



Meeting Minutes
North Hampton Planning Board
Thursday, February 17, 2011 at 6:30pm
Town Hall

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Shep Kroner, Joseph Arena, Laurel Pohl, Mike Hornsby, and Jim Maggiore, Selectmen's Representative.

Members absent: Phil Wilson and Barbara Kohl

Alternates present: Mike Coutu

Others present: Brian Groth, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Mr. Kroner assumed the Chair in the absence of Chair Wilson and Vice Chair Kohl.

Mr. Kroner convened the meeting at 6:32pm.

Mr. Kroner seated Mr. Coutu for Mr. Wilson.

The Board was in receipt of a letter from David York, Project Manager of W/S Development Associates requesting the balance from the "Staples" landscape surety account in the amount of \$8,500.00. They also received a letter from Building Inspector Richard Mabey stating that he had inspected the plantings in October 2010 when the surety was due to be released upon notification from W/S Development. He stated that "the plantings, according to the landscape plan, remain alive and intact".

Dr. Arena moved and Mr. Maggiore seconded the motion to grant the request from W/S Development to release the remaining balance of \$8,500.00 plus interest from the "Staples" landscape surety account.

The vote was unanimous in favor of the motion (6-0).

Alternate Member Michael Coutu wrote a paper on "Collateralization of Performance Obligations" and presented it to the Board.

Dr. Arena commended Mr. Coutu on the well written document and thanked him for sharing his expertise on the subject with the Board.

Mr. Coutu explained that he volunteered to write this paper for the Board because the article recently published in the LGC Town and County magazine was inadequate. He reminded the Board of the "self-calling" letter of credit established between the Town of North Hampton and the previous owners of

Greystone village that failed. He wrote a ten-page technical recital on collateralization, and Mr. Wilson began to write a draft policy based on that. Mr. Wilson was unable to finish the draft due to health reasons, so Mr. Coutu completed where he left off. The Board was in receipt of the draft policy statement for collateralizing performance obligations.

He explained that the law requires an account ledger that clearly identifies each account with the Town, and that it is critical to have an agreement between the Town and the Applicant. He suggested that a standardized agreement be drafted by an Attorney that specializes in this area. He also stated that it is critical that the surety accounts must be held in an account separate and apart from the assets of the town and cannot be comingled with town assets.

Ms. Chase explained that surety accounts are currently set up as individual accounts and are not comingled with any other town account.

Mr. Coutu suggested the Board make a motion to accept the draft policy for collateralizing performance obligations and to choose a Lawyer to draft a standardized agreement that responds to cash collateral, letter of credit and surety bonds. He said that the agreement sets up the rights and obligations of the "parties" involved (applicants and the Town).

Mr. Coutu explained that all collateral is not created equal and that there are three (3) types:

1. Cash Collateral – may not provide assurance that such cash can be applied for the purposes intended or that the cash will be available when needed. The Planning Board should establish a dollar "cap" for the use of cash collateral for situations involving small amounts.
2. Letters of Credit – is the best collateral there is as long as it is done correctly. A letter of credit is secure so that if a fraud is committed it does not relieve the bank from its obligation to the Town.
3. Surety Bonds – involves three parties: (1) Principal, (2) Obligatee, and (3) Surety or Issuer. Surety bonds are not the equivalent of a Letter of Credit. The surety's obligation is subject to contract disputes and fraud, which may relieve, in whole or in part, the surety from its obligation to pay or perform.

Mr. Coutu compared a "Letter of Credit" as a first prize; "Cash Surety"; as a second prize and "Surety Bond" as a third prize.

Mr. Kroner referred to the bus company in Town and asked if the Board had the authority to make them clean up the site when they vacate it. Mr. Groth said that he would look into that question.

Dr. Arena moved and Mr. Maggiore seconded the motion to adopt the draft policy statement for collateralizing performance obligations as written by Michael Coutu.

Mr. Groth referred to 3a under Surety Bonds and suggested adding *site plans, subdivision plans or excavation plans*.

Mr. Coutu agreed to make the change suggested by Mr. Groth.

The Board discussed replacing the draft policy with the current surety policy in the site, subdivision and excavation regulations.

The Board determined that any changes to the regulations would need to be done at a properly posted Public Hearing to be voted on by the Planning Board.

The Board voted on the original motion, (5 in favor, 0 opposed and 1 abstention). Mr. Kroner abstained.

Mr. Maggiore moved and Dr. Arena seconded the motion to direct Mr. Groth to isolate all areas within the Planning Board's regulations to be replaced with the draft policy statement for collateralizing performance obligations written by Michael Coutu at a properly posted Public Hearing. The vote was unanimous in favor of the motion (6-0).

Mr. Maggiore thanked Mr. Coutu for the continued amount of pro bono work he does for the Town of North Hampton.

The Board members along with Circuit Rider Brian Groth commended Mr. Coutu for the very well written performance surety policy.

Mr. Coutu said that it is very important to have the standardized agreement prepared by counsel that has expertise in the area of collateralization.

Mr. Coutu moved and Dr. Arena seconded the motion to retain legal counsel competent in matters of collateralization to prepare a standardized agreement to be used in collateral transactions as part of the site, subdivision and excavation regulations. The vote was unanimous in favor of the motion (6-0).

Mr. Groth said that the Town may need to "bid out" retaining legal counsel to draft the standardized agreement. He suggested that a RFQ (request for qualifications) be sent out first, rather than a RFP (request for proposals) so that the decision is not based on price.

Mr. Coutu said that he would draft the requisite of what will be required from the law firm. He will then give it to Mr. Maggiore to give to the Town Administrator.

It was discussed that there may be someone within the legal firm of Upton and Hatfield, Legal Counsel for the Town, that specializes in performance sureties. Ms. Chase will ask the Town Administrator.

I. Committee updates

Ms. Pohl reported that the CIP Committee met, but did not have enough information to complete the analysis. The Committee voted to have the Town Administrator come up with a schedule for the Capital Improvement Project. Mr. Maggiore is working with Mr. Fournier on that.

Ms. Pohl explained that the current CIP Committee Members are not happy with the process. She said that a process needs to be determined for the next Committee so that they have an understanding of what to do. She said that there should be Rules and Procedures and guidelines to go by.

Mr. Maggiore said that because the Committee did not know what to do they expected the work to be done instead of having to do the work itself. Mr. Maggiore said that the School proposal for the addition and the Warren Street Municipal Complex proposal came at the same time when the Committee was finalizing the CIP.

Dr. Arena said that years ago when he was working on the CIP, the Planning Board visited area towns to see how they handled their Capital Improvement Plans. He said that the Town of Plaistow had an outstanding CIP.

Mr. Kroner reported on the Master Plan update. He said that he is working with Mr. Groth and they are in the process of collecting data from the Rockingham Planning Commission and the Town Administrator. He said that he has asked for the inventory of all capital assets.

Mr. Kroner said that they have reached out to the Conservation Commission and the Water Commissioners for information. He said that a lot will transpire in March and April and that the Planning Board will have to come up with the recommendations for each Chapter of the Master Plan.

Mr. Kroner suggested that the members read a chapter in the current Master Plan. Mr. Groth said that some Chapters were updated in 2006 and 2008; he said they are concentrating on the older Chapters.

Minutes

Dr. Arena moved and Mr. Coutu seconded the motion to approve the minutes of January 13, 2011, January 20, 2011 and February 3, 2011.

Ms. Pohl corrected a typo on line 346 of the February 3, 2011 minutes.

The vote was unanimous in favor of the motion to approve the minutes of January 13, 2011, January 20, 2011 and February 3, 2011 with the typo correction (6-0).

The meeting was adjourned at 8:30pm without objection.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved April 21, 2011