



Town of Plaistow, New Hampshire
145 Main Street, Plaistow NH 03865
Phone: (603) 382-8469

PB Minutes 1/2/13

Town of Plaistow, NH
Office of the Planning Board
145 Main Street, Plaistow, NH 03865

January 02, 2013

Call to Order: 6:32 P.M.

Item One:

ROLL CALL: Present was *Vice Chairman*; Charles Lanza, *Selectman Ex- Officio*; Robert Gray and Tim Moore. Excused was *Chairman*; Steve Ranlett; Gennifer Silva was absent.

Also present was *Alternate*; Geoff Adams, *Alternate*; Joyce Ingerson, *Chief Building Official*; Mike Dorman, *Town Planner*; Leigh Komornick and *Recording Secretary*; Laurie Pagnottaro.

C. Lanza appointed G. Adams and J. Ingerson voting members for the meeting.

Item Two:

Minutes of December 19, 2012

R. Gray motioned to approve the minutes of December 19, 2012 as written, second by T. Moore

There was no discussion on the motion and the vote was 3-0-2; J. Ingerson and C. Lanza abstained.

Item Three:

Discussion with Ron Brown Regarding Various Issues Including:

- **Advertising for the New Homes**
- **Temporary Sales Office**
- **Request for Waiver for School and Recreation Impact Fees**

Present for the discussion was Ron Brown, The Falls at Gunstock Road, Plaistow.

C. Lanza stepped down for this discussion at 6:34pm. T. Moore will lead the discussion.

School District Impact Fee

R. Brown explained that he is requesting a waiver from the School District Impact Fee of \$2,916 for his 55 and older development. They will have no children in the school district; they have Condominium Documents to protect that from happening. He researched other NH communities and others such as Sandown, Salem and New Market have waived this fee. He asked the Board to grant the request.

J. Ingerson asked about the wording in R. Browns request letter that states that stated "the development will have children".

R. Brown replied that it is a typo. There will be no children in the development; the majority of the residence will be over 65.

R. Gray stated that this should have been done at the time of approval. He thinks that any type of request for not paying these fees should be contingent upon if the Condominium Documents ever change they become re-instatable. He is in favor of the request but if ownership changes and the association takes over and the development is no longer 55 and older, he would like those fees re-instatable.

R. Brown had no problem with that. He noted that the Town is already protected as any changes to the documents need approval by the Town.

There is more discussion on this issue.

T. Moore explained that the 55 and older piece is locked into zoning; it was approved under a zoning ordinance although it is no longer there. The chances of this project reverting to something other than 55 and older is slim.

L. Komornick will check with the Boards attorney for legality and wording so everyone is protected.

G. Adams asked how many units in the development.

R. Brown replied 40 units and 41 buildings with the clubhouse being the 41st building.

T. Moore stated that he is in favor of waiving the School District Impact Fee.

L. Komornick noted that she can provide the Board with written documentation R. Brown has presented to the Board. She was able to verify that other towns, specifically Salem, have a waiver clause for school and recreation for age qualifying developments.

R. Gray would like that any documentation provided to the Board be part of the record.

R. Gray motioned to grant the waiver for the school impact fee for the Falls at Gunstock Road contingent upon if the use for the 55 and older changes that the school impact fee is re-insatiable at the time of the change in use, second by G. Adams.

There was no discussion on the motion and the vote was 4-0-0 U/A.

Recreation Fee

T. Moore explained that the Town does provide activities for all ages; not just children. He added that he is not as inclined to support this waiver.

R. Gray agreed noting that they have the Elderly Affairs Committee that specifically plans activities for the elderly to do. He added that although they will have their own recreation facility at the

development that will not stop the people who live there from using the Town services and recreation.

J. Ingerson added that many of the activities planned through the Town are paid for by the participant.

R. Gray said they are subsidized by the Town.

J. Ingerson said some are subsidized, but not all are.

R. Brown stated that the fee is \$469. per bedroom. He added that they have a clubhouse at the development and the main reason was so the people have a place to do what they wanted to do on the development. It has a pool, walking trails and gardening areas. These people want to stay within the development; they come for the amenities and pay for the amenities. Most of them will not be here all winter long.

G. Adams said both sides have legitimate arguments. He asked if the Board would consider a reduction in the fee.

T. Moore replied that he thinks the Board can do that; that all volume impact fees are set so they can be reduced.

R. Brown noted that it states in zoning that if a development has a recreation area it takes them out of the recreation fee; although he is not sure of the exact wording.

J. Ingerson stated that it is her opinion that the Board waive the fee and not do a scale; that will set precedence.

R. Brown added that when the development is full the positive impact on the Town will be \$275,000 to \$350,000 a year tax base; free money.

R. Gray replied that it is not free money; it is used to pay for services.

There was more discussion regarding this issue; and what the number of bedrooms per fee is for.

L. Komornick stated that the school impact fee is based this way and is for activities for children. She noted that they do not require residential subdivisions to build recreation amenities; that is the purpose of including it in zoning.

T. Moore stated that he has changed his mind; they way the Town has structured the fee is not applicable when amenities have been provided. He will support the waiver.

G. Adams asked if per the recreation report they heard; the Town is increasing work on Town forests for access.

L. Komornick replied that this has nothing to do with that. Per bedroom it was based on children and children's activities like baseball.

R. Gray noted that per RSA 220-100C, Imposition of Recreation Facility Impact Fee, #2 states "no credits shall be given to off-set this impact fee". He added that they cannot scale it back.

T. Moore motioned to waive the recreation impact fee, second by J. Ingerson.

There was no discussion on the motion and the vote was 2-1-1; R. Gray voted against and G. Adams abstained.

Temporary Sales Office

R. Brown explained that he will need a sales office on the site. He added the following:

- It will be temporary
- It will be a trailer; 12 X 40 or 12 x 44. Not very big.
- He would like to keep it as short a period as they need; start with 12 months then they can come back before Board if needed.
- It will be located where the tent is.
- It will be as nice as they can make it.
- There will be no bathroom in the trailer; porta potty will be used.
- The trailer will not look like a trailer; it will have the façade of a house.
- It will be located at the top of Sweethill. Road.

T. Moore motioned to allow the temporary sales office as a trailer for a period of one year to be renewed in one year if necessary, second by G. Adams.

J. Ingerson asked that they specify the time.

T. Moore amended his motion to include, one year from today.

There was no further discussion on the motion and the vote was 4-0-0 U/A.

Signage

R. Brown explained that they had a 4x8 real estate sign on the property, they were sent a letter to remove the sign and they did. The sign was there for about six months before they removed it. They asked the Board if they could erect a temporary 4 x 8 real estate sign. It will be a picture of a house. He would like it up for a period of one year.

M. Dorman stated they the applicant will need a variance from the ZBA. He added that temporary or not, there can be nothing over 3 square feet in a residential area.

R. Brown stated that anything smaller and potential clients will not be able to see it. It is beneficial for the Town as well as himself that these units sell quickly.

J. Ingerson asked if he had an agent.

R. Brown answered that he sells the unit; there will be no agent sign.

The Board discussed the procedure for sending the applicant to the ZBA. It was decided that when he applies for the application M. Dorman will send him to the ZBA.

R. Brown inquired about the numbering of the residences. Previously he had the numbers up on tree's to show where the lots were; he is not sure if it was a Town or DES requirement. He added that at some point they would like to number the lots (1, 2, 3 etc...) so that people looking will know which house is which. It is confusing because they have joined the 16 lots into one entity and by zoning regulation they cannot do that. He would like to ask the Board to allow him to number the houses 1 through 40.

L. Komornick noted that for accessing purposes they have been numbered. He could have a diagram.

R. Brown said he already had a diagram.

M. Dorman said he could do that without a permit; 3 square foot sign for each house.

R. Brown asked about having a real estate sign for each house; 40 signs. He would like one at each house so potential buyers will know which homes are still for sale.

The Board discussed this issue. It was decided that there was nothing the Board could do as applicant needs to go to the ZBA. The Board came to the consensus that they will write a letter of support noting the hardship to the ZBA.

C. Lanza rejoined the Board at 7:36 pm.

Item Four:

Presentation by Police Chief Regarding Land Swap (with Alden Palmers) for the Public

The presentation was postponed.

L. Komornick noted that the postponement was done because the Town Manager would like the presentation to be shown to the BOS first and also that Steve Ranlett wanted to be present for the presentation. She assumes it is postponed until the next meeting.

Item Five:

Continuation of a Public Hearing on the Draft Zoning Amendments.

The Board discussed the following Articles:

Article Z-13-11: Are you in favor of the adoption of an amendment as proposed by the Planning Board to the Zoning Ordinance by modifying Article. III, General Provisions, § 220-13. Unregistered vehicles and commercial equipment, paragraph B., as follows:

B. Commercial Vehicles on a Residentially Used Lot. No commercial motor vehicles that exceed a one ton gross weight may be kept on any residentially used parcel. No more than one (1) commercial motor vehicle with a one-ton gross weight limit may be kept on any residentially used parcel. If the residence on the lot has an approved Home Occupation, then up to two (2) commercial vehicles, each with a up to, but not exceeding, one-ton gross weight limit, may be kept on the lot. One of these two such vehicles shall be garaged or fenced in with a stockade fence or other solid screening.

(Intent: Currently, more than one commercial vehicle on a residential lot suggests there is a business at that location. Limiting the number of commercial vehicles to one, without a home occupation, would be another check to make sure that people who should be getting home occupation approvals were indeed doing so. This would protect residential neighborhoods from businesses cropping up unchecked without limiting the person who works for a commercial business from bringing home a "company vehicle." Currently, the home occupation ordinance limits the number of employees (not living in the home) to one. So a second commercial vehicle is a possibility.)

G. Adams suggested the following wording change in section B. 5th line down: strike "with a up to, but".

The Board agreed to the wording change.

Present for the hearing was Dan Poliquin, 126 Main Street.

D. Poliquin explained that the truck he drives is a commercially registered one ton truck. This amendment will put him in violation. He added that this article will not be able to be easily enforced. If his tenant brings home a vehicle from work, how will it be enforced and why would you want to limit that. Many people work in 24 hour service and need to bring their work vehicles home to be on call; why penalize them. He added that he understands the intent but why adopt this?

C. Lanza agreed, stating that the intent is right, but the actual wording is not. It will be too much of an issue for enforcement. The wording is in such a way that it will not help the people in Town who are trying to make a living.

L. Komornick suggested that they might use the number of axels in the wording; maybe over 4 axels.

R. Gray stated that changing it now would be to significant a change to the wording of the ordinance that it would not be allowed. He asked M. Dorman if there is a compelling reason why it should not be enforceable or should not happen this year.

M. Dorman explained that this has been in the zoning forever and he has been enforcing it. They are just making the change from two to one vehicle.

R. Gray stated that that is what the intent should read; that they are going from two to one 1 ton vehicles.

There is more discussion on the issue of people on call bringing vehicles home for work.

M. Dorman stated that he would like to add an exception to this for those people that are on call.

C. Lanza asked that we make note of that change for next year, the wording is too restrictive.

R. Gray motioned to not post Article Z-13-11 to the warrant, second by T. Moore.

There was no discussion on the motion and the vote was 5-0-0 U/A.

Article Z-13-12: Are you in favor of the adoption of an amendment as proposed by the Planning Board to the Zoning Ordinance by modifying Article III, General Provisions, §220-13., unregistered vehicles and commercial equipment. paragraph C. as follows:

C. Construction Equipment. No construction equipment may be parked or stored on any residentially used parcel.

(Intent: This amendment would place the prohibition of parking or storing any construction equipment on any residentially used parcel, regardless of what Zoning District they are located in.)

R. Gray asked if there was any place in Town, home occupations or construction companies that might have a piece of construction equipment.

M. Dorman replied yes, landscapers.

L. Komorick added that landscapers with a site plan would be legal.

M. Dorman stated that the issue is along 125 where parcels are still used residential in the C1 zone; they need to be enforced with the use.

L. Komorick explained that this is a State land use law; it is grandfathered. A lot used a certain way regardless of zoning; the use dictates what goes on.

R. Gray asked what the definition of construction equipment.

M. Dorman was not sure; will look it up.

There was discussion on this issue and how it affects residents who have personal equipment.

R. Gray suggested putting this article off until they adopt a definition of construction equipment.

T. Moore stated that the wording is already in the ordinance. The intent when stated correctly is changing from residential district to residential used. That was the change, to clarify between district and use.

J. Ingerson suggested adding the word commercial or business equipment.

C. Lanza suggested either pushing this to next year and defining construction equipment or posting it and defining construction equipment next year.

T. Moore motioned to post Article Z-13-12 to the warrant, second by J. Ingerson.

D. Poliquin stated that in Article Z-13-9, Contractor's storage yard definition lists bulldozers, front end loaders and back hoes but no specifications or sizes. He added that if this passes anyone who owns any size backhoe or loader will be in violation on a residential lot.

T. Moore added that if this does not move forward they are still in that trap. He added that the only place this really applies is the half dozen residential lots on route 125 and a few others throughout Town.

D. Poliquin stated that this will now affect him; he has a front end loader. The article says nothing about commercial use.

There was more discussion.

T. Moore stated that he does not see how this article amendment will make the situation worse.

There was no further discussion on the motion and the vote was 1-4-0 denied; R. Gray, C. Lanza, J. Ingerson and G. Adams voted against the motion.

C. Lanza asked if any Board members had a suggestion for amended language.

The Board agreed that it should be re-worded.

L. Komornick stated that as this exists in zoning today, they cannot change it into something it is not. She asked M. Dorman about phone calls from abutters regarding neighbors who have commercial equipment and they feel they are living near a commercial lot. She can think of one and every week the abutter calls and every week M. Dorman writes a letter saying they need a site plan.

R. Gray asked at what point the letters stop.

M. Dorman answered that at some point they go to the attorney.

L. Komornick added that the only reason M. Dorman can write that letter because of this ordinance. She asked that the Board consider this point and how it is helping abutters who feel that their property value is diminished.

The Board decided to re-visit this ordinance next year.

Article Z-13-15: Are you in favor of the adoption of an amendment as proposed by the Planning Board to the Zoning Ordinance by proposing a new ARTICLE VII., Residential Rental Certificates of Occupancy that reads as follows:

RESIDENTIAL RENTAL CERTIFICATES OF OCCUPANCY

§220-51. Purpose

A. The purpose of the residential rental certificate of occupation is to insure that all residential rental units meet a minimal life safety standard prior to being occupied by a new tenant and to comply with the International Residential Code which has been adopted by the Town of Plaistow as its standard.

§220-52. General Requirements

A. A certificate of occupancy shall be issued, once a safety inspection has been completed, for the following residential rental units:

- a. Single-family dwellings***
- b. Non owner-occupied duplex dwellings***
- c. Multi-unit residential building***
- d. Residential rental condo units***
- e. Residential rental apartments***
- f. In-Law/Accessory apartments***

B. Prior to the issuance of a residential rental occupancy permit the following conditions must be met:

a. Application filed with the Department of Building Safety to include the following information:

- i. Full name of the primary tenant***
- ii. Contact telephone number for the landlord***
- iii. Payment of Application/Inspection fee as prescribed in Chapter 31(Fee Schedule) of the Selectmen's Regulations***

B. The rental unit must pass a minimal life safety inspection by the Building Inspector (or designee) and the Fire Chief (or designee) in accordance with all minimum housing standards (codes) and applicable ICC, NFPA, NEC codes.

C. All inspections are pass/fail and no certificate of occupancy shall be issued for a unit not deemed to meet minimal life safety requirements.

D. If a unit fails the minimal safety inspection a list of deficiencies shall be provided to the property owner within five (5) business days of the inspection.

E. A re-inspection fee as prescribed in Chapter 31 (Fee Schedule) of the Selectmen's Regulations shall be charged before a re-inspection will be scheduled.

F. All residential rental certificates of occupancy expire with a change in tenancy.

(Intent: To insure that all residential rental units meet a minimal life safety standard prior to being occupied by a new tenant and to comply with the International Residential Code which has been adopted by the Town of Plaistow as its standard).

C. Lanza noted that this is a new ordinance; not an amendment.

M. Dorman stated that for 26 years he has always inspected all units; residential, commercial and industrial, whether they are new homes, existing homes and rental units. The Town has never had a regulation in place like this to clarify why and what they are doing; that is what he is hoping to accomplish tonight.

J. Ingerson presented packets to the Board members. She explained that she brought in samples and examples of what is in place in other communities for the Board to review. She was concerned about comments made at the last meeting regarding that all that is required for safety inspections are smoke detectors for housing vouchers. She noted that her occupation is Certified Occupancy Specialist and she has done housing for over 16 years, inspection services, property management; in any type of housing you can think of. There are specific housing quality standards the Town needs to abide by if they are receiving vouchers from the Federal Government. Part of that is making sure these units get inspected for occupancy purposes; meaning that every time a new tenant moves into a rental housing property, whether privately owned or government subsidized, there are standards that need to be adhered to. She explained that she brought in samples of the certificate of occupancy from other towns; it is a pass or fail inspection. She added that this is important to maintain the quality of housing in Plaistow and to make sure landlords are complying with the basic housing quality standards. Right now there is no recourse for people. She used Pine Park as an example; there were life threatening problems there and residents had no one to go to, they needed to hire an attorney.

G. Adams asked what the issues were at Pine Place.

J. Ingerson replied basic safety issues like mold, plumbing, electrical and water issues, locks and smoke detectors not working. She added that this has since been rectified and new management has been brought in. She added that the Certificate of Occupancy also helps to protect the landlord; it gives proof that it was inspected and the unit was safe at move in. She stated that this is legal and is done in many other towns that she has provided samples of. It will also help to keep track of apartments in Town.

G. Adams stated that the Fire Chief has absolute authority to go into any location and do a life safety inspection. He is not sure if there is anyone else to go to, but that option does exist under RSA's. It is a matter of educating people of their options.

J. Ingerson stated that the first option would be to go to the landlord and that can be the problem; some landlords do not care and others do not have the resources to fix the problems. She added that many elderly do not want to go to Fire Chief because they are afraid they will need to leave their apartment or of losing their housing. She feels that they should have a basic safety inspection in place; mold, plumbing, electrical.

G. Adams stated that he does not disagree with the safety standpoint, but he does disagree in terms of the Certificate of Occupancy. It is issued under the building code specifically.

J. Ingerson stated that she is talking about rental units.

G. Adams said you cannot call it a Certificate of Occupancy; they do not have the authority to revoke it.

There was more discussion about the issue.

M. Dorman replied that this will give people a contact person if they have a problem. He added that the Fire Chief will not go out and inspect all the units.

C. Lanza asked if the Boards attorney had reviewed this proposal and had no problems with it.

L. Komornick agreed and added that she also has provided documentation given to her from the Board's attorney. The main point is that maybe they want to call it Certificate of Safety or Certificate of Compliance, but is a legal process that is supported. She said that it maybe should not be original building code issue but basic safety standards.

G. Adams noted that the document L. Komornick forwarded to the Board members from their attorney was from the City of Manchester. It specifically recognizes that a Certificate of Occupancy is issued by the town to a building; it then has the Certificate of Rental for safety inspections. He is also concerned with issuing it to the tenant as it puts the owners on the tenant. He added that the Manchester document stated that every rental unit needs to be inspected every three years and the Certificate of Rental is issued to the owner and not the tenant.

C. Lanza stated similar concerns. He has looked at other NH communities and they fall into the trap; calling it Certificate of Occupancy. He agreed that they do not want to do that anymore. He is concerned with the turnover in tenants; some keep tenants' long term and others turnover constantly. He agrees that doing the inspections every three years would be more realistic. He is also concerned with how the Building Inspector will enforce this ordinance.

M. Dorman stated that it is up to the landlords to inform him when a tenant changes. He added that the Welfare Department requires a Certificate of Occupancy before providing assistance.

J. Ingerson noted that when issuing vouchers the Town best have something in place regarding inspections as it is a requirement of the vouchers.

There was more discussion regarding how it will be enforced.

G. Adams stated concern over the wording that they are enforcing the IRC. He added that they cannot do that because the IRC is not applicable to the building. The next building inspector might not use common sense.

Present was Dick Hawkins, 130 Main Street. He explained that he has owned the apartments across the street for 63 years and he has not had any complaints. M. Dorman and the Fire Chief have been there before when they have tried to do this in the past. He is concerned with the \$50 fee; he will not pay it. When tenants move in and out of his apartment M. Dorman sees it, but he does not see the other apartments. How can it be enforced? He added that J. Ingerson has a good point and that many landlords need her policing, but he disagrees that tenants have no one to go to. They have M. Dorman and the Fire Chief as well as a health inspector.

J. Ingerson replied that the health inspector's hands are tied because there is no ordinance in place.

D. Hawkins answered that the health inspector can go to the Fire Chief.

There was more discussion.

R. Gray asked if there was a way to amend this without changing the purpose or is it so erroneous that it needs to go.

C. Lanza noted that the PB cannot change the fee; it has been set by the BOS.

D. Poliquin added that he once asked M. Dorman to show him the ordinance to support the inspections and fee and he could not do it, but the town is still requiring the landlord to pay the \$50 and get an inspection. He added that the tenant ends up paying the \$50. He stated that all landlords have been told that this is an ordinance but it is not an ordinance; it was rescinded. He stated that the ordinance will not change things. He asked about the wording; why include non-owner but not owner occupied? He has a problem with the ordinance in general and feels it will be unenforceable.

There was more discussion.

L. Komornick asked that if the Town continues to provide rental assistance and a tenant dies in that unit will the Town be liable.

J. Ingerson answered yes, if you are accepting money you are agreeing to terms and conditions. You need to understand those terms and conditions.

C. Lanza stated they should check with their attorney; he needs to know for sure before he can make a decision.

L. Komornick stated it should be the Town's attorney, not the Boards.

D. Poliquin clarified that not all state agencies actually come out to do inspections; he has only had one come out since 1999 and he has had many tenants with vouchers.

G. Adams motioned not to post Article Z-13-15 to the warrant, second by T. Moore.

G. Adams suggested that the Board reconsider this article; the intent is correct. He suggested the Board members review the e-mail sent from Attorney Donais regarding the Manchester document.

L. Komornick will re-send it out to Board members.

There was no further discussion on the motion and the vote was 4-1-0; J. Ingerson voted against the motion.

Article Z-13-9: Are you in favor of the adoption of an amendment as proposed by the Planning Board to the Zoning Ordinance by modifying all occurrences of "Contractor's Yard" in the Zoning Ordinance to "Contractor's Storage Yard" and by modifying Article II, Definitions, by adding a new definition for contractor storage yard as follows:

Contractor's Storage Yard - A site upon which heavy vehicles and equipment (such as bulldozers, front-end loaders, and back-hoes) and materials, supplies and forms, used by professional contractors in construction, land clearing, site work, utilities, landscaping or other similar activities are stored, including waste disposal containers. Land upon which any of the above items are temporarily stored on-site during the course of an active construction project shall not be considered a contractor's storage yard.

(Intent: To provide a definition for Contractor's Storage Yard to provide a clear description of this use.)

L. Komornick apologized to the Board; she was asked to get legal advice about re-visiting this article and she did not do that; it is already posted.

R. Gray asked if there was a definition for a contractor's yard in the ordinance.

M. Dorman replied no, they do not have one.

There was no further discussion on this article.

Item Six:

Other Business/Updates: Misc. Notices, letters, and other Correspondence from Dept. of Building Safety, Planning Department and ZBA; Status of Projects

FYI - Connolly V. ZBA

L. Komornick explained that the appeal for the setback was denied by the Superior Court based on the fact that there was knowledge upon building the garage that it was for residential use. For the contractor's yard Mr. Connolly withdrew without prejudice himself so it was never considered. He has a house and a garage out there; the garage cannot be used commercially.

Item Seven:

Adjournment

There was no further business before the Planning Board and the meeting was adjourned at 8:45 P.M.

Respectfully submitted as recorded by Laurie Pagnottaro.

Approved by the Planning Board on _____

Steve Ranlett, Chairman