

DRAFT
TOWN OF WEBSTER
PLANNING BOARD
MEETING MINUTES FEBRUARY 20, 2014

At 7:05 p.m. Chairman Jere Buckley convened the regularly scheduled meeting of the Webster Planning Board.

Present were Chairman Jere Buckley, Vice Chair Member Sue Roman and Member Sue Rauth.

The next order of business was to review the draft minutes from the January 16, 2014 meeting. Member Roman stated she had a minor wording change for the last sentence of the second paragraph on page 3; “Member Roman added that would ***just be targeting*** the merger ...” change to “Member Roman added that would ***appropriately relate only to*** the merger ...” There were no other comments. Member Roman made a motion to accept the minutes as amended; seconded by Member Rauth and approved unanimously as amended.

The next order of business was to discuss the requirement for COPART to submit a site plan review. Chairman Buckley stated in his opinion the COPART issue had been a series of mistakes:

1. Select Board at that time (~2 years ago) judged the original COPART proposal to be a continuation of the previous junkyard. In retrospect COPART had turned out to be a very different and enlarged business unlike the previous junkyard.
2. Town let COPART conduct business for two years without raising any significant objection. Chairman Buckley felt that length of time would make it extremely difficult for the Planning Board to do anything that would impact COPART’s ability to carry on with their normal business at this point.
3. Going the special exception route for the license application when according to RSA 236:115 the application for a junk yard license shall be made to the Select Board and must be accompanied by a “certificate” from the ZBA certifying that the proposal is not in conflict with provisions of the Zoning Ordinance. Chairman Buckley stated in that statute there was no reference to a special exception and no reference to any Planning Board participation or involvement. COPART was granted a special exception with restrictions from the ZBA at a public hearing.
4. COPART was informed that no site plan application would be required which presumably came from the Select Board.

Chairman Buckley stated he had a hard time understanding why the Board would have any enthusiasm about a site plan with what he regarded as a preordained outcome. He felt the Board would be compelled to approve the site plan with what would perhaps amount to trivial modifications. Chairman Buckley stated he thought conducting a site plan would be a waste of the Planning Board’s time and a waste of COPART’s time. He added that according to RSA 674:43. *Power to Review Site Plans*, the Planning Board is *authorized* to require a site plan application but it is not *required to*; authorization is not the same as a mandate. In conclusion, the Chairman stated that in the Site Plan Review Regulations the Planning Board has the ability to waive any, which presumably includes all, of the site plan requirements. At this time, Chairman Buckley then turned the discussion over to Member Roman.

Member Roman stated her concern was for the Planning Board to follow the Town-voted Zoning Ordinance. She felt she could not make all the legal conclusions the Chairman made, because she did not have all the facts. She did not know if the doctrine of *Municipal Waiver* was applicable or not in terms of what the Select Board approved 2 years ago. She did not know when the expansion of use took place. She stated those were issues the Planning Board would not decide anyway. Member Roman stated an application for a commercial exception was made and thence COPART submitted itself to the jurisdiction of the ZBA. The ZBA granted the special exception. She stated the Planning Board was authorized by the Town to conduct site plan reviews and normally the Board has not prejudged a site plan review. Member Roman stated the Board has looked at a site plan and then considered whether or not to do a review. Continuing, Member Roman stated that although there were some issues that the Board may not be able to change, she did not think the Board would change the ZBA decisions on operating hours. She did not know whether the Board had any authority to change traffic requirements. She stated there were a lot of other aspects of site plans that could be considered on the site plan checklist which is part of the application. Member Roman stated if there are some things the Board thinks ought to be changed, i.e., lighting or screening or other things that are part of the site plan review, that they ought to as a Board consider it because the Town has authorized them to do so. She did not think the Planning Board had a role with respect to the statute for the junk yard license, but the Board does have a role with respect to commercial exceptions. Member Roman stated she did not want the Board to establish a precedent where the Board would not even consider the matter particularly when the Board has not looked at the site plan in relation to the site plan checklist. Member Roman stated she would like the Board to at least look at the site plan/map that was attached to the special exception application. She stated she did not want to omit a review of that map. Chairman Buckley asked the Board if it would have to first convince the Select Board to retract their instructions to COPART that they did not need to submit a site plan review application. Member Roman stated she would like to assess the site plan to see if there is anything the Board would need to do. She stated she understood the Select Board may think the Planning Board has no role vis-a-vie the ordinance for junk yard licenses, but she did not think the Select Board intended or hoped they did not intend to cut off the Planning Board's right to review site plans for commercial exception applications. Chairman Buckley stated this was all academic; the Planning Board won't be doing anything until after the ZBA rehearing on March 18, 2014. Member Roman agreed. She inquired should the Board ask for a site plan to be submitted. After a brief discussion regarding the special exception application and the junk yard license application, Member Rauth added she felt there had been some confusion in terms of what had been submitted and what the expectations were. In the process that was followed, she agreed with Chairman Buckley that mistakes had been made along the way. She added, in her opinion, since the ZBA had issued COPART a commercial exception, the application process and the hearings then give the Planning Board the opportunity to go ahead and review what COPART is doing behind the fence, even if they have been operating for 2 years and even if the Planning Board may not undo anything, she felt the Board could begin to right some of the mistakes that had been made by having COPART follow the process.

Chairman Buckley recognized Mrs. Larson, Town PB/ZBA secretary. He asked her if Town Counsel had contributed to the topic. She informed the Board she had been part of a speakerphone conversation with the Town Counsel, Selectman Fanjoy and Judy Jones. The conversation revolved around COPART and the problems with the road etc. Then the conversation turned to the question of going before the Planning Board for a site plan review.

Town Counsel had advised the Town to have COPART go before the Planning Board. A few days prior, on behalf of Mrs. Larson, Mrs. Jones had contacted NHMA's Legal Inquiry Office (free to Town because of membership). Attorney Paul Sanderson stated that the Planning Board had no role in the junk yard license application process. Needless to say Mrs. Larson stated this whole issue has been very confusing for everyone. She also informed the Board that COPART had submitted a site plan review application together with the special/commercial exception application in December 2013. However, the site plan review application was incomplete without the checklist. Mrs. Larson was holding the application until that checklist had been submitted. In the meantime, the ZBA did grant the special/commercial exception and the Select Board issued a junk yard license to COPART pending any ZBA appeals or restrictions. At the Select Board meeting and public hearing of February 3, 2014 the Select Board stated it was not necessary for COPART to go before the Planning Board for a site plan review. Based on that, Mrs. Larson informed COPART of same and returned COPART's check in payment of the standard fees for the site plan application.

Member Roman stated there was tremendous confusion between a special exception and a junk yard license. She added she agreed with Town Counsel. Member Roman stated because a special exception application was filed by COPART, they submitted themselves to the jurisdiction of a special exception hearing and that normally follows with a site plan review. Member Rauth, in agreement, stated that COPART should go through the administrative process. Member Roman added there was no reason for the Planning Board not to conduct a site plan review. Even if it made no difference, she stated the Board does not excuse people and prejudge the matter. Member Rauth stated she felt the Board should follow this through. After a brief discussion Member Roman stated she did not want to make judgments; she wants to review a site plan and a site plan application; she stated she would not make pre-judgments about COPART's operation.

After a brief discussion, Member Roman suggested the Planning Board write a letter to the Select Board asking for clarification on whether the Select Board was saying 'no' a site plan review relative to the application for the junk yard license under the statute versus 'no' to a site plan review relative to the granting of a special exception under the Town's Zoning Ordinance. Member Roman stated she did not think that anybody could take away the Planning Board's right to a site plan review. She did not believe the Planning Board needed the Select Board's permission to do a site plan review. Chairman Buckley stated he probably would not do the best job of writing that letter to the Select Board because of being in the minority. He asked if one of the two Members present would write the letter. She suggested not doing the letter but go ahead and do a site plan review based on the commercial exception. Chairman Buckley stated that could look like the Planning Board was overruling the Select Board, which did not seem appropriate. Member Roman then suggested asking Town Counsel how to proceed. (Due to a new policy, "Utilization of Town Counsel Services Policy" adopted January 20, 2014; contacting Town Counsel must be approved by the Select Board.) After a brief discussion, by consensus, it was decided that before the ZBA rehearing takes place, Chairman Buckley will draft a letter to the Select Board to request legal advice from Town Counsel which Member Roman offered to review.

Chairman Buckley then reminded the Board to continue work on revising amendment number 5. He then moved on to the next item on the agenda, continued review of draft #4 of the proposed Driveway Regulations amendments. He stated he would rather the Board continue that item until there were more members in attendance, in particular Selectman Fanjoy, who worked very closely with the Chairman on that draft.

The next item on the agenda was new business. Chairman Buckley brought to the Board's attention the annual request from CNHRP for traffic counts. He stated he would like to run it by Selectman Fanjoy because of his involvement with the UNH road survey done in 2013. Mrs. Larson informed the Board a copies of the request were placed in the interoffice mail for Police Chief Dupuis and Road Agent Bean.

After a brief discussion, Member Rauth stated she would submit an informational piece to the March issue of the Grapevine regarding the four proposed Zoning Ordinance amendments on the Warrant.

At 7:57 PM Member Roman made a motion to adjourn; seconded by Member Rauth and approved unanimously.

These draft minutes were prepared by Therese E. Larson, Town PB/ZBA secretary.

Posted February 26, 2014