

TOWN OF NEWPORT, NH
Minutes of the Planning Board Meeting
April 12, 2016 – 6:00 P.M.
Board of Selectmen's Room
15 Sunapee Street
Regular Meeting

MEMBERS PRESENT: David Burnham, Vice Chairman; Ken Merrow, Karen Dewey, Gary Nichols, BOS Representative

MEMBERS ABSENT: Howard Dunn, Chairman; Jeff North, Bill Walsh, Erna McCormick, Alternate; David Kibbey, Alternate

VIDEOGRAPHER: Louis Cassorla, NCTV

STAFF PRESENT: Julie M. Magnuson, Planning and Zoning Administrator; Shane P. O'Keefe, Town Manager joined the audience after the meeting started.

CALL TO ORDER: Vice Chairman Burnham called the meeting to order at 6:01 p.m. followed by a roll call. Due the absence of the Chairman, Mr. Burham took over as acting Chairman.

AGENDA REVIEW: none

MINUTES:

March 1, 2016.

On a motion by Mrs. Dewey, seconded by Mr. Merrow; *the Board approved the minutes of the March 1, 2016 meeting as presented. The motion passed 4-0-0.*

On a motion by Mr. Nichols, seconded by Mrs. Dewey; *the Board voted to hear the Preliminary Conceptual Consultation Orion Prevention Information and Education, Inc. before the public hearing on Newport Planning Board's Rules of Procedure. The motion passed 4-0-0.*

Ms. Magnuson was acknowledged by the Chair. Ms. Magnuson addressed the Chair and stated that with Mr. Nichol's retirement from office, the April 12, 2016 meeting would be his last as a BOS Representative. She read aloud a prepared statement thanking Mr. Nichols for his many years of service, outlining a number of important decisions that had been made during his tenure on the Planning Board.

COMMUNICATIONS TO THE PLANNING BOARD:

Reading of communications directed to/from the Planning Board:

a) Plan titled "Annexation for Lot Line Adjustment 636 John Stark Highway" Dated November 9, 2015 and signed by Clifford P Richer, submitted to TOPAZ on March 4, 2016.

Mrs. Magnuson addressed Chairman Burnham concerning the communications. She explained that she had been given a file with no direction. Mr. Bert Spaulding, Sr. stated that if Ms. Magnuson was referring to his communications, his wish was that the item not be entertained at tonight's meeting. He asked to have it heard at another meeting. Ms. Magnuson explained to the Board that the item referenced was on the April 12, 2016 Planning Board agenda (item #4). Mr. Spaulding, Sr. addressed the Chair and requested that the Town Office of Planning and Zoning (TOPAZ) submit to the Chair and to him the legal standing for the requirement of the Mylar in place of the paperwork he had given them (Planning Board). For clarification, Vice Chairman Burnham asked Mr. Spaulding, Sr. if he wanted to know why he had to file a Mylar rather than just paper. Mr. Spaulding addressed the Chair and stated that he wanted to know the "legs he (the Town) stood on" to require a Mylar and thus usurp his (Mr.

Spaulding's) property rights. He requested a Town legal opinion that stated they could do that. Mr. Spaulding, Sr. requested that the Town tell him the statute that stated they could do it (require a Mylar) and he would comply. Without that-Ms. Magnuson addressed the Chair and stated the question should be referred to Town legal counsel. Chairman Burnham concurred.

Chairman Burnham then directed Ms. Magnuson to talk to Town legal counsel to find the statute that states filing a Mylar needs to be done. Ms. Magnuson asked, for clarification, if Mr. Spaulding, Sr.'s request was to find the "legal standing" of recording a Mylar. Mr. Spaulding concurred, stating she could use any words she chose to find why the Town could take his property rights; approve the annexation line then refuse the annexation because he did not submit to providing a Mylar. He had done research on the statutes and thought he had found a statute; he wanted to know what the Town legal counsel's interpretation and statute was. He explained his request further. Mr. Spaulding reiterated that if the Planning Board could tell him the statute under which they required a Mylar to be filed, he would comply with their request.

Ms. Magnuson asked, for clarification, if her directive was to talk to legal counsel in response to this question. Chairman Burnham stated yes.

Chairman Burnham read the following into the record:

Reading of communications directed to/from the Planning Board:

a) Plan titled "Annexation for Lot Line Adjustment 636 John Stark Highway" Dated November 9, 2015 and signed by Clifford P Richer, submitted to TOPAZ on March 4, 2016.

He stated that the agenda's Communication (item #4) was continued to the next Planning Board meeting per the applicant's request.

COMMITTEE REPORT: None

NEW BUSINESS:

Hearings on subdivisions or site plans:

Ms. Magnuson addressed the Chair and explained that the applicant was at the meeting for a Preliminary Conceptual Consultation. Comments by the Board members would be non-binding; the applicant was asking for input from the Board before a potential project.

Preliminary Conceptual Consultation: Orion Prevention Information and Education, Inc. (Owners) and Jonathan Burnham (Agent) requests preliminary review of the construction of a 36 x 60 accessory building for vehicle storage and maintenance. The property is identified as Map 115 Lot 017 and is located at 135 Elm Street in the Single Family (R-1) and Rural (R) Zoning Districts.

Vice Chairman Burnham acknowledged Mr. Jonathan Burnham as spokesman for the applicant. Mr. Jonathan Burnham addressed the Board members and gave a general synopsis of the intentions of the applicant in constructing an accessory building for vehicle storage and maintenance. Using a draft site plan, he showed the Board land currently owned by the school, the area on the lot where the building would be constructed and ingress and egress to the area.

Ms. Magnuson addressed the Board and stated that the lot existed, the access to the lot existed, there had previously been a mobile home and garage on the lot; it was her stated belief that these were all non-issues. She had given a site Plan Review Checklist to Mr. Burnham and the Board to review and comment.

All items on the Site Plan Review Checklist were discussed by the Planning Board members and Mr. Jonathan Burnham. Those items highlighted were:

- Proposed drainage system.
- Plans for potential a water and power supply and telephone.
- Exterior lighting. Members asked where it would be and emphasized lighting would need to be downcast and shielded.
- Snow removal locations were requested to be shown on the site plan.
- Access for emergency vehicles was stressed.

It was agreed that the need to have all material submitted to the New Hampshire Department of Transportation for access driveway approval was not applicable to the Case. There was additional general discussion between the applicant and the Board members. There being no further comments or questions from the Board members, Chairman Burnham closed the Preliminary Conceptual Consultation. Vice Chairman Burnham thanked Mr. Burnham for attending the meeting.

Ms. Magnuson addressed Mr. Jonathan Burnham and stated that deadlines for Planning Board submittals were posted on the Town website and in the TOPAZ office.

Preliminary Conceptual Consultation: Ken Aguiar (Owner) of ERICSAM, LLC

Requests preliminary review of the possible construction of a building consisting of a garage with office space and storage space downstairs and a residential unit upstairs. The property is identified as Map 107 Lot 017 and located at 308 Sunapee Street in the Light Commercial (B-1) Zoning District.

The applicant did not attend the meeting. The Preliminary Conceptual Consultation was tabled.

UNFINISHED BUSINESS: Public Hearing

On amendments to the Town of **Newport Planning Board's Rules of Procedure**. The amendments include correcting formatting and typographical errors; updating the sections pertaining to the roles of members and alternates; roles and election of officers; the running of meetings (including agenda items); public hearings; updating the days required for minutes/decisions; as well as other minor additions/deletions to bring the rules current.

Ms. Magnuson addressed the Board members and stated she had emailed the Newport Planning Board's Rules of Procedure and also mailed a hard copy to them.

Chairman Burnham asked Ms. Magnuson to read her memorandum of March 15, 2016. Ms. Magnuson explained the three copies of the Rules of Procedure that the Planning Board had received. She read the entire memorandum (the memorandum can be found in the TOPAZ office) into the record for clarity and for the viewing audience.

Ms. Magnuson addressed the Planning Board members and stated that their considerations were to accept or refute the changes including the red mark-up additions and the change to 6.g. concerning the time limit for public comment to the proposed Rules of Procedure dated April 12, 2016. She asked if there were any questions.

Mr. Nichols asked if the final draft had been posted. He was told yes.

Mrs. Dewey addressed Ms. Magnuson and stated that she had found it difficult to move from one document to another. She indicated "joint meetings and hearings" from the original March 1, 2016 meeting. She asked where it appeared in the proposed document. Vice Chairman Burnham stated it was item #5 on page 5 (Ms. Magnuson corrected him, stating it began on page 4).

Ms. Magnuson stated that information from the latest New Hampshire Office of Energy and Planning (OEP) handbook would keep the Newport Planning Board current. Chairman Burnham asked the Board members if there were any other questions or comments.

He then addressed the public in attendance and asked for public comment. Mr. Spaulding, Sr. addressed the Chair and asked if he would be imposing the three minute ruling for public comment at the April 12, 2016 meeting. Chairman Burnham stated no.

Mr. Spaulding then voiced his opinion concerning the public comment section of the Rules of Procedure. Chairman Burnham asked if there were any additional comments. Addressing Mr. Spaulding he stated he had none (to Mr. Spaulding's comments).

Mr. Spaulding addressed the Chair and again voiced at length his opinion concerning a public comment section in the meeting agenda and stated his intentions concerning the proposed public comments. Chairman Burnham addressed the Board and asked if there was any comment.

Mr. Nichols commented on Mr. Spaulding, Sr's opinion. He then made a motion to eliminate the last five words (page 3, 6. g.) of 6. g. to read: *Other business – public comment (NOTE: Public comments shall pertain to topics within the purview of the Planning Board)*. The Vice Chair called for a second.

Vice Chairman Burnham stated that 6g stated *may*. The newest OEP handbook also states "may be limited from three to five minutes". He gave an illustration of why 6g was written as it was. He acknowledged Ms. Magnuson. Ms. Magnuson gave additional information as to the basis of the three to five minute limitation as well as the basis for making the public comment section of the Rules of Procedure optional.

Chairman Burnham asked for additional comments. There were none. He called for a second to the motion. The motion died for lack of a second.

Mrs. Dewey addressed the Chair and asked if there were any other areas of the document that the Planning Board needed to address. The Chair stated no. Mrs. Dewey asked, for clarification, what the procedure was. She asked if the Chair needed a motion.

On a motion by Mrs. Dewey, seconded by Mr. Merrow; ***the Board voted to approve the recommended Rules of Procedure for the Planning Board, Town of Newport, NH dated April 12, 2016 as written.***

Ms. Magnuson requested that the following be added *with the addition of a header showing the changes at the 3.01.2016 meeting; JMM suggestion and updated OEP Recommended Rules of Procedure for 4.12.2016.*

There was discussion on the motion. Mr. Merrow asked that the motion include the caveat that the header be as specified on the marked up copy of the Rules of Procedure.

Mrs. Dewey restated her motion.

On a motion by Mrs. Dewey, seconded by Mr. Merrow; ***the Board voted to approve the recommended Rules of Procedure for the Planning Board, Town of Newport, NH dated April 12, 2016 with the header showing changes at the 3.01.2016 meeting; JMM suggestion and updated OEP Recommended Rules of Procedure for 4.12.2016 on it. The motion was tied 2-0-2 (Burnham and Nichols abstained).***

There was discussion on the motion. Chairman Burnham stated that he felt there should be a caveat concerning the public comment. The Board members explained the motion that had been voted on. Chairman Burnham called for a revote; he had misunderstood the motion.

On a motion by Mrs. Dewey, seconded by Mr. Merrow; ***the Board voted to approve the Rules of Procedure for the Planning Board, Town of Newport, NH dated April 12, 2016 that are noted as***

markup showing changes at the March 1, 2016 meeting; JMM suggestion and updated OEP recommended Rules of Procedure. The motion passed 3-0-1 (Nichols abstained).

NEW BUSINESS (cont.):

Continuation of hearings on subdivisions or site plans: None

Continuation of hearings on other matters: None

Any other matters that come before the Board.

Informational requests: None

Public comments: Mr. Bert Spaulding, Sr. addressed the Planning Board members at length with his views on freedom of speech and ability to speak in governmental forums such as the open forum portion of the Planning Board meeting.

He then read a prepared statement to the Planning Board directed to Chairman Dunn on his views and requests over the past few months. Town Manager O'Keefe addressed the Chair with a Point of Order. He stated that what Mr. Spaulding, Sr. was referring to was not a Board matter, but a personal matter and not in the purview of the Planning Board. Mr. Spaulding refuted the statement and asked the Chair if he had the floor and could continue. Chair Burnham asked Mr. Spaulding to continue. He continued, reading a prepared statement.

Mr. Nichols then addressed Mr. Bert Spaulding, Sr. and rebutted his views and request. Mr. Nichols stated that previously Mr. Spaulding had been a Selectman and a BOS Representative to the Planning Board. He reminded Mr. Spaulding that not once had he challenged Mr. Dunn's ability and leadership as Chairman. Mr. Nichols stated that Mr. Spaulding had only one item being brought before the Board. Mr. Nichols wanted it to be recognized by the Board and viewing audience that Mr. Spaulding, Sr. was using the law as a hammer. Therefore, the citizens will stand behind Chairman Dunn and the Board of Selectmen against Mr. Spaulding, Sr. He completed his discourse by reiterating several points and stated that Mr. Spaulding had not been providing the full issue; he provided information that benefitted "only one person's opinion."

Miscellaneous: None

On a motion by Mrs. Dewey, seconded by Mr. Nichols; *the Board voted to adjourn at 7:10 p.m. The motion passed 4-0-0.*

Respectfully submitted,

Maura Stetson
Scribe

Approved on: May 3, 2016