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5 **Stratham Planning Board**
6 **Meeting Minutes**
7 **March 2, 2016**
8 **Municipal Center, Selectmen's Meeting Room**
9 10 Bunker Hill Avenue
10 Time: 7:00 PM
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13 **Members Present:** Mike Houghton, Chairman
14 David Canada, Selectmen's Representative
15 Bob Baskerville, Vice Chairman
16 Jameson Paine, Member
17 Tom House, Member
18 Nancy Ober, Alternate
19 Lee Paladino, Alternate
20

21 **Staff Present:** Tavis Austin, Town Planner
22

23 **1. Call to Order/Roll Call**

24 The Chairman took roll call.

25 **2. Review/Approval of Meeting Minutes**

26 **a. February 17, 2016**

27 Mr. Paine made a motion to approve the February 17, 2016 minutes. Motion seconded
28 by Mr. House. Motion carried unanimously.

29 **2. Public Meeting**

30 **a. Preliminary Review—Realty Acquisitions, LLC, 142 Portsmouth Avenue/PO Box**
31 **432, Stratham NH 03885 for the property located at 9 Portsmouth Avenue, Tax Map**
32 **9 Lot 11.** Site Plan Review and Conditional Use Permit to construct a banking facility
33 with drive-through services. Public Hearing scheduled for March 16, 2016 following
34 recommendation of approval from Technical Review Committee.

35 Ms. Paladino recused herself as she works for the applicant.

36 Mr. Austin informed the Board that this application was heard by the Technical Review
37 Committee (TRC) the previous week and they did receive a recommendation for approval
38 from the TRC. In theory this application could go to public hearing, but Mr. Austin
39 recommended the applicant come tonight as there is an element that he feels the Board
40 would appreciate having time to think about.

41 Mr. Mark Stevens, applicant said that Gibbs gas station has been at its current site since
42 1970 and the lease has expired on it. He said there are 3 reasons why he wants to do this

1 project: this property is contaminating the ground, he has helped put Kennebunk Savings
2 Bank into other towns and thinks they would be a good asset to Stratham, and this will
3 be a tax re-exchange with a property in Newmarket, so there is a tight dead line to meet.
4 He feels that overall this will be a big improvement to the current site including the
5 reduction of drive throughs from 8 to 2.

6 Mr. Stevens said they have come up with a preliminary design and he asked the architect
7 Mike Keane to take a look at the Gateway regulations to see how they could comply.
8 They have done their best with what is an untenable site plan without some relief on
9 conditional use issues. They met with Mr. Austin and Mr. Houghton; Mr. Austin came
10 up with some ideas that they have incorporated. The TRC liked what they presented and
11 had some suggestions. Mr. Stevens said the parcel is about 30,000 S.F. and there is an
12 easement in connection with it. They are going to do a lot line adjustment plan to keep
13 this piece of property separate.

14 Mr. Stevens continued that there is a right turn in and a right turn out and a full
15 intersection on West Road. There is no vegetation and a partial sidewalk. He said they
16 have changed the parking around to create some more space. They realized the right turn
17 out isn't really necessary so have removed that. The drive-throughs are located on the
18 back side of the building so they can't be seen from the road, and in line with the TRC
19 comments they have come up with the idea of a stone wall which would be about 30"
20 high and 3' wide with a break for those using the sidewalk who want to go to the bank.
21 They have increased the sidewalk to go all around and have added a crosswalk. The TRC
22 wanted bike racks and a bench plus some areas out back for outdoor eating areas for the
23 employees so that has been incorporated.

24 Mr. Stevens showed a 100' setback from the shore land protection zone on the site plan.
25 The existing site conditions show the underground storage tanks within that setback.
26 They have reduced the pavement area in that district so the impact will be less than the
27 current impact by about 1,000 S.F. The sealed surfaces on this project are less than the
28 sealed surfaces on the existing site. There is a well on site which is contaminated with
29 MBTEs; they use a small filtration system in their kiosk so there is no real potable water
30 on the site, but what he is able to do is to connect to the potable water on the Route 11
31 investment property site which is out the back. The State under the MBTE program is in
32 agreement to pay for a water line extension that goes from Exeter to here to give potable
33 water to this site if Gibbs goes away. The MBTE program will clean up this site too.

34 Mr. Stevens described the lay out and architecture of the building next. He then talked
35 about the need for a conditional use permit (CUP) for the work in the 100' setback shore
36 land zone, for the setback of the building because the current 10' won't work for this
37 property, and he doesn't know if they comply with the location of the parking. Mr.
38 Stevens said that Mr. Austin had alluded to an issue with one of the conditional uses they
39 need. They don't have an issue, but it appears that the Town Administrator may with
40 getting a CUP for the drive-throughs. Mr. Stevens said there are currently 8 drive-
41 throughs on this property which is not permitted in this zone, but the Planning Board has
42 the right to give conditional use changes in the regulations. Mr. Stevens continued saying
43 they are reducing that number of drive-throughs from 8 to 2. He asked his attorney to
44 give a legal opinion and to fill out the CUP paperwork. According to the attorney the
45 Ordinance takes away the right for someone to go to the Zoning Board of Adjustment

1 (ZBA) for relief in this particular zone. The only relief they can seek if the Planning
2 Board doesn't grant a conditional use is court.

3 Mr. House commented that at the TRC meeting, they had suggested the drive going into
4 the property from Portsmouth Avenue be removed which would reduce pavement also.
5 The concern is queuing on Portsmouth Avenue during a busy period. Mr. House asked
6 about the septic. Mr. Stevens showed the septic system on the plan. Mr. Baskerville
7 asked Mr. House if the TRC had any recommendations about the drive through issue.
8 Mr. House said that the TRC did question the height of the drive-through in terms of fire
9 trucks. Mr. Stevens said they already tried it and he could provide evidence. Mr. Nate
10 Merrill, TRC member added that the Gateway did start off as an optional overlay within
11 the general commercial zone and the hope was that developers would choose that option
12 and get more density and mixed uses to enhance the value of their property, but in
13 exchange they would have to give up some things like the ability to have a drive-through.
14 There was a consensus among the TRC that they should work on reviewing the whole
15 Gateway code this year now that they have had some projects come before them. Mr.
16 Austin said he wasn't sure of the intent that drove the regulation to prohibit drive throughs
17 in this zone. Mr. Merrill said the size of the lot and its location are factors here. Mr.
18 Stevens said they would design some kind of Stratham sign in the face of the stone wall.
19 Mr. Merrill said the stone wall might help to mitigate any head light glare which was
20 another concern for the TRC.

21 Mr. Stevens said they don't have any landscaping as such, but he would send the plans
22 off to their Landscaping Architect firm who he was sure would be able to come up with
23 something. Mr. Stevens said there is a requirement per the regulations to put a street
24 light every 25', but it doesn't seem to make sense for this lot as there is already a
25 tremendous amount of light. They might need to put some light out in the back. They
26 have agreed to do a light study to figure out where they need light and where it works
27 and incorporate light into the site plan.

28 Mr. Baskerville said he likes everything they have and he is OK with a CUP for Parkmann
29 Brook, but he would like to see the storm water details. Mr. Stevens said that the storm
30 water will go exactly where the storm water goes now. He explained that the State took
31 a portion of Parkmann Brook and made a retention basin out of it and all the storm water
32 goes into Parkmann Brook. They are going to sheet flow the storm water into the woods
33 and then it is going to sheet flow into that section of Parkmann Brook; it will be a lot
34 cleaner than it is now. Ms. Ober referred to the right hand turn into the current site and
35 asked if it wasn't already a right hand turn lane. Mr. Stevens said that was correct that
36 it was a deceleration lane so the impact on Portsmouth Avenue was going to be less. Mr.
37 Stevens said they asked Stephen Pernaw, to do a comparison on the traffic volume
38 between a gas station with 8 drive throughs and a bank with 2 drive throughs. According
39 to the numbers, the traffic impact in this area will be reduced by around 50%.

40 Mr. Houghton said it looks like a nice upgrade and he likes the access from Portsmouth
41 Avenue being just one access way in. Within the Gateway district, this is a unique piece
42 of property and he is inclined to be supportive of what he sees before him. Mr. Paine
43 agreed and asked on behalf of Joe Johnson, TRC member if there was any way to access
44 Shaw's access road from a safety stand point. Mr. Stevens said they had gone through
45 this at the TRC meeting and it is not possible due to the history involved. Mr. Paine

1 asked about snow storage. Mr. Stevens showed a couple of places they could store snow
2 and said if it becomes an issue, snow can be removed off site. Mr. Paine asked if they
3 had considered something like second floor offices. Mr. Stevens said there really isn't
4 enough parking available plus they have to fit in a septic.

5 Mr. House said that the TRC were very happy with the architectural design of the
6 building.

7 Mr. John Sapienza, Raeder Drive said he wanted to make the Board aware that this bank
8 provided Stratham Fair with a mobile ATM machine and gave the commissions from the
9 transactions to the fair which was \$700 for the Town. It didn't cost the Town anything.

10 Mr. Stevens finished by saying he hopes to have all the information the Board needs by
11 the next Planning Board meeting on March 16, 2016 such as drainage, lighting and
12 landscaping, but at a minimum he needs an action on all the TRC requests.

13 Mr. Canada asked Mr. Deschaine, Town Administrator if he had any views he would like
14 to express. Mr. Deschaine said he thought this project was a great improvement over
15 what is there. After the TRC meeting Mr. Deschaine spoke with Mr. Stevens and about
16 his attorney's legal opinion and what he could provide for a basis for the Planning Board
17 to review and consult so they feel firm that their decision was on firm ground. After
18 reading this legal opinion, Mr. Deschaine has 2 reservations which center on the drive-
19 through element. Mr. Steven's attorney focuses mainly on the terminology and the
20 ordinance speaking about CUPs and the Planning Board's ability to deviate from the
21 plan. Mr. Deschaine said he thinks it is well designed in the ordinance to deal with the
22 sundries that come out of a development that don't quite fit. The Ordinance specifically
23 states no drive-throughs and shouldn't be the basis of the Ordinance and its intent be that
24 "no" means "no" and does the CUP really sanction the Board with the jurisdiction to
25 override a very clear prohibition? Mr. Deschaine continued that regardless of what CUP
26 authority the Board may have, it is already a vested grandfathered right on this site and
27 the applicant is just exercising its right which is a stronger argument. He feels the Board
28 should consider the legal opinion. Mr. Deschaine said the Ordinance needs to be revisited
29 to start clarifying some of these issues. Mr. Deschaine said that if the Board does choose
30 to allow a CUP and Town Counsel supports that, then the Board needs to be careful and
31 narrow as to why it is allowing that permit. His fear is that the Board just waive other
32 elements going forward no matter how restrictive the prohibition without clear
33 documentation stating why the Board made that decision.

34 Mr. Austin suggested that before the next meeting the Board go through Section 3.8.6.b.ii
35 and i.3. which are the 2 regulations referred to in the legal opinion. Mr. Austin asked
36 what possible conditions you put on a project to get around a "no". How do you further
37 the intent of the base zoning ordinance by putting conditions on it? This isn't simple if
38 you talk about the drive through only. Mr. Austin said the improvement to the district
39 isn't the fact that this project has 2 drive-throughs, it's the fact that it only has 2 drive-
40 throughs where it has the right to have 8. A condition might be that the applicant can
41 have drive-throughs if they reduce it to 2 from 8 to minimize the impact. Originally Mr.
42 Austin suggested that the applicant should go before the ZBA, but that would cause
43 problems with the time line and there are legal opinions that feel that is not the
44 appropriate path.

1 Mr. Houghton said there are definitely features unique to this parcel that don't apply to
2 most of the other Gateway Commercial Business District not the least of which is the
3 current use. There are positive environmental benefits to allowing this project and overall
4 it reflects the spirit of what is desired to be accomplished.

5 **b. Storm Water Regulations**, a discussion by Rob Roseen of Waterstone Engineering,
6 PLLC

7 Mr. Rob Roseen took the floor and gave an update on storm water regulations so far plus
8 the next steps. Next steps will include updating the site plan regulations to incorporate
9 the storm water regulations, working with a subcommittee to fine tune the language to
10 address the concerns of the planning Board and others. Regulations will balance the need
11 for standards for development that are consistent with EPA requirements for nutrient
12 requirements. A site plan review checklist will be developed to include tracking and
13 accounting elements as per recent discussions based on MS4 expectations.

14 They hope to have 4 working meetings with a working group subcommittee which will
15 consist of the Town Planner, representatives from the Planning Board, conservation
16 commissions, public utilities commission, stake holders from the previous working
17 group, 2 -3 members of the community representing large land owners, the development
18 community, other interested parties, the Code Enforcement Officer and a ZBA member.
19 The Rockingham Planning Commission may be consulted for review and input as
20 previous participants.

21 Mr. Roseen talked about the recommended next steps for Wetlands regulations next. He
22 talked about the benefits of buffers, but acknowledged that local landowners may find
23 the new regulations for that onerous. The goal for these regulations is to have a warrant
24 article ready for the 2017 Town vote and it is suggested that the working group for storm
25 water regulations works on the wetland regulations too.

26 Mr. Canada asked Mr. Roseen if he anticipates extra meetings with the wetland groups
27 he had last year. Mr. Roseen said for the storm water regulations, he didn't expect that
28 and they won't begin the wetlands discussion until storm water regulations are done. Mr.
29 Canada asked if the wetlands component is funded. Mr. Roseen said he believed the
30 funding is over for that. Mr. Paine asked if the working groups are open for the public
31 to attend and participate. Mr. Roseen said he would defer to the Planning Board about
32 that, but he wouldn't be opposed, although the level of productivity can go down at larger
33 meetings. Ideally there will be enough representatives in the working group so it feels
34 like all issues will be well represented. Mr. Houghton asked who was going to work on
35 confirming work group participants. Mr. Roseen said he could do that with Mr. Austin.
36 Mr. Houghton asked if any Planning Board members were interested. Several members
37 said they would be interested. Mr. Roseen said 2 members should be enough. Mr.
38 Canada observed that Mr. Roseen neglected to have a Board of Selectmen representative
39 on the working group, but said he would be happy to fill that position. Mr. Houghton
40 asked how often Mr. Roseen thinks the working group should meet. Mr. Roseen said he
41 envisages meeting on an every 2 or 3 weeks basis. He said he doesn't think it will take
42 more than 1 or 2 meetings to finish up the storm water regulations.

43 Mr. Stevens asked what the need was for the regulations. Mr. Roseen explained that
44 AOT is triggered at 100,000 S.F. and that would not meet the MS4 regulations. Mr.

1 Stevens said does that mean EPA would bring AOT to account Mr. Roseen said it doesn't
2 work like that; New Hampshire is one of the 4 non-delegated states which means New
3 Hampshire has both EPA and DES as permitting agencies. DES only weighs in when
4 their trigger conditions are met. EPA weigh in whenever they choose to. He doesn't
5 think the MSA update will affect the AOT program at all.

6 Ms. Kathleen Breslin, resident asked if she understood correctly that the public can
7 attend, but not necessarily participate. Mr. Houghton said the public is welcome to attend
8 those meetings. Once the meetings become public hearings, the public has the right to
9 comment. Ms. Breslin asked if the public would be banned from attending any of the
10 meetings. Mr. Houghton said no. Mr. Roseen added that through the working groups,
11 the public should be well represented.

12 **3. Miscellaneous**

13 a. Member Comments.

14 Mr. Baskerville said there is a new law about accessory apartments on the Governor's
15 desk to make them a permit by right, state wide, with the only difference being they have
16 to meet septic system approval so the subsurface department of DES has already issued
17 draft new septic division regulations for that. That will make all Stratham house lots
18 non-conforming should people want to add an extra bedroom. Mr. Paine added there are
19 2 agritourism bills also being tracked in the Senate.

20 b. Other.

21 Mr. Houghton informed the Board that the Heritage Commission still need a Planning
22 Board representative.

23 Mr. House and Mr. Merrill shared that they had a TRC meeting with Porsche the previous
24 week. They keep making suggestions to Porsche, but they keep coming back with the
25 same old plans. Mr. Austin said that Porsche have requested coming back on March 29,
26 2016 as well. Mr. House said that the landscape architect is Jeff Hyland who has a good
27 knowledge of the regulations.

28 Ms. Kathleen Breslin asked if the rules concerning vernal pools were Town, State or
29 Federal rules. Mr. Deschaine said all three. Mr. Baskerville said the regulations are more
30 for wetlands. Mr. Paine said the time to identify vernal pools is Spring time so if she is
31 going to have her wetlands looked at as she should for her State and Federal permits, she
32 will need those, a wetland scientist who should be a NH certified wetland scientist should
33 be identifying them. Mr. Baskerville added that in order for Ms. Breslin to get her
34 wetland permit from the State, she will have to say she did a vernal pool study. Mr. Paine
35 said her project engineer should be well versed in what to do concerning that.

36 **4. Adjournment.**

37 Mr. House made a motion to adjourn at 8:48pm. Motion seconded by Mr. Baskerville.
38 Motion carried unanimously.

39