



Town of Plaistow, New Hampshire
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Phone: (603) 382-8469

PB Minutes 10/2/13

October 02, 2013

Item One:

Chairman S. Ranlett called the meeting to order at 6:33 P.M.

Item Two:

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

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

S. Ranlett appointed G. Adams a voting member for the meeting.

Item Three:

Minutes of September 18, 2013

R. Gray motioned to approve the minutes of September 18, 2013, second by S. Kellogg.

There was no discussion on the motion and the vote was 4-0-1, S. Ranlett abstained.

Item Four:

Letter of Request from Ron Pica Regarding Blinn's Auto Body Site Plan.

S. Ranlett read the letter of request, dated September 27, 2013, from Ron Pica to the Board. The letter explained that J. Blinn has completed the placement of the binder surface for parking lot and driveway and that striping is completed. They requested the Board to allow them to wait until spring to install the finish surface.

L. Komornick noted that she is still waiting for the mylar. She asked M. Dorman if he had gone to the site and looked at the dumpster and bollards.

M. Dorman replied no; he will check on them in the morning.

R. Gray motioned to allow Blynn Auto Body to put final binder course on by May 15, 2014, second by G. Silva.

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

Item Five:

Update by Staff on the Status of Various Approved Subdivision and Site Plan Review Projects including Review of a Draft “Letter of Deficiency” Concerning Hillcrest Estates.

L. Komornick explained that on September 18, 2013 the DES received an application from Hillcrest Estates for a 34 lot state subdivision. The DES notified the Town that they had received the application. The road is currently under construction, they have a bond, and the mylar was recorded in 2011 as Plan No. D-36737. She added that it was recorded believing that all of the legal issues associated with the approval of the plan were addressed. The conditional approval notice of decision did not specifically call out stated subdivision approval as a condition of approval but it is mandatory by law.

R. Gray stated that he cannot imagine the Board would approval a plan without making state subdivision a condition or being told the applicant was in receipt of it.

L. Komornick reviewed the timeline of the application noting the following:

- The first application the Town received on April 4, 2007
- The Board had a full check list, CLD review, comments, and a staff report
- The elderly housing law suit was taking place during this time
- The Town appealed the ordinance for the elderly housing in 2007 after it was submitted on April 4th

The plan came before the Board for a second time on February 18, 2009

The applicants were sent before the ZBA on April 30, for a wetland variance

The applicants came back before the Board for a third time and requested continuances from 2009 until the Board approved them on March 17, 2010

She added that they do not have state subdivision approval or a well permit. They have however drilled a well on the site.

S. Ranlett stated that they will need to pull the minute of that meeting.

L. Komornick stated that Darren King, DES, sent back a letter that stated that he is requesting from the applicant a copy of the final approved public water system. She stated that this would suggest they might have an approved public water system there. He is also requesting in his letter a copy of the dredge and fill permit, the total flows for all 34 units, clarification of the size of septic tanks, copies of open space documents for remaining land, and copies of condominium documents. She added that the Board did allow the applicant to put a note on the plan stating they will file for condominium conversion prior to receipt of the first occupancy permit. Upon speaking to DES, the applicant did not file for any documents at all; anything that would have covered the project as a regular subdivision. The fact that they intended all along to condominiumize should have been a trigger for the Board to know that they had not gotten state subdivision approval; they would need all the documentation to apply for state subdivision approval as well.

R. Gray clarified the issues taking place:

- The Board needs to review the minutes to determine what happened
- Why did the Town’s engineers not flag them

L. Komornick stated that she had the minutes and all the documentation. She added that the engineers did flag the Board in item number 13 in the review letter. All the information is outlined in the Letter of Deficiency she had drafted. She spoke with the Board's attorney and he has suggested sending a Cease and Desist Letter. She presented the attorney's e-mail with the recommendation to M. Dorman and he spoke with the Town Manager about it on Friday who instructed M. Dorman not to send the letter. The Town Manager asked her to forward all the e-mail correspondence to him regarding the issue. On Tuesday the Town Manager called her and M. Dorman into his office to discuss this issue further and together they called the Board's attorney who stated that the Board could also send a Letter of Deficiency.

M. Dorman explained that the stop work order was discussed with the attorney and it was agreed that the Letter of Deficiency would be adequate at this time. He added that because the applicant has a signed plan it means that all the conditions have been met; even though they have not been.

There was further discussion regarding why the plan was signed, and whether the Board should send a Cease and Desist or a Letter of Deficiency.

L. Komornick said there was a gap in this plan with CLD's review and the length of time of the application; it was a matter of tracking the information and she takes full responsibility for this issue.

S. Ranlett asked what the applicant is doing out on the site.

M. Dorman replied that they are building a road, they drilled a well, and built the bridge. He added that they have the dredge and fill permit. When he issued the building permit he was assured that everything was in order. He explained that he went to the Town Manager because he was uncomfortable issuing the stop work order. During the last call with the attorney he was satisfied with the Letter of Deficiency being issued by the planning Board. With the letter the Town would be allowing them to continue working as they are trying to do the right thing; get state approvals.

R. Gray expressed concern with the possibility they do not get the state approvals.

S. Ranlett read an e-mail from Richard DeSeve, Compliance officer for DES. In the letter R. DeSeve agreed with the decision to issue a Cease and Desist and a Letter of Deficiency to the builder until such a time when DES issues subdivision approval. He also stated in the e-mail that he would forward D. King's letter to the Board with the outline of information D. King still needs before he can finalize the review of the subdivision. Once this information is provided DES will be able to approve the subdivision.

There was further discussion on this issue and who's responsible to issue the stop work order.

S. Ranlett asked why the Board is just hearing about this issue tonight when the issue came up last Friday. He added that he would like to see the minutes of the meeting as well. He also expressed concern over work being done with the possibility of the applicant not receiving state approval.

M. Dorman replied that it does not make sense to shut it down and make the applicants pull out all their equipment and possibly put the Town at liability when they just need to submit a few documents and the issue will be resolved in a week or two.

L. Komornick noted that the applicants need to get their condominium conversion approved by the Board and that it is at least a month out.

There was more discussion regarding this issue.

S. Ranlett stated that the Board should no longer approve any applicants unless all documents are

received.

L. Komornick added that they should allow no more than two continuances as well. She added that their attorney recommended that all state permits be received by the Board. She will include this in all notices of Decision and it should be included in all conditional approvals.

The Board further discussed the disconnect and issue of Town Employees doing the job of the Planning Board.

R. Gray stated that he feels a Cease and Desist order to the applicant. He would have liked to have been in on the conference call with the attorney or had him come in before the Board to explain the issue to them further.

L. Komornick noted that the attorney also suggested providing a deadline in the Letter of Deficiency and if the applicant did not meet it then they could issue the Cease and Desist. In the Draft she put a deadline of October 16, 2013 at 12:00 pm.

S. Ranlett asked where the applicants are in the process; is the application with the state.

L. Komornick answered yes; she provided the Board with a letter from Darren King that summarized the application and what documents need to be provided.

S. Ranlett read the letter to the Board which stated the following:

- DES received the application on September 18, 2013 from Snow's Brook for a subdivision of land
- DES needs a copy of final approval of public water system
- A copy of updated dredge and fill permit
- Provide total flows proposed including all 34 elderly units and community center flows
- Clarification of size of septic tanks as they will be shared by two units
- Each septic tank will need to be a minimum of 1,500 gallons
- Provide open space documents if remaining land will be designated open space
- Ensure these areas are worded accordingly on final plans

S. Ranlett stated that the final plans have already been signed. He added that the aboard had to have been lead to believe that they had state subdivision approval. He added that it has to be in the minutes. He stated that the Board would not approve a plan or sign a mylar without someone saying that all documents and conditions were complete.

L. Komornick stated that the issue now is what should be done about this.

The Board further discussed what should be done to resolve this issue now.

S. Ranlett stated that he also feels a Cease and Desist should be issued. He was upset that Planning Board decisions have been made without the Planning Boards involvement.

M. Dorman expressed concern about liability to the Town. He suggested getting an opinion from Town counsel and discussing the issue with the BOS before issuing a Cease and Desist. He stated that he works for the BOS and if they tell him to issue a Cease and Desist he will do so.

L. Komornick expressed concern over a conflict of interest with Town Counsel.

S. Ranlett asked for this issue to be set aside and for the next issue to be discussed.

L. Komornick explained that the next issue was with Little River Village. The Board did approve this plan with state subdivision and well approval. It also had a final DOT permit that was worded in a way that stated they had to achieve sight distance. At the time the DOT District 6 was receiving letters from the attorney of Red Torromeo, Bernie Campbell; his attorney is now Sumner Kalman. DOT caved and gave him the permit because they were asked to do so. When the project resumed, Dan Johnson tried to resolve the sight distance issue and Jim Driver stated that he couldn't find the in the file were they had received final. This means they never went back out to confirm they had gotten their sight distance. She stated that a revised and amended plan will come before the Board later this month to move the road further south. In addition to this the town has issued building permits to Chester Sullivan, a builder. He has purchased lots from Red Torromeo. The building permits should not have been issued had they known the road had to be moved.

Once this came to the Towns attention and inquiries were made other issues surfaced; the cul-de-sac was never finished, they have no governance, deeds, and easements. The houses that were sold cannot get occupancy permits. The applicants need to meet a long list of required documents that Attorney Cleary has been trying to contact them to get. Attorney Kalman sent her (L. Komornick) an e-mail stating that the Board's attorney had no right to be working on those documents. Atty. Cleary forwarded them to Atty. Kalman along with a list of remaining items and has not heard back from him. She added that she can show the Board the e-mail she received from Atty. Kalman. She stated that Red Torromeo will be back before the Board on October 16th.

M. Dorman stated that they need to move the driveway, finish the cul-de-sac, and pave. He added that the occupancy permit will not be given until after the paving is finished.

The Board discussed this issue and decided that this issue can be rectified.

S. Ranlett stated that these issues should come before the Board and not to the Town Manager.

L. Komornick stated that it would be helpful to have that statement in writing for when such issues come up.

There was more discussion on the issue of the Board not being notified of these issues earlier.

L. Komornick explained the last issue. She explained that in regards to the Ron Brown project the final condominium documents and plans have not been submitted for recording. Atty. Cleary has stated he will call R. Brown's attorney to find out why. She added that she has been in contact with SEC & Associates to ask where the mylar is and she has not gotten a response.

S. Ranlett asked if he is building out there.

L. Komornick replied yes, and he has a road that is not paved to binder beyond a certain point. R. Brown on the site. She noted that the Board gave him permission to build one unit for show.

L. Komornick suggested sending R. Brown a letter to document that he has been told to complete the binder before he can receive an occupancy permit. She added that she would be more comfortable pursuing these issues with DES.

S. Ranlett said to send R. Brown a letter as well to reiterate that he will get a Cease and Desist if he does not deal with his issues.

The Board discussed whose responsibility it is to write the Letters of Deficiency.

It was decided that R. Brown will get two letters; one from the Planning Board to address the missing documents and one from M. Dorman regarding completion of the binder.

S. Ranlett noted that he will come in tomorrow around 10:00 am to try and call Atty. Cleary to ask him questions regarding these issues; if any Board members wish to join him. He asked L. Komornick for a full list of what each project needs.

There was further discussion regarding how these three issues have come about.

The Board discussed what the deadline should be on the Letter of Deficiency for Snows Brook before they are issued a Cease and Desist. It was agreed upon by the Board that if S. Ranlett speaks with Atty. Cleary and he is in favor of a 30 day deadline from the issue of the Letter of Deficiency then that will be the deadline for the applicant to meet the conditions before a Cease and Desist is sent.

M. Dorman stated that he would still like to get the approval from the BOS before he sends the applicant the Cease and Desist Letter due to the potential liability to the Town. If the BOS is in agreement of issuing the Cease and Desist Letter then he will. There was more discussion on this issue.

It was decided that this issue will be put on the agenda from the next BOS meeting. S. Ranlett will attend the meeting and L. Komornick will forward all e-mails out to the Board. The letter of Deficiency with the 30 days deadline will be prepared and ready to send out after the BOS meeting pending their decision.

Item Six:

Update on the NHDOT Route 125 Widening Project and the Associated Service

L. Komornick explained that they have had two meetings; August 6th and September 9th. One was to update Town officials and the second was to meet with the abutters regarding the status of the service road. She added that there is a new project manager for DOT. There are a number of outstanding issues that have been provided by DOT that the Town Manager and project manager are addressing. The possible outcomes are that the road will either stop just past Planet Fitness or will continue on to Diesel World.

Item Seven:

Update by Staff on the Statues of the 2014 -2019 CIP Update

L. Komornick explained that the CIP Committee has adopted the updated CIP. T. Moore and herself are working on the revisions and will present it to the Board after Oct 16th as T. Moore will not be available for that meeting.

The Board discussed the date they will review and approve the CIP and decided to add it to the November 6, 2013 agenda as the October 16th agenda is full.

Item Eight:

Brief Planning Board Workshop to Review “Reassembled” Master Plan and Updates by Shem Kellogg on the Water Resources Chapter. Also, Discussion Regarding Funding for Further Master Plan and Impact Fee Updates in the Draft 2014 Planning Board Budget.

S. Kellogg explained that he took out the Natural Resources section and carved out the Water Resources piece. He added that G. Adams is working on the Natural Resources Chapter and he is working on the Water Resources Chapter. He has highlighted everything in yellow that he has updated. Some of the hydrogeology of the Town has not changed and does not need updating. He

is awaiting population projections from RPC for the water demand section. He will e-mail it out to the Board and welcomes their suggestions.

S. Ranlett asked if the Master Plan budget was submitted.

L. Komornick answered no; the Budget committee did not have a quorum and so did not meet. It is continued to the next meeting. She is unable to attend and asked that S. Ranlett and T. Moore attend.

S. Ranlett noted that the Board is asking to have \$5,000 put in the budget for the Master Plan.

L. Komornick explained that she has provided a copy of the schedule of the "Reassembled Master Plan". Everything is updated on it as to when it was completed or when it needs updating.

S. Ranlett explained that he has discussed with the BOS that he does not feel the \$5,000 will cover the cost of the updates needed. He is not sure how much time the Board and L. Komornick can actually devote to updating themselves. He also had discussion with the Town Manager and has included an e-mail from Bruce Mayberry regarding some quotes and the fact that he cannot help the Board by the end of this year.

R. Gray noted then the Board will not have anything completed by the end of the year to show the BOS.

The Board reviewed the e-mail. It was noted that \$12,500 was quoted for just three impact fee items before any Master Plan work is done. The three impact fee items he is discussing in the letter are; school, recreation, and public safety. The school impact fee has not been updated for 16 years and recreation has not been updated since it was created in 1996.

R. Gray stated that the BOS recommended that the Planning Board put together a scope of work including updating and impact fees, and any other work needed to get the Master Plan back on track. He suggested they come up with a figure and it be a part of the CIP as a rotating annual cost.

The Board discussed the \$5,000 figure and whether it would be enough to cover the work they need to do on the Master Plan as well as how often the impact fees should be updated.

L. Komornick stated that B. Mayberry explained that at least periodically. There are triggers such as the safety complex project. She will send that information out to the Board.

S. Ranlett would like to decide on a figure before he needs to meet with the BOS.

L. Komornick stated that they should have the new road impact fee added to the list; they can have B. Mayberry look at it. This would make four impact fees (not three).

L. Komornick suggested getting a consultant on board to complete the Transportation Chapter; the text needs to be updated to go along with the updated charts and graphs (about 40 hours). They could also use the assistance in developing the new Implementation Chapter. She recommended having B. Mayberry do the Housing Chapter; he would not get to it this year nor has he provided a cost for the individual chapter. L. Komornick will get a quote from him.

S. Ranlett suggested getting the school and recreation impact fees done as soon as possible; would cost about 8,000 and complete it for this year.

R. Gray expressed concern that there is not enough information in this letter to determine how much they need to budget for this. They need a figure for BOS and budget committee. He stated

it will take some work on L. Komornick's behalf to decide what she can do and what she cannot do.

L. Komornick replied she cannot get that information by next Tuesday night.

The Board agreed they need to get a contract with B. Mayberry for next year to encumber it.

S. Ranlett noted that they sent out RFP's last year and the quotes were between 55,000 and 75,000.

G. Adams suggested getting a breakdown of the quotes so they can pick and choose what chapters they need to complete.

L. Komornick stated they have gotten quotes for what they can get for various amounts. She can e-mail it out if anyone wishes to review it.

It was decided they will get a quote for the housing chapter and four impact fees from B. Mayberry. They will take the \$7,000 and encumber it and next year they will ask for \$20,000.

R. Gray stated that sometime in November the BOS will invite the PB to come back before them. That will give the PB time to get everything they need. He will explain the situation to the BOS.

S. Ranlett will go before the budget committee next Tuesday and go through what he has with the \$7,000 and explain that it may change.

Item Nine:

Reading of Communications Directed to or From the Board (Copies of the 2013-2014 Zoning Amendment Update Calendar)

The Board reviewed and discussed the zoning amendment calendar. It was decided that it should be wrapped up by December 18th but the Board could have an extra meeting on January 2nd if they need to as the regular meeting date is a holiday.

Item Ten:

Report / Update by Tim Moore on RPC Activities, State's 10 Year Plan Public Hearings and the Rail Project.

T. Moore was not present to give update.

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

L. Komornick noted that she is still trying to get verification from the Town Manager regarding who will cover the minutes while L. Pagnottaro is on maternity leave.

Adjournment

There was no further business before the Planning Board and the meeting was adjourned at 8:40 P.M.

Respectfully submitted as recorded by Laurie Pagnottaro.

Approved by the Planning Board on _____

Steve Ranlett, Chairman