



Meeting Minutes
Work Session
North Hampton Planning Board
Tuesday, December 20, 2011 at 6:30pm
Town Hall, 231 Atlantic Avenue

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

Members present: Barbara Kohl, Chair; Joseph Arena, Tim Harned, and Phil Wilson, Selectmen's Representative.

Members absent: Shep Kroner, Vice Chair; Laurel Pohl, and Mike Hornsby

Alternates present: Nancy Monaghan

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

Ms. Kohl convened the Meeting at 6:33pm.

Ms. Kohl seated Ms. Monaghan for Ms. Pohl.

New Business

Case #11:13 - Shane Smith – The Board approved the subdivision plan for Shane Smith on December 6, 2011 with conditions. The plan was revised and presented to the Board at the December 6th Meeting. The Board was in receipt of a letter from the Town's Engineer, Steve Keach, based on the plans submitted by the Applicant's Engineer at the December 6th meeting that suggested the Board add another Condition of Approval.

Mr. Wilson said that he planned to recuse himself from the discussion, but seeing that the Board approved the Application already he said that they cannot add the additional condition.

Mr. Groth said that the only way the Board could add another condition would be to reopen the Case and hold a Public Hearing.

Ms. Kohl noted that the recommended condition made by Steve Keach was to require a site specific stormwater management system to be designed and approved prior to the issuance of a building permit for residential construction on the proposed new two lots, as well as inspection of the completed construction prior to issuance of certificates of occupancy.

Dr. Arena commented that the Board agreed that there was no need for the stormwater management system because, as he stated at the Meeting, which was later determined, that the drainage flows toward the east eventually draining into Bass Beach and not in the direction of Kari Schmitz's property. Dr. Arena said that the suggested condition is an unnecessary burden on the Applicant.

Mr. Harned read from the Minutes of the December 6th meeting and one of the Conditions of approval was that the suggested notes from Keach and Nordstrom will be added to the final Mylar.

Ms. Kohl said that the suggested condition is separate from the notes that shall be added to the final Mylar.

Mr. Groth said that, in his opinion, the Board should not reopen the Case because it's a "tough sell" as to the reason for reopening it, and it would be placing an unnecessary hardship on the Applicant. Mr. Groth said that the Applicant fully responded to all of the Town Engineer's initial concerns.

Dr. Arena commented that his motion was made and seconded, and was voted on by the Board; this "condition" is after the fact, and should not be considered.

The Board decided to ask the Town's Engineer to rewrite the Memo based on the initial plans submitted to them from Jones and Beach, and where Jones and Beach had satisfied all of their concerns from that initial review.

Discussion on a possible Change of Use

Ms. Chase explained that the owners of 14 Lafayette Road have the opportunity to rent their building to a franchise, Applebee's Neighborhood Grill, to use as a satellite office, but would need to move in on January 15, 2012, three (3) weeks prior to the next available Planning Board Meeting. The previous tenant was Imprints Day School. The Owner was informed that he would have to apply to the Planning Board for a Change of Use and that the next available meeting would be February 7, 2012 (Mr. Kroner didn't have an objection in allowing him to attend the January 17, 2012 Work Session). The Owner wanted Ms. Chase to check with the Board to see if the Change of Use was necessary because the building was originally approved for office space. He represented that the new tenant would use the office space as a satellite office for Applebee's Restaurants, and that there would only be one (1) or two (2) employees occupying the space on a semi daily basis; the office would be vacant a lot of the time, except when they hold their monthly staff meetings of approximately ten (10) people. He said there will be a significant decrease in water usage and traffic.

Mr. Wilson said that the Zoning Ordinance has a set of uses, and office space and day schools are two different uses, which require a change of use approval from the Board, but also added that if there is no increase in the parking or modifications made to the building, and it was originally approved for office space, then it would be up to the Board's discretion whether or not to require the Change of Use Application. He said that in these economic times the Board may want to be flexible.

Dr. Arena said that because it was originally approved for office space, and there will be no significant changes to the building, then he has no problem with them reverting the use back to office space.

Ms. Kohl voiced concern over making such an allowance because the Planning Board has been burned so many times before. She said she would like to see more on the proposal.

Mr. Groth said that he understands, given past experiences, that the Board would be leery to allow it without a Hearing, but the building was originally used as office space, so they “passed that test” and there will be no changes to the square footage so the parking requirement doesn’t change; he can see good reasons on why they wouldn’t need to apply for a Change of Use.

Mr. Wilson suggested allowing the tenant to move in conditioned upon the willingness of the owner to come to the next Work Session and explain himself and confirm the representations he made to the Planning Administrator, and if the representations are not consistent, then the Board will not agree to the change, and the owner will be required to apply for a Change of Use to the Planning Board.

Mr. Harned commented that Mr. Wilson’s suggestion was a reasonable one.

Ms. Kohl said that she was afraid the Board would be opening a “can of worms” with all other future Applicants.

Mr. Wilson moved and Mr. Harned seconded the motion to authorize the Building Inspector to allow the tenant to move into the facility on the representation that it will be a facility for not more than one (1) or two (2) employees, except on occasions when they have an Applebee’s Conference there, which has been represented as once per month, and the agreement of the Applicant to meet with the Board at the January 17, 2012 Work Session to confirm that these representations are in fact the medium in which the building will be put.

Dr. Arena said that a Representative of Applebee’s should be the one present at the Work Session to address the Board.

Mr. Wilson said it is the Owner or an authorized Representative of the Owner that has to address the Board; the Board deals with the owners, not the tenant.

Dr. Arena said it is the people occupying the space and running the business that should address the Board.

Mr. Wilson said it is always the owner of the building unless the owner of the building authorizes the tenant to speak to the Board on his/her behalf. He said that the Board regulates “Land Use” and we regulate the use of the land by the Land Owner.

Mr. Groth said that the Board has the right to demand authorization from the Owner, but cannot compel his /her tenant to come before the Board. The Owner is responsible for his/her tenant to abide by his/her rules.

Mr. Harned said that, it was his understanding that the Board deals with the Land Owner or a representative of the Land Owner.

Mr. Groth said that he understood Dr. Arena’s point that it would be helpful to have the tenant here to explain what they plan to do.

Mr. Harned made a friendly amendment to add “on an average once a month”, regarding Applebee’s monthly conference meetings.

The vote passed in favor of the motion (4 in favor, 0 opposed and 1 abstention). Dr. Arena abstained.

Dr. Arena abstained because the motion was made to put a limitation on how often the tenant can use the facility when the Board doesn’t really know the first thing about the proposal except through hearsay.

Mr. Wilson said that is why the permission granted is conditioned upon the Owner coming before the Board on January 17, 2012 to reconfirm his representations made to the Planning Administrator, and answer any questions the Board has on the proposed use.

Committee Updates

CIP Committee – Mr. Wilson reported that the CIP Committee met twice since he reported last to the Planning Board. They met with the Police Department and the Fire Department and are scheduled to meet with the School on January 6, 2012; they still need to meet with Town Administration. He said they also plan to discuss the Municipal Complex; they decided that they would not entertain separate proposals; they want to talk about it as a whole. He said that it is the CIP Committee’s sense that nothing will be proposed with respect to the Municipal Complex for at least three (3) years and maybe even five (5) years. He said that they are still waiting for an updated proposal from Warren Street.

Mr. Wilson said that there are significant repairs that need to be made to the Municipal Buildings; the Clerk’s Office needs repairs and is not ADA compliant. The western side of the Fire Department Building is cracking; there are major repairs and maintenance that need to be addressed with these municipal buildings. Mr. Wilson said that the Public Works Director, John Hubbard has done a great job identifying the problems with the buildings.

Mr. Wilson said that the Library Trustees will have a better chance of persuading the voters to approve their plans if they are able to raise 50% of the cost of the project through fundraising. Mr. Wilson suggested that they come up with a plan of what it’s going to take to bring the Library to the 21st Century and present that to their major donors.

Dr. Arena said that the Town never put money away for building maintenance, and after he spoke about it at a Town Meeting they started putting money in a Capital Reserve Fund for building maintenance.

Blasting Protocol Ad hoc Committee – Mr. Harned said that he would like to put all of the information together that has been collected into one document and meet with the other Ad hoc Committee members and draw a line through everything they don’t want in it and keep or modify what they want to keep in it.

Mr. Harned explained that the State provides a 59-page document on explosive regulations, but they don’t really “protect” what needs “protection” in the Town of North Hampton. It’s basically more of a

public safety document that covers how explosive material should be handled and stored and the licensing processes individuals have to go through.

Mr. Harned said that there are three (3) areas explosives come into play, (1) the impact on structures; (2) Pollution of the ground water and (3) impacts on individual's Wells. He explained that NHDES mainly addresses the structure and pollution problems. The Wells can be affected by "cloudy" water (that eventually clears up), or impact on production of the Well. Mr. Harned explained that he has found no data on the protection of homeowner's Wells; that will have to be created from scratch. He asked direction from the Board on how the Committee should move forward.

Mr. Wilson said that there are two main issues the Board was concerned with; notification to the Abutters to give them the opportunity to comment and be heard before a blasting permit is issued, and also to give advanced notice to the general public regarding the noise from the blast.

Mr. Harned explained that the Town of Windham addresses the notification of Abutters by notifying houses 100-years old and older within a ½ mile radius and newer homes within in a ¼ mile radius. Ms. Kohl commented that "notification" is pretty well covered in the "draft" Ordinance.

Mr. Harned asked for the Board's opinion on how to come up with a radius from a Well standpoint, and also to consider how to test the water after the fact for contamination.

Dr. Arena said that the State Regulations are more geared toward the northern part of the State where more blasting occurs. The smaller towns have to come up with their own regulations. Dr. Arena said that "blasting" should be the last resort.

It was a consensus of the Board that they would like to protect homeowner's Wells. Mr. Harned said that he can come up with a number regarding radius and the Committee and Board can discuss that.

Mr. Harned said that in the "Purpose" section of the Ordinance it states that the Ordinance is a supplement to the State's Regulations.

Mr. Groth said that he would consult with his colleague (who was once a Circuit Rider up North) and ask for any information he may have on "blasting".

Mr. Wilson said that not only should "blasting" be a last resort, but the Ordinance should include standards that the Planning Board will apply and test on whether the Applicant has met the burden of proof that they *have* to blast in order to reasonably use the land.

Dr. Arena said that the Ordinance cannot be so restrictive that the people can't use their land. He suggested the Board add a limitation on the depth the "blasters" can dig to blast.

Ms. Kohl asked if the Ordinance was going to be more restrictive than the State, and Mr. Harned said, "It will be "different" from the State".

Mr. Wilson suggested requiring that an expert from the Water Company approve the plans submitted by the "blasting" company; the Aquifers need to be protected.

Mr. Harned said that the Town will have to hire a "Blast Administrator" at the Owner's expense.

Regarding fees for the “blasting” application, it was determined that the Planning Board recommends an amount to the Select Board because they set the Town’s fees. Mr. Harned suggested that any sureties involved would be handled under the Board’s Collateralization Policy. The Board agreed to penalize anyone that does not apply for a blasting permit.

The Board discussed a scenario where the developer finds out during the middle of the project that they need to blast in order to continue. It was determined that poor planning on the part of the developer would not result in waiving the approved blasting protocol.

Mr. Harned asked the Board if they wanted to go as far as ascertaining the capacity of people’s Wells. Mr. Wilson said that it wouldn’t be a bad idea for a “blaster” to test the Wells before and after the blast so they have a baseline to go by in case there are any problems with the blast.

Mr. Wilson said that it all comes down to how confident the Board is in the end, that the protective measurements put in place are going to protect the individual Well owner, and if they are confident then it would be up to, and at the expense of, the Well owner to have their Well inspected.

Mr. Harned has not come across data that tested what kind of blasting activity would cause a problem in a Well.

Mr. Harned said that he will take the information he received this evening and incorporate some of it into the draft, and get the Ad hoc Committee together for a meeting on it after the first of the year.

Ms. Kohl reminded Mr. Harned that the deadlines for Public Hearings for zoning changes are fast approaching.

Code of Ethics Committee – Mr. Wilson reported that the next Committee Meeting will be held on Wednesday, January 11, 2012. He said the Committee will go over the recommended changes proposed by the Planning and Zoning Boards; they will then decide to recommend to the Select Board whether or not to put it on the Warrant. Mr. Wilson said that in his opinion, the Town voted over a year ago to create this Ad hoc Committee, and to come back to the Voters with a new proposal and let the Legislative Body decide if they want to have it or not. Mr. Wilson said that the Select Board does not have to hold a Public Hearing on the proposed Code of Ethics.

Minutes

November 15, 2011 – Dr. Arena moved and Mr. Wilson seconded the motion to approve the November 15, 2011 minutes as amended.

The vote was unanimous in favor of the motion (5-0).

December 6, 2011 – Dr. Arena moved and Ms. Monaghan seconded the motion to approve the December 6, 2011 minutes.

The vote was unanimous in favor of the motion (4-0). Mr. Wilson and Mr. Harned did vote because they were not present at the December 6, 2011 meeting.

Other Business

Rite Aid Signalization Bond

Ms. Chase explained that the bond put into place by Band Aid six (6) years ago during the construction of Rite Aid will expire in February 2012. She asked for direction from the Board.

Mr. Wilson explained that the bond was put in place to install a signal for pedestrians to cross Lafayette Road at the Rite Aid location. WS Weiner was supposed to install sidewalks. The State agreed to the configuration and WS Weiner would pay for it. The Sidewalks were never installed because WS Weiner didn't want to maintain them.

Mr. Groth said that he spoke to the RPC Transportation Planner and was informed that the Department of Transportation never recommended the approval for the signalization configuration. He suggested the surety be released to the Applicant.

**Mr. Wilson moved and Dr. Arena seconded the motion to authorize the Planning Administrator to release the surety on the 6th anniversary, February 2012, to the Applicant.
The vote was unanimous in favor of the motion (5-0).**

Master Plan update

Mr. Groth said that he is in the process of coordinating, with Mr. Kroner; the public visioning sessions, and thought it would be a good idea to hold them in the month of April. He said he and Mr. Kroner would do a presentation, but would like to expand out and ask other members to help in facilitation at the Sessions in getting public input. He said that they will have a timeline ready in the next couple of meetings. Mr. Groth said that the Broadband Chapter is done and asked if anyone had any comments on it; there were no Board comments. Mr. Groth said that they have reviewed the Town of Newington's Master Plan book that Dr. Arena had given them and agree that they like the look and feel of the organization of the book. He said that the goal is to have the finalized copy of the Master Plan available this summer.

Junk Yards update

Mr. Wilson said that the Attorney is still working the matter and that the Town's Legal budget line is rapidly depleting. He said that the Select Board is not going to want to authorize any over expenditures in any items in the budget this year. He said he is not sure an Ordinance will be created this year, but enforcement action will be taken.

Dr. Arena said that he began writing a proposal/statement regarding "junk yards". He said that he broke down the words "Junk" and "Yard" into the two words and defined them individually. Dr. Arena will continue to work on it and have something ready for the Board to review. He commented that the "junk yard" booklet the Board has been reviewing is convoluted, and he is taking the approach to try and simplify it, so that it is easier to understand.

Ms. Kohl explained that the Board was in receipt of a list of Dealerships and Inspection Stations in North Hampton from the Department of Motor Vehicles Dealer Desk. After reviewing the list it was determined that it was grossly inadequate. Ms. Kohl referred to a property on Lafayette Road and wanted to know if she could offer some information to the Town's Attorney regarding this particular property because it may change his opinion on whether it should be considered a "junk yard".

Ms. Kohl said her research suggests that a dealer's license is associated with one, and only one, property and they are not transferrable from one property to another, but she would like the Town's Attorney to confirm that.

Ms. Kohl said the dealer's license has to be renewed by March 31st of every year.

The Board authorized Ms. Kohl to write a letter to the Select Board and "copy" Mr. Fournier requesting that the Code Enforcement Officer verify that the dealerships in Town have a current valid dealer's license. Ms. Kohl will also invite the Code Enforcement Officer to attend the next Work Session to address the questions the Board has on dealer's licenses.

Ms. Monaghan volunteered to contact the Motor Vehicle Department's Dealer Desk and try to obtain accurate information.

Sign Ordinance Violations

Ms. Kohl asked the Board to sign a "Complaint Form" for two signs that are in violation of the Sign Ordinance; one for the Pork-EZ sign shaped like a pig on Route 1, and the other for the Granit State tanker that is being used as a "bill board". She said once a complaint is filled out, action needs to be taken on it by Code Enforcement Officer.

**Mr. Wilson moved and Mr. Harned seconded the motion to authorize the Chair, Barbara Kohl, to sign the complaint forms for the Pork-Ez sign and the Granite State sign.
The vote was unanimous in favor of the motion (5-0).**

Ms. Chase informed the Board that the Interim Code Enforcement Officer has delivered "Cease and desist" notices to the businesses that have "feather flags" on their property.

Ms. Kohl informed the Board that Mr. Field, Chair of the ZBA, has requested a "Joint Meeting" between the Zoning Board, Planning Board and Conservation Commission concerning recommendations made by the Zoning Board where they have identified weaknesses in the Zoning Ordinance. She asked the Board to review the proposed amendments and they will discuss whether or not they agree to a "Joint Meeting" at the January 3, 2012 Meeting.

Ms. Chase informed the Board that Ocean Subaru would like to know whether or not the Planning Board felt that "feather flags" with no writing on them were considered signs.

**Mr. Wilson moved and Mr. Harned seconded the motion to authorize the Planning Administrator to write Ocean Subaru a letter that the "feather flags" are not allowed.
The vote was unanimous in favor of the motion (5-0).**

368 **The meeting was adjourned at 9:07pm without objection.**

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370 Respectfully submitted,

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372 Wendy V. Chase

373 Recording Secretary

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375 Approved January 17, 2012