years. You haven't been reasonable and you haven't been in good faith. And we're supposed to ignore the previous 2 years of your track record. I for one am tired of granting extensions and seeing nothing accomplished. The erosion will have to be fixed before you proceed with Phase II. What guarantees do we have if we grant any extensions, that you'll accomplish anything?

S. Cuddy Somers: What I'm trying to suggest is that, first of all, the board has a statutory obligation grant reasonable decisions. Second, without the extension of the approval, we don't have an approved Phase II. There is zero motivation for Miacomet whose asset in this entire project is the property. I simply want the board to be aware of the ramifications of what will happen if this approval goes away.

D. Marshall: It sounds to me more of a threat. That if this extension does not go through that the Town and the owners will be left to address the problem on their own.

S. Cuddy Somers: It's not a threat. I'm simply indicating what options are available for Miacomet or any other business.

S. Lovas Orr: Miacomet's commitment is questionable. I am very concerned that you are sitting here telling us that if we do not give you what you're asking for, nothing will get done. I feel like you're demanding my lunch money. I understand there's money issue.

S. Haight: This development did not cause the problem. It's an erosion problem that has deteriorated over the years. The burden of fixing the drainage it left on the developers, not on the Town or DPW. Don't try to put the problems on Phase 1 on Miacomet when it existed way before that. You have an approved Phase II.

D. Marshall: The problem is there, and yet the developer decides to build knowing the problem existed.

D. Rogers: I don't see it the purview of this board to essentially bail out Miacomet. It sounds like you're getting that on the record to prepare for litigation so if you don't get what you're looking for, you would

sue. It sounds to me that this board has been reasonable and has acted in good faith. This has been going on for 3-4 years now. I feel for the people living up there. I don't have a lot of confidence that having another extension would solve the problem. A year is unreasonable, maybe 60 or 90 days.

S. Cuddy Somers: It really is the slope easement. We're ready to go out there and address the erosion right now. Since 2009 the intention was moving forward with this erosion. The focus has been to nail down the erosion problem.

D. Shankle: The trail easement from the Council could have been done in 2 weeks just by getting on the agenda. It's not really that you had to get the work done. You just needed the approved plan. If you would have moved forward with the good faith effort to get this done, tonight you would have come in here with all the requirements met. That's what should have happened.

Opened to public.

Moe Beauchesne, 46 Bert Street: As far as the slope easement, in November 2009, I submitted what I thought was a proposal and have not heard back. It's been 3 ½ years. A week ago I did hear from Steve asking me what my requirements were. I sent him the same requirements. There's been no negotiations. I'm just waiting. I'm happy to hear they think they can get it done in 4 weeks. I am a reasonable person but it can't be done one-sided. I haven't seen any counter-offers. As far as granting the extension. I don't have an opinion whether you should grant or not.

Don Ingalls, 4 Hickory Court: This amended plan dated April 12, 2013 has been reviewed and approved?

J. Duffy: The State, Town and Stantec have approved the plan.

D. Ingalls: As long as it's been approved by the State and the Town. I'm going to be selfish. We have an offer to immediately address the erosion problem in Phase I. I will not be opposed to a 6-months extension because it's been approved by the Town and the State.

George Vaillancourt, 6 Bernice Street: I'm really opposed to put more houses there. The traffic right now is impassable. You have to get the State to get the lights there or someone's going to get killed.

Chair Gryval: Don't they have a deceleration lane proposed for that at one time?

J. Duffy: There's a turning lane proposed as part off-site plan but not a traffic light.

Public hearing closed.

S. Orr motioned to grant 3 months extension. Motion seconded by T. Walsh.

Motion and second withdrawn.

D. Marshall moved to grant the 3-month extension for the Webster Woods II project with condition that by the end of the 3-month extension, all work associated with the erosion is completed. Motion seconded by S. Orr. Vote unanimously in favor.

All other conditions still in effect.

**6. *BEAVER BROOK DEVELOPMENT OF HOOKSETT, LLC
(plan #06-18 & 09-03) "Beaver Brook Heights"**

Londonderry Tpke. (by-pass 28) & Jacob Ave. Map 49, Lots 49 & 58

87-lot subdivision conditionally approved on 5/19/2008 & 5/18/2009 (phasing). Granted a 1st extension to 5/18/2013 (Planning Board meeting of 7/9/12). Applicant requesting a 2nd extension (90-days) to 8/18/2013 per the following:

- **Extension Request** – Development Regulations (6/4/2012) section 10.03 2) Time Limits for Fulfilling Conditions.

Atty. Michael: Since that one extension, we have covered all of the outstanding issues. A wetlands permit expired. We were not notified until later. We needed to file a new application. We got authorization from the Town to sign off on the permit. It was signed off. Our extension runs out in about a week. Hopefully, we'll have the permit. It's a fairly small wetlands. That's what we're waiting for. It was approved previously and I don't see any reason why it won't be approved again. We're requesting the board to give us 90-days extension. I don't think it's going to take that long but I can't speak for the State of NH. The only outstanding issue is the payment of appropriate fees, which we're able to do then the plan could be recorded.

D. Marshall: 8 items were listed. Are all items addressed except for wetlands?

J. Duffy: No. I have an e-mail from Donna dated May 1st. There are many items included in here that are still outstanding. I went through the list and came up with 8 items that need to be addressed prior to approval.

1. Easement Agreement for entire subdivision.
2. Phasing/Vesting agreement.
3. Magdziarz Agreement (24 Jacob Avenue) original signed agreement.
4. Updated plans.
5. Updated NHDOT permit.
6. NHDES Wetland Permit for Jacob Avenue.
7. State Septic Approval Number.
8. Surety for future traffic study. Study to be completed six months after Beaver Brook Road and Jacob Avenue are completed.

D. Marshall: Is 90 days enough to address these items.

Atty. Michael: I believe we can get these done. I did speak to the Town Counsel and discussed the phasing plan issue. What was submitted was more of a development agreement than a phasing plan. I did not prepare that. This is a new thing that I just learned when I spoke with Atty. Buckley. That's not part of anything that I've seen before but I'm happy to take care of it. I don't think it's going to be that difficult to pull all these together.

Chair Gryval clarified that if the extension is granted, all the items will have to be addressed.

D. Marshall moved to grant the extension. Seconded by T. Walsh. Vote unanimously in favor.

7. CHANGE OF USE

J. Duffy informed the board of the following Change of Use decisions

- Hyung-Gyou Kim, 11 Kimball Drive, Map 37, Lot 13 – Prior use was music production/radio station. Applicant proposes to utilize this unit for singing practice/music production/karaoke. This may be considered an assembly use. Additional information has been requested of the applicant.
- Bass Pro Shops, 2 Commerce Drive, Map 37, Lot 43-A – Prior use was Lowe's Home Improvement Retail Store. Proposed use is Bass Pro Shops. (See letter of conditional approval on file.) They are scheduled to come before the ZBA on May 14 for a variance request. Their plan includes a boat repair. The property is located in the groundwater district. They have to update their driveway permit with the NHDOT. NHDOT will require a traffic study.

D. Marshall: DOT agreed to expedite the permit? Driveway permits usually take 6 months.

J. Duffy: They were advised to speak to DOT right away. I haven't heard anything from DOT yet. If and when the sewer line is available, they are willing to hook up to it. In the meantime, they are going to add another tank for their sewer. They are going through the State for approvals on that tank.

D. Marshall: It looks like they are looking to get a CO in October/November? They have 12 months from that date to hook up to the sewer line. Is the Sewer line going to be done that quickly?

L. Lessard: When the sewer is done, they have 12 months to hook up.

OTHER BUSINESS

- Regional Visioning Workshop, Barka Elementary School, Derry, 8:30 am – 11:00 am.
- Procedural Question – Normally waivers are handled at the public hearing not at completeness. The board decided to vote on waivers during public hearing.
- D. Shankle informed the board on Wednesday, May 8, 2013, he will ask the Town Council for approval to combine Building, Code Enforcement Office and Community Development under one department. Jo Ann Duffy will be the department head. Applications were received for CEO. They have a job description for an Assistant Planner.

ADJOURNMENT

Chair J. Gryval declared the meeting adjourned at 8:16 pm.

Respectfully submitted,

Evelyn F. Horn
Administrative Assistant