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Sandown Planning Board
Minutes
November 5, 2013

Date: November 5, 2013

Place: Sandown Town Hall

Members Present: Mark Traeger – Chairman, Matthew Russell -Vice Chairman,
Matthew Brown – Secretary, Ed Mencis, Ernie Brown, Hans Nicolaisen – Ex-Officio,
Steve Keach – Town Engineer

Also Present: Andrea Cairns - Recording Secretary

Absent: Steve Meisner

Opening: Mr. Traeger opened the meeting at 7:06 p.m.

Review of the 10/15/13 Minutes

MOTION: Mr. Russell made a motion to approve the 10/15/13 minutes as written. Mr. Mencis seconded the motion. Members voted in favor. Mr. Traeger abstained. The motion passed.

Correspondence

Notice from RPC for next year’s dues, they will be \$5,891. They are up from last year.

Rockingham Planning Commission is holding their legislative forum. Mr. Traeger has been several times and noted it is interesting.

7:15 - Public hearing for review of a Conditional Use Permit application to permit dredge and fill of a jurisdictional wetland or stream to upgrade an existing 12” culvert with an 18” culvert to provide access to a proposed four lot Open Space Development. The application was submitted by Rebecca Janco. The subject property is identified on Map 20 as Lot 3 and is located at 218 Fremont Road.

Mr. James Lavelle was in attendance to present the application.

Mr. Lavelle noted the project is simply for replacement and enlargement of the existing culvert. There will be approximately 120 sq. ft. of disturbance to the wetland. They received approval from the Conservation Commission and the state to accomplish the work.

Mr. Traeger explained for the public that they were seeking a permit to do work within the wetland conservation district.

Mr. Keach reviewed his letter dated November 5, 2013. He noted they have done what they could to avoid and minimize impact to the wetland. Mr. Keach’s letter addressed Section 3.D of the Zoning Ordinance which authorizes the board to require a performance guarantee. Mr. Keach feels since it is part of a larger project, they could combine the two

46 projects and Mrs. Janco could provide only one surety. He doesn't feel it is necessary to
47 impose that condition at this time since the bonding for the entire subdivision would
48 include this work.

49

50 Mr. Keach recommended that they approve the application.

51

52 **MOTION:** Mr. Russell made a motion to approve the application for a Conditional Use
53 Permit for Map 20, Lot 3, located at 218 Fremont Road submitted by Rebecca Janco. Mr.
54 Mencis seconded the motion. All members voted in favor. Mr. Nicolaisen abstained. The
55 motion passed.

56

57 Mr. Lavelle noted they were supposed to continue the public hearing for the subdivision
58 application submitted by Ms. Janco. Mr. Traeger noted it wasn't put on the agenda so it
59 couldn't be discussed. Mr. Lavelle noted they would like to continue the hearing to the
60 next available meeting and noted there are several items from Mr. Keach's review letter
61 that need to be addressed before the Board can give approval of the application. The
62 Board discussed appropriate dates for the hearing and decided on November 19th. Mr.
63 Keach felt the hearing needed to be re-noticed since the continuance wasn't placed on the
64 agenda. The Board agreed they would pay for the cost of noticing.

65

66 **Discussion regarding potential Zoning Ordinance violation for Hillside Estates**

67 Mr. Lavelle gave the Board checks for the CUP Application so there was no longer a
68 need for discussion.

69

70 **Engineer's Report**

71 Mr. Keach noted the Board received an estimate from Lavelle Associates for \$3750 to
72 complete installation of the bounds for Valerie Way. He is waiting on a completed
73 estimate from Busby for the paving of Valerie Way. They did receive an estimate from
74 Busby for \$31,450, but Mr. Keach had asked the estimate to be a fixed fee/not to exceed,
75 but it didn't state that. He is waiting for a revised estimate. He noted once he received the
76 final estimate from Busby, he would send both the Busby and Lavelle agreements to Mr.
77 Traeger so he could sign and execute them and they could begin work. They are hoping
78 to have the paving for Valerie Way completed at the same time as the paving for Fremont
79 Road.

80

81 **Other Business**

82 Mr. Ernie Brown noted that he received a call from Bob Bogosh the building inspector
83 that someone from the planning board walked his property and determined that there
84 needed to be silt fencing placed around a loam pile on one of his properties. Mr. E.
85 Brown didn't feel the planning board should be informing the code enforcement officer
86 about violations that the code enforcement officer should be picking up on his own. He
87 also noted that according to the NH Planning Board Handbook provided by the state that
88 planning board members have no right to trespass on others' property without
89 permission. They always have to get permission from the owner. He noted that he and the
90 code enforcement officer agreed that no silt fencing was needed. The loam in question is
91 200' from the river and he doesn't see how it could be impacting the wetlands.

92

93 Mr. Keach noted that he wasn't aware that someone had been out there. He noted that the
94 Board had asked him to work with Mr. Bogosh to explain the zoning ordinance that he is
95 supposed to be enforcing, which he has been doing.

96

97 Mr. E. Brown noted that the zoning ordinance specifies they are supposed to use best
98 management practices (BMPs) and that every loam pile does not need silt fencing.

99

100 Mr. Keach questioned if it was a large pile. Mr. E. Brown noted it was and that it was on
101 the house lot adjacent to the lot where it came from.

102

103 Mr. Traeger noted he was the one who spoke to Mr. Bogosh and that he didn't go on Mr.
104 Brown's property. He noted the pile could be seen from the road. He noted that the
105 erosion control regulations require any disturbance of property to be contained.

106

107 Mr. E. Brown questioned what BMPs are and asked if every piece of property needed to
108 be wrapped in silt fencing.

109

110 Mr. Keach noted they crafted the ordinance to give that judgment to the designer so that
111 he/she could create a strategy for that specific piece of property. He noted that erosion
112 control for a steep lot would be very different if there was a wetland at the bottom. He
113 noted that he could not remember that particular piece of property since it had been some
114 time since he had been there.

115

116 Mr. E. Brown questioned if it was the responsibility of code enforcement or planning.

117

118 Mr. Traeger noted the town has an ordinance. The intent of the ordinance was to take the
119 guesswork out for code enforcement. There is a loam pile that leads down to the Exeter
120 River. The ordinance states that the septic designer should outline erosion control
121 whether the property is flat, sloped or a wetland.

122

123 Mr. E. Brown noted there was no erosion control on the plan. Mr. Traeger stated there
124 should be.

125

126 Mr. E. Brown questioned who he was supposed to listen to—code enforcement or
127 planning.

128

129 Mr. Keach noted, had he been his design engineer, he would have created some kind of
130 erosion control for wind-born erosion. He noted most people think of water erosion, but
131 the dry weather will create dust that will get blown around. Mr. Keach noted his office
132 has suggested seeding the soil for larger piles. Mr. E. Brown argued it was November and
133 grass wasn't going to grow. He also noted the pile would only be there another month.

134

135 Mr. Keach noted that Mr. Bogosh is very knowledgeable, but is still sorting out what he
136 can tell someone to do and what he can't.

137

138 Mr. E. Brown asked again if Mr. Bogosh and Mr. Mencis were in charge or did the
139 planning board need to get involved. He noted the planning board member should have
140 picked up the phone and called him directly.

141
142 Mr. Nicolaisen agreed with Mr. E. Brown that Mr. Traeger is not the sheriff and should
143 have called Mr. E. Brown directly.

144
145 Mr. Mencis noted that Mr. E. Brown is an extremely reputable builder and when he came
146 in with his plans, they discussed everything on site and Mr. E. Brown was more than
147 willing to take care of whatever needed to be done. Mr. Mencis felt he didn't need silt
148 fencing.

149
150 Mr. Traeger noted that the ordinance was put in place so that no one needed to make a
151 judgment call on whether or not you needed silt fencing and Mr. E. Brown was part of
152 those conversations.

153
154 Mr. E. Brown noted there was no silt fencing on the plan. Mr. Traeger noted that
155 according to the ordinance that they passed, silt fencing is supposed to be placed on the
156 plans.

157
158 Mr. Traeger noted that the ordinance is new and he and Mr. Keach have been working
159 with Mr. Bogosh and Mr. Mencis on putting the ordinance into practice. The ordinance is
160 meant to take the guesswork out for Mr. Bogosh and Mr. Mencis and put the
161 responsibility on the engineer designing the plans. He has been working with Mr. Bogosh
162 and Mr. Mencis trying to educate them. Mr. Bogosh didn't know the ordinance existed
163 and Mr. Mencis forgot about it.

164
165 Mr. Russell questioned if the plans were submitted when Mr. Bogosh wasn't sure what
166 needed to be done. He noted that Mr. Traeger was falsely accused of trespassing and he
167 never stated it was a violation. He just asked the building inspector to go out and review
168 the site. He disagrees that the Board doesn't have purview to enforce regulations. It is
169 partially the Board's job to be the eyes and ears and assist the code enforcement officers.
170 He isn't suggested they go on other people's property, but if anyone in the public sees
171 something that needs to be checked, there is nothing wrong with asking Mr. Bogosh to go
172 and check it. It is a new ordinance.

173
174 Mr. M. Brown wanted it noted on the record that once again, our chairman spends more
175 time driving around town and sticking his nose into other people's business than he does
176 coming to meetings.

177
178 Mr. Keach noted the enforcement side is clearly in the purview of the code enforcement
179 officer and the health officer, but because someone is a member of any land use board
180 doesn't mean they also aren't citizens of the town. People can drive around and when
181 they see something, the appropriate thing to do is call code enforcement. You are all
182 citizens of your town. He noted that Tim Lavelle created the plans and used his judgment
183 when designing them.

184

185 Mr. E. Brown noted he doesn't know where he's going to put loam piles when the plans
186 are designed and neither do the engineers.

187

188 Mr. Traeger noted the intent of the ordinance was to make it very black and white and
189 take the guess work out; maybe that is what is missing and needs to be addressed.

190

191 Mr. E. Brown noted that when Mr. Lavelle looks at a lot on a piece of paper, he doesn't
192 know where the builder is going to put the pile of dirt. Mr. Bogosh and Mr. Mencis came
193 out and said it was fine.

194

195 Mr. Traeger noted the reason for the ordinance is that they've had issues with past
196 building inspectors who weren't getting things done. The ordinance was an attempt to put
197 the responsibility in the hands of the engineer.

198

199 Mr. Mencis noted it is an important issue and he's glad Mr. E. Brown brought it up.

200

201 Mr. Traeger noted that right now erosion control is a judgment call for Mr. Mencis and it
202 shouldn't be.

203

204 Mr. Keach noted when he talked to Mr. Bogosh he told him to look at the plan as a
205 builder. He knows how a site functions from prior experience. Mr. Bogosh should look at
206 the plans when they come in and enforce the plans as approved. The secondary part is
207 that sometimes things change.

208

209 Mr. Russell questioned, knowing how sensitive the area just above the Exeter River is
210 that you're building in, wouldn't it make sense to be more conservative.

211

212 Mr. E. Brown noted he was being conservative. He put silt fencing around a pile that he
213 didn't feel needed it in the first place.

214

215 Mr. Traeger noted that his interpretation of the ordinance is that every plan is going to
216 have some erosion control. It's a new ordinance. He went to sites with Mr. Bogosh where
217 there was supposed to be erosion control and there were clear violations that Mr. Bogosh
218 wasn't aware of.

219

220 Mr. Keach noted there is a mandatory note on all plans that BMPs should be in place.
221 When you see plans, you see what is going to be there at the conclusion of construction.
222 Part of good erosion control and BMPs is figuring out what is going to happen during
223 construction. It's reacting to changing conditions. You don't want erosion to go on to
224 other people's property, roads or wetlands.

225

226 Mr. Traeger noted that on July 18, 2013, the Board voted to send a letter to Mr. Bogosh
227 and Mr. Mencis asking them to enforce the erosion control regulations. He read the letter
228 to the Board.

229

230 Mr. Mencis noted that he respects Mr. E. Brown and feels a phone call could have solved
231 the problem being that Mr. Traeger was so far away from the topography.

232

233 Mr. Traeger noted he wasn't on the property, they've had difficulty getting the regulation
234 enforced and he did make a phone call, to the enforcement officer.

235

236 **MOTION:** Mr. Mencis made a motion to adjourn. Mr. E. Brown seconded the motion.

237 All members voted unanimously in favor. The motion passed. MEETING ADJOURNED
238 at 8:14 p.m.

239

240 Respectfully Submitted,



241

242 Andrea Cairns