

1 Sandown Planning Board
2 Minutes
3 January 20, 2015
4

5 **Date:** January 20, 2015

6 **Place:** Sandown Town Hall

7 **Members Present:** Ernie Brown - Chairman, Ed Mencis – Secretary, Steven Meisner, Doug
8 Martin, Mark Traeger, Lisa Butler – Alternate

9 **Also Present:** Town Engineer - Steve Keach

10 **Members Absent:** Matt Russell -Vice Chairman, Cynthia Bucu – Ex Officio

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12 **Opening:** Mr. Brown opened the meeting at 7:15 p.m.

13
14 Ms. Butler was appointed in place of Mr. Russell.

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16 **Review of 1/6/15 Minutes**

17 **MOTION:** Mr. Traeger made a motion to approve the 1/6/15 minutes as written. Mr. Martin
18 seconded the motion. Members voted in favor. Mr. Traeger abstained. The motion passed.

19
20 **Correspondence**

- 21 • *Town & Country* Magazine
- 22 • Information on a course offered by PretiFlaherty and NHTI

23
24 **7:15 – Public Hearing for review of amended site plan regulations**

25 Mr. Brown explained that the board already approved the changes, but when they made their
26 motion, it was to move it to the ballot, but they just needed to make a motion to approve the
27 changes.

28
29 **MOTION:** Mr. Traeger made a motion to approve the amendments to the site plan regulations
30 which adding language for the purpose of adding fire protection requirements for non-residential
31 or multi-family sites. Ms. Butler seconded the motion. All members voted in favor. The motion
32 passed.

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34 **7:30 – Chief Tapley discussion regarding Hillside Estates Fire Protection**

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36 *Mike Devine, Deputy Chief was also present.*

37
38 Chief Tapley noted, the issue has been going on for two years and there is still no water supply at
39 Hillside Estates, Meghan Drive. There is no viable, legal water source that can be used and the
40 fire department needs the board to move forward with getting something out there. NFPA code
41 has no vesting on subdivisions. Once any portion of the subdivision is opened up for review or
42 change, then the entire subdivision can be subject to updated code.

43
44 Chief Tapley noted eventually, he would like to put in a hydrant across the street in Hunt Pond,
45 but that is not close enough to the Hillside Estates development. His first choice would be a
46 cistern, it's always there; ponds grow in and have to be dredged. We need to do something; we
47 have all those homes up there and no viable water source.
48

49 Mr. Brown asked if they would be putting in a hydrant on Wells Village Road by the apartments.
50 Chief Tapley noted he would at some point, but it is still far away from Hillside Estates.

51
52 Ms. Cairns noted that she spoke with the Attorney General's office. They believe that the town
53 could compel the developer to put in a source of fire protection because it was part of the
54 approval. Ms. Cairns also spoke with Attorney Gorrow and she agreed. Ms. Cairns noted there
55 were two lots that were part of that approval that remain undeveloped.

56
57 Mr. Keach noted there were two approvals granted for Hillside Estates. The first was in 2003 for
58 the entire phased subdivision. There was no requirement for fire suppression by the former fire
59 chief, nor was there any offered by the developer. That subdivision approval has vesting and
60 cannot be altered. The second approval is for the lot-line adjustment granted in 2013. The request
61 and solution from the fire department came about as part of that plan. His opinion is that the legal
62 advice is correct to the extent that it deals with those six lots. The two remaining lots that haven't
63 been built upon cannot be built on at the present time because that road is part of phase IV and
64 they are fronted on a road that does not exist yet. He felt that before the board was to take any
65 action, they should make sure the attorney was aware of that. Those two lots that don't have
66 building on them, could be leveraged to cause something to occur, but you couldn't use that
67 leverage for the balance of the original application. It was understood that there was going to be
68 fire protection and the chief signed off on the application based on that piece of information and
69 your board relied on that action to approve the plan. This board could take an action to request an
70 interim measure.

71
72 Mr. Keach noted the Planning Board could ask the Board of Selectmen to put a hold on issuing
73 building permits on the two lots that remain to be built; but because of the fact that road frontage
74 hasn't been constructed yet, they can't be built on anyway.

75
76 Mr. Keach added in terms of vesting for NFPA code, they would need to comply with the 2003
77 code, not the current code. So Chief Tapley would need to go back and look and see what the
78 code required in 2003 when the subdivision was approved.

79
80 Mr. Keach added in accordance with the development agreement, there has to be a bond put in
81 place to build the roads and infrastructure for the next phase. They need to be built to be in
82 compliance with NFPA code. If they are out of compliance with that, then the town has the legal
83 authority to withhold any building permits anywhere in the development.

84
85 Mr. Traeger agrees that Chief Tapley has more authority to make something happen than the
86 board does. He would have no issue sending a letter to the Selectmen asking them to put a freeze
87 on building permits for those two lots, but that isn't much leverage to get it taken care of now.
88 Regardless, he thought writing the letter to get it on record would be good.

89
90 Mr. Brown added it would only affect roads in a later phase; it would not be a solution for right
91 now.

92
93 Mr. Keach noted the trigger needs to be pulled so there is a solid record that acknowledges the
94 approval given in 2013 has a problem. Anyone who goes to purchase the property will be
95 required to address that issue. The town should put the applicant/owner on notice that there needs
96 to be a remedy to replace the infrastructure that was lost. It creates a good legal record that there
97 is a problem. It doesn't solve the problem right now. We don't know how long the project will lay
98 dormant, but there is too much value for it to sit dormant forever. This can't slide on for years,
99 there has to be correspondence created that acknowledges the original approval.

100

101 Mr. Brown noted they tried to find a solution for both the chief and the developer that was
102 reasonable. If they had asked him to put in a cistern, then he likely wouldn't have moved forward
103 with the lot line adjustment because the costs would have out-weighted the gains from the
104 additional lot.

105

106 Mr. Keach noted their leverage is on the six lots, you need to put them on notice that there is a
107 defect in the representations made to gain the 2013 approval. He suggested issuing
108 correspondence to the applicant that includes the minutes of the meeting where fire suppression
109 was discussed and the commitments that were made to the board and acknowledge that this board
110 made the approval based on that commitment. They need to find a source of water that is an
111 acceptable form of fire protection to meet state code. If they don't it puts the approval in jeopardy
112 and according to RSA 676:4-a the board could revoke approval. The developer would need to
113 comply and deliver a source of fire protection. If the subdivision approval was revoked, any
114 future subdivision involving those two lots would need to meet current regulations and code.

115

116 Mr. Mencis added that they are all onboard with what the chief is trying to accomplish, they just
117 need to figure out how to get there.

118

119 Chief Tapley felt that once the developer opened up the plans, they opened up the entire
120 subdivision in terms of NFPA code.

121

122 Mr. Keach noted in terms of the subdivision approval, the entire plan is vested.

123

124 Mr. Meisner suggested that the board contact the attorney and let her know what they are
125 planning to do and get a written recommendation from her. He also noted that the remaining
126 property in that subdivision is for sale.

127

128 Mr. Brown noted it doesn't matter who builds on those two lots, they still need to comply.

129

130 Mr. Keach noted if there is a defect on the remaining piece, from a practical perspective, it affects
131 the title to the property. If the board is forced to record a notice of revocation for property that is
132 in the middle of the next phase, then anyone who goes to purchase that property will want it taken
133 care of.

134

135 **MOTION:** Mr. Traeger made a motion to solicit a written legal opinion with a recommendation
136 from the town attorney on how the board should move forward with the lot line adjustment
137 creating lots Map 17 as Lots 3-32, 3-33, 3-34, 3-40, 3-50 & 3-51 fronting on Meghan Drive, Jana
138 Circle and Patricia Circle being out of compliance with the understanding of approval for the
139 decision issued on April 16, 2013. Mr. Martin seconded the motion.

140

141 *Discussion:* Mr. Keach suggested going with Attorney Rattigan because he was the attorney who
142 wrote the original development agreement. He was the town's attorney on the project. Mr.
143 Traeger felt we should stick with the town's attorney. The board agreed.

144

145 All members voted in favor. The motion passed.

146

147 Chief Tapley would determine if the entire subdivision would be opened up according to NFPA
148 code.

149

150 **Maria Lane Surety**

151 Mr. Keach gave a history of the project.

152

153 In his opinion under the terms of the irrevocable letter of credit, he doesn't think the surety could
154 be released without planning board approval. The board needs to determine if the surety is still
155 active or not.

156

157 Members felt it needed to go to the attorney for her opinion.

158

159 Mr. Keach noted he is the last person on the planet to say the town should go build a road, but we
160 may have a fiduciary responsibility to put in the road because there is another owner out there
161 that purchased the property with the understanding that there would eventually be a road in place.

162

163 **MOTION:** Mr. Traeger made a motion to have the town attorney review surety number 98-41
164 issued by Pentucket Bank to Premier Realty Trust, Michael J. Maroney dated April 18, 2008 to
165 see if the surety is still in place and see if the town could act on it. Mr. Mencis seconded the
166 motion. Members voted in favor. Mr. Martin abstained. The motion passed.

167

168 Mr. Keach noted the bank isn't going to just write out a check, they will try and solve the issue.
169 The reason the surety was given was to protect people, in this case the Genests.

170

171 **MOTION:** Mr. Martin made a motion to adjourn. Mr. Mencis seconded the motion. All members
172 voted unanimously in favor. The motion passed. MEETING ADJOURNED at
173 8:36 p.m.

174

175 Respectfully Submitted,



176

177 Andrea Cairns